

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 2032

March 10, 1972

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STATE OF NEW JERSEY
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

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1. APPELLATE DECISIONS - McDERMOTT v. GARFIELD.

Jerome McDermott, et als.,)	
Appellants,)	
v.)	On Appeal
Mayor and Council of the City)	CONCLUSIONS
of Garfield, and Russian Orthodox)	and
Greek Catholic Church of the)	ORDER
Three Saints,)	
Respondents.)	

Cole, Geaney & Yamner, Esqs., by Morris Yamner, Esq., Attorneys
for Appellants
Chandless, Weller & Kramer, Esqs., by Ralph W. Chandless, Esq.,
Attorneys for Respondent Council
Clapp & Eisenberg, Esqs., by Jerome C. Eisenberg, Esq., Attorneys
for Respondent Russian Orthodox Greek Church

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of respondent City of Garfield (hereinafter Council) which, by resolution dated June 22, 1971, it renewed plenary retail consumption license C-22, issued to respondent Russian Orthodox Greek Catholic Church of the Three Saints (hereinafter Church). The license was conditionally issued and was limited to use in connection with church functions without excessive noise or nuisance or advertising, and not to be competitive with other licensees.

Appellants contend that the action of the Council was erroneous in that: (a) plans of proposed building made no mention of a bar; (b) a religious organization should not convert its premises to commercial use; (c) premises are located in a protected residential area where commercial use is not permitted; (d) prior to the transfer to the Church, the license was dormant for an extended period; (e) a religious organization should not have such license for profit; (f) grant of such license will set precedent for other licenses to enter the area; (g) the Church has not needed a liquor license during its seventy-five years of existence; (h) the grant of such license to the Church for limited use of the members converts the license into a "club" license; (i) the use of such license in the area constitutes a non-conforming use, and finally, (j) the condition of the license is contrary to law as stated in Englewood v. Lacqua, 92 N.J. Super 493 (App. Div. 1966).

The appeal was further bolstered by thirty-three signatories joining as objectors.

An answer filed by the Council denied any illegality in its action and an answer of the Church contained a simple denial with admission that a church, cultural center and church school are to be erected on the premises, and that the Church never before possessed a plenary retail consumption license.

The appeal was heard de novo in accordance with Rule 6 of State Regulation No. 15, with full opportunity given counsel to introduce testimony and cross-examine witnesses. The transcripts of testimony at the hearings held by the Council, by stipulation, accepted into evidence as a supplement to the evidence offered in the hearing before this Division. Rule 8 of State Regulation No. 15.

Patrick Ficarra, one of the Councilmen, testified that he alone voted against renewal of the license although he had previously voted affirmatively along with all of his fellow members, in favor of the transfer of the license to the Church. He explained his negative vote came about by the disclosure that public functions were anticipated and that the license would not be limited only to members of the parish. His initial impression had been that only parishioners would be able to avail themselves of the license privileges.

A former municipal engineer for the City, David C. Cascino, testified that his home adjoins the eight acre tract of Church property. He provided a detailed description of the buildings on and character of the Church land. That land is surrounded by high value residential homes of which his is one. The area of both Church and the one-hundred or more homes nearby fall within a R-1A zone, the most highly restricted residential land use in the city. The existence of a plenary retail consumption license in that area would have a deteriorating effect upon property values. He alluded to no present damaging effect but speculated on the prospective result.

Norman J. McDermott, a teacher and nearby resident to the Church gave extensive testimony concerning his opinion of the negative effect to property values a liquor license would bring to that area. His opinion can be capsulated into a fear of changes in the character of the neighborhood.

On behalf of the Church, John Opuda testified that he is a builder by profession for the past twenty years, and, as a member of the Church chaired its building committee. The land involved was purchased by the Church about a decade ago when it consisted of a dairy farm of approximately nine acres. Part of the land was swampy, insect and rodent infested. During its ownership, the Church caused the land to be filled, seventy-five trees to be planted, a parking area paved, roads built and a cultural center building erected -- the first of three contemplated buildings on the site.

The cultural center building, plans and photographs of which were admitted into evidence, is a huge building of unique architecture, two-hundred and twenty feet long and eighty feet wide. It contains a church school with ten classrooms, a library office, lounge and large auditorium used for meetings, concerts, basketball, weddings and other social functions. The auditorium will accommodate about a thousand people. Off the foyer entry is a lounge against the rear wall of which is a thirty-one foot bar. The lounge and foyer may be separated by a folding wall. In addition to the bar, the lounge contains five large tables each with six chairs. The building was dedicated less than two months ago.

Edward Onisko testified that he is the president of the parish council and is employed as director of personnel for the Atlantic & Pacific Tea Company. About nine hundred families support the Church. The cultural center serves as a gathering place for eleven auxiliary groups, representing different age and interest groups within the church membership. The Church Council determines how the building is to be used, makes rules for its use and offers these facilities principally for members and friends. In the approximately two months of existence, there have been but four occasions when the bar was open. These four were for (1) the day of dedication; (2) a "pot luck" dinner; (3) an awards dinner; and (4) a wedding. There is no "public bar" in the conventional sense, the bar being opened on the occasion of specific functions. No members or others can visit the building merely for the purpose of obtaining drink as the bar is opened only in connection with specific functions. The cost of the building exceeded half a million dollars.

From the varied contentions of the appellant's petition it would appear that the major thrust of their argument is directed mainly to objections to the person-to-person and place-to-place transfer of the license rather than objection to the renewal itself. Amid the objections is the plea that the appellants had no notice of the "issuance of the license" to the Church. There being no proof adduced that notice of application to transfer was not properly published in accordance with Rule 4 of State Regulation No. 6 it must be accepted that the objectors either named herein as appellants or who noted their names at the public meeting before the City did not file written objections to the transfer. However, the petition of appeal being directed against the renewal of the license being interwoven with what would be objections to the said transfer such objections may properly be considered on this appeal. Rule 3 of State Regulation No. 15.

The petition of appeal alleges that the plans of the proposed building made no mention of a bar. In the hearing before the Council, plans of Lawrence S. Stern, dated April 14, 1970 were marked in evidence and, thereafter, at a hearing before this Division these plans were also accepted into evidence. Page No. 4 of these drawings show the main floor plan at the extreme left of which a thirty-one foot, eight inch bar is clearly depicted. These plans had been filed with the City Clerk along with the Church's application for renewal. This objection is groundless.

Appellants argue that a religious organization should not convert its premises to commercial use. "Commercial [use] has been defined as: "from the point of view of profit: having profit as the primary aim." Webster's Third New International Dictionary (1961). The uncontroverted testimony of Parish Council President Onisko indicated that there was not nor would there be a "public bar" in the conventional sense; and the four solitary uses of the bar in two months would put to rest any conjecture that there was "profit" as a primary aim.

Appellants contend that the licensed premises are located in a protected residential area where commercial use is not permitted. It has been indicated that the transfer to the Church was not accepted by it as a "commercial" use and, as noted supra, no "commercial" intent can be ascribed to the license.

The license was dormant for a protracted period prior to its transfer to the Church and that, appellants allege, makes the renewal of the license erroneous. The appellants are obviously unaware that renewal in the name of the prior licensee was granted and the Council's action had been appealed to this Division. That appeal resulted in an order by the Director that the license be then renewed for the sole purpose of transfer and a transfer to the Church resulted. Cf. Hudson-Bergen Package Stores Association v. Garfield, Bulletin 1976, Item 3.

Appellants further contend that a religious organization should not have such license for profit. Assuming that any sale of alcoholic beverage by the Church results in "profit" it has long been held that a religious organization is not precluded from possessing such license. Among the earliest decisions of then-Director, Commissioner Burnett, was a determination concluding with the paragraph: "However I will gladly entertain applications for Special Permits for occasional affairs to be conducted by this Church." Special Permits, Bulletin 118, Item 4 (April 30, 1936). That same year, Commissioner Burnett added:

"If the Church or the club to which you refer is able to qualify in accordance with the statute and the State and local regulations, there is no reason why the Township Committee cannot issue them a license. They stand in the same position as any other applicant...."

Re St. Nicholas Ukranian Catholic Church, Bulletin 136, Item 13.

The grant of this license will not, as appellants contend, set a precedent for the inclusion of other licenses in this area. A perusal of the transcript of the hearing before the Council indicates that great concern was given to the consideration of the license, that the overall situation as described by the Church was unique and uniquely treated. From the testimony of the appellants' witnesses at the hearing before this Division, it is clear that the tract upon which the cultural center, the proposed church building and parish house is and to be erected is surrounded by residences of high value. There is no area remaining on which another cultural center could be erected, for which the renewal of this license could be called a precedent.

As the Church has not needed a license for the past seventy-five years of its existence, it needs none now, asserts the appellants. Firstly, this is not quite true. From the testimony of the parish president it appears that the Church has, from time to time, obtained Special Permits to sell alcoholic beverages during past functions. While these Special Permits (N.J.S. 33:1-74) are not "licenses" in the conventional sense, their holders enjoyed license benefits for temporary periods. Hence the Church has been in a similar position to that of a licensee on occasions during the past years.

The license, being a "non-conforming use" in the area of its location is challenged by appellants as being invalid. Such argument falls when tested against Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 59 N.J. Super. 419, 433 (App. Div. 1960), aff. 33 N.J. 498, which holds against this thesis.

Finally, the renewal is challenged in that the conditions imposed in the license are so restrictive as to constitute it a "club license". Appellants cite Englewood Common Council v. Lacqua, supra. in support of this contention. However, the situation sub judice and that in the Englewood case are easily distinguishable. The conditions imposed on the Lacqua license were identical to those conditions contained in club licenses generally and Lacqua and the country club of which the license was a part, objected vehemently. This Division determined that the municipality there could not transform a plenary retail consumption license into a "club" license and the court affirmed. Here the character of the license remains unchanged with the conditions imposed being those conditions that the Church indicated it would operate under. The Church is not an objector to those conditions. It is axiomatic that a transfer of license may be approved on conditions. Fiory v. Ridgewood, Bulletin 1932, Item 1.

While not specifically stated, a running objection throughout the proceedings, both before the Council and in this Division, was the presumed psychological abhorrence that a church or temple would have to the sale of alcoholic beverages. While the pastor of the parish did not testify before this Division, he did so before the Council. The over-riding question arose, i.e., the apparent inconsistency of a religious organization seeking a license, and in response thereto the pastor is quoted as follows:

"There is absolutely nothing insignificant. As a matter of fact, it would only take a person to walk into our parish to be in Garfield, New Jersey, or be it in Juneau, Alaska, since our churches go that far, to notice right away that all of our people have both a very social and it also, in a sense, is a very spiritual attitude toward the use of, let's say drinking
...."

The issuance, renewal and transfer of liquor licenses rests in the sound discretion of the issuing authority and its action will not be judicially disturbed in absence of a clear abuse of discretion. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949); Fanwood v. Rocco, 33 N.J. 404 (1960).

The record of the hearings held before the Council reveal that its members weighed the application on the scale of interest to the community as a whole:

"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." Ward v. Scott, 16 N.J. 16 (1954).

From a moribund dairy farm with an insect-ridden swamp to a prospective park-like setting described by the church officials, the eventual benefit to the community was envisioned by the Council and it acted accordingly. Such action could not be described as unreasonable, arbitrary or capricious but rather a proper exercise of its lawful discretionary authority.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 1st day of February 1972,

ORDERED that the action of respondent Mayor and Council of the City of Garfield be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

Richard C. McDonough
Director

2. APPELLATE DECISIONS - SUE & FRANK CLUB, INC. v. NEWARK.

Sue & Frank Club Inc.,)	
Appellant,)	ON REMAND
v.)	CONCLUSIONS
)	and
Municipal Board of Alcoholic)	ORDER
Beverage Control of the City of)	
Newark,)	
Respondent.)	

Leon Sachs, Esq., Attorney for Appellant
William H. Walls, Esq., by Jonathan Kohn, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This matter was heard by me upon remand by the Superior Court of New Jersey, Appellate Division, which by order dated November 29, 1971, vacated the Director's affirmance of the local Board's action (Sue and Frank Club Inc. v. Newark, Bulletin 1963, Item 2) and directed reconsideration in the light of the Ishmal ruling. The remand order succinctly articulates the basis of the Director's Conclusions and is repeated in toto:

"Appellant Sue & Frank Club Inc.'s application to renew its plenary retail consumption license was denied by the Newark Municipal Board of Alcoholic Beverage Control. On appeal to the State Director the action of the Municipal Board was upheld, the Director finding that the tavern was a hangout for drug addicts and other troublesome patrons, and that patrons frequently congregated outside the premises and were a source of annoyance and trouble to the local residents. The Director held that the licensee was responsible for conditions both in and outside the licensed premises which were caused by patrons thereof, and that the fault or merit of the licensee was not the determinative consideration.

The Director's Conclusions and Order were filed prior to the Supreme Court decision in

Ishmal v. Div. of Alcoholic Bev. Control, 58 N.J. 347 (1971).

It is not entirely clear from the Director's conclusions whether the finding that the tavern was a trouble spot was due to its physical location rather than culpable conduct on the part of the licensee. Ishmal holds that where the licensee is not at fault and has in good faith attempted to prohibit regulatory violations and criminal offenses, but that the root of the problem is the tavern's location, the licensee should in fairness be offered a chance to secure another location.

Under the circumstances, we conclude that justice will be served by vacating the Director's affirmance of the local board's action and remanding the matter to the Director for reconsideration in the light of the Ishmal ruling. Of course, if the Director finds that the problem not only involves the location but also the licensee's performance or lack of good faith efforts to prohibit regulatory violations, Ishmal would not control. We direct that the new Conclusions and Order be filed within 45 days from date. We will retain jurisdiction.

Reversed."

In accordance with the terms of the aforesaid order, full oral argument was heard based solely upon the record, by stipulation of counsel.

(1) The Court's decision clearly supported the Director's finding that this tavern was a trouble spot. This was conceded by the attorney for the appellant in his summation at the argument on remand, when he stated "...I think the point of the problem is deciding the issue of culpability."

Since this matter was considered by the Board prior to Ishmal, the broad question posed before it on the subject application for renewal was "whether, in the light of all the surrounding circumstances and conditions, it was good for Newark and the neighborhood involved, for this tavern to continue to exist at this particular location at all." The objective judgment of the Board which was affirmed by the Director and approved in the opinion of the Appellate Division, was the continuance of its present operation would be inimical to the public interest.

(2) As the court stated in Nordco, Inc. v. State, 43 N. J. Super. 277 at p. 282:

"It seems to us entirely proper for both the local and state agencies, when passing on such applications, to take into account not only the conduct of the licensee, but also conditions not attributable to its conduct, which render a continuance of a tavern in a particular location against the public interest."

In Ishmal, however, the court held that:

"...the tavern's character as a 'trouble spot' of narcotics activity was due to its physical location rather than culpable conduct on her part. We think it clear, therefore, that Mrs. Ishmal did not 'allow, permit or suffer' the drug problem at the tavern; and without that element the finding that Rules 4 and 5 were violated cannot stand."
(58 N.J. at p. 352)

Thus, the decisive and dispositive issue on the remand is whether the problem involves not only the location but also appellant's culpability or lack of good faith efforts to permit regulatory violation. In such instance Ishmal would not control.

Frank C. Weston, a principal stockholder and officer of the corporate appellant, testified that the appellant acquired this facility in April 1969, and that the license was renewed for both the 1969-1970 licensing period and the 1970-71 licensing period. No charges in disciplinary proceedings were ever preferred against this appellant by the Board. It appears that these premises have been operated as a "trouble spot" for a number of years prior to appellant's acquisition, and the appellant made some efforts to improve its operation and the nature of its patronage.

Weston stated that he had a conversation with local narcotic agents, and informed them that he would "...welcome them to come in at any time" to these premises. He further asserted that whenever he recognized a drug addict he would order him to "Get out. You're not buying anything and we don't need your type in here." As the manager of these premises he usually came there about 3:30 p.m. in the afternoon and would remain on and off until 2:00 a.m. the following morning. When he was not there, his wife substituted for him.

He further testified that when the appellant first took over these premises narcotic users would come into the tavern frequently but he found that these narcotic users entered the tavern less frequently after a month or so after he assumed management thereof.

He instructed his bartenders to keep out anyone who was loitering outside these premises. He also put a sign up on the door of the premises with the legend "No Loitering." On a number of occasions he would disperse any loiterers and inform the police in the area "I do not want anybody standing in front of the premises loitering." If the person did not move upon his request, he notified the police. Mrs. Weston testified that when people congregate in front of the premises she and the bartender tell them "To move."

(3) The Board failed to negate the affirmative testimony of Weston that he frequently called the police for assistance. The record shows that the police were summoned by Weston on numerous occasions. The Board had the opportunity to rebut such testimony by adequate proof that these calls were not in fact made by appellant. This it failed to do.

The proofs do not support a finding that appellant "allowed, permitted and suffered" the proscribed activity in and outside of the tavern.

I further find that it was not the fault of appellant but, rather, the location of these premises which presents the problem involved herein. Captain Critchley apparently agrees, for he has testified as follows:

"I would like to state the specific and particular reason why I did not feel that I can in good conscience renew the license for this tavern is the image that that particular location has achieved over the years. People in that community, in the housing project on the street and others in the area, are of the opinion that that location, that particular bar, no matter who runs it -- they have no objection to Mr. Wescott -- neither he or anyone else can operate that place in a way that will not be detrimental to the community. The people in the neighborhood and some of the people that I have discussed this matter with feel that the location has developed an image of a spot where people addicted to narcotics gather to meet the people that they buy their narcotics from, and consequently it is a focal point for that type of activity.

"I am not saying that the man who runs the tavern has anything to do with it. As a matter of fact in the conversations with me he convinced me without doubt that he vehemently objects to it, but unfortunately the location has gotten this kind of an image, it is a place for drug addicts. And unfortunately being that kind of a location it attracts people from all over....

"It is the location that has just that kind of an image with the people in the community. It has that image. And that is my position."

It is apparent that the root of the problem is the tavern's location rather than the culpability of the appellant.

(4) As the police Captain emphasized, no one could properly and lawfully operate this tavern at this location. Appellant tried and failed. Martyrdom is neither a legal nor moral obligation. To the contrary, appellant made good faith efforts to discourage the loitering and misconduct of its patrons by its affirmative actions. It is clear that the actions and conduct of the patrons of this establishment in loitering on the outside of the premises and harrassing the residents in the area was caused by narcotic addicts. The problem is, therefore, one of narcotic activity in and about the premises, which undoubtedly is the root of the evil.

Under the circumstances herein, I believe that the appellant should be given an opportunity to secure another location. Since fairness is the touchstone of the administrative process, it appears reasonable and in the public interest to afford appellant a fair opportunity to apply for a transfer of its license to suitable premises. See Ishmal, supra. Nevertheless, appellant should not be permitted to continue operation at the present premises. Cf. Nordco, Inc. v. State, supra (43 N.J. Super. at p.289).

It is, accordingly, recommended that an order be entered reversing the action of the Board and directing it to grant a renewal of appellant's license for the current licensing period upon the following conditions:

(a) That the license, when renewed, shall not be actually issued to the appellant but shall be retained by the Board.

(b) That the appellant may file prompt application for lawful transfer of its license to other suitable premises in the municipality.

(c) That within three (3) months from the date of the entry of the Order herein, the Board may, in its lawful discretion, grant said application.

(d) That upon the grant of appellant's application, the said license shall be issued to the appellant, and shall be in full force and effect as soon as the said transfer is endorsed on the face of the license certificate.

(e) If the application for said transfer is not approved within the above stated period of time, or any extension of time thereof granted by the Board, the said license shall be cancelled.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report and argument in support thereof, have been filed by the appellant, Sue & Frank Club Inc. No answering argument to such exceptions and argument have been filed by respondent.

The appellant argues that the Hearer's report, on remand, should be limited to a finding of whether there was culpability on the part of the appellant. Having found that there was no culpability the appellant contends that the Hearer had no authority to recommend that the license, when renewed, "shall not be actually issued to the appellant but retained by the Board until application is made for the transfer to another premises and within three months from the date of the entry of the order herein, the Board may in its lawful discretion, grant said application."

I am persuaded, upon my reading of the order of the Appellate Division, that appellant's interpretation does not express the true intent of that order. The Appellate Division did not intend that my order, on remand, shall be partial and ineffective; rather, it was the sense of the Appellate Division's action that a complete and effective order be entered, which, if affirmed, would be the basis for appropriate implementation by the local issuing authority. Hence, I find that appellant's exceptions are lacking in merit.

Having carefully considered the entire record herein, including the argument of counsel, the Hearer's report and appellant's exceptions with respect thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 3rd day of February 1972,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark in denying renewal of the said license be and the same is hereby reversed, and it is directed to grant the renewal of appellant's license for the current licensing period upon the following conditions:

(a) That the license, when renewed, shall not be actually issued to the appellant but shall be retained by the Board.

(b) That the appellant may file prompt application for lawful transfer of its license to other suitable premises in the municipality.

(c) That within three (3) months from the date of the entry of the Order herein, the Board may, in its lawful discretion, grant said application.

(d) That upon the grant of appellant's application, the said license shall be issued to the appellant, and shall be in full force and effect as soon as the said transfer is endorsed on the face of the license certificate.

(e) If the application for said transfer is not approved within the above stated period of time, or any extension of time thereof granted by the Board, the said license shall be cancelled.

Richard C. McDonough
Director

3. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)
Felicia H. Kidawa)
t/a K & K Liquor Store)
1289 Chase Street)
Camden, N.J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Distribu-)
tion License D-5 issued by the)
Municipal Board of Alcoholic Bev-)
erage Control of the City of)
Camden.)

Licensee, Pro Se.
Walter H. Cleaver, Esq., appearing for Division.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on November 19, 1971 she sold alcoholic beverages to a minor, age 17, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Marranzini, Bulletin 2012, Item 7.

Accordingly, it is, on this 31st day of January, 1972,

ORDERED that Plenary Retail Distribution License D-5 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Felicia H. Kidawa for premises 1289 Chase Street, Camden be and the same is hereby suspended for fifteen (15) days commencing 2:00 a.m. on Monday, February 14, 1972 and terminating 2:00 a.m. on Tuesday, February 29, 1972.

Richard C. McDonough,
Director

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION - FRONT - CRIMINALLY DISQUALIFIED STOCKHOLDER - FAILURE TO KEEP BOOKS - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF THE TERM WITH LEAVE TO LIFT AFTER 84 DAYS UPON PROOF OF CORRECTION OF UNLAWFUL ACTIVITY.

In the Matter of Disciplinary Proceedings against)

New Ritz Lounge, Inc.)
493 Springfield Avenue)
Newark, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-330, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

A. William Sala, Jr., Esq., Attorney for Licensee
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

Licensee pleads guilty to the following charges:

- "1. In your short-form application dated June 15, 1971 and filed June 24, 1971 with the Municipal Board of Alcoholic Beverage Control of the City of Newark, upon which you obtained your current plenary retail consumption license in answer to Question 8 you, after listing Cecelia Baulkman and Saul Sellers as the holders of 80% and 20% respectively, of your issued and outstanding stock, failed to disclose in answer to Question 10 therein a change in facts in your last prior long-form application viz., to show a change in answer from "No" to "Yes" to Question 22 in said long-form application which asks: "Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders? _____ If answer is "Yes", state details _____", to show and disclose that Cornelius Baulkman had such interest in that he was the real and beneficial owner of 80% of the shares of stock listed in the name of Cecelia Baulkman; such evasion and suppression of a material fact being in violation of R. S. 33:1-25.
- "2. In your aforesaid short-form application for license you failed to disclose and show in answer to Question 10 therein a change in facts in your last prior long-form application viz., a change of answer from "No" to "Yes" to Question 24 in said long-form application which asks: "Does the individual signing this application on behalf of said corporation know, or have any reason whatsoever to believe or suspect, that any of the officers or directors of said corporation, or any holder, directly or indirectly, by any device or subterfuge of more than ten (10) per cent in beneficial interest of the capital stock of said corporation would fail to qualify as an individual applicant for the license hereby applied for in any respect? _____ and to show and disclose you knew and had reason to know that Cornelius Baulkman, who indirectly was the holder of 80% of your issued

and outstanding stock in the name of Cecelia Baulkman, as aforesaid, would fail to qualify as an individual applicant for the reason of the fact that he had been convicted of crimes involving moral turpitude to wit: assault with intent to rape and breaking and entering with intent to rape in Essex County Court on May 21, 1947, entering and larceny in Essex County Court on July 20, 1955: such evasion and suppression of a material fact being in violation of R. S. 33:1-25.

- "3. In your aforesaid short-form application for license, you failed to state in answer to Question 10 therein a change in facts in your last prior long-form application viz., a change from "No" to "Yes" to Question 29 which asks: "Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license _____ If so, state names addresses and interest of such individuals, partnerships, corporations or association _____", and to show and disclose that the aforementioned Cornelius Baulkman had such an interest in that he, indirectly through the said Cecelia Baulkman had such an interest as hereinabove set forth in the license applied for and in the business to be conducted under said license; such evasion and suppression of a material fact being in violation of R. S. 33:1-25.
- "4. In your short-form application for license you failed to state in answer to Question 10 therein a change in facts in your last prior long-form application, viz., a change of answer from "No" to "Yes" to Question 30 in said long-form application which asks: "Has the applicant agreed to pay to any employee or other persons (by way of rent, salary or otherwise, all or any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for? _____ If so, give complete details _____," and to show you had agreed to permit the aforementioned Cornelius Baulkman to retain the profits and income derived from your licensed business; said evasion and suppression of a material fact being in violation of R. S. 33:1-25.
- "5. From on or about October 1, 1970 to date you knowingly aided and abetted said Cornelius Baulkman to exercise, contrary to R. S. 33:1-26 the rights and privileges of your successive plenary retail consumption licenses; in violation of R. S. 33:1-52.
- "6. From on or about October 1, 1970 to date, you failed to have and keep a true book or books of account in connection with the operation and conduct of your licensed business, viz., a record of all monies received, a record of the source of all monies received other than in the ordinary course of business, and a record of all monies expended from such receipts and the names of the persons receiving such monies and the purpose for which such expenditures were made; in violation of Rule 36 of State Regulation No. 20."

The licensee has a prior record of suspension of license for forty days effective July 27, 1964, by the local issuing authority for lottery activity on licensed premises, and for fifty-five days effective March 2, 1971, by the Director, for possessing liquor not truly labeled and purchase from improper source (Re New Ritz Lounge, Inc., Bulletin 1963, Item 4).

Prior record of suspension: for dissimilar offense of 1964 occurring more than five years ago disregarded for penalty purposes, but the prior suspension for dissimilar offense of 1971 occurring within the past five years considered, the license will be suspended on charges 1 through 5 herein for ninety-five days (Re Scott's Tavern, Inc., Bulletin 1733, Item 2; Re Mack's In-Crowd Bar, Inc., Bulletin 1810, Item 3; Re The 331 Broad Ave. Corp., Bulletin 1895, Item 2), and for ten days on charge 6 herein (Re O.K. Corral, Inc., Bulletin 1832, Item 6), making a total of one hundred five days, with remission of twenty-one days for the plea entered, leaving a net suspension of eighty-four days.

However, as the unlawful situation has not to date been corrected, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply to the Director for lifting of the suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted in any event sooner than eighty-four days from the commencement of the suspension herein.

Accordingly, it is, on this 2nd day of February 1972,

ORDERED that Plenary Retail Consumption License C-330, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to New Ritz Lounge, Inc., for premises 493 Springfield Avenue, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1972, effective 2 a.m. Wednesday, February 16, 1972, with leave to licensee or any bona fide transferee of the license to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but in no event sooner than eighty-four (84) days from the commencement of the suspension herein.

Richard C. McDonough
Director

5. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) -
LICENSE SUSPENDED FOR 60 DAYS, LESS 12 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Mary Liberino)
t/a Pete's Bar)
605 Lafayette Street)
Cape May, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-8, issued by the City Council of the City of Cape May.)

Perskie and Perskie, Esqs., by Marvin D. Perskie, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 30, 1969, she permitted gambling, viz., horse race bets, upon the licensed premises, in violation of Rule 7 of State Regulation No. 20.

The violation having occurred prior to March 23, 1971 (See Re Arnone, Bulletin 1971, Item 3), the license will be suspended for sixty days, with remission of twelve days for the plea entered, leaving a net suspension of forty-eight days. Re Artie Weber's Tavern, Inc., Bulletin 2023, Item 4.

Accordingly, it is, on this 2nd day of February 1972,

ORDERED that Plenary Retail Consumption License C-8, issued by the City Council of the City of Cape May to Mary Liberino, t/a Pete's Bar, for premises 605 Lafayette Street, Cape May, be and the same is hereby suspended for forty-eight (48) days, commencing 1:00 a.m. on Thursday, February 17, 1972, and terminating 1:00 a.m. on Wednesday, April 5, 1972.

Richard C. McDonough
Director

6.

ACTIVITY REPORT FOR JANUARY 1972

ARRESTS:		
Total number of persons arrested - - - - -		34
Licensees and employees - - - - -	11	
Bootleggers - - - - -	12	
Minors - - - - -	11	
SEIZURES:		
Distilled alcoholic beverages - gallons - - - - -		6.175
Wine - gallons - - - - -		1.75
Brewed malt alcoholic beverages - gallons - - - - -		222.36
COMPLAINTS AND INVESTIGATIONS:		
Inspections & visits made on assigned investigations - - - - -		1,698
Complaints assigned for investigation - - - - -		352
Investigations completed - - - - -		392
Investigations pending - - - - -		299
Premises where alcoholic beverages were gauged - - - - -		530
Bottles gauged - - - - -		8,515
Premises where violations were found - - - - -		206
Number of violations found - - - - -		296
License applications investigated - - - - -		9
Contacts made with other law enforcement agencies - - - - -		192
LABORATORY:		
Analyses made - - - - -		105
Refills from licensed premises - bottles - - - - -		66
Bottles from unlicensed premises - - - - -		8
IDENTIFICATION:		
Criminal fingerprint identifications made - - - - -		35
Persons fingerprinted for non-criminal purposes - - - - -		299
Identification contacts made with other enforcement agencies - - - - -		172
DISCIPLINARY PROCEEDINGS:		
Cases instituted at Division - - - - -		18*
Violations involved - - - - -		21
Fraud and front - - - - -	7	Failure to keep true books of acct. - - - - - 1
Sale to minors - - - - -	5	Purchase from improper source - - - - - 1
Possessing liquor not truly labeled - - - - -	4	Possessing indecent matter - - - - - 1
Perm. lottery & bookmaking on prem. - - - - -	1	Sol. empl. by & having interest in retail licensee - - - - - 1
Cases brought by municipalities on own initiative and reported to Division - - - - -		26
Violations involved - - - - -		33
Sale to minors - - - - -	10	Perm. persons of ill repute on prem. - - - - - 1
Fail. to close prem. during proh. hrs. - - - - -	3	Sale during prohibited hours - - - - - 1
Unqualified employees - - - - -	2	Altering prem. w/o approv. of I.A. - - - - - 1
Permitting brawl on premises - - - - -	2	Fail. to file notice of chg. in lic. app. - - - - - 1
Permitting immoral acty. on prem. - - - - -	4	Prohibited practice - - - - - 1
Perm. illegal acty. (narcotic) on prem. - - - - -	1	Act of violence - - - - - 1
Perm. loitering by minors unaccomp. by adults (local reg.) - - - - -	1	Conducting business as a nuisance - - - - - 1
Permitting hostesses on premises - - - - -	1	Fraud in application - - - - - 1
		Hindering investigation - - - - - 1
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		40
Appeals - - - - -	5	
Disciplinary proceedings - - - - -	27	
Eligibility - - - - -	8	
STATE LICENSES AND PERMITS:		
Total number issued - - - - -		1,329
Licenses - - - - -	5	Wine permits - - - - - 16
Solicitors' permits - - - - -	49	Miscellaneous permits - - - - - 343
Employment permits - - - - -	258	Transit insignia - - - - - 147
Disposal permits - - - - -	82	Transit certificates - - - - - 79
Social affair permits - - - - -	350	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued - - - - -	48	
Enforcement files established - - - - -	3	

RICHARD C. McDONOUGH
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: February 8, 1972

*Includes one cancellation proceeding - license improvidently issued in that licensee was not a bona fide club at time of issuance of license.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against
 Bound Brook Hideaway, Inc.
 208 W. Main Street
 Bound Brook, N. J.
 Holder of Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Bound Brook.

CONCLUSIONS
 and
 ORDER

 Thomas C. Brown, Esq., Attorney for Licensee
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 6, 1971, it sold alcoholic beverages to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Forpa, Inc., Bulletin 2015, Item 11. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$1095 in lieu of suspension.

Accordingly, it is, on this 15th day of February 1972,

ORDERED that the payment of \$1095 fine by the licensee is hereby accepted in lieu of a suspension of five (5) days.

Robert E. Bower
Director