Gossweiler

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

BULLETIN 1531 October 8, 1963

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ITEM

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Department of Law and Public Safety
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1100 Raymond Blvd. Newark 2, N. J.

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1. COURT DECISIONS - HESS OIL & CHEMICAL CORPORATION v. DOREMUS SPORT CLUB, NEWARK and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-509-62

HESS OIL & CHEMICAL CORPORATION, a Delaware Corporation,

Appellant,

vs.

DOREMUS SPORT CLUB; NEWARK BOARD OF ALCOHOLIC BEVERAGE CONTROL; and STATE OF NEW JERSEY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Respondents.

Argued September 9, 1963 -- Decided September 23, 1963

Before Judges Conford, Freund and Sullivan

Mr. David M. Pindar argued the cause for appellant (Messrs. Wilentz, Goldman & Spitzer, attorneys; Mr. Douglas T. Hague, of counsel).

Mr. Avrom J. Gold, Deputy Attorney General, argued the cause for respondents (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney for respondent Division of Alcoholic Beverage Control; Mr. Herbert S. Alterman, Deputy Attorney General, of counsel; Messrs. Rosenberg & Kesselman, attorneys for respondent Doremus Sport Club; Mr. Phillip Kesselman, of counsel).

The opinion of the court was delivered by

FREUND, J.A.D.

This is an appeal from a determination of the Director of the Division of Alcoholic Beverage Control (Division) that it had no jurisdiction to entertain an appeal taken out of time.

On December 13, 1962 appellant Hess Oil & Chemical Corporation (Hess) had filed written objection to an application by Doremus Sport Club for a place-to-place transfer of its plenary retail consumption license to 184-188 Doremus Avenue, Newark, immediately adjacent to Hess' petroleum storage facilities. A hearing was held by the Newark Municipal Board of Alcoholic Beverage Control on December 19, 1962. At the hearing Hess requested an adjournment to allow it to obtain an expert witness who could testify as to the fire hazard which

Hess alleged the planned transfer would involve. The request was denied, and it was announced that decision on the transfer application would be reserved. On January 28, 1963 Hess telephoned the secretary of the local board to ascertain the status of Doremus' application, and learned that the transfer had been approved, effective December 21, 1962. Hess filed a petition of appeal with the Division on January 29, 1963. Since this was 39 days after the effective date of the transfer the petition was dismissed as being out of time.

N.J.S.A. 33:1-26 provides in part for appeals concerning transfers of liquor licenses. The fifth paragraph thereof is controlling in this case:

> "If the other issuing authority shall refuse to grant a transfer the applicant shall be notified forthwith of such refusal by a notice served personally upon the applicant, or sent to him by registered mail addressed to him at the address stated in the application, and such applicant may, within 30 days after the date of service or mailing of such notice, appeal to the director from the action of the issuing authority, If the other issuing authority shall grant a transfer any taxpayer or other aggrieved person opposing the grant of the transfer may, within 30 days after the grant of such transfer, appeal to the director from the action of the issuing authority."

Hess argues that since it received no notice of the Newark board's adverse decision, its immediate appeal upon learning of the transfer should be deemed timely. Such a construction would be contrary to the statutory mandate. The paragraph quoted above makes separate provision for two classes of persons: those whose applications for transfer have been denied, and those who object to the granting of a transfer. In the first case, applicants must be "notified forthwith"; they must appeal "within 30 days after the date of service or mailing of such notice." In the second case, aggrieved third parties must appeal "within 30 days after the grant of such transfer"; mention of "notice" is significantly absent. The reason for this differentiation is obvious. Objections to transfers of liquor establishments are often quite numerous. The Legislature has chosen to require each individual objector to keep himself informed of a local board's decisional process rather than burden the local board with taking names and addresses, and later notifying the potentially large number of interested persons. There is no statutory requirement that a local board notify objectors of its decision to grant a place-to-place transfer. Compare Fanwoos v. Rocco, 33 N.J. 404, 416 (1960); Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 445 (1960).

In support of its position Hess relies upon De Nike v. Bd. of Trustees, Employees Ret. System of N.J., 34 N.J. 430 (1961), and Schack v. Trimble, 28 N.J. 40 (1958). We find both to be inapposite. The litigants in those cases were applicants, and the Supreme Court was concerned with the proper construction of rules of court in deciding whether the appeals to this court were timely. Enlargement of statutory time for appeal to a State administrative agency lies solely within the power of the Legislature, Borough of Park Ridge v. Salimone, 21 N.J. 28, 47 (1956), affirming 36 N.J. Super. 485 (App. Div. 1955), and not with the agency or the courts, Scrudato v. Mascot S. & L. Assn., 50 N.J. Super. 264, 270 (App. Div. 1958).

Since the appeal was untimely the Division acted properly in refusing to hear it. Indeed, the Division had no jurisdiction to accept the appeal. Scrudato v. Mascot S. & L. Assn., supra, 50 N.J. Super., at p. 269. See also American Fruit Growers, Inc. v. Lewis D. Goldstein F. & P. Corp., 78 F. Supp. 309, 311 (E.D. Pa. 1948); cf. 13 Rutgers L. Rev. 44, n. 5 (1958).

We do not agree with appellant's contention that the legislative requirement, in effect, that objectors be on notice as to the action of the local board, denies them due process.

Finally, Hess contends that the Newark board gave no consideration to the public welfare in its decision, so that we should order a de novo hearing before the Division on that issue. The record does not disclose clearly what information or representations were laid before the local board at its hearing, and the presumption is that it acted properly and considered all relevant factors, including the public interest. Hess was given ample opportunity to be heard on the question.

We have no authority to order the Division to hear an appeal from a local board where the Division is without statutory jurisdiction, no matter what the nature of the complaint by the objectors.

Affirmed.

2. APPELLATE DECISIONS - LAKE, INC. v. OAKLYN.

LAKE, INC., t/a "KARL'S LIQUORS", Appellant,	)	
v.	)	ON APPEAL CONCLUSIONS AND ORDER
MAYOR AND COUNCIL OF THE BOROUGH OF OAKLYN, Respondent.	)	

Epstein & Fluharty, Esqs., by E. Stevenson Fluharty, Esq., Attorneys for Appellant.
Aiken & Lake, Esqs., by James G. Aiken, Esq., Attorneys for Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent wherein, by resolution dated May 15, 1963, it suspended appellant's license for a period of 20 days, effective May 27, 1963, after finding appellant guilty in disciplinary proceedings of a charge alleging that on divers days between December 1962 and April 8, 1963 it sold or delivered alcoholic beverages to 2 minors in violation of Rule 1 of State Regulation No. 20. Appellant's premises are located at 210-212 White Horse Pike, Oaklyn, New Jersey.

"Upon the filing of this appeal, an order was entered by the Acting Director on May 24, 1963 staying respondent's order of suspension until further order herein. R.S. 33:1-31.

"Appellant, in its petition of appeal, alleges that the action of the respondent was erroneous and should be reversed for the following reasons:

(a) The respondent failed to make a finding of fact or conclusions of law with respect to the alleged charges.

(b) The appellant was not afforded opportunity to retain counsel to assist him in defense of said charges.

(c) The evidence at the hearing was insufficient to sustain a finding of guilt.

(d) The action of respondent was 'arbitrary, capricious, unreasonable'.

"Respondent, in its answer, denies the substance of the allegations in the petition and requests that its action is affirmed.

"The hearing on appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and to examine and cross-examine witnesses. Sidoroff, et al. v. Jersey City and Niebanck, Bulletin 1310; Item 1; Klein v. Township of North Bergen, 10 N.J. Super. 128 (App. Div. 1950).

"A brief precursory summary of the facts should be set forth in order to set the issues into proper focus. The testimony reflects the following: William ---, age 17, at the time of the hearing, was born on March 22, 1946. On April 4, 1963 he telephoned the appellant's liquor store from the living room of his home and spoke to a person whom he identified as 'Karl'. 'Karl' was identified by this witness in the court room as being Joel Heim, the president of the corporate appellant. He recongized his voice because he had spoken to him on prior occasions. In this conversation, he represented himself as being his grandfather with whom he was living at the time, and ordered a case of beer. Shortly thereafter, a grey truck bearing the legend of the appellant on its side panel pulled up to this residence and the case was delivered and left on the porch.

"This minor did not accept the beer personally but left a note on the porch with the sum of $4.40 which he had previously ascertained was the exact amount of the purchase. Actually, he left a $5.00 bill and the driver left the 60¢ change with the beer. As soon as the truck left the premises, the minor put the beer in the trunk of his automobile and on the following night, in the company of 2 of his friends, consumed the entire case.

"On the following evening he again called the appellant's store, spoke to Heim (whom he refers to as 'Mr. Karl'), misrepresented himself as his grandfather and ordered a pint of Seagram's whiskey for delivery to his home. This, too, was delivered, and the same method of receipt and payment by the minor was used for this purchase. He left $4.00 for the purchase on this occasion.

"This minor also stated that he had made numerous other purchases and was, therefore, able to recognize the telephone voice of Heim. These purchases took place in January, February and April of 1963. On the first occasion, in January 1963, Heim

personally delivered an order of beer, and was paid directly by this witness at the time of delivery. He described the delivery boys who made such deliveries after the initial delivery in 1963 and at the time of the deliveries his friends, Richard and Frank, were at his home.

"Thereafter, as a result of an investigation made by the local police department after the minor's arrest for some other violation, he was asked to identify the appellant, its agents or employees, which he did.

"On cross-examination he admitted that he never entered the premises of the appellant but insisted that he recognized Heim's voice on the phone. Also, he definitely identified Heim personally to the officer who accompanied him to appellant's liquor store. This witness was confused as to whether the incident happened on a Thursday or Friday night and was sharply examined about those dates. In any event, he was not certain whether the last incident happened on April 4 or April 5.

"Robert ---, age 16, testified that during the Christmas holidays of 1962 in the presence of William, he phoned the appellant's liquor store. Using his own name, he ordered 2 - 6 packs of beer for delivery to Robert's premises. Immediately after he placed the order he and his 2 friends 'were getting scared' so he called back and attempted to cancel the order. The appellant's employee told him 'It's not good business to cancel and everything, after you made your order.'

"He once more tried to cancel but nevertheless the liquor was delivered by a delivery boy from the appellant. When he met the delivery boy at the side door he said to him, 'I think my father has cancelled the order,' to which the boy replied, 'I don't want to play; just give me the money, and I'll give it to you,'; whereupon he paid him for the beer and accepted it. In the company of his friends he then went down the street and opened the cans of beer, '. . . we took a few swallows, and then we got scared and threw it in the creek.' The witness further testified to an incident which occurred when he and some friends 'chipped in' for beer which was ordered from the appellant.

"On cross-examination he explained that the reason he tried to cancel the order was because he knew he was doing wrong and was frightened because his mother was expected home soon.

"It was pointed out to him that when he testified before the respondent at the disciplinary proceeding, he was not certain whether he had used his own name. His explanation for that was that he was '. . . a little scared up there,'; but was now certain that he did use his own name. However, he further insisted that when the delivery was made by the driver he was not questioned as to his age. The version given at this hearing is the same as that set forth in a statement which this minor made to the local police authorities during the investigation in April 1963.

"Thomas ---, age 16, corroborated the testimony of Robert, with respect to the alleged purchase made during the Christmas holidays of 1962; and he assisted Robert in checking the phone number of the appellant in the directory. He also corroborated the incident which followed the purchase of the said beverages, and that he contributed money toward the payment of the said beer.

"Frank ---, age 19, also corroborated the prior testimony, and stated that in April he 'chipped in' for the purchase of beer at William's house; he also furnished further details with respect to the purchase of the beer and the incidents which thereafter transpired.

"John Schoellkopf, Jr., an Oaklyn police officer, testified that, as a result of an investigation of certain incidents in which William and Robert were involved, he accompanied William to the outside of appellant's liquor store. William then identified Heim as having made a delivery of alcoholic beverages to him at his house. The identification was made from the exterior of the premises; there was no actual confrontation.

"On behalf of the appellant, Thomas Engle, a delivery man, employed by appellant denied that he had ever made any deliveries or left merchandise at the residence of the minors involved herein; he also denied that there was any employee fitting the physical description given by the minors. On cross-examination, he admitted that he does not take any orders at the store; that orders are delivered in a 1955 grey Ford panel truck which has legend of the appellant imprinted on its side panel. He also insisted that he never leaves any alcoholic beverages, unless it can be personally accepted by the purchaser.

"Edward Schemenski, a clerk employed in appellant's liquor store, testified that he also makes deliveries; to his knowledge Heim has never made any deliveries. He recalled one occasion when a delivery was to be made to William's home and he found a note and nobody responded to his ring; whereupon he returned the merchandise. He recounts a similar incident which occurred on the following night in April. He insisted that he never left merchandise where there has been a note nor has he ever delivered merchandise for anyone under the statutory age.

"Joel N. Heim, president and principal stockholder of the corporate appellant, vigorously denied the charges made by these minors. He testified to the following: the appellant has never owned a station wagon; he personally has never made any deliveries; he has never delivered a single 6-pack of beer to any customer; no merchandise has ever been left where the purchaser is not at home and leaves a note instead.

"He submitted into evidence 2 delivery slips to support the fact that on 2 occasions orders were received for beer and whiskey at 21 Capital Street (the residence of William) and were returned with the slips marked 'void' because no one was present personally to receive the same. However, he was not certain who imprinted the word 'void' on these slips.

"On cross-examination it was developed that the appellant has destroyed all delivery slips for any prior years and thus was in no position to prove or disprove any deliveries made during the Christmas season of 1962.

"There was also no breakdown of the individual or total sales made through deliveries on any particular day, as all sales are considered as one final figure at the end of each day; nor were the cash register tapes available to reflect whether or not these sales were actually made, because these are discarded upon entry of the total figures in the book of account.

"Appellant first challenges the disciplinary proceedings held on May 15, 1963 because it alleges that it was not

afforded an ample opportunity to 'seek counsel to assist him' (sic) in the defense of the said charges; the respondent failed to make a finding of fact or conclusions of law; and the facts adduced at the hearing were indeed insufficient to support or sustain a finding of guilt. Therefore, asserts appellant, the hearing was arbitrary, capricious and unreasonable.

"The resolution and order, in its entirety, reads:

> 'WHEREAS, charges have been heretofore duly served upon the above named licensee, charging that on divers days between December 1962 and April 8, 1963, said licensee sold, served or delivered an alcoholic beverage to William E. --- and Robert ---, both persons under the age of twenty-one years in violation of Rule 1 of State Regulation No. 20.
>
> 'It is, therefore, on this 15th day of May, 1963, on motion duly made and seconded,
>
> 'RESOLVED AND ORDERED, that Plenary Retail Distribution License No. D-2 heretofore issued by the Mayor and Borough Council of the Borough of Oaklyn to Lake, Inc., t/a Karl's Liquors, for premises 210-212 White Horse Pike, Oaklyn, New Jersey, be suspended for a period of twenty (20) days effective May 27, 1963 at 9:00 a.m.
>
> 'Adopted: May 15, 1963'

"It is obvious that no findings of fact or conclusions of law are set forth in such resolution. I questioned counsel for the respondent to determine whether or not the omission of its findings was due to an inadvertence. He stated that he thought that there was an inadvertence; he referred to the transcript before the respondent (which was not introduced into evidence) in which a motion was made for suspension after a statement by a councilman that 'We find the corporation guilty of the charges.' Why was this not incorporated in the resolution is inexplicable, but as respondent's counsel maintained, it was the clear intention of the respondent to make a finding of guilt; and as Mr. Fluharty commented, 'Well, they certainly didn't acquit us'.

"A better and proper procedure, delineated and emphasized by the Rules of this Division and numerous adjudications require that there be a definite statement of findings of fact and conclusions of law at hearings before the local issuing authority. Fanwood v. Rocco, 33 N.J. 404.

"While this is directed to the attention of the respondent in this matter, such omission is not fatal to these proceedings because this is an appeal de novo as was pointed out hereinabove so that the appellant is finally not deprived of due process. Cf. Fanwood v. Rocco, supra; Oak Inn, Inc. v. City of Elizabeth, --N.J. Super.__ (decided July 12, 1963, not yet officially reported) reprinted in Bulletin 1523, Item 2; Farrell v. Englewood, Bulletin 1489, Items 1 and 2.

"My considered evaluation and analysis of the testimony on this appeal de novo leaves me with certain definite impressions.

"I have observed carefully the demeanor of the minors who testified on behalf of the respondent in this matter. They apparently were somewhat nervous, lacked certainty with respect to a specific date and were even, perhaps, vague about some other minor details but the substance of their testimony was credible, forthright and consistent. Under skillful and vigorous cross examination the testimony of these witnesses remained unshaken. It is true and indeed, unfortunate, that their activities which inculpated the appellant reflected a disregard for appellant's rights, it is also true that appellant was the victim of an evil scheme but I am persuaded that these plans, evilly conceived, were, nevertheless, actually executed.

"There has not been produced any evidence of ill will or malice or improper motivation toward the appellant by any of these minors and I sense no conspiracy on the part of these minors directed against the appellant.

"However, the fact is that alcoholic beverages were ordered on April 4 and April 5, 1963. This is corroborated by the very delivery slips submitted in evidence by the appellant. The testimony of the minors was that on one occasion a quart of Seagram's 7 was ordered and on another occasion a case of Piel's Beer costing $4.40 was ordered. Obviously these witnesses did not have a prior opportunity to examine these delivery slips--yet these slips are clear corroboration of the truthfulness of their testimony.

"Both these slips carry the legend, 'void' on them. However, there has been no proof as to when they were so inscribed, by whom or under what circumstances. The slips, of course, have been in the possession of the appellant at all times.

"There is another point which is important in the consideration of the testimony. The appellant has offered no proof to support its defense that alcoholic beverages were not delivered to the residences of the minors during the Christmas holidays of 1962; and there is no documentary evidence, either through the register tapes or other books and records to support its defense that no completed sales were made to the minors on the dates alleged.

"It has been the policy of this Division to scrutinize carefully testimony of minors where allegations are made that alcoholic beverages were purchased from the licensees. However, the corroborative testimony of a number of these minors fortifies the position of the respondent. Of course, testimony on behalf of the licensee and its denial thereof is always carefully considered. Cf. Koch v. Paterson, Bulletin 1472, Item 1.

"As I mentioned before, the appellant has been the victim of an evil scheme. However, if the testimony of the minors is believed, and I am so inclined, then it appears that Heim, the president of the corporate appellant, previously delivered alcoholic beverages on one of the occasions charged. If that is so, then he would have been able to observe, even with his eyes closed, that the minors looked their ages, namely 16 and 17. They certainly could have not been mistaken for persons of statutory maturity.

"It was incumbent upon appellant's agents and employees to exercise all the precautions and comply with all the specifics of the pertinent statute and Rule 1 of State

Regulation No. 20 (more particularly delineated on page 77 of Rules and Regulations of this Division); nothing short of complete compliance with such Rule can be rationalized.

"The prevention of sales of intoxicating liquors to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L., 502; Re Schneider, 12 N.J. Super. 449, 456; Mazza v. Cavicchia, 15 N.J. 498, 505; Guill v. Hoboken, 21 N.J. 574, 584.

"The evidence produced by the respondent must be of such probative force that it has engendered that feeling of reasonable probability under these circumstances.

"As Judge Jayne said in Davidson v. Fornicola, 38 N.J. Super. 365, 371 (1955):

> '. . . In exacting proof by the preponderance or greater weight of the evidence, the law does not prescribe the necessary quantum of the overweight or the degree of excess of its superiority in credibility. A preponderance is attained where the evidence in its quality of credibility destroys and overbalances the equilibrium. . .'

"I am persuaded that the respondent has produced such proof by a preponderance of, or the greater weight of, the evidence; thus, that the finding of guilt is supported by a fair preponderance of the believable evidence.

"Appellant has failed to sustain the burden of establishing that the action of the respondent was erroneous. Rule 6 of State Regulation No. 15. I therefore recommend that an order be entered affirming respondent's action and dismissing the appeal, fixing the effective dates for the suspension imposed by respondent, and stayed pending the entry of the order herein."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the transcript of the testimony, the exhibits, including the memoranda of counsel for the appellant and the respondent, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 3rd day of September 1963,

ORDERED that Plenary Retail Distribution License D-2, issued by the Mayor and Council of the Borough of Oaklyn to Lake, Inc., for premises 210-212 White Horse Pike, Oaklyn, be and the same is hereby suspended for twenty (20) days, commencing at 9 a.m. Tuesday, September 10, 1963, and terminating at 9 a.m. Monday, September 30, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (SOLICITATION FOR PROSTITUTION) - FOUL LANGUAGE - NUISANCE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 100 DAYS.

In the Matter of Disciplinary Proceedings against	)	
JACK DOBBS t/a JOE'S BAR 111 Washington Street Newark, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-897, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark	)	

Joseph A. D'Alessio, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"The licensee pleaded not guilty to the following charges:

> 1. On Wednesday night December 5, and early Thursday morning December 6, 1962, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of overtures and arrangements for illicit sexual intercourse and relations; in violation of Rule 5 of State Regulation No. 20.
>
> 2. On the occasion aforesaid, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20.
>
> 3. On the occasion aforesaid, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered unescorted female customers and patrons at your licensed place of business to solicit male customers and patrons to purchase numerous drinks of alcoholic beverages for consumption by them and others and otherwise conducted your licensed place of business in manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"To substantiate the charges, the Division produced ABC Agents S, R, Sc and C who participated in the investigation of the licensee's business.

"It appears from their testimony that on Wednesday, December 5, 1962, Agents C and R entered the licensee's premises at about 10:05 p.m. and shortly thereafter were followed by Agents Sc and S. Agents Sc and C seated themselves a stool apart at the front end of the 85-foot bar and Agent R seated

himself at the center, one stool to the left of Agent S. Hank (later identified as Henry Monterroso) and Bob, the night manager (later identified as Robert Weinstein, son-in-law of Jack Dobbs, the licensee) were tending bar and the patronage consisted of approximately 35 males and 25 females. The material facts adduced to support Charges 2, 3 and 1 can be succinctly stated in that order as follows:

"Throughout the agents' three-hour stay on the licensed premises, some of the male patrons and a majority of the female patrons indulged in vile and indecent language. The most offensive, however, was a disheveled, elderly cigar-smoking female called Flo, who cavorted about bare-foot and gave vent to unprintable invectives whenever a male bumped into her and when others sought to dance with her. The only admonition came from Hank, who lifted his finger to Flo and said, 'None of that.'

"At about 10:40 p.m., a female named Martha entered the premises, seated herself immediately to the right of Agent S and asked, 'Are you buying me a drink?' Agent S told her to call the bartender and ask for what she wanted. Bob approached and inquired of Agent S if it was OK to give her a drink and, when Agent S replied in the affirmative, Bob served Martha and took payment from money in front of the agent. Martha remained in the company of Agent S until he departed, during which time she was served several drinks of whiskey at his expense by both Hank and Bob.

"At about 10:45 p.m., Flo joined Agent Sc at the bar and was served drinks and cigars by Hank at the agent's expense. Flo also took $2 from the agent's money, one to play the juke box and purchase cigarettes and the other she held in her hand. When Agent Sc complained to Hank that he was being 'hustled', Hank merely suggested that he try to get his money back. Later, another female named Kitty joined Agent Sc and asked him to buy her a drink and Hank served her beer and brandy at the agent's expense.

"Flo, the cigar-smoking female, asked Agent Sc if he wanted to go to a hotel with her where she would engage in a perverted sex act with him for $10, $5 for her and $5 for the room. Agent Sc told Hank about the proposal and, when Hank replied that she was too old for anything else, Flo sought the company of another man and was then escorted from the premises by Hank.

"While Agent S was talking to Martha, a man named Tony approached and asked them to look at a blonde at the end of the bar, telling them that the prostitute wanted $10 and that he got her to accept $5. Hank, who was in the immediate vicinity of the trio, walked away. When Tony left, Martha asked Agent S if he wanted to go, that her price was $15 and that they could use her apartment. Agent S, in the presence of Hank, repeated what she had said, to Agent R and he, in turn told Bob. Both bartenders walked away. When Agent S suggested to Martha that he would see her at some other time, she told him that it would be 'tonight or not' and went to converse with the aforesaid Flo. Tony returned and wanted to know how Agent S was making out and, when Agent S told him that Martha wanted $15 and that they would use her apartment, Tony laughed and said that he (Agent S) would ruin the prostitutes around there because they got only $5 for their services. Martha returned to Agent S and asked if he had decided to go with her and, when he replied in the affirmative, she told him to leave the premises first and she would follow him.

"In the meanwhile, Agents R and C left the premises and took up a position about three or four doors up the street, where they were joined by Agent Sc. Shortly thereafter, they observed Agent S emerge and a few minutes later saw Martha join him. Both went directly across the street, entered agent R's car and drove off. Agents R, C and Sc followed in another car and when they saw the couple enter an apartment house on Mt. Pleasant Avenue, Newark, one of the agents telephoned the local police for assistance and two detectives responded.

"When Agent S and Martha entered her apartment on the second floor, she said, 'Let's settle' and Agent S handed her a five and a ten dollar bill, the serial numbers of which had been previously recorded on a slip of paper by Agent C during his stay on the licensed premises. Martha placed the bills under the mattress and disrobed. At this point, Agents R, Sc and C and the two detectives entered the apartment, identified themselves and, when Agent C located the bills which had fallen through the spring on to the floor, he handed them to the detectives who, after comparing the serial numbers thereon with those recorded on the slip of paper in the possession of Agent C, placed Martha under arrest and, accompanied by Agent C, proceeded to the First Precinct police station in Newark where she was 'booked'.

"Shortly before the closing hour of 2:00 a.m., Agent S, R and Sc returned to the licensed premises accompanied by the detectives, identified themselves to Bob, Hank and Kitty who was still seated at the bar, after which all of them went to the First Precinct police station where Agent S informed Bob and Hank of the violations and told them that Martha had been arrested for soliciting for prostitution. Neither Bob nor Hank would say anything or give voluntary signed statements and they and Kitty departed.

"Appearing on behalf of the licensee were Henry Monterroso, Kitty Fleming and Robert S. Weinstein, heretofore referred to as Hank, Kitty and Bob, respectively.

"It appears from their testimony that Kitty had called Hank's attention to the fact that Agent Sc was 'propositioned' by Flo and had asked him for $5; that Hank immediately came from behind the bar and escorted Flo from the premises and that the only remark Agent Sc made was 'Isn't that something.' Both Hank and Bob testified that Martha and Flo came into the premises unescorted and that they served them drinks at the agents' expense and they denied that Agents S and R, while in the premises, had informed them that Martha had arranged with Agent R to have sexual relations with him at her apartment for the price of $15. They further denied that they conversed with the agents or that they heard any conversations the agents had among themselves during their three hour stay on the licensed premises. Although they did not deny that both male and female patrons indulged in obscene and unprintable language, they asserted that they were shocked when at the First Precinct police station they were informed of the violations. It appears from the testimony of both Hank and Bob that their greatest concern was the alleged refusal by the agents of their request to be permitted to phone the licensee or a lawyer at the time the agents identified themselves and again when they were in the police station. However, Agents S and R, in rebuttal testimony, denied that either Hank or Bob made any such request.

"Having carefully considered the evidence adduced herein, I find that the testimony of the agents clearly and convincingly depicts what they observed, heard, said and did in the course of their investigation of the licensee's business and I disbelieve the testimony of the bartender and the manager that they were unaware of the illegal activities engaged in by the licensee's patrons. I conclude, therefore, that the Division has established the truth of the charges by a fair preponderance of the believable evidence and I recommend that the licensee be adjudged guilty thereof.

"When the license was held by the licensee herein in partnership with Emanuel Sussman, it was twice suspended by the Director for sale to an intoxicated person, once for sixty days, effective August 29, 1960, (Re Dobbs and Sussman, Bulletin 1356, Item 5) and again for forty days, effective November 17, 1960 (Bulletin 1370, Item 10).

"Since there is no evidence to indicate that the licensee's agents procured Martha for purposes of prostitution or that they actually participated in the arrangements she made with Agent S for such purposes, I further recommend that the license be suspended for ninety days on the three charges (Re A & B Bar, Inc., Bulletin 1416, Item 1) and that an additional ten days be imposed because of the two dissimilar violations which occurred within the past five years (cf. Re Mandel, Bulletin 1472, Item 2), making a total suspension of one hundred days."

Written exceptions to the Hearer's Report were filed with me within time by the attorney for the licensee.

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

Accordingly, it is, on this 3rd day of September 1963,

ORDERED that Plenary Retail Consumption License C-897, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Jack Dobbs, t/a Joe's Bar, for premises 111 Washington Street, Newark, be and the same is hereby suspended for one hundred (100) days, commencing at 2 a.m. Tuesday, September 10, 1963, and terminating at 2 a.m. Thursday, December 19, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
MARY DE FRANCISCO t/a ROSENHAYN BAR N/e Cor. of Morton Avenue and Vineland Avenue Deerfield Township PO Rosenhayn, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Deerfield.	)	

Harold A. Horwitz, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 5, 13, 25, 27 and 28, 1963, she permitted acceptance of horse race bets in violation of Rule 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for ten days, effective May 14, 1962 for sale in violation of State Regulation No. 38. Re De Francisco, Bulletin 1456, Item 5.

The prior record of suspension within the past five years for dissimilar violation considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Mitchell, Bulletin 1516, Item 3.

Accordingly, it is, on this 3rd day of September, 1963,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Deerfield to Mary De Francisco, t/a Rosenhayn Bar, for premises N/e cor. of Morton Avenue and Vineland Avenue, Deerfield, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, September 9, 1963, and terminating at 2:00 a.m. Friday, October 4, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD DISREGARDED BECAUSE OF CHANGE IN STOCKHOLDERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

677 Ocean Avenue Corporation
677 Ocean Avenue
Jersey City 5, N. J.

Holder of Plenary Retail Consumption License C-428, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City

CONCLUSIONS AND ORDER

Licensee, by Charles Alston, President, Pro se.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads guilty to a charge alleging that on August 10, 1963, it sold a pint bottle of whiskey for off-premises consumption during prohibited hours in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for ten days, effective September 8, 1959, for similar violation. Re 677 Ocean Avenue Corporation, Bulletin 1301, Item 7.

In mitigation of penalty, the licensee points out that its present officers and stockholders were not officers and stockholders at the time of the previous offense. Consequently, such offense will be disregarded in fixing the penalty herein. Re Eagle Package Liquor Co., Inc., Bulletin 1496, Item 7. The prior record thus disregarded, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Krainski, Bulletin 1525, Item 6.

Accordingly, it is, on this 3rd day of September, 1963,

ORDERED that Plenary Retail Consumption License C-428, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to 677 Ocean Avenue Corporation, for premises 677 Ocean Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, September 10, 1963, and terminating at 2:00 a.m. Friday, September 20, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

6. DISCIPLINARY PROCEEDINGS - POSSESSION OF ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SINGERS TAVERN, INC.
825 Clinton Avenue
Newark 8, N. J.

Holder of Plenary Retail Consumption License C-826, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Robert W. Wolfe, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 13, 1963 it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days with remission of five days for the plea entered, leaving a net suspension of five days. Re Dolan, Bulletin 1518, Item 5.

Accordingly, it is, on this 3rd day of September, 1963,

ORDERED that Plenary Retail Consumption License C-826, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Singers Tavern, Inc., for premises 825 Clinton Avenue, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, September 9, 1963, and terminating at 2:00 a.m. Saturday, September 14, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Jack Poust & Company, Inc.
155 East 56 Street
New York, New York
Application filed October 3, 1963 for Plenary Wholesale License.

Emerson A. Tschupp
Acting Director