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

August 1, 1962

BULLETIN 1463

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

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BULLETIN 1463

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY - SOLICITATION AND PROCUREMENT FOR PROSTITUTION - INDECENT LANGUAGE AND CONDUCT - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

Florence Tabatneck)
t/a Three O'Clock Club)
176 Paterson Street)
Paterson, N. J.)

Holder of Plenary Retail Consumption License C-135, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

CONCLUSIONS AND ORDER

Green and Lasky, Esqs., by H. Kermit Green, Esq., Attorneys for licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to the following charges:

"1. On November 19, 1961, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you, through a person employed as a bartender on your licensed premises, made offer to male patrons and customers on your licensed premises to procure and did procure a female to engage in acts of illicit sexual intercourse with said male patrons and customers and participated in and allowed, permitted and suffered the making of overtures and arrangements, in and upon your licensed premises, by said female with male patrons and customers for acts of illicit sexual intercourse, as aforesaid; in violation of Rule 5 of State Regulation No. 20.

"2. On November 19, 1961, you through a person employed as a bartender on your licensed premises, allowed, permitted and suffered foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

The file discloses that, pursuant to assignment to investigate a specific complaint that solicitation for prostitution was occurring at the licensed premises, particularly during afternoons, Division agents entered the barroom at 2:00 P. M. on Sunday, November 19, 1961. Shortly after their arrival, a female later identified as Susan --- entered the barroom and almost immediately the bartender asked the agents whether they wanted "to have some fun". When the agents indicated their willingness, the bartender, in foul language, asked Susan to expose her private parts. When she walked over to the agents, the bartender came from behind the bar, lifted the front of

Susan's dress above her waist, exposing her thighs and the lower part of her body which was unclothed with any undergarment. Susan then went to the center of the barroom and performed a solo dance, raising her dress to fully expose her upper thighs. When Susan returned to the bar and seated herself with the agents, the bartender said to her, "Show the boys", and gestured by lifting the front of his shirt. Susan then lifted the front of her blouse, exposing her breasts to the agents.

Later Susan said to the agents, "For ten dollars each I'll show you a good time." When they apprised the bartender of this offer, he at first replied, "She's a pig. I can get you something better at that price. There are some nice ones that come in here. I'll fix you guys up", but later interceded with Susan to cut her price saying to her, "Those guys are friends of mine --- take them on for five dollars each." When Susan agreed, the bartender informed the agents, "It's all set" but cautioned them to avoid the possibility of contracting a veneral disease, at the same time volunteering that during the agents' brief absence from the premises, and while he and Susan were alone in the barroom, he had asked her to engage in perverted sexual intercourse with him but that she had refused, albeit on a prior occasion he had engaged in normal sexual intercourse with her. Throughout the conversation, the various remarks of the bartender were couched in gutter language, obviously foul, filthy and obscene.

The arrangements having been made, the agents departed the licensed premises with Susan and went to the place of assignation where, in cooperation with local police officers, the investigation was concluded in regular course.

Licensee has a previous record of suspensions of license, all by the Director, as follows: (1) for thirty-five days, effective March 5, 1956, for conducting the licensed place of business as a nuisance (females soliciting drinks) and employing a criminally disqualified person (Bulletin 1103, Item 5); (2) for seventy-five days, effective October 15, 1958, for sale to an intoxicated person and employing the same criminally disqualified person (Bulletin 1247, Item 2); and (3) for thirty days, effective September 28, 1959, for possession of alcoholic beverages in containers not truly labeled (Bulletin 1305, Item 4).

The attorney for the licensee has supplemented the plea of non vult by written argument as to penalty (Rule 6 of State Regulation No. 16) in which he urges leniency on several points, and particularly so that the licensee may have an opportunity to dispose of the licensed business and salvage the investment therein. Significantly, the argument substantially admits the facts recited as appearing in the reports of investigation, but attributes the conduct of the bartender to "bravado".

It has long been established that solicitation for immoral purposes and the making of arrangements for illicit sexual intercourse or procurement for purposes of prostitution cannot and will not be tolerated on licensed premises. The public is entitled to protection from these sordid and dangerous evils. In the instant case, the licens through her employee, (Rule 33 of State Regulation No. 20) participated in the making of arrangements for illicit sexual intercourse, procured a prostitute ostensible for said purpose, and allowed, permitted and suffered the foul, filthy and obscene language and conduct by the bartender and a patron, as described herein. In view of all of the facts and circumstances in this case, and particularly on the basis of the making of arrangements for illicit sexual intercourse and procurement for prostitution, the only appropriate penalty

is outright revocation of the license, even in view of the non vult plea and even in the absence of any prior adjudicated record. See Re Tuck Inn, a corp., Bulletin 1286, Item 2, and cases cited therein (non vult plea); Re Kit Kat Lounge, Inc., Bulletin 1297, Item 1 (no licensee participation); Re Nick's Club 21, Inc., Bulletin 1388, Item 1 (non vult plea); Re Carsella, Bulletin 1348, Item 1.

The Matters urged by way of mitigation cannot affect the penalty in a matter involving violations of the kind in question. A licensee cannot allow the licensed business to be run in such a shockingly lewd manner and, when apprehended, be permitted to escape the inevitable by transfer of the license; nor should the prospect of a licensee's sustaining a substantial or even a total financial loss through revocation of license be considered cause for deviating from the course of revocation where such penalty is not only invited but commanded by the violations alleged and established, whether by contested hearing or by plea. As was said in Benedetti v. Trenton, Bulletin 1040, Item 1, affirmed in Benedetti v. The Board of Commissioner of the City of Trenton, et al., 35 N. J. Super. 30 (App. Div. 1955), reprinted in Bulletin 1058, Item 1:

> "... Proper protection of the public interests and morals cannot be made to depend upon the size of a licensee's business or the amount of his investment."

Accordingly, it is, on this 7th day of June, 1962,

ORDERED that Plenary Retail Consumption License C-135, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Florence Tabatneck, t/a Three O'Clock Club, for premises 176 Paterson Street, Paterson, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - ARONSON v. EAST ORANGE.

Pauline & Leonard Aronson, t/a Aronson's Liquor Store, Appellants,	)	On Appeal
v.	)	CONCLUSIONS AND ORDERS
Municipal Board of Alcoholic Beverage Control of the City of East Orange, Respondent.	)	

Brass and Brass, Esqs., by Leonard Brass, Esq., Attorneys for Appellants.
William L. Brach, Esq., by Norman E. Scull, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent whereby it suspended appellants' plenary retail distribution license for fifteen days, effective March 26, 1962, after appellants pleaded non vult to a charge alleging that on January 12, 1962 they sold and delivered alcoholic beverages at their licensed premises to Arnold ---, age 18, in violation of Rule 1 of State Regulation No. 20, and Chapter 3, Section 8 of the compiled and revised ordinances of the City of East Orange.

"Upon the filing of the appeal, an order was entered on March 22, 1962, staying the effect of respondent's order of suspension until further order of the Director. R.S. 33:1-31.

"It is contended in the petition of appeal filed herein that respondent acted arbitrarily and capriciously in imposing a fifteen-day penalty, as the suspension was too severe when considering the minor's physical proportions and that 'only a token penalty, if any, should have been prescribed'.

"Leonard Aronson, one of the appellants, testified that on the date in question he sold two pint bottles of wine to Arnold and, on account of the minor's 'build, his height, his looks', he did not question him as to his age because he 'felt he was over twenty-one'.

"Arnold testified that he is 18 years of age, six feet four inches in height, and weighs 185 pounds, and, at the hearing, identified Leonard Aronson as the man who sold him the two pints of wine without questioning him as to his age. Thus, it is clear that appellants failed to establish a defense under R.S. 33:1-77.

"Appellants' only contention seems to be that, under the existing circumstances, they are entitled to receive a lesser penalty than that imposed by respondent.

"In Re Club 17, Inc., 26 N.J. Super 43, on appeal from this Division because the Director had revoked its liquor license after entry of a non vult plea, it was stated:

> 'The essence of the argument on behalf of the licensee is that the acceptance of a plea of non-vult is necessarily contingent and provisional upon the imposition of a mitigated penalty or forfeiture. While in practice some favorable consideration is normally given to the submission by an accused of such a plea, we are not aware of any precedential authority that unqualifiedly attaches such a provisional limitation on the acceptance of the plea.'

"It has long been established that the question of quantum of penalty rests within the sound discretion of the local issuing authority and will not be disturbed on appeal unless it is greatly excessive and manifestly unreasonable. Engelhorn v. Belmar, Bulletin 1083, Item 1. I note in the instant case that the respondent, in imposing the penalty, took into consideration a similar violation committed by appellants, at which time their license was suspended for a period of five days, effective November 17, 1958. The penalty imposed herein, in my opinion, does not appear to be unreasonable or unduly excessive, in view of the fact that the minor was only 18 years of age, and there is no evidence of any improper motivation on the part of the respondent. I recommend, therefore, that an order be entered affirming respondent's action and dismissing the appeal, and vacating the order staying the suspension and fixing the effective dates for the fifteen-day suspension imposed by respondent."

Pursuant to Rule 14 of State Regulation No. 15, the attorney for appellant filed written exceptions to the Hearer's Report and also requested oral argument before me.

I find the record sufficiently clear without the necessity for hearing oral argument and thus said request is denied. Having carefully considered all of the evidence, argument of the

attorneys and the written exceptions filed by appellant's attorney, I concur in the findings and conclusions of the Hearer and shall adopt them as my conclusions herein.

Accordingly, it is, on this 4th day of June, 1962,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the fifteen-day suspension heretofore imposed by respondent and stayed during the pendency of this appeal be restored and reinstated against the license held by Pauline and Leonard Aronson, t/a Aronson's Liquor Store, for premises 153 Main Street, East Orange, to commence at 9:00 A. M. Monday, June 11, 1962, and to terminate at 9:00 A. M. Tuesday, June 26, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - PARADISE CLUB, INC. v. PATERSON.

Paradise Club, Inc., of Paterson, t/a Paradise Club, Appellant, v. Board of Alcoholic Beverage Control for the City of Paterson, Respondent.	)	On Appeal CONCLUSIONS and ORDERS

Bruno L. Leopizzi, Esq., Attorney for Appellant
Theodore D. Rosenberg, Esq., by William J. Rosenberg, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it suspended appellant's license for ten days effective April 16, 1962, after appellant was adjudged guilty of a charge alleging that on January 19, 1962, it hindered local police officers in their performance of their duties in and upon its licensed premises, in violation of R.S. 33:1-35. The licensed premises are located at 138 River Street, Paterson.

"Upon the filing of the appeal an order was entered on April 13, 1962, staying respondent's order of suspension until further order of the Director. R.S. 33:1-31.

"In its petition of appeal appellant alleges respondent's action was erroneous for the reason that the verdict was contrary to the weight of the evidence.

"Respondent in its answer denies that such is the fact and, by way of a separate defense, alleges its determination was based upon the evidence presented and was fair, reasonable and just.

"The attorneys for both parties agreed to submit upon the transcript of the testimony taken in disciplinary proceedings heard by respondent on April 4, 1962. The procedure is authorized by Rule 8 of State Regulation No. 15.

"The record discloses that prior to the hearing appellant entered a plea of not guilty to the following charge:

> 'That on January 19, 1962 you, through the actions of an employee, one Melvin Hutton, did hinder or delay or caused the hindrance or delay of police officers in the performance of their duty, in or upon your licensed premises, in violation of R.S. 33:1-35.'

"At the close of the hearing the respondent (by a unanimous vote) found appellant guilty on the charge and suspended appellant's license for ten days effective April 16, 1962.

"It appears from the transcript of the testimony that respondent called as its only witness Peter LeConte (a local police sergeant).

"Sergeant LeConte testified that at about 2 a.m. on January 19, 1962, he received a radio call to investigate a complaint that a patron at the licensed premises was in possession of a gun; that at about 2:05 a.m. he, followed shortly by Sergeant Hanna and other local police officers, arrived at the licensed premises; that there were fifteen male and female patrons in the premises; that he informed the bartender (whose name he believed to be Bucky Hutton) of his mission to the premises; that the bartender stated he had no knowledge of the complaint; that Sergeant Hanna, in his presence, spoke with Melvin Hutton (manager of the licensed premises); that Hutton denied that he was aware of any call to police headquarters following which he and the other officers instituted a search of the patrons, one of whom was Rose Marie Davis.

"Sergeant LeConte further testified that at his request Miss Davis emptied her handbag on the bar; that, almost simultaneously therewith, Hutton exclaimed in profane language that he (LeConte) had no right to search Miss Davis or inspect the contents of her bag and that this was the job of a policewoman; that he informed Hutton that he was interfering with his official police duties and that he was attempting to incite the patrons; that thereafter Hutton remained silent; that the search was completed; that no gun was found; that shortly before leaving the premises at about 2:30 a.m. Hutton privately informed him that he had summoned the police and that originally he was reluctant to say so because such knowledge by his patrons would adversely affect his business.

"On cross examination Sergeant LeConte reiterated his testimony on direct examination and further testified that the radio dispatcher had informed him that one Bucky Hutton had made the complaint; that he had been instructed to speak with Bucky Hutton upon his arrival at the licensed premises; that he was unable to find anyone in the premises by the name of Bucky Hutton; and that no one interfered with the search of the male patrons.

At the end of the City's case counsel for the appellant moved to dismiss the charge on the ground that it was Melvin Hutton who had summoned the police and that the evidence presented by the City failed to sustain the charge herein. The respondent was of the opinion that the police were hindered in their investigation and denied the motion.

"Melvin Hutton, on behalf of the licensee, denied he hindered the police in their investigation; denied he used any profane language as testified by Sergeant LeConte; and further testified that for the past year he has been employed at the licensed premises as its manager; that he is also known as Bucky Hutton; that on the morning in question 'someone' came into the premises and pointed to a male patron who he stated had a gun in his possession; that he reported the same to the police; that immediately upon the arrival at the premises of Sergeant LeConte and the other police officers he alerted

them to the aforesaid male patron who was searched and taken into custody; that, after the police had completed their search of the male patrons and LeConte had begun a search of Miss Davis, he asked LeConte to summon a policewoman for that purpose; that LeConte threatened to take him into custody if he tried 'to tell him his business;' that the following day the police returned to the premises to continue their search of the premises and that he had cooperated with them.

"On cross examination Hutton reaffirmed his direct testimony and further testified that Miss Davis did not object to being searched and that he told LeConte to call a police woman if he wished to continue his search of Miss Davis.

"I have carefully reviewed all the evidence in the case. The hearing in this matter was attended by the Board's three members. It is my opinion that the Board, before rendering its decision, carefully scrutinized the testimony, considered the demeanor of the two witnesses and judged their credibility. I find no reason to disbelieve Sergeant LeConte's testimony. The police officers at the time in question came to the licensed premises to investigate a serious complaint that one of its patrons was in possession of a dangerous weapon and it was the obligation of the licensee and its employees to provide all necessary assistance to help them in their endeavors. Cf. Kleinberg v. Newark, Bulletin 1168, Item 1. I find as a fact that the licensee failed to assist the police in their investigation when Hutton questioned the right of Sergeant LeConte to search Rose Marie Davis. Hence I further find as a fact that on January 19, 1962, the appellant, by the actions of its manager, hindered and delayed the police officers in the performance of their duties in and upon the licensed premises as charged herein. Under the circumstnaces, the 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 recommend, therefore, that an order be entered affirming respondent's action and dismissing the appeal, and fixing the effective dates for suspension imposed by respondent and stayed pending the entry of the order within."

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

After carefully considering the evidence in the case, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 4th day of June 1962,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the ten-day suspension heretofore imposed by respondent, and stayed during the pendency of this appeal, be restored to commence at 3 a.m. Monday, June 11, 1962, and terminate at 3 a.m. Thursday, June 21, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

4. APPELLATE DECISIONS - ARONSON v. EAST ORANGE - AMENDED.

Pauline & Leonard Aronson, t/a Aronson's Liquor Store, Appellants, v. Municipal Board of Alcoholic Beverage Control of the City of East Orange, Respondent.	On Appeal AMENDED ORDER

Brass and Brass, Esqs., by Leonard Brass, Esq., Attorneys for Appellants.
William L. Brach, Esq., by Norman E. Scull, Esq., Attorney for Respondent.

BY THE DIRECTOR:

On June 4, 1962, I entered Conclusions and Order herein affirming respondent's suspension of appellant's license for "fifteen days" and reimposing the suspension to commence at 9:00 A. M. Monday, June 11, 1962, and to terminate at 9:00 A. M. Tuesday, June 26, 1962, i.e., fifteen calendar days.

It now appearing that although the Resolution and Order in which respondent imposed the suspension recited that the license should "be suspended for a period of twenty (20) days, less five (5) days for the plea entered", it fixed the effective dates of such suspension to commence "March 26, 1962 at 9:00 a.m. and terminating on April 11, 1962 at 10:00 p.m.", or a period of seventeen calendar days. By letter of June 8th from the office of the City Counsel, I am advised that my "15 day suspension...is in fact a 13 day suspension for the reason that no sale of alcoholic beverages is permitted in the City of East Orange on Sunday" thereby indicating that it was the intention of respondent to suspend the license for fifteen business days rather than fifteen calendar days, as witness the effective dates of its suspension.

Accordingly, in order to effectuate respondent's intention, it is, on this 12th day of June, 1962,

ORDERED that the suspension heretofore imposed by respondent and stayed during the pendency of this appeal be restored and reinstated against the license held by Pauline and Leonard Aronson, t/a Aronson's Liquor Store, for premises 153 Main Street, East Orange, to commence at 9:00 A. M. Monday, June 11, 1962, and terminate at 9:00 A. M. Thursday, June 28, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

5. APPELLATE DECISIONS - DELWOOD INN v. GLOUCESTER TOWNSHIP

Delwood Inn, corp., t/a Delwood Inn,

Appellant,

v.

Township Committee of the Township of Gloucester (Camden County),

Respondent.

ORDER of DISMISSAL

Frank M. Lario, Esq., Attorney for Appellant
Vincent L. Gallaher, Esq., Attorney for Respondent

BY THE DIRECTOR:

Pursuant to my order dated March 7, 1962, and for the reasons stated therein, the above entitled appeal was remanded to the respondent for further consideration. Delwood Inn, corp. v. Gloucester, Bulletin 1446, Item 2.

In accordance with said remand respondent considered the matter and, as a result thereof, determined that, because of its inability to produce the minor in question whose testimony respondent contends is indispensable in the case, it has no alternative other than to request discontinuance of the instant appeal and rescission of the penalty hereinbefore imposed.

In view of the unusual circumstances presented herein, and no reason appearing to the contrary, I shall enter an order of discontinuance of the appeal filed in this matter.

Accordingly, it is, on this 7th day of June 1962,

ORDERED that the within appeal be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

6. APPELLATE DECISIONS - CERRA v. VERONA

Thomas Cerra, Sr., t/a Tommy's Bar-Grill,	)	
Appellant,	)	On Appeal
v.	)	
Mayor and Council of the Borough of Verona,	)	CONCLUSIONS and ORDER
Respondent.	)	

Elvin R. Giordano, Sr., Esq., Attorney for Appellant
Fred G. Stickel, III, Esq., Attorney for Respondent
Brass and Brass, Esqs., by Leonard Brass, Esq., Attorneys for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Mayor and Council (hereinafter respondent) whereby on March 6, 1962, it denied an application for a place-to-place transfer of appellant's license from 411 Bloomfield Avenue to 432 Bloomfield Avenue, Borough of Verona. The six members of the Borough Council voted unanimously to deny the transfer in question.

"Appellant herein in his petition of appeal asserts that the action of the respondent was erroneous in that it was unreasonable and discriminatory; furthermore, that respondent gave no reasons for its denial of the application of appellant for transfer.

"Respondent's answer denies the aforesaid allegation of appellant and contends that it acted reasonably under the circumstances and within the discretion vested in it by law.

"Chief of Police Edgar Coffin testified that appellant's proposed premises is 144 feet east of the entrance to the Verona Theater and that on Saturdays, Sundays and holidays it is not unusual for children to line up on the sidewalk for a distance of 200 to 300 feet while waiting for the theater doors to open. Moreover, Chief coffin testified that the parking space in the rear of the proposed premises available to the patrons of appellant's tavern is also used frequently by teenagers.

"John Geyser (manager of the Verona Theater) testified in opposition to the transfer of appellant's license. The objections voiced by him were that on Saturday afternoons and also during school vacations numerous children form a line outside the theater, which line extends in front of the appellant's proposed tavern. Moreover, he testified that the parking facilities in the rear of the proposed premises are now used by many teenagers attending the theater and it could be improper to permit patrons of the tavern to use the same parking area.

"Appellant rested his case after completion of a statement made by his attorney and failed to present any testimony in the matter.

"It may well be that a uniform policy against licenses for premises reasonably considered by the issuing authority as being too near a theater attended by children would be justifiable.

Cf. McConnell v. Trenton, Bulletin 35, Item 12. It might properly be assumed from the action of the respondent in the instant matter that such policy is now being initiated.

"It has been repeatedly stated that, although in fairness to an applicant, a local issuing authority should state the reasons for its decision, such failure to do so is not fatal. Inasmuch as this is a trial de novo, appellant has been accorded his full day in court. Haba Realty Corp. v. Long Branch, Bulletin 984, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1.

"A transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority, in the exercise of reasonable discretion, may grant or deny the transfer of a license. If denied on a 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; D'Allessandro v. Parsippany-Troy Hills, Bulletin 1333, Item 1. See also Biscamp v. Teaneck, 5 N.J.Super. 172 (App.Div. 1949).

"It has long been held that the question of whether or not a license should be permitted at a particular location is one within the sound discretion of the issuing authority and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm. Redfield v. Long Branch et al., Bulletin 1027, Item 1. It is apparent by the unanimous vote of the respondent that appellant failed to satisfy the members thereof that the public interest would best be served by the transfer of the license and there is nothing in the record indicating or even suggesting that respondent's refusal to grant appellant's application was inspired by improper motives. See Fanwood v. Rocco and Division of Alcoholic Beverage Control, 59 N.J.Super. 306 (App.Div. 1960), aff'd 33 N.J. 404 (1960).

"After considering all the evidence herein, including the exhibits and the oral arguments of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the respondent was erroneous, arbitrary, caprious or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. It is recommended, therefore, that an order be entered affirming respondent's action and dismissing the appeal."

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

Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 8th day of June 1962,

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

WILLIAM HOWE DAVIS
DIRECTOR

7. APPELLATE DECISIONS - SUGAR BILL INC. v. PASSAIC.

Sugar Bill Inc., t/a Sugar Bill Inc., Appellant,	)	
v.	)	On Appeal
Board of Commissioners of the City of Passaic, Respondent.	)	CONCLUSIONS and ORDER

Joseph M. Keegan, Esq., Attorney for Appellant.
Martin Klughaupt, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on February 6, 1962, it unanimously denied the application of appellant for a place-to-place transfer of its license from 327 Passaic Street to 305 Passaic Street, Passaic.

"Appellant herein, in its petition of appeal, asserts that the action of the respondent was erroneous in that it was arbitrary, capricious and against the weight of the evidence. Furthermore, that respondent gave no reasons for its denial of the application of appellant for transfer.

"Respondent's answer admits that no reasons were given for denial of the transfer, but contends that they 'were sufficiently stated publicly, at a regular meeting of the Board of Commissioners, in the presence of a representative of the appellant'. The answer further provides that the respondent considered all of the facts and circumstances pertaining to the proposed transfer, and the objections thereto, and concluded that the denial of the transfer was reasonable and proper and in the best interest of public welfare.

"It appears from the evidence presented herein the distance between the premises in question to be 221 feet, and the distance from the proposed premises to the 'Universal Hagus Spiritual Church' located at 49-51 Passaic Street to be 186 feet 5 inches.

"Will Davis (president of appellant corporate-licensee) testified that appellant now operates a tavern at 327 Passaic Street; that in February 1961, appellant purchased the proposed premises located on the southeast corner of State and Passaic Streets; that he now operates a restaurant in part of the said building, and it is his desire to transfer the corporate license to the other part and combine so that both businesses could be conducted in one establishment. Mr. Davis further testified that part of the premises sought for the liquor license has been vacant since April 1961, when it was vacated by the liquor licensee. Mr. Davis testified that another tavern is located on the corner of State and Passaic Streets diagonally opposite to the proposed premises.

"Irene Perry testified that she is the minister of the church, which is located within 200 feet of appellant's proposed licensed premises, but that neither she nor any ofthe church trustees object to appellant's license being transferred to the said building.

"David B. Kaplan (a member of the respondent Board) testified his reasons for voting to deny appellant's application for the transfer of the license were he 'took into consideration the proximity of the rectory, the St. Nicholas Church, St. Nicholas School, number six School which is about four blocks from the requested store that was to be used by the licensee and felt that that was a good legal basis for denial of the transfer'. Furthermore, he stated that it would be a disadvantage from the standpoint of public welfare to place another tavern diagonally across the street from one that's already there. He also testified that he also considered the written objection of the rector of St. Nicholas Church to permit another licensed premises at the intersection of State and Passaic Streets, as well as at the end of the block on State Street, there is a low-cost housing project wherein 350 families reside, many of whom have children of school age.

"Joseph A. Stanek (a member of the respondent Board) testified that his reasons for voting to deny the application for transfer to be that he was 'very much opposed to having taverns on a corner, especially on that corner. I know that area very well. I made many visits there. In fact, I go through practically four, five times a week and I note that that corner is a very busy intersection insofar as young children are concerned. There is a marshal on duty there and he has quite a job between the traffic and the great number of children that come to cross that corner. I personally don't think that that is the place for another tavern. We have one there and I think that's sufficient'. Moreover, Commissioner Stanek testified that he considered the objection filed by St. Nicholas Church which is approximately a short block from the proposed premises.

"Although the distance between the proposed premises and the Universal Hagus Spiritual Church on State Street is less that 200 feet, the minister of the Church testified she has no objection to the license being located at the proposed site. Irrespective of such consent, it is still within the province of the respondent to decide whether or not a license should be transferred to a particular location. I might add that where a church or school is in excess of 200 feet from the proposed licensed premises, an issuing authority has the right to decline a license for premises reasonably considered by it as being too near such church or school. Cf. McDonald v. Clayton, Bulletin 161, Item 5.

"It has been repeatedly stated that, although in fairness to an applicant, a local issuing authority should state the reasons for its decision, such failure to do so is not fatal. Inasmuch as this is a trial de novo, appellant has been accorded its full day in court. Haba Realty Corp. v. Long Branch, Bulletin 984, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1.

"A transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority, in the exercise of reasonable discretion, may grant or deny the transfer of a license. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; Van Schoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; D'Alessandro v. Parsippany-Troy Hills, Bulletin 1333, Item 1. See also Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949).

"It has long been held that the question of whether or not a license should be permitted at a particular location to be within the sound discretion of the issuing authority and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority, but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm. Redfield v. Long Branch et al., Bulletin 1027, Item 1. It is apparent by the unanimous vote of the respondent that appellant failed to satisfy the members thereof that the public interest would best be served by the transfer of the license and there is nothing in the record indicating or even suggesting that respondent's refusal to grant appellant's application was inspired by improper motives. See Fanwood v. Rocco and Division of Alcoholic Beverage Control, 59 N.J.S. 306 (App. Div. 1960) aff'd 33 N.J. 404 (Sup. Ct. 1960).

"After considering all the evidence herein, including the exhibits and the oral arguments of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the respondent was erroneous, arbitrary, capricious or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. It is recommended, therefore, that an order be entered affirming respondent's action and dismissing the appeal."

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

Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 8th day of June 1962,

ORDERED that the action of respondent Board be and the same is hereby affirmed, and that the appeal be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

8. STATUTORY AUTOMATIC SUSPENSION - SUPPLEMENTAL ORDER FURTHER STAYING SUSPENSION.

Auto Susp. #210 In the Matter of a Petition to Lift the Automatic Suspension of Plenary Retail Consumption License C-41, issued by the Board of Commissioners of the City of New Brunswick to Vienna Cafe (a corp.) 12 Easton Avenue New Brunswick, N. J.	On Petition SUPPLEMENTAL ORDER

Adler, Mezey & Pressler, Esqs., by Samuel M. Adler, Esq., Attorneys for Petitioner.

BY THE DIRECTOR:

On April 5, 1962, an order was entered temporarily staying the statutory automatic suspension of license of petitioner pending reopening and rehearing of the case resulting in the criminal conviction of Alex Fulop, Jr., an officer and stockholder of the petitioner. Bulletin 1448, Item 9.

It now appears from supplemental petition filed herein that following appeal of the conviction to the Middlesex County Court, Alex Fulop, Jr. was found guilty and fined $100. It further appears from Division records that disciplinary proceedings against the petitioner are in contemplation by the municipal issuing authority but that such proceedings have not yet been instituted. Additionally, it is represented by petitioner that it is intended to plead guilty to any charges in such disciplinary proceeding that may be instituted.

In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be further temporarily stayed pending the outcome of the disciplinary proceedings to be instituted by the municipal issuing authority. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after the disciplinary proceedings have been concluded.

Accordingly, it is, on this 5th day of June, 1962,

ORDERED that the aforesaid automatic suspension be further stayed pending the entry of a further order herein.

WILLIAM HOWE DAVIS
DIRECTOR

9. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION

Auto.Susp. #213 In the Matter of a Petition to Lift the Automatic Suspension of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Clark to Baumel's Liquor and Delicatessen, Inc. 30 Westfield Avenue Clark, N. J.	On Petition O R D E R

Joseph M. Feinberg, Esq., Attorney for petitioner.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on April 18, 1962 Enrico Gannett (secretary and 30% stockholder of Baumel's Liquor and Delicatessen, Inc.) was fined $150 in the Clark Township Municipal Court after he pleaded non vult to a complaint alleging that he sold alcoholic beverages to a minor, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license held by the corporation for the balance of its term. R.S. 33:1-31.1. The suspension has not been effectuated because of the pendency of this proceeding.

It further appears that the local issuing authority suspended the license of the corporation for five days after it pleaded non vult to a charge in disciplinary proceedings alleging sale to the same minor. The suspension was effective commencing May 21, 1962. It appearing that the suspension has been served, I shall lift the automatic suspension. Re Paul's Bar & Grill, Inc., Bulletin 1446, Item 8.

Accordingly, it is, on this 12th day of June, 1962,

ORDERED that the statutory automatic suspension of said license D-1 be and the same is hereby lifted, effective immediately,

William Howe Davis
Director

New Jersey State Library