

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

Kremer

BULLETIN 1700

November 17, 1966

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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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BULLETIN 1700

1. COURT DECISIONS - IN RE COX and O'TOOLE - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-499-65

In the Matter of Disciplinary
Proceedings against

SAMUEL H. COX
and
EDWARD O'TOOLE,

Employees of the Division of
Alcoholic Beverage Control.

Argued September 26, 1966 - Decided October 6, 1966

Before Judges Conford, Foley and Leonard

On appeal from Division of Alcoholic
Beverage Control, Department of Law and
Public Safety, State of New Jersey.

Mr. Raymond A. Brown argued the cause for
appellant, Samuel H. Cox.

Mr. Gerald D. Miller argued the cause for
appellant, Edward O'Toole, (Mr. Abraham
Miller, attorney).

Mr. Morton L. Anekstein argued the cause
for respondent (Mr. Arthur J. Sills, Attorney
General of New Jersey, attorney, Mr. Avrom J.
Gold, of counsel and on the brief).

The opinion of the court was delivered by
FOLEY, J.A.D.

Appeal from decision and order of the Director removing from
office Division Investigators Samuel H. Cox and Edward O'Toole.
Director's order affirmed. Opinion not approved for publication
by the Court committee on opinions.

2. COURT DECISIONS - SABBIA v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL
- DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A 494-65

VINCENT B. SABBIA and
NICHOLAS SABBIA,

Plaintiffs-Appellants,

v.

DIVISION OF ALCOHOLIC BEVERAGE
CONTROL OF THE DEPARTMENT OF LAW
AND PUBLIC SAFETY, STATE OF NEW
JERSEY, and JOSEPH P. LORDI,
DIRECTOR of said DIVISION,

Defendants-Respondents.

Argued September 12, 1966 - Decided September 26, 1966

Before Judges Sullivan, Kolovsky and Carton.

On appeal from the Division of Alcoholic
Beverage Control.

Mr. Charles M. Schimenti argued the cause for
appellants.

Mr. Michael Rudolph, Deputy Attorney General,
argued the cause for respondents; Mr. Richard
F. Aronsohn, Deputy Attorney General, of
counsel and on the brief (Mr. Arthur J. Sills,
Attorney General of New Jersey, attorney).

PER CURIAM.

Appeal from the Director's decision in Re Sabbia,
Bulletin 1664, Item 1. Opinion not approved for publication by
the Court committee on opinions. Petition for certification filed
October 10, 1966.

Order of revocation effective February 3, 1966 was stayed
by order of the Court on February 10, 1966. The stay was vacated
on March 14, 1966 when the revocation was reeffectuated.

3. APPELLATE DECISIONS - UZZELL v. ATLANTIC CITY and 2705 PACIFIC CORP.

Marion Uzzell,)	
Appellant,)	
v.)	On Appeal
Board of Commissioners of the)	CONCLUSIONS
City of Atlantic City, and 2705)	AND
Pacific Corp., t/a Haunted House,)	ORDER
Respondents.)	

Kirkman, Mulligan, Bell & Armstrong, Esqs., by David R. Fitzsimons, Jr., Esq., Attorneys for Appellant
Murray Fredericks, Esq., Attorney for Respondent Board of Commissioners
Edwin H. Helfant, Esq., Attorney for Respondent 2705 Pacific Corp., t/a Haunted House

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the unanimous action of respondent Board of Commissioners (hereinafter Commissioners) whereby it approved an application for a person-to-person and place-to-place transfer of a plenary retail consumption license from Morton Charleston and Grace Charleston, t/a Bayview Bar, to 2705 Pacific Corp., t/a Haunted House, and from premises 443 North Rhode Island Avenue to premises 2705 Pacific Avenue, Atlantic City.

Appellant's petition of appeal alleges that the action of the Commissioners was erroneous and should be reversed because the transfer to the proposed premises will (a) diminish the value of appellant's property, (b) the said property at 2705 Pacific Avenue has in the past been operated as a nuisance and issuance of a liquor license to said premises will "worsen the situation" and (c) that the respondent corporate licensee "is in fact an alter ego for persons" who are not qualified to hold a license.

Marion Uzzell testified that she resides in Margate approximately "five miles" from the premises in question and is the owner of the property 2703 Pacific Avenue immediately adjacent to the proposed premises; that the building which she owns has seven elderly tenants and there are two suites rented by doctors; that the transfer of a liquor license to the proposed premises would tend "to depreciate the value of my property, and certainly isn't helpful to the neighborhood;" that she has no personal knowledge of any problems that have been created by the use of the property to which transfer of the license was approved.

Frances Williams, residing at 2705 Pacific Avenue and president of the 2705 Pacific Corp., testified that her husband Allison Williams is the owner of the property to which the transfer of the license had been approved; that she is the holder of twenty-eight of the thirty shares of capital stock of the corporation but that she has no personal knowledge of the terms of the proposed lease because the matter is "in the hands of my accountant and my lawyer."

Commissioner John O'Donnell testified that he voted to approve the transfer of the license in question because he was of the opinion that "the public convenience could be served by the issuance of the license, and in view of the fact of the tremendous face lifting occurring in that area."

The testimony of Marion Uzzell discloses that she is apprehensive that her property located adjacent to the property to which the transfer of the license was approved would depreciate the value thereof. However, her opinion was not substantiated by any proof whatsoever and thus cannot be considered a valid reason for the denial of the transfer of the license. The question of whether property in the area will depreciate in value may be considered to be conjectural rather than fact. Cf. Smith et als. v. Newark and Black, Bulletin 1481, Item 2.

There has been no proof whatsoever that the corporate licensee was formed to protect persons who had an interest in the license and who would fail to qualify as individual licensees.

Another contention of appellant was that the corporation to which the transfer of the license was approved had no right of possession to the proposed premises. The application discloses that Frances Williams and Allison Williams, her husband, resided at and are the owners of the property known as 2705 Pacific Avenue, the site sought for the proposed premises. Frances Williams is the major stockholder of the respondent corporate licensee. Thus it follows that, since Frances and Allison Williams are the owners of the premises and Frances Williams is the president and major stockholder of the corporate licensee, it can be justifiably presumed that there is a colorable right to possession to the proposed premises.

In the exercise of its sound judgment, the local issuing authority may issue or transfer a license where it finds that applicant has a colorable right to possession and complete control of the premises. Spindel v. Garfield et als., Bulletin 1015, Item 3.

I shall now consider whether the Commissioners abused their discretion in approving the transfer of the license in question.

It has well been established that a local issuing authority's discretionary power is broad when called upon to determine whether a liquor license should or should not be transferred. The Director's function on appeals of this nature is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1. In Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision of an appeal from a zoning ordinance, cited in Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306, the following general principles were stated:

"...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 for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished:

'Universal distrust creates universal incompetence.'
Graham v. United States, 231 U.S. 474, 480. 34 S. Ct.
148, 151, 58 L. Ed. 319, 324 (1913)."

In the Rocco case, supra, it was stated:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.'" Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511.

There has been no evidence presented to indicate that the Commissioners were improperly motivated or abused the discretion vested in them by granting the transfer of the license in question.

After careful examination of the entire record presented herein, I conclude that the appellant has failed to sustain the burden of proof in showing that the action of the Commissioners was erroneous. Rule 6 of State Regulation No. 15. See Shiloh Baptist Church v. Atlantic City et al., Bulletin 1387, Item 2, and cases cited therein.

For the reasons aforementioned, it is recommended that an order be entered affirming the action of the Commissioners herein 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.

After carefully considering the entire record herein, including the transcript of testimony, the exhibits, the oral argument in summation presented by the attorneys for the respective parties, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of September 1966,

ORDERED that the action of the Board of Commissioners of the City of Atlantic City be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI,
DIRECTOR

4. APPELLATE DECISIONS - WILLIAMS v. PATERSON.

Anna Mae Williams,
t/a Big Daddy Bar & Grill,

Appellant,

v.

Board of Alcoholic Beverage
Control for the City of Paterson,

Respondent.

On Appeal

CONCLUSIONS
AND
ORDER

Joseph J. Cappa, Esq., Attorney for Appellant.

Adolph A. Romei, Esq., by Marino Tedeschi, Esq., Attorney for
Respondent.

Shavick, Thevos, Stern, Schotz & Steiger, Esqs., by
Barry I. Croland, Esq., Attorneys for Objector
Broadway Bank & Trust Company.

Evans, Hand, Evans, Allabough & Amoresano, Esqs., by
Douglas C. Borchard, Jr., Esq., Attorneys for Objector
New Jersey Bank & Trust Company.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the unanimous action of respondent in denying appellant's application for transfer of her plenary retail consumption license from 499 Main Street to 26-28 Washington Street, Paterson.

Appellant's petition of appeal in substance alleges that there is a need for a license at the proposed premises where a tavern was formerly located and which is equipped for said purpose; that the owner of the building "put considerable investments in the premises which can only be used for tavern purposes", and that respondent's action in denying the transfer was arbitrary, capricious and without legal basis.

Respondent's answer contends that there are sufficient liquor outlets in the area of the proposed premises to serve the convenience of the public and therefore the action of respondent was neither arbitrary nor capricious, but that respondent acted fairly and reasonably within its sound discretion.

William W. Harris, secretary of respondent, upon being asked what the reasons given by the members of respondent board were, read the minutes taken at the hearing as follows:

"Commissioner Pasquariello moved for denial of this application for transfer. He stated that the area in which it was sought to locate the tavern was in a section in which there are few residents; that section is frequented primarily by transients.

"Mr. Pasquariello continued by citing locations of existing taverns in the general area. He added, 'It is my opinion that there are enough taverns there now to serve that immediate area.'"

Mr. Harris further testified that the premises sought for transfer of the license in question was formerly occupied as a tavern; that the "liquor store" which was directly across the street from the proposed premises transferred its license one block south of the said proposed premises. The witness, in answer to questions of the attorneys representing the respective parties and those representing the objectors, gave detailed testimony regarding locations of various liquor outlets and then stated that, within an area of four blocks of the premises sought to transfer the license, there are twenty-five taverns and four package stores. A document prepared by the witness disclosing the names and locations of the aforementioned licensed premises was admitted in evidence without objection. Further testimony of Mr. Harris disclosed that across the river and within a distance of one-quarter mile from the proposed premises, there are two large housing developments there are six plenary retail consumption licenses and one plenary retail distribution license. Furthermore, Mr. Harris stated that the present location of the license sought to be transferred is three-quarters of a mile from the proposed premises.

Appellant testified that on a previous occasion her application for place-to-place transfer of her license to 45 West Broadway was denied because of too many taverns located in that area; that the proposed premises on Washington Street is located between two chicken markets and there are a number of empty stores in the area; that appellant desires to transfer her license because "There's no business around there at all. I'm not making any money there." Appellant stated that she desired to get out of the residential section where the premises is now located because of complaints being made.

Harry Schwartz, owner of the proposed premises, testified that the premises had formerly been used as a tavern until approximately three years ago when the license was revoked; that since that time the premises have been unoccupied, but the bar and the fixtures still remain in the premises.

Anthony Pasquariello, a member of respondent board, testified that he voted against the transfer because "There are too many taverns in that area now to serve the needs of the people. There aren't that many people in there." When questioned concerning the two large housing projects located across the river, but connected with a bridge from the area of the proposed premises, Commissioner Pasquariello named a number of liquor outlets in the area of the projects and he was of the opinion no need existed for an additional license to serve the public in that section.

Vincent J. Cortese, manager of the retail division of the Greater Paterson Chamber of Commerce, testified that he opposed any additional liquor establishments in the area sought by appellant.

The burden of establishing that the action of respondent was erroneous and should be reversed rests with appellant. Rule 1 of State Regulation No. 15. No one has a right to issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586; Biscamp v. Teaneck, 5 N.J. Super. 172. It is within the sound discretion of the local issuing authority in the first instance to determine whether or not a license should be transferred to a particular section of a municipality. Hudson-Bergen County Retail Liquor Stores Ass'n v. North Bergen et al., Bulletin 997, Item 2. A municipal issuing authority possesses wide discretion with reference to a transfer of a liquor license which, however, is subject to review by the Director in the event of an abuse of its

discretion. Passarella v. Atlantic City et al., 1 N.J.Super. 313. The action taken by the local issuing authority will not be disturbed in the absence of a clear abuse of discretion. Blanck v. Magnolia, 38 N.J. 484.

The Director's function on appeals such as that now under consideration is not to substitute his personal opinion for that of the issuing authority, but to determine whether reasonable cause exists for its opinion and, if so, to affirm, irrespective of his personal views. Larion, Inc. v. Atlantic City, Bulletin 1306, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1.

In Fanwood v. Rocco, 59 N.J.Super. 306, 323 (App.Div. 1960), aff'd 33 N.J. 404 (1960), Judge Gaulkin, among other things, stated:

"The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so."

Moreover, it was stated in Fanwood that no person is, as a matter of law, entitled to transfer of liquor license, and "If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

If the site for which the transfer of a license sought is in the same area as its present location, the reasonableness of the action of respondent in denying the transfer might be questionable. However, in the instant case, the distance between the present premises and the proposed premises being approximately three-quarters of a mile, the latter premises may properly be considered to be situated in a different section of the municipality.

This case can readily be distinguished from Common Council of Hightstown v. Hedy's Bar, 86 N.J.Super. 561, which affirmed the Director's reversal of the denial by the local issuing authority of an application for place-to-place transfer of a license. Hedy's Bar v. Hightstown, Bulletin 1561, Item 2. Judge Goldmann, speaking for the Appellate Division of the New Jersey Superior Court, found that the licensee "was forced to relocate by a public agency, the Hightstown Housing Authority, which took possession of the premises on August 1, 1963, when the tavern was obliged to cease operations." In the instant case, it is apparent from the testimony of appellant that her desire to transfer the license from the area where it is presently located is primarily based upon the fact that it is unprofitable for her to continue operations of the licensed premises at the existing location. It is a settled principle that in a conflict between private interests and the interests of the community at large, the latter must prevail. Silvestri v. Jersey City, Bulletin 1554, Item 2. Cf. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Smith v. Bosco, 66 N.J.Super. 165 (App. Div. 1961).

After consideration of all the evidence presented herein, I conclude that the action of respondent in denying the transfer in question was neither arbitrary, capricious nor an abuse of discretion.

Therefore, it is recommended that the action of respondent in denying the transfer of appellant's license be affirmed and that the appeal herein be dismissed.

Conclusions and Order

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's report and argument in support thereof were filed by the attorney for the appellant. Answers to the exceptions and written argument in support thereof were thereupon filed by the attorneys for objector Broadway Bank & Trust Company.

After carefully considering the testimony, exhibits, Hearer's report, exceptions thereto and written argument filed in behalf of appellant and answering argument filed in behalf of objector Broadway Bank & Trust Company, I find the exceptions without merit and unsupported by the Evidence. Hence I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 16th day of September, 1966,

ORDERED that the action of respondent Board of Alcoholic Beverage Control be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed

JOSEPH P. LORDI,
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - PRIOR DIS-SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS - CHARGES OF SALE IN VIOLATION OF STATE REGULATION NO. 38 AND SALE TO INTOXICATED PERSON DISMISSED.

In the matter of Disciplinary)
Proceedings against)

Helen Pawlicki)
t/a South Seas)
1 South Front Street)
Elizabeth, N. J.)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption)
License C-158, issued by the City)
Council of the City of Elizabeth)

Philip Dean Cohen, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On Saturday, August 21, 1965, at about 1:20 a. m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Fleischmann's Preferred Blended Whiskey, at retail, in its original container for consumption off your licensed premises, and you allowed, permitted and suffered the removal of such alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

"2. On August 21, 1965, at about 1:20 a. m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage directly and indirectly to a person actually or apparently intoxicated; in violation of Rule 1 of State Regulation No. 20.

"3. On August 21, 1965, you hindered and delayed, caused the hindrance and delay of, attempted to hinder and delay and failed to facilitate an investigation, examination and inspection of your licensed premises being conducted by Investigators of the Division of Alcoholic Beverage Control; in violation of R.S. 33:1-35."

The Division offered the testimony of two ABC agents at the hearings held herein.

Agent D testified that he, together with Agent T, participated in an investigation of the licensed premises on August 21, 1965. He entered the licensed premises, which he described as a neighborhood tavern, at 12:30 a.m. At that time approximately twelve patrons were being served by the licensee, Helen Pawlicki, who was tending bar.

At approximately 1:18 a.m. a male entered the front door walking in an erratic manner and whispered into the ear of a person known as "Hank", later identified as Joseph C. Bosonac. Hank was seated to the left of the agent. The questioning then revealed the following:

"Q What happened then?

A I had to go to the men's room. When I came out of the men's room I observed Hank coming from the back, in back of the bar, but the front of the bar against the wall, with a bottle against his left leg and his left hand against his left leg, and he walked up to this colored male--

Q Where was the colored male?

A Standing at the end of the bar. --and I observed the colored male put the bottle in his left front pocket, and I was able to read the label on the bottle, I was that close to him."

The agent testified that the purchase was a bottle of whiskey, that he saw the patron place money on the bar in front of Hank but he did not see the amount, nor did he see what happened to the money. The agent departed from the tavern and alerted his partner in the investigation, Agent T. The agents accosted the unidentified male after he made his exit from the tavern and was crossing the street. Upon request, the male handed the agents the bottle which he had in his left pants pocket. However, he denied that he purchased the bottle in the licensed premises. The agents and the unidentified male entered the licensed premises, whereupon the agents identified themselves to Hank and asked Hank "if he knew this fellow and sold him the bottle." Hank denied knowing him or selling him the bottle. The male was "a little drawn in speech" and "smelled of alcohol quite heavily." In addition, the witness declared that the male staggered and swayed and "kept moving his footing to get his balance."

The agents disclosed their identities to the licensee and advised her of the alleged sale. In response to the question, "What did she say?", the witness responded:

"She denied knowing anything about it, and she got a little frustrated when Agent T-- tried to go behind the bar, and she gave him a little shove, saying, 'No one comes behind my bar.' She came out from behind the bar and started shutting the lights off in the premises. I asked her to put the lights back on. She refused. Agent T-- said, 'We better leave because we don't want trouble.' The patrons started to leave also at the same time, and we left the premises."

Upon request, the licensee refused to give the agents a copy of the license application or turn the lights on. In the meantime the unidentified male departed from the premises without the agents' knowledge.

Additionally, the witness testified that Hank refused to furnish the agent with his last name and he did not see Hank come from behind the bar. He was on the patrons' side when he saw him.

On cross examination, the witness testified that Hank was seated immediately to his right when the unknown male entered the tavern at 1:18 a.m. and walked directly to Hank. He heard none of the conversation between Hank and the unknown male. He reiterated that he did not see Hank come from behind the bar with the bottle of whiskey and he did not know from where the bottle was procured.

Agent T testified that he accompanied Agent D in the instant investigation and remained seated in an automobile while D entered the licensed premises. He observed the unidentified male (heretofore referred to by Agent D) walking up the block in a staggering manner and enter the premises at 1:18 a.m. Shortly thereafter, Agent D left the licensed premises to signal him that he saw the unidentified male depart therefrom. The agents identified themselves to the unidentified male and, upon request, he produced a bottle of whiskey from his pants pocket. After he denied purchasing the whiskey in the licensed premises, the ABC agents and the unidentified male entered the licensed premises. Additionally, Agent T testified that when he first observed the unidentified male walking towards the licensed premises, he did not appear to be carrying anything in his hands or pockets, whereas, when he emerged therefrom he noticed something in his pants pocket. The unidentified male's speech was slurred and there was an odor of alcohol on his breath. Upon being apprised of the alleged sale, Hank denied it. Both agents identified themselves to the licensee. When Agent T attempted to go behind the bar, he was stopped by the licensee. She refused to produce the copy of her license application upon being requested to do so and said, "You get nothing ... Why don't you fellows leave us alone? You are always bothering us." Thereafter, she started putting out the lights and getting the patrons to leave the tavern. At this time he lost sight of the unidentified male patron. Agent D's request to the licensee that she turn the lights back on was ignored. The agents departed from the tavern at 1:40 a.m. about five minutes after the patrons left.

On cross examination, the agent testified that the unknown male was not drunk. However, he appeared to be intoxicated.

In defense of the charges, Joseph C. Bosonac (known as "Hank") testified that he had been gainfully employed as a salesman for a period of nine years and he was not in the employ of the licensee on the date in question. He entered the tavern on Friday, August 20, 1965, shortly after 10:30 p.m. After testifying that he had been conversing with a Dominick Russo and a Nick Soriano, the questioning elicited the following:

"Q What happened between you and Agent D?

A What happened?

Q Yes.

A I seen this man sitting alongside me for quite a while, the time I mentioned, and I would say about 10 after 1, a quarter after 1 he was sitting there, and all at once he grabbed me around the shoulder and pulled me by the shoulder, he pulled me off the stool, and said, 'You are under arrest, Hank.' I said, 'Who are you?' He said, 'You sold a bottle of whiskey.'

Q He pulled you off the chair?

A Yes. He tore my shirt.

Q When he pulled you off the chair were you facing the bar or did you have your back to the bar?

A My back was towards the street. I was talking then to Dominick Russo right alongside me. He came in and pulled me off the stool. I grabbed the bar. He said, 'You are under arrest.' I said, 'What for?' He said, 'Selling a bottle of whiskey.' I said, 'I couldn't sell a bottle of whiskey. Where would I get a bottle of whiskey?'

Q Had you been behind the bar at all that evening?

A No, sir."

The witness claimed that the licensee kept wine in the area where the agent accused him of obtaining the bottle of whiskey. Additionally, he testified that neither agent exhibited an identification of any kind to the licensee. Finally, he denied selling a bottle of whiskey to an unidentified male or seeing any unidentified male in the tavern that night to whom a sale was made.

On cross examination, Bosonac admitted having tended bar for the licensee the previous year but denied selling bottles of whiskey. He denied that Agent D pointed to any particular person concerning the alleged sale of the bottle of whiskey and that neither agent exhibited his credentials to him. He reiterated that he did not sell a pint bottle of whiskey to anyone on the date in question.

Dominick Russo, a former councilman and former president of the ABC Board of the City of Elizabeth, testified that he was a patron in the licensed premises for several hours and stayed until closing time on the date in question. He was in a group consisting of Hank and Nick Soriano, among others, and observed Agent D seated to the left of Hank at approximately 11:30 p.m. At approximately

12:15 or 12:20 a.m. he saw Agent D "standing up there, and he yanked Hank by the left shoulder, ripped his 'T' shirt, spun him around, this is a spinning stool, spun him around, so that he was faced in the opposite way, Hank had all to do to stand up, and he says, 'Hank, you are under arrest.'" In response to Hank's inquiry as to why he was placed under arrest, the agent responded, "You are under arrest because you sold a bottle of liquor." Upon being questioned as to whether he saw a bottle of liquor sold, the witness responded that he did not. Further, he testified that Hank did not leave his stool that night at all. Upon requesting Agent D to exhibit his credentials, Agent D refused to show anything and departed from the premises. He then called the local police. Agent T had also refused to show his credentials to the licensee. He did not observe the sale of a bottle, nor see any unidentified male in the tavern as herein alleged.

On cross examination, Russo testified that the police arrived pursuant to the telephone call and that he advised the police of Bosonac's "arrest."

Nick Soriano, chairman of the Planning Board of the City of Elizabeth, testified that he entered the licensed premises on Friday, August 20, 1965, at approximately 10:45 p.m. and sat two or three stools to the left of Hank and one stool to the left of Russo and engaged in conversation with them. When asked as to whether or not he saw anything unusual, he responded that he saw Agent T trying to gain admittance to the back bar and was prevented from doing so by the licensee who advised him that she would not permit anyone behind the bar. The agent did not show credentials, although he was requested to do so by the licensee. He did not observe a sale being made to an unidentified male nor did he see anyone on the premises who was drunk.

On cross examination, the witness stated that he did not see Hank being placed under arrest by anyone. He wasn't facing him all night and, at the time of the alleged arrest, he was playing a drum.

Daniel Skrobick testified that he entered the licensed premises as a patron on Saturday, August 21, 1965, at approximately 12:30 a.m. and, inasmuch as there were no seats at the bar, he sat at a table across from the bar. He saw Soriano, Russo, Bosonac, Agent D and others at the bar. At about 1:15, 1:20 a.m. he saw Agent D swing Hank off the chair and heard him say he was under arrest. He heard Agent D remark to Hank that he sold a bottle of whiskey to an unidentified male. This was denied by Hank. Further, he testified that he did not see Hank leave his stool prior to this incident, or see anyone approach Hank, or see Hank sell a bottle of whiskey. He did witness a male enter the bar with a bottle in the pocket of his khaki pants, approach a woman identified as Mildred Sanabria (who was seated at the same table as the witness), address her briefly, stand near the refrigerator for three or four minutes (the bar was crowded) and then walk out. He did not see this man whisper to Hank, nor did he see Hank give this man a bottle.

On cross examination, the witness testified that he did not see the male he had referred to heretofore in the tavern at the time Agent D swung Hank around on the stool.

Mildred Sanabria testified that she entered the licensed premises on August 20, 1965, at 10:30 p.m. and remained in the premises until beyond 1:20 a.m. She first sat at the bar and then sat on the same bench behind a table where the previous witness,

Daniel Skrobick, was seated and furthest removed from him. She did not see Agent D twist Hank around on a bar stool. She observed a male enter the tavern at about 1:15 or 1:20 a.m., wearing khaki pants. She noted a bottle in his trouser pocket. The male stopped very briefly at the table where she was seated, addressed a remark to her and then went to the rear near the refrigerator. He did not appear to be drunk and, after about three or four minutes, he departed from the tavern. She did not see him stop at the stool occupied by Hank and whisper to him, nor did she see Hank go behind the bar, get a bottle of whiskey and give it to the male. Upon observing a commotion between Hank and Agent D, she departed from the tavern.

On cross examination, the witness testified that the unidentified male had a bottle in his right pocket and that he did not stagger or stumble and his speech was normal when he addressed her. He spoke with no one else in the tavern. He was not standing close to anyone.

Joseph W. Smith testified that he entered the licensed premises on Friday, August 20, 1965, at approximately 10:45 p.m. At approximately 11:30 p.m. Agent D entered the tavern and sat to the right of Smith. Smith and Agent D were watching a pool game in progress and they conversed generally about the game. He did not observe any unidentified male walk in between Hank and Agent D. He did see Agent D turn Hank around on the stool and exclaim, "You are under arrest." Upon being questioned by Agent D as to whether or not he was the owner of the licensed premises, Hank replied that he was not. He saw Agent T try to enter the back bar and the licensee stop him from doing so at the gate to the bar. The agent did not exhibit a badge or a card.

The licensee, Helen Pawlicki, testified that she was tending bar without help from anyone at the times testified herein. She noticed Agent D (who was unknown to her at the time) enter the tavern shortly before midnight on Friday, August 20, 1965, and sit to the left of Hank. Seated to Hank's right was Dominick Russo and seated to Russo's right was Nick Soriano. Seated to Agent D's left was Joseph Smith. Smith came in shortly after Agent D entered the licensed premises. At about 1:20 a.m. she heard a "loud outburst" at the area where Hank and Agent D were seated. She didn't know what was going on. She saw Agent T for the first time when he asked her where she kept the pint bottles and the license application and tried to go behind the bar. Agent T displayed no identification and she did not allow him to go behind the bar. The testimony then proceeded as follows:

"Q As a result of his request and your refusal to let him in, what did you do then?

A Nick Soriano and Dominick Russo approached him, and that was the end of me. I was hysterical.

Q Do you remember shutting off the lights?

A Yes.

Q Why did you do that?

A To get everybody off the premises. I didn't need no trouble. I didn't know what the pitch was going to be, whether they were agents or they were somebody going to attack me or a robbery or something.

Q There was no identification?

A No.

Q Do you know whether the police responded during that period of time or within a short period of time?

A In several moments when we called them.

Q Were D-- and T-- on the premises when you called the police?

A No, they already left."

On cross examination, the licensee testified that Hank was not in her employ on the date in question and occasionally helped out by watching the place for a few moments, without pay. She did not observe any unidentified male in the tavern on the date in question. No one assisted her or rendered any services in the tavern that night. She admitted that she might have on hand pint bottles of the brand of whiskey allegedly delivered to a patron that night. Neither agent showed credentials. She denied that Hank went behind the bar that night or that anyone purchased package goods to take out.

Joseph P. Kelly testified that he is the commander of the night detective bureau of the City of Elizabeth and he was so employed on the date and time in question. Four uniformed men and three detectives responded to a call to proceed to the licensed premises. The call was logged at 1:53 a.m. The dispatch indicated that "there were two suspicious men who were trying to pass themselves off as ABC agents, and they had left the premises in a yellow convertible." The investigation was fruitless.

In rebuttal, Agent D testified that he did not spin Hank around on the stool or touch him or place him under arrest. He declared that he and Agent T showed their credentials to Hank and to the licensee.

In rebuttal, Agent T's testimony was, in the main, similar to the testimony given by Agent D.

I am persuaded that the agents' version with respect to their showing of credentials truly depicted what actually occurred. The licensee admitted that she refused to permit one of the agents to go behind the bar and then shut off all the lights. Her excuse that she feared an "attack" or "robbery" was fanciful and totally unworthy of belief. I am satisfied that the licensee's conduct was such that it constituted a hindrance, a delay and a failure to facilitate an investigation as charged.

It should be noted that we are presently dealing with a disciplinary action, and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus, the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). The guiding rule in these matters is that the finding must be based on competent legal evidence and grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

My evaluation and consideration of the testimony lead me to the conclusion that the Division has established the truth of Charge 3 herein by a fair preponderance of the evidence, and I recommend that the licensee be found guilty of said charge.

However, the totality of the testimony concerning the establishment of Charges 1 and 2 considered, it is my view that there appears to be a lack of the necessary preponderance of the evidence to find the licensee guilty of these charges. I recommend that Charges 1 and 2 be dismissed.

The licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective April 19, 1965, for sale to minors and sale in violation of State Regulation No. 38.

It is, therefore, further recommended that an order be entered suspending the license on the third charge for twenty days (Re Vogellus, Bulletin 1519, Item 3), to which should be added five days for the record of suspension of license for dissimilar violation occurring within the past five years (Re Club Ali-Baba, Inc., Bulletin 1654, Item 4), making a total suspension of twenty-five days.

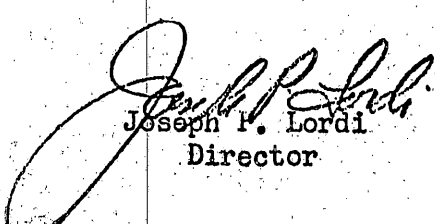
Conclusions and Order

Written exception to the Hearer's report alleging only that the finding was contrary to the weight of the evidence was filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of testimony, the Hearer's report and the exception thereto, I find that the Hearer has correctly assayed the testimony herein and that his finding is not contrary to the weight of evidence. Hence I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 19th day of September, 1966,

ORDERED that Plenary Retail Consumption License C-158, issued by the City Council of the City of Elizabeth to Helen Pawlicki, t/a South Seas, for premises 1 South Front Street, Elizabeth, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, September 26, 1966, and terminating at 2 a.m. Friday, October 21, 1966.


Joseph P. Lordi
Director