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

BULLETIN 1221 MAY 12, 1958.

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ITEM

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

BULLETIN 1221 MAY 12, 1958.

1. COURT DECISIONS - BELMAR v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL ET AL. - DIRECTOR AFFIRMED.

BOARD OF COMMISSIONERS OF THE BOROUGH OF BELMAR, a municipal corporation of the State of New Jersey, Appellant, -vs- DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY, et al., Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION A-188-57

Argued April 14, 1958 - Decided April 21, 1958.

Mr. Harold Feinberg argued the cause for appellant.

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondent Division of Alcoholic Beverage Control (Mr. Harold Kolovsky, Acting Attorney General, attorney).

Mr. Henry F. Hoey, Jr. and Mr. Harry R. Cooper argued the cause for respondent Gilmore Realty Corporation (Messrs. Braun and Hoey, attorneys).

PER CURIAM.

This case concerns a hotel liquor license for premises in Belmar which are described as the largest of the nine hotels in the community having liquor licenses for on-premises consumption. The premises in question have been licensed continuously for over 20 years. From 1945 to 1955 the hotel owners concessioned the bar to one McCarthy. While he was there the place became known as a "trouble spot," according to witnesses for the borough, but no details were given in testimony. Apparently young people congregated there habitually. The hotel operator terminated McCarthy's concession in 1956, and a new license was issued to the owner corporation in April 1956, subject to four special conditions, including the banning of a public bar and an exterior bar sign, and confining service of liquor to patrons seated at tables in the dining rooms or restaurant of the hotel. These conditions were approved administratively by the Director of Alcoholic Beverage Control, as is required by R.S. 33:1-32. The same special conditions were included in the renewals of the license for the ensuing years of 1956-57 and 1957-58. The last renewal was accepted under protest against the continuance of the special conditions mentioned, and a statutory appeal was taken to the Director of the Division of Alcoholic Beverage Control.

After a hearing there was a recommendation by the Hearer in the Division to sustain the conditions, but this was not accepted by the Director, the latter ordering the conditions stricken on the ground that it appeared that during

the summer seasons of 1956 and 1957 the licensed establishment had been conducted in a proper manner and without any complaints and that the appellant was therefore entitled to have an unrestricted license such as was enjoyed by all of the other competitive hotels in the borough.

On the present appeal the borough concedes that the substantial question presented is whether the Director committed an abuse of discretion in overruling the determination of the municipality that the conditions should be continued.

The cases indicate that while the local issuing authority is vested with discretion in the exercise of any statutory jurisdiction committed to it, nevertheless when the Division determines on appeal that that discretion has been exercised improperly or mistakenly and the court is reviewing the Division's determination, the inquiry becomes one as to whether it can be said that the Director's action was a manifestly mistaken exercise of his own sound discretion. Hickey v. Division of Alcoholic Beverage Control, 31 N. J. Super. 114 (App. Div. 1954); Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N. J. Super. 598 (App. Div. 1955), certif. den. 18 N.J. 204 (1955). In the present case we cannot say that there was a manifestly mistaken exercise of discretion in review by the Director of the Division. The previous trouble at the place was while it was under the operation of the concessionaire. When the owner of the hotel took over the place, there was no trouble. While it is argued that the absence of trouble under the operation of the owner was due to the existence of the special conditions, this is purely speculative, and the Director was entitled to take the view that, prima facie, the previous trouble was more likely to have been associated with the identity of the operator of the premises than with the absence of special conditions. He cannot be deemed unreasonable in finding, in effect, that it was unfair that only one of nine hotels in the borough, and that the largest, should be hampered by these obviously crippling conditions. We therefore conclude that the Director's exercise of reviewing discretion is not shown to have been mistaken. This is the kind of decision which was intended by the Legislature to be committed to his expert judgment and it should not be overruled by the court in these circumstances. See Hudson, Bergen, etc. Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1935).

The borough also contended at the oral argument that the Director did not sufficiently clearly find an improper exercise of local discretion. While the Director might have done so more explicitly, we think he has, in substance, concluded that there was a mistaken and unfair exercise of local discretion, under all the circumstances that appeared by the time of his decision. The appellate powers of the Director involve the exercise of a species of supervision and control transcending those of a formal appellate tribunal and they are "not to be shorn" by technical rather than substantial procedural limitations. Ibid. (135 N.J.L., at p. 510).

Other points argued are deemed without merit and not to require discussion.

Affirmed; no costs.

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2. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against S. D. PERNA & SONS, INC. t/a HAMILTON MANOR w/s of Black Horse Pike Hamilton Township (Atlantic County) PO RD 2, Mays Landing, N.J., Holder of Plenary Retail Consumption License C-18, issued by the Township Committee of Hamilton Township.	CONCLUSIONS AND ORDER

Defendant-licensee, by Sylvester D. Perna, President.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on January 30, 1958, it sold, served and delivered alcoholic beverages to three minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that ABC agents obtained signed, sworn statements from John --- (age 19), Joe --- (age 19) and Richard --- (age 20) wherein they state that they visited defendant's licensed premises at about 12:30 a.m., January 30, 1958, and remained for about two hours. They further state that during their stay each consumed several glasses of beer served to them by the bartender, without being questioned as to their ages, and that they were not required to produce any written proof thereof. On February 11, 1958, the three minors directed the agents to the licensed premises which they identified as the place wherein they consumed the alcoholic beverages served to them, but were unable to identify the person who made the sale. When it has been established that the minor purchased, had served to him or consumed an alcoholic beverage in the licensed premises, failure to identify the specific person who made the sale is not fatal in disciplinary proceedings against the licensee. See Re LaCorte, Bulletin 469, Item 1; Re Dante, Bulletin 771, Item 9.

Defendant has a prior adjudicated record. Effective March 3, 1958, I suspended its license for five days for sale of alcoholic beverages to a minor (Re S.D. Perna & Sons, Inc., Bulletin 1219, Item 5). The minimum penalty imposed for an unaggravated sale of alcoholic beverages to three minors, all of whom are eighteen years of age or older, is a suspension of the license for twenty days (Re Swayze, Bulletin 1197, Item 11). However, considering the prior similar violation which occurred within a five-year period, I shall suspend defendant's license for a period of thirty days. Cf. Re Tu-Dor Tavern, Bulletin 1163, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 18th day of March, 1958,

ORDERED that Plenary Retail Consumption License C-18, issued by the Township Committee of Hamilton Township to S. D.

Perna & Sons, Inc., t/a Hamilton Manor, for premises on w/s of Black Horse Pike, Hamilton Township (Atlantic County), be and the same is hereby suspended for twenty-five (25) days, commencing at 4:00 a.m. March 24, 1958, and terminating at 4:00 a.m. April 18, 1958.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - FALSE ANSWER IN APPLICATION RE PREVIOUS SUSPENSION - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

WILLIAM TRENZ
315 Centre Avenue
Secaucus, N. J.,

Holder of Plenary Retail Distribution License D-7, issued by the Town Council of the Town of Secaucus.

CONCLUSIONS AND ORDER

Samuel Moskowitz, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On January 28, 1958, you sold at retail, directly or indirectly, alcoholic beverages, viz., one case (24 - 12 ounce cans) of Schaefer beer, at less than the price thereof listed in the then currently effective Minimum Consumer Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30.

"2. In your application dated June 14, 1957, filed with the Town Council of the Town of Secaucus, upon which you obtained your current plenary retail distribution license, you falsely stated 'No' in answer to Question No. 41, which asks: 'Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled?', whereas in truth and fact the plenary retail distribution license of Trenz Community Market, Inc., for premises 315 Centre Avenue, Secaucus, N.J., in which you were president and principal stockholder (80%), issued by the Town Council of the Town of Secaucus for the license year 1946-1947, was suspended by the then Commissioner of Alcoholic Beverage Control for 20 days, effective November 1, 1946, for selling alcoholic beverages during prohibited hours, and permitting a minor to sell alcoholic beverages, in violation of State regulations; said false answer being in violation of R. S. 33:1-25."

The file discloses that on January 28, 1958, an ABC agent purchased from a clerk in defendant's premises one case (24 - 12 ounce cans) of Schaefer beer for $4.15. The minimum consumer resale price then in effect for said item was $4.40.

Defendant has no prior adjudicated record. However, when the license was held in the name of Trenz Community Market, Inc., said license was suspended for twenty days, effective November 1, 1946, as set forth in Charge 2 herein. I shall suspend defendant's license for a period of ten days because of the violation set forth in Charge 1 (Re Gugala, Bulletin 1189, Item 6) and for an additional period of ten days because of the violation set forth in Charge 2 (Re Mazza, Bulletin 1190, Item 6). Since the prior dissimilar violations occurred more than five years ago, they will not be considered in fixing the penalty herein (Re Pfeiffer, Bulletin 1208, Item 8). Five days will be remitted for the plea herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 13th day of March, 1958,

ORDERED that Plenary Retail Distribution License D-7, issued by the Town Council of the Town of Secaucus to William Trenz, for premises 315 Centre Avenue, Secaucus, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. March 24, 1958, and terminating at 9:00 a.m. April 8, 1958.

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - DOORNBOS v. PATERSON.

RUDOLPH DOORNBOS, t/a RUDY'S CLUB, Appellant, -vs- BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Louis C. Friedman, Esq., Attorney for Appellant.
Joseph Brumale, 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 ordered a suspension of appellant's plenary retail consumption license for premises 45 Bridge Street, Paterson, for a period of twenty-five days, effective November 18, 1957.

"Upon the filing of the appeal, an order was made by the Director staying the effect of respondent's order of suspension pending determination of the appeal. R. S. 33:1-31.

"It appears from the record herein that charges dated October 29, 1957 which were returnable before respondent on November 13, 1957, were served upon appellant, which charges allege that:

'1. That on June 27, 1957, you did allow, permit or suffer your licensed premises to be conducted in such a manner as to become a nuisance because of unnecessary noises in violation of Rule 5 of State Regulation No. 20.

'2. That on August 28, 1957 you did allow, permit or suffer in or upon your licensed premises, a brawl, act of violence or disturbance in violation of Rule 5, State Regulation No. 20 of the Rules and Regulations of the Department of Law and Public Safety, Division of Alcoholic Beverage Control.'

"On November 13, 1957, according to the record herein, the appellant appeared before the respondent and entered a plea of guilty to Charge 1 and a plea of not guilty to Charge 2. After a hearing in the matter conducted by respondent, the three members thereof found the appellant guilty of Charge 2.

"This is a trial de novo, pursuant to Rule 6 of State Regulation No. 16.

"Officer Harold Johnson testified that he and Officer Mosley were ordered to the appellant's licensed premises, arriving there about 1:45 a.m. on August 28, 1957. Officer Johnson was subjected to lengthy direct and cross-examination by the attorneys for the respective parties to the instant appeal. His testimony at times was contradictory with reference to the occurrences that took place at the time in question. The most that can be gathered from the testimony of Officer Johnson was that when he arrived at the premises he observed a man (subsequently identified as Bernard Doornbos, brother of appellant) on the street about to enter a taxicab; that he stopped the man and told him to wait there while he and Officer Mosley went into the licensed premises to ascertain what had been the trouble; that the appellant was behind the bar and upon being questioned, stated that his brother (Bernard) had come into the premises and while there had created a scene; that he (appellant) gave his bartender money to telephone to the police so that his brother might be ejected from the premises; that he (Officer Johnson) told the appellant to remain in the licensed premises while he and Officer Mosley went outside to speak to Bernard Doornbos with reference to the matter; that the appellant came out of the licensed premises and when he was seen by his brother, the latter attacked him and threw him to the ground; that appellant made an attempt to get into the licensed premises with his brother in hot pursuit of him; that a scuffle occurred inside the doorway of the premises which was soon brought under control by him (Officer Johnson) and his fellow officer.

"Officer Mosley testified that when he and Officer Johnson arrived at the licensed premises, the place was comparatively quiet; that Bernard Doornbos was attempting to enter a taxicab and because of the complaint made to police headquarters, they asked him if he would wait a minute; that they went inside and found the appellant behind the bar and questioned him concerning what had occurred; that the appellant claimed his brother had come into the licensed premises and had abused him by directing filthy language at him; that the appellant was advised to wait inside the tavern and the officers went outside to the street to speak to Bernard Doornbos; that appellant came out and a scuffle ensued in front of the tavern; that the brothers were separated and the appellant attempted to return to the tavern; that as he stepped inside the door 'his brother made a lunge for him, knocking him inside the tavern'; that the appellant insisted that his brother be apprehended and both

participants in the struggle were brought to headquarters, where each refused to sign a complaint. Complaints were made by the police officers to have the Doornbos brothers adjudged disorderly persons for street fighting, which complaints were subsequently dismissed in the municipal magistrate's court.

"Appellant testified that at the time in question, his brother, Bernard, came into the licensed premises and abused him; that in attempting to avoid any trouble, he directed his bartender to telephone to the police; that a few minutes after the bartender made a telephone call, the police arrived and he told them the reason why he had telephoned to police headquarters; that he went out into the street and was immediately attacked by his brother; that he did not fight back but when his brother threw him to the ground and tried to get on top of him, he attempted to resist him and that the melee was immediately stopped by the police officers, and that thereafter he did not go back into the licensed premises. The bartender, a woman patron and the wife of Bernard Doornbos, testified that Bernard came into the appellant's premises, created a disturbance by making accusations against his wife and the appellant directed the bartender to call the police. All were in agreement, however, that there was no brawl or fist-fight at any time in the licensed premises.

"I have examined the testimony of all the witnesses herein and the evidence indicates quite clearly that the appellant did not contribute in any way whatsoever to the occurrences which took place either before the arrival of the police officers or the scuffle which ensued outside the premises after the police officers had arrived. The appellant perhaps did not use the best judgment by going outside the premises after discussing the matter with the police, but there was no way in which he could anticipate that his brother, Bernard, would attack him while the police officers were present. He was thrown to the ground and there is no evidence available which indicates that he did anything other than to repulse his assailant with the purpose of retreating from the affray. I am satisfied, under the circumstances presented herein, that the appellant was not guilty of allowing, permitting or suffering in or upon his licensed premises, a brawl or act of violence or disturbance as alleged in Charge 2, and recommend that the respondent's action be reversed with reference thereto. Insofar as Charge 1 is concerned, appellant had pleaded guilty to said violation. In view thereof, I further recommend that the penalty of twenty-five days imposed by the respondent be modified to a period of ten days. This suspension is in accordance with that imposed by the respondent on the appellant's license by reason of his plea of guilty to Charge 1."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15. After careful consideration of the facts and circumstances herein, I concur in the findings and recommended conclusions of the Hearer and I adopt them as my conclusions herein.

The suspension of twenty-five days imposed by respondent Board was to become effective on November 18, 1957. On November 15, 1957, upon the filing of the appeal herein, I entered an order staying respondent Board's order of suspension pending determination of the appeal. I shall vacate said order and enter an order herein modifying the suspension of appellant's license from twenty-five days to a suspension of the license for ten days.

Accordingly, it is, on this 17th day of March, 1958,

ORDERED that the suspension of Plenary Retail Consumption License C-89 from twenty-five days be and the same is modified to a suspension of said license for a period of ten days; and it is further

ORDERED that my order dated November 15, 1957 be vacated, effective at 3:00 a.m. on March 24, 1958, and License C-89, now held by appellant for the 1957-58 licensing year, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Rudolph Doornbos, t/a Rudy's Club, for premises 45 Bridge Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. March 24, 1958, and terminating at 3:00 a.m. April 3, 1958.

WILLIAM HOWE DAVIS
Director.

5. APPELLATE DECISIONS - BILANCIO v. TRENTON.

FRANK BILANCIO, t/a BILANCIO DISTRIBUTING COMPANY, Appellant, -vs- BOARD OF COMMISSIONERS OF THE CITY OF TRENTON, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Minton, Dinsmore & Bohlinger, Esqs., by John R. Heher, Esq., Attorneys for Appellant.
Louis Josephson, Esq., by John A. Brieger, Esq., Attorney for Respondent.
Edward J. Leadem, Esq., Attorney for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it denied appellant's application to transfer his plenary retail distribution license from 62 Butler Street to 1001 Hamilton Avenue, Trenton. The application was denied on October 3, 1957 by a three to one vote of four members of respondent Board of Commissioners (hereinafter referred to as respondent Board), one of the members thereof being absent at the time.

"The respondent Board in an answer filed herein in support of its action in denying the transfer of the license in question alleges:

'1. That the appellant did not establish any public need, convenience or necessity for the granting of such transfer.

'2. That the area and neighborhood immediately adjacent to and surrounding the premises sought to be licensed is primarily and substantially residential in character.

'3. That a large majority of the residents in that area are opposed to the granting of such license transfer, as shown by the evidence relating thereto presented to the Board.'

"It appears from the record before me that appellant's present premises at 62 Butler Street are located 'approximately a city mile' from the proposed premises at 1001 Hamilton Avenue; that the appellant had applied on two prior occasions for a similar place-to-place transfer of his license; that on one occasion the application was denied by the respondent issuing authority whereas on the other occasion the application was withdrawn by appellant; that the proposed premises are located in a mixed residential and business neighborhood; that there is a public park running parallel to one side of the proposed premises on Fairmount Avenue; that the front portion of the store of the proposed licensed premises is presently occupied by a dress shop; that there is a plenary retail consumption license with broad package privileges located at the corner of Olden and Hamilton Avenue (1181-83 Hamilton Avenue) which is a distance of 949 feet from the proposed premises, a plenary retail distribution license on Hamilton Avenue 3300 feet therefrom and also a plenary retail consumption license 1900 feet away.

"Sandolo Bilancio, son of and employed by appellant, testified that the present premises on Butler Street are inadequate to properly carry on the liquor business; that the proposed location would be more convenient as 'I would like to live where I work, and it will save us a lot of running'; that at times people walk through the park and, although children ride bicycles in the park, he has never seen children play ball there; that there are a number of other types of business establishments on Hamilton Avenue in the vicinity of the proposed premises.

"Margaret Greco and Helen Szabo testified that they carried petitions on behalf of the appellant and one Samuel Naples testified that he made a tally of those who signed in favor of the transfer and the count was 1185. These petitions, and also petitions totaling 29 names of persons living on Fairmount Avenue offered on behalf of the respondent, were marked as exhibits in the instant case. An examination of the names and addresses on the petitions offered by the appellant discloses that a large number of people who signed the petition reside in the vicinity where the appellant's licensed premises are presently located. Written objections from two doctors and from the Villa Park Civic Society were also marked as exhibits herein. A person living in the neighborhood testified in opposition to the transfer. Lena Sensi, who resides at 1004 Hamilton Avenue, testified that she was in favor of a 'package goods' store being located at the proposed premises.

"It might be said at this juncture of the proceedings that the weight to be accorded petitions for or against the granting of a retail license, or transfer thereof, is a matter properly within the discretion of the municipal issuing authority. Freed v. Wayne, Bulletin 892, Item 7; Goff v. Piscataway, Bulletin 234, Item 5; Re Powell, Bulletin 59, Item 15. Appellant contends, as a ground for reversal, that the action of several members of the respondent Board, in taking a poll of persons residing in the vicinity of the proposed premises in order to determine the sentiment with reference to the transfer in question, especially between the time of the hearing before the respondent Board and their decision, was improper and constituted reversible error. R. S. 33:1-24 provides, among other things, that 'It shall be the duty of each other issuing authority to receive applications for such licenses as such other issuing authority is authorized to issue; to investigate applicants and to inspect premises sought to be licensed;...'. It is

therefore apparent that the action of the members of the respondent Board could not be considered improper. Furthermore, on October 3, 1957, the members of the respondent Board announced, at the time they voted on the resolution to deny the transfer, that the poll taken would not be considered by them. The three members of respondent Board who voted to deny the transfer said that they were of the opinion that to deny appellant's application would serve the best interests of the neighborhood and, moreover, it was their desire to preserve the residential character thereof. It was also expressed by Commissioner Duch that he was of the opinion that there were sufficient licensed premises in the neighborhood to meet the needs of the people residing therein.

"A transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion and such action will not be judicially disturbed in the absence of an abuse of discretion. Paul v. Brass Rail Liquors, 31 N. J. Super. 211; Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N. J. Super. 172; Zicherman v. Driscoll, 133 N. J. L. 586. It is contended on behalf of appellant that the proposed premises are owned by him and that his interest would better be served if he were permitted to operate his liquor business therefrom. In a conflict, however, between private interest and the interests of the community at large, the latter must prevail. Lingelbach v. North Caldwell, Bulletin 180, Item 8; Moraitis v. Lower Penns Neck, Bulletin 839, Item 11.

"After careful consideration of the evidence adduced herein indicating that at present there are other liquor establishments which appear sufficient to serve the neighborhood and that the transfer in question would move the licensee a considerable distance from its present location, I find the action of the respondent Board, in denying the application for the place-to-place transfer of appellant's license, to be neither arbitrary nor an abuse of discretion. I have examined the entire transcript of the proceedings herein and the reasons advanced by appellant for reversal of respondent Board's action, together with the memorandum filed by appellant's attorney, and find nothing therein which would warrant a reversal of the respondent Board's action. Under the circumstances, it is apparent that appellant has not sustained the burden of proof (Rule 6 of State Regulation No. 15) in showing that the action of respondent Board is errneous and, hence, I recommend that such action be affirmed and that the appeal filed herein be dismissed."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for appellant, pursuant to Rule 14 of State Regulation No. 15. The respective attorneys for the respondent and objectors filed answering argument thereto.

After carefully considering the entire record in this case, including the transcripts of testimony, the Hearer's Report and the exceptions and written arguments of counsel, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein and as recommended by the Hearer. I shall affirm the action of the respondent Board of Commissioners.

Accordingly, it is, on this 18th day of March, 1958,

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

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against GERTRUDE R. BLACK t/a BERKELY BAR 451 S. 3rd Street Camden, N. J., Holder of Plenary Retail Consumption License C-163, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

Gertrude R. Black, Defendant-licensee, Pro se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she sold during prohibited hours for off-premises consumption alcoholic beverages in their original containers, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that at 10:50 p.m. Saturday, November 30, 1957, ABC agents who were in the vicinity of defendant's licensed premises observed a man emerge therefrom carrying a package. The agents accosted the man who readily admitted that he had purchased six 12-ounce cans of beer from defendant's bartender. The man returned to the tavern with the agents and identified the bartender who made the sale. He also gave a voluntary signed statement that he entered defendant's licensed premises at 10:45 p.m. and asked the bartender if it was too late to get a six-pack of beer; that the bartender put the beer in a paper bag and accepted $1.10 in payment and that he left the premises immediately without consuming any drinks. Both the bartender and the defendant's husband then denied that any sale was made to the man for off-premises consumption.

Defendant has a prior adjudicated record. Effective May 13, 1956, her license was suspended for fifteen days by the local issuing authority for sale of alcoholic beverages to minors. The minimum suspension for the violation herein is fifteen days (Re DiGrezia, Bulletin 1139, Item 2), to which five days will be added because of the prior dissimilar violation which occurred within a five-year period. I shall suspend defendant's license for twenty days and remit five days for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 12th day of March, 1958,

ORDERED that Plenary Retail Consumption License C-163, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Gertrude R. Black, t/a Berkely Bar, for premises 451 S. 3rd Street, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. March 24, 1958, and terminating at 2:00 a.m. April 8, 1958.

WILLIAM HOWE DAVIS
Director.

7. CLUB LICENSE - OBJECTIONS TO ISSUANCE - LICENSE GRANTED SUBJECT TO CERTAIN CONDITIONS.

In the Matter of Objections to the Issuance of a Club License to

THE COLUMBIAN ASSOCIATION OF LIVINGSTON
272 West Northfield Avenue
Livingston, N. J.

CONCLUSIONS

Connolly, Vreeland and Connolly, Esqs., by Edward W. Connolly, Esq., Attorneys for Applicant.
Peter B. Cooper, Esq., Attorney for Objector Temple Emanu-El.
William J. Reimer, Esq., Attorney for Objectors Presbyterian Church of Livingston and L. O. Asher.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"An application by The Columbian Association of Livingston for a club license for premises 272 West Northfield Avenue, Livingston, has been filed with the Director rather than with the local issuing authority because a member thereof is also a member of the club. R. S. 33:1-20. Annexed to the application for the license is a Resolution adopted on May 20, 1957 by Council of the Township of Livingston which provides as follows:

> 'WHEREAS, the Columbian Association of Livingston, Knights of Columbus, Our Lady of the Mountains Council No. 3533 has duly applied for the issuance to it of a club license for premises 272 West Northfield Avenue, Livingston, New Jersey,
>
> "BE IT RESOLVED by the Council of the Township of Livingston in the County of Essex that it has no objection to the issuance of said Club License so applied for and consents thereto; and further that it is not aware of any provisions of law or local ordinance which prohibits the issuance of such license.'

"It appears that the Club in question was incorporated on August 27, 1953 and the purpose as expressed in its Certificate of Incorporation is 'The purpose for which this corporation is formed is to generally provide an organization for the carrying on and furthering of the principles and ideals of the Knights of Columbus and of rendering service to the community in accordance with those principles and ideals. In particular the purpose for which this corporation is formed is to organize, conduct, operate and maintain appropriate Council Chambers, Club House and Club Rooms and Social and Civic Centers for the entertainment of its members and as a means of forming and furthering enduring friendships, as well as rendering services to the community through the promotion, conduct and operation of religious, social, civic, educational and charitable activities of every kind, nature and description.'

"It appears from the testimony of John E. Duetsch, President of the applicant club, that title to the land and building which is to constitute the licensed premises was acquired by the said Club on June 17, 1957.

"Written objections to the issuance of the club license were filed by numerous individuals and also on behalf of the Presbyterian Church of Livingston and Temple Emanu-El, whose houses of worship are located in the immediate area.

"The objectors contend that the applicant's premises are within 200 feet of the churches aforementioned and therefore the issuance of a club license to applicant at its club premises would be in violation of R. S. 33:1-76.

"At the hearing both applicant and objectors presented a survey, one prepared by a land surveyor and the other by an engineer, respectively, which varied as to the distances between the respective churches and proposed licensed premises. Therefore, in order to insure a proper measurement, it was necessary to have representatives of the Division of Alcoholic Beverage Control measure the distance from the entrance of the proposed licensed premises to the entrances of the respective churches. I am satisfied as a result of the measurements so taken, that the distance between the entrances in question is more than 200 feet so that the statute aforementioned does not apply.

"Although the distance between churches or schools on the one hand and liquor premises on the other might be in excess of 200 feet, it becomes a matter of discretion as to whether a liquor license should be issued where such churches or schools are located in close proximity to the premises for which application for a liquor license is made. As early as 1934, the late Commissioner Burnett said in Staciewicz v. Trenton, Bulletin 35, Item 10:

> 'Section 76 (now R. S. 33:1-76) expresses a legislative policy against licensing premises near churches and schools. The 200 feet provision was included in the statute as a workable minimum requirement. The legislature did not contemplate depriving issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near churches or schools but, nevertheless, beyond 200 feet.'

This principle has been consistently followed ever since that time. Price v. Millburn, Bulletin 976, Item 3 (affd. 29 N. J. Super. 103) and cases cited therein.

"Although I am cognizant of the splendid work the applicant club performs in the community, I am nevertheless of the opinion that the location of its club premises is in too close proximity to the churches which have formally objected to the issuance of a liquor license in question. I, therefore, recommend that for the reason stated, the application for the club license in the matter now under consideration be denied."

Written exceptions and written argument pursuant thereto were filed with me by the attorneys for the applicant and written answering arguments were filed with me by the attorneys for the respective objectors in this matter. Thereafter, I heard oral argument of the attorneys on behalf of the interested parties hereto.

Insofar as the distance between the premises sought to be licensed and the houses of worship, I agree with the

conclusions of the Hearer that it is in excess of 200 feet from the respective entrances thereof. The matter of distance was covered very thoroughly by the litigants during the hearing both by the testimony of an engineer and the introduction into evidence of surveys. Furthermore, in accordance with our practice when an application such as the one in question is filed with this agency, representatives of this Division made an independent measurement to ascertain the various distances in question. I find that the entrance to Temple Emanu-El is on the east side of its building rather than on the west side thereof as was contended at the hearing. It is apparent from the testimony that the door on the west side of the premises was not used as an entrance; that it was kept locked and that it did not have a knob or handle on the outside thereof to be used by anyone desiring to enter the Temple. I am satisfied that there is a distance of 224 feet (shown on the survey made by Gallant Brothers, Land Surveyors) between the entrance of the applicant's premises and the entrance to the Temple on the east side of the building.

It was contended in behalf of the Presbyterian church that the crosswalk, painted during June 1957 by the Livingston Police Department (while this application was pending), constituted an established crosswalk which, if correct in determining the distance from entrance to entrance of the respective premises, would bring the applicant's premises within 200 feet of the church and make it ineligible for the license in question unless a waiver from the church was obtained. However, it appears from the testimony that practically all of the parishioners coming to church services are transported by cars which are driven into the parking lot east of the church edifice where the passengers are discharged; that from time to time a policeman has been stationed on West Northfield Avenue opposite the entrance to the parking lot regulating traffic for Sunday services; also that no policeman is stationed at the painted crosswalk. On the church side of the highway immediately opposite the painted crosswalk, the grass between the curb and pedestrian sidewalk paralleling the highway is not worn or trodden down, indicating that the recently painted crosswalk is seldom used for this purpose. In addition the alleged crosswalk has never been approved (as required by law) by the County of Essex (Northfield Avenue being a County highway) or by the Division of Motor Vehicles. I find, therefore, a proper measurement (following the method of measurement heretofore used in numerous decisions on appeals involving R. S. 33:1-76) from applicant's premises would be a point opposite its own entrance (described as a hard top driveway on the drawing of the Division) along the northerly side of Northfield Avenue in a southeast direction approximately 202 feet to a point opposite the parking lot of the church and then at right angles across Northfield Avenue 40 feet to the entrance of the parking lot or a total distance of approximately 242 feet.

(In passing, I may appropriately point out that even where the distance from "nearest entrance" to "nearest entrance", is within 200 feet, as measured pursuant to the method used in prior decisions, there is serious question in my mind that such method rather than door-to-door is wholly reasonable and practicable where, particularly in a rural community as in this case, the door to the church building and the door to the proposed licensed premises are deeply recessed from the public walk.)

I now consider the action taken by the Township officials with respect to the application of the Columbian Club with reference to locating its club quarters at the premises in question. The zoning board made it possible by its affirmative action for the Association to use the premises for club purposes. The Township Council, pursuant to the request of the applicant, did, at a public hearing during which little opposition was voiced and after proper advertising in a newspaper circulated throughout the municipality, amend its ordinance to permit the issuance of another club (liquor) license. Again the council took affirmative action with regard to the application in question when, by its official resolution hereinbefore quoted in full, it not only stated that "it has no objection to the issuance of said Club License" but "consents thereto". It is obvious that the Council (which, on May 20, 1957, adopted an ordinance to permit issuance of an additional club license) would have issued this license if the application therefor had been filed locally instead of with the State Director pursuant to R. S. 33:1-20.

It has been the Division's policy to deny an application for license in the face of a resolution, founded in reason, opposing the grant; and the general policy of denying an application has been followed, also, when no resolution consenting to the grant was adopted and when the municipal issuing authority chose to withhold formal expression in the matter. It would appear inconsistent to give less than considerable weight to a municipal issuing authority's resolution of consent.

Were this a retail consumption license permitting the sale of alcoholic beverages to the general public, I would have no hesitation in denying the application because of the proximity of applicant's premises to a church and a synagogue and more particularly for the reasons stated by the late Commissioner Burnett in Staciewicz v. Trenton, supra. The policy of the Division has been consistently in accord with this decision but I have searched the precedents of the Division in vain to find a case similar in certain vital aspects with the one before me. Commissioner Burnett was confronted with an application for a retail consumption license (allowing sales to the general public) in Trenton, an urban community (unlike the rural area in the present case), where a school building was slightly more than 200 feet from the proposed licensed premises but its play field extended within 15 feet of the same. Here we have a club license restricting sales to bona fide members and their bona fide guests. In addition the Presbyterian Church is not only beyond the 200 feet required by statute from its entrance to applicant's premises but is on the opposite side of a heavily travelled public highway and set back more than 200 feet from the highway. The local ordinance fixes the Sunday opening hour of licensed premises at 12:00 o'clock noon.

The applicant has a membership of 260 male adults and is a national fraternal association. In the same Township there are two national fraternal organizations holding club liquor licenses, one of them being immediately opposite a church.

With respect to the applicant's acquiring the premises in June of 1957, I hereby grant the applicant's Petition for

a waiver, under Paragraph 2, Rule 5 of State Regulation No. 7, of the provisions of Rule 4, State Regulation No. 7. I shall reverse the recommendations made by the Hearer in his Report and issue the club license in question with the condition that there shall be no exterior signs on the premises indicating the presence of a bar or that the applicant is the holder of a liquor license. I admonish The Columbian Association of Livingston and its members to observe even greater supervision over the conduct of its licensed premises than is normally required because of its proximity to two houses of worship and I caution them to abide strictly at all times by the State Alcoholic Beverage Law, the Rules and Regulations of this Division and the Township's ordinances.

Dated: March 12, 1958.

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Schenley Distillers, Inc.
350 FifthAvenue
New York, N. Y.
Application filed May 2, 1958 for person-to-person, place-to-place transfer of Plenary Wholesale License W-89 from Park & Tilford Distillers Corporation, 485 Fifth Avenue, New York, New York.

A. M. Uhrik, Inc.
75 Van Keuren Avenue
Jersey City, N. J.
Application filed May 7, 1958 for place-to-place transfer of Transportation License T-174 from 37 Avenue C, Newark, New Jersey.

William Howe Davis
Director.