STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 993

December 9, 1953

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 993 DECEMBER 9, 1953.

1. APPELLATE DECISIONS - SAINT PAUL AND SAINT PHILIPS EPISCOPAL CHURCH AND LOWENSTEIN v. NEWARK AND CILIO.

SAINT PAUL and SAINT PHILIPS EPISCOPAL CHURCH and HELAINE LOWENSTEIN, Appellants, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and PETER S. CILIO, Respondents.	ON APPEAL CONCLUSIONS AND ORDER

J. Leroy Jordan, Esq., Attorney for Appellant Saint Paul and Saint Philips Episcopal Church.
Elias I. Cohen, Esq., Attorney for Appellant Helaine Lowenstein.
Horace S. Bellfatto, Esq., by George B. Astley, Esq., Attorney for Respondent Municipal Board.
David J. Breitkopf, Esq., Attorney for Respondent Peter S. Cilio.

BY THE DIRECTOR:

This is an appeal from respondent Board's action granting transfer of respondent Cilio's 1952-1953 License C-629 from premises at 22 Clifton Avenue to premises at 455 High Street (known, also, as 457 High Street) and premises at the rear of 453 High Street, Newark. The transfer was granted by a two-to-one vote of the Board members.

The Petition of Appeal contends for reversal on the ground, among others, that the premises sought to be licensed are within 200 feet of the Church-appellant and, thus, that the transfer was granted in violation of R. S. 33:1-76 which provides, in here-pertinent part:

> "...no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church... Said two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church...to the nearest entrance of the premises sought to be licensed...."

The Answers filed by respondent Board and respondent licensee contend, among other things, that the proposed premises are in excess of 200 feet from appellant Church.

The proposed premises, consisting of a shop on the ground floor of the Rutledge Hotel building, are located on the west side of High Street diagonally across High Street from the church entrance. The entrance to the church is at a gate in a fence around the church yard and the entrance to the premises sought to be licensed (unless such entrance is the High Street entrance, hereinafter considered, to the Rutledge Hotel) is at the door thereof approximately flush with the Rutledge Hotel's building line. One walking from the church gate to the door of the proposed licensed premises would proceed in a southerly direction to the crosswalk at High and West Market Streets;

thence, by said crosswalk, to the other side of High Street; and thence northerly to the door of the indicated premises.

According to respondent Board's survey the distance was 202.40 feet. According to the survey of Church-appellant the distance was 192.50 feet. In view of the variation it was suggested, and agreed to by all parties, that the distance be measured by the Division. Obviously this is a close one, and specially trained representatives of the Division made not only one but two surveys -- the first shortly after the Hearing and the second quite recently.

Revised Statutes, 33:1-76 (and see, also, R.S. 33:1-73) is to be liberally construed in favor of churches and schools. "It is to be noted that the statute provides that the distance is to be measured from the nearest entrance of the church to the nearest entrance of the premises sought to be licensed, thus indicating that churches are to be protected to the full limit of the law.... The required 200 feet may not be pieced out by technicalities. Memorial Presbyterian Church v. Newark, Bulletin 191, Item 8. The rule must be applied realistically." (Ormond v. East Orange, and The Park Avenue Methodist Church v. East Orange, Bulletin 627, Item 1.)

The measurements made in behalf of respondent Board and in behalf of the Church were both in error. The measurement made for the Board used the center of the door and the center of the gate instead of a point on the nearest side or jamb of each. Since the doorway is 2 feet and 2 inches wide and the gate 5 feet and 1 inch wide, the discrepancy there along amounted to slightly more than 3 feet and 7 inches. In the measurement made for the Church the total distance was not far wrong but the "pedestrian" was jaywalking when, instead of proceeding properly to the crosswalk before traversing High Street, he cut over from the curb to a point in the crosswalk out into High Street and when he took the same kind of jaywalking course on the other side. The distance as measured by the Division, in accordance with the principles laid down in Aldarelli v. Asbury Park, Bulletin 186, Item 12, is 193 feet and 5 inches. That measurement is from the nearest side or jamb of the church gate along the sidewalk to a point located diagonally opposite the inner edge of the inside crosswalk line; thence along said edge to the opposite curb; thence diagonally to the High Street corner of the Rutledge Hotel building; and thence, along the sidewalk, to the nearest side or jamb of the door to the proposed licensed premises. That would seem to bring the distance within the proscribed 200 feet by a very small margin but, actually, the margin was greater. The distance of 193 feet and 5 inches is based upon the Division's second survey and between the time of the first such survey and the second the crosswalk markers, as newly repainted, had been located approximately 2 feet and 6 inches farther toward West Market Street and, thus, farther from the church gate and from the door to the proposed premises.

(It appears, from the evidence herein, that a person may walk through the High Street entrance of the Rutledge Hotel and thence through an interior doorway to the proposed licensed premises. With such interior access to the proposed licensed premises the nearest entrance thereof would appear to be the entrance to the hotel and that entrance is greatly under 200 feet from the nearest entrance to the church. However, my determination herein makes it unnecessary for me to rule upon the specific question.)

I find that the transfer was granted in violation of R. S. 33:1-76 and, therefore, respondent Board's action cannot be sustained. The same is true with respect to the granting of 1953-1954 renewal for the premises in question. (Rule 13, State Regulations No. 15;

Hudson Bergen County Retail Liquor Stores Association v. Jersey City, Bulletin 931, Item 4, affd. in Greenspan v. Division of Alcoholic Beverage Control, 12 N. J. 456, Sup. Ct. 1953.) However, under the peculiar circumstances, my reversal of respondent Board's action with respect to the transfer and renewal will be a modified one. Principal among such peculiar circumstances are respondent Cilio's compulsion, late in the 1952-1953 license year, to vacate his Clifton Avenue premises because of new government "housing or the Stickel Bridge approach"; a complete absence of mala fides in connection with Cilio's seeking of the transfer herein appealed from; and the circumstance that while the appeal herein was not heard until July 10, 1953, issuance of a new plenary retail consumption license to Cilio because of undue hardship and failure to obtain renewal because of circumstances beyond his control would not have been prohibited under the hardship provision of the State Limitation Law (P. L. 1947, c. 94, § 6; R. S. 33:1-12.18) or under the hardship exception in the City's numerical limitation ordinance (Chapter 3, Article 2, Sec. 3.19 of ordinance adopted October 15, 1952) if the application for such new license for other premises had been filed within 90 days after July 1, 1953. In the light of the special and peculiar circumstances, while respondent Board's action will be reversed and there shall be no sales or other operation under the license at the High Street premises, the transfer and renewal for those premises shall be deemed effective for the sole purpose of permitting transfer of the license therefrom. (Cf. Re Pasternak, Bulletin 287, Item 7.) If and when respondent Board receives such application for transfer during the 1953-1954 license year its action granting or denying such application will, of course, be discretionary in the first instance and appealable thereafter (R. S. 33:1-26).

Accordingly, it is, on this 19th day of November, 1953,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control granting the transfer here appealed from, and the subsequent renewal for 1953-1954, be and the same is hereby reversed, and that there shall be no sale of alcoholic beverages or other operation under the license (C-629) upon the premises at 455 High Street (also known as 457 High Street) and rear premises at 453 High Street; but it is further

ORDERED that the 1952-1953 transfer and 1953-1954 renewal be deemed effective for the sole purpose of permitting transfer.

DOMINIC A. CAVICCHIA
Director.

2. APPELLATE DECISIONS - RAJAH LIQUORS v. NEWARK.

RAJAH LIQUORS (A Corporation),
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Mayer & Mayer, Esqs., by Abraham I. Mayer, Esq., Attorneys for Appellant.
Horace S.Bellfatto, Esq., by Samuel P. Bernhaut, Esq., Attorney for Respondent.
Hodes & Hodes, Esqs., by William Hodes, Esq., Attorneys for Objector.
Louis B. Englander, Esq., Attorney for Objector.
Daniel G. Gallop, Esq., Attorney for Objector.

BY THE DIRECTOR:

This is an appeal from respondent's denial on June 12, 1953 of appellant's application for a place-to-place transfer of its 1952-1953 plenary retail consumption license from 274 Fifteen Avenue to 269-271 Springfield Avenue, Newark. The members of respondent Board voted unanimously to deny the transfer.

Appellant, in its Petition of Appeal, contends that since the premises to which transfer of its license is sought is within 750 feet of its present location, the action of respondent Board in denying the transfer was illegal, arbitrary, unreasonable and an abuse of discretion.

Respondent denies the contention of appellant and sets forth in its Answer the following grounds for its denial: (a) that the posting of the sign on the premises "did not conform with the ordinances of the City of Newark", (b) that the consent of the church located within 200 feet of the proposed premises "was not in the legal form of a waiver as required under the law nor was there an affidavit attached thereto" and (c) that the transfer of the license to the new location "would create a greater concentration of licenses than presently exists at that point and will also cause a greater congestion of traffic than now exists at the present location."

The transcript of the record below, including the testimony of the witnesses who appeared at the hearing before respondent Board, was submitted as part of the record on this appeal. (Rule 8 of State Regulations No. 15.) Further testimony and exhibits were introduced at the hearing on this appeal.

The record discloses that the proposed premises are located on the southwest corner of Springfield Avenue and Boyd Street, a distance of 570.60 feet from the present location. The latter is on the northeast corner of Fifteenth Avenue and Hayes Street. Within a radius of 750 feet of its present location, including appellant's license, there are nineteen licensed premises, sixteen of which are plenary retail consumption licenses (one having the broad package privilege) and three of which are plenary retail distribution licenses. Within 750 feet of appellant's proposed premises there are presently existing twenty-two liquor licensed premises, nineteen of which are plenary retail consumption licenses (one having the broad package privilege) and three of which are plenary retail distribution licenses.

No evidence was presented by appellant, either before the respondent Board or at the instant hearing, to indicate a need for or a

convenience to be served at the location sought for the transfer of the license.

Appellant contends that it "was given no opportunity to meet any issue with reference to traffic conditions" at the time of the hearing before respondent Board. However, though appellant knew that the respondent Board had given as one of its reasons for denial of the transfer that there is heavier traffic at the place to which the licensee asks to move its place of business, it produced no witnesses to indicate otherwise. "A municipal issuing authority may validly deny a license or place-to-place transfer of a license because of a reasonable apprehension of aggravated or undue traffic peril." (Freed v. Wayne Township, Bulletin 892, Item 7.) Oral argument made on behalf of appellant was lacking in competence and substance to establish that respondent's reason for denial on the particular ground was without merit.

Another contention of appellant is that refusal of the transfer by respondent Board on the ground that the granting would effect "a greater concentration of licenses than presently exists at that point", is without merit and an abuse of discretion. There is no substance to this argument since, as noted, a greater number of liquor outlets exists within 750 feet of the proposed premises than within 750 feet of the present premises.

Appellant further contends that Section 4 of the local ordinance provides, among other things: "In the event a licensee desires to transfer to another premises he shall be permitted to do so within seven hundred and fifty (750) feet of the premises wherein he is located at the time of such transfer" (underscoring added) and, therefore, that respondent Board could not rightfully refuse to grant the place-to-place transfer of the license in question. The quotation is from Section 4 of Newark's Ordinance 2419, adopted May 4, 1938. All of Newark's alcoholic beverage regulations were superseded by Chapter 3 of the City's Revised Ordinances, adopted October 15, 1952. In pertinent regard the hereinabove-quoted portion of Section 4 of Ordinance 2419 was superseded by the following provisions of Chapter 3, Article II, Sec. 3.29 of the Revision:

> "...In the event a licensee desires to transfer to other premises he may be permitted to do so at the discretion of the local issuing authority, within seven hundred and fifty feet of the premises where he is located at the time of such transfer." (Underscoring added.)

It would seem plain that granting of place-to-place transfer application was not mandatory under the quoted language of the superseded ordinance; and, a fortiori, there could be no merit in a contention that the quoted provisions of the operative ordinance call (or called) for such granting as a matter of right.

"Like other general questions involving the issuance or transfer of licenses, determination of how many retail liquor places will be permitted in any given area is confided, in the first instance, to the sound and bona fide discretion of the issuing authority. See Baselici v. Asbury Park, Bulletin 382, Item 4 (and cases there cited); and also Siebel v. Randolph, Bulletin 477, Item 1 (and cases there cited)." (Golden Inn Bar, Inc. v. Newark, Bulletin 481, Item 2.) "The transfer of a liquor license is not a right inherent in the license but is, rather, a privilege which the issuing authority may grant or deny in the exercise of a reasonable discretion. When the transfer is denied on reasonable grounds, such action will be affirmed. Drucker v. Trenton, Bulletin 474, Item 9." (Minsky v. Woodbridge Township, Bulletin 897, Item 3.) In the instant case I find that with respect to the merits of ground (c), alone, appellant has failed to sustain the burden of establishing that respondent's

action denying the application for transfer was arbitrary or unreasonable so as to constitute an abuse of discretion warranting reversal of that action. (See Rule 6 of State Regulations No. 15.) Language cited, for appellant, from Bock Tavern, Inc. v. Newark, Bulletin 952, Item 1, and from Trinity Methodist Church of Rahway v. Rahway and Fox, Bulletin 972, Item 3, is factually out of point with the particular circumstances of the instant case. The denial of appellant's application will be affirmed.

In view of the above finding and determination it will be unnecessary to consider any other reason given by respondent Board for the denial of the transfer in question.

Accordingly, it is, on this 24th day of November, 1953,

ORDERED that respondent's action be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

3. APPELLATE DECISIONS - LEFFLER AND MRVICHIN v. NEWARK.

JAMES LEFFLER and STEVEN MRVICHIN, trading as CAFE SOCIETY,

Appellants,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

William Osterweil, Esq., Attorney for Appellants.
Horace S. Bellfatto, Esq., by Samuel P. Bernhaut, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control.
Mayer & Mayer, Esqs., by Abraham I. Mayer, Esq., Attorney for Objector.
Louis B. Englander, Esq., Attorney for Objectors.

BY THE DIRECTOR:

This is an appeal from respondent's denial on June 12, 1953 of appellants' application for a place-to-place transfer of their 1952-1953 plenary retail consumption license from premises at 14 Belmont Avenue to premises at 274 Fifteenth Avenue, Newark. The three members of respondent Board voted unanimously to deny the transfer in question.

Respondent's reason for denial of the transfer in question, as expressed by its Chairman, is as follows:

> "...In view of the decision of this Board in the matter of the application of Rajah Liquors for a transfer from its premises at 274 Fifteenth Avenue to 269-271 Springfield Avenue denying the application, the Board will necessarily have to deny this application because there is at present a license located at 274 Fifteenth Avenue, and under our rules and regulations there cannot be two licenses operated by two licensees in the same premises.

"The application for transfer from 14 Belmont Avenue to 274 Fifteenth Avenue is denied."

Appellants contend that the action of the respondent was erroneous because:

"The proposed transfer was to a place within 750 feet of the existing licensed premises and the action of the Board was illegal, arbitrary, unreasonable and an abuse of discretion to issue a transfer of said license to appellants for premises 14 Belmont Avenue to be transferred to 274 - 15th Avenue, Newark, New Jersey for the period expiring on June 30, 1953 and for the period ending June 30, 1954. Although a renewal of the license was granted even subsequent to the denial of the transfer, this appeal is being filed at this time based upon the denial as aforesaid because the appellants feel and maintain that a new application to transfer the renewed license will probably result in a denial by the Board. In view of the fact that there were no objectors whatsoever to this transfer the Municipal Board of Alcoholic Beverage Control of the City of Newark, New Jersey acted arbitrarily in denying the right to transfer."

On June 9, 1953, respondent Board heard another application prior to the one now under consideration wherein Rajah Liquors sought a transfer of its license from 274 Fifteenth Avenue (appellants' proposed premises) to another location. On June 12, 1953 the application of Rajah Liquors was denied by respondent Board, thus leaving its license in the premises 274 Fifteenth Avenue. Under the circumstances, the respondent Board had no alternative but to deny the place-to-place transfer of appellants' license from 14 Belmont Avenue to 274 Fifteenth Avenue as two liquor licenses may not be issued and outstanding for the same licensed premises. R.S. 33:1-26 provides, inter alia, that "A separate license is required for each specific place of business and the operation and effect of every license is confined to the licensed premises."

Respondent's denial of Rajah Liquors' application for transfer of its license from the premises at 274 Fifteenth Avenue has been affirmed on appeal (Rajah Liquors (A Corporation) v. Municipal Board of Alcoholic Beverage Control of the City of Newark, Bulletin 993, Item 2).

The action of respondent will be affirmed.

Accordingly, it is, on this 25th day of November, 1953,

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

DOMINIC A. CAVICCHIA
Director.

4. APPELLATE DECISIONS - NORTH BERGEN TAVERN OWNERS ASSOCIATION AND SNIGER v. NORTH BERGEN AND WA-WA SOCIAL CLUB, INC.

NORTH BERGEN TAVERN OWNERS ASSOCIATION and VINCENT SNIGER,

Appellants,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWNSHIP OF NORTH BERGEN and WA-WA SOCIAL CLUB, INC.,

Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Appellants.
George B. Kedersha, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control of the Township of North Bergen.
Solomon & Solomon, Esqs., by Leo Solomon, Esq., Attorneys for Respondent Wa-Wa Social Club, Inc.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board on July 10, 1953, whereby it granted a club license to respondent Wa-Wa Social Club, Inc., for premises 1438 - 51st Street.

In their petition of appeal appellants alleged that respondent Board's action was erroneous in that:

"(a) The applicant did not comply with State Regulations #7, Rule 4.

"(b) The applicant did not comply with State Regulations #7, Rules 1 and 2.

"(c) The application for club license was not properly advertised, in violation of State Regulations 2, Rules 1, 2 and 3.

"(d) In applying for said club license the applicant did not comply with the ordinances, regulations of the State Director of Alcoholic Beverage Control, and the laws of the State of New Jersey pertaining to the issuance of club licenses.

"(e) The application for said club license was made in the month of June and should, therefore, have been considered, granted or denied before July 1, 1953. The application made in June was, however, considered by said Board and granted on July 10, 1953, which was within another licensing period which begins on July 1, 1953, and therefore said application was null and void and erroneously granted by said Board."

In its answer, respondent Board denied the allegations and set forth a statement of the grounds for its action.

The essential facts are not in dispute. Respondent club has been in existence for thirty-five years and has been incorporated for nineteen years. For the past fifteen years the club has held meetings, twice a month, alternating each month between the plenary retail consumption licensed premises of John Herr at 6031 Hudson Boulevard, North Bergen, and Leonard W. Ackerson at 4104 Liberty Avenue, North Bergen. At the former premises the club met in the public barroom where tables and chairs were arranged for its members in the front part of the barroom. Its meetings there were open to the view of the other patrons in the barroom. At the latter premises the meetings were held in a rear room separated from the barroom by

required as aforesaid, but which has been deprived of continuous possession and use of its clubhouse or club quarters by reason of foreclosure, dispossess or other removal for a cause other than the violation of the laws of the State or of municipal ordinance, shall not be prevented thereby from obtaining a club license upon presenting to the satisfaction of the issuing authority proof of said facts and proof that possession of suitable premises has been obtained" and contend that its provisions permit the local issuing authority, in its discretion, to issue a license under the facts and circumstances in this case.

This argument is unsound. The Rule must be read as a whole. The second sentence cannot be separated from the first. Obviously the Rule requires three years' continuous exclusive possession and use of a clubhouse or club quarters in all cases but excepts those clubs which have actually had such continuous exclusive possession and use but lost it by reason of foreclosure, dispossess or other removal for a cause other than the violation of the laws of the State or of municipal ordinance. Burak v. Irvington et al., Bulletin 130, Item 2.

In a memorandum filed by counsel for the club it is further contended that the action of the licensees, at whose premises the club held its meetings, in requiring the club to remove itself at the conclusion of its meetings so as to permit the conduct of the licensed business, was a "removal" within the contemplation of the Rule. This contention is wholly without merit. Even the renting of a room periodically for club meetings is not the exclusive and continuous possession of club quarters required by the Rule. Re Club Esquire, Jr., Bulletin 881, Item 1. Failure of compliance with the rule is even more obvious where, as here, no rent was paid. Cf. Witherspoon Social Club v. Township of Lawrence, Bulletin 308, Item 13.

Since respondent Wa-Wa Social Club, Inc. did not meet the requirements of the statute and regulations, respondent Board was without jurisdiction to issue the license and I have no alternative other than to cancel the license. Elizabeth Beverage Dealers Assn. v. Elizabeth and Catholic War Veterans, Inc., etc., Bulletin 869, Item 3.

In view of my determination on the jurisdictional ground, it is unnecessary for me to consider here any other matters raised.

Accordingly, it is, on this 19th day of November, 1953,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the Township of North Bergen in issuing a club license to respondent Wa-Wa Social Club, Inc., 1438 - 51st Street, North Bergen, be and the same is hereby reversed, and said license is hereby cancelled, effective immediately.

DOMINIC A. CAVICCHIA
Director.

5. APPELLATE DECISIONS - ROTH v. NEWARK.

WALTER ROTH, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Daniel Leff, Esq., Attorney for Appellant.
Horace S. Bellfatto, Esq., by George B. Astley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent on September 15, 1953, suspending appellant's plenary retail consumption license for fifteen days, effective September 28, 1953, after finding that appellant's predecessor in interest (Club Theresa, Inc.) allowed, permitted and suffered a brawl or act of violence to occur upon the licensed premises. On June 2, 1953, the license was transferred to appellant who was the principal stockholder of said Club Theresa, Inc.

Upon the filing of the petition of appeal I entered an order, dated September 25, 1953, staying the suspension pending the determination of this appeal.

Appellant contended that respondent's action was erroneous because:

(1) the finding of guilt was against the weight of the evidence;

(2) the testimony of the prosecution's principal witness, one John J. DeFreese, was unworthy of belief;

(3) the Board erroneously refused to permit appellant's counsel to examine DeFreese with respect to former convictions to show his propensity for argumentativeness and the likelihood that he was the aggressor;

(4) the Board erred in finding that the bartender had time to call the police; and

(5) hearsay testimony was received by the Board which improperly based its finding on such hearsay testimony.

Respondent, in its answer, denied these allegations and set forth separate defenses denying that its decision was based upon the testimony of any one witness and asserting that it was based upon "all the evidence, facts and circumstances revealed at the hearing."

At the hearing on this appeal respondent introduced in evidence the stenographic transcript of the hearing below after having given the requisite notice prescribed by Rule 8 of State Regulations No. 15. Appellant consented to its introduction but reiterated objections made at the hearing below with respect to certain rulings of the Board in receiving or excluding evidence. In addition, the bartender, White, who was on duty when the alleged brawl occurred, testified at the hearing herein and statements, obtained by the police department from three of respondent's witnesses below, were introduced for the sole purpose of affecting their credibility.

Appellant does not deny that a fight occurred at the licensed premises on the night of March 23, 1953 or that the bartender was a participant. Nor does he deny that there were three separate clashes between the bartender and DeFreese. His contention appears to be that an unruly patron (DeFreese) was the aggressor and that the bartender did all that he could do under the circumstances.

Respondent, on the other hand, found that the bartender "...if not the sole aggressor in this case was partially responsible for the brawl which took place; that he had an opportunity to call the police immediately after the first brawl was over, and when DeFreese went out, but that he failed to do so..." and, applying the rule that the licensee is responsible for the acts of his employee, found appellant guilty.

From all of the evidence it appears that White was tending bar at appellant's licensed premises on the night of March 23, 1953 and that the aforementioned DeFreese entered said premises some time after 7 p.m., accompanied by a female; that DeFreese ordered drinks for himself, his companion and another female and that an argument arose when White sought payment for the drinks while DeFreese claimed that he had already made such payment. The argument apparently became heated, and harsh (and probably foul and indecent) words were exchanged by White and DeFreese, followed by blows. After other patrons had separated the two men and had taken DeFreese outside, White went behind the bar allegedly to get a broom and shovel to clean up some broken glass. DeFreese returned and another encounter between the two men shortly ensued, with DeFreese armed with a knife and White with a club (a leg of a chair), which resulted in White driving DeFreese into the street. White again went behind the bar, this time seizing a knife, and after DeFreese again returned there was another encounter and White drove DeFreese out of the premises. White then locked the door and requested a female patron, who had been hiding behind the door, to call the police. Meanwhile, from the outside, DeFreese broke windows and the glass in the door. Both men received multiple wounds and contusions.

DeFreese testified that he had paid for the drinks and that, when he denied that he still owed for them, White argued with him for five minutes and then jumped over the bar and "hit at" him, whereupon he struck back. He further testified that, after he was escorted from the tavern, White came outside and struck him on the head with a club. He admitted that he later threw a stool through the window.

White denied that he jumped over the bar to attack DeFreese and claimed that when he walked from behind the bar to play the juke box he was punched by DeFreese. He testified that he did not call the police at that time but returned behind the bar to serve a customer, to get a shovel and broom to clean up the debris and to obtain a five-cent piece to use in calling the police. There is some conflict between his testimony below and his testimony on this appeal but, generally speaking, his claim is that he did not have time to call the police. However, he readily admitted that he armed himself first with the club, which is kept behind the bar for "protection," and later with a knife. At one point in the hearing below he testified that he "got panicky" and "grabbed the club" and at one point in the hearing herein he testified that, with knife in hand, he "... started swinging wildly until I got the club" from DeFreese who had seized it from him.

The testimony of the three women who were present when the argument started indicates that it was loud and that it lasted for at least fifteen minutes. Their testimony also indicates that the entire episode was not a mere "sudden flare-up" but, on the contrary,

covered a considerable period of time and raged both inside and outside of the licensed premises. The woman who made the telephone call testified that it was she who suggested to White that the police be called, which White denied. I have examined the statements introduced by appellant to affect the credibility of these witnesses and I find that said statements fail to do so.

Appeals to the Director from action of the local issuing authority are heard de novo and the burden of establishing that the action of such issuing authority was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15; Neu v. Irvington, Bulletin 923, Item 3; Laurence Harbor Amusement Corporation v. Township of Madison, Bulletin 955, Item 1.

After carefully considering the entire record before me I find that appellant has failed to sustain this burden. Respondent found that, because of the bartender's conduct, the licensee, who is held accountable for violations committed by his employees (Rule 31 of State Regulations No. 20) had allowed, permitted and suffered a brawl to occur at the licensed premises. I cannot disagree with this finding. Cf. Re Polster, Bulletin 388, Item 10; Re Center Market Bar & Grill, Inc., Bulletin 851, Item 3.

Appellant's contention that his counsel was erroneously refused opportunity to examine DeFreese with respect to his criminal record is not borne out by the record. He did establish upon cross-examination of DeFreese that the latter had a long criminal record, the exact nature of which the witness said he couldn't "keep track of." Counsel was then prevented from questioning DeFreese further as to the exact nature of the individual crimes. Appellant was not prejudiced thereby.

With respect to appellant's contention that hearsay testimony was received by respondent and that respondent's decision was based upon such hearsay testimony, I find that there was ample competent evidence, including the testimony of the bartender, to support the finding of guilt.

Disciplinary proceedings are neither barred nor abated by the transfer or the renewal of the license (State Regulations No. 16) and any license transferred or renewed is subject to the outcome of any appeal which may be taken (Rule 13 of State Regulations No. 15).

The action of respondent will be affirmed, the present appeal will be dismissed and the fifteen-day suspension originally imposed will be reinstated.

Accordingly, it is, on this 23rd day of November, 1953,

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

ORDERED that the fifteen-day suspension by respondent of appellant's plenary retail consumption license C-684, for premises 131-133 Howard Street, Newark, be and the same is hereby restored to commence at 2:00 a.m. November 30, 1953, and terminate at 2:00 a.m. December 15, 1953.

DOMINIC A. CAVICCHIA
Director.

6.

ACTIVITY REPORT FOR NOVEMBER 1953

ARRESTS:			
Total number of persons arrested			25
Licensees and employees	7		
Bootleggers	18		
SEIZURES:			
Motor vehicles - cars			2
Stills - over 50 gallons			3
- 50 gallons or under			1
Alcohol - gallons			.50
Mash - gallons			200.00
Distilled alcoholic beverages - gallons			58.78
Wine - gallons			257.45
Brewed malt alcoholic beverages - gallons			16.34
RETAIL LICENSEES:			
Premises inspected			915
Premises where alcoholic beverages were gauged			517
Bottles gauged			9,427
Premises where violations were found			76
Violations found			87
Type of violations found:			
Unqualified employees	25	Other mercantile business	3
Reg. #38 sign not posted	10	Improper beer taps	1
Disposal permit necessary	7	Other violations	41
STATE LICENSEES:			
Premises inspected			15
License applications investigated			15
COMPLAINTS:			
Complaints assigned for investigation			299
Investigations completed			346
Investigations pending			104
LABORATORY:			
Analyses made			108
Bottles from unlicensed premises			39
IDENTIFICATION BUREAU:			
Criminal fingerprint identifications made			31
Persons fingerprinted for non-criminal purposes			140
Identification contacts made with other enforcement agencies			107
Motor vehicle identifications via N. J. State Police teletype			3
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities			7
Violations involved:			
Sale to minors	3		
Sale during prohibited hours	2		
Permitting brawl on premises	1		
Permitting hostesses on premises	1		
Cases instituted at Division			12*
Violations involved:		Sale on Election Day	1
Sale to minors	2	Permitting slot machines on premises	1
Permitting immoral activity on premises	2	Improper advertising	1
Mislabeling beer taps	2	Sol'r-permittee employed by retailer	1
Fraud and front	2	Sale below minimum resale price	1

*Includes two cancellation proceedings - licenses improvidently issued to clubs not bona fide

Cases brought by municipalities on own initiative and reported to Division			11
Violations involved:			
Sale to minors	5		
Permitting brawl on premises	4		
Violation of special condition	1		
Permitting immoral activity on premises	1		
HEARINGS HELD AT DIVISION:			
Total number of hearings held			36
Appeals	2	Seizures	6
Disciplinary proceedings	18	Tax revocation	2
Eligibility	8		
PERMITS ISSUED:			
Total number of permits issued			1,123
Employment	105	Social affairs	406
Solicitors'	110	Special wine	323
Disposal of alcoholic beverages	70	Miscellaneous	109

DOMINIC A. CAVICCHIA
Director.

Dated: December 1, 1953.

7. STATE LICENSES - NEW APPLICATIONS FILED.

Red Star Express Lines of Auburn, Inc.
9101 Tonnele Avenue
North Bergen, N. J.
Application filed November 30, 1953 for transfer of Transportation License T-3 from 4800 Dell Avenue, North Bergen, N. J.

Charles Fossani
Atlantic Highlands Municipal Basin
Atlantic Highlands, N. J.
Application filed November 30, 1953 for Plenary Retail Transit License.

Raymond Edward Tag
809 Bayway Avenue
Elizabeth, N. J.
Application filed December 4, 1953 for transfer of State Beverage Distributor's License SBD-28 from Parkway Beverages, Inc., 562 Washington Avenue, Belleville, N. J.

Michael Yunger and Adam Yunger
T/a Tasty Bottling Company
1434 Parkside Avenue
Ewing Township
Trenton, N. J.
Application filed December 7, 1953 for transfer of State Beverage Distributor's License SBD-97 from 1331 Chambers Street, Trenton, N. J.

Palmyra Beer Distributors, Inc.
Broad and Walnut Streets
Palmyra, N. J.
Application filed December 8, 1953 for transfer of State Beverage Distributor's License SBD-109 from John Sacca, t/a Palmyra Beer Distributors.

Dominic A. Cavicchia
Director.