

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

March 17, 1964

BULLETIN 1553

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

BULLETIN 1553

March 17, 1964

1. APPELLATE DECISIONS - FOTI v. ELIZABETH.

FRANK FOTI, trading as)	
MARKET TAVERN,)	
	)	ON APPEAL
Appellant,	)	CONCLUSIONS
	)	AND ORDER
v.)	
)	
CITY COUNCIL OF THE CITY OF)	
ELIZABETH,)	
)	
Respondent.)	

Rinaldo and Rinaldo, Esqs., by Anthony D. Rinaldo, Esq.,
Attorneys for Appellant.

John M. Boyle, Esq., by Raymond A. Leahy, Esq., Attorney for
Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

HEARER'S REPORT

This is an appeal from the action of respondent City Council of the City of Elizabeth whereby it denied the application of appellant for renewal of his plenary retail consumption license for premises located at 862 Elizabeth Avenue, Elizabeth.

The resolution adopted at an "adjourned" meeting on June 24, 1963, reads as follows:

"WHEREAS, the City Council, acting as the Municipal Board of Alcoholic Beverage Control, has questioned the advisability of renewing the Plenary Retail Consumption License No. C-43, for premises located at 862 Elizabeth Avenue, for the license period commencing July 1, 1963 and terminating June 30, 1964, for the reason that the licensed premises were conducted improperly and in violation of the Rules and Regulations of this Board and of the Division of Alcoholic Beverage Control of the State of New Jersey, as set forth in the attached reports annexed hereto and made a part hereof and labeled Exhibits A and B; and

"WHEREAS, the Board, after proper investigation, has carefully evaluated the past record of the licensee and the application for renewal of said license, and it is the considered opinion of the Board that the licensee is unfit to operate said licensed premises for the reason that the said licensed premises were conducted improperly and in violation of the Rules and Regulations pertinent and relating to the conduct of the licensed premises; and

"WHEREAS, it would be contrary to the best interest of the public health, safety, welfare and morals to approve the application for renewal of said licensed premises; now, therefore,

"BE IT RESOLVED, that the application of Frank Foti, t/a Market Tavern, for renewal of Plenary Retail Consumption License C-43, for premises 862 Elizabeth Avenue, for the license period beginning July 1, 1963 and terminating June 30, 1964, be and the same is hereby denied."

The matter was considered by the respondent at its regular meeting on June 20, 1963, and in the presence of the appellant at that meeting he was questioned by members of the respondent concerning a suspension of his license during the 1962-63 period. Re Foti, Bulletin 1488, Item 7. A vote was thereupon taken and the application for renewal was approved by a vote of five-to-one.

After the appellant left the meeting, Councilman Maurice A. O'Keefe arrived at the meeting and objected to the grant of this license upon the mere issuance of a warning. It was then decided to have another meeting for the purpose of having a representative of the local Police Department testify, and this matter was taken up at a meeting held on June 24, 1963. At the latter meeting, after considering the hearsay testimony of a local police officer attached to the confidential squad of the Elizabeth Police Department, a vote was taken on a motion to renew the subject license. This motion was defeated by a vote of six-to-three. The appellant was neither given notice of nor appeared at the meeting of June 24.

Appellant herein challenges the action of the respondent by the petition of appeal filed herein and states that the action of respondent was erroneous for ten reasons which it details in the said petition. However, appellant presents only one ground for reversal which I find meritorious. It concerns the legal propriety of respondent's action at its June 24 meeting in denying appellant's application for renewal of said license in view of its earlier action on June 20, 1963, when it voted for the approval of said renewal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity to counsel to present testimony under oath and cross examine witnesses.

At the hearing before me eight of the councilmen, including the president of the respondent Council, testified and the substance of their testimony was as follows: This matter came on for hearing upon the application of the appellant for renewal of his license in the presence of the appellant. A full discussion was had with respect to the conduct of the appellant's premises during the past year, including discussion of the conviction as hereinabove referred to. After such discussion the appellant Foti was advised that he would be notified of the decision of the Council. Then, according to the minutes of the meeting, Councilman Thaddeus F. Gora stated "We have heard these people and should there be a repetition of these complaints, Council will take disciplinary action. Have the law Department compose a letter to the licensees (two licensees were considered at the same time), and a copy to the State Division of Alcoholic Beverage Control. On the Market Tavern (appellant) and

(David Ashen, trading as) Silhouette Lounge a strict warning."

The minutes of the meeting further show that Councilman Frank A. Cyron made a motion to renew the aforesaid licenses. The motion was seconded by Councilman Edward J. French and by a vote of five-to-three. The motion was carried.

Council President Mary D. Gillen testified that, during the consideration of appellant's application, six councilmen were present and Councilman O'Keefe arrived after the action was taken. Mrs. Gillen was then asked the following questions by me:

"The Hearer: ... I just want to ask you a question, Mrs. Gillen. As I understand it now, at this meeting of June 20, the feeling, your feeling, as well as the feeling of the other members of the Council, with the exception of Councilman Murphy, was that there should be a renewal of Foti's license, is that right?

The Witness: Yes, sir, that's right.

The Hearer: And you so voted?

The Witness: Yes, sir.

* * * * *

The Hearer: So that at that point all that required to be done was the preparation of a resolution form by the law department, is that correct?

The Witness: That's right."

And further:

"The Hearer: Did you generally vote on a matter more than once?

The Witness: No, we don't, sir.

The Hearer: Now, then you say you cleared with the law department to find out if Mr. Foti should appear on the June 24 meeting. You found that it was unnecessary for him to appear? Did you speak to Mr. Foti about that?

The Witness: No, I didn't, sir.

The Hearer: Did he appear at the June 24 meeting?

The Witness: No...."

Councilman Thaddeus F. Gora testified that the minutes as set forth hereinabove accurately reflect what transpired at the June 20 meeting. This witness stated that it is the custom of Council "to reprimand any violators and indicate to them that repetition will be dealt with more severely." This councilman was also asked by me the following:

"The Hearer: Councilman, did you understand that the vote on June 20 was a final vote when you voted to renew the license?

The Witness: No. Preliminarily, they were never final.

* * * * *

The Hearer: Well, according to the minutes here, it says, 'Councilman Cyron made a motion to renew the aforementioned licenses. Motion seconded by Councilman French.' And it says, 'Application for renewal of Frank Foti,' and so forth, 'continued,' and the affirmative vote of five and negative vote of one. That was so, wasn't it?

The Witness: Yes, sir.

The Hearer: And are you now saying that that vote to renew the license was not a final vote?

The Witness: In view of the further evidence provided, that became subject to revision and which has occurred.

The Hearer: Yes, but I mean, at the time the vote was taken.

The Witness: At that time it was a final vote."

Councilman Edward J. French testified that he had voted at the June 24 meeting in support of the motion to renew the license because he felt that the testimony of the police officer was hearsay and the appellant had already been adequately disciplined by this Division. I then directed his attention to the action of the June 20 meeting and asked him the following questions:

"The Hearer: Councilman, I direct the same question to you that I did to the prior two councilmen. With respect to the June 20 meeting when the vote was taken to renew this license, did you consider that that was a final vote?

The Witness: Yes, sir.

The Hearer: Was there anything said there at the time that the vote was taken about that being a preliminary meeting?

The Witness: No sir.

The Hearer: Did you understand what the vote was?

The Witness: That was the final vote.

The Hearer: It was a final vote?

The Witness: That's right. Later, this was added that Council started to discuss. That was later, but at that time that was a formal vote."

Councilmen Donald Whitken, Anthony E. Conte and Frank A. Cyron corroborated the testimony of the other councilmen.

Councilman Maurice A. O'Keefe testified that he arrived at the June 20 meeting after this vote was taken, and it was upon his objection to the prior vote that the respondent decided to have another meeting on June 24. He admitted that he was not present when Foti testified, and also admitted that Foti was not present at the June 24 meeting when the complained of action was taken.

Councilman Michael A. McGuire testified that he was not present at the June 20 meeting and his vote at the June 24 meeting was based entirely upon the testimony of the police officer. He therefore did not have the benefit of the presence or the testimony of the appellant.

Therefore, the sole dispositive issued herein is whether the action of the respondent on June 20 was a final action and whether the action of June 24 was invalid.

An examination of the June 20 meeting, fortified by the forthright and unequivocal testimony of the councilmen as set forth hereinabove satisfies me that the vote for renewal was unconditional, dispositive and final. Nor was there any action by vote or resolution either on June 20 or June 24 to rescind such action. It appeared that the respondent simply ignored its action on June 20, when it passed the resolution to deny, on June 24.

It has been long established that, where an issuing authority reaches a final determination on an application for a license or renewal thereof, in the absence of mistake of law or fact or fraud perpetrated upon the issuing authority (not claimed herein), it may not reconsider its action. West End Club v. Newark, Bulletin 1524, Item 1, citing Essex County Retail Liquor Stores Assn. v. Newark, et al., Bulletin 1457, Item 3; Kaighn et al. v. Union Beach, Bulletin 1217, Item 1; Lantz v. Hightstown, 46 N.J.L. 102; White v. Atlantic City et al., 62 N.J.L. 644; Gulnac v. Board of Chosen Freeholders, 74 N.J.L. 543. This doctrine has been followed in this Division since the beginning of its administration of alcoholic beverage control. See Re Hendrickson, Bulletin 47, Item 10; Plager v. Atlantic City, Bulletin 80, Item 11; Tyler's Country Club, Inc. v. Woodbridge, Bulletin 1311, Item 1.

Therefore, since the vote of June 20 was a final and decisive vote on the application for renewal, it follows that the complained of action on June 24 was clearly ineffective and invalid. Since the dispositive issue has been identified and determined, it is unnecessary to discuss the other matters raised in the pleadings.

Accordingly, I recommend that the action of the respondent in its June 24, 1963, resolution, denying renewal herein, be reversed and that it be required to issue a renewal license for the current year, in accordance with its motion of June 20, 1963.

Conclusions and Order

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

Having carefully considered the evidence adduced at the hearing, together with the exhibits, the written arguments of counsel contained in their memoranda, 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 30th day of January, 1964,

ORDERED that the action of the respondent be and the same is hereby reversed and respondent is hereby directed to issue a renewal license for the current year to appellant, in accordance with its motion of June 20, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

2. APPELLATE DECISIONS - ASHEN v. ELIZABETH.

DAVID ASHEN & JEANNETTE ASHEN,)	
t/a SILHOUETTE LOUNGE,)	
)	
Appellants,)	
	)	ON APPEAL
v.	)	CONCLUSIONS
	)	AND ORDER
CITY COUNCIL OF THE CITY OF)	
ELIZABETH,)	
)	
Respondent.)	

Weiner, Weiner & Glennon, Esqs., by John T. Glennon, Esq.,
Attorneys for Appellants.
John M. Boyle, Esq., by Raymond A. Leahy, Esq., Attorney for
Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of the respondent City Council of the City of Elizabeth whereby it denied application of appellants to renew their plenary retail consumption license for premises 292 Morris Avenue, Elizabeth. The resolution adopted at an "adjourned" meeting on June 24, 1963, reads as follows:

"WHEREAS, the City Council, acting as the Municipal Board of Alcoholic Beverage Control, has questioned the advisability of renewing the Plenary Retail Consumption License No. C-181, for premises located at 292 Morris Avenue, for the license period commencing July 1, 1963 and terminating June 30, 1964, for the reason that the licensed premises were conducted improperly and in violation of the Rules and Regulations of this Board and of the Division of Alcoholic Beverage Control of the State of New Jersey, as set forth in the attached reports annexed hereto and made a part hereof and labelled Exhibits A and B; and

"WHEREAS, the Board, after proper investigation, has carefully evaluated the past record of the licensee and the application for renewal of said license, and it is the considered opinion of the Board that the licensee is unfit to operate said licensed premises for the reason that the said licensed premises were conducted improperly and in violation of the Rules and Regulations pertinent and relating to the conduct of the licensed premises; and

"WHEREAS, it would be contrary to the best interest of the public health, safety, welfare and morals to approve the application for renewal of said licensed premises; now, therefore,

"BE IT RESOLVED, that the application of David Ashen & Jeanette Ashen, t/a Silhouette Lounge, for renewal of Plenary Retail Consumption License C-181, for premises 292 Morris Avenue, for the license period beginning July 1, 1963 and terminating June 30, 1964, be and the same is hereby denied."

Appellants challenge the action of the respondent in their petition of appeal for reasons set forth therein. However, I conceive of one ground for reversal which I consider meritorious. It concerns the legal propriety of the action of respondent at its June 24, 1963, meeting in view of its action at the June 20, 1963, meeting when it voted to approve the application for renewal of appellants' license.

The appeal was heard de novo, with full opportunity for counsel to present testimony under oath and cross examine witnesses. Rule 6 of State Regulation No. 15.

The picture irrebuttably gathered from the briefs is as follows: A public meeting was held by respondent on June 20, 1963, which considered, among other things, the application for the renewal of appellants' license.

At this public hearing David Ashen (the appellant) was questioned closely by members of the respondent, and stated that he had been in the tavern business for seventeen years; that this was the first violation since 1954. He also stated that he was not charged with overt acts or immoral activity, and that he refused to serve patrons fitting the description in the charge. Re Ashen, Bulletin 1495, Item 7.

After further examination of the appellant, respondent's President Mrs. Mary D. Gillen then advised Ashen that he would be notified of respondent's decision in the matter. The minutes of said meeting, introduced into evidence, reflect what transpired thereafter.

"Councilman Gora- We have heard these people and should there be a repetition of these complaints, Council will take disciplinary action. Have the law Department compose a letter to the licensees, and a copy to the State Division of Alcoholic Beverage Control. On the Market Tavern and Silhouette Lounge a strict warning.

"Councilman Cyron made a motion to renew the aforementioned Licenses. Motion seconded by Councilman French.

"Application for renewal of Frank Foti, Lic. C-43 and David Ashen & Jeanette Ashen, Lic. C-181, continued:

"Affirmative: Cyron	Negative: Murphy
French	1 member
Gora	
Whitken	
President Gillen	5 members"

Shortly after this vote was taken approving the renewal of said licenses, Councilman O'Keefe entered the meeting and objected to warning the appellants and suggested that, as this was a "preliminary meeting" (there is nothing in the minutes to indicate that this meeting was "preliminary"), the "Board" should have a member of the Police Department present at a subsequent meeting in order to explore the matter further. A motion to adjourn this meeting was then agreed to by all members of respondent present.

Prior to the date of the adjourned meeting the secretary of respondent sent a telegram to appellants notifying them to appear at the June 24, 1963, meeting. However, the evidence further shows that Ashen received a telephone call from Mrs. Mary D. Gillen (President of respondent) at 6 p.m. of June 24 (the night of the adjourned meeting) in which she told him not to appear at the meeting scheduled for that night, "that she would take the responsibility upon herself."

Acting upon her representation and advice, appellants did not appear nor were they represented by counsel at that meeting. According to the minutes of the meeting on June 24, the matter was further considered by having Detective John McGuire (a member of the confidential squad of the Elizabeth Police Department) testify that he obtained some hearsay information from an "admitted homosexual" regarding certain activities at the licensed premises. He added "At this time we have information but no proof." He also admitted that this was based upon actions not recently committed on the premises.

No other witnesses were called; no report of the Police Department was produced; no recommendations were received from the police or any other authority, nor was any other evidence presented with respect to any alleged unlawful activities. Apparently based upon the record as hereinabove set forth, and the testimony of Officer McGuire, a motion to deny the application for renewal was unanimously adopted.

Therefore, as stated hereinabove, the sole, meritorious and decisive issue, which I consider dispositive hereof, is whether the action of the respondent at its June 20 meeting constituted a final action, and whether the resolution of June 24, seeking to rescind, set aside or override such action, was effective and valid. An examination of the minutes of the June 20 meeting will disclose that the subject application for renewal was considered concurrently with an application for renewal of a plenary retail consumption license made by one Frank Foti, t/a Market Tavern. A detailed resume of the proceedings at the June 20 meeting and at the June 24 meeting has been delineated in my Hearer's Report in the appeal of Foti v. Elizabeth, Bulletin 1553, Item 1, which is being filed simultaneously with this Report. At the hearing on that appeal eight members of the Council testified with respect to the proceedings on June 20. None of the councilmen was produced at the instant appeal. However, since their testimony applies with equal force to the appeal under consideration, it is well to refer to their testimony in that hearing as it relates to the issue herein. The testimony of Council President Mary D. Gillen, and corroborated by a number of the other councilmen, is particularly enlightening. She stated that, during the consideration of the appellants' application, six councilmen were present and Councilman O'Keefe arrived after the action was taken. She then stated that it was understood by her and the

other councilmen present that the vote for the renewal of both the Foti and the Ashen applications were final votes, and the only thing then required to be done was the preparation of a resolution form by the law department. She repeated that, at the time the vote was taken, it was considered as final and irrevocable and not subject to further consideration at any future meeting.

My examination of the minutes of the June 20 meeting, fortified by the record itself and the forthright and unequivocal testimony of the councilmen in the Foti case, satisfies me that the vote for renewal was unconditional, dispositive and final. Nor was there any action by vote or resolution on June 20 or June 24 to rescind such action. It appears that the respondent simply ignored its action on June 20, when it voted its resolution to deny, on June 24.

It has been long established that, where an issuing authority reaches a final determination on an application for a license or renewal thereof, in the absence of mistake of law or fact or fraud perpetrated upon the issuing authority (not claimed herein), it may not reconsider its action. West End Club v. Newark, Bulletin 1524, Item 1, citing Essex County Retail Liquor Stores Assn. v. Newark et al., Bulletin 1457, Item 3; Kaighn et al. v. Union Beach, Bulletin 1217, Item 1; Lantz v. Hightstown, 46 N.J.L. 102; White v. Atlantic City et al., 62 N.J.L. 644; Gulnac v. Board of Chosen Freeholders, 74 N.J.L. 543. This doctrine has been followed in this Division since the beginning of its administration of alcoholic beverage control. See Re Hendrickson, Bulletin 47, Item 10; Plager v. Atlantic City, Bulletin 80, Item 11; Tyler's Country Club, Inc. v. Woodbridge, Bulletin 1311, Item 1.

Therefore, since the vote of June 20 was a final and decisive vote on the application for renewal, it follows that the complained of action on June 24 was clearly ineffective and invalid.

Since the dispositive issue has been identified and determined, it is unnecessary to discuss the matters raised in the pleadings and in the memoranda filed by opposing counsel. Accordingly, I recommend that the action of the respondent in its June 24, 1963, resolution, denying renewal of appellants' license, is reversed and that it be required to issue a renewal license for the current year, in accordance with its motion of June 20, 1963.

Conclusions and Order

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

Having carefully considered the evidence adduced at the hearing, together with the exhibits, the written arguments of counsel contained in their memoranda, 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 30th day of January,
1964,

ORDERED that the action of the respondent be and the same is hereby reversed and respondent is hereby directed to issue a renewal license for the current year to appellants, in accordance with its motion of June 20, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. APPELLATE DECISIONS - WEITZMAN v. CHERRY HILL.

ARTHUR E. WEITZMAN,)	
Appellant,)	
v.	)	ON APPEAL
	)	ORDER
BOARD OF COMMISSIONERS OF THE)	
TOWNSHIP OF CHERRY HILL,)	
Respondent.)	

David Novack, Esq., Attorney for Appellant.
Warren C. Douglas, Esq., Attorney for Respondent.

BY THE ACTING DIRECTOR:

Appellant appeals from denial by respondent on September 9, 1963, of his application for transfer of Plenary Retail Distribution License D-4 from Cherry Hill Liquor Store, Inc., for premises Cherry Hill Mall, to appellant for premises S/S of Route #70, 300 ft. west of Sawmill Road, Cherry Hill.

Prior to the hearing on appeal, by letter of January 23, 1964, appellant advised me that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 28th day of January 1964,

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

EMERSON A. TSCHUPP
ACTING DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - PRIOR SIMILAR RECORD - LICENSE SUSPENDED 25
 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

CHARLES R. MANDEL AND CEIL Z. MANDEL)
 t/a IMPERIAL BAR & GRILL)
 459 Ocean Avenue)
 Jersey City 5, N. J.)

CONCLUSIONS
 AND ORDER

Holders of Plenary Retail Consumption)
 License C-357, issued by the Municipal)
 Board of Alcoholic Beverage Control of)
 the City of Jersey City.)

 Licensees, by Charles R. Mandel, Pro se.
 David S. Piltzer, Esq., Appearing for the Division of Alcoholic
 Beverage Control.

BY THE ACTING DIRECTOR:

Licensees plead non vult to a charge alleging that on
 January 6, 1964, they possessed alcoholic beverages in two
 bottles bearing labels which did not truly describe their
 contents, in violation of Rule 27 of State Regulation No. 20.

Licensees have a previous record of suspension of
 license by the Director for fifty-five days, effective July 24,
 1962, for similar violation. Re Mandel, Bulletin 1472, Item 2.
 In addition, the license of Charles R. Mandel (then in partnership
 with Ely S. Mandel) for the same premises was suspended by the
 municipal issuing authority for five days, effective October 1,
 1951, for sale to minors and (then in partnership with Roslyn
 E. Mandel) by the Director for fifteen days, effective July 14,
 1958, for hours violation and permitting a punchboard on the
 licensed premises. Re Mandel, Bulletin 1238, Item 6. Again, in
 partnership with Ely S. Mandel and Roslyn E. Mandel, the license
 was suspended by the Director for thirty days, effective
 November 12, 1958, for sale to minor. Re Mandel, Bulletin 1254,
 Item 3.

The prior record of suspensions of license for dis-
 similar violation occurring more than five years ago disregarded
 but the prior record of similar violation within the past five
 years considered, the license will be suspended for twenty-five
 days, with remission of five days for the plea entered, leaving
 a net suspension of twenty days. Re Sanderlin, Bulletin 1484,
 Item 4.

Accordingly, it is, on this 29th day of January, 1964,

ORDERED that Plenary Retail Consumption License C-357,
 issued by the Municipal Board of Alcoholic Beverage Control of
 the City of Jersey City to Charles R. Mandel and Ceil Z. Mandel,
 t/a Imperial Bar & Grill, for premises 459 Ocean Avenue, Jersey
 City, be and the same is hereby suspended for twenty (20) days,
 commencing at 2:00 a.m. Wednesday, February 5, 1964, and
 terminating at 2:00 a.m. Tuesday, February 25, 1964.

EMERSON A. TSCHUPP
 ACTING DIRECTOR

5. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto.Susp. #239)

In the Matter of a Petition to Lift
the Automatic Suspension of Plenary
Retail Distribution License D-3,
issued by the Borough Council of
the Borough of South River to)ON PETITION
ORDERJACKSON LIQUORS, INC.
t/a JACKSON LIQUOR
64 Jackson Street
South River, N. J.)-----
Edwin A. Kolodziej, Esq., Attorney for Petitioner.

BY THE ACTING DIRECTOR:

It appears from the petition filed herein and the records of this Division that on January 7, 1964, John Anthony Giera, president and treasurer of the licensee-petitioner, was fined \$75 and \$10 costs in the South River Municipal Court after being found guilty of a charge of sale of alcoholic beverage to a minor on December 5, 1963, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after such disciplinary proceedings have been concluded. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re: Madison Narrow Fabrics, Bulletin 1537, Item 7.

Accordingly, it is, on this 22d day of January, 1964,

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

EMERSON A. TSCHUPP
ACTING DIRECTOR

6. DISQUALIFICATION REMOVAL PROCEEDINGS - PETIT LARCENY -
ORDER DENYING PETITION.

In the Matter of an Application to)	
Remove Disqualification because of a	)	CONCLUSIONS
Conviction, pursuant to R.S. 33:1-31.2.	)	AND ORDER

Case No. 1784)

Rinaldo and Rinaldo, Esqs., by Anthony D. Rinaldo, Esq.,
Attorneys for Petitioner.

BY THE ACTING DIRECTOR:

Petitioner's criminal record discloses that he was convicted in a local magistrate's court on August 13, 1956, for petit larceny (\$39.90 from a coin box of an amusement machine) and on November 15, 1956 for petit larceny (two tires and wheels from a parked automobile); that on his first conviction, he was fined \$25; that on his second conviction, he was fined \$250 and, in default thereof, was sentenced to serve eighty-four days in a county jail.

The crime of petit larceny involves the element of moral turpitude. See Raphalides v. N. J. Dept. of Civil Service, 80 N.J. Super. 407 (App. Div. 1963), wherein it was held:

"Larceny was a felony at common law and, whether grand or petit, is uniformly held to involve moral turpitude. 52 C.J.S. Larceny, sec. 60, p. 851; Bufalino v. Irvine, 103 F. 2d 830 (10 Cir. 1939); Orlando v. Robinson, 262 F. 2d 850 (7 Cir. 1959); Bell v. Commonwealth, 167 Va. 526, 189 S.E. 441 (Sup. Ct. App. 1937)."

See also Quilodran-Brau v. Holland, 232 F. 2d 183 (3 Cir. 1956), wherein it was held:

"It is well settled as a matter of law that the crime of larceny is one involving moral turpitude regardless of the value of that which is stolen. See, e.g., Tillingham v. Edmead, 1 Cir., 1929, 31 F. 2d 81 (15 dollars); Wilson v. Carr, 9 Cir., 1930, 41 F. 2d 704 (petit larceny); Pino v. Nicolls, 1 Cir., 1954, 215 F. 2d 237 (a dozen golf balls), reversed on other grounds, Pino v. Landon, 1955, 349 U.S. 901, 75 S.Ct. 576, 99 L. Ed. 1273; United States ex rel. Ventura v. Shaughnessy, 2 Cir., 1955, 219 F. 2d 249 (two sacks of corn meal); United States ex rel. Chartrand v. Karnuth, D.C.W.D.N.Y. 1940, 31 F. Supp. 799 (shoes valued at 12 dollars)."

See also Severini v. Division of Alcoholic Beverage Control, 82 N.J. Super 1 (App. Div. 1963), reprinted in Bulletin 1547, Item 1.

Petitioner, by reason of his aforesaid convictions, was rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

The statute under which relief may be afforded petitioner (R.S. 33:1-31.2) requires satisfactory proof, among other things, that petitioner has conducted himself in a law-abiding manner for at least five years last past. The record

herein discloses that on July 12, 1963, petitioner was arrested by a police officer on a charge of hindering an investigation of a licensed premises, in violation of R.S. 33:1-35, and that on July 19, 1963, he was convicted in a local magistrate's court on said charge, a misdemeanor under the Alcoholic Beverage Law (R.S. 33:1-51), and was fined \$10. Irrespective of the question whether the crime of which he was convicted on July 19, 1963 involved the element of moral turpitude, it thus appears that petitioner has been convicted of a crime within the past five years. Hence, I cannot find that he has been law-abiding during that period. Re Case No. 1153, Bulletin 1022, Item 6. The petition must be denied.

Accordingly, it is, on this 3d day of February, 1964,

ORDERED that the petition herein be and the same is hereby denied.

EMERSON A. TSCHUPP
ACTING DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - PRIOR
SIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5
FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

HARRY JOFFE AND NATHAN BARBAROSH)
t/a FERRY WINE & LIQUOR)
158 Ferry Street)
Newark, N. J.)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Distribution)
License D-55, issued by the Municipal)
Board of Alcoholic Beverage Control of)
the City of Newark.)

Harry and George G. Cohn, Esqs., by Harry Cohn, Esq., Attorneys
for Licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

Licensees plead non vult to a charge alleging that on December 30, 1963, they sold six four-fifth quart bottles of whiskey at less than filed price, in violation of Rule 5 of State Regulation No. 30.

Licensees have a previous record of suspension of license by the Director for ten days effective August 3, 1959, for similar violation. Re Joffe and Barbarosh, Bulletin 1296, Item 6.

The prior record considered, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Canal Liquor Co., Inc., Bulletin 1549, Item 2.

Accordingly, it is, on this 27th day of January, 1964,

ORDERED that Plenary Retail Distribution License D-55,

issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Harry Joffe and Nathan Barbarosh, t/a Ferry Wine & Liquor, for premises 158 Ferry Street, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. Monday, February 3, 1964, and terminating at 9:00 a.m. Tuesday, February 18, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

8. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

GREEN LANTERN, INC.
325 Sixteenth Avenue
Newark, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-836, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Newark.

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

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that it permitted gambling, viz., the acceptance of numbers bets on the licensed premises on October 31, November 6 and 13, 1964, and horse race bets on October 31, 1963, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re McKernan, Bulletin 1519, Item 2.

Accordingly, it is, on this 28th day of January, 1964,

ORDERED that Plenary Retail Consumption License C-836, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Green Lantern, Inc. for premises 325 Sixteenth Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, February 4, 1964, and terminating at 2:00 a.m. Monday, February 24, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ORDER TERMINATING SUSPENSION
FOR BALANCE OF TERM UPON PROOF OF CORRECTION OF UNLAWFUL
SITUATION.

In the Matter of Disciplinary)
Proceedings against)

LIDO BAR & GRILL, INC.)
60B-60C Branford Place)
Newark 2, N. J.)

ORDER

Holder of Plenary Retail Consumption)
License C-872, issued by the Municipal)
Board of Alcoholic Beverage Control of)
the City of Newark and transferred)
during the pendency of these proceedings to)

BRANFORD LIDO, INC.)

for the same premises.

Samuel Raffaello, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

On November 18, 1963, I entered an order suspending the license herein for the balance of its term, commencing on November 25, 1963, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the then unlawful situation (undisclosed interests in the license and false statements in the license application) for lifting of the suspension on or after 2:00 a.m. Friday, December 20, 1963, after the license had been suspended for twenty-five days. Re Lido Bar & Grill, Inc., Bulletin 1544, Item 2.

It appearing from verified petition submitted by the licensee, Branford Lido, Inc., to whom the license was transferred effective January 31, 1964, that the unlawful situation has been corrected, I shall grant the petition requesting termination of the suspension.

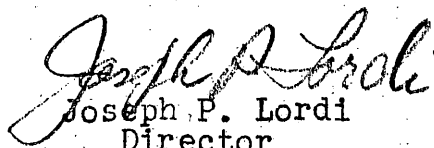
Accordingly, it is, on this 3d day of February, 1964,

ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated, effective 2:00 a.m. Tuesday, February 4, 1964.

Emmerson A. Tschupp
Acting Director

10. STATE LICENSES - NEW APPLICATION FILED

Affiliated Distillers Brands Corp.
1290 Avenue of the Americas
New York, New York
Application filed March 12, 1964 for
Additional Salesroom License for premises
Room 1910, 744 Broad Street, Newark, New
Jersey, on Plenary Wholesale License W-41.


Joseph P. Lordi
Director