

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

May 29, 1963

BULLETIN 1514

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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 1514

May 29, 1963

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY  
(INDECENT MOTION PICTURES) - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against

WHITEHOUSE POST #284 (AMERICAN LEGION)  
Ridge Rd.  
Readington Township  
PO Whitehouse, N. J.

)  
)  
) CONCLUSIONS  
) AND ORDER  
)

Holder of Club License CB-1, issued by the Township Committee of Readington Township.

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Herr & Fisher, Esqs., by C. Ryman Herr, Jr., Esq., Attorneys  
for Licensee.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges as follows:

- "1. On January 31, 1963, you allowed, permitted and suffered in and upon your licensed premises, matter containing obscene, indecent, filthy, lewd, lascivious and disgusting pictures, viz., motion picture films of male and female persons engaged in acts of sexual intercourse, acts of sexual perversion and other lewd and indecent sexual poses, acts and practices; in violation of Rule 17 of State Regulation No. 20.
- "2. On January 31, 1963, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the projection, exhibition and display thereon of the aforementioned six motion picture films; in violation of Rule 5 of State Regulation No. 20."

On the date indicated, State Police officers conducted a raid at the licensed premises, at which time the films referred to in the charges were being shown to a group of fifty-one men who were attending after payment of a \$3 admission charge.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days, effective January 5, 1953, for conducting a "50-50 club" lottery.

The prior record of dissimilar violation occurring more than five years ago disregarded and considering the plea entered, the license will be suspended for ninety days.  
Re Louis Wenzel Jr., Post #147, American Legion, Bulletin 1228, Item 3.

Accordingly, it is, on this 24th day of April, 1963,

ORDERED that Club License CB-1, issued by the Township Committee of the Township of Readington to Whitehouse Post #284 (American Legion) for premises on Ridge Road, Readington Township, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1963, commencing at 2:00 a.m. Tuesday, May 7, 1963, and it is further

ORDERED that any renewal license that may be granted shall be and remain under suspension until 2:00 a.m. Monday, August 5, 1963.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

2. APPELLATE DECISIONS - GENTILE v. MANALAPAN AND CLEMENCICH.

EUGENE GENTILE,	)	
	)	
Appellant,	)	
	)	
v.	)	ON APPEAL
	)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE	)	AND ORDER
TOWNSHIP OF MANALAPAN AND	)	
JULIUS CLEMENCICH,	)	
	)	
Respondents.	)	

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Robert A. McKinley, Esq., Attorney for Appellant.  
 Samuel S. Sagotsky, Esq., Attorney for Respondent Township Committee.  
 Harry Sagotsky, Esq., Attorney for Respondent Julius Clemencich

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the grant of a plenary retail distribution license to respondent Clemencich, and the denial of such license to appellant by a vote of 2-0, the third Committeeman (Sobechko) not participating by reason of disqualifying interest in a retail licensed business.

"This is the third appeal to this Division in this costly marathon engaged in by contesting applicants for a single plenary retail distribution license available and the respondent Township Committee. The proceedings relating to the consideration of the proposed issuance of this license have now extended over a period of several years, and the time for terminal and conclusive action is at hand. The previous appeals are reported in Clemencich v. Manalapan and Gentile, Bulletin 1419, Item 1 (appeal from grant to Gentile and denial to Clemencich -- reversed as to grant, affirmed as to denial) and Clemencich v. Manalapan, Bulletin 1465, Item 1 (appeal as from denial -- remanded for reconsideration).

"After the hearing on the last appeal the matter was remanded to the respondent Township with the following injunction set forth in the Hearer's Report and adopted by the Director:

'However, I would recommend that this matter be remanded to respondent for its reconsideration upon the merits, and for its action within a reasonable time from the date of service upon it of the Order of Remand. At the present hearing on appeal, the only party properly before me is, of course, the appellant herein. Justice and fairness to all parties would suggest that Gentile, Nicholas and Mrs. Maloney be then afforded an opportunity to reapply if they desire, upon compliance with the statutory requirements.

'Perhaps at this time, too, Committeeman Sobechko will have corrected any deficiencies which may have existed on January 25, 1962 with respect to his eligibility to participate in these proceedings, so that the full Committee may act hereon.

'It is further recommended that the respondent be ordered to act with dispatch, so that its action or inaction, within a reasonable time, may provide the basis for such other proceedings as may be thereby indicated. It is also suggested that the Committee take into consideration the paramount issue of public necessity and convenience, as well as the best interests of the community, in its determination.\*\*\*  
Clemencich v. Manalapan, supra.

The order further stated that the within appeal 'be and the same is hereby remanded to respondent Township Committee for its further action consistent with this order and with particular consideration of and emphasis upon the specific recommendations in the Hearer's Report herein adopted.'

'This matter was then reconsidered by the respondent Committee at its meeting on July 26, 1962, and a copy of the minutes of that meeting, in evidence herein, reflects a full and careful consideration of the four applications for the said license. Thereupon the following resolution was adopted:

'WHEREAS, Four applications for a plenary retail distribution license have been received by the Township Committee of the Township of Manalapan, County of Monmouth, State of New Jersey, and

'WHEREAS, A great deal of deliberation and discussion has been held regarding all four of these applications for a plenary retail distribution license, and

'WHEREAS, It has finally been decided by the Township Committee of the Township of Manalapan, County of Monmouth, State of New Jersey, that the granting of a plenary retail distribution license to Julius Clemencich for premises on Hwy. 9, in Manalapan Township, will serve a Public Convenience and will be in the best interest of the Township of Manalapan.

'NOW, THEREFORE, BE IT RESOLVED, By the Township Committee of the Township of Manalapan, County of Monmouth, State of New Jersey, that plenary retail distribution license #1 be and hereby is awarded to Mr. Julius Clemencich for premises located on Hwy. 9, in Manalapan Township, and

BE IT FURTHER RESOLVED, That the Clerk of said Township of Manalapan be and hereby is authorized to issue plenary retail distribution license #1 to Mr. Julius Clemencich for premises located on Hwy. 9, in Manalapan Township.

Upon roll call, Mayor Kerwin and Mr. Cycak both voted Aye.

A motion was then made by Mr. Cycak seconded by Mayor Kerwin and passed, that the certified checks of \$300.00 each be returned to the people filing the three other applications for a plenary retail distribution license.

Upon roll call, Mayor Kerwin and Mr. Cycak both voted Aye.

The petition of appeal filed herein by Gentile (one of the rejected applicants) urges reversal of the respondent Township's action for the reasons which may be summarized as follows:

1. His attorney requested an adjournment of the meeting to a later date in order to permit one of the Township Committeemen (James Sobechko) to divest himself of his interest in a tavern business so that the entire Township Committee could act upon the applications. The respondent Committee refused to grant this adjournment and considered itself bound by the imperative provisions of the remand order of this Division;
2. Respondent Committeeman Walter Cycak was motivated by bias and prejudice against the appellant because of an alleged statement made by him to the appellant on January 30, 1958, when the appellant sought to have him resign from the Committee. At that time Committeeman Cycak is alleged to have stated 'I'll make you pay through the nose for that, Gentile.' Appellant charges that this bias continued up to and including the date of this hearing and precluded a fair and impartial consideration of his application;
3. Appellant was not granted a full opportunity of a public hearing with respect to his application and more particularly with reference to his alleged right to examine opponents of his application for the said license;
4. Respondent Committee 'refused, failed, and neglected to furnish a copy of said minutes' to the appellant or his attorney after the date of the meeting for inspection;
5. That the decision of the Committee to issue the aforementioned license to the respondent Julius Clemencich 'was not based on public necessity and public convenience but was based on public sentiment because of the fact that the respondent Clemencich had filed a petition with approximately two hundred (200) signatures favoring the issuance of the license

to respondent, Clemencich. This decision is contradictory on its face in that although the respondent Clemencich had a petition with approximately two hundred (200) signatures favorable to his application, this appellant filed a petition with four hundred and fifteen (415) signatures favorable to his application.'

"Respondent Township Committee (hereinafter Committee) in its answer to the petition of appeal denied the essential allegations of the petition and sets forth the following affirmative defenses:

1. There was no lawful reason for Committeeman Cycak to disqualify himself;
2. The resolution authorizing the issuance of the license to the respondent Clemencich was based upon public convenience after a full consideration of all of the testimony, after a full and complete hearing, and sets forth in detail the reasoning by which it arrived at its decision;
3. There was no obligation to furnish appellant with a copy of the minutes of the meeting; that, furthermore, the appellant had full and complete access for the purpose of reading and copying said minutes;
4. That the respondent Committee acted with dispatch pursuant to the Order of Remand of this Division;
5. That it acted in accordance with the law and 'did exercise its sound discretion as required by law in granting the application to one Julius Clemencich\*\*\*' and, therefore, requests that the petition of appeal be dismissed.

"The respondent Julius Clemencich also filed an answer to the petition in which he sets forth the following:

1. '\*\*\*The appellant was permitted as a matter of courtesy, and not as a matter of right, to re-apply the third time for a liquor license. The Township Committee found, as a matter of fact, in favor of Julius Clemencich that it was a public necessity, a public convenience, and for the best interest of the Township to issue the plenary retail distribution license to Julius Clemencich;'
2. James Sobechko had not legally divested himself of his interest in a tavern license and, therefore, the action at this time by the majority of the respondent Committee was proper and within its sound judgment;
3. That, contrary to the allegation of the appellant of prejudice, '\*\*\* the appellant was prejudiced against Walter Cycak and Walter Cycak was not prejudiced against the appellant'; that, furthermore, the matter of prejudice was not raised in the prior hearings;

4. That the minutes, and particularly the adopted resolution, set forth the reasons upon which the action of the respondent Committee was based;
5. That the respondent Committee complied with the remand order with dispatch and in the manner directed.

"In both answers hereinabove referred to, respondents moved to dismiss the appellant's appeal on the ground that the appellant did not file and did not serve his notice of appeal and his petition of appeal within thirty days either on this Division or on the respondents.

"At the opening of the hearing before me, attorneys for the respondent Committee and Clemencich argued the above motion and pointed out that the operative resolution was passed on July 26, 1962; that a notice of appeal was served upon them on August 27, 1962, which is thirty-two days after the effective date of the Committee's action.

"In answer thereto, the attorney for the appellant presented in evidence an affidavit of mailing which reflects the fact that on August 25, 1962 (a Saturday), the affiant deposited in the U.S. Postoffice at Newark a sealed envelope, with postage prepaid, certified mail, return receipt requested, addressed to the respondent. It is admitted that these letters were received by the respondents, and notice was received by this Division by personal service on August 27, 1962.

"Rule 3 of State Regulation No. 15 (based on the provisions of R.S. 33:1-22 and 26) provides in part as follows:

"Appeals from the issuance of a license and from the granting of an application for the extension or transfer of a license must be taken within thirty (30) days from the date of the action appealed from; all other appeals must be taken within thirty (30) days after the service or mailing of notice by the municipal issuing authority of the action appealed from."

This Rule must be considered in the light of general rules of procedure applicable in our civil courts as well as to administrative agencies. August 25 would have been the thirtieth day, or the last date within which this appeal could have been filed within the directive of this Rule. However, this was a Saturday and Saturdays are considered public holidays. R.S. 36:1-1.1.

"Where, by statute, an act is due, arithmetically, on a date which turns out to be a legal holiday, it may be lawfully performed on the following day. Cf. Poetz v. Mix, 7 N.J. 436; Martinell v. Martinell, 21 N.J. 341. See also R.R. 1:27.

"The Division offices were closed on Saturday, and the next available day would have been August 27 when in fact the notice and petition of appeal were received. This Rule must be applied with a fair recognition of the fact that justice to litigants is always a polestar. Therefore, I recommend that the motion to dismiss the appeal on this ground be denied.

"This was an appeal de novo, with full opportunity for counsel to be heard and to present evidence under oath and cross examine the witnesses. Rule 6 of State Regulation No. 15;

N.J.S.A. 33:1-22; 33:1-26; Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598; Sideroff et al. v. Jersey City and Niebanck, Bulletin 1310, Item 1.

I

"The primary thesis of the appellant in this appeal is his allegation that Committeeman Walter Cycak was biased and prejudiced against him. The main thrust of the purported bias and prejudice was a threat alleged to have been made by Cycak on January 30, 1958, at the conclusion of a meeting during which the appellant had demanded that Cycak resign as police commissioner because of his employment as a bartender for a liquor licensee. At that time Cycak is alleged to have stated 'I'll make you pay through the nose for that, Gentile.' Appellant contends that this prejudice continued during the past five years and remained in this committeeman's mind and motivated his action in favoring the application of respondent Clemencich over that of the appellant.

"Appellant, testifying in support of this charge, stated that at the January 1958 meeting he challenged Cycak's right to be a police commissioner and continue his employment as a bartender at the same time. This, he says, angered Cycak who followed him to the front porch of the town meeting-house and made the statement aforesaid. He further stated that this statement was made in the presence of a number of witnesses. On cross examination this witness was asked whether he had any prejudice against Cycak. This he denied. With further reference to his relations with Cycak, appellant admitted that his relations since 1958 with Cycak were friendly.

"In support of the testimony relating to the 1958 meeting the appellant called one of the respondents, Catherine Nicholas, John Silvio, Claudio Silvio and his wife Pauline Gentile, all of whom testified that they had attended the meeting and heard Cycak make the statement attributed to him.

"Cycak, testifying in behalf of the respondent, categorically denied making the said statement or making any threats to Gentile. Cycak, who is the present Mayor of Manalapan Township, set forth in detail the reasons for his voting for Clemencich and insisted that his position and action with respect to the applications considered were consistent, based upon the public convenience and necessity of the community. He referred to the minutes of July 26, 1962, in which he set forth the reasons for his vote. Mr. Cycak, after giving the reasons for voting against the applications of Gentile, Mrs. Thomas Maloney and Mr. and Mrs. Nicholas, said that his vote would go to Clemencich at that time, which is as it had on the previous occasions. The minutes further summarize his reasons, which are set forth hereinafter in this Report.

"Cycak emphasized that his action was not based upon any prejudice or bias against Gentile but, rather, was based on the fact that, in addition to the reasons already stated, Clemencich had a more desirable location in which there were no other licenses; also that there was a new housing project being erected known as the Holiday Estates, in which there were ninety new buildings already occupied and over one hundred buildings in the process of construction.

"Respondent Committee also produced, in defense of this

charge of bias and prejudice, one Mrs. Cora Bazzoni who testified that she attended the meeting of January 1958 as a reporter for a local newspaper. She stated that Cycak said 'Good night' and left the premises immediately, and that at no time during the evening did she ever hear him make any threats or recriminatory statements against Gentile. Respondent Clemencich testified that he had attended the meeting in January 1962 and did not hear any objection raised by the attorney for appellant to Cycak's right or qualification to act as a committeeman.

"Thus we have a sharp conflict between the witnesses on behalf of the appellant and those testifying on behalf of the respondent Committee with respect to this charge of bias and prejudice.

"It is conceded that no affidavit of bias and prejudice was presented at any time by the appellant or anyone in his behalf to the respondent Committee challenging the right of Cycak to sit as a committeeman in the consideration of these applications. There is, indeed, a substantial conflict in the testimony as to whether the question of bias and prejudice was ever raised before July 1962. There is nothing that has been brought to my attention, either in the minutes or anywhere else, indicating such objection other than the testimony of Gentile.

"Even in biblical times, it will be recalled that Jethro, in assisting Moses in appointing judges, insisted that they be men of truth, hating injustice (Exodus 18, 21). Also, a judge may not sit in judgment where his friend or his enemy was a party (M.T. Sanhedrin, II, 7).

"The charge of bias and prejudice is a very serious charge when it concerns judges or those standing in the position of judges in judicial or quasi-judicial proceedings. The position of the judge is to discover objective truth. If the judge has any personal bias, such objectivity becomes distorted and true justice cannot prevail. Cf. Cardozo in 'Nature of the Judicial Process', 173. Since the respondent Committee was sitting in a quasi-judicial capacity, these principles would similarly apply. Freehold v. Gelber, 26 N.J. Sup. 388.

"The weakness in the present charge is that there has not been any affidavit of bias and prejudice filed prior to this appeal. The sense of appellant's contention is that the personal bias of Cycak continued from 1958 to July 1962, so that he was prejudiced against appellant in his consideration of these applications. Thus he could not decide the issue fairly and impartially.

"In this connection the Court, in U.S. v. Valenti, 120 F. Sup. 80, at p. 90, quotes Judge Frank as follows:

'\*\*\* If, however, "bias" and "partiality" be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will. \*\*\* Only death yields complete dispassionateness, for such dispassionateness signifies utter indifference.' In re J.P. Linahan, 2 Cir., 1942, 138 F. 2d 650.

"The controlling principle in cases relating to charges of bias seems to be that bias became immaterial where the board relied solely and directly on the evidence in the record for its

final determination. Cf. NLRB v. Air Associates, Inc., 121 F. 2d 586, 588.

"It has been held that bias and prejudice or improper motivation of public officials may not be presumed but must be established by convincing proof. Levine v. Harrison, Bulletin 1032, Item 2; Benedetti v. Trenton, Bulletin 1040, Item 1.

"My careful consideration of the facts and circumstances herein leads me to the conclusion that the appellant has not proved, by a fair preponderance of the believable evidence, that Cycak was biased and prejudiced against him; that, in any event, there is no convincing proof that any alleged bias and prejudice that may have existed in 1958 continued until the date of the last hearing in July 1962 when he was called upon to vote on the applications for this license. I am persuaded, from an evaluation of the evidence before me, that Cycak acted fairly, impartially and with due regard for the facts and the evidence before him in voting to approve the application of Clemencich. Gross v. Newark, Bulletin 1218, Item 1. I, therefore, must reject this contention of the appellant. Cf. U.S. v. Valenti, *supra*; Dan's, Administrative Law Treatise, Vol. 2, sec. 12.02.

## II

"Appellant raises the additional charge on this appeal that the decision of the respondent Committee to issue the aforementioned license to respondent Clemencich was not based on public necessity and public convenience. In furtherance thereof, he produced evidence to show that a petition had been filed with respondent Committee bearing approximately 200 signatures favoring the issuance of a license to respondent Clemencich. And he asserts that the appellant had filed a petition with 415 signatures favorable to his application.

"The minutes which are in evidence reflect the fact that a full and complete hearing on the four applications was held by the respondent Committee prior to the operative resolution hereinbefore referred to. The meeting of July 26, 1962, was held pursuant to the specific directive of this Division, contained in the Order of Remand (Clemencich v. Manalapan, *supra*). As we quoted in the earlier part of this Report, the Director recommended that the respondent be ordered to act with dispatch. The Director also suggested that all applicants for a license be heard in the interests of justice and fairness to all parties. This included the appellant. It was further suggested that the Committee take into consideration the paramount issue of public necessity and convenience as well as the best interests of the community in its determination.

"The minutes of that meeting appear to reflect such action. Acting upon the imperative of the Order of Remand, the respondent Committee held its meeting of July 26 upon proper notice and, quite properly as well, denied a request of counsel for appellant for a further adjournment. This application was made for the stated reason that Committeeman Sobechko was not at that time eligible to vote and that additional time should be given so that he might become eligible.

"It was the feeling of the respondent Committee that the time to act was at hand without any further adjournments, particularly in view of the time lag and the costly appeals

flowing from its prior actions on these applications.

"The appellant testified before me in support of his allegation that the action of the respondent Committee was not consistent with public necessity and convenience. This testimony was clearly unconvincing. On the other hand, the respondent produced Mrs. Regina Smith, Mrs. Frances Kamin, Mrs. Eileen Stroby and Mrs. Josephine McKennon in support of the position taken by the respondent Committee. In addition thereto, it produced Howard L. Woodward who testified that he is a Clerk of the Session of the Old Tennent Church and that the church was opposed to the application of Gentile because it was too close to the church. He stated that there are many thousands of visitors who come to the church for prayer, including many children; that there was also a tavern nearby which adequately served the residents of that immediate area.

"Perhaps the reasons for the Committee's action in voting favorably for the application of Clemencich as against the other applications is best reflected in the statement of reasons made by Mayor Cycak as reported in the July 26, 1962, minutes. Cycak stated that his decision was based on the same factors that he had considered previously in the matter, and that he voted against the following three applications because of the following reasons set forth therein:

'(A) Mrs. Thomas Maloney had applied for a Package License on Hwy. 33 where there were already several bars located. Package goods could be obtained from anyone of these taverns.

'(B) Eugene Gentile had applied for a Package License to be located at Tennent Corners. Since there is a tavern directly across the street from the Gentile property there is no necessity for another one in the same area. Mr. Cycak said that in addition to this the petitions presented against Mr. Gentile had been signed by people living primarily in this section of the Township whereas the petition favoring Mr. Gentile had been signed by Township residents living in other sections of the Township.

'(C) Mr. and Mrs. Nicholas have re-applied for the Package License for their property on Taylors Mill Road and Hwy. 9. In addition to the fact that the Nicholas property was under consideration for a possible jug handle off of Hwy. 9, Mr. Cycak said that the Nicholas had been talking of building a drug store and other stores for quite a long time and yet nothing ever materialized from the talk.

'Mr. Cycak said that his vote would go to Mr. Clemencich at this time, just as it had on the previous occasions. He pointed out that Mr. Clemencich had been the first applicant to officially apply to the Township for a Package License. He said also that Mr. Clemencich had a building ready to house a liquor store if the license was granted to him. In contrast to this, Mr. Cycak said the other three applicants only had plans for proposed buildings and some of these had been pending for quite a number of years.'

"The minutes also show that the then Mayor Kerwin expressed the feeling that a great deal of time and consideration had been given to the granting of this plenary retail distribution license. He stated that he had received many letters and petitions and all of them had been considered at length. He further stated that the respondent Committee did consider the applications on the question of public convenience rather than public necessity. In that regard he pointed out that there were one hundred-and-one new homes at Holiday Estates, Gordon's Corner, and an additional one hundred forty-six homes to be completed there during 1962 and 1963. It was for these reasons that he decided to second the resolution offered by Cycak which was thereupon adopted. A detailed discussion and summary of respondent Committee's reasoning is reported in Clemencich v. Manalapan, supra.

"As was pointed out in Clemencich v. Manalapan, supra, the issuing authority's discretionary powers in matters of this kind are broad, and it has the power to determine, in the first instance, whether or not a license should be granted. The burden of proving that the respondent abused its discretion falls upon the appellant and he must make out his case by a preponderance of the proofs. Family Finance Corp. v. Gaffney, 11 N.J. 565, 575 (1953); O'Hara and Yuttal v. West Orange, Bulletin 1483, Item 2. Since this is discretionary, the appellant must show manifest error or abuse of discretion below. Nordco v. State, 43 N.J. Super. 277, at 287; Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598, 600; First National Stores, Inc. v. Dumont, Bulletin 1451, Item 1.

"The Director's function on appeals of this type is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1; Larion, Inc. v. Atlantic City, Bulletin 1306, Item 1. The action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' Hudson-Bergen County Retail Liquor Stores Association, Inc. v. Hoboken, 135 N.J.L. 508, at 511. Cf. Fanwood v. Rocco, 59 N.J. Super. 306, 317.

"One of the primary considerations which documented the determination of the respondent Committee to grant the application of the respondent Clemencich was that there were no other similar licenses in the area to be served by him and that, therefore, it would serve the public convenience. This is consistent with a view affirmatively stated in Ward v. Scott, 16 N.J. 16 (1934) where the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the following general principle:

\*\*\* Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: "Universal distrust creates universal incompetence." Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151 \*\*\*.

"I am persuaded that the respondent Committee took into consideration the fact that the building of respondent Clemencich was already in existence and satisfactory for the intended purpose; that the area could conveniently serve a large new housing development; that this area was without adequate facilities of this nature; and that this applicant met the other requirements considered by the respondent Committee. On the basis of its consideration as reflected by the testimony and the exhibits, I conclude that the action of the respondent Committee was based upon the merits of the evidence before it.

### III

"Appellant has energetically argued that the fact that a greater number of persons signed the petition in his behalf was overwhelming, persuasive and should have resulted in favorable action in his behalf by the respondent Committee. A discussion of the force and effect of petitions is presented in Clemencich v. Manalapan, supra. It is sufficient to observe that the evidence discloses that the petitions were considered by the respondent Committee. But it also considered, among other things, the objections of the Old Tennent Church located near the proposed location of appellant, and concluded that these objections were substantial and meritorious and required rejection of appellant's application.

"I have considered the other matters raised in the appellant's petition of appeal and do not find them of substantial merit.

"After reviewing the evidence and arguments of counsel, I conclude that the appellant has failed to sustain the burden of proof in showing that the action of respondent Committee was erroneous. Rule 6 of State Regulation No. 15. Cf. Helms v. Newark et al., Bulletin 1398, Item 3.

"For the reasons aforesaid, it is recommended that an order be entered affirming the action of the respondent Committee and dismissing the appeal."

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

Having carefully considered the entire record herein, including the transcript of testimony, the oral argument of counsel at the conclusion of the hearing, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 15th day of April 1963,

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

EMERSON A. TSCHUPP  
ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ANTHONY KELSEY  
t/a KELSEY'S TAVERN  
236 Wayne St.  
Jersey City, N. J.

)  
)  
) CONCLUSIONS  
) AND ORDER  
)

Holder of Plenary Retail Consumption License C-52, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

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Licensee, Pro se.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 6, 1963, between 12:40 and 1:25 a.m., he sold several six-packs of canned beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for ten days, effective July 9, 1962, for similar violation. Re Kelsey, Bulletin 1470, Item 10.

The prior record considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re McHenry, Bulletin 1492, Item 3.

Accordingly, it is, on this 22d day of April, 1963,

ORDERED that Plenary Retail Consumption License C-52, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Anthony Kelsey, t/a Kelsey's Tavern, for premises 236 Wayne Street, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, April 29, 1963, and terminating at 2:00 a.m. Friday, May 24, 1963.

EMERSON A. TSCHUPP  
ACTING DIRECTOR



5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY  
Labeled - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

THOMAS CORRIDON AND PETER G. MC DERMOTT )  
228 Old Bergen Road )  
Jersey City, N. J. )

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Consumption License C-344, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

Jeremiah J. O'Callaghan, Esq., Attorney for Licensees.  
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensees plead guilty to a charge alleging that on March 14, 1963, 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.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Szymanski, Bulletin 1505, Item 7.

Accordingly, it is, on this 23d day of April, 1963,

ORDERED that Plenary Retail Consumption License C-344, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Thomas Corridon and Peter G. McDermott for premises 228 Old Bergen Road, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, April 30, 1963, and terminating at 2:00 a.m. Friday, May 10, 1963.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ZOTTO'S CORP. )  
t/a "ZOTTO'S" )  
1324 Hamilton Avenue )  
Trenton 9, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-124, issued by the City Council of the City of Trenton )

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Licensee, by Joseph DiEugenio, President, Pro se.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

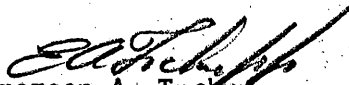
BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 11, 1963, it sold two six-packs of canned beer at less than filed price, in violation of Rule 5 of State Regulation No. 30.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Ginsburg, Bulletin 1498, Item 8.

Accordingly, it is, on this 29th day of April, 1963,

ORDERED that Plenary Retail Consumption License C-124, issued by the City Council of the City of Trenton to Zotto's, Inc., t/a "Zotto's", for premises 1324 Hamilton Avenue, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, May 6, 1963, and terminating at 2:00 a.m. Saturday, May 11, 1963.

  
Emerson A. Tschupp,  
Acting Director