

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N. J. 07016

BULLETIN 2109

August 1, 1973

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2109

August 1, 1973

1. APPELLATE DECISIONS - THE BIG TOP CAFE v. NEWARK.

The Big Top Cafe,	)	
	)	
Appellant,	)	
v.	)	On Appeal
	)	
Municipal Board of Alcoholic	)	CONCLUSIONS
Beverage Control of the City	)	and
of Newark,	)	ORDER
Respondent.	)	

-----  
Joseph V. Melillo, Esq., Attorney for Appellant  
William H. Walls, Esq., by Salvatore Perillo, Esq., Attorney  
for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which by resolution adopted January 29, 1973 suspended appellant's plenary retail consumption license for premises 257 Clifton Avenue, Newark, for ten days effective March 12, 1973, upon a finding that on Friday, July 22, 1972, appellant permitted its licensed premises to remain open after the required hour for closing, i.e., 2:00 a.m., in violation of Section 4:1-1 of the local ordinance.

Upon filing of the appeal an order was entered by the Director on March 9, 1973, staying respondent's order of suspension until further order of the Director.

Appellant denied the factual allegations upon which the Board based its decision and contended the licensed premises had been lawfully closed as required. The Board answered that its findings were based upon the factual testimony before it upon which its conclusions were based.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. By stipulation the parties relied upon the stenographic transcript of the proceedings held before the Board pursuant to Rule 8 of State Regulation No.15.

In support of the charge, the record reflects the following: Detective Alexander Melillo was conducting a routine check of appellant's premises at 2:30 a.m. July 22, 1972, and observed from the exterior what appeared to be patrons within. The door was locked but was opened by the owner upon the detective's knock. It appeared to the detective that the bartender was in process of cleaning the premises, but three persons were standing by the front door. He saw neither alcoholic beverages nor glasses on the bar. The premises were unlit except for a light over the bar. Upon inquiry he learned that the two men waiting by the door were ununiformed police officers of the City of Newark, awaiting the departure of the owner. He acknowledged that there had been incidents of crime in the area.

In defense, a principal officer of corporate appellant and two police officers gave the following account: Both officers, not being then on active duty, visited the premises as patrons some time before closing which occurred prior to 2:00 o'clock when all persons other than themselves, the owner and bartender departed. The officers remained there at the request of the corporate officer solely to accompany him home (two blocks away) as a protection both for him personally and for the receipts of the business which were substantial following the night's activity. This request was not unusual as one or the other had afforded the owner such protection a dozen or more times in the past. There were incidents of crime in the area and, although they were off-duty, they considered it their duty to protect the public to be a continuous one.

The single issue is narrowed to the interpretation of the controlling section of the ordinance applicable. That ordinance requires retail consumption licensed premises to be closed during the hours that the sale of alcoholic beverages is not permitted, i.e., between 2:00 a.m. and 7:00 a.m.

Were the two Newark policemen in the premises as patrons after the proscribed closing hour, the alleged violation could not have been seriously questioned. Premises must be closed to patrons during prohibited hours. Sena v. Union Beach, Bulletin 1953, Item 5; Elmora Liquors, Inc. v. Elizabeth, Bulletin 1955, Item 3.

Ordinances pertaining to closing hours have uniformly been interpreted to mean that, if there be anyone found on the premises, it shall be deemed a violation; the closing-of-premises provision means that all members of the public must be excluded. P. J. Mullins Bar, Inc. v. Paterson, Bulletin 1968, Item 1; Oliver Twist Pub and Lounge v. North Bergen, Bulletin 1869, Item 3.

Hence, from the factual background the issue may be further distilled to the question: were the policemen found in the premises patrons or public servants. Unquestionably, to the hour of closing the policemen were patrons. Following the closing hour, when standing by the door awaiting the departure of the owner to escort him and his receipts to his home as protection against possible crime, their role and character changed from those of patrons to policemen.

It is to be noted that Justice Francis, speaking for the court in Lyons Farms Tavern v. Newark, 55 N.J. 292, 304 (1970), said:

"... We are living in a parlous period and applications such as this must be reviewed in the ambience of the times. It would not do to apply the same test in populous Newark as would be utilized in a rural or suburban community. Time, place and circumstances make such an approach unrealistic."

Had appellant called the police requesting escort and had policemen responded to that request and had entered the premises, there would have been no violation. Cf. Hollie v. Newark, Bulletin 1962, Item 1. That policemen were fortuitously present and agreeable to do the same service does not change the purpose of their presence from that of on-duty policemen in response. Once the premises were cleared and the doorway locked, service of alcoholic beverages discontinued, the request having been made for police protection, the presence of the policemen became official in character. They were in effect not patrons but the agents of the licensee, and their presence in the premises for the aforementioned purpose was clearly lawful and not violative of the ordinance. This was clearly an emergent situation recognized in prior cases. See Town House, Inc. v. Montclair, Bulletin 792, Item 3.

I find the record completely devoid of testimony to substantiate the charge. The only witness appearing in support of the charge offered nothing in contradiction to the uncontroverted evidence advanced by appellant. Guilt was not established by a fair preponderance of the evidence.

It is therefore determined that the Board has failed to establish guilt by a fair preponderance of the evidence. Accordingly it is recommended that an order be entered reversing the action of the Board and dismissing the said charge.

#### Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the attorney for the Board, pursuant to Rule 14 of State Regulation No. 15. Written answers to such exceptions with supportive argument were filed by the attorney for appellant.

The exceptions and the answer thereto principally concerned the Hearer's finding that the police officers in the premises as patrons changed their roles to officers of the law as they awaited the departure of the owner. The Board challenged this doctrine with an implication that the officers maintained their patron status, and as such, their mere presence gave rise to the violation. I concur with the Hearer that such a view of police authority and assistance is contrary to the concept that some measure of protection by police officers can be expected when such officers are off-duty.

As the Hearer noted, these premises are located in a high-crime area; therefore, the actions of the police officers must be viewed realistically, within the context of the times, place and circumstance of this matter. See Lyons Farms Tavern v. Newark, supra (55 N.J. 292).

Having carefully considered the entire record herein, including the transcript of the testimony, the Hearer's report, the written exceptions and the written answers thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 31st day of May 1973,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby reversed, and that the charge herein, be and the same is hereby dismissed.

Robert E. Bower  
Director

2. APPELLATE DECISIONS - LIQUOR GIANT v. FAIRFIELD.

Liquor Giant,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS
Mayor and Council of the	)	and
Borough of Fairfield,	)	ORDER
Respondent.	)	

-----)

John J. Greco, Esq., Attorney for Appellant  
 Hoey & San Filippo, Esqs., by W. Eugene San Filippo, Esq.,  
 Attorneys for Respondent  
 Leonard Brass, Esq., Attorney for Objector Essex County Package  
 Stores Association

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Mayor and Council of the Borough of Fairfield (hereinafter Council) which, by unanimous vote, one member abstaining, denied appellant's application for a person-to-person and place-to-place transfer of its plenary retail consumption license from Sun Dance Lodge, Inc., to appellant and from premises 700 Route No. 46 to 630 Route No. 46, Fairfield.

Appellant alleges that the action of the Council was erroneous in that: "...it is not detrimental to the Borough of Fairfield to permit the transfer of the license from person to person and/or place to place."

The Council, in its answer, defended that the transfer was not in the best interest of the municipality because, as the result of a hearing held by it to consider the application it found:

"(A) The proximity to Route 46 as a heavily travelled thoroughfare which, in addition to the traffic within the shopping center itself, the presence of a tavern and liquor store will only increase the traffic safety problems in the area.

(B) The availability of alcoholic beverages for consumption within the shopping center could have a detrimental effect upon families who frequent the center for shopping."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses. Additionally, during the course of the hearing, the transcript of the hearing held by the Council was submitted by the Council and received in evidence. See Rule 8 of State Regulation No. 15.

I shall now consider the evidence on the issue of whether the proposed transfer was or was not in the best interest of the community.

Nancy Paige, who together with her husband Eric Paige, are the sole stockholders of the corporate appellant, testified that she and her husband (also the sole stockholders of Sun Dance Lodge, Inc.) conveyed title to the premises upon which appellant conducted its liquor business, due to the recurring flooding of the premises. Under the terms of the conveyance, it had to vacate the premises.

Thereafter, appellant entered into a lease arrangement with the owners of the Valley Fair building who occupied the main portion of the building as a supermarket for general retail merchandising including various food items. Under the terms of the lease, appellant was to occupy a part of the building as a barroom, wherein it would also sell package goods. Entry to the liquor establishment could be gained through a doorway located in the front of the building facing the highway. Entry could also be made by patrons entering into an enclosed lobby.

Inside the lobby are located two sets of electronically operated doors. One set leads into the proposed liquor establishment. The other set leads into the supermarket. The plans presented to the Council and herein received in evidence indicate that solid walls separate the proposed liquor establishment from the supermarket. Entrance to the supermarket could also be gained through a set of doors facing the parking lot. The business hours of the liquor establishment would correspond substantially with the supermarket's hours of doing business.

On cross examination the witness testified that Sun Dance Lodge sold the property in the year 1970 and retained possession through a year-to-year rental agreement.

Gus Jelardi, who is the manager of the said Valley Fair store, testified that, in the past, he has never experienced any difficulty by reason of the fact that a liquor outlet and a retail food store adjoined each other.

He has encountered no parking problem at the Valley Fair store. In his opinion, the establishment of the proposed liquor outlet would not be detrimental, hazardous or objectionable to the operation of the business which he manages, or to the patrons thereof. It is his view that his patrons would be inconvenienced by the grant of the application.

On cross examination, Jelardi asserted that it would be in the best interests of the residents of Fairfield to permit the establishment of the liquor outlet at the Valley Fair building.

Called as a witness by the respondent, Anthony Ganguzza, president of Valley Fair, identified the lease executed by Valley Fair, as landlord and by the appellant, as the tenant at the proposed location. The lease was received in evidence.

Stephen Szabo, testified that various photographs received in evidence depicted the Valley Fair building, entrance way and parking lot.

On cross examination, the witness testified that, over a period of twenty-four years, he had served the borough in various capacities including that of Mayor. He denied that, in voicing his objections to the proposed transfer at the meeting held by the Borough, he sought to influence the current governing body by reason of the fact that he had previously been a member of the Council.

Szabo admitted that he had sometime prior thereto transferred his interest in a package goods license to a Randolph Evans (who also voiced his objections to the proposed transfer at the hearing held by the Council to consider the application) and that he (Szabo) held a mortgage on the property. Evans paid for the photographs taken by the photographer whom he (Szabo) had recommended.

Parenthetically, it should be noted that, the sole corporate stockholders of the transferor corporation (who, as above noted, are the sole stockholders of the corporate transferee) had heretofore filed an appeal from the action of the Council in denying an application for a person-to-person and place-to-place transfer of its license involving the same locations that are involved in the subject appeal. That appeal, which was taken in the name of the transferor as appellant, was dismissed by order of the Director, dated November 14, 1972, at appellant's request that it be permitted to withdraw that appeal in order to afford appellant an opportunity to file amended application and amended plans with the respondent Council. Sun Dance Lodge, Inc. v. Fairfield, Bulletin 2080, Item 2.

The Council originally denied the application for the transfer after conducting a hearing on September 18, 1972 to consider the application filed by that appellant, namely, Sun Dance Lodge, Inc.

At that hearing several individuals, in addition to Evans and Szabo, articulated their objections to the proposed transfer. I shall capsule their testimony.

John Pagerie testified that he was opposed to the transfer because of the contemplated size of the bar (thirty-two stools); because many teenagers congregate at Valley Fair; and because many women and children patronize Valley Fair.

Frank Leonard was opposed to the locating of a barroom which would have its entrance in close proximity to one of the entrances into the grocery store patronized by many women and children.

Wayne Vitchie and Helga M. Leonard voiced objections substantially to the same effect as those previously made.

A petition objecting to the proposed transfer bearing sixty-three signatures was received in evidence by the Council.

Upon completion of the hearing and after due consideration, the chairman of the Council announced that the Council denied the application for the transfer because: (1) there was insufficient separation of the proposed licensed premises from other mercantile business; and (2) "...the transfer of the license would not be in the best interests of the community in light of the evidence and information we have heard this evening."

At the hearing held by the Council on December 18, 1972, during the course of which the transcript of the previous hearing held by the Council was received in evidence by it, over appellant's objection, the Council reaffirmed its prior action of denial of transfer.

## I

At the outset of the Division hearing, the Council and the objector moved to dismiss this appeal on the ground that the subject appeal was res adjudicata in view of the voluntary dismissal entered in Sun Dance Lodge, Inc. v. Fairfield, supra. That dismissal was not entered with prejudice against appellant's rights. Appellant was permitted to withdraw the previous appeal in order to afford appellant an opportunity to file an amended application and plans with the Council. Subsequently, the matter was reheard by Council on December 18. I find that this motion is without merit and therefore recommend that it be denied.

## II

During the course of the Division hearing, appellant argued against the admission into evidence of the transcript of the hearing held by the Council on September 18, 1972. Although it would undoubtedly have been better practice and preferable for the Council to have followed the procedure outlined in Rule 8 of State Regulation No. 15 by furnishing the Division with a stenographic

transcript of the proceedings before it, upon notice, the transcript was received in evidence because it was felt that the evidence therein elicited was pertinent not only to an adjudication of the subject matter but also, in order to gain an insight concerning what considerations impelled the Council to deny the transfer.

### III

The dispositive issue in these matters is: Did the Council act reasonably and in the best interests of the municipality? It is basic that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in its exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). As the court said in Fanwood v. Rocco, Super. 306, 320 (App. Div. 1960), aff'd 33 N.J. 404 (1960):

"...No person is entitled to [the transfer of a license] as a matter of law...."

and

"...If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial...."

In this connection it may be well to quote further from Fanwood v. Rocco, supra:

"The primary purpose of the act is to promote temperance (R.S. 33:1-59) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Board of Com'rs of City of Hoboken [135 N.J.L. 502 (E. & A. 1947)]. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent.

"The Legislature has entrusted to municipal issuing authorities the initial authority and charged them with the duty to approve or disapprove place-to-place transfers. The action of the Board in either approving or denying the application for such transfer may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.'" Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Hoboken,

135 N.J.L. 502 (E. & A. 1947).

As was stated in Ward v. Scott, 16 N.J. 16, 23 (1954):

"...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 .... And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

In the recent case of Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292, 303 (1970), the court stated:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record...."

#### IV

In considering appellant's contention that the Council failed to make specific findings of fact and the reasons in arriving at its determination, I find that it would have been preferable for the Council to make specific findings of fact and reasons in a carefully drawn resolution. This deficiency was partially rectified by the Council in its answer filed in the subject appeal and was further corrected at this appeal de novo hearing, since the central question is not whether the evidence before the Council was technically sufficient but whether, under all the evidence, the action of the Council was unreasonable or erroneous. The decisive issue in the instant matter is: did the Council err in arriving at its determination. As the court has stated in Hudson Bergen &c., Assn. v. Hoboken, supra:

"...in order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error and that the action of the Board was clearly against the logic and effect of the presented facts."  
(underscore added)

Cf. G.E.L.L. Inc. v. Newark, Bulletin 1911, Item 1.

The error of the Council in failing to fully state its reasons in an appropriate resolution, while procedurally incorrect, was unaccompanied by action clearly against the logic and effect of the presented facts. To find that the error in and of itself would vitiate the action of the Council would render impotent the principal issue involved, i.e., whether or not the transfer of the license to appellant would be to the best interest of the community. The test in granting or withholding a (license) by an issuing authority is public good, not the benefit or detriment to a licensee. Fanwood v. Rocco, supra.

Hence the resultant question: Did the Council take into consideration all of the facts before rendering its decision? "...While the Council's reasons might well have been elaborated and incorporated along with the factual findings in a formal resolution denying the transfer, we fail to see how the appellants were in anyway prejudiced by the omission...." Lublimer v. Paterson, 33 N.J. 428 (1960).

#### V

After considering all of the evidence herein, including the transcript of the proceedings before the Council, it is my opinion that the Council was, in part, influenced by the objections expressed by the residents who articulated their sentiments at both hearings conducted by it in reaching its ultimate determination. This approach has received the approbation of the Supreme Court in Lyons Farms Tavern, Inc. v. Newark, supra.

In conclusion, I observe that, in matters involving transfers of liquor licenses, the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide "the public interest". Lublimer v. Paterson, supra. As noted hereinabove, the Director, in these matters, is governed by the principle that where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, supra; cf. Fanwood v. Rocco, supra (59 N.J. Super. at p.320); Lyons Farms Tavern, Inc. v. Newark, supra.

The Council has, in my opinion, understood its full responsibility and has acted circumspectly and in the reasonable exercise of its discretion in denying said transfer. Absent improper motivation, not proven herein, the action of the Council, based upon such bona fide use of its lawful discretion, must be affirmed.

Therefore, upon consideration of all of the credible evidence herein, including the transcript of the testimony, the

exhibits and the argument of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Council was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

Inasmuch as this specific finding is dispositive of the subject appeal, I find it unnecessary to decide whether the appellant's proposed premises were violative of the statute requiring the separation of liquor sale from certain other mercantile sales, R.S. 33:1-12.1.

Therefore, I recommend that an order be entered affirming the action of the Council and dismissing the appeal.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the argument of counsel and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 31st day of May 1973,

ORDERED that the action of respondent Mayor and Council of the Borough of Fairfield be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Robert E. Bower  
Director

- 3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATION - FRONT - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO CORRECT AFTER SUSPENSION OF 35 DAYS.

In the Matter of Disciplinary )  
 Proceedings against )

Jimmy McGriff's Golden Slipper )  
 of Newark, Inc. )  
 t/a Reflection )  
 57 Branford Place )  
 Newark, N.J., )

CONCLUSIONS  
 and  
 ORDER

Holder of Plenary Retail Consumption )  
 License C-6, issued by the Municipal )  
 Board of Alcoholic Beverage Control )  
 of the City of Newark. )

-----  
 No appearance on behalf of Licensee  
 Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. In your short-form application dated and filed on June 12, 1972 with the Municipal Board of Alcoholic Beverage Control of the City of Newark, upon which you obtained your current plenary retail consumption license in answer to Question No. 8 you, after listing James McGriff and Dolphin Hargrove as the holders of 50% each of your issued and outstanding stock, failed to disclose in answer to Question No. 10 therein a change in facts in your last prior long-form application, viz., to show a change in answer from 'No' to 'Yes' to Question No. 22 in said long-form application which asks: 'Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders? \_\_\_\_\_. If answer is 'Yes', state details \_\_\_\_\_', to show and disclose that Eugene Blocker and Joseph Blocker had such an interest in that they were the real and beneficial owners of 25% each of the issued and outstanding stock listed in the names of James McGriff and Dolphin Hargrove; such evasion and suppression of a material fact being in violation of N.J.S.A. 33:1-25.

- "2. In your aforesaid short-form application for license, you failed to state in answer to Question No. 10 therein a change in facts in your last prior long-form application, viz., a change from 'No' to 'Yes' to Question No. 29 which asks: 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license? \_\_\_\_\_'. If so, state names, addresses and interest of such individuals, partnerships, corporation or associations. \_\_\_\_\_', and to show and disclose that the aforementioned Eugene Blocker and Joseph Blocker had such an interest in that they, indirectly, through the said James McGriff and Dolphin Hargrove, had such an interest, as hereinabove set forth in the license applied for and in the business to be conducted under the said license; such evasion and suppression of a material fact being in violation of N.J.S.A. 33:1-25.
- "3. In your short-form application for license you failed to state in answer to Question No. 10 therein a change in facts in your last prior long-form application, viz., a change in answer from 'No' to 'Yes' to Question No. 30 in said long-form application which asks: 'Has the applicant agreed to permit any person to receive, or agreed to pay to any employee or other persons (by way of rent, salary or otherwise), all or any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for? \_\_\_\_\_. If so, give complete details \_\_\_\_\_', and to show you had agreed to permit the aforementioned Eugene Blocker and Joseph Blocker to retain a percentage of the profits and income derived from your licensed business; said evasion and suppression of a material fact being in violation of N.J.S.A. 33:1-25.
- "4. From on or about April 6, 1972 to date, you knowingly aided and abetted said Eugene Blocker and Joseph Blocker, to exercise, contrary to N.J.S.A. 33:1-26 the rights and privileges of your successive plenary retail consumption licenses; in violation of N.J.S.A. 33:1-52."

An appearance was entered in licensee's behalf by Leon Sachs, Esq., its attorney. After two adjournments, each at the request of the licensee's attorney, this matter was finally scheduled for hearing at the Division offices on Monday, April 16, 1973 at 2:00 p.m.

On the morning of the day scheduled for the hearing, Sachs informed the Division that no one on behalf of the licensee had contacted him, that he would not appear, and to the best of his knowledge, the licensee's agents or officers also would not appear at the hearing.

The hearing proceeded as scheduled and at the time that it was concluded (at 2:25 p.m.) neither the licensee, nor anyone in its behalf, appeared at the hearing.

It appears from the testimony of Agent T, who acted pursuant to specific assignment to investigate an allegation of a "front" situation, and from the exhibits received in evidence, that the sole officers and stockholders of the corporate licensee are James McGriff and Dolphin Hargrove. Since McGriff, a musician, is mostly out of the State and Hargrove is preoccupied as a licensee in other premises and, therefore, neither of them can personally participate in the operation of the business, they made an oral arrangement to have Eugene R. Blocker and Joseph Blocker, manage the subject licensed premises, pay all bills in connection with the operation of the business and to retain the profits, if any. At the end of the year, the Blockers would have the option of purchasing the business.

Pursuant to that agreement, in April 1972, Eugene R. Blocker caused a trade name certificate under the trade name "Reflection" to be filed in the Office of the Clerk of Essex County, New Jersey, setting forth that he was the person connected with the said licensed premises as the owner of the said business; and a statement was filed with a local bank setting forth that he, Eugene R. Blocker, was the individual conducting the unincorporated business under the said trade name and that he was the individual authorized to sign checks and orders for the payment money withdrawing funds from the account opened in said bank. Also received in evidence were certain cancelled checks drawn on the trade name account, signed by Eugene R. Blocker.

Statements signed by McGriff and Blocker confirming the above mentioned arrangements were also received in evidence.

Thus, it is apparent that the Division has established the truth of the charges by a fair preponderance of the evidence, indeed by substantial evidence, and I recommend that the licensees be found guilty as charged.

Licensee has a prior record of suspension of license (1) by the Director for twenty-eight days, effective February 7, 1972, for possessing liquor not truly labeled. Re Jimmy McGriff's Golden Slipper of Newark, Inc., Bulletin 2029, Item 15; (2) by the local issuing authority for fifteen days,

effective March 20, 1972 for violation of local closing hours ordinance; and (3) by the Director for thirty-two days, effective January 16, 1973 for possessing liquor not truly labeled. Re Jimmy McGriff's Golden Slipper of Newark, Inc., Bulletin 2090, Item 1AA.

It is, further, recommended that the license be suspended on the charges herein for twenty days, to which should be added fifteen days by reason of three dissimilar violations occurring within the past five years, making a total of thirty-five days.

However, since the unlawful situation has not been corrected to date, I recommend that the license be suspended for the balance of its term and the term of any renewal thereof that may be granted, with leave granted to the licensee or any bona fide transferee of the license or any renewal thereof to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted in any event sooner than thirty-five days from the commencement of the suspension herein.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 30th day of May 1973,

ORDERED that Plenary Retail Consumption License C-6, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Jimmy McGriff's Golden Slipper of Newark, Inc., t/a Reflection for premises 57 Branford Place, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1973, effective 2:00 a.m. Wednesday, June 6, 1973, and the term of any renewal of said license which may be granted, with leave to the licensee or any bona fide transferee of the license, or of any renewal of said license which may be granted, to apply to the Director by verified petition for lifting of the suspension whenever the unlawful situation has been corrected, but in no event sooner than thirty-five (35) days from the commencement of the suspension herein.

Robert E. Bower  
Director

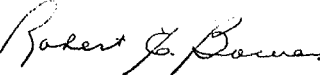
4. STATE LICENSES - NEW APPLICATIONS FILED.

F.C.D.S. Distributors, Inc.  
t/a Rapp Beer & Soda Distributors  
1000 Clinton Avenue  
Irvington, New Jersey  
Application filed July 19, 1973 for  
place-to-place transfer of State  
Beverage Distributor's License SBD-31  
from 396-398 18th Avenue, Newark, New Jersey.

Braceras, Inc.  
13 Birkendene Road  
Caldwell, New Jersey  
Application filed July 20, 1973 for  
place-to-place transfer of licensed  
warehouse operated under Wine Wholesale  
License WW-23, from 1275 Bloomfield Avenue,  
Building 5, Space 25A, Fairfield, New Jersey,  
to 1275 Bloomfield Avenue, Building 9, Space 83A,  
Fairfield, New Jersey.

Monsieur Henri Wines, Ltd.  
131-151 Morgan Avenue  
Brooklyn, New York  
Application filed July 24, 1973 for  
place-to-place transfer of licensed  
warehouse operated under Wine Wholesale  
License WW-2, from 6 Sellers Street,  
Kearny, New Jersey to 600 Washington  
Avenue, Carlstadt, New Jersey.

Otto Kern  
t/a Kern Distributing Co.  
303-309 Manchester Avenue  
North Haledon, New Jersey  
Application filed July 25, 1973 for  
limited wholesale license.

  
Robert E. Bower  
Director