

V

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

BULLETIN 1581

October 1, 1964

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - LAZZARA v. NORTH ARLINGTON.
2. APPELLATE DECISIONS - LANCE CORP. v. HIGHLANDS.
3. APPELLATE DECISIONS - OLIVERA v. ELIZABETH.
4. APPEAL CASES - JULY 1, 1963 THROUGH JUNE 30, 1964.
5. DISCIPLINARY PROCEEDINGS (Camden) - SALE TO INTOXICATED PERSONS - FOUL LANGUAGE - LICENSE SUSPENDED FOR 30 DAYS.
6. STATE LICENSES (Belleville)- OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED.
7. DISCIPLINARY PROCEEDINGS (Gloucester City) - FRONT - FALSE STATEMENTS IN APPLICATION FOR LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 20 DAYS UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION.
8. DISCIPLINARY PROCEEDINGS (Elizabeth) - SALE BELOW FILED PRICE - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (South Amboy) - GAMBLING (ACCEPTANCE OF HORSE RACE AND NUMBERS BETS) - LOTTERY (HORSE RACE POOL) - POSSESSION OF LOTTERY TICKETS - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
10. STATE LICENSES - NEW APPLICATIONS FILED.

New Jersey State Library

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

BULLETIN 1581

October 1, 1964

1. APPELLATE DECISIONS - LAZZARA v. NORTH ARLINGTON.

SAM LAZZARA,)

Appellant,)

v.)

MAYOR AND COUNCIL OF THE)
BOROUGH OF NORTH ARLINGTON,)

Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

-----)
Horace R. Bogle, Jr., Esq., Attorney for Appellant.
Milton Schleider, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent whereby it suspended appellant's plenary retail consumption license for one hundred twenty days effective June 8, 1964, after finding appellant guilty in disciplinary proceedings of charges alleging that he permitted a prostitute in and upon his licensed premises and that he permitted immoral activity on the premises or conducted his licensed place of business as a nuisance. Appellant's premises are located at 288 River Road, North Arlington.

Upon the filing of the appeal, an order dated June 5, 1964, was entered by the Director staying the effect of respondent's order of suspension pending determination of the appeal. R.S. 33:1-31.

No answer was filed by respondent, as required by Rule 4 of State Regulation No. 15.

When this matter came on for the de novo hearing pursuant to Rule 6 of State Regulation No. 15, the appellant's attorney stated that he desired to withdraw the grounds of appeal with the exception of that part of item 9G which states, "the penalty imposed upon the Appellant was harsh and excessive based upon the Appellant's record..."

The stipulated facts are as follows: On February 5, 1964, a female solicited for prostitution several patrons in the licensed premises and engaged in sexual intercourse with them in a motor vehicle on a lot across the street from the said premises. Appellant, testifying in mitigation of the penalty, stated that on the date in question, neither he nor his son, who assists him in the operation of the tavern, were present and that the establishment was being operated by a newly-employed bartender. He also pointed out that the parking lot is located across the street and a distance away from the licensed premises. He has arranged for the installation of bright lights there in order to forestall a recurrence of such incident. Appellant also stated that he had no prior record of suspension of license and had tried to operate his business in a clean and respectable manner during

the two years of his ownership thereof.

Respondent's attorney stated for the record that "due to certain circumstances in this case it may be difficult to prove all of the allegations necessary to find the appellant guilty of the charges." He further stated that both charges should be considered as one, namely, "That in essence this is a charge that the premises were a nuisance in nature." Finally, he admitted, "Under the circumstances, I join with the attorney for the appellant and I also state in my opinion that the penalty under the circumstances is unduly harsh and join with the attorney in requesting the Hearer to judge these facts and consider the penalty and review it and come to what should be a realistic and proper penalty in this case."

Therefore, the only issue in this case is whether or not respondent abused its discretion in imposing the penalty herein. While the amount of the penalty is usually entrusted to the discretion of the issuing authority, it is within the sound discretion of the Director to revise the penalty where warranted by the facts and circumstances. Mitchell v. Cavicchia, 29 N.J. Super. 11 (App. Div. 1953).

In view of all the facts and circumstances in this matter, particularly the clear expression by respondent's attorney that the penalty was excessive and unrealistic, a reduction of the penalty would appear to be warranted.

It is therefore recommended that an order be entered affirming respondent's action in finding appellant guilty of said charges, reducing the suspension from one hundred twenty days to sixty days (Re 315 Halsey, Inc., Bulletin 1495, Item 5), and fixing the effective dates for said suspension.

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.

After carefully considering the record, including the transcript, the oral argument of counsel contained therein 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 10th day of August 1964,

ORDERED that the action of the respondent in finding the appellant guilty be affirmed, and that Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of North Arlington to Sam Lazzara, for premises 288 River Road, North Arlington, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, August 17, 1964, and terminating at 2 a.m. Friday, October 16, 1964.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - LANCE CORP. v. HIGHLANDS.

LANCE CORP.,)

Appellant,)

v.)

BOROUGH COUNCIL OF THE)
BOROUGH OF HIGHLANDS,)

Respondent.)

ON APPEAL
CONCLUSIONS

-----)

Reussille, Cornwell, Mausner & Carotenuto, Esqs., by Anthony T. Bruno, Esq., Attorneys for Appellant.

Roberts, Pillsbury & Carton, Esqs., by William E. Russell, Esq. Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report.

This is an appeal from the action of respondent in denying a person-to-person transfer of a plenary retail consumption license from Frank J. & Ann Mandia, t/a Majestic Investment Co., to appellant for premises 75 Miller Street, Highlands.

Appellant contends that the action of respondent was erroneous in that it was "arbitrary and capricious, without any basis in law or in fact and a clear abuse of discretion. The premises have been used for retail liquor consumption for many years and no evidence was adduced why appellant could not carry on the same business on the same premises."

The record discloses that, during the past year or two, the present holders of the license have not operated at the premises in question. It further appears that there had been a fire in the building at 75 Miller Street and that the current renewal of the license had been granted subject to the removal of violations specified by the fire department and that the borough clerk was requested to hold the license certificate in escrow until said violations had been removed.

There has been testimony presented by Edward Drastal, secretary and treasurer of appellant corporation, that the proper repairs had been made and that notice had been received by him from the municipal authorities to that effect. The license covers the first floor of the premises with the two upper floors being sealed off.

The respondent presented no evidence whatsoever with reference to repairs or lack of repairs to the building for which the license had been granted to satisfy the conditions specified in the renewal resolution.

Councilman McGowan testified that he voted against the transfer of the license to appellant because next to the licensed premises is a playground "which the firemen put there about a year and a half ago" and is used daily; that his reason for voting to renew the license for the current licensing period was to protect the license of Frank J. & Ann Mandia who presently hold the license;

that he doesn't know of any reason why appellant corporation cannot hold a liquor license.

Reverend Richard N. Ryley testified that he objects to the transfer of the license to appellant because the "firemen's field playground" is "no more than fifty, sixty feet" away; that the said playground is used by children of all ages; that at his direction a written petition objecting to the transfer of the license was left at the back door of the church, which petition contains "either fifty or fifty-one" signatures (none of whom gave their address) and to his knowledge "six or seven" of the signers were less than twenty-one years of age; that in his opinion "to reopen this establishment would do the town no good, no good at all" and that a denial of the transfer of the license would be in the best interests of the municipality.

Carolyn Whitfield, the only person with the exception of Reverend Ryley who signed the petition objecting to the transfer to appear at the hearing herein, testified that she resides about one-quarter mile away from the licensed premises. Her objection to the transfer is that the premises are too close to the playground; that in her opinion it "might be a bad influence on the youth in our community."

There are no objections concerning the qualifications or fitness of the officers and stockholders of appellant. The only objection is that, if the transfer is approved, the premises, which have been closed for a long time, would reopen for business. It is a strange paradox that the respondent approved the application for renewal of the license for the current licensing year despite the fact that the playground was in existence at the time when the renewal was granted.

In a case where a similar reason was given by a local issuing authority for denial of a transfer, then Commissioner Hock stated that "it would be unfair to deny a transfer or renewal of the license for the premises in question solely upon the ground that a field in close proximity to the licensed premises was opened for playground purposes long after the licensed premises were established." See Ott's, Inc. v. Twp. of Edgewater Park, Bulletin 808, Item 4.

I have carefully considered the objections to the transfer of the license and conclude that the action of respondent in denying the person-to-person transfer thereof constitutes an abuse of discretion on its part.

Therefore it is recommended that the action of respondent be reversed, and that respondent shall grant appellant's application for transfer if the conditions imposed at the time of the renewal have been fulfilled.

Conclusions.

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

Subsequent to the transmission of a copy of the Hearer's Report to the attorneys for the respondent, and without awaiting my conclusions, the respondent transferred the license to the appellant. Thereafter the appellant's license was renewed for premises 75 Miller Street, Highlands, for the 1964-65 licensing year.

Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusions

and adopt his recommendation. Inasmuch as the license has already been transferred, it is unnecessary to enter any order herein directing the respondent to transfer the license to appellant.

JOSEPH P. LORDI
DIRECTOR

Dated: August 5, 1964

3. APPELLATE DECISIONS - OLIVERI v. ELIZABETH.

ELEANOR OLIVERI,)

Appellant,)

v.)

CITY COUNCIL OF THE CITY OF)
ELIZABETH,)

Respondent.)

ON APPEAL
ORDER

-----)
Louis R. Cerefice, Esq., Attorney for Appellant.
John M. Boyle, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from respondent's action in denying her application for transfer to her of Plenary Retail Consumption License C-82 from Mello-D-Club, Inc., for premises 606 Livingston Street, Elizabeth.

Prior to the hearing on appeal, by letter of August 4, 1964 appellant advised me that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 6th day of August 1964,

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

JOSEPH P. LORDI
DIRECTOR

4. APPEAL CASES - JULY 1, 1963 THROUGH JUNE 30, 1964.

Undecided June 30, 1963	13
Filed July 1, 1963 through June 30, 1964	<u>65</u>
Total	78

Disposition

Affirmed	25
Reversed	13
Modified	2
Withdrawn (after hearing)	2
Withdrawn (no hearing)	15
Undecided (16 cases heard) (5 " not ")	<u>21</u>
Total	78

Emerson A. Tschupp
Deputy Director

Dated: August 7, 1964

5. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS - FOUL LANGUAGE - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)	
EDWARD LESNIEWSKI, t/a Johnny's Cafe)	
1135-37 S. 4th Street)	
Camden, New Jersey)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-35 (for 1963-64 period) and now C-118 (for 1964-65 period), issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)	
-----))	
Licensee, Pro se.)	
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.)	

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report.

Licensee pleaded non vult to Charge 1 and not guilty to Charge 2, as follows:

- "1. On May 30, 1964, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- "2. On May 30, 1964, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

This report will concern itself with the evidence relating to the second charge.

The Division established its support of the second charge through the testimony of two ABC agents. Agent C, in the company of Agent J, visited the licensee's premises on the night of May 29, 1964, and the visit continued through the early morning of Saturday, May 30. At 11:30 p.m. on May 29 he entered the said premises alone and remained there for about twenty-five minutes. He then left and discussed with Inspector J procedure relating to further investigation.

At 12:01 a.m. on May 30 he re-entered the tavern, followed five minutes thereafter by Inspector J, and seated himself at the bar. He was served drinks by the bartender (later identified as Walter J. Davis) and observed that Mrs. Josephine Lesniewski (the wife of the licensee) also worked as a bartender at this time. During his stay at the premises on both May 29 and the early morning of May 30 he heard numerous patrons using the vilest and foulest language (often in ordinary conversation), the repetition of which would serve no useful purpose in this report. He particularly noted a female (referred to as Peggy Lou) who used vile and profane language frequently throughout his entire stay.

At 1:50 a.m. he identified himself to the bartender and Mrs. Lesniewski and, within a few minutes, the licensee came over and introduced himself. He questioned the bartender with reference to the offensive conversations and the particular foul language, and the bartender admitted "the conversation had taken place." He also asked the licensee about it, and the licensee admitted that such language was heard in the premises, but sought to justify it by saying, "What can you do about this kind of people? With this kind of people."

Inspector J testified that he entered the premises in company of two local police officials. He stated that over fifty per cent. of the patrons in the premises used this type of indecent language during his stay thereat. He insisted further that language and cursing was used frequently and loudly so that there was no doubt that everyone in the premises could and, indeed, did hear it. He further corroborated the fact that the bartender admitted hearing the offensive language, and that the licensee asserted that he was aware of it. The licensee explained that "at different times he had tried to control the language, not on this evening but on prior dates...."

Edward Lesniewski (the licensee), testifying in his own behalf, denied that he heard any cursing or foul language during the period that he was present on the date alleged. He admitted that he has heard cursing and foul language before, but "to say I never stop them

and throw them out, that would not be true because I do, and I do this on many, many occasions...." However, on this evening he did not hear any cursing, and he says they usually don't curse in his presence because "I tell them I am going to take steps, and they move for me."

On cross examination it developed that on May 29 he came down to the tavern for about ten or fifteen minutes, "saw nothing was happening, you know" and went up to his apartment to watch television.

On May 30, from 12 a.m. until twenty minutes of two, he spent a total of forty-five minutes in the premises but was not there continuously.

I have carefully examined and evaluated the testimony presented in this matter and am persuaded that the story given by the agents of this Division was a forthright and credible one and truly portrayed what actually occurred at the premises. On the other hand, I believe that the defense offered by the licensee was much less convincing, particularly in view of the fact that the licensee spent only a short part of his time in the premises. I am influenced further by the fact that neither the wife of the licensee nor Davis, who were both employed as bartenders on the date charged, were called as witnesses. Surely they could have testified to the occurrences as charged herein and would have been in a position to deny these charges if that were the fact. It was singularly significant to me that, while Mrs. Lesniewski was present at the hearing, she was not called as a witness. There was also no reason given why Davis was not produced since he could have been made available either voluntarily or by subpoena.

The applicable principle of law appears to be that, where a party has a witness or witnesses available, and where they possess peculiar knowledge concerning the facts essential to a party's case, the failure to call said witness or witnesses gives rise to an inference that, if called, the testimony elicited therefrom would be unfavorable to said party, i.e., he could not contradict the testimony of the Division's witnesses. Jacoby v. Jacoby, 6 N.J. Misc. 86; Re Cork 'N Bottle, Bulletin 1232, Item 3.

We are dealing here with a purely disciplinary measure and its alleged infraction. Such measures are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948). Thus the Division need establish its case only by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373. In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 C.J.S. Evidence, sec. 1042.

The situation here has been particularly aggravated by the fact that at least nine or ten patrons were females, and the constant use of this vulgar and obscene, filthy language, if left unchecked, would have a degrading effect upon such patrons and is a conduct which cannot be countenanced or condoned in the operation of licensed premises. It is the clear duty of a licensee to control the conduct of his patrons; his alleged inability to do so is no defense in these proceedings.

I am convinced that the Division has proved its charge by a fair preponderance of the believable evidence, and indeed by

substantial evidence, and I recommend that the licensee be found guilty of the second charge.

The licensee has no prior adjudicated record. It is further recommended that an order be entered suspending the license on the first charge for twenty days (Re Tony Maita's Oasis, Inc., Bulletin 1562, Item 4), and on the second charge for ten days (Re A & B Bar, Inc., Bulletin 1416, Item 1), making a total suspension of thirty days.

Conclusions and Order

No written exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of the proceedings, exhibits and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 5th day of August 1964,

ORDERED that Plenary Retail Consumption License C-118, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Edward Lesniewski, t/a Johnny's Cafe, for premises 1135-37 So. 4th Street, Camden, be and the same is hereby suspended for thirty (30) days, commencing at 2 a.m. Wednesday, August 12, 1964, and terminating at 2 a.m. Friday, September 11, 1964.

JOSEPH P. LORDI
DIRECTOR.

6. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED.

In the Matter of Objections to the
Transfer of State Beverage
Distributor's License SBD-137 from

WATCHUNG SPRING WATER CO., INC.
t/a SODA TOWN
4700 South Clinton Avenue
South Plainfield, New Jersey

to

ERNEST DEL GUERCIO and
ANTHONY FRANCESE
t/a D & F BEVERAGE COMPANY
113-119 Franklin Street
Belleville, New Jersey

CONCLUSIONS
AND ORDER

Samuel Raffaele, Esq., Attorney for Applicants.
Keenan & Finch, Esqs., by Leslie W. Finch, Esq., Attorneys
for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report.

On April 29, 1964, Ernest Del Guercio and Anthony Francese, t/a D & F Beverage Company, filed an application for person-to-person and place-to-place transfer of License SBD-137 from the Watchung Spring Water Co., Inc., t/a Soda Town, located at 4700 South Clinton Avenue, South Plainfield, to the applicants, and to premises at 113-119 Franklin Street, Belleville.

Written objections to the granting of the application for said transfer were filed and a hearing was duly held thereon.

The objections may be summarized as follows:

- (1) The Town of Belleville is overburdened with alcoholic beverage outlets;
- (2) The general area in which the proposed license transfer is to be located specifically is highly "over-saturated" with retail license establishments;
- (3) The proposed transfer would create additional competition which would have an adverse effect on the business of the present licensees;
- (4) There is no need or necessity for the said license.

At the hearing herein Ernest Del Guercio (one of the partners of the applicant) testified that he has been in the soda beverage business for about eighteen years and services approximately eight hundred customers. None of these customers lives in Belleville, nor does he serve anyone in the adjacent town of Nutley. His primary source of business is from customers in the City of Newark. He entered into this partnership with his nephew Anthony Francese (the co-applicant) and they rented the premises in question from his brother-in-law. These consist of three garages which are actually combined into one large garage with overhead doors.

The applicants paid \$4,700 to the Watchung Spring Water Co., Inc. for the transfer of the said license. He further represents that they do not intend to carry on a retail sales operation from these premises, nor do they intend to sell to residents of and in the Town of Belleville. He further testified that the new location is not near any existing schools or churches, nor is there any other State Beverage Distributor's license in this community.

Norman D. Lauterette, the Chairman of the local alcoholic beverage control board, testified that it was the consensus of the opinion of his Board that the community is "over-saturated with outlets" and that the present licensees adequately service that community. It was his opinion that, since there are enough licensees in town, "the Board has a moral obligation to those licensees in town to protect their business...."

Charles Rossi (president of the Belleville Tavern Owners and Package Store Dealers Association) presented the position of the members of that group, and it was stipulated that the testimony of those members present at this hearing would be essentially corroborative of that offered by him. He objected to the issuance of this transfer because he felt that the area was adequately serviced and, in fact, stated that several other State Beverage Distributor licensees, not anchored in Belleville, serviced customers

in that area. He further insisted that, even if the applicants delimited their activities so far as Belleville is concerned, the transfer would affect his members. He then admitted that, if no sales were made to residents of this community, the licensees in that community would not be affected. Finally he stated that he is opposed to any State Beverage Distributor licensees coming into Belleville from any part of the State.

After considering all the testimony herein, I am persuaded that the objections to the approval of this application for the transfer of the license herein had not been adequately proved; that they are of insufficient weight to warrant denial of the application.

I am particularly impressed with the fact that both applicants and their attorney have specifically expressed a willingness to accept the approval of the said transfer expressly conditioned upon their agreement not to operate a retail salesroom on the premises or to sell alcoholic beverages to residents in the Town of Belleville. The evidence also shows that there are no schools or churches within two hundred feet or in the vicinity of the proposed premises. There are no zoning restrictions which would serve as a forceful or influential factor in the consideration of objections herein. See Re Maccia, Bulletin 1401, Item 5.

The privileges conferred by a State Beverage Distributor's license are contained in R.S. 33:1-11(2)c. In essence, this license allows its holder to maintain a licensed premises and warehouse at and from which he may sell and deliver only unchilled beer and ale in original containers and in quantities of not less than 1/4 fluid ounces - - in common parlance, not less than a half-case containing twelve 12-ounce cans or bottles. A State Beverage Distributor licensee may sell and deliver this unchilled beer and ale both to licensed retailers and to consumers, with consumer sales and deliveries required to be made at prices which are not lower than the minimum prices filed in this office or listed in the current official Minimum Consumer Resale Price Pamphlet. There may, of course, be no sale or delivery of alcoholic beverages for consumption upon the licensed premises.

In view of the limitations and conditions which these applicants have voluntarily agreed to accept, namely, that they will not conduct sales from these premises or even sell to residents in the Town of Belleville, the proposed transfer to these premises will not materially affect competition or result in disadvantage to the objectors.

Since the privileges of a State Beverage Distributor's license are state-wide, the question of public necessity and convenience cannot be determined on the narrow basis of a single municipality in which the prospective licensee would have his principal office or warehouse. Re Beer Depot, Bulletin 1312, Item 8; Re Variety Beers & Soda Distributors, Inc., Bulletin 1000, Item 6.

It is of particular moment that there are no other such licenses located within this municipality.

The decision as to whether or not an application for a transfer of a State Beverage Distributor's license should be granted rests solely within the discretion of the State Director. While the sentiments of the local community and its municipal

issuing authority, as in this matter, are given serious consideration, the objections must be reasonable and based upon valid grounds. The attitude and commitments of the applicants herein fairly and adequately meet the objections presented.

After considering all of the evidence, it is my considered judgment that the objections are not sufficiently meritorious to warrant a denial of the application. Re Breton Woods Distributors, Inc., Bulletin 1490, Item 4; Re Kalb, Bulletin 1457 Item 5; Re Lutz, Bulletin 1312, Item 6.

I therefore recommend that the pending application be granted subject to the express conditions that no deliveries of alcoholic beverages to consumers shall be made on the licensed premises, and that no delivery be made to residents of the Town of Belleville. Cf. Re S & M Distributing Company, Bulletin 1287, Item 3.

Conclusions and Order.

No written exceptions to the Hearer's Report were filed with me by the attorneys for the objectors.

I have given careful consideration to the evidence, the Hearer's Report and the argument of counsel. I concur in the conclusions of the Hearer and adopt them as my conclusions herein. I shall therefore grant the application.

Accordingly, it is, on this 10th day of August 1964,

ORDERED that said application herein be granted subject to the express conditions that no deliveries of alcoholic beverages to consumers shall be made on the licensed premises, and that no delivery shall be made to residents of the Town of Belleville.

JOSEPH P. IORDI
DIRECTOR.

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN APPLICATION FOR LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 20 DAYS UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary)
Proceedings against)

THE SPORTS CORNER, INC.)
t/a SPORTS CORNER)
332 Jersey Avenue)
Gloucester City, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-32, issued by the Common)
Council of the City of Gloucester)
City.)

- - - - -)

Milton C. Nurock, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges as follows:

- "1. In your application dated June 12, 1963, filed with the Common Council of the City of Gloucester, upon which you obtained your 1963-64 plenary retail consumption license you falsely stated 'No' in answer to Question No. 31 thereof, which asks: 'Have you agreed to pay (by way of rent, salary or otherwise) to any employee, or other person, any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to pay Walter Clark all the profits derived from your licensed business after payment to you of a fixed weekly fee; in violation of R.S. 33:1-25.
- "2. You failed to file with the Common Council of the City of Gloucester, within ten days after the occurrence hereinafter stated, written notice of change of facts, set forth in your answer to Question No. 31 of your then currently effective license application, upon which you obtained your 1962-63 plenary retail consumption license, such change being that on or about June 12, 1963, you agreed to pay to Walter Clark all the profits derived from your licensed business after payment to you of a fixed weekly fee; in violation of R.S. 33:1-34.
- "3. You failed to file with the Common Council of the City of Gloucester, within ten days after the occurrences hereinafter stated, written notice of changes of fact set forth in your answer to Question No. 31 of your then currently effective license application, upon which you obtained your 1963-64 plenary retail consumption license, such changes being that on or about July 24, 1963, you agreed to pay to John M. Schules all the profits derived from your licensed business after payment to you of a fixed weekly fee and that on or about March 17, 1964, you agreed to pay John Dare, and on or about May 18, 1964, you agreed to pay Eugene Parker, a percentage of the income derived from your licensed business; in violation of R.S. 33:1-34.
- "4. You knowingly aided and abetted the following persons, during the following periods, to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses: Walter Clark from on or about June 12, 1963 to on or about July 24, 1963; John M. Schules, from on or about July 24, 1963, to on or about March 7, 1964; John Dare, from on or about March 17, 1964 to on or about May 5, 1964; and Eugene Parker from on or about May 18, 1964 to date; in violation of R.S. 33:1-52."

The facts are sufficiently set forth in the quoted charges.

To date there is no indication that correction of the unlawful situation has been accomplished.

Absent prior record, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of license to apply for lifting of the suspension whenever the unlawful situation has been corrected, but in no event sooner than twenty days from the date of commencement

of the suspension herein. Re SolarSKI, Bulletin 1528, Item 11.

Accordingly, it is, on this 6th day of August 1964,

ORDERED that Plenary Retail Consumption License C-32, issued by the Common Council of the City of Gloucester City to The Sports Corner, Inc., t/a Sports Corner, for premises 332 Jersey Avenue, Gloucester City, be and the same is hereby suspended for the balance of its term, effective 2 a.m. Thursday, August 13, 1964, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation for lifting of the suspension of the license on or after 2 a.m. Wednesday, September 2, 1964.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary
Proceedings against

MORRIS WEISBROT, MAX WEISBROT
and STANLEY WEISBROT
t/a BROAD & GROVE CLUB
400-402 South Broad Street
Elizabeth, New Jersey.

Holders of Plenary Retail Consumption
License C-16, issued by the City
Council of the City of Elizabeth.

Licensees, by Stanley Weisbrot, Pro se.

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

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on July 12 and 14, 1964, they sold a one-half gallon bottle of whiskey below filed price, in violation of Rule 5 of State Regulation No. 30.

Licensees have a previous adjudicated record. Effective February 10, 1955, their license was suspended by the then Director for twenty days for sale of alcoholic beverages below filed price and for an "hours" violation (Re Weisbrot, Bulletin 1052, Item 7), and effective January 30, 1961, their license was suspended by the local issuing authority for fifteen days for an "hours" violation.

The minimum suspension for a sale of alcoholic beverages below the filed price is ten days (Re Urban, Bulletin 1563, Item 11). I shall suspend the license for ten days for the instant violation, to which will be added five days because of a dissimilar violation within the past five years (Re Vamos, Bulletin 1541, Item 5), and an additional five days for a similar violation occurring more than five but less than ten

years ago (Re Harbor Inn, Inc., Bulletin 1428, Item 3), making a total suspension of twenty days. Five days will be remitted for the plea entered, leaving a net suspension of fifteen days.

Accordingly, it is, on this 6th day of August 1964,

ORDERED that Plenary Retail Consumption License C-16, issued by the City Council of the City of Elizabeth to Morris Weisbrot, Max Weisbrot and Stanley Weisbrot, t/a Broad & Grove Club, for premises 400-402 South Broad Street, Elizabeth, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Thursday, August 13, 1964, and terminating at 2 a.m. Friday, August 28, 1964.

JOSEPH P. LORDI
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - GAMBLING (ACCEPTANCE OF HORSE RACE AND NUMBERS BETS) - LOTTERY (HORSE RACE POOL) - POSSESSION OF LOTTERY TICKETS - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

FRIENDLY TAVERN, INC.
359 Bordentown Avenue
South Amboy, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-32, issued by the Common
Council of the City of South Amboy.

Patten & Pryga, Esqs., by Walter S. Pryga, Esq., Attorneys for
Licensee.

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

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on June 4, 20 and 29, 1964, it permitted acceptance of horse race and numbers bets, on June 20, 1964, permitted the conduct of a horse race pool and on June 29, 1964, possessed lottery tickets in the Irish Hospital Sweepstakes, daily double pools and 50-50 clubs on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record and considering the case as unaggravated, the license will be suspended for sixty days,

with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Mellolark, Inc., Bulletin 1573, Item 2.

Accordingly, it is, on this 11th day of August, 1964,

ORDERED that Plenary Retail Consumption License C-32, issued by the Common Council of the City of South Amboy to Friendly Tavern, Inc. for premises 359 Bordentown Avenue, South Amboy, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, August 18, 1964, and terminating at 2:00 a.m. Monday, October 12, 1964.

JOSEPH P. LORDI
DIRECTOR

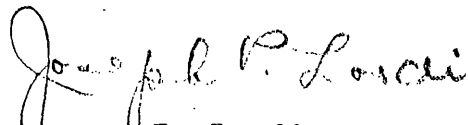
10. STATE LICENSES - NEW APPLICATIONS FILED.

Simon H., Leon M. & Harold Goldstein,
t/a Bacon Liquor Company
361-363 Jelliff Avenue
Newark, N. J.

Application filed 9/28/64 for Wine Wholesale License.

Esbeco Distilling Corporation
161-165 Frelinghuysen Avenue
Newark, N. J.

Application filed 9/25/64 for transfer of warehouse
to 161-165 Frelinghuysen Avenue, Newark, N. J.


Joseph P. Lordi
Director