

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
NEWARK INTERNATIONAL PLAZA  
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2322

June 13, 1979

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problems surrounding a fast-food take out delicatessen adjacent to the proposed location would be exacerbated if the transfer was approved.

An appeal de novo was heard in this Division, pursuant to N.J.A.C. 13:2-17.6, at which the parties were permitted to introduce evidence and cross-examine witnesses.

The president of appellant corporation, John M. Golia, testified that the licensed establishment contains the "broad package privilege" and, in consequence, the business if moved to the new location will have no bar or sales of alcoholic beverages for on-premises consumption. In his four years of operation, he has had no violations of any kind that resulted in disciplinary proceedings. His reasons for the intended move are to acquire a place with adequate parking. The present location has almost none, and the traffic congestion surrounding the present place is awesome. He stated that the new location would be a smaller store than his present one, but would be located in a mini-shopping place with more accessibility for the patrons.

Three neighbors to the proposed location testified as to their objections. James E. Pitra, Henry J. Treptow and Frank Agnello all stated that they feared that the present loitering, littering and noise problems which surround the delicatessen business in the tiny shopping area, in which the appellant's premises would be located, would be compounded by young people who would obtain alcoholic beverages there.

Lillian Bombara testified as an objector that she represented the Church located diagonally opposite the proposed location. Although the Church was more than 200 feet away, she felt the presence of a liquor store would increase the problems the church presently has with teenagers loitering on the Church grounds.

Preliminarily, it is observed that the transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970). On the other hand, where it appears that the denial was arbitrary or unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Bomwell v. Newark, Bulletin 1639, Item 1; Oror, Inc. v. Hackensack, Bulletin 2269, Item 2.

Counsel for objectors urge the applicability of the landmark decision of Fanwood v. Rocco, 33 N.J. 404 (1960), which determined that, if an issuing authority in its judgment

rejected an area of the community as a suitable place for an alcoholic beverage license upon a reasonable basis and properly motivated, that judgment should not be reversed on appeal.

Fanwood may be distinguished from the matter sub judice. Firstly, the Committee here took no action whatever. Following the exhortations of some neighbors, it simply avoided the issue. Its position was not determined, nor was there merit expressed in the objections listed. Secondly, all of the objections related to an existing delicatessen. None applied to the appellant. The fears of the neighbors were entirely speculative, and had no reference to the mode of operation of appellant at its present location.

The loitering, litter and noise in the area, of which the neighbors are justly concerned, is a problem in itself, and the issue herein should not be beclouded by the protests against the present conditions there. As there was no proof offered or inferred that any similar conditions surround the present location of appellant business, there is no foundation for the speculations of the neighbors as to any increase of their problems because of the proposed move. I find that by taking no action whatever upon the appellant's application, the Committee's result was arbitrary and unreasonable.

For the reasons stated, I conclude that the appellant has sustained its burden of establishing that the action of the Committee should be reversed, in accordance with N.J.A.C. 13:2-17.6. I, thus, recommend that the action of the Committee be reversed and the Committee be directed to grant appellant's application, with the special condition attached thereto that no bar be erected within the establishment and that no on-premises consumption of alcoholic beverages be permitted.

#### CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the objectors (concurrent in by the Township Committee), and written Answers thereto were submitted by the appellant.

In its Exceptions, the objectors reiterate their argument advanced at the hearing that the Committee's failure to act on the application amounts to a finding of "community sentiment" sufficient to support the denial in accordance with the holding in Fanwood v. Rocco, supra. I am satisfied that the Hearer fully considered and correctly resolved this issue in his Report, and I dismiss this Exception as without merit.

I cannot accept the proposition on the facts herein, which includes testimony of three objectors who didn't even file written objections, that such proofs constitute a basis to support a finding of "community sentiment." Joined with the failure of the Council to articulate said finding until this appeal, I am not persuaded as to the reasonableness of the Committee's action.

The Committee had its opportunity to set forth affirmatively its position at the time of the transfer application hearing. By its failure to act at that time, I see no basis to remand the matter for rehearing. Thus, I reject that aspect of the objector's Exception which requested same.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's Report, the written Exceptions filed thereto and the written Answers in reply, I concur with the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 1st day of February, 1979,

ORDERED that the action of the Township Committee of the Township of Ewing be and the same is hereby reversed; and it is further

ORDERED that the Township Committee be and the same is hereby directed to approve the place-to-place transfer in accordance with the application filed therefor.

JOSEPH H. LERNER  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - FAILURE TO DISCLOSE CHANGE IN INTEREST IN LICENSED PREMISES - FRONT - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against :

Samhar, Inc. :

t/a The Picadilly Bar and Lounge :

134 South Virginia Avenue :

Atlantic City, N.J. 08401 :

Holder of Plenary Retail Consumption License C-199, issued by the Board of Commissioners of the City of Atlantic City. :

. . . . . :

CONCLUSIONS AND ORDER

Saul J. Steinberg, Esq., Attorney for Licensee.

Michael J. Piarulli, Esq., Attorney for Proposed Transferee.

Mart Vaarsi, Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleads "not guilty" to charges alleging that: (1) in its short-form applications filed for the 1976-77 and 1977-78 licensing terms, it failed to disclose a change of interest or ownership of the license to one John Hermley, and/or 3701 West Corporation, contrary to the provisions of N.J.S.A. 33:1-25; (2) in its short-form license application for 1976 it failed to reveal that one Ed Sacks had a security interest in the license, contrary to the provisions of N.J.S.A. 33:1-25; and (3) the licensee aided John Hermley and/or 3701 West Corporation and Ed Sacks to exercise the privileges of the license, contrary to the provisions of N.J.S.A. 33:1-52.

By consent of counsel the following documents were offered in evidence; to which comment as to their content is made:

- D-1 1975 long-form application for renewal of license filed by the corporate licensee. This application fails to reveal any interest in the license other than that of the two corporate shareholders, Louis Goldman and Pearl Goldman.

- D-2 Application for Renewal of License (short form) filed July 20, 1977 by the corporate licensee, which discloses no one has any interest in the licensee other than Louis and Pearl Goldman.
- D-3 Application for person-to-person transfer of subject license filed June 28, 1977 by John Hermley, which reveals that applicant has sole interest in the licensed premises.
- D-4 Photocopy of check made by John J. Hermley, drawn on an account of 3701 West Corporation of which he is president, payable to Atlantic City and dated June 28, 1977, in the amount of \$600.00; along with a deposit ticket of City of Atlantic City indicating said check was deposited in its license fee account. Said check represents payment of the application fee for renewal of the license of Samhar, Inc.
- D-5 Renewal application filed June 23, 1976 by the licensee which fails to disclose any interest in corporate licensee other than Louis and Pearl Goldman. Attached thereto is check in sum of \$600.00 made payable to City of Atlantic City drawn on checking account of 3701 West Corporation in payment of license renewal fee of the subject licensee.
- D-6 A- Copy of agreement of sale from Samhar, Inc. to Hermley or 3701 West Corp., dated January 7, 1976 obliterated, indicating that date of final payment to be made on May 1, 1976.
- D-6 B- Copy of corrective memorandum, dated February 27, 1976, bearing same signatures as 6A above.
- D-6 C- Copy of Consent to Transfer signed by Louis and Pearl Goldman, in behalf of Samhar, Inc., to 3701 West Corporation dated February 25, 1976.
- D-7 A- Three deposit tickets of David E. Feinstein Company Trust Account, in the amounts of \$500.00, \$1,000.00 and \$3,500.00.

- D-7 B- Two checks, one in the amount of \$500.00 and the other in the amount of \$1,000.00, drawn on the account of John J. and Patricia N. Hermley payable to Feinstein Real Estate Company, which acted as the broker in the sales transaction.
- D-7 C- Copy of check drawn on the account of 3701 West Corporation in the amount of \$3,500.00 payable to Ed Sack and endorsed by Ed Sack to the order of Feinstein Real Estate Company - Trust Account.
- D-8 A- Copy of undated receipt signed by Ed Sacks acknowledging receipt of \$5,000.00 plus three notes, each providing for the payment of the amount of \$2,000.00, and therefore totalling \$6,000.00. This represents payment for subject license by John Hermley or 3701 West Corporation, it being stipulated that the monies were actually received by the Goldmans.
- D-8 B- Copy of undated memorandum signed by Louis Goldman assigning the subject liquor license to Ed Sacks. It provides that it cancels previous assignment of license of February 27, 1976 to John Hermley.
- D-9 A- Copy of letter addressed to John Hermley from David Feinstein indicating settlement of sale of license scheduled for May 1, 1976.
- D-9 B- Copies of two checks payable to Louis Goldman, one from Feinstein Trustee Account, in the amount of \$4,000.00, and the other in the amount of \$5,000.00 drawn by Ed and Sara W. Sacks, each dated May 3, 1976.
- D-10 Copy of check from 3701 West Corporation to Ed Sacks in the amount of \$2,000.00, in payment of one of the notes referred to in Exhibit D-8A and copy of deposit slip, showing deposit of this check into the Sacks' account.
- D-11 A- Indemnification agreement executed by John Hermley wherein he agreed to indemnify Ed Sacks against any claim that may be made by John Salicandro, dated May 11, 1977.

- D-11 B- Copy of receipt from Sacks, wherein he acknowledges receipt from Hermley of \$4,400.00, dated May 11, 1977. This represented payment of the balance due on account of the remaining two notes referred to in Exhibit D-8A.
- D-11 C- Copy of Assignment of subject license from Sacks to Hermley dated May 11, 1977. This document also recited that Sacks agreed to permit the license to remain in the name of Samhar, Inc., and the situs to remain at its present address, 134 South Virginia Avenue, Atlantic City.
- D-11 D- Copy of deposit slip to account of Ed and Sara Sacks for \$4,000.00, on face of which was written the word "License".
- D-12 Letter from licensee's accountants, Gardner and Company, dated August 10, 1977, addressed to Mr. Ed Fitzgerald, Investigator c/o Atlantic County Prosecutor's Office, which indicates that the licensee had no financial interest in the license after May 1, 1976, even though the transfer of the license had not been completed.

Following the Division's presentation of the foregoing documents, the licensee offered the following to supplement the record.

- L-1 Application for place-to-place and person-to-person transfer, dated February 2, 1976, from licensee to 3701 West Corporation and from premises 134 South Virginia Avenue to 3701 Filbert Avenue, Atlantic City, this application was denied April 29, 1976. It was stipulated that an appeal from this denial was filed with this Division and later withdrawn by the appellant therein, 3701 West Corporation.
- L-2 Application for transfer dated October 14, 1976 between the same parties which was denied December 9, 1976. Said denial was affirmed by the Director July 20, 1977 (Bull. 2272, Item 3).
- L-3 Renewal of license application signed by John Hermley pertaining to the subject license dated June 28, 1977. This was accompanied by

check of 3701 West Corporation bearing even date in the sum of \$600.00 payable to Atlantic City in payment of license renewal fee.

- L-4 Statement by employee of David Feinstein Co., indicating that all transfer documents pertaining to the transfer of the subject license 3701 West Corporation and/or John Hermley, except for consent to transfer, were prepared by that office.
- L-5 Resolution of Board denying transfer application on April 29, 1976. This pertains to application made on February 2, 1976; Exhibit L-1, above.
- L-6 Resolution of Board denying transfer application on December 9, 1976. This pertains to application dated October 14, 1976; Exhibit L-2, above.

At the outset of the hearing, the Division stated that the subject license had not been activated for a protracted period and had and is presently in the custody of the Board of Commissioners of the City of Atlantic City.

Licensee submitted the testimony of Louis Goldman, its president, who, together with his wife, own all the corporate stock of the corporate licensee, in defense of the charges.

He reviewed the history of the license which had been owned by his father and brother, now deceased. He became an owner more than a decade ago and operated the licensed establishment for a few years until the building became part of an urban renewal project.

There then being no situs for the license, it was deposited with the Clerk of the Board and renewed annually for fourteen years. The applications were prepared pro forma by the Clerk of the Board, and Goldman merely signed them. This practice continued beyond the period commencing when he executed the agreement to sell the premises to Hermley.

He denied he ever looked at the contents of the several applications, and was unaware of the requirement of disclosure of all interests of others in and to the license. He also denied any attempt whatever to conceal from the Board, or anyone, the interests of Hermley or Sacks in and to the license. From May 1, 1976, when he received the balance of the purchase price of the license, he felt he had no further interest in the license.

A transfer of license is presently pending from the licensee to Hermley.

The licensee conceded that it failed to have inserted in the 1976 and 1977 application forms any information respecting Hermley or Sacks, and those forms are, to that extent, inaccurate. It urged that the deficiency resulted from its failure to read the forms prepared by the Clerk of the Board. Its action was merely oversight and without intent of fraudulent conduct. It asserts that without the showing of such motives, the licensee should be found not guilty.

In support of its exculpatory argument, licensee urges that N.J.S.A. 33:1-25, in its final paragraph, sets forth the requirements which must be followed and met by applicants in preparing application forms.

In pertinent part it provides:

All statements in said applications required to be by law or by rules and regulations shall be deemed material, and any person who shall knowingly misstate any material fact, under oath, in said application shall be guilty of a misdemeanor.

(underlining theirs)

Such contention is without merit. That argument may only be valid in a criminal prosecution. This proceeding is in nowise a criminal prosecution. It is a civil proceeding to suspend or revoke a license. The aforesaid statute further provides as follows: "Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for suspension or revocation of a license." It does not provide that such statements need be knowingly made in an action to suspend or revoke a license.

The statute does set forth a presumption that all statements in the applications shall be deemed material. A mere misleading statement or suppression is malum prohibitum. A guilty scienter is not an ingredient in the proof of the charge. Thus, the lack of improper motivation for the admitted failure of compliance with the statute (N.J.S.A. 33:1-25, 52) goes solely toward mitigation. The intention and attitude of Goldman, however well meaning, is not a substitute for the requirements that all licensees are obliged to follow.

Thus, it is recommended that the licensee be found guilty of the charges herein set forth. However, this matter is admittedly not a typical "front" situation where fraud

is an element. Certainly, it would have been a simple matter for Goldman to have inserted information on both license applications pertaining to the prospective license sale. His guilt primarily is the carelessness and disregard of duty so characteristic of those who let others make decisions for them. In light of these mitigating circumstances, it is recommended that the license be suspended for twenty days.

The effective date of such suspension cannot, however, be imposed at present. The license is still retained in the office of the Clerk of the Board and no meaningful suspension can be imposed. Accordingly, it is further recommended that the license be suspended for twenty days, the effective date of which to be hereafter imposed by the Director, if and when the licensee, or its transferee, resumes substantial full time operation in connection with a licensed premises.

#### CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the licensee pursuant to N.J.A.C. 13:2-19.6.

In its Exceptions, the licensee reiterates the arguments advanced at the hearing that it relied on the advice of the local issuing authority clerk and, thus, the failure to state appropriate answers to license application questions was not then intentional. Absent intent to defraud or guilty scienter, it argues it has not violated N.J.S.A. 33:1-25.

This argument was fully considered and correctly resolved by the Hearer in his report. The statute and application on its face clearly mandates the providing of correct license information. A licensee may not abdicate such responsibility for incorrect statements on its application.

However, I specifically refrain from endorsing that portion of the Hearer's Report which seeks to differentiate the Division's administrative proceeding from the standard or elements necessary for a criminal conviction for a false or fraudulent attestation. It is not necessary herein to consider the same in the determination of this matter.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the memorandum of law of the licensee, the Hearer's Report and the written Exceptions filed thereto by the licensee, I concur in the findings and recommendations of the Hearer, except as above

noted, and adopt them as my conclusions herein. I find the licensee guilty as charged and shall suspend its license for twenty (20) days.

Inasmuch as the licensee is not in active operation, I shall defer the commencement of the effective dates of the suspension until such time as the licensee or a bona fide transferee resumes substantial full-time operation.

Accordingly, it is, on this 1st day of February, 1979,

ORDERED that Plenary Retail Consumption License 0102-32-201-001 issued by the Board of Commissioners of the City of Atlantic City to Samhar, Inc., t/a The Picadilly Bar and Lounge, for premises 134 South Virginia Avenue, Atlantic City be and the same is hereby suspended for twenty (20) days, the effective dates of which shall be set forth by Supplemental Order if and when the licensee, or its bona fide transferee resumes substantial full-time operation of licensed premises.

JOSEPH H. LERNER  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF DISQUALIFIED PERSON ON LICENSED PREMISES - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against }

Zenaida Rodriguez t/a Lareno Bar & Package Goods 233 20th Avenue Paterson, N.J. 07501 }

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License 1608-33-251-001, issued by the Board of Alcoholic Beverage Control of the City of Paterson. }

ORDER

No appearance in behalf of Licensee. Heikki Leesment, Esq., Deputy-Attorney General, Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

A charge was preferred against the licensee as follows:

From on or about April, 1977 to date, you employed or had connected with your licensed premises in a business capacity a person who had been convicted of a crime involving moral turpitude, viz., Jesus Gonzales, without said person having his statutory disqualification resulting from said conviction removed by order of the Director of the Division of Alcoholic Beverage Control, nor did said person first obtain a Rehabilitation Employment Permit from the Director; in violation of Rule 1 of State Regulation No. 13 (now N.J.A.C. 13:2-14.1)

Service of notice of the above charge dated December 9, 1977, was initially effected upon the licensee by certified mail on

December 12, 1977. It required her to submit a plea to the said charge on or before December 27, 1977. Upon failure of the licensee to respond, the Prosecution Section of this Division served another notice upon licensee, by certified mail, dated February 28, 1978, requiring her to file a plea to the said charge. The return receipt was signed on March 1, 1978 by a J. Gonzales, who apparently was the employee named in the charge as being convicted of a crime involving moral turpitude. No response having been elicited from this communication, a notice setting a hearing date of August 15, 1978 at 9:30 a.m. was sent to the licensee. Upon the failure of the licensee or anyone in her behalf to communicate with the Division, appear at the hearing, or furnish any reason for such failure to appear, the matter was heard ex parte.

Charles Kroncke, employed by this Division as a Supervising Special Inspector, testified that while an ABC agent was making a routine inspection of the licensed premises on August 25, 1977, he confronted a male, identified as Jesus Gonzales, who was employed by the licensee as the manager of her tavern business. Gonzales admitted that he had been convicted of a gambling charge and, on September 7, 1977, he signed a sworn statement on a form regularly used by the Division in the conduct of its official business, wherein he admitted such conviction. Also, on September 7, 1977, the licensee signed a sworn statement on a similar form wherein she admitted that Gonzales was in her employ as the manager of the licensed business. She further admitted that she was aware that he had been convicted of a crime and added that Gonzales had informed her that he had been cleared by the ABC. Those statements, together with an arrest and conviction sheet disclosing that Gonzales was convicted of a gambling charge, which I find involved the element of moral turpitude, were received in evidence.

Thus, I find that the Division has established the truth of the charge by a fair preponderance of the evidence, indeed, by unchallenged evidence, and recommend that the licensee be found guilty as charged.

The records of this Division reveal that Jesus Gonzales filed an application for a Rehabilitation Permit with this Division on December 22, 1977. Permit No. 858 was issued to him by the Division on January 17, 1978.

Licensee has no prior adjudicated record.

It is, therefore, recommended that the license be suspended for ten (10) days.

CONCLUSIONS AND ORDER

No written Exceptions were filed to the Hearer's Report pursuant to N.J.A.C. 13:2-19.6.

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 recommendations of the Hearer and adopt them as my conclusions herein. I find the licensee guilty of the charge and shall impose a ten (10) days suspension of license.

Accordingly, it is, on this 1st day of February, 1979,

ORDERED that Plenary Retail Consumption License 1608-33-251-001 issued by the Board of Alcoholic Beverage Control of the City of Paterson to Zenaida Rodriguez, t/a Lareno Bar & Package Goods, for premises 233 - 20th Avenue, Paterson be and the same is hereby suspended for ten (10) days commencing 3:00 a.m., Tuesday, February 13, 1979 and terminating 3:00 a.m. Friday, February 23, 1979.



JOSEPH H. LERNER  
DIRECTOR