

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1106

APRIL 9, 1956.

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New Jersey State Library

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DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1106

APRIL 9, 1956.

1. APPELLATE DECISIONS - D'ARCANGELO v. HOBOKEN.

ANNE D'ARCANGELO, )  
Appellant, )  
-vs- ) ON APPEAL  
MUNICIPAL BOARD OF ALCOHOLIC ) CONCLUSIONS AND ORDER  
BEVERAGE CONTROL OF THE CITY )  
OF HOBOKEN, )  
Respondent. )  
-----)  
Albert J. Shea, Esq., Attorney for Appellant.  
Joseph B. McFeely, Esq., by William Gottlieb, Esq., Attorney  
for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's order of October 28, 1955, revoking appellant's plenary retail consumption license for premises 56 Second Street, Hoboken, effective immediately, after appellant was found guilty of the following charges:

"1. That you did on divers days and dates from August 1, 1954 up to and including June 30, 1955, keep and maintain a certain common, ill-governed and Disorderly House, and in said house, for your own lucre and gain, then and on the aforesaid other days and times there unlawfully and wilfully did cause and procure certain persons to use the aforesaid '97 Club' as a place of assignation, by them and there permitting known drug users to frequent said place and permitted the unlawful sale of drugs on the aforesaid premises, all of which was in violation of Rule 4 of State Regulations No. 20.

"2. That you did on divers days and dated from August 1, 1954 up to and including June 20, 1955, unlawfully permit the unlawful solicitation of male patrons for immoral purposes with females, on the licensed premises, which is in violation of Rule 5 of State Regulations No. 20."

Appellant contends in her petition of appeal that "the action of the respondent was erroneous in that there was no evidence to substantiate the charges made and that the testimony of the only witness, Paul Lester Daniels, for the respondent was unworthy of belief."

A transcript of the testimony taken before respondent Board was submitted in evidence at the hearing herein, and additional testimony was presented as provided by Rule 8 of State Regulations No. 15.

It appears from the direct testimony of Paul Lester Daniels (hereinafter referred to as Daniels) that he became acquainted with appellant on August 16, 1954; that in October 1954 he commenced to work as a bartender for her and continued in that capacity until February 1955; that appellant agreed to provide board and lodging for him in return for the services rendered by him in her licensed premises; that he thereupon lived in the appellant's apartment "at #56-3rd Street and then

at 209 Washington Street;" that his duties as bartender began at different hours -- "sometimes from 6:00 o'clock in the morning, maybe sometimes from 9 o'clock at night to closing time;" that he was the only man working in the tavern, but at times there were three or four women employed therein; that a patron called Jimmy frequented appellant's licensed premises and on at least six occasions during a period "close to six months" he purchased narcotics for his own use from Jimmy; that on one occasion in November or December 1954 he obtained a sum of money from appellant for a particular purpose but, instead of spending the money for said purpose, he bought narcotics from Jimmy; that, when he admitted to appellant what he had done with the money, she spoke to Jimmy; that thereafter Jimmy continued to come into appellant's tavern and that appellant made no attempt to have him leave; that at times male patrons asked him about women "to stay with" and, when he told appellant about it, she told him in the future to send any men asking about women to her; that from then on he referred said men to appellant and thereafter he said, "she gave me money, she bought me clothes and she bought me shoes. She gave me a lot of things;" that appellant drove him in her automobile to a hospital in Lexington, Kentucky, for the purpose of enabling him to undergo treatment to effect a cure of the drug habit.

On cross-examination, Daniels admitted that he gave a statement to the police authorities concerning the alleged occurrences which took place in appellant's licensed premises after appellant had filed a complaint against him for destroying certain property in the premises; that he never brought any men to appellant for immoral purposes; that on one occasion he referred a man to her but did not hear any conversation which took place between them; that, although he purchased narcotics from Jimmy in the licensed premises, appellant had never seen him transact such business; that sometimes the narcotics were passed by Jimmy to him in the toilet or in the office; that, although he found a hypodermic needle in appellant's jewelry box in her apartment, he stated that the instrument "could be used for a lot of things;" that he never found narcotics in appellant's apartment; that, in accounting to her for the expenditure of some money she had given him to buy a present, he mentioned that he had used the money to purchase "stuff;" that appellant lectured him on the evils of using narcotics; that he met appellant in New York City on October 14, 1955, and talked with her for a period of time but the matter of her case which was then pending was not discussed; that he called appellant on the 'phone and requested that she meet him in New York and give him \$200.00 but that she hung up the receiver without acknowledging his request.

Appellant testified that she knew Daniels from coming into her licensed premises but that she never hired him to do any work in the tavern nor did she ever see him working in the premises. Appellant further testified that Daniels never spoke to her about men desiring to meet women for immoral purposes nor was she aware that Daniels had at any time purchased narcotics from a youth called Jimmy. Appellant then testified that Daniels helped her move when she changed her residence and that the hypodermic needle found in her jewelry box belonged to her brother who had used the same for a mastoid condition when he lived with her at the time; that she put the article in the jewelry box to prevent her brother's children from obtaining possession of it. Appellant admits that she drove Daniels in her car to Kentucky, but in explanation thereof testified that Daniels' mother asked her to do this for her son and that the mother and son accompanied her to Kentucky in order that Daniels might enter a Veterans' Hospital. She further admitted seeing

Daniels in New York City when she left his mother's apartment, and that her visit was for the purpose of ascertaining why "he was telling these lies about me."

I have carefully examined all of the testimony presented in this case. I might state that the only testimony presented by respondent was the uncorroborated testimony of Daniels. The numerous inconsistencies and contradictions disclosed in the testimony of Daniels concerning the appellant compel me to accord very little weight to his story. The accusations made by Daniels against appellant occurred after she had made a complaint to the authorities that he had destroyed property belonging to her. This in itself is indicative of a motive to retaliate for her action. Furthermore, his admitted attempt to obtain \$200.00 from appellant a short time prior to hearing of the disciplinary proceedings before the respondent Board is another reason I have discounted his testimony to a large degree.

Under the circumstances appearing in this case, I am satisfied that the evidence presented by the respondent herein is not of sufficient weight to affirm its action. The appellant having carried the burden of proof, I have no alternative other than to reverse respondent's action when it found appellant guilty of the charges herein which were preferred against her. Caruso v. Jersey City, Bulletin 694, Item 1.

Appellant will be given an opportunity to demonstrate her worthiness to hold the license in question. However, I might add that respondent will also have a full opportunity to consider the manner in which appellant's licensed premises are conducted for the balance of the current licensing period and, in the exercise of its reasonable discretion, to determine whether it is warranted to renew the license in question if and when an application may be filed for that purpose.

Accordingly, it is, on this 6th day of March, 1956,

ORDERED that the action of the respondent be and the same is hereby reversed.

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - MACK LIQUORS v. NEWARK AND BORNSTEIN.

MACK LIQUORS, a New Jersey corporation, )

Appellant, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and HARRY BORNSTEIN, t/a DOUGLASS-HARRISON WINE & LIQUORS, )

Respondents. )

-----  
Sol Hershops, Esq., Attorney for Appellant.  
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent Municipal Board.  
Carl J. Yagoda, Esq., Attorney for Respondent Harry Bornstein.

BY THE DIRECTOR:

This is an appeal from respondent Board's action whereby it approved an application for a transfer of Plenary Retail

Distribution License D-43 held by the respondent Harry Bornstein from 155 Spruce Street to 302 Belmont Avenue, Newark.

The appeal was presented upon the transcript of the proceedings before respondent Board pursuant to Rule 8 of State Regulations No. 15 and briefs submitted to me.

Appellant, the holder of a similar license issued for 125 Avon Avenue, alleges, in substance, that the action of respondent Board was erroneous because (1) said transfer was approved contrary to the provisions of an ordinance of the City of Newark and (2) the Board abused its discretion in failing to consider the numerous objectors and the close proximity of other licensed premises which are sufficient to take care of the needs and convenience of those residing near the proposed premises.

The distance between 155 Spruce Street and 302 Belmont Avenue is about six blocks.

At the hearing below it was stipulated that the building at 155 Spruce Street is one of many buildings proposed to be taken by the Housing Authority of the City of Newark for the erection of a low-cost housing project.

The building to which the transfer of the license was approved is located on the westerly side of Belmont Avenue, a short distance from Avon Avenue. In the same block on the westerly side of Belmont Avenue are buildings containing, respectively, a drug store, a butcher store, a grocery store, a beauty parlor, another grocery store and a tavern, all with apartments above the stores, and also some buildings used only for residential purposes. In the same block on the easterly side of Belmont Avenue are some buildings containing stores with apartments above and some buildings used only for residential purposes. On Belmont Avenue, two blocks from No. 302, there is another tavern and, four blocks from No. 302, there are two other taverns. Appellant's premises are around the corner on Avon Avenue and 524.34 feet from 302 Belmont Avenue.

At the hearing below, appellant, the owner of the nearest tavern, and nine other persons appeared and objected to the transfer. Some of the nine other objectors reside on Belmont Avenue and some on Avon Avenue. It appears also that respondent Board received written objections from numerous other persons residing on both avenues, but that these persons did not appear at the hearing.

As to (1): The pertinent portion of Section 3.29 of the ordinance in question provides:

"No plenary retail distribution license, except renewals, for the same premises as heretofore have been licensed, and transfers from person to person, shall be granted or transferred to other premises within a distance of seven hundred and fifty feet from an existing licensed premises covered by a plenary retail distribution license. In the event a licensee desires to transfer to other premises he may be permitted to do so at the discretion of the local issuing authority, within seven hundred and fifty feet of the premises wherein he is located at the time of such transfer. He shall comply with the provisions aforementioned when transferring to premises more than

seven hundred and fifty feet from the premises from which the transfer is sought.

\* \* \* \* \*

"Notwithstanding the above-mentioned seven hundred and fifty feet limitation affecting the transfer of any retail plenary consumption or distribution licenses, the local issuing authority, at their discretion, may allow transfer of such licenses free of such seven hundred and fifty feet limitation herein fixed in the event of any licensee's premises being taken for any municipal, county, state or federal project, provided, nevertheless, the new location to which the license is to be transferred under this exception shall not be located within a distance of five hundred feet of a then existing location licensed to do business under a like license as the one being transferred.\*\*\*"

It appears that the present case comes within that portion of the Section which provides that the local issuing authority may allow transfer of a license free of the 750 feet limitation "in the event of any licensed premises being taken for any municipal, county, state or federal project" provided the new location is not within 500 feet of a location licensed to do business under a like license. The building at 302 Belmont Avenue is more than 500 feet from appellant's licensed premises. It sufficiently appears that the Housing Authority proposes to take the property at 155 Spruce Street as part of the housing project. Appellant's attorney, however, contends that the present case does not come within the so-called hardship rule because the Housing Authority has not yet taken the property in question. In Baker v. Newark et al., Bulletin 1018, Item 1, the Newark Board, in disposing of a similar contention, said:

"\*\*\* this Board is of the opinion that the above facts constitute a taking within the hardship rule of the City ordinance in order to justify this Board to apply the same to the application in question and that it was not necessary to wait until the particular property was purchased or condemned before the applicant could claim benefit under the rule \*\*\*."

The Board's disposition of the contention in that case was approved by me in deciding said appeal.

As to (2): At the conclusion of the hearing below, at which all objectors were granted an opportunity to be heard, respondent Board reserved decision. At a meeting held one week later, the Chairman of the Board announced its decision which set forth that the members had "carefully evaluated the evidence presented by the applicant and by the objectors;" that they feel "that this is a hardship case" and that the transfer of the license "would not be an undue act of hardship to anybody." The decision concludes that "the Board is of the unanimous opinion that the application be granted."

It has long been held that the number of licenses which should be permitted in any particular area and the determination as to whether or not a license will be transferred to a particular location are matters within the sound discretion of the issuing authority, and that my function on appeal is not to substitute my opinion for that of the issuing authority but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of my personal views. Guarino v. Newark et al., Bulletin 1069, Item 2, and cases therein cited.

The burden of establishing that respondent Board's action was erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 15.

After considering most carefully all the evidence herein, I find that appellant has failed to sustain that burden.

Accordingly, it is, on this 14th day of March, 1956,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

3. APPELLATE DECISIONS - WAVERCZAK, ADMINISTRATOR PENDENTE LITE OF ESTATE OF VANDERHOOF v. SAYREVILLE AND VANDERHOOF (ORDER DISMISSING APPEAL).

WALTER WAVERCZAK, Administrator )  
Pendente Lite of Estate of GEORGE )  
S. VANDERHOOF, )

Appellant, )

ON APPEAL  
O R D E R

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF )  
SAYREVILLE and MARION VANDERHOOF, )

Respondents. )

-----  
George G. Kress, Esq., Attorney for Appellant.  
Joseph T. Karcher, Esq., Attorney for Respondent Borough Council.  
Isidor M. Dubrow, Esq., Attorney for Respondent Marion Vanderhoof.

BY THE DIRECTOR:

This is an appeal from the action of respondent Borough Council whereby it refused to extend Plenary Retail Consumption License C-24 for the licensing year 1954-55 in the names of appellant Walter Wawerczak, administrator pendente lite of the estate of George S. Vanderhoof, and respondent Marion Vanderhoof; and, furthermore, from its action in refusing to renew said license for the 1955-56 licensing period in the names of appellant Walter Wawerczak, administrator pendente lite of the estate of George S. Vanderhoof, and respondent Marion Vanderhoof.

Through their respective attorneys the parties hereto have agreed by a formal stipulation that the appeal herein be dismissed. No cause appearing to the contrary,

It is, on this 14th day of March, 1956,

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

WILLIAM HOWE DAVIS  
Director.

## 4. AMENDMENT TO RULE 3 OF STATE REGULATIONS NO. 15.

P. L. 1955, chap. 43, amended R. S. 33:1-26 to provide that an appeal to the Director from refusal to grant a transfer of a license may be taken within 30 days after the date upon which the local issuing authority serves upon or mails to the applicant a notice of such refusal instead of 30 days from the date of action of the local issuing authority. In order that the Rule may conform with the provisions of P. L. 1955, chap. 43, I am herewith, effective immediately, amending Rule 3 of State Regulations No. 15 to read:

"Rule 3. Appeals from the issuance of a license and from the granting of an application for the extension or transfer of a license must be taken within thirty (30) days from the date of the action appealed from; all other appeals must be taken within thirty (30) days after the service or mailing of notice by the municipal issuing authority of the action appealed from."

Promulgated: March 16, 1956.

Effective: Immediately.

Filed with the Secretary of State of New Jersey: March 16, 1956.

## 5. AMENDMENT TO RULE 14 OF STATE REGULATIONS NO. 15 - HEREIN OF PROCEDURE IN HEARINGS HELD IN APPEAL CASES.

I have deemed it advisable to amend the procedure in the conduct of hearings held in appeal cases. To accomplish this result, I have decided to amend Rule 14 of State Regulations No. 15 to become effective April 1, 1956. The present procedure will apply to hearings in appeal cases which are terminated on or before March 29, 1956. The amended procedure will apply to all appeal cases which are terminated or fully heard on and after April 2, 1956.

Accordingly, I am herewith, effective April 1, 1956, amending Rule 14 of State Regulations No. 15 to read:

"Rule 14. Hearings shall be conducted by the Director or a duly designated hearer. Each party may be represented by an attorney admitted to practice in the courts of this State and shall have the right to present his case by oral and documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Testimony shall be taken stenographically and transcribed in each case. Each party shall be afforded the opportunity to present argument, either orally before the hearer immediately upon the close of the evidence, or by written brief. Oral argument shall be limited to 15 minutes for each party, unless the hearer shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the hearer. In cases where a hearer's report is not to be prepared, such fact shall be announced by the hearer at the close of the evidence. In other cases, the hearer shall, upon receipt of the transcribed record and briefs, if any, prepare a report containing recommended conclusions and order and file the original with the Director and forthwith transmit a copy, either personally or by mail, to the parties or their attorneys. Within 10 days of the receipt of the report, each party may file written

exceptions and argument with the Director, together with proof of service of a copy thereof upon the other parties or their attorneys. Within 5 days after such service, answering argument may be filed with the Director, together with proof of service of a copy thereof upon the other parties or their attorneys. With respect to objectors appearing without an attorney, the provisions relating to the hearer's report shall apply only to one or more of such objectors as shall be designated by the hearer for such purpose. Except as otherwise provided herein, no oral argument may be had before the Director unless, on his own motion, the Director decides to hear oral argument and notifies the parties or their attorneys of the date and place fixed therefor.

"The hearer's report shall not be binding upon the Director and the Director's decision may, in whole or in part, adopt, modify or reject the report, provided, however, that no material change in the result recommended by the hearer shall be made by the Director without first affording the parties or their attorneys an opportunity to present oral argument before the Director. The decision of the Director shall be in the form of a written opinion setting forth his conclusions, together with supporting reasons therefor, and his order, if any. A copy of the opinion shall be mailed forthwith to the parties or their attorneys.

"Any of the provisions of this Rule relating to the presentation of his case or argument, or to the procedure in connection with the hearer's report, may be waived by any party or his attorney."

Promulgated: March 16, 1956.

Effective: April 1, 1956.

Filed with the Secretary of State of New Jersey: March 16, 1956.

6. PROMULGATION OF RULE 6 OF STATE REGULATIONS NO. 16 - HEREIN OF PROCEDURE IN HEARINGS HELD IN DISCIPLINARY PROCEEDINGS INSTITUTED BY THE DIVISION.

I have deemed it advisable to amend the procedure in conduct of hearings held in disciplinary proceedings instituted by the Division. To accomplish this result, I have decided to promulgate a new rule designated as Rule 6 of State Regulations No. 16, to become effective April 1, 1956. The present procedure will apply to hearings in such disciplinary proceedings which are terminated on or before March 29, 1956. The amended procedure will apply to all such cases which are terminated or fully heard on and after April 2, 1956.

It should be noted that Rule 6 of State Regulations No. 16 does not apply to disciplinary proceedings conducted by local issuing authorities.

Accordingly, I am herewith, effective April 1, 1956, promulgating Rule 6 of State Regulations No. 16 to read:

"Rule 6. Hearings in contested cases before the Division shall be conducted by the Director or a duly designated hearer. For the purposes of this Rule, the owner of the licensed premises, if he has been made a party, shall be considered a defendant. Each defendant may be represented by an attorney admitted to practice in the courts of this State. Testimony on behalf of the Division shall be presented by a prosecutor assigned by the Director, and such prosecutor and each defendant shall have the right to present his case or defense by oral and documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Testimony shall be taken stenographically and transcribed in each case. Each defendant shall be afforded the opportunity to present argument, either orally before the hearer immediately upon the close of the evidence, or by written brief. Oral argument shall be limited to 15 minutes for each defendant and the prosecutor, unless the hearer shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the hearer. In cases where a hearer's report is not to be prepared, such fact shall be announced by the hearer at the close of the evidence. In other cases, the hearer shall, upon receipt of the transcribed record and written briefs, if any, prepare a report containing recommended conclusions and order and file the original with the Director and forthwith transmit a copy, either personally or by mail, to defendants or their attorneys and to the prosecutor. Within 10 days of the receipt of the report, any defendant or the prosecutor may file written exceptions and argument with the Director, together with a statement of service of a copy thereof upon the prosecutor or the defendants, as the case may be. Within 5 days after such service, answering argument may be filed with the Director, together with a statement of service of a copy thereof upon the prosecutor or the defendants, as the case may be. Except as otherwise provided herein, no oral argument may be had before the Director unless, on his own motion, the Director decides to hear oral argument and notifies the defendants or their attorneys of the date and place fixed therefor.

"The hearer's report shall not be binding upon the Director and the Director's decision may, in whole or in part, adopt, modify or reject the report, provided, however, that the Director shall not increase any recommended penalty or term of disqualification of the premises, or change a recommended finding of not guilty or a recommendation of dismissal of the proceedings against the owner, without first affording defendants an opportunity to present oral argument before the Director. The decision of the Director shall be in the form of a written opinion setting forth his conclusions, together with supporting reasons therefor, and his order, if any. A copy of the opinion shall be mailed forthwith to defendants or their attorneys.

"Any of the provisions of this Rule relating to the presentation of the defense or case or argument, or to the procedure in connection with the hearer's report, may be waived by any defendant or his attorney, or the prosecutor, as the case may be.

"In uncontested cases before the Division, written argument as to penalty may be submitted to the Director within 5 days after entry of the plea. No oral argument may be had before the Director unless, on his own motion, the Director decides to hear oral argument and notifies the defendant or his attorney of the time and place fixed therefor."

Promulgated: March 16, 1956.

Effective: April 1, 1956.

Filed with the Secretary of State of New Jersey: March 16, 1956.

7. APPELLATE DECISIONS - THE FLORENCE METHODIST CHURCH ET ALS. v. FLORENCE TOWNSHIP AND CHRISTY - AMENDED ORDER EXTENDING TIME FOR TRANSFER OF LICENSE.

THE FLORENCE METHODIST CHURCH, )  
ET ALS., )

Appellants, )

-vs-

ON ORDER TO SHOW  
CAUSE

AMENDED ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP )  
OF FLORENCE, and GERTRUDE CHRISTY, )

Respondents. )

-----)  
George Pellettieri, Esq., Attorney for Respondent Gertrude Christy.  
Martin J. Queenan, Esq., Attorney for Respondent Township Committee.  
Dimon, Haines and Bunting, Esqs., by John E. Dimon, Esq.,  
Attorneys for Appellants.

BY THE DIRECTOR:

In my Conclusions and Order, entered January 4, 1956  
(Bulletin 1095, Item 9) it was:

"ORDERED that Gertrude Christy shall discontinue, for the balance of its term, all operations under License No. C-7 issued to her by the Township Committee of the Township of Florence for premises No. 1 Front and Broad Streets, Florence Township, on or before 2:00 a.m. February 3, 1956; and it is further

"ORDERED that said License No. C-7 be cancelled, effective 2:00 a.m. April 4, 1956, unless before said date said Township Committee shall, in its discretion, grant a transfer of said license to a qualified person for other premises, in which event said license shall be in full force and operation as soon as the transfer is endorsed on the face of the license certificate."

Mrs. Gertrude Christy has requested me, by letter of March 3, 1956, to grant an extension of the deadline date now fixed for person-to-person and place-to-place transfer of her 1955-56 license. Mrs. Christy's letter stresses her "investment" (cost of acquiring the 1954-1955 license by transfer from Charles G. Kovacs, Jr.) and her difficulties, in the situation encountered, of getting "a reasonable offer".

I believe that the 90-day period fixed by me was a generous one and, of course, it is not properly my responsibility or function to assist any licensee in obtaining a particular "offer", reasonable or otherwise. Under the present circumstances,

however, I believe it the fair course for me to grant a 30-day extension.

Accordingly, it is, on this 8th day of March, 1956,

ORDERED that the Conclusions and Order heretofore entered on January 4, 1956, be and the same are hereby amended as to the final paragraph, as follows:

"ORDERED that said License No. C-7 be cancelled, effective 2:00 a.m. May 4, 1956, unless before said date said Township Committee shall, in its discretion, grant a transfer of said license to a qualified person for other premises, in which event said license shall be in full force and operation as soon as the transfer is endorsed on the face of the license certificate."

WILLIAM HOWE DAVIS  
Director.

8. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT LANGUAGE) - HOSTESS - LOTTERY - ALLOWING PREMISES TO BE CONDUCTED AS A NUISANCE - PRIOR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against CHARLES PORCURI T/a SUNSHINE TAVERN 89 Garden Street Hoboken, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-158, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

Nicholas J. Paladino, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On November 9, 10, 12, 13, 16 and 17, 1955, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"2. On November 9, 10, 12, 13, 16 and 17, 1955, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20.

"3. On Saturday night, November 12 and early Sunday morning, November 13, 1955, you allowed, permitted and suffered a lottery commonly known as a drawing to be conducted in and upon your licensed premises and allowed, permitted and suffered tickets and participation rights in such aforementioned lottery in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20.

"4. On November 9, 10, 12, 13, 16 and 17, 1955, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered unescorted females frequenting your licensed premises to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them and others and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that the charges involve misconduct observed by three ABC agents on their visits to the defendant's licensed premises on November 9, 12 and 16, 1955.

On November 9, 1955, the agents entered the premises at about 11:00 p.m. They observed males and females, including the licensee, embracing and kissing. The barmaid called Peggy took some change from the agents to play the juke box. She asked one of the agents to scratch her back and made a vulgar remark relating to sexual intercourse. She introduced the agents to Frances, employed by the licensee as a part-time barmaid. Peggy served a drink of alcoholic beverages to Frances, herself and to the agents for which the agents paid. Thereafter, Peggy, without specific request so to do, served herself, Frances and the agents with a total of seven rounds of alcoholic beverages. Peggy also had other drinks at the expense of other male patrons. Frances indulged in vulgar language regarding sexual intercourse, told a dirty story and discussed a future date with the agents and stated that she would have another girl available. As the agents were about to leave, Frances asked one of them for coffee money and was given \$1.00.

On their second visit on November 12th at about 10:00 p.m., the agents found Peggy tending bar. Peggy asked Frances to join the agents. Peggy served alcoholic beverages to herself, Frances and the agents for which the agents paid. The agents asked Frances where the other girl was to which she replied that the girl would be there later. Meanwhile, Frances took the agents' money to play the juke box. The agents again observed males and females embracing and kissing and overheard foul and filthy language. The licensee was present tending bar on occasion. At about 11:00 p.m., a girl called Betty came in. Peggy called Betty over, introduced her to the agents and served her with two drinks of alcoholic beverages at the agents' expense. Betty then left. Frances addressed vulgar language to the licensee and told him to give a drink to a woman called Hopalong. The licensee served this woman with a drink and took the agents' money therefor. A girl called Irene entered the premises and was called over by Frances to meet the agents. Peggy served Irene alcoholic beverages at the agents' expense. Francis discussed Irene's "habits" with the agents but Irene told the agents that she would not indulge in any immoral acts but that she would drink with them. The agents had some general conversation with Frances and Peggy concerning their availability for immoral purposes. Frances kissed one of the agents and stroked his thigh with her hand. Peggy also indulged in "affectionate" conduct with one of the agents.

During the course of their stay, Frances addressed vulgar language to the licensee and asked him to run off a raffle for a quilt. The licensee took a large cardboard box containing numerous paper slips with names of persons indicated thereon, placed the box in front of one of the agents and asked him to

draw a slip. The agent complied, drew out a slip with the name of Norman Foster and handed the slip to the licensee. Foster did not respond when his name was called. Accordingly, another slip of paper was picked by a patron, which, by coincidence, also bore Foster's name. Later, Foster appeared and claimed the quilt. Frances engaged in a running comment addressed to the licensee in vulgar language during the drawing. The licensee made a practice of placing the names of shuffle alley players in the box and drawings to select the winner in the above manner were held once a week.

At 1:00 a.m. when the agents were leaving, Frances asked for and received a dollar from one of the agents. She then joined another man and was served a drink of alcoholic beverages at his expense.

On the agents' last visit on November 16, 1955 at 9:30 p.m., Peggy was tending bar. The licensee was seated in front of the bar with a girl called Mary with whom he was later observed hugging and kissing. Peggy kissed and was otherwise affectionate with one of the agents. Peggy served alcoholic beverages to the agents and herself for which the agents paid. They observed Frances drinking with other male patrons. She joined the agents and was served drinks at the agents' expense. The licensee left Mary to answer a telephone call, whereupon another male patron took the seat next to Mary and paid for a drink served to her. Peggy served another drink to Mary without request therefor by such patron. This patron in turn told Peggy that he did not have enough money to pay for Mary's drink and his own, paid only for Mary's drink, and left. When the licensee returned and stood behind the agents, they asked him about Mary's morals. The licensee said, "It could be made, but you got to talk to her". One of the agents did talk to Mary but she told him she did not indulge in any immoral conduct. Two of the agents went to the shuffle alley whereupon the licensee suggested that they play as partners for drinks. Mary and the licensee played one game as partners with the agents. The agents were the losers. Upon returning to the bar, Mary said to Peggy that the agents had to buy the drinks. Peggy said the losers buy for everybody. Peggy then poured drinks for Mary, Frances, herself, the licensee and the agents for which the latter paid. Frances told two of the agents that after the closing of the tavern Peggy and Frances would go with them to Peggy's flat. The agents observed Betty, whom they had seen on November 12th, obtain drinks at the expense of other male patrons. The agents again observed males and females embracing and kissing. At about 11:30 p.m., when Peggy served another round of drinks to Frances, herself and the agents without the latter's request, the agents disclosed their identities and seized the cardboard box containing slips of paper bearing names of persons who had scored over 400 in the shuffle game.

Defendant has a prior adjudicated record. Effective February 4, 1954, his license was suspended by the Director of the Division of Alcoholic Beverage Control for 90 days for violations similar to Charges 1, 2 and 4 herein. Re Porcuri, Bulletin 1001, Item 2.

Counsel for defendant presented oral argument before me as to penalty. In suspending defendant's license in 1954 for 90 days, mention was made of the fact that defendant was operating only a short time and had no prior record. If the present violations were the same as or of a more aggravated nature than those in the past, revocation of the license might well be merited. However, the present violations are less aggravated than those in the past. In addition the licensee has evidently

concluded that he is not capable of operating this licensed tavern properly. On November 22, 1955, he entered into a contract to sell the licensed business to what is represented as a bona fide purchaser, with consummation of such contract awaiting the outcome of these proceedings and approval of the transfer of the license by the local issuing authority. Under the circumstances presented, I shall suspend defendant's license for the balance of its term.

Accordingly, it is, on this 8th day of March, 1956,

ORDERED that Plenary Retail Consumption License C-158, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Charles Porcuro, t/a Sunshine Tavern, 89 Garden Street, Hoboken, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. March 19, 1956.

WILLIAM HOWE DAVIS  
Director.

9. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES BY RETAILER TO ANOTHER RETAILER, IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SILVER ROD STORES, (A Corp.)  
14 Journal Square  
Jersey City 6, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribution License D-122, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Silver Rod Stores, (A Corp.), Defendant-licensee, by  
Minna R. Buck, Secretary.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On or about January 18, 1955 and January 10 and 17, 1956 and on divers other days between January 18, 1955 and January 18, 1956 you, a New Jersey retail liquor licensee without authority of special permit so to do, purchased and obtained from and sold to another retail liquor licensee, viz., Solomon Ginsberg, t/a Young's Liquor Store, 2920 Hudson Boulevard, Jersey City, New Jersey, various alcoholic beverages; in violation of Rule 15 of State Regulations No. 20."

The file herein discloses that on the various dates specified in the charge preferred herein and on other days between January 18, 1955 and January 18, 1956 mentioned therein, defendant followed the practice of purchasing from, selling to or exchanging with the other retailer, various alcoholic beverages in violation of Rule 15 of State Regulations No. 20, which provides as follows:

"No retail licensee shall purchase or obtain any alcoholic beverage except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director of the Division of Alcoholic Beverage Control. Purchase of alcoholic beverage by one retailer from another and sale of alcoholic beverage by one retailer to another are prohibited."

I shall suspend defendant's license for a period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Reynolds, Bulletin 877, Item 4.

Accordingly, it is, on this 27th day of February, 1956,

ORDERED that Plenary Retail Distribution License D-122, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Silver Rod Stores, (A Corp.), 14 Journal Square, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 9:00 a.m. March 5, 1956, and terminating at 9:00 a.m. March 15, 1956.

WILLIAM HOWE DAVIS  
Director.

10. DISCIPLINARY PROCEEDINGS - AGGRAVATED SALES TO MINORS -  
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

JOHN JAY MILLER, JR. )  
475 Market Street )  
Saddle Brook Township )  
PO Rochelle Park, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-5, issued by the )  
Township Committee of the Township )  
of Saddle Brook. )

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Walter H. Jones, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on Friday night, October 21, and early Saturday morning, October 22, 1955, he sold, served and delivered alcoholic beverages to three minors, and permitted the consumption of such beverages by said minors, in and upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

The facts adduced herein show that on the dates set forth in the charge Lynn --- (age 17), Barbara (age 18) and Peggy (age 20), accompanied by two adults, were in defendant's licensed premises wherein each minor consumed one or more mixed drinks containing whiskey served by a waitress who made no inquiry as to their ages. Lynn and one of the adults later directed ABC agents to the premises in question and pointed it out as the place wherein the alcoholic beverages had been served to the minors, but were unable to identify the waitress who served them. Failure to identify the specific person who

made the sale, service and delivery to the minors is not fatal in disciplinary proceedings against the licensee (Re King, Bulletin 966, Item 1).

On January 16, 1956, I announced that the penalty in a case such as that now under consideration would be increased over that heretofore imposed (Re Increased Penalties, Bulletin 1095, Item 1). However, since the violation herein was committed previous to the time of said announcement, the penalty herein will not be affected thereby.

Defendant has no prior adjudicated record. Because of the number of minors involved and the fact that the youngest was only seventeen years of age, I shall suspend defendant's license for twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days (Re Primiceri, Bulletin 948, Item 5).

Accordingly, it is, on this 6th day of March, 1956,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Saddle Brook to John Jay Miller, Jr., for premises 475 Market Street, Saddle Brook Township, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. March 13, 1956, and terminating at 3:00 a.m. March 28, 1956.

WILLIAM HOWE DAVIS  
Director.

11. STATE LICENSES - NEW APPLICATIONS FILED.

Nucera Beverage Transportation Co., Inc.

51 Carmen Avenue, Basement, Bordentown Township, N.J.

Application filed March 20, 1956 for Transportation License.

M & L Motor Lines, Inc., 137 Harvard Ave., Stamford, Conn.

Application filed 3/21/56 for transfer of Transportation License T-126 from Mary E. Angenola, t/a M & L Motor Lines, 137 Harvard Ave., Stamford, Conn.

Milton Needle, Harold Needle & Arthur Needle, t/a Egg Harbor

Winery Company, 454 Boston Ave., Egg Harbor City, N.J.

Application filed 3/27/56 for transfer of Plenary Winery License V-5 from Milton Needle, t/a Egg Harbor Winery Company, 454 Boston Ave., Egg Harbor City, N.J.

Regina Wine Co., Inc., 330 Raymond Boulevard, Newark, N.J.

Application filed 3/23/56 for Plenary Winery License.

Camden County Beverage Company, N.W. Cor. Fillmore & Bulson Sts., Camden, N.J.

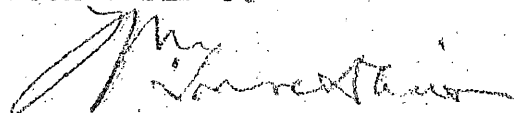
Application filed 4/3/56 for Limited Brewery License.

W.T. MacGowan Inc., 516-518 Passaic Ave., Spring Lake, N.J.

Application filed 4/3/56 for transfer of Wine Wholesale License WW-3 from Beaulieu Vineyard Distributing Co., 300 Montgomery St., San Francisco 4, Calif.

South Jersey Bottling Co., 256-258-260 Pine St. & 262-64-66 Pine St. & 811-13-15 S. 3rd St., Camden, N.J.

Application filed 4/5/56 for additional warehouse at 2021 Baltic Ave. & corner lot adjacent thereto, Atlantic City, N.J., on State Beverage Distributor's License SBD-8.



William Howe Davis  
Director.