

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

Mr. Michelson

BULLETIN 1179

AUGUST 7, 1957.

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

BULLETIN 1179

AUGUST 7, 1957.

1. APPELLATE DECISIONS - RARITAN LIQUORS, INC. v. BRIDGEWATER TOWNSHIP.

RARITAN LIQUORS, INC.,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE) CONCLUSIONS AND ORDER
TOWNSHIP OF BRIDGEWATER,)
Respondent.)

Green and Yanoff, Esqs., by Leo Yanoff, Esq., Attorneys for Appellant.
Charles A. Reid, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on February 4, 1957, it denied by unanimous vote appellant's application for a place-to-place transfer of plenary retail distribution license D-2 from its present location at Old York Road, Bradley Gardens, to Somerset Shopping Center at the Circle on Highway #22. Both locations are in Bridgewater Township.

"Respondent denied the application for the following stated reasons:

'The request for transfer of liquor license by Raritan Liquor Store has been denied because the Township Committee believes that the existing two licenses in the Township were originally granted to localities where the heaviest concentration of population existed namely Finderne and Bradley Gardens and that this situation still exists.

'We believe the licenses should be located where they will be of most value to the citizens of the Township. Transferring the license to the shopping center on Route 22 at the circle will not satisfy this requisite as well as leaving it in Bradley Gardens.'

"Appellant alleges that respondent's action was erroneous in that:

- 'A. It is not correct that the heaviest concentration of population exists as stated.
- 'B. It is not correct that the retention of the license at its present location will be of more value to the citizens of the Township than the transfer of the license to the Somerset shopping center.
- 'C. The public need and convenience will be better served by having the license at the new location.

- 'D. Appellant's present quarters at Old York Road are small, cramped and inadequate and cannot properly serve the needs and convenience of Bridgewater Township, whereas the proposed quarters at the Somerset Shopping Center will be large and commodious and better suited to satisfying the needs and convenience of the patrons of the store.
- 'E. The action of the Township Committee in denying the application for place to place transfer was an unreasonable exercise of its judgment.'

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"Briefly stated, the admitted facts are: Bridgewater is a rapidly growing community of approximately 14,000 persons. It is somewhat triangular in shape, with two densely populated areas at its base designated as Bradley Gardens, and Finderne which areas are separated by the communities of Raritan and Somerville. A recently constructed shopping center within the boundaries of Bridgewater at Somerville Circle is the site to which appellant seeks to transfer its license. Respondent is limited by law to two plenary retail distribution licenses, one of which it issued to appellant for premises in Bradley Gardens, the other to a licensee in Finderne. Bradley Gardens is separated from the shopping center site by the Borough of Raritan. Finderne is separated from said site by the Borough of Somerville. The distance between appellant's premises in Bradley Gardens and the shopping center is two miles. Appellant is the holder of two similar licenses -- one in Raritan and the other in Bernardsville. The distance between its licensed premises in Raritan and the shopping center is three-quarters of a mile. Twenty-eight plenary retail consumption licensed premises are scattered throughout the Township, the nearest to the shopping center being Middlebrook Bar and Grill and Somerville Inn, both approximately one mile distant therefrom. Raritan Valley Inn in Raritan Borough is at Somerville Circle and directly across from said shopping center. The dimensions of appellant's premises in Bradley Gardens are 6 ft. x 12 ft., and those of the proposed site 20 ft. x 100 ft., with a cellar 20 ft. x 50 ft. No question is raised as to the personal fitness of appellant's officers and stockholders or the suitability of the proposed premises as such, and the only objector who appeared before respondent (but not at the hearing herein) was a representative of the Bradley Gardens Businessmen's Association.

"The evidence adduced on the part of appellant tends to show that the proposed site to which the license is sought to be transferred is more commodious than appellant's location in Bradley Gardens; that it will enable appellant to carry an adequate and diversified supply of merchandise; that it has better parking facilities and that it will better serve the needs and conveniences of all the people of the Township. The evidence further tends to show that appellant has been operating its business in Bradley Gardens at a loss; that on two occasions said premises were burglarized, and that, relying upon a favorable determination of its application for the proposed premises, it incurred some debts and committed itself to other obligations.

"The evidence adduced on the part of respondent tends to show that Bradley Gardens and Finderne, located, respectively, in the southwesterly and southeasterly portions of the Township,

are the most densely populated areas, constituting, in practical effect, small, separate communities; that the section of the Township embracing the shopping center is comparatively rural and adequately served by existing licenses in the Township and in the municipalities contiguous thereto; that the shopping center is designed to encourage trade from an area far beyond the Township limits and is not a substitute for a neighborhood package store; that, when the first of the two package store licenses was issued, a plan of distribution of such licenses was formulated, in accordance with which the license in question was issued for premises in Bradley Gardens.

"The sole question to be determined herein is whether or not respondent's action was a reasonable exercise of its discretionary power.

"A transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Thompson v. Mt. Olive, Bulletin 986, Item 1; Van Schoick v. Howell, Bulletin 120, Item 6. On appeal the burden is on appellant to show that respondent abused its discretion. Rule 6 of State Regulation No. 15; Bock Tavern, Inc. v. Newark, Bulletin 952, Item 1; Livingston Land Corp. v. Livingston, Bulletin 1136, Item 3. There is no evidence herein to indicate that respondent issuing authority was improperly motivated. Respondent by its action was adhering to a plan of distribution respecting plenary retail distribution licenses which had been formulated when the first of such licenses was issued. It has heretofore been determined that denial of an application for transfer of a license on such grounds was not an unreasonable exercise of the discretionary power vesting in an issuing authority. Cf. Sadovsky v. Millstone, Bulletin 120, Item 4; Sheba v. Millstone, Bulletin 274, Item 1; National Liquor Company v. Metuchen, Bulletin 1167, Item 2. Counsel for appellant submitted a memorandum citing numerous cases in support of appellant's contention that respondent's action should be reversed. I have carefully considered the cited cases and am in accord with the answering memorandum of respondent's counsel -- that the principles enunciated in said cases are not applicable to the facts of the case sub judice.

"Considering all the facts and circumstances herein, I find that respondent's denial of appellant's application was a reasonable exercise of its discretionary power, and I recommend that its action be affirmed."

Written exceptions to the Hearer's Report were filed by the attorneys for appellant, pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record in this case, including the transcript of the testimony, the Hearer's Report and the exceptions thereto. I concur in the findings and conclusions of the Hearer and adopt his recommendation. I shall affirm the action of respondent.

Accordingly, it is, on this 20th day of June, 1957,

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

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - JUMP v. LOGAN TOWNSHIP.

GEORGE C. JUMP and EDNA A.)
 JUMP, partners, t/a JUMPY'S,)

Appellants,)

-vs-)

TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF LOGAN,)

Respondent.)

ON APPEAL
 CONCLUSIONS AND ORDER

-----)
 Nathaniel Rogovoy, Esq., Attorney for Appellants.
 William B. Kramer, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's denial of appellants' application for a new plenary retail consumption license for premises located on Route 130, Bridgeport, Township of Logan, Gloucester County.

"The application was denied on March 18, 1957, for the following stated reasons:

- '(a) No public need.
- '(b) Against the great weight of public opinion in granting another license.'

"The petition of appeal alleges that the population of the Township of Logan by the 1950 census is over 2,000; that there is presently one plenary retail consumption license in effect; that one more such license may be issued, and that the action of the Township Committee was arbitrary, capricious and an abuse of discretion.

"The evidence herein discloses that, for almost ten years last past, appellants have conducted a restaurant on Route 130 near the intersection of Route 130 and Route 332. It has been testified that both of these highways are heavily traveled, but it appears that the area surrounding appellants' premises is essentially rural in character. The plenary retail consumption license now in existence has been issued for many years last past to another individual for premises located in a section known as Nortonville near the southern boundary of the Township of Logan. Said premises are approximately four miles from appellants' premises.

"R. S. 33:1-12.14 provides, in effect, that no new plenary retail consumption or seasonal retail consumption license shall be issued in a municipality unless and until the combined total number of such licenses existing in such municipality is fewer than one for each 1,000 of its population as shown by the last then preceding Federal census. Since the population of the Township according to the 1950 census was in excess of 2,000, the issuance of a second plenary retail consumption license was not prohibited by R.S. 33:1-12.14. Appellants filed their application February 24, 1957. At that time an ordinance of the Township of Logan permitted the issuance of one plenary retail consumption license for each 1,000 of population. According to the 1950 Federal census the population of

the Township was 2,222. Thus there was at that time no local ordinance which would prevent the issuance of a second plenary retail consumption license. However, the fact that the issuance of a license is not prohibitive by State Law or local ordinance does not mean that an applicant has a 'right' to a license -- that his application must be granted. No person, however legally qualified, is entitled to secure a license as a matter of right. Haines v. Pemberton, Bulletin 869, Item 12.

"The evidence herein further discloses that, after appellants filed their application, written objections were received by the Township Committee and a public hearing was held on March 18, 1957. At said hearing a petition containing the names of 231 people who objected to issuance of the license was filed with respondent, and 22 objectors personally appeared at said hearing. At the conclusion of the hearing the two members of the Township Committee who were then present voted to deny the application for the reasons set forth above. On April 22, 1956, an ordinance repealing the prior limiting-ordinance, and providing, among other things, that not more than one plenary retail consumption license shall be issued and outstanding, was finally adopted without objection by respondent Township Committee.

"The number of licenses which should be permitted in a municipality is primarily within the sound discretion of the local issuing authority, and the function of the Director on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether a reasonable cause exists for its opinion. The only evidence as to the need for an additional license was that given by George C. Jump (one of appellants herein). On the other hand, Mayor Lewis Myers and Committeeman Edward T. Grover testified that in their opinion there was no need for an additional plenary retail consumption license in the Township. The Mayor, after referring to licenses in adjoining municipalities, stated that 'we feel if anyone wants any beverage to drink' they may 'either call by telephone or get in their car and go a short distance or get on the bus.' It also appears from the evidence that there was substantial local sentiment against the issuance of a second plenary retail consumption license.

"Considering all the evidence herein it does not appear that appellants have sustained the burden of proof in establishing that respondent abused its discretion. Gallagher v. Spring Lake, Bulletin 750, Item 7; Moschera v. Plumsted, Bulletin 1075, Item 8.

"Moreover, in determining this appeal the ordinance as it now exists must be considered. A second plenary retail consumption license cannot lawfully be issued in the Township of Logan in the face of the present ordinance prohibiting more than one such license. Moschera v. Plumsted, supra, and cases therein cited.

"After considering all the evidence herein and the letters, in lieu of briefs, submitted by the attorneys for appellants and respondent, I recommend that an order be entered affirming the action of respondent and dismissing the appeal herein."

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

Having carefully considered the evidence herein, I agree with the conclusions and recommendation as set forth in the Hearer's Report and adopt said conclusions as my conclusions herein. Hence I shall affirm the action of respondent.

Accordingly, it is, on this 20th day of June, 1957,

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

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (SOLICITING FOR PROSTITUTION) - HINDERING INVESTIGATION - CONDUCTING BUSINESS AS NUISANCE - PRIOR RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

NATHAN KURTZ)
T/a KELLY'S LONG BAR)
181 Mulberry Street)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-365, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

William Osterweil, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to the following charges:

'1. On August 28, September 6, 13 and 14, 1956, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

'2. On September 14, 1956, while Inspectors and Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety were conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35.

'3. On June 20, August 28, September 6, 7, 13 and 14, 1956, 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 make overtures to male patrons for illicit sexual intercourse and to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them; allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"At the hearing herein the Division called as its witnesses four of six ABC agents who participated in the investigation of defendant's licensed premises. They and the others will hereinafter be referred to as Agents M, N, L, D, R and G.

"Agent M testified substantially as follows: He visited defendant's licensed premises on August 28, September 6, 7, 13 and 14, 1956. On August 28 a female called Chink solicited him for drinks and prostitution. On September 6 he observed a female soliciting drinks from Agent L. On September 7 he observed a female called Louise in the company of Agent L and heard Agent N ask Carmine (the bartender) if Louise's husband was around because he wanted to engage in illicit sexual relations with her and that he heard Louise vent her spleen on a nationally prominent person by the continuous use of filthy and obscene expressions. Further, he was approached by a female called Nina who solicited him for drinks and who took from his change on the bar money to play a juke box. On September 13 he observed Nina join Agent L at the bar and accept drinks paid for by said agent. Later he was approached by a male patron who inquired if he wanted to engage in a perverted sex act. On September 14 Chink solicited him for drinks which he purchased for her and later he made arrangements with her to have illicit sexual relations with him. Thereafter he purchased from Carmine one of three bottles of perfume and, after handing \$10.00 in marked money to Chink for her intended promiscuity, left the premises followed at a distance by Chink who was apprehended by Agents D, R, N and L and two City detectives to whom, in his presence, she admitted the illicit arrangements and turned over the marked money. He testified further that he, Agent D and one of the detectives returned to the licensed premises, identified themselves and made known the violations to Carmine who 'phoned his brother John (the night bartender) to come to the premises; and that John, upon arrival, snatched from the hands of Agent D two bottles of perfume which had been seized for evidential purposes from the back bar.

"Agent N testified substantially as follows: He visited defendant's licensed premises on June 20 and September 7 and 14, 1956. On June 20 he observed unescorted females consuming drinks paid for by male patrons. On September 7 he observed Louise accept drinks at the expense of Agent L and take money from said agent's change on the bar to play the juke box. During his stay he asked Carmine whether Louise's husband was around since he wanted to have illicit sexual relations with her and that thereafter Louise became angry at the mention of a prominent person and indulged in filthy and obscene expressions. He further observed Nina soliciting drinks from Agent M. On September 14 he observed Chink consuming drinks paid for by

Agent M and later overheard a conversation between Agent M and Chink respecting an assignation. He further observed Carmine sell a bottle of perfume to Agent M. He then left the premises and joined the agents and detectives who apprehended Chink.

"Agent L testified substantially as follows: He visited defendant's licensed premises on June 20, September 6, 7, 13 and 14, 1956. (It was stipulated that his testimony would corroborate that of Agent N with respect to the occurrences which took place in the licensed premises on June 20, and that of Agents M and N with respect to the occurrences of September 7 and 14.) As to September 7 he testified that he conversed with Louise about having illicit sexual relations with her, bought her a drink and, without completing the illicit arrangements, left the premises. As to September 13 he testified that he asked Carmine to send Nina over to him so that he could arrange with her for a tryst and that, when Nina joined him, he made known his purpose and was told by her that she couldn't do business that day since she had to go to court.

"Witnesses who appeared for defendant were his two bartenders (John and Carmine Gagliardi). John testified that, in response to his brother's telephone call, he hastened to the licensed premises, went behind the bar and took two bottles of perfume which he claimed he had bought as a gift for his wife. He denied that he snatched the bottles of perfume from the agent's hand and stated that Carmine had not been authorized to sell the bottle purchased by the agent. Carmine testified that he was the bartender in the licensed premises on the dates alleged and had been such since the Spring of 1956, and stated that, although he saw Chink in the company of Agent M for about one hour, he couldn't remember whether he served her any drinks. He denied or didn't remember the other occurrences testified to by the agents, except the sale of the perfume which he stated he sold to Agent M 'to get him off my back.'

"In rebuttal, Agent D testified that John Gagliardi forcibly took from him the two bottles of perfume prior to the completion of the agents' investigation.

"Having carefully considered the testimony adduced herein, I find that, notwithstanding the exhaustive cross-examination of the agents, their testimony remained unshaken and I conclude that the Division has sustained the burden of proof as to the guilt of the defendant on all of the charges by more than a fair preponderance of the believable evidence. The fact that there is little evidence to show that the licensee himself participated in the related occurrences, or that the violations occurred in his presence (although it is admitted that he was in and about the premises) does not exonerate him. See Rule 33 of State Regulation No. 20.

"Defendant has a prior adjudicated record. Effective October 10, 1955, his license was suspended for one hundred eighty days by this Division after a finding of guilt on similar charges. Re Kurtz, Bulletin 1085, Item 1.

"Manifestly, defendant has not learned his lesson for, less than three months after the termination of the previous suspension, he again permitted unlawful activities upon his licensed premises. Such callous disregard for law and order, common decency and his responsibility as a licensee will not be countenanced.

"The Director (in Re Kaczka & Trobiano, Bulletin 1063, Item 1, said:

'I have given much thought to the penalty to be imposed in this case. The situation disclosed by the record cannot be tolerated. As I pointed out in Re Polka Club, Inc., Bulletin 1045, Item 6, and in Re Lloyd, Bulletin 1045, Item 7, "rigid enforcement of the regulations, the violation of which forms the basis of the charges herein, is essential to the preservation of decency and the protection of the public morals which demand a severe penalty in this case", and "degradation and depravity which constitute so serious a threat to the public welfare and morals, will not be tolerated upon the licensed premises and ... such premises cannot be permitted to become havens for deviates or persons of low morality."

"The views expressed by the Director are applicable to the instant case as are those enunciated by Judge Jayne, speaking for the Court in Re 17 Club, Inc., 26 N. J. Super. 43-52 (App. Div. 1953), wherein he said:

'The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support. In Re Schneider, 12 N. J. Super. 449 (App. Div. 1951).'

"Under all the circumstances in this case, and particularly in view of defendant's prior record, it is obvious that he has failed to meet or even approach the minimum standards of morality in the conduct of his business which the public has a right to expect from liquor licensees. The only proper and justifiable penalty in this case is revocation of his license. I recommend that an order be entered revoking defendant's license."

Counsel for defendant filed written exceptions to the Hearer's Report pursuant to Rule 6 of State Regulation No. 16, wherein he denies that the testimony is that (1) Agent M stated "that he heard Agent N ask Carmine (the bartender) if Louise's husband was around because he wanted to engage in illicit sexual relations with her"; (2) that Agent N asked Carmine if "he wanted to have illicit sexual relations with her"; and (3) that "As to September 13 he [Agent L] testified that he asked Carmine to send Nina over to him so that he could arrange with her for a tryst and that, when Nina joined him, he made known his purpose and was told by her that she couldn't do business that day since she had to go to court."

I have carefully reviewed the transcript of the proceedings herein, together with the Hearer's Report and the Exceptions thereto, and it is apparent that the above cited language is not the verbatim testimony of the agents. Rather, it is a discreet statement by the Hearer of the substance of their testimony, which in part connotes the vernacular used by them. However, if the import of the Exceptions is that the Hearer misstated the facts, hereinbelow is set forth the testimony with respect thereto which I submit is to the contrary.

As to Exception 1 - Page 12 of the transcript:

"Q. Did you hear any conversation between Nelson and the bartender? A. Yes, sir.

"Q. What did you hear? A. Agent Nelson said to Carmine, 'Is her husband around?'

"Q. To whom was he referring? A. Louise.

"Q. Go ahead. A. Carmine said, 'I don't know.' Agent Nelson then said, 'I want to get a piece of ass.' Carmine again said, 'I don't know.'"

As to Exception 2 - Pages 102 and 103 of the transcript:

"Q. Did you have any conversation with this girl Louise?

"A. * * * * and at this time I called Carmine and ordered another drink, and I asked him where was Louise' husband; she had been talking about him previously and said he was a young fellow and so forth. He just shrugged his shoulders as if to say he didn't know.

"A few minutes later I asked him again. I asked him the question what was she like because I would like to buy a piece of ass from her. He just shook his head and didn't make any verbal sounds at all. He shrugged his shoulders and backed away from me at this time.

"A few minutes later as I was having this conversation with Carmine Louise came back * * * *

"A. She came back as I was speaking to Carmine, and all of a sudden she yelled out -- the juke box playing at this time -- 'You're no gentleman. You tell everybody what you planning on doing.'"

As to Exception 3 - Pages 146 and 147 of the transcript:

"Q. Thereafter did you have any conversation with Carmine?

"A. Yes. I told him was there any dames on the premises I could buy a piece of ass off.

"Q. Did he make any response? A. No. He shrugged his shoulders to say he didn't know. Shortly afterwards I said, 'What about the dame at the far end of the bar' -- referring to Nina -- and he said, 'Maybe --'

"Q. Did you say anything else to him? What did you say to him? * * * *

"A. He said, 'Maybe you can; maybe you can't. It all depends.'

I said, 'Depends on what?'

He said, 'Depends on you.'

So I said, 'Send her over so I can buy a piece of ass off her and buy her a drink.'

"Q. Did you observe what, if anything, Carmine then did?

"A. He went to her and he spoke with her.

"Q. Then what occurred? A. Nina came over and sat by me.

"Q. When did Nina come over to you with respect to the time that Carmine spoke to Nina? A. Immediately.

"Q. When she came over what occurred? A. She came over. I asked her how much would she charge me for a piece of ass. She told me that she going to go to court on that day and she wouldn't be able to do any business with me."

Defendant's counsel further contends in his Exceptions that the Hearer was prejudiced by the fact that the defendant has a prior adjudicated record and that he "went beyond the real weight of the evidence * * * in determining his recommendation of revocation of the defendant's license."

Upon a finding of guilt in all disciplinary proceedings instituted by the Division the prior adjudicated record of a defendant is a factor which is considered in determining the proper penalty to be imposed. That the Hearer did so in the instant case cannot be attributed to an improper motivation or prejudice.

Considering all the facts and circumstances appearing herein I find that the Division has sustained the burden of proof of the defendant's guilt of the charges herein by more than a fair preponderance of the believable evidence. I, therefore, concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 20th day of June, 1957,

ORDERED that Plenary Retail Consumption License C-365, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Nathan Kurtz, t/a Kelly's Long Bar, 181 Mulberry Street, Newark, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS
Director.

- 4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATION NO. 38 AND LOCAL REGULATION - SERVICE OF FEMALES AT BAR AND FAILURE TO PERMIT CLEAR VIEW OF BAR IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BEDNARKO'S, INC.)
T/a BENNY'S BAR & GRILL)
162-164 Pavonia Avenue)
Jersey City 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-430, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
-----)

Bednarko's, Inc., Defendant-licensee, by Edward Bednarko, Vice Pres. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On Saturday, May 4, 1957, between 2:00 A.M. and 2:30 A.M. and on Sunday, May 26, 1957, between 2:00 A.M. and 2:30 A.M., you conducted your licensed business; in violation of Section 4 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950.

"2. On Sunday, May 26, 1957, at about 2:00 A.M. and again at about 2:10 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off your licensed premises; in violation of Rule 1 of State Regulation No. 38.

"3. On Sunday, May 26, 1957, between 2:05 A.M. and 2:30 A.M., you permitted the service of alcoholic beverages to females at a public bar on your licensed premises and the sale of alcoholic beverages over said bar to females for consumption by them on your licensed premises; in violation of Section 6 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950.

"4. On Sunday, May 26, 1957, between 2:00 A.M. and 2:30 A.M., you failed to remove all shades, screens and other obstacles so as to permit a clear view of the bar inside your licensed premises; in violation of Section 4 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950."

The file herein discloses that on Saturday, May 4, 1957, at about 1:15 a.m., ABC agents entered defendant's licensed premises wherein they observed a bartender serving 13 patrons seated at the bar. At 2:05 a.m., the bartender served what appeared to be the last round of drinks and five minutes later the agents, together with most of the patrons, left the premises. At about 2:30 a.m., one of the agents who remained in the area approached the premises, looked into the same and saw the bartender behind the bar and two men drinking at the bar.

On Sunday, May 26, 1957, at about 1:20 a.m., one of the aforesaid agents returned to the licensed premises and took a seat at the bar which was being tended by Edward Dziens. At 2:00 a.m., a party of six (four men and two women) who had been sitting at a table in a rear room of the premises came to the bar and were served three rounds of drinks within a half hour, at intervals of 10 minutes. During the same period the bartender also served three drinks of rye whiskey to the agent, a drink of Scotch whiskey to Edward Bednarko, an officer of the corporate-licensee herein, and made two sales of alcoholic beverages in their original containers for off-premises consumption, one to a patron and one to the agent. At 2:30 a.m. two ABC agents stationed in the area attempted to look into the interior of the premises but were unsuccessful because all views through the windows were obstructed by either drawn shades or closed wooden partitions. The two agents thereupon joined the third agent in the premises where all three of them identified themselves to the bartender and the other occupants.

The local regulation prohibits the conduct of the licensed premises between 2:00 a.m. and 1:00 p.m. on Sundays, prohibits other than the licensee and its actual employees and agents from being in and upon the licensed premises between such hours, requires the removal of all shades and screens and other

obstructions so as to permit a clear view of the bar inside the licensed premises during said hours, and prohibits the service and sale of alcoholic beverages to females at a public bar.

Defendant has no prior adjudicated record. I shall suspend its license for twenty days on Charges 1 and 4 (Re Kusy and Drag, Bulletin 1150, Item 4), for fifteen days on Charge 2 (Re Eckstein, Bulletin 1160, Item 5) and for an additional five days on Charge 3 (Re Steele Inn, Inc., Bulletin 1028, Item 4), making a total suspension of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 19th day of June, 1957,

ORDERED that Plenary Retail Consumption License C-430, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Bednarko's, Inc., t/a Benny's Bar & Grill, 162-164 Pavonia Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 26, 1957; and it is further

ORDERED that if any license be issued to this licensee or to any other person for the premises in question for the 1957-58 licensing year, such license shall be under suspension until 2:00 a.m. July 31, 1957.

WILLIAM HOWE DAVIS
Director.

5. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL SALE - ALCOHOLIC BEVERAGES AND MOTOR VEHICLE ORDERED FORFEITED.

In the Matter of the Seizure)
on December 18, 1956 of 14)
four-fifth quart bottles of rum)
and a Ford coupe on DeForest)
Avenue in East Hanover Township,)
County of Morris and State of)
New Jersey.)

Case No. 9382

ON HEARING
CONCLUSIONS AND ORDER

Manuel S. Romero, Pro se.
Dora Rothschild, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R. S. 33:1-66 and further pursuant to a stipulation dated December 21, 1956 signed by Manuel S. Romero, to determine whether 14 four-fifth quart bottles of rum and a Ford coupe, as described in a schedule attached hereto, seized on December 18, 1956 on DeForest Avenue, in East Hanover Township, New Jersey, constitute unlawful property and should be forfeited.

"Pending hearing in the case Manuel S. Romero deposited \$250.00 in cash under protest, pursuant to R. S. 33:1-66, with the Director of the Division of Alcoholic Beverage Control,

representing the appraised retail value of the aforesaid motor vehicle, and thereupon obtained return of such Ford coupe. He has stipulated that such Director determine, in the present proceedings, whether such sum should be forfeited or returned to him.

"Manuel S. Romero appeared at the hearing and sought return of the aforesaid sum of \$250.00 and the bottles of rum.

"Lieutenant William E. Davenport of the East Hanover police force testified as follows:

"Acting upon information that Romero was soliciting employees at the plants of local industrial concerns to purchase alcoholic beverages from Romero, the lieutenant met Romero and an employee, by prearrangement, at a designated garage located on DeForest Avenue on the afternoon of December 18th, and was introduced to Romero as a prospective purchaser of alcoholic beverages. Romero brought four or five bottles of rum from his car, parked on the street, displayed them to the employee, and stated the price thereof. The employee said that the price was satisfactory but that he did not have sufficient money to pay for the rum. The lieutenant then disclosed his identity, asked Romero if he had a license to transport alcoholic beverages, and when Romero replied in the negative, the lieutenant told him that he was therefore compelled to take Romero into custody. Romero asked for a "break", stating that he had been out of work for some time, was broke, and needed the money. The lieutenant then took custody of the car, the bottles of rum which Romero had brought into the garage, and bottles of rum in the car, making a total of 14 bottles of rum, and drove the car, accompanied by Mr. and Mrs. Romero, to police headquarters.

"The bottles of rum and the Ford coupe were turned over to ABC agents when they arrived at police headquarters later that afternoon. One of the agents testified that there were six bottles described as "Myers Rum", five bottles described as "Maraca Rum" and three bottles described as "Daiquiri Rum"; that four bottles of "Myers Rum" had no labels and the tax stamps broken, and two had labels attached with rubber bands and proper strip stamps; that the bottles of "Maraca Rum" had labels affixed thereto wrinkled and dilapidated, with considerable evaporation of their contents; and the bottles of "Daiquiri Rum" were in similar condition as to labels and contents. The agent asked Romero for an explanation of his liquor activities, who told him that he was selling his liquor at cost because he wanted to buy his wife a Christmas present, and that he did not think he needed a license to sell the liquor because it was his own rum.

"The agent further testified that on the night of Romero's arraignment in Magistrate's Court the manager of a package liquor store located in Morristown appeared and displayed a bill dated December 11, 1956, covering the sale of the 14 bottles of rum for the price of \$65.43, with a deposit of \$10.00 and a balance due of \$55.43.

"At the hearing Manuel Romero elaborated on his original explanation. His testimony, in substance, is: He first went to locate some liquor goods to make an unusual present for a friend, and came to the package store in question. There the manager took him to one side and told him he had some 'pre-war' rum in the basement. Romero accompanied the manager to the basement, where he observed the 14 bottles of rum in the condition in which they were seized. Asked if he could give him a break on

the price, the manager said he would have to obtain the full list price. Thereupon Romero said he would take the lot, paid him a \$10.00 deposit and arranged to pick up the rum later. When Christmas time came, he realized that he overstepped himself in buying so much liquor and had no ready cash to buy his wife a present. Having nothing to sell to realize cash, he thought of offering part of the liquor to persons in industrial plants that would have need of it for Christmas time, and did not stop to think that he would need a license; that he was interested in getting as much of his money back as he possibly could.

"On cross-examination, Romero claimed that he picked up the alcoholic beverages at the store on December 15th, without paying any additional sum on the purchase price because the manager trusted him; that he originally desired to purchase only four or five bottles of alcoholic beverages, and was pressured into purchasing 14 bottles. Asked what possible pressure was used, since he claimed to have agreed to pay the full list price, he swerved a bit, and offered the explanation that since it was represented as 'pre-war', he thought he would take the lot and give it to his friends. At the time he was unemployed, living on his meager savings, and residing in a room and kitchenette.

"Confronted with the mathematics of the incident, he admitted that he only invested \$10.00 in the purchase, claimed that he still had some savings when, after he picked up the alcoholic beverages, he realized he had no money to buy his wife a present; and that if he had succeeded in selling all of the alcoholic beverages, ostensibly at cost, he would only net \$10.00. Asked why he simply did not bring the rum back to the store and get the deposit returned, he said, 'I certainly would have done exactly that.'

"I consider Mr. Romero's testimony and demeanor evasive on these and other aspects of the case. It is my opinion from the evidence presented that what actually occurred was that the manager of the liquor store displayed to Romero his stock of rum unsalable in normal trade because of evaporation and dilapidated labels, and that Romero paid \$10.00 for the lot, and anticipated a substantial profit by peddling the rum for Christmas use to employees of industrial concerns.

"In any event, a person seeking relief from forfeiture must establish to the satisfaction of the Director that he acted in good faith and unknowingly violated the law. R. S. 33:1-66(e). Where persons, otherwise law-abiding, have sold, or attempted to sell taxpaid alcoholic beverages without a license for a variety of reasons, including instances where it was merely for accommodation, it has been uniformly and consistently ruled that they knew or should have known that they were violating the law, and relief from forfeiture denied. Some of these cases are Seizure Case No. 8553, Bulletin 1033, Item 7; Seizure Case No. 7583, Bulletin 877, Item 8; Seizure Case No. 7532, Bulletin 862, Item 7; Seizure Case No. 7114, Bulletin 813, Item 2; Seizure Case No. 7263, Bulletin 812, Item 2; Seizure Case No. 7145, Bulletin 783, Item 6.

"The undisputed facts are that Manuel S. Romero transported 14 four-fifth quart bottles of rum intended for sale by him in violation of the law governing transportation and sale of alcoholic beverages, and hence that such alcoholic beverages are illicit and with the motor vehicle in which they were transported and found constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(i), and (y), R.S. 33:1-2, R.S. 33:1-66.

"I therefore recommend that the application of Manuel S. Romero for return of the deposit of \$250.00 and the bottles of rum be denied, and instead, that such items be declared forfeited."

Exceptions to the Hearer's Report were filed by Manuel S. Romero pursuant to Rule 4 of State Regulation No. 28. I have carefully considered the entire record in the case, including the transcript of testimony, the Hearer's Report, and the exceptions, and concur in and adopt the Hearer's findings and recommendations.

Accordingly, it is, on this 5th day of June, 1957,

DETERMINED and ORDERED that the seized alcoholic beverages described in Schedule "A" attached hereto, constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66, and shall be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the sum of \$250.00, representing the appraised retail value of the Ford coupe, paid under protest to the Director of the Division of Alcoholic Beverage Control on behalf of Manuel S. Romero whereby he obtained return of such motor vehicle, be and the same hereby is forfeited in accordance with the provisions of R. S. 33:1-66, to be accounted for in accordance with the law.

WILLIAM HOWE DAVIS
Director.

SCHEDULE "A"

- 14 - 4/5 quart bottles of rum
- 1 - Ford two-door coupe, Serial No. 08563, New Jersey Registration BD-5570.

6. STATE LICENSES - NEW APPLICATIONS FILED.

William C. Roth, t/a Roth's Home Delivery
316 3rd Street, Cliffside Park, N.J.

Application filed July 18, 1957 for person-to-person transfer of State Beverage Distributor's License SBD-110 from Albert J. Bakunas, t/a A. J. Bakunas Beverages.

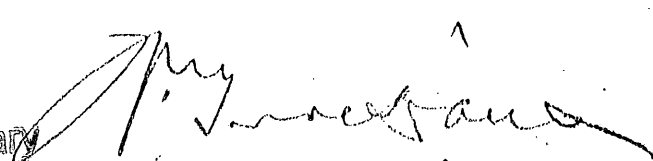
Michael Honchar, t/a Elliott Home Beverages
326 Talmadge Avenue, Bound Brook, N.J.

Application filed July 18, 1957 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-154 from James E. Cambria and Pasquale A. Albanese, t/a Hedrick Distributing Company, 11 Gypsum Street, Kearny, N.J.

Michael Softcheck, t/a Burlington Beer Company
306 W. State Highway #130 & Lincoln Ave., Burlington, N.J.

Application filed July 30, 1957 for person-to-person transfer of State Beverage Distributor's License SBD-16 from Burlington Beverages, Inc.

New Jersey State Library


William Howe Davis
Director