

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

BULLETIN 2149

June 11, 1974

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

BULLETIN 2149

June 11, 1974

1. NOTICE TO WHOLESALERS EXTENDING FILING DATE OF MINIMUM RESALE PRICES.

May 16, 1974

Milton H. Cooper, Executive Director  
New Jersey Wine and Spirit Wholesalers Association

Receipt is acknowledged of your letter dated May 16, 1974 wherein you request on behalf of the members of your Association an extension from Monday, May 20, 1974 to Monday, May 27, 1974 for the filing of wholesale-to-retail prices. You note that this request is made for the benefit of all wholesalers who must file wholesale to retail prices as well as all brand owners who are required to file minimum consumer resale prices.

You state that it has become apparent that they will not be able to meet the May 20, 1974 filing date required by State Regulations 34 and 30. Upon consideration, I have reviewed your request and for good cause shown, I have decided to grant the extension of the filing date from May 20, 1974 to May 27, 1974.

This is made, of course, with the express understanding, as stipulated in your letter, that your Association will pay the postage which will be incurred by this Division in mailing notification of the said extension to the wholesalers and brand owners.

Joseph H. Lerner  
Acting Director

2. NOTICE TO CLERKS OF LOCAL ISSUING AUTHORITIES - REQUEST OF THEM TO REMIND LICENSEES TO KEEP COPY OF APPLICATION, LIST OF EMPLOYEES AND PROPER STORAGE OF ALCOHOLIC BEVERAGES.

TO ALL MUNICIPAL CLERKS AND CLERKS OF LOCAL ISSUING AUTHORITIES:

Reports of investigations conducted by agents of this Division indicate that a number of licensees throughout the State are not in compliance with certain primary rules and regulations of this Division in the operation of their premises. The following violations were most often noted:

(1) Failure to keep a photostatic or other true copy of the application for license on the licensed premises, pursuant to Rule 16(b) of State Regulation No. 20.

(2) Failure to keep a list, on the licensed premises, in the form prescribed by the Director, of the names and addresses of, and required information with respect to all persons currently employed on premises, as set forth in Rule 16(c) of State Regulation No. 20.

(3) The storage of alcoholic beverages in areas other than those indicated in answer to question number 7 of the long-form application, in violation of Rule 25 of State Regulation No. 20.

In most cases, licensees plead ignorance of the fact that the hereinabove referred to documents must be kept on the licensed premises. Licensees must be advised that it is their responsibility to comply strictly with State Regulations in the operation of their premises.

Therefore, I enlist your cooperation, in the interests of proper operating procedure, to wit: At the time of issuance of new licenses, or transfers from person-to-person, or renewal of existing licenses, kindly point out to licensees what documents must be kept on the licensed premises and in what areas of said premises alcoholic beverages may be stored.

Such reminder to the licensees in your municipality will constitute a welcome service to licensees, and, hopefully, will result in a stricter observance by licensees of these important rules and regulations.

Joseph H. Lerner  
Acting Director

Dated: May 17, 1974

3. APPELLATE DECISIONS - FELDMAN v. IRVINGTON - SUPPLEMENTAL ORDER.

August Feldman & Anna Feldman,	)	
t/a Town Tavern,	)	
	)	
Appellants,	)	On Appeal
	)	
v.	)	SUPPLEMENTAL
	)	
Municipal Council of the Town	)	
of Irvington,	)	ORDER
	)	
Respondent.	)	

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Maurer & Maurer, Esqs., by Barry D. Maurer, Esq., Attorneys  
for Appellants  
Samuel J. Zucker, Esq., by Herman W. Kurtz, Esq., Attorney  
for Respondent

BY THE DIRECTOR:

On October 18, 1973 Conclusions and Order were entered herein affirming the action of the respondent Council which suspended appellants' license for thirty days on each of the first, second and third charges, or a total of ninety days, reversing the action of respondent in finding appellants guilty of the fourth charge preferred herein. Feldman v. Irvington, Bulletin 2123, Item 1.

Prior to the effectuation of the said suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal. On April 1, 1974, the court dismissed the appeal for lack of prosecution. App. Div. (Docket A-433-73). The suspension would normally now be reimposed.

However, on February 27, 1974, Conclusions and Order were entered herein affirming the action of the respondent and reimposed the revocation of appellants' license which was grounded on charges that appellant permitted a brawl and hindered an investigation. Feldman v. Irvington, Bulletin 2143, Item 1. Although an appeal was filed in the Appellate Division of the Superior Court, to the said order of revocation, no stay was granted by the court to the said order of revocation and the licensed premises are not presently operating. Thus, no effective penalty can be imposed at this time. The effective dates for suspension will be fixed by entry of a further order herein if and when the said licensed business resumes operation.

Accordingly, it is, on this 19th day of April 1974,

ORDERED that Plenary Retail Consumption License C-20, issued by the Municipal Council of the Town of Irvington to August Feldman & Anna Feldman, t/a Town Tavern, for premises 982 Springfield Avenue and 16 Myrtle Avenue, Irvington, be and the same is hereby suspended for ninety (90) days, the effective dates of which shall be fixed by further order herein if and when the said licensed operation is resumed on a full-time basis.

JOSEPH H. LERNER  
ACTING DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - ALLOWING MINOR TO SERVE - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against  
Henmad, Inc.  
252 Broad Avenue  
Palisades Park, N. J.,  
Holder of Plenary Retail Distribution License D-11, issued by the Mayor and Council of the Borough of Palisades Park.

CONCLUSIONS  
and  
ORDER

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Licensee, by Frank D'Amico, Pro se.  
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to a charge alleging that (1) on July 12, 1973, it permitted the sale of alcoholic beverages to a minor, age 17, in violation of Rule 1 of State Regulation No. 20, and (2) licensee pleaded guilty to a charge alleging that on the same date it permitted a minor, age 16, to serve alcoholic beverages in its licensed premises, in violation of Rule 2 of State Regulation No. 23.

At the outset of the hearing in this Division it was noted that the licensee, a corporation, was not represented by an attorney-at-law but, rather, an appearance was entered by Frank D'Amico who was one of its two principal stockholders. Permission was granted to such corporate officer to appear on behalf of the licensee provided that the corporate licensee would not thereafter interpose an objection that it was unrepresented by and was denied the right of counsel. Upon such assurances, the hearing was permitted to proceed.

The Division presented its case through the testimony of ABC agents D and C, from whose testimony the following facts were gleaned. The licensee operates a combination package store and delicatessen in which there is a counter where patrons may be served sandwiches. While at this counter the agents observed two males serving patrons, one behind the delicatessen counter and one in the package store section, both in close proximity to each other.

They observed a youthful-looking male patron enter and walk directly to the cooler from which he obtained a can of beer and a quart bottle of beer. He placed both on the counter of the package goods section where the beverage was placed in a bag, payment accepted and recorded on the register.

The entire sale was transacted within five feet of the agents, one of whom was directly behind the patron. The entire conversation between the patron and the clerk was overheard by both agents. None of the conversation related to the patron's age.

Upon departure of the patron one of the agents followed him from the store and ascertained his age to be seventeen years. Returning to the store, the agents identified themselves to the older of the two clerks (the one who was waiting on patrons behind the delicatessen counter). That clerk (later identified as Frank D'Amico, one of the two principal stockholders) insisted that he had sold alcoholic beverages to the same patron on prior occasions after the patron signed a written representation that he was of legal age. However, D'Amico could not locate the paper substantiating his prior sales. The minor (later identified as Gino ---) denied having signed any paper or displayed false identification at any time.

The Division introduced the testimony of the minor Gino, who confirmed that at the time of the sale he was seventeen years of age. At the time of the hearing, however, he had reached his eighteenth year and was an enlistee in the United States Navy. He admitted that on the first occasion, when he purchased beer in the licensed premises and had been asked his age, he stated that he was then eighteen years and displayed a temporary driver's license which had been altered to indicate that he was eighteen years of age.

He admitted denying to the agents, as well as in testimony in the municipal court, that he had previously falsely stated his age in the licensed premises and supported such statement with false document. He averred that he had lied both to the agents and to the court in fear of involvement which might have led to his rejection by the Navy of his application for enlistment.

At the hearing herein D'Amico offered a printed form containing the signature of the minor alleged to have been signed more than the month prior to the date contained in the charge.

Frank D'Amico produced on behalf of the licensee the paper bearing the minor's signature and asserted this paper was obtained by him upon the minor's first purchase of alcoholic beverages on the date thereon indicated.

The principal contention of the licensee is that the sale to the minor was a good-faith sale based upon the prior representation made by the minor that he was of legal age and that the said representation had been supported by a writing executed a month or more before the sale. Hence it was contended that there was no violation in connection with the sale to the minor herein.

A sale of alcoholic beverages to a minor is a violation of the statute. N.J.S.A. 33:1-77. The sole complete defense permitted by statute requires presence of the following: (1) that the minor falsely represented, in writing, that he was of full age, (2) that he appeared to be of full age, and (3) that the sale was made in good-faith reliance upon such written representation and appearance. All of these requisites are basic to the validity of such defense. Sportsman 300 v. Nutley, 42 N.J. Super. 488 (App.Div. 1956).

In the subject matter it is uncontroverted that the clerk making the sale did not do so in reliance upon any written representation of the minor or upon any other statement by the minor stating that he was of age and, therefore, the defense is not valid. It is also noteworthy that D'Amico candidly admitted, in referring to his clerk, that "May I state he was under the misconception that liquor, whiskey, is alcohol, and beer is not." Such a naive misconception on the part of a clerk in a package goods store is incredible.

I am persuaded and find by the clear and convincing evidence presented herein that the licensee is guilty of the contested charge and I therefore recommend that the licensee be found guilty of said charge.

Absent prior record, it is recommended that the license be suspended on the first charge, which relates to the sale to the minor, for twenty-five days, and on the second charge, wherein a guilty plea was entered, for ten days, making a total suspension of thirty-five days.

#### Conclusions and Order

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

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

Accordingly, it is, on this 4th day of April 1974,

ORDERED that Plenary Retail Distribution License D-11, issued by the Mayor and Council of the Borough of Palisades Park to Henmad, Inc., for premises 252 Broad Avenue, Palisades Park, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. on Wednesday, April 17, 1974 and terminating at 3:00 a.m. on Wednesday, May 22, 1974.

Joseph H. Lerner  
Acting Director

5. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN APPLICATION -  
LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against )

Five Points Liquor Store, Inc. )  
5 Pennington Avenue )  
Trenton, N.J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Distribution License D-5, issued by the City Council of the City of Trenton. )

- - - - - )  
Teich, Groh and Robinson, Esqs., by Leon M. Robinson, Esq.,  
Attorneys for Licensee  
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to charges alleging that on July 26, 1973, in its application for its current plenary retail distribution license filed with the City of Trenton, it failed to reveal that Philip Ventigli, Sr., had a beneficial one-half interest in the licensed business, and that the said Philip Ventigli, Sr., was disqualified by reason of a criminal conviction from holding any interest in any licensed business, in violation of N.J.S.A. 33:1-25; and, further that from August 15, 1963 to date, the licensee aided and abetted the said Philip Ventigli, Sr., to exercise contrary to N.J.S.A. 33:1-26 the rights and privileges of said license, in violation of N.J.S.A. 33:1-52.

The Division presented its case through the testimony of two ABC agents. Agent C testified that, pursuant to a specific assignment, he and Agent H conducted an investigation of the licensed premises during 1973. In the course of such investigation, he examined the applications for license for the years 1970-71,

1971-72 and 1972-73, and on May 8, 1973 visited the licensed premises. At that time the licensee was Frances Ventigli, and he discussed her participation in the license through an intensive interview. He learned that she had made a purchase of the licensed business on assignment from her husband concurrently with the acquisition of the business and the realty in which it is located.

Agent C examined records which indicated that the business had been acquired in 1963 as part of an overall transaction by which the realty became and still is owned by the licensee and her husband as tenants by the entirety, and the business, for which a contract had been entered into by the husband, was assigned to the wife by reference in the statement of title closing.

Prior to the acquisition of the business and realty, the husband, Philip Ventigli, Sr., had been disqualified from any association in the alcoholic beverage industry by reason of a prior conviction of crime. However, about two weeks before the purchase, he had received a removal of such disqualification from the then-Director of this Division. Nonetheless, his only connection with the licensed business, then in his wife's name, was as an employee.

Thereafter, Philip Ventigli, Sr., was indicted on August 13, 1969, and subsequently tried and convicted on March 10, 1972; he is presently incarcerated, serving a three year prison term based upon the said conviction.

The agents conducted a lengthy interview with Frances Ventigli from whom they obtained a statement which revealed that while the business is in her name (it has been subsequently transferred to the present licensee corporation); she pays her son and two other employees to assist her in managing the business. She receives no salary but one hundred dollars weekly "for house expenses." Her husband was an employee, but received no salary.

She revealed to the agents that at the time the business was acquired, the monies used in the transaction came from a credit union account of her husband, trust monies belonging to her children, joint savings, monies repaid to her husband, and the balance from her brother as a gift.

She declared to the agents the negotiations for the purchase of both the realty and the business were conducted by her husband. She had no prior connection with the liquor business. The funds taken from the children's trust accounts have long since been repaid. She admitted, further, that since the business was acquired, her husband had no other employment.

The agents examined the Employer's Quarterly Federal Tax Returns for the years 1968 to 1972, inclusive, which revealed that her son, Philip Ventigli, Jr., was employed, but they did not show her husband to be employed. Additionally, a portion of the 1972 income tax return contained, as Schedule "C" identification - "Philip and Frances Ventigli - Retail Liquors - Five Points Liquor Store."

Agent H, corroborated the testimony of agent C, adding that he aided in the preparation of this matter, and visited the licensee, the banks and the licensed premises in that connection.

Frances Ventigli testified that she initially owned the business as a sole proprietor but, on August 15, 1973, it "became a corporation." At the time of the acquisition of the business and realty, she paid \$10,000. for the business and she and her husband paid \$25,000. for the realty. She claimed that, of the \$10,000. paid for the business, no part of that sum belonged to her husband but, rather, was made up from the trust funds she held for her daughter (Account 24,219) in the amount of \$7,387.48.

She further stated that she had received \$4,103.79 as a gift from her brother, now deceased, who wanted her to have sole interest in her business venture. She maintained that the excess of those amounts over the \$10,000. required for the purchase of the business, was used as her contribution for the purchase of the realty. Her share of that was further augmented by the contribution from a joint account (Account 28,087) she held with her husband, of which \$4,428.74 was used. Her husband's sole participation was a contribution in the sum of \$5,062.78, which he had received as repayment of a loan due to him.

The remaining balance due for the purchase of the realty came from a trust fund belonging to her son and held by her husband, from which \$6,349.08 was used toward the realty acquisition. Hence, she maintained that she had the total interest in the business, and her interest in the realty was more than one-half.

In the management of the business, she asserted that she works between fifty and sixty hours of a six-day work week. In addition to serving customers, she takes care of the bookkeeping, and does the ordering and receiving of the alcoholic beverages. She admitted that were the business to be sold, her husband would share equally in the proceeds of such sale.

The stock of the present corporate licensee consists of one-hundred shares of which she holds seventy-five shares and her son holds twenty-five shares. His shares represent a gift to him by his mother as she is dependent upon his assistance, and wants him to have an interest in the business.

A certified public accountant, Louis H. Linowitz, testified that he has audited the books of the licensed business since 1968 and his records reveal that Frances Ventigli alone is the owner. A corporation was formed on August 15, 1973, with the wife and son as the sole stockholders. The corporation does pay a rental to the wife and husband as owners of the realty. Philip Ventigli was not on the corporate payroll.

The thrust of the complaint is that the application for the license failed to reveal that Philip Ventigli, Sr., was a true and beneficial owner of a half-interest in the licensed business. In short, the identity of ownership in the wife Frances, was a subterfuge to avoid disclosure that the husband was, in fact, part owner of the business.

The licensee contended that the business was purchased in the wife's name alone; that her husband's status was that of a mere employee, which employment was terminated instantly upon his later disqualification; and thus, the charges preferred against the licensee are without valid basis in fact. Counsel for the licensee argued that to hold otherwise would impose a restriction upon any licensee whose spouse became disqualified, and would unjustly give rise to a violation of the Alcoholic Beverage Law.

The crucial issues thus arises: Does Philip Ventigli, Sr., have such an interest in the licensed business as to imply that Frances, his wife, is in fact a "front" for such undisclosed interest.

"The very nature and characteristic of a 'front' is concealment and subterfuge. Very rarely is such proof buttressed with confessions and/or affirmative admissions. Thus the testimonial presentation must be largely circumstantial and documentary."

Sharp's Lodge, Inc. v. Lakewood, Bulletin 1842, Item 1.

From the totality of the evidence presented, an abiding conviction is inescapable that the business and the realty were a combined joint enterprise of husband and wife. His prior disqualification and its subsequent removal were aware to both; hence for reasons best known only to them, the deletion of the name of the husband from identity with the business was accomplished concurrently with the purchase of both realty and business. Nonetheless, his association with the business as an unpaid employee, not then having other gainful employment, and his active participation in settling claims of the Internal Revenue Service reveal a continued connection with the business up to the time of his later incarceration in prison.

From all of the testimony concerning the contribution of the wife at the time of the purchase, it is obvious that there was no separation of the funds contributed by her, from those invested by him. The funds were so commingled as to defy specific identity of independent source. I find, from the evidence, that the realty and the business was purchased by both husband and wife as a joint enterprise, in which the husband had a half-interest.

The husband, Philip Ventigli, Sr., has a record of arrests for gambling activity beginning in 1954. He was subsequently arrested in 1969, 1971 and 1973, on similar charges. Mrs. Ventigli may well have insisted that her husband's name not appear on the application in the mistaken belief that she would be immune from

any subsequent difficulties in which he would be embroiled. Her candid admission that the ownership in her name was changed to that of a corporation following his latest arrest leads to the same conclusion.

In a parallel matter, the then-Director stated:

"...it is apparent that the licensee, while admitting the facts established by the Division, seeks dismissal of the charges because of her alleged unintentional wrongdoing which she contends resulted from her inexperience. One would have to be naive to give credence to such pretensions...." Re Carlton, Bulletin 1535, Item 5.

Considering the testimony of the wife, it is apparent that the licensee is a corporation formed for the sole purpose of separating the interest of the wife from that of her criminally disqualified husband. The clear intention of the wife in altering the mode of ownership was that the legalistic separation would overcome the impediment of which she is well aware. Cf. Re Lo Presti, Bulletin 2135, Item 1.

As the illegal situation occurred prior to the time that Philip Ventigli, Sr., was disqualified, it is recommended that the penalty to be assessed be limited to the minimum precedential penalty of suspension for thirty days. Re G.E.L.L. Corp., Bulletin 1958, Item 2.

It is further recommended that the plenary retail distribution license issued to Five Points Liquor Store, Inc., be suspended for the balance of its term, with leave granted for the lifting of such suspension by the filing of a verified petition by the licensee or any bona fide transferee of the license that the unlawful situation has been corrected but, in no event, sooner than thirty days from the date of the commencement of the said suspension.

#### Conclusions and Order

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

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

Accordingly, it is, on this 26th day of April 1974,

ORDERED that Plenary Retail Distribution License D-5, issued by the City Council of the City of Trenton to Five Points Liquor Store, Inc. for premises 5 Pennington Avenue, Trenton, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1974, effective 2:00 a.m. on Tuesday, May 7, 1974; and in the event the said license is renewed for the 1974-75 licensing period, the said suspension shall continue in effect therein for the balance of its term, viz., until midnight June 30, 1975, with leave granted to the licensee of any bona fide transferee of the license to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but, in no event sooner than thirty (30) days from the date of the commencement of the suspension herein.

JOSEPH H. LERNER  
ACTING DIRECTOR

6. DISCIPLINARY PROCEEDINGS - MISLABELING OF 8 BOTTLES - FINE IN LIEU OF 25 DAYS SUSPENSION ACCEPTED.

In the Matter of Disciplinary Proceedings against )  
 )  
 Stock Enterprise, Inc. )  
 t/a Playpen Lounge )  
 Highway 35 and Chevalier Avenue )  
 Sayreville, )  
 P.O. South Amboy, N. J., )  
 )  
 Holder of Plenary Retail Consumption License C-57 (for 1973-74 license period), issued by the Borough Council of the Borough of Sayreville.)

CONCLUSIONS  
and  
ORDER

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 Thomas C. Brown, Esq., Attorney for Licensee  
 Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On January 4, 1973, you possessed, had custody of and allowed, permitted and suffered, in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,  
 Three one quart bottles labeled 'White Horse Blended Scotch Whisky, 86 Proof',

Two one quart bottles labeled 'Old Forester Kentucky Straight Bourbon Whiskey, 86 Proof',

Two one quart bottles labeled 'Schenley Reserve Blended Whiskey, 86 Proof', and

One quart bottle labeled 'Haig & Haig Pinch Blended Scotch Whisky, 86 Proof';

in violation of Rule 27 of State Regulation No. 20."

ABC agent G testified that on January 4, 1973 he tested approximately ninety bottles of alcoholic beverages that were in the licensed premises. He seized the eight bottles referred to in the charge after his preliminary tests revealed that the contents thereof appeared to be low in proof.

The bottles, which contained pourers, were thereupon sealed and submitted to the Division laboratory for analysis. The agent described the pourers as having no stopper or ball check and were commonly known as "speed pourers." No comparison bottles were taken because he did not see any in the general area from which the seized bottles were located and taken.

Penelope Moore, a qualified chemist employed as Division chemist, testified that in her opinion all of the bottles were low in proof; that three of the bottles were low in proof due to evaporation, and the other five bottles were low in proof due to tampering.

The licensee offered the testimony of Dr. Leon Greenberg, who has had wide experience in the field of alcoholic chemical research. Dr. Greenberg accepted Miss Moore's figures with respect to her findings that the contents of the subject bottles were low in proof. However, in his judgment the low alcoholic content was due to evaporation and not tampering. He based that opinion upon the fact that the bottles contained open pourers and, further, the presence of fruit flies in seven of the bottles indicated that the bottles must have been exposed to evaporation for a long period of time.

Arthur Stock, one hundred per cent. stockholder of the corporate licensee, testified that the subject bottles represented slow-moving stock; that each was affixed with an open-throat pourer without a cap on top, known as a "speed pourer;" that most of the said bottles had been on the premises from two to three years; that he gave orders to his employees that they were not to tamper with the liquor, and that it was his opinion that the liquor was low in proof due to evaporation.

In adjudicating this matter it is my view that the testimony of the Division chemist to the effect that all of the bottles mentioned in the charge were low in proof patently sustains a finding that the bottles bore labels which did not truly describe their contents. In the subject proceeding the finding of the Division chemist that all of the bottles were low in proof was unchallenged.

In its defense licensee vigorously contended that it did not tamper with the bottles; that they were low in proof because the bottles were old, were slow movers; that each of the seized bottles had speed or open-throated pourers attached to them, and that it had no knowledge that the contents of the bottles were low in proof.

In its pertinent part, Rule 27 of State Regulation No. 20 (which is alleged to have been violated) reads as follows:

"No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage ... in violation of the Alcoholic Beverage Law, or any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container which ... bears a label which does not truly describe its contents ...."  
(emphasis added)

The underlined portion of the subject rule is clear and unambiguous. It renders the mere possession of a container bearing a label which does not truly describe its contents a violation. Mere possession is malum prohibitum.

An offense which is malum prohibitum does not require proof of guilty knowledge or intent unless the statute or regulation clearly so provides. There is no inference that may be reasonably drawn from the quoted regulation which would give rise to the principle that guilty knowledge or mens rea or criminal intent is a prerequisite to a finding of guilt. Thus the defenses raised by the licensee are effectively negated without considering the bona fides thereof.

A licensee is responsible for any alcoholic beverages not truly labeled found upon his licensed premises. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup.Ct. 1947). Said the court in that case at p. 159:

"... We find nothing within the Alcoholic Beverage Control Act, R.S. 33:1-1, et seq., to indicate an intent that the holder of a retail consumption license must have knowledge that he possesses illicit beverages in order to make him amenable to disciplinary action. Our courts have consistently held that such knowledge is not an essential ingredient to conviction for possession under statutes similar to the one under consideration." See also The Panda v. Driscoll, 135 N.J.L. 164 (E. & A. 1946).

Applying the foregoing firmly established principles herein, I am persuaded by the clear and convincing evidence presented that the licensee is guilty of said charge and I therefore recommend that the licensee be found guilty of said charge.

Licensee has no prior adjudicated record. It is further recommended that, in accordance with present Division policy, the license be suspended for twenty-five days with respect to the five bottles which were tampered with and, with respect to the three bottles found to be low in proof as the result of evaporation, that a fine in the sum of \$150 be accepted in compromise in lieu of suspension of five days, in accordance with the provisions of Chapter 9 of the Laws of 1971.

### Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorney for the licensee and answer to the exceptions were filed by the attorney for the Division, pursuant to Rule 6 of State Regulation No. 16.

Having carefully analyzed the arguments set forth in the exceptions, I find that they have either been satisfactorily considered and resolved in the Hearer's report or are lacking in merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions filed with respect thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

However, the attorney for the licensee has now made application for the imposition of a fine in lieu of suspension of license for twenty-five days, in accordance with the provisions of Chapter 9 of the Laws of 1971. Having carefully considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$7,500.00 in lieu of suspension of license.

Accordingly, it is, on this 26th day of April 1974,

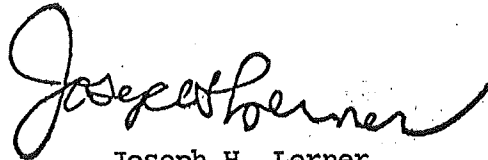
ORDERED that the payment of a fine of \$7,500.00 by the licensee is hereby accepted in lieu of suspension of license for twenty-five (25) days.

Joseph H. Lerner  
Acting Director

7. STATE LICENSES - NEW APPLICATIONS FILED.

Savo Balic  
t/a Balic Winery  
U.S. Route #40  
Mays Landing, New Jersey  
Application filed June 3, 1974 for  
plenary winery license with retail  
privileges.

Joseph A. Aiello  
26 E. Madison Avenue  
Dumont, New Jersey  
Application filed June 4, 1974 for  
person-to-person transfer of State  
Beverage Distributor's License SBD-14  
from William Ross.



Joseph H. Lerner  
Acting Director