

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

July 29, 1969

BULLETIN 1868

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - WILLNER'S LIQUORS v. FAIR LAWN.
2. ACTIVITY REPORT FOR MAY 1969.
3. DISCIPLINARY PROCEEDINGS (Union City) - SALE TO MINORS -
PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCES -
LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Union City) - ALCOHOLIC
BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR
60 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Gloucester City) - LEWDNESS
AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) -
LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Paulsboro) - SALE TO A MINOR -
PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20
DAYS.
7. DISCIPLINARY PROCEEDINGS (Union City) - ALCOHOLIC
BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD -
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
8. STATE LICENSES - NEW APPLICATION FILED.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

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BULLETIN 1868

1. APPELLATE DECISIONS - WILLNER'S LIQUORS v. FAIR LAWN.

Willner's Liquors (a)	
corporation),)	
)	
Appellant,)	On Appeal
)	
v.)	
)	CONCLUSIONS
Mayor and Council of the)	AND ORDER
Borough of Fair Lawn,)	
)	
Respondent.)	

Fox, Yanoff and Fox, Esqs., by Leo Yanoff, Esq. and Martin
S. Fox, Esq., Attorneys for Appellant
Floyd V. Amoresano, Esq., by Robert L. Garibaldi, Esq.,
Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the determination and action of the respondent Mayor and Council of the Borough of Fair Lawn which, by resolution dated January 9, 1969, suspended appellant's license for premises 14-23 River Road, Fair Lawn, for ten days effective January 19, 1969, after finding it guilty in disciplinary proceedings of a charge alleging the sale, service and delivery of alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

In its petition of appeal, appellant contends that the said action was erroneous because "the evidence clearly showed that Appellant was not guilty of the charges."

The answer herein admits the jurisdictional allegations in the petition and denies the substantive contention.

Upon the filing of the appeal, an order dated January 16, 1969, was entered by the Director staying the effect of respondent's order of suspension pending the determination of the appeal.

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses.

In support of the charge, respondent produced Carlo --- who gave the following account on direct examination: He was eighteen years of age at the time of the alleged occurrence and, at about 6:00 p.m. on August 5, 1968, met his friend Thomas --- (a minor) at the latter's home. He drove him directly to the vicinity of appellant's licensed premises,

left Thomas in the vehicle, and proceeded to the said premises. He purchased two six-packs of Old German beer from a sales clerk whom he could not identify. He then corrected himself to say that they were cans of beer. At the time of the purchase, he was not asked for identification, nor requested to make any written representation as to his age.

Returning to his car, he went to Paterson to get some gas, drove to Fair Lawn and then to the Dunkerhook Park in Paramus where he and his companion consumed part of the beer. He recalled that he left the park on one occasion and went to Strehl's liquor store in Fair Lawn to purchase additional beer, whereupon they returned to the park.

While consuming some of the beer, police officers arrived at the scene, found the beer in the car and took him to police headquarters where a signed statement (marked in evidence as Exhibit R-2) was given and executed. In this statement he stated that when he picked up his friend Tom, a minor by the name of Bob was also in his motor vehicle. After taking Bob to his destination, he went to Strehl's and bought a six-pack of Ruppert's beer for which he was charged eighty-nine cents. He then went to appellant's premises and purchased one six-pack of Old German beer for seventy-five cents. He proceeded to Radburn park, where he drank a little more than a six-pack. He then went to the Dunkerhook Park and, while parked there, he was apprehended by the local police officers. The statement further reflects the fact that he did not know who served him at appellant's premises except that "he is short, has black hair, he looks to be about twenty-two or three." Later in the statement, he corrected himself and stated that he went to appellant's premises first, and then to Strehl's.

On cross examination, Carlo, questioned about the quantity of beer purchased from appellant, stated that he believed he purchased twelve cans of Old German beer, rather than six cans, and during the course of the evening about six of the cans had been consumed by him and his friend. He insisted that some of the cans of Old German beer were still in the car at the time of the arrest. However, he later changed his story to say that when he saw the police approach his vehicle, he threw the cans under the car, but he was certain that he had consumed all the beer purchased at Strehl's.

He was questioned closely about testimony that he gave at the hearing before respondent in this matter, when he was asked the following:

"Question: When you went into Willner's what did you do?

"Answer: I went in there and asked for, I believe it was a six-pack of Old German beer, either Old German or Circle. I'm not sure."

"Q Was that true?

A Yeah."

And further:

"Q ... I call your attention to this question on Page 30 of the transcript of the hearing before the Excise Board, 'Question: Do you know how much you paid for this beer at this time? Answer: Seventy-five cents.' Was that statement true?

A Yes, that was. I just got done saying before how much I paid for the beer.

Q You paid seventy-five cents?

A Yes, I did."

He went on to explain that when he picked up his friend Tom at his home, Tom gave him \$3 because he had no money of his own. From the \$3 he paid \$1 for gas, 89¢ for beer at Strehl's and \$1.50 for the beer at appellant's premises. Pressed as to how he was able to pay for all of these purchases, he insisted that his present recollection was that some time during the evening they returned to Tom's home and Tom gave him more money. He was further questioned as to why he told the police, as reflected in the statement which he executed at police headquarters immediately upon his arrest, that he bought a six-pack of Old German beer for seventy-five cents and he replied to the following question and answer:

"Q ...Now, I call your attention to your testimony in the transcript at Page 39 where it says, 'Question: In your statement which has been marked, which I show to you, it says you bought a six-pack of Old German beer for seventy-five cents. Is that what you told the police that night?' And your answer is: 'Yes. If it's in the statement, I did.' Is that true?

A Yes, sir.

Q And was it true at the time you told it to the police?

A Seventy-five cents for Old German beer, yeah."

He admitted that his testimony before respondent with respect to the purchase and the statement given to the police with respect thereto were both false. He was interrogated about whether he had in fact gone to Strehl's first or to appellant's store, and the following was elicited:

"Q Was it that you didn't remember whether you had gone to Strehl's first or to Willner's first?

A That's right, I don't remember, no.

Q And do you remember now whether you went to Strehl's first or Willner's?

A I'm not too sure, no.

Q You're not too sure of that. So it is possible you went to Strehl's first?

A It's possible, yes.

Q Does this statement that I read to you refresh your recollection, that you bought some Ruppert's beer at Strehl's?

A Very possible.

Q Now, if you went to Strehl's first, when did you get to Willner's; at what time?

A I don't remember.

Q You can't tell then?

A No."

On redirect he was again asked the following:

"Q Would you tell me again, Mr. ---, how much you paid for the beer that you purchased at Willner's?

A Seventy-five cents."

Thomas --- testified that he was seventeen years of age on August 5, 1968, and was with Carlo on the evening of that date. They went in Carlo's car toward appellant's liquor store and Carlo parked his car about three hundred yards from the corner. From the position where the car was parked, he was unable to see whether or not Carlo entered appellant's premises but, when Carlo returned, he was carrying a package which Thomas ascertained contained twelve cans of Old German beer. They then drove to Paterson to get some gas; his mind is completely blank as to what happened after that time. His first recollection was that he awoke in a hospital the following day.

On cross examination he stated that Carlo picked him up at his home about 7:20 p.m. when they proceeded toward appellant's premises. He has no recollection of having drunk any beer that evening, of being apprehended by the police officer, or anything else that occurred on that evening.

James Mahoney (a member of the Paramus Police Department) testified as follows: During the course of his routine patrol, he observed the motor vehicle in which Carlo and Tom were parked and he pulled alongside the car. Carlo opened the door on the driver's side, got out of the car, this witness looked into the car and saw two bottles of Knickerbocker beer lying on the front seat. At that point Tom got out of the car, apparently "greatly intoxicated. He staggered out of the car, started getting very belligerent and loud, profane language and everything." He placed both minors under arrest and took them to headquarters. His first observation of the vehicle was made at some time between 10:15 and 10:45 p.m. and the minors were questioned at headquarters at about 11:15 p.m.

On cross examination he stated that during his conversation with Carlo, Carlo told him that he was employed by the Fair Lawn Police Department. Mahoney upon late investigation ascertained that the story was a fabrication and totally untrue. The witness added that before taking the minors to headquarters, he looked around the outside as well as inside the vehicle and found only the two bottles of beer. He saw no cans of beer in the vicinity.

Lieutenant Albert J. Senegeto (who was in charge of the Detective Bureau of the Fair Lawn Police Department on August 5, 1968) testified that in the course of his investigation, he made a purchase of Old German beer at appellant's premises. On cross examination, he was asked whether his opinion (of Carlo's veracity) was the same as it was at the time of the hearing before respondent when he was asked the following question:

"Question: ...Based upon your knowledge of Carlo ---, do you have an opinion as to his reputation for telling the truth?"

"Answer: My personal opinion is that he is not too reliable. I wouldn't put too much faith in him."

He stated that he was still of the same opinion today.

Police Officer Mahoney was recalled as a witness by appellant and questioned further about the confrontation with these minors in the park. He stated that he found two bottles of Ruppert's beer, that his search both in the vehicle and in the immediate vicinity of the vehicle revealed no cans or containers of beer. He added that he saw Carlo open the door from the driver's side, but he was certain that Carlo did not reach or throw anything under the car.

Patrolman Andrew G. Troy, of the Fair Lawn Police Department, gave the following account: In the morning of August 5, 1968, he saw Carlo and a companion, whom he identified as Bob ---, parked on a parking lot in the vicinity of appellant's premises. He had had prior experience with Carlo and advised appellant's sales clerks that Carlo was known to him as a minor, described his appearance to them, and alerted them in the event Carlo would seek to purchase alcoholic beverages. He admitted that this incident took place in the morning of that date, and he was unaware of what may have transpired at the time of the alleged purchase.

Appellant produced Leonard Shaw (a sales clerk) and Silvio Savastano (the manager of its premises) who testified that they were in the premises on the date and time charged herein. Both vehemently denied that Carlo ever entered the premises, either on that day or at any other time; and they certainly did not sell any alcoholic beverages to him. They both explained that a cash register tape reflects all purchases, that all purchases are rung up and recorded on the tape, and that no purchase in the sum of seventy-five cents was made on that day. They further explained that Old German beer is not sold in six-packs; that it comes in a carton containing twenty-four cans; that contrary to Carlo's statement that the cans were delivered to him in a half-box, in fact such purchases are sold and delivered in bags to customers.

Under vigorous cross examination, both witnesses were unshaken in their account that they remained on the premises during the entire evening, at no time left the premises, and were certain that this minor never entered these premises or made any purchase.

William C. Willner (president of the corporate appellant) corroborated the testimony of the two prior witnesses with respect to the cash register tape, and produced the cash register tape which was marked in evidence. He examined the tape and found no purchase of seventy-five cents (without tax) during that entire day. There were several purchases in the total sum of \$1.50, but he explained that many other items sold by appellant could reach a total of \$1.50. He also listed at least fifteen other liquor facilities in Bergen County which dispense Old German beer.

The guiding rule in these matters is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 34 C.J.S. Evidence, sec. 1042. While there is no set formula for determining the quantum of evidence required, each case being governed by its own circumstances, the verdict must be supported by substantial evidence. Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, 504-06 (1956). Cf. Walter v. Alt, 152 S.W. 2d 135, 141.

The inquiry is whether there is any evidence which, if accepted and given its fullest probative force, reasonably tends to sustain the judgment of the respondent herein. The accepted standard of persuasion governing the trier of facts is that the determination is probably founded in truth. Riker v. John Hancock Mutual Life Insurance Co., 129 N.J.L. 508, 511 (1943).

Thus the critical and decisive issue is whether the determination is founded in truth, i.e., whether or not the minors testified truthfully with respect to the alleged purchase of beer as charged herein.

I have had the opportunity to observe the demeanor of the two minors as they testified before me. I have also carefully analyzed and evaluated their testimony. I am frank to admit that Carlo's testimony was so contradictory, vague and evasive in many of its vital aspects as to become substantially nugatory in its total effect. In addition to the clear conflicts in his testimony, which were briefly delineated in the summary hereinabove, there are other significant portions of his testimony which challenge credulity. By his account he did not have enough money to make the purchases at both liquor facilities and for gas for his vehicle with the \$3 which he testified were given to him by his companion. At this hearing, for the first time, he stated that he returned to his friend's home where Thomas gave him more money. This is at variance with the sworn statement given to the police immediately after his apprehension and the testimony given at the hearing before respondent. In both instances, he omitted any such return trip to Thomas' home.

Further, he now says that he does not know whether he went first to appellant's premises or to Strehl's to purchase beer because his recollection is "vague". It is apparent that just what purchases were made, if any, at appellant's premises and who sold him the beer are equally vague. The attorney for respondent argues that Carlo was able fairly accurately to describe the sales clerk who allegedly sold him these alcoholic beverages. However, it is equally likely that he may have seen the clerk when he was in the vicinity of the premises on the morning of August 5, at which time police officer Troy saw Carlo near the said premises.

Another significant contradiction in the testimony of this minor developed in his account of what happened at the time of the original confrontation with the police. He stated that when he saw the police car approach, he threw the unconsumed cans of beer under his car. However, police officer Mahoney (the respondent's witness) testified that when he approached the minor's motor vehicle, the door on the driver's side was closed and, when he observed Carlo open the door and emerge from the vehicle, he did not notice any such action on the part of the minor. Furthermore, the evidence is clear that no cans of beer were found either inside the vehicle or in the immediate vicinity. The only beer that this officer found in the vehicle were two bottles of Ruppert beer.

The final nail in the coffin of contradiction was driven by this minor in his frank admission that he swore falsely in his statement to the police, and at the hearing before respondent. I therefore find his testimony incredible, untruthful and unworthy of belief. My opinion is fortified by respondent's witness Lieutenant Senegeto who has had prior experience with this minor and frankly admitted, both at the hearing before respondent and at this plenary de novo hearing, that the minor is "not too reliable. I wouldn't put too much faith in him." As is reflected in my summary of the minor's testimony, Lieutenant Senegeto investigated Carlo's assertion that he was employed by the Fair Lawn Police Department and found it entirely without foundation in fact.

The testimony of the other minor (Thomas) is, in my opinion, similarly incredible. The sum total of his testimony would indicate that the only thing he recalled is that he accompanied Carlo to the vicinity of appellant's premises and saw him return with cans of beer, although he did not see him actually enter the premises. All other events of the evening are completely blank. My assessment of this witness' demeanor and testimony suggests the probability that this minor, who was so intoxicated and belligerent that he was incarcerated for his own protection, may well have testified as he did after discussing this matter with Carlo and listening to testimony at the prior hearing. I find his testimony to be less than forthright or believable.

Against the testimony of these minors we have the more credible testimony and factual account of the sales clerk and the manager of appellant's premises. They both unequivocally denied that Carlo ever entered the premises or made any purchases. In addition, we have the testimony of appellant's president who produced the tape in support of the testimony of appellant's witnesses that no sales in the sum

of seventy-five cents were made on the date herein alleged. There were two sales items of \$1.50 reflected on the tape, which were made some time during the day and which this witness maintained may well have been made for the purchase of a number of other items. He also noted that Old German beer is available in any one of fifteen retail liquor facilities in Bergen County.

Weighing the testimony of appellant's witnesses as against that of the minors in this case, and examining the entire picture reflected in the record, the evidential weakness and imbalance of respondent's case becomes clearly evident. As Judge Jayne articulated it in Davidson v. Fornicola, 38 N.J. Super. 365, 371 (1955):

"...In exacting proof by the preponderance or greater weight of the evidence, the law does not prescribe the necessary quantum of the overweight or the degree of excess of its superiority in credibility. A preponderance is attained where the evidence in its quality of credibility destroys and overbalances the equilibrium..."

Qualitatively, the evidence produced by appellant stands in a much more favorable light than that produced by respondent. Thus I cannot say that I am persuaded that the evidence produced by respondent is of such probative force that it engendered that feeling of reasonable probability and certainty in these circumstances. Loew v. Union Beach, 56 N.J. Super. 93 (1959).

Wasserman and Goldberg v. Newark, Bulletin 1590, Item 1, is authority for the principle that in disciplinary proceedings, a preponderance of the evidence is necessary to support and justify a finding of guilt, and doubtful questions of fact must be resolved in appellant's favor. See Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1; Luisi v. Orange, Bulletin 1814, Item 3.

The conclusion is inescapable that the finding of guilt by respondent is not supported by substantial credible evidence on the whole of the record. I therefore recommend that the action of respondent be reversed and the charge herein be dismissed. Perlowski v. Jersey City, Bulletin 1458, Item 1; Lysaght v. Denville, Bulletin 1490, Item 1; Schwartz Drug Stores, Inc. v. Newark, Bulletin 1361, Item 2; Collazo v. Elizabeth, Bulletin 1410, Item 1.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the testimony and the argument of the attorneys for the respective parties herein, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 27th day of May 1969,

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

JOSEPH M. KEEGAN
DIRECTOR

2.

ACTIVITY REPORT FOR MAY 1969

ARRESTS:		
Total number of persons arrested - - - - -		6
Licenses and employees - - - - -	6	
SEIZURES:		
Brewed malt alcoholic beverages - gallons - - - - -		567
RETAIL LICENSEES:		
Premises inspected - - - - -		874
Premises where alcoholic beverages were gauged - - - - -		674
Bottles gauged - - - - -		10,589
Premises where violations were found - - - - -		198
Violations involved - - - - -		297
No Form E-141-A on premises - - - - -	87	No Disposal Permit - - - - - 4
Unqualified employees - - - - -	76	Other mercantile business - - - - - 2
Application copy not available - - - - -	58	Prohibited signs - - - - - 1
Form E-141-A incomplete - - - - -	33	Other violations - - - - - 56
STATE LICENSEES:		
Premises inspected - - - - -		18
License applications investigated - - - - -		11
COMPLAINTS:		
Complaints assigned for investigation - - - - -		431
Investigations completed - - - - -		429
Investigations pending - - - - -		225
LABORATORY:		
Analyses made - - - - -		52
Refills from licensed premises - bottles - - - - -		38
Bottles from unlicensed premises - - - - -		0
IDENTIFICATION:		
Criminal fingerprint identifications made - - - - -		5
Persons fingerprinted for non-criminal purposes - - - - -		529
Identification contacts made with other enforcement agencies - - - - -		377
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		7
Violations involved - - - - -		7
Sale to minors - - - - -	5	Failure to close premises during prohibited hours - - - - - 1
Sale during prohibited hours - - - - -	1	
Cases instituted at Division - - - - -		250
Violations involved - - - - -		30
Possessing liquor not truly labeled - - - - -	6	Bkmg. & lottery Acty. on premises - - - - - 1
Permitting immoral acty. on prem. - - - - -	3	Sale below filed price - - - - - 1
Sale during prohibited hours - - - - -	3	Fraud and front - - - - - 1
Fraud in application - - - - -	3	Unqualified employee - - - - - 1
Bookmaking activity on premises - - - - -	2	Misc. gambling on premises - - - - - 1
Bkmg., lottery & misc. gambling on prem - - - - -	2	Fail. to file notice of chge. in license application - - - - - 1
Lottery activity on premises - - - - -	1	Employee working while intoxicated - - - - - 1
Sale to minors - - - - -	1	Act or happening - - - - - 1
Permitting hostesses on premises. - - - - -	1	
Cases brought by municipalities on own initiative and reported to Division - - - - -		12
Violations involved - - - - -		13
Sale to minors - - - - -	7	Unqualified employee - - - - - 1
Sale during prohibited hours - - - - -	2	Permitting minor on prem. unaccomp. by parent (local reg.) - - - - - 1
Conducting business as a nuisance - - - - -	2	
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		51
Appeals - - - - -	2	Tax revocations - - - - - 10
Disciplinary proceedings - - - - -	29	Applications for license - - - - - 1
Eligibility - - - - -	9	
STATE LICENSES AND PERMITS:		
Total number issued - - - - -		14,662
Licenses - - - - -	14	Social affair permits - - - - - 514
Solicitors' permits - - - - -	31	Miscellaneous permits - - - - - 904
Employment permits - - - - -	495	Transit insignia - - - - - 11,069
Disposal permits - - - - -	68	Transit certificates - - - - - 1,577
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued - - - - -	106	
Enforcement files established - - - - -	13	

Dated: June 10, 1969

JOSEPH M. KEEGAN
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

*Includes one cancellation proceeding - license improvidently issued by reason of conviction of corporate officer of crime involving moral turpitude.

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED for 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Molinari Cafe, Inc. 501-09 Paterson Plank Road Union City, New Jersey, Holder of Plenary Retail Consumption License C-96, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS and ORDER

Kleinberg, Moroney, Masterson & Schachter, Esqs., by Martin D. Moroney, Esq., Attorneys for Licensee Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 1, 1969 it sold drinks of alcoholic beverages to nine minors, one age 16, two age 17, two age 18, two age 19 and two age 20, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for fifteen days effective October 20, 1953 (Re Molinari Cafe, Inc., Bulletin 988, Item 2), and by the municipal issuing authority for twenty days effective August 5, 1957, ten days effective July 11, 1960, and fifteen days effective July 22, 1968, all for sale to minors. In addition, the license then held by David Molinari (33-1/3 per cent. stockholder of the licensee corporation) was suspended by the municipal issuing authority for sixty days effective August 6, 1942, also for sale to minors.

Considering the number of minors involved and the age of the youngest (cf. Re Triple T. Inc., Bulletin 1639, Item 2), the record of two suspensions for similar violation within the past five and ten years (Re J.J.C., Inc., Bulletin 1822, Item 6; Re LaFreda & Olive, Bulletin 1824, Item 2), and the aggravating circumstance that this is the sixth similar offense (cf. Re Cohen, Bulletin 1770, Item 3), the license will be suspended for ninety days, with remission of five days for the plea entered, leaving a net suspension of eighty-five days.

Accordingly, it is, on this 26th day of May 1969,

ORDERED that Plenary Retail Consumption License C-96, issued by the Board of Commissioners of the City of Union City to Molinari Cafe, Inc., for premises 501-09 Paterson Plank Road, Union City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1969, commencing at 3 a.m. Monday, June 2, 1969; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Tuesday, August 26, 1969.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Jumbo's, Inc. 517 Paterson Plank Road Union City, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-108 issued by the Board of Commissioners of the City of Union City

Licensee, by Patrick Aiello, President, Pro se
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 17, 1969, it possessed alcoholic beverages in twenty-three bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Cf. Re Club "D" Lane, Inc., Bulletin 1600, Item 4.

Accordingly, it is, on this 27th day of May 1969,

ORDERED that Plenary Retail Consumption License C-108, issued by the Board of Commissioners of the City of Union City to Jumbo's, Inc. for premises 517 Paterson Plank Road, Union City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1969, commencing at 3:00 a.m. Tuesday, June 3, 1969; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Monday, July 28, 1969.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 George F. Nevius, Inc.)
 t/a JoMar Cafe)
 238 Essex Street)
 Gloucester City, New Jersey)
 Holder of Plenary Retail Consumption License C-14 issued by the Mayor and Council of the City of Gloucester City)
)

CONCLUSIONS AND ORDER

Licensee, by George F. Nevius, Secretary, Pro se
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 12, 1969, it permitted lewdness and immoral activity (indecent entertainment) on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that the performance of a female go-go dancer, in a cage next to the bar and on the bar, simulated sexual intercourse, that she exposed her private parts and performed, by herself and with an ostensible male patron, in an obscene and indecent manner characterized by acts, gestures and movements with the hands and other parts of the body.

Absent prior record, the license will be suspended for forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days. Re Cadillac Motel, Inc., Bulletin 1865, Item 2; Re Caggy's, Inc., Bulletin 1852, Item 4.

Accordingly, it is, on this 27th day of May 1969,

ORDERED that Plenary Retail Consumption License C-14, issued by the Mayor and Council of the City of Gloucester City to George F. Nevius, Inc., t/a JoMar Cafe, for premises 238 Essex Street, Gloucester City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1969, commencing at 7:00 a.m. Monday, June 2, 1969; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7:00 a.m. Saturday, July 12, 1969.

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR DIS-SIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
 Proceedings against)
 Niki Vela, Inc.)
 t/a Niki Vela Inn)
 1116 N. Delaware Street)
 Paulsboro, New Jersey)
 Holder of Plenary Retail Consumption)
 License C-14, issued by the Mayor and)
 Council of the Borough of Paulsboro)
 -----)

CONCLUSIONS
and
ORDER

Elliott G. Heard, Jr., Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Saturday, March 8, 1969, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Gary ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

The testimony of Gary --- (age 19) discloses that at about 11 p.m. Saturday, March 8, 1969, after entering the licensed premises with Maurice Higbee (hereinafter Higbee), he was introduced to Angela Vlachos (hereinafter Niki), an officer of the corporate licensee, and during an ensuing conversation Higbee told Niki that Gary was twenty-one years of age. Thereafter Higbee ordered two bottles of beer from Robert G. Winters (the bartender) and, when served, he handed a bottle of the beer to Gary who consumed the contents thereof.

Some time thereafter Higbee repeated his order and, when again served by the same bartender, handed another bottle of beer to Gary. Just as Gary was starting to drink the beer, an ABC agent came over, asked proof of his age, and he told the agent that he was nineteen years old. Gary further testified that he was never questioned by Niki or the bartender as to his age or to make any written representation thereof.

ABC agent G testified that he was present on the night in question and his attention was attracted to Gary because he appeared to him to be a minor. After hearing Higbee order two seven-ounce bottles of Schmidt's beer, he observed, when served, that Higbee handed a bottle to Gary. Gary thereafter consumed the beer and Higbee then ordered two more bottles from the bartender and gave a bottle to Gary

who was standing by the pool table. Agent G said he questioned Gary and Higbee as to their ages and ascertained that Gary was nineteen years old. Thereafter he seized a bottle of beer from which Gary was drinking and then advised Niki of the violation. He questioned Niki as to whether she had asked Gary concerning his age or whether she had obtained a written representation with respect thereto, and to both questions she shook her head from side to side. Thereafter Agent G said he questioned the bartender if he had sought identification from Gary and his answer was "I didn't sell it to the minor; I sold it to Higbee." Although the bartender did not answer when Agent G inquired if he ~~Saw~~ Gary drinking beer, Niki, in answer to the same question, said that she did.

Niki testified that, after she had been introduced to Gary by Higbee, she said to Gary "You look very young. Are you over 21?" And he said, "Yes, I am;" that she then asked, "Do you have anything on you?" And he replied, "No, I don't have anything with me;" that Higbee intervened saying, "I know him, Niki. I know him very well. I work with him. He will be 22 in July."

Robert G. Winters testified that, while tending bar on the night in question, he observed Higbee and Gary come into the licensed premises; that Higbee ordered and was served by him but that he neither heard any conversation between the two youths and Niki nor did he observe Gary consuming any beer. When asked on cross examination whether he questioned Gary as to proof of age, Winters said, "I had no reason to. He didn't come here to order beer. There was no intent he was going to get the beer. He was out of the picture completely."

Georgette M. Kaighn testified that she was in the licensee's premises at about 11 p.m. on the evening of March 8, 1969, when Gary and Higbee came into the establishment; that she overheard Niki inquire of Gary regarding his age and he stated to her that he was twenty-one years old and, furthermore, that Higbee said to Niki, "I'll vouch for him. I work with him." Miss Kaighn stated that she did not see Gary consume any beer in the licensed premises.

Niki testified that she saw Gary consume beer and thus there is no dispute with reference thereto.

The fact that the minor did not pay for the drink, or that it was not directly ordered by him, does not relieve the licensee of its responsibility since it has been held that service, even indirectly, to a minor by service by a minor's companion is a violation of the statute and hence constitutes a sale. R.S. 33:1-1(w); cf. Fran-Bo-Car, Inc. v. Englewood, Bulletin 1186, Item 3; Grippio v. Hoboken, Bulletin 999, Item 2; Re Gahr, Bulletin 377, Item 7.

Although Gary testified that Higbee told Niki that Gary was twenty-one years old, I believe Gary never made said assertion as represented by Niki. Regardless, there was no written representation by Gary as required by the applicable law and regulations of this Division. Rule 7 of State Regulation No. 20 and R.S. 33:1-77.

I therefore find as a fact that the Division has established the guilt of the licensee on this charge by a fair preponderance of the credible evidence. It is therefore recommended that the licensee be found guilty of sale and service of alcoholic beverages to the minor as charged..

Licensee has a prior record of suspension by the local issuing authority for twenty days effective November 20, 1968, because of an "hours" violation.

The prior record of suspension for dissimilar violation within the past five years considered, it is further recommended that the license be suspended for twenty days. Re Cheryl-Ann, Inc., Bulletin 1778, Item 7.

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 transcript of testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 29th day of May 1969,

ORDERED that Plenary Retail Consumption License C-14, issued by the Mayor and Council of the Borough of Paulsboro to Niki Vela, Inc., t/a Niki Vela Inn, for premises 1116 N. Delaware Street, Paulsboro, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Thursday, June 5, 1969, and terminating at 2:00 a.m. Wednesday, June 25, 1969.

JOSEPH M. KEEGAN
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Montmartre Night Club, Inc. 2522 Bergenline Avenue Union City, N. J. Holder of Plenary Retail Consumption License C-59, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS and ORDER

Licensee, by Mario Gonzalez, Vice President, Pro se Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 25, 1969 it possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for twenty-five days effective October 21, 1968 for permitting a dice game on the licensed premises and sale to a minor. Re Montmartre Night Club, Inc., Bulletin 1826, Item 7.

The prior record of suspension for dissimilar violation occurring within the past five years considered, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re The Maples, Inc., Bulletin 1812, Item 15.

Accordingly, it is, on this 26th day of May 1969,

ORDERED that Plenary Retail Consumption License C-59, issued by the Board of Commissioners of the City of Union City to Montmartre Night Club, Inc., for premises 2522 Bergenline Avenue, Union City, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Monday, June 2, 1969, and terminating at 3 a.m. Tuesday, June 17, 1969.

Joseph M. Keegan, Director.

8. STATE LICENSES - NEW APPLICATION FILED

Gold Star Liquors, Inc. Route #46 and Trenton Avenue Clifton, New Jersey

Application filed July 16, 1969 for place-to-place transfer of Plenary Wholesale License W-59 to include additional space.

Handwritten signature of Joseph M. Keegan and typed name: Joseph M. Keegan, Director