

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

BULLETIN 1243

OCTOBER 6, 1958.

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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 1243

OCTOBER 6, 1958.

1. APPELLATE DECISIONS - LIPSHITZ, INC. v. NEWARK.

LIPSHITZ, INC.,)	
Appellant,)	
-vs-)	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC)	CONCLUSIONS AND ORDER
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
Respondent.)	
-----)	
Charles Handler, Esq., Attorney for Appellant.		
Vincent P. Torppey, Esq., by James E. Abrams, 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 it suspended appellant's license for a period of twenty days, effective June 16, 1958, after finding the appellant guilty of a sale of alcoholic beverages on Sunday, November 10, 1957, during prohibited hours.

"Upon the filing of the appeal, an order was entered on June 9, 1958 staying respondent's order of suspension until further order of the Director. R. S. 33:1-31.

"Appellant, in its petition of appeal, alleges that respondent's action was erroneous because its decision was contrary to the weight of the evidence. The respondent, in its answer, denies that such is the fact.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 and the transcript of the proceedings before the respondent Board was received in evidence, and additional testimony was presented by appellant, in accordance with Rule 6 of such regulation.

"A police officer and Childs H. Poindexter, the person who is alleged to have purchased the alcoholic beverages, testified at the hearing before respondent Board. The police officer testified to the following effect: On Sunday, November 10, 1957, at about 10:00 a.m., he and another officer parked their car at a place where they could keep defendant's licensed premises under surveillance because they were investigating a complaint that alcoholic beverages were being sold there during prohibited hours on Sunday. They observed a taxicab come to a stop near where they were parked. Poindexter left the taxicab, walked about half a block and entered the licensed premises. Shortly thereafter they observed Poindexter come out with a package in his hand and enter the taxicab. The officers accosted Poindexter before the taxicab could be driven away, ascertained that there was delicatessen meat in the package and that he had a pint bottle of whiskey in his pocket.

"The officers immediately returned with Poindexter to defendant's licensed premises where in their presence he identified Nathan Lipshitz as the person who had sold him the pint

of whiskey. Lipshitz acknowledged that he had sold the meat to Poindexter but denied that he had sold him the pint of whiskey. It is the officer's recollection that at a hearing in police court on criminal charges in the case, Poindexter testified that he told the police officers he purchased the whiskey on Saturday night, not on Sunday morning.

"Poindexter testified that he purchased the meat and the pint of whiskey from Nathan Lipshitz on the Sunday morning in question. His recollection of the testimony in police court is that he was questioned as to his activities on Saturday, but that at such hearing he stated it was Sunday, not Saturday, when he purchased the bottle of whiskey. He did not recall clearly whether he was taken back to defendant's premises on that Sunday morning but this does not appear to be a vital discrepancy since it is not disputed that actually he did accompany the officers to the premises and accuse Lipshitz of making the sale. He further testified that he did not have the whiskey on his person when he left the taxicab. It appears that Poindexter had previously purchased meat and whiskey at the premises.

"The defense that was presented by the licensee, in short, is that Nathan Lipshitz sold Poindexter meat but not whiskey on the Sunday morning in question; that he sold Poindexter two pints of whiskey on the premises Saturday night of the same brand that was found on him on Sunday. Lipshitz's sister, the cashier, corroborated her brother and further testified that she received payment of \$1.40 representing only the purchase of meat. She was present when the police officers returned with Poindexter and was amazed at the accusation. A patron of the premises testified that he was present when Poindexter entered, observed and heard most of what transpired, left practically at the same time as Poindexter and that he did not observe any sale of whiskey to Poindexter and heard Nathan Lipshitz in a loud voice instruct his sister to collect \$1.40. At the appeal hearing, these three witnesses added more specific details to their previous testimony.

"Reduced to its fundamental aspect, the only direct evidence of the sale of the bottle of whiskey on the Sunday morning in question is that of Poindexter. Even that evidence is in conflict with the statement attributed to him when at the police court that he purchased the whiskey on Saturday. (In passing, it is noted that the criminal charges against Nathan Lipshitz were dismissed.) The circumstantial evidence is that the officers observed Poindexter enter and leave the premises but were not in a position to witness what he purchased there. The presence of the unwrapped pint bottle of whiskey in Poindexter's pocket is not proof positive that it was purchased that morning. The immediate confrontation and accusation of Lipshitz by Poindexter was met with a denial.

"Contrasting this evidence with the testimony that no such sale actually occurred, by the apparently disinterested customer, who is a retired police officer, and that of Nathan Lipshitz and his sister, even though their testimony is flavored by their interest in the outcome of the case, it is my opinion that the circumstantial evidence presents a strong inference but does not offer a firm legal foundation for a finding of guilt. I believe that, considering the full impact of all the evidence, it is insufficient to support a finding of appellant's guilt. I conclude that respondent has failed to establish by a fair preponderance of the evidence the violation charged. I recommend, therefore, that the action of respondent be reversed,

and that the charge preferred against appellant be dismissed. Pacilli v. Orange, Bulletin 1230, Item 1; cf. Re Brick's Bar, Inc., Bulletin 1196, Item 10."

No exceptions to the Hearer's Report were taken within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusion and adopt his recommendation.

Accordingly, it is, on this 4th day of September, 1958,

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

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - MONMOUTH COUNTY RETAIL LIQUOR STORES ASSOCIATION ET ALS. v. NEPTUNE CITY AND BILOW, INC.

MONMOUTH COUNTY RETAIL LIQUOR
STORES ASSOCIATION, a New Jersey
Corporation, RAY KRAMER, JAMES
WICKIS and JOE MEYERS,

Appellants,

-vs-

MAYOR AND COUNCIL OF THE BOROUGH
OF NEPTUNE CITY, and BILOW, INC.,

Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Samuel Moskowitz, Esq., Attorney for the Appellants Monmouth
County Retail Liquor Stores Association, Ray Kramer and
James Wickis.

Joseph J. Breitner, Esq., Attorney for the Appellant Joe Meyers.
Joseph R. Megill, Esq., Attorney for Respondent Borough of
Neptune City.

Benjamin Kleinberg, Esq., Attorney for the Respondent Bilow, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Mayor and Council whereby on March 24, 1958 they approved, by the unanimous vote of the six councilmen present, an application for a person-to-person and place-to-place transfer of a plenary retail consumption license without the 'broad package privilege' from Louise Plunkett to respondent Bilow, Inc. and from premises 73 Ridge Avenue to premises described as Store #2 in the Neptune City shopping center situate at the northwest corner of New Jersey State Highway Route #35 and Third Avenue, Neptune City, New Jersey.

"Although the petition of appeal sets forth a number of reasons why the transfer of the license should be reversed, all but one may be disregarded because it appears that the old and the new premises are practically in the same area and that the transfer to the new and apparently isolated area would decrease the concentration of licenses in the old area. Indeed the objectors conceded that they would have no objection to the

transfer to the new premises if the licensed business continued to be operated in the same manner as it had been operated at the old location. Thus, the sole contention requiring determination is, in effect, similar to that stated in Passaic Co., etc., Ass'n v. Board, etc., City of Paterson, 37 N. J. Super. 187, at page 193:

'Appellant also contends that installing a nominal bar and related fixtures in a "package store" does not convert the premises into a "public barroom" within the true spirit and meaning of the statute; that the statute was designed to prevent the emergence of "package stores" at premises possessing a plenary retail consumption license without the "broad package privilege," and that the physical arrangement of the premises can only lead one to conclude that the bar in question is not installed with the intent of maintaining a bona fide barroom, but it is instead, designed merely to facilitate the operation of a "package store" and thereby evade the spirit and intention of the law.'

"This is a troublesome problem which has been presented for consideration time and again where licensees who do not have a 'broad package privilege' nevertheless arrange the physical equipment of their place of business so that the major features thereof are those of a 'package store', with an ostensible bar relegated to minor importance, sometimes hardly visible, and thus seek to skirt or circumvent the minimal requirements of the statute. Each case, of course, must be considered in the light of the plans and other specific facts presented. Passaic Co., et al., supra.

"The design of the statute (R. S. 33:1-12.23) in the language of Passaic County, etc. v. Paterson, et al., Bulletin 1021, Item 1, relating to plenary retail consumption licenses, is that the Legislature intended where there was no 'broad package privilege' to confine the sale of alcoholic beverages in original containers to a bona fide barroom, which has been defined therein as a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises. A barroom as so defined has been judicially declared to mean that portion included within the four walls of the room in which the bar is located. Coral Lounge and Cocktail Bar, Inc. v. Hock, 5 N. J. Super. 163.

"The law must be applied as written. There is no present requirement therein governing the size of the bar or any provision that the principal business shall be the sale of alcoholic beverages by the drink. Of course, as in Passaic County, etc., v. Paterson et al., Bulletin 1021, Item 1, where it is an obvious subterfuge, doing violence to common sense, in that a small bar was placed in the rear of the premises effectively partitioned from the front of the premises by a large refrigerator and not visible from the entrance, such an arrangement was not tolerated. On the other hand, where the premises may have the primary appearance of a 'package store', but there is a bar and its facilities in the same room, as in Passaic County Retail Liquor Dealers' Ass'n. v. Paterson et al., Bulletin 1043, Item 3, and Messinger, et al. v. Pompton Lakes, etc., Bulletin 1129, Item 3, some of the outward aspects may be condemned and eliminated such as a misleading type of exterior sign on the premises or obstructions

in the interior designed to conceal the bar, but in view of the statute and decisional law, the fundamental physical arrangement technically complies with the statutory requirements.

"Turning, with these principles in mind, to the facts in the instant case, it appears that a diagram of the physical arrangements of the new premises was presented to the respondent Mayor and Council when they considered the application. From this diagram it appears that the dimensions of the new store are 18 1/2 feet in width and 123 feet in depth. There is a large overhead advertising sign on the exterior reading 'Bilow' 'Wines' 'Liquors' on the top line, and 'Bar' 'Cold' 'Beer' on a line underneath. In the interior, entirely visible through the front windows, there are shelves on both walls, six tiers in height, extending from the entrance at a distance of about 50 feet, lined solidly with a display of alcoholic beverages in original containers. A large glass front refrigerator, with a display of bottled beer, located at the termination of the shelves, effectively partitions the front of the premises from the rear, except for a small passageway. On the floor on the left hand side at or near the entrance, there is a counter for the sale and delivery of packaged alcoholic beverages. There is a register on this counter. A few feet from this counter, on the same side and about 27 to 30 feet from the entrance, there is a 12 foot counter or bar. On this bar usually there is a display of drinking glasses. On the shelf directly behind this bar there is another cash register and a display of drinking glasses. There may be some open bottles of alcoholic beverages on this shelf. There are no bar stools. Two of the witnesses, the Mayor and one of the objectors, observed on occasion persons being served drinks of alcoholic beverages at the bar. The establishment is open only at those hours at which the other stores in the shopping center are open.

"The evidence presented, consisting of the testimony of the witnesses, the diagram and various photographs of the exterior and interior of the premises, establishes beyond cavil that the establishment has the appearance of a 'package store'. However, it is undisputed that the bar is unobstructed and clearly visible from the entrance, that it is equipped with facilities for the sale of alcoholic beverages by the glass for consumption on the premises; that no bottles are on display therein; that all the equipment is within the four walls of the room where the bar is located.

"As heretofore stated, the respondent Mayor and Council, when considering the application, had before it the diagram of the physical layout and, in addition, the Mayor and one of the councilmen viewed the interior of the premises as laid out. The Mayor classified the establishment as a tavern which is selling 'both package and a barroom'. A member of the Council testified concerning the change in the method of the operation of the business; that he felt in business some people are more aggressive in some lines than others; that 'here is a fellow (Bilow) that has a tavern that is more aggressive in the selling of the other goods but whereas Mrs. Plunkett was perfectly satisfied with the tavern then'; that he felt that there was just as much 'room' at the location in the shopping center for the sale of alcoholic beverages by the drink as for the sale of bottled goods.

"The burden of establishing that the action of respondent Mayor and Council is erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. While the Director may exercise his independent judgment as to whether the physical layout conforms with the statutory requirements, I am of the opinion in the present instance that, under all the circumstances appearing in the case, the appellants have failed to meet the burden imposed upon them and, consequently, I recommend that the action of the respondent Mayor and Council be affirmed and the appeal denied."

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

As noted by the Hearer, the question involved herein is a vexatious one which is being presented to the Division in recently increasing frequency. In Passaic County Retail Liquor Dealers Association v. Paterson and Bertelli's Liquor Store, Inc., Bulletin 1021, Item 1 (affirmed by the Appellate Division of the Superior Court in 37 N. J. Super. 187), I stated that the pertinent statute (R. S. 33:1-12.23 et seq.) "was designed to prevent emergence of 'package stores' at plenary retail consumption licensed premises without the 'broad package privilege'". Nevertheless, this Division has encountered attempts by consumption licensees to evade the design of this statute by erecting token or sham bars in rooms devoted predominantly to the sale or display for sale of package goods, which rooms in effect constitute virtually exclusive "package or liquor stores". And the appellants urge, as grounds for reversal of the transfer, that respondent's licensed premises are within this category.

The term "public barroom" as used in the statute refers to a bona fide public barroom, not merely a room open to the public and containing somewhere therein a piece of equipment which the licensee refers to as the "bar". A token or sham bar does not convert a store into a barroom. Re Krystyniak, Bulletin 1021, Item 2. The law is not to be made a mockery by means of evasive schemes devised by consumption licensees.

To conform to the requirements of the remedial legislation, a consumption licensee without the "broad package privilege" must maintain a bona fide barroom with adequate bar facilities constituting an invitation to the public to be served and to consume drinks of alcoholic beverages therein. By this is meant that the size, shape, location, accessibility and equipment of the bar must be adequate to serve drinks at the bar to members of the public for consumption thereat. Token or sham bars not adequate in any such respect are not sufficient. Each case must be decided on its own facts.

With respect to the facts of the instant case, I have carefully considered the entire record herein, including the transcript of testimony, the exhibits in evidence and the Hearer's Report and, as a result, I find that the respondent licensee, with one exception hereinafter mentioned, has complied with the requirements of the statute in question and is not selling or displaying for sale alcoholic beverages in original containers for consumption off the licensed premises in other than the public barroom. The bar in question measures 12 feet in length in a room approximately 18 1/2 feet by 50 feet in size; it is shaped to accommodate patrons being served and consuming drinks; it is located so that it is completely accessible to patrons entering the barroom; it is

completely unobstructed by any objects; and, finally, it is equipped with facilities such as running water, sink, drinking glasses, ice and a back bar for open stock of alcoholic beverages and additional drinking glasses. The one exception is that the respondent licensee has not provided any bar stools or other adequate means by which patrons may be seated at the bar while being served and consuming drinks and this should be remedied immediately. See Messinger et al. v. Pompton Lakes et al., Bulletin 1129, Item 3, construing the word "facilitate".

I therefore concur in the findings of fact and recommendation of the Hearer and will adopt his report as it pertains thereto, with the above mentioned modification. Appellants having failed to sustain the burden of establishing that the action of the respondent Mayor and Council was erroneous, the transfer will be affirmed and the appeal denied.

Accordingly, it is, on this 9th day of September, 1958,

ORDERED that the action of the respondent Mayor and Council be and the same is hereby affirmed, in accordance with the conclusions hereinabove set forth, and the appeal herein is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - VIOLATION OF STATE REGULATION NO. 38 - UNLAWFUL TRANSPORTATION - TRANSPORTING WITHOUT BONA FIDE INVOICE OR MANIFEST - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

NANCY TAFROW)
t/a BIG CASTLE LIQUOR STORE)
438 S. Broad Street)
Trenton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-152, issued by the)
Board of Commissioners of the)
City of Trenton.)

Frank S. Stabile, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On June 14, 1958, you sold at retail, directly or indirectly, an alcoholic beverage, viz., a fifth bottle of Calvert Reserve Blended Whiskey, at less than the price thereof listed in the then currently effective Minimum Consumer Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30.

"2. On Sunday, July 13, 1958, you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., 12 pint bottles of Fleischmann's Preferred Whiskey, 3 pint bottles of Calvert Reserve Whiskey and 12 - 12 ounce cans of Schaefer Beer, at retail in their original containers for consumption off your licensed premises, and you allowed, permitted and suffered the removal of such alcoholic beverages from your retail licensed premises; in violation of Rule 1 of State Regulation No. 38.

"3. On Sunday, July 13, 1958, you transported alcoholic beverages in a vehicle not having a transit insignia affixed thereto; in violation of Rule 2 of State Regulation No. 17.

"4. On Sunday, July 13, 1958, you transported alcoholic beverages without a license, contrary to R. S. 33:1-2; in violation of R. S. 33:1-50(a).

"5. On Sunday, July 13, 1958, you delivered and transported alcoholic beverages in a vehicle, without the driver thereof having in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the bona fide name and address of the purchaser or consignee, and the brand, size of container and quantity of each item of the alcoholic beverages being delivered and transported; in violation of Rule 3 of State Regulation No. 17."

With respect to the first charge, the file herein discloses that at about 9:30 p.m. on June 14, 1958, an ABC agent entered defendant's licensed premises. The agent asked the clerk the price of a 4/5 quart bottle of Calvert Reserve Blended Whiskey and was informed that the price was \$4.79. The agent told the clerk to forget about the whiskey and ordered six cans of beer. The clerk obtained the beer and received payment therefor from the agent. As this transaction was in progress the licensee came over to the clerk and told him to accept \$4.50 for the whiskey. Accordingly, the clerk obtained a bottle of Calvert Reserve Blended Whiskey, handed the whiskey to the agent and accepted \$4.50 in payment therefor. The agent then left the premises with the beer and whiskey, joined another agent who had remained outside and both agents entered the premises and identified themselves to the clerk and the licensee. Thereupon the clerk, in the presence of the licensee and her son, verbally admitted that he had sold the bottle of whiskey for the aforesaid price stating that the reason he made the sale was because the licensee instructed him to do so. The licensee then stated that she could not read or write and did not know the correct price of the whiskey. The minimum consumer listed retail price in effect for such item was \$4.79.

With respect to Charges 2, 3, 4 and 5, the file herein discloses that on Saturday night, July 12, 1958 after 10:00 p.m., ABC agents kept defendant's licensed premises under surveillance while investigating a complaint that the licensee was selling and delivering alcoholic beverages during prohibited hours. They observed an employee of the licensee arrive at the licensed premises in a Plymouth sedan. At about 12:05 a.m., they observed this employee carry four cartons from the licensed premises and place them in such car. About fifteen minutes later this employee entered the car and followed the licensee in her car to the latter's home. There

the employee removed three of the cartons and brought them into the licensee's home. At this time the agents observed that the remaining carton contained alcoholic beverages. The employee then drove to the vicinity of his home where he was accosted by the agents who identified themselves. The agents ascertained that the carton contained 12 pint bottles of Fleischmann's Preferred Whiskey, three pint bottles of Calvert Reserve Whiskey and 12 cans of Schaefer beer. There was also the licensee's customer order slip in the carton naming the customer merely as "MOM". The agents were later informed that such alcoholic beverages were intended for delivery to the employee's landlady at the same house in which the employee resided.

The plymouth sedan was not registered in the name of the licensee and did not bear any transit insignia authorizing its use in the transportation of alcoholic beverages. The customer's order slip did not bear the bona fide name and address of the purchaser or consignee, as required by rules governing transportation of alcoholic beverages.

Defendant's only adjudicated record within the past ten years is a suspension of her license effective February 6, 1956 for five days by the local issuing authority for sale to a minor. It is alleged in mitigation of the violations herein involved that the order for the alcoholic beverages delivered on Sunday morning had been accepted by defendant about 7:00 p.m. on the previous evening; that the licensee is a widow, illiterate and ill; is burdened by the problems of the conduct of the licensed business and that the charges have contributed substantially to her worries and fear. However, it is to be noted that she participated personally in all of the misconduct charged.

The minimum penalty for the violation set forth in Charge 1 is ten days. Re Riddle & Schramm, Bulletin 1231, Item 6. The minimum penalty for the violations set forth in Charge 2 is fifteen days. Re Lithuanian Citizens Independent Aid Club, A Corp., Bulletin 1236, Item 5. While the violations set forth in Charges 3 to 5, both inclusive, are related to Charge 2, nevertheless, the removal of alcoholic beverages from the licensed premises and the attempted delivery thereof after midnight displays a singular lack of appreciation of the standard of conduct expected of a liquor licensee. However, making allowance for her physical condition, I shall suspend defendant's license on all charges for a period of thirty-five days to which five days will be added because of the prior dissimilar violation within the past five years, making a total 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 2nd day of September, 1958,

ORDERED that Plenary Retail Consumption License C-152, issued by the Board of Commissioners of the City of Trenton to Nancy Tafrow, t/a Big Castle Liquor Store, for premises 438 S. Broad Street, Trenton, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. September 8, 1958 and terminating at 2:00 a.m. October 13, 1958.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - VIOLATION OF STATE REGULATION
NO. 38 - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR
30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

JOHN A. SCHLOSSER)
t/a CLAREMONT TAVERN)
121 Claremont Road)
Bernardsville, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-6, issued by the)
Borough Council of the Borough of)
Bernardsville.)

Henry F. Schenk, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On Saturday, July 12, 1958, at about 10:50 p.m., you allowed, permitted and suffered the removal of alcoholic beverages, viz., a pint bottle of Seagram's Seven Crown Whiskey and six 12-ounce cans of Rheingold beer, in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

"2. On Saturday, July 12, 1958 between 10:50 p.m. and 11:00 p.m., while an inspector and an investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey 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."

The file herein discloses that on July 12, 1958, at about 9:45 p.m., two ABC agents entered defendant's licensed premises and observed John Wach and five other male patrons seated at the bar behind which stood John Schlosser (the licensee) acting as bartender. At about 10:40 p.m. the agents saw Wach walk in clear view of the licensee to a shelf behind the bar, pick up a pint-bottle of Seagram's Seven Crown Whiskey, walk to the ice box and take therefrom six 12-ounce cans of Rheingold beer. Wach placed the aforesaid alcoholic beverages in a cardboard box and, without any objections from the licensee, left the premises. One of the agents followed Wach into the street and escorted him back to the premises. When the agents attempted to question Wach about the aforesaid sales, the licensee directed him not to answer any of the questions and Wach thereupon refused to reply to any of the agent's inquiries. In addition, the licensee refused to answer any questions, refused to produce his license application and maligned the agents by calling them crooks, racketeers and stooges. Thereafter the licensee, upon being informed that the failure to have his license application on the premises constituted a violation, delivered the same to the agents.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days on Charge 1 (the

minimum penalty for an hours violation). Re Szot, Bulletin 1213, Item 10. As to Charge 2: Hindering involves a type of violation which strikes at the very heart of enforcement control. Where, as in the instant case, such hindering involves a slanderous attack on the agents (unattended by violence or threats), the minimum penalty should and will be a fifteen-day suspension of the license. Cf. Re The Village Barn, Inc. of New Jersey, Bulletin 1051, Item 3. I shall, therefore, suspend defendant's license on both charges for a period of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 2nd day of September, 1958,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Bernardsville to John A. Schlosser, t/a Claremont Tavern, for premises 121 Claremont Road, Bernardsville, be and the same is hereby suspended for twenty-five (25) days, commencing at 1:00 a.m. September 6, 1958, and terminating at 1:00 a.m. October 1, 1958.

WILLIAM HOWE DAVIS
Director.

5. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY
DIRECTOR - APPLICATION TO LIFT GRANTED.

Auto. Susp. #157

In the Matter of a Petition by)

AUGUST EDWIN DANKER)

t/a RADLEY LODGE)

142 Lamberts Mill Road)

Scotch Plains)

P. O. Westfield, N. J.,)

ON PETITION
O R D E R

To Lift the Statutory Automatic
Suspension of License C-4, issued)
by the Township Committee of the
Township of Scotch Plains.)

Fox and Schackner, Esqs., Attorneys for Petitioner.

BY THE DIRECTOR:

It appears from a verified petition filed herein that on July 8, 1958, petitioner was fined \$1,000.00 after he pleaded non vult in the Union County Court to an indictment alleging that he sold alcoholic beverages to minors, in violation of R. S. 33:1-77. Said conviction resulted in the automatic suspension for the balance of its term of the license he now holds. The petition requests the lifting of the automatic suspension. The license was not immediately picked up because of the pendency of these proceedings.

By order dated July 2, 1957, I suspended petitioner's license for forty days after he pleaded non vult in disciplinary proceedings to a charge of selling alcoholic beverages to the same minors. This suspension was effective from 2:00 a.m. July 15, 1957, to 2:00 a.m. August 24, 1957 (Bulletin 1183, Item 2). Under the circumstances, I shall grant the relief requested.

Accordingly, it is, on this 7th day of August, 1958,

ORDERED that the statutory automatic suspension of said License C-4 be and the same is hereby lifted and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary)
Proceedings against)

EUGENE KNOBLAUCH)
t/a GENE'S THREE PINES)
1007 S. Black Horse Pike)
Grenloch, Gloucester Township)
PO Blackwood, RFD, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-7, issued by the)
Township Committee of the Township)
of Gloucester.)
-----)

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

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold and permitted the sale of alcoholic beverages to three minors and permitted said minors to consume alcoholic beverages on his licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file disclosed that two ABC agents, acting upon information received from the Barrington Police Department, obtained signed, sworn statements from James --- (18 years of age), John --- (19 years of age) and Richard --- (20 years of age). In their statements the minors say that they entered defendant's premises about 9:00 p.m. July 11, 1958, and that each was served five glasses of beer by a female bartender. One of the minors says that, after he and the other minors consumed these drinks, he purchased from the same bartender three quart-bottles of beer which he took with him when they left the premises about 10:00 p.m. The three minors also say that no one on the licensed premises questioned them as to age.

Defendant has submitted an affidavit in which he states that he was in the kitchen when the violation occurred. He also submitted an affidavit of his bartender wherein she says that she does not remember serving any minors on July 11, but that there is a possibility she may have done so.

Defendant has operated his licensed business at the same premises for the past twenty-one years, and has a clear record during the past ten years. Under the circumstances I shall suspend defendant's license for twenty days (the minimum penalty for sale to three minors all at least eighteen years of age). Re Swayze, Bulletin 1197, Item 11. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 6th day of August, 1958,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Gloucester to Eugene Knoblauch, t/a Gene's Three Pines, for premises 1007 S. Black Horse Pike, Grenloch, Gloucester Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. August 13, 1958, and terminating at 2:00 a.m. August 28, 1958.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALE TO WOMEN OVER BAR IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 5 DAYS, LESS 2 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

LEN-TON, INC.
t/a CENTER TAVERN
336 Arch Street
Camden, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-73 for the 1957-58
licensing period and C-62 for the
1958-59 licensing period, issued
by the Municipal Board of Alcoholic
Beverage Control of the City of
Camden.

Len-Ton, Inc., Defendant-licensee, by Antonio Panetta, President.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On June 11 and 17, 1958, you served beverages to a woman directly over a bar on your licensed premises; in violation of Section 10 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934, as amended by Ordinance adopted September 12, 1935."

The pertinent clause of Section 10 of the ordinance hereinabove referred to provides:

"No woman shall be served with beverages over any bar."

The file herein discloses that on Wednesday, June 11, 1958 and on Tuesday, June 17, 1958, ABC agents visited defendant's licensed premises and observed a female being served alcoholic beverages directly over the bar.

On their second visit the agents identified themselves to the female patron and Leonard Panetta, the bartender, both of whom admitted aforesaid violation.

Defendant has no prior adjudicated record. I shall suspend defendant's license for five days. Two days will be remitted for the plea entered herein, leaving a net suspension of three days. Re Pennington, Bulletin 1132, Item 8.

Accordingly, it is, on this 7th day of August, 1958,

ORDERED that Plenary Retail Consumption License C-62 for the 1958-59 licensing period, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Len-Ton, Inc., t/a Center Tavern, for premises 336 Arch Street, Camden, be and the same is hereby suspended for three (3) days, commencing at 2:00 a.m. August 18, 1958, and terminating at 2:00 a.m. August 21, 1958.

WILLIAM HOWE DAVIS
Director.

8. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTION TO RENEWAL
OF ADDITIONAL WAREHOUSE LICENSE HELD TO BE WITHOUT MERIT.

In the Matter of Objections to)
Additional Warehouse at)

17 South Second Street)
Vineland, N. J.,)

Pursuant to Application filed by)
HARRISON BEVERAGE COMPANY,)

CONCLUSIONS

Holder of State Beverage Distribu-)
tor's License SBD-67, issued for)
premises at S.E. corner Delaware)
and Mediterranean Avenues, Atlantic)
City, N. J.)

Leo J. Berg, Esq., Attorney for Applicant.
William K. Dickey, Jr., Esq., Attorney for Fellowship
Church of Christ, an Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Pursuant to an application filed and duly advertised, the Director, on May 1, 1958, granted to Harrison Beverage Company an additional warehouse license for premises at 17 South Second Street, Vineland. This license was subject to the condition that an entrance on Elmer Street to the office building on said property shall be wholly abandoned and that a driveway adjoining 202 Elmer Street shall not be used in any respect in connection with the licensed business. When Harrison Beverage Company filed an application for renewal of its license for the 1958-59 licensing year, the Fellowship Church of Christ filed a written objection to the renewal of the additional warehouse license at 17 South Second Street, Vineland. It was explained that the Church officials had not filed objections to the application which resulted in the issuance of a license on May 1, 1958, because they had no actual notice of said application.

"At the hearing held upon said objections, the attorney for said Church stated that his client objected because (1) said premises are within 200 feet of the Church; (2) said premises are too close to the Church, and (3) the matter is res adjudicata.

"The objector refers to conclusions entered by former Director Cavicchia on September 29, 1952, wherein he denied an application filed by another applicant for the transfer of a State Beverage Distributor's license to the same premises, which were designated in said conclusions as 202 and rear of 204 Elmer Street, Vineland. In his discretion, the then Director denied the application for transfer because of the proximity of the premises in question to the Fellowship Church of Christ. Re Warren, Bulletin 945, Item 6.

"From the evidence herein it appears that the walk leading from Elmer Street to the office building will not be used; that the driveway adjoining 202 Elmer Street will not be used, and that the only entrance to the additional warehouse will be through the driveway on Second Street which, as indicated in Re Warren, supra, is more than 200 feet from the

nearest entrance to the Church which is located at 218 Elmer Street. Under the circumstances hereinabove set forth, I am of the opinion that the nearest entrance to the additional warehouse will not be within 200 feet of the nearest entrance to the Church. Since the proceedings are not between the same parties, the former conclusions are not res adjudicata, so far as this case is concerned. Hence there is no merit to Objections 1 and 3.

"There remains to be considered the question as to whether the Director, in his discretion, should deny this application because the premises are too close to the Church. Harry Harrison, President of applicant corporation, testified that the licensed corporation does not sell to consumers but sells and distributes Budweiser beer only to licensed retailers. As to the manner of operation, he testified that cases and barrels of beer will be stored in the additional warehouse for delivery to retailers in Cumberland County pursuant to orders obtained from the retailers by two salesmen; that the truck (and perhaps additional trucks if business increases) will leave the warehouse in the morning, make deliveries over a large area and return in the evening; that the premises will be closed after 6:00 p.m. on week-days and all day on Saturdays and Sundays. Under these circumstances it does not appear that the operation of the additional warehouse will in any way interfere with the Church services or with the school which had nine pupils during the past year. After reviewing all the testimony, I recommend that the application for renewal of the additional warehouse license be granted."

No exceptions to the Hearer's Report were filed with me.

After carefully considering the entire record, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein and, hence, I shall grant the application for renewal of the license in question.

WILLIAM HOWE DAVIS

Dated: September 3, 1958.

Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Liquor Corporation of America

247 Conway Court

South Orange, N. J.

Application filed September 29, 1958 for Warehouse Receipts License.

The House of Seagram, Inc.

Suite 1214-19, 1180 Raymond Boulevard

Newark, N. J.

Application filed October 2, 1958 for additional salesroom at 345-347 Avon Avenue, Newark, New Jersey on Plenary Wholesale License W-85.

WILLIAM HOWE DAVIS

Director.

10. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED
IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

FRANK GREENE)
t/a FRANK'S WINES & LIQUORS)
341 Paterson Avenue)
Wallington, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distri-)
bution License D-2, issued by the)
Mayor and Council of the Borough)
of Wallington.)
-----)

Frank Greene, Defendant-licensee, Pro se.
David S. Piltzer, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

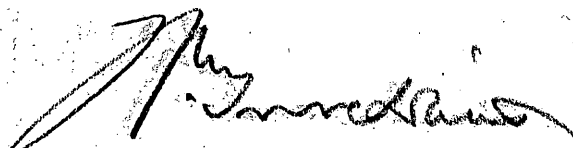
Defendant pleaded non vult to a charge alleging that he sold alcoholic beverages at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulation No. 30.

The file herein discloses that ABC agents examined the licensee's records, which included forty delivery slips for the months of June and July 1958, most of which slips appeared to indicate sales of alcoholic beverages at less than the minimum consumer resale price. The licensee, when questioned, identified six specific instances of such unlawful sales, detailing the names and addresses of the purchasers, the product sold and the price charged. The licensee also admitted that most, if not all, of the other delivery slips examined represented minimum resale price violations.

Defendant has a prior adjudicated record of one similar and one dissimilar violation, both of which occurred more than five years ago but within a ten-year period. See Bulletin 861, Item 7, and Bulletin 987, Item 6. Only the similar violation will be considered in fixing penalty. I shall, therefore, suspend defendant's license for the period of fifteen days. Re Gorcica, Bulletin 1189, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 8th day of September, 1958,

ORDERED that Plenary Retail Distribution License D-2, issued by the Mayor and Council of the Borough of Wallington to Frank Greene, t/a Frank's Wines & Liquors, for premises 341 Paterson Avenue, Wallington, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. September 15, 1958, and terminating at 9:00 a.m. September 25, 1958.



William Howe Davis
Director.