

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

DP

BULLETIN 1196

NOVEMBER 13, 1957.

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New Jersey State Library

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

BULLETIN 1196

NOVEMBER 13, 1957.

1. APPELLATE DECISIONS - THE GREAT ATLANTIC & PACIFIC TEA
COMPANY v. PASSAIC.

THE GREAT ATLANTIC & PACIFIC TEA)
COMPANY, a New Jersey Corporation,)

Appellant,)

-vs-)

BOARD OF COMMISSIONERS OF THE)
CITY OF PASSAIC,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
James V. McNamara, Esq., Attorney for Appellant.
William N. Gurtman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board whereby on June 4, 1957, it denied by a four-to-one vote of its members appellant's application for a person-to-person and place-to-place transfer of a plenary retail distribution license from Frank J. Hall to appellant, and from premises at 314 Monroe Street to premises 167 Jefferson Street, in the City of Passaic.

"Appellant contends, among other things, in its petition of appeal that the action of the respondent Board was arbitrary, unreasonable and an abuse of discretion and that the decision to deny the application was based upon prejudice against the appellant because the latter is 'a chain store.'

"At the hearing appellant produced Frank J. Hall (holder of the license in question) who testified that during the past three years he has operated his liquor establishment at 314 Monroe Street; that said premises are located in the center of the business area and that the 'traffic has become so heavy and business has just deteriorated, that's all, to a point where it's impossible to do business in that location.' Furthermore, Hall testified that the area wherein the proposed licensed premises are located is a large shopping district.

"According to Hall, the distance between his present establishment and the premises in question is 800 to 900 feet.

"John Lucianin testified that he is a police detective who in recent years has been assigned to investigate the applications for transfers of liquor licenses; that he investigated the matter in question and his investigation disclosed that, of the twenty-five liquor licenses in the area to which the transfer is sought, six are plenary retail distribution licenses; that the section in which appellant's business is located is one of the busiest and most congested intersections in the city; that there is a parking lot alongside of the premises belonging to a department store; that the nearest 'package goods store' is a block-and-a-half away although there is a tavern located about a block distant from the proposed premises.

"The transfer of a liquor license is not a right inherent in the license but is, rather, a privilege which the issuing authority may grant or deny in the exercise of a reasonable discretion. When the transfer is denied on reasonable grounds, such action will be affirmed. Drucker v. Trenton, Bulletin 474, Item 9.

"The question whether a license should be transferred to a particular location is a matter confided to the sound discretion of the issuing authority. The burden of showing that the issuing authority abused its discretion rests with the appellant. Segal et als. v. Clifton et al., Bulletin 732, Item 5, and cases cited therein. National Liquor Co. v. Metuchen, Bulletin 1167, Item 2; Raritan Liquors Inc. v. Bridgewater, Bulletin 1179, Item 1.

"It has consistently been held by this Division that the Director's function on appeals is, not to substitute his judgment for that of the local issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7; Mulcahy et als. v. Maplewood et al., Bulletin 658, Item 4.

"There has been no evidence presented that there is a need or necessity for a plenary retail distribution license at the proposed premises. Neither has there been any evidence adduced to indicate that the members of the respondent Board were prejudiced against the appellant obtaining a transfer of a liquor license.

"In all appeals to the Director the burden of proof to establish that the action of respondent was erroneous rests with appellant. Rule 6 of State Regulation No. 15. After careful review of the evidence presented herein, there is no indication of improper motivation on the part of the members of the respondent Board. Neither has the action taken by them been shown to be arbitrary, unreasonable or an abuse of discretion in reaching their determination.

"Under the facts and circumstances appearing herein, I recommend that the action of the respondent Board be affirmed."

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

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

Accordingly, it is, on this 15th day of October, 1957,

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

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - SCUDERI v. PAULSBORO.

ANTHONY SCUDERI, trading as
COZY CORNER INN,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH
OF PAULSBORO,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Frank M. Lario, Esq., Attorney for Appellant.
William B. Kramer, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action whereby it suspended appellant's plenary retail consumption license for a period of sixty days, effective June 12, 1957. The suspension was imposed after respondent found appellant guilty of a charge alleging that on January 29, 1957 and on divers days prior thereto, he sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverage by said minor in and upon his licensed premises in violation of Rule 1 of State Regulation No. 20. Appellant's premises are located at 815 Delaware Street, Paulsboro.

"Upon the filing of the appeal herein, an order was entered on June 10, 1957 staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

"The petition of appeal alleges in substance that respondent did not establish that Elladean ---, the alleged minor, was under the age of twenty-one; that the judgment was contrary to the weight of the evidence; and that the majority of the Borough Council, when finding the appellant guilty, were acting with bias, passion and prejudice, and therefore, such findings were arbitrary, capricious and unreasonable.

"The respondent, in its answer, alleged that it found the defendant guilty of the charge by a vote of 3 to 2 after a full hearing lasting for about five hours and after hearing about 8 or 9 witnesses; that the majority of the Board concluded therefrom that there was ample evidence to sustain a finding of guilt and reached its decision upon the testimony and not upon bias, passion or prejudice, and that its decision was not arbitrary, capricious or unreasonable.

"All of the witnesses are in agreement that Elladean was actually in defendant's licensed premises on the night of January 29th, 1957. Whether or not Elladean was served with and consumed beer at such time is the controversial issue and is of primary concern in this appeal.

"The evidence discloses that on the evening in question there was a chance meeting in defendant's tavern between Claude S. Horsley, a sixty-two year old man, and the minor and Mrs. Boyd, her adult female companion, both of doubtful character, who struck up an acquaintance with him, accompanied him to his home and there robbed him of some furnishings and foodstuffs. The victim of the robbery gave the following account of what occurred: On the evening of January 29, he went to appellant's

tavern, arriving there about nine p.m. The minor and Mrs. Boyd were standing at the bar. He ordered one or two beers, served by the licensee, and within a few minutes asked the licensee to call a cab to take him home. At this juncture, Mrs. Boyd came over to him and offered to take him home in her car. He accepted and the licensee did not call for a cab. He then purchased from the licensee several rounds of beer which he, Mrs. Boyd, and Elladean consumed. Before leaving the tavern, some time prior to ten p.m., he purchased six cans of beer and a fifth of whiskey for consumption at his home. He and Mrs. Boyd waited on the sidewalk outside the tavern for a few minutes for Elladean. He does not know what Elladean was doing just before she joined them. However, he specifically states that 'she (the minor) was standing because she was running back and forth to the darts and coming up to the bar and back to the dart board and back again. I know that. *** That is what she was doing. She wasn't playing with anybody that I know of. She was picking them up and practicing.'

Horsley further testified that on the next morning he discovered that he had been robbed. That night he went to defendant-licensee and asked the licensee the whereabouts of the girls and the likelihood of their return to the tavern. The licensee replied that he thought the girls lived in Camden, might be in the next evening and advised him to report the matter to the police. Sometime later, when Mrs. Boyd was apprehended for another offense, he was asked to identify her and made a criminal complaint against her. He was never asked to identify Elladean.

"An attempt is made to show that this witness, in a conversation with a witness for the appellant, stated in effect that at the insistence of ABC agents and the Chief of Police of the municipality, he falsely accused the licensee of the sale of beer to the minor to escape prosecution on a charge of contributing to the delinquency of a minor. It is extremely unlikely that ABC agents or Chief of Police made any such suggestion to him. He emphatically denies that he made any such remarks and explicitly stated that he made the accusation because the minor was actually served beer at the premises.

"Elladean testified that she was born on August 17, 1937. Her birth certificate to that effect was admitted into evidence. Her own testimony is sufficient to establish age and is now buttressed by her birth certificate. Appellant laid considerable emphasis upon the fact that she had not previously revealed that she was married and permitted the inference that the name she gave was her maiden name. However, appellant's counsel had been advised of her maiden name at least a week before the appeal hearing. In any event, the name by which she was known is not a material factor in establishing her age. There has been no evidence offered that her birth date is other than that testified to by her and shown on the birth certificate.

"Elladean further testified as follows: She visited defendant's tavern, accompanied by Mrs. Boyd, on several occasions in January 1957. On January 29, 1957 both arrived at such tavern about 7:00 p.m. She had a drink of soda, and asked for Eleanor, a barmaid with whom they were acquainted. Eleanor was at home, and they went there. They returned to the tavern between 8:30 and 9:00 p.m. She began to play at a dart board, and her companion was at the bar. Her companion introduced her to Horsley. He purchased drinks of beer for her, which were served by the licensee without any question as to her age, and

she interrupted her play at the dart board on a number of occasions to drink beer at the bar. She and Mrs. Boyd were at the tavern for about forty-five minutes and left with Horsley, a little before ten p.m. She and Mrs. Boyd returned to the tavern 'before two because it was still open.' She was taken into custody about a month later on charge of larceny from Horsley. She was in jail, awaiting trial, when she gave an ABC agent a statement concerning her consumption of beer at defendant's tavern on the night in question.

"Mrs. Boyd testified as follows: She was at defendant's premises with Elladean on four or five occasions during January 1957, and met the licensee. On January 29th both entered the tavern at about seven p.m., each had a drink of beer, and asked for Eleanor. They went to Eleanor's home and returned to the tavern about eight-thirty or nine p.m. The licensee introduced her to Horsley. She, in turn, introduced him to Elladean. She offered to drive him to his home. He purchased drinks of beer for her and Elladean, which they drank. Elladean was playing darts. They left with Horsley a few minutes before ten p.m. The two women returned to the tavern between ten-thirty and ten forty-five p.m., and she told the licensee that although he had pointed out Horsley as a soft touch, he did not have anything of much value to steal. She was in jail the latter part of February 1957 on another charge when arrested for larceny from Horsley.

"The defense presented by appellant and his witnesses is an absolute denial that the minor was served with or drank alcoholic beverages, or that she played darts. This conflict must be resolved by determining whether the evidence presented on appellant's behalf is more worthy of belief than that of the witnesses for respondent.

"George W. Carson, John Velahos, and Robert S. Sawyer, Jr. testified on appellant's behalf. Velahos describes this group as friends, who live in the same community and see each other. Sawyer on occasion assists the licensee as bartender and handy man.

"Carson gave the following testimony: He entered the bar at about seven-thirty p.m. on the night in question. Horsley entered about eight-fifteen p.m., took a seat at the bar, and almost immediately asked the licensee to call a cab. Mrs. Boyd and Elladean came in about five minutes later. He also said that the cab incident merely consisted of the words 'Call me a cab' and Mrs. Boyd's statement, as she walked in, of 'No, I'll take you home.' In asking clarification of whether or not the girls were there when Horsley called for the cab, Carson said, 'That is right, they weren't there -- Oh, yes, they were there.'

"Carson further testified that Mrs. Boyd and Elladean walked up to the bar and Mrs. Boyd talked to Horsley while he challenged Elladean to play a game of pool and she accepted; that thereafter Elladean remained at the pool table, and did not have anything whatsoever to drink, nor go to the bar during the entire twenty or thirty minutes she was there; that she did not play darts; that Mrs. Boyd and Horsley waited for Elladean to finish playing pool, and all three left, at about eight forty-five p.m.; and that he left at about nine p.m.

"Velahos testified as follows: He entered the tavern at about seven p.m. on January 29th. Horsley came in between seven-twenty and seven twenty-five p.m. Mrs. Boyd and Elladean came in between seven-thirty and seven-forty p.m. Horsley asked for a cab and Mrs. Boyd said she would take him home. Elladean

played pool the entire time she was there, never left the pool table to go to the bar, and was not served with any beer. She did not play darts. He took notice of the drinks of beer that were served to Horsley and Mrs. Boyd, of Horsley's purchase of beer and whiskey to take home, and that Horsley and Boyd talked for a while. He did not know what the other patrons in the bar at the time ordered or with what they were served. Horsley, Elladean and Mrs. Boyd left the tavern at nine p.m., although he says that they were there from a half hour to forty-five minutes.

"Sawyer testified as follows: On January 29, he entered the tavern between six forty-five and seven p.m. Horsley entered after seven-thirty p.m., probably close to eight p.m., sat at the bar, and ordered a beer. Mrs. Boyd and Elladean came in five to ten minutes later. Carson challenged Elladean to play pool, and Mrs. Boyd sat at the bar a couple of stools to the right of Horsley, and ordered a bottle of Coca Cola. Mrs. Boyd was at the bar five or ten minutes when Horsley asked for a cab. Mrs. Boyd said not to call a cab, moved over next to Horsley and commenced to converse with him. He states, 'After the girls propositioned Horsley to take him home,' Horsley purchased beer to take out. Elladean never reached the bar when she entered, because Carson left his seat and took two or three steps towards her when challenging her. She never reached the bar at any time while she was in the tavern, and had nothing whatsoever to drink there. She did nothing else but shoot pool, and did not play darts. The two girls and Horsley were in the place from thirty to forty-five minutes. Some three weeks later, he met Horsley in another tavern, and when discussing the incident, Horsley told him that ABC agents and the Chief of Police stated that if Horsley did not sign a paper that Elladean was served alcoholic beverages in defendant's tavern they were going to make a complaint against him (in criminal proceedings) for contributing to the delinquency of a minor.

"The licensee gives the following version of what occurred: Horsley entered first. Elladean and Mrs. Boyd came in five or ten minutes later, and sat at the bar alongside of Horsley. As Horsley entered, he ordered a glass of beer, and when it was served, asked the licensee to call a cab. As the licensee started for the telephone booth, Mrs. Boyd stated that she would take Horsley home. The licensee never saw either girl before. The only drink he served Mrs. Boyd was Coca Cola. He did not serve any beer to Elladean. Elladean, Mrs. Boyd and Horsley left the tavern between eight and eight-fifteen p.m.

"An ABC agent who was at defendant's tavern with Elladean, when she identified the licensee as the person who served her with beer on the night in question, testified that at the time of such identification the licensee told him that Elladean had been at the tavern on one other occasion and he had served her a soft drink.

"Counsel for appellant, in his brief, has analyzed the evidence presented at considerable length and contends that comparison and evaluation of specific details therein forcibly demonstrate that appellant's witnesses are telling the truth and respondent's witnesses are not. Counsel for respondent in his brief maintains that such is not the fact.

"It is to be observed that, some six months after the event, the recollection of those persons directly involved is likely to be more accurate than that of bystanders who naturally had no reason then to note specifically when other persons entered the tavern or observe what they did.

"The testimony of the minor and Mrs. Boyd must be evaluated in the light of the admitted criminal record of both. However, their criminal background and illegal activities on the night in question do not necessarily require that their account of service of beer to the minor should be rejected; on the contrary, during their forty-five minute or longer stay at the tavern, under the circumstances described, it would be quite natural that they would consume beverages. The testimony of respondent's three witnesses on this score is logical, and no substantial evidence has been presented to establish that they had any motive to falsely accuse the licensee of serving alcoholic beverages to the minor.

"There are many points of agreement, conflict and discrepancies in the testimony of the witnesses, some on minor aspects and some on major aspects. I am of the opinion that a fair appraisal of the evidence leads to the reasonable conclusion that the evidence presented by respondent, for the reasons hereinabove set forth, is more logical and convincing than that of the appellant on the primary issue of the service of beer to the minor. I recommend a finding, as the respondent did, that the minor was served with and consumed beer in defendant's premises at the time alleged, evidenced by a fair preponderance of the believable testimony. Although appeals to the Director from the action of the local issuing authority are heard de novo, the burden of establishing that the action of such issuing authority was erroneous and should be reversed rests with the appellant. Re Wally's, Inc. v. Parsippany-Troy Hills, Bulletin 1103, Item 4. The appellant has not established that the respondent's finding of guilt is erroneous and should be reversed. Hence, respondent's finding of guilt should be affirmed.

"Although not presented as a ground for reversal in his petition of appeal, appellant contends in his brief that the penalty imposed by respondent is excessive. Defendant's license was suspended, effective September 14, 1953 by the respondent for a period of ten days for a sale of alcoholic beverages to a minor. It has been repeatedly stated that a penalty imposed by a local issuing authority should not be reduced on appeal unless it appears that such penalty is manifestly unreasonable and clearly excessive. Re Wally's, Inc. v. Parsippany-Troy Hills, supra. The penalty here imposed does not appear to be of that character.

"I therefore recommend that an order be entered affirming the action of respondent, fixing the dates during which the sixty-day suspension shall be effective, and dismissing the appeal."

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

After carefully considering the record in this case I agree with the conclusions in the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is, on this 17th day of October, 1957,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the sixty-day suspension imposed by respondent, and which was stayed during the pendency of these proceedings, be restored against the license held by appellant for premises at 815 Delaware Street, Paulsboro, to commence at 7:00 a.m. October 28, 1957 and to terminate at 7:00 a.m. December 27, 1957.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

PICKWICK PRODUCTS, INC.)

497 Communipaw Avenue)

Jersey City 4, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-425, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Jersey City.)

Pickwick Products, Inc., Defendant-licensee, by John Dunne,
Secretary.

Dora P. Rothschild, appearing for Division of Alcoholic Beverage
Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that on Sunday, August 11, 1957, it sold 6 twelve-ounce cans of Piel's Light Beer, in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that at about 1:00 p.m. on Sunday, August 11, 1957, an ABC agent entered defendant's tavern. John Baggott was tending bar. The agent observed what appeared to be two sales of alcoholic beverages for off-premises consumption, and asked Baggott for six cans of Piel's Beer. Baggott obtained a six-can pack of beer, placed the beer in a paper bag, left the beer at the end of the bar, collected payment therefor, and informed the agent that he could get the bag with the beer when he left. At about 1:30 p.m. the agent took the package of beer from the bar and left the tavern. He was joined by another agent who had been stationed outside. Both agents immediately entered the tavern and identified themselves to Baggott, who verbally admitted the sale of the beer to the agent as above described.

Defendant has a prior record. Effective March 1, 1954 its license was suspended for ten days by the Director for a similar "hours" violation. Re Pickwick Products, Inc., Bulletin 1004, Item 6.

The minimum penalty of fifteen days for the violation as charged will be doubled because of the similar violation which occurred within a five-year period. I shall suspend defendant's license for thirty days. Re Czaplicki, Bulletin 1170, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 3rd day of October, 1957,

ORDERED that Plenary Retail Consumption License C-425, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Pickwick Products, Inc., 497 Communipaw Avenue, Jersey City, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. October 14, 1957, and terminating at 2:00 a.m. November 8, 1957.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

MILTON POTTER and BELLA POTTER)
T/a BELL & MILT'S)
125 Philadelphia Avenue)
Egg Harbor City, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-8, issued by the)
Common Council of the City of Egg)
Harbor City.)

Milton Potter and Bella Potter, Defendant-licensees, by
Milton Potter.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"You sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Robert A. ---, age 18, on June 5, 6 and 7, 1957 and divers days prior thereto; Donald G. ---, age 18, on June 5, 1957 and divers days prior thereto; and Edward H. ---, age 20, and John H. ---, age 20, on June 7, 1957 and divers days prior thereto; and allowed, permitted and suffered the consumption of alcoholic beverages by all such persons in and upon your licensed premises on the above stated respective dates and occasions; in violation of Rule 1 of State Regulation No. 20."

From signed, sworn statements obtained by ABC agents from the minors, it appears that Robert ---, age 18 years, visited defendants' licensed premises on June 5, 6 and 7, 1957 at which times he was served and consumed a large amount of beer and some other drinks containing whiskey; that on June 5, 1957 Donald ---, age 18 years, was in defendants' licensed premises during which time he was served and consumed seven or eight glasses of beer and that on June 7, 1957 Edward --- and John ---, both twenty years of age, were served and permitted to consume four glasses of beer in defendants' licensed premises.

Defendants have no prior adjudicated record. The minimum penalty for the sale or service to an 18-year-old minor is fifteen days. Re Show Boat, Inc., Bulletin 1176, Item 6. In view of the number of minors involved and the large quantity of alcoholic beverages served and permitted to be consumed, especially to and by Robert and Donald, I shall suspend defendants' license for a period of thirty days. Re Vasapoli, Bulletin 1141, Item 2. 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 October, 1957,

ORDERED that Plenary Retail Consumption License C-8, issued by the Common Council of the City of Egg Harbor City to Milton Potter and Bella Potter, t/a Bell & Milt's, for premises 125 Philadelphia Avenue, Egg Harbor City, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. October 8, 1957 and terminating at 3:00 a.m. November 2, 1957.

WILLIAM HOWE DAVIS
Director

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

In the Matter of Disciplinary)
Proceedings against)

STEPHEN SZEPAÑIAK)
T/a STEPHEN'S CAFE)
10 E. Edgar Road)
Linden, N.J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-58, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Linden.)
-----)

Stephen Szeponiak, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that ABC agents acting upon information transmitted to this Division by the Roselle, N. J. Police Department, obtained a signed, sworn statement from John ---, age 17, wherein he states that on August 27, 1957, he and three young companions drove to defendant's licensed premises; that he alone entered and without being required to produce any written proof of his age, purchased from the bartender two quart bottles of beer which he took with him from the premises. The other three minors volunteered signed statements asserting that they saw John enter the premises empty-handed and emerge therefrom carrying two quart bottles of beer and that they shared in the consumption of the beverages. Later, the four minors directed the agents to the licensed premises and pointed it out as the place where the beer was obtained and John identified therein Stephen Szeponiak, Jr. (son of the licensee) as the person who made the sale. The file does not disclose that the minors consumed alcoholic beverages on the licensed premises.

When, as in the instant case, the licensee has no prior adjudicated record, the minimum penalty for service of alcoholic beverages to a minor 17 years of age is twenty days. Re Arnts, Bulletin 1183, Item 8. I shall, therefore, suspend defendant's license for a period of twenty days and remit five days for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 2nd day of October, 1957,

ORDERED that Plenary Retail Consumption License C-58, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden to Stephen Szeponiak, t/a Stephen's Cafe, for premises at 10 E. Edgar Road, Linden, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. October 9, 1957 and terminating at 2:00 a.m. October 24, 1957.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary
Proceedings against

ROSE N. BARBUTO
T/a ROSE'S CORNER BAR & GRILL
1449 South Clinton Avenue
Trenton 10, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-116, issued by the
Board of Commissioners of the City
of Trenton.

-----)
Defendant-licensee, Pro se.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she sold an alcoholic beverage 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 the following: On Wednesday, September 4, 1957, ABC agents visited defendant's licensed premises wherein "Nick" Barbuto (husband of the licensee) was tending bar. One of the agents placed \$6.00 on the bar and ordered a quart of Schenley Reserve Blended Whiskey. "Nick" took the money and proceeded to the package goods department where a cash register was located, but did not ring up the sale. He returned with the brand of whiskey ordered, and placed it and 60¢ in change in front of the agent. The minimum resale price then in effect for the item in question was \$5.90. Both agents left with the bottle of whiskey. They returned immediately and identified themselves to the bartender who admitted the sale below the minimum price.

Defendant has no prior adjudicated record. I shall suspend her license for the minimum period of ten days, and remit five days for the plea entered herein, leaving a net suspension of five days (Re Giant Liquors, Inc., Bulletin 1180, Item 1).

Accordingly, it is, on this 2nd day of October, 1957,

ORDERED that Plenary Retail Consumption License C-116, issued by the Board of Commissioners of the City of Trenton to Rose N. Barbuto, t/a Rose's Corner Bar & Grill, for premises 1449 South Clinton Avenue, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. October 14, 1957, and terminating at 2:00 a.m. October 19, 1957.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

BESSIE ELIZABETH DeCLEMENTI)
T/a HILLBILLY HAVEN)
603 Atlantic Avenue and)
2 Philadelphia Ave.)
Egg Harbor City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-13, issued by the)
Common Council of the City of)
Egg Harbor City.)

Bessie Elizabeth DeClementi, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Thursday night, June 6, and early Friday morning, June 7, 1957, 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., Robert A. ---, age 18, 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."

From a statement given to ABC agents by Robert A. ---, age 18 years, it appears that, on June 6, 1957, he, in the company of Milton Potter, an adult, visited defendant's licensed premises and remained there until the early morning of June 7, 1957. During the time spent in the defendant's establishment, Robert was served and consumed several drinks of alcoholic beverages.

Defendant has no prior adjudicated record.

The minimum penalty for sale or service to an 18-year-old minor warrants a penalty of fifteen days. Re Show Boat, Inc., Bulletin 1176, Item 6. I shall suspend defendant's license for a period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 2nd day of October, 1957,

ORDERED that Plenary Retail Consumption License C-13, issued by the Common Council of the City of Egg Harbor City to Bessie Elizabeth DeClementi, t/a Hillbilly Haven, for premises 603 Atlantic Avenue and 2 Philadelphia Avenue, Egg Harbor City, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. October 8, 1957 and terminating at 3:00 a.m. October 18, 1957.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary
Proceedings against

SALAMANDRA LIQUOR STORE, INC.
T/a SALAMANDRA LIQUOR STORE, INC.
900-902 Chestnut Street
Trenton 10, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-89, issued by the Board of
Commissioners of the City of Trenton.

Defendant-licensee, by Leo V. Salamandra, President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

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

The file herein discloses that on September 12, 1957, an ABC agent visited defendant's licensed premises and purchased from Anthony Pinto (a shareholder of defendant corporation) one case containing twenty-four 12-ounce cans of Krueger Premium Beer at \$4.25. The minimum resale price then in effect for the item in question was \$4.40. This agent and another ABC agent who was then in the premises identified themselves to Anthony Pinto who alleged that he had made a mistake in change and declined to give a written statement in the absence of his attorney.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Safeway Stores, Inc., Bulletin 1157, Item 9.

Accordingly, it is, on this 3rd day of October, 1957,

ORDERED that Plenary Retail Consumption License C-89, issued by the Board of Commissioners of the City of Trenton to Salamandra Liquor Store, Inc., t/a Salamandra Liquor Store, Inc., for premises 900-902 Chestnut Street, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. October 14, 1957, and terminating at 2:00 a.m. October 19, 1957.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS
IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED
FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

JOSEPH DIAZ
487 Communipaw Avenue
Jersey City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-284, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Jersey City.

-----)
Joseph Diaz, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that during prohibited hours he sold alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that on Sunday, September 15, 1957, at about 1:40 p.m., an ABC agent who was in defendant's premises observed a patron purchase six 12-ounce cans of beer from the licensee. After the patron left the premises with the beer, this agent left the premises and stopped the patron in the street. This agent and another ABC agent who had remained outside then identified themselves to the patron and all three returned to the licensed premises where the licensee verbally admitted the violation.

Defendant has no prior record. I shall suspend his license for the minimum period of fifteen days. Re Grzybowski, Bulletin 1185, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 7th day of October, 1957,

ORDERED that Plenary Retail Consumption License C-284, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Joseph Diaz, for premises 487 Communipaw Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. October 14, 1957, and terminating at 2:00 a.m. October 24, 1957.

WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATION NO. 38, DISMISSED.

In the Matter of Disciplinary Proceedings against)

BRICK'S BAR, INC.
207 Water Street
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-93 for the 1956-57 and 1957-58 licensing years, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

-----)
Sidney B. Rosenthal, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to a charge alleging that on Saturday, April 20, 1957 at about 11:00 p.m., it sold, during prohibited hours, an alcoholic beverage, viz., one pint bottle of Vincove Sherry Wine, in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

"The proceedings were instituted on the basis of an alleged sale of a pint bottle of Vincove Sherry Wine to a passerby (described as a panhandler) who volunteered to ABC agents to make the purchase, after an unsuccessful attempt by the agents to make a purchase of alcoholic beverages at the defendant's licensed premises. This passerby entered the premises while the agents stationed themselves outside.

"At the hearing herein it was developed that this passerby apparently had no fixed residence or employment and, hence, despite a most thorough effort on the part of the Division to locate him for the purpose of serving a subpoena upon him, it was unable to do so and thus he was not available to testify. Further, it did not seem likely that he could be located within any reasonable time and that continued efforts to do so seemingly would be futile.

"The testimony of the ABC agents involved as to what they observed, wholly circumstantial, creates a strong inference, but does not definitely establish by probative evidence that the passerby actually purchased a bottle of Vincove Sherry Wine at the defendant's premises as charged.

"Under these circumstances and in view of the positive testimony of eight witnesses presented by the defendant, five of whom testified to the effect that the passerby entered defendant's licensed tavern on the date and time alleged but did not purchase any alcoholic beverages, and three of whom were police officers who testified that the passerby was a trouble-maker barred from the licensed premises, I conclude that the Division has failed to establish the guilt of the defendant by a fair preponderance of the evidence. I recommend, therefore, that the charge be dismissed."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16.

I have carefully considered the facts and circumstances of the case and concur in and adopt the Hearer's findings and recommended conclusions.

Accordingly, it is, on this 3rd day of October, 1957,

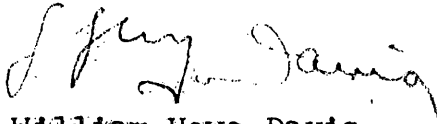
ORDERED that the charge herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

11. STATE LICENSES - NEW APPLICATION FILED.

Anthony F. Pisacane
t/a Pisacane Wine Co.
550 East 31st Street
Paterson, N. J.

Application filed November 8, 1957 for place-to-place transfer of Wine Wholesale License WW-33 from 168-170 Lyon Street, Paterson, N. J.


William Howe Davis
Director.