STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 962 March 30, 1953.

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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1060 Broad Street Newark 2, N. J.

BULLETIN 962 MARCH 30, 1953

1. APPELLATE DECISIONS - MONTCLAIR LOUNGE, INC. v. MONTCLAIR.

MONTCLAIR LOUNGE, INC., Appellant, -vs- BOARD OF COMMISSIONERS OF THE TOWN OF MONTCLAIR, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Bando J. Caruso, Esq., Attorney for Appellant.
Samuel Allcorn, Jr., Esq., Attorney for Respondent.
Samuel Rosenblatt, Esq., Attorney for Montclair Package Stores Assn., an Objector.
Ernest F. Keer, Jr., Esq., Attorney for Suburban Bar & Grill, an Objector.
Thomas B. Kaveny, Esq., Attorney for 8 other Objectors.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it denied an application to transfer appellant's plenary retail consumption license from premises known as 636 Bloomfield Avenue to premises known as 708-710 Bloomfield Avenue, Montclair.

The license in question was issued for many years, including the present licensing year, to Montclair Elks Club, Inc., for premises specified as "northwest corner of second floor" of the Montclair Theatre Building at 636 Bloomfield Avenue. Up to the present time the license has been used primarily in connection with the activities of Montclair Lodge BPOE. In January 1952 Michael C. Vitale purchased, for a substantial sum of money, all the outstanding stock of Montclair Elks Club, Inc. (the correct name of which appears from the certificate of incorporation to be Montclair Elks Club). Thereafter all of said stock was transferred to him or to his nominees. According to the testimony there was no indication at that time that the Montclair Lodge BPOE intended to move to other quarters. When the license was renewed for the present licensing year, the officers, directors and trustees of Montclair Elks Club, Inc. consisted of Michael C. Vitale and two members of his family who were merely qualifying stockholders. In August or September, 1952, the officers of Montclair Lodge BPOE decided that they would make no attempt to renew the lease covering the premises at 636 Bloomfield Avenue, which lease is due to expire April 30, 1953. When Mr. Vitale obtained this information, he arranged with his attorney to have the name of the corporation holding the liquor license changed to Montclair Lounge, Inc., and, after this change had been made, the local issuing authority was duly notified thereof. After Mr. Vitale made unsuccessful attempts to obtain from the owners of the Montclair Theatre Building a new lease for a portion of the second floor of said building, appellant applied to respondent for a transfer of its plenary retail consumption license to two vacant stores known as 708-710 Bloomfield Avenue. The application for the transfer was denied. Hence this appeal.

The answer herein alleges that respondent "denied the application in question in the exercise of the discretion granted and imposed upon it by law, and the exercise thereof by the Board of Commissioners, was in all respects reasonable, proper and lawful."

The resolution of the Board of Commissioners denying the application for transfer was introduced at the hearing held herein. It reads as follows:

"WHEREAS, application has been made to the Board of Commissioners of the Town of Montclair, in the County of Essex, for the transfer of Plenary Alcoholic Retail Consumption License No. C-8, heretofore issued to Montclair Lounge, Inc., for premises located at the northwest corner second floor, No. 636 Bloomfield Avenue, Montclair, to premises located at No. 708-710 Bloomfield Avenue, Montclair; and

"WHEREAS, notice of intention to apply for such transfer has been duly published and a hearing has been held thereon, now therefore,

"BE IT RESOLVED by the Board of Commissioners of the Town of Montclair, in the County of Essex, that the said application by Montclair Lounge, Inc. for the transfer of Plenary Retail Consumption License No. C-8 for premises located at No. 636 Bloomfield Avenue to premises located at No. 708-710 Bloomfield Avenue, Montclair, be and the same hereby is denied, for the reasons hereinafter set forth:

"The application of Montclair Lounge, Inc., for a transfer of its Plenary Retail Consumption License #C-8, from the present location on the second floor of 636 Bloomfield Avenue to premises located at 708-710 Bloomfield Avenue, Montclair, N. J., was the subject of a public hearing before the Board of Commissioners on November 25, 1952. After the hearing was closed, this Board decided to defer action on the application so as to permit a careful study of the request.

"The Board of Commissioners has since given extensive consideration to the application and has come to the conclusion that the granting of the application would be contrary to the best interests of the Town of Montclair. It is the unanimous opinion of the Board that the location of a tavern at the site proposed, by reason of its proximity to two schools, the Montclair Art Museum and a better residential area, would create an atmosphere and area inimical to the welfare and interests of the children attending classes at the two nearby schools and at the Montclair Art Museum, and would as well tend to adversely affect the abutting residential area.

"The location to which Montclair Lounge, Inc., desires to transfer its license and at which it seeks to operate a tavern is on the south side of Bloomfield Avenue, slightly east of St. Luke's Place, on the outer limits of the Bloomfield Avenue commercial area -- a block that, to our knowledge, has never been occupied by any tavern.

"West of St. Luke's Place, Bloomfield Avenue is zoned for and devoted to residential use -- with the exception of Montclair Academy and the Montclair Art Museum -- and the east-west intersecting streets contain many of our finest residences.

"The site proposed would place the tavern on the same block on which is located the Hillside School -- one of the largest public grade and junior high schools in the town. The Montclair Art Museum, one of the outstanding institutions of the town and the state that as part of its public service conducts educational programs for children, is just one block away. And the Montclair Academy, a private educational institution for boys of grade school and high school age, is approximately two

blocks distant. In addition to the general adverse effect upon an abutting area such as this, it is quite apparent that a substantial number of children of all ages would be required to pass this tavern in going to and coming from the named institutions, the effect of which is something less than desirable.

"After weighing these various factors against the convenience of the applicant, it is our considered conviction that to locate a tavern at the site proposed would be harmful and, therefore, that we would be derelict in our duty were we to approve this transfer in the exercise of the discretion that is imposed upon us under the provisions of the Alcoholic Beverage Law."

The evidence herein discloses that the premises known as 708-710 Bloomfield Avenue are located a short distance southeast of St. Luke's Place; that Bloomfield Avenue to the southeast of St. Luke's Place is developed as a business district but that Bloomfield Avenue to the northwest of St. Luke's Place is residential in character. The evidence further shows that, at the present time, five plenary retail consumption licenses, other than appellant's license, have been issued for premises on the portion of Bloomfield Avenue devoted to business, but that all of these licenses have been issued for premises which are at least three blocks southeast of St. Luke's Place.

At the hearing held herein William W. Skinner, a member of the Board of Trustees of the Montclair Art Museum, which is located on Bloomfield Avenue near St. Luke's Place, testified that the trustees of the museum are opposed to the transfer of the license because said transfer would result in the operation of a licensed premises in close proximity to the museum. The premises at 708-710 Bloomfield Avenue are 299 feet from the Art Museum. Mr. Skinner testified that 233 children between the ages of five and seventeen are enrolled in classes at the museum, and that there are about 100 to 150 additional children who attend the museum each week to hear lectures or to view exhibits. Mr. H. St. John Webb, Jr. testified that he is a Vice President and member of the Board of Trustees of the Montclair Academy Foundation which conducts Montclair Academy, a school for boys from the sixth grade to the twelfth grade, which is located on Bloomfield Avenue. He testified that the trustees of the Foundation object to the transfer of the license because they do not think a tavern is good so near the Montclair Academy. From the stipulation entered at the hearing it appears that the transfer of the license would result in the establishment of a licensed premises within 940 feet of the Montclair Academy, whereas at the present time the license held by appellant is located 1780 feet from the Academy. There is also evidence in the case concerning the location of Hillside School. This school is located at the corner of Hillside Avenue and Orange Road but, since it is approximately one thousand feet from either the present location occupied by appellant or the proposed location to which it seeks to transfer its license, I am disregarding the evidence as to the Hillside School.

The transfer to other premises is a privilege not inherent in appellant's license. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. VanSchoick v. Howell, Bulletin 120, Item 6. On the other hand, where it appears

that refusal of a transfer is arbitrary and unreasonable, the action of respondent will be reversed. Blumenthal v. Wall, Bulletin 169, Item 6.

Appellant cites Costa v. Verona, Bulletin 501, Item 2, and Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1, in both of which cases it was held that the action of the local issuing authority in denying a transfer was unreasonable. However, I conclude that the cited cases are not controlling in this case because there are a number of facts appearing herein which do not appear in the cited cases. Thus it appears herein that appellant plans to change its method of operation from its use of the license in connection with the operation of a club on the second floor to its use in connection with the operation of a cocktail lounge open to the general public. A somewhat similar situation existed in Alexander Craig Inc. v. Orange, Bulletin 251, Item 4, where the action of the local issuing authority in refusing to transfer the license was affirmed. In the present case there are already five premises (other than appellant's premises) on Bloomfield Avenue licensed to sell alcoholic beverages for consumption on the premises. It also appears that appellant seeks to transfer its license to a section of Bloomfield Avenue in close proximity to a residential section, the Montclair Art Museum and Montclair Academy. Under somewhat similar circumstances, the action of respondent in denying the transfer of a license has been upheld. Mooney v. Kearny, Bulletin 830, Item 6; Elmer v. East Orange, Bulletin 447, Item 6; Christian v. Passaic, Bulletin 928, Item 2.

In all appeals to the Director of the Division of Alcoholic Beverage Control, the burden of proof to establish "that the action of the respondent issuing authority was erroneous and should be reversed shall rest with the appellant." Rule 6 of State Regulations No. 15. After careful review of the evidence presented in the instant case, there is no indication that respondent's denial was so arbitrary or unreasonable as to warrant a reversal of its action. I find, therefore, that appellant has failed to carry the required burden of proof. The denial of appellant's application for transfer will be affirmed.

Accordingly, it is, on this 18th day of March, 1953,

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

DOMINIC A. CAVICCHIA
Director.

2. APPELLATE DECISIONS - MAIN MANOR, INC. v. EAST ORANGE.

MAIN MANOR, INC., trading as WHITE HOUSE, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF EAST ORANGE, Respondent.	ON APPEAL O R D E R

Herman E. Hillenbach, Esq., Attorney for Appellant.
Walter C. Ellis, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appealed from a thirty-day suspension of its Plenary Retail Consumption License C-8 issued for premises at 41 Main Street, East Orange. Said suspension was originally imposed by respondent to commence at 6:00 a.m. March 2, 1953, after respondent, in disciplinary proceedings, had found appellant guilty of a charge alleging that it sold alcoholic beverages to minors in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

Upon the filing of this appeal an order was entered by me on February 27, 1953, whereby respondent's order of suspension was stayed until the entry of a further order herein.

On the day fixed for hearing appellant filed a written "Withdrawal of Appeal" wherein it was stipulated by the attorneys for the respective parties that "said Petition of Appeal be withdrawn without costs to either party." No reason appearing to the contrary,

It is, on this 16th day of March, 1953,

ORDERED that the action of respondent be affirmed; that the order heretofore entered by me on February 27, 1953, be vacated effective at 6:00 a.m. March 23, 1953; and that the thirty-day suspension imposed by respondent, as aforesaid, be restored and reimposed against License C-8 issued to appellant for premises at 41 Main Street, East Orange, to commence at 6:00 a.m. March 23, 1953, and to terminate at 6:00 a.m. April 22, 1953.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS -- SALE ON SUNDAY OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINER FOR OFF-PREMISES CONSUMPTION IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against THEODORE BROGOWSKI 323½ Seventh Street Jersey City 2, N. J., Holder of Plenary Retail Consumption License C-369, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	CONCLUSIONS AND ORDER

Theodore Brogowski, 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 and delivered an alcoholic beverage at retail in its original container for off-premises consumption on Sunday, in violation of Rule 1 of State Regulations No. 38.

The file discloses that two ABC agents arrived in the vicinity of the defendant's licensed premises at 8:30 p.m., on Sunday, February 22, 1953, to investigate a specific complaint that defendant was selling alcoholic beverages in original containers for off-premises consumption on Sunday. One of the agents entered defendant's barroom while the other agent remained outside. Immediately after the first agent entered, a male patron came in the side door of the barroom and asked for a bottle of Seagram's V. O. whiskey to take home explaining that some "company" had arrived. The bartender placed a bottle of Seagram's V. O. whiskey in a paper bag and handed it to the patron who gave the bartender some money which was placed in the cash register. Shortly thereafter another male patron asked for a bottle of beer to take home. The same bartender took a quart of Rheingold beer from a cooler, placed it in a paper bag and handed it to the patron who paid him 45¢ which was also placed in the cash register. The agent then also requested a quart bottle of Rheingold beer to take home and, pursuant to that order, the same bartender obtained another quart bottle of Rheingold beer from the cooler and placed it in a paper bag and handed it to the agent who paid him 45¢ which was also placed in the cash register. This sale was made at 8:45 p.m. The agent left the premises with the quart bottle of beer and contacted his companion. Both agents then immediately returned to the licensed premises and identified themselves to the bartender, who readily admitted the sale but refused to give a written statement.

State Regulations No. 38 prohibit sale of alcoholic beverages in original containers for off-premises consumption at any time on Sunday.

Defendant admits the violation but, in alleged mitigation, asserts that it was committed in his absence by a person who was not one of his regular employees and that it was contrary to his specific instructions. Such circumstances do not constitute a defense. The licensee is responsible at all times for the proper conduct of his licensed premises. Cf. Essex Holding Corp. v. Hock, 136 N.J.L. 28. A licensee may not hide behind his employees, and it is immaterial that an offense may have been committed in his absence or contrary to his instructions. Re Paton, Bulletin 898, Item 3, and authorities there cited. See also Rule 31 of State Regulations No. 20.

Defendant has a previous record of similar violation. His license was suspended by the local issuing authority for three days, effective April 30, 1951, for this same type of violation. The minimum penalty for a second offense of this kind occurring within a five-year period is a thirty-day suspension of the license. Re Lyness, Bulletin 940, Item 1. See also Re Behling, Bulletin 811, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 16th day of March, 1953,

ORDERED that Plenary Retail Consumption License C-369, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Theodore Brogowski, 323½ Seventh Street, Jersey City, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. March 23, 1953, and terminating at 2:00 a.m. April 17, 1953.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - Hostesses - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against JEANETTE GOLDBERG T/a JEWELL BAR & GRILL 8 Outwater Lane Garfield, N. J., Holder of Plenary Retail Consumption License C-31, issued by the Mayor and Council of the City of Garfield.	CONCLUSIONS AND ORDER

Chandless, Weller & Kramer, Esqs., by Julius E. Kramer, Esq., Attorneys 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 she permitted a female to accept beverages at the expense of or as a gift from customers, in violation of Rule 22 of State Regulations No. 20.

The file herein discloses that on Friday night, January 9 and Saturday night, January 10, 1953, two ABC agents visited defendant's licensed premises. On each visit they remained in the premises during the early morning of the following day. The ABC agents on divers occasions paid for drinks of alcoholic beverages served to a female entertainer. They also observed male patrons pay for drinks of alcoholic beverages served to said female entertainer. The bartender would pour the drinks that were ordered for the female entertainer by the ABC agents and the male patrons, hand the respective

drinks to the husband of defendant who in turn would serve them to the female entertainer in a booth where she sat when not performing.

Rule 22 of State Regulations No. 20 provides:

"No *** licensee shall allow, permit or suffer any female employed on the licensed premises to accept any food or beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron".

In attempted mitigation, defendant alleges that the entertainer did not request the agents to buy drinks for her but that the agents "sent a drink over to her and she accepted the drink". Even if this be true, the rule cited above was violated when the licensee, or her employees, permitted the entertainer to accept the drink.

Defendant has a prior adjudicated record. Effective June 19, 1944, her license was suspended for twenty days for bookmaking and employing an unqualified person. Re Goldberg, Bulletin 624, Item 1. Again, effective August 28, 1946, her license was suspended for twenty days for possession of bagatelle machines and employing an unqualified person. Re Goldberg, Bulletin 727, Item 6. Because both of the violations are dissimilar in character and occurred more than five years from the instant violation, I shall not consider them in fixing the present penalty.

I shall suspend defendant's license for a period of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days. Re Manno, Bulletin 921, Item 6.

Accordingly, it is, on this 11th day of March, 1953,

ORDERED that Plenary Retail Consumption License C-31, issued by the Mayor and Council of the City of Garfield to Jeanette Goldberg, t/a Jewell Bar & Grill, 8 Outwater Lane, Garfield, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 4:00 a.m. March 18, 1953, and terminating at 4:00 a.m. April 2, 1953.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against DAVID DANKNER T/a D & D WINE & LIQUOR 49 Market Street Passaic, N. J., Holder of Plenary Retail Distribution License D-13, issued by the Board of Commissioners of the City of Passaic.	CONCLUSIONS AND ORDER

David Dankner, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

The file herein discloses that on February 26, 1953, an ABC agent entered defendant's licensed premises and asked the licensee for a quart bottle of Seagram's 7 Crown Whiskey. The licensee pointed to a bottle of that brand on the shelf and the agent observed a price tag of $5.47 attached thereto. After the agent asked the licensee if that was the best he could do and after some further conversation between them, the licensee sold the item to the agent for $5.25. Effective January 1, 1953, the minimum resale price of the item in question was $5.47.

Defendant has a prior record. Effective April 10, 1950, his license was suspended by the Director for a period of five days after he had pleaded non vult to a similar charge. Re Dankner, Bulletin 871, Item 11. Since this is a second similar violation, I shall double the minimum suspension of ten days and shall suspend defendant's license for a period of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days. Re Block & Meyers, Bulletin 917, Item 4.

Accordingly, it is, on this 13th day of March, 1953,

ORDERED that Plenary Retail Distribution License D-13, issued by the Board of Commissioners of the City of Passaic to David Dankner, t/a D & D Wine & Liquor, for premises 49 Market Street, Passaic, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. March 23, 1953, and terminating at 9:00 a.m. April 7, 1953.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against DONALD B. DELLERSON & EVA DELLERSON T/a HENRY'S CAFE 1075 South 2nd Street Camden, N. J., Holders of Plenary Retail Consumption License C-109, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

Defendant-licensees, by Donald B. Dellerson, a partner.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed on their licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

The file herein discloses that on February 17, 1953, an ABC agent examined forty-three opened bottles of alcoholic beverages on defendants' premises and seized one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky 90.4 Proof" when his field tests indicated a variance between the description on the label and the contents thereof. Subsequent analysis by the Division chemist disclosed that the contents of the seized bottle were not genuine as labeled.

Defendants have no prior record. I shall suspend defendants' license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Charette, Bulletin 940, Item 11.

Accordingly, it is, on this 13th day of March, 1953,

ORDERED that Plenary Retail Consumption License C-109, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Donald B. Dellerson & Eva Dellerson, t/a Henry's Cafe, for premises 1075 South 2nd Street, Camden, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. March 23, 1953, and terminating at 2:00 a.m. April 2, 1953.

DOMINIC A. CAVICCHIA
Director.

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

In the Matter of Disciplinary Proceedings against	)	
HEP'S TAVERN, INC. 415 - 37th Street Union City, N. J.,	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-34, issued by the Board of Commissioners of the City of Union City.	)	

Hep's Tavern, Inc., Defendant-licensee, by John Heppner, President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to four minors, in violation of Rule 1 of State Regulations No. 20.

On Friday, February 20, 1953, four minors, three aged twenty and one aged nineteen years, were sold and served three rounds of drinks, each round consisting of three beers and one highball, by a bartender on defendant's licensed premises.

Defendant has no prior adjudicated record. Because of the number of minors involved at the time in question, I shall suspend defendant's license for a period of fifteen days, instead of the minimum period of ten days imposed for a sale of alcoholic beverages to a minor when no aggravating circumstances appear. Re Owen, Bulletin 834, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 16th day of March, 1953,

ORDERED that Plenary Retail Consumption License C-34, issued by the Board of Commissioners of the City of Union City to Hep's Tavern, Inc., 415 --37th Street, Union City, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. March 23, 1953, and terminating at 3:00 a.m. April 2, 1953.

DOMINIC A. CAVICCHIA
Director.

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - GUILTY PLEA ENTERED AS TO CHARGE (2) - NOT GUILTY PLEA ENTERED AS TO CHARGE (1) AND NOLLE PROS GRANTED AS TO SAID CHARGE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against BLANCHE KOPER T/a COZY CORNER TAVERN 402 River Drive Garfield, N. J., Holder of Plenary Retail Consumption License C-67, issued by the Mayor and Council of the City of Garfield.	CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

Defendant pleaded not guilty to Charge 1 herein which alleges that on December 19, 1952, she sold alcoholic beverages to two minors, Salvatore --- and Angelo ---, and allowed, permitted and suffered them to consume alcoholic beverages on her licensed premises. At a hearing held upon said charge these two minors testified that they visited defendant's premises on the date in question, but stated that they had previously been drinking at other places and did not remember what they drank at defendant's premises. No other proof of the charge being available, the attorney for the Division requested that the charge be nolle prossed. Under the circumstances the request to nolle pros Charge 1 will be granted.

Defendant pleaded guilty to Charge 2 herein which alleges that:

"2. On January 17, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Virginia ---, Irene ---, William --- and Frank ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule I of State Regulations No. 20."

The file herein discloses that two ABC agents entered the barroom of defendant's premises on January 17, 1953, at 3:00 a.m., at which time the licensee and Walter Koper, her husband, were tending bar. About a half-hour later Frank Jarvis went behind the bar to help out. At about 3:40 a.m. a party of males and females, some of whom appeared to be minors, entered the sitting-room on defendant's premises. The agents then observed Walter Koper put seven or eight glasses of beer on a tray which he carried from the barroom to the sitting-room. Shortly thereafter the agents looked into the sitting-room and observed that several of the persons who appeared to be minors were consuming beer from glasses. At about 4:00 a.m. Frank Jarvis placed seven or eight glasses of beer on a tray and carried them from the barroom to the sitting-room. The agents followed Jarvis and, after they observed Virginia --- sipping her beer, the agents identified themselves to Jarvis, the licensee, and her husband. At the request of the agents, Irene --- produced a card, issued by her employer, which showed her age and date of birth; William produced his draft registration card which showed his age to be twenty; Virginia and Frank stated that they had no identification on their person.

In alleged mitigation defendant contends that, before Walter Koper served the first round of drinks, he requested proof of the ages of all in the party and that each member of the party exhibited to him a driver's license or other identification card showing that the holder thereof was over the age of twenty-one years. However, it is not alleged that any of the four minors falsely represented in writing that he or she was over the age of twenty-one years. Hence it is clear that defendant has not established a defense under the provisions of R. S. 33:1-77. Re Cedar Bar, Bulletin 942, Item 5.

Defendant has no prior adjudicated record. Because of the number of minors involved, I shall suspend defendant's license for a period of fifteen days, instead of the minimum period of ten days imposed for a sale to a minor when no aggravating circumstances appear. Re Camarda, Bulletin 946, Item 3. Five days will be remitted for the plea entered as to Charge 2, leaving a net suspension of ten days.

Accordingly, it is, on this 13th day of March, 1953,

ORDERED that Plenary Retail Consumption License C-67, issued by the Mayor and Council of the City of Garfield to Blanche Koper, t/a Cozy Corner Tavern, for premises 402 River Drive, Garfield, be and the same is hereby suspended for ten (10) days, commencing at 4:00 a.m. March 23, 1953, and terminating at 4:00 a.m. April 2, 1953.

DOMINIC A. CAVICCHIA
Director.

9. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against ALEXANDER SOTAK T/a HANDY TAVERN 14 Jersey Avenue New Brunswick, N. J., Holder of Plenary Retail Consumption License C-83, issued by the Board of Commissioners of the City of New Brunswick.	CONCLUSIONS AND ORDER

Charles M. Morris, Jr., Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On Sunday, January 4, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Lloyd E. --- and Edward ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

At the hearing held herein Lloyd E. --- testified that he was born on January 29, 1932; that on January 4, 1953, he and Edward --- entered defendant's premises about 3:00 p.m. and remained there for a period of about four hours; that during that period he drank "altogether about twenty" glasses of beer which were purchased from and served by a bartender; that no one questioned him as to his age and that, during that period of time, glasses of beer were served to and consumed by Edward.

At the hearing Edward --- testified that he was born on May 29, 1933; that he entered defendant's premises with Lloyd E. --- on January 4, 1953, at about 3:00 or 3:30 p.m. and remained on the premises until about 6:30 or 7:00 p.m.; that, after they entered the premises, he sat at the bar for more than an hour and thereafter sat at a table with an elderly couple during the balance of the time he remained on the licensed premises. Edward --- further testified that "around fifteen, twenty, maybe more" glasses of beer were served to him by a bartender and consumed by him, and that no one questioned him as to his age while he was in defendant's premises.

On behalf of defendant, Andrew Janendo testified that he was tending bar in defendant's premises on the afternoon of January 4, 1953, and that he was the only person tending bar at that time. He testified "They were at the bar and I refused to serve them." He also testified that he told Mr. Walker, a patron in the licensed premises, that "they were too young, I wouldn't serve them." Mr. Walker testified he had seen Edward seated at a table with an elderly couple but that he had not seen any service of beer by Andrew Janendo to Edward and had not seen Edward drinking beer. He corroborated the testimony of Andrew Janendo as to the statement made by the bartender concerning the young men. Three other patrons testified that they saw Edward seated at a table with an elderly couple, but denied that they saw any beer being served to him or consumed by him. Each of these three patrons denied that they saw Lloyd on the licensed premises at that time. I am not impressed by the testimony of the patrons because the record indicates that they were not constantly observing the actions of the minors during the long period of time they were present in defendant's premises. I believe the minors' testimony and, therefore, find defendant guilty as charged.

Defendant has a prior record. Effective June 17, 1940, his license was suspended by the local issuing authority for three days for employing an unqualified person in violation of R. S. 33:1-26. However, since the prior violation was of a dissimilar character and occurred more than five years ago, I shall not consider it in fixing a suspension in this case. Re Grande, Bulletin 932, Item 8. I shall suspend defendant's license for a period of ten days. Re Modrowski, Bulletin 582, Item 1. Re DiGirolamo, Bulletin 838, Item 1.

Accordingly, it is, on this 16th day of March, 1953,

ORDERED that Plenary Retail Consumption License C-83, issued by the Board of Commissioners of the City of New Brunswick to Alexander Sotak, t/a Handy Tavern, for premises 14 Jersey Avenue, New Brunswick, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., March 23, 1953, and terminating at 2:00 a.m. April 2, 1953.

DOMINIC A. CAVICCHIA
Director.

10. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINORS DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary Proceedings against HAROLD SACHS 35 Essex Street Paterson 3, N. J., Holder of Plenary Retail Consumption License C-195, issued by the Board of Alcoholic Beverage Control of the City of Paterson.	CONCLUSIONS AND ORDER

Robert I. Goodman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to a charge alleging that he sold, served and delivered alcoholic beverages to minors and permitted such minors to consume said alcoholic beverages at his licensed premises, in violation of Rule 1 of State Regulations No. 20.

After some difficulty in obtaining their appearance at a hearing, the two minors involved in the charge appeared and testified. One of them testified that, on Saturday, November 8, 1952, at which time she was 15 years of age, she visited defendant's licensed premises on two occasions, namely, at 8:00 p.m. and at midnight. She further testified that, on the first visit she was there with her male cousin but had nothing to drink, while, on the second visit, she was accompanied by an 18-year-old female; that a man bought each of them a bottle of beer at the bar; that a white male bartender named "Ernie" served the beer by uncapping the bottle and placing a glass (inverted) over the neck of the bottle; that she poured beer into a glass and consumed a small portion of it and guessed that the other minor also poured beer in a glass and consumed a portion of it; that they left hurriedly when they saw some detectives enter the barroom. On cross-examination she admitted that she and some other girls had been interrogated by a youth guidance counselor concerning their drinking of alcoholic beverages upon licensed premises and, when asked if she were not afraid that, unless she admitted drinking beer in defendant's barroom she might be sent to prison, she replied "I was afraid, but the other girls -- because the other girls told we drank in there."

However, her 18-year-old companion steadfastly denied, in her testimony, that she had either been in defendant's licensed premises on the night in question or had been served or had consumed any beer there. In explaining a prior signed and sworn statement to the contrary she testified that she had been told that her 15-year-old companion had given a statement to the effect that they had had beer at defendant's premises that night and that "to keep Glenda out from a lie I told him I had, too." Her testimony was later neutralized.

The licensee testified that he was working in his barroom on the night in question but did not see either of the two aforementioned minors; that, although he has a white male bartender named "Ernie," said bartender does not work after 10:00 p.m. on any

Saturday night and that the bartender who works from 9:30 p.m. to closing time is a negro bartender (Ferman King). This testimony was corroborated by Ferman King and both he and the licensee denied that glasses are inverted and placed over the necks of beer bottles because of the danger of breakage.

The licensee further testified that, on the very morning of November 8, 1952, he had been warned by the aforementioned youth counselor against serving alcoholic beverages to minors and that he was expecting the counselor to visit his licensed premises that night.

After carefully considering all of the testimony I find that defendant's guilt has not been established by the necessary preponderance of the evidence. I therefore find defendant not guilty.

Accordingly, it is, on this 16th day of March, 1953,

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

DOMINIC A. CAVICCHIA
Director.

11. STATE LICENSES - NEW APPLICATION FILED.

Dawson's Brewery, Inc.
29 Brook Street
New Bedford, Mass.
Application filed March 20, 1953 for Transportation License.

Cromwell Liquor Corp.
1 Exchange Place (Rooms 303 and 307)
Jersey City, N. J.
Application filed March 24, 1953 for Plenary Wholesale License.

Dominic A. Cavicchia
Director