

BULLETIN 946

OCTOBER 22, 1952.

TABLE OF CONTENTS

- ITEM
1. COURT DECISIONS - IN RE GUTMAN - DIRECTOR AFFIRMED.
 2. DISCIPLINARY PROCEEDINGS (Pemberton Township) - SALE TO MINORS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT SONGS AND LANGUAGE) - HOSTESSES - PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS.
 3. DISCIPLINARY PROCEEDINGS (Eastampton Township) - SALE TO MINORS - AGGRAVATING CIRCUMSTANCES (THREE MINORS INVOLVED) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
 4. DISCIPLINARY PROCEEDINGS (Lodi) - SALE TO MINOR - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS.
 5. APPELLATE DECISIONS - TULPAN v. PASSAIC.
 6. DISCIPLINARY PROCEEDINGS (Newark) - SALE FOR OFF-PREMISES CONSUMPTION IN OTHER THAN ORIGINAL CONTAINER IN VIOLATION OF R.S. 33:1-2 - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.
 7. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1952 THROUGH SEPTEMBER 30, 1952.
 8. SOLICITORS' PERMITS - A SOLICITOR MAY NOT BE AN OFFICER OF A BONA FIDE CLUB HOLDING A LIQUOR LICENSE. (IN RE FRANK, BULLETIN 113, ITEM 8 MODIFIED) - A SOLICITOR MAY NOT BE EMPLOYED BY OR CONNECTED IN ANY BUSINESS CAPACITY WITH ANY RETAIL LICENSEE.
 9. DISCIPLINARY PROCEEDINGS (Paterson) - SALE DURING PROHIBITED HOURS AND FAILING TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
 10. MORAL TURPITUDE - CONVICTION FOR COMMERCIALIZED GAMBLING HELD TO CONSTITUTE CONVICTION OF CRIME INVOLVING MORAL TURPITUDE UNDER FACTS OF CASE.
 11. DISCIPLINARY PROCEEDINGS (Maplewood) - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 946

OCTOBER 22, 1952.

1. COURT DECISIONS - IN RE GUTMAN - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
Appellate Division
A-513-51

In the Matter)

of)

Disciplinary Proceedings Against)
DOROTHY GUTMAN t/a GENE'S TAVERN,)
56 Mt. Pleasant Avenue, Livingston,)
New Jersey.)
-----)

Argued September 30, 1952. Decided October 7, 1952.

Before Eastwood, Goldmann and Francis, JJ.

Mr. Samuel H. Nelson argued the cause for the appellant.
Mr. Jacob Lubetkin, Attorney.

Mr. Samuel B. Helfand argued the cause for the respondent.
Mr. Theodore D. Parsons, Attorney.

The opinion of the Court was delivered by

EASTWOOD, S. J. A. D.

The defendant appeals from the order of the Acting Director of Alcoholic Beverage Control, suspending her plenary retail consumption license following a hearing of charges that (1) she permitted a brawl, act of violence and disturbance upon the licensed premises, in violation of Rule 5 of State Regulation 20; (2) that she permitted gambling on the licensed premises, in violation of Rule 7 of State Regulation 20; and (3) that on September 15, 1951, and prior thereto she employed and had connected with her, in a business capacity, one Harry Schenkel, who was then directly or indirectly interested in the wholesaling of alcoholic beverages, in violation of Rule 29 of State Regulation 20.

The defendant contends that (1) the charges were not established by a preponderance of the believable evidence, and (2) that the defendant's alleged employment of her father, who was then interested in the wholesale liquor business, "was not established".

Concisely stated, the argument of the defendant is that we should review the evidence and make a new finding of facts, independent of that made by the Acting Director. Were we inclined to do so, it would mean that where, as here, there is clearly sufficient competent evidence to support the conclusions of the Acting Director, we should substitute our judgment for his and determine, de novo, the credibility of the witnesses, the weight of the evidence, the inferences properly deducible therefrom and to resolve the conflicting evidence. While, of course, we may review the facts and make an independent finding, this court will not exercise that prerogative where the Director's findings are warranted by the evidence adduced before him. DeMoors v. Atlantic Casualty Insurance Company, 1 N. J. Super. 1 (App. Div. 1948); Passarella v. Board of Commissioners,

1 N. J. Super. 313 (App. Div. 1949); Traymore of Atlantic City, Inc. v. Hock, 9 N. J. Super. 47 (App. Div. 1950); Greenbrier, Inc. v. Hock, 14 N. J. Super. 39 (App. Div. 1951), cert. den., 7 N. J. 581 (1951).

The defendant argues that all of the respondent's witnesses were "biased" and, therefore, their testimony should not be given the weight accorded to it by the Acting Director. From our examination of the record, we are convinced that this charge of "bias" is not borne out. Such an assertion, if true, merely goes to the probative value of the witnesses' testimony and, properly, should be left to the trier of the facts. The determination of the Acting Director should not be disturbed unless it clearly appears from the entire record that it is arbitrary, unreasonable or capricious. The Legislature has delegated to the Alcoholic Beverage Control agency the duty and responsibility of hearing and determining charges of violations of the applicable statute and reasonable rules promulgated under the authority thereof. All of the safeguards of "due process" are afforded. The licensee receives due notice of the charges and the date of the hearing thereof; he is permitted representation by counsel; he may cross-examine the witnesses produced against him; he may produce witnesses in his own behalf and a complete stenographic record of the proceedings is made. If this court were, in such a case as here under review, to make an independent review of the facts and a new finding thereof, it seems to us we would be thwarting the legislative intent when it reposed that duty and responsibility in the agency. In Re Larsen, 17 N. J. Super. 564, 571 (App. Div. 1952).

"The sale of intoxicating liquor has from the earliest history of our state been dealt with by legislation in an exceptional way. In its legal significance it is sui generis. 'It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied.'" Hudson Bergen, &c., Assn. v. Hoboken, 135 N. J. L. 502 (E. & A. 1947); Essex Holding Corp. v. Hock, 136 Id. 28 (Sup. Ct. 1947). In some circumstances, where, regardless of his knowledge, the licensee may fail to prevent a prohibited act on his premises, he may be charged with the responsibility therefor. Essex Holding Corp. v. Hock, supra; Cedar Restaurant & Cafe Co. v. Hock, 135 N. J. L. 156 (Sup. Ct. 1947); Galsworthy, Inc. v. Hock, 3 N. J. Super. 127 (App. Div. 1949); In re Schneider, 12 N. J. Super. 449 (App. Div. 1951). Thus, it will be observed that our courts have consistently held that "the liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner." Zicherman v. Driscoll, 133 N. J. L. 586 (Sup. Ct. 1946); that "As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils." Crowley v. Christensen, 137 U. S. 86, 92; 34 L. ed. 620, 624 (1890).

There is no merit to the defendant's further contention that defendant's employment of Schenkel, her father, at the time engaged in the wholesale liquor business, was not established by the evidence. While Schenkel denied that he tended bar, he admitted that he cooked shrimp, cut up cold cuts and prepared sandwiches. On the contrary, the agency witnesses testified that in addition, he frequently tended bar. Regardless of whether he tended bar and whether he was compensated, his admissions that he assisted in the conduct of the licensed business sufficiently established his proscribed employment and resulted in a violation of the rules promulgated under the authority of the Act. (R. S. 33:1-26, as amended; Rule 29 of State Regulation No. 20). Kravis v. Hock, 137 N. J. L. 252, 255 (Sup. Ct. 1948).

The order of the Acting Director is affirmed.

2. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT SONGS AND LANGUAGE) - HOSTESSES - PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against DRAYMAN FAMILY CORPORATION T/a PIG'N WHISTLE INN W/S Lakehurst Road Pemberton Township P.O. Browns Mills, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-16 for the 1951-52 and 1952-53 licensing years, issued by the Township Committee of the Township of Pemberton.

Parker, McCay and Criscuolo, Esqs., by Robert W. Criscuolo, Esq. and James R. Giuliano, Esq.; Attorneys for Defendant-licensee. William F. Wood, Esq. and Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On May 2, 1952, the following charge was preferred against the defendant-licensee:

"1. On Thursday, March 20, 1952, 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 Olive --- and Mary ---, persons under the age of twenty-one (21) years and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

On August 13, 1952, while the foregoing charge was pending and undetermined, the following additional charges were preferred against the defendant-licensee:

"2. On Saturday night and early Sunday morning, August 9 and 10, 1952, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly and indirectly, at your licensed premises to Pvt. Curtis --- and Pvt. Lawrence ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

"3. On the aforesaid occasion, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that male entertainers performed in a lewd, indecent and immoral manner and also sang a song and recited stories having a lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulations No. 20."

"4. On the aforesaid occasion, you allowed, permitted and suffered Audrey Morris, a female employed on your licensed premises, to accept beverages at the expense of and as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20."

As to charge 1: Defendant pleaded not guilty, and a hearing was held.

Olive ---, seventeen years of age, testified that she and two girl companions visited defendant's licensed premises "about eight or eight-thirty" on the evening of March 20, 1952; that she ordered and was served two glasses of beer, each of which was drawn from a tap by a male bartender; that twice during the evening her girl companions ordered a Tom Collins and a Sloe Gin Fizz, respectively, which drinks were served to them by the same bartender; that Edgar Smith was the bartender who made service to her and her companions and that he did not inquire of the girls as to their ages.

Mary ---, nineteen years of age, corroborated the fact that Olive and another girl visited the defendant's licensed premises with her on March 20, 1952. Mary testified, however, that each was served only one glass of an alcoholic beverage; furthermore, that Olive had bottled beer rather than beer drawn from a tap. Although at the hearing herein Mary identified Edgar Smith as the person who made service of the alcoholic beverages at the time mentioned in the charge, she explained that she failed to identify him when she visited the defendant's licensed premises with the ABC agents because "I just didn't want to get anybody in trouble." The third girl alleged to have been with Olive and Mary was not available to testify at the hearing.

Edgar Smith, the bartender, testified that Olive was in the licensed premises on two occasions and that on her first visit "she had Coca Cola" after he refused to serve alcoholic beverages to her. He further testified that Olive and Mary were both in the licensed premises on a date he could not remember and that he served them only "coke".

Mary Schier, employed as hostess and hat-check girl by defendant-licensee, testified that on one occasion, the date of which she could not remember, Mary checked her coat with her and that later she observed Mary drinking a "coke".

Defendant's attorney objected to the admission of testimony of the two girls with reference to their respective ages. A person is competent to testify as to his or her own age, irrespective of the consideration that the fact of age is one of the essentials necessary to be established in order to constitute the violation charged. State v. Huggins, 83 N.J.L. 43; State v. Girone, 91 N.J.L. 498; Re Slansky, Bulletin 569, Item 7. Moreover, the Division introduced into evidence certificates indicating that females bearing the names of the minors in question were born on the dates testified to by them.

There is no dispute that Olive --- and Mary --- were in defendant's licensed premises on at least one occasion. Although there is a variance between the testimony of the two minors as to the kind of beer and the quantity that was consumed by Olive --- on defendant's licensed premises, I am satisfied after careful review of the testimony of the witnesses that the two girls were served alcoholic beverages by Edgar Smith, the bartender, on March 20, 1952. I therefore find the defendant-licensee guilty as charged.

(Although the proceeding consequent upon charge 1 was instituted during the 1951-1952 licensing period, it does not abate but remains fully effective against the renewal license for the licensing year 1952-53. State Regulations No. 16.)

As to charges 2, 3 and 4: Defendant pleaded non vult.

The file discloses that three ABC agents entered defendant's premises at about 11:30 p.m. on the evening of August 9, 1952, and remained on the premises until approximately 2:30 a.m. on the following morning. When the agents entered there were on the premises about 100 patrons, a large majority of whom were servicemen in uniform.

As to charge 2: When the agents entered, they observed three soldiers, two of whom appeared to be minors, seated at a table. In front of each soldier was a twelve-ounce bottle of beer and a glass. After each soldier had consumed the contents of the bottle in front of him, the agents observed the service of another twelve-ounce bottle of beer to each of the soldiers by a waitress. As the second drinks were being consumed, the agents identified themselves. Subsequent investigation disclosed that one of the soldiers was of full age, but that Pvt. Curtis --- was 18 years of age and Pvt. Lawrence --- was 20 years of age.

As to charge 3: While the agents were present, four members of the orchestra sang several songs and told several jokes, all of which were unquestionably indecent and disgusting. Entertainment of the type in question will not be permitted on licensed premises.

As to charge 4: While the agents were on the premises a woman entertainer, identified as Audrey Morris, consumed a glass of alcoholic beverage which had been purchased for her by one of the agents. This entertainer had previously consumed a number of drinks of alcoholic beverages which had been purchased for her by a soldier-patron on the licensed premises.

As to penalty: The minimum penalty in an unaggravated first offense case involving sale of alcoholic beverages to a minor 17 years of age (charge 1) is fifteen days. Re Panetta, Bulletin 852, Item 3. Charge 2 also involves sale of alcoholic beverages to minors, but on a date subsequent to that fixed in the first charge. However, because no locus poenitentiae ("i.e., a chance to repent and amend, and thereafter a subsequent violation and adjudication". Re Blanker, Bulletin 254, Item 6) intervened, it cannot here be considered a second offense. In other words, there must be an adjudication of guilt followed by punishment, and then, still unregenerate, a subsequent violation and adjudication. Rose v. Bellmawr, Bulletin 411, Item 9. Yet the violation cannot be ignored but must be considered as aggravating that which is the subject of the first charge. Cf. Re Ciancio, Bulletin 944, Item 4. The lewdness and immoral activity (charge 3) commands a suspension of fifteen days. Re Surf Colony Corp., Bulletin 919, Item 9. For the "hostess" activity (charge 4) the minimum penalty is twenty days. Re Arno, Bulletin 830, Item 1. Additionally to be considered in imposing total penalty in this case is defendant's prior adjudicated record: Effective January 23, 1950, its license was suspended by the then Director for a period of ten days after a plea of non vult to a charge that it had permitted a brawl on its licensed premises. Re Drayman, Bulletin 866, Item 2.

Under all the circumstances, and bearing in mind the two separate "minors" violations and the prior record but giving consideration to the non vult plea entered as to charges 2, 3 and 4, I shall suspend defendant's license for a period of sixty days.

Accordingly, it is, on this 7th day of October, 1952,

ORDERED that Plenary Retail Consumption License C-16, issued by the Township Committee of the Township of Pemberton to Drayman Family Corporation, t/a Pig'n Whistle Inn, for premises on w/s Lakehurst Road, Pemberton Township, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. October 16, 1952, and terminating at 2:00 a.m. December 15, 1952.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - AGGRAVATING CIRCUMSTANCES (THREE MINORS INVOLVED) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

VITO CAMARDA)
S/W Corner Route 39 & Powell Road)
Eastampton Township)
P.O. Mount Holly, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Eastampton.)
-----)

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

BY THE DIRECTOR:

The defendant has pleaded guilty to charges alleging that he sold, served and delivered alcoholic beverages to three minors, in violation of Rule 1 of State Regulations No. 20.

On Saturday, September 6, 1952, two sailors, aged 19 and 20 years, respectively, were each sold and served two 12-ounce bottles of beer on defendant's licensed premises by a bartender employed by defendant. On Monday, September 8, 1952, a soldier, 19 years of age, was served a glass of beer on defendant's licensed premises by a bartender employed by defendant.

Defendant has no prior adjudicated record. However, on September 2, 1952 he was warned by this Division with respect to alleged sales, on August 16, 1952 and on dates prior thereto, of alcoholic beverages to a soldier seventeen years of age. Because of the number of minors involved in the instant case, 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 Pross, Bulletin 929, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 3rd day of October, 1952,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Eastampton to Vito Camarda, s/w Corner Route 39 & Powell Road, Eastampton Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. October 14, 1952, and terminating at 2:00 a.m. October 24, 1952.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against)

JOSEPH GREMBOWIEC)
T/a JOE'S TAVERN)
252 Union Street)
Lodi, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Mayor and Council of the Borough of Lodi.)

Giuliano & Giuliano, Esqs., by James R. Giuliano, Esq., Attorneys for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to charges alleging that he (1) sold and delivered alcoholic beverages at his licensed premises to a minor, in violation of Rule 1 of State Regulations No. 20, and (2) sold and delivered alcoholic beverages at retail in original containers for off-premises consumption on Sunday, in violation of Rule 1 of State Regulations No. 38.

At the hearing, Walter ---, 15 years of age, testified that on Sunday, June 8, 1952, he purchased two cans of Krueger Beer from defendant at his licensed premises on each of three separate occasions, the first being at 11:00 a.m. or 12:00 noon, the second about 3:00 p.m. and the third about 6:00 p.m. He further testified that on the first two occasions he was accompanied to the licensed premises by a younger boy, Sal ---, 13 years of age, who waited for him outside; that on the last occasion he was alone; that, on each occasion, he was waited on by the licensee who charged him twenty cents per can for the beer and raised no question as to his age; that he did not sign any statement as to his age; that the licensee was alone in the barroom except on the last occasion when there were some patrons present; that the licensee obtained the beer from a refrigerated cabinet under the back-bar and placed it in a paper bag; and that, after each purchase, he (Walter) took the unopened cans of beer to a barn where horses were stabled and where he opened the cans and drank the beer. He identified the licensee as the person who had sold him the beer on each such occasion.

On cross-examination Walter admitted that he had previously stated that he had been charged thirty cents for the beer on each occasion and was uncertain as to some of the details of the interior of the barroom but he was unshaken with respect to the identity of the licensed premises where he obtained the beer and the cabinets where it had been stored.

Sal ---, 13 years of age, testified that, on only one occasion (3:00 p.m.), did he accompany Walter to the vicinity of the licensed premises on June 8, 1952. He fixed the day as a "confirmation" day at church (as did also one of defendant's witnesses). He further testified that he remained outside the tavern while Walter went in without a package and emerged with a paper bag containing two unopened white cans of Krueger Beer. He also testified that he spent most of the time from 11:10 a.m. to 6:00 p.m. or later on that day at the barn; that, in the evening, although he did not accompany

Walter to the defendant's licensed premises, he saw Walter leave the barn and return with two more unopened cans of Krueger Beer; and that he saw Walter consume beer from cans that day. He was positive in his identification of the premises from which he saw Walter emerge carrying a paper bag containing two unopened cans of beer.

An ABC agent testified that Walter had pointed out the licensed premises as the place where, and the licensee as the person from whom, he bought the beer on the day in question; that Walter had shown them the refrigerated cabinet where the beer was stored; that the cabinet contained Krueger Beer in cans and that Walter had described the licensee as a short man, with gray hair, at least fifty years of age and a little on the heavy side, which description, in general, fits the licensee.

It was stipulated that the other agent's testimony would be to the same effect.

Defendant, who is apparently in poor health, testified that his wife had opened the tavern at noon on the day in question; that he had not tended bar that day, but had gone out at 12:30 p.m. shortly after the noon meal; that thereafter he was continuously in the company of a boarder (Felix ---) and a friend (Harry ---) until 8:45 that night; that they had spent four or five hours at a tavern owned by his son on Route 6, Lodi, after which they went to the home of one Vincent --- where they stayed another two or three hours.

Felix and Harry testified to the same effect. Vincent testified that the three men had been at his home for a "couple of hours" after 6:00 p.m., on June 8, 1952. Vincent remembered the day as a "confirmation" day. However, the defendant, who is 68 years of age, and Felix and Harry, who are older, and all of whom apparently have difficulty with the English language, were vague with respect to other dates and seemed to remember only their activities on the specific afternoon in question. The same is true of the licensee's wife and daughter who sought to claim that, on Sunday, the licensee usually rests and that, on this particular day, he was not upon the licensed premises except for a brief period following the noon meal.

It was admitted that the only canned beer sold at the licensed premises is Krueger Beer, but the licensee sought to lessen the effect of this fact by showing that he has a large outdoor sign advertising Krueger Beer. Even if Walter may have previously seen the outdoor sign, the presence of the sign does not account for Walter's knowledge of the place where the Krueger canned beer was kept in the refrigerated cabinet.

From all of the evidence I am convinced that, on at least two occasions on the day in question, namely, at approximately 3:00 p.m., when he was accompanied to the vicinity of the licensed premises by Sal and at approximately 6:00 p.m., when he brought more beer back to the barn, Walter bought unopened cans of beer from the licensee. I am unconvinced by the testimony of the defendant's witnesses that defendant was not upon the licensed premises and that he did not tend bar on the afternoon in question. I am convinced that if he went to his son's tavern and visited his friend Vincent he did so much later in the day.

I find defendant guilty on both charges.

The licensee has a prior record. His license was suspended by the then State Commissioner for the balance of its term, effective May 28, 1937, for possession of illicit alcoholic beverages and possession of alcoholic beverages adulterated with acetone (Re Grembowiec, Bulletin 178, Item 6), and by the local issuing authority for twelve

days, effective November 29, 1937, for sales of alcoholic beverages on Primary Election Day. However, because of the long period which has elapsed since such previous violations and since they are dissimilar to those here involved, I shall disregard them in fixing the penalty. In view of the tender age (15) of the minor involved, I shall suspend defendant's license for twenty-five days on charge (1), Re Schuyler, Bulletin 944, Item 3, and for an additional fifteen days on charge (2), Re Della Rodolfa, Bulletin 916, Item 16.

Accordingly, it is, on this 2nd day of October, 1952,

ORDERED that Plenary Retail Consumption License C-12, issued by the Mayor and Council of the Borough of Lodi to Joseph Grembowiec, t/a Joe's Tavern, for premises 252 Union Street, Lodi, be and the same is hereby suspended for forty (40) days, commencing at 4:00 a.m. October 9, 1952, and terminating at 4:00 a.m. November 18, 1952.

DOMINIC A. CAVICCHIA
Director.

5. APPELLATE DECISIONS - TULPAN v. PASSAIC.

FRANK TULPAN, trading as)
FRANK TULPAN,)

Appellant,)

-vs-

BOARD OF COMMISSIONERS OF THE)
CITY OF PASSAIC,)

Respondent.)

ON APPEAL
O R D E R

Manfield G. Amlicke, Esq., Attorney for Appellant.
William N. Gurtman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appealed from the action of respondent whereby it found appellant guilty on a charge of allowing, permitting and suffering gambling upon his licensed premises and suspended his license for a period of five days. Upon the filing of said appeal I entered an order staying respondent's order of suspension pending the entry of a further order herein. R. S. 33:1-31.

On the date fixed for hearing the attorneys for the respective parties filed a stipulation wherein it was agreed and stipulated that the appeal be withdrawn subject to the consent of the Director of Alcoholic Beverage Control, and that the license be suspended for a period of five days, effective 3:00 a.m. Sunday, October 12, 1952, to 3:00 a.m. Friday, October 17, 1952, in lieu of the dates fixed for suspension of the license by respondent. No reason appearing to the contrary,

It is, on this 9th day of October, 1952,

ORDERED that the appeal herein be and the same is hereby dismissed, and it is further

ORDERED that the five-day suspension imposed by respondent, which suspension was stayed by my order as hereinabove set forth, be hereby restored to become effective at 3:00 a.m. Sunday, October 12, 1952, and to terminate at 3:00 a.m. Friday, October 17, 1952.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - SALE FOR OFF-PREMISES CONSUMPTION IN OTHER THAN ORIGINAL CONTAINER IN VIOLATION OF R. S. 33:1-2 - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

FRANK KUBERSKI & ROMAN GRANRATH
33 Beacon Street
Newark 3, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-506, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Abe W. Wasserman, Esq., Attorney for Defendant-licensees.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded not guilty to the following charge:

"On Friday, August 8, 1952, at about 11:30 P.M., you sold an alcoholic beverage not pursuant to and within the terms of your license as defined by R.S. 33:1-12(1) in that you sold a pint bottle of Schenley whiskey in other than the original container for consumption off the licensed premises, in that you opened such container and thereby destroyed its original character before making delivery thereof to the purchaser; in violation of R.S. 33:1-2."

The evidence herein discloses that William Fields, a bartender employed by defendants, sold a pint bottle of Schenley whiskey for \$2.78 to an ABC agent in defendants' premises at some time after 10:00 p.m. on the evening of August 8, 1952. It is admitted that the bartender broke the seal on the bottle before he placed the bottle on the bar. It is alleged, however, that the sale was made for consumption on the licensed premises and not for consumption off the licensed premises.

R.S. 33:1-12(1) permits the holder of a plenary retail consumption license to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, but permits the holder of such a license to sell alcoholic beverages for consumption off the licensed premises only in original containers. When the bartender broke the seal on the bottle, the bottle was no longer an "original container" within the meaning of the term as used in R.S. 33:1-12(1). Re Slatnick and Weinstein, Bulletin 864, Item 10. Hence, the question to be determined is whether the sale was made for on-premises consumption (which is permitted by the terms of the license) or whether the sale was made for off-premises consumption (which is beyond the terms of the license held by defendants).

On behalf of defendants, the bartender testified that the agents purchased a number of drinks of alcoholic beverages for two females who were seated at the bar with them; that the agent who purchased the bottle of Schenley whiskey told the bartender that he was running low on funds and wanted the bottle so as to provide further drinks for the females. The bartender further testified that when the agent started to leave the premises with the bottle in his pocket he requested him to come back but that the agent refused to do so. The testimony of the bartender as to the alleged conversation between the bartender and the agent is corroborated by a man who testified

that he was a patron in defendants' premises at the time in question. However, this witness said that there were two empty stools between the stool on which he was seated at the bar and the stool on which the agent was seated.

The agent who purchased the bottle testified that he and another agent entered defendants' premises shortly after 11:00 p.m. on August 8, 1952, and took seats at the bar. This agent testified that, about a half-hour later, he asked the bartender if he could have a pint of Schenley whiskey off the back bar to take home to a party; that the bartender took a pint bottle of whiskey from the back bar and, while his back was partly towards the agents, cut the seal on the bottle and removed the tax stamp; that the bartender then turned around, placed the bottle on the bar, and took a ten-dollar bill from the agent; that, after the bartender rang up \$2.78 on the cash register and returned to the agent his change, the agent put the bottle in his pocket and left the premises. The second agent corroborated the aforesaid testimony of the first agent. Both agents denied that they purchased any alcoholic beverages for two females or for any other persons at the bar. Both agents denied the testimony of the bartender and patron as to the alleged conversation at the time the sale was made, and both denied that the bartender requested the agent to return after he started to leave the premises. It also appears that, after the agents identified themselves, the bartender admitted the sale but said he thought it was all right provided he broke the seal. The bartender's remark in explanation of the sale is understandable in view of the fact that a sale after 10:00 p.m. of alcoholic beverages in an original container for off-premises consumption would constitute a violation of Rule 1 of State Regulations No. 38.

After considering all the testimony, I am satisfied that the agents are telling the truth. I do not believe the testimony of the bartender or the patron. Hence, I find defendants guilty as charged.

Defendants have a prior record. Effective July 18, 1949, the local issuing authority suspended their license for a period of five days after they pleaded non vult to a charge of selling alcoholic beverages to a minor. The minimum period of suspension for a violation of the character set forth herein is fifteen days. Re Langer and Bershaw, Bulletin 907, Item 5. Taking into consideration the prior record of defendants, I shall suspend defendants' license for a period of twenty days.

Accordingly, it is, on this 6th day of October, 1952,

ORDERED that Plenary Retail Consumption License C-506, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Frank Kuberski & Roman Granrath, for premises 33 Beacon Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. October 14, 1952, and terminating at 2:00 a.m. November 3, 1952.

DOMINIC A. CAVICCHIA
Director.

7. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1952 THROUGH SEPTEMBER 30, 1952

	JULY	AUG.	SEPT.	TOTAL
ARRESTS:				
Total number of persons arrested	28	26	31	77
Licensees and employees	10	12	8	30
Bootleggers	10	12	23	45
ABC agent impersonators	0	2	0	2
SEIZURES:				
Motor vehicles - cars	1	2	5	8
- trucks	0	0	2	2
Stills - over 50 gallons	0	0		4
- 50 gallons or under	6	2		14
Mash - gallons	1,415.00	0	37,113.10	37,528.10
Distilled alcoholic beverages - gallons	1.50	52.32	83.37	137.23
wine - gallons	1.23	4.80	21.50	27.53
Brewed malt alcoholic beverages - gallons	60.62	25.61	3.38	89.61
RETAIL LICENSEES:				
Premises inspected	1,001	943	755	2,597
Premises where alcoholic beverages were gauged	720	745	783	2,248
Bottles gauged	13,321	13,592	12,840	39,753
Premises where violations were found	118	98	64	280
Violations found	152	157	68	377
Type of violations found:				
Unqualified employees	66	80	18	164
Disposal permit necessary	6	4	18	28
Other mercantile business	10	6	1	17
Reg. #33 sign not posted	2	2	2	6
Probable fronts	3	0	0	3
Prohibited signs	1	1	1	3
Gambling devices	0	1	0	1
Other violations	64	63	28	155
STATE LICENSEES:				
Premises inspected	9	21	16	46
License applications investigated	12	6	13	31
COMPLAINTS:				
Complaints assigned for investigation	473	439	437	1,349
Investigations completed	412	414	405	1,231
Investigations pending	(156)	(173)	163	163
LABORATORY:				
Analyses made	110	134	120	364
Refills (from licensed premises) - bottles	2	5	2	9
Bottles from unlicensed premises	47	17	35	69
IDENTIFICATION BUREAU:				
Criminal fingerprint identifications made	26	28	30	84
Persons fingerprinted for non-criminal purposes	437	216	265	918
Identification contacts made w/other enforcement agencies	314	247	199	760
Motor vehicle identifications via N.J. State Police teletype	11	2	10	23
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	15	14	23	52
Violations Involved:				
Sale to minors	7	6	7	20
Sale during prohibited hours	6	6	7	19
Permitting females at bar	0	0	6	6
Sale to non-members by clubs	1	1	1	3
Permitting immoral activity on premises	2	0	0	2
Permitting gambling (wagers) on premises	1	0	0	1
Failure to afford view into premises during prohibited hours	0	1	0	1
Permitting lottery activity (raffle) on premises	0	0	2	2
Sale on credit by retail licensee	0	0	0	1
Permitting females to tend bar	0	1	0	1
Cases instituted at Division	18	11	17*	46
Violations involved:				
Sale to minors	10	5	5	20
Sale during prohibited hours	4	1	2	7
Permitting immoral activity on premises	2	2	2	6
Possessing illicit liquor	2	1	1	4
Hindering investigation	2	2	0	4
Unauthorized transportation	1	0	1	2
Failure to afford view into premises during prohibited hours	1	1	0	2
Permitting hostesses on premises	1	1	0	2
Possession of lottery tickets	1	0	0	1
Employing unqualified persons	1	0	0	1
Licensee working while intoxicated	1	0	0	1
Aiding and abetting sale during prohibited hours	1	0	0	1
Sale to intoxicated persons	0	1	0	1
Sale beyond scope of license	0	2	0	2
Sale below minimum resale price	0	0	2	2
Fraud and front	0	0	2	2
Delivery without bona fide invoice	0	0	1	1
Retailer soliciting house-to-house	0	0	1	1
Permitting pin ball machines on premises	0	0	1	1
Permitting females at bar	0	0	1	1
Conducting business as nuisance	0	0	1	1
Wholesaler accepting ordinary checks from retailer in default	0	0	1	1
Possessing contraceptives on premises	0	0	1	1

*Includes one cancellation proceeding for conduct of other mercantile business on consumption licensed premises

DISCIPLINARY PROCEEDINGS (Cont'd):

	JULY	AUG.	SEPT.	TOTAL
Cases brought by municipalities on own initiative and reported to Division	4	6	4	14
Violations involved:				
Sale to minors	2	2	2	6
Sale during prohibited hours	1	3	2	6
Permitting bookmaking on premises	1	1	0	2
Sale to intoxicated persons	0	2	0	2
HEARINGS HELD AT DIVISION:				
Total number of hearings held	30	24	34	88
Appeals	3	3	3	9
Disciplinary proceedings	14	15	17	46
Eligibility	9	4	9	22
Seizures	1	2	3	6
Applications for license	3	0	2	5
PERMITS ISSUED:				
Total number of permits issued	5,546	928	965	7,439
Employment	1,864	295	219	2,378
Solicitors'	2,818	57	105	2,980
Disposal of alcoholic beverages	124	39	62	225
Social affairs	349	380	373	1,102
Special wine	93	19	63	175
Miscellaneous	298	138	143	579

Dated: October 8, 1952.

DOMINIC A. CAVICCHIA
Director.

8. SOLICITORS' PERMITS - A SOLICITOR MAY NOT BE AN OFFICER OF A BONA FIDE CLUB HOLDING A LIQUOR LICENSE. (IN RE FRANK, BULLETIN 113, ITEM 8 MODIFIED) - A SOLICITOR MAY NOT BE EMPLOYED BY OR CONNECTED IN ANY BUSINESS CAPACITY WITH ANY RETAIL LICENSEE.

October 2, 1952

Stanley Pryga
Perth Amboy, N. J.

Dear Sir:

Reference is made to your conference of September 26, 1952 with our Mr. Wood concerning our letter of September 22, 1952 to you, advising that you may not hold an office in or be employed by Polish Falcons District #1, Inc., a retail liquor licensee, and at the same time be employed by F. & A. Distributing Co., a wholesale licensee.

During the conference you called attention to a 1936 ruling by the then Commissioner in Re Frank, Bulletin 113, Item 8, permitting an officer of a club licensee to receive a solicitor's permit. That ruling was based solely upon Section 40 of the Alcoholic Beverage Control Act (now R. S. 33:1-43), which prohibits any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any.... wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages.... There the only question was whether the statute applied to solicitors and, if so, whether mere officeholding in a licensed club gave one an "interest" in the club's business. However, since that ruling, by revision of our Pamphlet Rules and Regulations dated July 1, 1950, we promulgated Rule 7 of State Regulations No. 14, which provides that "No holder of a Solicitor's Permit shall be interested, directly or indirectly, in any retail license or any business conducted thereunder, or shall be employed by or connected in any business capacity with any retail licensee". (Underscoring added) This Rule, since broader and more specific than the statute, necessarily supersedes the ruling in Re Frank.

Accordingly, as indicated by our previous letter, you must terminate your officeholding in and employment by the retailer club or your employment by the wholesaler.

Very truly yours,
DOMINIC A. CAVICCHIA
Director.

9. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILING TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against LEI CLUB, A CORP. 27 Church Street Paterson 1, N. J., Holder of Plenary Retail Consumption License C-126, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Lei Club, A Corp.; Defendant-licensee, by John Coccoziello, Pres. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging it (1) sold, served and permitted the consumption of alcoholic beverages upon its licensed premises between 3:00 a.m. and 7:00 a.m. on Saturday, August 30, 1952; and (2) failed to have its licensed premises closed during said prohibited hours; both in violation of a local ordinance.

An ordinance of the City of Paterson prohibits the sale of alcoholic beverages on weekdays between 3:00 a.m. and 7:00 a.m. and requires that licensed premises (with exceptions not here material) shall be closed between said hours.

The file discloses that two ABC agents arrived in the vicinity of defendant's licensed premises at 2:00 a.m. on Saturday, August 30, 1952. At approximately 2:05 a.m., one agent entered the defendant's premises located in the basement of the building and took a seat at the bar. At that time a female entertainer was singing various popular songs and continued to entertain the patrons until 2:30 a.m. A male orchestra then started playing and continued until 2:59 a.m., when the members of the orchestra left the premises. The head waiter, within hearing distance of the ABC agent, advised a bartender, subsequently identified as Emil J. Penny, that "It's one minute to three". In response thereto the head waiter was cautioned by the bartender to lock the front door. The ABC agent ordered and was served with a drink by another bartender, Guido Borella, at 3:15 a.m. About 3:28 a.m., the other ABC agent (who had meantime remained outside) gained admission to defendant's licensed premises when some patrons were leaving; he observed nine patrons seated at the bar and drinks of alcoholic beverages in front of them; he ordered a drink of alcoholic beverages from Guido Borella but was told by him, "It's too late". Both ABC agents thereupon made known their identity to Emil J. Penny, who denied he had served any drinks after 3:00 a.m. John Coccoziello, President of defendant corporation, who was present on the morning in question, was advised of the violation. Guido Borella admitted the violation but contended that since there was no clock in the premises he was unaware of the time. John Coccoziello, aforementioned, an officer of the corporate licensee, was requested by the ABC agents to give a written statement but he declined to do so.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days. Re Croal, Bulletin 935, Item 8. 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, 1952,

ORDERED that Plenary Retail Consumption License C-126, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Lei Club, A Corp., 27 Church Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. October 14, 1952, and terminating at 3:00 a.m. October 24, 1952.

DOMINIC A. CAVICCHIA
Director.

10. MORAL TURPITUDE - CONVICTION FOR COMMERCIALIZED GAMBLING HELD TO CONSTITUTE CONVICTION OF CRIME INVOLVING MORAL TURPITUDE UNDER FACTS OF CASE.

October 10, 1952.

Re: Case No. 635

On January 11, 1952, subject was fined \$1,000.00 by a Judge of a County Court after he had pleaded non vult to a charge of bookmaking, in violation of R. S. 2:135-3.

On October 16, 1951, during a visit by prosecutor's detectives to the licensed premises where subject was employed as a bartender, a racing sheet, two betting slips and a sum of money were found in subject's pockets. The detectives seized \$50.00 of the money found on his person after he admitted that said sum was accepted by him as bets on horse races.

Subject testified that he accepted the bets for approximately four to six weeks previous to his apprehension; that his weekly receipts from the bets averaged between \$80.00 and \$90.00; and that he was the sole operator of the gambling business.

A review of all the evidence presented herein discloses that subject engaged in bookmaking as a principal. Hence, I believe that the crime of bookmaking, to which subject pleaded non vult on January 11, 1952, involves the element of moral turpitude. Cf. Re Case No. 626, Bulletin 892, Item 9.

I recommend, therefore, that subject be advised that, in the opinion of the Director, he has been convicted of a crime involving moral turpitude; that he is disqualified by virtue of R.S. 33:1-25 from holding a liquor license in this state; and that in the opinion of the Director any licensee who employs him, or permits him to be connected in any capacity with his business, would subject his license to suspension or revocation. R.S. 33:1-26.

Clarence E. Kremer
Attorney.

APPROVED:
DOMINIC A. CAVICCHIA
Director.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES 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

CHARLES E. HEIM & JOHN A. HEIM T/a MAPLEWOOD CORDIAL SHOP 164 Maplewood Avenue Maplewood, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-5, issued by the Township Committee of the Township of Maplewood.

Charles E. Heim & John A. Heim, Defendant-licensees, Pro Se. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

The file discloses that, on September 13, 1952, an employee of defendants sold a 4/5 quart bottle of Solera Cream Sherry to an ABC agent for \$1.47. The minimum consumer resale price of this product, as listed under the name "Solera" in the Minimum Consumer Resale Price List then in effect, was \$1.50.

In alleged mitigation of this offense, defendants point out that the brand name of this product had been listed in some earlier Minimum Consumer Resale Price Lists under the name "Frank Schoonmaker Selections"; that, when their clerk failed to find the item listed under that name in the current list, he referred to the earlier lists and, finding it priced there at \$1.47, so priced it for the purpose of the aforementioned sale. As in Re Taylor, Bulletin 784, Item 7, defendants claim, in effect, that they were misled by reason of the change in the indexing of the brand name. However, as was pointed out by the then Commissioner in that case, "This contention is without merit since the positions of a particular item may vary from list to list by necessity. The only sure way is to check the entire price list against inventory. The failure to find a listed item cannot be accepted as an excuse. To hold otherwise would open wide the door for violation, deliberate or innocent. The alleged mitigation urged by defendant constitutes no reason for imposition of less than the established minimum penalty for violations of this type. Cf. Re Grant Lunch Corporation v. Driscoll, 320 U.S. 801, Bulletin 601, Item 10."

Defendants have no prior adjudicated record. I shall suspend the 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 Town Hall Delicatessen, Inc., Bulletin 935, Item 10.

Accordingly, it is, on this 9th day of October, 1952,

ORDERED that Plenary Retail Distribution License D-5, issued by the Township Committee of the Township of Maplewood to Charles E. Heim & John A. Heim, t/a Maplewood Cordial Shop, 164 Maplewood Avenue, Maplewood, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. October 20, 1952, and terminating at 9:00 a.m. October 25, 1952.