

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

May 31, 1961.

BULLETIN 1389

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (RENTING ROOMS FOR ILLICIT SEXUAL INTERCOURSE) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR WARNING AS TO IMMORAL ACTIVITY - LICENSE SUSPENDED FOR 210 DAYS. (Branchburg Township).
2. DISCIPLINARY PROCEEDINGS (NEWARK) - CHARGES ALLEGING SALE DURING SUSPENSION OF LICENSE, SALE IN VIOLATION OF STATE REGULATION NO. 38 AND LOCAL REGULATION, AND FAILURE TO KEEP PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION DISMISSED - DEFENDANT FOUND GUILTY AS TO CHARGE ALLEGING THAT HE HINDERED AN INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 180 DAYS.
3. APPELLATE DECISIONS - ABRAMSON v. LAKEWOOD AND LLOYD'S LIQUORS, INC.
4. DISCIPLINARY PROCEEDINGS (Union City) - SALES TO MINORS - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.
5. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED. (Belmar).
6. DISCIPLINARY PROCEEDINGS (Oxford) - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. STATE LICENSES - NEW APPLICATIONS FILED.

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

May 31, 1961

BULLETIN 1389

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(RENTING ROOMS FOR ILLICIT SEXUAL INTERCOURSE) - SALE IN
VIOLATION OF STATE REGULATION NO. 38 - PRIOR WARNING AS TO
IMMORAL ACTIVITY - LICENSE SUSPENDED FOR 210 DAYS.

In the Matter of Disciplinary)
Proceedings against)

JOSEPH GOLAK, t/a ROYAL DINER)
Route #22)
Branchburg Township)
PO North Branch, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-1, issued by the Township)
Committee of Branchburg Township.)

Robert W. Wolfe, 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 pleaded not guilty to the following charges:

- '1. On July 16 and 20, 1960, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for the renting of rooms, the offering to rent and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.
- '2. On Wednesday, July 20, 1960, at about 10:40 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Seagram's Seven Crown Blended Whiskey, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
- '3. On Wednesday, July 20, 1960, while an Inspector and Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35.'

"The testimony of Agents V and N discloses that they visited defendant's licensed premises on July 16 and July 20, 1960; that on the 16th, they entered the premises at approximately 12:30 a.m.

and although there was no one attending bar, a man (subsequently identified as William Elbaun) came from 'the diner section' and served drinks to them; that during a discussion about renting a cabin located to the rear of the premises, Agent V stated to Elbaun that they did not want a cabin for that night, but would want one at a future time because they lined up a couple of 'married broads' and 'were looking for a place to get laid'; that Elbaun remarked, 'That's okay. Bring one for me'; that when the agents inquired whether it was necessary to sign a guest register Elbaun said, 'Yes, you can sign anything you want' and that no luggage was necessary and that the price was about 'six dollars'; that Elbaun 'shuttled' back and forth between the diner and the barroom.

"The testimony of the agents further discloses that at 10:15 p.m. on July 20th, Agent F accompanied them to the vicinity of defendant's licensed premises at which time they had in their respective possession a five-dollar bill and two one-dollar bills (the serial numbers of which had previously been recorded on a piece of paper); that Agents V and N entered the barroom and observed that defendant was tending bar and inquired of him about Elbaun who was in the diner; that the defendant asked if they had anything planned and Agent V said they had previously spoken to Elbaun about 'a couple of married broads' and their desire to obtain a cabin for the purpose of engaging in sexual intercourse; that defendant said, 'How do I know you're not a couple of ABC men?' and then related an incident that happened some time prior thereto when defendant's wife unknowingly rented a cabin to two ABC agents; that the defendant stated he fixed them good because the rear cabins were not part of licensed premises; that Agent V then said to Agent N in the presence of defendant, 'I don't think I want to rent these cabins out. I don't want to get in trouble because these girls are not our wives and we wouldn't afford to get arrested' and defendant remarked that they should 'not worry because State troopers and ABC men don't go out until after twelve o'clock'; that the sanitary facilities and the price for the use of the cabins were discussed and defendant agreed to accept five dollars apiece from the agents; that each agent gave the defendant a five-dollar 'marked' bill as aforementioned and defendant obtained a book from the end of the bar and each signed a name therein; that about 10:40 p.m. Agent V purchased a pint bottle of whiskey and thereafter the agents followed the defendant from the premises to 'a house trailer' located about 75 feet from said licensed premises; that in the trailer were a living room, kitchen, bath and two bedrooms which could be partitioned by use of a sliding door; that at the suggestion of the defendant, Agent N went back with him to the barroom where Agent N purchased four bottles of soda and then returned to the trailer; that at 11:05 p.m. Agent F, State Trooper Theodore W. Soliwada and defendant came into the trailer and Agent F asked Agent V who was seated on a bed what he was doing there; that in response thereto Agent V answered that he was waiting for his girl friend with whom he was to engage in illicit sexual intercourse; that defendant produced the two five-dollar bills from his trouser pocket which had been given to him by the agents, and remained silent until Agent V stated that the pint of whiskey found in the trailer was purchased at 10:40 p.m., when the defendant said it had been purchased at 9:30 p.m. Thereafter all left the trailer and proceeded to the licensed premises from where Agent V entered the diner and identified himself to Elbaun who recalled a previous visit and conversation in connection with renting a cabin at a future date for the purpose of engaging in illicit sexual relations and also, his (Elbaun's) remark to bring a girl for him; that while in the barroom, defendant prevented Agent F from inspecting a drawer by insisting that it was necessary for him to have a search warrant for such purpose; that Agent F suggested defendant call his lawyer but defendant replied that he was unaware where his lawyer would be at that time of night;

that defendant in the presence of three male patrons, ridiculed their positions as ABC agents and exclaimed that he could not understand that they were not afraid to walk the streets for fear of being 'bumped off'.

"Agent F testified that at 10:15 p.m. on July 20th, while Agents V and N entered defendant's premises, he remained in his car parked across the highway therefrom; that at 10:35 p.m. he saw Agent N leave the premises at which time he (Agent F) drove to the State Police Barracks in Somerville and about 11:00 p.m. returned with Trooper Soliwada; that both entered the defendant's barroom where Agent F showed the defendant his credentials; that at the request of Trooper Soliwada, defendant produced the register book and upon inspection thereof, Agent F saw names written therein by the agents; that Trooper Soliwada, the defendant and he went to the trailer and upon finding Agent V in one bedroom, he (Agent F) asked him what he was doing there, to which Agent V replied, 'I'm waiting for my girl'; that he then asked Agent V, 'Are you waiting for your girl or for your wife?' and Agent V said, 'I'm waiting for my girl friend'; and then said he rented the room from defendant for five dollars; that he (Agent F) asked whether he told defendant he was bringing his wife or girl friend and Agent V said, 'I told him I was taking my girl friend here' that when he questioned defendant if that were true, the defendant said, 'No. They told me they were taking their wives here'; that thereafter he (Agent F) went into the adjoining bedroom and asked the same questions of Agent N; that when interrogated about the pint bottle of whiskey, defendant said it was purchased at 9:30 p.m.; that defendant produced the 'marked' five-dollar bills paid to him by the agents; that Agent V made out a receipt for the register book and when defendant was requested to sign it, he said, 'I'll sign nothing. I'm no sucker'; that upon their return to the barroom he (Agent F) went in back of the bar and was in the process of examining the contents of a drawer when defendant approached him and said, 'Come on, come on, you got no search warrant'; that when told he needed none, defendant said, 'I don't know nothing'; that a discussion arose about the provision in the application where the licensee agrees to permit a search of the licensed premises and defendant, raising his arms, said, 'I don't know nothing. You got no search warrant. That's what lawyers are for'; that when he requested defendant to contact his lawyer, he said that he did not know where he was at that hour of the night; that defendant then discredited the agents' positions and made other derogatory remarks.

"The three agents were subjected to extensive cross-examination with the pertinent testimony given by them substantially similar to that given during direct examination.

"Three witnesses in addition to defendant, testified on his behalf.

"Trooper Soliwada testified that just before 11:00 p.m., Agent F appeared at the Somerville State Police Barracks and, after a conversation of 'approximately five minutes' he and Agent F got into his car and, after a drive of five minutes, reached defendant's premises; that they spoke to the defendant who produced the register book which Agent F examined; that conversation took place regarding the trailer and its occupants; that he, Agent F and defendant went to the trailer where a discussion about a 'bottle' allegedly sold on the licensed premises and about the rental of the trailer for the purpose of bringing women; that it was vague and 'Mr. Golak was constantly in the negative as far as supplying answers to the agents' questions at the time'; that the entire group went to the barroom where the agents walked around in the premises and his attention was drawn to where Agent F and defendant were by the defendant raising his voice; that defendant 'was rather vehement in stating of Gestapo tactics or something like that, but just what it was I couldn't say'.

"Harold Waldron testified that he was in defendant's premises on the evening of July 20th and recalled the agents wanting to rent a cabin but did not remember what defendant said; that he heard defendant say, 'Put it in your pocket. We haven't got much time' and when the agents walked out he (Waldron) 'looked up and it wasn't up to the ten mark yet'; that when defendant and Agent N were speaking earlier in the evening Agent N said 'their wives was coming'; that the two agents and the Trooper came 'I would say fifteen to a half an hour in there', and he heard defendant say, 'You can't go in there, I won't let you go in there. There is money in there' and then 'the ABC man hollered over to the fellow over there, "He won't let me go through. He won't let me go", and then said, "Write that down"'. "

"William Elbaun testified that he worked part time in the defendant's diner as a 'short-order cook' and remembered on July 16th speaking to Agents V and N when one of them said, 'If we bring girl friends, could we rent a cabin?' and he answered, 'I guess so', continuing, 'Bring one for me, but I don't rent the cabins out'; and then walked out to the diner amused at the incident; that on July 20th he recalled the conversation which had taken place on the 16th of July, but laughed because to him 'it didn't make sense'.

"Defendant testified that on July 20th Agents V and N told him that they wanted to rent two cabins as 'We have our wives in the shopping center later. We're going to wait for them', and when he asked, 'Where is the wives?', they said, 'They come later'; that when they signed the register he called their attention that it wasn't complete and was told that they were going to finish the writing when the wives came in; that he sold them a pint at two minutes to ten and said, 'Here, put that in the pocket'; that in a half hour the trooper came in and when it was ascertained that the trailer was rented to the agents, all proceeded thereto; that when Agent F saw the agents he inquired what they were doing there and they answered, 'We're waiting for lay'; that he didn't know what they meant by that expression; that he became angry when Agent F, without his permission, attempted to open a drawer and he forbid the agent to inspect the contents thereof.

"I have considered all of the evidence adduced herein and am satisfied that defendant rented the trailer to the agents with full knowledge of the purpose for which the place was ostensibly hired. It is apparent that such was the case because when the discussion between the agents and defendant occurred concerning the renting of a cabin, defendant appeared skeptical about the matter and related the incident when his wife rented cabins to ABC agents on a prior occasion.

"I am convinced from the record that the agents have given an accurate portrayal of the incidents and conversations which took place upon the licensed premises which resulted in the renting of the trailer to them for the alleged purpose. Although Waldron's main interest was in the baseball game being televised that night it is not quite understandable that he watched the clock to ascertain when the pint of whiskey was purchased by the agents and heard the agents say that they intended to bring their wives. The testimony of Waldron that the pint bottle of whiskey was purchased before 10:00 p.m. is inconsistent with his statement that fifteen minutes to a half hour thereafter the State Trooper came into the premises, especially when the Trooper testified that he arrived at defendant's premises after 11:00 p.m.

"Defendant's attorney, in the memorandum filed on defendant's behalf, contends that Agent V's testimony was contradictory as Elbaun helped out as a part time short order cook and never rented cabins. There is no contention by the Division that Elbaun rented a cabin to the agents but that he merely discussed the subject with them. Insofar as defendant's testimony is concerned, it is unimpressive and wholly unreliable.

"It is recommended, therefore, that an order be entered finding defendant guilty on the three charges preferred herein.

"Defendant has a prior adjudicated record. Effective June 1, 1942 his license was suspended by the local issuing authority for three days for permitting gambling on his licensed premises; effective November 26, 1943, his license was suspended by the State Commissioner for thirteen days for an Election Day violation (Bulletin 595, Item 12); effective October 18, 1948, his license was suspended by the local issuing authority for twenty days for an 'hours' violation; effective October 27, 1950 his license was suspended for sixty days for possession of (a) pin ball machines on his licensed premises and (b) sale of contraceptives (Bulletin 887, Item 5) and on September 14, 1959 a warning with respect to the same type of activities as in Charge 1 was given defendant. In view of the fact that the dissimilar violations occurred more than five years ago, they will not be considered in fixing the penalty recommended herein. The recent warning given defendant based on the type of activities allegedly occurring, similar to such as now is contained in Charge 1, might well warrant revocation of his license.

"However, because of the number of years defendant has been a licensee, it is recommended that an order be entered suspending his license on Charge 1 for a period of one hundred eighty days (Re Sabatini, Bulletin 1197, Item 1) and for an additional thirty days (Re Schlosser, Bulletin 1243, Item 4) on charges 2 and 3, making a total suspension of two hundred ten days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by defendant's attorney within the time limited by Rule 6 of State Regulation No. 16.

I have carefully examined all of the evidence adduced herein, including the transcript of testimony, the Hearer's Report and the written exceptions and argument submitted pursuant thereto. I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 3rd day of April, 1961,

ORDERED that Plenary Retail Consumption License C-1, for the 1960-61 licensing year, issued by the Township Committee of Branchburg Township to Joseph Golak, t/a Royal Diner, for premises on Route #22, Branchburg Township, be and the same is hereby suspended for two hundred and ten (210) days, to commence at 2:00 a.m., Monday, April 10, 1961, and to remain in effect until the expiration of said license at midnight, June 30, 1961; and it is further

ORDERED that any renewal or transfer of said license shall be and remain under suspension until 2:00 a.m., Monday, November 6, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

- 2. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING SALE DURING SUSPENSION OF LICENSE, SALE IN VIOLATION OF STATE REGULATION NO. 38 AND LOCAL REGULATION, AND FAILURE TO KEEP PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION DISMISSED - DEFENDANT FOUND GUILTY AS TO CHARGE ALLEGING THAT HE HINDERED AN INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against

AUGUSTINE DE SIMONE
 201 Bruce Street &
 46 - 14th Avenue
 Newark 3, N. J.

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption License C-373, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

 Stanley Blasi, 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 pleaded not guilty to the following charges:

- '1. On Sunday, December 4, 1960, at about 9:05 a.m., during the suspension of your license by the Director of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey from 2:00 A.M. Monday, October 10, 1960 to 2:00 A.M. Saturday, April 8, 1961, you allowed, permitted and suffered the sale, service and delivery of an alcoholic beverage, viz., a pint bottle of Vincove Port California Wine, in and upon your licensed premises; in violation of Rule 32(a) of State Regulation No. 20.
- '2. On Sunday, December 4, 1960, at about 9:05 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Vincove Port California Wine, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
- '3. On Sunday, December 4, 1960, at about 9:05 A.M., you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of an alcoholic beverage, viz., a pint bottle of Vincove Port California Wine on your licensed premises; in violation of Section 3:1(a) of the Revised Ordinances of the City of Newark, adopted October 15, 1952, as amended December 5, 1956.
- '4. On Sunday, December 4, 1960, at about 9:05 A.M., you failed to have your entire licensed premises closed; in violation of Section 3:1(b) of the Revised Ordinances

of the City of Newark, adopted October 15, 1952, as amended December 5, 1956.

- '5. On Sunday, December 4, 1960, while an Inspector and Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35.'

"It appears from the testimony herein that at 5:45 a.m. on Sunday, December 4, 1960, when defendant's license was under suspension, three ABC agents (hereinafter referred to as Agents J, S and Sp) arrived in the area of defendant's licensed premises. At about 6:05 a.m. Agent J proceeded to the immediate vicinity of defendant's premises and while standing across the street therefrom, observed that the place was closed but a night light in the interior was on. The said agent rejoined his fellow agents who were some distance away from the premises and at 7:00 or 7:15 a.m., upon his return to the vicinity of defendant's premises, he noticed that the night light had been extinguished and a man (subsequently identified as the defendant) was standing at a window inside the tavern. Agent J approached the premises to go into the side entrance thereof when a man came out and said that the place was closed. Agent J again rejoined his fellow agents who were still at a post of observation on South Orange Avenue. At 8:00 a.m. he again returned to the vicinity of defendant's premises and stationed himself on Fourteenth Avenue and, while there, he observed, on four or five occasions, males approach defendant, then follow him through the side entrance and, on each occasion, after a few minutes, both the men and defendant would return to the street. During this time two automobiles drove up, one parked at the curb, the other 'double parked', and the occupants of the cars alighted from their respective cars and, after speaking to defendant, entered the premises coming out a short time thereafter. Agent J for the third time rejoined his fellow agents, from where they drove to Fourteenth Avenue. They parked on the opposite side of the street about two blocks from defendant's premises and during a ten minute period, they observed on three or four occasions a number of people in the company of defendant going into and coming out of the side door of the licensed premises. Agent J left the car, walked toward the premises and when about thirty yards away he observed four males walk up to defendant and enter the premises. About five minutes thereafter, the four came out followed by another man (subsequently identified as Edgar Lee Artis) whom Agent J had previously seen enter the licensed premises. The man wore an unbuttoned lumber jacket showing a suit coat, the pockets of which appeared empty. About 9:05 p.m. Artis came out of the side door ahead of defendant and Agent J observed a bottle in his right hand suit pocket. Artis crossed the street, entered a restaurant located about thirty yards away where he remained about one or two minutes, and without making any purchase, came out of the establishment and walked toward 'a small street'. Agent J then signalled to his fellow agents, stopped Artis and identified himself as an ABC agent. The fellow agents drove up where Agent J and Artis were and also identified themselves to Artis, who got into the automobile and stated that he had purchased the bottle of Vincove wine found on his person from the defendant about five or ten minutes before the agents stopped him. Artis gave a voluntary statement which was reduced to writing and signed by him. Agent J then left the car and walked to the side door of defendant's premises in front of which the defendant and another man were standing. The other agents, accompanied by Artis, drove up and the agents identified themselves and, in the presence of defendant, Artis asserted that defendant had sold him the

wine to which accusation the defendant made no reply. Agent S requested defendant to permit him to enter the premises to complete the investigation but defendant stated that the place was closed. When Agent J requested defendant to permit the agents in the premises, he said, 'No, I won't let you guys in there. I'll call a cop. You guys stay outside and wait. I'll call a cop'. When defendant again refused the request, Agent J said, 'If you will not let us in we'll leave'. He replied, 'I'm not letting you in'. The agents then departed

"Artis, called as a witness for the Division, identified as his the pint bottle of Vincove port wine but denied that he had purchased it from defendant on the date in question. After the witness had identified his signature on a statement given when the alleged violation took place, the attorney appearing for the Division alleged surprise and confronted the witness with the contents of the statement which contradicted his testimony with reference to the purchase of the bottle of wine from defendant.

"Defendant testified that his license was then under suspension and would continue so to be until April 8, 1961; that he carries Vincove Port California wine but did not have any in stock on the date of the hearing; that his last purchase of said brand was made 'quite some time ago, before the suspension'; that he had been going to the licensed premises each morning and night to put water in the boiler, feed the dog and 'put the lights on and off'; that on the day in question he arrived at the premises between 8:45 and 9:00 a.m.; that he 'put the light out, I let the dog out, and I went and had coffee about fifteen or twenty minutes, that was it'; that he went back to the tavern, which he entered by use of the main front entrance on the corner of Bruce Street and Fourteenth Avenue; that there is a side entrance to the tavern about fifteen feet from the main entrance and between ten and fifteen feet from the side entrance is a door leading to a hallway at the rear of the licensed premises, which hallway also leads to the upstairs apartments; that between 10 and 10:30 a.m. he locked the tavern and remained outside and talked to eight or nine fellows; that while there a car occupied by three men (subsequently found to be two agents and another man) parked double and one asked if he were DeSimone; that he was asked to step inside but told the man, 'I am closed. I'm not opening the door. If you want me to open just give me the privilege of making a phone call to the local police so I can be protected, and I'll let you in'; that 'As I was going to the front door not these agents but the other agent says, "Let's get out of here" and they left'; that he did not remember talking to any other individuals that morning other than to say 'Hello'; that although he had seen Artis before, he did not remember seeing him that morning; that the key for the door to the tavern from the hallway which leads to the upstairs apartments is retained solely by him and that, 'It stays in the tavern at all times'; that at no time that day had he entered the hallway leading to the upper floors and at no time did he see any persons entering or leaving said hallway.

"Joseph A. Miele, an accountant and teacher, testified that he is employed by defendant to take care of his books and that on November 7, 1960 he made a physical inventory of the defendant's stock of alcoholic beverages but found no Vincove wines on hand on that date.

"Joseph Calabrese and Thomas Cataldo testified that on the morning of December 4th, they were talking to the defendant on the corner outside his licensed premises when the agents arrived; that they requested leave of defendant to enter the premises but he told them that before doing so he desired to call the police.

"After the parties hereto had rested their respective cases the attorney appearing for and on behalf of the Division under date

of January 9, 1961 notified the attorney for defendant that on January 18, 1961 at 10:00 a.m. he would apply to the Hearer to reopen the matter in question for leave to permit further cross-examination of the defendant and to present such testimony by way of rebuttal as may be deemed necessary and proper on the basis of the testimony given at any such hearing. The attorney appearing for the Division also set forth in said notice that if such application is granted and any matter is produced which the defendant or his attorney, in the opinion of the Hearer, could not be reasonably anticipated, he would enter no objection to a request for a continuance of the hearing to another date to afford defendant the opportunity to produce evidence by way of defense or rebuttal.

"On the return date of the aforesaid notice, the attorney for defendant objected to the reopening of the case because, in substance, such procedure would be detrimental to the defendant.

"In Healy v. Billias, 17 N.J. Super. 119, Judge McGeehan, speaking for the Appellate Division, stated:

'The order of proof and the reopening of a case on rebuttal rest within the sound judicial discretion of the trial court. Carlo v. The Okonite-Callender Cable Co., 3 N.J. 253 (1949); Hannon v. D., L. & W. R. R. Co., 98 N. J. L. 191 (E. & A. 1922). We will not interfere with determinations within the field of judicial discretion merely because we believe we would have decided differently. Smith v. Smith, 17 N. J. Super. 128 (App. Div. 1951). We interfere only when we are satisfied that in the particular circumstances of the case the discretion as exercised results in a manifest denial of justice, Carlo v. The Okonite-Callender Cable Co., above; Pirozzi v. Acme Holding Company of Paterson, 5 N. J. 178 (1950); In the Matter of the Accounting of the Executors of Israel Koretzky, 8 N. J. 506 (1951); Pepe v. Urban, 11 N. J. Super. 385 (App. Div.), certif. denied 7 N. J. 80 (1951); Smith v. Smith, above.

'In this case no circumstances have been brought to our attention which would give even the slightest support to a finding that a manifest denial of justice resulted.'

"After listening to the arguments of the attorney I, as Hearer, was satisfied that under the circumstances there was nothing presented by the defendant which might in any manner support a finding that if the case were reopened for the purposes stated a manifest denial of justice would result. Thus, in the exercise of discretion, the case was reopened for the admission of proper testimony in pursuance of the Division's application.

"The undisputed evidence disclosed that on October 5, 1960 (five days prior to the effective date of suspension of defendant's license) a shipment of Vincove wine consisting of thirty-three cases of which the total gallonage was 97.2. The defendant testified at the prior hearing that no purchase had been made of Vincove wine for quite some time before the suspension. Defendant attempted to explain this apparent discrepancy in his testimony as to the time of the last purchase of Vincove wine in that he had not purchased said brand of wine but that it was purchased by his manager who does all the buying of alcoholic beverages.

"The record herein discloses that, when Artis was called as

a witness by the Division, he denied under oath that he had purchased the bottle of wine in defendant's licensed premises but testified that he had purchased the wine at a store on South Orange Avenue. He stated that he went into the building where the defendant's premises are located to call on a friend who lived upstairs. After Artis so testified, the attorney appearing for the Division pleaded surprise and read the questions and answers contained in a written statement he had given to the agents on the day in question. Artis again maintained it was not true but, in any event, such statement could be used only to neutralize his testimony and could not be used to establish the truth of the pending charge with reference thereto. State v. D'Adame, 84 N.J.L. 386 (Ct. of E & A).

"Agent J testified that at 6:05 a.m. he proceeded to the immediate vicinity of defendant's premises and observed that it was closed but that a night light was on; that he left the vicinity but returned at 7:00 or 7:15 a.m. and that the light had been turned off and there was a man, subsequently identified as the defendant, inside the tavern standing near the window and when Agent J attempted to enter the building by the side entrance a man (not the defendant) came and informed him that the place was closed. Agent J left the vicinity but again returned at 8:00 a.m. and observed defendant standing outside the premises and on four or five separate occasions after men approached him, would go with the men through the side door of the building and after a few minutes had elapsed on each occasion defendant and these men would return to the sidewalk. Furthermore, on one occasion he saw two cars drive up, double park while the occupants alighted, spoke to defendant and all went inside the building by way of the side door, all returning through the same to the sidewalk. Agent J testified that he rejoined his fellow agents who were in a parked car some distance away and after he entered the car it was driven by a fellow agent to Fourteenth Avenue where they parked about two blocks away and on the opposite side of the street from which the defendant's premises are located. Agent J left the car and when about thirty yards from defendant's premises he observed defendant and four men enter the side door followed by another man who was subsequently identified as Artis who had a pint bottle of Vincove wine on his person. Subsequently, after the agents identified themselves, the defendant was confronted by Artis who asserted that defendant had sold him the bottle of wine. The defendant remained silent in the face of such accusation.

"The law appears to be well settled in this state that in civil actions as well as criminal action when an assertion is made in the presence of a party to a suit, and not contradicted by him, it is received in evidence on the ground that his silence is an admission of the truth of what was said. The degree of credit due to such tacit admission is to be estimated by the jury under the circumstances of each case. Donnelly v. State, 26 N.J.L. 463, cited and followed in State v. D'Adame, supra.

"I am satisfied after consideration of all the testimony herein that the agents have given an accurate account of the events on the morning in question. I am further satisfied that the defendant's testimony was fabricated to such an extent as to be unworthy of belief. The leaky boiler as one of the excuses for defendant's presence twice daily at the licensed premises then under suspension, continuing for such a long period of time, is far from plausible. Moreover, the testimony of defendant that he had not seen anyone at any time entering the side door of the premises is unbelievable.

"I might add that defendant testified that the agents had properly identified themselves but still he refused to let them (for reasons best known to himself) enter the premises under the pretext that he wanted to call the local police. If he had nothing to hide, such action on his part was inconceivable.

"After having carefully considered all of the evidence presented herein, I find that on the morning in question, while in the licensed premises and during the period of suspension of his license, the defendant sold the bottle of wine to Artis, in violation of the alcoholic beverage law, the rules and regulations and local ordinance applicable thereto. Moreover, I find that the defendant at the time failed to have his entire licensed premises closed in accordance with the section of the ordinance pertaining thereto. The defendant testified that although he was satisfied of the bona fides of the agents, he denied them access to the licensed premises to complete their investigation. By such conduct on the part of the defendant, he delayed and hindered the proper inspection of the licensed premises.

"Under the circumstances aforesaid, I recommend that defendant be found guilty on all of the charges preferred herein.

"Defendant has a prior adjudicated record. Effective July 15, 1957, his license was suspended by the Director for five days for accepting orders at a place other than the licensed premises. Bulletin 1184, Item 5. Effective January 4, 1960, his license was suspended for fifteen days by the local issuing authority for sale of alcoholic beverages during prohibited hours. Again effective October 10, 1960, his license was suspended for one hundred eighty days by the Director for (a) sale during license suspension, (b) sale on election day, (c) an 'hours' violation and (d) hindering an investigation. Bulletin 1362, Item 2. The suspension of defendant's license for the latter violation is still in force and will continue until 2:00 a.m., Saturday, April 8, 1961. In view of the defendant's past record, together with the serious charges in the matter now under consideration, it is recommended that an order be entered suspending defendant's license for a period of one hundred eighty days. Although the seriousness of the charges and past record might well warrant a revocation of defendant's license (Re Kirdzik, Bulletin 637, Item 2), I have recommended the aforesaid suspension for the reason that prior to defendant's acquisition of the license, the place had been operated as and appears particularly suited for a licensed premises. However, it is further recommended that defendant make every effort possible to transfer the license in question to one worthy to be associated in the alcoholic beverage industry in this State."

Pursuant to Rule 6 of State Regulation No. 16, the attorney for the licensee filed Exceptions and Argument to the Hearer's Report and the attorney appearing for the Division filed Answering Argument. In addition, oral argument was heard by me. I have carefully considered the entire record of the testimony of the hearings, the Exceptions and Answering Argument and oral argument. I concur with the Hearer that the evidence sufficiently establishes guilt as to Charge No. 5, but do not agree with his further recommendation that the evidence warrants a finding of guilt on the other charges, Charges Nos. 1, 2, 3 and 4. There is no disagreement with the Hearer that silence, in face of an accusation, may be considered a tacit admission of guilt in a disciplinary proceeding. However, such principle does not apply to this case. In general, a finding of guilt may be made only in those cases where the affirmative proof is sufficient to independently and otherwise establish the guilt of the licensee. The present case does not have that affirmative independent proof. The agents did not observe any unauthorized alcoholic beverage activity on the licensed premises and Artis, the principle witness for the Division, denied under oath at the hearing that any alcoholic beverages were sold to him on the licensed premises on that Sunday morning. Aside from any thought that some sinister factor may have caused Artis to refute his signed and sworn statement, nevertheless, as Director, I must decide cases only on the basis of legal proof. In this case the signed and sworn statement of Artis cannot be considered by me, and properly was not considered by the Hearer, as

probative proof. As used by the attorney for the Division, its only purpose was to neutralize the testimony of Artis. It is not the general practice of this Division to find a licensee guilty in a disciplinary proceedings solely on an admission of guilt made by him. Cf. Re Korobow, Lazar and Korobow, Bulletin 1101, Item 6. Accordingly, I find the licensee not guilty on Charges Nos. 1, 2, 3 and 4.

However, as stated, I concur with the Hearer's recommendation that the licensee be found guilty as to Charge No. 5 and therefore, find him guilty as to that charge. Additionally, I concur in the Hearer's recommended penalty of suspension of the license for one hundred eighty (180) days, but conclude that the full measure of such penalty should apply to the finding of guilt as to Charge No. 5. Were I to concur with the Hearer's recommendation of finding the licensee guilty on all the charges, I would unhesitatingly revoke the license outright. In view of the basic seriousness of Charge No. 5, viz., "hindering" and particularly since this conviction follows so closely the licensee's conviction on the charges on which he is presently under suspension, one of which charges was also for "hindering", and that this is the licensee's fourth adjudicated violation in disciplinary proceedings in less than five years, the recommended penalty of one hundred eighty (180) days is more fitting to the finding of guilt on Charge No. 5 alone

Accordingly, it is, on this 5th day of April, 1961,

ORDERED that Plenary Retail Consumption License C-373, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Augustine De Simone, for premises 201 Bruce Street, and 46 - 14th Avenue, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m., Saturday, April 8, 1961; and it is further

ORDERED that any renewal for the 1961-62 licensing year or transfer of said license shall be and remain under suspension until 2:00 a.m., Thursday, October 5, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - ABRAMSON v. LAKEWOOD AND LLOYD'S LIQUORS, INC.

SEYMOUR ABRAMSON,)
Appellant,)
v.)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LAKEWOOD, AND)
LLOYD'S LIQUORS, INC., t/a)
LLOYD'S LIQUORS,)
Respondents.)

ON APPEAL
ORDER

James F. McGovern, Jr., Esq., Attorney for Appellant.
Michael P. Silverman, Esq., Attorney for Respondent Township Committee.
Silverman & Silverman, Esqs., by Ruben D. Silverman, Esq.,
Attorneys for Respondent Lloyd's Liquors, Inc.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee whereby it transferred License D-10 issued to respondent Lloyd's Liquors, Inc., from 129 East Fourth Street to 1721 Madison Avenue, Lakewood.

Prior to the hearing herein, the attorney for appellant advised me in writing that his client desires to withdraw said appeal and that the attorneys for both respondents consented to said withdrawal. No reasons appearing to the contrary,

It is, on this 5th day of April 1961,

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

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

BENNY'S TAVERN
915 Bergenline Avenue
Union City, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-66, heretofore issued to you by the Board of Commissioners of the City of Union City.

Defendant-licensee, by Thomas De Marlo, Vice-President.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to three minors and permitted the consumption of such beverages by said minors in and upon its licensed premises; in violation of Rule 1 of State Regulation No. 20.

On Wednesday, February 15, 1961 two ABC agents entered defendant's licensed premises at about 8:30 p.m. and remained there until 1:30 a.m. the following morning. Between 9:15 and 9:45 p.m. two ABC agents observed five youths at the bar consuming beer served to them by Anthony C. Urspruch, defendant's bartender, who requested no written proof of their ages. When one of the youths who appeared to be an adult left the premises, the agents identified themselves to the others and ascertaining that three of them were John ---, age 17, George ---, age 20, and Paul ---, age 20, they seized the remaining portions of the drinks for evidential purposes and obtained signed and sworn statements from the minors and from the bartender confirming the aforesaid violation.

Defendant has a prior adjudicated record. Effective June 10, 1957 its license was suspended for ten days by the Director for sale to minors. Re Benny's Tavern, Inc., Bulletin 1177, Item 5, and effective June 23, 1957, its license was suspended for five days by the local issuing authority for an "hours" violation. The minimum penalty imposed for sale of alcoholic beverages to three minors, one of whom is only 17 years of age, is twenty-five days. Re Kronenwett, Bulletin 1292, Item 7. However, because of the prior similar violation which occurred within a five year period, the penalty will be increased by ten days (Cf. Re Graham, Bulletin 1134, Item 5), to which five days will be added for the dissimilar violation which occurred within the same period (Re Richman, Bulletin 1186, Item 10), making a total

suspension of forty days. Five days will be remitted for the plea entered herein making a net suspension of thirty-five days.

Accordingly, it is, on this 4th day of April 1961,

ORDERED that Plenary Retail Consumption License C-66 issued by the Board of Commissioners of the City of Union City to Benny's Tavern, 915 Bergenline Avenue, Union City, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 3:00 a.m., Tuesday, April 11, 1961, and terminating at 3:00 a.m., Tuesday, May 16, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

5. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

Auto. Susp. #195)	
In the Matter of a Petition)	
to Lift the Automatic Suspension)	
of Plenary Retail Consumption)	ON PETITION
License C-5, issued by the Board)	ORDER
of Commissioners of the Borough)	
of Belmar to)	
)	
LOUIS SILVERSTEIN)	
t/a LOU'S TAVERN)	
807 F Street)	
Belmar, N. J.)	

Charles Frankel, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from the petition filed herein that on March 30, 1961, Louis Silverstein, petitioner herein, was fined the sum of \$100 and costs after he pleaded nolo contendere in the Monmouth County Court to an indictment for selling alcoholic beverages to a minor in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of his license for the balance of its term. R.S. 33:1-31.1 The license has not been picked up because of the pendency of this proceeding.

It further appears from the petition and the records of this Division that the local issuing authority suspended petitioner's license for forty days after finding him guilty of a charge alleging sale to the same and another minor. It further appears that, upon an appeal from said action to the Director, I affirmed the action of the local issuing authority and reimposed said suspension to commence at 2 a.m. Monday, February 13, 1961, and to terminate at 2 a.m. Saturday March 25, 1961. Silverstein v. Belmar, Bulletin 1381, Item 5. Said suspension having been served, I shall grant the request to lift the automatic suspension.

Accordingly, it is, on this 4th day of April 1961,

ORDERED that the statutory automatic suspension of said license C-5 be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL CERESNAK)
t/a DUTCH HILL HOTEL)
Belvidere Avenue)
Oxford, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Oxford.)

Francis L. Thompson, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

Acting upon information received from the Police Department of Washington Borough, ABC agents obtained signed, sworn statements from William ---, Robert --- and Frederick ---. In his statement William --- says that he is 17 years of age and a high school student; that on the evening of February 18, 1961, he and Frederick rode in a car driven by Robert; that, after the car stopped near defendant's premises, he alone entered the premises at about 8 p.m. and his companions remained in the car. William --- says that he took a seat at the bar near a man whom he did not know and who offered to buy him a drink; that defendant served him a glass of beer and took the price of the drink from the stranger's money on the bar. William further says that, after he finished his drink of beer, he asked defendant for three quarts of beer; that defendant requested proof of age and that he showed defendant a driver's license which he had borrowed from another person; that he did not sign any written representation as to his age and that, after defendant sold him the three quarts of beer, he left the premises with the beer and returned to the car. The statements of Robert --- and Frederick --- set forth that William --- entered defendant's premises empty-handed and returned with three quarts of beer which were later consumed by them and William --- elsewhere.

In attempted mitigation defendant's attorney has submitted to me a letter wherein he says that his client's failure to require proper proof of age was due to the fact that he was very ill on the evening in question.

Defendant has a prior record. Effective January 9, 1956, the local issuing authority suspended his license for ten days for selling during prohibited hours. Since this dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. Re Hastings, Bulletin 1358, Item 7. I shall suspend defendant's license for twenty days, the minimum suspension imposed in cases involving sale to a 17-year-old minor. Re Felzot, Bulletin 1377, Item 5. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 5th day of April 1961

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Oxford to Michael Ceresnak, t/a Dutch Hill Hotel, for premises on Belvidere Avenue, Oxford, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Monday, April 17, 1961, and terminating at 2 a.m. Tuesday, May 2, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.

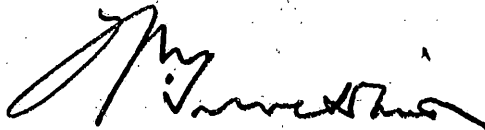
Eastern Brewing Corporation
t/a Colonial Brewing Company, Garden State Brewing Company,
Colony House Brewing Company, Waukee Brewing Company and
Circle Brewing Company
332, 334 and 329 North Washington Street
Hammonton, New Jersey
Application filed May 22, 1961 for
Additional Limited Brewery License.

Katharina Lee
t/a Jacob Lee - Winery
U. S. Highway Route #130
Mansfield Township, New Jersey
Application filed May 9, 1961 for Limited Winery License for
1961-62. Previous license held by Katharina Lee, Executrix of
the Estate of Jacob Lee.

Katharina Lee
t/a Jacob Lee - Winery
U. S. Highway Route #130
Mansfield Township, New Jersey
Application filed May 9, 1961 for Limited Winery License for
1961-62. Previous license held by Katharina Lee, Executrix of
the Estate of Jacob Lee.

Frank H. & Lilian K. Bohlen
t/a Holly Distributors
36 East South Avenue
Mount Holly, New Jersey
Application filed May 22, 1961 for State Beverage Distributor's
License for 1961-62. Previous license held by Frank H. Bohlen,
individually.

Frederick-Ward Associates, Inc.
92 Liberty Street
New York, New York
Application filed May 22, 1961 for
Plenary Wholesale License.



William Howe Davis
Director.