

STATE OF NEW JERSEY
Department of Law and Public Safety Deputy Director Saum
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

January 10, 1967.

BULLETIN 1709

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1709

January 10, 1967.

1. APPELLATE DECISIONS - STOCKTON HOTEL OPERATING CO. v. SEA GIRT.

Stockton Hotel Operating Co., Inc., t/a Stockton Hotel,)	
)	ON APPEAL
Appellant,)	
v.)	CONCLUSIONS
)	and
Borough Council of the Borough of Sea Girt,)	ORDER
)	
Respondent.)	

Ralph A. Yacavino, Esq., Attorney for Appellant
D. Joseph DeVito, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent Borough Council of the Borough of Sea Girt (hereinafter Council) whereby on June 21, 1966 it denied an application for a place-to-place transfer of the appellant Stockton Hotel Operating Co., Inc. (hereinafter Stockton) plenary retail consumption license for the 1965-66 period for the reason that the plans and specifications did not conform to a variance granted to the owner of the site upon which the proposed building was to be built, and the appellant further appeals from the action of respondent Council which also denied its application for renewal of its said plenary retail consumption license for the period expiring on June 30, 1967, for premises to be constructed at First Avenue, Sea Girt.

In order that the issue raised by the petition of appeal and the answers filed herein may be fully understood, a brief summary of the facts reflected in the record is necessary.

Stockton was the owner and operator of a seasonal resort hotel containing more than fifty rooms, and was the holder of a plenary retail consumption license for said premises which were totally destroyed by fire. It filed plans and specifications on December 20, 1965, with the building inspector and these plans have been the subject of further revision pursuant to litigation in the New Jersey Superior Court which resulted in an order of the said court on June 24, 1966, requiring revision of the said plans on or before September 1, 1966. The plans call for the construction of a modern colonial style five-story U-shaped fire-proof hotel containing two hundred twenty-five guest rooms. It also contains facilities for the operation of a plenary retail consumption license.

On June 6, 1966 Stockton filed an application for a transfer of its 1965-66 plenary retail consumption license from its fire-destroyed premises to a new building to be erected at the same location. On June 17, 1966 Stockton also filed with

Council an application for renewal of the said license for the period expiring June 30, 1967. On June 21, 1966 respondent denied the application for the reason that it would not approve the plans and specifications because they did not conform to a variance granted to Stockton. They took no action on Stockton's application for renewal.

In its petition of appeal Stockton contends that the respondent Council was in error in denying the application for transfer for the following reasons: (1) the said plans and specifications substantially conform to the said variance; (2) Council "lacked authority to deny said application for the reason stated"; (3) Council's action was "arbitrary, capricious and unreasonable"; (4) the members of Council failed to examine the plans and specifications prior to denying Stockton's application; (5) the action of Council was "contrary to law".

In its answer Council sets up four separate defenses which in substance set forth that plans and specifications filed by Stockton "have not been approved" by Council and found acceptable to it "as required by N.J.S.A. 33:1-24 and State Regulation 6, Rule 2 of the Rules and Regulations of the Division of Alcoholic Beverage Control".

The sole and dispositive issue herein is whether the Council abused its discretion in denying the said application for the reasons stated, namely, that it had not approved the plans and specifications filed with the Council by Stockton.

It has been well established that a license may be granted for or transferred to premises not yet constructed subject to a special condition (R.S. 33:1-32) that the premises be completed in accordance with plans and specifications filed with the issuing authority. Passarella v. Board of Commissioners of Atlantic City, 1 N.J. Super. 313 (App. Div. 1949); Watson et al. v. Camden and Valentine, Bulletin 1010, Item 1; Re Harris, Bulletin 183, Item 11; Re Salter, Bulletin 184, Item 8. In the instant case, as noted, plans and specifications were filed with the Council for the building as originally contemplated in keeping with the procedural requirement set forth in Re Salter, supra, and the purpose of such requirement (see Re Murphy, Bulletin 389, Item 11) and the pertinent specifications requirements of Rule 4 of State Regulation No. 6 appear to have been adequately fulfilled.

The Council has apparently misunderstood its function with respect to its consideration of plans and specifications filed at the time of an application for transfer. Primarily it is the duty of a local issuing authority to pass on the adequacy of licensed premises from the plans and specifications and not examine every nook and cranny of the specifications in order to determine whether it meets the requirements of the building code or of any variances. This would be an impossible burden imposed on a local issuing authority, and in fact in this case it was admitted that none of the members actually examined the revised plans and specifications.

The fact is that the revised plans and specifications contain substantially the same identical areas for the operation of its liquor license facilities as that contained in the original plans and specifications.

Frank A. Palmieri, president of Stockton, testified that the amended plans are "identical in every respect in so far as

perimeter, in so far as dimensions, except that on the face of them, the notations agreed upon, which were all structural, had been inscribed and the only structural exception is that the north and south wing has been reduced by approximately ten feet, but the narrowness of the original wings have been fattened so that the area was made up and the area is the same"; that actually the amended plans reflect "99.99 per cent" of the same plans as were originally submitted.

The Council, as hereinabove stated, must limit itself to policy questions and must determine whether the best interests of the public require the grant or denial of such application. In Lublimer et al. v. Paterson and Hutchins, 59 N.J. Super. 419 (1960) Judge Gaulkin stated that a violation of the building code, health code and the like would not in itself prevent a local issuing authority from granting a license to a particular premises but, before the liquor licensee could operate the establishment, he must comply with all applicable statutes and ordinances. Piccirillo v. Lyndhurst, Bulletin 1578, Item 3.

In Lublimer, on appeal to the Supreme Court of New Jersey (33 N.J. 428), Justice Jacobs, speaking for the court, stated at p. 441 that "unlike the zoning board of adjustment's function" in these matters, which is "essentially factfinding rather than policy-making, the municipal issuing authority's function in determining whether additional licenses shall be allowed in the municipality or in particular areas, is primarily a policy determination on the basis of facts which are generally undisputed." The Lublimer case concerned itself with an alleged violation of a zoning restriction and, in commenting thereon, the Supreme Court stated, at p. 435:

"In dealing with that contention the Appellate Division properly pointed out that the grant of Mr. Hutchins' application would in nowise permit him to operate in contravention of any applicable zoning provisions; if he ever attempts to so operate, relief is readily available. See Garrou v. Teaneck Tryon Co., 11 N.J. 294 (1953)."

While we do not deal herein with a zoning situation, the same general principle applies. The Council cannot arbitrarily withhold approval of the grant of an application simply because certain structural questions have arisen which are not related to the operation of the liquor licensed facilities. The purpose of plans and specifications is to generally inform the public of the general suitability and availability of the proposed premises for such operation and, as hereinabove noted, the actual license will not be processed until the building meets all statutory and local regulatory requirements.

The reservation and apprehension of Council now appear to be resolved and obviated. Subsequent to the hearing on this appeal de novo I was advised by counsel for Stockton in a letter dated August 22, 1966, as follows:

"In reference to hearing de novo heard by you on Appeal of Stockton Hotel Operating Co., Inc. from rejection of transfer from premises to premises of Stockton Plenary Retail Consumption License, please be advised that by an unanimous vote of the Borough Council of the Borough of Sea Girt a motion was passed on

August 16, 1966 approving and directing the Building Inspector to issue a Building Permit for the construction of a new hotel in accordance with plans and specifications, as amended pursuant to Superior Court order of June 24, 1966.

"Building Permit was delivered over to Stockton Hotel, Inc. by the Building Inspector of Sea Girt on August 17, 1966.

"This supplemental data may be noted in the record of Appeal, which still pends before you.

"I am sending a copy of this letter to D. Joseph DeVito, Borough Attorney of Sea Girt."

In reply to this letter the attorney for the Council, in a letter dated October 5, 1966, stated:

"In reply to your letter of September 30th, this is to advise you that the governing body of Sea Girt did by resolution dated August 16, 1966 unanimously approve and directed the building inspector to issue a building permit for the construction of a new hotel in accordance with plans and specifications as amended pursuant to Superior Court Order of June 24, 1966. I might advise you further, however, that the aforementioned building permit was issued upon plans and specifications other than those which were filed with the application for the transfer of the Retail Plenary Consumption license. These plans were necessarily revised because of the judgment entered by the Superior Court on June 24th.

"I enclose herewith a certified copy of the minutes of a special meeting of the Borough Council held on August 16th, at which time the issuance of the Building Permit was authorized.

"I do hereby consent to Mr. Yacavino's letter of August 22nd and this letter together with the enclosure, being made a part of the record in these proceedings."

The accompanying resolution set forth the following:

"Communications: Letter from Harry Kallop, Joseph Garrity and James Edelen dated August 16, 1966, recommended the issuance of Building Permit to the Stockton Hotel, Inc."

I am therefore persuaded that the Council's refusal to approve the application for transfer was erroneous and unreasonable.

Transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary or unreasonable, the action will be reversed. Club Warren, Inc. v. Newark, Bulletin 1585, Item 4; Tompkins v. Seaside Heights, Bulletin 1398, Item 1. In the instant matter it should be pointed out that the proposed new building will be constructed on the same site as the previous fire-destroyed building so that there can be no proper, valid question raised as to the public interest involved especially since a liquor license had been operated at these premises for a long period of time prior thereto. Furthermore, no challenge has been made to the reputation or character of the applicant. As the court pointed out in Bivona v. Hock et al., 5 N.J. Super. 118:

"... the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based. Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940)."

After an examination of the entire record, it is my determination that respondent's denial of the transfer and the renewal of the license thereupon was unreasonable, arbitrary and an abuse of its discretion. I therefore recommend that its action be reversed.

Since the 1965-66 license has expired, I further recommend that an order be entered reversing Council's action in denying the transfer of the 1965-66 license, directing it to grant such transfer subject to the special condition that the license shall not be endorsed and effective, and to grant its application for a renewal license for the 1966-67 period at the proposed premises subject to the special condition that said license shall not be actually issued unless and until the proposed new premises are first duly completed in keeping with the filed and approved plans and specifications.

Conclusions and Order

No exceptions to the Hearer's Report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the transcript, exhibits and the Hearer's report, I concur in the findings of the Hearer and adopt his recommendations.

Accordingly, it is, on this 7th day of November 1966,

ORDERED that the action of the respondent be reversed, and that the respondent is ordered to transfer the license in accordance with the application filed by the appellant; and it is further

ORDERED that the respondent is directed to grant appellant's application for renewal of its said license for the period expiring June 30, 1967, subject to the express condition that the said license shall not actually be issued before the premises, as described in the plans and specifications prepared and submitted by the appellant and found acceptable, shall first be completed.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - INDECENT ENTERTAINMENT - HOSTESS ACTIVITY - PRIOR RECORD DISREGARDED BECAUSE OF CHANGE OF STOCKHOLDERS - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Ask, Inc.
 t/a Hialeah Club
 1917 Atlantic Avenue
 Atlantic City, N. J.,
 Holder of Plenary Retail Consumption License C-57 for the year 1965-66 and C-126 for the year 1966-67, issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS and ORDER

 Edwin H. Helfant, Esq., Attorney for Licensee
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on February 15, 1966 it (1) permitted lewdness and immoral activity (indecent entertainment) on the licensed premises, in violation of Rule 5 of State Regulation No. 20 and (2) permitted female entertainers to accept drinks at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20.

With respect to the first charge, reports of investigation disclose that several female entertainers performed standard striptease routines accompanied by bumps and grinds and suggestive posturings and gesturings. With respect to the second charge, the reports disclose that the entertainers drank at the expense of male patrons, specifically a champagne "cocktail" (champagne over ice) at a charge of \$2.75 and a partially filled split (6.4 ounces) of the cheapest domestic champagne (retailing at 59 cents) at a charge of \$8.25.

Licensee has a previous record of suspension of license by the Director for fifty-five days effective November 16, 1965 for hostess activity and possessing an alcoholic beverage not truly labeled (Re Ask, Inc., Bulletin 1641, Item 2; Bulletin 1651, Item 8). However, there has been a complete change of stockholders of the licensee corporation in the meantime.

The prior record of suspension disregarded by reason of intervening change of stockholders (Re Gary's Bar, Inc., Bulletin 1691, Item 6), the license will be suspended on the first charge for thirty days (Re Venetian Bar & Grill, Inc., Bulletin 1687, Item 6), and on the second charge for thirty days (Re Ask, Inc., supra; cf. Re Golden Boy's, Inc., Bulletin 1668, Item 3), or a total of sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 7th day of November 1966,

ORDERED that Plenary Retail Consumption License C-126, issued by the Board of Commissioners of the City of Atlantic City to Ask, Inc., t/a Hialeah Club, for premises 1917 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for fifty-five (55) days, commencing at 7 a.m. Tuesday, November 15, 1966, and terminating at 7 a.m. Monday, January 9, 1967.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION AFTER DISMISSAL OF APPEAL TO APPELLATE DIVISION.

In the Matter of Disciplinary)
Proceedings against)

Cambar, Inc.)
t/a Ray's Tavern)
202 So. 5th St.)
Camden, New Jersey)

AMENDED ORDER

Holder of Plenary Retail Consumption)
License C-179, issued by the Municipi-)
pal Board of Alcoholic Beverage)
Control of the City of Camden.)

Molotsky, Rabkin & Gross, Esqs., by Ira Rabkin, Esq.,
Attorneys for Licensee.

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

BY THE DIRECTOR:

On September 26, 1966, I entered Conclusions and Order herein suspending the license for thirty days for permitting indecent entertainment on the licensed premises. Re Cambar, Inc., Bulletin 1703, Item 1.

Prior to the effectuation of the order of suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension pending the outcome of the appeal.

On October 28, 1966, the appeal was dismissed by consent. The suspension may now be reimposed.

Accordingly, it is, on this 9th day of November, 1966,

ORDERED that Plenary Retail Consumption License C-179, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Cambar, Inc., t/a Ray's Tavern, for premises 202 South 5th Street, Camden, be and the same is hereby suspended for thirty (30) days, commencing at 7:00 a.m. Wednesday, November 16, 1966, and terminating at 7:00 a.m., Friday, December 16, 1966.

JOSEPH P. LORDI
DIRECTOR

4.

ACTIVITY REPORT FOR NOVEMBER 1966

ARRESTS:		
Total number of persons arrested - - - - -		19
Licensees and employees - - - - -	11	
Bootleggers - - - - -	8	
SEIZURES:		
Stillis - 50 gallons or under - - - - -		1
Alcohol - gallons - - - - -		13
Mash - gallons - - - - -		165
Distilled alcoholic beverages - gallons - - - - -		1.71
Wine - gallons - - - - -		20.45
Brewed malt alcoholic beverages - gallons - - - - -		20.16
RETAIL LICENSEES:		
Premises inspected - - - - -		604
Premises where alcoholic beverages were gauged - - - - -		520
Bottles gauged - - - - -		9,197
Premises where violations were found - - - - -		72
Violations found - - - - -		118
Unqualified employees - - - - -	67	Prohibited sign - - - - - 4
Application copy not available - - - - -	18	Disposal permit necessary - - - - - 1
Other mercantile business - - - - -	8	Other violations - - - - - 14
Reg. #38 sign not posted - - - - -	6	
STATE LICENSEES:		
Premises inspected - - - - -		22
License applications investigated - - - - -		10
COMPLAINTS:		
Complaints assigned for investigation - - - - -		373
Investigations completed - - - - -		345
Investigations pending - - - - -		283
LABORATORY:		
Analyses made - - - - -		66
Refills from licensed premises - bottles - - - - -		41
Bottles from unlicensed premises - - - - -		1
IDENTIFICATION:		
Criminal fingerprint identifications made - - - - -		13
Persons fingerprinted for non-criminal purposes - - - - -		354
Identification contacts made with other enforcement agencies - - - - -		226
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		2
Violations involved - - - - -		2
Sale to minors - - - - -	1	
Sale during prohibited hours - - - - -	1	
Cases instituted at Division - - - - -		33
Violations involved - - - - -		43
Possessing liquor not truly labeled - - - - -	9	Permitting immoral acty. on prem. - - - - - 1
Permitting lottery acty. on prem. - - - - -	7	Conducting business as a nuisance - - - - - 1
Sale to minors - - - - -	6	Permitting hostesses on premises - - - - - 1
Sale during prohibited hours - - - - -	4	Serving female at bar (local reg.) - - - - - 1
Hindering investigation - - - - -	3	Permitting foul lang. on premises - - - - - 1
Permitting bookmaking on premises - - - - -	2	Purchase from improper source - - - - - 1
Beverage Tax Law non-compliance - - - - -	2	Unauthorized transportation - - - - - 1
Unqualified employee - - - - -	1	Permitting gambling apparatus on prem. - - 1
Fraud and front - - - - -	1	
Cases brought by municipalities on own initiative and reported to Division - - - - -		15
Violations involved - - - - -		18
Sale to minors - - - - -	11	Unqualified employee - - - - - 1
Conducting business as a nuisance - - - - -	2	Permitting foul lang.on prem. - - - - - 1
Permitting gambling on premises - - - - -	1	Permitting brawl on premises - - - - - 1
Permitting lottery acty. on prem. - - - - -	1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		34
Appeals - - - - -	3	Seizures - - - - - 1
Disciplinary proceedings - - - - -	21	Tax revocations - - - - - 1
Eligibility - - - - -	7	Applications for license - - - - - 1
STATE LICENSES AND PERMITS ISSUED:		
Total number issued - - - - -		1,544
Licenses - - - - -	3	Social affair permits - - - - - 367
Solicitors' permits - - - - -	39	Miscellaneous permits - - - - - 225
Employment permits - - - - -	341	Transit insignia - - - - - 298
Disposal permits - - - - -	46	Transit certificates - - - - - 13
Wine permits - - - - -	212	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued - - - - -	7	
Enforcement files established - - - - -	2	

JOSEPH P. LORDI
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: December 6, 1966

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS - NO REMISSION FOR PLEA ENTERED AFTER HEARING.

In the Matter of Disciplinary Proceedings against)

Jocon Bar & Grill, Inc.)
413-415 Avenue C)
Bayonne, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-23, issued by the Municipal Council of the City of Bayonne)

Licensee, by Adele Conti, President and Treasurer, Pro se.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

After not guilty plea and full hearing thereon, licensee withdrew the not guilty plea and pleaded non vult to charges alleging that (1) on July 24, 1966, it sold drinks of alcoholic beverages to three minors, one age 18 and two age 19, in violation of Rule 1 of State Regulation No. 20, and (2) in its current application for license, it concealed its record of prior suspension of license, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the Director for five days effective August 26, 1963, for possessing an alcoholic beverage not truly labeled (Re Jocon Bar & Grill, Inc., Bulletin 1528, Item 10), non-disclosure of which being the subject of the second charge.

The license will be suspended on the first charge for twenty days (Re Blue Diamond Corp., Bulletin 1614, Item 10) and on the second charge for ten days (Re DiDonato's Bowling Center, Bulletin 1681, Item 4), to which will be added five days by reason of the prior record of suspension of license for dissimilar violation occurring within the past five years (Re Manruff Corp., Bulletin 1691, Item 1), or a total of thirty-five days, without remission for the confessional plea entered after hearing (Re Triple Lake Ranch, Inc., Bulletin 1676, Item 3).

Accordingly, it is, on this 7th day of November, 1966,

ORDERED that Plenary Retail Consumption License C-23, issued by the Municipal Council of the City of Bayonne to Jocon Bar & Grill, Inc., for premises 413-415 Avenue C, Bayonne, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Monday, November 14, 1966, and terminating at 2:00 a.m., Monday, December 19, 1966.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
Labeled - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR
DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5
FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)
Edward & Evelyn Turner)
7008 Park Avenue)
Guttenberg, New Jersey,)
Holders of Plenary Retail Consumption)
License C-32, issued by the Mayor and)
Board of Council of the Town of)
Guttenberg.)

CONCLUSIONS
and
ORDER

Harber & Freesman, Esqs., by Jacob Freesman, Esq.,
Attorneys for Licensees.
Michael J. Mehr, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that (1)
on August 23, 1966, they possessed an alcoholic beverage in one
bottle bearing a label which did not truly describe its con-
tents, in violation of Rule 27 of State Regulation No. 20, and
(2) in their current application for license, they failed to
disclose their record of prior license suspension, in viola-
tion of R.S. 33:1-25.

Licensees have a previous record of suspension of
license by the municipal issuing authority for ten days
effective June 27, 1965, for sale during prohibited hours,
concealment of which being the subject of the second charge.

The prior record of suspension of license for dis-
similar violation within the past five years considered, the
license will be suspended on the first charge for fifteen days
(Re Hotel Morton Company, Bulletin 1622, Item 6), and on the
second charge for ten days (Re DiDonato's Bowling Center,
Bulletin 1681, Item 4), or a total of twenty-five days, with
remission of five days for the plea entered, leaving a net
suspension of twenty days.

Accordingly, it is, on this 3rd day of November 1966,

ORDERED that Plenary Retail Consumption License C-32,
issued by the Mayor and Board of Council of the Town of
Guttenberg to Edward & Evelyn Turner, for premises 7008 Park
Avenue, Guttenberg, be and the same is hereby suspended for
twenty (20) days, commencing at 3 a.m. Thursday, November 10,
1966, and terminating at 3 a.m. Wednesday, November 30, 1966.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against
 Doris I. Ayrer
 t/a Sit 'n Sip Tavern
 Route #130
 Burlington, N. J.
 Holder of Plenary Retail Consumption License C-6, issued by the City Council of the City of Burlington.

CONCLUSIONS and ORDER

 Doris I. Ayrer, Licensee, Pro se.
 David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On June 9, 1966, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages, in bottles which bore labels which did not truly describe their contents, viz.,

One 4/5 quart bottle labeled, 'Vat 69 Scotch Whisky, 86 Proof' and,

One 4/5 quart bottle labeled 'Chivas Regal Scotch Whisky, 86 Proof';

in violation of Rule 27 of State Regulation No. 20."

The testimony indicated that ABC agent B visited the licensed premises (which he described as a barroom) for the purpose of gauging alcoholic beverages in order to determine whether or not the labels on the bottles truly described the contents thereof. He entered the premises on June 9, 1966 at approximately 3:15 p.m. Mrs. Ann McKeone was tending bar. Several bottles were detained as evidence because they appeared to be "off in color and low in proof". Before the agent departed from the licensed premises, a person identified as Milton Walker came in to tend bar. Upon questioning by the agent, Mrs. McKeone and Walker denied tampering with the bottles and denied having knowledge of anyone else tampering with the bottles. In particular, a bottle labeled "Vat 69 blended scotch whisky, 86.8 proof" and a bottle labeled "Chivas Regal blended scotch whisky, 86 proof" were submitted to the Division laboratory for analysis.

John P. Brady, who is an expert in the field of chemical analysis of alcoholic beverages, testified that he analyzed the contents of the two bottles aforementioned.

He found the contents of the Vat 69 bottle to be 81.5 proof instead of 86.8 proof (as indicated on the label) and the contents of the Chivas Regall bottle to be 55.1 proof instead of 86 proof (as indicated on the label). Obviously the bottles bore labels which did not truly describe their contents.

In defense of the charge the licensee contended that she had no knowledge of any variance in the contents of the bottles, that she did not tamper therewith, that she had no knowledge of anyone tampering with the contents thereof, and all her employees were trustworthy.

It should be noted that we are presently dealing with a disciplinary action, and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). The guiding rule in these matters is that the finding must be based on competent legal evidence and grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Although the licensee was apparently sincere in her contentions, her sincerity left unchallenged the testimony of the chemist to the effect that the bottles bore labels which did not truly describe the alcoholic beverages contained therein.

Knowledge on the part of the licensee is not a prerequisite to a finding of guilt.

My evaluation and consideration of the testimony lead me to the conclusion that the Division has established the truth of the charge herein by a fair preponderance of the credible evidence, and I recommend that the licensee be found guilty of said charge.

The licensee has no prior record of suspension of license. I further recommend that the license be suspended for fifteen days (Re Pfeiffer and Howard, Bulletin 1694, Item 6).

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 3d day of November, 1966,

ORDERED that Plenary Retail Consumption License C-6, issued by the City Council of the City of Burlington to Doris I. Ayer, t/a Sit 'n Sip Tavern, for premises on Route #130, Burlington, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Thursday, November 10, 1966, and terminating at 2:00 a.m. Friday, November 25, 1966.

JOSEPH P. LORDI
Director

8. DISCIPLINARY PROCEEDINGS - FOUL LANGUAGE - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 Samjo Corporation)
 t/a Stage Door Bar)
 2228-2230 Atlantic Ave.)
 Atlantic City, N.J.,)
 Holder of Plenary Retail Consumption License C-212, issued by the Board of Commissioners of the City of Atlantic City.)

CONCLUSIONS and ORDER

 Edwin H. Helfant, Esq., Attorney for Licensee
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 24, 1966 it permitted foul and filthy language (by patrons) on its licensed premises, in violation of Rule 5 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for ten days effective May 14, 1962 for possessing alcoholic beverages not truly labeled (Re Samjo Corporation, Bulletin 1430, Item 3; Bulletin 1456, Item 7) and for fifty days effective November 3, 1965 for sale to intoxicated persons, foul language and indecent conduct, and sale to minors (Re Samjo Corporation, Bulletin 1650, Item 1).

The prior record of suspension of license for similar and dissimilar violation occurring within the past five years considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Manruff Corp., Bulletin 1691, Item 1.

Accordingly, it is, on this 7th day of November 1966,

ORDERED that Plenary Retail Consumption License C-212, issued by the Board of Commissioners of the City of Atlantic City to Samjo Corporation, t/a Stage Door Bar, for premises 2228-2230 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for twenty (20) days, commencing at 7 a.m. Tuesday, November 15, 1966, and terminating at 7 a.m. Monday, December 5, 1966.

JOSEPH P. LORDI
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY Labeled - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Felipe Garcia Gonzales
 345 Market Street
 Paterson, New Jersey
 Holder of Plenary Retail Consumption License C-151, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS AND ORDER

Licensee, Pro se.
Michael J. Mehr, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 24, 1966, he possessed alcoholic beverages in five bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Stamato, Bulletin 1693, Item 4.

Accordingly, it is, on this 10th day of November, 1966,

ORDERED that Plenary Retail Consumption License C-151, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Felipe Garcia Gonzales for premises 345 Market Street, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Thursday, November 17, 1966, and terminating at 3:00 a.m. Wednesday, December 7, 1966.

JOSEPH P. LORDI
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - SERVICE OF ALCOHOLIC BEVERAGES OTHER THAN ORDERED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
)	
Helen M. Gleim)	
t/a Sea Gull)	
1302-1310 Boulevard)	CONCLUSIONS
Ship Bottom, N. J.)	AND ORDER
Holder of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Ship Bottom)	
-----)	

Licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 9, 1966, she served an alcoholic beverage other than ordered, in violation of Rule 23 of State Regulation No. 20.

Report of investigation discloses that in response to an order for a mixed drink containing a name brand of Scotch whisky, the order was instead filled with a cheaper off-brand Scotch whisky.

Licensee has a previous record of suspension of license by the municipal issuing authority for fifteen days effective January 5, 1958, for sale to minors.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Robert Treat Hotel Co., Bulletin 1631, Item 9.

Accordingly, it is, on this 14th day of November, 1966,

ORDERED that Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Ship Bottom to Helen M. Gleim, t/a Sea Gull, for premises 1302-1310 Boulevard, Ship Bottom, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, November 21, 1966, and terminating at 2:00 a.m., Thursday, December 1, 1966.

JOSEPH P. LORDI
DIRECTOR

11. STATE LICENSES - NEW APPLICATIONS FILED.

Louis A. Benanito and Gladys Benanito
t/a LAB Soda and Beer Distributors
354 New Brunswick Avenue
Perth Amboy, New Jersey

Application filed December 27, 1966 for
person-to-person and place-to-place
transfer of State Beverage Distributor's
License SBD-20 from Joseph Bruno, t/a
Bruno's Soda & Beer Distributors, S/S
Cliffwood Avenue, approx. 250' East of
N.W. & L.B. RR, West of Locust Street,
Matawan, New Jersey.

Reitman Industries
300 Frelinghuysen Avenue
Newark, New Jersey

Application filed December 29, 1966 for
place-to-place transfer of Plenary
Wholesale License W-42, to include
additional space.

Vincove Winery
675 River Street
Paterson, New Jersey

Application filed January 3, 1967 for
plenary wholesale license.

Austin, Nichols & Co., Incorporated
58th Street & 55th Drive
Maspeth, New York

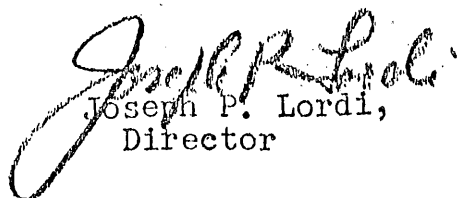
Application filed January 4, 1967 for
plenary wholesale license.

Victor Fischel and Company, Inc.
272 Terminal Avenue West
Clark, New Jersey

Application filed January 5, 1967 for
place-to-place transfer of Plenary
Wholesale License W-20 from 960
Springfield Avenue, Irvington, New Jersey.

The House of Seagram, Inc.
23 Willett Street
Bloomfield, New Jersey

Application filed January 5, 1967 for
place-to-place transfer of Additional
Salesroom License AW-63, under Plenary
Wholesale License W-85, from 960 Springfield
Avenue, Irvington, New Jersey to 268-274 Terminal
Avenue West, Clark, New Jersey.


Joseph P. Lordi,
Director