

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

BULLETIN 1296

September 8, 1959

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New Jersey State Library

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - TRANCHITO v. ELIZABETH.

JOSEPH TRANCHITO AND IGNAZIO TRANCHITO,)
t/a NEW ROMA BAR & GRILL,)
)
Appellants,) ON APPEAL
) CONCLUSIONS AND ORDER
)
v.)
)
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE)
CONTROL OF THE CITY OF ELIZABETH,)
)
Respondent.)

Henry S. Waldman, Esq., Attorney for Appellants.
Jacob Pfefferstein, Esq., by Raymond A. Leahy, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from an alleged denial of an application filed by appellants for a place-to-place transfer of their plenary retail consumption license from premises 40 Spencer Street to premises to be constructed at 455 Third Avenue, Elizabeth. Plans and specifications with reference to the proposed premises were filed at the time of the filing of the application in this matter. Rule 1 of State Regulation No. 6.

"At the time of the hearing before the respondent Board, the chairman thereof disqualified himself from participating in the matter. One member of respondent Board voted in favor of the application and the other member voted in opposition thereto, thus this appeal as from denial.

"The transcript of the proceedings before the respondent Board, by consent of the parties hereto, was marked as an exhibit herein. Additional testimony and exhibits were introduced by the parties to this appeal.

"Ignazio Tranchito, one of the appellants herein, testified that the appellants purchased a plot of land on the corner of Loomis Street and Third Avenue and are contemplating erecting a one-story building thereon. Diagonally across the street is an auto laundry and in the area of the proposed premises Tranchito testified is a trucking business, a confectionery store, a grocery store and a men's club. He further testified that appellants will not have any entertainment in the proposed licensed premises. He gave as a reason for seeking the place-to-place transfer that appellants' present premises are unhealthy and when it rains the sewer backs up and floods the basement, which prohibits use of any part thereof for storage purposes.

"Raymond A. Brown, secretary of the respondent Board, testified that the nearest liquor establishment is approximately 780 feet from the proposed premises. He further testified that there is no house of worship within 200 feet of the proposed

premises and the school which is nearest to the proposed premises is approximately 320 feet therefrom. Moreover, Mr. Brown testified that the neighborhood wherein the license has been requested to be transferred is in a business zone.

"John T. Zielenbach, employed as an engineering draftsman by the engineering department of the municipality, corroborated the testimony of Raymond Brown with reference to the nearest tavern, house of worship and school from the proposed location. He also testified that a school is located approximately 260 feet from appellants' present premises.

"Six persons who reside in the area where the proposed premises are to be constructed testified in opposition to the transfer. Their testimony, in substance, was that if permission were granted to the appellants to operate a liquor establishment at the proposed site, it would be detrimental to the neighborhood. They contend that it would be harmful to the young folks living in the vicinity and that it was their purpose to keep the neighborhood in its present condition. They feared that persons patronizing the appellants' establishment would leave the premises under the influence of liquor and, thus, would be a constant annoyance to the families residing in the area. A petition containing the names of 111 persons, many of whom reside in the vicinity of the proposed premises, was filed in which these persons indicated their objections to the transfer in question.

"The main objections to the transfer of appellants' license to the proposed site appear to be that the objectors are apprehensive that the operation of a liquor establishment in the neighborhood will adversely affect the morals of the young people and depreciate the value of the property in the area. In regard to the moral issue, if the licensed business is properly conducted, it should be no more objectionable to anyone than other types of business now being operated in the area. If the premises are permitted to be conducted in an improper manner, the licensees will subject their license to suspension or revocation. General objections in themselves to the issuance or transfer of a liquor license for premises located in a neighborhood where business establishments are not prohibited, do not justify a refusal. Carriell et al. v. Newark et als., Bulletin 1043, Item 2. Insofar as the contention that the surrounding properties will depreciate in value because of the transfer in question, there has been no proof presented in substantiation thereof.

"At the hearing herein, neither of the two members of the respondent Board who voted on the appellants' application appeared and testified as to their reasons for their respective votes. I have examined the testimony presented on behalf of the appellants but find nothing with reference to the paramount issue of public necessity and convenience. In order to warrant an issuance or a transfer of a liquor license, there must be some indication that the local issuing authority considered whether or not such need, necessity or convenience existed. In Mevoli et als. v. Camden et al., Bulletin 933, Item 1, it was ruled that:

'A decision of a local issuing authority totally disregarding the paramount issue of public necessity and convenience, such as is involved in connection with the discretionary function of transfer of a liquor license, cannot sustain the local action. Indeed, it is tantamount to a failure to discharge the responsibility which, under the provisions of the Alcoholic Beverage Law (R.S. 33:1-1 et seq.), is vested in each issuing authority in the first

instance to determine within its sound discretion whether a license shall be issued or transferred. Passarella v. Board of Commissioners, 1 N.J. Super. 313 (App. Div. 1949); Haefliger v. Allmuchy, Bulletin 880, Item 2.'

"The language used by Justice Jacobs, speaking for the New Jersey Supreme Court in Wood v. Scott, 16 N.J. 16 in a zoning matter (by substituting the words liquor licenses for variance) is apropos to a situation such as that now under consideration. In said case Justice Jacobs stated, 'Local officials who are thoroughly familiar with their community's characteristics and interest and are the proper representatives of its people are undoubtedly the best equipped to pass initially on such applications for variance.'

"The said respondent Board has been abolished and the local issuing authority consists of the entire City Council.

"The appellants herein have renewed their license for their present premises at 40 Spencer Street for the 1959-60 licensing period. In the present posture of the record, it is unnecessary to consider anything further with reference to this appeal. Since the license in question has expired, the comments made herein are merely advisory in the event of the filing of a similar transfer application by the appellants herein. It will be necessary, in reconsidering the matter in question, if and when a new application for transfer is filed, that the issue of public necessity and convenience as applied to the proposed location be determined by each member of the respondent issuing authority prior to voting in the matter. However, both parties are, of course, free in any future application to offer testimony in addition to that already offered in these proceedings either with reference to the present issues or such additional issues as may be raised. I recommend that the matter be remanded to the City Council for its consideration in the event that a new application for transfer of said license is filed for the current licensing term."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 30th day of July, 1959,

ORDERED that the matter be remanded to the Elizabeth City Council for its consideration in the event that appellants file a new application for a place-to-place transfer of their renewed license to the proposed site for the 1959-60 licensing term.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - HARRISON WINE AND LIQUOR CO. v. HARRISON.

HARRISON WINE AND LIQUOR COMPANY,)
INC.,)

Appellant,)

v.)

MAYOR AND TOWN COUNCIL OF THE)
TOWN OF HARRISON,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Joseph A. D'Alessio, Esq., Attorney for Appellant.
Joseph P. DiSabato, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on March 13, 1959 it suspended appellant's license for a period of 180 days, after considering a plea of non vult entered to a charge alleging that on Wednesday, December 31, 1958, appellant sold, served and delivered alcoholic beverages to an 18-year-old minor, in violation of Rule 1 of State Regulation No. 20. Appellant is a retail distribution licensee located at 202 Harrison Avenue, Harrison, New Jersey.

"Upon the filing of the appeal, an order was entered by the Director on March 20, 1959 staying respondent's order of suspension until further order herein. R.S. 33:1-31.

"Appellant, in its petition of appeal, alleges in substance that respondent's action was erroneous in that it was an abuse of its discretion and that the penalty imposed is excessive.

"Respondent, in its answer, denies appellant's allegations and contends that the penalty imposed is commensurable with the offense, in view of an adjudicated record of a prior similar violation.

"At the hearing herein, testimony was adduced respecting two charges preferred against appellant, to which pleas of non vult were entered. It appears that the first charge alleged that in December 1957 appellant sold, served and delivered alcoholic beverages to a 20-year-old minor and that respondent suspended its license for a period of 35 days, less five days for the confessional plea. It further appears that the second charge with which we are here concerned alleged that on December 31, 1958 appellant, sold, served and delivered a quart bottle of beer and a pint of wine to Vincent ---, age 18; that the sale was made by Charles J. Barbaz, Secretary of defendant corporation, and that respondent took into consideration the prior similar violation and suspended appellant's license for 180 days. In neither instance was the minor required to produce a written representation of his age.

"It is conceded that because of the entry of the confessional plea to the latter charge, the question to be decided is whether, in view of the surrounding circumstances, the suspension imposed by respondent is excessive. The suspension imposed in a local disciplinary proceeding rests in the first instance within the sound discretion of the local issuing authority, and the power

of the Director to reduce or modify it will be sparingly exercised and only with the greatest caution. Robinson, et al. v. Newark, Bulletin 54, Item 2; Russo v. Lincoln Park, Bulletin 1177, Item 7.

"In view of the aforesaid and notwithstanding the severity of the suspension imposed, I find no basis for reversal or even modification on this appeal. The plea for modification should be made, if at all, to respondent, which may grant relief in the event that the members thereof determine that such action is advisable. Re Bischoff, Bulletin 53, Item 5; Russo v. Lincoln Park, supra.

"I recommend, therefore, that an order be entered affirming respondent's action and dismissing the appeal, and fixing the effective dates for the suspension imposed by respondent and stayed pending the entry of the order herein."

Written exceptions, written argument with respect thereto and written answering arguments were filed with me by the attorneys for the respective parties herein in accordance with Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the transcript of the testimony, the Hearer's Report, the exceptions thereto and the written argument, I concur in the Hearer's findings and conclusions and adopt his recommendation.

It appears that during the pendency of the proceedings herein, respondent denied appellant's application for renewal of its license for the 1959-60 licensing year; that appellant appealed from respondent's action; that pending determination of said appeal an order was entered extending appellant's 1958-59 license and that said appeal has not yet been decided. Under the circumstances, the order entered herein staying respondent's order of suspension will be vacated and the 180 day suspension imposed by respondent and affirmed herein will be reinstated and reimposed against appellant's extended license.

Accordingly, it is, on this 30th day of July, 1959,

ORDERED that respondent's action be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; it is further

ORDERED that the order entered herein staying respondent's order of suspension be and the same is hereby vacated, effective August 6, 1959; and it is further

ORDERED that the 180 day suspension heretofore imposed by respondent against the plenary retail distribution license issued to Harrison Wine and Liquor Company, Inc., for premises 202 Harrison Avenue, be and the same is hereby reinstated and reimposed against appellant's extended license, effective at 9:00 a.m., Thursday, August 6, 1959, and terminating at 9:00 a.m., Tuesday, February 2, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - UNQUALIFIED EMPLOYEE - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

DUBLIN HOUSE, INC.
218 Paterson Plank Road
Union City, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-173 (for the 1958-59 and 1959-60 licensing years), issued by the Board of Commissioners of the City of Union City.

Dublin House, Inc., Defendant-licensee, by Michael Lillis, President.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On Saturday, May 9, 1959 between 12:25 A.M. and 12:50 A.M., you served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"2. On Saturday, May 9, 1959 between 12:40 A.M. and 12:45 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, in its original container for consumption off your licensed premises, and allowed, permitted and suffered the removal of said alcoholic beverage from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

"3. On Friday night, May 8 and early Saturday morning, May 9, 1959 and prior thereto, you employed and allowed, permitted and suffered the employment in and upon your licensed premises of a person, viz., Adelaide Adams, not a bona fide resident of the State of New Jersey, contrary to and in violation of Rule 4 of State Regulation No. 13.

"4. On Saturday, May 9, 1959 between 12:45 A.M. and 1:40 A.M., you, through your agents, servants, employees and other persons in your behalf, failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being made by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35."

On Friday, May 8, 1959, at about 11 p.m., Agent D, followed by Agents F and S at 11:50 p.m., entered the defendant's licensed premises. At about 12:20 a.m. Agent D heard a female who had taken a position at the bar between him and James Davis (the day bartender at the premises) warn Dominick Giacobe (the bartender on duty) to comply with the closing "hours" regulation because of the presence of ABC agents in the area. This female then asked for a quart-bottle of Schenley Reserve whiskey and two bottles of soft drinks "to take out."

At about 12:40 a.m. the agents observed the bartender place a quart-bottle of Schenley Reserve whiskey, two quart-bottles of soft drinks and a brown paper bag on the bar in front of aforementioned female and Davis who put the aforesaid three bottles in the bag. In the interim, at about 12:25 a.m., the agents observed a male patron enter the licensed premises, approach the bar with an unsteady gait, sway from side to side, fall against the wall several times and collide with other patrons at the bar where he was served a shot of whiskey. Ten minutes later this patron staggered to another position at the bar where he was served three additional drinks of whiskey.

At 12:45 a.m. the aforesaid female and Davis, in possession of the alcoholic beverages, left the premises from which they were followed into the street by Agent F who stopped them and identified himself. Davis refused to turn over the bag to the agent and deliberately threw the same into the street with sufficient force to break the bottle of alcoholic beverages. Agent F retrieved the bag, returned to the premises with the couple, informed Giacobe of the aforesaid violations and placed the neck of the aforesaid broken bottle of the alcoholic beverages on the bar. Giacobe and the female stated the alcoholic beverages were being delivered to Michael Lillis (president of the corporate licensee). While Agents F and S were otherwise engaged, Davis threw the aforesaid neck of the broken bottle in a receptacle behind the bar and, upon its recovery, denied he had removed the same. At about 1:40 a.m. Agents F and S left the premises. Agent D, who had observed aforesaid activities, remained in the premises without disclosing his identity.

At about 1:45 a.m. Michael Lillis appeared at the premises and Davis immediately informed him that he had broken the aforesaid bottle of alcoholic beverages in the street and that he had unsuccessfully attempted to conceal the neck of the same. Agent D left the premises about 2 a.m.

During this and prior visits to the premises the agents observed a female entertainer playing the piano. The investigation further disclosed that said entertainer was a non-resident who had not obtained the requisite employment permit and had been employed on the premises for four weeks.

By way of mitigation Michael Lillis has submitted a statement wherein he sets forth, among other things, that the service by the bartender of alcoholic beverages to the apparently intoxicated patron was contrary to his orders and that he did not know that it was a violation to take alcoholic beverages for his personal consumption from the licensed premises after hours. The licensee, however, cannot escape the consequences of the aforementioned acts of his agents and employees. Rule 33 of State Regulation No. 20. Nor does ignorance of the law or regulation afford any excuse. Licensees and their employees must know the rules and scrupulously adhere to them. See Re Krynicki, Bulletin 1238, Item 5. I have also considered all the other matters

offered in mitigation, together with the reports of the agents, and do not find any extenuating circumstances which would impel me to impose less than the established penalty in cases of this kind.

The defendant has no prior adjudicated record. However, it appears that by letter dated November 20, 1956, the licensee was warned by the Division with respect to a possible "hours" violation and hindering an investigation. I shall suspend defendant's license for fifteen days on Charge 1 (Re Golden Slipper, Inc., Bulletin 1268, Item 7); for fifteen days on Charge 2 (Re Celtic Bar, Inc., Bulletin 1281, Item 9); for five days on Charge 3 (Re Freud & Pittala, Bulletin 1142, Item 9), and for ten days on Charge 4 (Re Sorbera, Bulletin 1224, Item 1), making a total suspension of forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 29th day of July, 1959,

ORDERED that Plenary Retail Consumption License C-173, for the 1959-60 licensing year, issued by the Board of Commissioners of the City of Union City to Dublin House, Inc., for premises 218 Paterson Plank Road, Union City, be and the same is hereby suspended for forty (40) days, commencing at 3 a.m. Thursday, August 6, 1959, and terminating at 3 a.m. Tuesday, September 15, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

NOTE: By order dated August 3, 1959, the effective dates of the above suspension were changed to commence at 3 a.m., Wednesday, August 12, 1959 and to terminate at 3 a.m., Monday, September 21, 1959.

4. DISCIPLINARY PROCEEDINGS - HOSTESSES - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA - SPECIAL PERMIT (FOR EMPLOYMENT NON-RESIDENTS)- SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against)

JOHN CASAMASSIMO)
701 Paterson Plank Road)
Union City, N. J.)

Holder of Plenary Retail Consumption License C-82 (for the 1958-59 and 1959-60 licensing years), issued by the Board of Commissioners of the City of Union City.)

CONCLUSIONS AND ORDER

-----)
In the Matter of Disciplinary Proceedings against)

JOHN CASAMASSIMO)
701 Paterson Plank Road)
Union City, N. J.)

Holder of Special Permit E No. 208, issued by the Director of the Division of Alcoholic Beverage Control.)

-----)
Victor P. Mullica, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to a charge alleging that he permitted hostess activity on his licensed premises, in violation of Rule 22 of State Regulation No. 20.

On February 22, 1959, ABC agents visited defendant's licensed premises and observed female entertainers accepting drinks from and at the expense of male patrons.

On February 27, 1959, when the agents again visited defendant's premises, they observed male patrons purchasing drinks for female entertainers. On the early morning of February 28, 1959, two female entertainers accepted drinks from and at the expense of the agents. When the agents identified themselves to the two bartenders and called their attention to the violation, one bartender tried to justify the violation on the ground that the female entertainers did not solicit the drinks and the other stated he had nothing to say.

Defendant was also required to show cause why its Special Permit E No. 208, authorizing the employment of the aforementioned entertainers (non-residents), should not be cancelled, suspended or revoked.

Defendant has a prior adjudicated record. Effective January 28, 1959 defendant's license was suspended for fifteen days for a similar violation. Re Casamassimo, Bulletin 1266, Item 6. In view of the fact that this is the second similar violation occurring within five years, I shall double the minimum penalty for a violation of this kind and suspend defendant's license for forty days. Re Lee

agents followed the patron who later admitted to them that he had purchased the bottle of gin in defendant's licensed premises. Returning with the patron to the tavern, the agents identified themselves to the bartender and Louis E. Renton (treasurer of the corporate licensee) and informed them of the violation, which they denied. However, the patron, in their presence, verbally admitted that he purchased the quart bottle of gin from the bartender for \$4.40. The minimum resale price then in effect was \$4.44.

Defendant has a prior adjudicated record. Effective April 4, 1954, I suspended its license for ten days for an "hours" violation. Re Glenwood Tavern, Inc., Bulletin 1009, Item 7, and Bulletin 1011, Item 2. Under all the circumstances, including the similar violation which occurred more than five years ago, I shall suspend defendant's license for twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 28th day of July, 1959,

ORDERED that Plenary Retail Consumption License C-451, for the 1959-60 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Glenwood Tavern, Inc., t/a Glenwood Tavern, for premises 842 West Side Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday August 4, 1959, and terminating at 2 a.m. Monday, August 24, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against

HARRY JOFFE & NATHAN BARBAROSH
t/a FERRY WINE & LIQUOR
158 Ferry Street
Newark 5, New Jersey

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Distribution License D-55 (for the 1958-59 and 1959-60 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Green and Yanoff, Esqs., by H. Kermit Green, Esq., Attorneys for Defendant-licensees.

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

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charge:

'On January 3, 1959, you sold, at retail, a one gallon bottle of Fior Di California Brand California Burgundy Scelto, an alcoholic beverage, at less than the price thereof listed in the then currently effective pamphlet of New Jersey Minimum

Consumer Resale Prices of Alcoholic Beverages
published by the Director of the Division of
Alcoholic Beverage Control; in violation of
Rule 5 of State Regulation No. 30.'

"At the hearing herein, two ABC agents (hereinafter referred to as Agent R and Agent M) testified on behalf of the Division. Agent R testified that at about 9:10 p.m. on January 3, 1959 he and Agent M arrived in the vicinity of the defendants' licensed premises; that he (Agent R) had \$16.72 on his person, from which he retained \$2.50 (consisting of two one-dollar bills, a quarter, two dimes and a nickel) and gave the balance of \$14.22 to Agent M; that at about 9:20 p.m. he (Agent R) entered defendants' establishment while Agent M remained outside thereof; that as he entered he observed a man to his left who was 'stocking the shelves', a man to his right who was 'also stocking shelves there or something' and a man who was standing behind the service counter; that he asked the man to his left (subsequently identified as George Bertocchi) for a gallon of Fior di California wine and Bertocchi took a bottle from a shelf, walked to the counter, placed the bottle thereon and then returned to the place where he had been formerly standing; that the man at the counter (subsequently identified as Harry Joffe, one of the defendant-licensees) placed the bottle of wine in a paper bag and, while so doing, he (Agent R) laid the \$2.50 which he had in his possession on the counter in front of Joffe; that he (Agent R) then picked up the bag containing the wine, and Joffe picked up the money from the counter, looked at it and said 'O.K.'; that as he (Agent R) was half way to the door, he stopped, turned around to see where Joffe was putting the money and saw him ring the cash register and count the money as he placed it in the drawer; that Joffe again said 'O.K.' and 'good night'; that he (Agent R) met Agent M on the outside and both entered the defendants' premises; that after proceeding to the counter he (Agent R) placed the bag containing the bottle of wine on it and then took out his credentials and identified himself; that Joffe then said, 'You gave me \$2.69'; that the tape of the cash register was requested and, when produced, the last item thereon read '\$3.00'; that Joffe was asked why he rang up \$3.00 when he (Agent R) had given him \$2.50 and he replied, 'I rang up what you gave me, \$3.00' and, looking at Agent M said, 'You weren't in here when he bought the wine, remember?'; that Agent M said, 'How could he (Agent R) give you \$3.00 for this wine, or three one-dollar bills, when he had only \$2.50 on his person?', to which Joffe answered, 'He gave me \$2.69 and I must have rang up a pack of cigarettes'; that Agent M then asked, 'What kind of cigarettes?', and Joffe replied, 'I don't know. Maybe it was Kent's', adding, 'But remember, you weren't in here when I sold the wine, and I have two other witnesses--three witnesses against him'. Joffe further remarked, 'I didn't give it to him for under \$2.69'; that later, as the agents were leaving, Joffe again said to Agent M, 'And remember, you weren't in here when he bought the wine; don't forget it'.

"Agent R was subjected to extensive cross-examination, during which he admitted engaging in other conversation with Joffe about which he was not questioned on direct examination and also admitted that some time after he had made known his identity, he left the premises for a short period of time to go to his automobile to get various paraphernalia needed in the investigation. However, his testimony concerning the facts pertaining to the alleged purchase of the wine was consistent with the testimony which was given by him on direct examination.

"Agent M's testimony corroborated that of Agent R concerning the time element involved and also the fact that before entering the defendants' premises Agent R had produced a total sum of \$16.72, retained \$2.50 thereof, and had given him (Agent M) \$14.22 to hold. Agent M's testimony with reference to the denomination of the money comprising the \$2.50 retained by Agent R was similar to the latter's testimony. Agent M further testified that when Agent R entered the premises, he (Agent M) was standing directly across the street from the premises and observed through the front door 'someone come from the left of the store to the center rear portion of the counter and place a jug thereon'; that the 'someone' he subsequently ascertained was George Bertocchi; that Joffe was behind the counter, placed the jug in a bag and handed it to Agent R; that the latter stood there for a few seconds then walked up several paces toward the front door, turned around and appeared to be speaking to Joffe; that he (Agent M) started to cross the street and, while doing so, he observed Agent R talking and just starting to turn toward the front door; that he met Agent R outside the premises and both then entered; that they walked to the counter where Agent R placed the bag containing the bottle of wine and both he and his fellow agent made known their identities, Agent R saying 'State ABC'; that at that time Joffe said, 'You gave me \$2.69 for the wine'; that the tape taken from the cash register showed the last entry to be \$3.00. Agent M corroborated the various conversation related by Agent R as having taken place.

"Harry Joffe, one of the co-defendants as aforesaid, testified that on that particular evening a green Ford truck used in the business was parked in front of the store; that Agent R, upon entering, said to Bertocchi that he wished a gallon of Fior di California wine; that Bertocchi got the wine and brought it over to the counter where he (Joffe) was standing; that he (Joffe) put it in a bag, at which time the agent gave him the money, saying, 'I will have a pack of Kent cigarettes please'; that the money given to him consisted of 'two single dollars, he had a half dollar, a quarter, a dime and--two dimes and a nickel. He had three dollars'; that he (Joffe) handed Agent R the wine and cigarettes and, as he took the money, the agent turned around and said 'I want--how much is a case of Schlitz cans?', to which Joffe said '\$4.99'; that Agent R started walking and said 'I'll be back'; that thereafter he (Joffe) took the \$3.00 and rang it up in the cash register; that the sale was '\$3.00--a few pennies less than \$3.00'; that Agent R left the premises but that three minutes thereafter he returned with another man and said to Joffe, 'We got you'; that he (Joffe) then said, 'What do you mean, you got me?'; that Agent R then said, 'We're ABC agents' and pulled out his credentials; that he (Joffe) then instructed both Bertocchi and Frank Chiarieri to show the agents anything they wished and not to antagonize them in any way; that he remembered telling Agent M that he (Agent M) wasn't in when Agent R gave him the money but had no recollection of stating, 'Don't forget, it's his work against the three of us'.

"George Bertocchi testified that he obtained the gallon of Fior di California wine for Agent R and placed it at the counter where Joffe was standing; that he did not hear any of the conversation or any mention of price; that as Joffe was picking up the money which Agent R had placed on the counter, Agent R took the gallon of wine and hurried out of the store; that he heard Agent R inquire as to the price of a case of cans of Schlitz beer and also heard him say, 'I'll be back later for it'; that three minutes after the agent had left the premises he entered hurriedly, took out his credentials, laid the gallon

of wine on the counter and said, 'I am an agent'; that Agent M went to the cash register and inquired whether or not the item shown thereon was the last sale that was made, to which Joffe stated, 'Yes, that covers the cigarettes and a gallon of wine you just purchased'; that Agent M inquired why the register indicated \$3.00 when he (Agent M) had only given Agent R \$2.50; that he heard Agent M ask Joffe whether or not he wanted to sign a statement that he was guilty of the violation, and that Joffe declined to do so, replying that he was not guilty thereof; that there was other conversation between the other agent and Joffe and also several customers came into the premises and made purchases of alcoholic beverages.

"Frank Chiarieri's testimony was substantially similar to that given by Bertocchi.

"Agent M, called as a rebuttal witness for the Division, testified that he didn't notice any truck parked in front of defendants' licensed premises and, while looking through the door, there was nothing to impair his vision. Agent R, also as a rebuttal witness, testified that he did not purchase any cigarettes from Joffe and neither did he have a fifty-cent piece in his possession. Furthermore, at no time did Joffe ever make mention that the sale was in the amount of \$2.96, nor did he offer to give him four cents change.

"There is no dispute that at the time in question \$2.69 was the minimum consumer retail price in effect for a gallon of Fior di California Brand Burgundy Scelto wine.

"The testimony of the agents is in agreement that on the night in question Agent R had \$16.72 in his possession and that he retained \$2.50 thereof, permitting Agent M to hold the balance of \$14.22. It is apparent from the agent's testimony that when Agent R entered the premises the only money which he had on his person was the amount of \$2.50. I am satisfied that this is the amount placed on the counter by the said agent and the amount that Joffe accepted in payment for the gallon of wine in question. It is quite significant, according to the testimony of the agents, that immediately after they made known their identities to Joffe, and before he was told what their mission was, he exclaimed that he received \$2.69 for the gallon of wine. When he was questioned as to why he rang up \$3.00 on the cash register, he stated that the agent had purchased, in addition to the wine, a pack of cigarettes 'maybe Kent's'. Joffe testified that a package of Kent's cigarettes costs 27 cents. Thus, his own statement that he received \$2.69 for the wine (which I do not believe to be the case) plus the sum of 27 cents for the cigarettes would, as Joffe admitted, total \$2.96. Joffe claims that the agent hurried from the premises without receiving the change and there is no indication that Joffe offered to give the change to Agent R. I am not impressed with the version given by Joffe as to the incidents which he alleged occurred at the time.

"I am convinced that the agents have described what actually took place on the evening in question. I therefore recommend that the defendants be found guilty of the charge preferred herein.

"Defendants have no prior adjudicated record. Under the circumstances, I recommend that a minimum suspension of ten days be imposed. Re Metuchen Liquors, Inc., Bulletin 1121, Item 9."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorneys for the

defendants, pursuant to Rule 6 of State Regulation No. 16.

I have carefully examined the evidence herein, the memorandum filed by the defendants' attorneys, the Hearer's Report and the exceptions and written argument, and am satisfied that the Hearer's recommendation should not be disturbed. I adopt the Hearer's conclusions as my conclusions herein. Hence, I find the defendants guilty as charged, and shall suspend their license for ten days.

Accordingly, it is, on this 27th day of July, 1959,

ORDERED that Plenary Retail Distribution License D-55 for the 1959-60 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Harry Joffe & Nathan Barbarosh, t/a Ferry Wine & Liquor, for premises 158 Ferry Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., Monday, August 3, 1959, and terminating at 2:00 a.m., Thursday, August 13, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISQUALIFICATION REMOVAL PROCEEDINGS - FIVE YEARS GOOD CONDUCT NOT SHOWN - APPLICATION DENIED.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, Pursuant to) CONCLUSIONS
R.S. 33:1-31.2)

Case No. 1490

BY THE DIRECTOR:

Applicant's criminal record discloses that on March 20, 1953, after pleading guilty to an indictment of armed robbery, he was sentenced to serve one to two years in New Jersey State Prison. On July 10, 1956, following a plea of guilty to a charge of concealment of the crime of robbery, applicant was sentenced to serve eighteen months in a county penitentiary; sentence was suspended and he was placed on probation for three years. Since the crime of robbery, per se, involves the element of moral turpitude (Re Case No. 1061, Bulletin 981, Item 9), the crime of concealment of the offense of robbery, in my opinion, likewise involves the element of moral turpitude. Hence the applicant is disqualified from engaging in the alcoholic beverage industry in this State until the disqualification is removed.

One of the statutory requirements necessary for the lifting of a disqualification is that applicant must have conducted himself in a law-abiding manner for a period of five years last past following his last conviction of a crime involving moral turpitude. R.S. 33:1-31.2.

Since five years have not elapsed from the time that the applicant was convicted on July 10, 1956, as aforesaid, I shall deny the within application.

WILLIAM HOWE DAVIS
DIRECTOR

Dated: July 27, 1959

8. DISQUALIFICATION REMOVAL PROCEEDINGS - FIVE YEARS GOOD CONDUCT NOT SHOWN - APPLICATION DENIED.

In the Matter of an Application)
 to Remove Disqualification) CONCLUSIONS
 because of a Conviction, Pursuant)
 to R.S. 33:1-31.2.)
)
 Case No. 1491.

BY THE DIRECTOR:

Applicant's criminal record discloses that on April 22, 1955, after pleading non vult to an indictment charging receiving stolen property, he was sentenced to serve six months in a county penitentiary; the sentence was suspended and he was fined \$500 and placed on probation for two years. The crime of receiving stolen property ordinarily involves the element of moral turpitude (Re Case No. 1238, Bulletin 1075, Item 10). No reason appearing to the contrary, I find in this case that the crime involved moral turpitude and that said conviction precludes the applicant from engaging in the alcoholic beverage industry in this State until his disqualification is removed.

One of the statutory requirements necessary for the lifting of a disqualification is that the applicant must have conducted himself in a law-abiding manner for a period of five years last past following his last conviction of a crime involving moral turpitude. R.S. 33:1-31.2.

Since five years have not elapsed from the time that the applicant was convicted as aforesaid on April 22, 1955, I shall deny the within application.

Dated: July 28, 1959

William Howe Davis,
 Director.

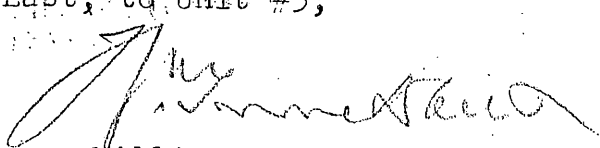
9. STATE LICENSES - NEW APPLICATIONS FILED

Capital Distributing Co. (A Corp.)
 64-66-68 Oakland Street
 Trenton, New Jersey

Application filed September 3, 1959 for Plenary Wholesale License and application filed for Additional Warehouse license for premises at 34 Exchange Place, Harborside Terminal in Unit 3, Jersey City, New Jersey.

Hoffman Import & Distributing Company
 t/a Walton Liquor Import Ltd. and
 Carew Morris Liquor Imports Ltd.
 34 Exchange Place
 Jersey City, New Jersey

Application filed September 3, 1959 for place-to-place transfer of Plenary Wholesale License W-10 from Unit #3, 5th Floor East, to Unit #3, 6th Floor East.


 William Howe Davis,
 Director.