

V

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

December 3, 1964

BULLETIN 1590

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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

December 3, 1964

BULLETIN 1590

1. APPELLATE DECISIONS - WASSERMAN AND GOLDBERG v. NEWARK.

BENJAMIN WASSERMAN AND SOL	)	
GOLDBERG, t/a ESSEX TAVERN,	)	
	)	
Appellants,	)	ON APPEAL
	)	CONCLUSIONS
v.	)	AND ORDER
	)	
MUNICIPAL BOARD OF ALCOHOLIC	)	
BEVERAGE CONTROL OF THE CITY	)	
OF NEWARK,	)	
	)	
Respondent.	)	

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Abe W. Wasserman, Esq., Attorney for Appellants.  
Norman N. Schiff, Esq., by Paul E. Parker, 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 respondent whereby it suspended appellants' license for fifteen days effective July 20, 1964, after finding appellants guilty in disciplinary proceedings of a charge alleging that on Sunday, February 2, 1964, appellants sold a pint bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Upon filing of the appeal an order dated July 10, 1964, was entered by the Director staying the effect of the suspension pending the determination of the appeal. R.S. 33:1-31.

Summarizing the grounds of appeal, appellants allege that there was no direct evidence of the proscribed sale or purchase, that the verdict was erroneous and contrary to the weight of evidence, and that respondent failed to give proper weight to the evidence submitted by appellants.

Respondent in its answer denied the substantive allegations of the petition of appeal.

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and examine witnesses.

At the hearing respondent relied upon the record, presented the stenographic transcript of the hearing below, and produced no witnesses. Two witnesses were produced in behalf of appellants.

The record below indicated that Detective Joseph Smith, of the Newark Police Department, had the licensed premises under surveillance at about 11 a.m. on Sunday, February 2, 1964; that he observed a man (later identified as Ollie Rawles) enter a doorway leading to a hall which adjoins appellants' tavern at 11:15 a.m., and that about ten minutes later Ollie Rawles emerged from said doorway carrying a paper bag. Detective Smith approached Rawles about a block from the tavern and received from him a pint bottle of Seagram's V.O. whiskey. Detective Smith led Rawles back through the same doorway leading into the hall adjoining the tavern premises and entered the tavern through a door in the rear of the hall. Detective Smith testified that Rawles identified Harry Wasserman, who was in the tavern, as the person who sold him the whiskey.

Ollie Rawles, produced as a witness by respondent, testified at the hearing below that he went to see a friend who he knew lived in the building several years ago; that, after he entered the hallway, he saw a man coming down the stairway and asked him "where can a man get a bottle of whiskey;" that the man offered to get him a bottle of whiskey, disappeared for several minutes and brought back a bottle of whiskey to him; that he paid the stranger and left the hallway.

At this point it should be noted that the hallway contained a stairway leading to several apartments occupied by various tenants, and that there was a tenant residing in a ground floor apartment on the same floor as the hallway entrance to the tavern.

Rawles admitted signing a statement at police headquarters wherein he stated that he purchased the whiskey from Harry Wasserman in the tavern. The statement was not offered in evidence. At both the hearing below and when produced by appellants at the present hearing, Rawles denied being in the tavern at all on the day in question, and denied purchasing the liquor from Harry Wasserman. He testified that he signed the statement inculpatory Harry Wasserman because he was scared and wanted to stay out of jail. At the present hearing Rawles additionally testified that in the Magistrate's Court his testimony was that he denied purchasing the whiskey in the tavern.

Harry Wasserman, called as a witness for appellants, at the hearing below and at the present hearing testified that he was employed as a bartender by appellants; that on February 2, 1964, he was cleaning the tavern; denied seeing Ollie Rawles in the tavern on the morning in question prior to the time that he was brought in by the police officers, denied selling any liquor to Rawles that morning, and stated that he had not seen Rawles for many years prior to that day.

It is axiomatic that in disciplinary proceedings a preponderance of the evidence is necessary to support and justify a finding of guilt, and doubtful questions of fact must be resolved in appellant's favor. Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1.

After carefully examining the transcript of the proceedings below and the testimony adduced at the present hearing, I find an absence of substantial legal evidence to

support a finding of appellants' guilt. In fact, there is a complete absence of direct evidence linking appellants to the alleged sale.

In view of the fact that the factual findings in this case were not supported by substantial legal evidence, I conclude that respondent failed to sustain the burden of establishing the finding of guilt by a preponderance of the evidence, and I therefore recommend that the action of respondent be reversed and the charge be dismissed. Kurschner v. Newark, Bulletin 1508, Item 2.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the proceedings below, the transcript of the testimony herein and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 14th day of October, 1964,

ORDERED that the action of the respondent be and the same is hereby reversed.

JOSEPH P. LORDI  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - ORDER LIFTING SUSPENSION FOR BALANCE OF TERM ON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against

JOE D'S BLUE MOON, INC.  
t/a CHEZ CHARLES  
165 First Avenue  
Newark 7, N. J.

Holder of Plenary Retail Consumption License C-521, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark and transferred during the pendency of these proceedings to

L. L. P., INC.

for the same premises.

ORDER

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Leslie S. Kohn, Esq., Attorney for Licensee L. L. P., Inc.  
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On July 2, 1964, supplemental order was entered herein suspending the license for the balance of its term, effective July 3, 1964, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation (undisclosed interest of criminally disqualified person in the license and employment

of such person on the licensed premises) for lifting of the suspension on or after October 6, 1964, after the license had been suspended for ninety-five days. Re Joe D's Blue Moon, Inc., Bulletin 1576, Item 4.

On September 16, 1964, the license was transferred to L. L. P., Inc. for the same premises.

It appearing from verified petition submitted by the licensee L. L. P., Inc. that the unlawful situation has been corrected, I shall grant the petition requesting termination of the suspension, effective immediately.

Accordingly, it is, on this 7th day of October, 1964,

ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated effective 2:00 a.m. October 7, 1964.

JOSEPH P. LORDI  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA - DEFERRED EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against

MADISON OPERATING CO., INC.  
t/a THE ALLAIRE HOTEL  
Northwest corner of Ocean & Union Avenues  
Spring Lake Boro, N. J.

)  
)  
) CONCLUSIONS AND ORDER  
)  
)

Holder of Seasonal Retail Consumption License CS-1, issued by the Mayor and Council of the Borough of Spring Lake.

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Licensee, by Lester Harvey, President, Pro se.  
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 18, 1964, it possessed alcoholic beverages in twenty-nine 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 sixty days (cf. Re Penn Brook Inn, Inc., Bulletin 1358, Item 8), with remission of five days for the plea entered, leaving a net suspension of fifty-five days.

Reports of investigation by agents of this Division disclose that the licensed business has been discontinued for the balance of the summer season May 1 - November 1, 1964, and thus no effective penalty can be imposed at this time. The effective dates for the suspension will be fixed by the entry of a further order herein after operation of the licensed business for the summer season May 1 - November 1, 1965, is fully resumed on a substantial basis.

Accordingly, it is, on this 15th day of October 1964,

ORDERED that any renewal for the 1965 summer season of Seasonal Retail Consumption License CS-1, issued by the Mayor and Council of the Borough of Spring Lake to Madison Operating Co., Inc., t/a The Allaire Hotel, for premises Northwest corner of Ocean & Union Avenues, Spring Lake Boro, be and the same is hereby suspended for fifty-five (55) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ORDER LIFTING SUSPENSION FOR BALANCE OF TERM ON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against )

FOUNTAINBLEAU (A CORP.) )  
258 Washington Street )  
Newark, New Jersey )

ORDER

Holder of Plenary Retail Consumption License C-769, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

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Friedman & D'Alessandro, Esqs., by Kalman Friedman, Esq., Attorneys for Licensee.

David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On June 17, 1964, Conclusions and Order were entered herein suspending the license and any renewal thereof for the balance of its term, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation (undisclosed interest of criminally disqualified person in the license and employment of such person on the licensed premises) for lifting of the suspension on or after September 22, 1964, after the license had been suspended for ninety days. Re Fountainebleau, Bulletin 1572, Item 2.

It appearing from verified petition submitted by the licensee that the unlawful situation has been corrected, I shall grant the petition requesting termination of the suspension.

Accordingly, it is, on this 15th day of October, 1964,

ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated, effective 2:00 a.m. Friday, October 16, 1964.

JOSEPH P. LORDI  
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING - CARDS, DICE AND POOL GAMES) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 30 DAYS - NO REMISSION FOR PLEA ENTERED AT HEARING.

In the Matter of Disciplinary Proceedings against  
 ADRIAN W. FLUCKIGER  
 2501 Central Avenue  
 Union City, New Jersey  
 Holder of Plenary Retail Consumption License C-186, issued by the Board of Commissioners of the City of Union City.

)  
 )  
 ) CONCLUSIONS  
 ) AND ORDER  
 )  
 )  
 )

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 Alfred A. Porro, Jr., Esq., by Michael J. Mastrangelo, Esq.,  
 Attorney for Licensee.  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

At the hearing herein licensee pleaded non vult to charges alleging that (1) on September 3 and 10, 1964, he permitted gambling (wagering at cards, dice and pool games) on the licensed premises, in violation of Rule 7 of State Regulation No. 20, and (2) on September 10, 1964, he sold six cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended on the first charge for fifteen days (Re Buffalino, Bulletin 1526, Item 10; Re Moser, Bulletin 1557, Item 4), and on the second charge for fifteen days (Re Perry, Bulletin 1582, Item 2), or a total of thirty days, with no remission for the plea untimely entered at the hearing (Re Moser, supra).

Accordingly, it is, on this 19th day of October 1964,

ORDERED that Plenary Retail Consumption License C-186, issued by the Board of Commissioners of the City of Union City to Adrian W. Fluckiger, for premises 2501 Central Avenue, Union City, be and the same is hereby suspended for thirty (30) days, commencing at 3 a.m. Monday, October 26, 1964, and terminating at 3 a.m. Wednesday, November 25, 1964.

JOSEPH P. LORDI  
 DIRECTOR

6. DISQUALIFICATION REMOVAL PROCEEDINGS - BOOKMAKING - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R.S. 33:1-31.2.	) ) )	CONCLUSIONS AND ORDER
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Case No. 1739

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G. George Addonizio, Esq., Attorney for Petitioner.

BY THE ACTING DIRECTOR:

Petitioner's criminal record discloses that on October 18, 1944, he was sentenced in a local magistrate's court to serve thirty days in the county jail on a gambling charge; that on May 3, 1945, a local magistrate adjourned without date a complaint charging him with gambling (dice); that on September 21, 1949, following a plea of non vult in the Essex County Court to a charge of bookmaking, he was sentenced to serve one to five years in New Jersey State Prison, from which institution he was paroled on July 5, 1950; that on June 29, 1955, he was convicted under a municipal ordinance (gambling) in a local magistrate's court and sentenced to serve sixty days in the county penitentiary and fined \$200; and that on August 25, 1962, he was arrested in Hamilton Township, Atlantic County, for failure to register as a criminal and posted bail of \$200 which was forfeited on September 6, 1962. (Petitioner testified that he subsequently appeared and was fined the \$200.)

Commercialized gambling may or may not involve moral turpitude. Re Case No. 1018, Bulletin 956, Item 7. Where one is a principal or "lieutenant" in commercialized gambling, particularly where gambling is conducted on a large scale, it has been held that such gambling involves the element of moral turpitude. Re Case No. 667, Bulletin 1093, Item 7. With reference to petitioner's conviction on September 21, 1949, it appears that petitioner was arrested following a raid upon an apartment in which he engaged in bookmaking. Since petitioner was convicted as a principal, said conviction involves moral turpitude and he was thereby rendered ineligible to be engaged in the alcoholic beverage industry. R.S. 33:1-25, 26. Petitioner's other convictions were violations of local ordinances and are not convictions of crime. Re Case No. 1385, Bulletin 1203, Item 8.

At the hearing held herein, petitioner (38 years old) testified that he has lived all his life in the same area where he presently resides; that he is married and living with his wife and two children; that for the past four years, he was employed as a manager of a licensed premises; that prior thereto he was a sales manager for a food company for two years and self-employed for two years as a contractor for remodeling homes; that before accepting aforesaid employment as manager of a licensed premises, he was advised by a local official that he was eligible for the same provided he did not dispense alcoholic beverages and that he has recently learned of his ineligibility to be employed in any capacity on licensed premises in this state.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the

alcoholic beverage industry in this state and that, ever since his conviction on September 21, 1949, he has not been convicted of any crime or arrested except as aforesaid.

Petitioner produced three character witnesses (a credit investigator, a clerk in the Department of Revenue and Finance of a local municipality, and a member of the bar of the State of New Jersey) who testified that they have known petitioner for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

The police department of the municipality wherein the petitioner resides reports that there are no complaints or investigations presently pending against the petitioner.

I hesitate to grant the relief sought for two reasons, (1) petitioner's conviction in 1962 for failure to register as a criminal in violation of a local ordinance (as testified by the petitioner) and (2) although disqualified, he worked on licensed premises in this state. To afford the petitioner the relief requested, it is necessary that I find that he has been conducting himself in a law-abiding manner for five years following the date of conviction and that his association with the alcoholic beverage industry will not be contrary to the public interest. See R.S. 33:1-31.2. Although his above conviction in 1962 for failure to register as a criminal does not constitute a conviction of crime, it is nevertheless a pertinent circumstance to consider on the question whether he has successfully rehabilitated himself and has been living in a law-abiding manner.

I do not believe that petitioner's conviction in 1962 is sufficient to overcome the favorable testimony of his character witnesses, his otherwise clear record during the past six to seven years and that petitioner's criminal record shows only one conviction of a crime which took place about fourteen years ago. Re Case No. 1716, Bulletin 1481, Item 7. With reference to petitioner's employment on licensed premises before obtaining the removal of his disqualification, I am likewise favorably influenced for the reasons hereinabove set forth, his sworn testimony that he was advised by a local official that he was eligible for employment on licensed premises as its manager and that he was unaware, until recently notified, of the statutory requirement he had to meet before accepting employment on licensed premises. Knowledge of the law, moreover, is not an essential prerequisite to removal of disqualification in these proceedings. Re Case No. 1279, Bulletin 1124, Item 8.

Considering all of the aforesaid facts and circumstances, I am satisfied that the petitioner has conducted himself in a law-abiding manner for five years following the date of his conviction of crime involving moral turpitude and that his association with the alcoholic beverage industry in this state will not be contrary to the public interest.

Accordingly, it is, on this 3rd day of April, 1963,

ORDERED that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

SEE FOLLOWING RELATED CASE

## 7. DISQUALIFICATION REMOVAL PROCEEDINGS - ORDER VACATING PRIOR ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application to	)	
Remove Disqualification because of	)	ORDER
a Conviction, Pursuant to R.S.	)	ON ORDER TO SHOW
33:1-31.2	)	CAUSE
Case No. 1739	)	

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 Farley & De Filippo, Esqs., by Victor A. De Filippo, Esq.,  
 Attorneys for Petitioner.

BY THE DIRECTOR:

Petitioner in the instant case was convicted on September 21, 1949, of bookmaking, a crime involving the element of moral turpitude, which precluded him from engaging in the alcoholic beverage industry in this State until his disqualification was removed. See R.S. 33:1-25, 26.

On March 19, 1963, a hearing was held on petitioner's application to remove his disqualification and, by order dated April 3, 1963, his statutory disqualification was removed pursuant to R.S. 33:1-31.2. Re Case No. 1739, Bulletin 1590, Item 6.

Among other considerations, the aforesaid order was predicated upon petitioner's sworn testimony given at the hearing in connection with the disqualification removal proceeding, namely, that except for being employed as manager of Joe D's Blue Moon, Inc., t/a Chez Charles, 165 First Avenue, Newark, N.J. (the holder of a plenary retail consumption license), he had no interest in the alcoholic beverage industry and that he had been advised by a local official that, although convicted as aforesaid, he was eligible for such employment by the licensee.

After the entry of the order, it came to my attention that such testimony was false in that petitioner, other than his aforesaid employment, did have an interest in the alcoholic beverage industry since, in truth and fact, the petitioner has been the "real and beneficial owner of all of the corporate stock" of the aforesaid licensee ever since 1958 (Re Joe D's Blue Moon, Inc., Bulletin 1542, Item 1) and in that the petitioner, as the file herein discloses, had not been advised by a local official that he was not disqualified from being employed by the licensee as its manager because of his aforesaid conviction. It is self-evident that if petitioner, at the hearing held on March 19, 1963, had truthfully disclosed his unlawful interest in the licensed business and did not claim that he had been advised by a local official that he was not ineligible for aforementioned employment by the licensee because of his aforesaid conviction in 1949, his statutory disqualification would not have been removed and the order of April 3, 1963 would not have been entered.

The instant proceeding is now before me pursuant to notice served upon the petitioner to show cause why the order entered in this cause on April 3, 1963 should not be vacated because of the petitioner's false testimony as aforesaid. See Re Case No. 502, Bulletin 888, Item 5; Re Case No. 1446, Bulletin 1280, Item 9. In response to this notice, the attorneys for the petitioner, by letter dated September 29, 1964, advised that the petitioner does not wish to contest these proceedings.

Based upon the record of the aforesaid disciplinary proceedings and the file in this case, I conclude that the petitioner knowingly perpetrated a fraud upon the Division when he gave his false testimony as aforesaid. It necessarily follows that the order entered herein on April 3, 1963 must be vacated. The petitioner thus remains disqualified under the Alcoholic Beverage Law from holding a liquor license, having any interest in any business conducted thereunder, and from being employed by or being connected in any business capacity with any licensee in this State.

Accordingly, it is, on this 8th day of October, 1964,

ORDERED that the order entered herein on April 3, 1963, be and the same is hereby vacated.

JOSEPH P. LORDI  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE  
SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

DISCIPLINARY PROCEEDINGS - DELIVERY BY LIMITED EMPLOYMENT  
PERMITTEE TO MINOR - PERMIT SUSPENDED 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

M. LEHMANN, INCORPORATED )  
70 South Street )  
Morristown, N. J. )

Holder of Plenary Retail Distribution License D-10, issued by the Mayor and Board of Aldermen of the Town of Morristown, )

CONCLUSIONS  
AND ORDER

and )

ROBERT W. ATKINS )  
3 Harvale Drive )  
Florham Park, N. J. )

Holder of Limited Employment Permit 949, issued by the Director of the Division of Alcoholic Beverage Control. )

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Thomas H. Green, Esq., Attorney for Licensee and Permittee  
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 4 and September 5, 1964, it sold alcoholic beverages to a minor, age 16, in violation of Rule 1 of State Regulation No. 20.

Permittee, age 19, pleads non vult to a charge alleging that on August 4, 1964, he engaged in conduct prohibited to his employer (the licensee herein), viz., the delivery of alcoholic beverages to a minor, contrary to Rule 1 of State Regulation No. 20, in violation of Rule 12 of State Regulation No. 13.

Reports of investigation disclose that on August 4, 1964, a telephone order for a case of beer and a 4/5 quart of whiskey was accepted at the licensed premises and the ordered alcoholic beverages were delivered by the permittee to a sixteen-year-old minor (who had placed the telephone order) at a residence in Morris Plains from which the call had been made, accepting payment from the minor at the time of delivery to him.

The reports further disclose that on September 5 a telephone order was accepted at the licensed premises for two and one-half cases of beer, a 4/5 quart of whiskey and a half-fifth bottle of liqueur, delivery of this order being made by Robert W. Atkins, president and principal stockholder of the licensee corporation, to the same sixteen-year-old minor at another residence in Morris Plains from which the minor had placed the call, payment again being accepted from the minor who took the delivery.

While clearly the conduct of the minor was reprehensible (resulting in his being charged by local police with juvenile delinquency), even more clearly is it the duty, obligation and responsibility of all licensees to refrain from and studiously avoid sale or delivery of alcoholic beverages to any minor under any circumstances. That is the mandate of the alcoholic beverage law under which the license is sought and obtained by the licensee, and with the license go the burdens as well as the benefits. For a similar factual situation in which the licensee was held responsible, see Lake, Inc. v. Oaklyn, Bulletin 1531, Item 2; affirmed on appeal in Lake, Inc. v. Oaklyn and Division of Alcoholic Beverage Control, App. Div. 1964, not official reported, recorded in Bulletin 1585, Item 1.

Absent prior record, the license will be suspended for twenty-five days (the minimum in cases involving sale to a sixteen-year-old minor), with remission of five days for the plea entered, leaving a net suspension of twenty days (Re Somia, Bulletin 1494, Item 4); and the permit will likewise be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days (Cf. Re Gershenbaum, Bulletin 1505, Item 2).

Accordingly, it is, on this 13th day of October 1964,

ORDERED that Plenary Retail Distribution License D-10, issued by the Mayor and Board of Aldermen of the Town of Morristown to M. Lehmann, Incorporated, for premises 70 South Street, Morristown, be and the same is hereby suspended for twenty (20) days, commencing at 9 a.m. Tuesday, October 20, 1964, and terminating at 9 a.m. Monday, November 9, 1964; and it is further

ORDERED that Limited Employment Permit 949, issued by the Director of the Division of Alcoholic Beverage Control to Robert W. Atkins, 3 Harvale Drive, Florham Park, be and the same is hereby suspended for twenty (20) days, commencing at 9 a.m. Tuesday, October 20, 1964, and terminating at 9 a.m. Monday, November 9, 1964.

JOSEPH P. LORDI  
DIRECTOR



10. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

FRANK ROSENBAUER )  
354 West Side Avenue )  
Jersey City, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-468, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

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Joseph J. Talafous, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on September 23, 1964, he sold six 12-ounce cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, 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 Dude's Bar, Inc., Bulletin 1577, Item 1.

Accordingly, it is, on this 13th day of October 1964,

ORDERED that Plenary Retail Consumption License C-468, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Frank Rosenbauer, for premises 354 West Side Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, October 20, 1964, and terminating at 2 a.m. Friday, October 30, 1964.

JOSEPH P. LORDI  
DIRECTOR

11. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS -  
POSSESSION OF INDECENT MATTER - LICENSE SUSPENDED FOR  
15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

CITY HALL BAR & GRILL (A CORP.) )  
882 Broad Street )  
Newark, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-505, issued by the Municipal )  
Board of Alcoholic Beverage Control of )  
the City of Newark. )

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Licensee, by Nicholas Stokes, President, Pro se.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

The following charges were preferred against the licensee:

"1. On Thursday, May 21, 1964, between 2:00 a.m. and 2:25 a.m., you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and allowed, permitted and suffered the consumption of alcoholic beverages on your licensed premises; in violation of Section 3.1(a) of Revised Ordinances of the City of Newark, adopted October 15, 1952 as amended December 5, 1956.

"2. On Thursday, May 21, 1964, between 2:00 a.m. and 2:25 a.m., you failed to have your entire licensed premises closed; in violation of Section 3.1(b) of Revised Ordinances of the City of Newark, adopted October 15, 1952, as amended December 5, 1956.

"3. On Thursday, May 21, 1964, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting pictures and representations, viz., a deck of fifty-two (52) "playing cards" bearing photographic representations and illustrations of male and female persons in obscene, indecent, filthy, lewd, lascivious and disgusting poses, positions, practices and acts; in violation of Rule 17 of State Regulation No. 20."

Licensee pleaded guilty to charges 1 and 2 and not guilty to charge 3.

The undisputed evidence presented herein is that during the investigation by ABC agents of the licensee's premises on May 21, 1964, a small brown paper package was found next to the cash register on the back bar. After Philip Garippa, the bartender on duty, denied knowledge of the contents of the package, he was requested by an agent to open the same. Inside the package was a black plastic box containing a deck of playing cards on the face of which were photographic representations of

nude men and women engaged in various acts of indecency and perversion.

Agent S testified that the brown paper package was taped and that "it did not appear to me it had been opened." Furthermore, he testified that he did not see any name written upon the package.

Agent C testified that there was no name on the package which consisted of "plain brown wrapping, sealed on both ends with Scotch tape." Furthermore, he testified "I don't believe it could have been opened."

Licensee produced the person who brought the package to its premises and also several witnesses who were present at the time. Stanley S. Sherman testified that a man known to him as "Bill" gave him a sealed package and requested that he give it to a man who works with him at the post office; that inasmuch as he was leaving by bus for the race track and did not intend to report for work, he wrote the fellow-employee's name on the package and left it with the bartender to give to him when he came into the premises; that the following day, when he (Sherman) visited the premises, he was surprised to learn what the package contained.

Two other witnesses testified that they were present on May 20, 1964, when Sherman left the package with the bartender, and heard the request that it be given to someone.

Philip Garippa testified that he was on duty on May 21, 1964, when the agents were in the licensed premises; that at their request, he opened the package and was "shocked" at the contents thereof. Furthermore, he testified that the package had not been touched "and no one knew what was inside it."

Both agents were of the opinion that the sealed package containing the playing cards in question had never been opened.

In view of the circumstances, I am of the opinion that the licensee should be given the benefit of the doubt arising from this incident. However, it might be well to remind licensees that it is very risky to accept any package without properly ascertaining the contents thereof. I recommend, therefore, that charge 3 be dismissed.

Licensee has a prior adjudicated record. Effective October 18, 1954, its license was suspended by the municipal issuing authority for fifteen days for bookmaking. Inasmuch as the dissimilar record occurred more than five years ago, it should not be considered in fixing the penalty herein. Re Mandel, Bulletin 1553, Item 4.

It is further recommended that an order be entered suspending the license on charges 1 and 2 for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Schmidt & Brophy, Bulletin 1577, Item 12.

#### Conclusions and Order

No written exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of the proceedings, the exhibit and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 20th day of October, 1964,

ORDERED that Plenary Retail Consumption License C-505, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to City Hall Bar & Grill (A Corp.) for premises 882 Broad Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, October 27, 1964, and terminating at 2:00 a.m. Friday, November 6, 1964.

JOSEPH P. LORDI  
DIRECTOR

12. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

HENRY S. BUIKEMA AND MARIE S. BUIKEMA, t/a ELM LIQUOR SHOP 23 Elm Street Westfield, N. J. )

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Distribution License D-6, issued by the Town Council of the Town of Westfield. )

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Licensees, by Henry S. Buikema, Pro se. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

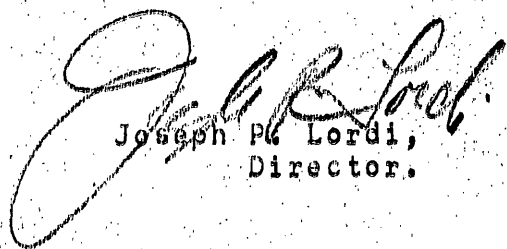
BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on September 19, 1964, they sold a case of quart bottles of whiskey at less than filed price, in violation of Rule 5 of State Regulation No. 30.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Crisafulli, Bulletin 1580, Item 9.

Accordingly, it is, on this 13th day of October 1964,

ORDERED that Plenary Retail Distribution License D-6, issued by the Town Council of the Town of Westfield to Henry S. Buikema and Marie S. Buikema, t/a Elm Liquor Shop, for premises 23 Elm Street, Westfield, be and the same is hereby suspended for five (5) days, commencing at 9 a.m. Monday, October 19, 1964, and terminating at 9 a.m. Saturday, October 24, 1964.

  
Joseph P. Lordi,  
Director.