

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

BULLETIN 1809

August 30, 1968

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1. APPELLATE DECISIONS - KAPLAN AND BUZAK v. ENGLEWOOD.

FRIEDA KAPLAN, STELLA BUZAK,)
FRANK BUZAK, t/a WEST SIDE)
BAR & GRILL,)

Appellants,)

-vs-)

COMMON COUNCIL OF THE CITY)
OF ENGLEWOOD,)

Respondent.)

ON APPEAL
O R D E R

Jacob Schneider, Esq. and Myron Rosner, Esq., Attorneys for
Appellants.

William V. Breslin, Esq., Attorney for Respondent.

BY THE DIRECTOR:

On June 7, 1967, the Director entered Conclusions and Order herein affirming respondent's denial of renewal for 1967-68 of appellants' plenary retail consumption license for premises 91 West Palisade Avenue, Englewood, and vacating his order extending the term of appellants' 1965-66 license until the determination of appellants' appeal from such denial. Kaplan et als. v. Englewood, Bulletin 1745, Item 1.

On appeal from the Director's order to the Appellate Division, said order was stayed pending determination of that appeal. Thus the appellants have continued to operate their licensed business under their 1965-66 license, by virtue of said extension of license, during the pendency of the appeal to the Appellate Division.

On February 23, 1968 the Director's order was affirmed by the Appellate Division (Kaplan et als. v. Englewood, Docket A-1310-66, not officially reported, recorded in Bulletin 1790, Item 1) and mandate on affirmance was received on June 21, 1968. Hence the Director's previous order of June 7, 1967 may now be reinstated.

Accordingly, it is, on this 25th day of June, 1968,

ORDERED that the action of the respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed. It is further

ORDERED that the Director's order entered on June 27, 1966, extending the term of appellants' 1965-66 license pending determination of the appeal herein, be and the same is hereby vacated, effective immediately.

JOSEPH M. KEEGAN
Director.

2. APPELLATE DECISIONS - SCHUJAS v. BRIDGETON.

BILL SCHUJAS, t/a UNCLE BILL'S)
BAR AND LIQUORS,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS
AND ORDER

CITY COUNCIL OF THE CITY OF)
BRIDGETON,)

Respondent.)

-----)
Frederick B. Edwards, Esq., Attorney for Appellant.
Arnold L. Bauer, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Hearer's Report

This is an appeal from the unanimous action of respondent whereby on November 10, 1967, it suspended appellant's license for premises southeast corner of South Pearl and East Commerce Streets, Bridgeton, for sixty days commencing November 20, 1967, after finding him guilty of the following charges:

"1. On October 18, 1967, you allowed, permitted and suffered a prostitute in or upon your licensed premises in violation of Rule 4 of State Regulation No. 20.

"2. On September 30, 1967, you allowed, permitted and suffered the unlawful possession and sale of narcotics, specifically marijuana, in or upon your licensed premises in violation of Rule 4 of State Regulation No. 20.

"3. On October 18, 1967, you allowed, permitted and suffered the unlawful possession and sale of narcotics, specifically marijuana, in or upon your licensed premises in violation of Rule 4 of State Regulation No. 20.

"4. On October 18, 1967, you allowed, permitted and suffered a prostitute in or upon your licensed premises to solicit another for immoral purposes in violation of Rule 4 of State Regulation No. 20."

A fifth charge alleging that on the dates in question appellant allowed, permitted and suffered the harboring of persons of ill repute upon the licensed premises, in violation of a local ordinance, was apparently not considered in the disposition of the matter.

Appellant sets forth in his petition of appeal that the action of respondent was erroneous and that its action was arbitrary and capricious.

Respondent denies said allegations and contends that its action should be sustained.

Upon the filing of the appeal, the Director entered an order on November 15, 1967, staying respondent's action pending the entry of a further order herein.

The transcript of the proceedings before respondent was submitted and, by stipulation of the parties, it was agreed that the decision herein be based thereon in lieu of a de novo hearing. Rule 8 of State Regulation No. 15.

Detective-Sergeant Richard H. Gauntt testified that during an investigation of the Cumberland Hotel, he directed George Smith, an informant, to visit the hotel and appellant's licensed premises (located therein) for the purpose of ascertaining whether a purchase of narcotics could be made; that on September 30, 1967, the informant gave Gauntt a "small brown packet containing vegetation alleged to be marijuana" which Smith stated he had purchased on said date in appellant's licensed premises. Sergeant Gauntt further testified that on October 18, as the result of a telephone call from Smith, he and three other police officers, armed with search warrants, went to the hotel where two of the officers stationed themselves at the entrance to appellant's premises while Gauntt and Officer Crawford went to a room rented by "Elaine"; that on finding she was not in the room, Gauntt went to appellant's premises where Smith and Elaine were seated at a table; that Elaine was taken to City Hall and, as she was entering the building, she "attempted to dispose of a small brown packet which was tucked in her skirt. She threw this in the trash can." When recovered, the packet was found to contain "vegetation" and was sent to the State Police laboratory for analysis. An examination of Elaine's pocketbook disclosed some money which had previously been marked by Gauntt.

On cross examination, the witness testified that Emerson Errickson, who was tending bar at the time Gauntt entered appellant's premises on October 18, had "no direct connection with these operations." Gauntt also stated that he himself had no knowledge that Elaine was a prostitute, had ever been convicted of prostitution, or that appellant permitted a prostitute on the licensed premises; that the allegations he made about Elaine's being a prostitute resulted from what other persons had told him. Although he knew of persons of ill repute being on the licensed premises, he never spoke to appellant concerning the same but believed that the licensee was notified by Chief Semple.

George Smith testified that at 2:10 p.m. on Saturday, September 30, 1967, he was seated at a table with a man called Tyrone pursuant to arrangements theretofore made to meet at appellant's licensed premises for the purpose of purchasing marijuana; that when several men came into the place, Tyrone got up from the table and, after speaking to the men, accompanied them from the licensed premises. When they returned, Tyrone came back to Smith's table while the others went to the bar. Thereafter, when Smith said he wanted to purchase some marijuana, Tyrone walked alongside one of the men at the bar, "got the marijuana and came back to the table to me and slipped it to me." Smith then took the packet to Sergeant Gauntt.

Smith further testified that a week later, since Tyrone was leaving town, he gave him (Smith) a note of introduction to Elaine requesting her to take care of Smith, which note was given to her in appellant's licensed premises. After Elaine read the note, Smith asked her for "pot" but, when she hesitated, he told her "I'll have to go somewhere else to get it." With this, Elaine made a telephone call and thereafter a man came into the licensed premises and gave Elaine "the stuff." In payment therefor, Smith gave her marked money which had been given to him by Sergeant Gauntt. When Elaine passed the marijuana to Smith, he walked out of the barroom and telephoned Sergeant

Gauntt about the receipt thereof. After Smith returned to the barroom, Elaine requested him to arrange dates with men for her for the purpose of engaging in sexual intercourse. Shortly thereafter Elaine was apprehended by the police and Smith left appellant's premises, returning at 11:00 p.m. that evening to pick up medicine which he had inadvertently left there. According to Smith, upon entering the establishment, Errickson on duty as bartender said to him, "A good thing you didn't go up to her room."

On cross examination, Smith said he did not have time to get any customers for Elaine because of her arrest on the day in question. He also said that at the time he spoke with Tyrone and also at the time he spoke with Elaine, his conversation was only with them. He had no knowledge whether appellant or the bartender were aware that Elaine solicited for prostitution or whether Tyrone was selling marijuana. He contended that Errickson may have overheard his conversation with Elaine because of the remark he made to him when he had returned to appellant's premises to obtain his medicine. At no time did Smith pay any money to Elaine for the purpose of illicit sexual intercourse, nor did he see any other person give her any money.

Appellant testified that he had no personal knowledge that Elaine was a person accused of prostitution, or did he have personal knowledge that a sale of marijuana might have been made on his licensed premises. No one told him at any time of the accusations with reference thereto.

Emerson Errickson testified that on October 18, 1967, he began work at 9:00 a.m., left at 2:10 p.m. and came back to the premises about 7:00 p.m. to check with the bartender on duty to ascertain whether any supplies were needed. He had just relieved the bartender when the latter went to the men's room and was walking behind the bar as a detective came into the licensed premises. Errickson was questioned at the hearing before respondent by appellant's attorney concerning his alleged conversation with Smith when he returned to the premises on the evening in question. Errickson said, "When the man come back in the bar he was talking, he said, 'Boy, that was a close shave,'" to which Errickson asked, "Shave? What do you mean?" and in reply Smith stated if he had \$5.00 he would "probably have been caught in the room." Errickson then commented to Smith, "Boy, you're just lucky you weren't involved."

Errickson further testified that he overheard none of the conversation alleged by Smith to have taken place between Smith and Elaine and that he never had any knowledge "about her being a prostitute or whatever she is." Concerning the sale of marijuana, he stated that he "never saw it, I don't know what it looks like, don't know nothing about it." On cross examination about the time appellant spends in the licensed premises, Errickson testified that he "wouldn't definitely say a half hour or an hour, because I don't know how long it takes him to clean up and do things he does, I don't know what time he comes in."

In answer to a question whether the police chief ever spoke to him (Errickson) about the operation of the licensed premises, he stated that the chief mentioned that he had information that horse race bets were taken and that profane language was used on the premises. Errickson told the chief that no betting took place on the premises and, in so far as profane language was used by some customers, he would put up signs in an attempt "to keep it down as much as possible." He did not remember if the chief mentioned prostitution but he (Errickson) knew

nothing concerning such alleged activity. When questioned by respondent's attorney regarding Elaine, Errickson said, "Well, there for a while she was going to school and I didn't see too much of her. Then she start coming in off and on, and then she moved into the hotel on Monday or Tuesday before she was arrested and she was in the bar quite often then." Elaine paid for most of her drinks as Errickson "would not allow anybody in the bar sponging drinks off somebody else. In fact, I did tell her on Tuesday night that I don't want her coming in here soliciting drinks off the customers...I don't go for this because I don't know who I am going to collect my money off of and I try to put a stop to it every time it happens."

I have set forth in detail the testimony of the witnesses as to the incidents allegedly occurring on the dates mentioned in the charges preferred herein. The charges being of a serious nature, it is incumbent that the evidence be carefully weighed in order to arrive at a proper determination.

The first question to be resolved is whether the reputation of Elaine as a prostitute was adequately shown to alert appellant and his bartender to prevent her from frequenting the licensed premises. Sergeant Gauntt testified that by reason of the investigation conducted under his jurisdiction, it was concluded that Elaine was a prostitute. He had no knowledge other than what was related to him. He acknowledged that he did not know whether Elaine had been convicted of engaging in prostitution. Although it appears from the testimony that Elaine at times may have frequented the licensed premises for the ostensible purpose of soliciting for illicit sexual intercourse, the alleged illegal activity never took place, nor is there any evidence in the record that she engaged in such illegal activity. Thus there appears to be no proof that she was a prostitute. Sergeant Gauntt admitted that he knew of no time that she had been convicted of such criminal offense and his knowledge concerning her was acquired merely through the investigation made, presumably by Smith. Insufficient proof was presented herein to brand Elaine as a known prostitute. She never admitted such conduct and no proof was presented that Elaine had made arrangements with anyone on appellant's licensed premises to engage in immoral activity. Therefore, it is recommended that Charges 1 and 4 be dismissed. Re Schumacher, Bulletin 901, Item 5.

With reference to the charges concerning possession and sale of marijuana on September 30 and October 18, there has not been adequate proof by any witness produced in this matter to connect either the licensee or the bartender with the illicit activities. I am mindful of the fact that a licensee or his employee must keep their eyes and ears open when in charge of licensed premises in order to detect the occurrence of anything illegal. However, only George Smith, the informant engaged by the police department, testified to what had taken place with reference to the purchase of marijuana on the dates in question. On September 30, Smith allegedly met with one Tyrone who had obtained a packet of marijuana from a patron who had come into the licensed premises. The said narcotic was slipped to Tyrone by the "pusher" while at the bar. There is insufficient proof that the bartender had or might have had any knowledge that such a transaction was taking place in the licensed premises. Smith contends that on October 18, he requested marijuana from Elaine and, through her contact she obtained the packet apparently containing said drug which she had given to Smith just before the police entered appellant's premises. Again, there has been inadequate proof that Errickson, the bartender, knew that Elaine

had given Smith the packet of marijuana. In fact, Sergeant Gauntt stated that Errickson had "no direct connection with these operations." Errickson denied knowledge of any such activity during his presence in the licensed premises. Appellant, who does not spend too much time in the licensed premises, testified that he visits the premises for various periods of time each day and that he had no knowledge whatsoever that Elaine was a prostitute, solicited for prostitution or that narcotics were sold by anyone on the licensed premises.

The purpose of Rule 4 of State Regulation 20 under which the charges in question were brought is to prohibit licensed premises from being used as a hang-out for persons generally known, or known to the licensee or his agents, to be undesirable. The rule was not intended to prohibit every person who may have been convicted of a crime from patronizing licensed premises, particularly where neither the licensee nor any of his employees had knowledge of the alleged activities of the patrons. Re Silver, Bulletin 441, Item 12.

Inasmuch as the record of the hearing before respondent is devoid of proof that appellant or his employees had any knowledge that Elaine engaged in prostitution or that sales of marijuana were made to Smith, I am compelled to recommend that the action of respondent be reversed and the charges theretofore preferred against appellant be dismissed. Cf. Cubanacan Corp. v. Newark, Bulletin 1753, Item 2, and cases cited therein.

Conclusions and Order

Written exceptions to the Hearer's Report and argument in support thereof were filed by the attorney for the respondent pursuant to Rule 14 of State Regulation No. 15.

After careful consideration of the entire record, including the transcript of the testimony, the Hearer's Report and respondent's exceptions and argument thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of June, 1968,

ORDERED that the action of respondent City Council of the City of Bridgeton in adjudging appellant guilty of the charges preferred herein be and the same is hereby reversed and the charges are dismissed.

JOSEPH M. KEEGAN
Director.

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

CLUB WARREN, INC.
154 Warren Street
Newark, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-493, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Newark.

Ralph C. DeRose, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers dates between January 16 and February 27, 1968, it variously permitted acceptance of numbers and horse race bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license then held for premises 141 Warren Street, Newark, by the municipal issuing authority for ten days effective November 5, 1951, for sale in violation of State Regulation No. 38.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Reiker, Bulletin 1780, Item 4.

Accordingly, it is, on this 25th day of June, 1968,

ORDERED that Plenary Retail Consumption License C-493, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Club Warren, Inc., for premises 154 Warren Street, Newark, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, July 2, 1968, and terminating at 2:00 a.m. Monday, August 26, 1968.

JOSEPH M. KEEGAN
Director.

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

RICHARD & MARY RISPOLI)
4509 Park Avenue)
Union City, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-200 for the year 1967-68 and C-41 for the year 1968-69 issued by the Board of Commissioners of the City of Union City.)

Louis P. Caroselli, Esq., Attorney for Licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges (1) and (2) alleging that on February 27, March 7, 10 and 12, 1968, they permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Hub Corp., Inc., Bulletin 1794, Item 4.

Accordingly, it is, on this 27th day of June, 1968,

ORDERED that Plenary Retail Consumption License C-41, issued by the Board of Commissioners of the City of Union City to Richard and Mary Rispoli for premises 4509 Park Avenue, Union City, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a.m. Tuesday, July 2, 1968, and terminating at 3:00 a.m. Monday, August 26, 1968.

JOSEPH M. KEEGAN
Director.

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)
COLUMBUS BAR & GRILL, INC.)
t/a Columbus Lounge & Italian)
Restaurant.)
1512 Calhoun Street)
Trenton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-56, issued by the)
City Council of the City of)
Trenton.)

Giacomo G. Rosati, Esq., Attorney for Licensee.
Walter H. Cleaver, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
November 15, 1967 it possessed alcoholic beverages in thirteen
bottles bearing labels which did not truly describe their
contents, in violation of Rule 27 of State Regulation No. 20.

Although the licensee has no previous record, the license
then held by Giovanni Baldassari, 49% stockholder of the licensee
corporation, in partnership with Paul Martini, for the same
premises, was suspended by the Director for twenty days effective
July 5, 1961 for accepting horse race bets on the licensed prem-
ises. Re Baldassari and Martini, Bulletin 1399, Item 4.

The prior record of suspension of license for dissimilar
violation occurring more than five years ago disregarded, the
license will be suspended for forty-five days, with remission
of five days for the plea entered, leaving a net suspension of
forty days. Re Silver Star Cafe, Inc., Bulletin 1783, Item 5.

Accordingly, it is, on this 26th day of June, 1968,

ORDERED that Plenary Retail Consumption License C-56,
issued by the City Council of the City of Trenton to Columbus
Bar & Grill, Inc., t/a Columbus Lounge & Italian Restaurant,
for premises 1512 Calhoun Street, Trenton, be and the same is
hereby suspended for forty (40) days, commencing at 2:00 a.m.
Wednesday, July 3, 1968, and terminating at 2:00 a.m. Monday,
August 12, 1968.

JOSEPH M. KEEGAN
Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

CHESTER LIPKA
384 Grove Street
Jersey City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-272, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Licensee, Pro se.
Louis F. Treole, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that (1) on May 25-26, 1968 he sold drinks of beer and two half-pints of liqueur, respectively, to two minors, ages 16 and 18, in violation of Rule 1 of State Regulation No. 20, and (2) on May 25, 1968 he sold the two half-pints of liqueur 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 twenty-five days (cf. Re Klein, Bulletin 1643, Item 7; Re Arrahill, Bulletin 1646, Item 1) and on the second charge for fifteen days (Re Falinski, Bulletin 1793, Item 15), or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 25th day of June, 1968,

ORDERED that Plenary Retail Consumption License C-272, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Chester Lipka, for premises 384 Grove Street, Jersey City, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Tuesday, July 2, 1968, and terminating at 2:00 a.m. Tuesday, August 6, 1968.

JOSEPH M. KEEGAN
Director.

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

In the Matter of Disciplinary Proceedings against)
)
 JERSEY LANES BAR & GRILL,)
 INC.)
 30 Park Avenue)
 Linden, N. J.,)
)
 Holder of Plenary Retail Consumption License C-26, issued by the)
 Municipal Board of Alcoholic Beverage Control of the City of)
 Linden.)
 -----)

CONCLUSIONS
AND ORDER

Kelly & Callahan, Esqs., by John R. Kelly, Esq., Attorneys
 for Licensee.
 Walter H. Cleaver, Esq., appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
 December 26, 1967 it possessed alcoholic beverages in five
 bottles bearing labels which did not truly describe their con-
 tents, 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 Heaney,
 Bulletin 1783, Item 6.

Accordingly, it is, on this 25th day of June, 1968,

ORDERED that Plenary Retail Consumption License C-26,
 issued by the Municipal Board of Alcoholic Beverage Control
 of the City of Linden to Jersey Lanes Bar & Grill, Inc., for
 premises 30 Park Avenue, Linden, be and the same is hereby
 suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday,
 July 2, 1968, and terminating at 2:00 a.m. Monday, July 22,
 1968.

JOSEPH M. KEEGAN
 Director.

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

584 AMBOY AVENUE, INC.)
t/a The Canteen)
584-586 Amboy Avenue)
Perth Amboy, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-31 issued by the)
Board of Commissioners of the)
City of Perth Amboy.)

-----)
Kovacs, Anderson, Horowitz & Rader, Esqs.,)
by Oliver R. Kovacs, Esq., Attorneys for Licensee.)
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 March 15, 1967, 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 quart bottle labeled 'G & W Seven
Star Light Blended Whiskey, 86 Proof',

One quart bottle labeled 'Hiram Walker's
Private Cellar Straight Bourbon Whiskey,
100 Proof', and

One 4/5 quart bottle labeled 'Barton Reserve
Kentucky Whiskey, a Blend, 90 Proof';

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

Richard Zanyor, formerly an agent of this Division, tes-
tified that on March 15, 1967, he tested eighty-seven open bottles
of liquor in the licensee's premises and seized three bottles
of whiskey and one of bourbon after his preliminary tests indi-
cated that the contents of the respective bottles did not
correspond with their labels. He further testified that on
March 16 he personally delivered the questionable bottles to
the Division laboratory, together with a genuine bottle of each
brand seized, with the exception of a bottle of Windsor Supreme
Canadian Whisky.

At the hearing herein, the witness identified the bottles
in question and testified that they were the bottles taken from
the licensed premises and placed by him in the trunk of his car
after he left the premises. On cross examination, Mr. Zanyor
stated that his wife also operated the automobile but he did
not remember whether she or he used the car on the evening of
March 15, 1967.

John P. Brady, a qualified chemist, testified that he made an analysis of the contents of the questionable bottle labeled "G & W Seven Star Light Blended Whiskey, 86 Proof" and found that "it had alcohol by volume of 40.75 percent, proof of 81.5...33.6 percent acids, 570.4 percent solids, and color 327 Klett color." His analysis of the contents of a genuine bottle of the same brand showed that "it contained 42.9 percent alcohol by volume or 85.8 proof, there were 32.4 percent acids, 551.2 solids, and color of 315." The proof being "approximately four points off," it was his opinion that the contents of the seized bottle were not genuine as labeled.

Mr. Brady further testified that an analysis of the contents of the questionable bottle of "Hiram Walker's Private Cellar Straight Bourbon Whiskey, 100 Proof," showed "48.45 percent alcohol by volume, 96.9 proof, 47.6 acids, 142.4 solids, color reading of 705," whereas an analysis of a genuine bottle of the same brand disclosed "alcohol by volume of 50.3, 100.6 proof, 61.2 grams acids, 148 grams solids, Klett color 582." Mr. Brady said it was his opinion that, since the bottle in question was "four points low in proof and not up to standard Hiram Walker's," the whiskey in the said bottle was not genuine as labeled.

Mr. Brady also testified that he made an analysis of the questionable bottle labeled "Barton Reserve Kentucky Whiskey, A Blend, 90 Proof" and that his findings were that this bottle "contained 38.45 percent by volume alcohol, or a proof of 76.9, it had 48 grams acids, 888.8 grams solids, and Klett color of 534," whereas an analysis made by him of the contents of a genuine bottle of said whiskey showed it to contain "44.7 percent alcohol by volume, proof of 89.4, 48 grams acids, 770.8 grams solids, and Klett color 486." Mr. Brady said that since the questionable bottle was thirteen points low in proof, in his opinion it was not genuine as labeled.

No analysis had been made of the contents of the bottle labeled "Windsor Supreme Canadian Whisky" which had been seized as there was no comparison bottle of this brand of whiskey furnished to the agent and Mr. Brady had not made any analysis of this particular type of whiskey at any time heretofore.

On cross examination, Mr. Brady was asked whether or not the proof in the respective bottles of whiskey might have been decreased by evaporation. He stated that in his opinion the rate of evaporation in opened stock was "almost negligible."

Thomas Coffey, vice-president of the corporate licensee, testified that the transfer of the business to the licensee occurred in August 1966 and at that time it bought all the open stock of liquor. The questionable bottles were part of that open stock. On cross examination, he was questioned as to whether or not the liquor purchased from the prior licensee had been analyzed and he stated that it had not.

A licensee is responsible for any alcoholic beverages not truly labeled found upon his licensed premises. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156. As the court stated in that case at p. 159:

"We find nothing within the Alcoholic Beverage Control Act, R.S. 33:1-1, et seq., to indicate an intent that the holder of a retail consumption license must

have knowledge that he possesses illicit beverages in order to make him amenable to disciplinary action. Our courts have consistently held that such knowledge is not an essential ingredient to conviction for possession under statutes similar to the one under consideration."

Although the sincerity of the licensee as to its contentions is not challenged, the chemist who made the analysis of the three bottles in question testified that the labels 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.

After careful examination of the testimony, I conclude that the Division has established the truth of the charge herein by a fair preponderance of the evidence and recommend that the licensee be found guilty thereof.

Licensee has no prior adjudicated record. Therefore, it is recommended that the license be suspended for twenty days. Re Cardinali & Strakowski, Bulletin 1788, Item 10.

Conclusions and Order

Written exceptions to the Hearer's report and written argument thereto were filed with me by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

I have carefully considered the entire record, including the exceptions filed, the exhibits and Hearer's report. I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of June 1968,

ORDERED that Plenary Retail Consumption License C-31, issued by the Board of Commissioners of the City of Perth Amboy to 584 Amboy Avenue, Inc., t/a The Canteen, for premises 584-586 Amboy Avenue, Perth Amboy, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1968, commencing* at 2:00 a.m. Tuesday, June 25, 1968; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Monday, July 15, 1968.

JOSEPH M. KEEGAN
Director.

*By order dated June 21, 1968, the suspension was deferred to commence at 2:00 a.m. Tuesday, July 30, 1968, and to terminate at 2:00 a.m. Monday, August 19, 1968.

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JAMES McSHARRY
96 Hudson Street
Hoboken, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-107, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

Licensee, Pro se.
Walter H. Cleaver, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 29, 1968 he possessed alcoholic beverages in two 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 fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Mihai, Bulletin 1793, Item 12.

Accordingly, it is, on this 17th day of June, 1968,

ORDERED that Plenary Retail Consumption License C-107, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to James McSharry, for premises 96 Hudson Street, Hoboken, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1968, commencing at 2:00 a.m. Monday, June 24, 1968; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Thursday, July 4, 1968.

JOSEPH M. KEEGAN
Director.

10. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
Labeled - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

MACK'S LONG BAR, INC.)
126 Market Street)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-16, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

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Mac A. Kaplus, Esq., Attorney for Licensee.
Walter H. Cleaver, Esq., appearing for Division of Alcoholic
Beverage Control.

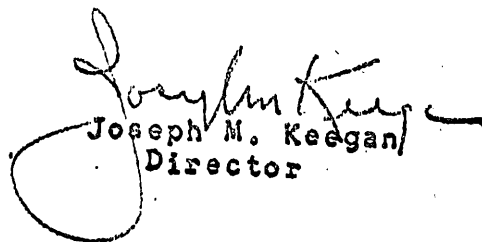
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
November 29, 1967 it possessed an alcoholic beverage in a bottle
bearing a label which did not truly describe its contents, in
violation of Rule 27 of State Regulation No. 20.

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 Old Elm Corp., Bulletin 1786,
Item 7.

Accordingly, it is, on this 27th day of June, 1968,

ORDERED that Plenary Retail Consumption License C-16,
issued by the Municipal Board of Alcoholic Beverage Control of
the City of Newark to Mack's Long Bar, Inc., for premises 126
Market Street, Newark, be and the same is hereby suspended for
five (5) days, commencing at 2:00 a.m. Thursday, July 4, 1968,
and terminating at 2:00 a.m. Tuesday, July 9, 1968.


Joseph M. Keegan
Director