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

BULLETIN 1371

JANUARY 9, 1961

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ITEM

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

ULLETIN 1371 JANUARY 9, 1961

COURT DECISIONS - GRANT LUNCH CORPORATION v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK AND DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-505-58

GRANT LUNCH CORPORATION,

Appellant,

vs.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and WILLIAM HOWE DAVIS, etc.

Respondents.

Argued December 5, 1960--Decided December 27, 1960

Before Judges Conford, Freund and Kilkenny

Mr. Daniel G. Kasen argued the cause for appellant (Messrs. Kasen, Schnitzer and Kasen, attorneys).

Mr. David M. Satz, Jr., Deputy Attorney General, argued the cause for respondent Division of Alcoholic Beverage Control (Mr. David D. Furman, Attorney General, and Mr. Samuel B. Helfand, Deputy Attorney General, attorneys).

The opinion of the court was delivered by

CONFORD, S. J. A. D.

This is an appeal from a decision of the State Director of the Division of Alcoholic Beverage Control sustaining the action of the respondent Newark Board, which found the appellant guilty of selling and serving beer to a person "actually or apparently intoxicated," in violation of a regulation of the Division, and suspended its retail liquor license for 20 days. The offense is alleged to have occurred August 23, 1957.

The adjudication by the Newark Board against the appellant was based substantially upon the testimony of three investigators of the Division to the effect that one Bannon was served beer at appellant's premises in Newark at a time when he was actually or apparently intoxicated. Each of the agents testified as to the details of Bannon's appearance, showing such classic indications of intoxication as incoherence of speech, use of profanity, unsteadiness on feet, bloodshot eyes and dishevelment of person. Their testimony was corroborated by that of a Newark police surgeon who examined Bannon shortly after the occurrence complained of, and who was told by Bannon that he had been drinking for several days. The licensee adduced testimony purporting to show that Bannon was not intoxicated.

At the hearing before the Newark Board, appellant demanded that the State Director produce written reports which had been filed concerning the incident by the three investigators. The Director refused to make these reports available under a departmental policy treating such reports as confidential.

On appeal, there was a hearing de novo before a hearer sitting for the Director, and the agents testified again, this time at the call of appellant, the respondent having submitted on the transcript before the Newark Board. Their testimony in substance accorded with that which they had given before. The appellant offered testimony of the bartender, night manager and general manager of its place of business to the effect that Bannon was, to all appearances, sober at the time he was served the beer. The hearer refused a request of appellant to give it access to the reports filed by the investigators. At the conclusion of the case the hearer filed a report in which he concluded that "the testimony of the agents clearly establishes that the licensee permitted the sale of alcoholic beverages to and the consumption of such beverages by a person actually, or apparently, intoxicated." The hearer also found that the testimony of the agents respecting the material facts had "remained unshaken," notwithstanding "exhaustive cross-examination." The Director concurred in the findings and conclusions and adopted the hearer's recommendation that the action of the Newark Board be affirmed. Pending this appeal the penalty has been stayed.

While the present appeal from the action of the Director was pending, and after the filing of appellant's original brief, this court, on the application of the Director, ordered a remand for the purpose of permitting the appellant to see the reports and to cross-examine the agents on the basis thereof. See State v. Hunt, 25 N.J. 514, 524 (1958). The failure to allow access to the reports had been one of two grounds of appeal raised by appellant in its original brief. Pursuant to the order, the reports were made available to appellant, and further hearings were held. But appellant's cross-examination of the agents went beyond what the hearer deemed the scope of the order for remand, and was disallowed to that extent. We subsequently denied a motion by the appellant designed to compel a broader scope of cross-examination of the agents than was being permitted by the hearer.

Pursuant to our order, a supplemental report was filed by the hearer, stating:

> "It is apparent that no additional testimony was offered by appellant relevant to the meritorious issue based on any disclosures gained from the reports and the cross-examination. I have reviewed the testimony of the investigators and read their reports and I find no inconsistencies which could in any way alter the findings set forth in my original report. Disregarding the testimony of McDermott, the testimony of West and Cooper respecting Bannon's slovenly appearance, bloodshot eyes, incoherent speech, profanity and unsteadiness on his feet, evidences the fact that the man was apparently, if not actually, intoxicated and, also, that while in that condition, he was served alcoholic beverages by the bartender. It has been clearly established, therefore, that appellant was guilty of violating Rule 1 of State Regulation No. 20.
>
> "I recommend, therefor [sic], that the determination of the Director entered on April 23, 1959 remain undisturbed."

The Director approved and adopted the supplemental findings, conclusion and recommendation of the hearer.

On the present appeal the appellant's briefs, original and supplemental, deliberately forego any attack on the sufficiency of the evidence before the Director to establish its guilt of the offense charged, but rely entirely on the arguments that (1) the reports had not, but should have been produced before the Newark Board for defendants' use in cross-examination at that time; and (2) the Director assertedly made no findings of fact. The appellant argues that it has consequently been deprived of a fair hearing.

Appellant's oral argument expands somewhat on its position in the briefs. Without approving the practice, we deal with the broadened base advanced for its contentions.

I.

Essentially, appellant argues it cannot be said to have been accorded due process unless the matter is remanded to the Newark Board to be retried all over again; this time with the reports of the investigators in its hands for plenary use in cross-examination of them. We cannot agree. The original offense occurred almost three and one-half years ago. If appellant was guilty, the effective administration of the law in this sensitive field of police-power control has suffered inordinately by the delay in the application of appropriate penalties for that length of time. Of course, a licensee is entitled to a full and fair hearing of the merits of a charge of violation of A.B.C. regulations. But if, in the light of the evidence of its guilt in this record and the opportunities which have by now been afforded appellant to show the contrary, substantial justice appears to have been done, neither principles of administrative procedural fairness nor the salutary and expeditious enforcement of the liquor law would be served by permitting it to retrace this long-drawn-out litigation for purely technical reasons. And that is precisely what we think its demand amounts to.

Appellant was given an opportunity on the remand to cross-examine the agents (except one who was unavailable, out of the State) "on the basis of their reports and to offer additional testimony, relevant to the meritorious issues, on the basis of such disclosures, if any, as may be gained from the reports and the cross-examination." When the agents were produced at the hearing in the Division on remand, appellant confronted neither one with any inconsistency between his report and prior testimony or with a demand for explanation or clarification; nor did it pursue any other proper interrogative technique in relation thereto. Moreover, it did not undertake to examine them on anything contained in their reports--clearly the prime purpose of the remand. It sought only to launch a repetition of the original extensive cross-examination on the basis of what was <u>not</u> contained in the reports. We think that the discretion of the hearer was not shown to have been abused in refusing to permit such a course, on the whole record presented and the terms of the order of remand.

Appellant stresses that before the Newark Board the burden of proof was on the charging party, but on the appeal, under regulations of the Director, the burden of establishing error below rested upon itself. Therefore, goes the argument, not having access to the reports in the first instance, and before the initial determination of guilt, caused it irreparable harm. In a weaker incriminatory case this argument might have weight. In the present case the objection is more theoretical than real. The nature of the proofs and the treatment of and reaction to them by the hearer and Director, before and after the remand, do not indicate that decision of the merits of the

case depended upon the allocation of the burden of persuasion, but rather upon what the Divisional officers regarded as the clear weight of the credible proofs. It is, of course, the proceeding before the Division which is the subject of this appeal. Neiden Bar and Grill v. Municipal Bd., etc., of Newark, 40 N.J. Super, 24, 29 (App. Div. 1956). Besides the opportunity of cross-examining the agents on their reports, appellant has, of course, had full opportunity to develop by argument any weakness in the charges by comparison of the reports with the agents' testimony. It has been accorded substantial procedural fair play. Cf. Mackler v. Bd. of Education of City of Camden, 16 N.J. 362 (1954).

II.

Concededly, the findings and conclusions, original and supplementary, could have been more explicitly formulated in the Division. But we find no substantial departure from the requirements of administrative fact-finding enunciated by the authorities.

We do not here have the common situation of purely conclusionary ultimate findings (sometimes quasi-legislative in nature) framed in the language of a regulatory statute, and without findings of underlying basic facts supporting them. See, e.g., Abbott Dairies v. Armstrong, 14 N.J. 319, 332 (1954) (fixing prices of milk); N.J. Bell Tel. Co. v. Communications Workers, etc., 5 N.J. 354, 375-377 (1950) (determination of public utility wages by arbitration board); cf. N.J. State Bd. of Optometrists v. Nemitz, 21 N.J. Super. 18, 32-33 (App. Div. 1952) (penalizing "gross incompetence" of optometrist). Here the litigaged [sic] issue before the administrative agency, and the only fact to be determined, was the actual or apparent intoxication of the man to whom liquor was concededly sold by appellant on the occasion in question. (Appellant has raised no question concerning "apparent intoxication" as a permissible standard.) While, in a sense, that fact is of a nature ordinarily conclusionary from evidence of the behavior of the subject, and, to that extent, subordinate findings as to underlying evidential facts might be helpful, they are not essential, as they would be in proceedings under regulatory statutes of the type involved in the cases cited above. Municipal courts daily decide drunken driving cases by the simple verdict of guilty or not guilty, and it has never been contended that due process was lacking because findings of facts evidentiary of drunkenness were not made by the trial magistrate.

Administrative agencies are not ordinarily required to state their findings of "evidential" facts, see Meeker v. Lehigh Valley R.Co., 236 U. S. 412, 427-428 (1915); cf. Long Dock Co. v. State Board of Assessors, 86 N.J.L. 592, 598 (E. & A. 1914); nor formulate "summaries of testimony," as distinguished from basic facts, 2 Davis on Administrative Law (1958), Section 16.06, p. 450; United States v. Pierce Auto Freight Lines, 327 U.S. 515, 529 (1946). "The most reasonable and practical standard is to require that findings of fact be sufficiently specific under the circumstances of the particular case to enable the reviewing court to intelligently review an administrative decision and ascertain if the facts upon which the order is based afford a reasonable basis for such order." N.J. Bell Tel. Co. v. Communications Workers, etc., supra (5 N.J., at p. 377). So judged, the present original and supplementary findings and conclusions, taken together, are entirely adequate (assuming findings of criteria of intoxication were necessary). By unmistakable implication, if not substantially expressly, the agency found Bannon to have had or shown "slovenly appearance, bloodshot eyes, incoherent speech, profanity and unsteadiness on his feet." These findings obviously supported the con-

clusion or fact (whatever the approach taken) of actual or apparent intoxication.

Order and Determination affirmed. The stay is vacated.

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2. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED, AFTER TERMINATION OF PROCEEDINGS TO REVIEW.

Grant Lunch Corp.,)
Appellant,)
v.) On Appeal
Municipal Board of Alcoholic Beverage Control of the City of Newark,) O R D E R
Respondent.)

Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq.
Attorneys for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

On April 23, 1959, I entered an order affirming the action of respondent and a further order reimposing a twenty-day suspension of appellant's license. Bulletin 1279, Item 3. Upon appeal filed, the Appellate Division of the Superior Court stayed the operation of said suspension until the outcome of the appeal. Said Court affirmed my action on December 27, 1960, and the attorneys for appellant have advised me that their client has decided not to seek any further review and that their client requests a prompt commencement of the suspension. The suspension may, therefore, now be reimposed.

Accordingly, it is, on this 28th day of December 1960,

ORDERED that the twenty-day suspension heretofore imposed by respondent and stayed during the pendency of proceedings on appeal be reinstated against the license now held by appellant for premises 197-205 Market Street and 6-8 Beaver Street, Newark, to commence at 2 a.m. Saturday, December 31, 1960, and to terminate at 2 a.m., Friday, January 20, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED, AFTER TERMINATION OF PROCEEDINGS TO REVIEW.

In the Matter of Disciplinary Proceedings against David Freud & Patrick Pittala t/a Airship Cocktail Lounge 223 Paterson Street Paterson 1, N. J., Holders of Plenary Retail Consumption License C-291, issued by the Board of Alcoholic Beverage Control for the City of Paterson.	ORDER

BY THE DIRECTOR:

On May 17, 1960, the defendants' license was suspended for thirty-five days. See Bulletin 1343, Item 4. Pending defendants' appeal to the Superior Court, Appellate Division, the suspension was stayed by the court. On December 2, 1960, the suspension was affirmed and it may, therefore, now be reimposed.

Accordingly, it is, on this 27th day of December 1960,

ORDERED that the thirty-five-day suspension heretofore ordered against plenary retail consumption license C-291 for the 1960-61 licensing year, issued by the Board of Alcoholic Beverage Control for the City of Paterson to David Freud & Patrick Pittala, t/a Airship Cocktail Lounge, for premises 223 Paterson Street, Paterson, be and the same is hereby reimposed, commencing at 3 a.m. Tuesday, January 3, 1961, and terminating at 3 a.m. Tuesday, February 7, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

4. APPELLATE DECISIONS - FRIEDLAND v. NEWARK

Charles Friedland, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	On Appeal CONCLUSIONS and ORDER

Samuel Rosenthal, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board whereby on June 28, 1960 it unanimously denied appellant's application for renewal of his plenary retail consumption license for the 1960-61 li-

cense year for premises located at 293 Broadway and 71 Oriental Street, Newark.

"On the filing of the appeal, an order dated June 30, 1960 was entered by the Director extending the term of the 1959-60 license until further order herein. Rule 12 of State Regulation No. 15.

"Appellant in its petition of appeal alleges that respondent's action was erroneous in that: '(a) Appellant had no notice of a hearing at which his application would be considered; (b) Appellant was invited to attend a hearing without being advised of the purpose thereof, did not have an opportunity to have counsel present or to examine witnesses; (c) The denial of the application is unreasonable, unwarranted and capricious and the punishment imposed thereby upon the appellant is excessive since the respondent failed to take into account the prior good record of the appellant who has been in business at the same address since 1933; (d) Appellant has already been punished by the issuing authority for the prior violations charged to him.'

"Respondent in its answer denies appellant's allegations and contends that the grounds upon which it made its decision were based upon the factual testimony adduced before it.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 and, when the matter came on for hearing, the transcript of the proceedings before respondent Board was received in evidence and additional testimony was presented by both parties in accordance with Rule 8 of the aforesaid Regulation.

"It appears from the transcript of the proceedings before respondent Board on June 28, 1960 that respondent preferred three separate charges against appellant on February 8, 1960 alleging that on Sundays, August 9, November 15 and December 6, 1959, he sold, served and delivered during prohibited hours alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38; that after appellant entered a plea of non vult to the charges, respondent, by resolution dated March 15, 1960, suspended his license for eighty days and remitted five days because of the confessive plea, leaving a net suspension of seventy-five days. It appears further that Lawrence A. Pluck, captain of the precinct in which appellant's licensed premises are located, was present at the hearing on June 28, 1960 and stated that he disapproved the renewal of the license because of the three convictions; that appellant, who appeared before respondent Board on June 28, 1960 in response to a letter from respondent's secretary, stated, 'I don't know the score...I sold something on a Sunday and I shouldn't have done it' and that 'since Repeal I was never behind the counter here. I was in the butcher business and in the grocery business and in the meat business all my life. This was new to me and I went in there like a blind man. I didn't know what I was doing but I paid, seventy-five days closed' and that he is '74 going to 75, it will never happen again'. He stated further that he owns the licensed building; that he leased the corner store in which his grocery and meat business was located; that he has no other business and would sell the licensed building because, 'I want to get out of the neighborhood. It is too much for me'.

"Witnesses called by appellant at the hearing on appeal were Edward Hester, Robert Stroud, Henry Dillon, Charles Friedland and Captain Lawrence A. Pluck.

"Mr. Hester testified that he is a social case worker and lives in the neighborhood of appellant's tavern which he has visited for a number of years; that he never saw anything amiss in there and

that the licensee has an excellent reputation.

"Mr. Stroud testified that he is employed in a ticket office; that he has visited appellant's tavern off and on for twenty years; that it is conducted in an orderly and lawful manner and that the licensee's reputation as a law-abiding citizen is 'all right'.

"Mr. Dillon testified that he is an electrician; that he used to visit appellant's tavern about 'twice a week'; that the tavern was 'always properly conducted' and that the licensee has a good reputation as a law-abiding citizen. On cross-examination the aforesaid witnesses testified that they had heard of the violations preferred against the licensee and two of the witnesses still considered him to be a law-abiding citizen.

"Charles Friedland, the licensee, testified that he is 74 years of age and has held a license since Repeal of the Eighteenth Amendment; that when he acquired the license he was operating and thereafter continued to operate a fruit, vegetable and butcher business; that he actually took over the licensed business when one of his bartenders died; that when he received the letter dated June 24, 1960 from respondent Board, he thought that they wanted him 'to pick up the license'; that if given the opportunity he would sell the business because he is 'getting too old for that kind of a job' and that during the time he has held the license he has not been on the premises excepting for a period of one year, during which time he committed two violations and his bartender committed one.

"Captain Pluck testified that 'on the basis of three convictions in one licensing period, I consider him a troublesome licensee due to the fact that it is incumbent upon me to give the premises stricter supervision since three violations occurred'. He testified on cross-examination that he would have favored renewal of the license if appellant had been found guilty of but one violation.

"Mr. Brown, secretary of respondent Board, testified that the three charges represented separate violations which were set down for a hearing on one returnable date to benefit the licensee by not 'hitting him twice for violations in such a short period of time'.

"It is the general rule that in the absence of a written objection an issuing authority is not required to hold any hearing upon an application to renew a license provided that it makes a thorough investigation on its own initiative. Utrecht v. Hopatcong, Bulletin 1154, Item 7; Murray v. Wanaque, Bulletin 1170, Item 1; Rule 8 of State Regulation No. 2. However, the City of Newark has adopted an ordinance (Section 3.35 of Revised Ordinances of Newark) the pertinent portion of which is set forth in Exhibit A-3 as follows:

> 'In the event any application for the renewal of license shall be questioned by the local issuing authority for any reason or in the event that an objection shall be filed in opposition to the application, then the applicant for renewal of such license shall be given notice of the reasons of the local issuing authority or of the objector and a day shall be set for a hearing before the local issuing authority upon due notice to the applicant of the day of hearing in order that the applicant may be afforded an opportunity to show cause why the application should be granted.

'If, after hearing, the local issuing authority is of the opinion that the application for the renewal of license shall not be granted, it shall refuse to grant renewal, setting forth reasons for refusal in the minutes of its meeting.' '

"It is doubtful that respondent Board complied with the requirements of the aforesaid ordinance. However, since the action of the Board is based upon appellant's prior record and the recommendation of the precinct captain of police, which is eminently proper (Lipman v. Newark, Bulletin 356, Item 6), it does not appear that appellant has been prejudiced by respondent's failure to hold a hearing. See Nordco v. Div. of Alcoholic Beverage Control, 43 N.J. Super. 277.

"Sound control of the liquor traffic requires that issuing authorities have ample right to deny a renewal to a licensee guilty of misconduct even though he has already suffered suspension for that misconduct. Haino v. Newark, Bulletin 352, Item 4; Lipman v. Newark, supra.

"Appellant's contention that the 75-day penalty imposed for the three violations constituted one conviction has no merit. Each violation was committed on a different date, and the three violations having occurred within the licensing period, evidences a continuing practice of misconduct of the licensed business warranting denial of renewal of the license.

"It is apparent from appellant's testimony that he seeks a reversal of respondent's action so that an application for transfer of his license to another party may be considered by the Board. To reverse on that ground would contravene the principle enunciated in Downie v. Somerdale, Bulletin 1135, Item 1, wherein the Director said:

'In effect, appellant is requesting me to reverse respondent's action and to order renewal of the license so that an application for transfer to another party may be considered. Were I to follow this procedure as a general practice, a desirable reduction in the number of licensed places would never be accomplished. In this case respondent might have renewed the license on condition that it be transferred to another person within a stated time. After the appeal was filed respondent might have indicated its consent to a reversal by me for such limited purpose. Instead, respondent chose to stand upon its answer and the record of the licensee. I find nothing unreasonable or unduly harsh in respondent's action.***'

"Having carefully considered the facts and circumstances herein and the established principles applicable thereto, I conclude that appellant has failed to establish that the action of respondent Board was erroneous. I recommend, therefore, that an order be entered affirming the Board's action and dismissing the appeal."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorney for appellant within the time limited by Rule 14 of State Regulation No. 15.

It is my duty to decide whether to affirm the action of respondent as recommended, or to remand the matter to respondent with instructions to comply with the Revised Ordinances of Newark, the pertinent section of which is set forth on page 4 of the Hearer's Report.

Primarily, it is the duty of respondent Board to administer the issuance of retail licenses in the municipality. R.S. 33:1-19. In considering applications for renewal, the Newark Board is required to comply with the provisions of the local ordinance. It has failed to do so. As stated by Judge Clapp in Nordco, Inc. v. Division of Alcoholic Beverage Control, 43 N.J. Super. 277:

> "We are by no means sanctioning a disregard of the Newark ordinance in the future. On the contrary, factual issues before the Newark board, which fall within the scope of the ordinance, should be resolved through a hearing, conducted in the manner referred to in Handlon v. Town of Belleville, 4 N.J. 99, 105 (1950)."

Accordingly, it is, on this 15th day of November 1960,

ORDERED that the matter be remanded to respondent in order that it may schedule a hearing and then proceed pursuant to the provisions of the local ordinance applicable thereto.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS NUISANCE (HOMOSEXUALS) - SALE TO WOMEN OVER BAR IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 105 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Gertrude Markowitz t/a Mindy's 340 Federal St., Camden 3, New Jersey Holder of Plenary Retail Consumption License C-157, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

Bookbinder, Peskin and Markowitz, Esqs., by Sidney W. Bookbinder, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

> "1. On September 11, 16 and 17, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g. males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct by such persons and by others in and upon your licensed premises; and otherwise conducted your licensed place of busi-

ness in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On September 16, 1960, you served beverages to a woman directly over a bar on your licensed premises; in violation of Section 10 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934, as amended by Ordinance adopted February 25, 1960."

On the early morning of September 11, 1960, two ABC agents entered defendant's licensed premises where Hurley Davis was tending bar and his wife, Virginia Davis, was acting as barmaid, and Edward Markowitz, husband of the licensee, was acting as manager. The agents observed five male persons there who, by their speech, dress and actions, appeared to be homosexuals; two of these persons were dancing with each other kissing and performing other indecent and suggestive motions; and another of these persons joined these two and performed similar indecent acts. Another person of this character was seated at the bar and at the suggestion of the bartender, opened a woman's compact, powdered his face and then engaged in similar indecent antics with the apparent approval of Edward Markowitz.

Shortly before midnight on September 16th, these two agents, accompanied by two other agents, entered defendant's licensed premises. Hurley Davis and his wife, Virginia Davis, were tending bar. During the course of their visit, they observed at one time about forty men there, of whom at least ten or twelve appeared to be homosexuals. A number of these persons engaged in vile and indecent conduct and language between themselves and towards the agents. The bartender made no effort to prevent such actions but, instead, vouched for one of these persons with reference to his abnormal sexual tendencies and also discussed with the agents the illicit sexual proclivities of a woman patron. At about 11:15 a.m. the agents revealed their identity to Hurley Davis and Virginia Davis.

The agents also observed Hurley Davis serve the woman above referred to with two drinks of alcoholic beverages at the bar. This woman indulged in vile, obscene and indecent language. The local ordinance prohibits the sale of alcoholic beverages to women at the bar.

Defendant has no prior adjudicated record. Counsel has represented in alleged mitigation that the license has been in the same ownership for twenty-seven years; that Edward Markowitz, the manager, is in ill health; that the licensed premises are located in a deteriorated neighborhood and a considerable amount of money has been expended for alterations to the building; that it is difficult for the manager to recognize homosexuals but that he intends hereafter to deny access to the premises to any person of whom he has the slightest doubt as to his abnormal nature. However, it should be noted, although not considered in fixing penalty because the offenses occurred more than ten years ago, that when the license for the premises was in the name of Edward Markowitz, it was suspended by the local issuing authority for ten days effective April 21, 1937; suspended for sixteen days effective July 20, 1942 and suspended for thirty days effective January 20, 1947. Balancing the considerations in favor of and adverse to the defendant-licensee, I shall afford the defendant the benefit of the doubt and impose the minimum penalty. I shall therefore suspend defendant's license for the period of one hundred days on Charge 1 (Re Feldman, Bulletin 1145, Item 1) and for five days on Charge 2 (Re Sid Mark, Inc., Bulletin 1324, Item 4), making a total suspension of one hundred and five days. Five days

will be remitted for the plea entered herein, leaving a net suspension of one hundred days.

Accordingly, it is, on this 17th day of November, 1960,

ORDERED that Plenary Retail Consumption License C-157, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Gertrude Markowitz, t/a Mindy's, for premises 340 Federal Street, Camden, be and the same is hereby suspended for one hundred (100) days, commencing at 2:00 a.m., Monday, November 28, 1960 and terminating at 2:00 a.m., Wednesday, March 8, 1961.

WILLIAM HOWE DAVIS,
DIRECTOR.

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

In the Matter of Disciplinary Proceedings against Dorothy E. & Benj. B. O'Dell t/a Oval Bar 26 West Madison Avenue Dumont, New Jersey Holders of Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Dumont.	CONCLUSIONS AND ORDER

Defendant-licensees, Pro se.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR;

Defendants pleaded non vult to a charge alleging that they possessed on their licensed premises 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.

On September 22, 1960, an ABC agent tested defendants' open stock of assorted brands of liquor and seized a quart bottle labeled "Calvert Reserve American Blended Whiskey, 86 Proof" for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of the seized bottle was low in acids and high in solids when compared with an analysis of a sample of the genuine product.

Defendants have no prior adjudicated record. I shall suspend their license for the minimum period of ten days (Re Picklo, Bulletin 1338, Item 12). Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 17th day of November, 1960,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Dumont to Dorothy E. & Benj. B. O'Dell, t/a Oval Bar, for premises 26 West Madison Avenue, Dumont, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, November 28, 1960, and terminating at 2:00 a.m., Saturday, December 3, 1960

WILLIAM HOWE DAVIS
DIRECTOR

7. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - STOCK OF ALCOHOLIC BEVERAGES AND FURNISHINGS AND EQUIPMENT ORDERED FORFEITED - APPLICATION FOR RETURN OF PROPERTY UPON DEPOSIT OF CASH AT THE HEARING DENIED.

In the Matter of the Seizure on July 16, 1960 of a quantity of alcoholic beverages, furniture, fixtures, and equipment, and $4.50 in cash at premises 136 Sheridan Avenue, in the Borough of Seaside Heights, County of Ocean and State of New Jersey	:	Case No. 10,353 On Hearing CONCLUSIONS and ORDER

Lenore Kaigler, Pro Se.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether a quantity of alcoholic beverages, $4.50 in cash, and various items of furniture, fixtures, and equipment, as described in a schedule attached hereto, seized on July 16, 1960 at a restaurant operated by Curllie Kaigler located at 136 Sheridan Avenue, Seaside Heights, New Jersey, constitute unlawful property and should be forfeited.

"Lenore Kaigler, wife of Curllie Kaigler, appeared at such hearing, for the purpose of recovering all or part of the furnishings seized, or else to be permitted to deposit their value in cash upon establishing that her husband was not in fact a persistent violator but rather forced by necessity to violate the Alcoholic Beverage Law.

"The facts, not in dispute, are that on July 16, 1960 an ABC agent entered Kaigler's restaurant, and there observed a number of men and women drinking alcoholic beverages and dining, and the agent purchased various drinks of alcoholic beverages from Kaigler, for which he paid with money identified by serial number. Other ABC agents entered by prearrangement, and identified themselves to Kaigler, who verbally admitted that he was engaged in the sale of alcoholic beverages without a license.

"The agents seized five bottles of various brands of alcoholic beverages, $4.50 in cash, including the marked money, and the fixtures, furnishings, and equipment in the premises.

"Curllie Kaigler did not hold any license authorizing his sale of alcoholic beverages and the premises were not licensed for that purpose. The records of the Division disclose that on October 16, 1953 Curllie Kaigler was convicted in the criminal court of Ocean County for selling alcoholic beverages without a license at the same premises, and was again convicted on September 25, 1959 for a similar offense at the same premises.

"The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, the $4.50 in cash seized in the premises, and all other personal property, seized in the premises in which such

illicit alcoholic beverages were seized, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"Mrs. Kaigler stated that she seeks to clarify the ownership of the property; that the building was built by her father, now deceased and is owned by her mother; that the building originally was a small hotel, with some of the seized equipment there for many years, and was originally patronized by persons employed in the area as domestics, but such employment in the area diminished greatly after World War II; that her father attempted to obtain a liquor license for the premises, but was unsuccessful, and Mrs. Kaigler was likewise unsuccessful when she made a similar attempt; that in order to sustain other patronage at the premises they were compelled to supply alcoholic beverages; that after the September 1959 raid on the premises, they planned for the 1960 summer season merely to use the place principally for pleasure and serve food and rent rooms, but her husband was not working, so that they decided, professedly on legal advice, to serve food with whiskey, the charge to be for the food, and not for the whiskey.

"The sale of food and alcoholic beverages in combination without a separate charge for the alcoholic beverages, is defined as a sale of alcoholic beverages under the provisions of R.S. 33:1-1(w).

"The provision for the reclamation of property seized under the Alcoholic Beverage Law as alleged unlawful property (R.S. 33:1-66) upon deposit of its appraised retail value in cash specifies that such deposit must be made within 30 days of the seizure, otherwise the Director may proceed to dispose of such property after a statutory hearing held in accordance with R.S. 33:1-66. Hence, it is not mandatory that Lenore Kaigler's present offer made more than 30 days after the seizure, to deposit such retail value, must be accepted. In view of the past record of the establishment, I am of the opinion that any discretionary authority you may have to accept a deposit after the expiration of the 30 day statutory period should not be exercised in favor of the claimant. I therefore recommend that the application of Lenore Kaigler for return of the seized property, either with, or without, the cash deposit of its appraised retail value, should be denied, and that an Order be entered in due course directing the forfeiture of all of the seized property."

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is on this 18th day of November, 1960,

DETERMINED and ORDERED that the seized property, including the $4.50 in cash, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66 and shall be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULED "A"

5 - bottles of various brands of alcoholic beverages
1 - television set

(Schedule "A" continued on next page)

SCHEDULE "A" (CONTINUED)

5 - wooden tables
19 - metal chairs
1 - metal table
1 - music box and currency therein
1 - refrigerator
$4.50 in cash

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

In the Matter of Disciplinary Proceedings against

Andrew Hamas
139 Wallington Avenue
Wallington, New Jersey

Holder of Plenary Retail Consumption License C-16, issued by the Borough Council of the Borough of Wallington

CONCLUSIONS and ORDER

Defendant-licensee, Pro se
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR;

Defendant pleaded guilty to a charge alleging that he possessed on his licensed premises an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On October 18, 1960, an ABC agent tested defendant's open bottles of alcoholic beverages and seized a quart bottle labeled "Four Roses Blended Whiskey, 86 Proof", the contents of which appeared to be low in proof and off in color. Subsequent analysis by the Division's chemist disclosed that the contents of the seized bottle varied substantially in proof and solids from the contents of a genuine sample of the labeled brand.

Defendant has no prior record. Defendant alleges that he did not tamper with the contents of the seized bottle, and states that he has no knowledge that anyone tampered with the contents of the bottle. I shall suspend defendant's license for ten days, the minimum suspension imposed in cases involving one bottle. Re DeFrance, Bulletin 1354, Item 5. Five days will be remitted for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 23rd day of November 1960,

ORDERED that plenary retail consumption license C-16, issued by the Borough Council of the Borough of Wallington to Andrew Hamas, for premises 139 Wallington Avenue, Wallington, be and the same is hereby suspended for five (5) days, commencing at 3 a.m. Monday, December 5, 1960, and terminating at 3 a.m. Saturday, December 10, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Grace E. Wilkes
t/a "Lindy's Restaurant"
Route No. 28, Northside between Clinton & Lebanon
Clinton Township
PO Annandale, New Jersey

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of Clinton Township.

CONCLUSIONS AND ORDER

Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that she sold alcoholic beverages to a minor on her licensed premises in violation of Rule 1 of State Regulation No. 20.

Acting upon information received from the state police, ABC agents obtained signed and sworn statements from Bruce ---, 19 years of age, and from two other persons who were with him on the evening of October 7, 1960. The statements disclose that at 8:45 p.m. on the date aforementioned, Bruce purchased a case of cans of beer for off-premises consumption from the defendant-licensee.

Defendant has no prior adjudicated record. I shall suspend her license for a period of fifteen days, the minimum penalty for sale of alcoholic beverages to a 19-year-old minor. Re Renda, Bulletin 1350, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 21st day of November 1960,

ORDERED that Plenary Retail Consumption License C-5 issued by the Township Committee of Clinton Township to Grace E. Wilkes, t/a "Lindy's Restaurant", for premises on Route No. 28, Northside between Clinton & Lebanon, Clinton Township, for a period of ten (10) days, commencing at 2:00 a.m., Tuesday, November 29, 1960 and terminating at 2:00 a.m., Friday, December 9, 1960.

William Howe Davis
Director