

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

BULLETIN 1303

October 20, 1959

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1100 Raymond Blvd. Newark 2, N. J.

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October 20, 1959

1. APPELLATE DECISIONS - PRIMITERA v. HOBOKEN.

JIM V. PRIMITERA, JOSEPHINE )  
FINN AND ANN BAROSA, )

Appellants, )

v. )

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY )  
OF HOBOKEN, )

Respondent. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

-----  
Julius D. Canter, Esq., Attorney for Appellants.

Robert F. McAlevy, Jr., Esq., by William Gottlieb, Esq., Attorney  
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on June 18, 1959, it revoked, effective immediately, appellants' License C-154 after finding appellants guilty of charges herein-after set forth. The licensed premises are located at 89 Adams Street, Hoboken.

"The petition of appeal (as amended) alleges that the evidence at the hearing below was inadequate and insufficient in law and that incompetent, irrelevant and immaterial evidence of a nature to inflame and prejudice the Board was introduced at said hearing.

"Upon the filing of the appeal the Director entered an order denying a stay of respondent's order of revocation and setting the case down for hearing on June 30, 1959. R.S. 33:1-31.

"It appears that two sets of charges were served upon appellants by respondent. The first set of charges was dated April 14, 1959, and may be summarized as follows: (1) on April 3, 1959, appellants sold and permitted the sale of alcoholic beverages to a 19-year-old minor and permitted said minor to consume such beverages on their licensed premises, in violation of Rule 1 of State Regulation No. 20; (2) on the same day appellants permitted the playing of shuffleboard for drinks, in violation of Rule 7 of State Regulation No. 20, and (3) on various dates between July 26, 1958, and April 3, 1959, appellants conducted the licensed business in such manner as to become a nuisance, in violation of Rule 5 of State Regulation No. 20. The second set of charges was dated June 1, 1959. Charge 1 therein alleged that on April 3, 1959, appellants sold alcoholic beverages to another minor, and Charge 2 therein alleged, in substance, that on March 14, 1959, and on divers dates thereafter, appellants permitted obscene language, disturbance or unnecessary noise on the premises, in violation of Rule 5 of State Regulation No. 20. The hearing on both sets of charges

was held by respondent on June 18, 1959, and at the conclusion of the hearing respondent dismissed Charge 1 of the charges dated June 1, 1959, and found appellants guilty of the three charges dated April 14, 1959, and Charge 2 dated June 1, 1959. Respondent then revoked appellants' license effective immediately.

"As to Charges 1 and 2 dated April 14: At the hearing held herein, Joseph --- (age 19) testified that he and two companions entered appellants' premises on April 3, 1959, about 5:30 p.m., and that he consumed two shots of scotch whiskey which were served by Jim Primiterra; that he, his two companions and another patron played four or five games on the shuffleboard, and that after each game the losers paid for beers consumed at the bar by the four players; that he left the premises about 7:30 p.m. but returned shortly after 8 p.m., at which time he purchased and consumed 'a couple of beers.' He further testified that at no time was he required to present any written representation that he was of full age.

"As to Charge 3 dated April 14: At the hearing herein, Officer Charles Smith, of the Hoboken Police Department, testified that on October 30, 1958, one Willie Frank Clark was stabbed while on the sidewalk near appellants' premises and collapsed and died in front of 79 or 81 Adams Street. Sergeant Joseph Pereira, of the same Department, testified that on December 21, 1958, at 1:30 a.m., he responded to a call and found that a window of appellants' premises had been broken and that some unidentified person had thrown something through the window; that he questioned Jim Primiterra who stated that he did not know who broke the window. A female patron testified that on January 10, 1959, while she was leaving the premises with a companion, she was struck on the forehead by a bottle thrown by someone outside the premises and was thereafter taken to a hospital. Officer Paul Kostka, of the Hoboken Police Department, testified that at 9:30 a.m. on March 29, 1959, he answered a call and Jim Primiterra showed him a hole, evidently made by a bullet, in the left window of the premises. The officer was unable to find the bullet inside the premises. He also testified that about 9:30 p.m. on April 3, 1959, he and another officer found a man lying on the sidewalk near appellants' premises. The man had been stabbed and died later in a hospital. Investigation disclosed that the man had been in appellants' premises but that the stabbing occurred outside. Referring to the latter incident, Alexander Murray (who lives at 90 Adams Street) testified that he saw six or eight men emerge from appellants' premises; that a commotion started; that one of the men jumped in a car and that two others held up the man who had been stabbed.

"As to Charge 2 dated June 1: Mrs. Dombrowski (who resides at 91 Adams Street) testified that, starting about March 14, 1959, and continuing for some time, patrons congregated outside appellants' premises and made much noise and used indecent language. Mrs. Polakowski (who resides at 90 Adams Street) testified that she frequently telephoned to the licensed premises about noise and indecent language. Mr. & Mrs. Murray (who reside at and own 90 Adams Street) testified as to indecent language used by persons who came from the licensed premises. Frank Orsi (who conducts a butcher business at and who owns 91 Adams Street) testified that, two or three months ago, six patrons came from the licensed premises and that some of them urinated in the hallway of his building.

"On behalf of appellants, Mr. Blakely (who is superintendent of a ten-family house at 72 Adams Street) testified that he had

received no complaints from the tenants and that, in his opinion, appellants conducted a nice place. Mrs. President (who resides at 77 Adams Street) testified that she never heard any fighting and that appellants' premises were very quiet. Jim Primiterra testified that he and his partners (who are his daughter and sister) have conducted the licensed business at 89 Adams Street since May 27, 1958; that he did not know the games on the shuffle-board were being played for drinks; that he never received any complaints from the four residents of the area who testified for respondent although he admits that he received two telephone calls in March concerning excessive noise. He further testified that he was not present on the evenings of October 30 or April 3. Walter Raiford testified that since September 1958 he occasionally acted as bartender in appellants' premises; that he never received any complaints and that appellants always conducted a nice place. He admitted that Willie Frank Clark had been in the premises for five minutes on the evening of October 30 and that the other patron had been in the premises for a short time about two hours before he was stabbed on the evening of April 3.

"After considering all the testimony and the oral argument made at the close of the hearing, I conclude that the evidence is clearly sufficient to sustain each of the four charges set forth above. It appears that, when appellant Jim V. Primiterra previously conducted business at 122 Adams Street, Hoboken, his license was suspended by the Director for twenty-five days, effective February 18, 1957, for selling to a minor and possessing obscene pictures (Bulletin 1160, Item 2), and again suspended by the Director for fifty days, effective October 24, 1957, for selling to minors and hindering an investigation (Bulletin 1197, Item 2). Under all the circumstances, the revocation was fully warranted. It is recommended, therefore, that an order be entered herein affirming the action of respondent and dismissing the appeal."

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 testimony and oral arguments presented at the hearing herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 8th day of September, 1959,

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

WILLIAM HOWE DAVIS  
DIRECTOR

## 2. APPELLATE DECISIONS - CLARK AND PARKER v. PATERSON.

DABBLE CLARK AND JOSEPH S. PARKER, )  
t/a DEE'S DEN, )

Appellants, )

v. )

BOARD OF ALCOHOLIC BEVERAGE CONTROL )  
FOR THE CITY OF PATERSON, )

Respondent. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

-----  
Edward H. Saltzman, Esq., by William J. Rosenberg, Esq.,  
Attorney for Appellants.

Harry Smith, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on April 22, 1959 it suspended appellants' license for a period of fifteen days, effective May 4, 1959, after finding them guilty on a charge alleging that they permitted and suffered a brawl and act of violence in and upon their licensed premises, in violation of Rule 5 of State Regulation No. 20. Appellants' premises are located at 281 Grand Street, Paterson.

"Upon the filing of the appeal, an order was entered by the Director on April 29, 1959 staying respondent's order of suspension until further order herein. R.S. 33:1-31.

"Appellants, in their petition of appeal, alleged that respondent's action was erroneous in that it was against the weight of the evidence.

"Respondent, in its answer, alleges that it acted within its sound discretion after a full hearing on the charge preferred against appellants.

"The hearing on appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15.

"Respondent called as its witnesses William Harris, Clerk of respondent Board, and Sergeant of Police Harold Clark. Mr. Harris testified that he recorded the minutes of respondent's meeting of April 22, 1959 and Sergeant Clark testified that after the police had investigated an assault alleged to have occurred in appellants' licensed premises on December 25, 1958 he, on December 30, 1958, took voluntary signed, sworn statements from Dabble Clark (one of the licensees), Cornelius Felisbret and Sunnie James, the three being present at the same time. The minutes and statements were received in evidence without objection and marked Exhibit R-1, R-2, R-3 and R-4, respectively, after which respondent rested its case.

"Dabble Clark's statement discloses that on December 25, 1958 John Coleman came into the licensed premises and started arguing with his wife who was seated at the bar; that during the argument Coleman knocked over a stool and some of the customers ushered him outside; that Coleman returned and resumed the

argument with his wife, and thereafter tussled with her brother; that Coleman was again ushered from the premises; that he returned thereto later and, seeing his wife in the phone booth, he pulled her out and in doing so fell against a customer named Cornelius Felisbret; that when Felisbret said to Coleman, 'Don't tear up the place' Coleman asked him to go outside saying, 'I will tear you up'; that Coleman then left and someone said he was going to get a shotgun; that about one-half hour later, Coleman returned with Sunnie James and that when Felisbret saw them coming toward him, he retreated to the back door; that Coleman picked up a stool, pulled a butcher's knife from beneath his coat, threw the stool at Felisbret and, with James at his side, continued to move toward him; that Felisbret picked up a two-by-four plank which was used as a doorstop and hit James and that Coleman, with the knife in one hand, picked up a stool with the other and lunged toward Felisbret, who hit him with the plank and knocked him to the floor. The statement further discloses that he (Clark) had had trouble with Coleman previously and had to put him out of his tavern and that during the attempted assault on Felisbret he (Clark) was standing at the end of the bar counting money. The statements of Felisbret and James corroborate that of Dabble Clark except that James states that, 'If he (Coleman) had a weapon, I didn't see any'.

"Appellants' witnesses were Joseph Parker and Dabble Clark, the licensees. Parker testified that he arrived at the tavern around 5:00 p.m., went into the telephone booth and was talking to his wife when the last incident occurred; that when he came out of the booth, Coleman was on the floor; that he went back to the phone booth intending to call the police but Coleman was blocking the door; that he didn't ask anyone to call the police but that the police arrived and took Coleman outside; that he didn't see any blow struck and that he didn't know who had the knife but saw it after it was picked up from the floor.

"Dabble Clark's testimony is essentially the same as that set forth in his statement to the police with the additional information that Coleman was in and out of the licensed premises four times between the hours of 12:00 noon and 5:00 p.m. on the date alleged; that when Sunnie James was hit, he rushed outside and stopped a police patrol car; that the police came into the tavern just as Coleman was hit and that, although he is acquainted with those who engaged in the fracas, the only one he had had trouble with previously is Coleman. He further testified that he and his partner have held a license for nearly a year, during which time no other charges were preferred against them.

"It is apparent from the evidence adduced herein that disturbances and acts of violence occurred in and upon appellants' licensed premises on the date alleged in the charge. Hence, the only issue to be decided is whether that evidence supports a finding that appellants allowed, permitted and suffered the violations to occur.

"In Connor v. Fogg, 75 N.J.L. 245 (Sup. Ct. 1907) the court said, 'To permit is defined as meaning to authorize or to give leave [McHenry v. Winston, 49 S.W. Rep. 4], but the term "permit" has been often used synonymously with "suffer" so that it may be said that one who suffers the doing of a thing which he might have prevented permits it'. In Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947) the court said, 'Although the word "suffer" may require a different interpretation in the

case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Gustamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2nd) 140'.

"Considering the testimony of Dabble Clark wherein he testified that he had had trouble with Coleman previously, no justifiable reason appears why he didn't seek police intervention to quell the disturbance created by Coleman and his wife and have them ejected from the tavern. Instead, it appears that he tolerated Coleman's disorderly conduct which eventuated in two assaults upon his wife and an incipient brawl with her brother and later, notwithstanding the fact that he had been informed that Coleman had left the premises to get a shotgun, he did nothing to prevent his re-entry, but stood placidly at the end of the bar counting money while Coleman unsuccessfully attempted to butcher an apparently innocent patron.

"In view of the aforesaid, I find that the evidence clearly establishes that appellants allowed, permitted and suffered a brawl and acts of violence to occur in and upon their licensed premises and I conclude that appellants have failed to establish by the necessary preponderance of the evidence that respondent's action was erroneous. Cf. Pribila v. Linden, Bulletin 1045, Item 4. I recommend, therefore, that the action of respondent be affirmed and that the appeal herein be dismissed. I further recommend that the fifteen-day suspension heretofore imposed by respondent and stayed during the pendency of these proceedings be reinstated and reimposed against appellants' license."

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

Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 8th day of September, 1959,

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

ORDERED that the fifteen-day suspension imposed by respondent Board, and stayed during the pendency of these proceedings, be and the same is hereby reinstated and reimposed against the license held by appellants for premises 281 Grand Street, Paterson, to commence at 3:00 a.m., Tuesday, September 15, 1959, and to terminate at 3:00 a.m., Wednesday, September 30, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR



3. APPELLATE DECISIONS - ARCHBISHOP THOMAS J. WALSH TENANT'S ASSOCIATION v. NEWARK AND ZORN.

ARCHBISHOP THOMAS J. WALSH TENANT'S  
ASSOCIATION.

Appellant,

v.

ON APPEAL  
CONCLUSIONS  
AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE  
CONTROL OF THE CITY OF NEWARK, AND  
SADIE ZORN, t/a SPRUCE TAVERN,

## Respondents.

Mario V. Farco, Esq., Attorney for Appellant.  
 Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney  
 for Respondent Municipal Board.  
 Fast & Fast, Esqs., by Joseph A. D'Alessio, Esq., Attorneys  
 for Respondent Sadie Zorn.  
 Stryker, Tams & Horner, Esqs., by Burtis W. Horner, Esq.,  
 Attorneys for Objector Verona-Pharma Chemical Co.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Board in approving by a two-to-one vote of its members a place-to-place transfer of respondent-licensee's plenary retail consumption license from premises 165 Spruce Street to premises 2081-2093 McCarter Highway, Newark.

"The petition of appeal alleges that the action of respondent Board was erroneous because there is already an excessive number of licensed premises in the immediate neighborhood and because the danger to children residing in the apartments of the 'Walsh Homes' will be increased.

"The stenographic transcript of the proceedings before the respondent Board on April 28, 1959 was submitted as part of the record of the case (Rule 8 of State Regulation No. 15). Additional testimony and exhibits were introduced at the hearing held herein.

"It appears that respondent-licensee has operated a liquor establishment for many years at 165 Spruce Street but had been forced to vacate the premises when the building (which has been demolished) was acquired by the Housing Authority of the City of Newark.

"According to the survey made by B. A. Duffy, City Surveyor, the location of the nearest licensed premises to the proposed site is 782 feet therefrom. The pertinent part of the local ordinance in question (Section 3.29) provides that in hardship cases (such as the one now under consideration) a license may be transferred where the proposed location is not within 600 feet of a similar existing licensed premises. Thus, the transfer for which application was made herein is not prohibited by the applicable Newark distance ordinance.

"David S. Fitterer, residing at 1891 McCarter Highway, testified that in his opinion there are more than sufficient

liquor licensed premises in the immediate area to meet the needs of the people. He named various liquor establishments and estimated in blocks the location of said establishments from the respondent licensee's proposed site. Furthermore, he testified that the addition of another licensed premises in the neighborhood would tend to create a traffic hazard, especially to children residing in the housing project. He testified that the proposed location of the licensed premises 'is two blocks north of the Archbishop Homes'.

"The number of licensed premises to be permitted in any particular area has been held to be a matter confided to the sound discretion of the issuing authority. DiGioacchino v. Atlantic City, Bulletin 1030, Item 3. It might be conceded that there is a large volume of vehicular traffic on McCarter Highway, but there has not been any evidence to substantiate the fact that the operation of respondent-licensee's licensed premises at the proposed site would aggravate the traffic situation.

"Melvin S. Kaye testified that he is Production Manager for Maas and Waldstein Co., which company is engaged in the manufacture of lacquers, enamels and various types of paint products. He stated that the company objects to the licensed premises being permitted at the proposed site as it will be within 100 feet of their plant, being separated therefrom by a right of way. His main objection was that employees may visit the licensed premises during coffee break, lunch hour or before working hours, which would increase the danger to the plant. He further testified that the company does not tolerate drinking during working hours and if any of the employees consume any alcoholic drink, this would be ground for immediate dismissal.

"The objection of the industries in the area properly deserves consideration and are material, but not the controlling factor in evaluating whether public need and necessity will be served by the location of a liquor license in such area. Such objections have no greater weight than the objections of persons in residential or business areas. Commissioner Burnett stated in Albert v. New Brunswick, Bulletin 228, Item 5, that his decision therein 'does not signify that industry is to have a veto power on the issuance of liquor licenses'.

"Where there is a municipal policy, uniformly applied, not to issue licenses too close to industrial plants, such action would be valid. Cf. United States Pipe & Foundry Co. v. Burlington et al., Bulletin 73, Item 6. It is not suggested, however, that the respondent Board has ever adopted any such policy. Moreover, the testimony of Melvin S. Kaye, aforementioned, that an employee of the company who consumed alcoholic beverages at any time during working hours would be subject to immediate discharge, should allay any fears that any of the employees would patronize respondent-licensee's place of business.

"After consideration of all the evidence presented herein, nothing appears in the case to indicate that the action of respondent Board in approving the application for the transfer in question was either arbitrary or unreasonable. I recommend that an order be entered affirming the action of respondent Board and dismissing the appeal filed herein."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered all the facts and circumstances herein, I

concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 9th day of September, 1959,

ORDERED that the action of respondent be and the same is hereby affirmed, and that the appeal be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against

FRANCES LACHNIGHT  
56-58 Second Street  
Hoboken, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-54 for the 1958-59 licensing year and C-113 for the 1959-60 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

-----  
Stephen Mongiello, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant entered a plea of not guilty to a charge alleging that on May 1, 1959 she sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by said minors in and upon her licensed premises, in violation of Rule 1 of State Regulation No. 20.

"To substantiate the charge the Division called as its witnesses Elaine --- and Theresa --- and two ABC agents who participated in the investigation. The agents will be referred to hereinafter as Agents F and L.

"Elaine --- and Theresa --- testified that on the date alleged in the charge they were 13 and 20 years of age, respectively.

"Agent F testified, in substance, that he and Agent L entered defendant's tavern at 10:40 p.m., May 1, 1959 and seated themselves at the bar; that his attention was directed to two females, apparently minors, who were consuming what appeared to be whiskey and soda which was served to them by the bartender, later identified as George Lachnight, son of the licensee; that at about 11:20 p.m. and again at 11:40 p.m., the bartender refilled the glasses in front of the young women and when they had sipped a portion of the last drink served he and Agent L approached them, identified themselves and, ascertaining that the girls were Elaine --- and Theresa ---, they questioned them as to their ages and were informed that each was 22 years old; that when he and Agent L requested some proof to substantiate their claim, Elaine

was unable to do so and Theresa admitted she was 20 years of age after it was called to her attention that a birth certificate she produced from her handbag had been altered to indicate she was 22 years of age. Agent F further testified that in response to a telephone call by Agent L, three local police officers came to the tavern and in their presence, Elaine said she was 16 years of age and Theresa maintained that she was 20; that he and Agent L then seized for evidential purposes the unconsumed portion of the drinks on the bar in front of the girls; that thereafter George, the bartender, and the minors were escorted to police headquarters where Elaine admitted her true age was 13 years and George admitted that the young women definitely looked to him to be minors and that he served each three glasses of whiskey and soda without requiring any written proof of their respective ages; that George further stated that he believed that on a previous occasion both girls produced birth certificates indicating that they were 22 years of age, and that the minors, hearing George's last statement, denied they showed birth certificates at any time to defendant or her son.

"Agent L was sworn and it was stipulated by the respective attorneys herein that if he were to testify, his testimony both on direct and cross-examination would be the same as that of Agent F.

"The defendant's witnesses were Theresa ---, Frances Lachnicht (the licensee), and Frank Muro (a patron of defendant's establishment).

"Theresa --- testified that she was acquainted with George Lachnicht but never attended school with him.

"Frances Lachnicht testified that Theresa went to school with her son George who was 24 years of age; that Theresa was in her tavern prior to May 1, 1959 but never produced at any time a birth certificate; that she had 'figured' her to be the same age as her son; that on Easter Sunday preceding May 1st, Elaine came into the tavern with her mother and a couple of male companions and that when one of the men came to the bar to get drinks she asked: 'How old is that girl?' and although the mother said Elaine was 22 and showed a birth certificate, she didn't believe Elaine looked her age and served her Coca-Cola. She testified further that on May 1, 1959 her son George relieved her about 9:30 p.m. and that she was not in the tavern at the time the minors are alleged to have been served alcoholic beverages.

"Frank Muro testified that he was not in defendant's licensed premises on May 1, 1959; that the girls are sisters and now look to be under 21 years of age; that they were in defendant's tavern with their mother on Easter Sunday; that he overheard the conversation between their mother and the licensee, during which the mother said that both girls were of age. Incidentally, the minors are not related.

"Theresa and Elaine were called by the Division as rebuttal witnesses. Theresa denied that she was in defendant's tavern on Easter Sunday and Elaine testified that she and her mother went, unaccompanied, to defendant's tavern on Easter Sunday; that Mrs. Lachnicht was not in the tavern during their stay and that a year ago her mother had lost the birth certificates of all of her children when her valise was stolen.

"It is evident from the testimony adduced herein that both minors consumed alcoholic beverages in defendant's licensed

premises on the date alleged and that they were served such beverages by the licensee's son who, at the time of sale, required no written proof of their ages. It is further evident that at no time did either minor produce a birth certificate. Had the presentation of birth certificates been definitely established, it would not constitute a defense to the charge preferred herein for it has consistently been held that in cases involving the sale of alcoholic beverages to and the consumption of such beverages by a minor in and upon licensed premises, the only defense provided by the Alcoholic Beverage Law is that wherein all the following facts affirmatively appear: (a) that the minor falsely represented himself in writing to be of age, (b) that the minor's appearance was such that an ordinary prudent person would believe him to be of age, and (c) that the sale was made in reliance upon such written representation and appearance and in the reasonable belief that the minor was of age. See R.S. 33:1-77; Re Butera, Bulletin 606, Item 4; Re Roey, Bulletin 747, Item 3 (certiorari denied by N.J. Sup. Ct. in Roey v. Hock, reprinted in Bulletin 758, Item 2). The mere verbal inquiry by the licensee or his agents as to the age of the minor, or the verbal misrepresentation of his age by the minor, or the display by the minor of some document (such as a driver's license or birth certificate) which represents his age to be over 21 does not constitute a defense.

"In view of the aforesaid, I conclude that the Division has established the truth of the charge preferred against defendant by more than a fair preponderance of the evidence and I recommend that defendant be adjudged guilty as charged. Although defendant has an otherwise clear record, the instant violation involving as it does the sale and service of several glasses of hard liquor to a mere child of 13 years warrants the imposition of a substantial penalty. I, therefore, further recommend that an order be entered suspending defendant's license for a period of forty-five days. Cf. Re Folejewski, Bulletin 790, Item 9; Cf. Re Lapadula, Bulletin 1035, Item 3 and see Re Increased Penalties, Bulletin 1095, Item 1."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by defendant's attorney, pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the Hearer's Report and the written exceptions and argument filed herein by defendant's attorney, I concur in the Hearer's findings and conclusion and adopt his recommendations.

Accordingly, it is. on this 14th day of September 1959,

ORDERED that Plenary Retail Consumption License C-113 for the 1959-60 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Frances Lachnicht, for premises 56-58 Second Street, Hoboken, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m., Monday, September 21, 1959 and terminating at 2:00 a.m., Thursday, November 5, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

5. ACTIVITY REPORT FOR SEPTEMBER 1959

<b>ARRESTS:</b>	
Total number of persons arrested	28
Licensees and employees	16
Bootleggers	12
<b>SEIZURES:</b>	
Motor vehicles - cars	3
- trailers	1
Stillis - over 50 gallons	1
- 50 gallons or under	2
Mash - gallons	1,800.
Distilled alcoholic beverages - gallons	257.57
Wine - gallons	33.50
Brewed malt alcoholic beverages - gallons	14.53
<b>RETAIL LICENSEES:</b>	
Premises inspected	417
Premises where alcoholic beverages were gauged	475
Bottles gauged	8,606
Premises where violations were found	40
Violations found	61
Unqualified employees	38
Application copy not available	12
Prohibited signs	5
Reg. #38 sign not posted	2
Other mercantile business	2
Other violations	2
<b>STATE LICENSEES:</b>	
Premises inspected	45
License applications investigated	8
<b>COMPLAINTS:</b>	
Complaints assigned for investigation	450
Investigations completed	432
Investigations pending	195
<b>LABORATORY:</b>	
Analyses made	360
Refills from licensed premises - bottles	87
Bottles from unlicensed premises	95
<b>IDENTIFICATION:</b>	
Criminal fingerprint identifications made	11
Persons fingerprinted for non-criminal purposes	224
Identification contacts made with other enforcement agencies	177
Motor vehicle identifications via N. J. State Police teletype	3
<b>DISCIPLINARY PROCEEDINGS:</b>	
Cases transmitted to municipalities	16
Violations involved	17
Sale during prohibited hours	10
Sale to minors	4
Sale to non-members by club	3
Cases instituted at Division	48
Violations involved	70
Sale to minors	14
Possessing liquor not truly labeled	10
Sale during prohibited hours	9
Permitting bookmaking on premises	6
Permitting lottery activity (numbers, sweepstakes tickets) on premises	6
Hindering investigation	4
Permitting gambling (wagering, cards)	3
Permitting immoral activity on premises	3
Possessing contraceptives on premises	3
Cases brought by municipalities on own initiative and reported to Division	20
Violations involved	24
Sale to minors	13
Permitting brawl on premises	4
Sale during prohibited hours	3
Possessing indecent matter	2
Sale below minimum resale price	2
Fraud and front	2
Failure to file notice of change in application	1
Sale to intoxicated persons	1
Employing minor as bartender	1
Conducting business as a nuisance	1
Sale outside scope of license	1
Sale to non-members by club	1
Failure to close premises during prohibited hours	2
Permitting bookmaking on premises	1
Permitting immoral activity on premises	1
<b>HEARINGS HELD AT DIVISION:</b>	
Total number of hearings held	64
Appeals	11
Disciplinary proceedings	38
Eligibility	7
Seizures	3
Tax revocations	3
Applications for license	2
<b>STATE LICENSES AND PERMITS ISSUED:</b>	
Total number issued	1,407
Licenses	4
Employment permits	236
Solicitors	50
Disposal	97
Social affair permits	433
Miscellaneous	241
Transit insignia	324
Transit certificates	22

Dated: October 2, 1959

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS NUISANCE -  
 LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
 Proceedings against

FRANCES TALIERCIO  
 113 Hudson Street  
 Hoboken, N. J.

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption  
 License C-180, issued by the Municipal  
 Board of Alcoholic Beverage Control of  
 the City of Hoboken.

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 Peter Daghljan, Esq., Attorney for Defendant-licensee.  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to the following charge:

"On June 12, 13, 17, 18, July 2 and 3, 1959, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; allowed, permitted and suffered unescorted females frequenting your licensed premises to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them and others in and upon your licensed premises; allowed, permitted and suffered the sale and service to and the consumption of alcoholic beverages by persons actually or apparently intoxicated in and upon your licensed premises; employed and permitted the employment of females as bartenders on your licensed premises contrary to a regulation (Ordinance adopted December 7, 1955) of the City of Hoboken; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Between 11:45 p.m. on Friday, June 12, 1959, and 1:50 the following morning, ABC agents in the licensed premises observed two unescorted females (Terry and Joyce) solicit numerous drinks from and at the expense of a number of male patrons with the complete cooperation and assistance of the bartender. One of these females (Terry), apparently intoxicated, solicited every male patron who entered the premises to buy her a drink and subjected those who refused her solicitation to a loud verbal attack of filthy language. Terry also approached the agents and, when they refused to buy her a drink, she helped herself to seventy-five cents of their money on the bar and rebuked them with obscene language. Thereafter the agents observed Terry take a dollar-bill from each of two patrons -- one of whom complained in vain to the bartender. Before leaving the premises at 1:50 a.m. the agents saw Terry give the bartender the various sums of small change she "clipped" from patrons at the bar and, in exchange thereof, receive dollar-bills.



On Wednesday, June 17, 1959, at about 10 p.m., the agents returned to the premises and took seats at the bar which was being tended by aforementioned Joyce who was assisted at times by another female (Louise). Louise acted as a manager of the licensed premises. On this visit to the premises the agents observed four females practice their "barfly" activities on five male patrons. The agents also observed two of these females openly and in the presence of the barmaids, engage in vulgar and indecent exhibitions with two male patrons seated at the bar (a detailed description of these indecencies would serve no useful purpose). Neither Joyce nor Louise made any attempt to stop these lewd performances. One of these females, in a short conversation with one of the agents, made free use of obscene language. Shortly thereafter, at 12:45 a.m., the agents departed from the premises.

In furtherance of their investigation, ABC agents returned to the licensed premises on Thursday, July 2, 1959, at about 9:50 p.m., and took seats at the bar which was being tended by aforesaid Joyce. There were twenty patrons (seven males and thirteen females) on the premises. On this visit the agents recognized three unescorted females (Rose, Lola and Terry), whom they had seen on their previous visits to the premises. Two of these females (Rose and Lola) were served alcoholic beverages although it was quite apparent they were intoxicated. At about 11 p.m. Louise escorted Lola from the premises because of her inebriated condition and her indecent behavior with one of the agents. During this visit the agents were solicited for drinks by Terry and Rose, and the latter was also observed soliciting drinks from a male patron. At about 12:20 a.m. the agents identified themselves to Louise and the licensee who had entered the premises shortly prior to 12:20 aforesaid.

By way of mitigation the attorney for the defendant has submitted a statement setting forth therein that the licensee has recently become a widow; that on May 15, 1959, she purchased the licensed premises with her life's savings; that she had no prior experience in operating a tavern; that she had no knowledge of the rules and regulations governing a licensed premises; that she did not know that aforesaid violations were contrary to the same, and that she had made unsuccessful efforts to conduct the licensed premises in a proper manner. However, ignorance of the law or regulations does not afford any excuse. Licensees and their employees must know the rules and scrupulously adhere to them. Re Krynicki, Bulletin 1238, Item 5. Moreover, since the manner in which the licensee permitted her business to be conducted is offensive to common decency and public morals, it was incumbent upon her to take strong measures to avoid the indecencies complained of herein regardless of the rules and regulations of this Division.

Defendant has no prior adjudicated record. The usual penalty for the violations herein is sixty days. Re Angioletti, Bulletin 1298, Item 3. Considering all the facts and circumstances herein, I shall suspend defendant's license for fifty days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty-five days.

Accordingly, it is, on this 15th day of September, 1959,

ORDERED that Plenary Retail Consumption License C-180, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Frances Taliercio, for premises 113 Hudson



Street, Hoboken, be and the same is hereby suspended for forty-five (45) days, commencing at 2 a.m. Monday, September 28, 1959, and terminating at 2 a.m. Thursday, November 12, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA - EFFECTIVE DATES TO BE FIXED BY SUBSEQUENT ORDER.

In the Matter of Disciplinary  
Proceedings against

RICHARD W. & ROBERT R. STORCH  
t/a "SEA PLAY INN"  
114-116 Beachway  
Keansburg, N. J.

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Consumption )  
License C-31, issued by the Mayor and )  
Council of the Borough of Keansburg. )

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Joseph W. Jantusch, Esq., Attorney for Defendant-licensees.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to persons actually or apparently intoxicated and permitted the consumption of such beverages by said persons, in violation of Rule 1 of State Regulation No. 20.

On Sunday, August 16, 1959, at about 1:30 a.m., ABC agents observed a male patron stagger from the front door where he had been resting his head on his arm and join his companions at the bar. One of his companions was unsteady on the seat, his eyes were "bleary", his hair was mussed and he had difficulty controlling his head from bobbing up and down. Despite the condition of the two men in question, Richard W. Storch, one of the defendant-licensees, served a drink of whiskey to one of them and a glass of beer to the other.

Defendants have no prior adjudicated record. I shall suspend their license for a minimum period of twenty days. Re Boysen's Sunset Tavern, Inc., Bulletin 1266, Item 1; Re Joe's White Birch Bar, A Corp., Bulletin 1206, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Investigation discloses that defendants' business is conducted on a seasonal basis. Thus, no effective penalty can be imposed at the present time. The effective dates for suspension herein will be fixed by further order to be entered after the licensed premises shall have opened for business for the 1960 season. Cf. Re DeFreitas, Bulletin 1051, Item 5.

Accordingly, it is, on this 16th day of September, 1959,

ORDERED that Plenary Retail Consumption License C-31, issued by the Mayor and Council of the Borough of Keansburg to Richard W. & Robert R. Storch, t/a "Sea Play Inn", for premises 114-116 Beachway, Keansburg, be and the same is hereby suspended for a period of fifteen (15) days, the time to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS  
DIRECTOR

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

In the Matter of Disciplinary  
 Proceedings against

VIOLA DE ANGELO  
 604 Market Street  
 East Paterson, N. J.

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption  
 License C-10, for the 1958-59 and  
 1959-60 licensing years, issued by  
 the Mayor and Council of the Borough  
 of East Paterson.

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 Jerome L. Kessler, Esq., Attorney for Defendant-licensee.  
 William F. Wood, Esq., Appearing for the Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:


Defendant pleaded non vult to a charge alleging that she possessed on her 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 June 3, 1959, an ABC agent, when testing the licensee's open stock of alcoholic beverages, seized some bottles which appeared to be off in proof and color. Subsequent analysis by the Division's chemist disclosed that the contents of a bottle labeled "Seagram's Seven Crown American Blended Whiskey 86 Proof", when compared with a sample of the genuine product of said brand, varied substantially in solids and acids.

Defendant has no prior adjudicated record. I shall suspend defendant's license for ten days, the minimum suspension in a case involving one bottle. Re Meola, Bulletin 1285, Item 12. Five days will be remitted for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 21st day of September, 1959,

ORDERED that Plenary Retail Consumption License C-10, for the 1959-60 licensing year, issued by the Mayor and Council of the Borough of East Paterson to Viola DeAngelo, for premises 604 Market Street, East Paterson, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m., Monday, September 28, 1959, and terminating at 3:00 a.m., Saturday, October 3, 1959.

  
 William Howe Davis  
 Director