

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

BULLETIN 1305

October 28, 1959

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

BULLETIN 1305

October 28, 1959

1. DISCIPLINARY PROCEEDINGS - RETAILER ON DEFAULT LIST ACCEPTING DELIVERY OF ALCOHOLIC BEVERAGES EXCEPT FOR PAYMENT IN CASH - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

B & T, INC.)
t/a PENGUIN BAR & LIQUOR STORE)
611-613 S. Warren Street)
Trenton 10, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-8 (for the 1958-59 and 1959-60 licensing years), issued by the Board of Commissioners of the City of Trenton.)

David A. Friedman, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant entered a plea of non vult to the following charge:

"On or about January 21, 1959 and on divers occasions prior thereto, while you were listed on the then currently effective Default Lists published by this Division, you purchased and accepted delivery of alcoholic beverages except for payment in cash on delivery; in violation of Rule 4(b) of State Regulation No. 39."

The facts giving rise to aforesaid charge are more fully set forth in paragraph 2 of my Conclusions and Order entered in disciplinary proceedings against Norman Caine (a solicitor for a wholesale licensee), decided simultaneously herewith, and thus need not be repeated here.

Defendant has no prior adjudicated record. By way of mitigation the attorney for defendant has submitted a three-page statement setting forth therein, among other things, that defendant has been the holder of the liquor license for less than two years; that Samuel Barge, President of defendant corporation, was not thoroughly familiar with the regulations and looked for guidance to aforesaid Norman Caine who solicited the corporation's business. 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, the instant file discloses that, when the defendant's President was questioned by the Division agent during the investigation, he attempted to explain the violations in question by claiming that he had engaged in the practice of prepaying the solicitor for the orders placed and received, although admittedly no written records were kept of the alleged prepayments. Not only does this attempted explanation lack credibility, but it also indicates that defendant was well aware of the Division's credit regulations concerning retail licensees on the Default List. Considering all the facts and circumstances in this case, I shall suspend

defendant's license for ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 23rd day of September, 1959,

ORDERED that Plenary Retail Consumption License C-8 (for the 1959-60 licensing year), issued by the Board of Commissioners of the City of Trenton to B & T, Inc., t/a Penguin Bar & Liquor Store, for premises 611-613 S. Warren Street, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2 a.m., Monday, October 5, 1959, and terminating at 2 a.m., Saturday, October 10, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - SOLICITOR CONNECTED IN BUSINESS WITH RETAILER - ENGAGING IN CONDUCT PROHIBITED TO EMPLOYER - HINDERING INVESTIGATION - PERMIT SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

NORMAN CAINE)
88 Poplar Avenue)
Deal, N. J.)

CONCLUSIONS AND ORDER

Holder of Unlimited Solicitor's Permit No. 3846, issued by the Director of the Division of Alcoholic Beverage Control.)

Warren & Stein, Esqs., by George Warren, Esq., Attorneys for Defendant-permittee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. From August 28, 1958 to date you, the holder of a Solicitor's Permit, have been interested, directly and indirectly, in a retail license and business conducted thereunder, viz., the licensed business of B & T, Inc., t/a Penguin Bar and Liquor Store, 611-613 South Warren Street, Trenton, N. J., and you have been connected in a business capacity with this retail licensee; in violation of Rule 7 of State Regulation No. 14.
- "2. On or about January 29, 1959 and on divers occasions prior thereto, you engaged in conduct prohibited to your employer, Vincove Winery, by Rule 4(a) of State Regulation No. 39, in that you sold alcoholic beverages except for payment in cash on delivery to the above mentioned retail licensee who at the times of delivery was listed on the Default List published by this Division; in violation of Rule 12 of State Regulation No. 14.
- "3. On January 21, 1959 you engaged in conduct prohibited to your above mentioned employer by Rule 2 of State Regulation No. 17, in that you transported alcoholic beverages in a vehicle not owned or leased or

contracted for by your aforesaid employer; in violation of Rule 12 of State Regulation No. 14.

- "4. On January 21, 1959 you engaged in conduct prohibited to your above mentioned employer by Rule 6 of State Regulation No. 39, in that you delivered alcoholic beverages to the above mentioned retail licensee without an accompanying bona fide authentic and accurate delivery slip, invoice, manifest or waybill or similar document stating the name and address of the retail licensee, the brand, size of container and quantity of each kind of alcoholic beverages being delivered or transported and the price and terms of sale and without leaving a copy of such document with the aforesaid licensee; in violation of Rule 12 of State Regulation No. 14.
- "5. On February 11, 1959, you failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, examination and inspection being conducted by an inspector and an investigator of the Division of Alcoholic Beverage Control; in violation of R.S. 33:1-35."

On January 15, 1958, B & T, Inc., purchased its licensed business at 611-613 So. Warren Street, Trenton, from Phil-Norm, Inc., of which company Norman Caine was Vice-president and one of its principal stockholders. As part of the purchase price B & T, Inc., executed a purchase money chattel mortgage to the vendor. On August 28, 1958, Norman Caine was issued a solicitor's permit by this Division and obtained employment as a salesman by Vincove Winery (a wholesale licensee). From August 28 aforesaid to on or about June 18, 1959 (the date of the filing of the within charges), aforesaid chattel mortgage was in full force and effect and Caine's aforesaid interest in Phil-Norm, Inc. remained unchanged. During said period Caine solicited and accepted orders for alcoholic beverages from B & T, Inc. and other retail licensees.

On January 29, 1959, Vincove Winery delivered on credit to B & T, Inc., aforesaid, an order consisting of eighteen cases of assorted alcoholic beverages. At the time of the delivery this retail licensee was listed on the Default List published by this Division and had been so listed continuously ever since October 6, 1958, therefore requiring under the Division regulations that all sales of alcoholic beverages to it by any wholesaler or manufacturer be made not on credit but for payment in cash on delivery. Caine, with knowledge of this fact, effected the sale of aforesaid alcoholic beverages on a credit basis. Similar sales had previously been made by Caine to B & T, Inc. on January 2, January 8 and January 21, 1959.

On January 21, 1959, Caine picked up three cases of alcoholic beverages from a warehouse licensee and delivered the same to B & T, Inc. in an improperly licensed automobile and unaccompanied by a proper invoice as required by the regulations of this Division.

With respect to Charge 5 herein, the file discloses that on February 11, 1959, Caine gave to agents of this Division a sworn statement wherein he failed to acknowledge that Phil-Norm, Inc. held a chattel mortgage on property at the licensed premises of and owned by B & T, Inc. and made certain false statements relative to the aforesaid sale of three cases of alcoholic beverages to B & T, Inc. on January 21, 1959. The file further discloses that, subsequent to the service of the charges herein, Norman Caine ceased to be an officer or stockholder in Phil-Norm, Inc.

The illegal activities indulged in by the defendant indicate a disregard for the conditions and restrictions of his solicitor's permit. I find no excuse for his actions.

Defendant has no prior adjudicated record. Considering all the facts and circumstances of this case, I shall suspend defendant's permit for fifty days. Cf. Re Kennelly, Bulletin 1262, Item 2, and my release of February 1, 1958, in Bulletin 1207, Item 1. Five days will be remitted for the plea entered herein, leaving a net suspension of forty-five days.

Accordingly, it is, on this 23rd day of September, 1959,

ORDERED that Unlimited Solicitor's Permit No. 3846, issued by the Director of the Division of Alcoholic Beverage Control to Norman Caine, 88 Poplar Avenue, Deal, be and the same is hereby suspended for forty-five (45) days, commencing at 9 a.m. Monday, October 5, 1959, and terminating at 9 a.m. Thursday, November 19, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - SOLICITOR CONNECTED IN BUSINESS WITH RETAILER - PRIOR RECORD - PERMIT SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

PHILIP JOHN CAINE)
24 North Eastfield Avenue)
Trenton, N. J.)

CONCLUSION AND ORDER

Holder of Unlimited Solicitor's Permit No. 3783, issued by the Director of the Division of Alcoholic Beverage Control.)

Warren & Stein, Esqs., by George Warren, Esq., Attorneys for Defendant-permittee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge;

"From August 28, 1958 to date you, the holder of a Solicitor's Permit, have been interested, directly and indirectly, in a retail license and business conducted thereunder, viz., the licensed business of B & T, Inc., t/a Penguin Bar and Liquor Store, 611-613 South Warren Street, Trenton, N. J., and you have been connected in a business capacity with this retail licensee; in violation of Rule 7 of State Regulation No. 14."

From August 28, 1958 to June 18, 1959 (the date of the filing of the within charge), Philip Caine was the holder of a solicitor's permit and was employed by a wholesale liquor licensee. During said period Philip Caine was the President and one of the principal stockholders of the Phil-Norm, Inc., which held a purchase money chattel mortgage on the goods and chattels of aforesaid B & T, Inc. By way of mitigation defendant's attorney states that defendant was unaware

that a solicitor was prohibited from having an interest in the licensed premises of a retail licensee. However, the above mentioned rule clearly provides that no holder of a solicitor's permit shall be employed by or connected in any business capacity with a retail licensee. The file in this case discloses that, subsequent to the service of the charge herein, Philip Caine ceased to be an officer or stockholder in Phil-Norm, Inc.

Defendant has a prior adjudicated record. Effective April 18, 1953, the retail consumption license of Philip Caine at 611-613 So. Warren Street, Trenton, was suspended by the then Director (on appeal from suspension by the local issuing authority) for twenty days for sale to minors (Caine v. Trenton, Bulletin 965, Item 4) and, effective January 24, 1955, the above license was suspended by the local issuing authority for twenty days on an "hours" violation. Since the first of aforesaid prior dissimilar violations occurred more than five years ago, it will not be considered in fixing the penalty herein. Re Schmoldt, Bulletin 1294, Item 6.

I shall suspend defendant's license for ten days, to which will be added five days for the prior dissimilar violation which occurred within the past five years (Re Gertman, Bulletin 1276, Item 9), making a total suspension of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 23d day of September, 1959,

ORDERED that Unlimited Solicitor's Permit No. 3783, issued by the Director of the Division of Alcoholic Beverage Control to Philip John Caine, 24 North Eastfield Avenue, Trenton, be and the same is hereby suspended for ten (10) days, commencing at 9 a.m. Monday, October 5, 1959, and terminating at 9 a.m. Thursday, October 15, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS. - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FLORENCE TABATNECK)
t/a Three O'Clock Club)
176 Paterson Street)
Paterson, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-135, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Green and Yanoff, Esqs., by H. Kermit Green, Esq., Attorneys 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 in and upon her licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On July 13, 1959, an ABC agent tested defendant's open stock of assorted brands of liquor and seized a number of bottles for further tests by the Division chemist, which tests disclosed that the contents of three bottles labeled "MacKenzie Blended Scotch Whisky 86 Proof" were diluted and 39 proof short; the contents of one bottle labeled "Imported Seagram's V.O. Canadian Whisky a Blend 86.8 Proof" were diluted and 43.0 proof short, solids and acids low and the color light; and the contents of two bottles labeled "Boaka Vodka 80 Proof" were diluted, one being 46 proof short and the other 37 proof short.

Defendant has a prior adjudicated record. I suspended her license for thirty-five days, effective March 5, 1956, for conducting her licensed business as a nuisance and for employing a criminally disqualified person. I again suspended her license for seventy-five days, effective October 15, 1958, for sale to an intoxicated person and employing a criminally disqualified person. Under all the circumstances and because of the prior dissimilar violations within the past five years, I shall suspend defendant's license for thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 22nd day of September 1959,

ORDERED that Plenary Retail Consumption License C-135, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Florence Tabatneck, t/a Three O'Clock Club, for premises 176 Paterson Street, Paterson, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m., Monday, September 28, 1959 and terminating at 3:00 a.m., Wednesday, October 28, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHARLES NASSANEY)
185 Paterson Street)
Paterson, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-313, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

H. Dick Cohen, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On July 9, 1959 and on divers dates prior thereto you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Ronald ---, age 16; Michael ---, age 17 and William ---, age 18, and you allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

Acting on information received from the Parsippany-Troy Hills Police Department, ABC agents obtained sworn, written statements from Ronald --- (age 16), Michael --- (age 17), William --- (age 18), and another minor, John, wherein they set forth that at about 1:00 a.m. on Thursday, July 9, 1959, they entered the defendant's licensed premises; that with the exception of John, who had a soft drink, each of them was served a bottle of beer by Albert Nassaney, the bartender, without requiring any of them to make any written representation as to their respective ages; that Ronald, Michael and William had been served alcoholic beverages by the same bartender on prior visits to the licensed premises; that Michael and William were not questioned about their ages on these prior visits and that Ronald on his first visit to the licensed premises stated, upon inquiry, that he was 20 years of age but, nevertheless, was served a glass of beer. Thereafter, the four minors identified the licensed premises as the place where the alcoholic beverages were obtained and identified Albert Nassaney as the bartender who served aforesaid alcoholic beverages.

By way of mitigation, the attorney for the licensee has submitted a statement which I have carefully read, together with the statements of minors and the reports of the agents. I do not find, however, any extenuating circumstances which would impel me to impose less than the established penalty in cases of this kind.

Defendant has no prior adjudicated record. I shall suspend defendant's license for thirty days, the minimum penalty for a sale to a 16-year-old minor where three minors are involved. Re Jennings, Bulletin 1244, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 23rd day of September 1959,

ORDERED that Plenary Retail Consumption License C-313, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Charles Nassaney, for premises 185 Paterson Street, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m., Monday, October 5, 1959 and terminating at 3:00 a.m., Friday, October 30, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS -- SALES TO MINORS -- LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

AUTOMATIC SUSPENSION - PETITION TO LIFT GRANTED AT EXPIRATION OF SUSPENSION IN DISCIPLINARY PROCEEDINGS.

In the Matter of Disciplinary Proceedings against)

ROBERT HUETTER)
t/a (WIEDERSEHN INN))
Two Bridges Road)
Caldwell Township)
PO Caldwell R.D., N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of Caldwell Township.)

-----)
Auto. Susp. #173)
In the Matter of a Petition by)

ROBERT HUETTER)
(same address))

ON PETITION
ORDER

To Lift Automatic Suspension of said License C-8)

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Meyer Sugarman, Esq., Attorney for Defendant-Petitioner.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to the following charge:

"On the night of July 8 and the early morning of July 9, 1959, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Michael ---, age 17 and Ronald ---, age 16, and you allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

Acting upon information received from the Parsippany-Troy Hills Police Department, ABC agents obtained sworn, written statements from Ronald --- (age 16), Michael --- (age 17) and two other minors. Ronald stated that at about 11:30 p.m. on Wednesday, July 8, 1959, he, Michael and two minor friends drove to defendant's licensed premises to purchase some beer; that he along entered the defendant's licensed premises and, without being required to make any

written representation of his age, was served a glass of beer by Robert Huetter (the licensee) following which he purchased three containers of beer from Huetter; that he carried the alcoholic beverages to the car; that he and his companions consumed the same and that he paid for the alcoholic beverages with money contributed by some members of the group. Ronald further stated that the following morning, at about 2 a.m., he and his friends drove back to the licensed premises; that on this visit he and Michael entered the licensed premises and, without being questioned about their ages, they were each served two or three glasses of beer by Mr. Huetter; that they also purchased three containers of beer from Mr. Huetter and that they carried the alcoholic beverages to the car where he and his three friends consumed the same. The foregoing is substantially corroborated by the statements of Michael and the other two minors. Thereafter the four minors identified the licensed premises as the place where the alcoholic beverages were obtained and Ronald and Michael identified aforesaid Robert Huetter as the person who sold the same to them.

By way of mitigation, the licensee submitted a statement which I have carefully read, together with the statements of the minors and the reports of the agents. I do not find, however, any extenuating circumstances in this case which would impel me to impose less than the established penalty in cases of this kind.

On August 27, 1959, the licensee was fined \$75 in the Municipal Court of the Township of Caldwell after he was found guilty of a charge of selling alcoholic beverages to the same minors, in violation of R.S. 33:1-77. Said conviction automatically suspends the license held by defendant for the balance of its term. R.S. 33:1-31.1. Because of the pendency of these proceedings the license has not yet been picked up by ABC agents.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty-five days, the minimum suspension for the sale of alcoholic beverages to a 16-year-old minor. Re Shinkunas, Bulletin 1253, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Defendant has filed with me a petition to lift the statutory automatic suspension of his license. I shall grant the requested relief upon the expiration of the suspension imposed in the disciplinary proceedings.

Accordingly, it is, on this 22nd day of September, 1959,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of Caldwell Township to Robert Huetter, t/a (Wiedersehn Inn), for premises on Two Bridges Road, Caldwell Township, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, September 29, 1959, and terminating at 2 a.m. Monday, October 19, 1959; and it is further

ORDERED that the statutory automatic suspension of said license be lifted effective at 2 a.m. Monday, October 19, 1959, at which time the license will be restored to full force and operation.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LEAH F. HAFNER)
t/a PATERSON HOUSE)
Nolan's Point)
Jefferson Township)
PO Lake Hopatcong, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-23, issued by the Township Committee of Jefferson Township.)

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 and delivered and permitted the sale and delivery of alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

Pursuant to information received from the Jefferson Township Police Department, an ABC agent obtained a signed, sworn statement from William --- (16 years of age) wherein he said that at about 9:40 p.m. on July 10, 1959, he purchased two six-packs of Schaefer beer from George Hafner who was tending bar at the time. William further stated that no inquiry as to his age was made by the bartender at the time in question. William also stated that he had previously purchased beer in defendant's premises and that he then displayed a falsified card which indicated that the holder was over 21 years of age. However, this cannot be accepted as a mitigating circumstance in a case involving sale to a 16-year-old minor.

Defendant has no prior adjudicated record. The minimum penalty for sale of alcoholic beverages in an unaggravated case to a 16-year-old minor is twenty-five days. Re Shinkunas, Bulletin 1253, Item 2. I shall suspend defendant's license for twenty-five days, less five days' remission for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 22nd day of September, 1959,

ORDERED that Plenary Retail Consumption License C-23, issued by the Township Committee of Jefferson Township to Leah F. Hafner, t/a Paterson House, for premises Nolan's Point, Jefferson Township, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Tuesday, September 29, 1959, and terminating at 3:00 a.m., Monday, October 19, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL, KATHERINE & HENRY PATRYLOW t/a PATRYLOW'S GROVE & COCKTAIL BAR 31st Street & Sumner Avenue Kenilworth, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-10 (for the 1958-59 and 1959-60 licensing years), issued by the Borough Council of the Borough of Kenilworth.)

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

BY THE DIRECTOR:

The defendants pleaded non vult to a charge alleging that they possessed on their licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On May 20, 1959, an ABC agent tested the defendants' open bottles of alcoholic beverages and seized ten such bottles because they appeared to have been refilled. An analysis by the Division's chemist of the contents of the bottles in question disclosed that the contents of the four bottles referred to in the charge varied substantially in acids and solids from the contents of genuine bottles of the respective brands.

Defendants have a prior adjudicated record. Effective March 9, 1949, their license was suspended by the local issuing authority for fifteen days for sale of alcoholic beverages to minors. Again, effective February 1, 1954, their license was suspended by the local issuing authority for 150 days for sale of alcoholic beverages to minors. In view of the fact that both aforementioned dissimilar violations occurred more than five years ago, they will not be considered in fixing the penalty herein. Re Smith, Bulletin 1163, Item 11. I shall suspend defendants' license for twenty days, the minimum penalty in a "refill" case involving four bottles. Re Sanderlin, Bulletin 1286, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen 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 Borough Council of the Borough of Kenilworth to Michael, Katherine & Henry Patrylow, t/a Patrylow's Grove & Cocktail Bar, for premises at 31st Street and Sumner Avenue, Kenilworth, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, September 28, 1959, and terminating at 2 a.m. Tuesday, October 13, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - SALE DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

DAVID BRICK, RUTH BRICK, FRANK LEONARDO AND MARIE LEONARDO, a Partnership t/a CABIN OF JOY 205-12th Avenue Paterson 1, N. J.

CONCLUSIONS AND ORDER

 Holders of Plenary Retail Consumption License C-272 (for the 1958-59 and 1959-60 licensing years), issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Peter P. Zangara, Esq., Attorney for Defendant-licensees.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants entered a plea of not guilty to charges alleging that (1) on Sunday, April 26, and Sunday, May 3, 1959, they sold during prohibited hours alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) on the same days they sold alcoholic beverages during prohibited hours, in violation of a local ordinance.

"To substantiate the charges, the Division called as its witnesses the ABC agents who participated in the investigation of defendants' licensed business. They will be referred to herein as Agents J and M.

"Succinctly stated, the testimony of Agent J shows that at about 12:15 p.m. on Sunday, April 26, 1959, he and Agent M arrived in the vicinity of defendants' licensed premises; that Agent M stationed himself about 100 feet from defendants' tavern on the same side of the street; that he proceeded toward the tavern and observed a white man emerge therefrom, hand what appeared to be a quart bottle of whiskey to one of six colored men in a car parked in front of the licensed premises, accept some money from the man and return to the tavern; that later he saw a colored man enter the tavern, come out shortly thereafter and stand in front of the licensed premises; that a colored man wearing a white apron came out of the tavern, handed a bottle to the man standing in front thereof, accepted money and returned to the tavern; that at about 12:30 p.m. he (the agent) entered the tavern and asked the man wearing the white apron for a pint of whiskey; that the man said it would cost three dollars; that he handed the man a ten-dollar bill and was told to 'wait outside' which he did; that shortly thereafter, the man came out and handed him the pint of whiskey and \$6.75 change, saying as he re-entered the premises 'Thank you my man'; and that he joined Agent M and showed him the pint bottle of whiskey, after which both left the vicinity. A certified copy of the ordinance alleged to have been violated and the pint bottle of whiskey were received in evidence and marked Exhibits S-1 and S-2, respectively.

"Agent J testified further that he and Agent M arrived in the vicinity of defendants' licensed premises at about 12:15 p.m. Sunday, May 3, 1959; that Agent M stationed himself about fifty feet from defendants' tavern on the same side of the street; that he proceeded to the tavern, tried the door which was locked and observed therein two males and female (later identified as three of the licensees); that he walked up the street a short distance and at about 12:20 a.m. observed a colored man (later identified as James Thomas) approach a window on the side of the tavern; that he joined the man thereat; that the window was open and the colored man handed a dollar bill to someone inside saying, 'I'd like to have a pint of sherry wine'; that a white man, later identified as David Brick, one of the licensees, peered out and asked him (Agent J) what he wanted and that when he requested a pint of liquor, Brick said, 'I'm not selling any today' and closed the window. Agent J testified further that he crossed the street and, from a vantage point, observed Thomas return to the side window and saw a white arm protrude therefrom and hand Thomas what appeared to be a bottle of wine and some change; that Thomas put the bottle in his hip pocket and walked down the street in the direction of Agent M; that he followed and accosted Thomas and asked him for the pint of wine; that Agent M then approached and saw Thomas hand over the bottle; that he, Agent M and Thomas went back to the tavern, knocked on the door and were admitted by Brick; that Mr. and Mrs. Brick and Frank Leonardo (licensees), who were in the tavern, were informed of the violation and in their presence Agent M asked Thomas if he bought the wine there; that Thomas said he bought the bottle in defendants' tavern the previous night and left it in the premises and that Brick handed it to him the following Sunday through the side window and that Brick shrugged his shoulders and did not comment. The bottle of wine taken from Thomas was received in evidence and marked Exhibit S-3.

"Agent M's testimony corroborates that of Agent J with respect to seeing the man who wore the white apron hand Agent J a pint bottle of whiskey (Exhibit S-1) in front of defendants' tavern and that he saw the bottle in the possession of Agent J. His testimony further corroborates that of Agent J respecting the movements of Thomas and Agent J before and as they proceeded to the side window of the tavern, Agent J's crossing the street, Thomas' return to the window, the bottle being handed to Thomas, the confrontation of Thomas by Agent J and himself, the acquisition of the pint bottle of wine, the entry of Thomas, Agent J and himself into the tavern wherein three of the licensees who were present were informed of the violation, the questioning of Thomas, Thomas' reply and Brick's shrugging of his shoulders.

"On cross-examination, Agent J testified that when he, Agent M and Thomas entered the tavern, he stated that on April 26, 1959 he purchased some liquor from a colored man employed in defendants' tavern; that he was unable to identify the person who made the sale and that Brick said he was not working on that Sunday. Agent M testified on cross-examination that Thomas pointed to Mr. Brick as the person who handed him the bottle through the window and that when he, Agent J and Thomas first entered the premises, Thomas stated that he had purchased the bottle of wine in defendants' licensed premises the evening before and had left it there.

"The witnesses called on defendants' behalf were James Thomas, Lorren Rogers, Henry Bryant, Ruth and David Brick and Frank Leonardo, the last three being partners in the licensed business.

"Thomas testified in substance that on Saturday night, May 2, 1959, he purchased a pint of wine in defendants' tavern from Henry Bryant, the bartender, and took it home; that at about 11:30 a.m. the following morning, he went to defendants' tavern and gave Brick a dollar bill, telling him that he wasn't going to work that day; that

he returned home, put the bottle of wine in his pocket and was proceeding towards his sister's house when he was stopped by a man who asked him for a drink; that when he said that he didn't have any, the man grabbed him and took the bottle out of his pocket and told him that he was going to be locked up; that he was taken to the tavern and, before entering, the man called another man who was in a car across the street; that when the three entered the tavern he was asked where he got the wine and that he stated that he bought it in the tavern on Saturday night and took it home and that he never told the man he had left the wine in the tavern.

"On cross-examination, he testified that he and Agent J were at the side window of the tavern and that he handed a dollar bill through the window to Brick and walked on. He denied that he returned to the window and that he was handed the pint of wine at that time.

"Rogers (colored) testified that he is employed by defendants as a porter; that he was in the tavern when the agents and Thomas came in and that he heard Thomas say that he didn't leave the wine in the tavern on Saturday night.

"Bryant (colored) testified that he is employed as a bartender in defendants' licensed premises and that on Saturday night, May 2, 1959, he sold a bottle of wine to Thomas. He further testified that Rogers also tends bar on Sunday evening.

"Mrs. Brick testified that she heard Thomas say that he 'bought the bottle of wine Saturday night' and that when Agent J said that he had purchased liquor in the tavern on April 26th and pointed to her husband who he said had made the sale, she told him that that was 'impossible' because her husband didn't work that Sunday.

"David Brick testified that on Sunday, May 3, 1959, he saw Agent J and Thomas at the side window; that Thomas handed him a dollar bill which was given to him the night before for work he was to do on Sunday and said he wasn't going to work that day and that Thomas kept insisting to the agents that he bought the wine on Saturday night. He admitted that he carries in stock the same brand of wine purchased by Thomas and denied that he sold Agent J a bottle of liquor on April 26th because he was not working on that Sunday.

"Leonardo testified that he told Thomas who was at the side window that, 'We don't sell no package goods on Sunday'; that he closed the window; that Agent J said that Brick sold him liquor the previous Sunday; that there were two colored men in the tavern when the agents entered and that the licensees do not have a colored bartender working on Sunday afternoons. On cross-examination, he admitted that Rogers was in and about the licensed premises before the opening hour on Sunday, April 26, 1959; that all of the employees wear white aprons when cleaning up and that Thomas said when questioned by the agents, 'I took it (the bottle of wine) home with me. I took it out this morning'.

"I have carefully considered the evidence adduced herein and I find that, notwithstanding the exhaustive cross-examination of the agents, their testimony remained unshaken and presents a true picture of the events which transpired on the dates alleged in the charge. I conclude, therefore, that the Division has sustained the burden of establishing the truth of the charge herein and I recommend that defendants be adjudged guilty thereof. In view of defendants' otherwise clear record, I further recommend that their license be suspended for a period of twenty days, the minimum penalty imposed for violations as charged herein. Re Reimer, Bulletin 1075, Item 5; Re Gardianos, Bulletin 1133, Item 5; Re Badyna, Bulletin 1203, Item 3."

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

Having carefully considered the entire record herein, I concur in the findings and conclusions of the Hearer and adopt his recommendations. I find defendants guilty as charged.

Accordingly, it is, on this 23rd day of September, 1959,

ORDERED that Plenary Retail Consumption License C-272 (for the 1959-60 licensing year), issued by the Board of Alcoholic Beverage Control for the City of Paterson to David Brick, Ruth Brick, Frank Leonardo and Marie Leonardo, a Partnership, t/a Cabin of Joy, for premises 205 - 12th Avenue, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. Thursday, October 1, 1959, and terminating at 3 a.m. Wednesday, October 21, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

DOUBLE BEN, INC.)
t/a PARK AVENUE TAVERN)
266-268 Park Avenue)
Newark, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-78, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Samuel J. Zucker, Esq., Attorney for Defendant-licensee.
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold and permitted the sale of alcoholic beverages to a 17-year-old minor, in violation of Rule 1 of State Regulation No. 20.

Acting upon information obtained from the Essex Fells Police Department, ABC agents, on July 3, 1959, obtained signed, sworn statements from Maynard --- and Noel ---. In his statement Maynard --- says that he was born on November 19, 1941 (and hence was 17 years of age when the alleged violation occurred); that on the evening of July 1, 1959, Noel --- was a guest in his car which stopped near defendant's premises; that at about 8 p.m. he alone entered defendant's premises and purchased five six-packs of assorted brands of beer from a man who did not question him as to his age. Maynard --- also alleges that he had previously purchased alcoholic beverages in defendant's premises. In his statement Noel --- says that he is 17 years of age; that on the evening of July 1, 1959, he was in the car when it stopped near defendant's premises; that Maynard --- entered the premises, returned to the car within five minutes and asked him what kind of beer he wanted; that Maynard --- then re-entered the premises and returned with five six-packs of beer which were placed in the car. Both young men stated that the car was drive to Essex Fells where members of the Police Department apprehended them for illegal parking and that neither of

them had consumed any of the beer.

Later, on July 3, 1959, both young men accompanied ABC agents to the vicinity of defendant's premises which they identified, from the outside, as the place where the beer had been purchased. Maynard --- entered with the agents and identified Benjamin Gottlieb as the person who had sold the beer to him. At that time Gottlieb admitted that it was possible he made the sale because Maynard --- looked to be twenty-one years of age.

In alleged mitigation defendant's attorney has advised me in writing that Benjamin Gottlieb (an officer of defendant corporation) explains that Maynard --- is over six feet tall, weighs 180 pounds and had a goatee four inches wide and extending below the chin, and that the purchaser appeared to be twenty-three or twenty-four years of age. The agent's report confirms the statement that the minor is over six feet tall, weighs about 180 pounds, and that he had a goatee. However, the agents report that the minor appears to be about nineteen years of age. The minimum penalty for sale to a 17-year-old minor is twenty days. Re Davis, Bulletin 1250, Item 4. Ordinarily I would be inclined to increase the minimum penalty because of the large amount of alcoholic beverages sold but, considering the appearance of the minor, I shall impose the minimum suspension in this case. I shall suspend defendant's license for twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

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

ORDERED that Plenary Retail Consumption License C-78, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Double Ben, Inc., t/a Park Avenue Tavern, for premises 266-268 Park Avenue, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, September 28, 1959, and terminating at 2 a.m. Tuesday, October 13, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

11. STATE LICENSES - NEW APPLICATION FILED.

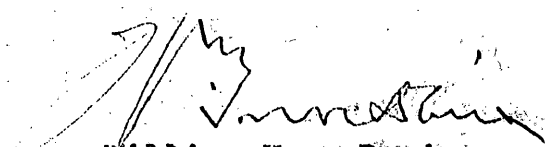
E. L. Kerns Co.

North Alley rear of 302-04-06-08

North Broad Street and 302-04 North Broad Street

Trenton, New Jersey

Application filed October 26, 1959 for place-to-place transfer of Plenary Wholesale License W-61 to include additional space.


William Howe Davis
Director