

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 5, N. J.

BULLETIN 1122

JULY 20, 1956.

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - HORNAUER v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND NEULS v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DECISIONS OF DIRECTOR IN BOTH CASES AFFIRMED.
2. APPELLATE DECISIONS - MOORE v. CAMDEN.
3. APPELLATE DECISIONS - ZIOMEK v. DELAWARE TOWNSHIP.
4. DISCIPLINARY PROCEEDINGS (Union City) - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Stillwater Township) - FAILURE TO FILE WRITTEN NOTICE OF CHANGE OF FACTS (SHARING PROFITS WITH NON-LICENSEE) - LICENSE SUSPENDED FOR 15 DAYS.
6. DISCIPLINARY PROCEEDINGS (Long Branch) - AGGRAVATED SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS.
7. DISCIPLINARY PROCEEDINGS (Paterson) - ORDER FIXING EFFECTIVE DATES OF SUSPENSION AFTER LICENSEE RESUMED BUSINESS.
8. ACTIVITY REPORT FOR JUNE 1956.
9. DISCIPLINARY PROCEEDINGS (Englewood) - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
10. DISCIPLINARY PROCEEDINGS (Wildwood) - ORDER FIXING EFFECTIVE DATES OF SUSPENSION AFTER LICENSEE RESUMED BUSINESS.
11. DISCIPLINARY PROCEEDINGS (West Milford) - ORDER FIXING EFFECTIVE DATES OF SUSPENSION AFTER LICENSEE RESUMED BUSINESS.
12. STATE LICENSES - NEW APPLICATION FILED.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 5, N. J.

BULLETIN 1122

JULY 20, 1956

1. COURT DECISIONS - HORNAUER v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND NEULS v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DECISIONS OF DIRECTOR IN BOTH CASES AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

FRANK E. HORNAUER, t/a BLUE ROOF RESTAURANT,)	
)	
Appellant,)	
-vs-)	Docket A-241-55
DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY,)	
)	
Respondent.)	
-----)	
GEORGE E. NEULS, t/a RIVER VIEW INN,)	
)	
Appellant,)	
-vs-)	Docket A-242-55
DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY,)	
)	
Respondent.)	
-----)	

Argued June 18, 1956 - Decided June 27, 1956.

Before Judges Goldmann, Freund and Conford.

Mr. Edward E. Stover argued the cause for both appellants.
(Mr. Archie Roth, on the brief).

Mr. Samuel B. Helfand, Deputy Attorney-General argued the cause for respondent (Mr. Grover C. Richman, Jr., Attorney-General of New Jersey, attorney).

The opinion of the court was delivered by

GOLDMANN, S.J.A.D.

These appeals seek review of the determination of the Director of the Division of Alcoholic Beverage Control suspending appellants' liquor licenses upon finding them guilty of the sale and service of alcoholic beverages to a 15-year-old girl who, together with two adult male companions, visited both taverns on Sunday, July 24, 1955. Suspensions entered against two other licensees (Hempel and Baer, t/a Mansfield Inn, and Landzberger t/a Al King's Bar & Grill), whose taverns were likewise visited by the trio on the same day, have not been appealed. A charge brought against one Schureman, t/a Cedar Castle, for sale and service of alcoholic beverages to a minor, was dismissed after hearing, for lack of proof. The facts concerning

the other proceedings mentioned have been stipulated of record.

This court granted a stay of the suspensions pending appeal. Permission to file a consolidated brief was granted the Division by orders duly entered.

Appellants' major contention is that the proofs fail to support the charges by a fair preponderance of the believable evidence. This is the standard which guides the Director in measuring the adequacy of proof to sustain guilt in disciplinary proceedings instituted against licensees for violation of the statute or a Division regulation. Kravis v. Hock, 137 N.J.L. 252, 254 (Sup. Ct. 1948). On appeal our approach to the record is from a different direction. As respondent correctly notes, the futility of projecting for appellate review contentions relating to the preponderance of the evidence given before administrative agencies has become so increasingly manifest that documented support for their rejection would appear superfluous. In his analysis of developments in administrative law written for the 1946 Annual Survey of American Law (N.Y.U. School of Law) 187, 229, by Chief Justice Vanderbilt shortly before coming to the bench, he said:

"The scope of judicial review upon findings of fact continues to be narrowly limited. The substantial evidence rule is applied rigorously in literally hundreds of cases and has become so well established in the federal courts and in many of the state courts that detailed reference to all of the many cases would serve no useful purpose. The courts continue to apply the usual corollaries to the rule, i.e., that it is the function of the administrative agency and not the courts to weigh the evidence, to determine the credibility of witnesses, to draw inferences and conclusions from the evidence, and to resolve conflicts therein."

The now generally accepted gauge of administrative factual finality is whether the factual findings are supported by substantial evidence. In re Larsen, 17 N. J. Super. 564, 576 (App. Div. 1952). In every case in which this court has been requested to resolve conflicting evidence, independently of the factual conclusion of the respondent agency, it has declined to do so. Passarella v. Board of Commissioners, 1 N. J. Super. 313, 321 (App. Div. 1949); Traymore of Atlantic City, Inc. v. Hock, 9 N. J. Super. 47, 48 (App. Div. 1950); In re Schneider, 12 N. J. Super. 449, 454 (App. Div. 1951); In re Larsen, above, at pages 573, 576-7 (App. Div. 1952); In re Gutman, 21 N. J. Super. 579, 581, 582 (App. Div. 1952); Mazza v. Cavicchia, 28 N. J. Super. 280, 289 (App. Div. 1953), reversed on another ground, 15 N. J. 498 (1954); Mitchell v. Cavicchia, 29 N. J. Super. 11, 13-14 (App. Div. 1953); Benedetti v. Bd. of Com'rs. of Trenton, 35 N. J. Super. 30, 34 (App. Div. 1955); cf. N. J. Bell Tel. Co. v. Communications Workers, etc., 5 N. J. 354, 378 (1950). Cf. also, Senate Bill No. 42, 1956 session of the New Jersey Legislature, section 7, which embodies the substantial evidence rule in reviews of administrative agency action; Sanders v. Director, Division of Taxation, etc., ___ N. J. Super. ___ (App. Div., June 26, 1956).

The reason for this exercise of judicial restraint is that otherwise the agency "would be reduced to the status of a mere conduit for the transmission of evidence to the courts." Mazza v. Cavicchia, above, at page 289; and see In re Larsen, above, at page 571. Justice (then Judge) Brennan, in his concurring

opinion in the Larsen case, though critical of the merger of functions reposed in the Division, expressed his view of the appellate power of reviewing the facts under then Rule 3:81-13 (now R. R. 4:88-13) (cf. R.R. 1:5-4(b), 2:5); thus:

"We should be cautious in invoking the power at least when dealing, as here, with the fact finding of an experienced agency of demonstrated competence. Cf. Dobson v. Commissioner, 320 U.S. 489, 88 L. Ed. 248 (1943). We should appreciate the undesirability of trying cases de novo from such an agency and of the value of having the agency assume a real responsibility for weighing and considering the facts in a field where it has considerable experience." 17 N. J. Super., at pages 577-8.

See In re Gutman, above, 21 N. J. Super., at pages 581-2.

The case of Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 95 L. Ed. 456, 71 S. Ct. 458 (1951), is generally looked to as authoritatively furnishing the conventional formula for judicial application of the substantial evidence rule: "It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *** "[I]t must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." 340 U.S., at page 477. Stating that the rule was not intended to negative the function of the Labor Board as one of those agencies "presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect," the opinion continues:

"*** Nor does it mean that even as to matters not requiring expertise a court may displace the Board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it de novo." 340 U. S., at page 488.

To similar effect, see N. J. Bell Tel. Co. v. Communications Workers etc., above, 5 N. J., at pages 377-379.

In his comprehensive article, "'Substantial Evidence' in Administrative Law," 89 U. of Pa. L. Rev. 1026, 1038 (1941), Dean Stason of the University of Michigan Law School finds the most acceptable meaning of the term "substantial evidence" to be that which confers finality upon an administrative decision on the facts, "when, upon an examination of the entire record, the evidence, including the inferences therefrom, is found to be such that a reasonable man, acting reasonably, might have reached the decision; but, on the other hand, if a reasonable man, acting reasonably, could not have reached the decision from the evidence and its inferences then the decision is not supported by substantial evidence and it should be set aside. In effect, this is the prevailing rule in jury trials relative to the direction of verdicts, and is also the prevailing rule applied by appellate courts in setting aside jury verdicts because contrary to the evidence." And see Stern, "Review of Findings of Administrators, Judges and Juries: A Comparative Analysis," 58 Harv. L. Rev. 70, 89 (1944).

The choice of accepting or rejecting the testimony of witnesses rests, therefore, with the administrative agency. Where such choice is reasonably met, it is conclusive on appeal. The scope of appellate review does not possess such breadth as would permit a disturbance of the administrative finding unless the court is convinced that the evidence permits of no reasonable latitude of choice. The court canvasses the record, not to balance the persuasiveness of the evidence on one side as against the other, but in order to determine whether a reasonable mind might accept the evidence as adequate to support the conclusion and, if so, to sustain it.

Tested by these considerations, it cannot be said that the proofs in either of the cases before us were insufficient to sustain the findings of the Director, whatever the members of this court as individuals might conclude as to whether a fair preponderance of the credible evidence indicated the guilt or innocence of the respective appellants. In each case the girl unequivocally testified that beer had been served to and consumed by her, and she identified the person making the service. Her male companions corroborated the service of beer to, and its consumption by, the minor. The defense in the Hornauer case was that the girl was served only orange soda. In the Neuls case the defense was that neither she nor her companions visited River View Inn on the Sunday in question. The testimony was in direct conflict, thus posing fact issues on which fair-minded judges, as respondent readily admits, could reasonably find the persuasive balance tilting in either direction. In such posture, the determination made in each case by the Director, exclusively entrusted as trier of the facts with the duty of determining in which direction the evidence preponderates, is conclusive on review. We cannot, in the words of Dean Stason, say that "a reasonable man, acting reasonably, could not have reached the decision from the evidence and its inferences."

Appellants make a special point of the minor's repudiation of her prior written statement in the Schureman case that she had been served beer in his tavern, resulting in the dismissal of the charge brought against him for selling alcoholic beverages to a minor; and also of her unsworn retraction directed to all four taverns visited on the day in question -- Hornauer, Neuls, Hempel and Landzberger. The Director of the Division gave due consideration to these elements in the proof. Although the girl frankly admitted that she had been mistaken in saying she had visited the Schureman tavern, she and her male companions were firm in their testimony that she had been served and had consumed beer in the four other taverns, without any inquiry as to her age on the part of anyone connected with the operation or management of the bar. As a matter of fact, there were signed statements by the owners in the Hempel and the Landzberger cases admitting service of beer to the girl on July 24, 1955, and in each of those cases the Director found the licensees guilty.

Appellants suggest that a de novo judicial review of the evidence is warranted because the hearings were conducted before a hearer, so that the Director had no opportunity for personal observation of the witnesses. This very contention was rejected by this court in Mazza v. Cavicchia, 28 N. J. Super. 280, 289 (App. Div. 1953), reversed on another ground, 15 N. J. 498 (1954). Commenting upon the reach of appellate review under R.R. 1:5-3 (now R.R. 1:5-4(b)) and R.R. 2:5, the court stated:

"*** So it is said that a more compelling reason for restudy of the weight of the evidence exists here because the Director neither heard nor saw the witnesses. Despite this lack, which is not an uncommon one in modern administrative procedure, the test, which has judicial sanction for general application to the review of an administrative tribunal's decision, is whether the factual finding, out of which it arose, is supported by substantial evidence. [Citations omitted] In our judgment, this test is a sound one and the caution above referred to [in exercising the authority given this court to make an independent determination of the facts] does not mean a departure therefrom. It signifies the care that will be exercised by the courts in determining whether the record provides substantial evidence of the licensee's guilt."

Each appellant makes the additional point that he was prejudiced by the refusal of the hearer to permit further exploration of the credibility to be accorded the testimony of one of the two men who accompanied the minor, by interrogating him as to the nature of the crime after he had admitted having been convicted of a crime. Counsel for the licensees was technically entitled to go into the matter. State v. Tune, 17 N. J. 100, 110-111 (1954). However, appellants do not particularize their claim of prejudice and have not demonstrated in what manner the ruling of the hearer was prejudicial. Conviction of a crime, regardless of its nature, is in and of itself evidence reflecting adversely upon the credibility of a witness. N.J.S. 2A:81-12. It is to be presumed that this circumstance was given due weight by the Director. While the Tune case indicates that the question put to the witness was permissible, it does not hold, nor does it necessarily follow, that its exclusion is tantamount to prejudicial error.

R. R. 1:5-3(b) provides that "Neither error in the admission or the exclusion of evidence, nor error in any ruling or order or in any action taken or omitted by *** any administrative agency ***, nor any other matter, whether or not involving the exercise of discretion, shall constitute ground for *** disturbing a *** determination, unless a denial of the relief sought appears to the court to be inconsistent with substantial justice." In construing this rule it has been held that "Even if there was error but it was not prejudicial, the verdict would not be disturbed." Miller v. Trans Oil Co., 18 N. J. 407, 414 (1955). Especially is this true of alleged error by an administrative agency, cf. Pennsylvania Railroad Co. v. Department of Public Utilities, 14 N. J. 411, 427-8 (1954), since its action "should not be subjected to the same close and technical scrutiny as is frequently applied in reviewing the judgment of a court." Middleton v. Division of New Jersey Real Estate Commission, etc., 39 N. J. Super. 214, 219 (App. Div. 1956). And see Dutcher v. Department of Civil Service, 7 N. J. Super. 156, 163-4 (App. Div. 1950); Senate Bill No. 42, above, sec. 20(c); Mazza v. Cavicchia, above, 28 N. J. Super., at pages 284-5, and 15 N. J., at page 509; and, generally, 73 C.J.S., Public Administrative Bodies and Procedure, § 210, p. 569 ff. We are not persuaded that what was done here was "inconsistent with substantial justice."

It is further insisted, in the Neuls case, that the hearer erred when he refused to permit counsel for the licensee to ask the same witness whether he had ever been "involved in any other criminal indictments," and whether "the ABC Investigator had knowledge that you were being held for any

criminal charge." Neither question was pertinent as to credibility, since the first did not call for disclosure of a conviction and, as to the second, whether the agent knew or did not know of any criminal charge was irrelevant and immaterial. Further, appellant fails to specify just what prejudice might have been visited upon him by the action taken by the hearer. Additionally, the reason now belatedly given us for these questions, namely, "to ascertain the motive or establish his reason for his testimony," was not disclosed to the hearer and thus no opportunity afforded to correct any alleged error. See R. R. 4:47. Accordingly, appellant may not now object to the hearer's rulings. Cf. Burke v. Lincoln Transit Co., 37 N. J. Super. 433, 437 (App. Div. 1955).

Affirmed.

2. APPELLATE DECISIONS - MOORE v. CAMDEN.

JOHN J. MOORE, trading as)	
JOHNNY MOORE'S,)	
Appellant,)	
-vs-)	ON APPEAL
	CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF CAMDEN,)	
Respondent.)	

William T. Cahill, Esq., Attorney for Appellant.
 Norman Heine, Esq., by Louis L. Goldman, Esq., Attorney for Respondent.
 Joseph W. Cowgill, Esq., Attorney for witnesses.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's license for thirty days, effective 7:00 a.m. May 14, 1956, after finding him guilty on a charge of selling alcoholic beverages to two minors. Appellant's premises are located at 600 Point Street, Camden.

Upon the filing of the appeal I entered an order, dated May 10, 1956, staying respondent's order until entry of a further order herein. R.S. 33:1-31.

At the hearing of the appeal the attorney for appellant stated that his client consented to withdraw the appeal and the attorney for respondent consented to said withdrawal. No reason appearing to the contrary,

It is, on this 18th day of June, 1956,

ORDERED that the appeal herein be dismissed, and the thirty-day suspension be reimposed to commence at 2:00 a.m. June 25, 1956, and to continue until the expiration of the license at midnight June 30, 1956; and it is further

ORDERED that any renewal or transfer of appellant's license shall be and remain under suspension until 2:00 a.m. July 25, 1956.

WILLIAM HOWE DAVIS
 Director.

3. APPELLATE DECISIONS - ZIOMEK v. DELAWARE TOWNSHIP.

JOHN ZIOMEK, trading as)
GARDEN STATE GRILLE,)

Appellant,)

-vs-

ON APPEAL
O R D E R

BOARD OF COMMISSIONERS OF)
THE TOWNSHIP OF DELAWARE)
(CAMDEN COUNTY),)

Respondent.)

-----)
William B. Knight, Esq., Attorney for Appellant.
John E. Yeomans, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's License C-30 for forty-five days, effective at 7:00 a.m. June 1, 1956, after he pleaded non vult to a charge of selling alcoholic beverages to minors. Appellant's premises are located at Grove Street and Route No. 70, Delaware Township.

Upon the filing of the appeal I entered an order, dated May 31, 1956, staying respondent's order until entry of a further order herein. R.S. 33:1-31.

A stipulation of dismissal, signed by the attorneys for both parties, has been filed whereby it is agreed that the appeal be dismissed and the sentence heretofore imposed by respondent be reinstated forthwith. No reason appearing to the contrary,

It is, on this 22nd day of June, 1956,

ORDERED that the appeal herein be dismissed, and the forty-five-day suspension be reimposed to commence at 7:00 a.m. June 25, 1956, and to continue until the expiration of the license at midnight June 30, 1956; and it is further

ORDERED that any renewal for the 1956-57 licensing year or transfer of appellant's license shall be and remain under suspension until 7:00 a.m. August 9, 1956.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

GORMAN'S LIQUOR STORES, INC. 606 Paterson Plank Road Union City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-15, issued by the Board of Commissioners of the City of Union City.

Gorman's Liquor Stores, Inc., Defendant-licensee, by Benjamin Hirsch, Secretary-Treasurer. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold alcoholic beverages at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that on May 4, 1956, an ABC agent entered defendant's licensed premises and purchased a 4/5 quart bottle of "Seagram's Seven Crown Blended Whiskey" for \$4.00 from Benjamin Hirsch, the clerk then on duty in the establishment. Mr. Hirsch, in a signed sworn statement, admitted such sale and acknowledged that the Minimum Consumer Resale Price then in effect for the item in question was \$4.49.

Defendant has a prior adjudicated record. Effective June 16, 1947, its license was suspended by the then Commissioner for a period of five days for sale below the Minimum Resale Price. Effective November 1, 1948, its license was suspended for a period of fifteen days for a similar violation. See Bulletin 768, Item 2, and Bulletin 820, Item 9. The present violation is the third time that defendant has been guilty of selling below the Minimum Consumer Resale Price. However, in mitigation, a period of more than seven years has elapsed since the prior violations occurred, and its record has otherwise been clear for that period.

Under all the circumstances, I shall suspend defendant's license for thirty days, less five days' remission for the plea entered herein, leaving a net suspension of twenty-five days. Re Guskind, Bulletin 826, Item 11; Re Cherlin, Bulletin 804, Item 7.

Accordingly, it is, on this 6th day of June, 1956,

ORDERED that Plenary Retail Distribution License D-15, issued by the Board of Commissioners of the City of Union City to Gorman's Liquor Stores, Inc. for premises 606 Paterson Plank Road, Union City, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 11, 1956; and it is further

ORDERED that any renewal or transfer of such license shall be and remain under suspension until 3:00 a.m. July 6, 1956.

WILLIAM HOWE DAVIS Director.

5. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE WRITTEN NOTICE OF CHANGE OF FACTS (SHARING PROFITS WITH NON-LICENSEE) - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against
 CENTURY HOLDING CO.
 T/a WEST SHORE LODGE
 West Shore Road, Swartswood Lake
 Stillwater Township
 PO Swartswood, N. J.,
 Holder of Plenary Retail Consumption License C-4, issued by the Stillwater Township Committee.

CONCLUSIONS AND ORDER

 Nicholas Albano, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"You failed to file with the Stillwater Township Committee, within 10 days after the occurrence thereof, written notice of change in fact set forth in answer to Question 31 of your license application dated June 2, 1955, upon which you obtained your current plenary retail consumption license, such change being that on or about October 12, 1955 you agreed to pay Pasquale Paragino, your manager, 50% of the net profits from your licensed business; your failure to file such notice being in violation of R. S. 33:1-34."

At the hearing held herein, statements obtained by an ABC agent from Howard W. Hanscom on December 1, 1955, and from Pasquale Paragino on December 2, 1955, were introduced into evidence. In the statement obtained from Hanscom, who is assistant secretary and treasurer of defendant corporation, he admits that on October 12, 1955, he, on behalf of the corporation, made an oral agreement with Paragino whereby the latter would have charge of the operation of the licensed premises, subject to his supervision, and would receive as compensation one-half of the net profits of the licensed business. In the statement obtained from Paragino he corroborates the aforesaid statement as to the oral agreement and further says that it was understood that the agreement would later be reduced to writing. From additional evidence given at the hearing by Hanscom, I am satisfied that there was little, if any, profit from the operation of the business between October 12, 1955, and December 2, 1955; that small sums of money were paid by defendant to Paragino during that period for his personal expenses and that, shortly after December 2, 1955, the corporation entered into a verbal agreement with Paragino whereby he would receive a straight weekly salary and would have no interest in the profits.

It is admitted that defendant did not file a written notice with the local issuing authority concerning the agreement to pay Paragino 50% of the net profits, as required by R. S. 33:1-34. Hence defendant is guilty as charged.

Where a substantial portion of the profits is to be paid to an employee, he becomes, in effect, a partner of the

licensee even if he is legally not a partner. For many years it has been the policy of the Director to approve only those agreements which provide that, aside from a fixed salary, a steward of a club (holding a club license or consumption license) may receive not more than 25% of the net profits and a manager employed by any other holder of a consumption or distribution license may receive not more than 5% of the net profits of the alcoholic beverage business.

Defendant has no prior record. In this case the licensee (apparently in good faith and ignorant of our rulings to the contrary) entered into an agreement which was never lived up to by either party because the receipts were never sufficient to pay a living wage to the manager. As indicated above, the illegal situation appears to have been corrected. Nevertheless, a penalty will be imposed because of the failure to comply with the provisions of R. S. 33:1-34. Under all the circumstances of this case I shall suspend defendant's license for fifteen days. Cf. Re Marple, Bulletin 1006, Item 5; Re Helfiker, Bulletin 1070, Item 10.

Accordingly, it is, on this 28th day of May, 1956,

ORDERED that Plenary Retail Consumption License C-4, issued by the Stillwater Township Committee to Century Holding Co., t/a West Shore Lodge, for premises on West Shore Road, Swartswood Lake, Stillwater Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. June 4, 1956, and terminating at 2:00 a.m. June 19, 1956.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - AGGRAVATED SALES TO MINORS -
LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

FRANK J. PICONE)
T/a TURF CLUB)
227 Broadway)
Long Branch, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Board of Commissioners of the City of Long Branch.)

Frank J. Picone, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded not guilty to a charge alleging that on the night of January 31 and early morning of February 1, 1956, he allowed, permitted and suffered the sale and service of alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

On the night in question the minor, Pvt. Lawrence --- (19 years old) entered the defendant's tavern about 10:00 p.m. He testified that he remained there until 1:00 o'clock the next morning, during which time the barmaid served him "about six beers and about four or five whiskies." While consuming

the last drink the defendant asked proof of his age, stating that he had just been informed that he was under 21 years of age. When Lawrence was unable to produce such proof, the defendant told him he could not be served with any alcoholic beverages. The minor then left the tavern and, as he put it, in "pretty poor" condition.

Pvt. John C. Oliver testified that, between midnight and 1:00 o'clock, he saw the barmaid serve several glasses of beer to Pvt. Lawrence ---. He then told the defendant that Lawrence --- was a minor, with the result as stated above. Oliver, who had been with Lawrence immediately before the latter went into the tavern, stated that Lawrence was then sober but that, when he saw him in the tavern early the next morning, Lawrence was "drunk."

On behalf of the defendant a patron testified that he did not observe the minor drinking any alcoholic beverages on the occasion in question. The force of his testimony was considerably weakened, however, by his admissions that he was not "watching him particularly" and that "from nine-thirty on" he "lost all track" of the minor because he "didn't pay any attention."

Another of defendant's witnesses (a 17-year-old high school student) claims to have been in the tavern from "between eight-thirty and nine-thirty" until closing time at 2:00 a.m. She stated that Lawrence had not been served any drinks by the barmaid but admitted that Lawrence "was drunk when he left." The inference intended to be conveyed by her testimony is that Lawrence had been drinking elsewhere, since she testified that he "kept going in and out." Lawrence, however, categorically denied that he had consumed any alcoholic beverages that night other than those served to him at the defendant's tavern.

The barmaid testified that the tavern was very crowded and that many soldiers were there because "January 31st [was] pay night." She denied serving Lawrence except with "water one time." She admitted, however, that the defendant had called him over and had spoken to him. She also was unable to state what Lawrence's condition of sobriety was when he left because "I didn't pay too much attention; as I said before, I was very busy."

The defendant did not take the stand and the record is thus silent as to his reason for demanding proof of age from Lawrence. The ready inference, however, is that Lawrence was drinking alcoholic beverages and, when Pvt. Oliver told the defendant that Lawrence was a minor, the defendant was prompted to ascertain whether Lawrence was old enough to be served with liquor.

I am convinced from a careful reading of the record, including the absence of any motivation for the minor to fabricate his story out of whole cloth, that the defendant is guilty as charged.

The defendant has no prior adjudicated record. Since the violation occurred subsequent to January 16, 1956 (see Bulletin 1095, Item 1), and is aggravated by the number and kind of drinks consumed by the minor (Re Kasica, Bulletin 1093, Item 5), the penalty for the instant violation will be fixed at twenty days.

Accordingly, it is, on this 4th day of June, 1956,

ORDERED that Plenary Retail Consumption License C-7, issued by the Board of Commissioners of the City of Long Branch to Frank J. Picone, t/a Turf Club, for premises 227 Broadway, Long Branch, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. June 11, 1956, and terminating at the expiration of the license, namely, at midnight, June 30, 1956.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - ORDER FIXING EFFECTIVE DATES OF SUSPENSION AFTER LICENSEE RESUMED BUSINESS.

In the Matter of Disciplinary Proceedings against)

LEE CLUB, A CORP.)
T/a LEE CLUB)
27 Church Street)
Paterson 1, N. J.,)

O R D E R

Holder of Plenary Retail Consumption License C-126, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)
-----)

BY THE DIRECTOR:

On March 27, 1956 the defendant's license was suspended for 40 days. See Bulletin 1108, Item 2. Upon appeal to the Superior Court, Appellate Division, the court stayed the suspension. The appeal has been discontinued and the penalty may now be reimposed.

Accordingly, it is, on this 1st day of June, 1956,

ORDERED that the aforesaid suspension of 40 days of License C-126 issued by the Board of Alcoholic Beverage Control for the City of Paterson to Lee Club, A Corp., t/a Lee Club, for premises 27 Church Street, Paterson, be and the same is hereby reimposed, commencing at 3:00 a.m. June 11, 1956; and it is further

ORDERED that any renewal or transfer of such license shall be and remain under suspension until 3:00 a.m. July 21, 1956.

WILLIAM HOWE DAVIS
Director.

8. ACTIVITY REPORT FOR JUNE 1956

ARRESTS:		
Total number of persons arrested	-----	19
Licensees and employees	----- 9	
Bootleggers	----- 10	
SEIZURES:		
Motor vehicles - cars	-----	3
Stills - over 50 gallons	-----	1
Mash - gallons	-----	270.00
Distilled alcoholic beverages - gallons	-----	61.93
Wine - gallons	-----	11.07
Brewed malt alcoholic beverages - gallons	-----	14.96
RETAIL LICENSEES:		
Premises inspected	-----	713
Premises where alcoholic beverages were gauged	-----	765
Bottles gauged	-----	13,304
Premises where violations were found	-----	50
Violations found	-----	75
Type of violations found:		
Unqualified employees	----- 30	Other mercantile business ----- 4
Disposal permit necessary	----- 7	Other violations ----- 30
Reg. #38 sign not posted	----- 4	
STATE LICENSEES:		
License applications investigated	-----	5
COMPLAINTS:		
Complaints assigned for investigation	-----	448
Investigations completed	-----	370
Investigations pending	-----	218
LABORATORY:		
Analyses made	-----	120
Bottles from unlicensed premises	-----	41
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made	-----	12
Persons fingerprinted for non-criminal purposes	-----	411
Identification contacts made with other enforcement agencies	-----	271
Motor vehicle identifications via N.J. State Police teletype	-----	7
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	15
Violations involved:		
Sale during prohibited hours	----- 11	Failure to afford view into premises during prohibited hours ----- 2
Failure to close premises during prohibited hours	----- 4	Employing female bartender ----- 2
Sale to minors	----- 4	Permitting lottery activity (raffie tickets) on premises ----- 1
Cases instituted at Division	-----	31
Violations involved:		
Sale to minors	----- 15	Permitting gambling (pool game) ----- 1
Sale during prohibited hours	----- 9	Employing female bartender ----- 1
Failure to close premises during prohibited hours	----- 2	Permitting lottery activity (Sweepstakes tickets) ----- 1
Failure to afford view into premises during prohibited hours	----- 2	Sale outside scope of license ----- 1
Possessing indecent matter	----- 2	Unqualified employees ----- 1
Sale to non-members by clubs	----- 2	Permittee engaging in conduct prohibited to employer ----- 1
Fraud and front	----- 2	Permitting immoral activity ----- 1
Unauthorized transportation	----- 1	Conducting business as a nuisance ----- 1
Sale below minimum consumer price	----- 1	Permitting foul language on premises ----- 1
		Hindering investigation ----- 1
Cases brought by municipalities on own initiative and reported to Division	-----	20
Violations involved:		
Sale to minors	----- 14	Hindering investigation ----- 1
Permitting brews on premises	----- 4	Permitting hostesses on premises ----- 1
Unqualified employees	----- 2	Sale during prohibited hours ----- 1
Failure to file notice of change in application	----- 1	Failure to close premises during prohibited hours ----- 1
Sale to intoxicated person	----- 1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	51
Appeals	----- 10	Seizures ----- 1
Disciplinary proceedings	----- 29	Tax revocations ----- 1
Eligibility	----- 9	Applications for license ----- 1
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-----	4,328
Licenses	----- 1	Social affair permits ----- 334
Employment permits	----- 429	Miscellaneous " ----- 98
Solicitors'	----- 2,826	Transportation insignia ----- 520
Disposal	----- 57	Transportation certificates ----- 63

WILLIAM HOWE DAVIS
DIRECTOR

Dated July 9, 1956

9. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 W. E. BEVERAGE CORP.
 107-109 William Street
 Englewood, N. J.,
 Holder of Plenary Retail Distribution License D-5, issued by the Common Council of the City of Englewood.

CONCLUSIONS AND ORDER

Berthold Vorsanger, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

Acting upon information obtained from the Teaneck Police Department, ABC agents obtained sworn statements from Pfc. William --- (18 years of age) and Pvt. Edward --- (19 years of age). In his statement William --- says that on the evening of May 8, 1956, he, the other minor and two young girls drove to the vicinity of defendant's licensed premises; that about 9:30 p.m. he and Edward entered the premises; that he purchased from a male clerk two pints of wine and two quarts of beer which he carried with him from the store, and that thereafter he and Edward drank the wine and beer. In his statement Edward --- substantially corroborates the statement given by William ---.

Defendant has no prior record. The minimum suspension for sale of alcoholic beverages to an 18-year-old minor is now fifteen days (Re Martin, Bulletin 1107, Item 9). I shall suspend defendant's license for fifteen days, and remit five days for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 1st day of June, 1956,

ORDERED that Plenary Retail Distribution License D-5, issued by the Common Council of the City of Englewood to W. E. Beverage Corp., 107-109 William Street, Englewood, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m., June 11, 1956, and terminating at 9:00 a.m., June 21, 1956.

WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - ORDER FIXING EFFECTIVE DATES OF SUSPENSION AFTER LICENSEE RESUMED BUSINESS.

In the Matter of Disciplinary Proceedings against)

HARRY GERSON & ANNA V. GERSON)
T/a LYNDHURST HOTEL & BAR)
239-241 East Schellenger Avenue)
Wildwood, N. J.,)

O R D E R

Holder of Plenary Retail Consumption License C-11, issued by the Board of Commissioners of the City of Wildwood.)

George B. Francis, Esq., Attorney for Defendant-licensees.
Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

It appearing that, by an order dated September 29, 1955, the license held by the above named defendants was suspended for twenty days and that the effective dates of said suspension were to be fixed by subsequent order (Bulletin 1085, Item 2); and

It further appearing to my satisfaction that defendants' premises have now been reopened for the 1956 season,

It is, on this 4th day of June, 1956,

ORDERED that the twenty-day suspension heretofore imposed shall commence at 3:00 a.m. June 11, 1956, and terminate at the expiration of the license at midnight, June 30, 1956.

WILLIAM HOWE DAVIS
Director.

11. DISCIPLINARY PROCEEDINGS - ORDER FIXING EFFECTIVE DATES OF SUSPENSION AFTER LICENSEE RESUMED BUSINESS.

In the Matter of Disciplinary Proceedings against)

JOSEPH DEAVER)
T/a DEAVER'S HOTEL)
Lakeshore Drive)
Upper Greenwood Lake)
West Milford, P.O. Hewitt, N.J.,)

O R D E R

Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of West Milford.)

Sidney Simandl, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

It appearing that by an order dated January 5, 1956, the license held by the above named defendant was suspended for forty days and that the effective dates of said suspension were to be fixed by subsequent order (Bulletin 1096, Item 5); and

It further appearing to my satisfaction that defendant's premises are now being operated on a substantial basis;

It is, on this 4th day of June, 1956,

ORDERED that the forty-day suspension heretofore imposed shall commence at 3:00 a.m. June 8, 1956 and continue in effect until the expiration of the license at midnight June 30; and it is further

ORDERED that, if said license be renewed for the 1956-57 licensing year, such license shall be under suspension until 3:00 a.m. July 18, 1956.

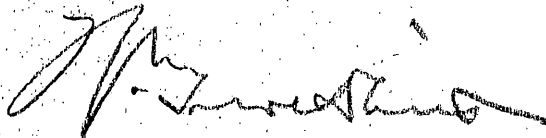
WILLIAM HOWE DAVIS
Director.

12. STATE LICENSES - NEW APPLICATION FILED.

Harry A. Bode, Aaron George Bode and Julius Adam Bode
t/a Raritan Beverage Co.

Southeasterly side of Lincoln Highway, Lot 15, Blk 1130 on
Assessment Map, Edison Township, P. O. Nixon, N. J.

Application filed July 13, 1956 for person-to-person
transfer of State Beverage Distributor's License SED-173
from Harry A. Bode, t/a Raritan Beverage Co., Southeasterly
side of Lincoln Highway, Lot 15, Blk 1130 on Assessment
Map, Edison Township, P. O. Nixon, N.J.



William Howe Davis
Director.