

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 660

MARCH 31, 1945.

1. DISCIPLINARY PROCEEDINGS - PERMITTING KNOWN PROSTITUTES ON LICENSED PREMISES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - PERMITTING LEWDNESS AND IMMORAL ACTIVITIES ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)

FRANK NAPOLITANI, JR.)
T/a NEW DEAL CAFE)
921-25 Springwood Avenue)
Asbury Park, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-19, issued by the)
City Council of the City of)
Asbury Park.)
-----)

Joseph F. Mattice, Esq., Attorney for Defendant-licensee.
Edward F. Hodges, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that he allowed, permitted and suffered (1) known prostitutes and persons of ill repute on his licensed premises, in violation of Rule 4 of State Regulations No. 20, and (2) lewdness and immoral activities on his licensed premises, in violation of Rule 5 of State Regulations No. 20.

On September 29, 1944, at about 12:15 a.m., an ABC agent entered the defendant's premises, followed shortly thereafter by another agent. The former proceeded to the bar, where he was joined by a colored female. After engaging her in conversation, the agent purchased a drink for her at her suggestion. She then asked him for a nickel to play the automatic phonograph. When she left the bar for that purpose, the agent told the bartender that he "wanted to have some fun in town", to which the bartender replied, "If you want to have some fun there is a good girl right there", indicating the colored female for whom the agent had purchased the drink. In blunt language, the agent then told the bartender that he "didn't want a good girl", but rather one with whom he could have sexual intercourse. Again referring to the same colored female, the bartender explained to the agent that "That chick is the best --- in town", employing a common colloquial expression descriptive of a prostitute. The agent then testified:

"When she came back to the bar I asked her whether or not what was said was true. She asked him what he said, and then he told her what he had told me and we laughed it off and fooled around at the bar and we made arrangements to meet next morning at 9:30."

The "arrangements" included the stipulated price of three dollars.

The bartender, who was employed at the premises for four years, although denying any personal knowledge of the questionable

character of the female, admitted that he and the agent had had the conversation as related by the latter. In a written statement made by the bartender on October 4, 1944, however, which was admitted in evidence, he made the bald statement that "I know that she is a prostitute."

The female in question denied that the subject of sexual intercourse was discussed between her and the agent. Her testimony is not worthy of belief, however, because, in a written statement made by her on October 2, 1944, also an exhibit in evidence, she admitted the discussion relative to the price of three dollars and, when queried as to whether that sum represented "the price of sexual intercourse with (her)", she replied, "I guess so. I guess it was."

The defendant recalled the incident in question and testified that he was on the premises throughout, although he claims not to have heard any of the conversation because he "was near the door." In contradiction of this statement, however, the bartender testified that the defendant was behind the bar during the entire time. The defendant further testified that he had given instructions to the bartender that the female was not to be permitted on the premises because of an assault committed by her on another female patron at the licensed premises about two years before. Despite these instructions the bartender admitted that "she has been coming in our tavern this past summer off and on."

The record preponderantly supports the truth of the allegations made in the charges herein and I therefore find the defendant guilty as charged.

The unholy union of vice and liquor on licensed premises will not be tolerated. The only effective means of completely divorcing the two is an outright revocation of the license. Such will be the order.

This tavern is one of three located in the City of Asbury Park, where the same type of immoral activity was discovered by ABC agents, resulting in the simultaneous institution of disciplinary proceedings against all three licensees. See Re Ballerino, Bulletin 660, Item 3, and Re Jerry's Tavern, Inc., Bulletin 660, Item 2.

Accordingly, it is, on this 22nd day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-19, issued by the City Council of the City of Asbury Park to Frank Napolitani, Jr., t/a New Deal Cafe, for premises 921-25 Springwood Avenue, Asbury Park, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

- 2. DISCIPLINARY PROCEEDINGS - PERMITTING LEWDNESS AND IMMORAL ACTIVITIES ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - PERMITTING A FEMALE EMPLOYEE TO ACCEPT ALCOHOLIC BEVERAGES AT THE EXPENSE OF PATRONS, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - PERMITTING KNOWN PROSTITUTES ON LICENSED PREMISES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

JERRY'S TAVERN, INC.)
 T/a JERRY'S TAVERN)
 1017-1023 Kingsley Street)
 Asbury Park, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the City Council of the City of Asbury Park.)
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Joseph F. Mattice, Esq., Attorney for Defendant-licensee.
 Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant was served with charges alleging that it allowed, permitted and suffered (1) lewdness and immoral activities on its licensed premises, in violation of Rule 5 of State Regulations No. 20, (2) a female employee to accept beverages at the expense of patrons, in violation of Rule 22 of State Regulations No. 20, and (3) known prostitutes and persons of ill repute on its licensed premises, in violation of Rule 4 of State Regulations No. 20.

A plea of guilty was entered to the second charge, and not guilty pleas were entered to the first and third charges.

These premises were under observation by ABC agents on at least six occasions between September 23 and October 4, 1944. On several of these occasions, the premises were frequented by servicemen, many of whom were observed leaving the tavern with women who would return to the premises alone within an hour. These women were referred to as prostitutes by the bartender, with the explanation, however, that they confined their activities to servicemen. During one afternoon visit, when an agent inquired of the bartender whether any girls were available for sexual intercourse, the bartender told him to "come around tonight, we may have some."

In the meantime, one of the agents had become friendly with a waitress, Marie, who solicited him for drinks. She also suggested that she would get a female for him with whom he could have intimate relations. During one of the visits, this agent was asked by the waitress where he had been the preceding night because the female had been available. On another occasion, the waitress offered herself for the purpose of sexual intercourse with the agent.

On October 3, 1944 the agent returned to the tavern and the waitress made several unsuccessful attempts to contact the female by telephone. She then wrote the female's telephone number on a piece

of paper which she handed to the agent and suggested that he phone her. During this conversation with the waitress, she highly recommended this female to the agent, using the most coarse and filthy language in describing her. An appointment was then made for the following afternoon, at which time the waitress promised that the female would be present.

When the agent returned on October 4, 1944, shortly before 5:00 p.m., the waitress introduced him to Doris ----, with the remark, "This is the girl I have been telling you about." The agent was then permitted to purchase several rounds of drinks for Doris and the waitress. The latter urged Doris to cancel a previous engagement she had made and while Doris was using the telephone, the waitress kept praising Doris' body and figure and told the agent the charge would be ten dollars. When the agent remonstrated at the price, the waitress insisted that "You will be satisfied." When Doris returned, having broken her previous appointment, the agent referred to the price that had been set by the waitress, and Doris affirmed it. It was then agreed, at the suggestion of the waitress, that Doris and the agent use the waitress' room "instead of paying someone for a hotel room." They were not able, however, to gain admittance to the waitress' room and so they proceeded to a hotel, where they were later found by enforcement officers. Doris was arrested and found guilty of prostitution before the local police magistrate.

The testimony concerning the occurrences on October 4, 1944 was corroborated by two other ABC agents. The waitress, Marie, arranged with one of these agents to introduce him to Doris later that night for the purpose of sexual intercourse at the agreed price of ten dollars.

On behalf of the defendant, no officer or employee of the corporate licensee was produced. A local detective testified that he had been unable to subpoena the waitress to appear at the hearing. The only refutation of any of the evidence produced by the prosecution came from Doris, who denied any agreement relative to price but admitted that she and the agent had arranged to have intimate relations, with the excuse that she had been "drinking." In a written statement made by her at the time of her arrest, however, which was received in evidence, she stated that "He (the agent) was paying me ten dollars to have sexual intercourse with me."

The defendant is guilty as charged. The license will be revoked outright. See Re Napolitani, Bulletin 660, Item 1, and Re Ballerino, Bulletin 660, Item 3, both decided simultaneously herewith.

Accordingly, it is, on this 22nd day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-7, issued by the City Council of the City of Asbury Park to Jerry's Tavern, Inc., t/a Jerrys Tavern, for premises 1017-1023 Kingsley Street, Asbury Park, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - PERMITTING KNOWN PROSTITUTES ON LICENSED PREMISES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - PERMITTING LEWDNESS AND IMMORAL ACTIVITIES ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

MARY BALLERINO)
T/a JOE'S CAFE)
904-906 Springwood Avenue)
Asbury Park, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-36, issued by the City Council of the City of Asbury Park.)
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Max M. Barr, Esq., Attorney for Defendant-licensee.
Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges that she allowed, permitted and suffered (1) known prostitutes and persons of ill repute on her licensed premises, in violation of Rule 4 of State Regulations No. 20, and (2) lewdness and immoral activities on her licensed premises, in violation of Rule 5 of State Regulations No. 20.

On the evening of September 28, 1944 an ABC agent entered the defendant's premises, where he proceeded to the bar and engaged in conversation with two colored females, Billie and Dottie. A detailed account of their conversation will serve no useful purpose. It is sufficient to state that it took a very familiar turn, and resulted in lewd byplay in which the agent was permitted, in full and open view, to stroke freely various parts of the bodies of the females.

All of this activity took place directly at the bar and lasted about twenty minutes, during which time the bartender served them several drinks. Joseph Ballerino, the licensee's husband, who managed the premises on her behalf, was standing along the opposite wall, about seven or eight feet away.

Another ABC agent, who was seated at the bar, about six or seven feet from the other agent and girls, corroborated all of the foregoing.

This session concluded when the agent made an appointment with Billie to meet her at the tavern the next evening.

This agent returned about 9:30 in the evening of September 29, 1944 and noticed that Billie was under the influence of liquor. When he reminded Billie of their appointment, she replied that she was busy. Shortly thereafter, Dottie entered and joined the agent at the bar, where they were served by Joseph Ballerino, who was then acting as bartender. The conversation between Dottie and the agent finally culminated in the former agreeing to have intimate relations with the agent for the sum of \$7.00, \$5.00 for her and \$2.00 for the room."

Before they left, Dottie went to the ladies' room. The agent then turned to Joseph Ballerino and asked him whether Dottie "was a clean girl", to which the former replied, "I don't know." The agent then informed him that he had arranged to have sexual intercourse with her and Joseph Ballerino answered that "he didn't care, go ahead."

The agent and Dottie then proceeded to a rooming house in the neighborhood, where she paid \$2.00 to the proprietress. They were later found alone in the room by several ABC agents and members of the local police force. Dottie was charged with soliciting, found guilty and sentenced to a six-month jail term.

The bartender who served the agent and the two girls on September 28th was not produced at the hearing. Joseph Ballerino testified that he was standing at the wall opposite the bar and "was talking to a couple of friends, 15 or 20 minutes, and then played the ball game -- two games -- and then walked out." Although he recalled the agent and the girls being together at the bar, he testified that he observed no immoral activity take place. As to the evening of September 29th, he admitted having a conversation with the agent about Dottie but insisted that: "First he bought me a drink, and Dotty went to the lavatory and he asked me how was the girl, clean; and I practically told him get to hell out, and he took a drink and thanked me and walked out."

Two other patrons, frequent customers of the tavern, testified in the defendant's behalf. The first witness stated that he was at the bar on the evening of September 28th while the agent was there with Billie and Dotti and noticed nothing unusual occur among them. When he was interrogated as to how he fixed that evening in his mind, he said that he had been paid that day and knew it was a Friday, the day upon which he always receives his wages. Reference to the calendar, however, discloses that September 28, 1944 fell on a Thursday. He further testified that he was at the premises on September 29, 1944 and overheard Joseph Ballerino say to the agent, "What kind of a joint do you think I am running? The best thing you can do is get out." On cross-examination he stated that he was positive of the two dates in question because "my pay day fell on Friday, and naturally the following day would be the 29th."

The other witness testified that he overheard Joseph Ballerino remark, during the evening of September 29th, "I don't know this girl. Why ask me?" When he was asked to whom this remark was made, he replied, "I looked around, I wasn't paying much attention, it was spoken so quick." On cross-examination he denied having overheard any conversation between Joseph Ballerino and the agent. He further admitted, when cross-examined as to the distance between him and the agent on the evening in question, that "I don't exactly remember because I had a few drinks and was feeling pretty good."

I am satisfied from the evidence that the defendant is guilty of permitting immoral activities on her licensed premises, as alleged in the second charge.

The defendant apparently contends that, in order to find that she has "allowed, permitted and suffered" either violation, it is essential that the proofs disclose that she was personally implicated in the violations. This contention is devoid of merit. To follow the defendant's argument to its logical conclusion, all that a licensee would need do to avoid responsibility for any violation would be to absent himself from the licensed premises. The law does not permit of any such absurd consequence. On the contrary, a licensee is

responsible for all violations committed on the licensed premises by his agents or servants. This rule was succinctly stated by the late Commissioner Burnett in Re Jacobs, Bulletin 315, Item 8:

"One thing is clear -- the master is responsible for the wrongdoing of his servants. A licensee is, therefore, accountable, irrespective of his personal innocence, for violations committed on the licensed premises. Liquor regulations are made to eliminate the undesirable conditions at which they are aimed. From the viewpoint of public interest, it matters little whether a violation is committed by the licensee himself or by one of his employees. However harshly this principle operates in a particular case, it is the only rule which protects the public and under which the liquor industry itself may survive."

See also Re Clover Inn, Inc., Bulletin 327, Item 2; Re Tap House Bar & Grill, Inc., Bulletin 654, Item 4.

The finding of guilt on the second charge herein is sufficient warrant for revoking the license. Cf. Re Napolitani, Bulletin 660, Item 1, and Re Jerry's Tavern, Inc., Bulletin 660, Item 2, both decided today.

Reference to the previous history of these premises which, to say the least, is most imposing, presents a rather illuminating picture of the type of establishment with which these proceedings are concerned. To present a few of the highlights of this history, it appears that Michael Ballerino, brother of Joseph Ballerino, held the first license from February 1934 to June 30, 1937. Joseph Ballerino was one of the employees there. The licensee, Michael Ballerino, received several warnings concerning improper conduct at the premises. In June 1937 the local issuing authority was requested to institute proceedings on charges of sales during prohibited hours and also hindering an investigation. These proceedings were not brought, however, because Michael Ballerino failed to renew his license and a new license was issued on July 1, 1937 to Joseph Ballerino. The latter's tenure as a licensee was particularly short-lived. In January 1938 he pleaded guilty to permitting persons of ill repute on the licensed premises, sale of contraceptives, conducting a lottery and sales of alcoholic beverages to intoxicated persons, whereupon his license was revoked outright. In April 1938 one Joseph Vetrano obtained a license for the premises. Joseph Ballerino apparently still continued his association with the premises. In December 1938 James Ballerino, brother of Joseph, stated to several ABC agents who warned the former about giving prizes for high score on a bagatelle machine, that "my brother Joe and I work it together." In May 1941 evidence of sale during prohibited hours was obtained. Before proceedings could be brought thereon, however, a new license was issued to the present licensee on July 1, 1941.

Mary Ballerino's license was suspended by the local issuing authority in February 1944 for a net period of ten days upon her guilty plea to charges of selling alcoholic beverages to four minors. Joseph Ballerino, her husband and manager of her premises, was the person who had sold the intoxicants to the minors.

Although the seriousness of the violation herein justifies a total abrogation of the license privileges, it may not be amiss to refer to the fact that the same result would follow from a less serious infraction. In addition to the prior proceedings in February 1944 against this licensee, she must be held to strict accountability.

for the previous record of her husband. Since, despite his insalubrious record, she chose to retain him as manager of her licensed premises, she cannot now complain if the full force of his malefactions is visited upon her. Sheer realism and the public interest in sound liquor control require no less. Cf. Re Davalos, Bulletin 563, Item 2.

In view of the result reached herein on the second charge, reference to the evidence under the first charge is unnecessary.

Accordingly, it is, on this 22nd day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-36, issued by the City Council of the City of Asbury Park to Mary Ballerino, t/a Joe's Cafe, for premises 904-906 Springwood Avenue, Asbury Park, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

4. ELIGIBILITY - FACTS EXAMINED - APPLICANT DECLARED ELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

March 21, 1945.

Re: Case No. 562

Applicant's only criminal conviction, according to his fingerprint returns, resulted from his guilty plea to the crime of gaming in March 1943. He received a one-year jail term, which was suspended, and he was placed upon probation for two years and fined the sum of \$200.00.

Applicant was an employee of a gambling house, where he received a stipulated daily wage for working at the dice table. He was neither the proprietor of the establishment nor did he have any interest therein other than that of a minor employee. Under the circumstances, I do not believe moral turpitude is involved in his conviction. Cf. Re Case No. 466, Bulletin 535, Item 5.

It is recommended that applicant be advised that the conviction aforesaid does not mandatorily disqualify him from holding a liquor license or being employed on licensed premises in this state.

APPROVED:

ALFRED E. DRISCOLL
Commissioner.

Samuel B. Helfand
Attorney.

5. STATE REGULATIONS NO. 34 - RULE 5 (PERMISSIVE DISCOUNT FOR CASH) CONSTRUED TO DEEM PAYMENT MADE WITHIN 5 DAYS OF DELIVERY AS CASH.

TO MANUFACTURERS AND WHOLESALERS:

For purposes of Rule 5, Regulations No. 34, wherein a discount not in excess of two per centum (2%) may be granted for cash payment made on or before delivery, it is hereby ruled that such payment shall be deemed cash if payment is made within five (5) days from the date of delivery.

ALFRED E. DRISCOLL
Commissioner.

Dated: March 23, 1945.

6. DISCIPLINARY PROCEEDINGS - ORDER STAYING SUSPENSION PENDING REARGUMENT.

In the Matter of Disciplinary Proceedings against)

EDWARD DUFFY and JOHN McDONALD)
18 Hamilton Street)
Paterson 1, N. J.,)

ON PETITION ORDER

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Holders of Plenary Retail Consump-)
tion License C-315 issued for the)
1943-44 fiscal year, and renewed)
for the current (1944-45) fiscal)
year, by the Board of Alcoholic)
Beverage Control of the City of)
Paterson.)

Charles S. Silberman, Esq., Attorney for Petitioners.

BY THE COMMISSIONER:

On March 13, 1945, after finding defendants guilty as to charges (1) and (2), which alleged that they sold alcoholic beverages to minors, I suspended their license for fifteen days, commencing at 12:01 a.m. March 20, 1945 and terminating at 12:01 a.m. April 4, 1945.

Petitioners have filed a verified petition requesting that the record be reviewed and that a reargument be permitted, and also that the suspension presently in effect be stayed pending review and reargument.

Petition alleges, in effect, that the Commissioner has wholly disregarded the entire factual testimony and the memorandum of law filed by defendants, and also that the penalty is excessive.

In all cases, the entire record is given very careful consideration before decision is rendered. However, in view of the statements set forth in the petition, I shall afford the attorney for the petitioners an opportunity to present before me his oral argument, and I shall stay the suspension until further order.

Accordingly, it is, on this 22nd day of March, 1945,

ORDERED, that leave be given to the attorney for petitioners to reargue the case orally before me on a date to be fixed; and it is further

ORDERED, that the suspension heretofore imposed, and now in effect, be stayed until further order of the Commissioner.

ALFRED E. DRISCOLL
Commissioner.

7. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$100.00 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS IN DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT GRANTED.

In the Matter of the Petition of

EMIL W. FOLBRECHT
T/a WHITE HORSE TAVERN
170 Hackensack Street
Wood Ridge, N. J.,

ON PETITION
CONCLUSIONS AND ORDER

To Lift the Automatic Suspension of Plenary Retail Consumption License C-7 issued by the Mayor and Borough Council of the Borough of Wood Ridge.

William J. Egan, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from the petition filed herein that on March 12, 1945 the licensee pleaded guilty in the Criminal Judicial District Court of Bergen County to a charge of selling alcoholic beverages to minors and that, as a result thereof, he was fined \$100.00.

It further appears that on February 28, 1945, the Mayor and Borough Council of the Borough of Wood Ridge suspended his said license for a period of fifteen days, effective March 14, 1945, at 12:01 a.m., and terminating March 29, 1945, at 7:00 a.m., after the licensee, in disciplinary proceedings instituted by said issuing authority, pleaded guilty to charges of selling alcoholic beverages to minors.

The records of the Department of Alcoholic Beverage Control show that the indictment in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. Because of his conviction in the criminal proceedings, petitioner's license has been automatically suspended for the balance of its term. R. S. 33:1-31.1.

The petition filed herein prays that the automatic suspension may be lifted.

This case concerns the sales of beer for consumption on the premises to four minors, two of whom were seventeen years of age, one of whom was nineteen years of age, and the other of whom was twenty years of age.

Petitioner has no prior record. Under the circumstances, the suspension imposed by the local issuing authorities appears to be adequate. Hence I shall lift the automatic suspension of the license at the time the suspension now in effect expires.

Accordingly, it is, on this 22nd day of March, 1945,

ORDERED, that the automatic suspension of the license aforesaid be lifted, effective at 7:00 a.m. March 29, 1945. The license may be returned to the licensee at that time.

ALFRED E. DRISCOLL
Commissioner.

8. STATE REGULATIONS NO. 39 - EXTENSION OF CREDIT BY MANUFACTURERS AND WHOLESALERS TO RETAIL LICENSEES - RULE 7 AMENDED - INTERPRETATIONS - FORMS OF NOTICE.

TO ALL NEW JERSEY LICENSEES:

Rule 7 of State Regulations No. 39 is amended, effective immediately, to read as follows:

"Rule 7. Each delivery of alcoholic beverages by a manufacturer or wholesaler to a retail licensee shall be accompanied by an invoice of sale bearing the name of the retail licensee, the names, types and quantities of the products to be delivered, the price and terms of sale, and the place and date of actual delivery. One copy of such invoice shall be signed by the retail licensee or his agent, showing acceptance of the merchandise, and shall be retained by the manufacturer or wholesaler; the other copy shall be retained by the retail licensee.

"Where delivery of alcoholic beverages to a retail licensee is made not by the manufacturer or wholesaler but by the holder of a transportation license, the delivery may be accompanied, in lieu of an invoice of sale, by a delivery or transit slip, a copy of which shall be kept at the licensed premises of the retail licensee for a period of one year from the date thereof and shall be available for inspection by representatives of the Department. Where a delivery or transit slip, in lieu of an invoice of sale, accompanies a delivery to a retail licensee, the manufacturer or wholesaler shall mail to the retail licensee a copy of the invoice of sale bearing the information required in the first paragraph of this rule, not later than the next business day following the date of delivery.

"Copies of all invoices of sale shall be kept at the licensed premises of the retail licensee and of the manufacturer or wholesaler, respectively, for a period of one year from the date thereof, unless the Commissioner shall have granted written permission to keep them at a place outside of the State designated by him, and shall be available for inspection by representatives of the Department."*

The rule, as amended, permits deliveries to retailers by transportation licensees to be accompanied by delivery or transit slips in lieu of invoices. But in such instances invoices must be mailed to the retailers not later than the next business day following the date of delivery. Furthermore, the rule, as amended, does not require that the original invoice shall be retained by the retailer nor does it require that a retailer shall sign the copy of the invoice retained by him. In addition, the amended rule still requires that invoices must be kept, and available for inspection, for one year but permits licensees, under certain circumstances and with the Commissioner's written approval, to keep the invoices at a place outside this State. It will be apparent that these changes in Rule 7 are made in reasonableness and fairness to suit the convenience of the trade.

*Pursuant to the Alcoholic Beverage Tax Law (R. S. 54:45-2), licensees must keep invoices available for inspection for five years.

IMPORTANT INTERPRETATIONS AND RULINGS - REGULATIONS NO. 39

For the purposes of Regulations No. 39, "cash" and the "equivalent of cash" shall be construed to mean currency, money orders, and checks not post-dated. This does not mean, of course, that a manufacturer or wholesaler must accept ordinary checks in payment from a retailer. A manufacturer or wholesaler may require as a matter of his own business practice that a retailer or a retailer in default shall pay only in currency or by certified check or money order.

For the purposes of Regulations No. 39, "payment" shall be construed to be made on the date when the cash or its equivalent is received by the manufacturer or wholesaler or by the manufacturer's or wholesaler's agent or representative, except that where the cash or its equivalent is mailed to the manufacturer or wholesaler, payment shall be construed to be made on the date of the letter's postmark.

Manufacturers and wholesalers shall deposit checks from retailers not later than the second business day following receipt thereof by either the office of the manufacturer or wholesaler or by an agent or representative of the manufacturer or wholesaler.

Rule 4(a) of Regulations No. 39 requires that each manufacturer and wholesaler shall give notice by registered mail to each retailer in default within five days after the default occurs; and Rule 4(b) requires that a copy of the notice be filed with the State Commissioner within five days after the default occurs. Manufacturers and wholesalers should be particularly careful to send notices to, and report to the department, only retailers who have in fact failed to pay within thirty days after delivery. Thus, when the thirtieth day after delivery has passed, a manufacturer or wholesaler should be most careful, before sending notice to the retailer and the Department, to check with his solicitor or collector handling the account to make certain whether or not the retailer has paid within the thirty-day period. If payment has not been made to the solicitor or collector, the manufacturer or wholesaler should attempt to learn from the retailer whether or not he has mailed payment by check in time to be postmarked not later than the thirtieth day after delivery. Such care should be taken not only in fairness to the retailer but to avoid unnecessary and mistaken notices which would complicate and confuse the records.

In respect to the day, within the five-day period, when notices of default are to be given retailers and the Department, each manufacturer and wholesaler shall pursue, as nearly as possible, a consistent and uniform practice. In other words, a manufacturer or wholesaler is to treat his customers alike and not report certain retailers in default on the first day and others on the fifth day.

Should a retailer make purported payment by a check which is returned to the manufacturer or wholesaler without payment, he is, if the thirty-day period has expired and payment not made, in default and should be so notified and reported. This is true whether the check is that of the retail licensee or of a third party.

Alcoholic beverages returned by a retailer to, and accepted by, a manufacturer or wholesaler shall be credited to the particular invoice under which the alcoholic beverages were originally shipped, except that if such invoice has been paid the credit shall be applied to the oldest invoice, if any, outstanding and unpaid for alcoholic beverages sold after March 1, 1945, and, if none, then to the oldest invoice outstanding and unpaid.

Forms of Notice Prescribed

The following form of Notice of Default required by Rule 4(a) is hereby prescribed:

REGISTERED NOTICE OF DEFAULT

Date _____

TO: _____

(Name of Licensee)

(Trade name, if any)

(Street Address) (City) (County)

Pursuant to State Regulations No. 39, Rule 4(a) of the Department of Alcoholic Beverage Control, notice is hereby given that you are in default in payment for purchases of alcoholic beverages.

DATE OF DELIVERY

INVOICE NO. (if any)

AMOUNT UNPAID

A copy of this notice is being mailed to the office of the Department of Alcoholic Beverage Control, in accordance with Rule 4(b) of State Regulations No. 39.

Rule 5 of State Regulations No. 39 prohibits you from accepting delivery of any alcoholic beverages from any manufacturer or wholesaler except for cash until you have paid in full the amount of the default shown in this notice.

(Name of Manufacturer or Wholesaler)

By: _____

The following form of Notice of Payment of Default required by Rule 4(c) is hereby prescribed:

NOTICE OF PAYMENT OF DEFAULT

Date _____

TO: Department of Alcoholic Beverage Control

Take notice that payment has been received for the purchase of alcoholic beverages from the licensee hereinafter set forth, reported as being in default under date of

(Name of Licensee)

(Trade name, if any)

(Street Address) (City) (County)

<u>AMOUNT</u>	<u>DATE OF DELIVERY</u>	<u>INVOICE NO. (if any)</u>	<u>FORM OF PAYMENT</u>	<u>DATE PAID</u>
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(Name of Manufacturer or Wholesaler)

By: _____

The blank forms hereinabove prescribed shall be 8 1/2 inches in width and 8 inches in length. They may be printed, mimeographed or typed.

ALFRED E. DRISCOLL
Commissioner.

Dated: March 23, 1945.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

EMIL STALDER
North Bridge Avenue
Red Bank, N. J.,

Holder of Plenary Retail Consumption License C-19 issued by the Mayor and Council of the Borough of Red Bank.

CONCLUSIONS AND ORDER

Robert Friedlander, Esq., Attorney for Defendant-licensee.
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads guilty to charges alleging that alcoholic beverages were sold and served to and permitted to be consumed by minors upon the licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file discloses that on numerous occasions during the months of March and April and specifically on June 11, August 4, August 20 and August 21, all in the year 1943, beer was sold to minors on defendant's licensed premises. Five of these minors were sixteen years of age, three were seventeen years old and two were eighteen years of age.

Prior to the day of the hearing in the instant case, the defendant, through his attorney, requested leave for himself and two of his employees to testify as to the type of establishment being conducted by him. Upon his request being granted, the testimony of the aforesaid persons revealed the following information: The building wherein the business is conducted is 140 feet in length and 30 feet in width, with seats available to accommodate approximately 350 patrons. In the rear room of the licensed premises there is an electric organ and floor space to be used for dance purposes. There are bowling alleys installed in the basement of the building for the use of defendant's customers. The bowling alleys have also, on occasions, been rented to various social clubs, including a church society.

It appears from the description given of the licensed premises that such a place may well have a lure for young people. In fact, the defendant and both of his employees testified that, because of the trouble with young folks visiting the premises, the side door leading to the back room from the parking space has been locked. This makes it necessary to pass through the barroom in order to reach the rear room where the dance floor is situated. Also, several men were employed to keep minors out of the premises and, in addition thereto, the defendant has had thousands of cards printed reciting the law applicable to any person misrepresenting or misstating his or her age for the purpose of inducing any licensee or any employee of any licensee to sell, serve or deliver any alcoholic beverages to a person under the age of twenty-one years.

Regardless of the above enumerated precautions taken by the defendant and his employees, there appears to be no reasonable excuse or explanation that may be offered for the sale and service of alcoholic beverages to boys and girls of such tender years as appear in the instant case. Most of these boys and girls were sold and served beer on numerous occasions.

Licensee has no prior record. He has operated licensed premises for nine years. Therefore, considering all the circumstances, I shall impose a penalty of thirty days' suspension of the defendant's license with a remission of five days for the guilty plea, or a net suspension of the license for a period of twenty-five days.

Accordingly, it is, on this 23rd day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-19, issued by the Mayor and Council of the Borough of Red Bank to Emil Stalder for premises on North Bridge Avenue, Red Bank, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 12:01 a.m. April 2, 1945, and terminating at 12:01 a.m. April 27, 1945.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against EMIL STALDER North Bridge Avenue Red Bank, N. J., Holder of Plenary Retail Consumption License C-19 issued by the Mayor and Council of the Borough of Red Bank.

CONCLUSIONS AND ORDER

Frederic M. P. Pearse, Esq., Attorney for Defendant-licensee. Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded not guilty to charges alleging that, on June 26, 1944, he sold, served and delivered to, and permitted the consumption of alcoholic beverages by, minors upon his licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

During the hearing held herein, counsel for defendant conceded that alcoholic beverages had been sold to and consumed by two minors who were both eighteen years of age. He contends, however, that the minors misrepresented their ages to defendant's employees. An examination of the testimony discloses that the minors were accompanied by adults; that a waitress asked the minors if they were over twenty-one, and that both minors nodded their heads in the affirmative. Neither minor was asked to sign any written statement as to her age.

It is clear that defendant did not comply with all of the provisions of R. S. 33:1-77 and hence is guilty as charged. The facts, however, may be considered as mitigating circumstances.

As to penalty: This is a second similar violation (see Re Stalder, decided herewith). However, in view of the mitigating circumstances and the penalty imposed in the proceedings referred to above, I shall suspend the license in this proceeding for an additional period of ten days (a total suspension of thirty-five days).

Accordingly, it is, on this 23rd day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-19, issued by the Mayor and Council of the Borough of Red Bank to Emil Stalder, for premises on North Bridge Avenue, Red Bank, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. April 27, 1945, and terminating at 12:01 a.m. May 7, 1945.

Alfred E. Driscoll Commissioner.