

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

August 26, 1963

BULLETIN 1525

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - MC QUEEN v. NEWARK.
2. APPELLATE DECISIONS - JAMES VOLPONE & SONS, INC.  
v. NEWARK.
3. ACTIVITY REPORT FOR JULY 1963.
4. DISCIPLINARY PROCEEDINGS (Pennsauken) - ALCOHOLIC  
BEVERAGES NOT TRULY LABELED - FALSE STATEMENT IN  
LICENSE APPLICATION - PRIOR DISSIMILAR RECORD -  
LICENSE SUSPENDED FOR 55 DAYS.
5. DISCIPLINARY PROCEEDINGS (Newark) - SALE TO MINORS -  
LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Sayreville) - SALE TO  
INTOXICATED PERSON - SALE IN VIOLATION OF STATE  
REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE  
SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.
7. STATUTORY AUTOMATIC SUSPENSION (Passaic) - ORDER  
STAYING SUSPENSION.
8. DISCIPLINARY PROCEEDINGS (Paterson) - SALE IN VIOLATION  
OF STATE REGULATION NO. 38 - PRIOR SIMILAR VIOLATIONS -  
LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1525

August 26, 1963

1. APPELLATE DECISIONS - MC QUEEN v. NEWARK.

ELLION MC QUEEN, t/a MC QUEEN'S )  
TAVERN, )  
Appellant, ) ON APPEAL  
v. ) CONCLUSIONS  
MUNICIPAL BOARD OF ALCOHOLIC ) AND ORDER  
BEVERAGE CONTROL OF THE CITY )  
OF NEWARK, )  
Respondent.

Saul Cohen, Esq., Attorney for Appellant.  
Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney  
for Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent in denying a place-to-place transfer of appellant's plenary retail consumption license from premises 223 Sherman Avenue to premises 169 Elizabeth Avenue, Newark.

"Two of the three members of respondent Board voted to deny said application for transfer, one member being absent from said meeting.

"The appeal herein was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcript of the proceedings before respondent was received in evidence and marked Exhibit R-1. Rule 8 of State Regulation No. 15.

"The respondent denied the transfer in question because the proposed premises sought by appellant is in excess of six hundred feet from appellant's existing licensed premises and thus is in violation of the distance-between-premises ordinance applicable thereto.

"The section of the ordinance hereinabove referred to is Section 3.29 of the Revised Ordinances of the City of Newark, New Jersey, 1951, as amended, and reads as follows:

'1. (a) No plenary retail consumption license, except renewals for the same premises and transfers of licenses from person to person within the same premises, shall be granted or transfer made to other premises within a distance of one thousand feet from any other premises then covered by any other plenary retail consumption license or any plenary retail distribution license,

provided, however, that the local license issuing authority may, in its discretion, grant a transfer of an existing license to the same licensee only, to other premises within six hundred feet of the premises from which the transfer is made, notwithstanding that the premises to which the license is so transferred is within one thousand feet of an existing plenary retail consumption license or plenary retail distribution license, provided, however, that such transfer shall be made in good faith and shall inure solely for the benefit of the same licensee.'

"Section 3.29-1(c) provides:

'Where the one thousand foot distance is referred to in this section, the same shall be measured in the same manner as required by statute for the measuring of two hundred feet relative to schools and churches.'

"The attorney for appellant contends that, since the ordinance specifically describes the method of measurement to be used in cases involving a one thousand foot distance and is silent with reference to the method of measurement to be used in cases where the six hundred foot distance is applicable, the respondent is privileged to exercise discretion as to the method of measurement in the matter of a place-to-place transfer.

"In Ted's Bar & Grill, Inc. v. Newark and Hopkins, Bulletin 841, Item 8, wherein no method of measurement was set forth in the distance-between-premises ordinance, Director Hock stated:

'...In the absence thereof, the method of measurement is that used in the Alcoholic Beverage Law's so-called "200-foot rule" with respect to distance between licensed premises and a church or school, i.e.: "...in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed." (Revised Statutes, 33:1-76.) Franklin Stores Co. v. Newark and Gruber, Bulletin 381, Item 7 Re Guenther, Bulletin 206, Item 15; Crowley v. Atlantic City and Foxwell, Bulletin 455, Item 11.'

"On appeal by Hopkins from an adverse decision by Director Hock, the Appellate Division of the Superior Court of New Jersey (Hopkins v. Newark et als., 4 N.J. Super. 484) accepted the method of measurement used as prescribed in R.S. 33:1-76.

"A survey prepared by E. E. Schumacher, Surveyor (Exhibit R-4), upon which appellant relies, shows an air line measurement between entrances to the respective premises. Commissioner Burnett ruled that, in providing the method of measurement to be used, the statute contemplated a reasonable and sensible solution concerning the normal way a pedestrian would properly walk. A pedestrian would not go cross-lots or through back yards or in an air line, or trespass on private property. Nor would he be a jaywalker and cross streets on the diagonal but rather at right angles. His walking would be confined to the public thoroughfare and he would cross streets at the cross walks. Cf. Bulletin No. 3; Aldarelli v. Asbury Park, Bulletin 186, Item 12; Essex County Retail Liquor Stores Association v. Bloomfield et al., Bulletin 1403, Item 1.

"Another survey prepared by the surveyor aforementioned (Exhibit R-3) indicates the normal way that a pedestrian would properly walk from the nearest entrance of the existing premises to the nearest entrance of the proposed premises. Therefore, if a pedestrian would walk in a southerly direction from the entrance of appellant's licensed premises on Sherman Avenue to Stanton Street and then walk westerly on Stanton Street to a point on the westerly side of Elizabeth Avenue and then proceed in a southerly direction to the entrance to the proposed premises, the distance thereof would be 715 feet and thus would be in contravention of section 3.29-1(a) of the ordinance in question.

"In view of these circumstances, I am satisfied and find that the respondent had no alternative other than to deny appellant's application for the place-to-place transfer. This being the only matter at issue, it is recommended that the action of the respondent be affirmed and the appeal herein be dismissed."

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

Having carefully considered the record herein, including the memorandum filed by the attorney for the appellant, the Hearer's Report and the recommendations contained therein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 16th day of July, 1963,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

2. APPELLATE DECISIONS - JAMES VOLPONE & SONS, INC. v. NEWARK.

JAMES VOLPONE & SONS, INC., )  
t/a VOLPONE'S, )

Appellant, )

v. )

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

Respondent. )

ON APPEAL  
CONCLUSIONS

-----  
Felix J. Verlangieri, Esq., Attorney for Appellant.  
Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney for Respondent.  
Humphrey Famularo, Esq., Attorney for Objectors.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent (Hereinafter Board) which, by a two-to-one vote of its members, denied an application for a place-to-place transfer of appellant's plenary retail consumption license from 202 Stuyvesant Avenue to 211-213 Stuyvesant Avenue, Newark.

"Appellant's petition of appeal alleges that the action of the Board was arbitrary and capricious, thus constituting an abuse of discretion.

"The answer filed on behalf of the Board denies the said allegations and contends that, in the exercise of its sound discretion, the Board concluded that the refusal to approve the transfer was supported by the facts adduced at the hearing.

"The appeal herein was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcript of the proceedings before the Board was received into evidence pursuant to Rule 8 of State Regulation No. 15. Additional evidence was heard and exhibits were introduced at the instant hearing.

"Matthew P. Reuther, the member of the Board who voted to approve the transfer, stated at the hearing below, 'Here we have an applicant who wants to have a little bar for the servicing of dinners and meals to its customers, and I don't think it should be denied.'

"John J. Walsack and Louis R. Cerefice, also members of the Board, voted to deny the transfer, each remarking 'I have no statement.'

"It was represented to the Board by the attorney for appellant that the proposed premises is 250 feet from the existing premises and that appellant intends to erect a twelve-foot bar for service of alcoholic beverages to those awaiting an available table for meals, and at all other times alcoholic beverages would be served with meals to those seated at tables.

"James Volpone, president of appellant corporation, testified that in December 1962, by virtue of a person-to-person transfer, appellant had acquired the license in question for premises 202 Stuyvesant Avenue; that on February 13, 1963, because of lack of patronage, appellant filed the present application for place-to-place transfer to its restaurant at 211-213 Stuyvesant Avenue; that since September 1, 1956, appellant has operated an Italian-American restaurant at said premises, with specials including the sale of pizza to be taken from the premises, and that the restaurant accommodates approximately fifty patrons. Volpone confirmed the representations made by his attorney before the Board as to the size of the bar and appellant's intended method of operation.

"Appellant produced Albert V. Clapp, a realtor, who described the area where the restaurant is located to be both business and residential, with business establishments on Stuyvesant Avenue and the majority of various types and sizes of residences on the side streets. Clapp also produced photographs taken by him on May 8, 1963, at 4 p.m. and 7 p.m. respectively, of the area wherein the restaurant is located, which photographs disclosed traffic conditions. The photographs, when taken, showed parking spaces available, but it was agreed by Clapp that the traffic problem would possibly be greater after 7 p.m.

"Appellant also produced four other witnesses (two of whom live in close proximity to appellant's restaurant whereas two reside quite a distance away) and, in substance, all were in agreement that in their opinion the restaurant was conducted in a proper manner.

"A petition containing twenty-seven names of persons residing in the immediate area of the restaurant was marked as an exhibit in evidence herein. A number of persons whose names appeared on the petition testified before the Board and at the instant hearing. It was stipulated that other objectors present at the appeal hearing, if called upon to testify, would register objections similar to those who testified. The objections to a liquor license at appellant's restaurant may be summarized as follows: (a) cars of customers of appellant's restaurant park double on Commonwealth Avenue and also park at entrances to driveways of nearby residents; (b) obscene language is used and immoral conduct practiced by persons on the street and in cars; (c) excessive noise from patrons of the restaurant, and (d) customers litter the neighboring properties with uneaten food and discard boxes used to carry pizza and other food from the restaurant.

"Appellant has operated the licensed premises at 202 Stuyvesant Avenue for a comparatively short period of time but there were no complaints of improper conduct attributed to it.

"I believe the testimony of the objecting witnesses and appreciate the annoyance which caused them to register objections concerning the conditions permitted to prevail on the outside of the restaurant.

"No one is entitled to a license to sell alcoholic beverages as a matter of right. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946). Nor is there any inherent right to transfer such a license to other persons or premises. The issuing authority, in the exercise of its discretion, may grant or deny a transfer.

If denied on reasonable grounds, such action will be affirmed. On the other hand, where it appears that refusal of a transfer is arbitrary and unreasonable, the action of respondent in refusing the transfer will be reversed. Shapley v. Delaware, Bulletin 294, Item 7; Maliken v. Neptune City, Bulletin 915, Item 2; Meister v. Passaic Township, Bulletin 1030, Item 1.

"It is unfortunate that the majority of the members of the Board who voted to deny the transfer gave no reason for their action. While it has been repeatedly indicated that in all fairness a local issuing authority should state the reasons for its decisions, such failure has not been ruled to be fatal. Although it is obvious that there appears no evidence of improper motivation, public suspicion concerning the Board's failure to state reasons for its action may very well arise.

"The testimony of the objectors tended to establish that, in the operation of appellant's restaurant (presently without liquor license), conditions existed outside its premises which disturbed the people residing in the neighborhood. However, a number of objectors stated that patrons from a nearby licensed premises contributed to such annoyance. The objectors testified that, with the exception of a few occasions, no complaints were brought to the attention of the proper authorities.

"General objections to the transfer of a license to a business street filed by residents of side streets which are residential are not in themselves sufficient reasons for denying the application. Pistilli v. Bernardsville, Bulletin 1030, Item 2. While it is true that the question of public necessity and convenience is considered when a transfer of a license is requested for a particular location, although there are other licenses serving the neighborhood, it does not constitute a valid reason for denying a transfer from one location in a neighborhood to another premises in the same neighborhood since no increase in concentration of liquor licenses results from such transfer. Kupay v. Passaic, Bulletin 803, Item 9; Costa v. Verona, Bulletin 501, Item 2; O'Bertz v. Perth Amboy, Bulletin 1011, Item 1; Geltzeiler v. Newark, Bulletin 1171, Item 1; Bivona v. Hock, 5 N.J. Super. 118.

"I find from the believable facts presented herein that the conditions on the outside of appellant's restaurant have been unsatisfactory. There has been no evidence concerning improper conduct inside appellant's restaurant. However, it might be well to impress upon appellant that a liquor licensee cannot escape responsibility for conditions on the outside of the licensed premises caused by patrons of his establishment. Vreeland v. Roselle, Bulletin 352, Item 5.

"Since it has been represented by appellant that it intends to conduct a licensed business restricted to sale of alcoholic beverages with food ordered for consumption on the licensed premises, after careful consideration of all the testimony it is recommended that the transfer in question be granted subject to the following special conditions:

1. That no alcoholic beverages be served to patrons except at tables with food to be consumed on the premises;

2. That no alcoholic beverages in original containers be sold for off-premises consumption.

(Since appellant would have no 'public barroom', sale of alcoholic beverages in original containers for off-premises consumption would be prohibited under the terms of the "broad package privilege" act (P.L. 1948, c. 98) and State Regulation No. 32. This in no way should be construed to prohibit the appellant from erecting a service bar for use of its employees in obtaining drinks to be served to patrons of the restaurant.) Cf. Pasquale and Heenan v. Tenafly, Bulletin 1074, Item 1.

"I therefore recommend that the action of the Board be reversed, and that the place-to-place transfer of the license be granted subject to the conditions aforementioned."

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

Having carefully considered the record herein, including the exhibits and the argument of the respective attorneys and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations. Therefore, I shall reverse the action of the respondent in this case.

It would be meaningless, however, at this time to order the granting of appellant's application for transfer of the 1962-63 license which has now expired. The respondent has issued to appellant a renewal of its license for premises 202 Stuyvesant Avenue for the 1963-64 licensing period. Therefore the decision herein is merely advisory in the event of the filing of a similar transfer application by the appellant herein. Both parties are, of course, free in any future proceedings to offer testimony in addition to that offered herein, either with respect to the present issues or such additional issues as may be raised.

While the action of respondent is reversed, nevertheless, since the license which was the subject of this appeal has expired, no order requiring respondent to transfer said license will be entered herein.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

Dated: July 17, 1963

3.

ACTIVITY REPORT FOR JULY 1963

<b>ARRESTS:</b>		
Total number of persons arrested - - - - -		28
Licensees and employees - - - - -	15	
Bootleggers - - - - -	13	
<b>SEIZURES:</b>		
Motor vehicles - cars - - - - -		1
Distilled alcoholic beverages - gallons - - - - -		24.194
Wine - gallons - - - - -		13.659
Brewed malt alcoholic beverages - gallons - - - - -		33.292
<b>RETAIL LICENSEES:</b>		
Premises inspected - - - - -		829
Premises where alcoholic beverages were gauged - - - - -		409
Bottles gauged - - - - -		6,795
Premises where violations were found - - - - -		106
Violations found - - - - -		127
Unqualified employees - - - - -	45	
Reg. #38 sign not posted - - - - -	35	
Application copy not available - - - - -	17	
Other mercantile business - - - - -	6	
Prohibited signs - - - - -		4
Disposal permit necessary - - - - -		2
Other violations - - - - -		18
<b>STATE LICENSEES:</b>		
Premises inspected - - - - -		26
License applications investigated - - - - -		9
<b>COMPLAINTS:</b>		
Complaints assigned for investigation - - - - -		408
Investigations completed - - - - -		348
Investigations pending - - - - -		164
<b>LABORATORY:</b>		
Analyses made - - - - -		112
Refills from licensed premises - bottles - - - - -		34
Bottles from unlicensed premises - - - - -		23
<b>IDENTIFICATION:</b>		
Criminal fingerprint identifications made - - - - -		10
Persons fingerprinted for non-criminal purposes - - - - -		498
Identification contacts made with other enforcement agencies - - - - -		351
Motor vehicle identifications via N.J. State Police Teletype - - - - -		1
<b>DISCIPLINARY PROCEEDINGS:</b>		
Cases transmitted to municipalities - - - - -		21
Violations involved - - - - -		23
Sale during prohibited hours - - - - -	12	
Sale to minors - - - - -	6	
Failure to close prem. dur. proh. hours - - - - -	3	
Failure to afford view into prem. during prohibited hours - - - - -		1
Sale to non-members by club - - - - -		1
Cases instituted at Division - - - - -		26
Violations involved - - - - -		43
Sale to minors - - - - -	10	
Possessing liquor not truly labeled - - - - -	5	
Sale during prohibited hours - - - - -	5	
Permitting immoral activity on prem. - - - - -	3	
Sale to intoxicated persons - - - - -	3	
Conducting business as a nuisance - - - - -	2	
Permitting bookmaking on premises - - - - -	2	
Permitting lottery activity (numbers, horse race pool) on premises - - - - -	2	
Permitting hostess activity on prem. - - - - -	2	
Sale outside scope of license - - - - -		1
Permitting foul language on prem. - - - - -		1
Possessing contraceptives on prem. - - - - -		1
Substituting drink other than ordered - - - - -		1
Sale to non-member by club - - - - -		1
Hindering investigation - - - - -		1
Failure to close prem. dur. proh. hours - - - - -		1
Unqualified employee - - - - -		1
Fraud and front - - - - -		1
Cases brought by municipalities on own initiative and reported to Division - - - - -		23
Violations involved - - - - -		32
Sale to minors - - - - -	14	
Sale during prohibited hours - - - - -	5	
Permitting brawl on premises - - - - -	3	
Permitting gambling paraphernalia on prem. - - - - -	2	
Permitting bookmaking on premises - - - - -	2	
Conducting business as a nuisance - - - - -	1	
Failure to close prem. dur. proh. hours - - - - -		1
Hindering investigation - - - - -		1
Possessing contraceptives on prem. - - - - -		1
Permitting gambling on premises - - - - -		1
Permitting lottery activity (numbers) on premises - - - - -		1
<b>HEARINGS HELD AT DIVISION:</b>		
Total number of hearings held - - - - -		34
Appeals - - - - -	6	
Disciplinary proceedings - - - - -	20	
Eligibility - - - - -		8
<b>STATE LICENSES AND PERMITS ISSUED:</b>		
Total number issued - - - - -		2,335
Licenses - - - - -	618	
Social affair permits - - - - -		398
Solicitors' permits - - - - -	62	
Miscellaneous permits - - - - -		302
Employment permits - - - - -	512	
Transit insignia - - - - -		313
Disposal permits - - - - -	123	
Transit certificates - - - - -		7
<b>OFFICE OF AMUSEMENT GAMES CONTROL:</b>		
Licenses issued - - - - -	12	
Premises inspected - - - - -	56	
Enforcement files established - - - - -	24	
Premises where violations were found - - - - -		2
Number of violations found - - - - -		2

EMERSON A. TSCHUPP  
 Acting Director of Alcoholic Beverage Control  
 Acting Commissioner of Amusement Games Control

Dated: August 6, 1963

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 55 DAYS.

In the Matter of Disciplinary Proceedings against

HALA CORPORATION  
t/a MONTANARO'S  
7400 S. Crescent Blvd.  
Pennsauken, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-27, issued by the Township Committee of Pennsauken Township.

-----  
Frank M. Lario, Esq., Attorney for Licensee.  
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"The licensee pleaded not guilty to the following charges:

"1. On September 26, 1962, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

One 4/5 quart bottle labeled "Blended Scotch Whisky Johnnie Walker Red Label, 86.8 Proof";

One 4/5 quart bottle labeled "Blended Scotch Whisky Johnnie Walker Black Label, 86.8 Proof";

Two 4/5 quart bottles labeled "Black & White Blended Scotch Whisky, 86.8 Proof";

Two 4/5 quart bottles labeled "Chival Regal Blended Scotch Whisky, 86 Proof" and

One quart bottle labeled "Calvert Reserve American Blended Whiskey, 86 Proof";

in violation of Rule 27 of State Regulation No. 20.

"2. In your license application dated June 6, 1962, filed with the Township Committee of Pennsauken Township, upon which you obtained your current plenary retail consumption license, you falsely stated "No" in answer to Question 41, which, in pertinent part, asks whether you ever held a license which was suspended, whereas in truth and fact licenses held by you for the above premises were suspended by the Township Committee of Pennsauken Township for 3 days, effective January 26, 1960, for 5 days, effective September

13, 1960 and for 5 days, effective January 9, 1961, each suspension being for your serving women at a bar, contrary to local ordinance; said false statement, evasion and suppression of material facts being in violation of R.S. 33:1-25.'

"To substantiate the charges the Division produced ABC Agent O and John P. Brady, a graduate chemist regularly employed by the Division.

"Succinctly stated, the testimony of Agent O is as follows: On the date alleged he tested the open stock of assorted brands of liquor in the licensee's premises and detained nine bottles, the contents of which appeared off in color when compared with the contents of five bottles of the same brands the seals of which were broken in his presence by George Montanaro, president and 98% stockholder of the corporate licensee. Upon completing the tests he sealed the fourteen bottles with sealing wax in the presence of Montanaro, gave him an official receipt for them and locked them in the trunk of his car. The following day he transported the liquor to the Division's offices in Newark where he affixed identification tags to the bottles and turned them over to the Division's chemist. Seven bottles, the contents of which chemist Brady found to be spurious, were identified by Agent O as among those he had detained and were marked Exhibits S-1 through S-7 in evidence. Agent O further testified that, before leaving the licensed premises, he examined the copy of the licensee's current license application and found therein evidence upon which Charge 2 is predicated. A certified copy of the current license application was marked Exhibit S-8 in evidence and similarly indicated the omitted matter.

"The testimony of chemist Brady may be summarized as follows: On January 25, 1963, he opened the nineteen sealed bottles which had been detained by Agent O and analyzed the contents of each for alcohol, total solids, acids and color. Comparing the contents of Exhibits S-1 through S-7 with the contents of the comparison bottles and the analysis findings of hundreds of genuine samples of the same brands made by the Division's chemist (since deceased), with which findings he was in complete accord, he determined that the contents of the seven bottles were not genuine as labeled. Specifically, his findings are as follows:

- S-1 - the solids are low and the Klett color is low;
- S-2 - the solids and acids are low and the Klett color is light;
- S-3 - the solids and acids are low and the color is light;
- S-4 - the solids are low, the color is light and the acids are off;
- S-5 - the acids are low, solids are off and the color is light;
- S-6 - the solids are low, and the color is light;
- S-7 - the solids are high.

"Appearing on behalf of the corporate licensee were George Montanaro, Dorothy M. Carter (secretary and bookkeeper), Edward Hause (bartender) and Elizabeth Lynn (waitress), all employees of the licensee.

"With respect to Charge 2, Mr. Montanaro testified that the reason why Question 41 of the current license application was answered in the negative was 'Because I thought this was only for state violations; I didn't know the local ordinance was involved in this;' that he didn't intend to conceal the violations, and that the members of the Township Committee who granted the renewal of the license knew of the violations because they imposed the suspensions. With respect to Charge 1 he testified that Jones Creek, which is affected by the tide, is in the rear of the licensed premises and caused four floods, one in June, two in July and one on August 26, 1962, which rose three to four feet above the first floor of the licensed building; that, when the water receded, it left so much debris in the premises that he had to call upon the Fire Department, his employees and friends to clean up the place; that 'We removed all the bottles from the premises and took them outside, wiped off the bottles, took off the pourers and wiped them off and put them back on the bottles. Whether they went back on the same bottles I don't know', and that several alcoholic beverage distributors advised him that the liquors could be sold.

"Mrs. Carter testified that she typed the licensee's renewal application and 'I felt you only had to list state violations, and this was a township violation.' She further testified that to her knowledge no one ever tampered with any of the liquor behind the bar.

"Mr. Hause testified in substance that he has been employed as a bartender for three years in the licensed premises; that, after the floods, he helped carry the whiskey outside so that they could clean up the bottles; that the whiskey in Exhibits S-1 through S-7 are slow-moving items; that 'The only one I ever saw tamper with bottles was the bartender taking caps off and cleaning them;' that 'The caps get changed at least an average of once a week' and that the only way he could account for the questionable whiskey 'is changing the caps too often.'

"Mrs. Lynn testified that, after the floods, she helped clean the bottles and that she didn't see anyone tamper with the contents of the seven exhibits.

"It was then stipulated that the testimony of Joseph Gramowski (the other bartender) and Mrs. Montanaro, who were not at the hearing, would show that they were present during and after the floods and that they did not tamper with the whiskey or see anyone else tamper with liquor.

"A newspaper photograph of the licensed premises during one of the floods, a photograph of the interior of the licensed premises before the floods, and a newspaper photograph of a corner of the premises being cleaned after one of the floods by Montanaro were marked in evidence as Exhibits D-3, D-4 and D-5 respectively.

"Considering the evidence adduced herein, I find that the corporate licensee failed to establish a defense to the charges. The testimony of its witnesses respecting floods, the handling of the open stock of liquor by firemen, neighbors and employees who cleaned the bottles and substituted caps, Montanaro's seeking and accepting the opinion of distributors as to

the advisability of keeping the liquor in stock, all tend to confirm the fact that the contents of the seven bottles might have been affected either by the flood water, the substitution of caps or by the helpers. Nevertheless Montanaro, though doubtful of the genuineness of the contents, allowed the liquors to remain on the licensed premises. As the court said in Cedar Restaurant & Cafe Co. v. Hock, 135 L. 156 (reprinted in Bulletin 748, Item 9:

'... In the instant case, the charge is possession and the prosecutor does not dispute possession of the bottles but merely contends that it was unaware that the contents had been diluted. Knowledge that the beverages were illicit is not essential to guilt. State v. Solomon, 96 N.J.L. 124, reversed on other grounds 97 Id. 252.... We find nothing within the Alcoholic Beverage Control Act, R.S. 33:1-1 et seq. to indicate an intent that the holder of a retail consumption license must have knowledge that he possesses illicit beverages in order to make him amenable to disciplinary action. Our courts have consistently held that such knowledge is not an essential ingredient to conviction for possession under statutes similar to the one under consideration. State v. Solomon, supra, (spurious liquor); Waterbury v. Newton, 50 N.J.L. 534 (illegally colored oleomargarine); Board of Health v. Vandruens, 77 N.J.L. 443, (possession of impure food).'

"I further find that the testimony of the Division's witnesses clearly and convincingly shows that the contents of the exhibits were not genuine as labeled and that, notwithstanding the lengthy cross examination to which both witnesses were subjected, their testimony remained unshaken.

"In view of the aforesaid and because the violation set forth in Charge 2 is admitted, I conclude that the Division has established the truth of the charges by a fair preponderance of the believable evidence, and I recommend that the licensee be adjudged guilty as charged.

"The licensee has a prior adjudicated record. Effective January 26, 1960, September 13, 1960, and January 9, 1961, its license was suspended by the issuing authority for three, five and five days respectively for serving women at the bar in violation of a local ordinance.

"The minimum penalty imposed in 'refill' cases involving seven bottles is thirty days (Re Kulasha, Bulletin 1460, Item 15), and ten days for the violation set forth in Charge 2 (Re Cappy's Hideaway, Inc., Bulletin 1504, Item 2). However, because of the three suspensions for dissimilar violations occurring within the past five years, an additional fifteen days should be imposed. Cf. Re Mandel, Bulletin 1472, Item 2. I further recommend, therefore, that the license be suspended for a total period of fifty-five days."

No written exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16 and as extended at the request of licensee's attorney.

Having carefully considered the transcript of the proceedings, the exhibits and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is on this 25th day of June, 1963,

ORDERED that Plenary Retail Consumption License C-27, issued by the Township Committee of Pennsauken Township to Hala Corporation, t/a Montanaro's, for premises 7400 S. Crescent Blvd., Pennsauken, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, July 2, 1963, and terminating at 2:00 a.m. Monday, August 26, 1963.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

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

In the Matter of Disciplinary Proceedings against )

POODLE CLUB, INC. )  
24 William Street )  
Newark 2, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-649 for the years 1962-63 and 1963-64, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

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Licensee, by Anthony Margotta, President, Pro se.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 25, 1963, it sold drinks of beer to six minors -- one age 18, three age 19, and two age 20 -- in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Cf. Re Morris, Bulletin 1447, Item 8.

Accordingly, it is, on this 25th day of June 1963,

ORDERED that Plenary Retail Consumption License C-649, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Poodle Club, Inc., for premises 24 William Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, July 2, 1963, and terminating at 2 a.m. Monday, July 22, 1963.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

LAWRENCE E. KRAINSKI )  
t/a LARRY'S TAVERN )  
17 Thomas St. )  
Sayreville, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-32, issued by the Borough Council of the Borough of Sayreville, and transferred during the pendency of these proceedings to )

LAWRENCE E. AND FLORENCE KRAINSKI )  
t/a LARRY'S TAVERN )

for the same premises.

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Edwin A. Kolodziej, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that on Sunday, March 24, 1963, he (1) sold a drink of whiskey and beer and a container of beer and a half pint of liqueur to an intoxicated person, in violation of Rule 1 of State Regulation No. 20, and (2) sold the pint of liqueur for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days, effective November 7, 1955, for sale in violation of State Regulation No. 38.

The prior record considered, the license will be suspended on the first charge for twenty days (Re D.E.L. Corp. Bulletin 1495, Item 3) and on the second charge for fifteen days (Re Ruth & Middaugh, Bulletin 1504, Item 6), to which will be added five days for the previous similar offense more than five but less than ten years ago, or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 1st day of July, 1963,

ORDERED that Plenary Retail Consumption License C-32, issued by the Borough Council of the Borough of Sayreville to Lawrence E. and Florence Krainski, t/a Larry's Tavern, for premises 17 Thomas Street, Sayreville, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. Monday, July 8, 1963, and terminating at 3:00 a.m. Monday, August 12, 1963.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

7. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto.Susp.#230 )  
 In the Matter of a Petition to Lift )  
 the Automatic Suspension of Plenary )  
 Retail Consumption License C-7, )  
 issued by the Board of Commissioners )  
 of the City of Passaic to )  
 MARY SZCZECH )  
 t/a FOUR ACES TAVERN )  
 426 Van Houten Avenue )  
 Passaic, N. J. )

ON PETITION  
ORDER

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Manfield G. Amlicke, Esq., Attorney for Petitioner.

BY THE ACTING DIRECTOR:

It appears from the petition filed herein and the records of this Division that on June 25, 1963, the licensee-petitioner was fined \$50 and \$5 costs in the Passaic Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on June 19, 1963, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after such disciplinary proceedings have been concluded. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Rust, Bulletin 1511, Item 7.

Accordingly, it is, on this 16th day of July, 1963,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR VIOLATIONS - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ROSE CALI  
t/a MAC ROSE TAVERN  
331 Grand St.  
Paterson 1, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-177, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Nathan Robins, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 10, 1963, at 11:15 p.m., she sold a pint bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for ten days, effective December 2, 1957, and again for twenty-five days, effective April 4, 1960, both for similar violation. Re Cali, Bulletin 1202, Item 9; Bulletin 1336, Item 10.

The prior record considered, the license will be suspended for thirty-five days (Re 188 Boyd St., Inc., Bulletin 1518, Item 2) with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 1st day of July, 1963,

ORDERED that Plenary Retail Consumption License C-177, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Rose Cali, t/a Mac Rose Tavern, for premises 331 Grand Street, Paterson, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Monday, July 8, 1963, and terminating at 3:00 a.m. Wednesday, August 7, 1963.

  
Emerson A. Tschupp,  
Acting Director.