

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

January 30, 1959

BULLETIN 1261

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New Jersey State Library

THE OFFICE OF THE ATTORNEY GENERAL
STATE OF TEXAS
DALLAS, TEXAS

MEMORANDUM

TO: THE ATTORNEY GENERAL

FROM: [Name]
SUBJECT: [Subject]

[Text]

[Text]

[Text]

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

January 30, 1959.

BULLETIN 1261

1. APPELLATE DECISIONS - WITTY'S LIQUORS, INC. V. RAHWAY.

WITTY'S LIQUORS, INC.,)
Appellant,)
v.) ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC) CONCLUSIONS AND ORDER
BEVERAGE CONTROL OF THE CITY)
OF RAHWAY,)
Respondent.)

Wilentz, Goldman, Spitzer & Sills, Esqs., by Robert N. Wilentz,
Esq., Attorneys for Appellant.
James F. Patten, Esq., Attorney for Respondent.
Kein, Scotch & Pollatschek, Esqs., by Julius R. Pollatschek,
Esq., Attorneys for Union County Retail Liquor Stores
Association, Objector.
Bernard P. Escandon, Esq., Attorney for Individual Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Board on August 11, 1958 whereby it denied, by a two to one vote, an application for transfer of plenary retail consumption license C-20 (issued for the 1957-58 licensing year) from Alfred Zullo to appellant and from 1332 Main Street to 453-457 St. Georges Avenue, Rahway. The resolution passed by the respondent Board set forth as reasons for its action that 'the new site will create a traffic hazard on an already congested highway; that the said business at the proposed new location will be detrimental to the residential nature of the property located adjacent and nearby said site; that the area and entire neighborhood is well supplied with taverns or package stores; that the testimony of the applicant's witnesses as to parking facilities is not borne out by the physical aspects of the premises and that the testimony of Mr. Nathan Witkin to the effect that he made promises to potential objectors which he did not intend to keep, makes questionable the veracity or the principles of this witness even though his explanation was that he was ill and would have promised anything in order to get rid of his inquisitors'.

"Appellant, in its petition of appeal, asserts that respondent Board's action was erroneous because (a) the evidence before respondent does not support its decision; (b) the evidence and the available facts required the approval of the application; (c) respondent's action served only the private interests of other license holders in the Township (City) and did not serve the public interest or the public convenience; (d) the interests of public convenience, safety and welfare would be promoted by granting appellant's application and (f) the action of respondent was arbitrary and capricious and contrary to the laws and regulations of the State

of New Jersey and of this Division governing the same.

"The answer denies these allegations and contends that the action of the respondent Board in all respects was equitable and just.

"Nathan Witkin (hereinafter referred to as Witkin), president of appellant corporation, testified that the three plenary retail consumption licenses located nearest to the proposed premises are approximately 1200, 1500 and 3000 feet distant, respectively; that there is a state beverage distributor's license across the street and a short distance away two club licenses and a plenary retail consumption license issued to a country club, the latter located approximately 1000 feet west of St. Georges Avenue, measuring said distance from the licensed premises which was estimated to be 1500 feet from the proposed location as aforementioned. Witkin further testified that on St. Georges Avenue, within a reasonable distance of the premises sought by him, there are various types of business establishments. The photographs in evidence of the area disclose that adjacent to the proposed location is a lumber company and among other businesses in close proximity are several gasoline service stations and a furniture factory and showroom. The attorneys for the respective parties stipulated that the particular area wherein the license is sought to be transferred is zoned and used for commercial purposes. Witkin further testified that when a delegation of people from a civic organization called at his Perth Amboy liquor establishment in order to ascertain what type of a store he proposed to operate in Rahway if the transfer were granted, he told them that they would operate the bar in the same manner as the one in Perth Amboy where there is neither music nor entertainment. Furthermore, in Perth Amboy women are not permitted at the bar and the licensed premises is closed on Sundays and operates fewer hours than the law permits.

"Abram Simoff, president of Par-Traf, Inc., a company engaged as parking and traffic consultants, testified that on request of appellant a survey of traffic conditions along St. Georges Avenue in the vicinity of the proposed premises was made; that a check of automobile traffic during certain hours on Saturday, Sunday and Thursday, October 11, 12 and 16, 1958, respectively, indicated, in his opinion, that there would be no traffic hazard at the location of the proposed licensed premises and that at present there is room around the proposed premises to park 14 cars and also a space on one side for storage of four cars.

"Seymour Rowitz testified that for a number of years he operated an automobile agency at the proposed premises and that he had entered into a lease (which is still effective) with an adjoining property owner for use of land approximating 12 additional feet which might be used for parking purposes.

"Alfred Zullo, the present holder of the license, testified that of the 37 outstanding liquor outlets (both plenary retail consumption and distribution licenses) 24 thereof (including the present licensed premises) are located in a section which he considered the downtown section of the city. Zullo's opinion was corroborated substantially by the testimony of John D. Markey, a real estate broker, who has had offices in Rahway for many years. Markey also was of the opinion that permission to operate a liquor establishment at the proposed premises would not affect the residential neighborhood surrounding the business area.

"Two objectors, namely, Joseph T. Rauschmayer and Eugene J. Quinn, testified that they and several other members of a civic association visited Witkin's liquor establishment in Perth Amboy and, while there, Witkin came to the premises and explained the

type and method of operation which he intended to invoke at the proposed premises in Rahway. It appears from their testimony that Witkin expressed the view that appellant was to operate a package goods establishment rather than a tavern at the premises, despite the fact that the license in question was a plenary retail consumption license. They further testified that they were of the opinion under such circumstances that the association which they represented might not persist in its objection. However, after the discussion with Witkin, it became a matter of conjecture whether the assurances of Witkin could be relied upon; that, after discussion with the members of the association, they were not satisfied with the promises made and as a result thereof the two objectors were requested by the association to appear before the respondent Board to object to the transfer in question. The residences of both of these objectors apparently are not in the immediate area of the proposed premises. Other objectors (one residing across the street and two others residing one and three blocks, respectively, from the proposed premises) testified in opposition to the transfer. The members of the respondent Board did not testify in this matter.

"The transfer of the liquor license to other persons or premises or both is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Olko v. Saddle River, et al., Bulletin 926, Item 3, and cases cited therein.

"On the other hand, where it appears that refusal of a transfer is arbitrary and unreasonable, the action of respondent in rejecting the transfer will be reversed. Olko v. Saddle River, et al., supra.

"One of the reasons which prompted the respondent Board to deny the transfer in question was the attitude of Witkin toward the members of the civic association who had visited the Perth Amboy liquor establishment in order to ascertain the type of business which would be conducted at the proposed premises. Witkin made a remark when the matter was originally heard before the respondent Board that because of his illness at the time he had told the visiting members of the association anything in order to get rid of them. Appellant's attorney, during his summation, termed such incident as unfortunate and agreed that Witkin's attitude was definitely improper. He further said 'I don't think there is any excuse for saying those things even if a man is sick as he was sick. Even if a man wants a liquor license to be transferred and knows that the people at his store are the people most likely to prevent a transfer, I don't think it can be excused'. However, he stated that he has known Witkin and his family for many years and that he can positively state that he is a man of integrity. Witkin himself appeared penitent for his attitude toward the delegation.

"The section of the highway whereon the proposed premises is located is devoted almost exclusively to business. The evidence herein indicates that the nearest plenary retail consumption license is approximately 1200 feet away. The parking facilities provided for patrons appear sufficient to accommodate the parking of cars off the street. According to the sketch of the interior of the premises, which has been marked as an exhibit in evidence in the within case, appellant proposes to have a 25 foot bar and two sections in the barroom of approximately 16 feet each wherein shelving is to be erected for the purpose of displaying alcoholic beverages in their original containers. It is expressly agreed that appellant will adhere to the sketch concerning the layout of the interior of the premises.

"After careful examination of all the evidence presented herein, I conclude that the action of the respondent Board in denying the transfer of the license was arbitrary and unreasonable and I recommend that said action be reversed."

No exceptions to the Hearer's Report were taken within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered all the facts and circumstances herein, I concur in the Hearer's finding and conclusion and adopt his recommendation.

Accordingly, it is, on this 12th day of January 1959,

ORDERED that the action of respondent be reversed and respondent is directed to transfer the license in accordance with the application filed by appellant.

WILLIAM HOWE DAVIS
DIRECTOR

2. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTIONS TO TRANSFER OF LICENSE HELD TO BE WITHOUT MERIT - REQUEST FOR REHEARING DENIED.

In the Matter of Objections to the)
Transfer of State Beverage Dis-)
tributor's License SBD-15 held by)

JOSEPH COHEN AND ROBERT DICKMAN)
t/a LAKE BEVERAGE DISTRIBUTORS)

from)

REAR 95 WEST MAIN STREET)
DENVERVILLE, NEW JERSEY)

to)

LOTS 136, 137, 138, 139 & 140)
ON N. J. STATE HIGHWAY 46)
ROCKAWAY BOROUGH, NEW JERSEY)

CONCLUSIONS

Leo J. Berg, Esq., Attorney for the Applicant.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The Mayor and Council of the Borough of Rockaway filed a written objection to the granting of the application herein and a hearing was duly held thereon. Rule 12 of State Regulation No. 1.

"The written objection alleged that (1) there are sufficient number of liquor outlets presently existing in the municipality to supply the needs of its inhabitants; (2) the governing body of the municipality is interested in developing the highway business zone and properties fronting thereon by the establishment of high grade mercantile business or industrial plants and (3) the trucks of applicant and of their customers' vehicles operating to and from the proposed premises will constitute a serious traffic hazard.

"At the hearing no one appeared on behalf of the objector.

On behalf of the applicants, Joseph Cohen, one of the partners, testified that the applicants must vacate the premises where they are now located; that a contract was entered into to purchase the land in question and that applicants intend to erect and maintain a warehouse and salesroom in accordance with plans and specifications filed at the office of the Division of Alcoholic Beverage Control; that the site of the proposed location is in a business zone and permission has been granted by the Municipal Board of Adjustment to erect the proposed building on the aforementioned plot of ground. The applicants also presented photographs of the surrounding area which disclose that various types of business establishments are presently operating in the vicinity of the proposed location. An inspection of the photographs clearly indicates that the type of business to be operated by the applicants could not be considered out of line with the types of business that are presently situated on said highway. Applicant Cohen testified that of the four trucks operated in connection with his business, three leave the premises, after being loaded in the morning, and return thereto between 5:00 and 7:00 o'clock in the evening. Only one of the trucks is kept on the premises for special deliveries when needed. Further, the purchase of malt beverages from the proposed premises will be negligible. Thus, any concern that a traffic hazard might develop appears to have no basis in fact.

"In considering the objection, it must be borne in mind that municipal consent is not a statutory prerequisite to the issuance or transfer of a State license and that the privileges of a State Beverage Distributor's license are state-wide (Re DeAscentiis, Bulletin 1091, Item 11). After considering all of the evidence presented herein, there appears to be no valid reason for denial of the transfer in question.

"Under the circumstances shown herein, it is recommended that the application for transfer to the proposed premises be granted if and when the application is in proper form and subject to the completion of premises in accordance with the plans and specifications filed."

After the Hearer's Report was submitted in this matter (a copy of which was mailed to the Mayor and Council who had heretofore filed objections to the transfer of the license in question), a communication was received from the Borough Attorney, by direction of the governing body, requesting a re-hearing. I denied the request because the factual evidence presented by the applicant by way of photographs of the area where the proposed licensed premises was to be located, manner of operation, etc., was quite adequate to determine whether the transfer sought should be approved. It is apparent by the resolution presented on behalf of the objecting municipality that the Mayor, who is the holder of a plenary retail consumption license with broad package privileges in the Borough of Rockaway, participated in the matter in question when it was before the governing body.

It has been consistently ruled by this Division that a member of a municipal governing body who holds or is in any wise interested in a liquor license, is disqualified not only from voting but from participating in any discussions regarding alcoholic beverage matters. Furthermore, he must withdraw entirely from the proceedings for otherwise the purpose of the disqualification will in large part be nullified. In Re Mohr, Bulletin 557, Item 1. See also Re Kerner, Bulletin 298, Item 9 wherein numerous rulings are collected and discussed.

I have carefully examined the record in the matter and also the Hearer's Report submitted herein. I find that all the

objections entered by the municipality were fully considered by the Hearer and hence, I shall adopt the recommendation made by him that the transfer be approved.

I shall issue the license in question when all necessary prerequisites have been fully complied with.

WILLIAM HOWE DAVIS
DIRECTOR

Dated: December 15, 1958

3. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CENTRAL LIQUOR CO., INC.)
t/a CENTRAL LIQUOR CO., INC.)
601 Market Street)
Camden, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Defendant-licensee, by Edward A. Wolcuff, Secretary-Treasurer.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on November 14, 1958, 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 Regulation No. 30.

The file herein discloses that on the date set forth in the charge an ABC agent purchased from Edward A. Wolcuff (the clerk on duty) three 4/5 quart bottles of Canadian Club Blended Canadian Whisky and three 4/5 quart bottles of Seagram's V.O. Canadian Whisky, A Blend. The clerk calculated the price as \$6.30 for three bottles and \$6.40 for three bottles (the correct price), making a total of \$38.10; then subtracted \$3.81, and accepted \$34.29 in payment for such alcoholic beverages. Such discount is not permitted on the purchases of six bottles of alcoholic beverages. The agent then joined another agent, and both agents identified themselves to Mr. Wolcuff and informed him of the violation.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of ten days, and remit five days for the plea entered herein, leaving a net suspension of five days. Re Higgins, Bulletin 1248, Item 10.

Accordingly, it is, on this 23rd day of December, 1958,

ORDERED that Plenary Retail Distribution License D-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Central Liquor Co., Inc., t/a Central Liquor Co., Inc., for premises 601 Market Street, Camden, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m., Monday, January 5, 1959, and terminating at 9:00 a.m., Saturday, January 10, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF REGULATION NO. 38 - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FRANK & PAULINE GOLDA)
131-133 Fleming Avenue)
Newark 5, New Jersey)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-9, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Addonizio, Sisselman, Nitti & Gordon, Esqs., by Philip E. Gordon, Esq., Attorneys for Defendant-licensees.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to charges alleging that (1) on Sunday, August 10, 1958, they sold an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38 which prohibits any such sale on Sunday, and (2) on the same day they sold an alcoholic beverage at less than the price listed in the minimum consumer resale price list then in effect, in violation of Rule 5 of State Regulation No. 30.

At about 12:45 a.m. on August 10, 1958, two ABC agents at the licensed premises observed Frank Golda (one of the licensees) place a 4/5 quart bottle of Seagram's V.O. Canadian Whisky and a bottle of soda in a paper bag, hand the bag and its contents to a patron and collect payment therefor. When the patron left the premises with such items he was stopped by the agents and, at their request, he returned with the bag and its contents to the premises. The patron stated, in the presence of Golda, that he had paid him \$6.50 for both items, paying \$6.15 for the whiskey. The correct price for the whiskey was \$6.40. Golda then asserted that he had charged \$6.45 or \$6.50 for the bottle of whiskey and made a gift of the bottle of soda. This was obviously an afterthought.

Defendants have no prior adjudicated record. I shall suspend their license for the minimum period of fifteen days on Charge 1 (Re Fine & Weiler, Bulletin 1248, Item 1) and for the additional minimum period of ten days on Charge 2 (Re Higgins, Bulletin 1248, Item 10), making a total suspension of twenty-five days. Five days will be remitted for the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 29th day of December 1958,

ORDERED that plenary retail consumption license C-9, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Frank & Pauline Golda, for premises 131-133 Fleming Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, January 6, 1959, and terminating at 2 a.m. Monday, January 26, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

EDWARD CARLONZA, SR.)
t/a ED CARROLL'S CLUB 23)
23 Washington Street)
West Orange, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-28, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange.)

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

BY THE DIRECTOR:

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

"On November 7, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., John A---, age 19, John M---, age 20 and John S---, age 20, and you allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

On November 7, 1958, at about 9:45 p.m., ABC agents were on defendant's licensed premises and observed the licensee serve a glass of beer to each of the aforementioned minors who partially consumed the same. Prior thereto two of the minors, upon request for identification by the licensee, had displayed identification cards indicating the persons named thereon were over twenty-one years of age. The licensee, however, failed to obtain a written representation from the minors that they were of legal age as required by R.S. 33:1-77.

By way of mitigation the attorney for the licensee has submitted a statement which I have carefully considered.

Defendant has no prior adjudicated record. Ordinarily the penalty imposed for a sale of alcoholic beverages to an eighteen or nineteen year old minor where three minors are involved is twenty days. Cf. Re Cochrane, Bulletin 1239, Item 1. However, in view of the circumstances appearing in the instant case I shall suspend defendant's license for fifteen days. Re Mandel, Bulletin 1254, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 5th day of January 1959,

ORDERED that plenary retail consumption license C-28, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange to Edward Carlonza, Sr., t/a Ed Carroll's Club 23, 23 Washington Street, West Orange, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, January 12, 1959, and terminating at 2 a.m. Thursday, January 22, 1959;

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ANDREW PALLO AND MARGARET PALLO t/a PAUL'S DELICATESSEN AND LIQUORS 422 Teaneck Road Ridgefield Park, New Jersey)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Distribution License D-6, issued by the Board of Commissioners of the Township of Ridgefield Park.)

Maurice S. Austin, Esq., Attorney for Defendant-licensees.. Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On October 31, 1958 and on divers days prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Michael ---, age 18; in violation of Rule 1 of State Regulation No. 20."

On October 31, 1958, at about 9:55 p.m., an ABC agent observed Andrew Pallo, one of the licensees herein, sell two quart bottles of beer to Michael ---, age 18.

By way of mitigation, the attorney for the defendants submitted a letter setting forth therein that prior to October 31st aforesaid Michael, at the request of Mr. Pallo, displayed an identification card indicating he was of legal age. This is emphatically denied by the minor.

Defendants have no prior adjudicated record. I shall suspend defendants' license for fifteen days, the minimum penalty for the sale of alcoholic beverages to an 18-year-old minor. Re McGarry, Bulletin 1213, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 6th day of January 1959,

ORDERED that Plenary Retail Distribution License D-6, issued by the Board of Commissioners of the Township of Ridgefield Park to Andrew Pallo and Margaret Pallo, t/a Paul's Delicatessen and Liquors, for premises 422 Teaneck Road, Ridgefield Park, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m., Tuesday, January 13, 1959, and terminating at 9:00 a.m., Friday, January 23, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CLENDENNY TAVERN, INC.)
60 Clendenny Avenue)
Jersey City 4, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-335, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Defendant-licensee, by Richard McHale, President
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to the following charge:

"On Sunday, September 14, 1958, you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., six 12-ounce cans of Rheingold Extra Dry Lager Beer, at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of such alcoholic beverages from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

At 6:10 p.m. on Sunday, September 14, 1958, an ABC agent purchased six 12-ounce cans of beer for off-premises consumption from Thomas Arthur (the bartender on duty at the time). The agent and a fellow agent left the premises with the beer but returned immediately thereafter, identified themselves and informed the bartender of the violation. The bartender denied the sale and refused to give a statement.

Defendant has a prior adjudicated record. Its license was suspended on four occasions, two of which occurred prior to 1947 and, therefore, will not be taken into consideration in fixing the penalty herein. Cf. Re Tsibikas, Bulletin 1188, Item 10. Effective December 3, 1956, and June 23, 1958, its license was suspended for ten days and for a net period of twenty-five days, respectively, for violations similar to that set forth herein (Re Clendenny Tavern, Inc., Bulletin 1147, Item 6, and Bulletin 1235, Item 3). The minimum penalty for a first offense as charged is a fifteen-day suspension (Re Dew Drop Inn, Inc., Bulletin 1175, Item 6). However, considering the fact that the two prior violations occurred within a five-year period, I shall suspend defendant's license for a period of sixty days (Re Berger Company, Inc., Bulletin 1204, Item 1). Five days will be remitted for the plea entered herein, leaving a net suspension of fifty-five days.

Accordingly it is, on this 7th day of January 1959,

ORDERED that plenary retail consumption license C-335, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Clendenny Tavern, Inc., for premises 60 Clendenny Avenue, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a.m. Tuesday, January 20, 1959, and terminating at 2 a.m. Monday, March 16, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOSEPH SMAGULER)
t/a THE OLD MILL INN)
373 Straight Street)
Paterson 3, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-20, issued by the Board of Alcoholic Beverage Control for the City of Paterson:)

Joseph Smaguler, Defendant-licensee, Pro se.
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold and delivered during prohibited hours an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

On Saturday, November 8, 1958, at about 10:40 p.m., an ABC agent who was in defendant's licensed premises observed a patron confer with Marinus Koman (one of the two bartenders). The bartender approached Carmen Vitile (the other bartender) who was heard to say, "He's all right." Koman then sold a pint of wine to the patron who pocketed it and left the premises. The agent followed and, being joined by another agent who had remained outside, they apprehended the patron, identified themselves and seized the bottle of wine. All three then entered the licensed premises and informed the bartenders of the violation. Koman admitted that he had made the after-hours sale.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of fifteen days (Re The Mart, Inc., Bulletin 1251, Item 4). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

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

ORDERED that plenary retail consumption license C-20, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Joseph Smaguler, t/a The Old Mill Inn, for premises 373 Straight Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3 a.m. Monday, January 26, 1959, and terminating at 3 a.m. Thursday, February 5, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against
 FERDINAND G. THOMA, JR.
 n/e Corner Mantua Pitman Boulevard and Sewell Road
 Barnsboro, Mantua Township
 P.O. RFD #2, Sewell, New Jersey
 Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Mantua.

CONCLUSIONS AND ORDER

 Alfred T. Sanderson, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

"On September 19, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Philip ---, age 16, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20".

"At the hearing held herein Philip testified that on September 19, 1958, he was 16 years of age; that on said date at about 9:30 p.m., he and two friends, Paul, age 17 and Dennis, age 16, drove in Dennis' car to the parking lot in the rear of and adjoining the defendant's licensed premises; that he had been served alcoholic beverages on previous visits to the licensed premises; that Paul had given him two dollars to buy a bottle of Vodka; that he alone entered the licensed premises through its rear door, and, without being required to make any written representation of his age, was served a glass of beer by Meta Budnik, a barmaid who accepted 10 cents in payment thereof; that thereafter upon his inquiry Mrs. Budnik quoted him the price of a pint of Vodka at \$2.15; that he then returned to his companions in the car, obtained an additional 25 cents from Paul to supplement \$1.90 he had in his possession, came back to the tavern and gave \$2.15 to Mrs. Budnik; that Mrs. Budnik thereupon placed a pint bottle of Vodka in a bag, handed the same to him and that he carried the alcoholic beverages from the premises to his friends in the car. Philip further testified that later that evening he was apprehended by a police officer; that after being questioned at the police station for about two hours, he, in the presence of his mother and stepfather, told the police that he had obtained the aforesaid bottle of Vodka at the defendant's licensed premises.

"Paul testified that on September 19, 1958 at about 9:30 p.m., he, together with Philip and Dennis drove in Dennis' car to the parking lot of defendant's licensed premises to buy a bottle of

Vodka; that shortly prior thereto he had given Philip two dollars; that he saw Philip enter the licensed premises through its rear door; that about 10 minutes later Philip came back to the car and received from him an additional 25 cents; that he then saw Philip empty-handed re-enter the licensed premises and in about five minutes emerge therefrom carrying a bag containing the bottle of Vodka.

"Dennis was called to testify and it was stipulated by counsel that, if examined, his testimony on direct examination would be the same as Paul's. On cross-examination Dennis stated that Philip was chosen to purchase the Vodka because of his alleged prior visits to the licensed premises.

"An ABC agent testified that on September 22, 1958, at about 10 p.m., he was directed by Philip, Paul and Dennis to the parking lot in the rear of defendant's licensed premises; that Philip and he entered the licensed premises through a rear door leading to and from the said parking area; that Philip identified Mrs. Budnik as the person who, on September 19, 1958, sold him the glass of beer and the bottle of Vodka; that he identified himself to Mrs. Budnik and informed her of the alleged violation on September 19, 1958; that Mrs. Budnik admitted being on duty as the barmaid on the night in question and stated that she did not remember making the alleged sale of alcoholic beverages to Philip or seeing him on the premises; that Philip pointed to a section on the back bar from which he (Philip) said Mrs. Budnik obtained the aforementioned bottle of Vodka and that he observed that the designated section contained a supply of Vodka including the brand and size in question.

"Meta Budnik, on behalf of the defendant, testified that for the past ten years she has been employed as a barmaid on the defendant's licensed premises; that she was on duty on the night of September 19, 1958; that as far as she knew she had not seen Philip prior to September 22, 1958; and that to her knowledge she never served him any alcoholic beverages. On cross-examination Mrs. Budnik stated that 'Friday night is an awful busy night, very busy'; that she alone was tending bar on that night; that there were about 20 to 25 patrons at the bar and that she could not recall seeing Philip on the licensed premises.

"I have carefully considered all the testimony adduced herein and find that, notwithstanding the exhaustive cross-examination of the Division's witnesses, their testimony remained unshaken and that they gave an accurate and truthful account of what transpired in the case. Under the circumstances, I conclude that the Division has sustained the burden of proof of defendant's guilt by a fair preponderance of the believable evidence and it is recommended that the defendant be found guilty as charged.

"Defendant has no prior adjudicated record. It is further recommended that an order be entered providing the defendant's license be suspended for a period of twenty-five (25) days, which is the minimum penalty imposed for sale of alcoholic beverages to a 16 year old minor. Re Hurley-Patterson, Inc., Bulletin 1203, Item 2."

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

After carefully considering the facts and circumstances appearing herein, I concur in the Hearer's findings and conclusions and adopt his recommendation. I shall suspend defendant's license, for a period of twenty-five days.

Accordingly, it is, on this 12th day of January, 1959,

ORDERED that plenary retail consumption license C-1, issued by the Township Committee of the Township of Mantua to Ferdinand G. Thoma, Jr., for premises at n/e Corner Mantua Pitman Boulevard & Sewell Road, Barnsboro, Mantua Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 6 a.m. Monday, January 19, 1959, and terminating at 6 a.m. Friday, February 13, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against)

THOMAS PICARDO & ANNA PICARDO)
t/a BRADLEY LIQUOR STORE)
618 Main Street)
Bradley Beach, New Jersey)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the Borough of Bradley Beach.)

Stout and O'Hagan, Esqs., by Sidney Hertz, Esq., Attorneys for Defendant-licensees.
David S. Piltzer, Esq., Appearing for Division of Acoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charge:

'On July 21 and 25, 1958, you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., David ---, age 18, in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"The evidence given at the hearing herein discloses that late on the evening of July 25, 1958, officers of the Belmar Police Department apprehended on the Belmar beach a number of minors who had alcoholic beverages in their possession. The officers took the minors, including David ---, to Police Headquarters for questioning as to the possible violation of the provisions of a beach party permit by reason of the fact that the alcoholic beverages were brought upon the beach. During this investigation David --- told the Belmar police officers that he had purchased the alcoholic beverages at Bradley Liquor Store, Main Street, Bradley Beach. At the hearing held herein David testified that he is 18 years of age; that on the evening of July 25, 1958, between 9:30 and 10 p.m., he entered defendants' premises and purchased from Thomas Picardo (one of the licensees) a case of beer, a bottle of vodka, a bottle of rum and some potato chips, pretzels and soda; that he then called Nick --- into the premises; that he and Nick carried the items from the store, placed them in their car, drove to the hotel where they were employed, and later carried the items to the beach where they were seized by the Belmar Police. David --- further testified that he had previously

visited defendants' premises on the evening of July 21, 1958, between 9:30 and 10 p.m., and that he had then purchased from Thomas Picardo a bottle of rum which he had taken to the hotel where he was employed. David further testified that no one in defendants' premises questioned him as to his age at the time the above purchases were made.

"Nick --- testified that on July 25, 1958, between 9:30 and 10 p.m., he had driven with David to defendants' premises; that he later entered the premises at David's request and assisted him in carrying the items purchased by David from the premises to their car. Nick --- also testified that on the evening of July 21, 1958, he had driven with David to the same premises, and that he had remained outside; that David, empty-handed, entered the premises and came out a short time later carrying a bag which he later ascertained contained a bottle of rum.

"Elizabeth --- testified that she was a member of the beach party held on July 25 and that, earlier on the same evening, she had accompanied David and Nick to defendants' premises but had remained in the car. She further testified that David entered first; that Nick entered a short time thereafter, and that both carried packages from the premises which they placed in the car and which packages she later ascertained included rum, vodka and beer.

"At the hearing herein Officer Robert Barraud, of the Belmar Police Department, testified that he and another officer had confiscated twenty-four cans of beer, a bottle of Myers rum and an empty vodka bottle at the beach party on the evening of July 25.

"An ABC agent testified that on August 13, 1958, David --- and Nick --- accompanied him to defendants' premises and identified it as the place at which the aforesaid purchases had been made. He also testified that David identified Thomas Picardo as the person who had made the sale, and that Nick could not definitely identify Thomas Picardo as the person who had made the sale.

"On behalf of defendants, Thomas Picardo testified that he has been in the liquor business for more than thirteen years and for the past five years at the present premises; that no previous charges had been made against him; that he did not sell alcoholic beverages to David on either July 21 or July 25, and that he never saw David prior to the time he entered the licensed premises on August 13 with the ABC agent. Thomas Picardo admitted, however, that he was working alone at the licensed premises on July 21, 1958, between 9:30 and 10 p.m., and that on the evening of July 25, 1958, he and a bartender were on duty. The Mayor, Chief of Police and the Borough Clerk of Bradley Beach testified as to the good character of Thomas Picardo and as to the satisfactory manner in which the licensed premises are conducted.

"After considering all the evidence, I can see no reason for doubting the testimony given by the three minors. Weighing their testimony against Thomas Picardo's testimony, which in effect means that he has no recollection of making either sale, leads me to conclude that the Division has established defendants' guilty by a fair preponderance of the evidence. It is recommended, therefore, that defendants be found guilty as charged and that an order be entered suspending their license for fifteen days, which is the minimum penalty imposed for sale of alcoholic beverages to an 18 year old minor. Re Krygier, Bulletin 1234, Item 8."

Written exceptions to the Hearer's Report and written argument were filed with me by the attorneys for defendants. Rule 6 of State Regulation No. 16. The exceptions alleged that the evidence produced at the hearing is not accurately related in the Hearer's

Report and in no way established defendants' guilt by a fair preponderance of the evidence. I have reviewed the transcript of testimony taken at the hearing and find that the Hearer's Report sets forth in substance all the evidence presented. I can find no valid reason for doubting the testimony given by the three minors.

After carefully considering the entire record, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on the 12th day of January 1959,

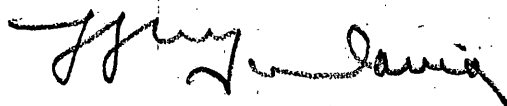
ORDERED that plenary retail consumption license C-4, issued by the Board of Commissioners of the Borough of Bradley Beach to Thomas Picardo & Anna Picardo, t/a Bradley Liquor Store, for premises 618 Main Street, Bradley Beach, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, January 19, 1959, and terminating at 2 a.m. Tuesday, February 3, 1959.

WILLIAM HOWE DAVIS
Director.

11. STATE LICENSES - NEW APPLICATION FILED

Michael Honchar
t/a Elliott Home Beverages
Rear of 326 Talmadge Avenue
Bound Brook, New Jersey

Application filed January 28, 1959 for place-to-place transfer of State Beverage Distributor's license SBD-154 from 326 Talmadge Avenue, Bound Brook, New Jersey



William Howe Davis
Director