

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1684

July 20, 1966

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1. COURT DECISIONS - STATE v. ZURAWSKI - COMPANION CASE TO
ZURAWSKI v. LINDEN, BULLETIN 1617, ITEM 1.

SUPREME COURT OF NEW JERSEY

STATE OF NEW JERSEY,)	
Plaintiff-Respondent,)	
v.)	47 N.J. 160
MERDIE ZURAWSKI,)	
Defendant-Appellant)	

Argued April 25, 1966 - Decided May 9, 1966.

On appeal from a judgment of the Superior Court,
Appellate Division, whose opinion is reported at 89 N.J. Super.
488 (reprinted in Bulletin 1658, Item 3).

Mr. Hyman Isaac argued the cause for the appellant
(Mr. Barry Epstein, on the brief; Messrs. Reibel, Isaac &
Tannenbaum, attorneys).

Mr. Joseph A. Hoffman argued the cause for the
respondent (Mr. Arthur J. Sills Attorney General, attorney.)

PER CURIAM. The judgment is affirmed for the reasons
expressed in the opinion of Judge Brown in the Appellate Division.

For affirmance - Chief Justice WEINTRAUB and Justices
JACOBS, FRANCIS, PROCTOR, HALL and SCHETTINO. - 6.

For reversal - none.

2. STATE REGULATIONS - REGULATION NO. 22, RULE 1 PROMULGATED.

TO ALL PLENARY WHOLESALE AND WINE WHOLESALE LICENSEES:

On August 19, 1964, R.S. 33:1-11 of the Alcoholic Beverage Law was amended, effective November 17, 1964, by Chapter 170 of the Laws of 1964, to require that plenary wholesale licensees and wine wholesale licensees deliver alcoholic beverages to retailers only from inventory in a warehouse located in New Jersey which is operated under a plenary wholesale license or a wine wholesale license, as the case may be.

Since the effective date of such legislation, the question has been presented to the Division of how long alcoholic beverages must physically remain in a warehouse to be considered "inventory", i.e., whether the mere unloading and immediate reloading of merchandise delivered by truck to an appropriate warehouse comply with the statutory requirement. No definition of such "inventory" is contained in the legislation.

In order to provide an objective administrative standard to guide licensees in compliance with, and the Division in enforcement of, the statutory amendment, I am adopting, pursuant to R.S. 33:1-39, new Regulation No. 22 to implement such legislation by defining the word "inventory", as used in R.S. 33:1-11, to include only alcoholic beverages which have been stored in an appropriate warehouse for at least a period of 24 continuous hours. The new Regulation is hereby promulgated as follows:

STATE REGULATION NO. 22

Delivery to Retailers from Warehouse Inventory
By Plenary and Wine Wholesale Licensees

- Rule 1. No plenary wholesale licensee or wine wholesale licensee shall deliver alcoholic beverages to a licensed retailer other than from inventory in a warehouse located in New Jersey and operated under a plenary wholesale license, or a wine wholesale license, as the case may be. Such "inventory" shall be deemed to include only alcoholic beverages which shall have been stored in such a warehouse for at least a period of 24 continuous hours.

JOSEPH P. LORDI
DIRECTOR

Promulgated Wednesday, July 6, 1966.

Effective Wednesday, July 6, 1966.

Filed with the Secretary of State (N.J.) Wednesday, July 6, 1966.

DISCIPLINARY PROCEEDINGS - INDECENT ENTERTAINMENT - SALE TO A MINOR
- HINDERING INVESTIGATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED
FOR 105 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

Tropical Gardens, Inc.
Rt. 18 & Parker Avenue
East Brunswick, N. J.

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption
License C-2, issued by the Township
Committee of the Township of East
Brunswick.

Toolan, Haney & Romond, Esqs., by John E. Toolan, Esq., Attorneys
for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on December 29, 1965, (1) it permitted lewdness and immoral activity (indecent entertainment) on the licensed premises, in violation of Rule 5 of State Regulation No. 20, and (2) sold drinks of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20, and (3) on December 30, 1965, it attempted to hinder investigation by offering a bribe to the investigating agents, in violation of R.S. 33:1-35.

Reports of investigation disclose that, with respect to the first charge, a scantily-clad female entertainer gave a performance including bumps and grinds, suggestive bodily movements and posturings and gesturings; and that, with respect to the third charge, Adam Roskosky, president of the licensee corporation, offered to give the investigating agents "some expense money" if in their reports of investigation they would minimize the violations observed.

Licensee has a previous record of suspension of license by the municipal issuing authority for (1) seven days effective June 7, 1954, for sale during prohibited hours, (2) eight days effective August 27, 1957, for sale to minors, (3) nineteen days effective March 8, 1963, for permitting a person of ill repute on the licensed premises, employing a criminally disqualified person, hindering investigation and sale to minors, and (4) fifteen days effective March 27, 1963, for sale to minors. In addition, when the license was held by Adam and Helen Roskosky (stockholders and officers of the licensee corporation), it was suspended by the Director for thirty-five days effective March 6, 1944, for sale to an intoxicated person. Re Roskosky, Bulletin 607, Item 11.

The license will be suspended on the first charge for thirty days (cf. Re Long, Bulletin 1666, Item 2), on the second charge for ten days (Re 136 Stuyvesant Avenue, Inc., Bulletin 1673, Item 6) and on the third charge for twenty days (Re Straus, Bulletin 1452, Item 3), to which will be added twenty-five days by reason of the record of suspensions for sale to minors twice within the past five years and once more than five but less than ten years ago (Re Woodland Grove, Inc., Bulletin 1625, Item 4; Re J.C.R. Corporation, Bulletin 1650, Item 6) and twenty days by reason of the record of suspension for hindering investigation (cf. Re Charmac, Inc., Bulletin 1637, Item 1), or a total of one hundred five days, with remission of five days for the plea entered, leaving a net suspension of one hundred days.

Accordingly, it is, on this 6th day of June 1966,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of East Brunswick to Tropical Gardens, Inc., for premises Rt. 18 & Parker Avenue, East Brunswick, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1966, commencing at 2 a.m. Monday, June 13, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Wednesday, September 21, 1966.

JOSEPH P. LORDI
DIRECTOR

4. APPELLATE DECISIONS - DE BATTISTA v. JERSEY CITY and LUDWINSKI.

MARION DE BATTISTA,)	
Appellant,)	
v.)	ON APPEAL
)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC)	AND ORDER
BEVERAGE CONTROL OF THE CITY OF)	
JERSEY CITY, and VICTOR LUDWINSKI,)	
t/a SPARKIE V,)	
Respondents.)	

Abraham Miller, Esq., by Gerald D. Miller, Esq., Attorney for Appellant.

T. James Tumulty, Esq., by Joseph S. E. Verga, Esq., Attorney for Respondent Municipal Board.

Victor Ludwinski, Respondent, Pro se.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant appeals from the action of the respondent Municipal Board (hereinafter Board) which, by unanimous vote, granted a place-to-place transfer of respondent-licensee's plenary retail consumption license from premises 228 to premises 194 Monticello Avenue, Jersey City.

Appellant's amended petition of appeal contends that the action of the Board was erroneous in that "the above mentioned attempt to transfer the License No. C-285 to 194 Monticello Avenue is not bona fide, but rather is an attempt to sell the License."

The answer filed by the respondent Board asserts that "after due hearing by the Board the application for transfer was granted."

Appellant's attorney called respondent-licensee Ludwinski as a witness and his testimony disclosed that he operated his liquor establishment for three years at 228 Monticello Avenue. Ludwinski further testified that he was served with a notice to

vacate by an agent of the Fairmount Lumber Company, the owner of the premises which he occupied, because the company desired the additional space for use in its business. Pursuant to the said notice he vacated the premises 228 Monticello Avenue as of October 26, 1965.

Appellant testified that she attended the hearing before the Board when the application for the transfer in question was considered, and she overheard a conversation between respondent Ludwinski and two other men concerning the sale of the license. Furthermore, appellant testified that there are two taverns and one package store in the immediate area.

Walter J. McDermott, secretary of the Board, testified that the distance between 228 and 194 Monticello Avenue is 480 feet. He also testified that, prior to the approval by the Board of the transfer of the license now being considered, there were four taverns and one package store within two blocks of the proposed premises.

I shall consider the two objections advanced by appellant herein.

As to the first, there has been no credible evidence presented that respondent-licensee is attempting to sell the license as contended by appellant. The only testimony pertaining thereto is that stated by appellant that she overheard a conversation involving the respondent-licensee, as a result of which she felt that he would sell the license to anyone. However, transfer of a liquor license is not dependent on any agreement between parties but, as provided by statute (R.S. 33:1-26), is within the sound discretion of the issuing authority. Iavicoli v. DiMarco, 142 N.J. Eq. 699 (E. & A. 1948); Popular Refreshments, Inc. v. Fuller's Milk Bar, etc., 85 N.J. Super. 528, p. 540 (App. Div. 1964); Packard-Bamberger etc. v. Bor. Council of Oakland and Div. of Alcoholic Beverage Control, 87 N.J. Super. 92, p. 96 (App. Div. 1965).

With reference to the other objection, it was stated in DeOicco and Rula v. Manville, Bulletin 467, Item 1, as follows:

"This Department has repeatedly held that, in accordance with the principle of 'home rule,' determination as to the geographic distribution of retail liquor licenses in a municipality and as to the number of licenses to be permitted in any area lies within the sound and bona fide discretion of the local issuing authority. See Rosenvinge v. Metuchen, Bulletin 249, Item 6, and Raynor v. West Deptford, Bulletin 462, Item 5, and cases there cited."

It has been consistently ruled that it is not the function of the Director on appeal to substitute his opinion for that of the members of the Board. De Stefano et als. v. Jersey City et al., Bulletin 1289, Item 4, and cases cited therein. Cf. Fanwood v. Rocco and Division of Alcoholic Beverage Control, 59 N.J. Super. 306 (App. Div. 1960), aff'd 33 N.J. 404 (Sup. Ct. 1960). The burden of proof to establish that the action of the Board was erroneous rests with appellant. Rule 6 of State Regulation No. 15.

An examination of the evidence presented herein does not indicate any improper motivation on the part of any member

of the Board in voting to grant the transfer, and the approval thereof appears to be a reasonable exercise of discretion. In my opinion appellant has failed to sustain the burden of proof which is necessary in order to reverse the action of the Board.

Under the circumstances, and after careful scrutiny of the entire record, it is recommended that the action of the Board be affirmed and that the appeal herein be dismissed.

Conclusions and Order

No exceptions were taken to the Hearer's report pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 2d day of June, 1966,

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

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

STEPHEN HORAK & SOPHIE HORAK
t/a STEVE'S TAVERN
309 Johnston Avenue
Jersey City, N. J.

)
)
) CONCLUSIONS
) AND ORDER
)

Holder of Plenary Retail Consumption
License C-503, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Jersey City.

Licensees, Pro se.

Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on Sunday, May 8, 1966, they sold a pint bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee Stephen Horak has a previous record of suspension of license by the Director for fifteen days effective February 2, 1953, for sale during prohibited hours, and for twenty-five days effective September 14, 1956, for sale in violation of State Regulation No. 38. Re Horak, Bulletin 957, Item 4; Bulletin 1134, Item 4. The licensee-partnership has a previous record of suspension of license by the Director for twenty days effective August 24, 1960, for sale in violation of State Regulation No. 38 and sale of contraceptives. Re Horak, Bulletin 1355, Item 3.

The prior record of suspension of license for similar violation in 1953 disregarded because occurring more than ten years ago, the license will be suspended for fifteen days (Re Orbach, Bulletin 1670, Item 5), to which will be added ten days by reason of the record of two suspensions of license for similar violation occurring in 1956 and 1960, more than five but less than ten years ago (Re Carabelli, Bulletin 1428, Item 7), or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 2d day of June, 1966,

ORDERED that Plenary Retail Consumption License C-503, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Stephen Horak and Sophie Horak, t/a Steve's Tavern, for premises 309 Johnston Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing * at 2:00 a.m. Thursday, June 9, 1966, and terminating at 2:00 a.m. Wednesday, June 29, 1966.

JOSEPH P. LORDI
DIRECTOR

* By order dated June 7, 1966, the suspension was deferred to commence at 2:00 a.m. Wednesday, June 15, 1966 and to terminate at 2:00 a.m. Tuesday, July 5, 1966.

6. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary
Proceedings against

HARRY J. GILDAR
t/a GILDAR'S PARADISE CLUB
100 Englishtown Road
Monroe Township
PO Jamesburg, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-4, issued by the Township
Committee of the Township of Monroe,
County of Middlesex.

Jack I. Doppelt, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On December 9, 1965, 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., Kenneth A.---, age 17, in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division, Kenneth --- testified that he was born on March 13, 1948, and was 17 years of age. On Thursday, December 9, 1965, Kenneth's uncle, Gerald Mead, drove him to the licensed premises from Kenneth's home and parked in the parking lot alongside the building, arriving there shortly after 7:00 p.m. Mr. Mead gave Kenneth \$1.25 which Mead had received from Kenneth's father prior to leaving for the licensed premises; and Kenneth entered a door at the right side of the building leading into the package goods section of the licensed premises. To the left, there was a doorway leading to the bar and dining room section. Upon opening the door, a chime sounded and Kenneth approached the cooler on the left side of the package section, took out a six-pack of Schaefer beer and placed it on the counter to the right of the door. Up to this time Kenneth was alone in the package goods section. Thereafter, John Spezio (later identified as a bartender employed by the licensee) entered the package goods section from the barroom, placed the six-pack in a brown paper bag, rang up the sale and gave Kenneth a dime change from the \$1.25 given to the bartender by Kenneth. Thereupon, Kenneth took the package to the car, gave his uncle the dime change, his uncle looked at the package and both returned home. Kenneth, his father and uncle then drove to the state police barracks where the uncle gave the change to Kenneth's father. The witness stated that on neither this occasion nor on any prior occasion did anyone ever question him as to his age, ask him to produce any proof thereof or make any written representation concerning his age.

On cross examination, the witness testified that he had been in the package store more than ten times since August 1965, that he knew where the beer and paper bags were kept, and that a bartender could not see from the bar or restaurant into the package goods area. Additionally, he testified that he was in the package store "Maybe a minute, minute and a half most" before he saw the bartender. He denied that he had any of his own money upon entering the licensed premises. He admitted that beer could be taken from the package goods area without detection.

On redirect examination, the witness testified that the sound of the chime upon opening the door was loud enough for the bartender to hear it.

Gerald Mead, the uncle of the minor, testified that after receiving the sum of \$1.25 from the minor's father, he drove the minor to the licensed premises on the day and time in question and gave him a dollar bill and a 25-cent piece. The minor entered the licensed premises alone and, upon returning to the car, which the witness had parked in the parking lot alongside the building that the minor entered, the minor returned with a brown paper bag containing a six-pack of Schaefer beer and a dime change. They returned to the home of the minor's father and from there they went to the state police barracks where the witness handed the minor's father the dime given to the witness by the minor.

On cross examination, Mead stated that he handed the minor the sum of \$1.25 in order to purchase the beer, although he knew it was an unlawful transaction. He admitted that he did not see the minor from the time he left the car to the time he returned to the car.

The father of the minor testified that there was a discussion at his home concerning his son's ability to purchase beer. Whereupon, he handed Gerald Mead a dollar bill and a quarter. Mead and Kenneth departed from the house and returned about twenty minutes later with the six-pack of beer. Immediately thereafter, they took the beer to the State Police.

Agent G testified that in the course of investigating the charge herein, he went to the licensed premises on Sunday afternoon, December 12, 1965, with Agent D, the minor and the minor's father. Prior to going to the licensed premises, the agent communicated with the licensee, Harry Gildar, by telephone and requested that he have all of his employees present at the licensed premises. Upon arriving, the agents entered through the door at the left of the premises leading into the barroom, identified themselves to the licensee and requested that he gather all his employees in one room. Gildar led them into the kitchen towards the rear of the premises. Agent G then departed from the premises, signalled to the minor and reentered the premises through the door leading into the package goods section. Upon opening that door, he heard "some kind of bell or buzzer that was hooked up that was audible." The agent stated that when he was in the kitchen, he heard the sound when a patron entered that door. The agent asked the minor in the presence of the licensee whether or not he could identify the person who sold him the six cans of beer on December 9. Kenneth responded, "No, he isn't here." As soon as he said that, a male entered the kitchen and Kenneth immediately pointed to him and said, "That's him. That's John." The male was identified as John Spezio. The agent identified himself to Spezio and ascertained from him that he was employed at the licensed premises as a bartender and he was so engaged on the day and time in question. When queried as to whether or not he remembered selling the minor the beer, he responded, "I don't remember."

On cross examination, the witness admitted that it would be possible for a person to enter and leave the package goods store without being detected by anyone in some other part of the licensed premises. In response to the question, "Assuming you were in the bar operating as bartender then would you have some difficulty in hearing the sound [of the door buzzer]?", the witness responded, "I don't know. I really honestly couldn't say." As to whether or not the sound could be heard in the dining room, the witness responded, "I would say average type business, average type of behavior on the licensed premises, I would assume the sound could be heard."

The attorneys for the respective parties stipulated that the testimony of Agent D, who accompanied Agent G on the investigation of the within charge, would be corroborative of Agent G's testimony.

Harry J. Gildar, the licensee, testified that it was possible for a customer to enter the package store without being observed by any employee working in either the bar, kitchen, or dining area. He then testified as follows:

"Q With respect to the door leading into the package store, does it have any kind of device which emits a sound when the door is opened?

A There is a chime, as there is on the other three doors, and the chime is in the kitchen.

Q The chime is activated by the opening of the door into the package store; is that correct?

A Yes.

Q Will you describe the sound that is emitted when the door to the package store is opened?

A Just one soft chime.

Q Is that sound heard in the kitchen?

A Yes.

Q Can you hear that sound behind the bar?

A You can.

Q Can you hear that sound in the dining room?

A I doubt it."

Additionally, the licensee testified that he was not on the premises on December 9, 1965, at about 7:30 p.m., and that John Spezio, who had been employed by him for six years, was on duty at the time. He stated that an employee does not necessarily rush into the package store when the chime sounds because the person entering may want to use the telephone or pick up an order for food which had been ordered by telephone. There had been thefts from the package store.

On cross examination, the licensee admitted that when the door of the package store was opened, the chime could be heard in the barroom and that on December 9, 1965, a six-pack of Schaefer beer cost \$1.15. He was not on the licensed premises on the night of the alleged occurrence.

It was stipulated that no criminal complaint was made against Kenneth for taking anything out of the premises unlawfully.

John Spezio testified that he had been employed as a bartender by the licensee for six years and was on duty at the time of the alleged occurrence. The only other employee working at the same time was the cook whose work area was the kitchen. It was Spezio's duty to take care of package store sales and serve the patrons in both the dining room and at the bar without assistance from any other employee. The chime attached to the door leading into the package goods section rings in the kitchen. He described the sound as a "soft chime" which could be heard behind the bar but not in the dining area. He stated it was possible for someone to enter and leave the package store unobserved by him. Inasmuch as many persons come in to use the telephone or wait for food orders, he does not immediately respond to the chime. He did not sell anything to the minor, nor would he have sold him anything because (judging Kenneth's appearance in the hearing room) he appeared to him to be under 17 years of age. Finally, the witness testified that he did not recall any instance of the sounding of the chime which resulted in not finding a customer there.

On cross examination, Spezio testified that he did not recall specifically everything he sold on the evening in question. He admitted that he served sandwiches and soft drinks to Kenneth in the package store two or three times during the months of October and November 1965, but denied that he was in the premises on December 9, 1965. He denied telling the ABC agents on December 12 that he had never seen the minor before.

In rebuttal, Agent G testified that when Kenneth identified Spezio as the person who served him on December 9, Spezio denied seeing the minor on the premises at any time. On cross examination, the agent admitted that Spezio's denial of ever seeing the minor on the premises was not made part of his statement.

It is a firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a fair preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956).

Since this proceeding presents a strictly factual situation, the credibility of the witnesses must be weighed.

I have had an opportunity to observe the demeanor of the witnesses as they testified and I have made a careful analysis and evaluation of their testimony. Both the minor and his uncle unequivocally identified the licensed premises. I am impressed by the fact that the minor made positive identification of the bartender who served him. As a matter of fact, the minor refused to identify anyone until the particular bartender entered the room where the identification was being made and he then immediately identified him and referred to him accurately by first name. Additionally, I am mindful of the fact that at the time of the identification the bartender, when queried as to whether or not he made the sale to the minor, responded, "I don't remember."

An additional basic principle is worthy of emphasis. A licensee is responsible for the misconduct of his employees and is fully accountable for their activities on the licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20.

My evaluation and consideration of the testimony lead me to the conclusion that the Division has established the truth of the charge herein by a fair preponderance of the evidence, and I recommend that the licensee be found guilty of said charge.

Licensee has a previous record of suspension of license by the municipal issuing authority for four days effective January 22, 1945, for sale after hours.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, it is recommended that the license be suspended for twenty days. Re Dugout, Inc., Bulletin 1669, Item 2.

Conclusions and Order

Written exceptions to the Hearer's report and argument with reference thereto, were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of the testimony, the Hearer's report and the exceptions and arguments filed with reference thereto (which exceptions and arguments I find to be without merit), I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 2d day of June 1966,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Monroe to Harry J. Gildar, t/a Gildar's Paradise Club, for premises 100 Englishtown Road, Monroe Township, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. Thursday, June 9, 1966, and terminating at 3 a.m. Wednesday, June 29, 1966.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION
NO. 38 - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary
Proceedings against

JOSEPH VECCHIONE
t/a NEPTUNE BOTTLE SHOP TAVERN
27 Atkins Avenue
Neptune, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-7, issued by the Township
Committee of the Township of Neptune

Joseph F. Mattice, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., -Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Saturday, October 30, 1965, at about 10:30 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., six (6) twelve ounce cans of Krueger Beer, at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of such alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

The testimony of ABC Agent C discloses that at 9:05 p.m. October 30, 1965, he and Agent D arrived in the vicinity of the licensed premises, described by him as a one-story brick building in which there is a package store (hereinafter store) on the corner and adjacent and connected thereto is a tavern; that he parked the car diagonally across the street about fifty feet from the licensed premises and both he and Agent D left the car and entered the tavern, remaining there for a couple of minutes before returning to the bar; that after entering the car, they kept the store under observation; that at 10:00 p.m. the exterior lights of the store were extinguished but the interior lights were permitted to remain lighted; that at 10:10, 10:15 and 10:25 p.m., respectively, males were observed tapping on the window of the store and, after attracting the attention of Joseph Vecchione (subsequently learned to be the licensee) entering the tavern and, on each occasion, the licensee would leave the store but return and place six cans of beer in a brown paper bag and go to the rear of the store; that a short time thereafter, the respective males would come out of the tavern carrying a package.

Agent C testified that at 10:30 p.m. he observed a male at the front entrance of the store gain the attention of the licensee by raising his hand and then proceed inside the tavern. The licensee was seen going to the rear of the store and thereafter returning to the front of the store, place two six-packs of Krueger beer into a large paper bag and again go to the rear of the store. Shortly thereafter a man came out of the tavern carrying a large paper bag.

As he walked around the corner, Agent D stopped him and after the agents identified themselves, learned the man's name to be Wakey Evans (hereinafter Evans). In response to questioning by the agents, Evans said that he had just purchased the beer in the licensee's establishment. The agents and Evans went back to the store, tapped on the window and, when the licensee came to the front and was shown the agents' credentials, both agents and Evans were permitted to enter. According to the agent, the licensee admitted that he sold the beer to Evans and also to three other persons after 10:00 p.m.

The testimony of Agent D, who accompanied Agent C on October 30, 1965, substantially corroborated the testimony given by Agent C as to what occurred at the licensee's premises at the time in question.

Although both Agents C and D were cross-examined at length by the attorney for the licensee, the agents' testimony remained substantially unchanged.

Wakey D. Evans testified that when he arrived at the licensee's premises, it was "after 10, so I went in the bar" and purchased "two six-packs of beer" from the licensee. Evans said he paid \$3 for the two six-packs of beer and identified his signature on the package containing the beer (Exhibit S-1). On cross examination, Evans testified that he did not know the exact time when friends picked him up although "I know it was between 10 and 10:35, I do know that much." He further stated that when he looked in the store, he saw "Mr. Dickerson" behind the counter and Dickerson made a motion to the effect that the store was closed; so he then entered the tavern.

Licensee testified that on October 30, 1965, he closed the store at "10 o'clock" according to the clock which was ten minutes fast at the time; that he extinguished the exterior lights of the store and all inside lights with the exception of "two night lights"; that he then locked the front door and the door leading into the bar and walked through the office to the tavern; that Dickerson was in the store when "they knocked at the door and he let them in. Then they talked to him. I don't know what they said. He came in the bar and called me and told me the ABC was there", that when Evans came in the tavern, it was "five minutes of 10" and when Evans ordered beer, Dickerson got the beer, handed it to him and he, in turn, gave it to Evans who paid for it and "walked right on out." Licensee further testified that Evans returned with the ABC agents "I'd say it was about five minutes after 10."

On cross examination, when the licensee was asked whether the agents entered the package store, he answered, "I don't know. Yes, they had to." And, when asked if the lights were bright in the store, he said, "No. I turned it on when they came in. I said when I came in, I was sent for, and Mr. Dickerson was in the store, I turned them on." Licensee testified that he was tending bar all evening except when he went into the store to turn out the window lights which illuminated the exterior. He further testified that he did not answer Agent C when the agent said, "This man bought twelve cans of beer" and thereafter stated "Wouldn't I be foolish to admit those charges?" The licensee recalled saying to the agents, "It isn't 10 o'clock, according to my clock."

Samuel Dickerson testified that he was in the store "from 6 o'clock up until 10:30" and thereafter went to work in the barroom; that at "10 o'clock" the licensee came into the store, locked the front door, extinguished the lights on the inside and in the windows and put on the night light located at the rear of the store; that at "about one minute after 10", while he (Dickerson) was placing bottles on the shelves, he saw Evans at the door and motioned to him "because it was after 10 and the liquor store was closed"; that about a minute thereafter, the licensee said, "Sam, give me two six-packs of Krueger out of there" and he then placed two six-packs in a paper bag and gave them to him. Dickerson further testified that two men came to the store door, identified themselves as ABC agents and, after he permitted them to enter, asked him to "go get your boss." Dickerson said he heard no conversation between the agents and the licensee as he was told by the licensee to "take care of the bar." Dickerson further said that, knowing the clock was ten minutes fast, the sale "was made at nine minutes of 10."

On cross examination, Dickerson testified that he was in the store at 10:30 p.m. when the agents and Evans came into the premises.

Louis R. DiLieto, son-in-law of the licensee, testified that at 10:20 p.m. on October 30, 1965, he received a telephone call from the licensee who told him that ABC agents were there and had left. On cross examination, DiLieto could not recall the date but after looking at the clock, made a mental note that the call was received at 10:20 p.m.

The agents were recalled to the stand and denied that the licensee said to them that the sale of beer to Evans was made before 10 o'clock or that they directed Dickerson to get the boss. Moreover, both agents were in agreement that they never saw Dickerson in the store, but that he (Dickerson) was in the barroom when questioned by them.

This proceeding presents a purely factual question and, pursuant thereto, I have set forth in detail a large amount of the pertinent material and testimony in order to arrive at a just and proper conclusion.

Evidence to be believed must be credible in itself and thus I have carefully observed the demeanor of the witnesses as they testified so that proper evaluation of their respective testimony could be made.

There is no doubt in my mind that the testimony of the agents was a true and accurate account of the events which occurred at the time in question. Furthermore, testimony of Evans shows that although he wavered somewhat as to the specific time of the purchase of the beer, he was positive that he purchased the beer from the licensee after 10:00 p.m. on the date in question.

On the other hand, testimony of the licensee and the other witnesses produced on his behalf has not impressed me with its authenticity and thus does not constitute a defense to the charge preferred herein. I am further satisfied that the licensee made the sale of two six-packs of beer for off-premises consumption to Evans after the legal closing hour as charged.

It is a basic principle of law that disciplinary proceedings against liquor licensees are civil in nature and not criminal,

and require proof by a preponderance of the believable evidence. In re Schneider, 12 N. J. Super. 449 (App.Div. 1951); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

A fair and impartial evaluation of the evidence clearly preponderates in favor of a finding of guilt and I so recommend.

The licensee has no prior adjudicated record of suspension of license. Under the circumstances, it is further recommended that the license be suspended for the minimum period of fifteen days. Re Orbach, Bulletin 1670, Item 5.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibit, the memorandum filed by the attorney for the licensee and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 2d day of June, 1966,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Neptune to Joseph Vecchione, t/a Neptune Bottle Shop Tavern, for premises 27 Atkins Avenue, Neptune, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Thursday, June 9, 1966, and terminating at 3:00 a.m. Friday, June 24, 1966.

Joseph P. Lordi,
Director

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against)

ALBA ROSATI
 t/a ROSATI'S CAFE
 521-523 Perry Street
 Trenton, New Jersey)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption
 License C-255, issued by the City
 Council of the City of Trenton.)

 Licensee, Pro se.

Morton B. Zemel, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:


Licensee pleads non vult to a charge alleging that on March 21, 1966, she possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Roncskevitz, Bulletin 1674, Item 8.

Accordingly, it is, on this 20th day of June 1966,

ORDERED that Plenary Retail Consumption License C-255, issued by the City Council of the City of Trenton to Alba Rosati, t/a Rosati's Cafe, for premises 521-523 Perry Street, Trenton, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1966, commencing at 2 a.m. Monday, June 27, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Saturday, July 2, 1966.


 Joseph P. Lordi
 Director

New Jersey State Library