

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

BULLETIN 1257

JANUARY 14, 1959.

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - SORANNO v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - ORDER OF DIRECTOR AFFIRMED.
2. DISCIPLINARY PROCEEDINGS (Newark) - LEWDNESS AND IMMORAL ACTIVITIES (OFFERING TO PROCURE FEMALE FOR ILLICIT SEXUAL INTERCOURSE AND PERMITTING THE MAKING OF ARRANGEMENTS THEREFOR) - OBSCENE LANGUAGE AND CONDUCT - SALE TO INTOXICATED PERSON - NUISANCE - PRIOR RECORD OF PRESIDENT OF DEFENDANT CORPORATION - LICENSE SUSPENDED FOR 210 DAYS.
3. DISCIPLINARY PROCEEDINGS (Keansburg) - LEWDNESS AND IMMORAL ACTIVITIES (RENTING ROOMS FOR ILLICIT SEXUAL INTERCOURSE) - FAILING TO HAVE TRUE COPY OF LICENSE APPLICATION ON PREMISES - LICENSE SUSPENDED FOR 180 DAYS.
4. DISCIPLINARY PROCEEDINGS (Greenwich Township, Warren County) - CHARGE ALLEGING VIOLATION OF STATE REGULATION NO. 38 DISMISSED.
5. STATE REGULATIONS - REGULATION NO. 21 - RULE 1(a) AMENDED TO PERMIT REDISTRIBUTION OF ADVERTISING BOTTLE POURERS BY RETAILERS TO CONSUMERS.
6. DISCIPLINARY PROCEEDINGS (Shrewsbury) - CHARGE ALLEGING SALE TO MINOR DISMISSED.
7. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1958 TO DECEMBER 31, 1958 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R. S. 33:1-19.
8. DISCIPLINARY PROCEEDINGS (Hoboken) - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.
9. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 1257

JANUARY 14, 1959.

1. COURT DECISIONS - SORANNO v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-617-57

JOSEPH SORANNO, trading as)
RACEWAY TAVERN,)
)
Appellant,)
-vs-)
)
DIVISION OF ALCOHOLIC BEVERAGE)
CONTROL,)
)
Respondent.)
-----)

Argued December 22, 1958 -- Decided December 24, 1958.

Before Judges Goldmann, Conford and Haneman.

Mr. Martin Simon argued the cause for appellant.

Mr. Samuel B. Helfand, Deputy Attorney-General, argued the cause for respondent (Mr. David D. Furman, Attorney-General of New Jersey, attorney).

The opinion of the court was delivered by

GOLDMANN, S.J.A.D.

This is an appeal pursuant to R.R. 4:88-8 from the final action of the Director of the Division of Alcoholic Beverage Control suspending appellant's plenary retail consumption license for a period of 25 days on a charge that he sold alcoholic beverages to a person under the age of 21 years. Appellant pleaded not guilty. Following the taking of proofs the hearer filed a report in which he reviewed the testimony and recommended that the Director impose a 25-day suspension in view of a similar violation two years prior which resulted in appellant's license being suspended for ten days. Appellant then filed written exceptions to the hearer's report as well as a brief. After considering the entire record, including the report, exceptions and argument, the Director concurred in the hearer's findings and conclusions and adopted his recommendation.

Appellant argues that the Director's determination is not sustained by a fair preponderance of the believable evidence. He complains that the Director's conclusions and order disclosed no findings with respect to the credibility of the witnesses, nor any discussion of the weight of the evidence or the inferences to be deduced therefrom, so that neither the appellant nor this court is enlightened as to just how he resolved the conflicting testimony. The Director's determination is characterized as arbitrary, unreasonable and capricious.

The scope of review of administrative fact findings is entirely settled by what we said in Hornauer v. Division of

Alcoholic Beverage Control, 40 N. J. Super. 501 (App. Div. 1956). We there pointed out that the accepted gauge of administrative factual finality is whether the factual findings are supported by substantial evidence. We noted that in every case in which this court had been requested to resolve conflicting evidence, independently of the factual conclusion of the respondent agency, we had declined to do so; otherwise the agency "would be reduced to the status of a mere conduit for the transmission of evidence to the courts."

"The choice of accepting or rejecting the testimony of witnesses rests, therefore, with the administrative agency. Where such choice is reasonably made, it is conclusive on appeal. The scope of appellate review does not possess such breadth as would permit a disturbance of the administrative finding unless the court is convinced that the evidence permits of no reasonable latitude of choice. The court canvasses the record, not to balance the persuasiveness of the evidence on one side as against the other, but in order to determine whether a reasonable mind might accept the evidence as adequate to support the conclusion and, if so, to sustain it." (40 N.J. Super., at page 506)

Appellant's position, fundamentally, is that the Director, without reasonable basis, chose to accept the agency's evidence rather than that produced by the licensee. Our reading of the record leads to the opposite conclusion. We find that the Director's choice of the conflicting evidence was reasonably made and amply supports his determination. As in Hornauer, this conflict in testimony posed fact issues "on which fair-minded judges * * * could reasonably find the persuasive balance tilting in either direction. In such posture, the determination made * * * by the Director, exclusively entrusted as trier of the facts with the duty of determining in which direction the evidence preponderates, is conclusive on review. We cannot * * * say that 'a reasonable man, acting reasonably, could not have reached the decision from the evidence and its inferences.'" (at page 207) In short, we find the determination here under attack supported by substantial evidence.

A word about appellant's contention that the Director must discuss the weight of the evidence or the inferences to be deduced therefrom. There is no such requirement. An administrative agency "is under no obligation to recite every item of evidence or of fact which has some bearing on the questions before it; it need not specify the weight given to any item of evidence or fact or disclose mental operations by which its decisions are reached." 42 Am. Jur., Public Administrative Law, § 151, p. 501 (1942). Cf. Long Dock Co. v. State Board of Assessors, 86 N.J.L. 592, 598 (E. & A. 1914); Household Finance Corp. v. Gaffney, 20 N. J. Super. 394, 408 (App. Div. 1952), affirmed per curiam, 11 N. J. 576 (1953); D., L. & W. R. Co. v. Hoboken, 10 N. J. 418, 431 (1952).

Affirmed.

- - - - -

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (OFFERING TO PROCURE FEMALE FOR ILLICIT SEXUAL INTERCOURSE AND PERMITTING THE MAKING OF ARRANGEMENTS THEREFOR) - OBSCENE LANGUAGE AND CONDUCT - SALE TO INTOXICATED PERSON - NUISANCE - PRIOR RECORD OF PRESIDENT OF DEFENDANT CORPORATION - LICENSE SUSPENDED FOR 210 DAYS.

In the Matter of Disciplinary)
Proceedings against)

NEW SILVER TOP INC.)
119 Washington Street)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-119, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On August 8 and 9, 1958 you allowed, permitted and suffered in and upon your licensed premises lewdness and immoral activity in that you offered to procure and procured for a male patron a female for the purpose of prostitution and illicit sexual intercourse; you allowed, permitted and suffered the making of arrangements for such prostitution and illicit sexual intercourse; and you made such arrangements; in violation of Rule 5 of State Regulation No. 20.

"2. On August 6, 7, 8 and 9, 1958 you allowed, permitted and suffered in and upon your licensed premises foul, filthy and obscene language and conduct; in violation of Rule 5 of State Regulation No. 20.

"3. On August 6 and 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 actually or apparently intoxicated 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.

"4. On August 6, 7, 8 and 9, 1958 you allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance in that you allowed, permitted and suffered unescorted females to frequent your licensed premises to solicit male patrons to purchase drinks of alcoholic beverages for consumption by them; you allowed, permitted and suffered on your licensed premises lewdness and immoral activity as hereinbefore alleged in Charge 1; and you otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

At approximately 10:10 p.m. on Wednesday, August 6, 1958, two ABC agents (hereinafter referred to as agents J and S) entered defendant's licensed premises and took seats at the extreme far end of the bar attended by a bartender (Walter Connor) who will be referred to hereafter as Walter. During a conversation between Walter and the agents, a female named Betty came over to the agents and invited them to play on the shuffle alley and thereafter she returned to the section of the bar where she had been originally seated. However, within a short period of time Betty came over to the agents at the bar and maneuvered herself on the lap of Agent J and began to move her body in an indecent manner, making filthy remarks while so doing. The bartender was standing immediately in front of the agents and laughed at the suggestive display. While the agents and Betty were drinking, a female came over to Agent S and, placing her hand on his shoulder, handed the agent several small telescopes containing lewd pictures. The female stated that the pictures in the telescopes were worth a drink. Walter then poured a shot of whiskey for her and took thirty-five cents from money on the bar belonging to Agent S in payment therefor.

At one time, as Betty proceeded to answer the telephone, Agent S asked Walter what Betty charged to engage in illicit relations and he answered "seven and three" and at the same time emphasized the amount with his fingers. Agent S then inquired if there were other females present who would engage in sexual relations and Walter pointed to a blond-haired woman seated to the right of the agents. At that time an intoxicated male patron who appeared dirty, unshaven, with his hair disheveled and who had difficulty standing, was served a drink of beer by Walter. Betty became very loud and took off her belt, lifted her blouse above her head and exposed part of her breasts which evoked laughter from all those present. The agents asked what night would be best to meet females for immoral purposes, and Walter suggested the following Friday. They left the premises at 1:00 a.m. on the morning of August 7, 1958.

On Friday, August 8, 1958, at 10:15 p.m., the two agents who had visited defendant's licensed premises on the prior occasion again entered the defendant's premises and observed that Walter was tending bar. After a short period of time Betty came over to them and again sat on Agent J's lap. Walter walked over to the section where the agents and Betty were seated and, despite the fact that the agent had not ordered a drink for her, he poured a shot of whiskey for her and took payment therefor from the money belonging to the agents. He did likewise for several more drinks of whiskey served to Betty. The latter stated to Agent J that he better not get excited as she had no intention of leaving the premises with him. Agent J called this to the attention of Walter and, at his suggestion, they met in the men's room. During the conversation Walter advised Agent J not to pay for any more of Betty's drinks and stated that he would "fix it up" with some other female. As they left the men's room Walter directed Agent J's attention to a female and said "here she is now, sit tight, and I'll talk to her for you." Agent J rejoined Agent S and, a few minutes thereafter, Walter came over and remarked to Agent J "it's okay she's sitting at the table over there, go over and talk to her." Agent J walked to the table where the female called Kay was seated, introduced himself and arrangements were made by them to engage in sexual intercourse. He handed her one five-dollar bill and five one-dollar bills, the serial numbers of which had previously been recorded. As she finished her drink, Agent J

walked over to the bar, ordered a drink from Walter, told him of the price charged by Kay to engage in sexual intercourse, and informed him that they were leaving the premises for that purpose. After leaving the premises en route to a hotel, she and Agent J were stopped by other ABC agents. A few minutes later a police car drove up and two municipal police officers alighted therefrom. Kay, when requested by the officers, produced the money obtained from Agent J and it was found that the serial numbers on the bills corresponded with those on the list previously made.

It has come to my attention that on October 3, 1958, all of the capital stock of defendant-corporation was purchased by other persons and new directors and officers have been elected. However, this fact cannot be considered in mitigation of penalty for the serious violations committed by the defendant. The stock was purchased after these proceedings were instituted and the purchasers of the stock assumed the risk of the final determination to be made in the matter. Rule 3 of State Regulation No. 16.

Defendant corporate-licensee has no prior adjudicated record. However, Joseph Schutz (president of defendant corporation and holder of 50% of its capital stock) is also president and a majority stockholder of corporate-licensee 188 Boyd Street, Inc., whose license has been suspended on two occasions. Effective October 15, 1956, the license of 188 Boyd Street, Inc. was suspended by the local issuing authority for ten days for violation of Rule 1 of State Regulation No. 38 and, effective November 10, 1958, its license was suspended by the local issuing authority for twenty-five days for a similar violation. Under all of the circumstances appearing herein, I shall suspend defendant's license for two hundred ten days.

Accordingly, it is, on this 1st day of December, 1958,

ORDERED that Plenary Retail Consumption License C-119, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to New Silver Top Inc., for premises 119 Washington Street, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. Monday, December 8, 1958; and it is further

ORDERED that any renewal of said license for the 1959-60 licensing year by defendant or any transferee of said license shall be and remain under suspension until 2:00 a.m. Monday, July 6, 1959.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (RENTING ROOMS FOR ILLICIT SEXUAL INTERCOURSE) - FAILING TO HAVE TRUE COPY OF LICENSE APPLICATION ON PREMISES - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against)

MARY COLUMBO, Executrix of the Estate of Thomas Columbo t/a "MARINE ROOM" Laurel Ave.-Highland Blvd. Keansburg, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-30, issued by the Mayor and Municipal Council of the Borough of Keansburg.)

-----) William K. Miller, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On October 17 and 22, 1958, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.

"2. On October 22, 1958, you conducted your licensed business without having a photostatic or other true copy of your application for your current license on the licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20."

The file herein discloses that the licensed premises consist of a three-story frame building with a bar on the ground floor and the balance of the premises conducted as a hotel. On October 17, 1958 two ABC agents at the premises held a conversation with the licensee concerning the charge she made for renting rooms, during which discussion, in response to the licensee's inquiry, the agents told her that they intend to use the room for an hour or two and not for all night; that they asked the licensee whether they would have to register, to which she replied that they could sign any name "What do you care, they all do that". The agents informed the licensee that they intended to have meretricious relations with two married women. There was some further conversation to the effect that the agents would not need to bring any baggage and relating to details whereby the agents and the girls would avoid detection. The licensee volunteered that they could come any night, even that night, to which the agents replied that they could not arrange it for that night. The agents then left the premises.

On October 22, 1958, at about 10:00 p.m., these two agents returned to the premises. The licensee was seated therein and the agents asked her whether she had any room for them for that night and, in the course of the conversation, the licensee said that she would go upstairs to make the beds for

the agents' use. The agents told her to advise them when the rooms were ready and they would, in the meantime, telephone to the girls. One of the agents followed the licensee into the hotel lobby, entered the telephone booth located there, and pretended to make a call to the "girls". Shortly thereafter, the licensee returned to the bar and told the agents that she had prepared two rooms for them. One of the agents told the other in her presence that he just called the girls and that they would be there in twenty minutes. Thereupon, a conversation took place between the two agents and the licensee, the substance of which related to the proposed meretricious relationships which the agents were anticipating with the girls. The licensee advised the agents that the rooms were open and said "You can pay me now. If the girls don't show up, I'll give you back the money". She told them that no one would bother them. The agents then handed the licensee \$8.00 in payment for the rental of the rooms, the bills used by them being identified by serial numbers. The licensee placed the money in a drawer behind the bar and rejoined the agents. After some further conversation between the licensee and the agents, one of the agents told the licensee that they might as well sign the register now and go up to their rooms. Thereupon, the licensee indicated that the agents were to enter the hotel lobby where the hotel register is located. One of the agents signed the register with the name of a fictitious Mr. and Mrs. and pretended to hesitate as to the address, whereupon the licensee named an address in Brooklyn, which the agent entered on the register. The other agent then likewise signed the name of a fictitious Mr. & Mrs. and, turning to the licensee, said "Where do I live?", whereupon she replied "Put down Valley Stream, Long Island". The licensee asked the agents when they had to get the girls home and they told her 1:30 a.m. After some further conversation between the licensee and the agents of a coarse nature related to the ostensible illicit activity they were about to engage in, the agents proceeded to their respective rooms as assigned to them by the licensee.

At about 11:00 p.m., by prearrangement, two other ABC agents, together with the licensee and two members of the local police, knocked at the door of one of these rooms and the agent in the room stated in the presence of the licensee that he was there waiting for a girl. The group of officers and the licensee proceeded to the next room and the agent there made a similar statement. Thereupon, the licensee stated that she was ignorant of the law concerning renting of rooms, in that she thought it was all right to rent rooms to couples as long as they are over 21, regardless of whether they were married or not as it made no difference and that she was only required to refuse young couples; that it would insult older couples if she asked if they were married.

It is clear that the licensee had no real concept of the decent standard of conduct expected of a liquor licensee or a hotel proprietor.

The agents recovered their marked money and incidental to their activities discovered that the licensee did not have available a photostatic or other true copy of her application for the current license on the premises.

Defendant has no prior adjudicated record. The circumstances urged on her behalf in alleged mitigation of the offense do not warrant the imposition of any lesser penalty than that usually imposed for a violation of this nature. The

established penalty for the violation charged herein is a suspension of the license for one hundred eighty days. Re Sabatini, Bulletin 1197, Item 1. I shall suspend defendant's license for that period on both charges.

Accordingly, it is, on this 24th day of November, 1958,

ORDERED that Plenary Retail Consumption License C-30, issued by the Mayor and Municipal Council of the Borough of Keansburg to Mary Columbo, Executrix of the Estate of Thomas Columbo, t/a "Marine Room", for premises on Laurel Avenue-Highland Boulevard, Keansburg, be and the same is hereby suspended for one hundred eighty (180) days, commencing at 2:00 a.m. Wednesday, December 3, 1958, and terminating at 2:00 a.m. Monday, June 1, 1959.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING VIOLATION OF STATE REGULATION NO. 38 DISMISSED.

In the Matter of Disciplinary Proceedings against
ELEANORE KREIDER & HARRY KREIDER
t/a STILL VALLEY GRILL
Route #22, State Highway
Greenwich Township (Warren County)
PO Stewartsville, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-4, for the 1957-58 and the 1958-59 licensing years, issued by the Township Committee of the Township of Greenwich.

Wayne Dumont, Jr., Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charge:

'On Sunday, April 20, 1958, at about 11:30 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., three quart size bottles of Neuweiler Beer, at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.'

"At the hearing held herein the Division called as its witnesses Walter DeHart, Harold Patrick Fehr and Thomas Rooks, who testified that on Sunday, April 20, 1958, they were in Fehr's car and that, at about 11:30 p.m., DeHart, who was driving, stopped the car at a closed gasoline service station about 150 feet from defendants' licensed premises, which are situated on an island between two State highways; that they were accompanied by another automobile, one of whose occupants was Patricia ---, age 16, for whom DeHart had earlier that

night promised to get some beer; that the second car came to a stop directly in back of them at the aforesaid service station; that Fehr and Rooks, at the suggestion of DeHart, joined Patricia in the other automobile. DeHart further testified that he then drove alone in Fehr's car about 150 feet and parked the same in front of the defendants' licensed premises; that he entered the premises and observed Ida Nyiri and Richard Faulkner (whom he knew from previous visits to the premises) tending bar; that he ordered a bottle of beer from Miss Nyiri and, while consuming the same, asked her for three quarts of beer to take out; that she referred him to Faulkner, who sold him three quart bottles of beer, accepted \$1.15 in payment thereof and said he would hand them to him at the back door; that three minutes later he left the premises by the front door, went around to the back door, picked up a bag containing aforesaid beer from the floor (just inside of a screen door which he had opened) and then drove down a back road followed by the second car. The aforesaid three witnesses testified that they and Patricia drank the three quarts of beer.

"DeHart continued to testify that he was familiar with the surrounding territory; that there were two other licensed premises in the immediate vicinity of the one in question, the nearer of which he observed to be closed and the other open; that on April 20, 1958 aforesaid, at about 3:00 p.m., Fehr and he had each consumed a bottle of beer on defendants' licensed premises; that, thereafter, he had not consumed any other alcoholic beverages until he returned to the licensed premises as aforesaid; that on his second visit to the licensed premises he remained there for about ten minutes, during which time he made no particular observation of the other patrons at the bar, and did not speak to any of them, and that about two or three years ago he was convicted on a charge of breaking and entering.

"Fehr further testified that he saw DeHart leave the main highway and turn off the same towards defendants' licensed premises; that thereafter he had been conversing in the rear seat of the other car with Patricia and Rooks; that the next time he saw his car (five minutes later) it was halfway across said highway opposite the area of the licensed premises; that he 'happened to look out and notice it'; that he did not know where DeHart had been in the interval; that they followed DeHart, travelling in southerly direction, down a side road. Fehr continued to testify that on April 20, 1958 aforesaid, between 2:00 and 3:00 p.m., he consumed a bottle of beer on defendants' licensed premises; that he had been with DeHart on said date from about 2:00 p.m. until about 7:00 a.m. the following morning, during which time he does not remember visiting any other tavern or consuming any alcoholic beverages except as aforesaid, and that he had been convicted of driving an automobile at a time when his license was revoked.

"Rooks, in addition, testified that at about 7:00 p.m. on April 20th aforesaid, DeHart and Fehr picked him up at his home in Fehr's car; that they drove to a bar in Asbury where they each consumed two glasses of beer between 7:30 and 7:45 p.m.; that after arriving at the service station as aforesaid, DeHart alone continued driving on the highway and turned off the same in the direction of defendants' licensed premises; that the next time he saw Fehr's car it was travelling in the southerly direction on a side road; that he did not see DeHart enter or leave the licensed premises, and that about two years ago he was convicted of larceny.

"An ABC agent testified that on May 8, 1958, DeHart accompanied him and another agent to the licensed premises and identified Faulkner as the person who, on April 20th aforesaid, sold him the aforementioned three quart bottles of beer for off-premises consumption; that in reply to his questioning Faulkner stated he was tending bar on the night in question; that he knew DeHart and denied he had seen or had sold him any alcoholic beverages that night. The agent further testified that the Palm Garden Restaurant (located nearby) sells the brand of beer in question but not in quart sizes, and that Fehr and Rooks informed him that they did not see DeHart enter or leave the licensed premises.

"Harry Kreider (co-licensee) testified that he tends bar daily at the licensed premises between 1:00 and 8:00 p.m.; that on April 20, 1958 he alone was tending bar and that he is positive that on said date he did not serve any alcoholic beverages to DeHart or Fehr, whom he has known for about four years.

"Richard L. Faulkner, testifying for the defendants, denied making the alleged sale of beer to DeHart and continued to state that for the past year and a half he has been employed as a bartender on the licensed premises; that on April 20, 1958, except for a period of two hours (10:30 p.m. to about 12:30 a.m.) he was tending bar from 8:00 p.m. to 3:00 a.m. the following morning; that during aforesaid two hours he was taking a nap and resting in an arm-chair in the kitchen; that Ida Nyiri, a friend of his, had relieved him of his duties for those two hours; that he recalled the night of April 20th because the licensee had gone to Maryland for three days (April 15 to April 18, 1958) and he had worked day and night during this period, and that it was not unusual for Miss Myiri to take over his duties as aforesaid.

"Ida Nyiri, called as a witness for the defense, corroborated Faulkner's testimony and denied selling DeHart any alcoholic beverages. She continued to testify that for the past 23 years she has been regularly employed by a company in a nearby town; that she recalls the night of April 20th aforesaid because she celebrated her birthday on April 17th and because the licensee had gone to Maryland for a few days in the early part of the week; that on the night in question Peter Stangle (with whom she had gone to school) and Leslie Thomas (who had formerly tended bar for her brother) were two of the patrons on the premises; that every Friday, Saturday and Sunday, between the hours of 8:00 p.m. and 3:00 a.m. the next morning, during the past seven months, she has visited with Faulkner at the licensed premises; that she took over Faulkner's duties on April 20th at about 10:30 p.m. and that he did not return to the bar until about 12:30 or 1:00 a.m., at which time the patronage begins to increase because of the earlier closing hours in two nearby communities.

"Peter Stangle testified that every fourth week he works a shift between 3:00 and 11:00 p.m.; that during the week of April 16 to April 22, 1958 (Sunday inclusive), he had worked during those hours; that on Sunday, April 20, 1958, at about 11:10 p.m. (as was his practice when he worked to 11:00 p.m.) he arrived at the licensed premises and remained for about one hour; that during this period there were about six or seven patrons on the premises; that Faulkner was not on duty nor did he see him on this visit; that Miss Nyiri served him; that he knows DeHart and his parents for 'years'; that

he did not see DeHart on the licensed premises on the night alleged; that he sat at the bar (in his customary seat) facing the front door and directly opposite where DeHart testified he had occupied a seat.

"Leslie Thomas testified that he is presently employed as a gasoline station attendant and that, prior thereto, he drove a truck and was a bartender; that on April 20, 1958 he was on the licensed premises between 1:00 and 5:00 p.m. and between 7:30 p.m. to 3:00 a.m. the next morning; that on his second visit aforesaid he consumed four or five glasses of beer and played pool; that he daily visits the licensed premises; that he knows the licensee for ten years; that he knows DeHart for about three years; that he remembers the night in question because the following day was Mr. Kreider's birthday; that he sat at the corner of the bar, from which position he could see both entrances to the licensed premises and that DeHart did not enter the same.

"This case presents a conflict between the three principal witnesses produced by the Division and those called by the defendants. Although there is a possibility that DeHart's account of his purchase of the beer is correct, a finding of guilt must be established by a fair preponderance of the evidence. After carefully considering the uncorroborated testimony of DeHart as to the actual purchase of the beer on the licensed premises, the testimony of his two companions (who did not see him enter or leave defendants' licensed premises) and the testimony of the defendants' witnesses, I conclude that the Division has not established defendants' guilt by a fair preponderance of the believable evidence. In this connection, in considering the weight to be given to DeHart's testimony, it is to be noted that he repeatedly denied he consumed any alcoholic beverages on April 20th aforesaid between 3:00 and 11:30 p.m., although this is in direct contradiction to Rooks' testimony. I, therefore, recommend that the charge herein be dismissed. See Re Apt., Bulletin 1166, Item 9; Re Pacilli, Bulletin 1230, Item 1."

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 herein, I concur in and adopt the findings and recommended conclusions of the Hearer.

Accordingly, it is, on this 10th day of November, 1958,

ORDERED that the charge herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

5. STATE REGULATIONS - REGULATION NO. 21 - RULE 1(a)
AMENDED TO PERMIT REDISTRIBUTION OF ADVERTISING BOTTLE
POURERS BY RETAILERS TO CONSUMERS.

NOTICE TO ALL LICENSEES:

January 13, 1959

Under existing regulations, bottle pourers could permissibly be furnished by manufacturers and wholesalers to retail licensees only for use on their licensed premises pursuant to Rule 1(a) of State Regulation No. 21 but the furnishing of pourers by manufacturers and wholesalers to retail licensees for their redistribution to the public was prohibited by the same rule.

Administrative experience has demonstrated that the long standing prohibition against the distribution of bottle pourers to the public by retail licensees is unrealistic in view of the continuing trend toward marketing and purchase for home consumption of alcoholic beverages in half-gallon and gallon containers, which are more conveniently decanted by the use of a pourer. Furthermore, it would appear that the furnishing of bottle pourers to the public by retail licensees would involve no greater problem of liquor control than the furnishing of can openers and bottle openers which has long been permitted.

Accordingly, Rule 1(a) of State Regulation No. 21 is amended effective immediately as follows:

"Rule 1. No manufacturer or wholesaler of alcoholic beverages shall, directly or indirectly, furnish by sale, loan, gift or otherwise, or deliver, service or repair any fixtures, equipment, signs, or advertising matter of any kind to any retail licensee or at any retail licensed premises in the State of New Jersey except as follows:

"(a) Manufacturers and wholesalers may furnish to retail licensees, but only for use at the licensed premises, (1) inside signs including window displays, (2) tap markers as described in Rule 26 of State Regulation No. 20, the cost or value of which shall not exceed One Dollar (\$1.00) each, (3) advertising trays, coasters, napkins, stirrers, scrapers and scraper holders, menu sheets and covers, scoring sheets and calendars, and (4) other similar advertising specialties for which written approval has first been obtained from the Director of the Division of Alcoholic Beverage Control, and they may also furnish to retail licensees, for use at the licensed premises or for redistribution to the public for use off the licensed premises, (1) advertising pamphlets, recipe booklets, circulars, handbills, can openers, bottle openers and bottle pourers, and (2) other similar matter for which written approval has first been obtained from the Director; provided, however, that all the above items shall bear on the face thereof the name, brand or trade-mark of the manufacturer or wholesaler and shall be furnished gratuitously, and further provided that the total aggregate cost or value of all such items does not exceed One Hundred Dollars (\$100.00) for any one retail licensed premises for any one license year."

It will be noted that the effect of the amendment is to remove "bottle pourers" from that class of equipment which heretofore might be permissibly furnished to retailers only for use at their licensed premises, and to include "bottle pourers" in the group of advertising specialties which may be furnished by manufacturers and wholesalers to retailers for redistribution to the public, as well as for use at the licensed premises.

WILLIAM HOWE DAVIS
Director.

Promulgated January 13, 1959

Effective January 13, 1959

Filed with the Secretary of State (N.J.) January 13, 1959.

6. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR DISMISSED.

In the Matter of Disciplinary)
Proceedings against)

BENJAMIN and BESSIE COHEN)
t/a BROOKSIDE LIQUORS)
Broad Street)
Shrewsbury, PO Shrewsbury, N.J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-2, issued by the)
Borough Council of the Borough of)
Shrewsbury.)

Patterson & Cooper, Esqs., by Peter Cooper, Esq., Attorneys
for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charge:

'On June 30, 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., Kenneth ---, age 19, 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.'

"Defendants' licensed premises are located about one-quarter mile from Fort Monmouth. Private John --- (24 years of age) testified that on pay-day, June 30, 1958, he and another soldier visited defendants' premises about 9:30 p.m.; that he then purchased eighteen cans of beer and a pint of whiskey which he took back to the barracks; that a number of soldiers drank the beer, and that Private Kenneth --- (19 years of age) drank the entire pint of whiskey. He further testified that about 11:00 p.m. he and Kenneth --- visited defendants' premises where he purchased another nine quarts of beer, which were likewise taken back to the barracks, where he, Kenneth --- and other soldiers consumed the beer.

"No violations appear to be involved in the aforesaid purchases because John --- is of full age. However, both John --- and Kenneth --- testified that, while they were in the premises about 11:00 p.m., each drank two glasses of beer which were served by a male bartender who did not question Kenneth --- as to his age. An ABC agent testified that on July 26, 1958, he accompanied both soldiers to the premises where Kenneth --- identified Benjamin Cohen as the person who served the drinks and John --- stated that he thought Benjamin made the service. At that time Benjamin told the agent that he had never seen the young men in the premises.

"The sole issue in this case is whether John and Kenneth told the truth when they testified that two glasses of beer were served to and consumed by Kenneth on the evening in question. It appears from the testimony that neither of these witnesses was satisfied with the amount of alcoholic beverages they had consumed before midnight at the barracks because, thereafter, they attempted to return to defendants' premises and, when they found it closed, they went to a licensed place in Eatontown where they became involved in trouble which resulted in their arrest. On cross-examination Kenneth admitted that on July 1, 1958, he had given to the military authorities a statement wherein he did not mention that he had any drinks at defendants' premises on the previous evening. It further appears from the testimony of Chief Mass of the Shrewsbury Police Department that he interviewed Kenneth in jail on July 9; that, after he asked Kenneth to tell him the truth, Kenneth told him that he had had nothing to drink at defendants' premises and that 'he was not served by either Mr. or Mrs. Cohen.' On cross-examination John admitted that, after his arrest, he had given to the Eatontown police a statement wherein he said that 'I went back to the Brookside Bar and then got nine quarts of beer to bring back to the company to drink.' It should be noted that, in his statement, John did not allege that he or Kenneth had anything to drink on defendants' premises. It should be noted also that both Kenneth and John had consumed a large amount of alcoholic beverages before 11:00 p.m. Weighing all the testimony produced by the Division and the testimony of both defendants and Marvin Dangler (their bartender), wherein these witnesses deny any recollection of having seen the young men on the premises about 11:00 p.m., I conclude that the Division has not established defendants' guilt by a fair preponderance of the believable evidence. I recommend, therefore, that an order be entered dismissing the charge herein."

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

After carefully considering all the facts and circumstances of this case, I concur in the Hearer's conclusions and adopt the same as my conclusions herein.

Accordingly, it is, on this 13th day of November, 1958,

ORDERED that the charge herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

7. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1958 to DECEMBER 31, 1958 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	487	\$ 208,450.41	72	\$ 27,625.00	24	\$ 2,295.00						583	\$ 238,370.41
Bergen	811	307,734.04	301	87,988.00	112	10,570.00	53	\$ 2,496.50	5	\$ 1,381.63	5	1277	410,170.17
Burlington	187	81,518.63	40	12,225.00	45	6,350.00	1	50.00				273	100,143.63
Camden	453	224,457.53	82	33,925.00	75	7,457.54			1	375.00	1	610	266,215.07
Cape May	135	76,800.00	11	4,000.00	16	1,950.00						162	82,750.00
Cumberland	80	40,875.00	14	3,700.00	30	4,060.00						124	48,635.00
Essex	1347	759,351.10	350	209,718.90	102	14,025.00	28	1,400.00	2	1,500.00	1	1828	985,995.00
Gloucester	108	38,595.00	15	3,920.00	22	1,950.00						145	44,465.00
Hudson	1538	697,784.25	298	122,400.00	83	9,635.21	63	2,700.00				1982	832,519.46
Hunterdon	79	28,000.00	9	3,360.00	10	1,100.00						98	32,460.00
Mercer	422	258,550.00	51	21,400.00	54	7,700.00			1	391.63	3	525	288,041.63
Middlesex	632	312,605.00	79	25,595.00	96	8,630.00	4	200.00			1	810	347,030.00
Monmouth	551	287,710.71	122	43,620.00	43	4,800.00	10	435.00	26	11,843.02	26	726	348,408.73
Morris	356	131,939.69	97	32,750.00	54	4,842.20	19	950.00	5	1,312.50	5	526	171,794.39
Ocean	193	109,867.00	47	19,680.00	24	2,575.00						264	132,122.00
Passaic	869	357,105.36	167	51,330.00	41	5,025.00	9	425.00				1086	413,885.36
Salem	51	19,300.00	8	1,550.00	20	1,658.76						79	22,508.76
Somerset	187	85,700.00	41	12,595.00	27	3,150.00						255	101,445.00
Sussex	165	45,805.00	21	4,185.00	9	545.00	1	50.00	1	225.00	1	196	50,810.00
Union	550	306,316.10	144	66,860.00	78	9,225.00	28	1,375.00				800	383,776.10
Warren	148	44,070.00	20	5,060.00	28	3,100.00			2	318.84	2	196	52,548.84
Total	9349	\$4,422,534.82	1989	\$793,486.90	993	\$110,643.71	216	\$10,081.50	43	\$17,347.62	45	12545	\$5,354,094.55

William Howe Davis
Director

January 8, 1959

8. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against

PANTALEO DiTERLIZZI
200 Grand Street
Hoboken, N. J.,

Holder of Plenary Retail Consumption License C-64 (for the 1957-58 and 1958-59 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

Albert J. Shea, Esq., Attorney for Petitioner.

1257
ON PETITION
O R D E R

BY THE DIRECTOR:

An order having been entered on November 13, 1958, suspending defendant's license for sixty-five days commencing at 2:00 a.m. December 1, 1958, and terminating at 2:00 a.m. February 4, 1959; and

Application having been made to me by said defendant for a postponement of said suspension because arrangements had previously been made for five affairs to be held at defendant's premises between December 10 and December 31, and it appearing that numerous persons would be inconvenienced by suspension of the license during December,

It is, on this 26th day of November, 1958,

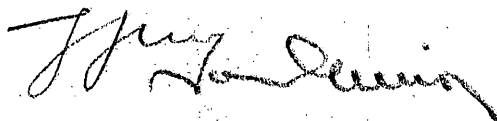
ORDERED that the suspension of sixty-five days, instead of commencing at 2:00 a.m. December 1, 1958, shall, in lieu thereof, commence at 2:00 a.m. Monday, January 5, 1959, and terminate at 2:00 a.m. Wednesday, March 11, 1959.

WILLIAM HOWE DAVIS
Director.

9. STATE LICENSES - NEW APPLICATION FILED.

Edward J. Pryor
t/a T. J. Beverages
433 Central Boulevard
Fort Lee, N. J.

Application filed January 14, 1959 for person-to-person transfer of State Beverage Distributor's License SBD-91 from Tony Jiannantino, t/a T. J. Beverage.



William Howe Davis
Director.