

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 847

JUNE 29, 1949.

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THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

MEMORANDUM FOR THE DIRECTOR

DATE: 10/15/68
SUBJECT: [Illegible]

TO: [Illegible]

FROM: [Illegible]

RE: [Illegible]

[Illegible]

[Illegible]

Very truly yours,
[Illegible Signature]

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 847

JUNE 29, 1949.

1. NEW LEGISLATION - MUNICIPAL REFERENDA - R. S. 33:1-44 THROUGH R. S. 33:1-47.1 AMENDED - MINIMUM PERIOD BETWEEN REFERENDA ON THE SAME QUESTION EXTENDED FROM THREE YEARS TO FIVE YEARS.

Assembly Bill No. 378 (Second Official Copy Reprint) was approved by Governor Driscoll on June 14, 1949, and thereupon became P. L. 1949, Chapter 296.

As last amended prior to P.L. 1949, ch. 296, each of the indicated five local option sections provided that:

"Whenever a referendum shall have been had in any municipality pursuant to this section, no further referendum on the same question shall be held therein prior to the general election to be held in such municipality in the third year thereafter" (Underscoring added.)

The new Act -- P.L. 1949, ch. 296 (effective immediately) -- amends each of the five sections so as to change the words "third year thereafter" to "fifth year thereafter".

ERWIN B. HOCK
Director.

Dated: June 24, 1949.

2. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 10 DAYS - CHARGE OF CONCEALING LANDLORD'S INTEREST IN PERCENTAGE OF INCOME AS RENTAL, DISMISSED.

In the Matter of Disciplinary Proceedings against

E. GERALD ZUMAN
T/a SEA BRIGHT YACHT CLUB
958 Ocean Avenue
Sea Bright, N. J.,

Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Sea Bright, and transferred during the pendency of these proceedings to

VAL ERNIE
T/a SEA BRIGHT YACHT CLUB,
for the same premises.

CONCLUSIONS
AND ORDER

Solomon Lautman, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded not guilty to charges alleging that (1) in June 1948, he hindered an investigation being conducted by ABC agents of an alleged undisclosed interest of John S. Osterstock in his license and business conducted thereunder, and (2) in his several license applications, he concealed the interest of his landlord in his license and business conducted thereunder.

On June 18, 1948, an ABC agent visited the defendant's licensed premises and interviewed him concerning the ownership of his license and the business conducted thereunder. The interview proceeded on an orderly and friendly basis until the defendant was called to the telephone located in a room on the licensed premises which was used as an office. While the defendant was thus engaged, the agent opened a ledger book which was lying on a desk in the office and noticed an entry therein appearing under the name of John S. Osterstock, reading "Liquors \$1500". Before the agent could examine any more than this one page, the defendant "picked the book up, closed the book, turned around and put it in a file and told me (the agent) that it contained his personal business and I had no right to examine that book". The agent then referred the defendant to the provisions of R.S. 33:1-35 which authorize the examination of the "books, records, accounts, documents and papers of the licensees or on the licensed premises" and also enjoin all licensees to "facilitate...any such inspection and...not in any way hinder or delay or cause the hindrance or delay of same, in any manner whatsoever". The defendant, after reading the foregoing section of the statute, persisted in his refusal to permit the agent to examine the ledger.

The agent returned to the premises on June 29, 1948, accompanied by his immediate superior. When the latter called upon the defendant to produce the book, the defendant first denied that any such book had ever existed. Upon further questioning, the defendant stated that the book "had nothing to do with the licensed business". Being further pressed, he explained that the entry in the ledger referred to a "contemplated purchase of alcoholic beverages for the licensed business", which purchase had not been consummated. When the agents then demanded that the ledger be produced, the defendant stated that he "had destroyed the book".

The defendant denies that he told the ABC agents that he had destroyed the book and insists that he told them only that he had destroyed the single page in the ledger which contained the entry in question. Assuming this to be so, the destruction of this page, under the circumstances exhibited herein, would constitute a violation of the statute. However, I find it difficult to believe this version of the incident because, in such case, the agents would naturally have called for the production of the book to determine for themselves whether the single page had been destroyed; and the defendant admits that he did not produce the book for their inspection at any time.

The proofs are plenary of the defendant's guilt on this charge and no further reference thereto is necessary other than the following testimony given by the defendant:

- "Q Do you still have this ledger book which is under discussion today?
 A Yes.
 Q Where is it now?
 A In my home.
 Q Did you tell your attorney you had that book?
 A He never asked me.
 Q Is there any reason for your not bringing it here today?
 A No."

I find defendant guilty on the first charge.

The basis of the second charge is a provision in the lease between the defendant and the owner of the property, Sea Bright Investment Co. Inc., fixing the rental for the premises at 8% "of the gross income" received by the defendant during the term of the lease. The allegation is that the percentage rental agreement was falsely concealed by the defendant's negative answer to Question 30 in the license application, which reads:

"Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?"

There is no provision in the Alcoholic Beverage Law, or the State rules and regulations, which specifically prohibits a licensee from agreeing to pay his landlord a rental based upon a percentage of the profits or income of the licensed business. It is true that the statute interdicts the creation of an interest whereby any person other than the licensee exercises, or attempts to exercise, any of the rights or privileges of the license. See R. S. 33:1-26. Appropriately framed questions seeking to elicit such information are, therefore, properly included in license applications.

Where a lease provides for a rental based upon a percentage of the profits, as distinguished from income, the present application forms include a suitable question for eliciting this information. See Question 31, Bulletin 650, p. 4. Such an arrangement, based upon profits, therefore, need not be revealed in answer to present Question 30. Parity of reasoning impels the conclusion that an arrangement based upon percentage of income may likewise be properly omitted from any answer to Question 30.

Fairness to licensees requires that they should not be held responsible for failing to reveal information which may not reasonably be said to be called for in response to any question in the application. Cf. Re Brenner, Bulletin 399, Item 5. If it is deemed that all rental agreements based upon a percentage of income shall be disclosed in order to determine whether an interest in the license or business conducted thereunder is thereby created, an appropriately worded question will be included in future applications.

Under the circumstances, the second charge is dismissed.

The determination of the appropriate penalty to be meted out on the first charge herein has given me some concern. Where, during the course of an investigation being made by ABC agents, the licensee destroys records pertaining to the licensed business, a permissible inference may be drawn that the destruction was of evidence material to the allegation under investigation. Cf. Re Majestic Wine & Spirits, Inc., Bulletin 600, Item 1. Such inference may be fortified by other evidence sufficiently weighty to warrant a penalty commensurate with that which would normally have been imposed if the allegation under investigation had resulted in a charge against the licensee and a finding of guilt thereon. Whether the principle shall be applied in a given case depends, of course, upon all of the facts. After careful consideration of the entire record, I find that the evidence is insufficient to warrant the application of the principle herein, especially since the entry in the book was observed by the agent prior to its alleged destruction. Under all of the attendant circumstances, I shall suspend the license for a period of ten days.

Accordingly, it is, on this 15th day of June, 1949,

ORDERED that Plenary Retail Consumption License C-1, heretofore issued by the Borough Council of the Borough of Sea Bright to E. Gerald Zuman, t/a Sea Bright Yacht Club, 958 Ocean Avenue, Sea Bright, and transferred during the pendency of these proceedings to Val Ernie, t/a Sea Bright Yacht Club, for the same premises, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. June 20, 1949, and terminating at 3:00 a.m. June 30, 1949.

ERWIN B. HOCK
Director.

3. DISCIPLINARY PROCEEDINGS - PIN-BALL MACHINE - POSSESSING LOTTERY TICKETS ON LICENSED PREMISES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

PETER T. BRADLEY)
County Rd. & D.L. & W. R.R.)
Secaucus, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-20, issued by the)
Town Council of the Town of)
Secaucus.)

Peter T. Bradley, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging (1) that he allowed, permitted and suffered a bagatelle or pin ball machine on his licensed premises, in violation of Rule 7 of State Regulations No. 20, and (2) that he possessed on his licensed premises tickets or participation rights in a lottery, in violation of Rule 6 of State Regulations No. 20.

The machine is a pin ball machine within the rulings of the Division. Cf. Re Durachko, Bulletin 844, Item 9. While defendant disclaims any knowledge of the lottery tickets -- a drawing for a television set -- the tickets were in his possession on the licensed premises.

Defendant has no prior adjudicated record. I shall suspend the license for the minimum period for each charge: ten days for charge one (Re Carteret Club, Bulletin 672, Item 12) and five days for charge two (Re Villotto Riggin Post #67, Bulletin 750, Item 9), and remit five days thereof for the plea. This will leave a net suspension of ten days.

Accordingly, it is, on this 14th day of June, 1949,

ORDERED that Plenary Retail Consumption License C-20, issued by the Town Council of the Town of Secaucus to Peter T. Bradley, for premises County Rd. & D. L. & W. R. R., Secaucus, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m., June 20, 1949, and terminating at 2:00 a.m., June 30, 1949.

ERWIN B. HOCK,
Director.

4. APPELLATE DECISIONS - PERRY v. ELIZABETH.

JAMES D. PERRY,)
Appellant,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF ELIZABETH,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Edward L. Whelan, Jr., Esq., Attorney for Appellant.
Louis P. Longobardi, Esq., Attorney for Respondent.
Julius R. Pollatschek, Esq., Attorney for Union County Retail Liquor
Stores Association, an Objector.

BY THE DIRECTOR:

This is an appeal from the denial of appellant's application for a plenary retail distribution license for premises at 1034 East Grand Street, Elizabeth.

Respondent denied the application because "the license applied for is within 1500 feet of existing licenses and is restricted by a City ordinance adopted May 5, 1947". The evidence shows, and appellant admits that his premises are within 1500 feet of at least six existing licensed premises. Appellant, however, contends that the city ordinance does not apply to the issuance of a plenary retail distribution license and that, therefore, the action of respondent was erroneous.

The pertinent part of the ordinance in question is as follows:

"SECTION 1. That the resolution establishing the 1500 foot rule be amended to read as follows:

"No license for the sale and consumption of alcoholic beverages whatsoever, excepting renewals, shall be granted for any licensed premises within the area of a circle having a radius of 1500 feet, and having for its central point an existing licensed premises, excepting, however, that a club license may be issued to any veterans post, unit or subdivision chartered by any national veterans organization which has been approved by the National Veterans Administration of the United States, and entirely composed of honorably discharged members of the armed forces of any war."

Revised Statutes, 33:1-12 provides for the various types of retail licenses, including plenary retail distribution licenses, for the sale of alcoholic beverages for on-premises consumption, off-premises consumption, or both. I am unable to agree with appellant's contention that the ordinance is inapplicable, in its terms, to plenary retail distribution licenses.

Appellant contends, further, that the ordinance does not apply and was not intended to apply to plenary retail distribution licenses because of a difference in language between the ordinance and the city's resolution (adopted by the Municipal Board of Alcoholic Beverage Control on October 23, 1935, and approved by the City Council on November 6, 1935) which it amended. That resolution read, in pertinent part:

"Be it Resolved, that no license whatsoever, excepting renewals, shall be granted for any premises within the area of a circle having a radius of 1500 feet and having as its central point an existing licensed premises."

In Burns v. Elizabeth, Bulletin 794, Item 5, the precise question was before me and I found that the 1947 ordinance, amending the 1935 resolution, was intended to exempt only the indicated club licenses from the effect of the 1500 foot rule. No reason appears why a different result should be reached in the present case. Thus, respondent's action is affirmed.

Accordingly, it is, on this 16th day of June, 1949,

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

ERWIN B. HOCK
Director.

5. APPELLATE DECISIONS - JENKINSON v. POINT PLEASANT BEACH.

MARY B. JENKINSON, ORLO B.
JENKINSON and ALICE J. RIPLEY,
Appellants,

-vs-

MAYOR AND BOROUGH COUNCIL OF THE
BOROUGH OF POINT PLEASANT BEACH,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Edwin P. Longstreet, Esq., Attorney for Appellant.
Stanley Herbert, Esq., Associate Counsel for Appellant.
W. Douglas Blair, Esq., Attorney for Respondent.
Elvin R. Simmill, Esq., Attorney for Objectors.
Sidney Simandl, Esq., Attorney for Objectors, Ocean County Tavern Association.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it denied appellants' application for a transfer of their plenary retail consumption license to include premises then under construction at the north end of the beach, east of the boardwalk, and also a storage room west of the boardwalk, situated adjacent to the present licensed premises, located in the Borough of Point Pleasant Beach.

Appellants allege, in substance, that the action of the respondent in denying appellants' application to transfer was arbitrary and unreasonable because there is a need for and a convenience to be served by an additional outlet at the proposed premises.

The testimony shows that the premises under construction consist of a pavilion to be located east of the boardwalk, approximately 2300 feet from the present licensed premises.

Orlo B. Jenkinson, one of the appellants herein, contends that the great influx of people to the municipality in question during the summer season of 1948 is sufficient reason to establish the need for an outlet at the proposed site to permit the sale of alcoholic beverages. He further testified that only beer is sold at the present licensed premises, and that the sale of alcoholic beverages would be restricted to beer at the new pavilion.

Mayor George Makin testified that, although he was not required to vote on the application for transfer of the appellants' license, he is in favor of added facilities for the sale of beer being granted to appellants so that they may adequately operate their business. He further testified that he based his opinion on the "great change in the population of the summer and winter months", a population of 3,000 in winter and between 20,000 and 30,000 in summer.

Councilmen John Bogan and Emil Zezula, who voted in favor of the transfer of the license to include the new premises, testified that, in their opinion, the privilege of selling beer at the proposed premises would be a convenience to the persons using the north end of the beach. Councilman Zezula, when asked whether he thought that an outlet at the new location was a public necessity, stated, "I don't know as I should say it is a public necessity", and then stated that the public would be better served if said outlet were permitted.

The testimony of four Councilmen who voted against the transfer of the license to include the other premises was substantially in agreement that, because of other licensed premises at not too great a distance from the proposed site, there was no need for an additional outlet at the location in question. Furthermore, they testified that in their judgment the application, made to include premises 2300 feet distant from appellants' present premises, was not for a transfer of a license, but rather, in effect, an application for a new license. They further testified that the issuance of a license for the location desired would be prohibited by a provision contained in Paragraph 2, Section 4, of the borough's ordinance, adopted September 12, 1940. The provision reads: "No Plenary Retail Consumption license, excepting renewals of licenses presently outstanding, shall be issued for or transferred to any portion of that area of the Borough of Point Pleasant Beach lying East of Ocean Avenue, the said Ocean Avenue extending from the Manasquan River Southerly to the Borough of Bay Head." (The provision was supplemented by an ordinance, adopted June 26, 1947, containing an exception, inapplicable in the circumstances here present, in favor of hotels having fifty or more sleeping rooms.)

The indicated 1940 ordinance prohibited and prohibits the transfer sought.

To the immediate merits, apart from the point that a granting of the transfer would have been in contravention of the ordinance: A transfer of an alcoholic beverage license is not a right inherent in the license, but is rather a privilege which the issuing authority may grant or deny in the exercise of a reasonable discretion. Where the transfer is denied on reasonable grounds, such action will be affirmed. Trio Bar Corporation v. Hightstown, Bulletin 776, Item 1. The burden of proof is upon the appellant to show that the action of respondent in denying the transfer was arbitrary or unreasonable. Henderson v. Gloucester, Bulletin 542, Item 2. There is nothing presented herein to indicate that respondent was arbitrary or unreasonable in its determination, or inspired by improper motives.

The denial of the application is sustained and the appeal therefrom will be dismissed.

Accordingly, it is, on this 16th day of June, 1949,

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

ERWIN B. HOCK
Director.

6. APPELLATE DECISIONS - MONESSON v. LAKEWOOD.

LOUIS MONESSON, trading as)
MONESSON'S LIQUOR SHOP,)
Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LAKEWOOD,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Edward M. Rothstein, Esq. and Joseph A. Citta, Esq., Attorneys for Appellant.

James J. Myers, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the revocation of appellant's plenary retail consumption license issued for premises at 428 Clifton Avenue, Lakewood. The license was revoked by respondent after it found appellant guilty in a disciplinary proceeding on a charge of selling alcoholic beverages to a person actually or apparently intoxicated, and allowing, permitting and suffering such person to consume alcoholic beverages on the licensed premises, in violation of Rule 1 of State Regulations No. 20.

Appellant alleges that he is not guilty of the charges preferred against him, and that the penalty imposed by respondent is excessive and represents an abuse of sound discretion.

At the hearing herein, an investigator of the Division of Alcoholic Beverage Control testified that he entered appellant's premises at about 1:05 p.m. on January 5, 1949; that he observed at the bar a patron (Victor) who was cursing and swearing and whose speech was incoherent; that shortly thereafter he saw the appellant, who was then acting as bartender, serve a drink of whiskey and a glass of beer to Victor and collect the sum of \$1.90 from Victor; that he, the agent, seized the glass of beer as evidence after Victor had consumed the glass of whiskey. Two police officers of the Township of Lakewood, who arrived shortly thereafter in response to a call from the investigator, testified that in their opinion Victor was intoxicated.

Appellant testified that he had relieved his bartender, Oakes, at about 12:45 p.m. and admits that he served the drinks to Victor. Incidentally, it appears that he over-charged this patron the sum of forty cents for these and other drinks ordered by this patron for himself and two companions. Appellant alleges, however, that Victor did not appear to him to be intoxicated at the time the drinks were served, and this patron testified that he remembered everything that happened during that day. It appears from the testimony of the bartender, Oakes, that Victor had been on the licensed premises continuously from 10:00 a.m. and had run up a bill of \$10.00 for drinks served to himself and his companions before the licensee took over at approximately 12:45 p.m. Considering all the evidence, and especially the evidence of the investigator as to the actions of the patron prior to the time the drinks were served, I am satisfied that Victor was actually or apparently intoxicated at the time the drinks were served to, and consumed by, him. Hence, I shall affirm the action of respondent in finding appellant guilty as charged.

As to penalty: During the 1942-43 fiscal year respondent suspended appellant's license for a period of twenty days for sales of alcoholic beverages to intoxicated persons. On March 12, 1945, the Commissioner suspended appellant's license for the balance of its term after appellant herein had pleaded non vult to a second charge alleging that he sold alcoholic beverages to an intoxicated person. Re Monesson, Bulletin 657, Item 2. This violation, therefore, is a third violation for selling to intoxicated persons.

The penalty to be administered in a local disciplinary proceeding rests primarily within the sound discretion of the local issuing authority. On appeal the penalty will be reduced only under unusual circumstances. Starr v. Clementon, Bulletin 381, Item 2; Creston Holding Co. v. Belleville, Bulletin 544, Item 2. At the hearing herein Committeemen Miller and Armstrong testified that they voted to revoke the license because of appellant's previous record and because of other complaints they had received against him. At the time of the hearing Committeeman Burdge, who had voted to revoke the license, was confined to his home because of illness. However, an affidavit executed by him was presented at the hearing, wherein he says: "If I were to judge this case solely on the sworn testimony given and the consideration of his two previous violations, I would not have recommended a permanent revocation but would have voted for a lesser penalty in the nature of a substantial suspension". At the hearing below Committeeman Curtis refrained from voting and it appears from his affidavit presented at the hearing that he refrained from voting because "I felt that permanent revocation is a too severe penalty". Committeeman Johnson, who voted for revocation, did not appear at the hearing herein.

Under all these circumstances, and in view of the fact that statements made by certain residents at the hearing below as to unsatisfactory conditions in the same neighborhood, where at least two other licensed premises are located, were apparently considered improperly because this was a hearing on a charge and not a hearing on a renewal application, I have decided to remand the case to respondent solely upon the question of the proper penalty to be imposed. If respondent on reconsideration decides to revoke the license, then, of course, the license may not be renewed for the coming fiscal year. On the other hand, if respondent on reconsideration decides to modify the revocation to a substantial suspension, then the license, in the discretion of the respondent, may be renewed provided that the renewal is granted subject to said suspension or any unexpired portion thereof.

Accordingly, it is, on this 17th day of June, 1949,

ORDERED that the action of respondent in finding appellant guilty be and the same is hereby affirmed, and the case is remanded to respondent solely for the purpose of considering the proper penalty to be imposed.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - SALE AND ADVERTISING OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 30 - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CLARENCE MESSIAH NURSE
T/a TIMBUKTU
1606-8 Arctic Avenue
Atlantic City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-26, issued by the Board of Commissioners of the City of Atlantic City.)

Clarence Messiah Nurse, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that he sold alcoholic beverages at retail below the minimum consumer price, and advertised alcoholic beverages for sale at retail at a price less than the said minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

On May 4, 1949, two agents of the State Division of Alcoholic Beverage Control purchased from the licensee a 4/5 quart bottle of Calvert Special Blended Whiskey for the price or sum of \$3.50. On April 30, 1949, defendant advertised in the Atlantic City Press said Calvert Special for sale at retail for the price of \$3.50 per 4/5 quart. The minimum consumer price for said item is \$3.60, as disclosed in the list of such prices, effective April 1, 1949.

The minimum penalty for Fair Trade violations is ten days. Cf. Re Markowitz, Bulletin 792, Item 9.

Defendant has a prior record. In 1945 his license was suspended for fifteen days for a dissimilar violation. See Bulletin 680, Item 7. Under the circumstances, I shall suspend his license for fifteen days and remit five days for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 17th day of June, 1949,

ORDERED that Plenary Retail Consumption License C-26, issued by the Board of Commissioners of the City of Atlantic City to Clarence Messiah Nurse, t/a Timbuktu, for premises 1606-8 Arctic Avenue, Atlantic City, be and the same is hereby suspended for a period of ten (10) days, commencing at 7:00 a.m. June 21, 1949, and terminating at the expiration of the license, namely, at midnight June 30, 1949.

ERWIN B. HOCK
Director.

8. APPELLATE DECISIONS - OSIECKY v. SEA BRIGHT AND OCEAN DRIVE OPERATING CO.

WILLIAM OSIECKY and EMILY OSIECKY;)

Appellants,)

-vs-

MAYOR AND COUNCIL OF THE BOROUGH OF SEA BRIGHT, and OCEAN DRIVE OPERATING CO.,)

Respondents.)

ON APPEAL CONCLUSIONS AND ORDER

Milton M. & Adrian M. Unger, Esqs., by Sidney Jaffe, Esq., Attorneys for Appellants.

A. Henry Giordano, Esq., Attorney for Respondent Mayor and Council. Quinn, Doremus, McCue & Russell, Esqs., by Vincent J. McCue, Esq., Attorneys for Respondent Ocean Drive Operating Co.

BY THE DIRECTOR:

The respondent Borough Council granted the application of the respondent, Ocean Drive Operating Co., for a plenary retail consumption license for premises at 1038 Ocean Avenue, Sea Bright. Hence this appeal.

The prior proceedings leading up to the approval of this application are fully reported in Bulletin 832, Item 12. Briefly, it may be stated that when the corporate licensee applied for two separate transfers of its license during the last licensing year to premises more than 1200 feet from its present location, both transfer applications were denied and, on appeal, the denials were sustained. See Bulletin 812, Item 12. Subsequently, the corporation applied for relief under the provisions of R. S. 33:1-12.18, which authorize the filing of an application for new license despite the statewide limitation, and this relief was granted. See Bulletin 817, Item 2. On October 6, 1948, the corporation's application for a license at its present location was denied by a vote of 2 to 1. On appeal, the application was remanded to the Borough Council for further action because of the reasons appearing therein. See Bulletin 832, Item 12.

Upon reconsideration of the application on February 23, 1949, it was granted by a vote of 4 to 1. The appellants, who hold a license for premises about 20 feet distant from that of respondent corporation, object to the issuance of the license because of the number of other licensed establishments in the vicinity. Assuming, arguendo, that the appellants' objections would be sound if the respondent's premises were operated as an ordinary tavern, the objection loses force in the light of the testimony given by the four Councilmen who voted to approve the application. From their testimony, as well as that of the vice-president of the respondent licensee, it appears that the premises of the corporate respondent is operated as a hotel, containing 50 sleeping rooms, and that at the time the application was granted, 40 of those rooms were prepared for occupancy. In addition, the premises is operated as a restaurant and has facilities for catering to banquets, dances, wedding parties, and the like. There is only one other hotel with restaurant in the municipality which, however, caters to a more expensive clientele. The appellants' hotel is not operated on the same level as that of the respondent and, although serving sandwiches, does not conduct a restaurant there.

Under the circumstances, it was within the sound discretion of the local issuing authority to determine whether the application should be granted. The appellant, upon whom rests the burden of proof, has failed to demonstrate that the action of the respondent

Council was so unreasonable and arbitrary as to constitute an abuse of such discretion. Its action, therefore, must be sustained.

Accordingly, it is, on this 20th day of June, 1949,

ORDERED that the petition of appeal be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

- 9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PERMITTING MINOR (HOLDER OF EMPLOYMENT PERMIT) TO SELL ALCOHOLIC BEVERAGES - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY MINOR PERMITTEE CONTRARY TO CONDITIONS OF PERMIT - PERMIT SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

EARL W. YEIDE
T/a YEIDE'S DELICATESSEN
1382 Morris Avenue
Union, N. J.,

Holder of Plenary Retail Distribution License D-13, issued by the Township Committee of the Township of Union,

-and-

JOHN ALEXANDER WILSON
980 Lorraine Avenue
Union, N. J.,

Holder of Employment Permit No. 1100, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS

AND ORDERS

Earl W. Yeide, Defendant-licensee, Pro Se.
John Alexander Wilson, Defendant-permittee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant-licensee pleads non vult to charges of (1) selling alcoholic beverages on Wednesday, May 25, 1949, at about 7:15 a.m., in violation of Rule 1 of State Regulations No. 38; and (2) permitting an employee, John Alexander Wilson, a minor, to sell alcoholic beverages, in violation of Rule 2 of State Regulations No. 13.

Defendant-permittee, nineteen years of age, who holds an employment permit, pleads non vult to a charge of selling and serving alcoholic beverages, contrary to the conditions upon which his permit was issued. See Rule 10(a) of State Regulations No. 13. Both proceedings will be considered and disposed of herein since they arose out of the same incident.

The file in the instant case discloses that defendant-licensee operates a delicatessen store. On the morning in question, at about 7:15 a.m., an ABC agent ordered some merchandise from the defendant-

permittee and, at the same time, inquired of the defendant-licensee whether he could have some cold cans of beer. When told by defendant-licensee that he could have the beer, the ABC agent ordered twelve 12-ounce cans. The defendant-licensee put the cans of beer in a paper bag, placed it on the counter, and then walked away. The defendant-permittee placed a bag containing the other merchandise on the counter, calculated the amount of money due from the "customer" for all the items including the cans of beer, and accepted payment therefor.

A Limited Retail Distribution License held by defendant-licensee in 1944 was suspended by the local issuing authority for five days, effective January 3, 1944, after a retail inspection disclosed that he had chilled beer in an icebox on the licensed premises. Because of the time elapsed, I shall not consider the prior record in fixing the penalty herein.

Under the circumstances, I shall suspend the license of defendant-licensee for a period of twenty-five days, less five days' remission for the plea entered herein, or a net suspension of twenty days. I shall suspend the permit issued to John Alexander Wilson for a period of thirty days, less five days for the plea, or a net suspension of twenty-five days. Re Treznz, Bulletin 736, Item 2.

Accordingly, it is, on this 20th day of June, 1949,

ORDERED that Plenary Retail Distribution License D-13, issued by the Township Committee of the Township of Union to Earl W. Yeide, t/a Yeide's Delicatessen, for premises 1382 Morris Avenue, Union, be and the same is hereby suspended for the balance of its term, effective June 28, 1949, at 9:00 a.m.; and it is further

ORDERED that if any license be issued to this licensee, or any other person, for the premises in question, for the 1949-50 fiscal year, such license shall be under suspension until 9:00 a.m. July 18, 1949; and it is further

ORDERED that if any employment permit be issued by the State Director of Alcoholic Beverage Control to John Alexander Wilson for the 1949-50 fiscal year, said permit shall be under suspension from 9:00 a.m. July 18, 1949 until 9:00 a.m. August 12, 1949.

ERWIN B. HOCK
Director.

10. DISCIPLINARY PROCEEDINGS - SALE AND ADVERTISING OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 30 - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA

In the Matter of Disciplinary Proceedings against

MONTCLAIR FOOD COMPANY, INC.
517 Bloomfield Avenue
Montclair, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-11, issued by the Board of Commissioners of the Town of Montclair.

Montclair Food Company, Inc., Defendant-licensee, by George J. Chase, President.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that it sold and advertised for sale alcoholic beverages at retail below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

On May 19, 1949, defendant advertised, in the Montclair Times, Martini & Rossi Vermouth for sale at retail at the price of \$2.52. On said day agents of the State Division of Alcoholic Beverage Control purchased from defendant's clerk in defendant's licensed premises a 30-ounce bottle of said alcoholic beverage at said price. The minimum consumer price for said item was \$2.59 as disclosed in the list of such prices effective April 1, 1949.

The minimum penalty for Fair Trade violations is ten days. Re Markowitz, Bulletin 792, Item 9. In 1946, defendant's license was suspended by me for a net period of five days after a plea of non vult to a similar charge. See Bulletin 744, Item 9. The President of defendant corporation alleges that the violation was due to an error made in restocking shelves after extensive alterations of the licensed premises. A violation of the Fair Trade Regulations is serious even if due to a mistake. Re Grant Lunch Corp., Bulletin 517, Item 3. Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408. Under the circumstances I shall suspend the license for twenty days. Remitting five days because of the plea will leave a net suspension of fifteen days.

Accordingly, it is, on this 21st day of June, 1949,

ORDERED that Plenary Retail Distribution License D-11, issued by the Board of Commissioners of the Town of Montclair to Montclair Food Company, Inc., for premises 517 Bloomfield Avenue, Montclair, be and the same is hereby suspended for the balance of its term, effective at 9:00 a.m. June 28, 1949; and it is further

ORDERED that, if any license be issued to this licensee or any other person for the premises in question for the 1949-50 licensing year, such license shall be under suspension until 9:00 a.m. July 13, 1949.

ERWIN B. HOCK
Director.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JAMES DUFFY)
T/a DUFFY'S TAVERN)
Highway #35)
Madison Township)
P.O. Lawrence Harbor, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Madison.)

Benjamin Kleinberg, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that, in violation of Rule 28 of State Regulations No. 20, he possessed one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", which bottle bore a label which did not truly describe its contents.

On May 24, 1949, an ABC agent tested twenty-seven opened bottles of alcoholic beverages on defendant's premises and seized the bottle mentioned in the charge when the contents thereof appeared to be off color. Subsequent analysis by the Division Chemist established that the contents of the seized bottle did not conform with the description thereof on the label.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum of fifteen days, less five days for the plea, leaving a net suspension of ten days. See Bulletin 836, Item 6.

Accordingly, it is, on this 21st day of June, 1949,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Madison to James Duffy, t/a Duffy's Tavern, Highway #35, Madison Township, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 22, 1949; and it is further

ORDERED that if any license be issued to this licensee or any other person for the premises in question for the 1949-50 fiscal year, such license shall be under suspension until 2:00 a.m. July 2, 1949.

ERWIN B. HOCK
Director.

12. TRANSPORTATION INSIGNIA - ALCOHOL PERMITS AND BLANKET EMPLOYMENT PERMITS - EXTENDED TO JULY 15, 1949.

June 24, 1949.

NOTICE TO ALL LAW ENFORCEMENT AUTHORITIES:

Transportation Insignia, Special Permits to possess and sell alcohol at retail, Special Blanket Employment Permits and Special Permits to employ Caddies and Pin Boys expire at midnight, June 30, 1949. New Insignia and the above mentioned types of permits must be obtained for such transportation and employments for the fiscal year beginning July 1st.

In many instances, certification of the issuance of licenses has not been received from clerks of municipal issuing authorities. Due to the consequent delay, a large number of retail licensees will be without new Insignia or permits on July 1st.

It would be unfair to retailers who have obtained licenses and applied for Transportation Insignia and Special Permits, to deprive them of delivery privileges or keep some person out of work because of this omission beyond their power to control.

I have, therefore, granted an extension of 1948-49 Insignia, Special Alcohol Permits, Special Blanket Employment Permits and Special Permits to employ Caddies and Pin Boys to midnight, July 15, 1949 to those licensees who have been issued licenses for the fiscal year beginning July 1, 1949.

BUT at the expiration of this extension, the law will be enforced and arrests made.

ERWIN B. HOCK
Director.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Sea-Cal-Frank Corporation
405 Lexington Ave., New York, N. Y.
Application filed June 21, 1949 for Plenary Wholesale License for fiscal year commencing July 1, 1949.

Eastern Motor Dispatch, Inc.
State Route 29 and Ball Ave., Union, N. J.
Application filed June 22, 1949 for Transportation License for fiscal year commencing July 1, 1949.

Langer Transport Corp.
86 Colden St., Jersey City, N. J.
Application filed June 22, 1949 for Transportation License for fiscal year commencing July 1, 1949.

Rodgers Motor Lines Inc.
254 Jefferson St., Cor. Jefferson & Oliver Sts., Newark, N. J.
Application filed June 24, 1949 for Transportation License for fiscal year commencing July 1, 1949.

McKesson Imports, Inc.
759 Summer Ave., Newark, N. J.
Application filed June 27, 1949 for transfer of Plenary Wholesale License W-49 from McKesson Liquor Co., for 1949-50 fiscal year.

Quality Importers, Inc.
350 Fifth Ave., New York, N. Y.
Application for Plenary Wholesale License filed June 28, 1949, for fiscal year commencing July 1, 1949.

New Jersey State Liquor

Erwin B. Hock
Director.