

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2074

December 19, 1972

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Dr. Cranford, N.J. 07016

BULLETIN 2074

December 19, 1972

1. DISCIPLINARY PROCEEDINGS - SUMMARY REPORT OF UNCONTESTED PROCEEDINGS.

In the Matters of Disciplinary
Proceedings against the following
licensees:

CONCLUSIONS
AND ORDERS

A. Jan Kwiatkowski & Janina Kwiatkowski
t/a Cottage Grill
9 Cedar Avenue
Linden, N. J.

S-9291
Lic C-7

Charge: Mislabeled of 2 bottles - fine of \$200 in lieu of
10 days suspension
Order: September 29, 1972

B. Playboy of Sussex, Inc.
t/a Playboy Club Hotel
Highway #517 & #94 McAfee Area
Vernon
P.O. McAfee, N. J.

S-9258
Lic C-7

Charge: Sale to 3 minors, 16, 17 and 20 - fine of \$63,650 in lieu
of 25 days suspension
Order: October 2, 1972

C. Home Liquors (A Corp. of N.J.)
641 Springfield Ave.
Newark, N.J.

Mun.Rev. 5475
Lic C-687

Charge: Sale to a minor - fine of \$1,080 in lieu of 10
days suspension
Order: September 26, 1972

D. Carmine Sassi
t/a J & C Liquor Store
S/W Cor. N. Virginia Ave. &
East Line St.
Upper Penns Neck, N. J.

S-9286
Lic D-1

Charge: Sale to a minor, 18 - failure to disclose suspensions
in license application - two prior similar violations
suspension of 32 days
Order: September 27, 1972 - suspension effective 10/10/72

E. Burdak, Inc.
t/a Burdak Inc.
530-32-34-36 Center Street
South Amboy, N. J.

Mun.Rev. 5479
Lic C-9

Charge: Sale to a minor, 19 - fine of \$400 in lieu of 25 days
suspension
Order: September 27, 1972 -

F. Ocean Beverage Company, Inc.
t/a Ocean Beverage Company
1218 West Brigantine Ave.
Brigantine, N. J.

S-9235
Lic D-1

Charge: Sale to a minor, 20 - fine of \$750 in lieu of 5 days suspension
Order: October 19, 1972

G. Bilow, Inc.
 Gaub Rd. & Route 516
 Madison Twp.
 P.O. Old Bridge, N. J.

S-9299
 Lic C-21

Charge: Mislabeled 5 bottles - fine of \$2,200 in lieu of 20
 days suspension
 Order: October 24, 1972

H. Harry & Joe's Inc.
 t/a Bill's Liquor Store
 801 Mantua Pike
 West Deptford Twp.
 P.O. Woodbury, N. J.

S-9321
 Lic D-1

Charge: Sale to minor, 18 - fine of \$970 in lieu of 10 days suspension
 Order: October 24, 1972

I. Mario's Wine & Liquor Store Inc.
 243 High Street
 Burlington, N. J.

S-9278
 Lic D-1

Order permitting fine of \$400 in lieu of 10 days suspension
 previously imposed and stayed by supplemental order of September
 19, 1972

Order: October 24, 1972

J. The East Orange Motel Corp.
 t/a Holiday Inn
 120 Evergreen Place
 East Orange, N. J.

S-9246
 Lic C-25

Charge: Mislabeled 3 bottles - fine of \$3,135 in lieu of 15 days
 suspension
 Order: October 25, 1972

K. 2415 Pacific Corporation
 t/a The Playground
 2415 Pacific Avenue
 Atlantic City, N. J.

S-9300
 Lic C-177

Charge: Permitting females to accept drinks - prior similar record -
 license suspended for 52 days
 Order: October 24, 1972 - suspension effective 11/1/72

L. Jadlyn, Inc.
 t/a Friends Bar & Package Goods
 620 Mantua Pike
 Deptford Twp.
 PO Wenonah, N. J.

S-9335
 Lic C-7

Charge: Sale to minor, 17 - prior dissimilar record - fine of \$2,960
 in lieu of 25 days suspension
 Order: October 26, 1972

M. Jo-Vin Corp.
 t/a Vinnie's Do-Drop Inn
 46-48 West St.
 Englewood, N. J.

S-9154
 Lic C-6

Charge: Failure to reveal prior suspension in application -
 "Hours" Ordinance violation - prior similar hours violation
 suspension for 32 days
 Order: November 3, 1972 - suspension effective 11/14/72

N. Jesse Robins & Alma Robins
t/a Robins Nest
236 Monticello Ave.
Jersey City, N. J.

S-9356
Lic C-81

Charge: Gambling (numbers) - license suspended for 72 days
Order: November 6, 1972 - suspension effective 11/20/72

O. Charles & Dora Weiman
t/a Voorhees Liquor Store
6 Berlin Road
Voorhees Twp.
PO Haddonfield, N. J.

S-9159
Lic D-1

Charge: Sale to a minor, 18 - fine of \$750 in lieu of 10 days
suspension
Order: October 19, 1972

P. Falk's Bar & Liquors, Inc.
U. S. Route 22
Pohatcong Twp. (Warren Co.)
PO RD #1, Phillipsburg, N. J.

S-9257
Lic C-3

Charge: Sale to minors, 19 and 20 - fine of \$3,780 in lieu of
20 days suspension
Order: October 19, 1972

Q. James T. Ryan & Joseph O'Rourke
185 Coles St.
Jersey City, N. J.

S-9328
Lic C-455

Charge: "Hours" regulation - fine of \$400 in lieu of 10 days
suspension
Order: October 19, 1972

R. Wooden Wheel Inn Co., Inc.
State Highway #206
Montgomery Twp.
PO Rd Skillman, N. J.

S-9241
Lic C-1

Charge: Conduct of business without employees list - Rule 16C of
State Regulation No. 20 - fine of \$400 in lieu of 10 days
suspension after consideration of prior dissimilar record
Order: October 19, 1972

S. R S M Associates, Inc.
t/a "Crescendo Lounge"
Shopping Center (unnumbered)
N. Broadway, North End, 2nd Section
Lower Penns Neck Twp.
Pennsville, N. J.

S-9276
Lic C-2

Charge: Sale to a minor, 20 - fine of \$200 in lieu of 5 days
suspension
Order: October 19, 1972

T. Tomlo, Inc.
t/a LBJ Bar
617-619 South 11th Street
Newark, N. J.

S-9338
Lic C-390

Charge: Mislabeled 3 bottles - employed disqualified person -
suspension for balance of term with leave to correct after
40 days - suspension effective dates deferred
Order: November 3, 1972

U. Reggie's Inc.
t/a Reggie's
7 Coles Road, Blenheim
Gloucester Twp.
PO Box 446, Blackwood, N. J.

S-9341
Lic C-4

Charge: Sale to minor, 18 - fine of \$400 in lieu of 10 days
suspension
Order: November 3, 1972

V. One Eleven Wines & Liquors, Inc.
t/a One Eleven Wines & Liquors, Inc.
111 Albany St.
New Brunswick, N. J.

S-9353
Lic C-8

Charge: Mislabeling 9 bottles - suspension of 28 days
Order: November 3, 1972 - suspension effective 11/14/72

W. Louis E. Jakiel
t/a First Avenue Tavern
402 First Ave.
Elizabeth, N. J.

S-9343
Lic C-80

Charge: "Hours" regulation - prior dissimilar offense within
5 years - license suspended for 15 days
Order: November 6, 1972 - suspension effective 11/20/72

X. J. J. Y. Inc.
295 - 9th St.
Jersey City, N. J.

S-9324
Lic C-424

Charge: "Hours" regulation - license suspended for 10 days
Order: November 6, 1972 - suspension effective 11/20/72

Y. A.W.W. Lewandowski Post No. 20 Amvets
323 New York Ave.
Lyndhurst, N. J.

S-9358
Lic CB-7

Charge: Sale to non-members or guests - license suspended for
10 days
Order: November 6, 1972 - suspension effective 11/20/72

Z. George Raheb
t/a George's Liquor & Deli
74 Crawford St.
PO Eatontown
Shrewsbury Township, N. J.

S-9339
Lic D-1

Charge: Sale to a minor, 17 - suspension of 15 days
Order: November 6, 1972 - suspension effective 11/20/72

ROBERT E. BOWER
DIRECTOR

2. DISQUALIFICATION REMOVAL PROCEEDINGS - PRIOR CRIME (CARRYING CONCEALED WEAPON) - DID NOT INVOLVE MORAL TURPITUDE UNDER THE CIRCUMSTANCES - DISQUALIFICATION REMOVAL NOT REQUIRED.

Eligibility No. 803

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State because of the conviction of a crime.

The applicant pleaded guilty to the charge of unlawfully carrying a concealed weapon in the Bergen County Court on May 7, 1968 and was sentenced to six months in the Bergen County Jail (suspended) a \$250.00 fine and one month probation.

The crime of carrying a concealed weapon may or may not involve the element of moral turpitude. When the crime stands alone, unattended by the crime of intent to commit other crimes, it does not ordinarily involve moral turpitude. Case No. 1698, Bulletin 1474, Item 4.

At the hearing held herein, the applicant testified that, at the time of the incident he was the owner of an automobile sales business in Hackensack, which business dealt in new and used foreign cars.

Approximately one year before the subject incident he was granted a permit to purchase a pistol. However, his application to carry the weapon was denied. The nature of his business was such that, on frequent occasions, he was required to carry substantial sums of money either to his home or to the bank during evening hours.

On the evening of January 6, 1968 at approximately 8:00 P.M. he left his business premises with approximately \$3,000.00 in cash. He described the area as a "...rundown section of Hackensack." and as a "ghetto area." He placed the gun in the glove compartment of his car as he had done on prior occasions when he transported large sums of money.

At approximately 1:30 A.M. he received a telephone call from the Hackensack Police Department, advising him of a fire at his business premises. He returned at once to the premises, and during the course of police investigation into the cause of the fire, which included a search of his automobile, the pistol was discovered.

Applicant has no prior or subsequent criminal convictions.

Under the circumstances presented herein, I find that the applicant has not been convicted of a crime involving the element of moral turpitude, and, therefore, no order removing his disqualification is required. Re Case No. 131, Bulletin 451, Item 7.

APPROVED:

Harry D. Gross
Hearing Agent

Robert E. Bower
Director

Dated: October 3, 1972

3. ACTIVITY REPORT FOR OCTOBER 1972

ARRESTS:		
Total number of persons arrested - - - - -		10
Licensees and employees- - - - -	3	
Bootleggers- - - - -	5	
Minors- - - - -	2	
SEIZURES:		
Stillls - 50 gallons or under - - - - -		0
Alcohol - gallons- - - - -		0
Mash - gallons - - - - -		0
Distilled alcoholic beverages - gallons- - - - -		17.03
Wine - gallons - - - - -		8.42
Brewed malt alcoholic beverages - gallons- - - - -		55.43
COMPLAINTS AND INVESTIGATIONS:		
Inspection & visits made on assigned investigations- - - - -		1,375
Complaints assigned for investigation- - - - -		343
Investigations completed - - - - -		367
Investigations pending - - - - -		347
Premises where alcoholic beverages were gauged - - - - -		562
Bottles gauged - - - - -		10,793
Premises where violations were found - - - - -		180
Number of violations found - - - - -		263
License applications investigated- - - - -		3
Contacts made with other law enforcement agencies- - - - -		465
LABORATORY:		
Analyses made- - - - -		131
Refills from licensed premises - bottles - - - - -		106
Bottles from unlicensed premises - - - - -		2
Controlled Dangerous Substance - - - - -		2
IDENTIFICATION:		
Criminal fingerprint identifications made- - - - -		7
Persons fingerprinted for non-criminal purposes- - - - -		372
Identification contacts made with other law enforcement agencies - - - - -		269
DISCIPLINARY PROCEEDINGS:		
Cases instituted at Division - - - - -		36
Violations involved- - - - -		49
Sale during prohibited hours - - - - -	4	Purchase from improper source- - - - - 1
Sale to minors - - - - -	4	Employ person convicted of crime - - - - - 1
Possession liquor not truly labeled- - - - -	8	No lic. application on premises- - - - - 3
Permitting immoral activity- - - - -	1	No E-141-A Form - - - - - 8
Sale to club non-member- - - - -	2	No true books of account - - - - - 3
Permitting gambling on premises- - - - -	2	Promotional contest- - - - - 1
Numbers game - - - - -	1	Employment disqualified person - - - - - 1
Liars Poker - - - - -	1	Employment non-resident- - - - - 1
Fraud & Front- - - - -	4	Storage on unlicensed premises - - - - - 1
Aiding & Abetting- - - - -	3	Transport alc. bev. w/o proper invoice - 1
Cases brought by municipalities on own initiative and reported to the Division - - - - -		28
Violations involved- - - - -		34
Sale to minors - - - - -	22	Employment of intoxicated persons- - - - - 2
Sale during prohibited hours - - - - -	3	Sale to intoxicated persons- - - - - 1
Act of violence- - - - -	1	Narcotics activity - - - - - 1
Brawl - - - - -	1	Unreported change in corporate structure 1
Nuisance - - - - -	2	
Fines in lieu of disciplinary proceedings- - - - -		108
Total amount of fines- - - - -		\$5,775.
HEARINGS HELD AT DIVISION:		
Total number of hearings held- - - - -		26
Appeals- - - - -	6	Seizures - - - - - 10
Disciplinary proceedings - - - - -	10	
STATE LICENSES AND PERMITS:		
Total number issued- - - - -		1,783
Licenses - - - - -	4	Wine permits - - - - - 306
Solicitors' permits- - - - -	67	Miscellaneous permits- - - - - 215
Employment permits - - - - -	320	Transit insignia - - - - - 172
Disposal permits - - - - -	130	Transit certificates - - - - - 31
Social affair permits- - - - -	538	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Enforcement files established- - - - -	2	

ROBERT E. BOWER
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: November 10, 1972

4. DISCIPLINARY PROCEEDINGS - REBATES GIVEN BY HOLDER OF SOLICITOR'S PERMIT IN VIOLATION OF RULE 3 OF STATE REGULATION No. 35 - INSUFFICIENT PROOF - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against)

Richard M. Warner)
242 Oakwood Drive)
Paramus, N.J.)

Holder of Unlimited Solicitor's Permit No. 3833 (for the 1971-72 permit period; and Permit No. 1622 for the 1972-73 Permit Period))

CONCLUSIONS and ORDER

Richard H. Steinberg, Esq., Attorney for Solicitor
Dennis M. Brew, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Permittee pleaded not guilty to the following charge:

"On divers days from on or about January 1, 1969, to on or about December 31, 1969, you, holder of an unlimited solicitor's permit for employment with Galsworthy, Inc., holder of a New Jersey plenary wholesale license offered to furnish and furnished, directly or indirectly, to then holders of plenary retail consumption licenses or plenary retail distribution licenses, as named and designated on Schedule "A" attached hereto and made a part thereof, gifts, rebates, allowances of money, things of value, discounts and inducements, including free goods, deals, combination sales and similar inducements; contrary to and in violation of Rule 3 of State Regulation No. 35."

On behalf of the Division, Agent P. testified that on January 4, 1971, he interviewed Johnathan Frankel, president of Frankel Wine and Liquor Corp., a plenary retail distribution licensee with respect to an allegation that said licensee had accepted cash "kick-backs" from Galsworthy, Inc., holder of a New Jersey Plenary Wholesale license. The statement, in pertinent part, sets forth that one Dick Warner, salesman for Galsworthy delivered an unspecified sum of money to him and that any such arrangement ended in September, 1969.

Johnathan Frankel testified that he is employed by the Frankel Wine and Liquor, Inc.; he has dealt with Galsworthy Corp. for many years; and for a substantial portion of the year 1969, the Galsworthy representative who serviced his account was Mr. Zimetbaum. Thereafter, Warner succeeded to that position. He received cash kick-backs from Galsworthy on one instance only, in the latter part of 1969. While he does not personally know who delivered the cash payment in a sealed envelope, he assumed that it must have been Warner, the subject solicitor.

He asserted that the arrangement with Galsworthy regarding kick-backs was not made with or through Warner. "When Mr. Warner appeared on the scene as far as I was concerned, the whole situation was over." The funds received by Frankel in 1969 were for a period of time prior to that during which Warner serviced the account.

He added that the envelope containing the cash from Galsworthy was delivered to the licensed premises during his absence, and was given to him by his employee upon his return. He did not personally observe the person who delivered the envelope.

Richard Warner testified that during the year 1969, he was employed by Galsworthy as a salesman and he began servicing the Frankel account during mid-summer of that year. He candidly admitted his knowledge of kick-back arrangements in the industry but adamantly denied that he had ever taken part in any such arrangement and steadfastly denied ever delivering the cash to Frankel.

The testimony of Agent P is of no probative value since he merely served to introduce the statement of Frankel into evidence.

The direct testimony of Frankel serves no purpose other than to substantially dilute the force of the statement in evidence. Counsel for the Division argues that the statement taken earlier, in time, should reasonably be accepted as being the more accurate.

However, the statement itself, dated January 4, 1971 was taken at least 1½ years prior to the delivery of the cash herein which, according to Frankel, was delivered no later than September 1969.

The direct testimony of Frankel raises sufficient doubt in my mind to question whether it substantially establishes the charge herein.

To be in doubt is to be resolved. Such doubt must be resolved in favor of the licensee. Feldman v. Irvington, Bulletin 1969, Item 2. I therefore, conclude that this charge has not been established by a fair preponderance of the credible evidence.

Accordingly, I recommend that the charge herein be dismissed.

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 transcript of testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 19th day of October 1972,

ORDERED that the charge against Unlimited Solicitor's Permit No. 1622, issued by the Director of the Division of Alcoholic Beverage Control to Richard M. Warner, 242 Oakwood Drive, Paramus, be and the same is hereby dismissed.

Robert E. Bower,
Director.

- 5. DISCIPLINARY PROCEEDINGS - PURCHASE FROM OTHER RETAILERS WHILE ON NON-DELIVERY LIST - MATTER HEARD EX PARTE - LICENSE SUSPENDED FOR 15 DAYS - PREMISES CLOSED - SUSPENSION DEFERRED UNTIL RE-OPENING.

In the Matter of Disciplinary Proceedings against)

Sanitate, Inc.)
 t/a Roundtable Restaurant & Lounge)
 808 South Orange Avenue)
 Newark, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-152 (for 1971-72 license period), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

 No appearance on behalf of Licensee Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee did not appear to contest the following charge (a not guilty plea was entered by the Division):

"On divers days between February 22, 1971 and February 22, 1972, when your name appeared on the Non-Delivery List, you the holder of a New Jersey plenary retail consumption license, without authority of special permit first obtained from the Director of the Division of Alcoholic Beverage Control, purchased or obtained numerous orders of various kinds and brands of alcoholic beverages from other than holders of New Jersey manufacturer's or wholesaler's licenses, viz., from holders of plenary retail consumption and distribution licenses; in violation of Rule 15 of State Regulation No. 20."

On behalf of the Division, the following documents were offered in evidence:

- (1) Notice of charges dated June 14, 1972, and addressed to the licensee herein by certified mail (return receipt requested) and returned to the Division marked "Unclaimed;"
- (2) Copy of a telegram to the licensee advising of charges and requesting an answer;
- (3) Affidavit by a member of Division Enforcement staff regarding an attempt to make personal service on the licensee herein. The affidavit sets forth that on July 13, 1972 the premises were closed and locked.

The prosecutor further represented that he had been advised on the morning of July 14, 1972 (date of hearing) by the Municipal Board of Alcoholic Beverage Control, City of Newark, that to its knowledge no business had been conducted at the premises for several months, the Board was unable to effect its own personal service on the licensee in a disciplinary proceeding. Lastly, the Board advised that the licensee herein had not made application to renew its license for the 1972-73 license period.

Accordingly, the hearing proceeded ex parte. Agent C testified on behalf of the Division that the Division records disclose the licensee herein was placed on the non-delivery list on February 22, 1971, and has continued on the list until the date of hearing (July 14, 1972).

On February 22, 1972 he inspected the licensed premises in the company of Agent M. At the premises he interviewed Peter Campisi (holder of 98% of the stock of the corporate licensee) with respect to the charge herein. With some reluctance, Campisi admitted making numerous purchases from other retail licensees.

An inventory taken by Agent C discloses the stock on hand to be 120 containers of assorted liquors and nine cases of beer, all of which were seized and transported to Division headquarters.

In a statement taken from Campisi at Division headquarters on February 25, 1972, he again admitted making numerous purchases of alcoholic beverages in an effort to keep the business running until he could sell it.

Licensee, by his own admission, is guilty of the charge herein.

While the licensee has no prior adjudicated record, it is noted that on March 7, 1972 the Municipal Board of Alcoholic Beverage Control of the City of Newark instituted disciplinary proceedings against the licensee herein, which proceedings are now pending.

Accordingly, it is recommended that the licensee herein be found guilty and that the license be suspended for fifteen days. Re The Main of Rahway, Bulletin 2062, Item 10.

Since the licensee is not presently in operation and did not apply for renewal of the license for the current license period, it is further recommended that any suspension be deferred pending the return of the licensee or its officers or directors to operation of licensed premises.

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 transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Division records indicate that the subject license was not renewed for the current license period. Hence no effective penalty can be imposed at this time.

Accordingly, it is, on this 19th day of October 1972,

ORDERED that Plenary Retail Consumption License C-152 (for 1971-72 license period), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Sanitate, Inc., t/a Roundtable Restaurant & Lounge, for premises 808 South Orange Avenue, Newark, be and the same is hereby suspended for fifteen (15) days, the effective dates of which are hereby deferred until the entry of a further order herein.

ROBERT E. BOWER
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against
 Washington Delicatessen of Pompton Lakes, Inc.
 119-121 Wanaque Avenue
 Pompton Lakes, N.J.,
 Holder of Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Pompton Lakes.

CONCLUSIONS and ORDER

 Robert H. Chester, Esq., Attorney for Licensee
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On January 25, 1972, 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., Douglas R. T---, age 18; in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division Douglas --- testified that he was born on April 15, 1953 and was eighteen years of age on the date alleged in the charge. On the morning of January 25, 1972, accompanied by Michael ---, he drove to the licensed premises (a combination delicatessen and packaged liquor store) for the purpose of purchasing beer. He parked in the parking lot at the rear of the premises. Immediately thereafter he left the car empty-handed and entered the store. A male (identified as Donald Barr) was working behind the counter.

Douglas testified that he purchased five bottles of Horlacher's beer, paid two dollars and change; returned to the car and drove "to the party." He was not requested or required to produce identification or proof of age, nor did he make a written representation that he was of statutory maturity.

On cross examination Douglas testified that he absented himself from school in order to attend an all-day party being held behind Michael's home. On the morning of the day in question he departed from his home at the time that he would normally attend school and proceeded to Michael's home at approximately nine o'clock. He accompanied Michael to the party, left the party with Michael and arrived at the licensed premises shortly after ten o'clock. He did not specifically recall seeing any other patrons in the premises. He did not recall seeing a male identified as Irving Nurik in the premises that morning. He saw Nurik that night when the ABC agents accompanied him to the premises for identification purposes.

Douglas asserted that, upon requesting Barr to give him five bottles of Horlacher's, Barr removed the five quart-bottles from the bottom shelf of the cooler which was located four or five feet diagonally behind the counter, and placed them in a paper bag. Upon exiting, he and Michael proceeded to the party. Later he was questioned by ABC agents who indicated to him that he had committed a crime and requested his cooperation in identifying the licensee involved.

Michael testified that on January 25 he was driven by Douglas to the rear of the licensed premises where he parked. Douglas got out of the car empty-handed and, upon his return approximately five minutes later, he was carrying a bag which he ultimately learned contained five quarts of Horlacher's beer.

On cross examination the witness denied that the beer was purchased at a place other than the subject licensed premises.

ABC Agent V testified that, accompanied by ABC Agent S, he proceeded to the Riverdale police station on January 25 at approximately 7 p.m., where he met Douglas and Michael. The agents, accompanied by a member of the Riverdale police force and a member of the Pompton Lakes police force, were directed to the licensed premises by Douglas and Michael. Upon entry, Douglas pointed out Barr (who was then engaged in making sandwiches) as the male who sold him the beer.

Agent V identified himself to Barr and informed him that he had on that day purchased the five quarts of beer from him (Barr). Barr responded, "I don't have any of that beer. I ran out. If you don't believe me, call Horlacher." Douglas suggested that Agent V should look in the lower end of the beer cooler. Upon opening the door, Agent V noted that it contained fourteen quarts of Horlacher beer.

The questioning of V then revealed the following:

- "Q Upon discovering this [the Horlacher beer] what was Mr. Barr's reaction? If any.
- A He said to me, 'I would have hidden that if I wanted to.' I said, 'What do you mean?' He said, 'You know what I mean.' I said, 'Why would you want to hide it?' He said, 'You know why.'"

After identifying themselves, Barr continued to make sandwiches, wait on customers and ring up sales for a period of fifteen or twenty minutes, although he was requested to halt his activities by Agent V. He finally ceased his business transactions upon demand by the police officers.

He recalled seeing a male in the store premises who was identified as Barr's brother-in-law. He had a black eye and needed a shave. He resembled Nurik; however, he was not certain that it was Nurik.

It was stipulated that Agent S's testimony on direct examination would be similar to Agent V's direct testimony.

On cross examination Agent S testified that, in addition to Barr, he observed a male who had a black eye and who identified himself as Barr's brother-in-law. He could not identify that male as Nurik. Barr did not cease waiting on his customers until he was told that the investigation had priority.

In behalf of the licensee, Irving Nurik (a corporate officer thereof and a brother-in-law of Donald Barr) testified that he reported to work on January 25 at approximately 8:45 a.m. Barr was in the premises. The store has a very high volume sandwich luncheon take-out business, with a high volume of patronage from 11 a.m. to noontime. Pursuant to Nurik's suggestion, Barr left the store between 9:15 and 9:30 a.m. so that he could go home for lunch, pick up a piece of roast beef at the butcher shop and return by 11 a.m. in order to attend to the rush-hour patronage. Barr returned shortly after 11 a.m. From approximately 9:15 a.m. to approximately 11 a.m., while Barr was away, Nurik attended to the business unassisted. He did not see Douglas in the store and he denied selling Douglas the beer. He denied returning to the store that evening. The nearest liquor store is more than a block distant from the subject licensed premises.

Donald Barr (a principal officer of the corporate licensee) testified that on January 25 he opened the store at 8 a.m. Nurik came in at 8:45 a.m. Shortly after 9 a.m. he departed for the meat market. The butcher was busy and kept him there approximately a half-hour. He then went home, consumed a sandwich, returned to the store shortly after 11 a.m. and remained there until 10 p.m.

He stated that ABC Agents V, S and Douglas entered the store at approximately 9 p.m. Barr's father, and brother who had a black eye due to an operation, were in the store on a social visit. He denied selling beer to Douglas on that day. In response to Agent V's question concerning whether he had Horlacher's beer, he informed him that he didn't think he had any because "we" called the distributor that day.

On cross examination Barr asserted that he had never seen Douglas prior to the night of January 25. Douglas pointed to the case where the Horlacher beer was kept to Agent V and the agent found the beer in the case.

Preliminarily, it should be observed that we are dealing with a purely disciplinary action, and such action is civil in nature, and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since the matter sub judice presents a factual issue, the credibility of witnesses must be weighed. Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div. 1961).

I have had an opportunity to observe the demeanor of the witnesses as they testified and, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony.

Although I strongly deplore the conduct of the minor on the date in question, I am imperatively persuaded that his version had a substantial ring of truth with respect to the alleged purchase of the alcoholic beverages in the licensed premises.

I am impressed by the fact that the minor unhesitatingly directed the agents to the licensed premises. It is apparent that, despite a searching cross examination, the minor unequivocally identified the licensed premises, the particular employee involved in making the sale, and pointed to the location where the item that he alleged he purchased in the licensed premises was kept.

I have carefully noted the demeanor of the minor, and I fail to detect any semblance of improper motivation on his part or on the part of the ABC agents. On the other hand, I have an abiding feeling that the testimony presented by the licensee was totally lacking in candor.

I conclude, therefore, that a fair 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. I further recommend that the license be suspended for fifteen days. Re Yeager, Bulletin 2049, Item 11.

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 transcripts of the testimony, the exhibit and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 2nd day of November 1972,

ORDERED that Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Pompton Lakes to Washington Delicatessen of Pompton Lakes, Inc., for premises 119-121 Wanaque Avenue, Pompton Lakes, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Wednesday, November 15, 1972, and terminating at 3 a.m. Thursday, November 30, 1972.

Robert E. Bower,
Director.

7. ELIGIBILITY HEARING - POSSESSION OF WEAPON NOT INVOLVING MORAL TURPITUDE.

Eligibility No. 800

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State because of the conviction of a crime.

The applicant pleaded guilty to the charge of illegal possession of a weapon in the Passaic County Court on November 6, 1969 and was sentenced to six months in the County Jail, a fine of \$1000. and a one year period of probation. The six month period of imprisonment was suspended.

The crime of carrying a concealed weapon may or may not involve the element of moral turpitude. When the crime stands alone, unattended by other crimes or intent to commit other crimes, it does not ordinarily involve moral turpitude. Case No. 1698, Bulletin 1474, Item 4.

At the hearing held herein, it was established that the applicant has been the holder of 48% of the shares in a corporation which owns and operates a plenary retail consumption license in New Jersey.

At the hearing held herein, the applicant testified that he left his licensed premises at approximately 3:00 A.M. on the evening of the incident. He had in his possession a 25 caliber automatic weapon which he kept in a brown paper bag under the seat of the car. Also present in the vehicle was a large dog which dog he kept at the licensed premises to prevent hold-ups or other problems. Both the gun and the dog were to protect him from possible robbery while transporting his daily receipts home.

During the drive home and while stopped at a traffic light, the applicant had a sudden recurrence of a chronic back condition, which caused him excruciating pain and rendered him virtually immobile. Since he was unable to drive, the car remained stationary and impeded traffic. As a result, police officers were summoned, and the weapon was found.

Applicant has no prior criminal record; he had not registered the weapon; there have been several attempted hold-ups at his licensed premises; the police department retained the weapon, and he now relies completely on the use of dogs for protection. Under these circumstances, I am persuaded that the conviction of the crime of carrying a concealed weapon did not involve the element of moral turpitude.

I, therefore, find that the applicant has not been convicted of a crime involving the element of moral turpitude and that no order removing his disqualification is required. Re Case No. 131, Bulletin 451, Item 7.

Harry D. Gross,
Hearing Agent

Approved:

Robert E. Bower,
Director

Dated: October 3, 1972

8. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary Proceedings against)
)
 Norwood at Avon, Inc.)
 t/a Norwood at Avon)
 Second & Norwood Avenues)
 Avon-by-the-Sea, N.J.,)
 Holder of Seasonal Retail Consumption License CS-3 (for 1971-72 license period), issued by the Board of Commissioners of the Borough of Avon-by-the-Sea.)

AMENDED ORDER

 William J. Gearty, Esq., Attorney for Licensee
 Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

On October 3, 1972 Conclusions and Order were entered suspending the said license for the balance of its term, viz., until midnight October 31, 1972, commencing October 4, 1972 with leave to the licensee or any bona fide transferee of the licensee to apply to the Director for the lifting of the suspension whenever the unlawful situation has been corrected but in no event sooner than forty-four days from the commencement of the suspension, as computed in the said order.

Recent legislative amendment, however, has changed the expiration of the term of seasonal retail consumption licenses from October 31 to and through November 14. Therefore, I shall enter an order amending the said Conclusions and Order to conform with the provisions of the statute (N.J.S.A. 33:1-12 (2)).

Accordingly, it is, on this 6th day of October 1972,

ORDERED that Seasonal Retail Consumption License CS-3, issued by the Board of Commissioners of the Borough of Avon-by-the-Sea to Norwood at Avon, Inc., t/a Norwood at Avon, for premises Second & Norwood Avenues, Avon-by-the-Sea, be and the same is hereby suspended for the balance of its term, viz., midnight November 14, 1972, effective as of 2:00 a.m. Wednesday, October 4, 1972, with leave to the licensee or any bona fide transferee of the license to apply to the Director by verified petition for the lifting of such suspension whenever the unlawful situation has been corrected, but in no event sooner than forty-four (44) days from the commencement of the suspension herein, computed as follows: Forty-two (42) days to the end of the present term, viz., midnight, November 14, 1972; and in the event of a renewal of this seasonal license for the 1973 seasonal license period, then for a period of two (2) days, after the resumption of operation of the licensed business thereunder.

Robert E. Bower
 Robert E. Bower
 Director