

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

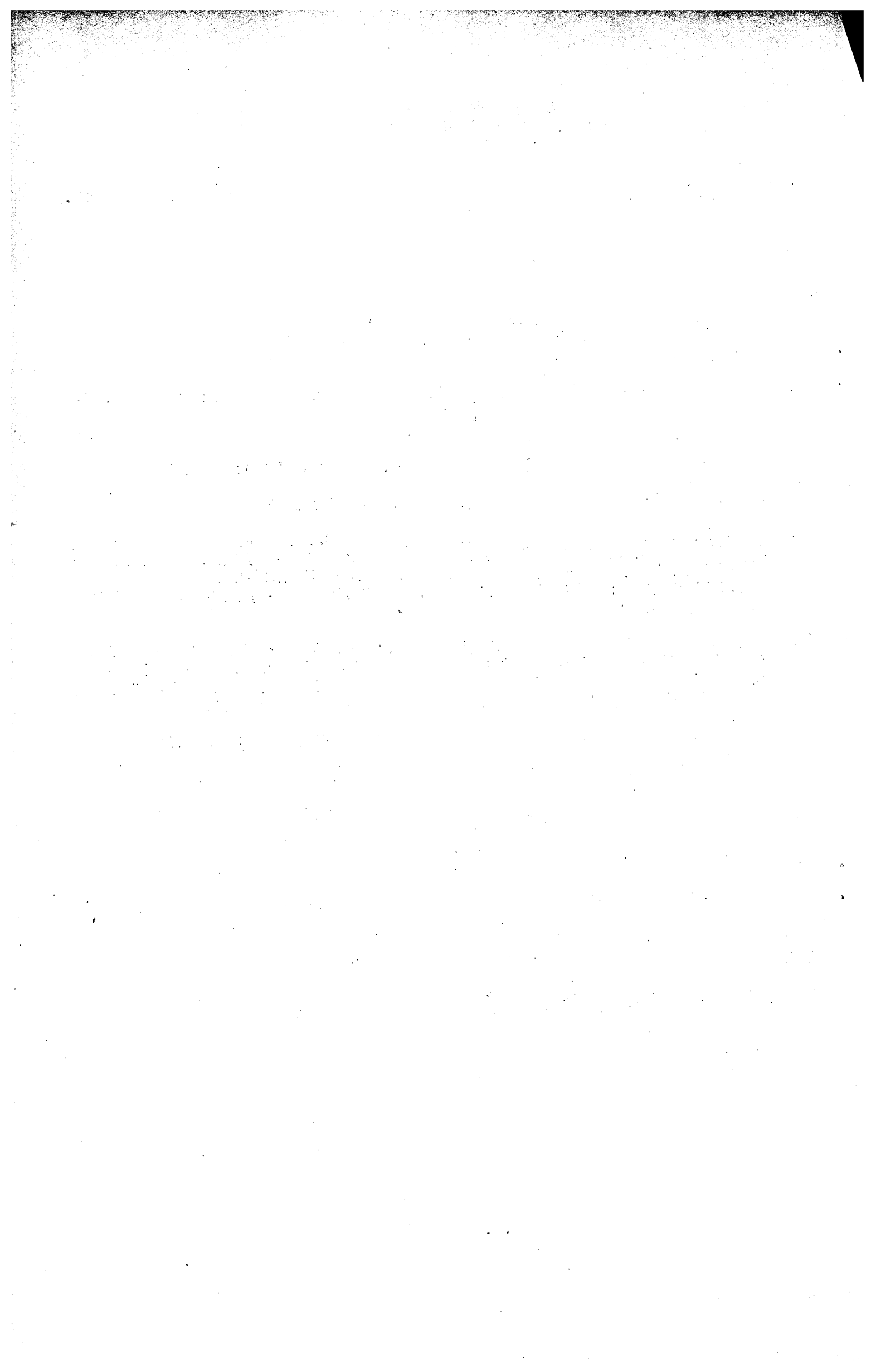
BULLETIN 738

NOVEMBER 19, 1946.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Montague Township) - EMPLOYING NON-RESIDENT ON LICENSED PREMISES WITHOUT REQUISITE PERMIT - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.
2. APPELLATE DECISIONS - PASSAIC TAVERN OWNERS ASSOCIATION ET AL. v. PASSAIC ET ALS.
LIQUOR PACKAGE DEALERS OF PASSAIC v. PASSAIC ET ALS.
FISHMAN ET AL. v. PASSAIC ET ALS.
3. APPELLATE DECISIONS - SIRVENT v. MOUNTAIN LAKES.
4. DISCIPLINARY PROCEEDINGS (Guttenberg) - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 65 DAYS.
5. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES PURCHASED BY ONE RETAILER FROM ANOTHER AND TRANSPORTED UNLAWFULLY ORDERED FORFEITED - TRUCK USED IN SUCH TRANSPORTATION RETURNED TO OWNER WHO ESTABLISHED THAT HE UNKNOWINGLY VIOLATED THE LAW.
6. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLE INTENDED FOR ILLEGAL TRANSPORTATION OF ALCOHOLIC BEVERAGES RETURNED TO OWNER WHO ACTED IN GOOD FAITH AND UNKNOWINGLY VIOLATED THE LAW.
7. DISCIPLINARY PROCEEDINGS (Bayonne) - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.
8. APPELLATE DECISIONS - RUOFF v. GLOUCESTER TOWNSHIP.
9. DISCIPLINARY PROCEEDINGS (Newark) - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.
10. STATE LICENSES - NEW APPLICATIONS FILED.
11. PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION OF ALCOHOLIC BEVERAGES - MINIMUM CHARGE FOR "BEVERAGES ONLY" PROHIBITED.



STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 738

NOVEMBER 19, 1946.

1. DISCIPLINARY PROCEEDINGS - EMPLOYING NON-RESIDENT ON LICENSED PREMISES WITHOUT REQUISITE PERMIT - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
ROCK VIEW (INC.)
T/a ROCK VIEW HOUSE
River Rd., 2 Mi. from N. Y. State Line
Montague Township
P.O. Port Jervis, N. Y.,
Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Montague.

Mackerley and Friedman, Esqs., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

CONCLUSIONS
AND ORDER

Defendant pleaded non vult to a charge that from July 1, 1946 until September 11, 1946 it knowingly employed a non-resident to sell alcoholic beverages at its licensed premises without special permit, in violation of R. S. 33:1-26 and State Regulations No. 13, Rule 4.

There is no dispute as to the facts. The non-resident was employed as a bartender regularly during the summer and, subsequently, as an extra bartender. The employment record of the corporate defendant discloses that said non-resident was carried thereon as a resident of Otisville, in the State of New York, about twelve miles distant from defendant's licensed premises. It further appears that said non-resident had never secured a special permit as required by Regulations No. 13. Thus, it appears that defendant is guilty as charged.

In offering the plea, defendant, through its attorney, stressed the fact that defendant has never been convicted of a violation of the State Alcoholic Beverage Law or Regulations; that it operates a hotel near the New York and Pennsylvania state lines; that it is well thought of locally; and that its failure to secure the necessary permit was due to an inadvertent oversight of defendant's employees who admittedly are charged with the securing of necessary permits and keeping of proper records.

The fact that the violation was unintentional does not excuse it, especially in view of the fact that a similar neglect has been the cause of at least eight prior violations. Each of the prior violations had been cured by the issuance of a validating permit and in the spring of 1946 the licensee-defendant was fully instructed, again, in reference to this condition and warned that a subsequent violation would necessitate proper disciplinary proceedings.

The other facts urged in mitigation have been considered in fixing the penalty.

Considering all the facts and circumstances in the instant case, the license will be suspended for ten days, less five days for the plea, making a net suspension of five days.

Defendant operates on a summer seasonal basis and its premises are presently closed. Accordingly, the effective date for the suspension cannot properly be fixed at this time. Re Solomon, Bulletin 586, Item 2.

Accordingly, it is, on this 8th day of November, 1946,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Montague to Rock View (Inc.), t/a Rock View House, for premises on River Road, 2 Miles from New York State Line, Montague Township, be and the same is hereby suspended for a period of five (5) days, the time to be fixed by subsequent order to be entered herein.

ERWIN B. HOCK
Deputy Commissioner.

2. APPELLATE DECISIONS - PASSAIC TAVERN OWNERS ASSOCIATION ET AL. v. PASSAIC ET ALS.

LIQUOR PACKAGE DEALERS OF PASSAIC v. PASSAIC ET ALS.
FISHMAN ET AL. v. PASSAIC ET ALS.

PASSAIC TAVERN OWNERS ASSOCIATION)
and LEO GILMARTIN,)
Appellants,)

-vs-

BOARD OF COMMISSIONERS OF THE CITY)
OF PASSAIC, and SAMUEL WALDMAN;)
PETER E. BIESIADECKI; VINCENT GIBLIN;)
BERNARD L. FAHN and FANNIE TEMEL;)
MARTIN and HARRY KORNELUH; JOSEPH H.)
MILLER; VINCENT J. SENATORE; STEPHEN)
TULENKO,)
Respondents.)

LIQUOR PACKAGE DEALERS OF PASSAIC,)
NEW JERSEY,)
Appellant,)

-vs-

BOARD OF COMMISSIONERS OF THE CITY)
OF PASSAIC, and JOHN KRAYNAK and)
PETER KRAMER; JOSEPH ALBERTI; JOSEPH)
and ROBERT FAZIO; ABE KAYE; ALEXANDER)
and PETER LUGOWE; BENJAMIN P. MAGGIO)
and EMIL G. MAGGIO; JAY E. RICH;)
MICHAEL and GEORGE SAYKANICS,)
Respondents.)

ON APPEAL

O R D E R

LOUIS FISHMAN, individually, and)
LIQUOR PACKAGE DEALERS OF PASSAIC,)
NEW JERSEY,)
Appellants,)

-vs-

BOARD OF COMMISSIONERS OF THE CITY)
OF PASSAIC, and HARRY SCHIFFMAN;)
PAUL D. RAPPAPORT; PHILIP W.)
KRAKOWITZ; EDWARD LAFER and JUSTINE)
A. LAFER; JOHN J. NOONAN, JR.;)
DANIEL J. HANLEY; PATRICK J. LOFTUS,)
Respondents.)

Stanley J. Polack, Esq., Attorney for Appellants, Passaic Tavern Owners Association and Leo Gilmartin.
Hammer & Hammer, Esqs., Attorneys for Appellants, Liquor Package Dealers of Passaic and Louis Fishman.

Thomas E. Duffy, Esq., Attorney for Respondent Board of Commissioners.
 Morris Dobrin, Esq., Attorney for Respondent, Samuel Waldman.
 Michael Andrus, Esq., Attorney for Respondent, Peter E. Biesiadecki.
 Martin J. Loftus, Esq., Attorney for Respondents, Vincent Giblin;
 Daniel J. Hanley; Patrick J. Loftus.
 Joseph J. Weinberger, Esq., Attorney for Respondents, Bernard L.
 Fahn and Fannie Temel; Martin and Harry Kornbluh.
 Martin Klughaupt, Esq., Attorney for Respondents, Vincent J. Senatore;
 Stephen Tulenko; John Kraynak and Peter Kramer; Michael and
 George Saykanics; John J. Noonan, Jr.; Alexander and Peter
 Lugowe; Benjamin P. Maggio and Emil G. Maggio; Jay E. Rich.
 Manfield G. Amlicke, Esq., Attorney for Respondents, Harry Schiffman;
 Joseph Alberti; Joseph and Robert Fazio.
 Benjamin Osherov, Esq., Attorney for Respondent, Paul D. Rappaport.
 Elmer Friedbauer, Esq., Attorney for Respondent, Philip W. Krakowitz.
 Harry A. Kaplan, Esq., Attorney for Respondents, Edward Lafer and
 Justine A. Lafer.
 Harry Kampelman, Esq., Attorney for Respondent, Abe Kaye.
 Joseph H. Miller, Pro Se.

- - - - -

These appeals are from the issuance by the Board of Commissioners of the City of Passaic of the following plenary retail consumption licenses:

Samuel Waldman, for premises 177 Passaic Street
 Peter E. Biesiadecki, for premises 123 Passaic Street
 Vincent Giblin, for premises 9 Federal Street
 Bernard L. Fahn and Fannie Temel, for premises 647 Main Avenue
 Martin and Harry Kornbluh, for premises 280 Monroe Street
 Joseph H. Miller, for premises 72 First Street
 Vincent J. Senatore, for premises 104 Ann Street
 Stephen Tulenko, for premises 78 First Street;

and from the issuance by the said Board of the following plenary retail distribution licenses:

John Kraynak and Peter Kramer, for premises 49 Market Street
 Joseph Alberti, for premises 320 Passaic Street
 Joseph and Robert Fazio, for premises 78 Broadway
 Abe Kaye, for premises 372 Monroe Street
 Alexander Lugowe and Peter Lugowe, for premises 135 Passaic St.
 Benjamin P. Maggio and Emil G. Maggio, for premises 305 Passaic St.
 Jay E. Rich, for premises 381 Broadway
 Michael and George Saykanics, for premises 70 Fourth Street
 Harry Schiffman, for premises 256 Monroe Street
 Paul D. Rappaport, for premises 192 President Street
 Philip W. Krakowitz, for premises 136 President Street
 Edward Lafer and Justine A. Lafer, for premises 313 Broadway
 John J. Noonan, Jr., for premises 152 Central Avenue
 Daniel J. Hanley, for premises 952 Main Avenue
 Patrick J. Loftus, for premises 521 Main Avenue.

The petitions of appeal, among other issues, raise various technical objections concerning the manner in which the applications for license were submitted. Conceiving that there may be merit in such objections, the licensees are desirous of surrendering their licenses and submitting new applications therefor to the local issuing authority.

The respondent Board of Commissioners adopted a resolution on October 15, 1946, reciting the foregoing and resolving that the State Commissioner "be and he is hereby requested to remand all the proceedings now before him in each of the aforesaid cases to the Board of Commissioners of the City of Passaic for further action".

No valid reason appears why the request for remand should not be granted and, therefore, all of the aforesaid proceedings will be remanded to the respondent Board of Commissioners for further action consistent with law and the said resolution.

Accordingly, it is, on this 12th day of November, 1946,

ORDERED that all of the aforesaid proceedings herein be and the same are hereby remanded to the respondent, Board of Commissioners of the City of Passaic, for its further action consistent with law and the aforesaid resolution.

ERWIN B. HOCK
Deputy Commissioner.

3. APPELLATE DECISIONS - SIRVENT v. MOUNTAIN LAKES.

HARRY L. SIRVENT, trading as)
LaPOLOMA,)
Appellant,)
-vs-)
BOROUGH COUNCIL OF THE BOROUGH)
OF MOUNTAIN LAKES,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Frank C. Scerbo, Esq., by Ralph Porzio, Esq., Attorney for Appellant.
Elden Mills, Esq., Attorney for Respondent.

This is an appeal from a thirty-day suspension of appellant's plenary retail consumption license issued for premises on Bloomfield Avenue, Route 6, Borough of Mountain Lakes. The suspension was imposed by respondent as a result of disciplinary proceedings in which appellant was found guilty on charges of selling alcoholic beverages to minors in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

At the time of the filing of the appeal an order was entered staying the effect of the suspension until the entry of further order herein. R. S. 33:1-31.

Pursuant to stipulation, a transcript of the testimony taken at the hearing before respondent was admitted into evidence and additional testimony was taken at the hearing of the appeal.

The evidence herein discloses that at approximately 3:20 a.m. on July 6, 1946, Police Officer Cortwright investigated an automobile accident on Parsippany Road, Whippany, New Jersey. During the course of the investigation, four minors who had been involved in the accident stated to the Police Officer that they had previously been drinking at the "LaPoloma." The minors were Henry ---, age 19; Thomas ---, age 18; William ---, age 16, and Albert ---, age 20.

At the hearing below, Henry --- testified that prior to the accident he and three other minors had visited appellant's premises. He testified that he ordered "Schenley and water and Schenley and coke"; that he paid for one round of drinks for the four minors but that he could not recall who paid for the other rounds of drinks. Thomas --- testified that on the morning in question he and the other three minors arrived at appellant's premises about 12:15 a.m. and remained there until 2:30 a.m. He also testified that he consumed a tumbler of whiskey and club soda or water which had been purchased by Henry, and that Henry also paid for a second round of drinks.

William --- testified that, on the early morning of the day in question, he and the other three minors had visited appellant's premises. He testified that Henry had purchased two rounds of drinks for each of the four minors. Albert --- testified that, on the morning of the day in question, he and the other three minors had been in appellant's premises. He testified that he had two drinks of "rum and coke" and that he "paid for a couple of rounds." He testified that they arrived at the premises a little after midnight and left about 3:00 a.m.

On July 29, 1946, three of the minors, who were then accompanied by ABC agents, visited appellant's premises and identified Jerome J. Levy as the bartender from whom the drinks had been purchased. At the hearing held before respondent, the four minors again identified Levy as the person who had sold the drinks to them. Appellant alleges that during the visit to the licensed premises on July 29, 1946, the ABC agents induced the minors to identify Levy but I find that contention to be absolutely unfounded.

There is no corroboration of the testimony given by the minors as to the purchase and consumption of alcoholic beverages by them and, hence, it is necessary to consider their testimony carefully. This is particularly necessary in this case in view of the fact that the licensee, Jerome Levy and four patrons of appellant's premises testified under oath that none of the minors was present on appellant's premises at any time during the evening of July 5, 1946, or the early morning of July 6, 1946. One of appellant's witnesses, who is an engineer, testified that he was in the licensed premises from 8:00 p.m. on July 5th until the premises closed on the following morning, and that he is certain that none of the boys was in the licensed premises during that period of time. Another of appellant's witnesses, who is a dentist, testified that he arrived at appellant's premises with his wife about 11:30 p.m. on July 5, 1946, and that they remained there until about 2:50 a.m. He also testified that none of the boys was present during that period of time. Two other witnesses, who stated that they were on the licensed premises between 11:00 p.m. July 5, 1946 and 2:00 a.m. of the following morning, testified that they did not see the boys at any time during that period of time.

As to the boys' testimony: The testimony given by each of the minors establishes guilt, if the testimony is true. It appears, however, that on July 8, 1946, Henry ---, who was then in a hospital at Fort Dix, New Jersey, signed a written statement wherein he said:

"I remember taking a whiskey and coke to William --- who was at the piano. *** And then went to the piano in the barroom. *** There was a female behind the bar. *** The male bartender was kind of stocky, dark hair."

On July 7, 1946, William ---, who was then in a different hospital, signed a written statement wherein he said:

"I then played the piano a while. *** While I was drinking, one of my friends put another drink on the piano for me and I drank that. *** We then played a gun machine for quite a while. *** The bartender was a middle-aged man, heavy set, average height."

At the hearing, William --- testified that he had played the gun machine for about one-half hour. Thomas --- testified at the hearing that, before visiting appellant's premises, they had stopped outside of Archie's roadstand about midnight and that the roadstand was then closed. Albert --- testified that the bartender was "sort of stocky and dark, black hair and about five feet eight inches in height."

It is clear from the testimony in this case that there was no piano available for the use of customers in appellant's premises; that there was no machine gun in appellant's premises, and that appellant did not employ a female bartender, although he did employ a waitress who waited on patrons who were seated in booths. It appears also that, despite the identification of the bartender on July 29, 1946, the description of the bartender given by the minors in their statements and at the hearing does not even approximately describe Jerome Levy, who is nearly six feet tall. There is evidence that Archie's roadstand was open until 1:00 a.m. on July 6, 1946. There is further evidence in the case that another licensed place located in close proximity to La Poloma has a piano for the use of patrons, a machine gun, a female bartender and two male bartenders who fit the description given by the minors of the man who served the drinks. There is a possibility that the boys may have been confused and that they may have visited the nearby licensed premises. In any event, their evidence taken in its entirety is so confusing that it cannot outweigh the positive testimony given by the appellant, his bartender and four patrons that the minors in fact were not on the licensed premises on the evening in question. This is a serious charge. The guilt of appellant has not been established by a fair preponderance of the evidence. Hence it is necessary for me to reverse the action of respondent.

Accordingly, it is, on this 13th day of November, 1946,

ORDERED that the action of respondent issuing authority be and the same is hereby reversed.

ERWIN B. HOCK
Deputy Commissioner.

- 4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 65 DAYS.

In the Matter of Disciplinary Proceedings against)

BRUNO M. BONTEMPI)
6900 Bergenline Avenue)
Guttenberg, N. J.,)

Holder of Plenary Retail Consumption License C-30, issued by the Mayor and Board of Council of the Town of Guttenberg, and transferred during the pendency of these proceedings to)

CONCLUSIONS AND ORDER

BRUNO M. BONTEMPI and EDA BONTEMPI)
for the same premises.)

-----)
Vanderbach & Vanderbach, Esqs., by Harry W. Vanderbach, Esq.,)
Attorneys for Defendant-licensee.)
Edward F. Ambrose, Esq., appearing for Department of Alcoholic)
Beverage Control.)

Defendant has pleaded non vult to charges alleging that (1) he falsely stated in his application for a plenary retail consumption license that no person other than himself was interested in the license or the business to be conducted thereunder, thus concealing the interest of Eda Bontempi and Fortunato Michael Bontempi, in violation of R. S. 33:1-25; and (2) he, from June 3, 1940 to

August 1, 1946, knowingly aided and abetted the said Eda Bontempi and Fortunato Michael Bontempi to exercise, contrary to the provisions of R. S. 33:1-26, the rights and privileges of his successive plenary retail consumption licenses, in violation of R. S. 33:1-52.

It is clear that, during the time defendant held his various and successive plenary retail consumption licenses, his mother, Eda Bontempi, was a partner in the business. It appears that, during that time, she probably held a 6/7 interest in the business. Her interest was not disclosed in answer to Question 30 in the application filed in June, 1946. This question asks: "Has any individual... other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?", and was answered "No".

It is not so clear that Fortunato Michael Bontempi was interested in the business. The only evidence of Fortunato Michael Bontempi's interest is his own statement, given to Department investigators in the course of the investigation, in writing, claiming such an interest. He, however, refuted his written statement and explained that his only interest in the business (not one requiring disclosure in answer to Question 30) was occasioned by the fact that he loaned his nephew, the defendant, \$300.00. This amount has since been repaid. This testimony is corroborated by the defendant and by Eda Bontempi.

The reason for the establishment of the "front" situation appears to have been because Eda Bontempi was a non-citizen in 1940 when Bruno Bontempi obtained the license. Subsequently, in 1943, she became a citizen of the United States.

It is obvious that the allegations in the charges as to Eda Bontempi are true. In view of the plea, it is not necessary to determine whether or not the allegations in the charges as to Fortunato Michael Bontempi are in fact true. I recite the circumstances to show that the illegal situation has been corrected by the transfer of the license as hereinafter set forth.

It is not disputed that all the parties mentioned herein are now duly qualified to hold a license and it appears that the license has now been transferred by the municipal issuing authority to Bruno M. Bontempi and Eda Bontempi, co-partners, pursuant to a written partnership agreement, subject to the outcome of these proceedings.

The penalty normally imposed in "front" cases motivated by reason of non-citizenship is a suspension for a period of sixty (60) days. Re Ferrucci, Bulletin 682, Item 12. The defendant has a prior record constituting a suspension for a period of ten (10) days effective February 15, 1944, on a charge of being open and selling alcoholic beverages during prohibited hours in violation of local ordinance. Under all of the circumstances, I shall suspend the license for a period of sixty-five (65) days.

Accordingly, it is, on this 14th day of November, 1946,

ORDERED that Plenary Retail Consumption License C-30, issued by the Mayor and Board of Council of the Town of Guttenberg to Bruno M. Bontempi, for premises 6900 Bergenline Avenue, Guttenberg, and transferred during the pendency of these proceedings to Bruno M. Bontempi and Eda Bontempi, for the same premises, be and the same is hereby suspended for a period of sixty-five (65) days, commencing at 3:00 a.m. November 30, 1946, and terminating at 3:00 a.m. February 3, 1947.

ERWIN B. HOCK
Deputy Commissioner.

5. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES PURCHASED BY ONE RETAILER FROM ANOTHER AND TRANSPORTED UNLAWFULLY ORDERED FORFEITED - TRUCK USED IN SUCH TRANSPORTATION RETURNED TO OWNER WHO ESTABLISHED THAT HE UNKNOWINGLY VIOLATED THE LAW.

In the Matter of the Seizure)	Case No. 7011
on June 28, 1946, of 34 cases)	
of beer, and on July 12, 1946)	
of a Chevrolet truck, at)	ON HEARING
109 Beachway, in the Borough of)	CONCLUSIONS AND ORDER
Keansburg, County of Monmouth)	
and State of New Jersey.)	

Haydn Proctor, Esq., Attorney for Albert Siegel.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 34 cases of beer seized on June 28, 1946, and a Chevrolet truck owned by Albert Siegel, seized on July 12, 1946, at 109 Beachway, Keansburg, New Jersey, constitute unlawful property and should be forfeited.

It appears that Siegel (as president of Club Rhumba, Inc., holder of a plenary retail consumption license for premises 109 Beachway, Keansburg) had purchased 90 cases of beer from another retailer, of which 34 cases and two cases of empty bottles were seized during an investigation by A.B.C. agents on June 28, 1946. When Siegel admitted that his Chevrolet truck had been used to transport this beer to the licensed premises, agents seized the truck on July 12, 1946.

Siegel did not have a transportation license, as required by R. S. 33:1-13, nor had the Club Rhumba, as a liquor licensee, obtained a transit insignia from this Department, as provided for by R. S. 33:1-28 and State Regulations No. 17, authorizing the use of such Chevrolet truck in the transportation of alcoholic beverages.

The beer transported in the aforesaid unlicensed vehicle is illicit. R. S. 33:1-1(i). Illicit alcoholic beverages and the vehicle in which they are transported constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-66. The beer likewise constitutes unlawful property and is subject to forfeiture under the provisions of R. S. 33:1-66(c), because such beer was not purchased from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit, as required by State Regulations No. 20, Rule 15.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Albert Siegel appeared with counsel and sought return of the Chevrolet truck. Forfeiture of the beer was not opposed.

Under R. S. 33:1-66(e) I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the law.

The vending retailer's beer was legitimate in origin, although Siegel admits that he knew that he was not permitted to purchase it from such retailer. It is possible, as Siegel claims, that he had no previous occasion to deliver alcoholic beverages, and, hence, was unaware that it was likewise illegal to use an unlicensed vehicle to transport alcoholic beverages.

Accepting Siegel's claim that he unknowingly violated the law governing transportation of alcoholic beverages, it leaves the further question whether he can be considered to have acted in good faith when purchasing beer from another retailer with knowledge that this was prohibited by the Alcoholic Beverage Law.

During the shortage of alcoholic beverages within the past few years, the Department has recognized that it is a natural impulse for one retailer to lend a helping hand to another retailer. When there were no aggravating circumstances, a validating permit to cover the sale of alcoholic beverages from one to the other was generally issued in lieu of disciplinary proceedings. Knowledge that such a transaction was not permitted was not, in itself, regarded as a controlling factor. It was not considered an unlawful enterprise so flagrant in nature as to involve the element of bad faith.

I am, therefore, satisfied that in so far as the transportation of the beer purchased from another retailer is concerned, Siegel should be considered as an unwitting violator of the law. The motor vehicle will, therefore, be returned upon the payment of the cost of its seizure and storage, conditioned upon Siegel's obtaining a validating permit to cover the unlawful transportation of the beer. Of course, no validating permit with respect to the purchase of the beer will be issued since that purchase was, in part, the basis for revocation of the license of Club Rhumba, Inc. See Re Club Rhumba, Inc., Bulletin 726, Item 1. That offense is, therefore, merged in the penalty.

Accordingly, it is DETERMINED AND ORDERED that, if on or before the 25th day of November, 1946, Albert Siegel pays the cost of seizure and storage of the Chevrolet truck, and applies for and obtains a permit retroactively validating the unlawful transportation of the beer, at a fee of \$25.00, the motor vehicle will be returned to him; and it is further

DETERMINED AND ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: November 13, 1946.

SCHEDULE "A"

- 34 - cases Hensler Beer
- 2 - empty cases Hensler beer bottles.

6. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLE INTENDED FOR ILLEGAL TRANSPORTATION OF ALCOHOLIC BEVERAGES RETURNED TO OWNER WHO ACTED IN GOOD FAITH AND UNKNOWINGLY VIOLATED THE LAW.

In the Matter of the Seizure)	Case No. 7030
on August 14, 1946, of a Ford)	
truck and a quantity of beer)	
and whiskey and soda in the)	ON HEARING
vicinity of Broad and Hill)	CONCLUSIONS AND ORDER
Streets, in the City of Newark,)	
County of Essex and State of)	
New Jersey.)	
-----)	

Joseph Kmetz, Pro Se.
 Anthony Giuliano, Esq., Attorney for the Newark Lodge of Elks.
 Joseph Vitolo, Pro Se.
 Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes of New Jersey, to determine whether a quantity of alcoholic and other beverages and a Ford truck constitute unlawful property and should be forfeited.

On August 14, 1946, at about 3:30 p.m., A.B.C. agents observed a Ford truck, loaded with a considerable quantity of alcoholic beverages, parked in front of the club quarters of the Newark Lodge of Elks (B.P.O.E. No. 21) located at 929 Broad Street, Newark.

The truck did not have a transportation insignia affixed to it as required by State Regulations No. 17 and actually was not licensed by the State Department of Alcoholic Beverage Control to transport alcoholic beverages. The agents questioned Joseph Kmetz, the owner of the truck, and Anthony Vitolo, who appeared on the scene. These men told the agents that the 52 cases of beer and about 20 cases of soda on the truck had that day been purchased by Anthony Vitolo from the Elks Club, which holds a plenary retail consumption license for the premises, and that such alcoholic beverages were to be transported to Vitolo's home at 264 Elm Street, Newark, for his personal consumption. There was also a case of whiskey on the truck for which no satisfactory explanation was given.

The agents seized the truck, and the beverages thereon, because even if the alcoholic beverages were intended for personal consumption, the quantity exceeded that which may be transported without a license. See R. S. 33:1-2.

When the matter came on for hearing, pursuant to R. S. 33:1-66, Joseph Kmetz appeared and sought return of the motor vehicle. Joseph Vitolo appeared and sought return of all of the beverages, with the exception of the case of whiskey, which was claimed by the Elks Club.

The evidence establishes that the alcoholic beverages were tax-paid, legitimately purchased by the Elks Club, and with the exception of the case of whiskey, sold by it either to Joseph or Anthony Vitolo or to both. The full details of the purpose for which the Vitolos purchased the beverages and why they were to be removed from the club quarters has not been established by the evidence but may be clarified by a pending investigation on another aspect of the case. Hence, decision as to whether all of the beverages shall be forfeited or returned will be reserved.

However, whatever the actual nature of the transaction, I am satisfied that Kmetz had no interest in the beverages, had no knowledge of what was involved, and merely agreed to the use of his truck as an accommodation for the Vitolos, who are related to him by marriage. Kmetz was in the United States armed service until December, 1945, and after his discharge purchased the truck for the purpose of engaging in a trucking business on a small scale. He says that he never transported any alcoholic beverages and did not know that he was required to have a license for that purpose.

Under R. S. 33:1-66(e), I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the law. I am satisfied from the evidence that Kmetz acted in good faith and did not intend to violate the law governing the transportation of alcoholic beverages. Further delay in returning the truck to him until I decide what shall be done with the alcoholic beverages may work a hardship upon him. The truck, therefore, will be returned to Joseph Kmetz upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 26th day of November, 1946, Joseph Kmetz pays all the costs incident to the seizure and detention of said Ford truck, it will be returned to him.

ERWIN B. HOCK
Deputy Commissioner.

Dated: November 14, 1946.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD -- LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

In the Matter of Disciplinary Proceedings against)
 DOMENICA FILERINO)
 T/a CLUB HARLEM)
 545 Boulevard)
 Bayonne, N. J.,)
 Holder of Plenary Retail Consumption License C-165, issued by the)
 Board of Commissioners of the)
 City of Bayonne.)
 -----)

CONCLUSIONS AND ORDER

Maurice A. Cohen, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that she possessed one 4/5 quart bottle labeled "Old Taylor Kentucky Straight Bourbon Whiskey", one 4/5 quart bottle labeled "Old Overholt Straight Rye Whiskey", one 4/5 quart bottle labeled "Old Crow Kentucky Straight Bourbon Whiskey", and one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R.S. 33:1-50.

On September 19, 1946, during the course of an inspection of defendant's liquor stock, an agent of the Department of Alcoholic Beverage Control seized the bottles in question after his field tests indicated that the contents thereof were not genuine as labeled. Subsequent analyses by the Department chemist revealed several differences in characteristics between the whiskey described on the labels and that in the bottles.

Defendant denies any knowledge relative to the violation. However, a licensee is absolutely responsible for any "refills" found in her stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has a prior adjudicated record. Effective February 24, 1946, on a plea of guilty to charges alleging sale of alcoholic beverages to minors and allowing minors to congregate in the premises, contrary to the Alcoholic Beverage Law and state and local regulations, defendant's license was suspended by the local issuing authority for a period of four days. Under the circumstances, I shall suspend defendant's license for a period of twenty-five days.

Accordingly, it is, on this 15th day of November, 1946,

ORDERED that Plenary Retail Consumption License C-165, issued by the Board of Commissioners of the City of Bayonne to Domenica Filerino, t/a Club Harlem, for premises 545 Boulevard, Bayonne, be and the same is hereby suspended for a period of twenty-five (25) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
 Deputy Commissioner.

8. APPELLATE DECISIONS - RUOFF v. GLOUCESTER TOWNSHIP.

GOTTHILF RUOFF)
 T/a JOURNEY'S END RANCH INN,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF)
 GLOUCESTER TOWNSHIP (Camden)
 County),)
)
 Respondent)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

S. Huntley Beckett, Esq., Attorney for Appellant.
George D. Rothermel, Esq., Attorney for Respondent.

This appeal is from the respondent's refusal to transfer the appellant's plenary retail consumption license from Sicklerville Road to Black Horse Pike, in the Township of Gloucester.

The area surrounding the premises where the appellant seeks to locate depicts the usual scene found along well traveled highways in rural communities. The neighborhood is sparsely settled, contains few structures and consists mostly of open farm lands. Within 800 feet of the desired location is another consumption establishment and, about 300 feet distant, is the local grade school. Virtually all of the nearby residents are in protest and a substantial number appeared at the hearing below to voice their objections to licensing an additional premises in their section of the Township, which is known as Grenloch. The three members of the Committee voted unanimously to deny the application.

In an attempt to meet the burden of establishing that the action of the respondent was unreasonable, the appellant testified that he intended to conduct a restaurant at his new premises. The evidence shows, however, that the consumption establishment located less than one-sixth of a mile away serves food. No other witnesses were produced by the appellant.

It is clear, in view of the foregoing, that the respondent's determination is neither arbitrary nor unreasonable and its action in denying the appellant's application for a place-to-place transfer is, therefore, affirmed.

Accordingly, it is, on this 18th day of November, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against)

GEORGE TAUSK & ROSE RODBURG)
T/a CASA BLANCA)
1011 Broad Street)
Newark 2, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-377 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Saul C. Schutzman, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendants pleaded not guilty to the following charges:

"1. On Tuesday, October 15, 1946, at about 11:00 p.m., you sold alcoholic beverages to Fireman l/c Joseph ---, a minor, in violation of R. S. 33:1-77.

"2. On the occasion aforesaid, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to the above named person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

Joseph --- was born on July 20, 1928, and hence was eighteen years of age at the time the alleged violations occurred.

At the hearing herein an investigator employed by the Department of Alcoholic Beverage Control testified that he and another investigator entered defendants' premises on October 15, 1946, at about 10:30 p.m., and that at about 11:00 p.m. he observed the minor, Joseph ---, seated at the rear end of the bar talking to another sailor. He testified further that he saw Alan Berkowitch, a bartender, serve a glass of beer and a shot of whiskey to each of the sailors; that he saw the minor drink his shot of whiskey; that the same bartender poured a second shot of whiskey which the minor also drank before consuming part of the glass of beer. He testified also that all these drinks were paid for by the minor and that the money was rung up on the cash register by the bartender Berkowitch.

The other investigator testified that he observed the two sailors standing at the back end of the bar, and that he saw the bartender, Berkowitch, serve a glass of beer and a shot of whiskey to the minor. He testified further that he saw the minor drink the whiskey; that thereafter he saw the same bartender serve a second drink of whiskey, which the minor also consumed, and that the minor also consumed part of his glass of beer. He testified also that he saw the minor pay the bartender for these drinks, but that he did not observe the bartender ring up the sales on the cash register.

The minor testified that he entered the licensed premises on the evening of October 15, 1946, at about 10:30 p.m.; that he was in the licensed premises twenty or thirty minutes before the investigators spoke to him and identified themselves; that, during that time, while he was seated with other sailors at the rear end of the bar, he was served by a bartender with a glass of beer and a shot of

whiskey, both of which he consumed. He states that he believes he paid the bartender for the drinks but that he is unable to identify the bartender who made the sale.

On behalf of defendants, the bartender, Alan Berkowitch, denies that he sold any alcoholic beverages to the minor. Three sailors, who were also in the licensed premises, testified that they did not see the minor drink anything and that he was in the premises only about five minutes before the investigators spoke to the minor and identified themselves. Two of these sailors were seated at a different part of the bar and said that they spoke to the minor as he entered the premises and before he went to the rear end of the bar. The third sailor apparently was at the end of the bar with the minor, but admits that, while he and the minor were standing at the rear end of the bar, he was talking to an "old buddy" who had previously served on the same vessel and also to a girl who was present on the licensed premises.

Admittedly the premises were crowded on the evening in question. There apparently were at least one hundred customers in the place. It may well be that the bartender has no distinct recollection of serving the minor and, under the circumstances, the sailors who testified for defendants may be telling the truth when they say that they did not observe any drinks being served to the minor. However, this testimony is not sufficient to overcome the positive testimony given by the two investigators, which is corroborated to a great extent by the minor himself. The evidence is clearly sufficient to establish that alcoholic beverages were sold to the minor on the evening in question, and that the minor was permitted to consume these alcoholic beverages on the licensed premises. Hence I find defendants guilty as charged.

Defendants have no prior adjudicated record. Under all the circumstances, I shall suspend defendants' license for a period of ten days.

Accordingly, it is, on this 19th day of November, 1946,

ORDERED that Plenary Retail Consumption License C-377, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to George Tausk and Rose Rodburg, t/a Casa Blanca, for premises 1011 Broad Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. December 2, 1946, and terminating at 2:00 a.m. December 12, 1946.

ERWIN B. HOCK
Deputy Commissioner.

10. STATE LICENSES - NEW APPLICATIONS FILED.

John V. Errichetti and James V. Garzone, t/a Mainland Distributors
2958-60-62 Salmon St., Philadelphia, Pa.

Application for Limited Wholesale License filed November 18, 1946.

Roma Wine Company
150 Bay St., Jersey City, N. J.

Application for Plenary Winery License filed November 19, 1946.

Denver Chicago Trucking Company, Inc.
1375 Paterson Plank Road, Secaucus, N. J.

Application for Transportation License filed November 19, 1946.

Pascale Trucking Company, Inc.
566 - 52nd St., West New York, N. J.

Application for Transportation License filed November 19, 1946.

ERWIN B. HOCK
Deputy Commissioner.

11. PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION OF ALCOHOLIC BEVERAGES - MINIMUM CHARGE FOR "BEVERAGES ONLY" PROHIBITED.

November 19, 1946

TO ALL CONSUMPTION LICENSEES:

You are hereby furnished with copy of special ruling concerning the imposition of minimum charges applicable to beverages only:

"Dear Mr. _____:

"Reference is made to my previous letters to you dated August 6th and 13th, concerning your practice of imposing a charge of 'One Dollar Minimum per person on Beverages only during Dinner and Supper'.

"I understand that the minimum charge applies not only to alcoholic beverages but also to soft drinks. However, since it is not reasonable to expect a dinner patron to purchase a dollar's worth of soft drinks with a meal, inevitably a customer, intending to be served merely a meal at your licensed premises, is, for all practical purposes, virtually forced to purchase alcoholic beverages whether he wants them or not. By the same token, those who may patronize your licensed premises during the dinner and supper hours, intending to consume merely a single drink costing less than a dollar, will likewise be induced to purchase more than one in order to use up the minimum charge.

"Upon further consideration of the problem involved, I have concluded that the practice tends unduly to increase consumption of alcoholic beverages and, consequently; it is hereby ruled that the practice is prohibited, pursuant to R. S. 33:1-39. You are therefore directed to cease and desist from engaging in the practice of imposing any minimum charge applicable to beverages only. Violation of this special ruling may be cause for suspension or revocation of your license.

"Nothing contained herein is intended to prohibit the imposition of a minimum charge which is not confined to beverages alone."

You will be guided accordingly and comply with the ruling above quoted.

Erwin B. Hoek
Deputy Commissioner.