

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

Mr. Michelson

September 30, 1957

BULLETIN 1188

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

September 30, 1957

BULLETIN 1188

1. APPELLATE DECISIONS - GROSS v. NEWARK.

HARRY GROSS, t/a H & S BAR,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)

BEVERAGE CONTROL OF THE CITY)

OF NEWARK,)

Respondent.)

Joseph J. Breitner, Esq., Attorney for Appellant.

Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action whereby on May 14, 1957 it suspended appellant's plenary retail consumption license for a period of fifteen days, commencing at 7:00 a.m. May 27, 1957, after appellant had been found guilty in disciplinary proceedings of a charge alleging that he permitted and suffered in and upon his licensed premises a brawl, act of violence or disturbance, in violation of Rule 5 of State Regulation No. 20. Appellant's premises are located at 275 Broad Street, Newark.

"Upon the filing of the appeal an order was entered by the Director, on May 21, 1957, staying respondent's order of suspension until entry of a further order herein.

"Appellant in his petition of appeal alleges, inter alia, that respondent's action was erroneous in that it was against the weight of the evidence.

"Respondent in its answer alleges that its finding of guilt was supported by the factual testimony adduced at the hearing before it.

"The appeal was presented upon the stenographic transcript of the proceedings before respondent Board, pursuant to Rule 8 of State Regulation No. 15.

"It appears from the transcript that a female patron entered appellant's licensed premises at about 10:00 a.m. December 29, 1956, and was refused a drink by the bartender who thought she had had sufficient elsewhere; that thereafter the female gave \$5.00 to a male friend to purchase a pint of whiskey; that when the purchase was made another male took the bottle from the purchaser and both proceeded to the men's room; that the female followed, knocked on the door and demanded the whiskey; and that when the males emerged she attempted to take the bottle and was cut somehow on the hand. It further appears from the bartender's testimony that he was unaware of the female's injury until she requested him to give her some napkins; that he thought she had scratched her hand on the door; that there was no undue excitement or loud noise on the premises; that

the patrons were all friends 'fooling around'; and that he didn't know the whiskey was purchased for the female. It still further appears that the testimony of the witnesses called by the local issuing authority corroborates that of the bartender that there was no argument or fight on the premises; that when the whiskey was taken from the purchaser by the other male they were only 'kidding'; and that the female's injury 'didn't look like a cut, more like a scratch * * *.'

"Considering all the evidence herein, I cannot find that the licensee allowed, permitted or suffered a brawl, act of violence or disturbance upon the licensed premises, within the contemplation of the Rule, and I conclude that respondent's action in finding appellant guilty of the charge should be reversed. I recommend that an order be entered accordingly."

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the evidence herein, I agree with the conclusions and recommendation of the Hearer and adopt his conclusions as my conclusions in this case.

Accordingly, it is, on this 24th day of July, 1957,

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

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - AUSTON v. NEWARK.

LOUIS AUSTON, trading as)
RAINBOW CLUB,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Louis Auston, Appellant, Pro se.
Vincent P. Torppey, Esq., by James E. Abrams, Esq.,
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Appellant appeals from respondent's action on May 7, 1957, finding him guilty of a charge alleging a sale, after 10:00 p.m. on January 5, 1957, of an alcoholic beverage for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and suspending his license (on this and two other charges) for forty days effective May 20, 1957. Appellant's premises are located at 53 Rankin Street, Newark.

"Upon the filing of the appeal an order was entered on May 10, 1957, staying respondent's order of suspension until entry of a further order herein.

"The appeal was presented upon the stenographic transcript of the proceedings before respondent Board pursuant to Rule 8 of State Regulation No. 15.

"It appears from the transcript that on April 30, 1957, appellant appeared at a hearing conducted by respondent to consider three charges then pending against him. The attorney who represented appellant at said hearing pleaded not guilty to the charge hereinabove set forth and pleaded non vult to both of the other pending charges -- namely, one alleging that on December 29, 1956, appellant failed to provide during prohibited hours an unobstructed view of his licensed premises, in violation of a City ordinance, and the other alleging a sale, after 10:00 p.m. on February 2, 1957, of an alcoholic beverage for off-premises consumption, in violation of Rule 1 of State Regulation No. 38. A hearing was then held upon the charge to which appellant pleaded not guilty. At a subsequent meeting on May 7, 1957, the two members of respondent Board who conducted said hearing announced that they had found appellant guilty of said charge and suspended his license on this and the other two charges for a total period of forty days. Appellant alleges that the finding of guilt as to the contested charge was contrary to the weight of the evidence and, in effect, that the suspension imposed was excessive.

"As to the alleged violation of January 5, 1957, two detectives employed by the Newark Police Department testified at the hearing below that on the evening in question, while they were in a store located at the corner of Springfield Avenue and Rankin Street on an assignment which had no connection with appellant's premises, they observed one Clyde Thomas enter appellant's premises at about 10:25 p.m. They testified that their attention had been attracted to Thomas because he appeared to have a weapon in his pocket. They further testified that Thomas remained in appellant's premises for about three minutes; that, after Thomas left said premises, they stopped him and searched him and found that the object which aroused their suspicion was not a weapon but was in fact a pair of gloves, and that their search also disclosed that Thomas had a bottle of wine concealed under his shirt. From other evidence in the case it appears that Thomas was taken to the 4th Precinct Police Station and that, later on the same evening, Thomas was escorted by another detective to appellant's premises where he identified Jeb O'Neill as the person who had sold him the bottle of wine. Thereafter on the same evening Thomas gave a written statement to the Newark police in which he said that he had purchased the bottle of wine from Jeb O'Neill in appellant's premises.

"The transcript of the evidence below discloses that, when Clyde Thomas was called as a witness by respondent, he denied under oath that he had purchased the bottle of wine in appellant's premises and said that the statement given to the Newark police was untrue. He further testified that the bottle found on his person by the detectives was one of two bottles of wine which he had purchased about 9:00 p.m. in a liquor store on the corner of South Orange Avenue and Boston Street. After Thomas so testified, the attorney for respondent pleaded surprise and read the questions and answers contained in the written statement he had given to the Newark police. Thomas again testified that the statement was not true but, in any event, such statement could be used only to neutralize his testimony and could not be used to establish the truth of the pending charge. Smarsch v. Elizabeth, Bulletin 1083, Item 2. Thomas also testified that he had been drinking wine during the day and was 'pretty well loaded' when the detectives stopped him, although the detectives say he was then sober.

"After considering the testimony given by Thomas at the hearing below and the conflicting written statement previously given by him to the Newark police, I conclude that his testimony is completely unworthy of belief. The two detectives were more than six feet from Thomas when he entered appellant's premises and, hence, were not in a position to ascertain whether he had the bottle of wine on his person when he entered the premises. There is no other testimony to support the alleged violation. Jeb O'Neill (the only bartender then on duty in appellant's premises) denied that he had sold any bottle of wine after 10:00 p.m. on the evening in question, and a patron testified that Thomas entered the premises but did not buy a bottle of wine. Under the circumstances, the finding of guilt is contrary to the weight of evidence and should be reversed.

"It appears that, in fixing the period of suspension, respondent considered the admitted violation on February 2, 1957, as a second similar violation and doubled the usual fifteen-day penalty imposed in similar cases. This is not the usual procedure because there was no 'locus poenitentiae' between the two alleged violations. Re Thaler, Bulletin 1042, Item 3. In any event, since the finding of guilt as to the violation alleged to have been committed on January 5, 1957, should be reversed, the admitted violation on February 2, 1957 becomes a first violation of Rule 1 of State Regulation No. 38 and the license should be suspended for fifteen days on this charge, and for an additional five days because of the violation committed on December 29, 1956. Appellant is entitled to a remission of five days because of the pleas entered as to the two admitted violations. The penalty imposed herein should, therefore, be reduced from forty days to fifteen days. Under all the circumstances, I recommend that an order be entered reversing respondent's action in finding appellant guilty as to the violation alleged to have been committed on January 5, 1957; reducing the suspension imposed by respondent from forty days to fifteen days, and fixing the dates during which the fifteen-day suspension shall remain in effect."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15. After careful consideration of the facts and circumstances herein, I concur in and adopt the findings and recommended conclusions of the Hearer.

The suspension of forty days imposed by respondent Board was to become effective on May 20, 1957. On May 10, 1957, upon the filing of the appeal herein, I entered an order staying respondent Board's order of suspension pending determination of the appeal. I shall vacate said order and enter an order herein modifying the suspension of appellant's license from forty days to a suspension of the license for fifteen days.

Accordingly, it is, on this 7th day of August, 1957,

ORDERED that the suspension of Plenary Retail Consumption License C-500 for forty days be and the same is modified to a suspension of said license for a period of fifteen days; and it is further

ORDERED that the order dated May 10, 1957 be vacated, effective at 2:00 a.m. August 14, 1957, and License C-500, now held by appellant for the 1957-58 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Louis Auston, t/a Rainbow Club, for premises 53 Rankin Street, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. August 14, 1957 and terminating at 2:00 a.m. August 29, 1957.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - FAILURE TO NOTIFY ISSUING AUTHORITY OF CHANGE OF FACTS IN APPLICATION - LICENSEE CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE AFTER OBTAINING LICENSE -PRIOR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE GRANTED TO A TRANSFEREE OF THE LICENSE TO APPLY FOR LIFTING OF THE SUSPENSION AFTER 30 DAYS FROM EFFECTIVE DATE THEREOF.

MORAL TURPITUDE - CRIMES OF ATTEMPTING TO OBTAIN MONEY UNDER FALSE PRETENSES AND OBTAINING MONEY UNDER FALSE PRETENSES HELD TO INVOLVE MORAL TURPITUDE.

In the Matter of Disciplinary Proceedings against)

ANTHONY VILLARE)
T/a TONY'S SUPPER CLUB)
900 N. 2nd Street)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-103 for the 1956-57 and C-192 for the 1957-58 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Salvatore J. Avena, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The following charges were preferred against defendant:

'1. You failed to file with the Municipal Board of Alcoholic Beverage Control of Camden, within 10 days after the occurrence thereof, written notice of change in fact set forth in answer to Question 33 of your application dated June 7, 1956, upon which you obtained your current plenary retail consumption license, such change being that you were convicted in the Camden County Court on or about March 28, 1957 of the crimes of attempt to obtain money under false pretenses and obtaining money under false pretenses in violation of N.J.S. 2A:85-5 and 2A:111-1; your failure to file such notice being in violation of R. S. 33:1-34.

'2. On or about March 28, 1957 you were convicted in the Camden County Court of the crimes of attempt to obtain money under false pretenses and obtaining money under false pretenses in violation of N.J.S. 2A:85-5 and 2A:111-1, both crimes involving moral turpitude, such convictions being acts or happenings occurring after the time of your making application for your current plenary retail consumption license which, had they occurred before said time, would have prevented the issuance of the license since such issuance would have been contrary to R. S. 33:1-25.'

"Defendant pleaded non vult to the first charge and, although admitting the conviction in the second charge, denied that it involved moral turpitude. Charge (2) is based upon the provisions of R. S. 33:1-31(1).

"There were introduced in evidence herein certified copies of indictments, arraignments, convictions and sentences from which it appears that, on September 10, 1956 defendant pleaded non vult to the following indictments which alleged that (1) between January 20, 1956 and February 6, 1956, he unlawfully, knowingly and designedly received and obtained a sum of money from an insurance company by means of false representations and pretenses, contrary to the provisions of N.J.S. 2A:111-1 and that (2) on February 10, 1956, he unlawfully, knowingly and designedly attempted and endeavored to obtain money from another insurance company under false pretenses, contrary to provisions of N.J.S. 2A:85-5 and N.J.S. 2A:111-1.

"As a result of defendant's plea of non vult to obtaining money by reason of false representations and pretenses he was sentenced on March 28, 1957 to a county jail for a period of six months, the operation of said sentence being suspended, was placed on probation for three years and fined \$300.00. As a result of defendant's plea of non vult to the crime of attempting to obtain money under false pretenses he was sentenced on March 28, 1957 to a county jail for a period of six months, the operation of the sentence being suspended.

"The defendant's plea of non vult to the criminal charges results in his 'conviction of a crime' within the contemplation of the Alcoholic Beverage Law (R.S. 33:1-25), see Re Vesey, Bulletin 608, Item 1; Re Serra, Bulletin 608, Item 2.

"The crime of obtaining money under false pretenses ordinarily involves moral turpitude. Re Case No. 309, Bulletin 384, Item 6. The crime of attempting to obtain money under false pretenses involves the same element. Re Case No. 310, Bulletin 387, Item 5.

"Defendant testified that he had his automobile repaired, including a set of new tires placed thereon, at a garage operated by two men also involved in the fraudulent scheme and he furthermore accepted a sum of money as his share of the proceeds obtained from the insurance company as a result of fraudulent transactions.

"His explanation that he was 'trying to be a nice guy not to expose' his confederates and therefore gave false statements to the insurance adjuster, is without merit.

"Serious thought must be given to the proper penalty to be imposed in this case. Defendant's license was suspended for five days, effective August 6, 1956 for allowing gambling on the licensed premises. Re Villare, Bulletin 1131, Item 4. In the instant case he pleaded non vult to the charge of failure to file notice with the local issuing authority within ten days after his criminal convictions. Because of recommended finding of guilt of defendant on charge (2) his license may be suspended or revoked. R. S. 33:1-31. The seriousness of charge (2) would ordinarily warrant a revocation of defendant's license. Since his criminal convictions mandatorily disqualify him from holding a liquor license or being associated in any capacity whatsoever with the alcoholic beverage industry in this State (R. S. 33:1-25, 26), I recommend that his license shall not be revoked but it shall be suspended for the balance of the term, viz., until June 30, 1958. I recommend that in the event that the license is transferred to a duly qualified person, a petition by said person be entertained to lift the

suspension but in no event shall an order be entered lifting said suspension prior to the expiration of thirty days from the effective date hereof. Cf. Re Homestead Inn, A Corporation, Bulletin 989, Item 3."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16. After carefully considering the facts and circumstances herein, I concur in and adopt the findings and recommended conclusions of the Hearer. Hence, I find defendant guilty of charge (2). The defendant pleaded non vult to charge (1). I shall suspend defendant's license for the balance of its term. In the event that the license is transferred to a duly qualified person, application may be made to me for the lifting of such suspension but in no event will an order lifting the suspension be entered prior to the expiration of thirty days from the effective day thereof.

Accordingly, it is, on this 30th day of July, 1957,

ORDERED that Plenary Retail Consumption License C-192, issued for the 1957-58 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Anthony Villare, t/a Tony's Supper Club, 900 N. 2nd Street, Camden, be and the same is hereby suspended for the balance of its term, effective immediately; and it is further

ORDERED that application in the form of a verified petition may be made to me by a bona fide transferee of the license requesting the lifting of such suspension after the expiration of thirty days from the effective date thereof.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PERMITTING OBSCENE LANGUAGE ON PREMISES - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MEYER'S TAVERN (A Corporation))
294 Belmont Avenue)
Newark 8, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-445 (for the 1956-57 and 1957-58 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Samuel Voltaggio, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) it sold during prohibited hours for off-premises consumption alcoholic beverages in original containers with the seals thereon broken, in violation of Rule 1 of State Regulation No. 38 and (2) it allowed, permitted and suffered foul and obscene language in and upon its licensed premises, in violation of Rule 5 of State Regulation No. 20.

The file herein discloses that after 10:00 p.m. Wednesday, May 15th, and continuing into the early hours of Thursday, May 16, 1957, an ABC agent, visiting defendant's licensed premises, observed the bartender therein sell to patrons wine and whiskey in original containers after breaking the seals thereon and pouring therefrom a drink for each purchaser. Each purchaser then left the premises with the opened bottle without any objection by the bartender. During the agent's stay, defendant's patrons indulged in foul and obscene language without restraint. On Friday, May 24th, after 10:00 p.m., the same agent observed a different bartender and Meyer Porbin (an officer of defendant-corporation) follow the same procedure in selling alcoholic beverages in original containers during prohibited hours. At about 10:45 p.m. the agent purchased a pint bottle of whiskey from the bartender "to take out." The bartender broke the seal and poured a "shot" for him. When the agent consumed the drink and a "chaser" supplied by Porbin, he was handed the bottle and left the premises with the unconsumed portion of his purchase. Within a few minutes the agent and other agents participating in the investigation returned and identified themselves to Porbin who verbally stated that the bartender sold the whiskey to the agent to be consumed on the premises.

Defendant has no prior adjudicated record. However, when Meyer Porbin and Molly Porbin held the license, it was suspended for fifteen days, effective June 23, 1947, by the local issuing authority for sale to minors and immoral activity; and, effective May 22, 1954, it was again suspended for ten days by the same authority for a violation of Rule 1 of State Regulation No. 38. Since the second prior violation by a predecessor in interest was substantially similar to the violation set forth in Charge 1 and occurred within a five-year period, the penalty with respect to Charge 1 would ordinarily be doubled. Re Fiala, Bulletin 1170, Item 3. In attempted mitigation defendant's attorney alleges that Meyer Porbin was confused as to whether or not the recent amendment to Rule 1 of State Regulation No. 38 (effective January 1, 1957) prohibited the practice followed on the licensed premises. The Rule does prohibit such practices but since this is the first case brought under the amended Rule, I shall suspend defendant's license for twenty days on Charge 1. I shall suspend defendant's license for an additional ten days on Charge 2, Re Moskowitz, Bulletin 1127, Item 4, making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 7th day of August, 1957,

ORDERED that Plenary Retail Consumption License C-445, for the 1957-58 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Meyer's Tavern (A Corporation), 294 Belmont Avenue, Newark, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. August 15, 1957, and terminating at 2:00 a.m. September 9, 1957.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against JOHN P. ZLOTKOWSKI 566 Grand Street Jersey City, N. J., Holder of Plenary Retail Consumption License C-107, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

John P. Zlotkowski, Defendant-licensee, Pro se. Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on Sunday, July 7, 1957, he sold alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that on Sunday, July 7, 1957, at about 1:00 p.m., an ABC agent entered defendant's licensed premises and observed the licensee behind the bar filling a brown paper bag with cans of Ballantine's beer for a patron. Shortly thereafter, the agent asked the licensee for a pint of Seagram's Seven Crown Whiskey. Mr. Zlotkowski thereupon handed the agent a pint bottle of the aforementioned brand of whiskey and accepted \$3.00 in payment thereof. The agent then left the premises with the alcoholic beverage and returned within a few minutes with another agent. Both agents identified themselves to the licensee who admitted the aforesaid violation. At this time the licensee also admitted selling fifteen 12-ounce cans of Ballantine's beer and a 4/5 quart bottle of Fleischmann's Blended Whiskey for off-premises consumption to the aforesaid patron.

The defendant has a prior adjudicated record. Effective November 12, 1956, his license was suspended by the Director of this Division for twenty-five days for the following reasons: (1) local "hours" violation, (2) sale during prohibited hours, in violation of State Regulation and (3) sale beyond scope of license. Re Zlotkowski, Bulletin 1145, Item 5. The minimum penalty for an "hours" violation is fifteen days. Re Eckstein, Bulletin 1160, Item 5. Since the defendant committed a similar violation within five years the penalty will be doubled. Re Czaplicki, Bulletin 1170, Item 6. I shall suspend defendant's license for thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 6th day of August, 1957,

ORDERED that Plenary Retail Consumption License C-107, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John P. Zlotkowski, 566 Grand Street, Jersey City, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. August 12, 1957, and terminating at 2:00 a.m. September 6, 1957.

WILLIAM HOWE DAVIS Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
 PETER SCANGARELLO)
 T/a OAK INN)
 301 Oak Street)
 Passaic, N. J.,)
 Holder of Plenary Retail Consumption License C-106, issued by the Board of Commissioners of the City of Passaic.)

CONCLUSIONS AND ORDER

 Peter N. Perretti, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On June 15, 1957, 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., Ralph ---, age 16; in violation of Rule 1 of State Regulation No. 20."

Acting upon information received from the Clifton Police Department, ABC agents on June 25 and June 26, 1957, obtained signed sworn statements from Ralph ---, John --- and four other youths. In his statement Ralph --- says that he was born on September 17, 1940, and that on the evening of June 15, 1957, he and the other youths drove to the vicinity of defendant's licensed premises; that he and John --- entered the premises about 9:00 p.m. and the other youths remained in the car; that he then purchased three quarts of beer from the bartender, after which he and John left the premises with the bottles and re-entered the car; that, after driving to another location, the contents of the three bottles were consumed by the youths. Ralph further says that the group returned to the vicinity of defendant's licensed premises at about 9:45 p.m., at which time he and John again entered while the others remained in the car; that he purchased a pint bottle of whiskey from the same bartender; left the premises with John, entered the car and drove to another location where the contents of the bottle were being consumed by the youths when they were apprehended by members of the Clifton Police Department. In his statement given to the ABC agents, John --- substantially corroborated the statement given by Ralph ---, although he had previously given a statement to the Clifton police officers wherein he said that he had purchased the beer in defendant's premises on the evening in question. The statements obtained from the other four youths confirm the aforesaid statements in so far as said statements allege that Ralph and John entered defendant's premises on two occasions on the evening in question, but the youths who remained in the car could not, of course, state whether the purchases were made by Ralph or John. Subsequently, all youths were taken to the vicinity of defendant's premises and all identified the premises as the place in which the purchases had been made. Ralph and John entered defendant's premises with the ABC agents and identified

one John Collins (a bartender) as the person who sold the beer and whiskey on the evening of June 15, 1957. Collins verbally admitted to the agents that he worked at the licensed premises on the night in question, but alleged that he was off duty between 8:00 p.m. and 11:00 p.m.

In alleged mitigation the attorney for defendant has asked me to consider the fact that defendant was not present when the violation was committed; that the statements given by Ralph and John are inconsistent in numerous respects, and that criminal proceedings instituted against John Collins for selling alcoholic beverages to a minor has been dismissed. A licensee is responsible for a violation committed by his agent, servant or employee. Rule 33 of State Regulation No. 20. I am satisfied from the evidence herein that the sales of alcoholic beverages were made by the bartender to the minor Ralph ---. The fact that the criminal proceedings against the bartender were dismissed is immaterial in these proceedings.

Defendant has a prior adjudicated record. Effective October 1, 1945, his license was suspended for five days by the local issuing authority for permitting gambling on his licensed premises, and effective March 5, 1951, his license was suspended for ten days by the local issuing authority for sale during prohibited hours and failure to have his licensed premises closed during prohibited hours. Since these dissimilar violations occurred more than five years ago, I shall not consider them in fixing the penalty herein. The minimum penalty for sale to a 16-year-old minor is now a suspension of the license for twenty-five days. Re Campbell, Bulletin 1133, Item 7. Under all the circumstances of this case, I shall suspend defendant's license for the minimum period of twenty-five days, less five days for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 7th day of August, 1957,

ORDERED that Plenary Retail Consumption License C-106, issued by the Board of Commissioners of the City of Passaic to Peter Scangarello, t/a Oak Inn, for premises 301 Oak Street, Passaic, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. August 14, 1957 and terminating at 3:00 a.m. September 3, 1957.

WILLIAM HOWE DAVIS
Director.

7. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1956 to JUNE 30, 1957 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 -

COUNTY	CLASSIFICATION OF LICENSES														Total Fees Paid
	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect			
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid					
Atlantic	490	\$ 208,922.05	71	\$ 25,575.00	23	\$ 2,012.21					1	583	\$ 236,509.26		
Bergen	796	300,137.50	291	84,262.75	100	9,279.15	53	2,496.25	9	2,471.30	8	1,241	398,646.95		
Burlington	185	78,040.00	37	10,097.04	44	6,299.18	1	50.00				267	94,486.22		
Camden	454	220,358.47	82	34,818.15	71	6,757.74			2	750.00	1	608	262,694.36		
Cape May	134	73,900.00	11	4,000.00	18	2,148.90						163	80,048.90		
Cumberland	80	40,875.00	15	4,100.00	29	3,910.00						124	48,885.00		
Essex	1,355	755,310.00	351	205,700.00	101	13,499.93	29	1,450.00	3	2,250.00	2	1,837	978,209.93		
Gloucester	108	34,400.00	15	3,500.00	22	1,922.88						145	39,822.88		
Hudson	1,539	698,537.79	298	122,400.00	85	9,792.73	66	2,850.00			1	1,987	833,580.52		
Hunterdon	79	27,200.00	8	3,000.00	8	948.90	1	50.00				96	31,198.90		
Mercer	425	259,600.00	51	21,150.00	55	7,790.96			1	105.00	1	531	288,645.96		
Middlesex	633	312,455.00	75	23,645.00	92	7,916.81	4	200.00				804	344,216.81		
Monmouth	551	288,525.14	120	41,985.00	42	4,713.15	10	435	49	22,239.23	26	746	357,897.52		
Morris	357	127,342.05	98	32,700.00	50	4,489.56	19	950.00	10	2,681.25	6	528	168,162.86		
Ocean	198	106,575.04	47	19,680.00	26	2,724.38					1	270	128,979.42		
Passaic	871	357,455.00	167	51,370.00	37	4,425.00	10	475.00			1	1,084	413,725.00		
Salem	51	19,300.00	8	1,550.00	18	1,725.00						77	22,575.00		
Somerset	187	81,452.39	40	12,245.00	26	2,950.00						253	96,647.39		
Sussex	168	45,855.00	20	3,955.00	9	535.00	1	50.00	2	407.40	1	199	50,802.40		
Union	549	301,909.93	144	66,300.00	74	8,213.98	31	1,525.00				798	377,948.91		
Warren	148	43,830.00	20	5,060.00	31	3,329.79			4	613.54	2	201	52,853.33		
Totals	9,358	4,381,990.36	1,969	777,092.94	961	105,385.25	225	10,531.25	80	31,517.72	51	12,542.00	5,306,517.52		

William Howe Davis
Director

August 29, 1957

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 MONTEREY ENTERPRISES, INC.
 T/a THE TALLY-HO
 111 Madison Avenue
 Lakewood, N. J.,

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption License C-19 (for the 1956-57 and 1957-58 licensing years), issued by the Township Committee of the Township of Lakewood.

 Edward M. Rothstein, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on May 16, 1957, it sold and allowed, permitted and suffered the sale of alcoholic beverages to two minors and permitted said minors to consume such beverages on its licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that, acting upon information received from the Security Officer at the Naval Air Base, Lakewood, ABC agents obtained signed statements from A/N David --- and A/N Norman ---. In his statement David says that he is nineteen years of age, and Norman says that he is twenty years of age. In their statements both minors say that they, accompanied by another sailor, entered defendant's licensed premises on May 16, 1957, between 8:00 p.m. and 9:00 p.m. and remained on the premises for approximately fifteen minutes; that during their visit each was served with two glasses of beer purchased from the bartender by the other sailor; that they consumed their drinks and that no one on the licensed premises questioned either of them as to their respective age. Subsequently said two minors accompanied ABC agents to defendant's premises and identified the premises as the place where they had been served on the evening of May 16, 1957.

Defendant has no prior record. The minimum period of suspension now imposed for sale to a nineteen-year-old minor is fifteen days (Re Edelson, Bulletin 1160, Item 3). I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 29th day of July, 1957,

ORDERED that Plenary Retail Consumption License C-19 (for the 1957-58 licensing year), issued by the Township Committee of the Township of Lakewood to Monterey Enterprises, Inc. (a corp.), for premises 111 Madison Avenue, Lakewood, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. August 5, 1957 and terminating at 2:00 a.m. August 15, 1957.

WILLIAM HOWE DAVIS
 Director.

9. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - SALE IN VIOLATION OF CONDITION IN PERMIT - SPECIAL PERMIT SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HELEN MURPHY and MARY TRACY)
c/o New Jersey National Guard Armory)
500 Rahway Avenue)
Westfield, N. J.,)

CONCLUSIONS AND ORDER

Holders of Special Permit SM-1420, issued by the Director of the State Division of Alcoholic Beverage Control.)

Helen Murphy and Mary Tracy, Defendant-permittees, Pro se. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded guilty to the following charges:

"1. On April 2, 1957, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Raymond J. ---, age 18 and Louis J. ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"2. On the aforesaid occasion, you sold alcoholic beverages to persons who were not members of the New Jersey National Guard or the New Jersey Naval Militia or bona fide guests of any such member; in violation of one of the express conditions of your special permit authorizing sale and service of alcoholic beverages at the New Jersey National Guard Armory at Rahway Avenue, Westfield, New Jersey."

The file herein discloses that on April 2, 1957 at about 9:15 p.m., two ABC agents entered the aforementioned New Jersey National Guard Armory and proceeded to the bar in the grill where the permittees were dispensing alcoholic beverages under Special Permit SM-1420 issued by the Division on July 1, 1956. The agents, non-members of the New Jersey National Guard or the New Jersey Naval Militia, were each served three bottles of beer by the bartender, Edward J. Murphy, husband of one of the permittees, who accepted payment thereof at the rate of 25¢ per bottle. At about 10:30 p.m., the agents observed the bartender serve a bottle of beer to each of four young men in National Guard uniforms and accept payment thereof at 25¢ per bottle. Two of these young men appeared to be minors. The agents watched these four young men consume part of their beer and then identified themselves to them. Two of these guardsmen said they were Raymond J. --- (age 18) and Louis J. --- (age 19). At no time did it appear that these minors were questioned about their ages.

Defendants have no prior adjudicated record. I shall suspend defendants' permit for fifteen days on Charge 1 (Re Vecchione, Bulletin 1113, Item 2), and for an additional fifteen days on Charge 2 (cf. Re Orange Lodge #135, B.P.O. Elks, Bulletin 1127, Item 5), making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 16th day of May, 1957,

ORDERED that Special Permit SM-1420, issued by the Director of the State Division of Alcoholic Beverage Control to Helen Murphy and Mary Tracy, c/o New Jersey National Guard Armory, 500 Rahway Avenue, Westfield, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 9:00 a.m. May 23, 1957, and terminating at 9:00 a.m. June 17, 1957.

WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ASTOR J. TSIBIKAS)
T/a ROYAL DELICATESSEN)
730 Bergen Avenue)
Jersey City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Astor J. Tsibikas, Defendant-licensee, Pro se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge that on Sunday, June 23, 1957, he sold alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.


The file herein discloses that on Sunday, June 23, 1957, at about 7:15 p.m., while the licensee was on the licensed premises, his clerk, Henry Hunecke, sold six 12-ounce cans of Knickerbocker beer to an ABC agent and a pint bottle of Fleischmann's Dry Gin to a customer for off-premises consumption. The agent and two fellow-agents, who joined him in the street after purchasing the beer, returned to the premises and identified themselves to the licensee and his clerk who admitted making the aforesaid illegal sales.

The defendant has a prior adjudicated record. His license was suspended on four occasions, three of which occurred prior to 1940 (more than ten years ago) and, therefore, will not be considered in fixing the penalty herein (Re Clendenny Tavern, Inc., Bulletin 1147, Item 6). Effective July 17, 1950, defendant's license was suspended for five days by the local issuing authority for an "hours" violation. The minimum penalty for a violation as charged herein is fifteen days (Re Dew Drop Inn, Inc., Bulletin 1175, Item 6). However, considering the prior similar violation which occurred within a ten-year period, I shall suspend defendant's license for

twenty days (Re Amster, Bulletin 1142, Item 5). Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 6th day of August, 1957,

ORDERED that Plenary Retail Distribution License D-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Astor J. Tsibikas, t/a Royal Delicatessen, 730 Bergen Avenue, Jersey City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m. August 13, 1957, and terminating at 9:00 a.m. August 28, 1957.



William Howe Davis
DIRECTOR.