

STATE OF NEW JERSEY
 Department of Law and Public Safety
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL
 1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1945

December 23, 1970

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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1. APPELLATE DECISIONS - GALLAGHER'S AVALON LIQUOR STORE
ET ALS. v. AVALON AND PRINCETON GRILL, INC.

GALLAGHER'S AVALON LIQUOR STORE, ET ALS.,)	
Appellants,)	ON APPEAL
)	CONCLUSIONS
v.)	AND ORDER
)	
BOARD OF COMMISSIONERS OF THE BOROUGH OF AVALON, AND PRINCETON GRILL, INC.,)	
Respondents.)	

Patrick T. McGahn, Jr., Esq., Attorney for Appellants
James A. O'Neill, Esq., Attorney for Respondent Borough
Nathan W. Davis, Jr., Esq., Attorney for Respondent Princeton Grill, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Board of Commissioners (hereinafter Board) whereby by a vote of two of its three members (one member being absent) it approved an application for a place-to-place transfer of respondent-licensee (hereinafter licensee) plenary retail consumption license to include a new building constructed adjacent to its present licensed premises. The premises in question are presently known as 2098-2008 Dune Drive, Avalon, and include the "Pool and Patio Area. Hotel and adjacent premises." The former address of licensee's premises was "21st Street and Dune Drive" and included the "Pool, Parking and Patio."

Appellants contend that the action of the Board in approving the application of the license for the place-to-place transfer was erroneous for the following reasons:

1. The transfer of this license is not in accord with the existing laws of the State of New Jersey.
2. The purported transfer is to an entirely new building.
3. The transfer, in effect, seeks to cover two separate locations with one license.
4. The transfer has the effect of converting the existing 'C' license into a broad base 'C' license where actually, two separate licenses should be required.
5. The transfer has the effect of converting an existing 'C' license into a 'D' license.

6. The application for transfer was incomplete and confusing.
7. The applicant has not established a need for the transfer.
8. Appellant contends that the transfer is not in the best interests of the community.
9. The transfer does not represent sound judgment based on the future growth of the area nor does it take into account the physical, social and economic conditions prevailing in the area.
10. Appellant contends that the approval of the transfer will not advance the common good and welfare of the community and was unreasonable and arbitrary under the circumstances.
11. The granting of the license violates the spirit and intention of the law."

The Board's answer filed herein denies the allegations contained in appellants' petition of appeal and avers that "The ground area in the new license was the same as that licensed under the old license, and the only new area involved was a new building being constructed as part of the hotel complex. The old address of 2098 Dune Drive, or 21st and Dune Drive, represents the same parcel of ground which had previously been licensed and which is now described as 2098-2008 Dune Drive."

The licensee in answer filed also denies the allegations in appellants' petition of appeal and adopts as defenses divers reasons set forth in the resolution of the Board in this matter.

The resolution of the Board, dated April 21, 1970, in approving the transfer in question reads as follows:

"WHEREAS, the Princeton Grill, Inc. has duly applied for a transfer of a Plenary Retail Consumption License from 2098 Dune Drive (formerly 21st Street and Dune Drive) in the Borough of Avalon to 2098-2008 Dune Drive in said Borough, and said application has been published in accordance with applicable law and regulations for the transfer of a Plenary Retail Consumption License for the sale of alcoholic beverages; and

WHEREAS, objections to said transfer were filed on March 26, 1970 by Patrick T. McGahn, Jr. as attorney for Gallagher's Avalon Liquor Store, 2208 Dune Drive, Avalon; Avalon Jem Corporation, Trading as Gallagher's Pub, 3601 Third Avenue, Avalon; Marie C. Gallagher, Walter G. Fellenbaum and Marie E. Fellenbaum; and

WHEREAS, a public hearing on said transfer was held on April 7, 1970 and opportunity was given to the aforesaid objectors and their counsel Patrick T. McGahn, Jr. to present testimony and oral argument; and

WHEREAS, at the conclusion of said hearing the objectors requested and were granted leave to file a written brief; and

WHEREAS, the Board of Commissioners have considered the testimony and argument of the objectors against the proposed transfer; and

WHEREAS, the Board of Commissioners have determined that the application has been made in proper form, that the plans and specifications comply with all State and Municipal statutes, ordinances, and regulations pertaining to the transfer of a Plenary Retail Consumption License, and the building and zoning codes of the Borough of Avalon; and

WHEREAS, the Board of Commissioners has determined that a granting of this transfer does not, in effect, convert License C-3 into a broad base 'C' license, nor, in effect, create a 'D' license from a 'C' license as alleged by the objectors; and

WHEREAS, the new building will be located on the same land area previously licensed, and that said building will constitute the principal bar and sole location for the sale of package goods for off premises consumption; and

WHEREAS, the objections all appear to be without merit.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Borough of Avalon, County of Cape May, State of New Jersey, the Alcoholic Beverage Issuing Authority for said Borough, that:

Section 1. Allegations of the preamble hereto are incorporated herein as if set forth in full.

Section 2. Princeton Grill, Inc. is entitled to the transfer from 2098 Dune Drive to 2098-2008 Dune Drive, Borough of Avalon.

Section 3. This transfer is approved subject to the condition that the new building be completed in accordance with the plans and specifications accompanying said application and that said building when completed shall be inspected and approved by the Division of Alcoholic Beverage Control, Department of Law and Public Safety of the State of New Jersey."

The appeal herein was heard de novo pursuant to Rule 6 of State Regulation No. 15.

The transcripts of the proceedings before the Board were received in evidence, and additional testimony and supplemental documents were presented in accordance with Rules 6 and 8 of said regulation.

I shall consider the objections advanced by the appellants to the effect that the transfer of the license was improper as it not only covered the hotel premises as heretofore, but also included a new building as part of the licensed premises.

A brief description of the layout of the two buildings in question may be helpful in this matter. The facts are substantially undisputed and are as follows: The hotel, in addition to sleeping quarters, has restaurant facilities to accommodate 250 to 300 diners. The bar in the hotel is 64 feet long, plus two service areas used by the waitresses to obtain drinks for the restaurant patrons. The hotel has no heating facilities and thus had not been operated during the winter.

The newly constructed building has a 65-foot front and depth of 45 feet. The interior thereof is one large room containing a rectangular 62-foot bar around which thirty stools are erected. There is a counter to the left of the entrance to the package section of the interior, and there are a number of shelves erected on the front of the interior and along the sides to the right of said entrance. The interior, in addition to the bar and display shelf, has a sandwich bar, a washroom for women and one for men, a walk-in bar, cooler and storage rooms. There is an entrance in the front of the building to the bar section and some distance away a larger door to the package goods section.

As was stated by the late Commissioner Burnett in Re Dodd, Bulletin 241, Item 8:

"Where two separate buildings constitute the premises sought to be licensed, separate licenses will in general be necessary. The reason is that generally speaking each building will constitute a separate place of business. For each specific place of business (R.S. 33:1-26; Control Act, Sec. 23), a separate license is required. But it does not necessarily follow that merely because there are separate buildings, separate licenses will be necessary. The buildings may be so arranged and operated that they could be said to constitute a single place of business within the meaning of the statute."

It was held that it is not essential that a liquor licensee abandon his old premises as a transfer of a license may lawfully include both the new and the old. New Jersey Licensed Beverage Assn. etc. v. Camden and Viviani, Bulletin 215, Item 5.

It has been well established that a transfer of a license to cover adjacent premises or an addition to existing premises, even though an additional entrance was provided thereby, does not require a new license in the old premises and, in addition thereto, constitutes a single place of business. See Springdale Park, Inc. v. Andover et al., Bulletin 1702, Item 2 and cases cited therein, aff'd on appeal by the Superior Court of New Jersey (App.Div.) 97 N.J. Super. 270.

The local issuing authority's discretionary power is broad when called upon to determine whether a liquor license should or should not be transferred. The Director's function on appeals of this nature is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Freehold Suburban Tavern Owners Assn. et als. v. Howell and Ho-Jan Corp., Bulletin 1687, Item 1; Broadley v. Clinton and Klingler, Bulletin 1245, Item 1.

In Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision of an appeal from a zoning ordinance, cited in Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306, the following general principles were stated:

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications***. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

In the Rocco case, supra, it was stated, at p. 321:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof. '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511...."

Extension and enlargement of premises in these circumstances under one single license has been consistently upheld by the Division and the courts for many years. For example, in Re Dodd, supra, it was ruled that a single license could cover two social halls on the opposite side of the highway -- one used in the summer and one in the winter -- if "so arranged and operated that they could be said to constitute a single place of business within the meaning of the statute." Essex County Retail Liquor Stores Assn. et al. v. Newark and Pere, Inc., 64 N.J. Super. 314, 322.

I conclude that under the facts herein, although the buildings do not physically adjoin one another, the operation of the establishment is as a single unit and hence can be considered as one specific place of business within the meaning of the statute. Re Beisch, Bulletin 81, Item 10.

Thus it is recommended that the action of respondent to include the new building as part of the licensed premises be affirmed, and that the appeal herein be and the same is dismissed.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for appellants pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions to the Hearer's report which I find have either been answered in the said Hearer's report or are lacking in merit. I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 27th day of October 1970,

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

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - MISKULIN v. UNION CITY.

NICK MISKULIN,)	
Appellant,)	ON APPEAL
v.)	ORDER
BOARD OF COMMISSIONERS OF)	
THE CITY OF UNION CITY,)	
Respondent.)	

Louis Gluck, Esq., Attorney for Appellant
Edward J. Lynch, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from the suspension on July 14, 1970 by respondent Board of Commissioners of the City of Union City of Plenary Retail Consumption License C-40 issued to appellant for premises 4801 Park Avenue, Union City.

Prior to hearing appellant's attorney advised me by letter dated October 22, 1970 that the appeal was withdrawn and that appellant has already served the said suspension prior hereto. This was verified by telephone communication with the respondent's Clerk on October 23, 1970.

Accordingly, it is, on this 26th day of October 1970,

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

RICHARD C. McDONOUGH
DIRECTOR

3. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1970 THROUGH SEPTEMBER 30, 1970

	JULY	AUGUST	SEPTEMBER	TOTAL
ARRESTS:				
Total number of persons arrested	5	16	20	41
Licensees and employees	2	7	4	13
Bootleggers	3	9	16	28
SEIZURES:				
Motor vehicles - cars	1	1	1	3
- trucks	1	-	-	1
Alcohol - gallons	-	-	2.64	2.64
Distilled alcoholic beverages - gallons	-	22.585	17.403	39.988
Wine - gallons	37.816	39.765	1.875	79.456
Brewed malt alcoholic beverages - gallons	162.34	38.182	25.98	226.502
RETAIL LICENSEES:				
Premises inspected	463	369	611	1,443
Premises where alcoholic beverages were gauged	411	327	538	1,276
Bottles gauged	7,081	5,445	8,979	21,505
Premises where violations were found	123	131	171	425
Violations found:	222	210	256	688
No Form E-141-A on premises	66	44	54	164
Unqualified employees	70	92	70	232
Form E-141-A incomplete	21	26	31	78
Application copy not available	11	11	29	51
Disposal permit necessary	9	2	3	19
Other mercantile business	4	2	7	13
Prohibited signs & practices	1	1	1	3
Improper beer taps	-	-	1	1
Other violations	40	32	55	127
STATE LICENSEES:				
Premises inspected	9	17	4	30
License applications investigated	4	7	1	12
COMPLAINTS:				
Complaints assigned for investigation	458	342	390	1,190
Investigations completed	386	391	410	1,187
Investigations pending	(416)	(355)	(311)	(311)
LABORATORY:				
Analyses made	85	66	84	235
Refills from licensed premises -bottles	54	44	49	147
Bottles from unlicensed premises	14	6	14	34
IDENTIFICATION:				
Criminal fingerprint identifications made	1	-	4	5
Persons fingerprinted for non-criminal purposes	649	460	426	1,535
Ident. contacts made with other enforcement agencies	435	283	300	1,018
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	7	1	5	13
Violations involved	9	1	6	16
Sale to minors	5	1	2	8
Sale during prohibited hours	3	-	4	7
Failure to close premises during prohibited hours	1	-	-	1
Cases instituted at Division	28	14	29	71
Violations involved	31	18	34	83
Sale during prohibited hours	4	5	6	15
Possessing liquor not truly labeled	6	-	6	12
Sale to minors	-	4	7	11
Permitting immoral activity on premises	5	-	5	10
Permitting lottery activity on premises	4	2	3	9
Fraud in application	2	2	-	4
Hindering investigation	-	1	2	3
Unqualified employees	3	-	-	3
Permitting miscellaneous gambling on premises	2	1	-	3
Permitting foul language on premises	-	1	1	2
Permitting hostesses on premises	1	-	-	1
Serving beverages other than ordered	1	-	-	1
Permitting bookmaking, lottery & misc. gambling on premises	1	-	-	1
Sale below filed price	1	-	-	1
Failure to keep true books of account	1	-	-	1
Sale outside scope of license	-	1	-	1
Sale to non-member by club	-	1	-	1
Employing police officer on premises	-	-	1	1
Failure to close premises during prohibited hours	-	-	1	1
Fraud and front	-	-	1	1
Cases brought by municipalities on own initiative and reported to Division	18	21	9	48
Violations involved	22	22	12	56
Sale to minors	9	8	4	21
Permitting brawl on premises	2	4	1	7
Conducting business as a nuisance	4	-	2	6
Permitting misc. gambling on premises	1	3	2	6
Sale during prohibited hours	-	2	1	3
Failure to close premises during prohibited hours	3	-	-	3

**Includes one cancellation proceeding - license inadvertently issued since it was the latest renewal for a new license originally issued in 1966

	<u>JULY</u>	<u>AUGUST</u>	<u>SEPTEMBER</u>	<u>TOTAL</u>
DISCIPLINARY PROCEEDINGS (CONTINUED)				
Cases brought by municipalities on own initiative and reported to Division (Continued)				
Permitting minors on prem. unaccompanied by parent or guardian (local reg.)	-	2	1	3
Permitting premises to be used for illegal activity (narc.)	1	-	1	2
Unqualified employees	2	-	-	2
Storage off licensed premises	-	1	-	1
Hindering investigation	-	1	-	1
Permitting immoral activity on premises	-	1	-	1
HEARINGS HELD AT DIVISION:				
Total number of hearings held	66	43	53	162
Appeals	10	10	7	27
Disciplinary proceedings	33	25	36	94
Eligibility	20	6	10	36
Seizures	3	2	-	5
STATE LICENSES AND PERMITS ISSUED:				
Total number issued	2,605	1,467	1,654	5,726
Licenses	571	11	1	583
Solicitors' permits	52	60	41	153
Employment permits	790	442	389	1,621
Disposal permits	66	87	73	226
Social affair permits	426	421	502	1,349
Miscellaneous permits	398	244	257	899
Wine permits	30	15	42	87
Transit insignia	251	173	50	474
Transit certificates	21	14	319	354
OFFICE OF AMUSEMENT GAMES CONTROL:				
Licenses issued	17	3	1	21
State Fair licenses issued	42	73	15	130
Premises inspected	246	563	123	932
Premises where violations were found	16	29	9	54
Number of violations found	18	36	15	69
Enforcement files established	23	28	9	60

RICHARD C. McDONOUGH
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: October 26, 1970

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

300 PACIFIC CORP.)
 t/a Adelpia Bar)
 300 Pacific Avenue)
 Atlantic City, N. J.)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption)
 License C-111, issued by the Board of)
 Commissioners of the City of Atlantic)
 City.)

 Licensee, by Joseph Starr, Secretary-Treasurer, Pro se.
 Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on Saturday, August 8, 1970, it sold two bottles of beer (1) to a minor, age 20, in violation of Rule 1 of State Regulation No. 20, and (2) for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensee corporation has a previous record of suspension of license by the municipal issuing authority (1) for five days, effective May 15, 1967, for sales during prohibited hours in violation of Rule 1 of State Regulation No. 38, and (2) for two hundred sixty-eight days, effective May 8, 1969, for permitting disturbances, unnecessary noises, brawls and acts of violence on the licensed premises and the licensed place of business to become a nuisance. In addition, a license held by Joseph Starr and Joseph Rose (stockholders and officers in the license corporation) as partners, for premises 188 South Virginia Ave., Atlantic City, was suspended by the Director for two hundred thirty-five days, effective September 16, 1963, for permitting immoral activity (procurement for prostitution), female employees to accept drinks at the expense of male patrons, employing non-residents without requisite permits, and conducting the licensed place of business as a nuisance. Re Starr and Rose, Bulletin 1528, Items 1 and 2.

The 1963 suspension of the Starr-Rose license for dissimilar violations occurring more than five years ago disregarded, the license will be suspended on the first charge for ten days (Re Belco Liquor Store, A Corporation, Bulletin 1897, Item 4), and on the second charge, the 1967 suspension of the licensee corporation for similar violation occurring within the past five years considered, for thirty days (Re Culver & Culver, Bulletin 1874, Item 4), to which will be added five days by reason of the record of the 1969 suspension of the licensee corporation for dissimilar violations occurring within the past five years, or a total of forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 27th day of October 1970,

ORDERED that Plenary Retail Consumption License C-111,

issued by the Board of Commissioners of the City of Atlantic City to 300 Pacific Corp., t/a Adelpia Bar, for premises 300 Pacific Corp., t/a Adelpia Bar, for premises 300 Pacific Avenue, Atlantic City, be and the same is hereby suspended for forty (40) days, commencing at 7:00 a.m. Thursday, November 12, 1970, and terminating at 7:00 a.m. Tuesday, December 22, 1970.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MARY MAIONE)
t/a Jim's Tavern)
Route 130)
Bordentown Township, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Bordentown.)

James Logan, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 8, 1970, she possessed alcoholic beverages in three bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of two suspensions of license by the Director for sales to minors, (1) for ten days, effective May 31, 1966, and (2) for twenty days, effective June 10, 1966. Re Maione, Bulletins 1682, Item 6 and 1685, Item 2.

The license will be suspended for twenty days (Re Mario's, Inc., Bulletin 1919, Item 8), to which will be added ten days by reason of the record of the two suspensions of license for dissimilar violations within the past five years (Re Nazario, Bulletin 1840, Item 5), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 26th day of October 1970,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Town of Bordentown to Mary Maione, t/a Jim's Tavern, for premises Route 130, Bordentown Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, November 9, 1970, and terminating at 2:00 a.m. Friday, December 4, 1970.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LAELED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

THREE SISTERS (A CORPORATION)
U.S. Highway #46
Rockaway Township
PO Dover, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Township Committee of the Township of Rockaway.

Licensee, by Leo A. Marin, President, Pro se.
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 April 23, 1970, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

One quart bottle labeled 'Imperial Hiram
Walter Blended Whiskey, 86 Proof',

One quart bottle labeled 'Canadian Lord
Calvert Canadian Whisky, 80 Proof',

One quart bottle labeled 'White Horse Blended
Scotch Whisky, 86 Proof', and

One quart bottle labeled 'Haig & Haig Pinch
Blended Scotch Whisky, 86 Proof';

in violation of Rule 27 of State Regulation No. 20."

ABC agent D visited the subject premises on April 23, 1970, pursuant to a specific assignment to make a routine, retail liquor gauge inspection. In gauging seventy-one of the open bottles, he seized five open bottles which appeared to be low in proof, thus these bottles bore labels which did not truly describe their contents. These bottles were sealed in the presence of an employee of the licensee and were transmitted to the Division's chemist for further chemical analysis.

The bottles were analyzed by the Division's chemist and his report, certified by the Director and admitted into evidence pursuant to R.S. 33:1-37, established that four of the bottles were not genuine as compared with the background of numerous samples of sealed bottles delivered to the laboratory over the years.

The report shows that the following bottles were not genuine:

- 1 - quart bottle containing fourteen ounces labeled "Imperial Hiram Walker Blended Whiskey, 86 proof" was low in proof;
- 1 - quart bottle containing twenty-three ounces labeled "Canadian Lord Calvert, Canadian Whisky, 80 proof" was low in proof;
- 1 - quart bottle labeled "White Horse Blended Scotch Whisky, 86 proof," was low in proof and high in acids; and
- 1 - quart bottle labeled "Haig & Haig Pinch Blended Scotch Whisky, 86 proof," was low in proof and high in solids.

Leo A. Marin, president and principal stockholder of the corporate licensee, testified that he did not know why the seized bottles were not genuine except that he believed that they were "caused by natural causes and not by anybody cheating the public". He testified that they may have been caused by "... natural evaporation because the bottles that was there, they weren't moving fast enough"

The firmly established rule in these matters is that the licensee is responsible for any alcoholic beverages not truly labeled found upon his licensed premises. As the court stated in Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156, at p. 159:

"*** We find nothing within the Alcoholic Beverage Control Act, R.S. 33:1-1, et seq., to indicate an intent that the holder of a retail consumption license must have knowledge that he possesses illicit beverages in order to make him amenable to disciplinary action. Our courts have consistently held that such knowledge is not an essential ingredient to conviction for possession under statutes similar to the one under consideration." See also Panda v. Driscoll, 135 N.J.L. 164. (E. & A.).

The testimony clearly supports the charge herein that the proofs on the seized bottles were low and did not accurately reflect the proofs as set forth on the labels of the said bottles.

The licensee is of the opinion that evaporation did cause the low proofs. However, the testimony of the Division chemist and other chemical analysts in many other cases has clearly rejected such explanation; evaporation does not cause this condition, but rather it is usually caused by dilution. No expert testimony was adduced by the licensee in support of its thesis.

Furthermore, although the licensee's principal officer testified that he did not know why the contents of the bottles were not genuine as labeled, our courts have consistently held that knowledge on the part of the licensee is not a prerequisite to a finding of guilt.

After careful consideration and appraisal of the testimony, I conclude that the charge herein has been established by a fair preponderance of the credible evidence. It is, accordingly, recommended that the licensee be found guilty thereof. Re: Sussex Lanes, Inc., Bulletin 1915, Item 5.

Licensee has no prior adjudicated record. It is further recommended that the license be suspended on this charge for twenty days. Re: Dor & Al, Inc., Bulletin 1917, Item 3.

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 the transcript of the 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 27th day of October 1970,

ORDERED that Plenary Retail Consumption License C-14, issued by the Township Committee of the Township of Rockaway to Three Sisters (A Corporation) for premises U.S. Highway #46, Rockaway Township, PO Dover, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Thursday, November 12, 1970, and terminating at 3:00 a.m. Wednesday, December 2, 1970.

RICHARD C. McDONOUGH
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - GAMBLING (LIAR'S POKER) - FALSE STATEMENT IN APPLICATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HELEN AND EILEEN DOWLING)
t/a "Jim Dowling's")
514-516 Bay Avenue)
Point Pleasant Beach, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Mayor and Borough Council of the Borough of Point Pleasant Beach.)

Parsons, Canzona, Blair and Warren, Esqs., by Rocco Ravaschiere, Esq., Attorneys for the Licensees.
Walter H. Cleaver, Esq., Appearing for the Division.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging (1) that on March 31, 1970 they permitted gambling, viz., wagering on a game of "Liar's Poker", utilizing serial numbers on United States paper currency, for money stakes, on the licensed premises, in violation of Rule 7 of State Regulation No. 20, and (2) that in their application for then current license they failed to disclose record of prior license suspensions.

Although this partnership has no record of any previous suspensions, license held by Ernie & Larry's, Inc. for same premises, in which both partners were stockholders, was twice suspended for sale to minors, once by the Director for five days effective September 16, 1963 (Re Ernie & Larry's, Inc., Bulletin 1532, Item 12), and once by the municipal issuing authority for fifteen days effective November 2, 1964, such suspensions being the subject matter of the second charge.

The prior record of suspensions of licenses of Ernie & Larry's, Inc., although chargeable against this partnership (cf. Re Moore, Bulletin 1659, Item 4), will not be considered in admeasuring the penalty since dissimilar from the charges herein and having occurred more than five years ago. Accordingly, the license will be suspended on the first charge for fifteen days (Re Specac Corp., Bulletin 1917, Item 4), and on the second charge for ten days (Re Progressive Democratic Club, Bulletin 1911, Item 7), or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 27th day of October, 1970,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Mayor and Borough Council of the Borough of Point Pleasant Beach to Helen and Eileen Dowling, t/a "Jim Dowling's", for premises 514-516 Bay Avenue, Point Pleasant Beach, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, November 3, 1970, and terminating at 2:00 a.m. Monday, November 23, 1970.

RICHARD C. McDONOUGH
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ROCKY AND JOE'S, INC.
307 Ocean Avenue
Jersey City, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Licensee, by Rocco Georgia, President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Tuesday, June 23, 1970 it sold six cans of beer for off-premises consumption during prohibited hours in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for thirty days effective January 15, 1969 for sales to minors and permitting foul and indecent language on the licensed premises. Re Rocky and Joe's, Inc., Bulletin 1839, Item 6.

The prior record of suspension of license for dissimilar violations within the past five years considered, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Fortuna Club, Inc., Bulletin 1880, Item 5.

Accordingly, it is, on this 27th day of October 1970,

ORDERED that Plenary Retail Consumption License C-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Rocky and Joe's, Inc., for premises 307 Ocean Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Tuesday, November 10, 1970, and terminating at 2:00 a.m. Wednesday, November 25, 1970.

RICHARD C. McDONOUGH
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
MARY DiNICK, INC.
t/a Opus 1
1317 Memorial Avenue
Atlantic City, N. J.
Holder of Plenary Retail Consumption License C-92, issued by the Board of Commissioners of the City of Atlantic City.

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) CONCLUSIONS
) AND ORDER
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Licensee, by Mary DiNicolantonio, Secretary-Treasurer, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 11, 1970, it sold drinks of beer to two minors, ages 16 and 18, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Lipka, Bulletin 1809, Item 6.

Accordingly, it is, on this 27th day of October 1970,

ORDERED that Plenary Retail Consumption License C-92, issued by the Board of Commissioners of the City of Atlantic City to Mary DiNick, Inc., t/a Opus 1, for premises 1317 Memorial Avenue, Atlantic City, be and the same is hereby suspended for twenty (20) days, commencing at 7:00 a.m. Tuesday, November 10, 1970, and terminating at 7:00 a.m. Monday, November 30, 1970.

RICHARD C. McDONOUGH
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF STATE REGULATION NO. 38 - POSSESSION OF INDECENT MATTER - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

STANLEY POPEWINY)
t/a Popewiny's)
132 North Main Street)
Paterson, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Licensee, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

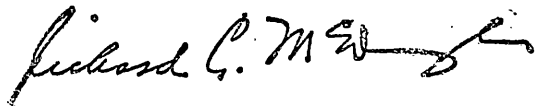
BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on Sunday, September 13, 1970, before 1:00 p.m., he (1) sold two bottles of gin during hours prohibited by municipal regulation, and (2) for off-premises consumption, in violation of Rule 1 of State Regulation No. 38; and (3) that on same he possessed, sold and distributed on the licensed premises obscene and indecent matter, viz., copies of a publication entitled "Candid Press", in violation of Rule 17 of State Regulation No. 20.

The license will be suspended on the first and second charges for twenty days (Re Lipshitz, Inc., Bulletin 1911, Item 8), and on the third charge for fifteen days (Re Big Red's, Inc., Bulletin 1751, Item 14), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 2nd day of November 1970,

ORDERED that Plenary Retail Consumption License C-12, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Stanley Popewiny, t/a Popewiny's, for premises 132 North Main Street, Paterson, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Tuesday, November 17, 1970, and terminating at 3:00 a.m. Thursday, December 17, 1970.



Richard C. McDonough,
Director