

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

BULLETIN 1726

April 20, 1967

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"2. On January 7, 14, 20, February 9, 11, 15, 17, 21, 23, March 1, 2, 10, 18, April 12, 21, 1966, and on divers other days, you allowed, permitted and/or suffered in and upon your licensed premises immoral activity in that you, by and through your employees, agents and/or servants did allow persons to make overtures and arrangements for the sale and purchase of narcotics; and that you further allowed, permitted and/or suffered persons who indulged in and/or appeared to indulge in the use, sale and purchase of narcotics to frequent and congregate in and upon your said licensed premises; and you allowed, permitted and/or suffered and otherwise conducted your licensed place of business in such a manner as to become a nuisance and to be completely offensive to public morals and common decency; in violation of Rule 5 of State Regulation No. 20."

Upon the filing of the appeal challenging such action, an order dated September 30, 1966 was entered by the Director staying the effect of respondent's order or revocation pending the determination of this appeal.

In their petition of appeal the appellants allege that the action of the Board was erroneous and should be reversed for the following reasons: (1) the licensees were not guilty of the said charges, (2) the plea of guilty was entered erroneously over objection of counsel for the licensees, (3) by reason thereof licensees were deprived of a fair hearing and due process, (4) the licensees were entitled to have their plea of guilty withdrawn and a plea of not guilty entered.

The answer of the respondent denies the substantive allegations of the petition and sets forth that the grounds upon which the Board made its decision "were based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the penalty imposed substantiated such action."

This hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15. Stenographic transcript of the hearing below was submitted in accordance with procedure authorized by Rule 8 of State Regulation No. 15, and a full hearing of these charges constituted supplementation of the said transcript.

Before considering and evaluating the substantive charges upon which the action of the Board was grounded, it might be well to dispose of the allegations of the petition in so far as they relate to the procedure with respect to its alleged plea entered on behalf of the appellants at the hearing before the Board.

My examination of the transcript reveals the following: After the appellants were duly served with a copy of the charges dated July 25, 1966, hereinabove set forth, their attorney (Joel C. Rinsky, Esq., appearing for Philip Levitan, Esq.) appeared on the return date (August 10, 1966), requested and was granted an adjournment of the said hearing to September 7, 1966. Appellants appeared at the adjourned hearing date (September 7, 1966) and Charles Smith (appellant) informed the Board that he desired to enter a plea of guilty. A similar statement was made by his wife, who is the co-appellant herein. He was asked by the Chairman of the Board whether he was represented by counsel and he replied that he had consulted with his counsel and associate counsel and, on their advice, was entering this plea "with an explanation."

The attorney for the Board then reminded the Board that at the last appearance the appellants' attorney indicated that he was going to prepare a defense to these charges. The Chairman then instructed the appellants to make an attempt to have their attorney attend that morning and directed a brief adjournment in order to enable them to do so. After a recess of about a half-hour, the appellant Smith appeared with his present attorney (Paul Parker) who stated to the Board that he had just been retained several minutes before and, after advising the appellants of the severity of the charges "and the consequences if he were found guilty or entered a plea of guilty to the charges", the appellants then desired to permit him to withdraw his earlier plea of guilty and enter a plea of not guilty. This action was vigorously opposed by the Board's attorney, and the Chairman stated that the only reason he granted the brief adjournment was to "hear the explanation and nothing else." Accordingly, the Board then voted to deny this application to retract the plea, and voted unanimously to revoke their license.

My analysis of the transcript convinces me that no final plea of guilty was entered by the appellants at the hearing before the Board. The Chairman, perhaps through an abundance of caution, did not accept the said plea because he undoubtedly felt that the seriousness of the charges, carrying with them the likelihood of the ultimate penalty of revocation, required that these appellants have an attorney appear with them at the hearing. He did not make it clear to the appellants that the only thing he required by counsel's presence was an explanation. Therefore I conclude that, in the absence of a firm and final plea of guilty, the appellants were denied the opportunity to be heard and be given a full and fair hearing on the said charges.

However, at this plenary de novo hearing such opportunity has been now given to the appellants; they are accordingly not prejudiced. I shall now, therefore, consider the testimony reflected in the entire record herein.

In support of the Board's case, it produced at this plenary hearing Detective Jerome M. Cleary, of the Newark Police Department, who gave the following account: Pursuant to a special assignment to investigate narcotics activity at the premises of the appellants, he, in the company of two fellow officers, on January 7, 1966 observed one Samuel Sherman about to enter the said licensed premises. As Sherman noticed the police officers, he threw a deck of heroin on the ground. Entering the tavern, the detectives arrested him and charged him with possession of heroin.

On January 14, 1966, at 4:15 p.m., this witness, in possession of a search warrant for the premises and one Yvonne White, observed Miss White on the outside of the premises transacting the sale of heroin with a young man, immediately after which she entered the licensed premises. She was forthwith arrested and fifteen decks of heroin were found in her possession.

On January 20, 1966 this witness observed a transaction involving the sale of heroin between Miss White and one Andrea Fisher which took place in front of the said tavern.

On February 15, 1966, at about 1:30 p.m., this officer entered the licensed premises and observed Miss White seated at the bar. A man approached her, handed her some money and she in turn handed him a small stack of glassine envelopes which later

proved to contain heroin. She was thereupon arrested. Tending bar at this time was a bartender later identified as Thomas Williams, who was a registered narcotics violator with a record of conviction of the narcotics law.

On March 10, 1966 this witness, in the company of two other police officers, again entered the licensed premises at about 3 p.m. and shortly thereafter observed one Bernard Jacobs pick up a small brown paper bag on the sidewalk in front of the said premises, enter the tavern, remove four stacks of glassine envelopes from the bag and go into the men's room. A search of the men's room disclosed a considerable quantity of heroin secreted therein.

On March 18, 1966, at about 4:25 p.m., this police officer observed, from a vantage point outside the premises, one Richard Taylor sell a deck of heroin and enter the licensed premises. Following him into the premises, where he was then seated at the bar, the witness approached Taylor who immediately tossed a stack of glassine envelopes containing heroin to the service part of the bar. The police officers retrieved the heroin and placed Taylor under arrest. During this incident one of the bartenders was just a few feet away from the police officer and, as Detective Cleary jumped over the bar to retrieve the heroin, the bartender said to him, "Don't knock over the garbage can."

Charles P. Collins, a narcotics agent employed by the Federal Bureau of Narcotics, gave the following account: He had visited the licensed premises on many occasions as an undercover agent and had witnessed narcotics activity both inside and outside of the premises. More specifically, he recounted the following: On February 9, 1966 he was introduced by a police informant in the premises to Bernard Jacobs. Jacobs told him that he could not sell narcotics to him directly because he did not know him, but that he would sell the same to the informant. A purchase of heroin was thereupon negotiated and the transaction was completed in that manner. The heroin was taken by the agent and certified as such in tests at the Bureau of Narcotics.

On February 11, 1966 a similar transaction took place with a sale by Jacobs to the informant who paid with funds advanced by this witness. This sale took place in the rear of the bar.

On February 17, 1966 this agent visited the premises and was able to make a direct purchase from Jacobs of heroin, for which he paid him \$16 from officially advanced funds. On this visit he recognized a number of the patrons as having been in the premises on his prior visits thereto, and that "a few of the people I seen before were apparently junkies."

Another visit was made by this agent on February 23, 1966, when he purchased heroin from one Freddie Stringer, whom he identified as the person who had previously sold him heroin and whom he had seen at the licensed premises on a previous occasion. This witness, who has had a considerable background of experience in investigation of narcotics violations, identified the characteristics of narcotics addicts which include "drooping, apparent state of semi-sleep", "runny noses" and so forth, and stated that a number of the patrons whom he had observed in these premises appeared to have these characteristics and to be under the

immediate influence of narcotics.

The witness further testified that on March 2, 1966 he made contact with one Victor Hearn, a narcotics "pusher", inside the premises and a direct purchase was made by Officer Williams. On cross examination he admitted seeing the sign "No junkies allowed" on the premises, with the added legend "If you have a card you are barred." However, this did not appear to keep any of the so-called "junkies" out of the premises. He also added that some of the transactions involving the sale of heroin were negotiated openly in the barroom.

Testimony of the aforementioned officers was corroborated, in so far as the incidents of February 17, February 23 and March 2, 1966, by police officer William H. Williams who was present when the sales were made on those occasions. He recalled a similar incident with respect to the sale on February 21, 1966 at 4:25 p.m. involving sale of heroin in the licensed premises at a cost of \$31. Testimony was similarly corroborated by Detective Arthur Gocheler, who added the following: On February 15, 1966, while in the premises he noted that Thomas Williams (who was then employed as bartender) had been arrested by him several years ago, charged with the sale of narcotics; that Williams is a seller of narcotics but not a user. He added that he informed Smith (the appellant herein) of that fact and Smith told him that he would "get rid of Mr. Williams" as soon as he could get another bartender.

Tracey Yvonne White, testifying on behalf of respondent Board herein, stated that she is presently serving a prison sentence at the Clinton Reformatory for a narcotics violation which occurred on January 14, 1966. She frequently visited this tavern to "drink and have a nice time." She admitted being arrested in the tavern on January 20 for the sale of narcotics; that she was in the premises on February 16, 1966, at which time she also made a sale of narcotics. She added that she visited these premises three or four times a week and often several times each day, and during these visits she would meet addicts in the said premises.

Andrea Fisher testified that she is presently serving a prison sentence at the Clinton Reformatory for possession of narcotics; that she was at the licensed premises with Miss White; that she made sales of narcotics outside the premises; that she frequented this tavern for the purpose of meeting people; that she was generally known in the premises as a seller of narcotics, but that she did not actually make the sales inside the premises.

Bernard Jacobs testified that he is presently serving a term in State Prison for the possession and sale of narcotics on February 9, 1966. He admitted selling heroin to Agent Collins on February 17, 1966. He also admitted frequenting these premises every day in January and February 1966, and was well known to the bartenders.

Harold Nichols, who also has a long criminal record as a narcotics violator, admitted that he had been a patron at the licensed premises but that he never told either of the appellants or their employees that he had ever been convicted of narcotics violations or had anything to do with narcotics.

Charles Smith (a co-appellant) presented the following defense to these charges: He had been employed as a bartender at these premises for three years prior to his purchase of the same

on September 29, 1965. He was well aware that the premises were located in a "hazardous area" and he was fully aware of the situation that existed. "I thought by purchasing the tavern in my own way I could clean it up.... I definitely did not want known junkies in my place of business."

Because a number of these undesirable persons continued to frequent the premises, he had to discharge at least fifteen or twenty bartenders because he thought they were "serving people I thought were narcotics, and conversing with them on their off time and my seeing them." He admitted that he employed Williams as a bartender but, as soon as he was informed that "he was a pusher he was fired immediately."

He further testified that there was nothing that he could really do because "the whole area was contaminated" and the previous owner "had twice as many charges" as he had. On one occasion after he purchased the tavern he spoke to a local police captain, but nothing came from that conference. He insisted that conditions are no worse than they were during the time that he was employed at the premises. He did not deny that "junkies" frequented his premises but that, if he "found a customer sleeping, a wino, or a narcotic", he would eject him immediately. He put up a sign "No junkies allowed" but would not actually eject them. The junkie "himself knew if he had a card he was to leave." On cross examination he asserted that he sought the cooperation of the Police Department in keeping addicts out and spoke to the Captain on one occasion with respect to that. Of course, narcotics addicts were frequenting his premises. However, the only time he would actually eject a narcotics addict was when he found them asleep in the premises.

We are dealing here with purely disciplinary measures and their alleged infractions. Such measures are civil in nature, and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

My examination and evaluation of the testimony herein convince me that the guilt of the appellants of the charges in so far as they refer to the January and February dates is clear and has been established beyond a peradventure of doubt. There is no denial on the part of the appellants that the premises were frequented by narcotics addicts and sellers of narcotics. It is equally certain to me that the appellants allowed, permitted and suffered the activities, as delineated in the charges, to take place in and upon the licensed premises.

It is ludicrous to assert, as Smith testified, that the premises were conducted in no worse a manner than when he was formerly employed as a bartender. He forthrightly admitted that he knew narcotics addicts patronized the premises both before and after his purchase of the premises, and he did precious little to keep them out. The mere placing of a sign on the premises telling these junkies to keep out of the premises is woefully insufficient and bespeaks totally inadequate control. Witnesses for the Board, particularly the former patrons (now serving prison terms) testified that the activities were carried on extensively in the premises without any serious design to conceal their enterprise.

I therefore conclude that the appellants allowed,

permitted and suffered these proscribed activities to occur on the licensed premises. The mere fact that the appellants may not have actually seen such transactions, if that were the fact, is no answer. Licensees may not avoid their responsibility for conduct occurring on their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3.

A liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585 (E. & A. 1888); Mazza v. Cavicchia, 15 N.J. 498 (1954). And, as Judge Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App. Div. 1953), said:

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

In the exercise of that power the Legislature invested the issuing authority (the Board) with the power to suspend or revoke licenses, after hearing, for certain enumerated violations including violation of the law or of State or local regulation. R.S. 33:1-31.

It is a sad commentary that these conditions were permitted to continue for such a long period of time without summary action by the local authorities. Surely the Board acted not a moment too soon, and I find that its action in revoking the said license was eminently dictated as the only proper penalty under these circumstances. The charges have been proved by a fair preponderance of the credible evidence -- indeed by overwhelming and substantial evidence. Thus the appellants have failed to sustain the burden of establishing that the Board's action in revoking the said license was erroneous, and should be reversed.

I recommend, therefore, that an order be entered affirming the Board's action in revoking the said license, and reimposing the order of revocation.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 21st day of February, 1967,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-684, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Charles and Jutta Smith, t/a Smitty's Bar, for premises 131-133 Howard Street, Newark, be and the same is hereby revoked, effective immediately.

JOSEPH P. LORDI  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - SALE TO NON-MEMBERS - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 80 DAYS - NO REMISSION FOR CONFESSIVE PLEA ENTERED AFTER PARTIAL HEARING.

In the Matter of Disciplinary Proceedings against AMALGAMATED LOCAL #731, UNITED AUTOMOBILE WORKERS OF AMERICA 1320 Parkway Avenue Ewing Township PO Trenton, N. J. Holder of Club License CB-1 issued by the Township Committee of the Township of Ewing.

CONCLUSIONS AND ORDER

Pellettieri and Rabstein, Esqs., by George L. Pellettieri, Esq., Attorneys for Licensee. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

After partial hearing, licensee pleaded non vult to charges alleging that on September 23, 30, October 19, 28 and November 23, 1966, it (1) and (2) permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20, and (3) sold drinks of beer to non-members, in violation of Rule 8 of State Regulation No. 7.

Licensee has a previous record of suspension of license by the Director for five days effective January 9, 1967, for possessing an alcoholic beverage not truly labeled. Re Amalgamated Local #731 UAW, Bulletin 1715, Item 10.

The license will be suspended on Charges 1 and 2 for sixty days (Re Appleman, Bulletin 1712, Item 4) and on Charge 3 for fifteen days (Re Polish American Citizens' Club, Bulletin 1689, Item 7), to which will be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Ask, Inc., Bulletin 1712, Item 3), or a total of eighty days, without remission for the plea entered after partial hearing (Re Beef and Bird, Inc., Bulletin 1711, Item 1).

Accordingly, it is, on this 21st day of February, 1967,

ORDERED that Club License CB-1, issued by the Township Committee of the Township of Ewing to Amalgamated Local #731, United Automobile Workers of America, for premises 1320 Parkway Avenue, Ewing Township, be and the same is hereby suspended for eighty (80) days, commencing at 2:30 a.m. Tuesday, February 28, 1967, and terminating at 2:30 a.m. Friday, May 19, 1967.

JOSEPH P. LORDI DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE  
SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

EDWARD L. KERWIN )  
t/a KERWIN'S HOMESTEAD )  
Rock Ave. & W. 4th Street )  
Piscataway, N. J. )

CONCLUSIONS  
AND ORDER

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

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Joseph C. Doren, Esq., Attorney for Licensee.  
David S. Piltzer, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On August 27, 1966, 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., Gary J. ---, age 19; in violation of Rule 1 of State Regulation No. 20."

The Division's case was presented through the testimony of Gary --- and James --- (both minors) and two ABC agents. The picture reflected by their testimony is as follows:

Gary (who was 19 years of age on the date alleged herein) gave the following account: On Saturday, August 27, 1966 he and several of his friends decided to purchase alcoholic beverages to be used for a get-together with their friends and, in pursuance thereof, in the company of his friend James ---, he proceeded to the licensee's premises in his motor vehicle. Parking his car in the rear lot, with James remaining in the car, he entered the back door of the premises. The reason he sought to make these purchases at these premises was that he had made purchases on three or four prior occasions without encountering any difficulty. He ordered two six-packs of Pabst's beer, a six-pack of Piel's beer and two quarts of Colt 45 malt liquor from the clerk on duty (later identified as Theodore H. Wolff). Wolff asked him for identification and he produced a pink-tinted driver's license (the color indicating the holder to be under 21 years) which reflected his true age. Wolff examined the license and, without making him execute any written representation as to his age, sold him the alcoholic beverages, for which he paid the prevailing price. He further states that this was the first occasion on which he had ever been asked by licensee's agent to produce any identification. He then left the premises, re-entered his motor vehicle and drove with his friend to a dead-end street in South Plainfield where a part of the beer was consumed by the group. While they were imbibing,

they were apprehended by local police officers, who ascertained that he was a minor; he was thereupon taken into custody. On cross examination he insisted that, although the license clearly reflected his true age as being 19 years of age, Wolff did not hesitate to sell him the said alcoholic beverages. He further denied that he was with anybody else inside the premises, and he positively identified the licensee's place of business as the premises at which he purchased the said beer.

James --- testified that he accompanied Gary, on the evening of the date charged, to the licensed premises and remained in Gary's car while he watched Gary enter the said premises. Gary remained in the premises for about twenty minutes to a half-hour and, when he glanced around, he saw Gary coming toward the car with the above described alcoholic beverages in his possession. He also definitely identified the premises as the place in which the beer had been purchased, and stated that he had on several prior occasions accompanied Gary to these premises. He then corroborated the testimony of Gary with respect to the confrontation with the South Plainfield police officers. On cross examination he emphasized that he saw Gary actually enter the licensed premises and, while he did not see him leave the said premises, it was his contention that it would have been impossible for him to have proceeded to any other licensed premises in the area on that occasion. He added that, when Gary re-entered the motor vehicle, he placed the purchased beer in the car, and he did not question him with respect to the details of the purchase.

Agent D gave the following version: Pursuant to a specific assignment to investigate the alleged violation, he visited the premises on October 4, 1966 in the company of Agent W and Gary and his father. The agents first entered the premises alone and questioned Wolff with respect to the alleged transaction. Wolff was very cooperative and, at the suggestion of the agent, for the purpose of identification had a friend of his join him behind the counter. At this point Gary and his father entered the premises, and Wolff was definitely pointed out as the person who had sold the said beer to him. Wolff admitted that he had seen this minor in the premises on prior occasions but did not remember the particular circumstances on the date alleged herein. Wolff was then shown the minor's driver's license and he looked at it very carefully and said that he would not have accepted that driver's license as proof of age.

Agent W corroborated the testimony of Agent D and added the following: Wolff said he recognized the minor as having been in the premises, but he thought Gary "was in there with someone else." He was then asked what method he would use to check out a person he believed could be a minor, and his reply was that he would check a driver's license or a draft card. At this point the driver's license was produced and Wolff looked at it and replied, "He just turned 21." He then looked at it again, and said, "Oh, no. He is just going to be 20."

Theodore H. Wolff, called as a witness on behalf of the licensee, gave the following account: He had been employed at these premises for the past seven years and had seen Gary at the licensed premises on several occasions, although he could not specifically recall the circumstances on the date alleged. However, he denied that he ever sold him any alcoholic beverages. He explained that, when the agents questioned him about this incident and when he was shown the driver's license, he said that the older was "20 or 21 until I took time out to subtract correctly mentally the date on the card." On cross examination

he stated that in his opinion Gary appeared to be 19 or 20, and that he would definitely have questioned him if he sought to make a purchase. However, he was certain that he had not sold any alcoholic beverages to him on the date alleged or on any previous occasion. He further admitted that at the confrontation "I did not deny anything that night, no, sir."

Edward L. Kerwin (the licensee) gave the following account: He was in his premises on the date alleged but does not recall seeing Gary there at any time on the said date. However, on two previous occasions, when Gary sought to make purchases, he "asked if he had any identification, and he said, 'No' and walked out." However, he does not specifically recall the particular date alleged in this charge. He was then asked the following:

"Q So far as you know and as far as you can recall now, you can't tell whether you were even present on the premises that night [August 27 ?]

A That is right."

We are dealing here with a purely disciplinary measure and its alleged infraction. Such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Benedetti v. Trenton, 35 N.J. Super. 30, 34 (App.Div. 1955); Kravis v. Hock, 135 N.J.L. 259 (Sup.Ct. 1947).

I have had the opportunity to observe the demeanor of the witnesses as they testified at this hearing, and I was impressed with the credibility of the testimony of the two minors who appeared to give a straightforward, believable and accurate account of the episode. Their testimony wherein they positively identified the premises in question, the date alleged herein and, as to Gary, the licensee's agent who made the sale, remained unshaken under the energetic cross examination of competent defense counsel and was consistent throughout. I am equally satisfied that they had no improper motive in inculcating this licensee. The testimony of the agents with respect to the confrontation seems to corroborate the evidence adduced from the minors.

It is particularly revealing that Wolff was confused as to the age of the minor when he was first shown the true driver's license. Contrasted with the positive testimony of the minors, we have the denial of sale by Wolff and the licensee. However, neither of these individuals could recall the specific date or the circumstances surrounding the alleged purchase. However, since they deny that any sales were made, this case presents a factual conflict which must be resolved.

I am satisfied that there has been presented proof here, by a fair preponderance of the credible evidence, that a purchase was made by the minor on the date alleged from the licensee's agent. Since I find that there was a purchase, it follows that the statutory requirements with respect thereto were not met. The only complete defense in the sale or service of an alcoholic beverage to a minor is a written representation by the minor that he is twenty-one years of age or older, and that in fact he appeared to be of statutory maturity. Wolff admits that the minor appeared to be no more than 19 or 20 years of age. Thus, in any event, a sale under these circumstances would be violative of the rules and regulations of this

Division. See Rule 1 of State Regulation No. 20, and special note in Section 5 of appendix to the 1957 Pamphlet State Regulations. Re Piet Corporation, Bulletin 1479, Item 2.

After considering the evidence adduced herein and the argument of counsel at the conclusion of the hearing, I conclude that this Division has established the truth of the charge by a fair preponderance of the believable evidence. Freud and Pittala v. Davis, 64 N.J. Super. 242 (App.Div. 1960). I therefore recommend that the licensee be found guilty as charged.

Licensee has a prior adjudicated record. Effective November 19, 1943, his license was suspended by the Commissioner for thirty-five days for sale to an intoxicated person (Re Kerwin, Bulletin 595, Item 8). Effective November 19, 1947 his license was suspended by the municipal issuing authority for ten days for sale during prohibited hours. Since these suspensions for dissimilar violations occurred more than five years ago, they should not be considered in the imposition of any penalty. However, the license was also suspended by the municipal issuing authority for three days, effective January 3, 1966 for sale to minors, which suspension for similar violation within the past five years should be so considered.

It is further recommended that an order be entered suspending the license for twenty-five days. Re Mattera, Bulletin 1686, Item 2.

#### 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 20th day of February, 1967,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Piscataway to Edward L. Kerwin, t/a Kerwin's Homestead, for premises Rock Avenue and West 4th Street, Piscataway, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, February 27, 1967, and terminating at 2:00 a.m. Friday, March 24, 1967.

JOSEPH P. LORDI  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) -  
LOTTERY (FOOTBALL POOL TICKETS) - LICENSE SUSPENDED FOR  
60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

DANIEL H. HAYES  
t/a Danny's  
162 Main Street  
Asbury Park, New Jersey

)  
)  
) CONCLUSIONS  
AND ORDER  
)  
)

Holder of Plenary Retail Consumption License C-34, issued by the City Council of the City of Asbury Park.

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Charles Frankel, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on December 6, 10, 12 and 16, 1966, he permitted the acceptance of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20, and (2) on December 16, 1966, possessed football pool tickets on the licensed premises, in violation of Rule 6 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Friendly Tavern, Inc., Bulletin 1581, Item 9.

Accordingly, it is, on this 15th day of February, 1967,

ORDERED that Plenary Retail Consumption License C-34, issued by the City Council of the City of Asbury Park to Daniel H. Hayes, t/a Danny's, for premises 162 Main Street, Asbury Park, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a.m. Tuesday, February 21, 1967, and terminating at 3:00 a.m. Monday, April 17, 1967.

JOSEPH P. LORDI  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - HINDERING INVESTIGATION - PRIOR SIMILAR VIOLATION - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MARY VINNICK  
t/a Coronet Bar & Grill  
62-64-66 Sitgreaves Street  
Phillipsburg, New Jersey

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the Town of Phillipsburg.

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Licensee, Pro se.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that on December 3, 1966, she (1) and (2) failed to close the licensed premises after 2:00 a.m. during hours prohibited by municipal ordinance and (3) hindered investigation by refusal promptly to admit investigating ABC agents to the licensed premises, in violation of R.S. 33:1-35.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective July 18, 1966, for violation of the local hours ordinance.

The prior record of suspension of license for similar violation within the past five years considered, the license will be suspended on Charges 1 and 2 for thirty days (Re Pecoraro and Marchitto, Bulletin 1690, Item 3) and on Charge 3 for ten days (Re Corinthian Square Club, Bulletin 1681, Item 3), or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 15th day of February, 1967,

ORDERED that Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the Town of Phillipsburg to Mary Vinnick, t/a Coronet Bar & Grill, for premises 62-64-66 Sitgreaves Street, Phillipsburg, be and the same is hereby suspended for thirty-five (35) days, commencing at 1:00 a.m. Wednesday, February 22, 1967, and terminating at 1:00 a.m. Wednesday, March 29, 1967.

JOSEPH P. LORDI  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

GLITTER CLUB, INC. )  
687 Springfield Avenue )  
Newark, N. J., )

CONCLUSIONS AND ORDER.

Holder of Plenary Retail Consumption License C-701, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

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Ralph C. DeRose, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 12, 1966 it sold drinks of alcoholic beverages to three minors, all age 18, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, 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 Karamac Kamp, Inc., Bulletin 1695, Item 12.

Accordingly, it is, on this 14th day of February 1967,

ORDERED that Plenary Retail Consumption License C-701, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Glitter Club, Inc., for premises 687 Springfield Avenue, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, February 20, 1967, and terminating at 2 a.m. Tuesday, March 7, 1967.

JOSEPH P. LORDI  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

HACKENSACK GOLF CLUB  
Soldier Hill Road  
Emerson, N. J.

)  
)  
) CONCLUSIONS  
) AND ORDER  
)

Holder of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Emerson

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Winne & Banta, Esqs., by Horace F. Banta, Esq., Attorneys for Licensee.

David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

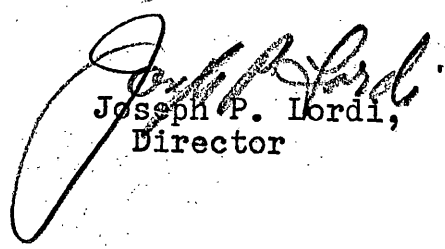
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 30, 1966, it possessed alcoholic beverages in four bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, 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 Dinzik, Bulletin 1693, Item 6.

Accordingly, it is, on this 20th day of February, 1967,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Emerson to Hackensack Golf Club for premises on Soldier Hill Road, Emerson, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Monday, February 27, 1967, and terminating at 2:00 a.m. Tuesday, March 14, 1967.

  
Joseph P. Lordi,  
Director