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

BULLETIN 1280 JUNE 16, 1959

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ITEM

STATE OF NEW JERSEY
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1100 Raymond Blvd. Newark 2, N. J.

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1. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - SALE TO INTOXICATED PERSON - CHARGE ALLEGING NUISANCE DISMISSED - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against CHEZ LEON, INC. t/a CHEZ LEON Pier Lane Caldwell Township PO Caldwell, RD, N. J., Holder of Plenary Retail Consumption License C-6, issued by the Caldwell Township Committee.	CONCLUSIONS AND ORDER

Green and Yanoff, Esqs., by H. Kermit Green, Esq., and Irving Vichness, Esq., Attorneys for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed a Report herein, the material portions of which are as follows:

"Defendant has pleaded not guilty to the following charges:

'1. During the early part of June 1958, 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., Carole ---, age 15, and you allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

'2. During the early part of June 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated, and you allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

'3. During the early part of June 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance in that you allowed, permitted and suffered a female minor to be served a quantity of alcoholic beverages, after which you allowed, permitted and suffered said female to enter a room in the building in which your licensed premises are located, in which room one of your male officers and stockholders and a male patron engaged in sexual relations with her; and you otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"Before any testimony was taken at the hearing herein the attorney for defendant moved to dismiss the charges upon the ground that the pleading of the charges does not give the licensee sufficient information as to the date of the offense. The attorney appearing for the Division opposed the granting of the motion for various reasons including the reason that the president of defendant corporation has personal knowledge as to the particular date in question. I recommend that the motion be denied. The averment of the time of the commission of the offenses in this case is formal and not of the essence of the offenses. State v. Yanetti, 101 N.J.L. 85 (Ct. E & A 1925).

"In his brief filed herein the attorney for defendant also contends that the charges should be dismissed on the ground that the Division's failure to provide a proper method of prehearing discovery has prejudiced the licensee by not affording a fair and impartial hearing. This contention appears to be based upon the refusal of the attorney appearing for the Division to furnish to defendant's attorney prior to the hearing a copy of a statement obtained from Carole Anne --- (hereinafter called Carole), a witness in the case. However, even in criminal cases, a prosecutor may not be required to furnish before trial to defendant's attorney a copy of a statement obtained from a prospective witness. State v. Johnson, 28 N.J. 133, at 142 (Sup. Ct. 1958). Defendant was permitted to use the statement in question for the purposes of cross-examination at the hearing. It is recommended that this contention be found to be without merit.

"For reasons which will hereinafter appear, the only issues to be decided are whether alcoholic beverages were served to Carole while she was intoxicated, and whether John R. Russell (president of defendant corporation) and Robert --- (a patron) had sexual relations with Carole in a room in the licensed building.

"On July 26, 1958, Carole was apprehended by members of the Paterson Police Department on a morals charge not connected in any way with this case. As a result of statements thereafter given by her to the Paterson Police and ABC agents, these proceedings were instituted.

"From the evidence herein it appears that the principal witnesses are Sally --- (age 14), Carole --- (who was 15 years of age in June 1958), John R. Russell (age 27, single) and Robert --- (age 24, divorced).

"Admittedly, Sally and Carole were seated first in John's car and later in Robert's car in the parking-lot of Chez Leon, Inc., for three or four hours on a Sunday evening in June 1958; the date being fixed as either June 1 or June 8 by Sally and Carole and June 15 by John and Robert. There was nothing suspicious or irregular in such conduct. Sally lived nearby and she and Carole, wearing Bermuda shorts, were walking through the parking-lot on their way to a place apparently frequented by teenagers when one of defendant's employees, who knew Sally, met them and suggested that John, who also knew Sally, might drive them to their destination, if he was not too busy. Accordingly, the girls first waited in John's car, which had no radio, and later, with Robert's permission, waited in his car, which had a radio. John finally advised them that he was too busy that evening to leave the premises. There is some evidence that during this period of time Robert brought from

the licensed premises two drinks which he allegedly described, respectively, as 'rum and coke' and 'Scotch-on-the-rocks' which he gave to Carole, who consumed the drinks. Robert denies this and testified he gave each girl only a bottle of 'coke.' In any event, it appears that the licensed premises closed about 11:00 p.m. and that, at some time within the next hour, Sally, Carole, John and Robert entered the dining-room of the licensed premises. All the witnesses agree that Carole asked for a 'screwdriver' which was prepared for her by John and which she had partly consumed before the four went to the barroom and sat on stools at the bar. John testified that, after they entered the barroom, he served Carole a 'Scotch and water', but Carole testified that he then also served two 'gin-fizzes' to her and that he had previously served two 'screwdrivers' to her in the dining-room. All witnesses agree that, after a drink or drinks had been served in the barroom to Carole, she fell in a sitting position on the floor when she attempted to arise from her stool; that she was laughing and giggling and thereafter had words with Sally and slapped her in the face.

"As to the events which thereafter occurred, Sally testified that she accompanied Carole to the ladies' room, which is on the second floor of the licensed building, and that Carole 'wouldn't sit up straight or anything;' that Robert came up and said he would try to help her and 'told me to go downstairs with Jack;' that, when she went downstairs, Carole was in the bathroom and 'didn't have pants on;' that, after talking to John for about twenty minutes, he accompanied her part-way home. She fixed the time when they left the premises at between 1:00 a.m. and 1:30 a.m. Carole testified that, after she fell in the barroom, she got up to go to the bathroom and that the next thing she remembers is that she was on a bed in an office on the second floor; that John had sexual intercourse with her, after which she passed out; that Robert had sexual intercourse with her, after which she passed out, and that later both helped her to get dressed; that John was at the licensed premises at 2:30 a.m.; that Robert drove her home and that she entered her house as the clock was striking 3:00 a.m. Robert admitted that he had gone upstairs shortly after the girls went up and said that he saw Sally in the doorway of the ladies' room and Carole sitting on the floor, fully clothed, with her back to the wall; that Carole made some nonsensical remarks; that he went downstairs to the kitchen to make some coffee and was there when John returned after seeing Sally part-way home; that both called Carole down and, when she did not come, both went upstairs and found Carole, fully clothed, on a bed in John's office; that Carole accompanied them to the kitchen where she had coffee; that he left the Chez Leon at 12:30 a.m. or 12:40 a.m., drove her home, and then drove to Pompike Inn, where he met John and Fred Spano (one of defendant's bartenders) at about 1:00 a.m. John's testimony as to the events at the Chez Leon is substantially the same. He testified that he left the premises about 12:30 a.m. and drove to Pompike Inn, arriving there shortly before 1:00 a.m. Each witness denied that he had sexual relations with Carole. Fred Spano testified that on a Sunday evening in June which, he believes, was June 15, he drove to Pompike Inn, Cedar Grove, and that John and, thereafter, Robert, arrived at said premises "maybe 11, 11:30, 12" and possibly 1:00 a.m.

"On the cross-examination of Carole, she admitted that she had had sexual relations before the events hereinabove set forth. She also testified that, about a week after

said events, she asked John for a loan of $10.00 and picked up $30.00 cash which had been placed in his car and that thereafter, when she thought she was pregnant, she asked John for $5.00 for pills and picked up $50.00 cash which had been placed in his car. John denied this testimony."

The Hearer recommended that defendant be found guilty as to Charges 1 and 3, and not guilty as to Charge 2 because there was insufficient evidence that Carole was apparently intoxicated when drinks were served to her. The Hearer further recommended, in effect, a sixty-day-suspension of defendant's license.

Written exceptions and argument thereon were filed with me by the attorneys for defendant, pursuant to Rule 6 of State Regulation No. 16. I have carefully considered the entire record, including the testimony, Hearer's Report, written exceptions and argument thereon, and agree with the recommendation that the motion to dismiss the charges be denied. I conclude that the evidence sufficiently establishes guilt as to Charges 1 and 2 and I, therefore, find defendant guilty as to said charges.

I have given special consideration to the recommendation that defendant be found guilty as to Charge 3. This, the most serious of the charges, must stand or fall on the uncorroborated testimony of Carole, who admittedly has a sad and shocking background of sexual experiences with a number of males. Charge 3 involves John and Robert in a very serious morals offense which, if the subject matter of a criminal complaint, would require that their guilt be proven beyond a reasonable doubt. Here we have not only the vigorous denial of John, a young man of unblemished record, but his testimony is supported by that of his friend Robert who, also, has an unblemished record. I cannot accept the story of Carole alone (who admittedly "passed out" in the barroom) as being an accurate portrayal of this sorry evening's events and, hence, I find defendant not guilty on Charge 3. Defendant has no prior record. The recommended penalty of sixty days is not, in my opinion, excessive considering the age of the minor involved and particularly since she was permitted to drink to the point of intoxication. I shall suspend defendant's license for sixty days because of the finding of guilt as to Charges 1 and 2.

Accordingly, it is, on this 30th day of April, 1959,

ORDERED that Plenary Retail Consumption License C-6, issued by the Caldwell Township Committee to Chez Leon, Inc., t/a Chez Leon, for premises on Pier Lane, Caldwell Township, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. Monday, May 11, 1959; and it is further

ORDERED that any renewal for the 1959-60 licensing year or transfer of said license shall be and remain under suspension until 2:00 a.m. Friday, July 10, 1959.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MAX & HARRY SCHWARTZ
t/a SCHWARTZ'S TAVERN
312 Fifteenth Avenue
Newark 3, N. J.,

Holders of Plenary Retail Consumption License C-828, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Kapp Brothers, Esqs., by Herman W. Kapp, Esq., Attorneys for Defendant-licensees.
William F. Wood, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On March 4, 1959, 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.,

Two 1/2 gallon bottles labeled 'Seagram's Seven Crown American Blended Whiskey 86 Proof',

Two 1/2 gallon bottles labeled 'Calvert Reserve American Blended Whiskey 86 Proof',

One 1/2 gallon bottle labeled 'Seagram's V. O. Canadian Whisky A Blend 86.8 Proof',

One 1/2 gallon bottle labeled 'Schenley Reserve Blended Whiskey 86 Proof',

One 1/2 gallon bottle labeled 'Lord Calvert American Blended Whiskey 86 Proof',

One 4/5 quart bottle labeled 'Gallagher and Burton Black Label Blended Whiskey 86 Proof',

One quart bottle labeled 'Carstairs 1788 White Seal Blended Whiskey 86 Proof',

One quart bottle labeled 'I. W. Harper Kentucky Straight Bourbon Whiskey 100 Proof',

One quart bottle labeled 'Old Grand-Dad Kentucky Straight Bourbon Whiskey 100 Proof',

One quart bottle labeled 'Four Roses Blended Whiskey 86 Proof',

One quart bottle labeled 'Old Taylor Kentucky Straight Bourbon Whiskey 100 Proof',

One quart bottle labeled 'Wilson "That's All" Blended Whiskey 86 Proof',

One quart bottle labeled 'Hunter "First Over the Bars" Blended Whiskey 86 Proof',

One quart bottle labeled 'J. W. Dant Kentucky Straight Bourbon Whiskey 100 Proof',

One 4/5 quart bottle labeled 'Hiram Walker's Private Cellar Straight Bourbon Whiskey 100 Proof',

One 4/5 quart bottle labeled 'Imperial Hiram Walker Blended Whiskey 86 Proof', and

One 4/5 quart bottle labeled 'Old Hickory Straight Bourbon Whiskey 100 Proof';

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

On March 4, 1959, an ABC agent seized on defendants' premises the nineteen bottles mentioned in the charge because the contents of the bottles appeared to be off in proof and color. At the time of the seizure Max Schwartz admitted that he had refilled all of the bottles with other brands of tax-paid whiskey. The Division's chemist reports that his analysis disclosed that the contents of the seized bottles varied substantially from the contents of genuine samples of the products which the seized bottles purported to contain.

Defendants have no prior adjudicated record. In attempted mitigation the attorney appearing for defendants refers to the fact that his clients have conducted their business for nearly twelve years and states that the violation was committed because of "financial embarrassment due to severe illnesses that affected one of the licensees, Harry Schwartz, and his wife". The facts of this case bespeak a deliberate fraud upon defendants' patrons. To fit the punishment to the offense requires the imposition of a sixty-day-suspension. In thus fixing the penalty consideration has been given to defendants' otherwise clear record. Re Gavlak, Bulletin 716, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 30th day of April, 1959,

ORDERED that Plenary Retail Consumption License C-828, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Max & Harry Schwartz, t/a Schwartz's Tavern, for premises 312 Fifteenth Avenue, Newark, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Thursday, May 7, 1959, and terminating at the expiration of the license, namely, at midnight, June 30, 1959.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 55 DAYS.

In the Matter of Disciplinary Proceedings against

JEAN GILSENAN
t/a CALLAGHAN'S LODGE
Back road to Kemah Lake
Hampton Township
P. O. Swartswood, N. J.,

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Hampton.

CONCLUSIONS AND ORDER

Defendant-licensee, by Walter Zaniewski, Manager.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to the following charges:

'1. On Sunday, October 19, 1958, 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., Janet ---, age 14, Wayne ---, age 19, Richard ---, age 20, and Otto ---, age 20, 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 Sunday, October 19, 1958, you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, at retail, in their original containers for consumption off your licensed premises, and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.'

"At the hearing herein Walter Zaniewski, son-in-law of the licensee, represented that he was the manager of the premises and had first-hand knowledge of the activities therein. His defense to the charges succinctly stated is that he could not have committed the violations charged because he did not have any beer or ale on the premises at the time charged.

"The evidence presented establishes that the four minors named in Charge 1, some of whom were known to Walter Zaniewski by sight, and a 21-year-old companion entered defendant's licensed premises on Sunday, October 19, 1958 between 5:00 and 6:00 p.m., and remained there for about an hour; that an elderly couple were in the premises when they entered and another couple with an infant entered thereafter; that the youngsters played the juke box and Zaniewski danced with Janet, the female minor. Walter Zaniewski agrees that such are the facts.

"However, there is a wide disagreement between Zaniewski and the others concerned as to whether the minors and their companion were served with bottles of ale. The minors and their companion relate, in specific detail, that they asked for beer, were told by Zaniewski he had no beer but had Irish Cream Ale and, accordingly, Janet was served and drank one bottle of ale while the minor boys and their adult companion were served and drank a number of bottles of ale and, shortly before they left, the adult purchased a case of such ale to take out and placed it in the car in which they had arrived at the premises.

"For his part, Walter Zaniewski relates that he operates a tavern on a part-time, mainly summer season, basis, although the licensed business is conducted year round; that on October 19, 1958, the establishment was practically closed, but by happenstance the elderly couple entered the tavern and his father, who was there on some matter unconnected with the operation of the business, called to him while he was in his home adjoining so that, ultimately, he came over and served the couple the last two bottles of beer in stock; that he had no ale; that he did not consider any of the boys to be under 21 years of age, but had no beer to serve them, and told them that if they wanted liquor (presumably whiskey) he would serve them, but had nothing else; and that when the couple with the infant entered, he served them a couple of highballs.

"There is thus presented squarely a conflict of testimony. On the one hand there is the clear-cut evidence of the minors and their companion that they were served with and drank Irish Cream Ale and that the adult purchased a case of such ale. (Zaniewski was evidently friendly towards the group, as indicated by the fact that he danced with Janet and that they remained in the premises for about an hour). There is no substantial evidence that any of the group had any reason unjustly to accuse Zaniewski of serving ale to them. It appears unlikely that the minors and their companion remained at the premises for an hour without consuming any refreshments whatsoever. On the other hand, there is merely the uncorroborated denial of Walter Zaniewski that he had any ale to serve. His father was not presented to give his account of what transpired. Under these circumstances, I am of the opinion that the preponderance of the evidence establishes the guilt of the defendant-licensee of the charges and I recommend a finding to that effect.

"Defendant has no previous adjudicated record. However, in view of the youthfulness of the female involved and that there were four minors, I recommend that defendant's license be suspended on both charges for a period of fifty-five days. Cf. Re Cutillo, Bulletin 1133, Item 3."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16.

After carefully considering the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 27th day of April, 1959,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Hampton to Jean Gilsenan, t/a Callaghan's Lodge, for premises Back Road to Kemah Lake, Hampton Township, be and the same is hereby suspended for fifty-five (55) days, commencing at 7:00 a.m. Thursday, May 7, 1959, and terminating at the expiration of the license, namely, midnight, Tuesday, June 30, 1959.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - PERMITTING ACT OF VIOLENCE UPON ABC AGENTS - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

PETER JOSEPH BACUS
6800 Park Avenue
Guttenberg, N. J.,

Holder of Plenary Retail Consumption License C-34, issued by the Mayor and Board of Council of the Town of Guttenberg.

CONCLUSIONS AND ORDER

Alexander A. Abramson, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to charges alleging that (1) on Saturday, January 17, 1959, while agents of this Division were conducting an investigation, he failed to facilitate, hindered and delayed and caused the hindrance and delay of such investigation, in violation of R. S. 33:1-35, and (2) he committed and allowed, permitted and suffered in and upon his licensed premises acts of violence, viz., assaults and batteries upon two agents of the Division of Alcoholic Beverage Control, in violation of Rule 5 of State Regulation No. 20.

"Two ABC agents participated in the investigation leading to the proceedings herein. In the testimony and comment hereinafter set forth, the full names of the agents will not be used but instead, just the first letter of their respective surnames, i.e., D and J.

"The testimony of Agent D discloses that at 11:35 p.m. on Friday, January 16, 1959, he and Agent J entered defendant's licensed premises and, upon reaching the bar, each was served a drink by the bartender (subsequently identified as Robert McCook); that at 12:25 a.m. on January 17, 1959, while in the process of questioning a male patron concerning his age, he was struck by the patron; that in an attempt to restrain this patron, Agent D grabbed him by the shirt front and pushed him against the wall; that two other male patrons joined in the affray; that as Agent J succeeded in separating the combatants, Agent D observed the defendant standing in front of him saying, 'I don't care if you are ABC or State Police, you started fighting in here. You tried to choke that boy'; that when the agent attempted to raise his arm, the defendant struck him on the forearm; that although defendant was instructed to call the police for the purpose of stopping the disturbance, he made no effort to do so; that the bartender aforementioned came between Agent D and the defendant and told the latter to stop; that the bartender then left the premises but returned shortly thereafter with two police officers. In answer to defendant's attorney, Agent D testified that he had not identified himself prior to the incident in question and did not know whether defendant knew that he and his partner were ABC agents.

"Agent J's testimony corroborated in substance that given by Agent D concerning the events which took place at the

time in question. Agent J, in answer to question from defendant's attorney, testified that when Agent D identified himself to the man whom he was questioning, he spoke in a normal tone and, because of the noise in the premises at the time, 'perhaps' it might have been impossible for defendant to hear it.

"Agents D and J concurred in the opinion that Robert McCook, the bartender, was very cooperative in all respects.

"Defendant produced eleven persons as witnesses to what took place in his premises on the morning in question. All appeared to be in agreement that the trouble was provoked by Agent D and none of them had seen him struck by anyone in the premises. Edward Fantry (23 years of age), who Agent D claimed attacked him, testified that during the discussion concerning his age Agent D called him a 'wise guy', grabbed him around the neck and threw him against the wall; that when struggling to free himself, he struck Agent D's arm.

"Defendant testified that at 12:15 a.m., as he stood at the bar alongside of his wife, he observed the agents approach Fantry and engage him in conversation; that he heard Agent D call Fantry a 'wise guy' and saw him grab him by the throat, push him against the wall and strike him; that he immediately called to his brother to summon the police; that he then made an effort to break up the fight and, after the agents had gone toward the door, Agent D then identified himself to him; that the whole affair ended very quickly.

"The testimony of the agents on the one hand and that of the defendant's witnesses on the other, is far from being in agreement. The only thing that appears certain is that a scuffle took place at the time in question. There is no doubt from the testimony of the witnesses that there was much confusion in the licensed premises. The matter to be decided in this proceeding is whether or not the defendant or his employees participated in an assault upon the agents or did not take the necessary and proper steps to prevent or stop the brawl. The agents were of the opinion that defendant knew they were representatives of the Division of Alcoholic Beverage Control but, regardless thereof, defendant attacked Agent D. The defendant contends, however, that the first time he actually became aware that the men were ABC agents was when Agent D identified himself while standing at the door after the trouble had subsided. There is no need to emphasize the fact that a physical attack upon an ABC agent warrants very serious consequences. There is no doubt that excitement prevailed at the time of the incident. Under the circumstances, it is understandable that the testimony of the various witnesses for the Division, and that given on behalf of the defendant, respectively, concerning what occurred on the occasion, would differ materially. There must be a preponderance of the believable evidence in order to substantiate the Division's case.

"I have carefully examined the record in this case and have given consideration to the testimony given by all of the witnesses herein. I am satisfied that the defendant made an effort to separate those involved in the scuffle and in so doing had unintentionally come into contact with Agent D. Although defendant might not have used the best judgment possible, I am satisfied, in view of the conditions that existed at the time, that he acted as a reasonable man would have done

under the same or similar circumstances. I am further satisfied that he did direct his brother to summon the police as has been testified to in this case. I therefore recommend that the charges preferred herein be dismissed."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorney appearing for the Division pursuant to Rule 6 of State Regulation No. 16. Written answering argument was filed by the attorney for the defendant. The said attorneys also presented oral argument before me at my request.

The exceptions filed by the attorney appearing for the Division are taken to the Hearer's recommended dismissal of the charge preferred herein.

I have carefully considered the entire record in the case, including the trial transcript and exhibits, the Hearer's Report, the exceptions, and written and oral arguments of counsel.

I shall sustain the exceptions filed by the prosecuting attorney for the reason that, in my opinion, defendant's guilt on both charges has been established by a clear preponderance of the evidence.

While there is evidence tending to show that the defendant personally participated in the acts of violence and assaults and batteries upon the agents, such evidence is not sufficient for a specific finding that he did so participate. However, it is abundantly clear, from all of the evidence, that the agents at no time precipitated the melee; that they suffered numerous bruises and contusions requiring hospital treatment (despite the claim of defendant's witnesses that the agents were not struck); that these injuries were not self-inflicted but, on the contrary, were the result of assaults and batteries as alleged in the charges, which the defendant did nothing to prevent. If anything, the defendant encouraged the attack upon the agents by his remarks and conduct. Obviously, he both (1) hindered and failed to facilitate and delayed and caused the hindrance and delay of the investigation and (2) allowed, permitted and suffered acts of violence, viz., assaults and batteries upon the agents upon the licensed premises, as alleged in the charges.

I find the defendant guilty as charged on Charge 1, and guilty as to so much of Charge 2 which alleges that he allowed, permitted and suffered in and upon the licensed premises acts of violence, viz., assaults and batteries upon two agents of the Division of Alcoholic Beverage Control, in violation of Rule 5 of State Regulation No. 20.

Defendant has no prior adjudicated record. Under all of the circumstances, I shall suspend his license for thirty days.

Accordingly, it is, on this 27th day of April, 1959,

ORDERED that Plenary Retail Consumption License C-34, issued by the Mayor and Board of Council of the Town of Guttenberg to Peter Joseph Bacus, for premises 6800 Park Avenue, Guttenberg, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Monday, May 4, 1959, and terminating at 3:00 a.m. Wednesday, June 3, 1959.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against

PETER JOSEPH BACUS
6800 Park Avenue
Guttenberg, N. J.,

Holder of Plenary Retail Consumption License C-34, issued by the Mayor and Board of Council of the Town of Guttenberg.

ORDER

Alexander A. Abramson, Esq., Attorney for Defendant-licensee.

BY THE DIRECTOR:

An order having been entered herein on April 27, 1959, suspending defendant's license for thirty days commencing at 3:00 a.m. Monday, May 4, 1959 and terminating at 3:00 a.m. Wednesday, June 3, 1959; and

Application having been made to postpone the effective date of said suspension because defendant had previously made commitments for various affairs to be held during the Guttenberg Centennial celebration; and good cause appearing for the granting of said application,

It is, on this 29th day of April, 1959,

ORDERED that the suspension of thirty days heretofore imposed, instead of commencing at 3:00 a.m. Monday, May 4, 1959, shall, in lieu thereof, commence at 3:00 a.m. Monday, May 18, 1959 and terminate at 3:00 a.m. Wednesday, June 17, 1959.

WILLIAM HOWE DAVIS
Director.

6. STATE REGULATIONS - REGULATION NO. 39 - MANUFACTURERS AND WHOLESALERS FAILING TO PAY PROPORTIONATE COST OF DEFAULT LIST TO HAVE LICENSE CONDITIONED AGAINST SALE TO RETAILERS.

TO ALL MANUFACTURERS AND WHOLESALERS:

The Official Default List containing the names and addresses of the retail licensees who are in default in payment of accounts is published and mailed each week in accordance with Rule 3 of State Regulation No. 39.

The regulation requires that the list be mailed to each manufacturer and wholesaler who, by Rule 5(f), shall be chargeable with a proportionate cost of the publishing and mailing. It appears that some manufacturers and wholesalers who are entitled by their license to sell to retailers are not subscribing to the List and that some are getting the List each week and are not being charged a proportionate share of the cost.

Therefore, commencing July 1, 1959, every manufacturer and wholesaler who, by his license, is entitled to sell to retailers, will be obligated to receive and pay for the Official Default List. Should any licensee, so entitled to sell to retailers, for any reason wish not to receive the List and consequently not pay for it, such licensee must have its license conditioned to the effect that no sales to retailers are permitted under the license.

WILLIAM HOWE DAVIS
Director.

Dated: May 27, 1959.

7. SPECIAL PERMITS - HOLDER OF RESTRICTED SOCIAL AFFAIR PERMIT MAY PURCHASE MALT ALCOHOLIC BEVERAGES FROM LICENSED MANUFACTURER, WHOLESALER OR RETAILER.

TO ALL MANUFACTURERS AND WHOLESALERS:

By ruling effective January 2, 1958, in Bulletin 1205, Item 3, special permits issued to certain organizations holding social affairs on and after that date were issued subject to the restriction that the permittee could purchase alcoholic beverages only from a retail licensee at not less than the listed minimum consumer resale prices.

It has been demonstrated that the foregoing policy has had the intended effect of curbing the illegal diversion of distilled spirits to private individuals. On the other hand, there would appear to be no serious problem with respect to malt alcoholic beverages. Experience has further shown that, in many instances, permittees have been unable to obtain a ready supply of beer, particularly draught beer in comparatively large quantities, other than from the manufacturer or wholesaler who has the needed transportation facilities and dispensing equipment.

To enable all social permittees to purchase malt alcoholic beverages from manufacturers and wholesalers as well as retailers, I rule that, effective immediately, the stamped restriction on special permits issued to restricted permittees shall read as follows:

> "Permittee may purchase malt alcoholic beverages from licensed manufacturer, wholesaler or retailer; all other alcoholic beverages only from a retail licensee at not less than listed minimum consumer resale prices. <u>No type of alcoholic beverage may be purchased from any club licensee.</u>"

Manufacturers and wholesalers are again placed on notice that when called upon to fill a purchase order from a social permittee for alcoholic beverages other than malt alcoholic beverages, they must examine the permit in order to ascertain if the holder thereof is privileged to purchase from the manufacturer or wholesaler.

WILLIAM HOWE DAVIS
Director.

Dated: May 27, 1959.

8. DISQUALIFICATION REMOVAL PROCEEDINGS - APPLICATION TO LIFT GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2. Case No. 1446	CONCLUSIONS AND ORDER

BY THE DIRECTOR:

Applicant's fingerprint returns disclose that in November 1950 he pleaded non vult to an indictment charging him with the crime of assault with intent to rob, and on February 9, 1951, he was sentenced to an indeterminate term in Bordentown Reformatory, from which institution he was paroled on April 21, 1953, and that on June 4, 1958, he was arrested in Florida for failure to give a satisfactory account of himself and was fined $100.00. The crime of assault with intent to rob involves the element of moral turpitude and precludes applicant from engaging in the alcoholic beverage industry in this State until his disqualification is removed.

At the hearing herein applicant testified that he is 26 years of age and resides with and supports his wife and two children; that in 1958, although he committed no offense, he was picked up by the police and later released upon paying a $50.00 fine; that he is presently unemployed, having been ordered by his doctor to quit his job as a driver of an oil truck; that he has several opportunities to become employed as a bartender; that he has never been convicted of any other crime and that, excepting the 1958 incident, he has had no difficulty with the law since 1953. The Police Department of the city wherein applicant resides reports no complaints or investigations presently pending against him.

Three witnesses (a motion picture operator, a diner proprietor and applicant's parole officer) appeared and testified that they have known applicant for more than five years, during which time he has had a good reputation in the community.

Considering all the circumstances, I find that applicant has been law-abiding for more than five years last past, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 15th day of December, 1958,

ORDERED that applicant's statutory disqualification, because of the conviction described herein, be and the same is hereby removed in accordance with the provisions of R. S. 33:1-31.2.

WILLIAM HOWE DAVIS
Director.

9. DISQUALIFICATION REMOVAL PROCEEDINGS - PREVIOUS ORDER LIFTING DISQUALIFICATION VACATED ON ORDER TO SHOW CAUSE.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 1446

ORDER ON ORDER TO SHOW CAUSE

Samuel D. Bozza, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

Petitioner in the instant case was convicted in November 1950 of a crime involving the element of moral turpitude, which precluded him from engaging in the alcoholic beverage industry in this State until his disqualification was removed. See R. S. 33:1-25.

On December 3, 1958 a hearing was held on petitioner's application to remove his disqualification and, by order dated December 15, 1958, his statutory disqualification was removed pursuant to R. S. 33:1-31.2. See Case No. 1446.

Among other considerations, the aforesaid order was predicated upon petitioner's sworn testimony given at the hearing held in connection with the disqualification removal proceedings.

After entry of the order, there were brought to my attention facts underlying petitioner's arrests and conviction which he either concealed or adroitly suppressed at the hearing on December 3, 1958.

The proceedings herein are now before me pursuant to notice served upon petitioner to show cause why the order entered in this case on December 15, 1958 should not be vacated because of his aforesaid testimony. In response to the notice, petitioner appeared with counsel on April 1, 1959 at which time further and more definite testimony was elicited from him.

There is no need to set forth herein the testimony given by petitioner at the hearing on the order to show cause. Suffice to say his numerous clashes with the law since his conviction in 1950, the seriousness of the alleged offenses and his companionship with people of ill repute convince me that his association with the alcoholic beverage industry in any capacity at this time would be contrary to the public interest. Furthermore, I am not at all impressed with his explanation of the occurrences in which he became involved.

Because of the aforesaid reasons, my order entered on December 15, 1958 will be vacated. Petitioner thus remains disqualified from holding a liquor license, from having an interest in any business conducted thereunder and from being employed by any licensee in this State. However, after the lapse of two years from the date hereof, he may file a new application to remove his disqualification.

Accordingly, it is, on this 23rd day of April, 1959,

ORDERED that my order entered on December 15, 1958 be and the same is hereby vacated and annulled.

WILLIAM HOWE DAVIS
Director.

10. AUTOMATIC SUSPENSION - STAYED PENDING DISPOSITION OF DISCIPLINARY PROCEEDINGS BY LOCAL ISSUING AUTHORITY.

Auto. Susp. #166 In the Matter of a Petition to Lift the Automatic Suspension of License D-1, issued by the Mayor and Council of the Borough of Carlstadt to ANTHONY M. JURVIC t/a KRETZ BEVERAGE CO. 434-436 Hackensack Street Carlstadt, N. J.	ON PETITION ORDER

BY THE DIRECTOR:

The petition herein discloses that on May 12, 1959, Anthony M. Jurvic was fined the sum of $50 and costs after he had pleaded non vult in the Municipal Court of the Borough of Carlstadt to a charge alleging that he sold alcoholic beverages to a minor, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of the license held by Anthony M. Jurvic. R.S. 33:1-31.1 Because the Division was informed that the licensee intended to apply for a stay of said suspension, the license has not yet been picked up.

Disciplinary proceedings have not yet been instituted against the licensee because of the said sale of alcoholic beverage to a minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after the disciplinary proceedings have been decided. In fairness to petitioner I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Faessler, Bulletin 920, Item 15.

Accordingly, it is, on this 13th day of May, 1959,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

WILLIAM HOWE DAVIS
DIRECTOR

11. STATE LICENSES - NEW APPLICATION FILED.

John Lutz
t/a Lutz Beverage Co.
12 Ludlow Street
Jersey City, New Jersey

Application filed June 16, 1959 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-171 from Max J. Mareiniss, Assignee for the Creditors of Maresca Beverage Co. Inc., 514 Central Avenue, Jersey City, New Jersey.

William Howe Davis
Director