

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

Mr. Gossweiler

BULLETIN 1394

August 1, 1961

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New Jersey State Library

another liquor licensee appeared and testified as an objector against the granting of the application for transfer. It further appears that the only witness called by appellant at the hearing on appeal was William C. Willner, and that his direct testimony is in all respects in accord with that elicited on his cross-examination before respondent Board.

"Since I find that the facts in this case and the principles of law applicable thereto are succinctly stated in the formal opinion of respondent Board, it is deemed unnecessary to add to or to detract from what has been so cogently expressed therein. It reads as follows:

'Opinion. Person to person and place to place. Jack Popper, trading as Spotlight Bar, to Willner's Liquors, a corporation of New Jersey, trading as Willner Liquors, and from 525 Springfield Avenue to 543 Springfield Avenue, Newark, license #738.

'The prospective licensee in the above application is a large liquor distributing corporation, with eighteen licenses, throughout the state. It has had a very good record of operation in the City of Newark. The prospective transferor, at the present time operates a bar in the basement of premises 525 Springfield Avenue, which has been a sore spot with respect to local enforcement because of noise complaints from neighbors. The transferor was advised many times by this Board to try to dispose of his license and get out of business.

'Leonard Brass, Esq., representing the Essex County Retail Liquor Dealers Association objecting for his client, stated that the main reason for an objection was the fact that the transferee was going to use a "C" license as a subterfuge for the operation of a package liquor store. The hearing elicited that the prospective transferee was going to have a room approximately 22 feet by 65 feet and that at the front entrance there was to be a 12 foot bar facing the door, and there were to be six stools. Transferee also stated that he was going to hire a clerk-bartender to handle all business, both for the sale of package goods and for sale of drinks over the bar. He also stated that there would be no tap beer, only in bottles. It was also brought out that there would be shelves on each side of the room where package goods would be displayed. Mr. Brass indicated that the proposed bar was too small for such a large store and that this was one of the subterfuges that the prospective licensee was indulging in in order to evade the law. He also made a point that licensee was not going to have a full time bartender. Licensee stated that for business reasons, he could not hire too many employees until he knew exactly how much and what type of business he was going to excel in at this location, be it bar business or package business. Licensee also stated that the word bar would be displayed prominently on the front door and that his sign on the outside would read Willner's Liquors and Bar or Willner's Bar and Liquors. The objection of the Piccolo Bar was substantially that of Mr. Brass and in addition thereto, based on economic hardship. There also was an objection by a Mr. Held who holds a "D" license in the neighborhood and his objection was also based on economic hardship.

'The State Director in the case of Water Tower Liquors Inn, Bulletin #1368, Item #3, stated in clear and convincing language that the operation of a bona fide bar room depends on a number of factors, that there were no hard and fast

rules definitive of a bar room or package liquor store, that each case rests on its own two feet and the factors involved in the particular operation. The only criterion being full compliance with revised statute RS 33:1-12.23 NJSA, which reads as follows:

"The holder of a plenary retail consumption license or a seasonal retail consumption license, after the effective date* of this act,** may sell and display for sale alcoholic beverages in original containers for consumption off the licensed premises only in the public barroom of the licensed premises, such barroom being a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises ***."

'The size of a bar can be large in one case and small in another case and medium size in another case and in all cases could successfully comply with the statutes of our state. In the Water Tower Liquors matter there was originally a 4 foot bar with 3 stools, which the Director insisted was not in a bona fide public bar room, but when changed to a bar 15 feet 9 inches in length and 6 stools in front thereof, the Director decided that "the room now satisfied the requirements necessary to establish that the room is a public bar room", as set forth in Messenger vs. Pompton Lakes and Bertelli's, Bulletin #1129, Item #3. The Director was affirmed in the Bertelli case by the Appellate Division of the Superior Court of New Jersey, 117A Second, Page 147, wherein the court in approving this application stated that the approval for transfer may not be disturbed by a reviewing court in the absence of a showing of abuse of discretion.

'This Board, as a matter of fact, finds that it is much more salutary and salubrious to the citizens of the City of Newark, to bring out into the open a license which was hitherto hidden from the public view in a basement, and in a basement, which though not a den of iniquity, was sufficiently troublesome to demand a warning to the owner to get out of business. Secondly, according to diagrams introduced at the hearing, this Board finds that as a matter of fact that Willner's Liquors does intend to run a bona fide barroom, that the employment of only one person to handle the bar and package goods at the inception is not a subterfuge, but just common good business practice. Thirdly, the Director and the courts have often expressed the thought that mere economic hardship on nearby licensees does not constitute meritorious objections.

'For the foregoing reasons, the Board unanimously approves the above mentioned transfer.'

"Considering the aforesaid, I conclude that respondent Board acted within its sound discretion and that appellant failed to establish herein that the action of said issuing authority was erroneous. I recommend, therefore, that an order be entered affirming the action of respondent Board and dismissing the appeal."

I have carefully considered all of the testimony and exhibits and, except for the matters discussed below, I concur in the findings and conclusions of the Hearer.

There are three matters which deserve comment. First, the Hearer's Report seems to indicate that the sales area will consist of a room approximately 22' x 65' in size, with a 12' bar at the front end. It may well be that such a layout, involving a small bar at one end of a large room, would not meet the requirements of R.S. 33:1-12.23 (quoted in the Hearer's Report) and State Regulation No. 32. However, it is unnecessary to decide that question since the testimony shows that, although the entire premises will be about 65' or 70' deep, the sales area is to be only about 30' deep and that this area will be partitioned from the rear portion of the premises and the latter portion used for storage. A 12' bar might be deemed adequate for a room only 22' x 30' in size, provided the bar meets the other requirements discussed below.

Secondly, the record does not contain a full description of the proposed bar apparatus and, hence, I cannot determine therefrom whether the apparatus would constitute a genuine bar. To remove any doubt, I point out that, under the above law and regulation, the so-called bar must be both designed for and regularly used to facilitate sale of alcoholic beverages by the drink. As I have so often said in the past, the bar must be bona fide. A token or sham bar does not convert a liquor store into a public barroom. The bar must be sufficient in size, and there must be adequate bar facilities, to constitute an invitation to the public to be served and to consume drinks of alcoholic beverages. In addition to its length (discussed in the preceding paragraph), the apparatus must be of normal bar height of at least 42" and it must be equipped with foot and elbow rests, stools and facilities for cleaning drinking glasses. See Re Krystyniak, Bulletin 1021, Item 2, and Monmouth County Retail Liquor Stores Association et als. v. Neptune City and Bilow, Inc., Bulletin 1243, Item 2. The licensee must make sure that its bar conforms to all of the requirements herein set forth.

Finally, the licensee's corporate and trade names are "Willner's Liquors". The term "liquors", as used in the alcoholic beverage trade, is generally understood to mean package goods and, standing alone, that term might mislead the public to believe that the licensee is conducting only a package goods business. The use of misleading names in connection with an alcoholic beverage business is contrary to Rule 2 of State Regulation No. 26, which prohibits a licensee from using any name, sign or symbol "which is calculated to or may mislead the general public to believe the licensee is conducting any operations or business pertaining to alcoholic beverages or otherwise other than the operation of business actually being conducted by the licensee". Passaic County Retail Liquor Dealers' Association et als. v. Bertelle's Liquor Store, Inc., Bulletin 1021, Item 1. Cf. also Messinger et als. v. Bertelli's Liquor Inc. No. 3, Bulletin 1129, Item 3. Hence, before this transfer may become effective, the licensee must adopt corporate and trade names which are not misleading. This may be done by eliminating the term "liquors" altogether therefrom. Such a change would permit the licensee to use the same names for its various package stores (which are operated under appropriate licenses) and for the business here contemplated. In the alternative, the licensee may adopt for the latter business names such as "Willner's Tavern and Liquors" or "Willner's Bar and Liquors".

Accordingly, it is, on this 3rd day of May 1961,

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

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - DE VRIES v. PASSAIC AND DI PERI AND RUSSO.

ANN DE VREIS,)	
Appellant,)	ON APPEAL
v.)	CONCLUSIONS
)	AND ORDER
BOARD OF COMMISSIONERS OF THE CITY)	
OF PASSAIC AND CARMINE DI PERI AND)	
GIACOMO RUSSO,)	
Respondent.)	

Abraham Feltman, Esq., Attorney for Appellant.
 Martin Klughaupt, Esq., Attorney for Respondent Board of Commissioners.
 Joseph M. Keegan, Esq., Attorney for Respondents Di Peri and Russo.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board of Commissioners of the City of Passaic, hereinafter respondent Board, which, on November 15, 1960, granted an application for a place-to-place transfer of Plenary Retail Consumption License C-51 held by respondents Carmine Di Peri and Giacomo Russo from their present premises 211 Monroe Street to premises 888 Main Avenue, Passaic. The distance between said premises is greatly in excess of 250 feet.

"Appellant, in her petition of appeal, alleges in substance that the action of respondent Board was erroneous in that it violates Section 3.14 of Chapter 3 of the Revised Ordinances of the City of Passaic, designated as the 'footage rule', and that the addition of another license in an area of three blocks in which there are six liquor establishments would serve no useful purpose and would be detrimental to the public interest.

"Respondent Board and Di Peri and Russo, in their answers, deny appellant's allegations and set forth matters therein which they contend support the action of respondent Board, which should be affirmed.

"The pertinent sections of Chapter 3 of the Revised Ordinances of the City of Passaic (footage rule) as amended read as follows:

'No plenary retail consumption license, excepting renewals, for the same licensed premises as heretofore have been licensed, and transfers from person to person, shall be granted or transferred to other premises within a distance of two hundred and fifty feet from existing licensed premises covered by a plenary retail consumption license. In the event a licensee desires to transfer to other premises, he may be permitted to do so at the discretion of the local issuing authority, within two hundred and fifty feet of the premises where he is located at the time of such transfer. He shall comply with the provisions aforementioned when transferring to premises more than two hundred and fifty feet from the premises from which transfer is sought.

'Where the two hundred and fifty foot distance is referred to in this section, the same shall be measured in the same manner as required by statute for the measuring of two hundred and fifty feet relative to schools and churches.'

"It appears from the evidence adduced herein that appellant is the holder of Plenary Retail Consumption License C-45 issued to her for premises 888 Main Avenue, Passaic; that on October 31, 1960 respondents Di Peri and Russo entered into a written agreement with Herman Damoff, owner of said premises, to lease the entire premises for a term of ten years commencing November 15, 1960, 'it being the intent of the parties that the term of this Lease shall not commence until the Landlord is actually able to give possession of the demised premises'; that on November 4, 1960 Di Peri and Russo filed an application for transfer of their Plenary Retail Consumption License C-51 from 211 Monroe Street to 888 Main Avenue; that on November 14, 1960 the District Court of Passaic County rendered judgment 'for possession January 15, 1961' in favor of Damoff and against appellant; that on November 15, 1960 respondent Board granted the application of Di Peri and Russo subject to a special condition that the 'license shall not be effective unless and until the applicant shall have presented evidence of his (sic) legal right to such possession to the premises in question and of the lack of such legal right to possession by Ann DeVreis, holder of Plenary Retail Consumption License No. C-45'; that on November 17, 1960 appellant filed an application for transfer of her license from 888 to 896 Main Avenue; that on December 6, 1960 respondent Board granted appellant's application subject to the special condition 'that the transfer shall not be endorsed and effective unless and until the new premises shall have been completed and ready for operation to the satisfaction of the Board of Commissioners'. It further appears from the evidence that the distance between 888 and 896 Main Avenue is approximately 110 feet and that on January 12, 1961, the date of the hearing on appeal, appellant was in possession of premises 888 Main Avenue, but that under the order of the District Court, she was required to vacate the premises on January 15, 1961.

"Considering the evidence adduced herein, it is apparent that when Di Peri and Russo filed their application they had sufficient interest in premises 888 Main Avenue by virtue of their lease to warrant respondent Board in granting the application subject to the special conditions. Of course, the transfer could not become effective until on or after January 15, 1961 and then only if there is no other plenary retail consumption licensed premises within 250 feet of 888 Main Avenue. Cf. Rittenger v. Bordentown et al., Bulletin 547, Item 10.

"No maps of the area in question were introduced in evidence other than a sheet of paper showing the locations of premises 888 and 896 Main Avenue and the approximate distance between them. The only testimony relating to the distance between 888 Main Avenue and the licensed premises of the Guarantee Wine & Liquor, Inc. (the nearest retail licensed premises to 888 Main Avenue on November 15, 1960), was offered by Joseph Hirkala, Assistant Municipal Clerk, and Florin DeVreis, son of appellant licensee. Hirkala testified that at the time Di Peri and Russo filed their application there were no other liquor establishments within 250 feet of 888 Main Avenue and DeVreis testified that according to his measurement (ascertained by the use of a six foot rule) the licensed premises of Guarantee Wine & Liquor, Inc. are within 200 feet of 888 Main Avenue.

"There must be a strict compliance with the ordinance establishing the 'footage rule' and, since the evidence herein is inconclusive as to whether or not the issuance of a license to Di Peri and Russo would be in conformity therewith, I recommend that an order be entered remanding the case to respondent Board to have that question determined and to advise the Director as to its determination. I further recommend that the order provide that the appeal herein be retained by the Director pending final adjudication of the aforesaid issue."

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

Having carefully considered the record herein, including the

transcript of the proceedings, 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 April, 1961,

ORDERED that the case be and the same is hereby remanded to respondent Board of Commissioners to determine whether or not premises 888 Main Avenue, to which the license held by respondents Di Peri and Russo was transferred are within 250 feet of the licensed premises of the Guarantee Wine & Liquor, Inc., and that pending receipts of notification of the action of said Board the appeal shall be retained by me for the purpose of adjudicating thereafter the issue involved.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - GUSS v. JERSEY CITY AND SMITH.

LOUIS GUSS,)	
)	
Appellant,)	
)	
v.)	ON APPEAL
)	CONCLUSIONS
)	AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY OF)	
JERSEY CITY, AND MARIE AGNES)	
SMITH, t/a SMITTY'S TAVERN,)	
)	
Respondents.)	

Nathan Pearlman, Esq., Attorney for Appellant.
 Ezra L. Nolan, Esq., by Francis M. McInerney, Esq., Attorney for
 Respondent Board.
 John J. Corcoran, Jr., Esq., Attorney for Respondent Marie Agnes Smith.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board which on September 20, 1960, granted the application of respondent Marie Agnes Smith for renewal of her plenary retail consumption license C-345 for the 1960-61 licensing year for premises 220 Newark Avenue, Jersey City.

"Appellant, who is the landlord of said premises, alleges in substance that the action of respondent Board was erroneous in that respondent Marie Agnes Smith 'had no right of possession the same having been terminated many months before.'

"Respondent Marie Agnes Smith denies appellant's allegation and contends in substance that at the hearing held by respondent Board on September 20, 1960, appellant offered no proof or reason why the application for renewal should not have been granted and that he does not have a right at the hearing on appeal to offer evidence or reasons why the action of respondent Board should be reversed.

"Respondent Board alleges in substance that its determination was based upon the evidence adduced at a full hearing before it.

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

"It appears from the official records and the evidence adduced herein that respondent Marie Agnes Smith operated a tavern at 220 Newark Avenue under a three-year lease with appellant expiring May 31, 1960; that, prior to the expiration of the lease, respondent Marie Agnes Smith gave appellant notice that she would vacate the premises on May 31, 1960, but remained therein until June 30, 1960, as a month-to-month tenant; that, prior to the termination of her lease, she applied for and was granted a transfer of her license to premises 577 Jersey Avenue, and that she filed an application for renewal of her license for premises 220 Newark Avenue; that the action of respondent Board in granting the transfer was appealed to the Division and on July 27, 1960, the Director reversed respondent Board (Bosco et al. v. Jersey City and Smith, Bulletin 1353, Item 1); that thereafter respondent Marie Agnes Smith appealed from the Director's determination to the New Jersey Superior Court, Appellate Division (Smith v. Bosco et als., not yet officially reported, but reported in Bulletin 1382, Item 1) and, pending the Court's decision which on March 9, 1961, affirmed the Director respondent Board on September 20, 1960, granted respondent Marie Agnes Smith's application for renewal of her license for premises 220 Newark Avenue, which is the basis of the appeal herein.

"Considering the aforesaid, it is apparent that respondent Marie Agnes Smith filed her application for renewal of her license within time, but that she had no legal right to possession of premises 220 Newark Avenue either on July 1, 1960, or on September 20, 1960, when the resolution granting her application for renewal was adopted. Because of her lack of possession, the action of respondent Board in granting the renewal was erroneous. However, since it appears from the evidence that appellant has been and is still willing to renew the Smith tenancy, and considering the timing (with the other appeals being processed and only recently determined), I recommend that a reversal of respondent Board's action be a modified one, i.e., if respondent Marie Agnes Smith shall have acquired legal right to possession of the premises at 220 Newark Avenue prior to June 30, 1961, and shall have presented to respondent Board satisfactory evidence thereof, said Board may adopt a resolution amending its resolution of September 20, 1960, so as to provide that the 1960-61 license renewal for such premises pursuant to her original application be granted to respondent Marie Agnes Smith effective immediately, i.e., as of the date of the amendatory resolution."

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

Having carefully considered the evidence and exhibits herein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 27th day of April 1961,

ORDERED that the action of respondent Municipal Board be reversed unless respondent Marie Agnes Smith presents to said Board, prior to June 30, 1961, satisfactory evidence that she has acquired legal right to possession of the premises at 220 Newark Avenue and, prior to said date, respondent Board adopts a resolution amending its resolution of September 20, 1960, as aforesaid.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

GEORGE J. KAUP)
 t/a COLEMAN HOUSE BAR)
 206 Main Street)
 Asbury Park, New Jersey)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption)
 License C-6, issued by the City)
 Council of the City of Asbury Park.)

 Edwin J. Fox, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant entered a plea of non vult to the following charges:

- "1. On November 13, 20 and 27, 1960, you allowed, permitted and suffered gambling, viz., the making and accepting of bets in a lottery designated as the 'Numerology Bango-Club' and more commonly known as a 'numbers game', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- "2. On November 13, 20 and 27, 1960, you allowed, permitted and suffered tickets and participation rights in a lottery designated as the 'Numerology Bango-Club' and more commonly known as a 'numbers game', to be sold and offered for sale, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20.
- "3. On Sunday, November 27, 1960, at about 5:25 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Seagram's Seven Crown Blended Whiskey, at retail in its original container for consumption off your licensed premises, and allowed, permitted and suffered the removal of such alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

On November 13, 1960, Agents C and D visited the said premises at about 4:30 p.m. and noticed a male, referred to as "Jimmy" (later identified as James Joseph Jennings), enter the licensed premises. "Jimmy" took a seat at the bar and conversed with John Olczak, Jr. (the bartender) who purchased three slips from "Jimmy" for the sum of \$3. Agent D requested Olczak to show him the slips of paper and, upon examining same, it was evident that they were lottery tickets, which are based upon the last three digits of the "mutual handle" at a race-track and commonly referred to as numerology tickets. Agent D then purchasee two "numerology tickets" from "Jimmy."

On November 20, Agents D and H entered the licensed premises at about 3:35 p.m. A female, known as Marie, was tending bar. At 4:30 p.m. Jennings entered the premises and, shortly thereafter, sold

two similar lottery tickets to Agent D and one similar lottery slip to Agent H in the presence of the bartender.

On Sunday, November 27, 1960, at about 3 p.m., ABC Agent C entered the premises with three one-dollar bills, the serial numbers of which had been previously recorded. The agent asked Olczak (who was then on duty as a bartender) whether he knew when "Jimmy" would be in and the bartender replied that he would not be in. At 5:25 p.m. Agent C purchased a pint of Seagram's Seven whiskey from Olczak, who handed the same over the bar and stated "Put it in your pocket." Agent C departed from the premises and immediately returned with other ABC agents and local police officers. A search of Olczak produced six "numerology slips" and \$82 in cash.

Olczak readily admitted the sale in the presence of the licensee but declined at that time to make any statement with respect to the lottery slips. However, after he was placed under arrest, he voluntarily gave a signed, sworn statement admitting the above facts.

Defendant has a prior adjudicated record. Effective July 10, 1960, his license was suspended by the City Council of Asbury Park for five days for sale during hours prohibited by Rule 1 of State Regulation No. 38. On Charges 1 and 2, I shall suspend his license for twenty-five days, the minimum suspension imposed in these cases where a licensee or employee is involved. Re Horstmann, Bulletin 1338, Item 5. To this I shall add an additional suspension period of thirty days on Charge 3, which is the usual penalty where there is a second "hours" violation within the past five years (Re Texas Foods, Inc., Bulletin 1362, Item 8), making a total suspension of fifty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty days.

Accordingly, it is, on this 2nd day of May, 1961,

ORDERED that plenary retail consumption license C-6, issued by the City Council of the City of Asbury Park to George J. Kaup, t/a Coleman House Bar, for premises 206 Main Street, Asbury Park, be and the same is hereby suspended for fifty (50) days, commencing at 3 a.m. Tuesday, May 9, 1961, and terminating at 3 a.m. Wednesday, June 28, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - SALE IN VIOLATION OF LOCAL REGULATION - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against)

ORIENT DELICATESSEN & LIQUOR STORE, INC.)
t/a ORIENT DELICATESSEN & LIQUOR STORE)
663 Ocean Avenue)
Jersey City 4, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-66, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Jesse Moskowitz, Esq., Attorney for Defendant-licensee.
Dora P. Rothschild, Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

- '1. On Sunday, October 16, 1960 at about 11:55 a.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., one 4/5 quart bottle of Fleischmann's Preferred Blended Whiskey, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of such an alcoholic beverage from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
- '2. On Sunday, October 16, 1960 at about 11:55 a.m., you sold alcoholic beverages; in violation of Section 4 of an Ordinance adopted by the Board of Commissioners of the City of Jersey City on April 18, 1939.'

"At the hearing held herein, the Division called as its witnesses two ABC agents hereinafter referred to as Agent J and Agent D.

"Agent J testified that he and Agent D were assigned to investigate a complaint that the defendant was selling alcoholic beverages on Sundays in their original containers for consumption off its licensed premises; that on Sunday, October 16, 1960, at about 11:45 a.m., he and Agent D arrived in the vicinity of the defendant's licensed premises which he alone entered while his companion waited on the outside; that he observed Roy Vafiadis (president of the corporate-licensee) waiting on seven patrons (male and female) who were standing in line at a counter; that he took a position in the line behind a patron later identified as Johnny Jacobs; that he heard Jacobs order a loaf of bread and a fifth of Fleischmann's Whiskey; that he observed Mr. Vafiadis place both of these articles in a bag, accept a five-dollar bill from Jacobs, ring \$4.70 on the cash register and give some change to Jacobs.

"Agent J further testified that immediately after aforesaid sale he asked for and was refused a pint of whiskey by Mr. Vafiadis; that he then followed Jacobs into the street, stopped him about ten

feet from the licensed premises where he was rejoined by Agent D; that he and Agent D identified themselves and examined the contents of the bag; that the bag contained aforesaid bottle of whiskey and loaf of bread; that Jacobs stated to them he had just purchased the same at the licensed premises for \$4.70. In addition, Agent J testified that he and Agent D returned to the licensed premises with Jacobs, identified themselves to Mr. Vafiadis, informed him of the violation and displayed the contents of the bag; that Mr. Vafiadis and Jacobs denied the alleged sale of the whiskey; that upon request by Agent D, Mr. Vafiadis produced a section of the cash register tape (Exhibit S-3) and that the same indicated a recent sale of \$4.70.

"On cross-examination, Agent J reiterated the pertinent parts of his direct testimony.

"Agent D was called to testify and it was stipulated by counsel that, if examined, his testimony on direct examination would be the same as Agent J's with respect to the events which took place after he (Agent D) had rejoined Agent J in the street as aforesaid. On cross-examination, Agent D testified that he observed Jacobs, followed by Agent J, leave the licensed premises and observed that Jacobs was stopped by Agent J at point about ten feet from the licensed premises.

"Mr. Vafiadis, testifying for the defendant, repeated the denials he made to the agents and further testified that on October 16th aforesaid, he sold Jacobs a loaf of bread for 32 cents; that in payment thereof Jacobs handed him a dollar bill; that he rang \$4.70 on the register and gave Jacobs his change; that the \$4.70 represented the 32 cents for the bread and accumulated monies left on the ledge of the register for prior sales of merchandise not yet deposited in the cash register.

"On cross-examination, Vafiadis testified that he had known Jacobs as a neighbor and patron for years; that he had sold him alcoholic beverages on prior occasions; that he had rung a separate sale of 32 cents on the register for the loaf of bread; that upon request by Jacobs he placed the bread in a large bag and that he observed Jacobs, followed almost immediately by Agent J, leave the licensed premises.

"Johnny Jacobs testified that on Sunday, October 16, 1960 between 10:45 and 11:30 a.m., he entered the defendant's licensed premises with the aforementioned bottle of whiskey concealed in his hip pocket; that he had purchased the same on the previous day between 12:30 and 1:00 p.m. at the defendant's licensed premises; that he then carried the alcoholic beverages to the home of a friend, Randolph Morrison, where he had remained for a number of hours; that during this visit he and his friend had been consuming alcoholic beverages following which he departed Morrison's home to visit his brother in Bayonne; that he had left the bottle of Fleischmann's whiskey intact at Morrison's home; that the next morning (Sunday, October 16th aforesaid) between 11:00 and 11:30 a.m. he returned to Morrison's home, picked up the bottle of alcoholic beverages in question; went to the defendant's licensed premises and purchased a loaf of bread; that when he had reached the street he placed the bottle of liquor in the bag containing the bread and denied that he had purchased the alcoholic beverages on Sunday morning aforesaid.

"On cross-examination Jacobs, in response to a question why he did not place the bottle of alcoholic beverages in the bag while on the licensed premises, stated that, 'I could have kept it in my pocket until I got home, but didn't think of it'.

"Ollie Mays, on behalf of the defendant, testified that she is a patron of the licensee; that on October 16th aforesaid she was in defendant's licensed premises; that she had observed Jacobs purchase a loaf of bread and that she does not know whether Jacobs had purchased any alcoholic beverages.

"Randolph Morrison, testifying for the defendant, corroborated the testimony of Jacobs with respect to the events which took place at his home on Saturday, October 15, and Sunday, October 16, 1960, and further testified that Jacobs' condition 'wasn't so good' when he left his home on Saturday.

"This case presents a conflict between the testimony of the agents and the principal witnesses for defendant. However, I find as a fact from the testimony of Agent J that Mr. Vafiadis sold Jacobs the 4/5 quart bottle of whiskey on Sunday morning, October 16, 1960, in violation of Rule 1 of State Regulation No. 38, and in violation of the local ordinance which prohibits the sale, service and delivery of alcoholic beverages on Sundays between the hours of 2:00 a.m. and 1:00 p.m. I find as a fact that Mr. Vafiadis deposited \$4.70 in his cash register at the time of the aforesaid sale to Jacobs and that this sum included the purchase price paid to Mr. Vafiadis by Jacobs for the 4/5 quart bottle of Fleischmann's Preferred Blended Whiskey.

"After reviewing the evidence and exhibits, I recommend that defendant be found guilty as charged. Defendant has a prior record. Effective November 26, 1956 its license was suspended for ten days for an "hours" violation (Rule 1 of State Regulation No. 38). Bulletin 1146, Item 12. It is further recommended, therefore, than an order be entered suspending the defendant's license for twenty days on both charges herein (Re Vardakis, Bulletin 1219, Item 4) and for an additional fifteen days for the prior similar violation which occurred within the past five years (Re Texas Foods, Inc., Bulletin 1362, Item 8), making a total suspension of thirty-five days."

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

Having carefully considered the record herein, including the transcript of the proceedings, the exhibits and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations. Hence, I find the defendant guilty as charged.

Accordingly, it is, on this 27th day of April 1961,

ORDERED that Plenary Retail Distribution License D-66, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City, to Orient Delicatessen & Liquor Store, Inc., t/a Orient Delicatessen & Liquor Store, 663 Ocean Avenue, Jersey City, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 9:00 a.m., Monday, May 8, 1961, and terminating at 9:00 a.m., Monday, June 12, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

6. SEIZURE - FORFEITURE PROCEEDINGS - ORDER AMENDED DIRECTING RETURN OF MOTOR VEHICLE TO INNOCENT LIENOR ON BASIS OF RE-APPRAISAL OF SAID VEHICLE.

In the Matter of the Seizure on)	Case No. 10,436
October 23, 1960 of a quantity of)	
alcohol and an Oldsmobile sedan on)	AMENDED
the New Jersey Turnpike, Mile Post)	ORDER
No. 39 in the Township of Mount Laurel,)	
County of Burlington and State of)	
New Jersey.)	

 Chivian and Chivian, Esqs., by Louis Chivian, Esq., Attorneys for
 General Motors Acceptance Corporation.

Sheldon M. Liebowitz, Esq., by Conrad W. Krafte, Esq., Attorneys
 for Otis Glover, Sr.

I. Edward Amada, Esq., appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

On April 18, 1961 Conclusions and Order were entered herein, wherein it was determined that the Oldsmobile sedan described in the Schedule "A" attached thereto, constituted unlawful property and was thereby forfeited in accordance with the provisions of R.S. 33:1-66; that the said motor vehicle shall be offered at public sale, pursuant to State Regulation No. 29, and sold by the Director of the Division of Alcoholic Beverage Control, if a bid satisfactory to him is obtained; otherwise the motor vehicle will be returned to the General Motors Acceptance Corporation, upon payment of costs of its seizure, storage and sale. The Conclusions and Order herein recognized the lien of the said General Motors Acceptance Corporation to the extent of \$3,275.99, and provided that, from the proceeds of the said sale, if the said motor vehicle is sold, this lien shall be recognized to the extent of \$3,275.99 out of the balance if any, after first deducting the costs of seizure, storage and sale, as may be incurred.

After the date of the filing of this Conclusions and Order, I decided to have a re-appraisal made of the said motor vehicle and such re-appraisal was made on April 19, 1961, by an authorized and qualified appraiser.

The appraisal report indicates that the retail market value of the vehicle in question is substantially less than the amount of the lien thereon and I shall therefore modify my Order of April 18, 1961, and direct that the motor vehicle be returned to General Motors Acceptance Corporation, upon payment by it of the costs of seizure and storage of the Oldsmobile sedan.

Accordingly, it is on this 1st day of May, 1961,

ORDERED that if on or before the 11th day of May, 1961, the General Motors Acceptance Corporation pays the costs of seizure and storage, said Oldsmobile sedan, more particularly referred to in "Schedule A" annexed to the Conclusions and Order dated April 18, 1961 shall be returned to General Motors Acceptance Corporation.

WILLIAM HOWE DAVIS
 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)

EVO PASQUINI)
 t/a ISLAND PARK)
 Route #46)
 White Township)
 PO Buttzville, N. J.)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption)
 License C-5, issued by the Township)
 Committee of White Township.)

 Evo Pasquini, Defendant-licensee, Pro se.
 William F. Wood, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On March 28, 1961, an ABC agent made a routine test of defendant's open stock of liquor and seized five bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of three of the said bottles (two quart bottles of Seagram's Seven Crown American Blended Whiskey, 86 proof and one quart bottle of Schenley Reserve Blended Whiskey, 86 proof) were high in solids and low in acids when compared with an analysis of the contents of genuine bottles of the same items.

Defendant has no prior adjudicated record. I shall suspend his license for twenty days, the minimum period of suspension in a case involving three bottles. Re Union News Co., Bulletin 1326, Item 12. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 24th day of April 1961,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of White Township to Evo Pasquini, t/a Island Park, for premises on Route #46, White Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, May 1, 1961, and terminating at 2 a.m. Tuesday, May 16, 1961.

WILLIAM HOWE DAVIS
 DIRECTOR

8. STATUTORY AUTOMATIC SUSPENSION - SUSPENSION PREVIOUSLY STAYED
LIFTED UPON TERMINATION OF DISCIPLINARY PROCEEDINGS.

Auto. Susp. #193)
 In the Matter of a Petition to)
 Lift the Automatic Suspension)
 of License C-152, issued by the)
 Board of Alcoholic Beverage)
 Control for the City of Paterson to)
)
 NELSON "B" INC.)
 120 - 16th Avenue)
 Paterson, N. J.)
)

ORDER

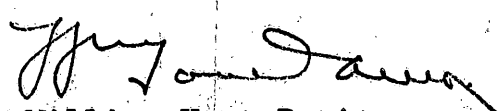
BY THE DIRECTOR:

On March 2, 1961, I entered an order temporarily staying the automatic suspension of the license held by Nelson "B" Inc. until the entry of a further order herein. At that time disciplinary proceedings had been instituted by the local issuing authority, but no hearing had been held therein.

The Secretary of the Board of Alcoholic Beverage Control for the City of Paterson has advised me that the licensee pleaded non vult to the charge of selling alcoholic beverages to the 18-year-old minor and that on March 8, 1961, the Board suspended its license for ten days, less five for the plea, effective from 3 a.m. Monday, April 24, 1961, to 3 a.m. Saturday, April 29, 1961. I shall, therefore, on my own motion, enter an order lifting the automatic suspension at the termination of the suspension imposed in the disciplinary proceedings.

Accordingly, it is, on this 24th day of April 1961,

ORDERED that the statutory automatic suspension of License C-152, held by Nelson "B" Inc., be lifted at 3 a.m. Saturday, April 29, 1961.


 William Howe Davis
 Director

New Jersey State Library