

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

BULLETIN 1222

MAY 20, 1958.

TABLE OF CONTENTSITEM

1. STATE REGULATIONS - REGULATION NO. 34 - RULE 11 INTERPRETED - BILLING HANDLING CHARGES AT LESS THAN COST PROHIBITED.
2. STATE REGULATIONS - REGULATION NO. 34 - SPECIAL RULING REQUIRING EXECUTION AND FILING OF AFFIDAVITS OF COMPLIANCE ABROGATED.
3. APPELLATE DECISIONS - WOODS v. NEWARK.
4. DISCIPLINARY PROCEEDINGS (South Orange) - CLUB LICENSE - ILLICIT LIQUOR - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Camden) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Atlantic City) - CHARGE ALLEGING SALES TO MINORS DISMISSED.
7. DISCIPLINARY PROCEEDINGS (Little Falls Township) - SALES TO MINORS - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 10 DAYS.
8. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Penns Grove) - SALE TO MINOR - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
10. DISCIPLINARY PROCEEDINGS (Carlstadt) - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS.
11. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.
12. AUTOMATIC SUSPENSION (Lindenwold) - SALE TO MINOR - LICENSE SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION GRANTED UPON EXPIRATION OF SUSPENSION NOW IN EFFECT.
13. AUTOMATIC SUSPENSION (Passaic) - STAYED PENDING DETERMINATION BY LOCAL ISSUING AUTHORITY AS TO WHETHER DISCIPLINARY PROCEEDINGS SHOULD BE INSTITUTED.
14. DISCIPLINARY PROCEEDINGS (Newark) - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
15. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 1222

MAY 20, 1958.

1. STATE REGULATIONS - REGULATION NO. 34 - RULE 11 INTERPRETED -
BILLING HANDLING CHARGES AT LESS THAN COST PROHIBITED.

TO ALL LICENSEES PRIVILEGED TO SELL ALCOHOLIC BEVERAGES TO
RETAILERS (V, VL, S, SL, R, W, WL, WW, SBD, B AND BL):

Rule 11 of State Regulation No. 34 provides, in part,
as follows:

"No manufacturer or wholesaler of alcoholic beverages, other than malt alcoholic beverages, shall furnish or offer to furnish, directly or indirectly, to any wholesaler or retailer, and no wholesaler or retailer shall accept or offer to accept directly or indirectly from any manufacturer or wholesaler, any gift, rebate, or allowance of money or any thing of value (whether by sale, loan, gift or otherwise) or other discount or inducement, including free goods, deals, combination sales, and similar merchandising devices,..."

From time to time complaints have been received that wholesalers have violated the above quoted Rule by delivering to retailers exclusive brand and private label alcoholic beverages at cost or at cost plus a nominal handling charge. During the course of a survey, it was learned that, in the opinion of a cross-section of wholesale licensees, a wholesaler's cost for handling alcoholic beverages is not less than 5% of the cost of the merchandise in the case of distilled spirits and not less than 10% in the case of other alcoholic beverages.

I am convinced that a wholesaler who handles alcoholic beverages not listed in the official Wholesale Price List for less than cost is furnishing a thing of value, or discount or inducement to the retailer, in violation of Rule 11 of State Regulation No. 34, thereby subjecting his wholesale license (and possibly the retailer's license) to suspension or revocation.

While actual cost may be the subject of proof in a particular case, it would appear that the percentages hereinabove set forth represent the minimum cost, and wholesalers would be well-advised not to handle deliveries of alcoholic beverages to retailers at less than such minimum cost of handling, as indicated by those percentages.

WILLIAM HOWE DAVIS
Director.

Dated: May 7, 1958.

2. STATE REGULATIONS - REGULATION NO. 34 - SPECIAL RULING REQUIRING EXECUTION AND FILING OF AFFIDAVITS OF COMPLIANCE ABROGATED.

TO HOLDERS OF W, WL, WW, R, VL, V AND SL LICENSES:

As you know, by special ruling addressed to you dated May 15, 1956 (reprinted in Bulletin 1116, Item 3), it was required that you obtain from your solicitors and maintain on your licensed premises a monthly affidavit affirming their non-violation of State Regulation No. 34 during the preceding month, and the monthly filing with this Division of similar affidavit by you.

Administrative experience has demonstrated that the requirement has by now served its purpose, and that its continuance would impose needless clerical burdens upon the licensees affected.

Accordingly, the mentioned special ruling is hereby abrogated, effective immediately.

WILLIAM HOWE DAVIS
Director.

Dated: May 7, 1958.

3. APPELLATE DECISIONS - WOODS v. NEWARK.

WILLIAM WOODS,)	
Appellant,)	
-vs-)	ORDER OF DISCONTINUANCE
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
Respondent.)	

Joseph A. D'Alessio, Esq., Attorney for Appellant.
Vincent Torppey, Esq., by James E. Abrams, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The attorneys for the respective parties hereto having stipulated to discontinue the within appeal, and no reason appearing to the contrary,

It is, on this 21st day of March, 1958,

ORDERED that the within appeal be and the same is hereby discontinued.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - ILLICIT LIQUOR - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

R. H. TERRELL LODGE NO. 661 - I.B.P.O.E. OF W. 15 First Street South Orange, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-1, issued by the Board of Trustees of the Village of South Orange.)

Jerome L. Kessler, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it possessed in its 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.

The file discloses that on January 3, 1958, an ABC agent made a preliminary test of the open stock of alcoholic beverages in defendant's premises and seized thirteen 4/5 quart bottles of various types of liquor when his test indicated that the contents of these bottles were low in proof. Subsequent analysis by the Division's chemist disclosed that the contents of each of the seized bottles were substantially short in proof when compared with the contents of genuine bottles of the same items. The contents of the seized bottles also varied in acids and solids from the contents of genuine bottles. At the time of the seizure the Chairman of defendant's House Committee and the bartender then on duty denied knowledge of any tampering with the stock of liquor. In attempted mitigation, the attorney for defendant alleges that another bartender was responsible for the violation but, in any event, the licensee is responsible for the acts of his agents and employees. The attorney also alleges that no complaints as to alcoholic beverages had ever been made to the Chairman of the House Committee who has served in that capacity for approximately twenty years, and that defendant has no record of any prior violation since it obtained a license more than twenty years ago.

Defendant in fact has no prior record. In some prior cases involving licensees who sell to the general public a suspension of sixty days has been imposed where a substantial number of bottles containing illicit liquor have been found on the licensed premises (see Bulletin 716, Item 7; Bulletin 742, Item 8). However, under all the circumstances of this case, I shall suspend defendant's license for twenty-five days and remit five days for the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 26th day of March, 1958,

ORDERED that Club License CB-1, issued by the Board of Trustees of the Village of South Orange to R. H. Terrell Lodge No. 661 - I.B.P.O.E. of W., for premises 15 First Street, South Orange, be and the same is hereby suspended for twenty (20) days, commencing at 7:00 a.m. April 8, 1958, and terminating at 7:00 a.m. April 28, 1958.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against)

JAMES F. DALY and JOSEPH E. KOHM)
t/a DALY'S CAFE)
201 Vine Street)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-132, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
-----)

Cahill and Wilinski, Esqs., by William T. Cahill, Esq., Attorneys for Defendant-licensees.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded guilty to the following charges:

"1. On Sunday, December 1, 1957, at about 10:40 a.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a quart bottle of Mission Bell Muscatel Wine, 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 retail licensed premises; in violation of Rule 1 of State Regulation No. 38.

"2. On Sunday, December 1, 1957, at about 10:40 a.m., you sold, served and delivered and suffered and permitted the sale, service and delivery of above mentioned and described alcoholic beverage, directly or indirectly, upon your licensed premises; in violation of Section 5 of an ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934."

The file herein discloses that at about 10:30 a.m. on Sunday, December 1, 1957, ABC agents observed a person enter defendants' licensed premises and emerge therefrom at about 10:40 a.m. with a quart of wine which he had obtained therein. The excuse is offered that the wine was given to this person by James F. Daly (one of the licensees) in return for or on account of services rendered by this person to the licensees the previous day. Aside from the doubtful propriety of paying wages in liquor, it is typical of the excuse often presented in cases of this nature that the alcoholic beverages had been sold the previous day and delivered on Sunday and like excuses, as illustrated in Re Harbor Inn, Inc., Bulletin 1199, Item 3, and invariably rejected.

In any event, every delivery of alcoholic beverages by a licensee is declared to be a sale (R. S. 33:1-1(w)) and even delivery and removal of alcoholic beverages on Sunday, absent evidence of sale, is prohibited by Rule 1 of State Regulation No. 38. Hence, the circumstances urged in attempted mitigation of the offense furnishes no reason for the imposition of less than the minimum penalty for a violation of this nature.

The defendant-licensees have no adjudicated record of suspension of their license for a similar violation within ten years or a dissimilar violation within five years. I shall suspend defendants' license for twenty days (Re Badyne, Bulletin 1203, Item 3) and remit five days for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of March, 1958,

ORDERED that Plenary Retail Consumption License C-132, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to James F. Daly and Joseph E. Kohm, t/a Daly's Cafe, for premises 201 Vine Street, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. March 27, 1958, and terminating at 2:00 a.m. April 11, 1958.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALES TO MINORS DISMISSED.

In the Matter of Disciplinary Proceedings against
SABAR, INC.
t/a THE COVE
933 Atlantic Avenue
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-135, issued by the Board of Commissioners of the City of Atlantic City.

Samuel Epstein, 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 a charge alleging that it sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

"At the hearing herein the Division called as its witnesses Philip ---, age 20 (an airman in the U. S. Navy), and an ABC agent.

"Philip testified that at about 9:00 p.m. on Friday, November 15, 1957, he entered defendant's licensed premises and seated himself at the bar behind which were two bartenders who served him ten bottles of beer without requiring any proof of his age; that he left defendant's premises at about 1:30 a.m. the following morning and proceeded to another tavern wherein he remained until 2:30 or 3:00 a.m. and that some time later he directed an ABC agent to defendant's premises but could not identify the bartenders who served him.

"The agent testified that at about 9:00 p.m., Wednesday, December 11, 1957, Philip directed him to defendant's licensed

premises wherein both Samuel and Israel Saul (each a 33% stockholder of the corporate licensee herein) were present and that Philip was unable to identify them as the bartenders who had served him. He testified further that both of the Sauls admitted that they tended bar on the dates alleged and that they stated they had never previously seen or served the minor. Samuel and Israel Saul testified that they both tended bar on the dates alleged; that defendant employs no other bartenders and that they had never seen Philip prior to the time he visited the licensed premises with the ABC agent, at which time Philip failed to identify either of them.

"The failure to identify the particular employee making the sale or service of alcoholic beverages to a minor is not fatal in disciplinary proceedings provided it be established that the minor purchased, had served to him or was permitted to consume an alcoholic beverage in the licensed premises. Re LaCorte, Bulletin 469, Item 1; Re Cohen, Bulletin 495, Item 6; Re Dante, Bulletin 771, Item 9; cf. Re Polish Peoples Home, Inc., Bulletin 1137, Item 1; cf. Re Kabe, Inc., Bulletin 1165, Item 4.

"Weighing the uncorroborated testimony of the minor against the positive testimony of defendant's witnesses, I conclude that the Division has not sustained the burden of proof in establishing defendant's guilt by the necessary preponderance of evidence. I recommend, therefore, that the charge herein be dismissed."

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 Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 25th day of March, 1958,

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

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against
CHET & JOHN'S, INC.
t/a CHET AND JOHN'S SINGAC LODGE
600 Main Street
Little Falls Township
PO Great Notch, N. J.,
Holder of Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Little Falls.

CONCLUSIONS
AND ORDER

Frank D. Van Arsdale, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has entered a plea of non vult to a charge alleging that it sold, served and delivered alcoholic beverages to

two minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that on Friday night, January 10, 1958, ABC agents visited defendant's licensed premises wherein Ellen Daley and Harry Hill were tending bar. During their stay the agents observed the bartenders serve a glass of beer apiece to two apparent minors without requiring any written proof of their ages. The agents identified themselves to the youths, ascertained they were Carole ---, age 18, and Robert ---, age 20, and seized the unconsumed portion of their drinks for evidential purposes. Thereafter, the agents made their identities known to the bartenders and informed them of the violation. Both bartenders refused to give signed, sworn statements but verbally admitted that they served the minors after they exhibited drivers' licenses indicating that they were of age. Robert volunteered a signed, sworn statement and Ellen verbally admitted that each was served alcoholic beverages by Harry, to whom they had previously exhibited drivers' licenses indicating they were over 21 years of age, and that at no time were they required to produce any written proof thereof in accordance with the statute hereinafter referred to.

One of the essential requisites necessary to establish a defense to a sale of alcoholic beverages to a minor is a written representation as to his age, signed by the minor as provided by law. See R. S. 33:1-77. The exhibiting of a driver's license, birth certificate, etc., is not a compliance with the statute and has been so held by this Division since the inception of the statute. See Re Roey, Bulletin 747, Item 3.

Defendant has no prior adjudicated record. The usual suspension imposed for an unaggravated sale of alcoholic beverages to an eighteen-year-old minor is fifteen days. Re Martin, Bulletin 1107, Item 9. In view of the particular circumstances herein which, in most respects, are similar to those in cases heretofore decided, I shall suspend defendant's license for a period of ten days. Re Angelotta, Bulletin 1163, Item 12, and cases cited therein. No remission will be allowed for the confessional plea which was entered on the day set for hearing on the charge.

Accordingly, it is, on this 13th day of March, 1958,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Little Falls to Chet & John's, Inc., t/a Chet and John's Singac Lodge, for premises 600 Main Street, Little Falls, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. March 24, 1958, and terminating at 2:00 a.m. April 3, 1958.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against CANZANO, INC. t/a CAVEN POINT BAR & GRILL 784-786-788 Garfield Avenue Jersey City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-378, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Davidson & Miniutti, Esqs., by Joseph S. Nester, Esq., Attorneys for Defendant-licensee. Dora P. Rothschild, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Tuesday, January 21, 1958, at about 7:55 a.m., you allowed, permitted and suffered the removal of an alcoholic beverage in an opened container from your licensed premises, viz., an alcoholic beverage, approximately 24 ounces, in an opened 4/5 quart bottle labeled Mohawk Rock and Rye 65 Proof; in violation of Rule 1 of State Regulation No. 38."

The file herein discloses that on Tuesday, January 21, 1958, at about 7:55 a.m., an ABC agent purchased from Anthony Canzano, who was tending bar, a 4/5 quart bottle of Rock and Rye "to take out". The bartender instructed the agent to take a shot from the bottle before taking it out in order "to make it legal". The agent left the premises with the opened bottle and met other agents who had remained outside. The agents returned to the premises and identified themselves to the bartender, who admitted the sale.

Defendant has no prior record. I shall suspend its license for fifteen days and remit five days for the plea herein, leaving a net suspension of ten days (Re Lou's Tavern, Inc., Bulletin 1209, Item 4).

Accordingly, it is, on this 13th day of March, 1958,

ORDERED that Plenary Retail Consumption License C-378, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Canzano, Inc., t/a Caven Point Bar & Grill, for premises 784-786-788 Garfield Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. March 24, 1958, and terminating at 2:00 a.m. April 3, 1958.

WILLIAM HOWE DAVIS Director.

9. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

RAINBOW BAR (INC.)
42 West Pitman Street
Penns Grove, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Penns Grove.

Defendant-licensee, by Nicola DiFilippantonio, President.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On March 8, 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., John ---, age 18, and 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."

The file herein discloses that on March 8, 1958, ABC agents observed an employee of defendant serve a glass of beer to each of three males seated at the bar. The agents questioned the three persons in question concerning their respective ages and ascertained that one of them was a minor 18 years of age. A statement (signed and sworn to by the minor) was obtained wherein he stated that he was not questioned by the barmaid as to his age before service of the beer to him.

Although defendant corporate-licensee has no adjudicated record, it appears that a retail liquor license held by Nicola DiFilippantonio, President of and holder of 98% of the capital stock of defendant corporation, was suspended by the local issuing authority on three occasions. Effective May 5, 1937 his license was suspended for fourteen days for possession of illicit liquor; effective July 29, 1940, for three days for permitting music to be played on the licensed premises, in violation of a local regulation, and effective July 20, 1949 for twenty days for sale of alcoholic beverages during prohibited hours and beyond the scope of his license. Inasmuch as the violations occurred more than five years ago and are dissimilar in character to the violation now under consideration, they will not be considered in fixing the suspension to be imposed herein.

The minimum penalty for sale and service of alcoholic beverages to an 18-year-old minor is fifteen days (Re DeClementi, Bulletin 1196, Item 7). I shall suspend defendant's license for a period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 24th day of March, 1958,

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Penns Grove to Rainbow Bar (Inc.), for premises 42 West Pitman Street, Penns Grove, be and the same is hereby suspended for ten (10) days, commencing at 7:00 a.m. April 7, 1958, and terminating at 7:00 a.m. April 17, 1958.

WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

GERTRUDE DECKER)
325 Paterson Plank Road)
Carlstadt, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-15, issued by the Mayor and Council of the Borough of Carlstadt.)
-----)

James F. McGovern, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to a charge alleging that she sold, served and delivered an alcoholic beverage to a minor and permitted the consumption of such beverage by said minor in and upon her licensed premises in violation of Rule 1 of State Regulation No. 20.

"At the hearing herein the Division called as its witnesses Mary ---, age 17, and Leonard ---, an adult, and an ABC agent.

"Mary testified in substance that at about 10:00 p.m. on Sunday, September 1, 1957, she and Leonard entered defendant's licensed premises wherein each consumed a whiskey and soda highball served to them by John Lewis, the bartender, who required no written proof of her age. Her testimony respecting the sale and service to and consumption by her of an alcoholic beverage in and upon the licensed premises was corroborated by that of her companion, Leonard. The ABC agent testified that on September 4, 1957 Mary directed him, another agent and several police officers to defendant's licensed premises wherein she identified John Lewis as the person who had made the sale. He testified further that Lewis stated that he was the only person tending bar at the time alleged and that, while he admitted that Mary and a male companion were in the licensed premises on the occasion, he denied that he served her an alcoholic beverage.

"The licensee testified that she was in Europe on the date alleged and that she had never before been charged with any violation.

"Lewis testified that he served a whiskey and lemon soda to Leonard and a lemon soda to Mary which he stated they consumed.

"Considering all the facts and circumstances herein, I find that the Division has established the guilt of the defendant by a preponderance of the believable evidence. Since defendant has no prior adjudicated record, I recommend that an order be entered finding defendant guilty and suspending her license for the minimum period of twenty days. Re Arnts, Bulletin 1183, Item 8."

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 and adopt the Hearer's finding and recommendations. Hence, I find defendant guilty of the violation charged.

Accordingly, it is, on this 25th day of March, 1958,

ORDERED that Plenary Retail Consumption License C-15, issued by the Mayor and Council of the Borough of Carlstadt to Gertrude Decker, for premises 325 Paterson Plank Road, Carlstadt, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. April 1, 1958, and terminating at 3:00 a.m. April 21, 1958.

WILLIAM HOWE DAVIS
Director.

11. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure)
on January 16, 1958 of 48 two-)
quart "Mason" jars of alcohol)
and an Oldsmobile sedan on the)
northbound lane of the New Jersey)
Turnpike, at the 38 Mile Post, in)
the Township of Mount Laurel,)
County of Burlington and State of)
New Jersey.)

Case No. 9638

ON HEARING
CONCLUSIONS AND ORDER

Irwin S. Markowitz, Esq., Attorney for The Waterbury National Bank.

Dora P. Rothschild, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 48 two-quart jars of alcohol, and an Oldsmobile sedan, described in a schedule attached hereto, seized on January 16, 1958 on the northbound lane of the New Jersey Turnpike at the 38 Mile Post, in the Township of Mount Laurel, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of The Waterbury National Bank, which sought recognition of its alleged lien on the motor vehicle. No one opposed forfeiture of the alcohol.

Reports of ABC agents and other documents in the file, presented in evidence with consent of the bank, disclose the following facts:

A New Jersey State Trooper halted the Oldsmobile sedan on the above date and location during his routine patrol of traffic on the highway. The trooper ascertained that the motor vehicle was being operated by its registered owner, Vance R. Williams. When the trooper discovered in the trunk of the car the 48 two-quart jars of alcohol, without a stamp on any of the jars evidencing payment of tax on alcoholic beverages, he took into custody the alcohol, and motor vehicle, and arrested Williams. Later the alcohol and motor vehicle were turned over to ABC agents.

A sample of the contents of one of the jars was analyzed by the Division chemist, who reports that it is alcohol and water fit for beverage purposes, with an alcoholic content by volume of 47.1 percent.

The seized alcohol is illicit because of the absence of a tax stamp on any of the jars. R. S. 33:1-1(i), R. S. 33:1-88. Vance R. Williams, in a signed sworn statement, relates that he was employed by the U. S. Rubber Company and then by the American Brass Company in Waterbury, had been laid off for about two weeks, and decided, in order to meet payments on the car, to drive to North Carolina, where he purchased the moonshine alcohol intending to sell it in Connecticut. Such illicit alcohol, and the Oldsmobile sedan in which it was transported and found, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R. S. 33:1-66.

The Waterbury National Bank presented in evidence a conditional sales contract dated October 18, 1956, which the bank holds by assignment. The contract, signed by Vance R. Williams, evidences the conditional sale of the Oldsmobile sedan in question for the sum of \$3459.50, with an unpaid balance thereon of \$2733.12. The present balance due on the contract, after rebate for prepayment, is \$1423.95.

Before accepting the contract and extending credit to Vance R. Williams, the bank received information that he was 28 years of age, married, resided at an address in Waterbury, was employed by the U. S. Rubber Company, and was furnished with various personal and business references. The bank checked this information with an independent credit agency, which confirmed that it was accurate and did not report any derogatory information. The bank had a previous account with Williams which had been found satisfactory. Williams does not appear to have any previous criminal record.

I am satisfied from the evidence presented that The Waterbury National Bank acted in good faith, and did not know, or have any reason to suspect, that the Oldsmobile sedan would be used to transport illicit alcohol. I shall therefore recognize its lien against such motor vehicle to the extent of \$1423.95.

It appears that the appraised retail value of the Oldsmobile sedan does not exceed the amount of the lien claim and the costs of its seizure and storage. Such motor vehicle will therefore be returned to The Waterbury National Bank upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 27th day of March, 1958, The Waterbury National Bank pays the costs incurred in the seizure and storage of the Oldsmobile sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the alcoholic beverages listed in the aforesaid Schedule "A" constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66 and that they be retained for use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: March 17, 1958.

SCHEDULE "A"

- 48 - two-quart "Mason" jars of alcohol
- 1 - Oldsmobile sedan, Engine and Serial No. 567L5986, Connecticut Registration BG9014

12. AUTOMATIC SUSPENSION - SALE TO MINOR - LICENSE SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION GRANTED UPON EXPIRATION OF SUSPENSION NOW IN EFFECT.

Auto. Susp. #149
 In the Matter of a Petition to)
 Lift Automatic Suspension of)
 Plenary Retail Consumption)
 License C-7, issued by the)
 Borough Council of the Borough)
 of Lindenwold to)
 TELL-TALE TAVERN, INC.)
 310 White Horse Pike)
 Lindenwold, PO Laurel Springs, N.J.)

On Petition
O R D E R

Donald Palese, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

A verified petition filed herein discloses that on February 27, 1958, Robert E. Andrews (president of Tell-Tale Tavern, Inc.) was fined the sum of \$100.00 and received a suspended sentence of six months in the County jail after he had pleaded non vult in the Camden County Court to a charge of selling 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 the corporation. R. S. 33:1-31.1. Petitioner closed its premises on March 6, 1958.

It further appears from the petition that on March 13, 1958, the local issuing authority suspended the corporation's license for twenty-five days, less five for the plea, effective from 4:00 p.m. March 6, 1958, to 4:00 p.m. March 26, 1958, after the corporation had pleaded non vult in disciplinary proceedings to a charge of selling alcoholic beverages to the same minor, in violation of Rule 1 of State Regulation No. 20. The minor was 16 years of age.

It appearing that the suspension imposed by the local issuing authority is adequate and that said suspension is now in effect and will expire at 4:00 p.m. March 26, 1958, I shall grant the request to lift the automatic suspension at the expiration of said suspension.

Accordingly, it is, on this 21st day of March, 1958,

ORDERED that the automatic suspension of License C-7, held by Tell-Tale Tavern, Inc., for premises 310 White Horse Pike, Lindenwold, be lifted and said license restored to full force and operation at 4:00 p.m. March 26, 1958.

WILLIAM HOWE DAVIS
Director.

13. AUTOMATIC SUSPENSION - STAYED PENDING DETERMINATION BY LOCAL ISSUING AUTHORITY AS TO WHETHER DISCIPLINARY PROCEEDINGS SHOULD BE INSTITUTED.

Auto. Susp. #150)
In the Matter of a Petition to)
Lift Automatic Suspension of)
Plenary Retail Consumption License)
C-152, issued by the Board of Com-)
missioners of the City of Passaic)
to)

ON PETITION
O R D E R

ALBERTI'S 570 CLUB, INC.)
t/a ALBERTI'S 570 CLUB)
570 Main Avenue)
Passaic, N. J.)

-----)
Robert M. Kronman, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

The petition herein discloses that on March 20, 1958, Samuel Alberti (Vice President of the licensed corporation) was fined the sum of \$100.00 and \$10.00 costs after he had been found guilty in the Municipal Court of Passaic on a charge of selling alcoholic beverages to a nineteen-year-old minor. Such conviction resulted in the automatic suspension of petitioner's license under the provisions of R. S. 33:1-31.1. Because the Division was informed that petitioner intended to apply for a stay of said suspension, the license has not yet been picked up.

The purpose of the automatic suspension is to ensure that, when a licensee is convicted in a criminal court for violating the Alcoholic Beverage Law, there is swift and sure penalty against the licensee. Re Panasevitz, Bulletin 485, Item 3.

The file in this case indicates that it is alleged that on February 17, 1958, alcoholic beverages were served on the licensed premises to a nineteen-year-old minor by said Samuel Alberti and also to a sixteen-year-old minor by a bartender; that the Board of Commissioners of the City of Passaic was recently requested to advise the Director as to whether or not it intended to institute disciplinary proceedings but that no reply to said letter has been received to date, and that the Board will not meet again until the early part of April. In fairness to the licensee, the effect of the automatic suspension will be stayed pending the entry of a further order herein. Cf. Re Faessler, Bulletin 920, Item 15.

If the local issuing authority hereafter institutes disciplinary proceedings and finds the licensee not guilty, a supplemental petition to lift the automatic suspension immediately may be filed with the Director; or, if the local issuing authority finds defendant guilty and imposes a suspension, a supplemental petition to lift the automatic suspension at the expiration of said suspension may be filed with the Director.

Accordingly, it is, on this 25th day of March, 1958,

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

WILLIAM HOWE DAVIS
Director.

14. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BIASE'S BAR & GRILL (A CORP.)
451-457 Bloomfield Avenue
Newark 4, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-116, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

-----)
Defendant-licensee, by Anthony P. Biase, President.
William F. Wood, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it allowed, permitted and suffered mislabeled beer taps on its licensed premises, in violation of Rule 26 of State Regulation No. 20.

The file herein discloses that on February 17, 1958, during the course of a retail inspection of defendant's licensed premises, an ABC agent found a barrel containing Blatz beer connected to a tap bearing the brand name "Ambassador" and a barrel of Blatz beer connected to a tap without a marker.

Defendant has no prior adjudicated record. I shall suspend its license for a period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Dunkirk, Bulletin 1197, Item 6.

Accordingly, it is, on this 26th day of March, 1958,

ORDERED that Plenary Retail Consumption License C-116, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Biase's Bar & Grill (A Corp.), for premises 451-457 Bloomfield Avenue, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. April 7, 1958, and terminating at 2:00 a.m. April 12, 1958.

WILLIAM HOWE DAVIS
Director.

15. STATE LICENSES - NEW APPLICATIONS FILED.

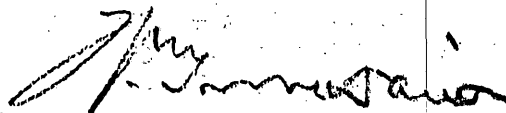
John M. Crisafulli, Marie R. Crisafulli, Ernest Scuorzo and
Carrie B. Scuorzo, t/a Beverages, Limited
606-608 Adams Street
Hoboken, N. J.

Application filed May 12, 1958 for place-to-place transfer
of State Beverage Distributor's License No. SBD-73 from
511-513-515 Madison Street, Hoboken, N. J.

Duggan's Distillers Products Corporation
t/a Kay Liquor Products, H & S Liquor Company, Pristine Liquor
Products, Gold Star Distilled Products, Dulcy Associates,
Jollivet et Cie, Scotch Distillers Products, Ltd.,
The Hoxley-Warner Company, The Edmond Darth Company,
Distillers Products, International & Imperial Distillers, Ltd.

7-11 Paris Street
Newark, N. J.

Application filed May 16, 1958 for place-to-place transfer
of Rectifier and Blender License R-7 from 248 McWhorter St.,
Newark, N. J.



William Howe Davis
Director.