

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Dr. Cranford, N.J. 07016

BULLETIN 2049

JULY 6, 1972

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N. J. 07016

BULLETIN 2049

JULY 6, 1972

1. COURT DECISIONS - TED MIL, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1810-70

TED MIL, INC., t/a TED DU BOIS,
GASLIGHT,

Plaintiff-Appellant,

v.

RICHARD C. McDONOUGH DIRECTOR,
DIVISION OF ALCOHOLIC BEVERAGE CONTROL,
STATE OF NEW JERSEY, DIVISION OF
ALCOHOLIC BEVERAGE CONTROL,

Defendant-Respondent.

Argued April 24, 1972 - Decided May 8, 1972.

Before Judges Sullivan, Leonard and Carton.

On appeal from Determination and Order of the Director of
Division of Alcoholic Beverage Control.

Mr. Miles Feinstein argued the cause for plaintiff-appellant
(Messrs. Tencza, Feinstein, Manfre & Traymore, attorneys).

Mr. David S. Piltzer, Deputy Attorney General, argued the
cause for defendant-respondent (Mr. George F. Kugler, Jr.,
Attorney General of New Jersey, attorney).

PER CURIAM

The Director of the Division of Alcoholic Beverage Control suspended appellant's liquor license for a period of sixty days after a hearing and determination that the licensee permitted an entertainer to perform on the licensed premises on two occasions in a lewd, indecent and immoral manner.

On this appeal from the Director's Decision and Order, it is argued that the findings and conclusions are not supported by substantial evidence and amount to a deprivation of free speech and an erosion of rights protected by the First Amendment and mirrored in the Fourteenth Amendment.

We conclude that there was an ample basis in the evidence for the findings and conclusions, and that the Director's suspension of the license, based upon such findings and conclusions, is not violative of the First and Fourteenth Amendments. Lastly, we find no merit in the contention that the suspension imposed is excessive and unduly punitive. The matter of penalty rests within the sound discretion of the Director who has established a minimum suspension of sixty days for a first offense of this kind.

Affirmed.

2. DISCIPLINARY PROCEEDINGS - LEWDNESS (TABLOID PUBLICATIONS) - LICENSE
SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary)
Proceedings against)

Blue Piano, Inc.)
t/a Blue Piano)
875-875 Bergen Avenue)
Jersey City, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-478, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Jersey City.)
-----)

William J. Caputo, Esq., Attorney for Licensee
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to the following charge:

"On October 20, 1971, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting printings, writings, stories, illustrations and accounts, viz., a 4' x 10' picture displayed on a wall behind the bar and publications in form of tabloids; in violation of Rule 17 of State Regulation No. 20."

By stipulation and agreement between counsel for the licensee and this Division, the words "a 4' x 10' picture displayed on a wall behind the bar and" were deleted from the charge upon the explicit understanding that the offending picture was to be forthwith removed from the premises. The remaining subject of the charge was "publications in form of tabloids" found on the licensed premises.

Pursuant to a specific assignment to conduct an investigation concerning the offending photo mural hereinabove referred to, ABC agents D and P visited the licensed premises on October 20, 1971.

Agent D testified that he has been an inspector in this Division about fifteen years. His investigation of the premises required a thorough inspection which revealed the existence of a number of tabloid "newspapers" rolled lengthwise and secured by scotch tape. This roll was discovered in a cabinet in back of the bar. The scotch tape securing the roll was adhered to a piece of paper on which someone's name had been written. The roll itself was about three or four inches in diameter which disclosed part of the front page of one of the issues.

The "newspapers", offered into evidence, were exhibited to the bartender who denied knowledge of their presence to the agent who, upon reading off the name contained on the slip under the scotch tape fastener, learned that such person was not connected with the licensee and was presumably a patron.

Agent P testified in general corroboration of the testimony of Agent D save for the initial discovery of the roll of "newspapers." He viewed the removal of the attaching tape and the two-to-three inch wide paper on which the person's name had been written.

On behalf of the licensee Cornelius Robinson testified that he is a bartender in another establishment and, on the night before the agents' visit, received the subject "news-papers" from someone with instructions to deliver the roll to the licensed premises so that one Gary --- (whose name presumably appeared on the attached paper) could pick them up the following day.

Francis J. Burns testified that he is the night bartender in the licensed premises; was on duty the day before the agents visited, but has no recollection of receiving a roll or bundle of newspapers. He did aver that papers, packages and miscellaneous items are from time to time deposited with him for later pick-up by patrons. If he knew any material so deposited to be lewd or indecent, he would immediately discard it.

Two patrons (Edgar T. Peters and John F. Callahan) testified that they were in the premises when Agent D discovered the "newspapers", saw him open them up, but could not see their contents nor from their view could determine if they were lewd or indecent. They recalled the agent reading out the name Gary --- whom they both knew.

The manager of the licensee (Joseph T. Gorzelnik) testified that he learned of the confiscation of the "newspapers" afterward and had no knowledge of them whatever. He has been manager of the licensed premises about eight years.

The defense was predicated upon two contentions: (a) that the material discovered was not in itself lewd or immoral, it being common tabloid type papers available on any news stand, and (b) even if the material was lewd and indecent, it was so wrapped with an identifying label on it that a reasonably prudent licensee or its agents could not have known the content until unwrapped.

Addressing the first contention, a perusal of the "newspapers" as exposed reveals issues of six different publications, i.e., "National Chronicle", "National Mirror", "Candid Press", "Inside News", "Close-Up" and "National Bulletin." "National Chronicle" portrays on its cover a photograph of a couple kissing and a partially nude girl; its only and major headline is "Sexes Nude Teen Girls." In its interior are photographs of bare-breasted women, articles on sex amid advertisements offering varied assortments of pictorial sex activity. As if to put the color of respectability on the publication, a photograph of the Justices of the United States Supreme Court is included. "National Mirror" carries the headline "Giant Stud Rips Nympho" and a scantily dressed woman. Smaller headlines include "Lesbian Vampires on the Make" and "Her Body wouldn't open to his demands." The interior contains an article entitled "TV Actress Films 24-Hour Orgasm." Photographs or drawings of bare-breasted women adorn every page.

"Candid Press" has a partially unclothed female filling half its cover, with principal headline "Rakes Off her Nipples - for Sex." That partially clothed woman is shown with a rake across her chest. The interior contains articles and photographs exclusively on sexual depravity. "Inside News" carries a headline "Husbands Peddle Their Wives to Sex Hungry American G.I.'s." The interior is similar to the others.

"Close-Up" carries a headline "Lesbian Teacher Rapes, Kills Pretty Cheerleader." The interior contains articles, among others, entitled "Noise is Ruining Your Sex Life" and "How to Make Plaster Casts of your girl's Breasts." Finally, "National Bulletin" carries a partially undressed female on the cover with headline "Bored Wives Act in Dirty Movies for Sex Kicks" and "Inside a Vice Training School." The interior content is similar to the others.

Nowhere is there contained in any of the issues news stories, editorials or articles that are not predominantly sex-oriented except in such isolated instances as to defy relevancy, i.e., the above mentioned photograph of the Justices.

The critical point of inquiry about which the entire issue revolves is the determination of the question how much of the offending papers could be viewed, before unwrapping, by the inspector, and presumably the licensee or his agents, that would lead to a conclusion that the papers contained what they did. On this point the agent was exhaustively examined.

The agent was asked:

"Q At first glance when you saw this packet, could you identify what the contents were?

A No.

* * *

Q You had to unwrap the wrapping in order to identify the contents?

A When I handled the papers, I knew what they were."

With the packet of newspapers being rerolled to simulate the physical condition of the papers when first discovered, the agent was asked:

"Q ... What did you visibly see with your eye the first time you saw this publication packet in this manner?

A Probably the headline of that tabloid.

Q You saw the name of the tabloid?

A Probably the headline is the first thing I saw and then the name of the tabloid second. Then perhaps part of a picture illustration on it.

* * *

Q In other words, it could be that the first time you saw this publication it was wrapped and you just saw the newsprint as opposed to a news picture, sir?

A Yes, but you see, there is a difference between the first line and the second line. It is a matter of a glance. However, you are right. The first thing I saw probably was the headline."

Apparently the removal of the tabloids, their examination and unrolling involved but one simultaneous act which the agent described as "It took as long as it took me to reach into the cabinet and take this packet out and look at it and determine what it was that I had in my hand and open it up by taking the wrapping off. As long as that takes, that's how long it was. It was a continuous motion." Hence the question whether or not the outside content of the tabloids was sufficient to stimulate an inquiry is thus answered affirmatively.

The contentions that the tabloids were not obscene were similarly raised in Re Novembre, Bulletin 1056, Item 2, in which case the Director cited State v. Weitershausen, 11 N.J. Super. 487, 491-2 (App.Div. 1951) as follows:

"Although the words obscene and indecent are commonly used and understood they are probably not susceptible of precise legal definition. Cf. Commonwealth v. New, 142 Pa. Super. 358, 16 A. 2d 437 (1940); United States v. Levine, 83 F. 2d 156 (2d Cir. 1936). In the Isenstadt case [Commonwealth v. Isenstadt, 318 Mass. 543, 62 N.E. 2d 840 (1945)] Justice Qua recently expressed principles which may be accepted as controlling. He stated that material may be deemed obscene and indecent within a statutory prohibition if it has a substantial tendency to deprave or corrupt its readers or viewers by 'inciting lascivious thoughts or arousing lustful desire;' the material is to be judged in the light of the customs and habits of thought of the time and place and where reasonable men may differ the question is one of fact..."

In McFadden's Lounge, Inc. v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61, 66 (App.Div. 1954), the court stated that the stringency of Rule 5 of State Regulation No. 20, a "disciplinary rule governing the conduct of those who have been granted the special privilege of vending alcoholic beverages at a designated location ... must be measured in its relation to the reasonably apprehended evils of the trade." Our courts have uniformly held that the standard applied by this rule to licensed premises has been more restrictive than to non-licensed premises. "What is lewdness or immorality for purposes of a rule regulating premises licensed for the sale of alcoholic beverages may be determinable on a distinctly narrower basis than for purposes of regulation of commercial entertainment generally." Davis v. New Town Tavern, 37 N.J. Super. 376, 378 (App.Div. 1955).

This Division has consistently ruled that indecent photographs, cartoons and printed matter have no place on liquor-licensed premises. Re Fasanello, Bulletin 1884, Item 2. Applying the views above expressed, I conclude that the possession of the seized material was a violation of Rule 17 of State Regulation No. 20 and I therefore recommend that the licensee be found guilty of the charge.

Absent prior record, it is further recommended that the license be suspended for fifteen days. Re Buffy, Bulletin 2033, Item 5.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by licensee pursuant to Rule 6 of State Regulation No. 16. I find these exceptions have been considered in the Hearer's report and are lacking in merit.

Having carefully considered the entire record herein, including transcript of the testimony, the exhibits, the Hearer's report and the exceptions thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 27th day of April 1972,

ORDERED that Plenary Retail Consumption License No. C-478, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Blue Piano, Inc., t/a Blue Piano, for premises 873-875 Bergen Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing 2 a.m. Thursday, May 11, 1972, and terminating 2 a.m. Friday, May 26, 1972.

Robert E. Bower
Director

3. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1971 THROUGH MARCH 31, 1972

	1st Quarter July Aug. Sept.	2nd Quarter Oct. Nov. Dec.	3rd Quarter Jan. Feb. March	Total
ARRESTS:				
Total number of persons arrested	151	115	135	401
Licensees and employees	54	48	50	152
Bootleggers	21	16	27	64
Minors	75	51	57	183
Disorderly person	1	-	-	1
ABC Impersonator	-	-	1	1
SEIZURES:				
Motor vehicles - cars	1	-	1	2
Stills - 50 gallons or under	1	2	-	3
Alcohol - gallons	50	41	.25	91.25
Mash - gallons	825	105	-	930
Distilled alcoholic beverages - gallons	34.937	128.96	49.245	213.142
Wine - gallons	62.025	59.223	35.375	156.623
Brewed malt alcoholic beverages - gallons	222.769	152.393	322.09	697.252
COMPLAINTS AND INVESTIGATIONS:				
Inspections & visits made on assigned investigations	3,783	4,800	6,140	14,723
Complaints assigned for investigation	976	970	1,080	3,026
Investigations completed	1,025	917	1,054	2,996
Investigations pending	(320)	(357)	(373)	(373)
Premises where alcoholic beverages were gauged	966	1,450	1,782	4,198
Bottles gauged	15,807	23,014	28,890	67,711
Premises where violations were found	462	597	628	1,687
Number of violations found	708	797	925	2,430
License applications investigated	30	12	19	61
Contacts with other law enforcement agencies	701	1,131	787	2,619
LABORATORY:				
Analyses made	288	449	262	999
Refills from licensed premises - bottles	184	333	137	654
Bottles from unlicensed premises	22	31	34	87
IDENTIFICATION:				
Criminal fingerprint identifications made	75	46	143	264
Persons fingerprinted for non-criminal purposes	1,509	1,045	797	3,351
Ident. contacts w/other enforcement agencies -	967	657	602	2,226
MV Ident. made via N.J. State Police teletype	1	-	-	1
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	4	2	-	6
Violations involved	4	2	-	6
Sale during prohibited hours	1	-	-	1
Sale to minors	3	1	-	4
Failed to close prem. during proh. hours	-	1	-	1
Cases instituted at Division	88	88	98*	274*
Violations involved	108	103	110	321
Sale to minors	29	25	33	87
Sale during prohibited hours	11	14	9	34
Possessing liquor not truly labeled	9	5	13	27
Permitting lottery acty. on premises	5	10	7	22
Fraud and front	3	8	9	20
Permitting immoral activity on premises	7	5	6	18
Permitting misc. gambling on premises	4	4	4	12
Purchase from improper source	1	2	9	12
Hindering investigation	-	4	5	9
Possessing indecent matter	4	4	1	9
Sales to non-members by club	3	2	2	7
Failure to keep true books of account	1	3	3	7
Permitting bookmaking on premises	4	2	-	6
Failed to close prem. during proh. hours	4	2	-	6
Unqualified employees	3	1	-	4
Sale to retailer while on Non-Delivery	-	-	4	4
Fraud in application	3	1	-	4
Permitting hostess activity on premises	2	-	1	3
Permitting foul language on premises	1	1	1	3
Permitting lottery & bookmaking on premises	1	1	1	3
Sales outside scope of license	1	1	-	2
Permitting narcotic activity on premises	2	-	-	2
Perm. lottery, bookmaking & misc. gambl. on prem.	1	1	-	2
Sales below filed price	2	-	-	2
Possessing contraceptives on premises	2	-	-	2
Permitting brawl, etc. on premises	1	1	-	2
Single instance of other violations	3	6	2	11
Cases brought by municipalities on own initiative and reported to Division	63	54	71	188
Violations involved	81	62	85	228
Sale to minors	31	23	33	87
Sale during prohibited hours	9	8	3	20
Failed to close prem. during proh. hours	5	5	8	18
Permitting brawl, etc. on premises	4	3	6	13

*Includes one cancellation proceeding - license improvidently issued in that licensee was not a bona fide club at time of issuance of license.

	1st Quarter July Aug. Sept.	2nd Quarter Oct. Nov. Dec.	3rd Quarter Jan. Feb. March	Total
DISCIPLINARY PROCEEDINGS (CONTINUED)				
Cases brought by municipalities on own initiative (Continued)				
Permitting gambling on premises	3	8	-	11
Conducting business as a nuisance	6	4	1	11
Unqualified employees	3	3	3	9
Act of violence	3	1	4	8
Loitering by minors unaccomp. by adults (local reg.)	4	1	2	7
Permitting narcotic activity on premises	1	1	5	7
Hindering investigation	2	1	2	5
Permitting immoral activity on premises	-	-	4	4
No. Form E-141-A on premises	1	1	2	4
Permitting persons of ill repute on prem.	1	1	2	4
Employee w/o I.D. card (local reg.)	2	1	-	3
Permitting lottery activity on prem.	-	-	3	3
Altering prem. w/o approval of Iss. Auth.	-	-	2	2
Fail. to afford view into prem. during proh. hrs.	2	-	-	2
Single instance of other violations	4	3	5	12
HEARINGS HELD AT DIVISION:				
Total number of hearings held	146	122	117	385
Appeals	30	21	20	71
Disciplinary proceedings	87	78	80	245
Eligibility	23	16	11	50
Seizures	5	7	6	18
Tax revocations	1	-	-	1
STATE LICENSES AND PERMITS ISSUED:				
Total number issued	5,574	4,756	3,388	13,718
Licenses	572	3	12	587
Solicitors' permits	148	466	123	737
Employment permits	1,564	972	542	3,078
Disposal permits	213	262	205	680
Social affair permits	1,279	956	1,206	3,441
Wine permits	113	504	44	661
Miscellaneous permits	988	813	810	2,611
Transit insignia	512	709	328	1,549
Transit certificates	185	71	110	366
OFFICE OF AMUSEMENT GAMES CONTROL:				
Licenses issued	15	69	336	420
State Fair licenses issued	176	-	-	176
Premises inspected	1,075	-	-	1,075
Premises where violations were found	42	-	-	42
Number of violations found	51	-	-	51
Enforcement files established	59	38	19	116

ROBERT E. BOWER
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: May 5, 1972

4.

ACTIVITY REPORT FOR APRIL 1972

ARRESTS:		
Total number of persons arrested	-----	60
Licensees and employees	----- 24	
Boofleggers	----- 8	
Minors	----- 28	
SEIZURES:		
Motor vehicles - cars	-----	3
Stills - 50 gallons or under	-----	2
Alcohol - gallons	-----	174
Mash - gallons	-----	1,045.50
Distilled alcoholic beverages - gallons	-----	1.82
Wine - gallons	-----	.80
Brewed malt alcoholic beverages - gallons	-----	12.60
COMPLAINTS AND INVESTIGATIONS:		
Inspections & visits made on assigned investigations	-----	1,595
Complaints assigned for investigation	-----	372
Investigations completed	-----	379
Investigations pending	-----	376
Premises where alcoholic beverages were gauged	-----	724
Bottles gauged	-----	12,150
Premises where violations were found	-----	217
Number of violations found	-----	305
License applications investigated	-----	5
Contacts made with other law enforcement agencies	-----	345
LABORATORY:		
Analyses made	-----	119
Refills from licensed premises - bottles	----- -b-	84
Bottles from unlicensed premises	-----	5
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	12
Persons fingerprinted for non-criminal purposes	-----	476
Identification contacts made with other enforcement agencies	-----	377
DISCIPLINARY PROCEEDINGS:		
Cases instituted at Division	-----	65
Violations involved	-----	77
Sale during prohibited hours	----- 25	
Sale to minors	----- 17	
Possessing liquor not truly labeled	----- 12	
Permitting immoral activity	----- 5	
Sale to non-members by club	----- 4	
Permitting lottery acty. on prem.	----- 2	
Sale below filed price	----- 2	
Sale to intoxicated persons	----- 1	
Permitting brawl on premises	----- 1	
Permitting misc. gambling on prem.	----- 1	
Cases brought by municipalities on own initiative and reported to Division	-----	35
Violations involved	-----	45
Sales to minors	----- 23	
Conducting business as a nuisance	----- 5	
Sale during prohibited hours	----- 5	
Permitting narcotic acty. on prem.	----- 3	
Permitting brawl on lic. premises	----- 2	
Act of violence	----- 1	
No Form E-141-A on premises	----- 1	
Hindering investigation	----- 1	
No copy of lic. appl. on premises	----- 1	
Perm. immoral acty. on premises	----- 1	
Fraud and front	----- 1	
Fail. to afford view into prem. during prohibited hours	----- 1	
Perm. hostess activity on prem.	----- 1	
False answer in lic. appl.	----- 1	
Possessing chilled beer (DL lic.)	----- 1	
Possessing indecent matter	----- 1	
Purchase from improper source	----- 1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	59
Appeals	----- 5	
Disciplinary proceedings	----- 46	
Eligibility	----- 2	
Tax revocations	----- 6	
STATE LICENSES AND PERMITS:		
Total number issued	-----	3,564
Licenses	----- 5	
Solicitors' permits	----- 108	
Employment permits	----- 2,502	
Disposal permits	----- 30	
Social affair permits	----- 440	
Wine permits	----- 3	
Miscellaneous permits	----- 305	
Transit insignia	----- 167	
Transit certificates	----- 4	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued	----- 76	
Enforcement files established	----- 5	

Dated: May 9, 1972

ROBERT E. BOWER
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

5. 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)

P.J.K., Inc.)
t/a M & R Bar)
41 West Broadway)
Paterson, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-283, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Licensee, Pro se.
Peter E. Rhatican, Appearing for Division.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Thursday, February 24, 1972, about 10:55 P.M., it sold alcoholic beverages in its original container for off premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior adjudicated record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re McGraw, Bulletin 2038, Item 5.

Accordingly, it is, on this 27th day of April 1972,

ORDERED that Plenary Retail Consumption License C-283 issued by the Board of Alcoholic Beverage Control for the City of Paterson to P.J.K., Inc., t/a M & R Bar, for premises 41 West Broadway, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. on Tuesday, May 9, 1972 and terminating at 3:00 a.m. on Friday, May 19, 1972.

Robert E. Bower
Director

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

In the Matter of Disciplinary Proceedings against)

Moegen, Inc.)
t/a Gene O'Brien's Club Shamrock)
94-96 Beachway)
Keansburg, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-11 issued by the Mayor and Council of the Borough of Keansburg.)

Licensee, Pro se.
Peter E. Rhatican, Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 26, 1972, it sold alcoholic beverages to two minors, ages 16 and 17, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Klein, Bulletin 1643, Item 7.

Accordingly, it is, on this 27th day of April 1972,

ORDERED that Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Keansburg to Moegen, Inc., t/a Gene O'Brien's Club Shamrock, for premises 94-96 Beachway, Keansburg, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. on Thursday, May 4, 1972 and terminating at 2:00 a.m. on Wednesday, May 24, 1972.

Robert E. Bower
Director

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED 55 DAYS, LESS 11 FOR PLEA - APPLICATION OF IMPOSITION OF FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against Elizabeth Sportservice, Inc. t/a Freehold Raceway Routes 9 & 13 Freehold Borough P.O. Box 111 Freehold, N. J. Holder of Seasonal Retail Consumption License CS-1 issued by the Mayor and Council of the Borough of Freehold.

CONCLUSIONS and ORDER

----- Crummy, O'Neill, Del Deo & Dolan, Esqs., by Ralph N. Del Deo, Esq., Attorneys for Licensee. Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 13, 1971, it possessed eighteen bottles of alcoholic beverages on the licensed premises the labels of which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license would normally be suspended for fifty-five days with remission of eleven days for the plea entered, leaving a net suspension of forty-four days.

However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with Chapter 9 of the Laws of 1971. The imposition of a fine in lieu of suspension is generally not made where the charge embraces the possession of more than two bottles. However, each case must be evaluated upon the facts and circumstances therein. I find in this matter that under all the circumstances, a payment of a fine in lieu of suspension would be in the public interest.

I have, accordingly, favorably considered the application in question and have determined to accept an offer in compromise by the licensee to pay a fine of \$15,840.00 in lieu of suspension.

Accordingly, it is, on this 28th day of April 1972,

ORDERED that the payment of a \$15,840.00 fine by the licensee is hereby accepted in lieu of the suspension of license for forty-four days.

Robert E. Bower Director

8. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary)
 Proceedings against)

Jive Shack Bar (A Corp.))
 274 - 15th Avenue)
 Newark, N. J.,)

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption)
 License C-439, issued by the Municipal)
 Board of Alcoholic Beverage Control of)
 the City of Newark.)

 Jacob M. Goldberg, Esq., Attorney for Licensee
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

On June 23, 1971 Conclusions and Order were entered herein suspending the subject license for sixty-five days commencing July 7, 1971 after finding licensee guilty of (1) sale of alcoholic beverages on October 16, 1970, in violation of Rule 1 of State Regulation No. 38; (2) sale of alcoholic beverages to a minor, age 17, in violation of Rule 1 of State Regulation No. 20, and (3) failing to disclose a prior suspension in its current application filed with the local issuing authority, in violation of R.S. 33:1-25. Re Jive Shack Bar (A Corp.), Bulletin 1993, Item 2.

Upon appeal filed, an order was entered on June 30, 1971 by the Appellate Division of the Superior Court staying the said suspension pending determination of said appeal. On April 4, 1972 the said court affirmed the action of the Director. Jive Shack Bar v. Div. of Alcoholic Beverage Control, (App.Div. 1970), not officially reported, recorded in Bulletin 2043, Item 1. The suspension may now be reimposed.

Accordingly, it is, on this 2nd day of May 1972,

ORDERED that Plenary Retail Consumption License C-439, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Jive Shack Bar (A Corp.), for premises 274- 15th Avenue, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1972, commencing at 2 a.m. Tuesday, May 16, 1972; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Thursday, July 20, 1972.

Robert E. Bower,
 Director.

9. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBERS - LICENSEE VIOLATED LOCAL HOURS ORDINANCE - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Ukrainian National Home for Lighting Carmel Road Millville, N. J.,)

CONCLUSIONS and ORDER

Holder of Club License CB-4, issued) by the Board of Commissioners of the City of Millville.)

Licensee, by George Kracke, Jr., Financial Secretary, Pro se
Peter E. Rhatican, Appearing for Division

BY THE DIRECTOR:

Licensee pleads guilty to two charges alleging that on February 20, 1972 it (1) sold alcoholic beverages to non-members in violation of Rule 8 of State Regulation No. 7 and (2) it sold alcoholic beverages in violation of local "hours" ordinance.

Absent prior record, the license will be suspended for fifteen days on the first charge (Re Cape May Loyal Order of Moose #1054, Bulletin 2017, Item 4) and for fifteen days on the second charge (Re Ann's Tavern, Bulletin 2029, Item 3), making a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 2nd day of May 1972,

ORDERED that Club License CB-4, issued by the Board of Commissioners of the City of Millville to Ukrainian National Home for Lighting, for premises on Carmel Road, Millville, be and the same is hereby suspended for twenty-five (25) days, commencing at 7 a.m. Monday, May 15, 1972, and terminating at 7 a.m. Friday, June 9, 1972.

Robert E. Bower,
Director.

10. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA - APPLICATION FOR IMPOSITION OF FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

Pompeii Inn (Corp.))
t/a John & George's)
99 Main Street)
Bloomingdale, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Bloomingdale.)

William J. Rosenberg, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 25, 1972 it sold alcoholic beverages to a minor, age 17, in violation of Rule 1 of State Regulation No. 20.

Licensee has a prior record of suspension for five days by local issuing authority effective April 20, 1969, for State "hours" violation.

License would normally be suspended for twenty days (Re Kidawa, Bulletin 2032, Item 3), to which would be added five days by reason of the dissimilar violation occurring within the past five years, making a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$800 in lieu of suspension.

Accordingly, it is, on this 2nd day of May 1972,

ORDERED that the payment of an \$800 fine by the licensee is hereby accepted in lieu of the suspension of license for twenty (20) days.

Robert E. Bower,
Director.

11. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR IMPOSITION OF FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against :

Kathleen M. Yeager and Gail Yeager t/a McCormick's Liquors 1105 Linden Street Camden, New Jersey :

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-50 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. :

..... Harris Y. Cotton, Esq., Attorney for Licensees. Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on December 4, 1971 they sold alcoholic beverages to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re 100 Bar, Inc., Bulletin 2012, Item 12. However, the licensees have made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensees to pay a fine of \$1,000.00 in lieu of suspension.

Accordingly, it is, on this 3rd day of May, 1972

ORDERED that the payment of a \$1,000.00 fine by the licensees is hereby accepted in lieu of a suspension of license for ten days.

Robert E. Bower, Director

