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

BULLETIN 1537 November 20, 1963

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ITEM

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

BULLETIN 1537 November 20, 1963

1. COURT DECISIONS - VOGELLUS v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-816-62

EMILY KAHLERT VOGELLUS, trading as HIAWATHA BAR & GRILL,

plaintiff-appellant,

vs.

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

defendant-respondent

Argued October 14, 1963 -- Decided October 16, 1963

Before Judges Goldmann, Kilkenny and Collester.

Mr. William H. Burns argued the cause for appellant (Mr. Philip J. Blanda, Jr., attorney).

Mr. Avrom J. Gold, Deputy Attorney General, argued the cause for respondent (Mr. Arthur J. Sills, Attorney General, attorney).

PER CURIAM

Plaintiff licensee appeals from an order of the Acting Director of the Division of Alcoholic Beverage Control suspending her plenary retail consumption license for a period of 35 days, based upon two violations which took place upon the licensed premises late Sunday afternoon, March 3, 1963. (Re Vogellus, Bulletin 1519, Item 3.) Concurring in the findings of the Division hearer and adopting his recommendation, the Acting Director found plaintiff guilty of (1) selling and delivering, and allowing, permitting and suffering the sale and delivery of alcoholic beverages, namely, six 12-oz cans of Schaefer beer, at retail in their original containers for consumption off the licensed premises, and allowing, permitting and suffering their removal from the premises, in violation of Rule 1 of State Regulation No. 38; and (2) failing to facilitate, and hindering and delaying and causing the hindrance and delay of an investigation, inspection and examination of the licensed premises by Division investigators, in violation of N.J.S.A. 33:1-35. We stayed the suspension pending determination of the appeal.

The licensee admits the illegal sale but relies on the defense of entrapment. She also contends that the evidence does not support the Director's finding of a violation of N.J.S.A. 33:1-35.

In their testimony before the Division hearer, plaintiff

and her bartender contradicted the details of the circumstances surrounding the sale of the beer and the events which ensued, as testified to by the two Division investigators. The hearer fully reviewed the testimony in the report he filed with the Acting Director. He concluded that the defense of entrapment had not been established, citing State v. Rosenberg, 37 N.J.Super. 197 (App. Div. 1955), and that the Division had established the truth of the hindering charge by a fair preponderance of the believable evidence. Inasmuch as the bartender had admitted selling the cans of beer during prohibited hours, the hearer recommended that the licensee be adjudged guilty of both charges preferred against her, and that a 35-day suspension of license be entered. In the course of his report he made specific reference to his opportunity of judging the credibility of the witnesses. He found the investigators' version of the material facts credible and convincing, but could not, in view of all the circumstances, give credence to the licensee's testimony. He found her account "unworthy of belief."

Defendant does not raise the question of whether the defense of entrapment is applicable to proceedings before the Director of the Division of Alcoholic Beverage Control.

The leading New Jersey case on entrapment is State v. Rosenberg, above, where the court, adopting the definition of entrapment in Sorrells v. United States, 287 U.S. 435, 53 S. Ct. 210, 77 L. Ed. 413 (1932), said:

> "Generally, it may be said that where a police officer 'envisages a crime, plans it, and activates its commission by one not theretofore intending its perpetration' for the purpose of providing a victim for prosecution, the defense is available. *** However, a distinction must be recognized between the situation where the criminal intent or design originates in the mind of the officer for the purpose of luring or entrapping the accused into commission of the offense which otherwise he would not have committed, and where such intent has its inception in the mind of the accused and the officer acting in good faith in the pursuit of his duties merely furnishes opportunities or facilities for, or aids or encourages the accused in the commission of the offense." (37 N.J.Super., at page 204)

In the Sorrells case, a prohibition agent made repeated requests of defendant for liquor during a conversation involving war reminiscences. As a result of this friendly conversation and requests, the agent was able to persuade defendant to get some liquor for him. The court held that this course of conduct was sufficient to send the issue of entrapment to the jury.

In Sherman v. United States, 356 U.S. 369, 78 S. Ct. 819, 2 L. Ed. 2d 848 (1958), a government informer persistently asked defendant to get him narcotics, feigning physical suffering. Defendant was at the time undergoing treatment for drug addiction. After repeatedly failing to get the requested narcotics, he finally obtained them for the informer. The Supreme Court held that defendant had been entrapped and ordered dismissal of the indictment.

Sherman was decided on the same day that the court handed down its decision in Masciale v. United States, 356 U.S.

386, 78 S. Ct. 827, 2 L. Ed. 2d 859 (1957), affirming 236 F. 2d 601 (2 Cir. 1956), rehearing denied 357 U.S. 933, 78 S. Ct. 1367, 2 L. Ed. 2d 1375 (1958). In that case a government informer, known to defendant for four years, introduced him to a government agent who was posing as a big narcotics buyer. Defendant was arrested after he had obtained drugs for the agent. The court held there was no entrapment.

The defense of entrapment is normally a question for the jury -- here the Division hearer. Sorrells v. United States, State v. Rosenberg, above. The hearer found no evidence from which it could be inferred that the investigator who bought the cans of beer from the bartender implanted an unlawful design in his mind, or that he practiced any trickery, persuasion or fraud to induce him to commit a wrongful act. The Acting Director concurred in this finding, as do we. In the language of the Sorrells case, the purchasing agent did not envisage the offense, plan it, and activate its commission by one not theretofore intending its perpetration. He did not lure or entrap the bartender into committing an offense which he otherwise would not have committed. Rather, the agent, acting in good faith and in the pursuit of his duties, merely furnished the opportunity for the commission of the offense. The mere solicitation to sell the cans of beer was not in itself an entrapment. The Masciale rationale is applicable. Cf. Swallum v. United States, 39 F. 2d 290 (8 Cir. 1930); Commonwealth v. Kutler, 173 Pa. Super. 153, 96 A. 2d 160 (Sup. Ct. 1953).

The substantial evidence rule warrants an affirmation of the Division's order as against the claim of entrapment. See Hornauer v. Division of Alcoholic Beverage Control, 40 N.J.Super. 501, 504 et seq. (App.Div. 1956).

So, too, there was substantial evidence to support the Acting Director's finding that the licensee hindered the investigation of her premises, and most certainly did not do everything in her power to facilitate it, in violation of N.J.S.A. 33:1-35, which provides, in pertinent part, that

> "Every *** licensee *** shall, on demand, exhibit to the director *** or to his *** deputies or investigators, or inspectors or agents all of the matters and things which the director of the division *** is hereby authorized or empowered to investigate, inspect or examine, and to facilitate, as far as may be in their power so to do, in any such investigation, examination or inspection, and they shall not in any way hinder or delay or cause the hinderance or delay of same, in any manner whatsoever.***"

The fact that the Division hearer expressly rejected the licensee's version of the events that occurred when the investigators returned to the licensed premises following their purchase of the beer, is of no small moment. Such a specific finding of credibility is not to be lightly regarded.

Affirmed.

2. APPELLATE DECISIONS - LETHE, INC. v. NORTH BERGEN.

LETHE, INC., Appellant, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWNSHIP OF NORTH BERGEN, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Alexander A. Abramson, Esq., Attorney for Appellant.
Robert W. Bazzani, Esq., Attorney for Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"The appellant challenges by this appeal the action of respondent Municipal Board of Alcoholic Beverage Control of the Township of North Bergen (hereinafter Board) in denying its application for renewal of Plenary Retail Consumption License C-69 for premises located at 1020 Tonnelle Avenue, North Bergen.

"In its petition of appeal appellant alleges that the action of respondent was erroneous for the following reasons:

a. Said action was not made in good faith and was arbitrary and capricious;

b. No notice was given to appellant of the date of the meeting so that appellant was not afforded an opportunity to be heard;

c. Appellant was not apprised of the reasons or grounds for denial of the renewal.

"In its answer the respondent admits the jurisdictional allegations contained in the petition of appeal, and denies the substantive allegations thereof. In addition, it sets forth affirmatively that, after hearing and considering the evidence produced at its regular meeting, it was satisfied that the license should not be renewed because

(1) Appellant did not use the license since the transfer to it on March 1, 1960, for a period of more than three years, and

(2) The Board challenges the appellant's right to possession of the premises for which said license has been issued.

"The second affirmative defense of the Board was abandoned at the hearing on this appeal when no evidence was produced with respect to the latter answer of the Board concerning appellant's right of possession, and counsel for the Board conceded that he had no such evidence.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel

to present testimony under oath and cross examine witnesses. Sidoroff et als. v. Jersey City and Niebanck, Bulletin 1310, Item 1.

"The picture developed by appellant in support of its petition is as follows: Corporate appellant is in possession, as tenant, of the first floor of premises at 1020 Tonnelle Avenue, North Bergen, and, as of the date of this appeal, continues as such tenant on a month-to-month basis. There has been no indication by the landlord that there is any intention to dispossess the appellant from these premises.

"According to the testimony of Daniel D. Blum, president and 98% stockholder of the corporate appellant, appellant has occupied these premises since March 1960, at which time steps were taken to 'paint it and clean it up'. However, this work was not completed because the manager, one Robert O'Connor, was transferred by appellant to similar troubled enterprise in which they were engaged in Harrington Park, New Jersey. After working at the Harrington Park premises until about July 1961, O'Connor disappeared and was not heard from again.

"In the meantime, in November or December 1960, Blum became seriously ill and was taken to the Hackensack Hospital in February of 1961 with a condition diagnosed as a coronary thrombosis. He was in the hospital for a little over three weeks and was thereafter completely limited in his ability to ambulate or to engage in any kind of work. He states that he is still under intense medication; takes prescribed medication for a condition now diagnosed as angina pectoris as well as high blood pressure.

"Blum further asserted that he now has intentions of resuming the operation of the tavern at these premises and, although he would be unable personally to perform the day-to-day duties required, will be able to supervise its operation. He asked for the opportunity to engage a manager within the next thirty to sixty days so that operation can commence.

"On cross examination Blum admitted that the premises had never been actually opened and operated as a tavern because of the fact that the alterations had never been completed. He explained that the reason he had not initially replaced O'Connor was that he was confident that O'Connor would return from Harrington Park. Blum's extended illness interfered with his intention to make such change. Blum insists that, if given the opportunity, he can satisfactorily supervise the operation and hire a competent person to undertake the active management of these premises.

"The Board called as a witness in its behalf Lieutenant Thomas Dwyer of the local Police Department, who is assigned as an inspector for respondent. He verified the fact that these premises had not been operated since 1960; that he had made a number of visits and found the premises closed.

"One of the contentions of appellant is that no notice was given to appellant of the Board's action in denying the renewal of the license. In this connection it should be pointed out that such notice is not required. A local issuing authority is not required to conduct any hearing as a requisite to a denial of a new or renewed license in the absence of any objection to the same. Nordco, Inc. v. Newark, Bulletin 1148, Item 2. Rule 8 of State Regulation No.2 provides:

'No hearing need be held if no such objections shall be lodged (but this in nowise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant.'

"There is evidence that respondent has made such investigation and was satisfied on the basis of the same that appellant was not entitled to a renewal. It is clear that, since appellant was not entitled to a hearing, it has no valid complaint because it was not permitted to present testimony below. However, as was noted hereinabove, this was a trial de novo, and the question is not whether the evidence before the local Board was technically sufficient but whether, under all the evidence now before me, the license should be renewed. Ritter v. North Bergen, Bulletin 546, Item 2.

"The dispositive and crucial question is whether the failure of appellant to use the license and operate these premises for the privilege granted for a period of three years is sufficient to justify the disapproval of the application for renewal of the license.

"Mere non-user will not of itself void a license. See Re Tarantola, Bulletin 570, Item 5. However, a municipal issuing authority should not be required to renew a license under which no business has been conducted for a protracted period and where convincing evidence in explanation and justification of non-user is not adduced. Hall v. Mount Ephraim, Bulletin 786, Item 2. No one is entitled to renewal of a license as a matter of right. Zicherman v. Driscoll, 133 N.J.L. 586. See also Re Smith, Bulletin 784, Item 5, wherein (the fact being a six year non-use of the license) the then Commissioner said:

'...This practice of non-user over a substantial length of time does violence to the paramount principle underlying the issuance of licenses, to wit, that licenses shall be issued only in the interest of the public necessity and convenience.'

Cf. Prickett v. Southampton, Bulletin 1484, Item 2.

"However, the facts and circumstances in the instant case require sympathetic consideration. Blum, the president and for all purposes sole owner of the corporate appellant (the other two stockholders are merely qualifying holders), was prevented from operating under this license due to his unfortunate and protracted illness. My impression, gained from the testimony, is that Blum has had financial reversed and this would be his primary source of income.

"A similar situation, involving the same corporation, was presented for consideration by this Division in Lethe, Inc. v. Harrington Park, Bulletin 1497, Item 1. In that case the Director compared the circumstances therein with the facts in Prickett v. Southampton, supra, and pointed out that in the Prickett case the period of non-user was more than six years and the evidence therein showed clearly that the last application for renewal was made not with any intention of operating under the license but

solely to keep the license alive so as to permit person-to-person and place-to-place transfer. He also distinguished the case from Hall v. Mount Ephraim, supra, wherein there was no convincing evidence adduced in explanation and justification of the non-user, and the evidence therein indicated that there was no intention of operating at the premises sought to be licensed. He also distinguished that case from Re Smith, supra, in that in the Smith case there was a complete lack of bona fides with six years of non-use and with the intention to sell the license and no intention to operate under it. In the matter sub judice, the period of non-use is three years, and the application appears to be made in good faith.

"I have observed the demeanor and evaluated the testimony of Blum on the witness stand and am satisfied that his heart attack and related physical disability were such that he could not operate under the license or alter the premises during the past three years. Doubt has been generated as to whether his physical condition will permit him to undertake the supervision which he proposes at these premises. However, a compassionate benefit of the doubt should be given to the appeallant in view of all the circumstances.

"I, therefore, recommend that the respondent's denial of the appellant's application for license renewal should be reversed upon the following qualification and special condition: that there be a completion of alterations and renovations within a period of sixty days (cf. Saint Paul and Saint Philips Episcopal Church and Lowenstein v. Newark and Cilio, Bulletin 993, Item 1) and the license to be issued by the Board only if the said alterations and renovations are completed for effective commencement of operations within such time."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument thereto were filed with me by the attorney for the respondent.

After carefully considering the testimony, exhibits, Hearer's Report, exceptions thereto and written argument filed on behalf of the respondent, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 3d day of October, 1963,

ORDERED that respondent's denial of appellant's application for license renewal be and the same is hereby reversed upon the following special conditions: (1) that there be a completion of alterations and renovations within a period of sixty days from the date hereof, (2) that the license be issued by the respondent only if the said alterations and renovations are completed within such time so as to permit operation of the licensed business upon issuance of such license, and (3) that the licensee thereafter actively engage in and continue operation of the licensed business in good faith after such issuance.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. APPELLATE DECISIONS - BAKER v. NORTH ARLINGTON AND MANCUSO RIVER ROAD CORPORATION.

FRED BAKER, et als., Appellants, v. MAYOR AND COUNCIL OF THE BOROUGH OF NORTH ARLINGTON, and MANCUSO RIVER ROAD CORPORATION, Respondents.	)	ON APPEAL ORDER

Clapp & Eisenberg, Esqs., by Howard T. Rosen, Esq., Attorneys for Appellants.
Milton Schleider, Esq., Attorney for Respondent Mayor and Council.
Barry S. Tolstoi, Esq., Attorney for Respondent Mancuso River Road Corporation.

BY THE ACTING DIRECTOR:

Appellants appeal from grant by respondent Mayor and Council on August 6, 1963, of application for transfer of a plenary retail consumption license from Red Top, Inc., for premises 288 River Road, to respondent Mancuso River Road Corporation, for premises 359 River Road, North Arlington.

Prior to the hearing of the appeal, by letter of October 2, 1963, the appellants' attorneys advised me that the appeal was withdrawn. No reason appearing to the contrary, it is, on this 3rd day of October 1963,

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

EMERSON A. TSCHUPP
ACTING DIRECTOR

4. SPECIAL PERMITS - FEES FOR EMERGENCY TRANSPORTATION PERMITS INCREASED EFFECTIVE OCTOBER 30, 1963.

NOTICE REGARDING INCREASE IN FEES FOR EMERGENCY TRANSPORTATION PERMITS AUTHORIZING TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VEHICLES NOT BEARING CURRENT TRANSIT INSIGNIA OR FOR WHICH LIMITED TRANSPORTATION CERTIFICATES ARE NOT IN EFFECT.

As distinguished from regular transit insignia, and limited transportation certificates (permitting only transportation from New Jersey to a point outside the State), emergency transportation permits allow licensees the temporary use of a vehicle under emergent conditions or to replace temporarily disabled vehicles for a designated period of time. Such permits are issued by way of accommodation, and are not subject to requirements as to regular transit insignia. For example, under an emergency transportation permit:

1. The vehicle for which the Permit is issued need not bear commercial plates, nor must a commercial vehicle fee be paid.

2. When the vehicle is not owned by the applicant no lease agreement is required.

3. No insignia need be affixed to the vehicle. The Permit may be carried <u>inside</u> the vehicle.

4. The permit does not restrict the use of the vehicle only to the operation of the licensed business.

As distinguished from emergency transportation permits issued to licensees, such permits are issued, also, to non-licensees to allow a specific pick-up or delivery of alcoholic beverages in New Jersey. For the latter permit the fee is $10.00, but the fee for an emergency transportation permit issued to licensees has long been $5.00 With particular thought to the special accommodation feature and the convenience and numerous advantages given thereunder, and the increased administrative costs (since the $5.00 fee was established many years ago) incident to the processing of these Permits, I determined, in all reasonableness and fairness, to increase the fee for emergency transportation permits to licensees from $5.00 to $10.00, such fee being chargeable for such Permits issued on and after October 30, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

Dated: November 7, 1963

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - HINDERING INVESTIGATION - PRIOR SIMILAR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
MICHAEL PERRY, INC. t/a PERRY'S PARAMOUNT GRILL 125 Park Avenue East Rutherford, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-19, issued by the Mayor and Council of the Borough of East Rutherford.	)	

Chandless, Weller & Kramer, Esqs., by Ralph W. Chandless, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charges:

'1. On December 15, 1962 and prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Margaret ---, age 18, Barbara ---, age 19 and Kenneth ---, age 19 and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

'2. On December 15, 1962, while an Inspector and Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35.'

"Margaret --- and Barbara --- testified that on December 14, 1962, they were 18 and 19 years of age, respectively, their dates of birth being December 29, 1943 and August 20, 1943.

"Agent S testified that at 11:05 p.m. on December 14, 1962, he entered the licensee's premises, which consists of a main barroom containing a large bar and also a rear room with numerous tables, chairs and a bar; that of the 300 males and females in the premises, approximately 175 to 200 were in the main barroom and that 90% of them appeared to him to be minors; that at about 12:30 a.m. on December 15, 1962, while

he and two other agents were seated at a table in the rear room, he observed seated at a table about fifteen feet away Margaret and Barbara and three males; that in front of each was an empty 12-ounce beer bottle and a glass; that at about 12:45 a.m. the waiter (subsequently identified as Anthony DiSalvo) picked up the empty bottles, spoke to one of the males and went to the bar in the rear room; that DiSalvo returned to the table in question with five bottles of beer, opened them and placed a bottle on the table in front of each person, including Margaret and Barbara, and received payment therefor from one of the males; that each of the three males and the two females poured beer into their respective glasses and each consumed a portion thereof; that at about 1:15 a.m. on December 15, 1962, he (Agent S) approached the table at which the two girls and three youths were seated, identified himself as an ABC agent and, after ascertaining from Margaret and Barbara that they were minors, seized their partially filled glasses of beer; that as he was speaking to Margaret and Barbara, Michael Perry (president and 50% stockholder of the corporate licensee) and Albert Jackson (vice-president and 50% stockholder of the corporate licensee) came to the table; that Jackson tapped him (Agent S) on the left arm and said, 'I want to talk to you about this incident' and when he was asked who he was, Jackson said, 'I'm a very good friend of Mr. Perry', that Perry operates a nice place and, although minors come into the establishment, they are checked and are not served; that when asked in what capacity he was connected with the business, Jackson said, 'I'm just the bookkeeper'; that subsequently, while the investigation was continued at police headquarters, Jackson said to Margaret and Barbara, 'Now, don't sign anything and don't you give them a statement and don't let them frighten you when they talk to you. Your words are as good as their words.'

"Agents D and O, who were present at the time in question, corroborated the testimony of Agent S that they saw both Margaret and Barbara consume beer and heard the remarks of Jackson addressed to Agent S, as testified to by the latter.

"Michael Perry testified that he recalled the three agents being in the premises on December 14, 1962, and when Agent S picked up the two glasses of beer from the table where Margaret and Barbara sat, he (Perry) stated to the agent, 'You took somebody else's beer'; that neither of the girls had anything in front of them but that 'there was about three bottles of beer on the table' belonging to the three males.

"Albert Jackson testified that he noticed Agent S with a couple of glasses and that a boy was demanding return of his beer for which he contended he had paid; that he saw Margaret and Barbara leave the premises and that they were in a room at the police station when he arrived; that he entered the said room and asked Agent S 'If I were a lawyer could I listen to what was going on. He said, "No" so I left'; that later when he obtained the license application which had been requested by the agents, he again entered the room to give it to the agents. Jackson admitted that he told the agents he was a bookkeeper but denied being asked if he had any official connection with the corporate licensee. He also denied telling the two girls not to give a statement.

"Gladys Gasser, employed as a waitress by the licensee, testified that she noticed Margaret and Barbara seated at a table with three males and saw Agent S pick up two glasses from the table; that there were 'three bottles of Miller's and three glasses and one empty soda glass in the center of the table.' She testified that she had not seen DiSalvo serve the drinks to those seated at the table.

"Anthony DiSalvo testified that on the occasion in question he served three bottles of beer to the male patrons seated at the table but at no time brought anything to Margaret and Barbara.

"Francis LaGreca, a police captain of East Rutherford, called as a character witness, testified that he knows both Perry and Jackson and both have a good personal reputation and operate a respectable place of business.

"Having carefully considered the testimony given by all of the witnesses at the within hearing, I am satisfied that the named minors were served and consumed alcoholic beverages on the licensed premises. It is hard to believe the testimony of Anthony DiSalvo, the waiter, that the two minor girls, although in the establishment for quite a long time, sat at the table and had nothing to drink. I find as a fact that Margaret and Barbara were each served a bottle of beer by DiSalvo on December 15, 1962, and each actually consumed a portion of the beer, as related by the agents.

"In so far as Jackson is concerned, I am satisifed that the agents have also related a true account of his withholding the fact that he is an officer and stockholder of the corporate licensee and believe that on several occasions he interfered with the investigation by counselling Margaret and Barbara and others to refrain from cooperating with the agents while they were endeavoring to obtain truthful information with reference to the alleged violation. There is no question that Jackson hindered or at least failed to facilitate the investigation.

"There being no proof offered by the Division that alcoholic beverages were sold to or consumed by Kenneth ---, an alleged minor, it is recommended that so much of the charge as relates to him be dismissed.

"Under the circumstances appearing herein, I conclude that the Division has established the truth of the charges except as to alleged sale to minor Kenneth --- by a fair preponderance of the believable evidence and thus I recommend that the licensee be adjudged guilty on both charges.

"Although the licensee, as a corporate entity, has no prior adjudicated record, it appears that, when the license was held in the individual name of Michael Perry (now president and holder of 50% of the stock of the corporate licensee), it was suspended by the Director for five days effective February 9, 1953, for sale of alcoholic beverages to minors on January 9, 1953. Re Perry, Bulletin 957, Item 7.

"Under the circumstances appearing herein, it is therefore recommended that the license be suspended on the first charge for fifteen days (Re Colonel Cooper, Inc., Bulletin 1491, Item 8), on the second charge for ten days

(Re Pregnor, Bulletin 1517, Item 8) and for an additional five days because of the past similar violation committed by Michael Perry more than five but less than ten years prior to the instant violation (Re McClain and McCann, Bulletin 1427, Item 6) when he, as an individual, was the holder of the license (cf. Re Elcor, Inc., Bulletin 1515, Item 1), thus making a total suspension of thirty days."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the licensee's attorneys pursuant to the provisions of Rule 6 of State Regulation No. 16. Answering argument to the exceptions were filed by the Division's attorney. It should be noted that the exceptions were confined solely to Charge 2 in these proceedings and no exceptions to the Hearer's Report were filed with respect to Charge 1.

I have given careful consideration to the evidence and exhibits herein, the Hearer's Report, the exceptions and written argument of counsel for the licensee in support thereof, and written argument of counsel for the Division in answer thereto. I concur in the conclusions of the Hearer and adopt his recommendations. Hence, I find the licensee guilty as charged.

Accordingly, it is, on this 2d day of October, 1963,

ORDERED that Plenary Retail Consumption License C-19, issued by the Mayor and Council of the Borough of East Rutherford to Michael Perry, Inc., t/a Perry's Paramount Grill, for premises 125 Park Avenue, East Rutherford, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Wednesday, October 9, 1963, and terminating at 2:00 a.m. Friday, November 8, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ORDER DEFERRING EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against	)	
MICHAEL PERRY, INC. t/a PERRY'S PARAMOUNT GRILL 125 Park Avenue East Rutherford, N. J.	)	AMENDED ORDER
Holder of Plenary Retail Consumption License C-19, issued by the Mayor and Council of the Borough of East Rutherford.	)	

Chandless, Weller & Kramer, Esqs., by Ralph W. Chandless, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

On October 2, 1963, I entered an order suspending the license herein for thirty days commencing October 9, 1963. Re Michael Perry, Inc., Bulletin 1537, Item 5.

Licensee has filed a petition requesting that the imposition of the suspension be deferred for thirty days and, for good cause appearing, I have granted such petition.

Accordingly, it is, on this 7th day of October, 1963,

ORDERED that the previous order of suspension herein is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-19, issued by the Mayor and Council of the Borough of East Rutherford to Michael Perry, Inc., t/a Perry's Paramount Grill, for premises 125 Park Avenue, East Rutherford, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Wednesday, November 6, 1963, and terminating at 2:00 a.m. Friday, December 6, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

7. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto.Susp.#233 In the Matter of a Petition to Lift the Automatic Suspension of Plenary Retail Distribution License D-36, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to MADISON NARROW FABRICS (A CORP.) t/a LEXINGTON LIQUOR SHOP 432-A Lexington Avenue Clifton, N. J.	ON PETITION ORDER

Petitioner, by Louis DeRoon, Jr., President, Pro se.

BY THE ACTING DIRECTOR:

It appears from the petition filed herein and the records of this Division that on September 30, 1963, Louis DeRoon, Jr., president, secretary and treasurer of the licensee-petitioner, was fined $100 and $5 costs in the Clifton Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on September 21, 1963, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's, license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after such disciplinary proceedings have been concluded. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Szczech, Bulletin 1525, Item 7.

Accordingly, it is, on this 8th day of October, 1963,

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

EMERSON A. TSCHUPP
ACTING DIRECTOR

8. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
J. BOYLE, INC. t/a PARK VIEW TAVERN 17 Davis Avenue Kearny, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-25, issued by the Mayor and Council of the Town of Kearny.	)	

Joseph F. McCarthy, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 21, 1963, it permitted the acceptance of horse race bets on the licensed premises, in violation of Rule 7 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 Deutsch, Bulletin 1512, Item 8.

Accordingly, it is, on this 8th day of October, 1963,

ORDERED that Plenary Retail Consumption License C-25, issued by the Mayor and Council of the Town of Kearny to J. Boyle, Inc., t/a Park View Tavern, for premises 17 Davis Avenue, Kearny, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, October 15, 1963, and terminating at 2:00 a.m. Monday, November 4, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Alexander F. Maccia, Jr.
t/a Garden State Beer Depot
339 Ocean Avenue
Jersey City, N. J.

Application filed November 14, 1963 for place-to-place transfer of State Beverage Distributor's License SBD-3 from 12 Ludlow Street, Jersey City, N. J.

Emerson A. Tschupp
Acting Director