

BULLETIN 1195

NOVEMBER 6, 1957.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - VISIDOR CORP. v. CLIFFSIDE PARK.
2. DISCIPLINARY PROCEEDINGS (Madison Township) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - HINDERING - SALES TO MINORS - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Wall Township) - AGGRAVATED SALE TO MINORS - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Rumson) - SALES TO MINORS - PRIOR RECORD - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS.
5. DISCIPLINARY PROCEEDINGS (Paterson) - SALE DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATION NO. 38 - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Paterson) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Passaic) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Highland Park) - SALES TO MINORS - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Jersey City) - CONDUCTING BUSINESS AND PERMITTING PERSONS OTHER THAN THE LICENSEE AND EMPLOYEES ON LICENSED PREMISES DURING PROHIBITED HOURS AND FAILURE TO KEEP LICENSED PREMISES CLOSED AND FAILURE TO KEEP LICENSED PREMISES OPEN TO PUBLIC VIEW, IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
10. 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 1195

NOVEMBER 6, 1957.

1. APPELLATE DECISIONS - VISIDOR CORP. v. CLIFFSIDE PARK.

VISIDOR CORPORATION, trading as)
De Carlo's Pizzeria,)

Appellant,)

-vs-)

MAYOR AND BOROUGH COUNCIL OF)
THE BOROUGH OF CLIFFSIDE PARK,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Joseph F. Kearney, Esq., Attorney for Appellant.
Edward A. Smarak, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action whereby on June 24, 1957 it denied appellant's application for transfer of Plenary Retail Consumption License C-3 from 201 Palisade Avenue to 783 Palisade Avenue, Cliffside Park.

"The record herein discloses that Fred DeCarlo, who held License C-3 for the 1955-56 license year at premises 201 Palisade Avenue, applied for a transfer of said license to premises in a building owned by his brother, Dominick DeCarlo, at 783 Palisade Avenue. On June 11, 1956 respondent, by unanimous vote, denied the application and Fred DeCarlo appealed. Pending determination of his appeal, Fred DeCarlo obtained a renewal of his license for the 1956-57 license year for 201 Palisade Avenue. On November 13, 1956 the Director affirmed respondent's action in denying the application for transfer (Re DeCarlo v. Cliffside Park, Bulletin 1144, Item 3) and on May 13, 1957 said license was transferred to appellant herein. On May 31, 1957 appellant filed an application for transfer of its license to 783 Palisade Avenue and on June 24, 1957 respondent, by a 4 to 3 vote, denied the application. The appeal herein is taken from respondent's action.

"Appellant's petition of appeal alleges that respondent's action was erroneous and sets forth the following grounds for reversal thereof:

1. Its action was arbitrary and constituted an abuse of discretion.
2. It ignored the pertinent statutes and regulations in denial of the transfer.
3. It failed to notify appellant of the time for hearing in the matter.
4. It acted upon information improperly presented.
5. The reasons for its action have no basis in fact.
6. It gave undue consideration to a written protest filed against the transfer in question.

"Respondent denies appellant's allegations and sets forth the following reasons for its action:

1. The appellants are in effect one and the same as the appellant in the case of Fred DeCarlo, trading Morre's Tavern v. Mayor and Borough Council of the Borough of Cliffside Park, File #2464, Division of Alcoholic Beverage Control.
2. The appellants in their application set forth no grounds to indicate that the conditions existing on the prior application for transfer were different from those now existing.
3. There has been no physical change in the area or location since the original application was denied and affirmed on appeal to the Division of Alcoholic Beverage Control.
4. There are sufficient licensed establishments in the area of 783 Palisade Avenue.
5. There are not sufficient parking facilities for another licensed premises in the area.
6. That the establishment of another licensed premises in the area would increase traffic congestion endangering the safety and welfare of the residents at the area.
7. That the public need and convenience would not be served by the transfer of the license to 783 Palisade Avenue.

"Appellant's allegations and respondent's answer thereto are substantially the same as those set forth in the prior appeal by Fred DeCarlo. Re DeCarlo v. Cliffside Park, supra.

"At the hearing herein, a statement of admissions by respondent in lieu of answer to interrogatories served upon it was introduced in evidence by consent. The admission upon which appellant apparently relies for reversal of respondent's action is that no hearing was held on its application. Respondent stated in its statement of admission that, 'About a year ago De Carlo made an application for the transfer of the same license to the same premises. The Borough Council made a complete investigation and denied the application on the grounds set forth in the resolution adopted by the Council at that time. De Carlo appealed that denial to the Division of Alcoholic Beverage Control and the Borough was sustained. On denying the present application, the Borough made no further investigation; conducted no hearing; the applicant did not apply for a hearing and the Borough denied the application on the same grounds on which it had denied the previous application.'

"A plot plan showing the area adjacent to 783 Palisade Avenue was introduced in evidence. It shows two taverns in the same block in which the proposed site is located and two taverns in the next block, all premises being on the same side of the street.

"Dominick DeCarlo, appellant's only witness, testified that he is secretary and treasurer of appellant-corporation and lives at 783 Palisade Avenue; that he invested \$36,000.00 in his property which consists of three stores above which are two three-room apartments; that his property is 75' in width and 100' in depth and that across the street from his property is the

Palisades Amusement Park covering three or four blocks; that the proposed site of transfer is a store 18' x 50'; that the issuing authority made no inspection of the proposed site of transfer; that appellant had no notice of any hearing on its application for transfer; that no parking is permitted in the area of the proposed site between the months of April and September; that the nearest licensed premises to the proposed site of transfer are at 785 Palisade Avenue to the north and 771 Palisade Avenue to the south; that he attended the Council meeting when the vote was taken on appellant's application and was not interviewed or consulted by respondent; that Palisade Avenue is a main thoroughfare; that 39 objectors petitioned against the transfer and 21 petitioned in favor of it; and that the proposed site of transfer had been licensed premises for 14 or 15 years prior to 1955.

"No witnesses were called by respondent. Its attorney stated that it rested its case 'on the record of the prior rejection and allegations set forth in the answer to the petition of appeal'.

"In his report dealing with the appeal by Fred DeCarlo, the Hearer stated that, 'Mayor Francis J. Murphy testified that he formerly lived in the neighborhood where the proposed premises are situated and that in his opinion "there are sufficient licensed establishments in the area"; that although he did not vote in the matter he was opposed to "a fifth tavern" in the area because "another tavern going in there definitely would cause greater congestion there, and also did not see any reason of what value or convenience it would serve the people"'.

"The record herein is devoid of any evidence that the character of the neighborhood has changed since Fred DeCarlo's appeal and the facts presented in the case sub judice are substantially the same as those presented on the prior appeal.

"With respect to appellant's contention that no hearing was held on its application, Rule 10 of State Regulation No. 6 is hereinbelow set forth:

'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 grant the transfer applied for.' (Emphasis supplied)

"The aforesaid rule is intended to afford objectors an opportunity to be heard before an application to transfer is granted. If objections to the granting of a transfer are filed and the issuing authority should grant the application without a hearing, such action on appeal would be reversed or remanded. If, however, objections are filed and the issuing authority has determined to deny an application for transfer, it may do so on its own motion without conducting a hearing. Since as appears, a thorough investigation had previously been made by respondent when Fred DeCarlo filed his application for transfer of the same license to the same premises as that to which appellant seeks to transfer the license, no further investigation is required. As pointed out in Re DeCarlo v. Cliffside Park, supra: 'A transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; Van Schoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251,

Item 4; Semento v. West Milford, Bulletin 253, Item 2; Masarik et al. v. Milltown, Bulletin 283, Item 10; Biscamp et al. v. Teaneck, Bulletin 821, Item 8. See also Biscamp v. Teaneck, 5 N. J. Super. 172 (App. Div. 1949).

"The question of whether or not a place-to-place transfer is to be granted is in the first instance within the sound discretion of the Council and on appeal to this Division the appellant has the burden of showing that the Council abused its discretion. Rule 6 of State Regulation No. 15; Bock Tavern Inc. v. Newark, Bulletin 952, Item 1; Segal et als. v. Clifton et al., Bulletin 732, Item 5; Christian v. Passaic, Bulletin 928, Item 2. Moreover, the number of licensed premises to be permitted in any particular area has been held to be a matter confided to the sound discretion of the issuing authority. Longyear v. Jefferson, Bulletin 972, Item 4; Di Gioacchino v. Atlantic City, Bulletin 1030, Item 3.

"With respect to appellant's contention that his large investment in the business is a factor to be considered on this appeal, it has long been established that when there is a conflict between private interests and the interests of the community at large, the latter must prevail. Lingelbach v. North Caldwell, Bulletin 180, Item 8; Moraitis v. Lower Penns Neck, Bulletin 839, Item 11.

"After carefully considering all of the evidence adduced herein and more especially the fact that there are at present four plenary retail consumption licensed establishments located near the proposed premises and that the transfer of the license in question would move it a considerable distance (1 1/4 miles) from its present location, I find that the action of respondent in denying appellant's application was neither arbitrary nor an abuse of discretion and I recommend that its action be affirmed."

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

Having carefully considered the evidence herein, I agree with the conclusions and recommendation set forth in the Hearer's Report and adopt said conclusions as my conclusions herein. Hence I shall affirm respondent's action.

Accordingly, it is, on this 9th day of October, 1957,

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

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - HINDERING - SALES TO MINORS - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHARLES SEDDON)
T/a MELODY BAR)
795 Summerfield Avenue)
Madison Township)
PO Laurence Harbor, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-21, issued by the Township Committee of the Township of Madison.)
-----)

John A. Kelly, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) he sold alcoholic beverages during prohibited hours, in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38; (2) he, by his agent, hindered ABC agents in their investigation, in violation of R. S. 33:1-35; and (3) he sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by said minors in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that ABC agents, acting upon information transmitted to this Division by the Madison Township Police Department, obtained signed, sworn statements from Richard --- (age 18) and Laird --- (age 19) wherein they state that on April 17, 1957, they visited defendant's licensed premises wherein they consumed several glasses of beer served to them by a bartender who made no inquiry as to their ages. They stated further that at the same time they purchased, to take out, three quart-bottles of beer from the same bartender. Subsequently they directed the agents to the licensed premises and pointed it out as the place where they had purchased and consumed alcoholic beverages. They also identified the bartender who served them. The file further discloses that shortly before 11:00 p.m. Saturday, June 22, 1957, ABC agents who were in defendant's licensed premises observed Harry Novotny (the bartender) therein give a package to a female who took it from the premises. About the same time a male patron entered and asked Harry for "two quarts to go and a glass of beer." Harry served the glass of beer and went into the back room. He returned carrying a package which he gave to the patron and accepted \$1.00 in payment. The patron left with his purchase and was followed by one of the agents who apprehended him and seized the package which contained two quart-bottles of beer. When the agent who had apprehended the male patron returned with him and his purchase, both agents identified themselves to Harry. Thereafter some of the patrons indulged in obscene language toward the agents without protest from Harry. Harry refused to call the licensee or to give the agents the cash register tape on which the aforesaid sales were recorded, saying "See the owner, I won't give you anything."

Defendant has no prior adjudicated record. Counsel for defendant has submitted a letter setting forth alleged mitigating

circumstances. He states that defendant is aged and infirm and was not present when the violations occurred. Some alleged mitigating circumstances concerning the violations are not substantiated by the agents' reports. In view of all the facts, the minimum penalty will be imposed herein. I shall suspend defendant's license for a period of fifteen days on Charge 1 (Re Dempsey Corp., Bulletin 1180, Item 4); ten days on Charge 2 (Re Lorenzo, Bulletin 1132, Item 4) and fifteen days on Charge 3 (Re Park Plaza Lounge, Inc., Bulletin 1172, Item 8), making a total suspension of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 30th day of September, 1957,

ORDERED that Plenary Retail Consumption License C-21, issued by the Township Committee of the Township of Madison to Charles Seddon, t/a Melody Bar, for premises 795 Summerfield Avenue, Madison Township, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. October 9, 1957, and terminating at 2:00 a.m. November 13, 1957.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - AGGRAVATED SALE TO MINORS -
LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SOLLY & LENA GUARIGLIA)
T/a BUNNY HOP BAR AND GRILL)
500 Ft. South of 18th Ave. on Hwy. 35)
Wall Township)
P. O. Box 701, Belmar, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-6, issued by the Township Committee of Wall Township.)

Anthony P. Bianco, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to charges alleging that (1) on the night of July 27th and during the early morning hours of July 28, 1957 they sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to five minors and allowed, permitted and suffered said minors to consume such beverages in and upon their licensed premises; (2) that on Sunday, August 25, 1957 they sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to two minors and allowed, permitted and suffered said minors to consume such beverages in and upon their licensed premises, both in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that on Saturday, July 27, 1957 at about 11:30 p.m., two ABC agents entered the defendants' licensed premises and observed the same to be occupied by a bartender, a waitress and about 40 to 50 patrons (male and female), some of whom were seated at the bar and others at tables. At about 11:45 p.m. both licensees went behind the bar to assist

the bartender in tending bar. The agents noticed a group of youthful-looking males and females sitting at a table and drinking what appeared to be alcoholic beverages. At 12:45 a.m. the agents saw Alberta Leeper, the waitress, serve a round of beer to the aforesaid group which included Richard A. --- (age 18), Robert D. --- (age 19) and Ann --- (age 20). At about this time the agents observed Ronald E. --- (age 19) and John A. --- (age 20) accompanied by two male adults, enter the premises and take seats at a table where they were each served a glass of beer by the same waitress. At about 1:00 a.m. the agents saw Richard A. go to the bar, order two glasses of beer from George Horning, the bartender, and return with same to his table. Shortly thereafter, the bartender served a mixed drink containing an alcoholic beverage to Robert D.

At 1:15 a.m. the agents identified themselves to the aforesaid five minors, the bartender, the waitress and the licensees.

In oral statements, Ronald E. --- gave his age as 19, John A. --- gave his age as 20 and both admitted being served alcoholic beverages by Alberta Leeper, the waitress. In sworn written statements dated July 28, 1957, Richard A. --- stated he was 18 years old, Robert D. --- stated he was 19 years of age and Ann --- stated she was 20 years of age. All three admitted they were served and consumed alcoholic beverages on the licensed premises; that no one inquired of either Richard A. or Ann about their ages; that the waitress asked Robert D. for identification and he produced a false automobile driver's license which indicated he was over 21 years of age.

The bartender and the waitress orally admitted serving alcoholic beverages to the minors as hereinabove set forth.

By way of mitigation, the attorney for the licensees has submitted a statement which I have read carefully together with the file in the case. The licensees contend, among other matters, that proof of age was asked of certain of the minors before they were served and that two of them produced motor vehicle licenses indicating they were adults. I find that one of the minors did produce a false driver's license showing him to be over 21 years of age.

I might point out that one of the essential requisites necessary to establish a defense to a sale 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.

The file further discloses that on August 25, 1957 at about 1:45 a.m., three ABC agents (other than those aforementioned) entered the defendants' licensed premises and shortly after taking seats at the bar observed Frances --- (age 19) and Thomas --- (age 19) each consume a glass of beer while sitting at a table with five young companions. At about 2:13 a.m., the agents saw Alberta Leeper, the aforementioned waitress, take an order for drinks from this group; approach the service section of the bar and ask the bartender for five

mixed drinks of alcoholic beverages and a glass of beer. The waitress then returned to the table with said drinks and served Frances and Thomas each with one of the mixed drinks. The agents, after observing both minors consume part of their aforesaid beverages, identified themselves to the group and questioned the two minors who stated they were 19 years of age. Thereafter the agents informed the licensees of the violation and questioned the waitress who admitted serving the mixed drinks but denied the minors consumed them.

The defendants have no prior adjudicated record. The minimum penalty for sale to an 18-year-old (or 19-year-old) minor is fifteen days, Re Angelotta, Bulletin 1163, Item 12, to which ordinarily ten days would be added because of the number of minors involved. Cf. Lucky's Tavern, Inc., Bulletin 1159, Item 4. In view of the circumstances that exist in the instant case, I shall suspend the defendants' license for twenty days on Charge 1 and for an additional fifteen days on Charge 2 (Re Brudzinski, Bulletin 1164, Item 11), making a total suspension of thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 1st day of October, 1957,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of Wall Township to Solly & Lena Guariglia, t/a Bunny Hop Bar & Grill, for premises 500 Ft. South of 18th Ave. on Hwy. 35, Wall Township, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. October 8, 1957 and terminating at 2:00 a.m. November 7, 1957.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against)

FRANK SARAPPO, INC.)
T/a PARK BAR & GRILL)
19-23 West River Road)
Rumson, N. J.,)

CONCLUSIONS
AND ORDER

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

A. Henry Giordano, Esq., Attorney for Defendant-licensee.
William F. Wood, 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 on Thursday evening, July 11, 1957, it sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

"The undisputed fact adduced at the hearing shows that on the date alleged, Frank Sarappo (president of the corporate-licensee herein) sold a case of Ballantine beer and six cans of

Rheingold beer to Frank --- without requiring written proof of the purchaser's age.

"Sarappo testified that Frank appeared to him to be of age; that he asked him how old he was; that Frank informed him that he was 21 years of age; that he then requested some identification and when shown a printed card on which he observed the numeral 21, he made the sale.

"Frank --- testified that on the date alleged he was 19 years of age; that he is 6'1" tall and weighs 208 lbs.; that Sarappo sold the beer to him without inquiring as to his age or asking him to produce any written proof thereof.

"Having observed the minor's physical characteristics and mannerisms, I am of the opinion that a reasonably prudent person might conclude from Frank's appearance that he was 21 years of age or over. However, since Sarappo deemed it expedient to testify as to what he did by way of verification, it must be inferred that he was doubtful that the purchaser was of legal age. Giving full credence to his testimony, what he did under the circumstances, was not enough.

"R. S. 33:1-77 provides that 'Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over.'

"The defense outlined in the aforesaid statute has been ruled to be effective in disciplinary proceedings as well as in criminal proceedings. Cf. Caruso v. Jersey City, Bulletin 694, Item 1.

"It is apparent from Sarappo's testimony that defendant failed to comply with all the aforesaid statutory provisions. I am constrained to find defendant guilty as charged.

"Defendant has a prior adjudicated record. Effective February 16, 1954 its license was suspended for 20 days by the Director for a fraud and front violation. Re Frank Sarappo, Inc., Bulletin 1004, Item 4. The penalty usually imposed for selling a quantity of alcoholic beverages to a 19-year-old minor, when the licensee has a prior dissimilar violation which occurred within a 5-year period, is twenty-five days. Re Seidel, Bulletin 1143, Item 2. In the instant case there are mitigating circumstances. I, therefore, recommend that defendant's license be suspended for a period of ten days because of the violation set forth herein (Re Angelotta, Bulletin 1163, Item 12) and for an additional period of five days for the prior record, making a total suspension of fifteen days."

After the Hearer submitted his report, the Division's attorney filed written exceptions and argument thereto, pursuant to Rule 6 of State Regulation No. 16, wherein it is alleged that the Hearer's recommended penalty is inadequate. Defendant's attorney did not file an answering argument.

Having carefully reviewed the record herein, the Hearer's Report and the exceptions and argument filed, I am nowise in accord with the theory advanced by the Hearer that physical appearance alone, indicating greater age, is a sufficiently mitigating circumstance to warrant deviation from the usual penalty heretofore imposed in unaggravated cases involving a 19-year-old minor. However, considering the physical appearance of the minor involved herein and the fact that he was within eight days of his twentieth birthday on the date alleged, I am satisfied that the penalty ordinarily imposed for the sale of alcoholic beverages to a 20-year-old minor is, in this particular case, adequate. Under the circumstances, I shall adopt the Hearer's recommendation that defendant's license be suspended for a period of fifteen days.

Accordingly, it is, on this 30th day of September, 1957,

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Rumson to Frank Sarappo, Inc., t/a Park Bar & Grill, for premises 19-23 West River Road, Rumson, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. October 7, 1957 and terminating at 2:00 a.m. October 22, 1957.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATION NO. 38 - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
)	
CATHERINE FORTUNATO)	
T/a KAY'S RENDEZVOUS)	CONCLUSIONS
217 - 21st Avenue)	AND ORDER
Paterson 3, N. J.,)	
Holder of Plenary Retail Consumption License C-197, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)	

Catherine Fortunato, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that (1) she sold alcoholic beverages during prohibited hours in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38 and (2) allowed, permitted and suffered gambling (card games for money) in and upon her licensed premises, in violation of Rule 7 of State Regulation No. 20.

The file herein discloses that ABC agents were at defendant's licensed premises on Friday, August 9, 1957 from about 10:45 p.m. to about 12:35 the next morning; on Thursday, August 15, 1957 from about 11:40 p.m. to about 12:55 the next morning and on Sunday, August 25, 1957 between 3:30 p.m. and 6:00 p.m. On their first visit the agents observed the licensee, acting as barmaid, with the assistance of Daniel Fortunato,

her husband, make three sales of alcoholic beverages in their original containers for off-premises consumption to various patrons. The agents then left the premises without identifying themselves. On their second visit the agents observed two men, Paul LoParo and aforementioned Daniel Fortunato tending bar. Fifteen minutes after their arrival (11:55 p.m.) the agents saw LoParo make a sale of an alcoholic beverage in its original container for off-premises consumption to a patron and at about an hour later observed Fortunato playing a few games of stud poker (5 and 10 cent limit) at the bar with two patrons. Thereafter the agents left the premises without making their identities known. On their last visit one ABC agent stationed himself on the outside of the premises and another entered the same. The latter, after observing LoParo make three separate sales of alcoholic beverages in their original containers for off-premises consumption, asked him for two quart bottles of Schaefer beer. The bartender thereupon took two quart bottles of said brand of beer from a refrigerator, placed them in a brown paper bag, handed the package to the agent and accepted 90 cents in payment thereof. The agent then left the premises with the alcoholic beverages and immediately returned to the same with the other agent. The agents identified themselves to LoParo, the licensee and her husband. LoParo admitted making the aforesaid unlawful sale to the agent. The licensee and her husband admitted the aforesaid violations observed by the agents on their first and second visits.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days on Charge 1 (Re Ocean Avenue Tavern, Inc., Bulletin 1187, Item 6) and for an additional ten days on Charge 2 (Re Woodlawn Bar & Grill, Inc., Bulletin 990, Item 4), making a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 8th day of October, 1957,

ORDERED that Plenary Retail Consumption License C-197, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Catherine Fortunato, t/a Kay's Rendezvous, for premises 217 - 21st Avenue, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. October 15, 1957 and terminating at 3:00 a.m. November 4, 1957.

WILLIAM HOWE DAVIS
Director.

6. 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

WALTER S. TIMINSKI
T/a WALT'S BAR
16 Mary Street
Paterson 3, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-181, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Koribanics & Koribanics, Esqs., by Steven Koribanics, Esq.,
Attorneys for Defendant-licensee.
Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold during prohibited hours alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that at 10:45 p.m. Wednesday, August 28, 1957, ABC agents who were in defendant's licensed premises observed a patron enter therein, walk to the rear of the bar and call the licensee who was tending bar. The licensee conferred with the patron and escorted him into the kitchen from which thereafter could be heard the opening of a refrigerator door and the rustling of a paper bag. The licensee returned to his station behind the bar and, within minutes, the patron appeared carrying a package and started out the front door. The agents stopped the patron, identified themselves and seized the package which contained six twelve-ounce cans of Rheingold beer. Neither the patron nor the licensee would give the agents a signed statement, asserting, however, that the beer was ordered and paid for at 9:30 p.m. that evening.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of fifteen days (Re Dempsey Corp., Bulletin 1180, Item 4) and remit five days for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 23rd day of September, 1957,

ORDERED that Plenary Retail Consumption License C-181, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Walter S. Timinski, t/a Walt's Bar, for premises 16 Mary Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. September 30, 1957, and terminating at 3:00 a.m. October 10, 1957.

WILLIAM HOWE DAVIS
Director.

7. 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)

ALEX S. KLINGHOFFER)
127 Market Street)
Passaic, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-145, issued by the Board of Commissioners of the City of Passaic.)

Morris B. Ploshnick, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold during prohibited hours an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that at 10:25 p.m. Thursday, September 5, 1957, one of two ABC agents who were in defendant's licensed premises asked the bartender therein for a pint of wine to take out. The bartender handed a pint-bottle of wine to the agent and accepted 55¢ in payment. The agent left the premises with his purchase and, within minutes, returned thereto accompanied by a third agent. Both agents identified themselves to the bartender who, in the presence of the licensee, verbally admitted the aforesaid sale but refused to give a written statement.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of fifteen days (Re Dempsey Corp., Bulletin 1180, Item 4) and remit five days for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 30th day of September, 1957,

ORDERED that Plenary Retail Consumption License C-145, issued by the Board of Commissioners of the City of Passaic to Alex S. Klinghoffer, for premises 127 Market Street, Passaic, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. October 7, 1957, and terminating at 3:00 a.m. October 17, 1957.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BELA KOVACS & JULIA KOVACS)
T/a HIGHLAND PARK HOTEL)
704 Raritan Avenue)
Highland Park, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Highland Park.)

John A. McKenna, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge that on July 26, 1957 they sold and allowed, permitted and suffered the sale of alcoholic beverages to three minors and permitted said minors to consume such beverages on their licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that on July 26, 1957 two ABC agents at the licensed premises of defendants observed three youths enter, take seats at the bar, and consume three glasses of beer served by the bartender. The bartender also filled four cartons with beer, placed them in a bag, and put them in front of the group.

The agents disclosed their identity and ascertained that the three youths were Gerard --- (age 20), Nicholas D. --- (age 18) and Nicholas J. --- (age 19), and obtained signed sworn statements from each wherein it appears, in substance, that the beer was ordered by Nicholas D. and served to the minors by the bartender without any inquiry as to age or request for identification.

Defendants have no prior adjudicated record. The minimum suspension imposed for a sale of alcoholic beverages to an eighteen-year-old minor is fifteen days. Re One Twenty-eight, Inc., Bulletin 1165, Item 7. The usual additional penalty of five days where three minors were involved (Re Jim's Restaurant, Inc., Bulletin 1164, Item 12) will not be imposed because the agents report that Gerard "looks like he could pass for 21 years of age". Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 16th day of September, 1957,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Highland Park to Bela Kovacs & Julia Kovacs, t/a Highland Park Hotel, for premises 704 Raritan Avenue, Highland Park, be and the same is hereby suspended for ten (10) days, commencing at 1:30 a.m. September 23, 1957 and terminating at 1:30 a.m. October 3, 1957.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AND PERMITTING PERSONS OTHER THAN THE LICENSEE AND EMPLOYEES ON LICENSED PREMISES DURING PROHIBITED HOURS AND FAILURE TO KEEP LICENSED PREMISES CLOSED AND FAILURE TO KEEP LICENSED PREMISES OPEN TO PUBLIC VIEW, IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JULIA J. MURPHY)
T/a CLUB TAVERN)
363 Grove Street)
Jersey City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-457, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
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James F. Ryan, Esq., Attorney for Defendant-licensee.
Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On Sunday, August 18, 1957, between the hours of 2:00 a.m. and 2:35 a.m., you conducted your licensed business; in violation of Section 4 of Ordinance No. K-1299, regulating the sale and distribution of alcoholic beverages by all those holding plenary retail consumption licenses in the City of Jersey City adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950, which prohibits any such activity between the hours of 2:00 a.m. and 1:00 p.m. on Sundays.

"2. On the occasion aforesaid, you suffered and permitted persons except yourself and your actual employees and agents in and upon the licensed premises; in violation of the above mentioned ordinance.

"3. On the occasion aforesaid, you failed to remove all shades, screens and other obstacles so as to permit a clear view of the bar inside your licensed premises; in violation of the above mentioned ordinance."

The file herein discloses that on Sunday, August 18, 1957, ABC agents visited the vicinity of defendant's licensed premises at about 1:00 a.m. At 1:20 a.m. one of the agents entered the tavern wherein he observed at the bar three males who remained on the premises after he left at 2:05 a.m. The front door of the tavern had been closed and the outside sign lights extinguished at 1:55 a.m., but the screens and shades were not removed to permit a clear view of the bar from the outside. At 2:35 a.m. the agents, while attempting to peer into the premises, were accosted by a local police officer who, upon learning their identities, joined them. The agents then knocked on the front door and announced in a loud voice that they were State ABC agents. When they, with the officer,

were admitted, they made known their identities, informed the bartender of the after-hour violation and seized for evidential purposes the drinks in front of the three patrons who, refusing to give their names, were requested to leave. The bartender refused to give a signed statement.

Defendant has no prior adjudicated record. I shall suspend her license for a period of twenty days (Re Zimbardo, Bulletin 1157, Item 4) and remit five days for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 23rd day of September, 1957,

ORDERED that Plenary Retail Consumption License C-457, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Julia J. Murphy, t/a Club Tavern, for premises 363 Grove Street, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. September 30, 1957, and terminating at 2:00 a.m. October 15, 1957.

WILLIAM HOWE DAVIS
Director.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Columbia Brewing Company
101 S. Ferguson St.
Shenandoah, Pa.

Application filed October 28, 1957 for Transportation License.

Anthony Olivero
t/a Olivero's Delivery Service
252 N. Fullerton Avenue
Montclair, N. J.

Application filed October 29, 1957 for Transportation License.



William Howe Davis
Director.