

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

June 17, 1969

BULLETIN 1862

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Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1862

June 17, 1969

1. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)
Arthur F. Everly)
t/a Morris Hills Liquors)
1129 Route 46)
Parsippany-Troy Hills Township)
PO Parsippany, New Jersey)
Holder of Plenary Retail Distribution License D-5 issued by the Township Council of the Township of Parsippany-Troy Hills)
- - - - -)

CONCLUSIONS AND ORDER

Schneider, Stewart & Yadlon, Esqs., by Robert E. Yadlon, Esq., Attorneys for Licensee
Walter H. Cleaver, Esq., appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On January 3, 1969, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Paul ---, age 20; in violation of Rule 1 of State Regulation No. 20. [S-8003]

"2. On December 28, 1968, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Lester ---, age 19; in violation of Rule 1 of State Regulation No. 20 [S-8009]"

With respect to the first charge, Paul --- testified that he is 20 years of age and was born on July 6, 1948. On January 3, 1969, he entered the licensee's premises and purchased a bottle of Canadian Club whisky and a bottle of coffee flavored brandy, being served by a clerk identified as Andrew Tyrone. He was not asked for any identification, nor was he required to make any representation with respect to his age. Upon leaving the premises, he was accosted by ABC Agent D who questioned him with respect to the purchase. Both of them then returned to the premises, where he identified the clerk who had sold him the alcoholic beverages.

On cross examination, Paul stated that he had his driver's license and his social security card in his possession at the time of the alleged purchase but was not asked to produce them. At the request of counsel, he displayed them at the hearing herein.

ABC Agent D testified that he participated in the investigation of alleged sales to minors at these premises pursuant to a specific assignment. On the evening of January 3, accompanied by ABC Agent F, he stationed himself at a post of observation in his automobile in the immediate vicinity of the premises. At 9:40 p.m. he saw the minor entering the premises empty-handed. Shortly thereafter, the minor left the premises with the alcoholic beverages. After questioning the minor, he returned with him to the premises and spoke to Andrew Tyrone, the clerk then on duty. The minor identified Tyrone as the person who sold him the alcoholic beverages. Tyrone readily admitted selling the same and stated that he had not asked the minor for any identification because he appeared to be of statutory maturity. Arthur Everly, the licensee, who was also on the premises at the time, informed the agent that he had been on the telephone at the time of the sale and "did not know what had happened." The bottles which had been initialed by Tyrone on January 3 were admitted into evidence.

Arthur Everly, testifying in his own behalf, stated that Tyrone had indeed sold the minor alcoholic beverages but that it was Tyrone's opinion that the minor "was over twenty-one years of age." He added that if his appearance had been questionable, he would have been asked for identification but that Tyrone had made an "erroneous judgment, it was just an error in judgment."

There is no dispute over the factual complex herein. A sale was made to a minor and no written representation was required with respect to his age, nor was any proof of age given. I am satisfied that the Division has proved its case by a preponderance of the credible evidence and recommend that the licensee be found guilty of the first charge.

With respect to the second charge, the Division produced Lester --- who testified as follows: He is 19 years of age and was born on June 25, 1949. He had visited the licensee's premises on several occasions, the last of which was on December 28, 1968, on which occasion he was accompanied by his friend James ---, a 16-year-old minor. While James remained on the outside, he entered the premises, went to a shelf and took a half pint of Seagram's 7 Crown whiskey, then asked for and was served a pint of Southern Comfort whiskey and a six-pack of Black Label beer, which the licensee handed to him. He paid for the same with funds, part of which was his and part of which had been given to him by James. The money was paid to a cashier, later identified as Marguerita Everly, the wife of the licensee. At no time, either prior to the date herein alleged or on the date of the purchase, was the minor asked to produce evidence of age, nor did he make any written representation with respect thereto. Emerging from the premises, he met his friend on the outside, walked toward the high school in the vicinity and consumed part of the alcoholic beverages. At the hearing herein, he identified Mrs. Everly as the person who was the cashier and accepted payment for the said purchase.

James testified that he is 16 years of age and was born on September 25, 1952. He accompanied Lester to the licensed premises on December 28 and remained on the outside while Lester went in to purchase alcoholic beverages. Before Lester entered, it was agreed that he was to purchase a half pint of Southern Comfort whiskey, a half pint of Seagram's 7 Crown whiskey and a six-pack of Black Label beer; they "both chipped in for it." He watched Lester walk into the store, make the purchase and hand money to Mrs. Everly at the cash register. He checked the package which Lester carried out of the

premises and saw that it contained the aforementioned alcoholic beverages. They walked up the road and consumed part of the alcoholic beverages.

ABC Agent D testified that subsequent to December 28, 1968 he was assigned to investigate an alleged sale to a minor at these premises on that date. He visited the premises on January 9 and 11, 1969. On his first visit, he was accompanied by ABC Agent Z and James. James directed the agents to the premises and was asked to look through the window of the licensed premises to see whether Mrs. Everly was on duty. When he told the agents that he did not see her, the agents entered without him and questioned the licensee, who admitted that the cashier was his wife. He was then asked to have her available for questioning on the following Saturday, January 11, at 3:00 p.m.

When the agents returned to the premises on January 11, Mrs. Everly was not present and the agents were informed by the licensee that she "was not available, she had gone to Long Island City to visit with friends on vacation." The agent asked, "Did you not inform her?" and the licensee replied, "Yes, I did, but she had made arrangements." On January 11, both Lester and James made a positive identification of the premises where the alcoholic beverages had been purchased.

Arthur F. Everly, testifying in his defense, denied that Lester had been in the premises on December 28, and further stated that at no time during that evening did he have occasion to come to the front of the store at the time this purchase was made. Therefore, the minor could not have identified him as being present. He produced a tape purportedly taken from the cash register reflecting the sales made on December 28. He also produced a monthly record book which purported to reflect daily receipts, but this record book was not introduced into evidence. The witness stated that there is no figure of \$4.72 on the tape which would reflect the total sale made to the minor on that date.

Lawrence Bisceglia, a clerk employed by the licensee, testified that he was in the premises on the date and at the time in question and knows that the licensee was in the back room during that time. He stated emphatically that the licensee had no occasion to go into the sales section of the premises.

Marguerita Everly, the wife of the licensee, denied that the minor entered the premises on December 28 or made any purchases there. She stated that she had never seen the minor and would be certain to recognize him if he had, in fact, made any purchases at the licensed premises.

On cross examination, Mrs. Everly was asked why she did not appear after an appointment had been made with her husband to have her present on January 11. She answered that she had made arrangements to go out of town and her husband "didn't ask me to change it. I didn't see I was implicated in any way." She felt it was not necessary for her to be present at the appointed time.

Hugo Ledwig testified that he is employed on a part time basis by the licensee and was certain that at the time the minor allegedly entered the premises, the licensee was in the rear room. He also asserted that the minor did not enter the premises.

The sharp factual conflict presented by the evidence herein makes the issue of credibility of critical importance.

Actions of this kind, which are civil in nature, require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960). Testimony, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

I have had an opportunity to observe the demeanor of the witnesses as they testified at this plenary hearing and have been able to evaluate and assess such testimony. I am persuaded that the testimony of the minors is both credible and forthright and stands in a much more favorable light than that of the licensee's witnesses. Lester has given a straightforward and unembellished account of his purchase of alcoholic beverages at the licensed premises. His testimony was fully corroborated by his companion.

On the other hand, I find most incredible the testimony of the licensee's witnesses, particularly that of Marguerita Everly, his wife. It is, in my opinion, significant that this witness, who was described fully to the ABC agents by the minor as being employed as the cashier at the time and date of the purchase, failed to keep an appointment for the purpose of confrontation and questioning. Her rationalized excuse for such failure was that she was not "implicated." This is a most remarkable explanation in view of the fact that her husband was faced with a serious charge which could result in the possible suspension or revocation of his license. Her attitude may well raise the inference of her guilty knowledge and participation in the transaction and a desire to avoid a confrontation. As noted above, the positive identification of this witness was made by the Division witnesses at the hearing.

It is equally incredible to believe that the licensee was in the rear room of the licensed premises during the entire evening of December 28. This date was a Saturday and it appears from the record that there was considerable activity on these premises. As the licensee and manager in charge of that business, it is more likely that he was in the sales section at the time the minors say they saw him there and positively identified him. I reject the licensee's denial of his presence in view of such affirmative testimony.

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. I find that the Division's evidence does establish the charge based upon a reasonable certainty as to the probabilities arising from a fair consideration of the said evidence.

In his argument in summation, the licensee's attorney suggests that the minor was "protecting a supplier they regularly buy from, and that they picked out this licensee so that they could shift the blame." There is not the slightest scintilla of evidence to support that argument and, indeed, it was denied by the Division's witnesses.

The licensee further argues that the cash register tape presents empiric proof of the fact that no sale was made to the minor, as testified by the Division witnesses. I am not satisfied from the evidence that the tape is entirely authentic. The monthly record book, which was marked for identification and produced to support the entries on the tape, was never introduced into evidence.

Since the licensee denies that there was any sale on December 28, it is unnecessary to consider whether compliance was

had with Rule 1 of State Regulation No. 20 in all its aspects, as more specifically defined by the Special Note relating to defenses provided by R.S. 33:1-77 available to a licensee in disciplinary proceedings involving sale of alcoholic beverages to a minor. P.86 of the rules and regulations. The testimony of the minor that the sale was made to him without any requirement that he prove his age clearly establishes the subject charge.

After carefully considering all of the evidence produced herein, I am satisfied, and find as a fact, that the Division has established the guilt of the licensee by a fair preponderance of the credible evidence, indeed, by clear and convincing evidence. It is recommended that the licensee be found guilty of the second charge.

Absent prior record, it is further recommended that the license be suspended on the first charge for ten days (Re Barrett, Bulletin 1842, Item 4) and on the second charge for fifteen days (Re Dolan Clubs, Inc., Bulletin 1842, Item 3), or a total of twenty-five days.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee's attorneys pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the Hearer's report and the exceptions, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of April 1969,

ORDERED that Plenary Retail Distribution License D-5, issued by the Township Council of the Township of Parsippany-Troy Hills to Arthur F. Everly, t/a Morris Hills Liquors, for premises 1129 Route 46, Parsippany-Troy Hills Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 9 a.m. Monday, May 5, 1969, and terminating at 9 a.m. Friday, May 30, 1969.

Joseph M. Keegan
Director

- 2. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED INTERSTATE TRANSPORTATION OF ALCOHOLIC BEVERAGES - CLAIM OF OWNER OF MOTOR VEHICLE DENIED ABSENT GOOD FAITH - SUM DEPOSITED ON STIPULATION, UPON RETURN OF MOTOR VEHICLE, AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the matter of the Seizure)
on July 14, 1968 of a quantity)
of alcoholic beverages and a 1961)
Cadillac hard-top sedan, at Mile)
Post 34 (northbound lane), New)
Jersey Turnpike, Mount Laurel)
Township, County of Burlington)
and State of New Jersey)
- - - - -)

CONCLUSIONS
and
ORDER

Thomas A. Lunn, Esq., appearing for Fredericus William Kellerman
Harry D. Gross, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 83 containers of alcoholic beverages and a Cadillac hard-top sedan, described in a schedule attached hereto, made part hereof and marked Schedule "A", seized on July 14, 1968 at Mile Post 34, north-bound lane of the New Jersey Turnpike, Mount Laurel Township, Burlington County, New Jersey, constitute unlawful property and should be forfeited; and further, to determine whether the sum of \$600.00, deposited with the Director, under protest, pursuant to a stipulation dated October 31, 1968 signed by Fredericus William Kellerman, representing the appraised retail value of the 1961 Cadillac hard-top sedan, should be forfeited or returned to him.

When the matter came on for hearing pursuant to R.S. 33:1-66, Fredericus William Kellerman, represented by counsel, sought the return of the money deposited under the aforesaid stipulation, and the alcoholic beverages.

The Division's file, which was submitted in evidence with the consent of the claimant herein, established the following facts: On Sunday, July 14, 1968 a State trooper, while on routine patrol on the said New Jersey Turnpike, observed a blue 1961 Cadillac hard-top sedan, bearing Virginia license plates A438963 travelling north-bound on the New Jersey Turnpike, and its rear portion appeared to be low to the ground. He stopped the motor vehicle and requested the driver to exhibit his license. While checking the license, he observed two cases of alcoholic beverages in the said motor vehicle.

Upon questioning Kellerman, it was disclosed that he had 6 1/3 cases of alcoholic beverages in the trunk of the car. Kellerman, who identified himself as the owner of the vehicle, told the State trooper that he was delivering the alcoholic beverages to his brother who lived in New York. He admitted that he had no transportation license or permit authorizing the transportation of these alcoholic beverages. There was no transit insignia affixed on the car nor any inscription painted thereon showing that the car was one authorized to transport liquor.

He was thereupon arrested, charged with the unlawful transportation of alcoholic beverages in violation of R.S. 33:1-2 and R.S. 33:1-50 and was released in bail for arraignment in the Mount Laurel Township Municipal Court.

The records of this Division do not disclose any permit or other authorization for the transportation throughout the State issued to Kellerman.

On July 18, 1968 a full quart of Canadian Club Whiskey, one of the seized bottles, was analyzed by the Division chemist, who reports that it is an alcoholic beverage, fit for beverage purposes, with an alcoholic content by volume of 43.5%.

The file of this Division includes the affidavit of mailing, affidavit of publication, the complete inventory and the chemist's report.

Since these alcoholic beverages were being transported without the requisite New Jersey transportation license or permit as required by R.S. 33:1-13 and Rule 2 of State Regulation No. 18 and in an unlicensed vehicle which did not bear any transit insignia affixed thereto or an inscription painted thereon in violation of the Alcoholic Beverage Law and Rule 2 of State Regulation No. 17, such alcoholic beverages, so unlawfully transported, are illicit. R.S. 33 :1-1 (i).

The Alcoholic Beverage Law provides that it shall be unlawful to transport alcoholic beverages without a license except in limited amounts for personal consumption as defined in R.S. 33:1-2. All such illicit beverages and the vehicle in which they were transported are, therefore, unlawful property. R.S. 33:1-1(y). Such unlawful property must be seized by any officer knowing, or having reasonable cause to believe it to be unlawful property. R.S. 33:1-66(a); Seizure Case No. 11,670, Bulletin 1701, Item 4; Seizure Case No. 10,707, Bulletin 1467, Item 4.

Fredericus William Kellerman, testifying in support of his claim, gave the following account: He lives in Alexandria, Virginia and was going to visit his brother who lives in Long Island City, New York. He planned to run a party on November 28th (five months from the date of the seizure) in New York for his employees and friends, in honor of his son's Bar Mitzvah; and he purchased the alcoholic beverages in Washington because he knew that "there was a couple of dollars saving, to be honest with you". He admitted telling the State trooper that he was buying this merchandise for his brother although he now explained that actually he was merely storing the alcoholic beverages at his brother's home for that occasion. He admitted that he had no permit nor did his motor vehicle have a transit permit or any insignia painted thereon. He further explained that he did not know that he was violating any law.

From my examination of the testimony, I find that the claimant purchased the said alcoholic beverages because he could effect a savings to himself by making such purchase in Washington rather than in New York. We can take judicial notice of the fact that the sale price for standard brands of alcoholic beverages in Washington, D.C. is less than that in New York. It became the duty of the claimant to ascertain what permits were required in order to transport this large quantity of alcoholic beverages through this State. R.S. 33:1-66 and Rule 3(b) of State Regulation No. 28 provide that upon application made for the return of the seized property, the Director may order the return thereof, if he is satisfied that the claimant acted in good faith, and did not know or have any reason to believe that he was violating the law.

In the absence of such good faith the Director has no authority to relieve the claimant of forfeiture. Seizure Case No. 10,913, Bulletin 1507, Item 2; Seizure Case No. 11,156, Bulletin 1557, Item 5.

From the evidence presented, I find that the claimant, by his failure to obtain a special permit either from New Jersey or from New York, and not checking to ascertain what permits were required for lawful transportation through New Jersey, did not act in good faith.

Accordingly, I find that he has not satisfied the requirements of the Statute and was in violation thereof. R.S. 33:1-2. Seizure Case No. 11,990, Bulletin 1810, Item 4; R.S. 33:1-1(y).

Accordingly, it is recommended that the claim of Fredericus William Kellerman for the return of the alcoholic beverages and the monies deposited under the aforementioned stipulation, be denied, and that an Order be entered directing the forfeiture of the said monies deposited under the stipulation, as aforesaid, and the alcoholic beverages.

Conclusions and Order

No exceptions to the Hearer's Report were filed pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is on this 24th day of April, 1969,

DETERMINED and ORDERED that the sum of \$600.00, deposited with the Director, under protest, pursuant to the stipulation dated October 31, 1968 signed by Fredericus William Kellerman, representing the appraised retail value of the 1961 Cadillac hardtop sedan which was returned to Kellerman, be and the same is hereby forfeited; and it is further

DETERMINED and ORDERED that the alcoholic beverages as set forth in Schedule "A", which was seized therein, constitute unlawful property, and the same be, and is hereby forfeited in accordance with the provisions of R.S. 33:1-66, and shall be retained for the use of hospitals and State, county and municipal institutions, or destroyed, in whole, or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Joseph M. Keegan,
Director

SCHEDULE "A"

- 83 - containers of alcoholic beverages
- 1 - 1961 Cadillac sedan, Serial No. 62K095885, Engine No. 12537752, Virginia Registration A-438-963.

3. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION- LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against
 Tierney's Corner, Inc.
 Route 15 & Tierney's Corner
 Jefferson Township
 R.D. 3 Wharton, N.J.,
 Holder of Plenary Retail Consumption License C-27, issued by the Township Committee of the Township of Jefferson.)

CONCLUSIONS
and
ORDER

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Licensee Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Saturday October 5, 1968, between 4:20 A.M. and 5:00 A.M. you, directly or indirectly, through officers, directors and stockholders of your corporation, and agents, servants, persons employed on your licensed premises and other persons on your behalf, failed to facilitate and hindered, delayed, caused the hindrance and delay, and attempted to hinder, delay and cause the hindrance and delay of an investigation and inspection of your licensed business and licensed premises and search thereof, then and there being conducted by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of Rule 35 of State Regulation No. 20."

In behalf of the Division Agent D testified that, accompanied by Agent Z, he arrived at the licensed premises on October 5, 1968 at approximately 4 :10 A.M. The licensed premises (consisting of a barroom) are contained in the ground floor of a building completely surrounded by a parking lot. To gain access into the barroom the building contained "a front entrance, left side entrance, rear entrance, large glass door, and there is also a door into I believe a kitchen area."

The agents attempted to enter the barroom through the large glass door at the rear of the premises. Finding that door locked, they proceeded to the kitchen door. Upon finding that door locked, they proceeded to the side door. This too was locked. Peering through the glass panels of that door he observed seven people in the barroom. The agents then proceeded to the front door and, upon finding that locked, they knocked loudly on the door. A male (later identified as Martin Valdiviez) came to the door and said, "We are closed." The agents placed their credential cards bearing the legend "ABC" in large letters on glass panels in the door and called out, "It is the ABC." Valdiviez turned around and said, "It is the ABC." A person, identified as Leon Behler, came from behind the bar after clearing some glasses off the top of the bar and proceeded to the door after more pounding on the door by the agents. The agents identified themselves with their cards and "told him we wanted the door to be opened, we wanted to come in." Behler responded, "No, you can't come in. We are closed." Agent Z said that "if he didn 't open the door a charge of hindrance would be entered against the premises." Behler replied, "No. We are closed. You can't come in."

Not gaining admittance to the licensed premises, the agents drove to a telephone booth a short distance away. At 4:20 a.m. D made a telephone call to the local police headquarters and informed the person who answered the telephone that he wanted to check a violation at the licensed premises, was refused admittance, and wanted police assistance. Upon the arrival of Martin Kowal, a local police officer, at 4:30 a.m., the police officer and the two agents approached the front door. Kowal knocked on the door, whereupon the door was opened and he and the agents were admitted into the tavern. Mary Behler (an officer of the licensee corporation and wife of Leon Behler, Sr.), Leon Behler, Jr. (also an officer of the licensee corporation) and Martin Valdiviez (who played in the band at the licensed premises) were identified as being

in the tavern at the time.

On cross examination Agent D asserted that he did not notify the local Police Department of his activity on the morning in question.

Upon being requested to state how he obtained Valdiviez's identification, he testified:

"He [Valdiviez] first attempted to give me some kind of auxiliary police cards and what not, and when I insisted I did not want this he kept throwing it on the table and saying, 'There is my identification.' I insisted every individual has a driver's license or some valid identification other than these cards which any one can pick up, and finally after talking to Patrolman Kowal, who advised him to give his identification to us, and also in conversation with Mr. Behler we were given identification of all the people, Mr. Valdiviez reluctantly took out his driver's license and gave it to the agent with comment."

In response to the inquiry as to the procedure followed in obtaining identification of the various individuals in the licensed premises, Agent D replied, "After some discussion, lengthy discussion, we finally got the identifications from all the people involved, as well as the license application. After a slight run-around, yes, we ultimately got the information."

Concerning Behler's conduct during the investigation, he testified, "He failed to give me his identification immediately upon request. He gave me a lot of trouble to give me this. 'We are allowed to be in here. It is none of your business what we are doing in here,' etcetera, etcetera, verbatim I can't remember." It took a period of "five to ten" minutes before he could obtain Behler's identification.

The agents did not leave the premises until 5 a.m. (one-half hour after entry), whereas "if we [the agents] had gotten everything right away we would have been out in 5 minutes, 5 or 10 minutes."

In behalf of the licensee, Theodore A. Romanosky (a sergeant in the local police force) testified that he was assigned to desk duty on the morning of October 5, 1968. At approximately 4:15, 4:16 a.m. he received a telephone call from Leon Behler stating that "there were two men outside prowling around who had claimed they were ABC men, and he requested an officer." He informed Behler that he would dispatch a car to the tavern. Prior to hanging up the receiver, he received another telephone call from "an agent of the ABC, Alcoholic Beverage Control, and he advised me he needed an officer at Tierney's Corner." He dispatched Patrolman Kowal to the scene.

The sergeant noted the relationship between the two telephone calls (which were received almost simultaneously) and made the following entry in his log book:

"4:17 a.m., ABC, Alcoholic Beverage Control, wanted officer at Tierney's, an officer was assigned, 703, Patrolman Kowal."

Patrolman Martin Kowal testified that, pursuant to Sergeant Romanosky's instructions, he met Agents D and Z at the licensed premises on the day in question and, upon knocking on the front door, was admitted in the barroom by Mr. Behler. He remained in the barroom for a period of approximately thirty minutes.

The officer then testified as follows:

- "Q Valdiviez in response to a request for identification produced, as testified by [D], some fraternal order or police card or some other voluntary organization card?
- A Quite a few cards.
- Q He produced a number of various cards that were unsatisfactory to [D] for the purpose of identification?
- A Yes, sir.
- Q And he ultimately produced a driver's license or something that was satisfactory; is that correct?
- A Yes, eventually he did."

On cross examination the officer testified that Valdiviez exhibited a number of cards to ABC Agent D and did not exhibit his driver's license until advised to do so by him.

Leon O. Behler (the manager of the tavern business conducted by the corporate licensee) testified that at approximately 4:15 a.m. on the day mentioned in the charge they "were in there cleaning up, checking out" when he heard a knock on the front door. He requested Valdiviez to check the door and warned him, "Nobody gets in here after three o'clock." He heard "hollering back and forth" and pounding on the door. Valdiviez turned around and said, "they claim they are from the ABC." Behler told Valdiviez, "if they are from the ABC tell them to get hold of a police officer and they can get in". The knocking on the door continued and Behler proceeded into the kitchen, called up the local Police Department, and requested that a police officer be sent to the tavern. He stated that the reasons for requesting a patrolman be sent rather than opening the door himself were that he had trouble with people attempting to gain admittance into the tavern after hours and approximately "three or four months prior to October about 3:30, a quarter to four in the morning, four fellows tried to break in."

Returning to the occurrences of October 5, Behler testified that, upon the arrival of Officer Kowal and receiving his assurance that "he had checked them out", he opened the door and admitted the agents.

It is apparent that the major inquiry presented is factual. In evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Not only was the refusal to admit the agents into the licensed premises until a police officer arrived at the scene, but also the action of Valdiviez in failing to properly identify himself until advised to do so by the police officer was deliberate, contemptuous and unwarranted under the circumstances and clearly and palpably constituted a violation of the rule alleged

in the charge.

I conclude and I find that the Division has established the truth of the charge by a fair preponderance of the credible evidence, and I recommend that the licensee be found guilty of said charge.

The licensee has no previous record of suspension of license. I further recommend that the license be suspended for fifteen days. Re Societa DiMutuo Soccorso Guglielmi Marconi, Inc., Bulletin 1824, Item 9.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the exhibit, the Hearer's report and the exceptions and argument filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 22nd day of April 1969,

ORDERED that Plenary Retail Consumption License C-27, issued by the Township Committee of the Township of Jefferson to Tierney's Corner, Inc., for premises Route 15 & Tierney's Corner, Jefferson Township, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Tuesday, April 29, 1969, and terminating at 3 a.m. Wednesday, May 14, 1969.

Joseph M. Keegan
Director

4. DISCIPLINARY PROCEEDINGS - FRONT - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
Whitestone of Trenton, Inc.
t/a Blackstone Lounge
2485 So. Broad St.
Hamilton Township
Po Trenton, N.J.
Holder of Plenary Retail Consumption License C-30 issued by the Township Committee of the Township of Hamilton (Mercer County)

CONCLUSIONS
AND ORDER

Lichtenstein, Levy & Segal, Esqs., by Stephen F. Lichtenstein, Esq.,
Attorneys for Licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1), (2) and (3) alleging that by false statement in its current license application, it concealed the fact that Blackstone Restaurant, Inc. had (since May 31, 1968) a 50 per cent interest in the license and the licensed business, in violation of R.S. 33:1-25 and 52.

During the pendency of this proceeding, the unlawful situation has been corrected by the execution of an agreement to transfer all of the corporate stock of the licensee corporation to Blackstone Restaurant, Inc., such transfer to be made at the expiration of the suspension to be imposed herein.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Cf. Re Pappanastasiou, Bulletin 1826, Item 4.

Accordingly, it is, on this 22nd day of April, 1969,

ORDERED that Plenary Retail Consumption License C-30, issued by the Township Committee of the Township of Hamilton (Mercer County) to Whitestone of Trenton, Inc., t/a Blackstone Lounge, for premises 2485 So. Broad Street, Hamilton Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Thursday, April 24, 1969, and terminating at 2:00 a.m. Friday, May 9, 1969.

Joseph M. Keegan
Director

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA

In the Matter of Disciplinary Proceedings against
Rose & Harry James, Inc.
t/a Harry's
507 So. 17th Street
Newark, New Jersey,
Holder of Plenary Retail Consumption License C-109, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.
-----)

CONCLUSIONS
and
ORDER

Licensee, by Harry James, President, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 6, 1969 it possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior 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: Richlitsky, Bulletin

1839, Item 9.

Accordingly, it is, on this 22nd day of April 1969,

ORDERED that Plenary Retail Consumption Licence C-109, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Rose & Harry James, Inc., t/a Harry's, for premises 507 So. 17th Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, April 29, 1969, and terminating at 2 a.m. Friday, May 9, 1969

Joseph M. Keegan,
Director

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the matter of Disciplinary)
Proceedings against)
Thuro's Tavern (A Corporation))
212 Long Avenue)
Hillside, New Jersey,)
Holder of Plenary Retail Consumption)
License C-14, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the Township of Hillside.)
-----)

CONCLUSIONS
and
ORDER

Licensee, by Helen Carasia, Secretary, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 17, 1969 it possessed alcoholic beverages in three bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re T V Motel, Inc., Bulletin 1850, Item 14.

Accordingly, it is, on this 30th day of April 1969,

ORDERED that Plenary Retail Consumption License C-14, issued by the Municipal Board of Alcoholic Beverage Control of the Township of Hillside to Thuro's Tavern (A Corporation), for premises 212 Long Avenue, Hillside, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Wednesday, May 7, 1969, and terminating at 2 a.m. Thursday, May 22, 1969.

Joseph M. Keegan,
Director

7. CANCELLATION PROCEEDINGS - LICENSEE CRIMINALLY DISQUALIFIED - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT ON PROOF OF CORRECTION.

In the Matter of Cancellation)
Proceedings against)
GEORGE MC GILLICK)
t/a Tick Tock Bar)
189 - 16th Avenue)
Paterson, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-134 issued by the Board of)
Alcoholic Beverage Control for the)
City of Paterson)

Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee does not contest an order to show cause why his license should not be suspended, revoked or cancelled because improvidently issued in violation of R.S. 33:1-25 in view of the fact that he was ineligible for license by reason of his conviction on April 29, 1966 of the crime of possession of lottery slips, a crime involving moral turpitude.

The fact of the conviction was set forth in the current application for license and was not concealed by any false statement therein.

Since to date there has been no correction of the unlawful situation, the license will be suspended for the balance of its term, subject to lifting of the suspension on application of any bona fide transferee of the license.

Accordingly, it is, on this 25th day of March, 1969,

ORDERED that Plenary Retail Consumption License C-134, issued by the Board of Alcoholic Beverage Control for the City of Paterson to George McGillick, t/a Tick Tock Bar, for premises 189 - 16th Avenue, Paterson, be and the same is hereby suspended, effective 3:00 a.m. Tuesday, April 1, 1969, for the balance of its term, viz., until midnight June 30, 1969, with leave to any bona fide transferee of the license to apply for lifting of the suspension.

JOSEPH M. KEEGAN
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

THE MARINER OF PENNSVILLE, INC.)
t/a "The Mariner")
Main to W. Pittsfield St. bet.)
Front St. & Delaware River)
Pennsville, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-1 issued by the Township)
Committee of the Township of)
Pennsville)

Narrow & Evans, Esqs., by Joseph Narrow, Esq., Attorneys for
Licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic
Beverage Control

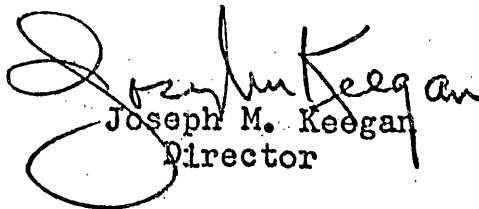
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
March 1, 1969, it sold a pint of vodka to a minor, age 19, in
violation of Rule 1 of State Regulation No. 20.

Absent prior 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 Ehrlich, Bulletin
1827, Item 5.

Accordingly, it is, on this 13th day of March, 1969,

ORDERED that Plenary Retail Consumption License C-1,
issued by the Township Committee of the Township of Pennsville
to The Mariner of Pennsville, Inc., t/a The Mariner, for premises
Main to W. Pittsfield Street between Front Street and Delaware
River, Pennsville, be and the same is hereby suspended for ten
(10) days, commencing at 7:00 a.m. Monday, March 17, 1969,
and terminating at 7:00 a.m. Thursday, March 27, 1969.


Joseph M. Keegan
Director