

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

BULLETIN 1314

December 29, 1959

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - APPELATE-BROWER POST #4569 V.F.W. v. CORBIN CITY.
2. APPELLATE DECISIONS - NIGHT OWL CLUB, INC. v. NEWARK.
3. DISCIPLINARY PROCEEDINGS (PATERSON) - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (CAMDEN) - AIDING AND ABETTING UNLAWFUL TRANSPORTATION - TRANSPORTATION IN VEHICLE WITHOUT TRANSIT INSIGNIA - FAILURE TO HAVE INVOICE OR MANIFEST - PERMITTING BUSINESS TO BE USED IN FURTHERANCE OF ILLEGAL ACTIVITY - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (CAMDEN) - AIDING AND ABETTING UNLAWFUL TRANSPORTATION - TRANSPORTATION IN VEHICLE WITHOUT TRANSIT INSIGNIA - PERMITTING BUSINESS TO BE USED IN FURTHERANCE OF ILLEGAL ACTIVITY - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (NEWARK) - OBSCENE LANGUAGE - NUISANCE - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
7. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAXPAID ALCOHOLIC BEVERAGES - PERMITS TO IMPORT ALCOHOLIC BEVERAGES INTO STATE OF DESTINATION OBTAINED SUBSEQUENT TO SEIZURE - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES RETURNED.
8. DISCIPLINARY PROCEEDINGS (FRANKFORD TOWNSHIP) - SALE TO MINOR - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (MONTCLAIR) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
10. DISCIPLINARY PROCEEDINGS (PATERSON) - SALE IN VIOLATION OF REGULATION NO. 38 - PRIOR RECORD NOT CONSIDERED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
11. DISCIPLINARY PROCEEDINGS (PATERSON) - SALE IN VIOLATION OF REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

STATE OF NEW JERSEY
Department of Law and Public Safety
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BULLETIN 1314

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.. APPELLATE DECISIONS - APPEL-GATE-BROWER POST #4569 V.F.W. v. CORBIN CITY

Applegate-Brower Post #4569
Veterans of Foreign Wars,

Appellant,

v.

Common Council of the City
of Corbin City,

Respondent.

ON APPEAL

CONCLUSIONS

AND

ORDER

Augustus S. Goetz, Esq., Attorney for Appellant.
Glenn and Glenn, Esqs., by Benjamin A. Rimm, Esq., Attorneys
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the denial on June 8, 1959 of appellant's application for a club license for premises located on State Highway Route 50 in Corbin City.

"Appellant's petition of appeal sets forth that its application was denied by the respondent for the following reasons: (1) That there were already three licensed places with C licenses in Corbin City. (2) That the said three licensed places paid substantial taxes and that the appellant's licensed premises, even though restricted to members and guests, would compete with the three licensed places, so as to possibly cause a reduction of taxes through one or more of the licensed places going out of business.

"Respondent in its answer filed herein, sets forth additional grounds for its aforesaid action, to wit: (1) The municipality is already adequately and amply serviced by existing licensed establishments and the public convenience and necessity does not require the additional license in the area. (2) The application is made by an organization consisting of 38 members of which 7 are residents of the municipality and one is a member of Council thereof and the license is sought for the convenience of these members. (3) The population of Corbin City is less than 300 and there are presently three plenary consumption licenses in existence. These three licensees are sufficiently and amply serving the public of Corbin City and public interest will not be served by adding a club license in the area.

"Appellant, in its petition of appeal, contends that the action of respondent was erroneous in that aforesaid competition is legitimate and is to be expected and that appellant is entitled to a club license under the laws of this State.

"On August 26, 1959 while the within proceedings were pending, the City Clerk of Corbin City forwarded to the Director of this Division

a copy of an ordinance which was passed on first reading by the City Council on July 13, 1959 and adopted on final reading on August 20, 1959; the ordinance was published on July 23 and August 20, 1959.

"The ordinance amends Section 4 of an ordinance of April 10, 1944, as last amended by an ordinance adopted April 14, 1958, so as to repeal, by omission thereof, the plenary retail distribution and club license fees thereto fixed in Section 4. The ordinance further amends Section 7 of the 1944 ordinance (which had set forth a plenary retail distribution license quota as 1) so as to provide that no plenary retail distribution license shall be issued and further amends Section 8 of the 1944 ordinance (which had set forth a club license quota as 1) so as to provide that no club license shall be issued.

"A municipality may, by ordinance, limit the number of licenses to sell at retail, including club licenses, and may amend or repeal such ordinance. R. S. 33:1-40. The aforesaid limitations are, however, subject to appeal to the State Director. R. S. 33:1-41. A municipality may also by ordinance enact that no club licenses shall be granted within said municipality, R. S. 33:1-12(5), and there is no provision in the Revised Statutes to appeal or review this right of the local municipality. A club license cannot lawfully be issued in Corbin City in the face of the present ordinance prohibiting such issuance. Local #2111 United Steelworkers of America C.I.O. v. Trenton, Bulletin 899, Item 3; Brothers Fishing Lodge v. Lower, Bulletin 1295, Item 2. In determining this appeal the Director must consider the ordinance as it now exists. Moschera v. Plumsted, Bulletin 1075, Item 8, and cases therein cited.

"In view of the fact that I have no alternative other than to recommend dismissal on legal grounds, it will be unnecessary to discuss the merits of the case now under consideration. Under the circumstances, I recommend that the action of the respondent be affirmed and that the appeal herein be dismissed."

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

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 4th day of November, 1959,

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. APPELLATE DECISIONS - NIGHT OWL CLUB, INC. v. NEWARK

Night Owl Club, Inc.)	
Appellant,)	
v.)	ON APPEAL
Municipal Board of Alcoholic)	CONCLUSIONS
Beverage Control of the City)	
of Newark,)	AND
Respondent.)	ORDER

Frank Metro, Esq., by Richard F. Burnett, Esq., Attorney
for Appellant.
Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq.,
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it suspended appellant's license for a period of fifteen days, effective July 13, 1959, after finding the appellant guilty on the following charge (1) that at about 5:04 a.m. on January 24, 1959 it sold, served and delivered alcoholic beverages and permitted the consumption thereof in violation of Section 3.1(a) of an ordinance of the City of Newark, as revised December 5, 1956, and (2) that on January 24, aforesaid, during prohibited hours, it failed to have its licensed premises closed in violation of Section 3.1(b) of said ordinance.

"The ordinance referred to in aforesaid charges prohibits the conduct of business on weekdays between 2:00 a.m. and 7:00 a.m. and requires the entire licensed premises to be closed between aforesaid hours.

"Upon the filing of the appeal, an order was entered on July 10, 1959 staying respondent's order of suspension until further order of the Director. R.S. 33:1-31.

"In its petition of appeal appellant alleges that respondent's action was erroneous because its decision was contrary to the weight of the evidence. Respondent, in its answer, denies such is the fact.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, the transcript of the proceedings before the respondent Board was received in evidence, and additional testimony was presented by appellant, in accordance with Rule 6 of said Regulation.

"At the hearing before the respondent, three police officers testified that at about 5:04 a.m. on January 24, 1959 they looked through an unobstructed window of the licensed premises; that they observed three individuals sitting at the bar on which there were several glasses and behind which stood a bartender; that they did not see any beverages being ordered, served or consumed and that in response to a knock on the front door, the same was unlocked and they were admitted to the licensed premises. They further testified that upon interrogation, they learned the aforesaid occupants of the premises were Rocco Carfello, Helen Carfello (wife of Rocco), Anthony Carfello (bartender) and Abe Morrison whom they heard, in the course of their investigation, was an employee (porter) of the licensee; that they observed a glass of

water and a half glass of beer (or what appeared to be beer) on the bar in front of said Morrison; that Morrison admitted he had consumed a portion of the same and that said half glass of beer was taken from the premises for evidential purposes.

"Aforesaid transcript of testimony also discloses that no chemical analysis was made of the glass of alleged beer; that none of the officers tasted it, smelled it or gave any reason why the beverage had the appearance of a fluid containing more than 1/2 of 1% (by volume) of alcohol and suitable for human consumption (alcoholic beverage). Appellant presented no testimony before the respondent Board.

"At the hearing held herein, Helen Carfello testified she and her husband, Rocco Carfello, are officers of the corporate defendant-licensee that Anthony Carfello is employed by the licensee as a bartender; that Abe Morrison has been employed as a clean-up man by the licensee for a period of about two years (since the inception of the corporation); that she was on the licensed premises from about 8:30 p.m. on January 23, 1959 to 5:04 the next morning when the police officers were admitted to the premises; that no alcoholic beverages were served or consumed after 2:00 a.m. on January 24 aforesaid; that exclusive of aforesaid corporate officers and employees, no one was in the licensed premises after 2:00 p.m. that at the time the police officers entered the premises and prior thereto, her husband was washing glasses behind the bar; that she and Anthony Carfello were sitting at the bar discussing business in general and were joined by Morrison about 10 or 15 minutes before the police arrived.

"It will be noted that with respect to Charge 1 the police officers testified that although they had not observed any alcoholic beverages being served or consumed in the licensed premises after hours, they saw and seized what appeared to be a half glass of beer standing on the bar in front of Morrison. Arguendo, that the beverage seized in front of Morrison was served to him after 2:00 a.m., there is no proof that the same was an alcoholic beverage within the purview of the statute (R.S. 33:1-1(b)). The mere statement that the beverage appeared to be beer, in my opinion, is insufficient to sustain the charge.

"With respect to the second charge, the police officers testified that the front door of the licensed premises was locked; that they had a clear view of the licensed premises from the street; that the only persons they saw in the licensed premises were Rocco Carfello, Helen Carfello, Anthony Carfello and Abe Morrison, none of whom was described by them as patrons or members of the public. Mrs. Carfello stated that she and aforesaid individuals were officers and employees of the licensee. In addition, there is no evidence that the licensed premises were kept open to the public after 2:00 a.m.

"Section 3.1(b) of the city ordinance reads as follows:

'During hours when sales of alcoholic beverages are prohibited the entire licensed premises shall also be closed, but this closing of premises requirement shall not apply to drug-stores, restaurants, hotels, clubs or to other establishments where the principal business is other than the sale of alcoholic beverages.'

"As used in the ordinance 'closed' means that all members of the public must be excluded (see Re Casarico, Bulletin 268, Item 1, and Re Heisel, Bulletin 318, Item 12). In Re Zenda, Bulletin 271, Item 5, the then Commissioner ruled that proof of the charge of 'keeping open' (which is the same as 'not being closed') requires only proof that the licensee continues to entertain the public. See also Town House Inc. v. Montclair, Bulletin 792, Item 3, as to what constitutes keeping the licensed premises closed during prohibited hours.

"Considering all the evidence herein, I find that the testimony adduced by the respondent is insufficient to support a finding of appellant's guilt, and conclude that respondent has failed to establish by a fair preponderance of the evidence the violations charged. I recommend, therefore, that the action of the respondent be reversed, and that the charges preferred against appellant be dismissed. Lipshitz, Inc. v. Newark, Bulletin 1243, Item 1."

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

Having carefully considered the testimony and the brief filed on behalf of the appellant, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 9th day of November, 1959,

ORDERED that the action of respondent be and the same is hereby reversed.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD - LICENSE
SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

Michael DeLuccia)
t/a Club 25)
13 N. Main Street)
Paterson 1, New Jersey)

CONCLUSIONS

and

ORDER

Holder of Plenary Retail Consumption)
License C-162, issued by the Board of)
Alcoholic Beverage Control for the)
City of Paterson.)

-----)
Defendant-licensee, Pro se
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, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

On the evening of September 23, 1959, ABC agents observed a bartender on duty in defendant's licensed premises serve a bottle of beer to a girl who, upon questioning by the agents, stated that she was nineteen years of age. The bartender admitted the violations to the agents.

Defendant has a prior adjudicated record. During the past five years defendant's license was suspended on five separate occasions as follows: Effective February 20, 1956, by the Director for twenty-five days for an "hours" violation (Bulletin 1102, Item 2); effective April 1, 1957, for twenty-five days by the Director for an "hours" violation (Bulletin 1166, Item 1); effective April 26, 1957, by the Director for fifteen days for sale of alcoholic beverages to minors (Bulletin 1166,

Item 2); effective March 17, 1958, by the local issuing authority for permitting a brawl on the licensed premises, and effective April 6, 1959, for ten days after the Director's affirmance of the action of the local issuing authority which was sustained by the Appellate Division of the Superior Court for failure of the defendant to provide a constable pursuant to the provisions of a condition in his license (Bulletin 1275, Item 11).

The minimum penalty for sale to a 19-year-old minor is fifteen days. Re Kirk, Bulletin 1300, Item 10. However, because of a prior similar violation occurring within a five-year period I shall add ten days more, and because of defendant's past record I shall add twenty-five days, making a total suspension of fifty days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty-five days.

Accordingly, it is, on this 2nd day of November, 1959,

Ordered that plenary retail consumption license C-162, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Michael DeLuccia, t/a Club 25, for premises 13 N. Main Street, Paterson, be and the same is hereby suspended for forty-five (45) days, commencing at 3 a.m. Monday, November 9, 1959, and terminating at 3 a.m. Thursday, December 24, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING UNLAWFUL TRANSPORTATION - TRANSPORTATION IN VEHICLE WITHOUT TRANSIT INSIGNIA - FAILURE TO HAVE INVOICE OR MANIFEST - PERMITTING BUSINESS TO BE USED IN FURTHERANCE OF ILLEGAL ACTIVITY - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 45 DAYS - LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

Bill's B. Bar (A Corp.)
783 Spruce Street
Camden, New Jersey

CONCLUSIONS

AND

Holder of Plenary Retail Consumption
License C-87, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Camden.

ORDER

Mulford E. Emmel, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On December 18, 1958, you aided and abetted another in the unlawful transportation of alcoholic beverages, contrary to R.S. 33:1-2; in violation of R.S. 33:1-50(d).
- "2. On December 18, 1958, you transported alcoholic beverages in a vehicle not having a transit insignia affixed thereto; in violation of Rule 2 of State Regulation No. 17.

- "3. On December 18, 1958, you delivered and transported alcoholic beverages in a vehicle without the driver thereof having in his possession a bona fide, authentic and accurate delivery slip, manifest, invoice, waybill or similar document stating the bona fide name and address of the purchaser or consignee and the brand, size of container, and quantity of each item of the alcoholic beverages being delivered and transported; in violation of Rule 3 of State Regulation No. 17.
- "4. On December 18, 1958, you allowed, permitted and suffered your licensed business to be used in furtherance and aid of an illegal activity and enterprise, viz., unlawfully possessing and transporting alcoholic beverages in Philadelphia, Pennsylvania, which illegal activity and enterprise resulted in a conviction in a criminal prosecution in the Commonwealth of Pennsylvania on June 10, 1959 of your agent, Edward Casey; in violation of Rule 4 of State Regulation No. 20.
- "5. On or about June 6 and December 17 and 18, 1958, you sold at retail, directly or indirectly, alcoholic beverages at less than the prices thereof listed in the then currently effective Minimum Consumer Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30."

The file discloses that on December 18, 1958, agents of the Pennsylvania Control Board observed alcoholic beverages being removed from defendant's premises and being placed in a station wagon which bore no transportation insignia. The agents followed the station wagon after it left defendant's premises and observed that it stopped at the premises of Trent Liquors, Inc., where two additional cases of alcoholic beverages were removed from said premises and placed therein. The agents then followed the station wagon to the City of Philadelphia where they stopped it and found the following alcoholic beverages therein:

- 12 fifth bottles Old Grand Dad Whiskey
- 12 fifth bottles Schenley Whiskey
- 24 fifth bottles Seagram 7 Crown Whiskey
- 6 fifth bottles Beefeater Gin
- 9 fifth bottles Seagram's V.O. Whiskey
- 3 fifth bottles Cutty Sark Scotch Whisky
- 48 pint bottles Schenley Whiskey

Edward Casey (the driver) stated to the agents that he was not regularly employed by defendant but was being paid one dollar per case by defendant for making deliveries to customers in Philadelphia. He was arrested and subsequently convicted in a criminal court in Pennsylvania for various violations of the Alcoholic Beverage Law of that State. At the time of his arrest Mr. Casey had in his possession two invoices indicating that some deliveries were to be made to two addresses in Philadelphia at prices less than the minimum consumer resale price then in effect for said items. During subsequent investigation at defendant's premises a New Jersey ABC agent found a bill indicating that on June 6, 1958, four cases and eight additional bottles of whiskey had been sold to a customer at less than the minimum consumer price then in effect for said items.

Defendant-licensee has no prior record. William Levin is president, director and owner of one-third of the stock of defendant corporation.

When the license for the premises in question was in his name and the name of Julius Levin, it was suspended by the Director for twenty days, effective August 10, 1950, for possession of illicit liquor. Re Levin, Bulletin 883, Item 7. However, since this dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. This is a serious violation and appears to have been a rather large-scale operation. Under the circumstances, I shall suspend defendant's license for forty-five days. Re Cork'n Bottle, Inc., Bulletin 1232, Item 3. Five days will be remitted for the plea, leaving a net suspension of forty days.

Accordingly, it is, on this 5th day of November 1959,

ORDERED that Plenary Retail Consumption License C-87, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Bill's B. Bar (A Corp.), for premises 783 Spruce Street, Camden, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. Thursday, November 12, 1959 and terminating at 2:00 a.m., Tuesday, December 22, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING UNLAWFUL TRANSPORTATION - TRANSPORTATION IN VEHICLE WITHOUT TRANSIT INSIGNIA - PERMITTING BUSINESS TO BE USED IN FURTHERANCE OF ILLEGAL ACTIVITY - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

Trent Liquors, Inc.
t/a Trent Liquors
575 Trenton Avenue
Camden, New Jersey

CONCLUSIONS

AND

Holder of Plenary Retail Consumption
License C-143, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Camden.

ORDER

Mulford E. Emmel, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On December 18, 1958, you aided and abetted another in the unlawful transportation of alcoholic beverages, contrary to R.S. 33:1-2; in violation of R.S. 33:1-50(d).
- "2. On December 18, 1958, you transported alcoholic beverages in a vehicle not having a transit insignia affixed thereto; in violation of Rule 2 of State Regulation No. 17.
- "3. On December 18, 1958, you allowed, permitted and suffered your licensed business to be used in furtherance and aid of an illegal activity and enterprise, viz., unlawfully possessing and transporting alcoholic beverages in Philadelphia, Pennsylvania,

which illegal activity and enterprise resulted in a conviction in a criminal prosecution in the Commonwealth of Pennsylvania on June 10, 1959 of your agent, Edward Casey; in violation of Rule 4 of State Regulation No. 20.

- "4. On or about December 15, 1958, you sold at retail, directly or indirectly, alcoholic beverages at less than the prices thereof listed in the then currently effective Minimum Consumer Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30."

The file discloses that on December 18, 1958, agents of the Pennsylvania Control Board observed two cases of alcoholic beverages being removed from defendant's premises and being placed in a station wagon which bore no transportation insignia and which contained other alcoholic beverages which had been placed therein at the premises of Bill's B. Bar. The agents followed the station wagon to the City of Philadelphia where they stopped it and found a large quantity of alcoholic beverages therein.

Edward Casey (the driver) stated to the agents that he was not regularly employed by defendant but was being paid by defendant for making deliveries. He was arrested and subsequently convicted in a criminal court in Pennsylvania for various violations of the Alcoholic Beverage Law of that State. At the time of his arrest Mr. Casey had in his possession defendant's invoice indicating a delivery of two cases of whiskey and six bottles of gin at prices below the minimum resale price then in effect for said items.

Defendant-licensee has no prior record. Julius Levin is president and owner of one share of the stock of defendant corporation. When the license for the premises in question was in his name and the name of William Levin, it was suspended by the Director for twenty days, effective August 10, 1950, for possession of illicit liquor. Re Levin, Bulletin 883, Item 7. However, since this dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. This is a serious violation and is distinguished only in minor respects from Re Bill's B. Bar, decided herewith. Under all the circumstances, I shall suspend defendant's license for forty days. Five days will be remitted for the plea, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 5th day of November, 1959,

ORDERED that plenary retail consumption license C-143, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Trent Liquors, Inc., t/a Trent Liquors, for premises 575 Trenton Avenue, Camden, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m., Thursday, November 12, 1959, and terminating at 2:00 a. m., Thursday, December 17, 1959.

WILLIAM HOWE DAVIS
DAVIS

6. DISCIPLINARY PROCEEDINGS - OBSCENE LANGUAGE - NUISANCE - LICENSE
SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

Lonzie B. Jackson and Ruby P. Jackson
143 Howard Street
Newark 3, New Jersey,

CONCLUSIONS
and
ORDER

Holders of Plenary Retail Consumption
License C-576, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Newark.

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

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On Saturday night, September 26, 1959, you allowed, permitted and suffered foul, filthy, obscene language, brawls, acts of violence and disturbances in and upon your licensed premises and allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance; in violation of Rule 5 of State Regulation No. 20."

On Saturday, September 26, 1959, between 10 and 11:20 p.m., ABC agents, while at the defendants' licensed premises, heard different patrons in the area of the bar freely and loudly using foul, filthy and obscene language and observed them throwing beer and wine bottles on the floor. At no time did Isaac Bowen (the bartender on duty) make any attempt to stop same. At about 10:50 p.m. two male patrons engaged in an argument and, when one of them began pushing the other, the agents warned the bartender a fight was about to take place. The bartender replied, "Let them kill themselves" and remained behind the bar. At this time the aggressor of the fight stabbed his opponent in the abdomen. Bowen admitted in a written statement that he heard the argument between the two men, observed the incidents prior to the stabbing and made no attempt to stop the same.

The conduct committed on defendants' licensed premises indicates that the agent of licensees permitted the establishment to be conducted in such manner as to become a nuisance.

By way of mitigation the attorney for the defendant licensees submitted a letter requesting I deal leniently with the licensees for the reason that the licensees entrusted the operation of the licensed premises to their bartender and because they were not on the premises when the violations took place. The licensees, however, cannot escape the consequences of their agent's failure to act as hereinabove set forth (Rule 33 of State Regulation No. 20). A licensee cannot exculpate himself because of his absence from the licensed premises when violations take place. Re Dressler, Bulletin 1189, Item 3.

I have read the file in the case, together with the reports of the agents, and find no extenuating circumstances that would impel me to impose a lesser penalty than that fixed in cases of this kind.

Defendants have no prior adjudicated record. Under all the circumstances I shall suspend their license for twenty-five days. Five days will be remitted for the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 5th day of November, 1959,

ORDERED that plenary retail consumption license C-576, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Lonzie B. Jackson and Ruby P. Jackson, for premises 143 Howard Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, November 17, 1959, and terminating at 2 a.m. Monday, December 7, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

7. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAXPAID ALCOHOLIC BEVERAGES - PERMITS TO IMPORT ALCOHOLIC BEVERAGES INTO STATE OF DESTINATION OBTAINED SUBSEQUENT TO SEIZURE - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES RETURNED.

In the Matter of the Seizure	:	
on March 19, 1959 of a quantity	:	
of whiskey, 24 bottles of beer	:	Case No. 9928
and a Chrysler sedan on Route	:	
No. 130, in the Township of	:	On Hearing
Bordentown, County of Burlington	:	
and State of New Jersey.	:	CONCLUSIONS AND ORDER
.....	:	
Walter P. A. Ensor, Esq., Attorney for Albert Smithson, Henry Beane,	:	et al
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage	:	Control

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of taxpaid alcoholic beverages, and a Chrysler sedan, described in a schedule attached hereto, seized on March 19, 1959, on Route No. 130, Bordentown, New Jersey, constitutes unlawful property and should be forfeited.

When the matter came on for hearing, counsel for the owner of the car and various claimants to the alcoholic beverages appeared and sought return of the alcoholic beverages and motor vehicle.

The evidence presented establishes that on the above date and location New Jersey State troopers halted the motor vehicle during their routine patrol of traffic on the highway. They ascertained that the motor vehicle was registered in the name of John Smith, and that the passengers therein were Henry Beane and Albert Smithson. When the troopers discovered the taxpaid whiskey in the car, and that Smithson, the driver of the car, did not have a New Jersey license or permit to transport alcoholic beverages, the troopers took possession of the alcoholic beverages and Chrysler sedan pending determination of the source and destination of such alcoholic beverages. Thereafter the motor vehicle and alcoholic beverages were turned over to ABC agents.

It appears that the alcoholic beverages were purchased from a retail licensee located in Washington, D. C., and Smithson had in his possession invoices from the retail licensee for all of the alcoholic beverages. Smithson and Beane are residents of New York City. However,

However, neither of these persons had in their possession a permit or permits for the importation of such alcoholic beverages into New York, in accordance with the requirements of that state. Bulletin 1204, Item 8. Compliance with such requirement is an integral part of Rule 2, State Regulation No. 18 governing the transportation of alcoholic beverages through this State for delivery in another state. Both Smithson and Beane stated that a group of men had pooled their money and delegated them to purchase alcoholic beverages in Washington on their behalf. The transportation of the alcoholic beverages in this state under the circumstances outlined was unlawful and subjects Smithson and Beane to criminal prosecution.

There has now been presented six permits issued by the New York State Liquor Authority to Evelyn Ford, Albert Codrington, Henry Beane, Jerome F. Anderson, Harold Ture, and Chester Storall respectively, authorizing the importation into that state of the alcoholic beverages listed herein in Schedule "A" attached hereto, and six receipts for New York State Tax on such liquor issued by the Commodities Tax Bureau of the New York State Liquor Authority. Hence the transportation and delivery of the alcoholic beverages in question is now in full compliance with the laws of this state and that of New York insofar as seizure proceedings are concerned. No opinion is expressed as to whether these permits obtained after the event affect the criminal proceedings, which are within the sole jurisdiction of the Prosecutor of the County.

Accordingly, it is DETERMINED AND ORDERED that if on or before the 14th day of November, 1959, John Smith, Evelyn Ford, Albert Codrington, Henry Beane, Jerome F. Anderson, Harold Ture, Chester Storall or any of them pay the costs incurred in the seizure and storage of the motor vehicle and alcoholic beverages as listed in the aforesaid Schedule "A" such motor vehicle and alcoholic beverages will be returned to each respectively, in accordance with the amount set forth on each permit, or to any person designated to receive the same on their behalf.

Dated: November 4, 1959

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 591 - pints of assorted brands of taxpaid whiskey
- 50 - 4/5 quart bottles of assorted brands of taxpaid whiskey
- 2 - 1/16 gallon bottles of whiskey
- 24 - bottles of beer
- 1 - Chrysler sedan, Serial No. 7180976, Engine No. C51823560, New York Registration 5733BX

DISCIPLINARY PROCEEDINGS - SALE TO MINOR - AGGRAVATING CIRCUMSTANCES -
LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)
Renato Segalla)
t/a "Kek's")
East Shore Road, Culver Lake)
Rte 206, Frankford Township)
PO Branchville, N. J.)
Holder of Plenary Retail Consumption)
License C-2, issued by the Township)
Committee of Frankford Township.)
- - - - -)

CONCLUSIONS
and
ORDER

Defendant-licensee, Pro se
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage
Control

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on August 4, 1959, and divers other dates, he sold and permitted the sale of alcoholic beverages to a minor and permitted the consumption of such beverages by said minor on his licensed premises, in violation of Rule 1 of State Regulation No. 20.

Acting upon information obtained from the New Jersey State Police, ABC agents obtained a signed, sworn statement from Herbert --- (age 17) wherein he says that on the evening of August 4, 1959, he and three other minors drove to the vicinity of defendant's premises; that he alone entered; that he purchased and consumed a glass of beer and also purchased several quart-bottles of beer and a pint of wine which he carried from the premises and that he and the other minors drank this beer and wine elsewhere. Herbert --- says that the aforesaid alcoholic beverages were purchased from Merlin VanGordon, a bartender, and that on a number of occasions prior to August 4, 1959, and on six occasions subsequent to August 4, 1959, he purchased alcoholic beverages from the same bartender in defendant's premises. Herbert --- also says that on several occasions since the summer of 1958 he purchased alcoholic beverages from defendant in the licensed premises. Statements obtained from the other three minors substantially corroborate the aforesaid statement as to the beer and wine carried from the premises on the evening of August 4, 1959.

The ABC agents also obtained a signed, sworn statement from defendant wherein he admits that he sold beer and wine to Herbert --- and says that he made these sales after Herbert --- exhibited to him a birth certificate and driver's license which indicated that the holder thereof was 21 years of age. Herbert --- admits that in June 1959 he showed a birth certificate to the aforesaid bartender but denies that defendant ever questioned him as to his age. In any event, the minor never represented in writing that he was 21 years of age or over. See R.S. 33:1-77.

Defendant has no prior adjudicated record. The minimum penalty imposed in a case involving sales to a 17-year-old minor is twenty days. Re Colton, Bulletin 1300, Item 3. However, this case is aggravated by the fact that numerous sales were made to this minor over a long period of time. Under the circumstances I shall suspend defendant's license for twenty-five days. Five days will be remitted for the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 2nd day of November, 1959,

ORDERED that plenary retail consumption license C-2 issued by the Township Committee of Frankford Township to Renato Segalla, t/a "Kek's", for premises on East Shore Road, Culver Lake, Rte. 206, Frankford Township, be and the same is hereby suspended for twenty (20) days, commencing at 7 a.m. Thursday, November 12, 1959, and terminating at 7 a.m. Wednesday, December 2, 1959.

WILLIAM HOWE DAVIS
DIRECTOR.

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

In the Matter of Disciplinary
Proceedings against

Willow Cafe & Restaurant, Inc.
367 Bloomfield Avenue
Montclair, New Jersey

Holder of Plenary Retail Consumption
License C-4, issued by the Board of
Commissioners of the Town of
Montclair.

CONCLUSIONS

AND

ORDER

Addonizio, Sisselman, Nitti & Gordon, Esqs., by G. George
Addonizio, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On September 16, 1959 an ABC agent tested defendant's open stock of alcoholic beverages and seized a number of bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of four bottles varied substantially in acids and solids when compared with the contents of genuine bottles of the same products.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of twenty days imposed in cases involving four bottles. Re Rosenfield, Bulletin 1300, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 4th day of November 1959,

ORDERED that Plenary Retail Consumption License C-4 issued by the Board of Commissioners of the Town of Montclair to Willow Cafe & Restaurant, Inc., for premises 367 Bloomfield Avenue, Montclair, be and the same is hereby suspended for fifteen (15) days, commencing at 1:30 a.m., Monday, November 9, 1959 and terminating at 1:30 a.m., Tuesday, November 24, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OR REGULATION NO. 38 -
PRIOR RECORD NOT CONSIDERED - LICENSE SUSPENDED FOR 15 DAY, LESS
5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

George & Kaiser Balkjy
t/a Ace & George's Market
324 Chamberlain Avenue
Paterson, New Jersey

CONCLUSIONS

AND

ORDER

Holders of Plenary Retail Distribution
License D-2, issued by the Board of
Alcoholic Beverage Control for the City
of Paterson.

Defendant-licensees, by Kaiser Balkjy, Partner.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

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

On Sunday, September 27, 1959, at about 3:35 p.m., an ABC agent entered defendants' premises and observed Henry Lawton (a clerk) placing packs of beer in a paper bag while conversing with a customer. After the agent entered, the clerk placed the bag on the floor and asked the agent what he wanted. The agent asked for a half-gallon of wine and the clerk replied "Not on Sunday". The agent left the premises and met another ABC agent, who had remained outside. Shortly thereafter the aforesaid customer left the store with two paper bags, and when the agents stopped him, they ascertained that one bag contained twenty-four 12-ounce cans of beer. All returned to the premises where the clerk admitted that he had sold the beer to the customer.

Defendants have no prior adjudicated record at the premises operated by them in Paterson. It appears that a license held by them for premises in Clifton was suspended by the local issuing authority for three days, effective November 26, 1951, for selling during prohibited hours. However, considering the length of time that has expired since the violation and defendants' clear record at their licensed premises in Paterson during the past twelve years, I shall suspend their license in this case for fifteen days, the minimum suspension imposed in cases of this kind. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 2nd day of November, 1959,

ORDERED that plenary retail distribution license D-2, issued by the Board of Alcoholic Beverage Control for the City of Paterson to George & Kaiser Balkjy, t/a Ace & George's Market, for premises 324 Chamberlain Avenue, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m., Monday, November 9, 1959, and terminating at 9:00 a.m., Thursday, November 19, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary)
Proceedings against)

Arthur G. Nixon & John E. Dowling)
t/a Nixon's Tavern)
137 North Main Street)
Paterson 2, New Jersey,)

CONCLUSIONS
and
ORDER

Holders of Plenary Retail Consumption)
License C-12, issued by the Board of)
Alcoholic Beverage Control for the)
City of Paterson.)

-----)
Alexander A. Abramson, Esq., Attorney for Defendant-licensees
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage
Control.

BY THE DIRECTOR:


Defendants pleaded non vult to a charge alleging that on Sunday, October 11, 1959, they sold during prohibited hours alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

At about 1 p.m. on the above mentioned date two ABC agents observed a woman enter the licensed premises by a side door and emerge therefrom within ten minutes carrying a brown paper bag. The agents identified themselves to the woman, who told them she had purchased two quarts of beer in the licensed premises and had them in the bag. The agents entered the licensed premises with the woman, and the bartender admitted that he had made the sale.

Defendants have no prior adjudicated record. I shall suspend defendants' license for the minimum period of fifteen days. Re 677 Ocean Avenue Corporation, Bulletin 1301, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 2nd day of November, 1959,

ORDERED that plenary retail consumption license C-12, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Arthur G. Nixon & John E. Dowling, t/a Nixon's Tavern, for premises 137 North Main Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3 a.m. Monday, November 9, 1959, and terminating at 3 a.m. Thursday, November 19, 1959.


William Howe Davis
Director