

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

Mr. Gossweiler

BULLETIN 1307

November 6, 1959

TABLE OF CONTENTS

- ITEM
1. DISCIPLINARY PROCEEDINGS (Washington Township - Mercer County) - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS.
  2. DISCIPLINARY PROCEEDINGS (Belmar) - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, DATES TO BE FIXED BY FURTHER ORDER.
  3. DISCIPLINARY PROCEEDINGS (Margate City) - SALES TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA - EFFECTIVE DATES TO BE FIXED BY SUBSEQUENT ORDER.
  4. DISCIPLINARY PROCEEDINGS (Linden) - SALES TO MINORS - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
  5. DISCIPLINARY PROCEEDINGS (Asbury Park) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
  6. DISCIPLINARY PROCEEDINGS (Hillsdale) - EXERCISING PRIVILEGES OF LICENSE PRIOR TO TRANSFER THEREOF TO DEFENDANT - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
  7. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
  8. DISCIPLINARY PROCEEDINGS (Fort Lee) - SALE TO INTOXICATED PERSON - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
  9. DISCIPLINARY PROCEEDINGS (Upper Freehold Township) - CHARGE ALLEGING POSSESSION OF ALCOHOLIC BEVERAGES NOT TRULY LABELED DISMISSED.
  10. DISCIPLINARY PROCEEDINGS (Madison Township) - SALES TO INTOXICATED PERSONS - OBSCENE LANGUAGE - SALE FOR OFF-PREMISES CONSUMPTION IN OTHER THAN ORIGINAL CONTAINER - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
  11. DISCIPLINARY PROCEEDINGS (Hanover Township) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
  12. DISCIPLINARY PROCEEDINGS (Lakewood) - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
  13. STATE LICENSES - NEW APPLICATION FILED.

New Jersey State Library

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

BULLETIN 1307

November 6, 1959

1. DISCIPLINARY PROCEEDINGS - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against )

MICHAEL LAVDAS )  
t/a ROBBINSVILLE BAR & GRILL )  
State Highway #33 )  
Washington Township (Mercer Co.) )  
PO Robbinsville, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Washington (Mercer Co.) )

-----  
Sidney F. Skokos, Esq., Attorney for Defendant-licenses.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant entered what he terms a technical plea of not guilty to the following charge:

"On July 28 and 30, 1959, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of horse race bets; in violation of Rule 7 of State Regulation No. 20."

Counsel for the licensee explained that such plea was being entered because the licensee was reluctant to enter any other plea in view of the pending criminal proceedings against him in the case, but stipulated that the decision as to whether or not he was guilty of the charge should rest entirely upon the facts appearing in the files of the Division.

The file discloses that on July 28, 1959, ABC agents, who had on previous dates observed the bartender (George Lavdas, brother of the licensee) accept horse race bets from patrons, were at defendant's licensed premises and placed horse race bets with George Lavdas.

On July 30, 1959, the agents were again at the premises and placed horse race bets with George Lavdas. Other agents and local officers entered the premises shortly after these bets were placed; identified themselves, and George Lavdas surrendered betting slips and marked money used by the agents to place their bets. The licensee was not present at the time. Since the licensee is responsible for the acts of his employees upon the licensed premises (Re O'Neill, Bulletin 1286, Item 3), it is clear from the evidence presented that the defendant-licensee is guilty of the charge and I so find.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty-five days, the minimum suspension



June 3, 1954, for sales to minors and employing a minor as a bartender (Re The Aloha, Inc., Bulletin 998, Item 4 and Bulletin 1021, Item 3), and the second time for fifteen days commencing June 9, 1959, for sales to minors (Re The Aloha, Inc., Bulletin 1246, Item 10 and Bulletin 1286, Item 7). In addition, when Vincent McCarthy (president of the corporate licensee herein) held the license in his own name at premises 15th Avenue and Ocean Avenue, Belmar, said license was suspended by this Division for ten days, effective June 20, 1949, for possessing an illicit alcoholic beverage (Re McCarthy, Bulletin 832, Item 10 and Bulletin 846, Item 8). The 1949 dissimilar violation and the 1954 similar violation will not be considered in fixing the penalty herein, the former because it occurred more than ten years ago and the latter because "the present stockholders were not involved in the previous violation since they took over the entire stock and operation of the corporation about two years after the above violation occurred." See Bulletin 1246, Item 10. The minimum period of suspension imposed for a violation such as charged herein is fifteen days, to which ten days will be added because of the prior similar violation which occurred within a five-year period. Re Gellner, Bulletin 1291, Item 4. I shall, therefore, suspend defendant's license for twenty-five days, with no remission for the confessional plea which was entered on the day scheduled for hearing on the charge.

Investigation discloses that defendant's business is not being conducted at present. Thus no effective penalty can be imposed at this time. The effective time and date of the suspension, therefore, will be fixed by further order which will be entered by me after the licensed premises shall have reopened for business.

Accordingly, it is, on this 30th day of September 1959,

ORDERED that Seasonal Retail Consumption License CS-6, issued by the Board of Commissioners of the Borough of Belmar to The Aloha, Inc., t/a The Aloha, for premises 104 - 4th Avenue, Belmar, be and the same is hereby suspended for twenty-five (25) days, the effective time and date to be fixed by subsequent order, as aforesaid.

WILLIAM HOWE DAVIS  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA - EFFECTIVE DATES TO BE FIXED BY SUBSEQUENT ORDER.

In the Matter of Disciplinary Proceedings against

SHOREVIEW, INC.  
t/a FLAGSHIP BAR  
S.E. Monroe & Amherst Aves.  
Margate City, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the City of Margate City.

-----  
Moore, Butler & McGee, Esqs., by Albert A. F. McGee, Esq.,  
Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

On the evening of July 25, 1959, ABC agents observed three young girls seated at the bar in defendant's licensed premises. Each girl had a drink of alcoholic beverages in front of her. The agents kept the girls under surveillance for a period of time during which the girls left the bar to dance on several occasions. Finally, the agents approached the girls in question and ascertained that one of them who was seen consuming beer was 16 years of age and the other two showed proof that each of them was more than twenty-one years of age. It appears from statements given by the girls that one of the adults ordered bottled beer for the 16-year-old on two separate occasions.

In alleged mitigation, the attorney for defendant has submitted an affidavit by Helen Kauffmann, Secretary-Treasurer of Shoreview, Inc., in which she says that she is in charge of the premises and that, because of a death in the family, she did not arrive at the premises on the evening in question until after the violation occurred. Her absence does not warrant imposition of less than the usual penalty imposed in cases of this kind.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of twenty-five days for sale to or consumption by a 16-year-old minor. Cf. Re Scangarello, Bulletin 1188, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Investigation discloses that defendant's business is conducted on a seasonal basis. Thus, no effective penalty can be imposed at the present time. The effective dates for suspension herein will be fixed by further order to be entered after the licensed premises shall have opened for business for the 1960 season. Cf. Re DeFreitas, Bulletin 1051, Item 5.

Accordingly, it is, on this 24th day of September 1959,

ORDERED that Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the City of Margate City to Shoreview, Inc., t/a Flagship Bar, for premises S.E. Monroe & Amherst Aves., Margate City, be and the same is hereby suspended for a period of twenty (20) days, the time to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

BEATRICE FREDERICKS & RUTH HORNER )  
t/a BEA'S TAVERN )  
1915 South Wood Avenue )  
Linden, N. J. )

CONCLUSIONS  
AND ORDER

-----  
Holders of Plenary Retail Consumption License C-20, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden. )

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

BY THE DIRECTOR:

Defendants pleaded non vult to charges alleging that (1) they sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor in and upon their licensed premises, in violation of Rule 1 of State Regulation No. 20, and (2) they allowed, and permitted gambling (playing pool for money stakes) in and upon their licensed premises, in violation of Rule 7 of State Regulation No. 20.

On August 7, 1959, ABC agents who were in defendants' licensed premises observed the bartender therein serve a drink of brandy to a young lady, apparently a minor, without requiring written representation as to her age. When the young lady had consumed a portion of her drink, the agents identified themselves and ascertaining that she was Phyllis ---, age 20, seized the remaining portion of her drink for evidential purposes. During the agents' stay in the licensed premises, they observed numerous games of pool being played for stakes ranging from one dollar to seven dollars per game. After the agents had identified themselves, two of the players gave them sworn statements admitting the violation.

Defendants as partners, have no prior adjudicated record. Effective October 6, 1941, the local issuing authority suspended a license held by Beatrice Nannery (apparently now Beatrice Fredericks) for three days for permitting gambling, but, since the prior violation occurred more than ten years ago, it will not be considered in fixing penalty herein. I shall suspend defendants' license for the minimum period of ten days on Charge 1 (Re Murtagh, Bulletin 1287, Item 9) and for fifteen days on Charge 2 (Re Repac, Bulletin 1287, Item 6), 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 29th day of September 1959,

ORDERED that Plenary Retail Consumption License C-20, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden to Beatrice Fredericks & Ruth Horner, t/a Bea's Tavern, for premises 1915 South Wood Avenue, Linden, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m., Tuesday, October 6, 1959 and terminating at 2:00 a.m., Monday, October 26, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

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

In the Matter of Disciplinary Proceedings against )

FENIMORE HOTEL CORP. )  
t/a FENIMORE HOTEL )  
213 Second Avenue )  
Asbury Park, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-74, issued by the City Council of the City of Asbury Park. )

-----  
Defendant-licensee, by Haig Ellian, President, and George Leylegian, Treasurer,  
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

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

On July 15, 1959, an ABC agent tested the licensee's open stock of assorted brands of liquor and seized a number of bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of two bottles labeled "Cutty Sark Blended Scots Whisky 86.0 Proof" and one bottle labeled "Johnnie Walker Red Label Blended Scotch Whisky 86.8 Proof" were low in solids and acids and that the contents of one bottle labeled "Calvert Reserve American Blended Whiskey 86.0 Proof" were high in solids and low in acids.

By way of mitigation the aforesaid officers of the corporate licensee state that they did not knowingly tamper with the contents of any of the bottles seized, but that a bartender "may have consolidated bottles for his own convenience."

However, it is axiomatic that a licensee must be held responsible for violations committed by his employees. A patron is entitled to get what he orders, and it is the licensee's responsibility to see that he does.

Defendant has no prior adjudicated record. I shall suspend its license for twenty days, the minimum suspension in a "refill" case involving four bottles. Re Grower, Bulletin 1263, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Investigation discloses that defendant's business is not being conducted at present. Thus no effective penalty can be

imposed at this time. A further order fixing effective dates will be entered by me after the licensed premises shall have reopened for business.

Accordingly, it is, on this 29th day of September, 1959,

ORDERED that Plenary Retail Consumption License C-74, issued by the City Council of the City of Asbury Park to Fenimore Hotel Corp., t/a Fenimore Hotel, for premises 213 Second Avenue, Asbury Park, be and the same is hereby suspended for fifteen (15) days, the effective time and date to be fixed by subsequent order.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - EXERCISING PRIVILEGES OF LICENSE PRIOR TO TRANSFER THEREOF TO DEFENDANT - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

WALTER ROSKO )  
t/a NEIGHBORHOOD STORE )  
577 Hillside Avenue )  
Hillside, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Limited Retail Distribution License DL-1 (for the 1958-59 and 1959-60 licensing years), issued by the Borough Council of the Borough of Hillside. )

-----  
Robert E. Personette, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"From about June 16, 1958 to about April 14, 1959 you exercised the rights and privileges of the limited retail distribution license held by Arft Beelendorf, t/a Neighborhood Store, for premises at 577 Hillside Avenue, Hillside, New Jersey; in violation of R.S. 33:1-26."

While making a routine inspection of the above licensed business on February 11, 1959, an ABC agent found evidence indicating that Arft Beelendorf (the then licensee) had farmed out his license to Walter Rosko (defendant herein). Returning to the licensed premises on February 19, 1959, the same agent obtained a sworn statement from Rosko in which he states that he has been manager of the licensed business since June 1958; that Beelendorf pays him "strictly salary, no commission of any kind" and that he contemplated having the license transferred to himself. The premises are a delicatessen store licensed to sell packaged warm beer.

On February 24, 1959, the agent obtained a sworn statement from Beelendorf in which he states that Rosko is employed as manager of his licensed business on a salary basis and "also he gets a percentage of the profits of all the merchandise sold including sale of beer;" that Rosko has no written agreement with him, "just

my word and Mr. Rosko's word. We both agreed that I would get 10 per cent of the profits, if any, and Mr. Rosko would have 90 per cent to work with, that is, to arrange for ordering new supplies and paying the help ...."

Further investigation by other agents disclosed that Beelendorf and Rosko had executed an agreement on June 17, 1958, by which the licensed premises and business were leased for a period of one year to Rosko, who agreed to deposit \$100 weekly in Beelendorf's bank account. The agreement purports to exclude from Rosko's possession "that portion of the premises devoted to the sale of alcoholic beverages." However, the license application was not amended to indicate the exclusion. The agents confronted Beelendorf and Rosko with documentary evidence of the arrangement under which they had been operating and both gave sworn statements verifying the facts contained therein. They further state that Rosko had been in full control and possession of the licensed premises from June 16, 1958, to about April 14, 1959; that he conducted the business for his own profit, and that he was not required to and did not give Beelendorf any accounting of the money he received from the sale of alcoholic beverages.

It appears from the Division's records that neither the licensee herein nor his predecessor has a prior adjudicated record and that on April 14, 1959, the illegal situation was corrected by transfer of the license from Arft Beelendorf to Walter Rosko (a qualified person who is the defendant herein). Since the charge herein was not preferred until after the license was transferred, a situation is presented whereby the holder of the license at the time the violation occurred is exculpated. However, had the charge been preferred against Beelendorf, it would have been sustained upon the evidence appearing herein and any suspension imposed against Beelendorf's license would continue in full force and effect against the license if transferred during the period of suspension. Rule 5 of State Regulation No. 16. Consideration cannot be given to the defendant herein for it was he who, over a period of nine months, knowingly, if not fraudulently, exercised the rights and privileges of a liquor licensee. Considering all the facts and circumstances herein, I shall suspend defendant's license for a period of twenty days. Cf. Re Russo, Bulletin 741, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 29th day of September 1959,

ORDERED that Limited Retail Distribution License DL-1 (for the 1959-60 licensing year), issued by the Borough Council of the Borough of Hillsdale to Walter Rosko, t/a Neighborhood Store, for premises 577 Hillsdale Avenue, Hillsdale, be and the same is hereby suspended for fifteen (15) days, commencing at 9 a.m. Tuesday, October 6, 1959, and terminating at 9 a.m. Wednesday, October 21, 1959.

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

JOHN BARTOSZAK AND JEAN BARTOSZAK  
t/a BARTOSZAK'S BAR  
791 Newark Avenue  
Jersey City, N. J.

CONCLUSIONS  
AND ORDER

-----  
Holders of Plenary Retail Consumption License C-473, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Defendant-licensees, Pro se.  
Dora P. Rothschild, 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.

At about 3:05 p.m., Sunday, August 23, 1959, an ABC agent who was in defendants' licensed premises purchased from the bartender therein six cans of beer, which he took with him from the premises. The agent contacted a fellow agent and both re-entered the tavern and identified themselves to the bartender who admitted the sale for off-premises consumption.

Defendants have no prior adjudicated record. I shall suspend their license for the minimum period of fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Dublin House, Inc., Bulletin 1296, Item 3.

Accordingly, it is, on this 29th day of September, 1959,

ORDERED that Plenary Retail Consumption License C-473, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Bartoszak and Jean Bartoszak, t/a Bartoszak's Bar, for premises 791 Newark Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., Tuesday, October 6, 1959, and terminating at 2:00 a.m., Friday, October 16, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

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

In the Matter of Disciplinary Proceedings against )

WILLIAM ZIPSE )  
212 Main Street )  
Fort Lee, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Fort Lee. )

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

BY THE DIRECTOR:

Defendant pleaded guilty to the following charge:

"On Saturday, August 8, 1959 between 2:10 a.m. and 2:35 a.m., you served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

At about 2:15 a.m. on Saturday, August 8, 1959, ABC agents observed a female leave her seat at the bar and stagger while walking to the juke box and upon her return therefrom, fall to the floor. One of the agents and the woman's male companion helped her to her feet. She could not walk without assistance and reached the bar with the help of two male patrons. The woman's eyes were glassy, her hair disheveled, she spoke in a loud voice and her speech was slurred and incoherent. At 2:25 a.m., the woman in question, in a loud voice, inquired from the defendant what became of her drink and he replied that she must have lost it. He then proceeded to mix another drink containing whiskey and soda, which he served to the woman. After she had partially consumed the drink, an agent seized her glass and then the agents made known their identity to the woman. The agents thereafter questioned the defendant and his wife and both admitted that she was not sober, but thought that since she was not driving a car and was with companions, it was all right to serve her.

Defendant has no prior adjudicated record. The minimum suspension for service to a person apparently or actually intoxicated is fifteen days. Re Golden Slipper, Inc., Bulletin 1268, Item 7. I shall suspend defendant's license for a period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 28th day of September 1959,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Fort Lee to William Zipse, for premises 212 Main Street, Fort Lee, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., Monday, October 5, 1959, and terminating at 3:00 a.m., Thursday, October 15, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING POSSESSION OF ALCOHOLIC BEVERAGES NOT TRULY LABELED DISMISSED.

In the Matter of Disciplinary Proceedings against )

ABE SEIDEL, t/a OASIS )  
Hightstown Road or Old York Road )  
Upper Freehold Township )  
PO RFD Allentown, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2 for the 1958-59 licensing year and C-1 for the 1959-60 licensing year, issued by the Township Committee of Upper Freehold Township. )

-----  
Edward A. Costigan, 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 he possessed on his licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

"An ABC agent testified that on April 4, 1959 he tested fifty-nine open bottles of alcoholic beverages on defendant's licensed premises (including two bottles found in a rear stock room). According to the testimony of the agent, one of the bottles in the stock room was a half-filled pint bottle labeled 'Fleischmann's Preferred Blended Whiskey 90 Proof', which did not have a stopper. The agent testified that the bottle 'appeared to be concealed' as it was discovered after the defendant had removed several cardboard cases. The agent seized the said bottle when a preliminary test of the contents showed that the proof was higher than indicated on the label of the bottle.

"The Division chemist testified that a chemical test made of the contents of the seized bottle disclosed 'the alcoholic content to be 50 per cent by volume (100 proof), natural color and solids of 89.2 grams per 100 liters, Klett color test was 400'. The chemist further testified that an analysis of a genuine sample of 'Fleischmann's Preferred Blended Whiskey 90 Proof' showed an alcoholic content of 45 per cent by volume (90 proof), artificial color, solids 428 grams per 100 liters, Klett color was 485. The chemist testified that, in his opinion, based on the chemical analysis aforementioned, the whiskey in the seized bottle was not the genuine brand.

"Defendant testified that he has never refilled a bottle and that he did not have any knowledge of the existence of the bottle in question until he saw the agent reach down from underneath some trash, pick up the bottle and show it to him.

"Stephen Turnacky, a part-time employee of defendant and who worked for defendant in March and April 1959, testified that the pint bottle of Fleischmann's whiskey found in the stock room belonged to him. He further testified that whenever defendant went out of the premises he (Turnacky) would pour a 'little'

whiskey from other bottles into the bottle in question. Furthermore, he claimed to have hidden the uncapped bottle under some rags when he heard the defendant coming into the room.

"The fact that defendant lacked knowledge as to the existence of the bottle on his licensed premises, or the illicit nature of its contents, cannot constitute a legal defense to the charge preferred herein. The New Jersey Supreme Court has held that the violation of possessing illicit alcoholic beverages is complete without proof of such knowledge. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156; English v. Hock, 137 N.J.L. 34. The defendant has produced no evidence whatsoever which could be construed to overcome the presumption of the illicit character of the alcoholic beverage in the bottle found on his licensed premises. Moreover, Rule 33 of State Regulation No. 20 provides that 'it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee'. Under the circumstances, I recommend that defendant be found guilty as charged.

"Defendant has a prior adjudicated record. Effective December 15, 1954 his license was suspended by the local issuing authority for five days for sale of alcoholic beverages during prohibited hours. Again, effective November 1, 1956, his license was suspended by the Division for sale of alcoholic beverages to minors. Re Seidel, Bulletin 1143, Item 2. The minimum penalty for a violation as that now under consideration is ten days. (Re Schaffer, Bulletin 1291, Item 7.) In view of the defendant's dissimilar prior record occurring during the past five years, I recommend his license be suspended for a period of fifteen days."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorney for defendant and written answering argument was filed with me by the attorney appearing for the Division, pursuant to Rule 6 of State Regulation No. 16.

I do not agree with the Hearer that Stephen Turnacky was a "part-time" employee of the defendant. It is apparent from the evidence that Turnacky was of rather limited intelligence and, although some of his answers in response to questions of the attorney appearing for the Division might tend to classify him as an employee, the very nature of the work (carpentry) performed for others as well as for the defendant would make him an independent contractor. In addition, the admission that the pint of whiskey belonged to him and that it was he who refilled the bottle and hid it in the establishment is not controverted in any way whatsoever by the Division.

I am satisfied from the circumstances appearing in this case that the defendant should not be held responsible for possession of the bottle of whiskey hidden by Turnacky in the licensed premises. Therefore, I find defendant not guilty and direct that the charge preferred herein be dismissed.

Accordingly, it is, on this 29th day of September 1959,

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

WILLIAM HOWE DAVIS  
DIRECTOR





contents appeared to be other than as described by the labels. Subsequent analysis by the Division chemist disclosed that the contents of the two bottles, when compared with the samples of the genuine product of the labeled brand, varied substantially in solids.

Defendant has a prior adjudicated record. Effective September 20, 1954 his license was suspended for five days for sale to a minor. Re Fanok, Bulletin 1033, Item 3. I shall suspend defendant's license for fifteen days, the minimum period where two bottles are involved, to which will be added five days because of the dissimilar violation which occurred within the past five years, making a total suspension of twenty days. Re Sherry, Bulletin 1295, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 30th day of September 1959,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of Hanover Township to George Fanok, t/a "George's Tavern", for premises 1003 Route 10, Hanover Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Tuesday, October 13, 1959 and terminating at 2:00 a.m., Wednesday, October 28, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

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

In the Matter of Disciplinary Proceedings against

MORRIS SOIFFER  
t/a LAKEWOOD PRODUCE & PROVISION CO.  
311 Monmouth Avenue  
Lakewood, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribution License D-9, issued by the Township Committee of the Township of Lakewood.

-----  
Novins, Novins & O'Connor, Esqs., by Robert J. Novins, Esq.,  
Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

On September 4, 1959, ABC agents observed Wilhelm ---, who appeared to be a minor, enter defendant's licensed premises and purchase 12 cans of beer from one of the clerks. When Wilhelm left the premises, the agents revealed their identity to him, and ascertained that he was 18 years of age. The agents and the minor entered the licensed premises, confronted the clerk who sold the beer, and such clerk, and the licensee, who was also present, verbally admitted the aforesaid sale of beer to the minor without inquiry as to Wilhelm's age.

Defendant has no prior adjudicated record. I shall suspend

defendant's license for fifteen days (the minimum penalty for sale to an 18-year-old minor). Re Swick, Bulletin 1291, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 30th day of September 1959,

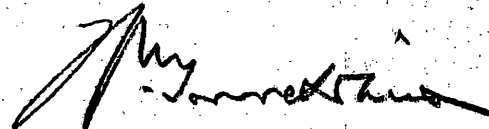
ORDERED that Plenary Retail Distribution License D-9, issued by the Township Committee of the Township of Lakewood to Morris Soiffer, t/a Lakewood Produce & Provision Co., for premises 311 Monmouth Avenue, Lakewood, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m., Tuesday, October 13, 1959, and terminating at 9:00 a.m., Friday, October 23, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

13. STATE LICENSES - NEW APPLICATION FILED.

BRANIFF AIRWAYS, INC.  
t/a Braniff International Airways  
Dallas, Texas

Application filed November 4, 1959 for  
Plenary Retail Transit License.



William Howe Davis  
Director