

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

I. E. Amada

BULLETIN 1232

JULY 16, 1958.

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

BULLETIN 1232

JULY 16, 1958.

1. APPELLATE DECISIONS - HUDSON-BERGEN COUNTY RETAIL LIQUOR
STORES ASSOCIATION ET ALS. v. RAMSEY AND PACKARD-BAMBERGER &
CO., INC.

HUDSON-BERGEN COUNTY RETAIL LIQUOR)
STORES ASSOCIATION, a New Jersey)
Corporation, RAMSEY LIQUORS, INC.,)
and LESTER GIBIAN,)

Appellants,)

-vs-)

THE MAYOR AND COUNCIL OF THE)
BOROUGH OF RAMSEY, and PACKARD-)
BAMBERGER & CO., INC.,)

Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

Samuel Moskowitz, Esq., Attorney for Appellants.
James M. Muth, Esq., Attorney for Respondent Mayor and Council.
Charles P. DeYoe, Esq., Attorney for Respondent Packard-
Bamberger & Co., Inc.

Meehan Brothers, Esqs., by John J. Meehan, Esq., Associate
Counsel for Respondent Packard-Bamberger & Co., Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Mayor and Council whereby it approved an application for a person-to-person and place-to-place transfer of a plenary retail consumption license from Henry Chanut and Evelyn Chanut to respondent Packard-Bamberger & Co., Inc., and from premises 538 Franklin Turnpike to premises located at 25 Ramsey Shopping Center, Route 17, Ramsey, N. J. Five of the six members of the Borough Council voted on the application, three of whom voted in favor of the transfer and two opposed it. One member disqualified himself from voting on the matter because he is associated with the alcoholic beverage industry in this State.

"The appellants contend, in substance, in their petition of appeal that the action of the respondent Mayor and Council was erroneous for the following reasons:

- A. The granting of the transfer of such license is in direct violation of an Ordinance to amend an Ordinance entitled: 'An Ordinance to Amend an Ordinance Entitled "An Ordinance Limiting and Regulating the Issuance of Liquor Licenses, Fixing Hours for the Sale of Liquor and Regulating Premises Licensed Therefor"' Passed By the Council and Approved by the Mayor of the Borough of Ramsey, in the County of Bergen, October 28, 1940.
- B. The granting of the transfer of said license is socially undesirable.
- C. There is no public need or necessity for the transfer of said license to the premises in question, inasmuch as this area is amply served by the present existing outlets.

- D. The granting of the transfer of said license is in violation of the alcoholic beverage control laws and regulations of the State of New Jersey.
- E. The Mayor and Council of the Borough of Ramsey were guilty of an abuse of discretion and a mistake of law and fact in granting the transfer of said license.
- F. The granting of said transfer of license to the Respondent, Packard-Bamberger & Co., Inc., was arbitrary and unreasonable.

"The greater part of the evidence presented in the instant case was with reference to Ordinance 239 which, inter alia, regulates the issuance of liquor licenses in the Borough of Ramsey. Said amended ordinance was passed on final reading at a meeting of the Mayor and Council on June 11, 1941 and approved by the Mayor on the same date. The pertinent section of said amended ordinance provides as follows:

- 'Section 1. That the number of plenary retail consumption licenses outstanding in the Borough of Ramsey at the same time shall not exceed eleven, as follows:
- a. For premises fronting on State Highway Route No. 2, four;
 - b. For the remainder of the premises in this Borough, seven.'

"State Highway Route No. 2 is now known as Route 17.

"The evidence presented herein discloses that the proposed licensed premises are in a large shopping center where there are various other types of retail businesses. The two buildings (described as Unit #1 and Unit #2) in which all the respective business establishments are located, are constructed in the form of an ell (L) and are situated on approximately 26 acres of land. The parking area surrounding the buildings can accommodate 1646 parked cars, the greater part of said space, however, being in the front of the establishments. Automobiles can be driven to the shopping area from Route 17 by proceeding on a road leading from the highway to Franklin Turnpike. Before reaching Franklin Turnpike there is a ramp with a gradual descent of 50 feet where, at the lower level, it meets the parking area of the shopping center. The building (Unit #1) containing, among other businesses, the proposed licensed premises, according to the testimony of Councilman Zabriskie, is 400 or 500 feet away from the closest point of Route 17. Councilman Zabriskie, however, testified that he considers the ramp aforementioned which leads to Franklin Turnpike as part of Route 17. Although there is an entrance to the shopping center by use of the road from Route 17 and thereafter by the ramp aforementioned, there is no exit from the shopping center leading to Route 17. In order to leave the shopping center by automobile it is necessary to use Bennett Avenue which leads to Franklin Turnpike. By use of Fergus Avenue from the Franklin Turnpike, one may gain entrance to the shopping center.

"'Fronting upon the street' means touching the boundary line of the street. Roach v. Soles, D.C. Cal. 120 F. Supp. 400, 404. The ordinance in question specifically refers to premises fronting on State Highway #2 (#17). It is immediately apparent that the licensed premises itself, although the front entrance thereto faces in the direction of Route 17, is, as the testimony of Councilman Zabriskie indicated, a considerable distance therefrom. The parking area which is situated 50 feet below Route 17

cannot be said to touch or come in contact with Route 17 or the road leading therefrom to Franklin Turnpike. There is also testimony to the effect that the occupants travelling in a car on Route 17 would not be able to see the shopping center.

"It has long been established that a local governing body has no jurisdiction to grant or transfer a license in violation of the terms of a local ordinance. Bachman v. Town of Phillipsburg, 68 N.J.L. 552.

"In the case of Wright v. Vogt, 7 N.J. 1, 5 (1951), Justice Heher speaking for the New Jersey Supreme Court stated:

'As in the case of statutes, the purpose of construction of ordinances and municipal by-laws is the discovery in effectuation of the local legislative intent; and in general the inquiry is governed by the same rules as apply in the interpretation of statutes. Ordinances are to receive a reasonable construction and application, to serve the apparent legislative purpose. The aim of judicial construction is to ascertain the sense in which the terms were employed by the legislative body.'

Judge Jayne, in the matter of Preziosi v. Buonaccorsi, 16 N. J. Super. 15 (App. Div.), stated:

'It is also the settled rule that where the words of the statute are clear and their meaning and application plain, there is no room for judicial construction.'

He cited the case of McGowan v. Metropolitan Life Ins. Co., 60 N.J.L. 198 (E. & A. 1897).

"The pertinent section of the ordinance now under consideration provides that there shall be only four licensed premises 'fronting on State Highway #2 (#17)'. Appellants contend that because the entrance to the licensed premises in question faces toward Route 17, it is their considered opinion that the said premises front on Route 17. If the said licensed premises were constructed on the level with Route 17 and a reasonable distance therefrom, there might be some merit to the appellants' contention. However, in the case sub judice, the proposed licensed premises itself is situated in a depressed area 50 feet below Route 17 or any roads leading therefrom and is at a distance of 400 or 500 feet from the highway. The parking area does not constitute any part of the proposed licensed premises, the latter being confined solely to the building itself. It is plainly discernible that the proposed licensed premises cannot, under any stretch of the imagination, be considered to front on Route 17. The respondent Mayor and Council by its action interpreted the ordinance in question as not applicable to the transfer applied for. I am satisfied that the respondent Mayor and Council did not violate its ordinance by approving the transfer in question.

"There has been some testimony to the effect that there are other liquor establishments operating in the general area of the proposed licensed premises. The license in question was transferred from 538 Franklin Turnpike about one-half mile away from the shopping center. Councilman Zabriskie testified that there are three other licensed establishments all of which are about 500 feet distant from the shopping center, although one of them may be somewhat nearer.

"It has consistently been held that the number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Carriell et al. v. Newark et al., Bulletin 1043, Item 2 and cases cited therein. The appellants further contended that the manner in which the premises are to be laid out is a violation of the intent of Rule 7 of State Regulation No. 32 of the Division of Alcoholic Beverage Control, which provides that 'no holder of a plenary retail consumption license...shall sell any alcoholic beverages in the original containers for off-premises consumption from an additional public barroom...' As was stated by Judge Freund in Totowa v. Chicken Barn, Inc. and Division of ABC, 41 N. J. Super. 459,

'The clear intent of the rule was to implement R.S. 33:1-12.23 so as to insure that a restricted consumption licensee should not establish a second public barroom and there sell packaged liquor. The statute and rule do not prohibit enlargement of an existing public barroom. To hold otherwise would prevent a licensee from enlarging or renovating his premises. The Director determined, and we agree, that since no walls were to be erected to separate the bar from the package goods display, the proposed changes merely enlarged the area in which package goods are displayed, and thus there was no violation of either the statute or regulations.'

"Exhibit RL-3 (a copy of which was filed with the application for transfer) shows the proposed interior lay-out and bar detail of the premises occupied by respondent Packard-Bamberger. This exhibit indicates that said respondent proposes to erect an 18-foot L-shaped bar around which there will be nine stools for use by patrons and that the side walls will have shelving on which bottles of alcoholic beverages will be displayed. In the cases of Totowa v. Chicken Bar, Inc. and Division of ABC, *supra*, and also in Passaic Co. etc., Ass'n v. B. D. etc. City of Paterson, 37 N. J. Super. 187, 194 (App. Div. 1955), the courts have upheld the Division's contention that a lay-out similar to that now under consideration did not violate the Alcoholic Beverage Law.

"There is no proof which would indicate that the respondent Mayor and Council abused its discretion or acted in an arbitrary or unreasonable manner in reaching its decision.

"Under the circumstances appearing herein, it is apparent that appellants have not sustained the burden of proof (Rule 6 of State Regulation No. 15) showing that the action of respondent Mayor and Council was erroneous and, hence, I recommend that such action be affirmed and that the appeal filed herein be dismissed."

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

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

Accordingly, it is, on this 29th day of May, 1958,

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

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - HOSTESSES - EMPLOYING UNQUALIFIED PERSON - PRIOR RECORD - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against THE HOLLY CLUB, INC. 701 Paterson Plank Road Union City, N. J., Holder of Plenary Retail Consumption License C-82, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS AND ORDER

The Holly Club, Inc., Defendant-licensee, by Mario Casamassimo, President. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that (1) it permitted hostess activity on its licensed premises, in violation of Rule 22 of State Regulation No. 20, and (2) it knowingly employed an unqualified person thereon, in violation of Rule 4 of State Regulation No. 13.

The file herein discloses that from 9:15 p.m. on Friday, April 18, 1958, to 1:50 a.m. the following morning, ABC agents were in defendant's licensed premises and observed three female entertainers consuming several alcoholic drinks served by aforesaid Mario Casamassimo, acting as bartender, and paid for by various male patrons with whom they mingled at the bar. During aforesaid period at about 12:10 a.m., one of the aforesaid female entertainers joined the agents at the bar and, at the agents' expense, was served two drinks by the bartender. At about 12:20 a.m. the agents identified themselves to the three female entertainers, and to Casamassimo who admitted aforesaid violation.

The file also discloses that one of the aforesaid entertainers (Pat Todd) was an unqualified non-resident employee who worked on licensed premises six days a week.

Defendant has a prior adjudicated record. Effective July 1, 1956, the local issuing authority suspended the defendant's license for fifteen days for the following violations: (1) hours, (2) unqualified employees, and (3) hostess activity (the latter two violations being similar to those charged herein). The usual suspension by this Division for the violations charged herein is twenty-five days (Re Ferraro, Bulletin 1142, Item 3). Since the defendant committed similar violations within five years, the penalty will be doubled (cf. Re Lee Club, Bulletin 1108, Item 2, and Re Czaplicki, Bulletin 1170, Item 6). I shall suspend defendant's license for 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 June, 1958,

ORDERED that Plenary Retail Consumption License C-82, issued by the Board of Commissioners of the City of Union City to The Holly Club, Inc., for premises 701 Paterson Plank Road, Union City, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 9, 1958; and it is further

ORDERED that any renewal for the 1958-59 licensing year, or transfer of said license, shall be and remain under suspension until 3:00 a.m. July 24, 1958.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - TRANSPORTING ALCOHOLIC BEVERAGES IN VEHICLE HAVING NO TRANSIT INSIGNIA - TRANSPORTING ALCOHOLIC BEVERAGES WITHOUT INVOICE OR MANIFEST - AIDING AND ABETTING UNLAWFUL TRANSPORTATION - ALLOWING PREMISES TO BE USED IN AID OF ILLEGAL ACTIVITY - CHARGE ALLEGING SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST DISMISSED - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against
CORK'N BOTTLE, INC.
t/a CORK'N BOTTLE, INC.
S.E. Cor. Admiral Wilson Blvd. & Rosemont Avenue
Pennsauken Township
PO Camden, N. J.,
Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Pennsauken.

CONCLUSIONS
AND ORDER

Hermann, Melnik & Lowengrub, Esqs., by Albert B. Melnik, Esq.,
Attorneys for Defendant-licensee.
David S. Piltzer, 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 the following charges:

'1. On April 11 and 12, 1957 you sold at retail, directly or indirectly, the following alcoholic beverages, viz., 6 - 4/5 quart (fifth) bottles of Vat 69 Scotch Whisky, 6 - 4/5 quart (fifth) bottles of Seagram's VO Canadian Whisky, 6 - 4/5 quart (fifth) bottles of Canadian Club Canadian Whisky and 1 case (12 bottles) of 4/5 quart (fifth) bottles of Schenley Reserve Blended Whiskey, at less than the respective 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.

'2. On April 12 and June 26, 1957 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 June 26, 1957 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, invoice, manifest, 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 April 12 and June 26, 1957 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).

'5. On April 12 and June 26, 1957 you allowed, permitted and suffered your licensed business to be used in furtherance and aid of an illegal activity and enterprise, viz., (1) unlawfully exposing, keeping for sale and selling certain alcoholic, spirituous, vinous and fermented liquor and other alcoholic beverages, (2) unlawfully possessing certain liquor and (3) unlawfully having and keeping certain liquor; to wit, a quantity of a certain alcoholic, spirituous, vinous and fermented liquor and other alcoholic beverage, containing more than 1/2 of 1 per cent of alcohol by volume, in a certain package, container and receptacle in which said liquor was contained had not been sealed while containing that liquor with the official seal of the Pennsylvania Liquor Control Board, which illegal activity and enterprise occurred in the County of Philadelphia, Commonwealth of Pennsylvania, and which illegal activity and enterprise resulted in a conviction in a criminal prosecution in the Court of Quarter Sessions of the Peace of the County of Philadelphia, Commonwealth of Pennsylvania, on February 14, 1958, of your corporate president, Bernard Weiner, and your corporate secretary and treasurer, Byron Schader; said conduct by you being in violation of Rule 4 of State Regulation No. 20.'

"It appears from the testimony presented herein that on April 12, 1957 Cpl. Rufus G. Williams, a member of the Pennsylvania State Police, observed a man (subsequently identified as Richard Scott) making a delivery of 2 1/2 cases of whiskey from a 1950 Chevrolet panel truck to a building known as 1615 Fox Chase Road, Philadelphia; that the whiskey in question consisted of six bottles of Canadian Club, six bottles of Seagram's VO, six bottles of Vat 69 Scotch Whisky and one case consisting of twelve bottles of Schenley whiskey, all of which were in sizes commonly known as 'fifths'; that the bottles of liquor in question were taken to Harrisburg and placed in a safe in the office of the Department of Justice; that on November 21, 1957 he (Cpl. Williams) obtained a bottle of each of the respective brands of liquor and took them to the Pennsylvania Liquor Control Laboratory, also in Harrisburg, for chemical analysis; that after the analyses of the contents of the bottles were made, they were again placed in the safe where they had been originally stored. It appears further from the testimony of Cpl. Williams that on June 26, 1957 he and Sgt. Stanton, also of the Pennsylvania State Police, stationed themselves at a vantage point on the Admiral Wilson Boulevard in Pennsauken Township, New Jersey, where they could observe the defendant's licensed premises; that at 12:18 p.m. he (Cpl. Williams) observed a colored man come out of defendant's premises and walk in the direction of the Camden bridge where the man entered a two-tone Buick coupe and proceeded south on the Admiral Wilson Boulevard; that, shortly after 1:00 p.m. on the same date, as a result of a radio communication, he (Cpl. Williams) and Sgt. Stanton proceeded to the Philadelphia side of the Walt Whitman Bridge where he saw one Oswald Bard, an employee of defendant, in the custody of Pennsylvania State Trooper Leland Emery who had stopped a 1954 Chevrolet panel truck with a Pennsylvania registration; that he recognized Oswald Bard as the person he had seen emerge from the defendant's licensed premises and enter a two-tone Buick coupe at 12:18 p.m.; that an inspection of the truck revealed that there

were 29 packages containing assorted brands of alcoholic beverages; that the inventory of the contents of the said packages was made by said Trooper Emery (said inventory being marked by consent of counsel as an exhibit in the instant proceeding); that said Oswald Bard did not have in his possession any bona fide delivery slips, invoices, manifests, waybills or similar documents indicating the name and address of the purchaser and the brand and size of the containers; that the truck did not have affixed thereto any transit insignia required to transport alcoholic beverages.

"Sgt. Willard J. Stanton testified that he accompanied Cpl. Williams on June 26, 1957. His testimony was substantially similar to that given by Cpl. Williams.

"Sgt. Gerald C. Dollar testified that at about 1:00 p.m. on June 26, 1957, while in Camden, he observed a Chevrolet panel truck with Pennsylvania license plates at the corner of Fairmount and Eighth Streets and that the driver thereof proceeded west on Eighth Street to Kaighn Avenue; that the next time he saw this truck was about fifteen minutes thereafter and that the driver thereof, whom he identified as Oswald Bard, was in the custody of the Pennsylvania State Police on the Pennsylvania side of the Walt Whitman Bridge; that he observed 29 packages, three of which were torn open at the corner, in the truck and that the bottles contained in the packages which were opened were marked as alcoholic beverages; that Sgt. Stanton and Cpl. Williams were with Bard at the time; that the truck bore no transit insignia; that Bard had a number of slips of paper in his possession which corresponded with numbers on the packages with the name of a person to whom the packages were consigned but that there was nothing on any of the papers pertaining to any alcoholic beverages.

"ABC Agent Fuhrman testified that he participated in the investigation concerning the defendant-licensee and, in the course thereof, on October 7, 1957, spoke to one Mr. Weiner (president of the defendant-licensee) concerning a reference which was alleged to have been given to Rice and Holman (automobile dealers) concerning one Richard Scott; that Weiner admitted giving a reference to John Hornback, employed by Rice and Holman, but that Weiner at no time stated that the said Richard Scott was ever in defendant's employ.

"John Hornback testified that he is employed by Rice and Holman as the manager of its used car department; that on May 3, 1957, when the business establishment by whom he was employed was next door to the premises of defendant-licensee, he interviewed a Richard Scott with reference to employment and, after taking the data from said Richard Scott and a request for references, a Mr. Weiner called him on the telephone and stated that 'Scott good man and honest. Left go due to cutting expenses'; that he never had spoken to Weiner of the defendant-corporation prior to receiving the telephone call in question and merely believed that the person was Weiner of the defendant-licensee based on the person's representation.

"There has been no testimony presented herein which disclosed that at any time beverages were actually seen being taken from the defendant's licensed premises. The evidence presented by Cpl. Williams concerning April 12, 1957 is to the effect that he observed a young man who was subsequently identified as Richard Scott make a delivery of various bottles of alcoholic beverages to a destination on Fox Chase Road, Philadelphia; that the 1950 Chevrolet panel truck from which

the alcoholic beverages were taken for delivery was registered in Pennsylvania by the owner thereof, namely, Richard Scott. It is conceded that there is no dispute by the defendant herein that the truck in question was transferred to Richard Scott by Bernard Weiner, president of the defendant-corporation. It is further conceded by the defendant herein that the 1954 Chevrolet panel truck also registered in the State of Pennsylvania was transferred from said Bernard Weiner to Oswald Bard who was apprehended and taken into custody by the State Police on June 26, 1957.

"On February 14, 1958 Byron Schader and Bernard Weiner, both officers of the defendant-corporation, pleaded guilty when arraigned to three charges, to wit, that they unlawfully, by themselves, their employees and agents, exposed and kept for sale and did sell certain alcoholic, spirituous, vinous and fermented liquor and other alcoholic beverages; that they unlawfully possessed said liquor within the Commonwealth of Pennsylvania and that the containers and receptacles which contained the liquor had not been sealed with the official seal of the Pennsylvania Liquor Control Board, all of which were contrary to laws and against the peace and dignity of the Commonwealth of Pennsylvania.

"The evidence adduced herein, considering all the facts and circumstances (except as to date of April 12, 1957, hereinafter discussed) amounts to more than mere suspicion that alcoholic beverages were being transported in violation of the Alcoholic Beverage Law and the rules and regulations of this Division. The defendant elected to present no evidence whatsoever in contradiction of the facts alleged by the various witnesses produced by the Division. A presumption arises by the failure to explain or refute testimony involving the defendant's licensed premises that the defendant abstained from calling witnesses because of the fact that such witnesses could not contradict said testimony given by the Division's witnesses. The rule of law appears to be that where a party has a witness or witnesses available and where they possess peculiar knowledge concerning the facts essential to a party's case the failure to call said witness or witnesses gives rise to an inference that, if called, the testimony elicited therefrom would be unfavorable to said party. Jacoby v. Jacoby, 6 Misc. 86.

"Inasmuch as the Division has presented no proof with reference to Charge 1 and thus, in effect, has abandoned said charge, I have no alternative other than to recommend its dismissal.

"I have given careful consideration to the date of April 12, 1957 contained in Charges 2 and 4. The evidence presented is not sufficient in my opinion to sustain the relationship of employer and employee. The testimony presented is that a man who represented his name to be Weiner called Hornback on the telephone and gave a verbal reference to Hornback concerning one Richard Scott. Hornback testified that he had never spoken to Bernard Weiner, president of the defendant corporate-licensee, on any previous occasion and therefore did not recognize the man's voice. Moreover, Agent Fuhrman also testified that during the investigation in the matter in question, when he interviewed Bernard Weiner, the latter never indicated that Richard Scott was employed by the defendant. In view of the fact that the truck driven by Richard Scott on April 12, 1957, which was registered in Pennsylvania, was transferred to him by Bernard Weiner of the defendant-corporation, it gives rise to a grave

suspicion that Scott was employed by defendant at the time. However, suspicion cannot be accepted as a proper substitute for proof. Re Jolas, Bulletin 926, Item 8. Under the circumstances, I recommend that so much of Charges 2 and 4 with reference to the date of April 12, 1957 be dismissed. I am satisfied, however, that the record herein is supported by adequate proof to sustain Charges 3 and 5 and also the parts of Charges 2 and 4 relating to the violations alleged on the date of June 26, 1957 and I recommend that defendant be adjudged guilty thereof.

"Defendant has no prior adjudicated record. Under the circumstances appearing herein, I recommend that defendant's license be suspended for thirty days."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the prosecuting attorney pursuant to Rule 6 of State Regulation No. 16. Written answering argument was filed by the attorneys for the licensee. Such attorneys also presented oral argument before me at my request.

The exceptions filed by the prosecuting attorney are taken to the Hearer's recommended dismissal of so much of Charges 2 and 4 as concern the date of April 12, 1957 and to the adequacy of the recommended penalty of suspension of thirty days on the remaining portions of Charges 2 and 4 and on Charges 3 and 5 in toto. The issue raised as to the recommendation of dismissal is whether sufficient evidence has been presented proving the employment by the licensee of Richard Scott on April 12, 1957.

I have carefully considered the entire record in the case, including the trial transcript and exhibits, the Hearer's Report and the briefs, exceptions and written and oral arguments of counsel. I find that the employment of Richard Scott by the licensee on April 12, 1957 has been established by a preponderance of the believable evidence presented. It is clear from the record that on May 3, 1957 John Hornback received a telephone call from a man who identified himself as "Mr. Weiner" of Cork'n Bottle; and that "Mr. Weiner" gave him a reference of employment of Richard Scott, stating that he employed Scott from March 4, 1955 to April 15, 1957.

It is also clear that during the Division investigation Bernard Weiner, president of the corporate licensee, admitted to ABC Agent Fuhrman that he had spoken to Hornback by telephone on May 3, 1957 and had given Hornback a reference on Richard Scott covering his period of employment from March 4, 1955 to April 15, 1957. Thus, the identification of the "Mr. Weiner" who spoke to Hornback is not in doubt. The fact that Weiner did not admit to Fuhrman that Scott was in his employ is not determinative in view of his above mentioned admission to Hornback under circumstances in which no reason appears why he would tell anything other than the truth.

In addition, the circumstances summarized in the Hearer's Report, particularly the transfer by Weiner to Scott and Bard of ownership of both trucks used by Scott and Bard for the prohibited deliveries in question, and the resulting criminal convictions of Weiner and Byron Schader (both indicted simultaneously with Scott and Bard for unlawful

transportation and possession of alcoholic beverages on April 12 and June 24, 1957 and both identified in these indictments as connected with the licensed premises in question), lead to the conclusion that Scott was acting within the scope of his employment with the licensee in making the delivery of April 12, 1957. Moreover, it is significant that the defendant chose not to present any evidence on its behalf. See Re Favareille, Bulletin 986, Item 3.

Under Rule 33 of State Regulation No. 20, the licensee is responsible in disciplinary proceedings for violations committed by its officers, agents, servants or employees.

Therefore, I shall not accept the recommended dismissal of the parts of Charges 2 and 4 concerning the date of April 12, 1957. However, I shall accept the remaining conclusions and recommendations of the Hearer's Report with respect to the licensee's guilt on Charges 3 and 5 and the remaining portions of Charges 2 and 4, for the reasons stated therein. Consequently, I find the licensee guilty of Charges 2, 3, 4 and 5, as established by a preponderance of the believable evidence presented. Charge 1 has been abandoned because of lack of evidence, so I shall therefore dismiss it.

I have given much consideration to the question of penalty. Even assuming that I had concurred in all of the recommendations in the Hearer's Report, I nevertheless consider the violations in question serious enough to merit a penalty greater than thirty days. I am disturbed by the types of violations and the manner in which they were committed. Under all the circumstances of this case, I shall suspend defendant's license for forty-five days. Cf. Re Anton's Wines & Liquors, Inc., Bulletin 898, Item 5.

The file discloses that the defendant's business is not being conducted at present because the licensed building was recently damaged by fire. 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 28th day of May, 1958,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Pennsauken to Cork'n Bottle, Inc., t/a Cork'n Bottle, Inc., for premises S.E. Cor. Admiral Wilson Blvd. & Rosemont Avenue, Pennsauken Township, be and the same is hereby suspended for forty-five (45) days, the effective time and date to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE
SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

1032

In the Matter of Disciplinary)
Proceedings against)

WILLIAM WILCOX)
t/a WILCOX CAFE)
349 Evesham Avenue)
Lawnside, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-1, issued by the)
Mayor and Council of the Borough)
of Lawnside.)

Wallace, Yeomans, Douglas and Gerry, Esqs., by Bruce A. Wallace,
Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

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

The file herein discloses that on Tuesday, April 8, 1958, ABC agents made an inspection of defendant's licensed premises and found in his living quarters (which are part of the licensed premises) a quantity of bottled liquor. One bottle of the open stock labeled Old Taylor Bourbon Whiskey contained wild cherries and gin, and the licensee informed the agents that he had refilled other bottles with various brands of leftover whiskies in bottles taken from the bar. The agents seized six bottles and submitted them to the Division's chemist for analyses of their contents. The chemist's report shows that the contents of five of the six bottles differ from the contents of genuine bottles of the same items.

Defendant has a prior adjudicated record. Effective May 10, 1950, his license was suspended for fifteen days by the local issuing authority for permitting a brawl on his licensed premises and conducting his place of business as a nuisance. The prior dissimilar violation, having occurred more than five years ago, will not be considered in fixing the penalty herein. I shall suspend defendant's license for twenty-five days (Re Passaic River Yacht Club, Bulletin 1164, Item 1). Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 28th day of May, 1958,

ORDERED that Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Lawnside to William Wilcox, t/a Wilcox Cafe, for premises 349 Evesham Avenue, Lawnside, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. June 5, 1958, and terminating at 3:00 a.m. June 25, 1958.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

FLORENCE CHEVESTUIK, EXECUTRIX)
OF THE ESTATE OF TILLIE CIECIUCH,)
DEC'D.)
t/a LINDEN HOTEL)
15 S. Wood Avenue)
Linden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-9, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Linden.)

Florence Chevestuik, Defendant-licensee, Pro se.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she possessed in her 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.

The file discloses that on April 16, 1958, an ABC agent made a preliminary test of the open stock of alcoholic beverages in defendant's licensed premises and seized a quart bottle labeled "Old Grand Dad Kentucky Straight Bourbon Whiskey Bottled In Bond 100 Proof" when his test indicated that the contents thereof appeared to be low in proof and off in color. Subsequent analysis by the Division's chemist disclosed that the contents of the bottle was low in proof and had added artificial color when compared with an analysis of the contents of a genuine bottle of the same item.

Defendant has no prior adjudicated record. Under the circumstances I shall suspend defendant's license for a minimum period of fifteen days for a violation of the kind in question (Re Ford, Bulletin 1215, Item 6). 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 May, 1958,

ORDERED that Plenary Retail Consumption License C-9, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden to Florence Chevestuik, Executrix of Estate of Tillie Cieciuch, Dec'd, t/a Linden Hotel, for premises 15 S. Wood Avenue, Linden, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 9, 1958, and terminating at 2:00 a.m. June 19, 1958.

WILLIAM HOWE DAVIS
Director.

ACTIVITY REPORT FOR JUNE 1958

ARRESTS:		
Total number of persons arrested	-----	26
Licensees and employees	----- 16	
Bootleggers	----- 10	
SEIZURES:		
Motor vehicles - cars	-----	2
Stills - 50 gallons or under	-----	2
Distilled alcoholic beverages - gallons	-----	379.14
Wine - gallons	-----	.10
Brewed malt alcoholic beverages - gallons	-----	10.07
RETAIL LICENSEES:		
Premises inspected	-----	746
Premises where alcoholic beverages were gauged	-----	553
Bottles gauged	-----	8,918
Premises where violations were found	-----	75
Violations found	-----	91
Type of violations found:		
Prohibited signs	----- 18	Other mercantile business ----- 6
Unqualified employees	----- 17	Disposal permit necessary ----- 4
Reg. #38 sign not posted	----- 17	Improper beer taps ----- 1
Application copy not available	----- 16	Other violations ----- 12
STATE LICENSEES:		
Premises inspected	-----	14
License applications investigated	-----	37
COMPLAINTS:		
Complaints assigned for investigation	-----	343
Investigations completed	-----	318
Investigations pending	-----	135
LABORATORY:		
Analyses made	-----	161
Refills from licensed premises - bottles	-----	3
Bottles from unlicensed premises	-----	16
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made	-----	24
Persons fingerprinted for non-criminal purposes	-----	324
Identification contacts made with other enforcement agencies	-----	195
Motor vehicle identifications via N. J. State Police teletype	-----	3
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	19
Violations involved	-----	21
Sale during prohibited hours	----- 13	
Sale to minors	----- 6	
Permitting brawl on premises	----- 1	
Permitting gambling (cards)	----- 1	
Cases instituted at Division	-----	31
Violations involved	-----	48
Sale to minors	----- 12	Permitting gambling (wagering) on prem. - 1
Sale during prohibited hours	----- 9	Failure to file notice of change in application - 1
Conducting business as a nuisance	----- 4	Failure to close premises during prohibited hours - 1
Sale to intoxicated persons	----- 3	Hindering investigation - 1
Fraud and front	----- 3	Permitting lottery activity (numbers) - 1
Permitting foul language on premises	----- 2	Sale below minimum resale price - 1
Failure to have copy of license application on premises	----- 2	Service to women at a bar (local reg.) - 1
Permitting immoral activity on prem.	----- 2	Employing bartender without requisite identification card (local reg.) - 1
Possessing illicit liquor	----- 1	
Permitting hostesses on premises	----- 1	
Unqualified employees	----- 1	
Cases brought by municipalities on own initiative and reported to Division	-----	18
Violations involved	-----	19
Sale to minors	----- 13	
Sale during prohibited hours	----- 3	
Permitting brawl on premises	----- 2	
Failure to close premises during prohibited hours	----- 1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	48
Appeals	----- 9	Seizures ----- 1
Disciplinary proceedings	----- 27	Tax revocations ----- 2
Eligibility	----- 6	Applications for license ----- 3
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-----	4,358
Licenses	----- 1	Social affair permits ----- 472
Employment permits	----- 301	Miscellaneous " ----- 133
Solicitors "	----- 2,754	Transit insignia ----- 435
Disposal "	----- 49	Transit certificates ----- 133

DATED: July 7, 1958

WILLIAM HONE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JAMES PARLEGRECO & PETER PARLEGRECO
t/a JAMES & PETE'S TAVERN
316 Grand Street
Paterson 1, N. J.,

CONCLUSIONS AND ORDER.

Holders of Plenary Retail Consumption License C-175, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Defendant-licensees, by Peter Parlegreco, a partner.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded guilty to charges alleging that (1) during prohibited hours they sold, served and delivered alcoholic beverages in and upon their licensed premises, (2) they failed to have their entire premises closed during said hours, both in violation of a local ordinance, and (3) during said hours they sold and delivered alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

An ordinance of the City of Paterson prohibits the sale, service and delivery of alcoholic beverages on Sundays between the hours of 3:00 a.m. and 1:00 p.m. and requires that licensed premises (with exceptions not material herein) shall be closed between said hours.

The file herein discloses that at 12:20 p.m. Sunday, April 27, 1958, ABC agents observed a man approach the front entrance of defendants' licensed premises and hold up six fingers. The man then entered a hallway leading to the rear of the licensed premises and, shortly thereafter, he emerged therefrom carrying a package. The agents questioned the man who informed them that he had purchased six cans of beer in defendant's tavern. The agents seized the beer for evidential purposes and escorted the man into the tavern where they identified themselves to James Parlegreco, one of the licensees, who admitted the violations charged herein.

Defendants have no prior adjudicated record. The minimum penalty for selling alcoholic beverages during prohibited hours and failing to have licensed premises closed during those hours, in violation of a local ordinance, is a suspension of the license for a period of fifteen days, Re Romeo, Bulletin 1146, Item 11, and the minimum penalty for a violation of Rule 1 of State Regulation No. 38 is a suspension of the license for a similar period, Re Black, Bulletin 1221, Item 6. When there are separate violations of the Ordinance and the Regulation, a total suspension of thirty days is warranted. Re Healey, Bulletin 600, Item 4. However, when, as in the instant case, the offense consists of a single act of selling for off-premises consumption, notwithstanding that such single sale constitutes a violation of both the local Ordinance and the State Regulation, it would be unreasonably severe to impose a separate penalty for each violation. Re Wasiluk, Bulletin 608, Item 10.

Considering all the circumstances herein, I shall suspend defendants' license for a period of twenty days and remit five days for the plea entered herein, leaving a net suspension of fifteen days. Re Wasiluk, supra; Re Gallo and MacRae, Bulletin 1156, Item 8.

Accordingly, it is, on this 28th day of May, 1958,

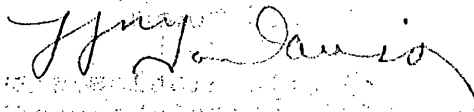
ORDERED that Plenary Retail Consumption License C-175, issued by the Board of Alcoholic Beverage Control for the City of Paterson to James Parlegreco & Peter Parlegreco, t/a James & Pete's Tavern, for premises 316 Grand Street, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. June 4, 1958, and terminating at 3:00 a.m. June 19, 1958.

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATION FILED.

Arnold Krauss
t/a Mid State Beverage Distributors
21-29 Reid Street
South River, N. J.

Application filed July 14, 1958 for person-to-person transfer of State Beverage Distributor's License SBD-172 from Ethel D. Allgair, William M. Weis and Mary A. Weis, t/a Allgair Distributing Company.



William Howe Davis
Director.