STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N.J.

BULLETIN 1101 MARCH 6, 1956.

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1101 MARCH 6, 1956.

1. APPELLATE DECISIONS - HEINZER v. WATCHUNG.
COHEN AND ABRAMSON v. WATCHUNG.

WALTER S. HEINZER,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF WATCHUNG,
Respondent.

SIDNEY COHEN and BEN ABRAMSON, trading as BEL-AIR LODGE,
Appellants
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF WATCHUNG,
Respondent.

ON APPEAL

CONCLUSIONS AND ORDER

Harry W. Herzog, Esq., Attorney for Appellants.
James W. Hurley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

These closely related appeals will be decided together. The first is from respondent's action of May 12, 1955, denying appellant Heinzer's application for transfer of a 1954-1955 plenary retail consumption license from Cohen and Abramson for premises at 154 Bonnie Burn Road in the Borough of Watchung. The second is from respondent's action of September 8, 1955, denying the application of appellants Cohen and Abramson for 1955-1956 renewal of their plenary retail consumption license for the premises at 154 Bonnie Burn Road. The respective hearings on the two appeals were held on July 14, 1955 and October 28, 1955; and oral argument, as to both, was held before me on November 28, 1955.

Appellant Heinzer originally obtained a license for the indicated premises on August 25, 1944, and the license was renewed to him for each year thereafter up to and including 1951-1952. The 1951-1952 license was transferred to Cohen and Abramson, effective September 27, 1951, and the license was renewed to them up to and including 1954-1955.

On November 29, 1954, Preston Henry, Inc. filed application for transfer to it of the 1954-1955 license for the indicated premises. Respondent denied the application on January 13, 1955, and on February 9, 1955, an appeal from such denial was discontinued after stipulation therefor by the attorneys for the respective parties. (Preston Henry, Inc. v. Watchung and Cohen and Abramson, Bulletin 1052, Item 3.)

On February 3, 1955, the Pines of Watchung, Inc. filed application for transfer to it of the 1954-1955 license for the indicated premises. On February 10, 1955, respondent denied the application and an appeal from such denial was

filed on February 24, 1955. Respondent's Answer to the Petition of Appeal sets forth, in substance, the following as the reasons for denial:

1. The premises operated as a nonconforming use and, as a matter of law, the use has been entirely abandoned;

2. The premises are operated solely for the benefit of persons not residents of the Borough and are operated by and cater to members of the negro race, and the Borough does not have one negro resident;

3. The premises have been under investigation for violation of law by agencies of the Federal government, County Prosecutor's office and municipal police;

4. The premises are in such a state of disrepair that the building is unsafe for public use and the premises are in violation of the health code of Watchung and the State of New Jersey.

On that Appeal (The Pines of Watchung v. Watchung and Cohen and Abramson, Bulletin 1061, Item 2), my Conclusions and Order, dated April 27, 1955, found no merit in reasons 1 and 2 but affirmed the denial because of reasons 3 and 4. Concerning reasons 3 and 4, I said:

"As to 3: Mayor Gray testified that, prior to the time the present application was considered, he received confidential information that Federal and State investigations were being made concerning the alleged use and sale of narcotics at the licensed premises during the summer of 1954. He further testified that, at the time the application was denied, these investigations, so far as he knew, were still pending. Chief of Police Barrett testified that, prior to the time the present application was filed, he had reported to the Mayor and Council that the above investigations had been instituted and were being continued. At the hearing a former patron testified that, during the summer of 1954, a bartender in the licensed premises introduced him to another man from whom he purchased marijuana cigarettes in the lavatory of the premises. Another former patron testified that, during the summer of 1954, he smoked a marijuana cigarette at the bar and saw a girl pass a marijuana cigarette to a male patron at the bar. There is no evidence in the record that during the course of these investigations any accusations were made or charges preferred against Sidney Cohen or Ben Abramson or any of their employees. Nevertheless, I cannot conclude that respondent acted in an unreasonable manner in denying the pending application while the aforesaid investigations were still pending.

"As to 4: Photographs introduced into evidence disclose the dilapidated condition of a bridge over which automobiles must pass to reach the licensed premises. They also disclose an accumulation of rubbish in and near the building on the property. The Borough engineer testified that he inspected the bridge on March 17, 1955, and that it is not safe for traffic. He further testified that he then entered the basement of the building and found a steel 'I' beam 'shimmed up' by pieces of wood, and stated that 'if they were knocked out of place, the floor would sag.' The Health Inspector of the Borough

testified that on December 7, 1954, he recommended to the Mayor and Council that six things should be done before the premises were reopened. He testified that up to the date of the hearing there has been no compliance with any of his recommendations. It has been decided that a local issuing authority may lawfully refuse to issue, renew or transfer a license when it appears that the premises are unfit or unsanitary. Lipnicki v. Trenton, Bulletin 30, Item 6; Marriot v. Trenton, Bulletin 34, Item 10; Miche v. Hoboken, Bulletin 592, Item 12."

Appellant Heinzer's application for transfer of the 1954-1955 license was filed on May 6, 1955; and, as noted, his appeal herein is from respondent's denial of the application on May 12, 1955. The main assertions in respondent's Answer to the Petition of Appeal are (1) that, in 1954, Cohen and Abramson "permitted trade in marijuana cigarettes to be carried on at the licensed premises"; (2) that "the premises have been closed and inoperative since September 1954 and there could not possibly be an investigation of its activity since the date it closed"; (3) that the premises are not suitable for public occupancy; and (4) that Heinzer's appeal "is not taken in good faith since his object is to forestall action by the respondent in refusing to renew the license for the year 1955-1956. . ."

The application of appellants Cohen and Abramson for 1955-1956 renewal was filed on July 29, 1955; and, as noted, their appeal herein is from respondent's denial of that application on September 8, 1955. The assertions in respondent's Answer to the Petition of Appeal are (1) that, in 1954, appellants permitted the sale and use of marijuana cigarettes upon the licensed premises; (2) that, during the license year 1954-1955, appellants permitted the premises to fall into a state of disrepair and unsafe for public occupancy and the conditions of the premises constituted a nuisance to the Borough; and (3) that, during the license year 1954-1955, "appellants, in violation of the rules and statutes made and provided, entered into an agreement with Walter Heinzer, the owner of the premises, whereby the appellants are prohibited from transferring the license to any other location or person without the approval of the said Walter Heinzer."

Before proceeding to a determination on the principal issues in these rather complex appeals, I shall consider two legal questions raised.

The first is the question, hereinabove adverted to, concerning an alleged agreement that Cohen and Abramson would not move the license to other premises or consent to transfer to another person without Heinzer's approval. Such an agreement, if any, would be invalid and unenforceable as against public policy. (Walsh v. Bradley, 121 N. J. Eq. 359 (1937), Lachow v. Alper, 130 N. J. Eq. 588 (1942); Rawlins v. Trevethan, 139 N. J. Eq. 226 (1947).) But such an agreement (while invalid and unenforceable) between a licensee-tenant and his landlord would not bar transfer of the license to the landlord.

The second question, raised in both appeals, concerns the contention that respondent failed to afford a proper hearing to the applicants before denying the applications. The contention is without legal merit. A municipality is required to afford a hearing to objectors (Rules 6 and 7 of State Regulations No. 2; Rules 8 and 9 of State Regulations No. 6) not to applicants (Rule 8 of State Regulations No. 2; Rule 10 of State Regulations No. 6). (See Thompson v. Roxbury, Bulletin 635, Item 3, and bulletin items therein cited.)

It is admitted by the Borough Attorney, on behalf of respondent Mayor and Council, that appellant Heinzer is of good character and that there are no objections to him personally as an applicant.

It is admitted by appellant Heinzer that no improvement of the premises had been begun by May 12, 1955 when his application was denied, but he testified that before filing the application he had retained a builder to make the repairs which the building inspector had deemed necessary: that "there was a complete new bridge put in and new guard rails, and under the dining room there was shims underneath the pillars which were replaced by concrete, and there was also three new lolly columns put in underneath the barroom. And the front steps were fixed leading into the bar"; and "On the interior I had the kitchen repainted, dining room repaired, ladies' room and men's room repapered and painted, and the kitchen has been completely done over". Appellant Heinzer presented various photographs of the exterior and interior showing the condition of the premises as the various repairs and improvements had been completed by May 26, 1955.

Appellant Abramson testified that during the time he and appellant Cohen operated the business no charges were preferred for any violation of law or of regulations. Abramson testified, further, that because he and Cohen were making no profit from the business they discontinued operation, in October of 1954, . . . "we had been losing money constantly in there; we had reached the limit of our resources".

The Borough's Mayor testified that appellant Heinzer's application was denied for the reasons aforementioned which were given when the applications of The Pines of Watchung and of Preston Henry, Inc. were denied: "We continued to take the same position as we did when we denied the other two." The Mayor's testimony also stressed his strong feeling that licensees have a great responsibility and that Abramson and Cohen had violated their franchise in connection with the "marijuana cigarette" episode. The President of respondent Council testified that his voting to deny was "based mainly on the fact that the information was that there was a traffic in narcotics on these premises", and that to the best of his knowledge the investigation relative thereto had been completed. Another Councilman testified that important reasons for his voting to deny were deterioration of the premises and "the situation of selling marijuana cigarettes".

Two basic questions are involved in these appeals: (1) as to the marijuana cigarettes; (2) as to the condition of the premises.

(1) In The Pines of Watchung, supra, I was constrained to attach potential importance to the then-pending investigation. It was conceivable that revocation proceedings might have developed therefrom, and accompanying a revocation of license they may be a two-year ineligibility of the premises. (R. S. 33:1-31.) It seems clear, however, that the investigation has long since been completed and I find that ground of denial to be without merit.

(2) It appears (as hereinabove set forth) that the premises, though unsuitable when appellant Heinzer's application was denied, were rendered suitable by May 26, 1955 -- well in advance of the end of the 1954-1955 license year. It appears, further, that respondent Council did not, after denying Heinzer's application, inspect or view the premises with respect to their suitability for operation. Having knowledge of the repairs and

improvements immediately contemplated on the date of denial, respondent might have granted the transfer application subject to a completion-of-repairs special condition. Under all the attendant circumstances I find the outright denial of the application to have been unreasonable, and the action of denial is reversed; but the 1954-1955 license sought to be transferred has expired and, as noted, not Heinzer but Cohen and Abramson filed application for the 1955-1956 license. Nevertheless, my decision as to the 1954-1955 license transfer, though advisory, is not moot. As hereinafter set forth, my decision on the merits is to be followed in the event of Heinzer's filing of application for transfer to him of the 1955-1956 license.

Under all the circumstances I find that the outright denial of the 1955-1956 application for renewal was unreasonable and the action of denial will be reversed, but the reversal will be a modified one as hereinafter set forth.

Accordingly, it is, on this 30th day of January, 1956,

ORDERED that respondent's action denying the application of Sidney Cohen and Ben Abramson for 1955-1956 renewal of their plenary retail consumption license, be and the same is hereby reversed, and respondent is directed and ordered to grant such application with the proviso, however, that the granting of the application shall not permit any operation under the license by Cohen and Abramson but shall be solely for the purpose of permitting grant of application, if any, for transfer of the 1955-1956 license to Walter S. Heinzer, in accordance with the decision herein, or of application for transfer of the license to another person approved by respondent, if application for transfer is in good order and in the absence of any new issue not raised in these appeals.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICES OR MANIFESTS - SALE AT PREMISES OTHER THAN LICENSED PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against UNION BEVERAGES INC. S/W Corner Union Avenue & John Street Linden, N. J., Holder of State Beverage Distributor's License SBD-116, for the 1954-55 and 1955-56 licensing years, issued by the Director of the Division of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On March 22, 1955, there was served upon defendant a copy of the following charge:

"On March 8, 1955, you 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 name or size of the container and quantity of each item of alcoholic beverages being transported; in violation of Rule 3 of State Regulations No. 17."

On October 12, 1955, while the above charge was pending and undetermined, there was served upon defendant a copy of the following additional charge:

"On September 15 and 16, 1955 and on divers other days prior thereto, you sold alcoholic beverages not pursuant to and within the terms of your state beverage distributor's license, contrary to R. S. 33:1-26 and R.S. 33:1-1(w), in that you accepted orders for alcoholic beverages at premises other than your licensed premises; in violation of R. S. 33:1-2."

Defendant has pleaded not guilty to both the aforesaid charges.

It appears from the testimony of an ABC agent that on March 8, 1955, he stopped a truck owned by defendant-licensee and operated by one Salvatore Busichio; that he made an inventory of the contents of the truck and found thereon 46 cases of beer and also some cases of soda; that the driver had in his possession a load sheet and 79 route cards fastened in a loose-leaf binder; that there was nothing on said route cards to indicate that they pertained to deliveries of beer for that day; that he interrogated the aforementioned driver and the information was reduced to writing, signed by the driver (marked as an exhibit in evidence in the instant case), wherein he stated that although some customers have refused to purchase beer from him for two or three months, he still considers it to be a standing order and is prepared to serve them from the truck if they decide to purchase beer from him; that he goes into the customers' homes before he carries the case of beer to the house and ascertains whether they desire beer that day in order to save himself carrying the case to and from the truck. A statement was taken from Henry Goldfinger, secretary and treasurer of defendant corporate-licensee (marked also as an exhibit in evidence herein), which states with reference to the route cards that "His standing order route cards which he uses on that route which is No. 18 calls for 79 cases of beer for standing order customers but due to the winter season and also the Lent season, several of the standing orders are refusing a delivery and the driver who has been on that route for 5 years, he knows those that are not going to take any beer so he reduces his load but still he has many customers that take beer and has to have the beer on the truck if they want it. If every standing order customer had taken their order, he would have been short."

Bulletin 845, Item 6, dated April 11, 1949, as officially interpreted by Director Hock, provided that the requirement of Rule 3 of State Regulations No. 17, in so far as a state beverage distributor's license is concerned, would be met if the operator or person in charge of the truck had a route card for each customer with a standing order making it unnecessary to carry a separate bona fide invoice or manifest for each customer to whom malt alcoholic beverages are delivered. The route cards must be

specific with reference to the name, address and standing order of the customer and must provide space for (1) the date of delivery, (2) the quantity delivered, (3) size of the container delivered, (4) brand delivered, and (5) price charged. In addition thereto there must be carried on the vehicle a loading list setting forth the total quantity of malt alcoholic beverages loaded for delivery, indicating the brand loaded, the total quantity thereof and size of each container.

An examination of the route cards discloses that the majority of the customers shown on the cards, respectively, could not be classified as those with standing orders. Some of them had not purchased beer from defendant for many months. It was impossible to reconcile the load sheet with the route cards as the orders shown on the latter were in excess of the cases of beer actually on the truck and, further, the brands of beer on the truck did not correspond with those shown on the load list. I find defendant guilty of the original charge. With reference to the supplemental charge, it is apparent from the driver's statement that he goes to the homes of the customers to inquire whether beer is desired to avoid making an unnecessary trip with the case of beer if the customer does not wish any that day. It is apparent that many of the customers who cannot be classified as those having a standing order are contacted in the manner described. I find defendant guilty of the supplemental charge.

Defendant has a prior adjudicated record. Effective October 4, 1950, its license was suspended for twenty days when it pleaded non vult to (a) making deliveries without requisite invoices, (b) accepting orders off the licensed premises, (c) employing solicitors without requisite permits, and (d) failure to notify change of employees. Re Union Beverages, Inc., Bulletin 886, Item 5. Again, effective October 9, 1951, its license was suspended for ten days for failure to report retailers in default. Re Union Beverages, Inc., Bulletin 918, Item 10.

In view of the past record and considering the present violations, I shall suspend defendant's license for twenty days.

Accordingly, it is, on this 1st day of February, 1956,

ORDERED that State Beverage Distributor's License SBD-116, issued by the Director of the Division of Alcoholic Beverage Control to Union Beverages Inc., S/W corner Union Avenue & John Street, Linden, be and the same is hereby suspended for twenty (20) days, commencing at 7:00 a.m. February 8, 1956, and terminating at 7:00 a.m. February 28, 1956.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING UNLAWFUL SALE OF ALCOHOLIC BEVERAGES - SALE AT PREMISES OTHER THAN LICENSED PREMISES - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against

ANTHONY ROTELLA & ANTHONY J. MASI
T/a SUBURBAN BEVERAGE SERVICE
45 Downing Street
Newark 5, N. J.,

Holders of State Beverage Distributor's License SBD-5, for the 1954-55 and 1955-56 licensing years, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded not guilty to the following charges:

"1. On October 23, 29, 30 and November 6, 1954 and on divers other days during the months of October and November 1954, you solicited from house to house the purchase of alcoholic beverages by personal visits and allowed, permitted and suffered such solicitation; in violation of Rule 3 of State Regulations No. 20.

"2. On October 23, 29, 30 and November 6, 1954 and on divers other days during the months of October and November 1954, you sold alcoholic beverages not pursuant to and within the terms of your state beverage distributor's license, contrary to R. S. 33:1-26 and R.S. 33:1-1(w), in that you accepted orders for alcoholic beverages at premises other than your licensed premises; in violation of R.S. 33:1-2."

An ABC agent testified that during an investigation of the instant matter, he interrogated customers of the defendant-licensees and as a result thereof it was ascertained by him that orders for cases of beer were obtained at the homes of two customers on October 29th and November 6, 1954, respectively; that he then interviewed Anthony J. Masi, one of the defendant-licensees, concerning the method which they followed with reference to sale of beer. Masi made a statement, which was reduced to writing, wherein he said, "If a person comes from one of the homes in the vicinity where he (the driver) is making deliveries and asks him if he can deliver a case of beer, he will accept the order and turn it into the office in New Brunswick, make out a route card and make the delivery on his next week's route delivery." Harry Friedman testified that he drives a truck for the defendants on Saturdays and that when he was asked by customers whether he carried beer, he told them that he could not sell from the truck but could take their orders for a case of beer and make delivery thereof on the following Saturday.

Defendants did not refute the testimony of the ABC agent nor the contents in the written statements of Anthony J. Masi and Harry Friedman, aforementioned, but rested their case without calling any witnesses to testify in their behalf.

The defendants made no objection to the marking of statement of Anthony J. Masi, one of the defendant-licensees, as an exhibit in evidence but objected to the statement of Harry Friedman, an employee, being so marked because it was not made in the presence of the defendant-licensees. Inasmuch as the substance of the statement made by Harry Friedman, which is pertinent to the instant case, is contained in the statement made by Anthony J. Masi, one of the defendant-licensees as aforementioned, and is merely corroborative thereof, its admission as an exhibit in the case was not improper. Cf. Mazza v. Cavicchia, 15 N. J. 498.

I find the defendants guilty as charged.

Defendants have no prior adjudicated record. I shall suspend defendants' license for a period of ten days. Re Caggiano, Bulletin 928, Item 5.

Accordingly, it is, on this 1st day of February, 1956,

ORDERED that State Beverage Distributor's License SBD-5, issued by the Director of the Division of Alcoholic Beverage Control to Anthony Rotella & Anthony J. Masi, t/a Suburban Beverage Service, 45 Downing Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 7:00 a.m. February 8, 1956, and terminating at 7:00 a.m. February 18, 1956.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICES OR MANIFESTS - AIDING AND ABETTING UNLAWFUL SALE OF ALCOHOLIC BEVERAGES - SALE AT PREMISES OTHER THAN LICENSED PREMISES - CHARGE ALLEGING PRICE ADVERTISING OF MALT BEVERAGES, DISMISSED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

NEIGHBORHOOD HOME BEVERAGE SERVICE (A CORP.)
169 Main Street
Edison Township
PO Metuchen, N. J.,

Holder of State Beverage Distributor's License SBD-60, for the 1954-55 and 1955-56 licensing years, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charges:

"1. On November 13, 1954 you 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 name or size of the container and quantity of each item of alcoholic beverages being delivered and transported; in violation of Rule 3 of State Regulations No. 17.

"2. On divers days during the months of August, September, October and November 1954 you directly and indirectly solicited from house to house by personal visits the purchase of alcoholic beverages and allowed, permitted and suffered such solicitation; in violation of Rule 3 of State Regulations No. 20.

"3. On divers days during the months of August, September, October and November 1954, you sold alcoholic beverages not pursuant to and within the terms of your state beverage distributor's license, contrary to R. S. 33:1-26 and R.S. 33:1-1(w), in that you accepted orders for alcoholic beverages at premises other than your licensed premises; in violation of R. S. 33:1-2.

"4. On divers days during the months of August, September, October and November 1954, you price-advertised malt alcoholic beverages (by direct or indirect reference to price) at retail in circulars and handbills; in violation of a special ruling made on July 6, 1954 by the Director of the Division of Alcoholic Beverage Control."

An ABC agent testified that on November 13, 1954, he stopped defendant's motor vehicle which was being operated by Nicholas J. Roberto, made an inventory of the items on the truck, and as a result thereof found that the vehicle contained a quantity of soda and 76 cases of beer; that the driver had no invoice or manifest in his possession relating to the malt alcoholic beverages on the truck but that he had a load sheet disclosing that 76 cases of beer were loaded on the vehicle that morning and that he also had a loose-leaf book containing names of approximately 200 customers; that he examined the loose-leaf sheets, two of which had the words "One case each week" or "Drop one case weekly", whereas the remaining loose-leaf sheets had no indication of the quantity to be delivered; that in many instances the addresses on the loose-leaf sheets were incomplete; that he interrogated the driver with reference to his method of operation and was told by him that the truck was loaded in the morning and that he expected to call upon approximately 200 customers some of whom might desire to have beer delivered to them.

A written statement signed by Nicholas J. Roberto, and marked over objection of attorney for defendant as an exhibit in evidence in the instant case, discloses that he has in his possession a route book containing names of customers; that he loads the vehicle with the number of cases of beer which he believes sufficient to meet the demand of those requesting beer that day; that the route book did not disclose the names and addresses of the customers who had, that day, ordered the 76 cases of beer carried on the truck; that he actually sold 34 cases on November 13, 1954; that he did not know how many customers actually had standing orders to be delivered on specific dates; that if a customer wanted a case of beer he would get a case from the truck for the customer; that at the time he obtained an order for soda he would accept an order for beer; and that at times he would leave a free bottle of soda and a card whereon was listed the various brands of beer and further, contained the following writing, "All Beers At Standard Prices".

Althea Boetticher, secretary and treasurer of the defendant corporate-licensee, signed a statement, which was also marked as an exhibit in evidence in the instant case, to the effect that she is familiar with the operation of the business and that the method of operation as stated by Nicholas J. Roberto is correct.

Inasmuch as the substance of the statement of the officer of the defendant corporate-licensee and that of the employee thereof is identical, the admission of the employee's statement as an exhibit herein was not improper. Cf. Mazza v. Cavicchia, 15 N. J. 498.

Bulletin 845, Item 6, dated April 11, 1949, as officially interpreted by Director Hock, provided that the requirement of Rule 3 of State Regulations No. 17, in so far as a state beverage distributor's license is concerned, would be met if the operator or person in charge of the truck had a route card for each customer with a standing order making it unnecessary to carry a separate bona fide invoice or manifest for each customer to whom malt alcoholic beverages are delivered. The route cards must be specific with reference to the name, address and standing order of the customer and must provide space for (1) the date of delivery, (2) the quantity delivered, (3) size of container delivered, (4) brand delivered, and (5) price charged. In addition thereto there must be carried on the vehicle a loading list setting forth the total quantity of malt alcoholic beverages loaded for delivery, indicating the brand loaded, the total quantity thereof and size of each container.

It is apparent that the defendant herein failed to comply in all respects with the requirements set forth in the aforementioned bulletin. The route cards were deficient in many ways and deliveries were made to customers other than those having standing orders.

I find the defendant guilty of Charges 1, 2 and 3. With reference to Charge 4, the violation appears technical in nature. Therefore, under the circumstances appearing herein, I am disposed to find the defendant not guilty of said charge. I might warn, however, that a repetition of said advertising in the future, wherein price is referred to, may warrant imposition of a penalty therefor.

Defendant has no prior adjudicated record. I shall suspend its license for a period of twenty days. Re Silk City Bottling Co., Inc., Bulletin 1086, Item 10.

Accordingly, it is, on this 1st day of February, 1956,

ORDERED that State Beverage Distributor's License SBD-60, issued for the 1955-56 licensing year by the Director of the Division of Alcoholic Beverage Control to Neighborhood Home Beverage Service (A Corp.), 169 Main Street, Edison Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 7:00 a.m. February 8, 1956, and terminating at 7:00 a.m. February 28, 1956.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICES OR MANIFESTS, DISMISSED.

In the Matter of Disciplinary Proceedings against

MORRIS GLASSMAN, FRANK KIPNIS & DAVID FRANKLIN
T/a IDEAL BEVERAGE COMPANY
112 Pine Street
Montclair, N. J.,

Holders of State Beverage Distributor's License SBD-66 for the 1954-55 and 1955-56 licensing years, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded not guilty to the following charge:

"On November 11, 1954, you 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 name or size of the container and quantity of each item of alcoholic beverages being transported; in violation of Rule 3 of State Regulations No. 17."

The facts in the instant case are not in dispute. It appears that on November 11, 1954, an ABC agent stopped defendants' motor vehicle which was being driven by one Donald Stevens and was in charge of David Franklin, one of the defendant-licensees. At the time, the vehicle contained 72 cases of beer and also other beverages with which we are not presently concerned. The man in charge had a load sheet showing the quantity of beer that had been loaded on the truck that morning and he also had about 150 route cards. The load sheet disclosed that on the day in question, the truck originally carried 80 cases of beer. Eight cases of beer had been delivered to customers prior to the time the agent checked the contents of the truck. The licensee in charge displayed route cards which indicated that 58 cases of beer were to be delivered on the day in question.

The attorney for the defendants contended that a verbal ruling was made by one of my predecessors with regard to the holder of a state beverage distributor's license, to the effect that extra cases of beer could be carried on the truck and supplied to customers with standing orders if they desired more than they had originally ordered. This fact was corroborated by two members of my staff who at the time attended the conference when such verbal ruling was made. That being so, it would be unfair to find the defendants herein guilty of the charge in question. I might state that a new Rule pertaining to the subject now under consideration is in the process of being prepared and will be promulgated within a short period of time. Until said Rule is actually adopted it will be permissible for the holders of a state beverage distributor's license to carry a limited amount of extra cases of malt

alcoholic beverages on their vehicles to supply the needs of customers who have bona fide standing orders.

For the reasons above expressed, I find the defendants not guilty.

Accordingly, it is, on this 1st day of February, 1956,

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

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING AIDING AND ABETTING UNLAWFUL SALE OF ALCOHOLIC BEVERAGES AND SALE AT PREMISES OTHER THAN LICENSED PREMISES, DISMISSED.

In the Matter of Disciplinary Proceedings against

ALBERT KOROBOW, JACK LAZAR and JACK KOROBOW
T/a KEANSBURG BEVERAGE CO.
158-162 Main Street
Keansburg, N. J.,

Holders of State Beverage Distributor's License SBD-112 for the 1954-55 and 1955-56 licensing years, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded not guilty to the following charges:

"1. On December 10, 1954 and prior thereto, you solicited from house to house the purchase of alcoholic beverages by personal visits and allowed, permitted and suffered such solicitation; in violation of Rule 3 of State Regulations No. 20.

"2. On December 10, 1954 and prior thereto, you sold alcoholic beverages not pursuant to and within the terms of your state beverage distributor's license, contrary to R.S. 33:1-26 and R.S. 33:1-1(w) in that you accepted orders for alcoholic beverages at premises other than your licensed premises; in violation of R. S. 33:1-2."

It appears from the evidence presented herein that on December 10, 1954 Albert Korobow, one of the defendant-licensees, was interrogated by an ABC agent in the presence of Jack Lazar and Jack Korobow, the other defendant-licensees. A statement was made by the said Albert Korobow (reduced to writing) wherein he said that he and his partners (Jack Lazar and Jack Korobow), in conjunction with the operation of a soda business, distribute malt alcoholic beverages; that orders for beer are received from some customers over the telephone at the licensed premises, whereas in other cases the drivers of the soda trucks when delivering soda ask if the customers desire beer, and, if so,

they accept orders from them for the delivery of beer to be made the following day or on such other date as is suggested by the customers; that these orders are then written by the drivers on a pad used for that purpose and the orders are submitted to the defendants at the licensed premises; and that seven such orders for beer were taken on December 10, 1954 by Jack Lazar, aforementioned, to be delivered on December 11, 1954. Said statement was marked in evidence without objection thereto.

No witnesses were called by defendants to testify at the instant hearing. At the close of defendants' case, the attorney for the defendants made a motion that the charges preferred herein be dismissed "on the ground that the only evidence in this case is a statement which is introduced, admittedly signed by the licensee, referring to generalizations. There is no specific instance of any violation of any regulation."

I agree with the contention of the attorney for the defendants that the only indication that a violation was committed, as set forth in the charges herein, was a subsequent statement given by one of the licensees. However, licensees should be thoroughly familiar with the Rules and Regulations of this Division governing their particular type of license and, if not, then I strongly recommend for their enlightenment a study of the same. Licensees' present method of operation is unquestionably in violation of our Rules and Regulations and, if continued, will place their license in jeopardy. However, I am dismissing the charges preferred herein solely because of the general nature of our proof based on a written statement given by one of the licensees and not because I am convinced of their innocence of the charges or ignorance of our Rules and Regulations.

Accordingly, it is, on this 1st day of February, 1956,

ORDERED that the charges herein be and the same are hereby dismissed.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICES OR MANIFESTS - SALE AT PREMISES OTHER THAN LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against FRANK RINALDI, ANTHONY RINALDI and JOHN RINALDI T/a RINALDI BROS. 1006 West Elizabeth Avenue Linden, N. J., Holders of State Beverage Distributor's License SBD-29, issued by the Director of the Division of Alcoholic Beverage Control for the 1954-55 licensing period.	CONCLUSIONS AND ORDER

Frank Rinaldi, Anthony Rinaldi and John Rinaldi, Defendant-licensees, by Frank Rinaldi, Partner.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded not guilty to the following charges:

"1. On April 27, 1955, you 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 name or size of the container and the quantity of each item of alcoholic beverages being transported; in violation of Rule 3 of State Regulations No. 17.

"2. On April 27, 1955, and on divers days prior thereto, you sold alcoholic beverages not pursuant to and within the terms of your state beverage distributor's license, contrary to R. S. 33:1-26 and R.S. 33:1-1(w), in that you accepted orders for alcoholic beverages at premises other than your licensed premises; in violation of R.S. 33:1-2."

An ABC agent testified that on April 27, 1955, he observed Frank Rinaldi (one of the defendant-licensees) deliver two full cases of beer to two homes, respectively, and come out of each house with a case of empty beer bottles; that he identified himself to the said driver of the truck and thereafter took an inventory of the contents of the truck and found fourteen cases of beer therein; that the driver did not possess any invoices or manifests but did have a load sheet, some route cards and a daily report sheet; that examination of the route cards did not disclose any information pertaining to the beer found in the truck for delivery that day, and that he interrogated Frank Rinaldi, aforementioned, concerning this and was told by him that he did not make any entries on the route cards but loaded the truck in the morning from memory as he was familiar with the route and could "figure out" what customers would purchase beer that day; that said Frank Rinaldi stated that, if a soda customer asked if he had beer, he would take the order and make delivery.

Frank Rinaldi testified that, beginning with the previous December, he discontinued making entries on route cards but merely carried them to identify his customers; that he marked his sales of malt alcoholic beverages directly on a daily report sheet instead of posting the entries on said report sheet from the route cards at the end of the day; that he would go into the homes of his steady customers and inquire whether they desired beer.

An examination of the testimony of Frank Rinaldi, one of the defendant-licensees and the sole witness who testified on their behalf, disclosed that the use of route cards was discontinued entirely several months prior to the date of the alleged violation. Under the circumstances, I have no alternative other than to find the defendants guilty of the charges preferred herein.

Defendants have no prior adjudicated record. I shall suspend their license for a period of twenty days (cf. Re Diehl, Bulletin 882, Item 6). Our records disclose that defendants have failed to renew their license for the 1955-56 licensing period. If said license shall be renewed by defendants herein for the current licensing period, the twenty-day suspension will then be imposed.

Accordingly, it is, on this 1st day of February, 1956,

ORDERED that the said twenty-day suspension be imposed against defendants' license, if and when said license shall be renewed by them.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOHN CULLEN and HUGH CULLEN
807 Ocean Avenue
Jersey City 4, N. J.,

Holders of Plenary Retail Consumption License C-179, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

John Cullen and Hugh Cullen, Defendant-licensees, Pro se.
Dora P. Rothschild, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded guilty to a charge alleging that during prohibited hours they sold an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that at 2:15 p.m. on Sunday, January 22, 1956, an ABC agent purchased from Hugh Cullen, one of the licensees, a pint bottle of whiskey for off-premises consumption. The agent left the premises with the bottle and returned shortly thereafter accompanied by another ABC agent. The agents identified themselves to Hugh Cullen, who admitted the sale.

Defendants have no prior adjudicated record. I shall suspend their license for fifteen days. Re DiGioia, Bulletin 1092, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 7th day of February, 1956,

ORDERED that Plenary Retail Consumption License C-179, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Cullen and Hugh Cullen, 807 Ocean Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. February 14, 1956, and terminating at 2:00 a.m. February 24, 1956.

WILLIAM HOWE DAVIS
Director.

9. STATE LICENSES - NEW APPLICATION FILED.

Bell Beverages, Inc.
812 - 27th Street, Union City, N. J.
Application filed March 5, 1956 for transfer of State Beverage Distributor's License SBD-24 from Sparkling Beverages, Inc., 812 - 27th Street, Union City, N. J.

William Howe Davis
Director.