

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

October 26, 1961

BULLETIN 1417

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Elizabeth) - PERMITTING OBSCENE CONDUCT AND ENTERTAINMENT ON PREMISES - FEMALE IMPERSONATORS - VIOLATIONS OF RULE 1 OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 190 DAYS.
2. DISCIPLINARY PROCEEDINGS (Elizabeth) - SUSPENSION PREVIOUSLY IMPOSED - ORDER AMENDED TO AFFECT LICENSE EXTENDED BY ORDER IN APPEAL CASE.
3. DISCIPLINARY PROCEEDINGS (Camden) - REMOVAL OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - TRANSPORTATION IN VEHICLE HAVING NO TRANSIT INSIGNIA - TRANSPORTATION WITHOUT INVOICE OR MANIFEST - CHARGE ALLEGING THAT LICENSEE AIDED AND ABETTED ANOTHER IN UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES DISMISSED - PRIOR RECORD - LICENSE SUSPENDED FOR 65 DAYS.
4. DISCIPLINARY PROCEEDINGS (Newark) - MINIMUM RESALE PRICE LIST (MALT ALCOHOLIC BEVERAGES), VIOLATION OF - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

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

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1. DISCIPLINARY PROCEEDINGS - PERMITTING OBSCENE CONDUCT AND ENTERTAINMENT ON PREMISES - FEMALE IMPERSONATORS - VIOLATIONS OF RULE 1 OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 190 DAYS.

In the Matter of Disciplinary Proceedings against )

BEDROCK, INC. )  
t/a BILLY'S TAVERN )  
1060 Magnolia Avenue )  
Elizabeth 4, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-163, issued by the City Council of the City of Elizabeth. )

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Feinberg and Feinberg, Esqs., by Joseph M. Feinberg, Esq., Attorneys for Defendant-licensee.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant entered a plea of not guilty to the following charges preferred against it on January 9, 1961 in Case No. S-5760:

- '1. On Monday night, January 2, 1961, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene conduct in and upon your licensed premises, viz., in that persons employed on your licensed premises performed for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.
- '2. On Monday night, January 2, 1961, you allowed, permitted and suffered female impersonators in and upon your licensed premises; in violation of Rule 4 of State Regulation No. 20.
- '3. On Monday, January 2, 1961, at about 10:25 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Calvert Reserve Blended Whiskey, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.'

"After the hearing on the above charges and pending determination with respect thereto, defendant entered a plea of non vult to the following charges preferred against it on June 1, 1961 in Case No. S-5864:

- '1. On Saturday, May 20, 1961, at about 2:55 a.m., you allowed, permitted and suffered the removal from your licensed premises of an alcoholic beverage in an opened container, viz., an alcoholic beverage in an opened pint bottle labeled Seagram's Seven Crown Blended Whiskey; in violation of Rule 1 of State Regulation No. 38.
- '2. On Saturday, May 20, 1961, you, through David Bedrock, secretary-treasurer, director and shareholder of your corporation, did attempt to hinder, delay and cause the hindrance and delay of the investigation of the above alleged violation then and there being conducted by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey by urging, suggesting and counselling said Investigators to make false and untruthful reports of their investigation to show that no such violation had in fact occurred and by offering to give money to said Investigators to make and file such false and untruthful reports; in violation of R.S. 33:1-35.'

The Report herein covers both cases.

"To substantiate the charges preferred in Case No. S-5760, the Division called as its witnesses the three ABC agents who participated in the investigation of defendant's licensed business. They will be referred to hereinafter as Agents C, G and M. The evidence presented by the agents is substantially as follows: At about 1:15 p.m., January 2, 1961, the three agents arrived in the vicinity of defendant's licensed premises. Agent C entered the tavern alone, seated himself at the front bar and observed that the premises consisted of the main barroom, to the rear of which was a large room containing tables and chairs, a raised bandstand and a small service bar. Arthur Roberts, the bartender, and the agent engaged in conversation and, when the agent was about to leave, the bartender asked, 'Why don't you come back about 6:00 o'clock, stating, 'The fags will give us a show. There are some pictures of them over on the wall'. The agent left the premises at about 2:15 p.m. and rejoined the other agents. At 7:00 p.m. the same evening, the three agents returned to the vicinity of the licensed premises and, at 8:00 p.m., Agent C again entered the tavern and proceeded to the rear room, at the entrance of which he paid \$1.50 before being admitted. After checking his coat, the agent sat at a table and observed some twenty-five patrons, males and females, milling around and five males at a table who particularly attracted his attention. One of the five wore a pink dress and earrings, another wore a gold type blouse, toreador type women's pants, long earrings and had a blonde streak in his hair. The third wore a string type skirt, earrings, a piece of material across his chest and a bracelet and had a flower on his leg. The other wore women's type shorts, shoes and sweater and all of them had their faces powdered and wore lipstick and each had his hair fixed in feminine style. The agent then walked to the service bar, behind which was Arthur Roberts, who, referring to the five persons at the table, said, 'Those are the fags over there. They are going to give the show. They put on a good show'. The agent left the premises and, after conferring with Agents G and M, returned to the rear room in which a four-piece band was playing. Shortly thereafter, the male with the pink dress, known as Sally Mitchell, who acted as the M.C., strutted about the stage and from time to time pulled his dress about his hips (revealing a woman's girdle and silk stockings) and proturded his buttocks toward the audience. Thereafter, Sally sat on the front of

the stage with his legs apart and addressed an indecent and suggestive remark to the male patrons. Sally then produced the male with the string type skirt who, after doing some 'bumps and grinds', lay on the floor and simulated the act of sexual union. The audience clapped and shouted and the entertainer jumped from the stage and grabbed the privates of a male patron. Returning to the stage, he completed his dance after removing all but a black piece of cloth that was wrapped around his midsection. The male who was dressed in the gold type jacket and known as Trudy Marshall was next introduced and he engaged in a 'bumps and grinds' dance similar to that performed by the entertainer who preceded him. The audience roared its approval and the music became louder and louder. The next act was a tap dance performed by the male who looked like a female and wore female type sport clothes. When the first show was over, Agent C walked to the service bar where he was later joined by Trudy Marshall, who inquired as to where he lived, what he was doing later on and asked if the agent would wait around until after the second show and take him home. During the conversation with Trudy, Agent C observed two patrons approach David Bedrock (secretary and treasurer of the coporate-licensee) after 10:00 p.m. and saw each patron purchase from Bedrock a bottle of whiskey for off-premises consumption. At 10:25 p.m., the agent got his coat from the cloak room and went over to Arthur Roberts at the service bar and asked him for a pint of whiskey. Roberts told him to see Curtis Morgan, the waiter. The agent asked Morgan for a pint to take out and, when Roberts told the waiter that he knew Agent C, Morgan said, 'It will cost you \$3.25 for the bottle and you will have to give me something for getting it for you'. The agent gave him a fifty-cent tip and a ten-dollar bill and walked with him to the main barroom where Morgan told Bedrock to give the agent a pint of Calvert. Bedrock took the ten-dollar bill, handed the agent \$6.75 in change and a pint bottle of Calvert Whiskey, from which he had torn off a piece of the seal. The agent put the bottle of whiskey in his pocket, left the premises and gave it to Agents G and M. Returning to the rear room of the tavern, Agent C remained there until the next show was about to start, at which time he rejoined the other agents. The three agents and two local police officers, who had been enlisted by Agent G to assist in the investigation, then entered the tavern, proceeded to the rear room and took positions near the stage where they watched the dancer, who was doing the 'strip'. Shortly thereafter, Bedrock came into the room and, when the agents identified themselves and informed him of the violations, he told them that the entertainer had performed in a Newark tavern previously and nothing was said or done about it. He further said that he sold a pint of whiskey to be consumed on the premises.

"The testimony of Agents G and M corroborates that of Agent C insofar as their participation in the investigation was concerned, and Agent G further testified that when he entered the tavern, he saw the male dancer who 'had on a string of beads about the forehead or around the top of the head; he had on--a little flower was tied onto his upper arm; he had on a bracelet; he was bare-chested; from the waist was a small band from which hung strings, could have been strings of beads or just strings, under that he had a small black triangular patch covering the front and rear....As I saw this performer performing, he was dressed as I previously described, and he was doing a series of motions, wiggles, and bumps and grinds in time to the music, and as the tempo of the music increased his movements increased, and at the conclusion of his dance he was laying on the floor face down moving the center of his body in up and down motion, simulating the act of sexual intercourse'.

"A picture of the aforesaid dancer taken on the premises during his performance by a patron with a polaroid camera and seized by the agents was received in evidence, as was a photograph of Trudy Marshall dressed in female attire, which was taken off the wall of the licensed premises by the agents.

"Defendant called as its witnesses Bernice and Frank Burwell, Olivia and Raymond Glasco, Cindy Hall, George Mitchell, Elvie Greene, C. B. McLean, Curtis Morgan, Edward Roberts, Arthur Roberts, Archie Cohen and David Bedrock.

"Mrs. Burwell testified that she, her husband and two friends were seated at a front table in the rear room of defendant's establishment on the night of January 2, 1961 and saw the first show. She denied that any of the male performers wore women's clothes or facial makeup and characterized the performance of one dancer as a calypso or limbo dance.

"Mr. Burwell affirmed everything his wife said about what she saw that night.

"Cindy Hall testified that she was a guest singer on the night in question and that it was she who wore the pink dress. She denied that any of the male entertainers were attired in female garb or performed in any indecent manner.

"George Mitchell testified that his stage name is Sally Mitchell; that he was the M.C. of the show in defendant's premises on the night of January 2, 1961; that Alvin Gatlin, who is known as Trudy Marshall, entertained only as a singer on the date alleged and he denied that he or the other male entertainers wore women's clothing or facial makeup and he characterized the dance engaged in by one of the performers as African-Cuban.

"Elvie Greene testified that he saw Agent C conversing with Arthur, the bartender in defendant's tavern, around 2:15 p.m., January 2, 1961; that the agent left around 4:30 p.m.; that he, C. B. McLean and Curtis Morgan later visited the Oak Inn, another tavern in the vicinity, in which he observed Agent C consuming a 'shot and beer' and that the agent was still there when he and his friends left the tavern about 5:00 p.m.

"The testimony of C. B. McLean corroborates that of Greene.

"Curtis Morgan testified that on the date alleged, he was a waiter in defendant's licensed premises; that Agent C was seated at a table in the rear room; that as he came out of the kitchen, the agent asked, 'If I would deliver him a pint of whiskey. I told him yes I would. He gave me a ten-dollar bill...I charged him \$3.25. The agent gave me a half-dollar for a tip'; that he asked Arthur if he knew Agent C and Arthur told him that he was a friend of his; that 'I got the whiskey from the froc bar about a quarter of ten'; and gave it to the agent, together with his change and that about fifteen to eighteen minutes thereafter, the agent 'put the bottle in his pocket and walked out of the place'.

"Edward Roberts testified that he is the brother of defendant's bartender, Arthur Roberts; that on the date alleged he was acting as the doorman to the rear room; that he stamped the palms of the patrons' hands who were admitted after paying \$1.50; that he admitted the agent therein and later saw a pint of Calvert on the table where the agent alone was sitting, 'I don't know if it was the same one he took in the back'.

"Arthur Roberts testified that on the date alleged, he worked as a bartender in the main barroom from 6:00 a.m. to 6:00 p.m.; that in the afternoon he served three or four shots of whiskey with beer chasers to Agent C, who was in the tavern for about two hours; that Agent C returned to the tavern about 7:00 or 8:00 o'clock 'like he said he would for the show' and was admitted to the rear room where he (Arthur) was working behind the service bar; that he conversed with the agent and later saw Morgan, the waiter, bring a bottle of whiskey to him at

his table; that he had no idea what time it was; that he saw the show and none of the male entertainers was dressed in female attire; that he didn't see any of them engage in lewd actions or hear an indecent remark by one of them and he admitted that before the waiter got the bottle of whiskey, he came to him and, referring to Agent C, asked, 'Is this fellow all right?'

"Archie Cohen testified that he has been employed as a bartender in defendant's licensed premises since 1953; that on the date alleged, he commenced his tour of duty at 6:30 p.m.; that he served Agent C at the front bar between 7:30 and 8:00 p.m.; that he saw the 'limbo dance' and that at approximately 9:40 p.m. he observed Mr. Bedrock sell a pint bottle of Calvert whiskey to the waiter Morgan.

"David Bedrock testified that he is an officer of the corporate-licensee; that he arrived at the tavern between 8:00 and 8:30 on the date alleged; that he saw part of the second show which had been booked by a member of the band; that none of the male entertainers wore female attire; that he didn't hear any of them use indecent language or engage in any indecent act with a patron; that none of the entertainers was a female impersonator; that the first time he saw the picture of Trudy Marshall was when the agents tore it from the wall; that at 9:40 p.m. he gave the pint of whiskey to Morgan, the waiter, and that he gets \$5.75 for set-ups, but charged Morgan \$3.25 because the waiter told him that the agent was a friend of Arthur's.

"Having had the opportunity to judge the credibility of the witnesses and recognizing a sharp dispute of the facts, I believe the testimony of the agents, which clearly depicts what actually occurred in and upon the licensed premises on the date alleged and I disbelieve the testimony of defendant's witnesses, who cannot be considered as disinterested persons, since the majority of them were on the date alleged or had previously been employees of the corporate-licensee, and the others were patrons who frequented defendant's establishment.

"Considering all the evidence adduced in this case, including the exhibits, I find that the Division has established the truth of the charges by a fair preponderance of the believable evidence and I recommend that defendant be adjudged guilty of the violations charged.

"With respect to the charges preferred in Case No. S-5864, to which the confessional plea was entered, it appears from the investigative reports that at 1:45 a.m., Saturday, May 20, 1961, two ABC agents arrived in the vicinity of defendant's licensed premises, which one of them later entered and seated himself at the bar. David Bedrock, secretary-treasurer of the corporate-licensee, was in and about the premises and two bartenders were serving the patrons. The agent purchased a beer and, from the time he entered until 2:50 a.m., he observed Bedrock sell many bottles of alcoholic beverages for off-premises consumption. Continuing his investigation, the agent left the barroom and proceeded to an apartment on the second floor of the licensed building where a 'speakeasy' was alleged to be operating. A male called 'Sally' made his appearance and the agent asked him for a pint of whiskey. 'Sally' said, 'I don't sell any whiskey up here. Go down to the tavern and see Dave. He will let you have anything you want'. The agent complied and received from David Bedrock a pint of whiskey for which he paid \$3.25. Leaving the premises with his purchase, the agent was met by his fellow agent, to whom he showed the whiskey and explained what had occurred. Both agents entered the tavern, identified themselves and informed Bedrock of the violations, which he denied. The agents then requested and received the cash register tape which confirmed the after hours sale. After the patrons and the bartenders had departed, Bedrock addressed the agents, saying, 'give me a break fellows, forget the violation and I'll give you a hundred bucks apiece'. The agents informed him that his attempted bribe would be reported and left the premises about 3:40 a.m..

"Defendant has a prior adjudicated record. Effective March 5, 1956 and May 6, 1958, its license was suspended by the local issuing authority for ten and twenty days, respectively, for 'hours' violations, and effective January 9, 1961, the license was suspended by this Division for sixty days for a similar violation and for sale of alcoholic beverages outside the scope of the license. Re Bedrock, Inc., Bulletin 1374, Item 1.

"The minimum suspensions imposed for the violations set forth in Charges 1 and 2 of Case No. S-5760 are thirty and sixty days, respectively (Re Paddock International (A Corp.), Bulletin 1372, Item 2; Re Savoy Club, Inc., Bulletin 1289, Item 7); and the minimum suspension imposed for the violation set forth in Charge 2 of Case No. S-5864 is twenty days. Re The Village Barn Inc. of New Jersey, Bulletin 1051, Item 3. However, since the violations set forth in Charge 3 of Case No. S-5760 and in Charge 1 of Case No. S-5864 constitute the third and fourth similar violations occurring within a five-year period, the penalty therefor is seventy-five days. Re Pawlowski, Bulletin 1245, Item 2; Cf. Re Woodlawn Bar & Grill, Inc., Bulletin 1060, Item 2; Cf. Re Bedrock Inc., Bulletin 1374, Item 1.

"In view of the aforesaid, I further recommend that an order be entered suspending defendant's license for a total of one hundred ninety days, which includes ten days for the prior similar violation and the prior dissimilar violation which occurred within ten and five years, respectively, less five days for the confessional plea entered in Case No. S-5864."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the proceedings and exhibits in Case No. 5760, the investigative reports in Case No. 5864, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 11th day of September 1961,

ORDERED that Plenary Retail Consumption License C-163, issued by the City Council of the City of Elizabeth to Bedrock, Inc., t/a Billy's Tavern, for premises 1060 Magnolia Avenue, Elizabeth, be and the same is hereby suspended for one hundred ninety (190) days, commencing at 2:00 a.m., Monday, September 18, 1961 and terminating at 2:00 a.m., Tuesday, March 27, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SUSPENSION PREVIOUSLY IMPOSED - ORDER AMENDED TO AFFECT LICENSE EXTENDED BY ORDER IN APPEAL CASE.

In the Matter of Disciplinary Proceedings against )

BEDROCK, INC. )  
t/a Billy's Tavern )  
1060 Magnolia Avenue )  
Elizabeth 4, N. J. )

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-163, issued by the City Council of the City of Elizabeth. )

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Feinberg and Feinberg, Esqs., by Joseph M. Feinberg, Esq., Attorneys for Defendant-licensee in Case S-5760.  
William K. Miller, Esq., Attorney for Defendant-licensee in Case S-5864.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

It appearing that by order dated September 11, 1961, I suspended defendant's 1960-61 plenary retail consumption license for one hundred ninety (190) days, effective September 18, 1961, and

It further appearing that on June 29, 1961, the City Council of the City of Elizabeth denied defendant's application for renewal of said license for the 1961-62 licensing year, and

It further appearing that defendant appealed to me from the action of said City Council, and

It further appearing that upon the filing of the appeal I entered an order dated June 30, 1961, extending the term of the 1960-61 license until further order, and

It further appearing that the appeal from the denial of the renewal by said City Council has been heard but not adjudicated,

It is, on this 14th day of September 1961,

ORDERED that Plenary Retail Consumption License C-163 for the 1960-61 licensing period, as extended, heretofore issued by the City Council of the City of Elizabeth to Bedrock, Inc., t/a Billy's Tavern, for premises 1060 Magnolia Avenue, Elizabeth, be and the same is hereby suspended for a period of one hundred ninety (190) days, commencing at 2:00 a.m., Monday, September 18, 1961 and terminating at 2:00 a.m., Tuesday, March 27, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - REMOVAL OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - TRANSPORTATION IN VEHICLE HAVING NO TRANSIT INSIGNIA - TRANSPORTATION WITHOUT INVOICE OR MANIFEST - CHARGE ALLEGING THAT LICENSEE AIDED AND ABETTED ANOTHER IN UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES DISMISSED - PRIOR RECORD - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary Proceedings against  
BILL'S B. BAR  
783 Spruce Street  
Camden 3, N. J.  
Holder of Plenary Retail Consumption License C-161 (for the 1960-61 licensing year) and C-202 (for the 1961-62 licensing year), issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

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David R. Brone, Esq., by Carl Valore, Jr., Esq., Attorney 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 Friday, March 3, 1961 at about 10:15 p.m. you allowed, permitted and suffered the removal of alcoholic beverages, viz., one case of fifth bottles of Seagram's 7 Crown Whiskey, one case of fifth bottles of Canadian Club Whisky and one pint bottle of Tiger Rose Wine, in their original containers from your retail licensed premises; in violation of Rule 1 of State Regulation No. 38.
- '2. On Friday, March 3, 1961 at about 10:15 p.m., you knowingly aided and abetted another in the unlawful transportation of the above mentioned alcoholic beverages, contrary to R.S. 33:1-2; in violation of R.S. 33:1-52.
- '3. On Friday, March 3, 1961 at about 10:20 p.m., you transported the above mentioned alcoholic beverages in a vehicle which did not have a transit insignia affixed thereto or an inscription painted thereon; in violation of Rule 2 of State Regulation No. 17.
- '4. On Friday, March 3, 1961 at about 10:20 p.m., 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, size of container and quantity of each item of the alcoholic beverages being transported; in violation of Rule 3 of State Regulation No. 17.'

"It appears from the testimony presented herein on behalf of the Division that, on March 3, 1961, at about 10:15 p.m., while ABC agents

kept the above licensed premises under observation from a nearby vantage point, they observed a 1951 Hudson Tudor Sedan bearing New Jersey registration parked near the said premises. According to the testimony of Agent H, a man (later identified as James Davis) carried a case of whiskey from the front part of the said licensed premises which is the package goods section, and placed the same in the trunk of this car. About one minute later, at approximately 10:16 p.m., Agent H observed another man (later identified as William Levin, manager of the licensed premises) carry another case of alcoholic beverages from the said licensed premises, which he also placed in the trunk of this same vehicle. There was no insignia affixed to the said car authorizing the transportation of alcoholic beverages. These two men engaged in conversation for about one minute; Davis then closed the trunk of the car; Levin returned to the premises, Davis entered the car and drove it in the direction of the Walt Whitman Bridge, leading to Philadelphia.

"Agent H further stated that when they came to within one-half mile from the Walt Whitman Bridge, they intercepted Davis' vehicle at the intersection of South 9th Street and Morgan Boulevard in Camden. The ABC agents thereupon identified themselves and searched the car. They found one case of fifths of Seagram's 7 Crown Whiskey, one case of fifths of Canadian Club Whisky and one pint bottle of Tiger Rose Wine. The serial numbers had been torn off and removed from both cases of whiskey. Davis produced a registration card reflecting his ownership of that motor vehicle. He also had a five-dollar bill and a telegram money order for five dollars, which he claimed had been sent to him that day by his sister upon his representation that he was 'broke and needed money'. Davis could not produce any invoices or other indicia relating to these alcoholic beverages. He did have a card with a Philadelphia telephone number on it, but stated that he could not recall the listing.

"Agent H further testified as follows: Davis and the two agents returned to the licensed premises at about 12:30 a.m. and were permitted entry by Levin. Upon confrontation, Davis said to Levin, 'Man, you got me all messed up'. Levin did not reply. Levin then refused to answer any questions without the advice of his attorney, but did permit the agents to search the premises and gave them the invoices relating to these two cases of whiskey. The agents found the two pieces of cardboard with the serial numbers on them in a trash can under the counter of the package goods section of these premises. The serial number and the excise number corresponded with that part of the sections of each of the cases.

"Agent T testified substantially to the same effect.

"On behalf of the licensee, Sylvia Mazer testified to the following: Her husband is a stockholder of defendant-corporation and she helps out on weekends. On the night in question, Davis came into to premises and purchased a pint of Tiger Rose Wine. He then engaged in conversation with Levin. A few minutes before 10:00 p.m. she turned off the lights and left the premises and Davis, carrying a case of liquor, followed her. She got into her car and did not observe the actions of Davis after that moment. She further testified that she did not know where his car was parked, and that her brother remained in the premises after she left. Upon cross-examination, she denied that she heard any of the conversation between Levin and Davis and testified that she did not know whether Davis was actually employed by the licensee.

"William Levin testified that his wife is one of the stockholders of Bill's B. Bar and that he is employed there without a salary to 'help her out'; that he was employed as manager on the night in question. He further described the circumstances under which he gave Davis the two cases of whiskey in the following manner: Davis was a handyman in another enterprise which Levin operates in partnership with Mazer. Davis came to

these premises shortly after 9:00 p.m. and insisted upon a payment for monies allegedly due him which this witness estimates was 'somewhere in the neighborhood of \$125 to \$150'. He stated that he could not give him any money, and then Davis requested two cases of whiskey on account of monies due him because he would like 'to hold a party and would like to have some whiskey'. He informed Davis that it would not be legal to give him two cases of whiskey but, nevertheless, gave him the two cases upon Davis' promise that he would give one of the cases to his sister. Levin then assisted him in carrying out one of the cases of whiskey to his car and handed it to Davis.

"Upon cross-examination, this witness stated that Davis had been employed on a part-time basis for him in his various businesses for ten or twelve years; that in 1961 he was employed by the B.J.M. Investment Company, an enterprise owned by Levin in partnership with his brother-in-law; that Davis had done some maintenance work at the licensed premises in 1960 but he did not know exactly how much was owed him for that work. He further stated that he was not familiar with the books and records of the B.J.M. Investment Company and therefore did not know how much was due and owing to Davis, but because of the lateness of the hour, he felt that paying Davis in this manner would approximate the sum due to him.

"He was further questioned about the reason why the serial numbers were ripped off the two cases. He answered that they were not on the cases when he came on duty and he was 'under the impression it was some sort of federal law. I had been under that impression for years.' He further asserted that he did not know Davis by his true name, but only by the nicknames of 'Balzer' or 'Herb', and did not examine the payroll records to determine whether Davis was an employee. He denied that he knew the exact destination of these two cases except that he assumed that one of the cases was to go to Davis' sister. He did not receive any receipt from Davis upon delivery to him of the two cases of whiskey. He further denied that Davis was ever employed for making deliveries, other than that as a favor he would occasionally deliver packages in the neighborhood, for which he received 'a drink or something like that'.

"The final witness called by the defendant was James H. Davis, who testified substantially as follows: He came to the licensed premises of defendant herein to make a purchase of wine and 'see if I can't get a little money from Bill to get some whiskey to have a party.' He had worked for the licensee some time in 1959 and felt that he was entitled to about \$175 for such services rendered. He noticed these two cases of whiskey which he estimated had a value of about \$35 per case (the authorized minimum consumer resale price of these two cases was \$133.38). He argued with Bill (Levin) about his bill and since it was a few minutes before ten o'clock, Levin agreed to let him have the whiskey. Levin told him that it was illegal to take two cases of whiskey, but Davis advised him that he would bring one of the cases of whiskey up to his sister who lived above the tavern. He stated that he then left the tavern with the case of liquor, followed by Bill who delivered the other case to his car. In the meantime, his sister came downstairs and he engaged in a conversation with her, which resulted apparently in his keeping the two cases of whiskey. He then proceeded toward Morgan Boulevard, ostensibly for the purpose of going to his brother-in-law. When he was stopped by the ABC agents, he was about seven or eight blocks in the opposite direction. His explanation for this was that his mind was wandering and he was thinking about the party, which caused him to lose his way. He was then questioned by the ABC agents and stated that he was not employed by the defendant, but would occasionally deliver whiskey in the neighborhood. Upon cross-examination, he added that he was presently unemployed, has been so unemployed since July 1960 and was, in fact, collecting unemployment compensation during this period of time. He could not state exactly how much was due to him, but acknowledged a prior

voluntary written statement in which he explained that Levin owed him about \$120, and these two cases of liquor served as part payment for the money owed. He further asserted that these two cases were given to him with the understanding that the defendant was to receive a credit of \$70 (his understanding of the value of these two cases of whiskey) on the amount due and owing to him. He further admitted that no receipts were signed by him, nor any invoices given to him. He was asked why he hadn't been paid the sum of money due and owing to him before this night in question, and he replied that occasionally the defendant would give him small sums of money - 'he give me money when I ask him, if he see his way clear, he give it to me.'

"I have given careful consideration to the testimony adduced herein, and it becomes abundantly clear that there is a very sharp conflict in the stories presented by the Division's witnesses and those on behalf of the defendant. Defendant suggests that the charges are 'quasi-criminal and therefore the defendant must be proven guilty of the charges beyond a reasonable doubt'.

"It is well-established that these proceedings are not criminal or quasi-criminal proceedings, but are disciplinary proceedings against the license of an individual for violation of the statute or a Division regulation. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252, 254, 59 Atl. Rep. 2nd, 657 (Sup. Ct. 1948); Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408, aff. 130 Id. 554, cert. den. 320 U. S. 801; The Panda v. Driscoll (E. & A.) 135 N.J.L. 164. Disciplinary proceedings against liquor licensees are civil in nature and require proof by preponderance of the believable evidence only. Freud v. Davis, 64 N.J. Super. 242, 165, Atl. Rep. 2nd. 850 (1960); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 378 (1956); Hornauer v. Division of Alc. Beverage Control, 40 N.J. Super. 501, 503, (1956). In the Hornauer case, the Court emphasized that the accepted gauge of administrative factual finality is whether the factual findings are supported by substantial evidence. Thus, determinations in administrative proceedings are based upon substantial evidence. By substantial evidence is meant such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In Re Larsen, 17 N.J. Super. 564, 576 (App. Div. 1952); Universal Camera Corp. v. Nat'l Labor Relations Board, 340 U.S. 474, 95 L. ed. 456, 71 Sup. Ct. 458 (1951). In other words, the comparative degree of proof by which a case must be established is the same in this agency as in a judicial proceedings, i.e., a preponderance of the believable evidence. See 42 Am. Jur., Public Administrative Law, Sec. 132, page 467; Liquid Carbonic Co. v. Industrial Commission, 352, Ill. 405, 186 n.e. 1940, 87 A.L.R. 770; and it does not require proof beyond a reasonable doubt. Engles Copper Mineral Co. v. Industrial Accident Commission, 183 Cal. 714, 192 Pac. 845, 11 A.L.R. 785; Citizens Bank of Nevada v. Robinson, 74 Nev. 91, 323 Pac. 2nd 705. The measure of support of factual findings in matters before this Division by the fair preponderance of the believable evidence has been fully accepted and deeply rooted in our decisions. Kravis v. Hock, supra; Hornauer v. Div. of Alcoholic Beverage Control, Bulletin 1122, Item 1; In Re Kreider, Bulletin 1257, Item 4; In Re Pacilli, Bulletin 1230, Item 1; Hornauer v. Division, supra.

"Guided by these general principles, I shall discuss the charges presented herein in paragraphs 1, 3, 4 firstly. Defendant is charged in Charge 1 of allowing, permitting and suffering the removal of alcoholic beverages described in the charge at about 10:15 p.m., which was after the time proscribed by Rule 1 of State Regulation No. 38. I believe the ABC agents gave a forthright and credible account of what happened on this night. They had investigated the defendant on several previous occasions and understood as part of this investigation that Rule 1 of State Regulation No. 38 was to be specifically considered in their observation of the activities of the defendant on this night. They

testified that they checked their watches with the car radio of the vehicle in which they were riding, and kept a careful check on the time during the entire evening. They stated that it was approximately 10:15 p.m. when Davis and Levin removed the alcoholic beverages from these premises, and they maintained this version of that happened under searching cross-examination. On the other hand, we have the testimony of Mrs. Mazer, who based her version of the time on the fact that these premises are usually closed at about 10:00 p.m. Davis admitted that he was not certain of the exact time but thought it was around 10:00 p.m. He testified in answer to question of time when he left the store, 'I can't say exactly, but I know definitely before ten, because I know it was close to closing time, because Mrs. Mazer said it was time to close.' However, when he was stopped by the agents at 10:28 p.m. of that evening, he admitted that he had just left the defendant's premises. It is generally agreed that it would take only about ten minutes to drive from the premises to the place where Davis was intercepted. I am persuaded that on the basis of the believable evidence, there was a clear and unmistakable violation of Rule 1 of State Regulation No. 38.

"The third and fourth charges may be considered together on the basis of the intertwining evidence on which these charges must either stand or fall. The Division has taken the position that Davis was, in fact, an employee and agent of the defendant; that on Friday, March 3, 1961, he was engaged or employed by the defendant, its agents or employees, to deliver two cases of alcoholic beverages, and in furtherance thereof, that he did place those two cases of whiskey in his motor vehicle and proceeded toward his destination at the time of his interception by ABC agents. This is vigorously denied by the defendant who claims, in brief, that Davis was not its agent, servant or employee; that these cases were given to him by the defendant in payment of monies earned by Davis in former employment; that the cases of whiskey were removed by Davis with the intention of using them for a party to be given by him and friends that evening.

"There is no denial of the fact that the motor vehicle in which these cases of alcoholic beverages were placed was owned by Davis; that the said vehicle did not have a transit insignia affixed thereto or an inscription painted thereon; nor is there any denial that Davis did not have 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, as required by Rule 3 of State Regulation No. 17. (Since the contention of the defendant is that there was no other purchaser than Davis, himself, no manifest or delivery slip was necessary). Defendant, of course, denies that Davis was its agent, servant or employee, or performed any services on its behalf on the night in question.

"It would be useful to define at this point, the word 'employ'. Webster's New International Dictionary (2nd edition) defines the word 'employ' as: 'To use; to have in service; to cause to be engaged in doing something; to make use of as an instrument, a means, a material, etc., for a specific purpose.' In Kravis v. Hock, supra, the court stated:

'The Commissioner (of Alcoholic Beverage Control), has consistently construed the word "employed" to embrace "all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship". Such a construction seems to be a logical one.'

See Cino v. Driscoll (Sup.Ct. 1943), 130 N.J.L. 535. In Freud v. Davis, supra, the Court in considering the word 'work', in a somewhat different setting, supported the Division's construction of 'work' as embracing all persons

whose services are utilized in furtherance of the licensed business, notwithstanding the absence of a technical employer-employee relationship, citing Kravis v. Hock, *supra*. The court further stated that the fact that the individual involved (an apparently intoxicated entertainer) received no compensation from the licensee for his work was of no moment.

"The conclusions from both the actions of Davis and Levin, the manager of these premises, appears inescapable, that Davis was in fact employed on behalf of the licensee and in furtherance of its interests. I cannot believe that Davis, who had been unemployed for six months and was in such need of funds that he had to wire his sister for an emergency five dollars that very day, would have been willing to accept two cases of high-priced whiskey in payment of an alleged debt due to him. It seems equally incredible that he was going to use this whiskey for a party that evening. It is clear that he did not know the exact value of these two cases, for the value that he has placed on them was far less than the actual resale price authorized for these brands of whiskey. Here, too, there is a sharp conflict in the testimony of Davis and Levin. It seems to me that Davis was quite satisfied with the Tiger Rose Wine that he had purchased for his own needs, at 70 cents per pint, and considering his circumstances, would never had entertained the thought of purchasing cases of Seagram's 7 Crown Whiskey and Canadian Club Whisky. I am of the clear conviction that he was prevailed upon by the defendant-licensee to make a delivery of these two cases, was given five dollars for his services, and his story of the transaction with reference to this whiskey is an unequivocal fabrication.

"It is argued by counsel for the defendant, that the story given by Davis on the night in question was truthful because there had been no conference with Levin, and it was made at the time when he was nervous - 'when he was most apt to be truthful'. It is equally conceivable that while this man is not the type of individual who would, in counsel's words, 'become a Phi Beta Kappa', this version might have been given to him before Levin sent him out on this delivery.

"A court is not bound to accept everything as true a witness may say, and evidence, to be believed, must not only proceed from a reliable witness but it must be credible in itself. Harris v. Barrett, 72 N.J. Eq. 386, 72 At. 956. A witness is not entitled to credit whose testimony is inconsistent with the common principles by which the conduct of mankind is usually governed. Earle v. Norfolk & New Brunswick Hosiery Co., 36 N.J. Eq. 188, Aff. 37 Eq. 315. In weighing evidence, the credibility thereof as it appears proper under the tests of experience and observation, is to be considered. Daggers v. Van Dyck, 37 N.J. Eq. 130.

"There is testimony that although both Davis and Levin knew that it was against the regulations of this Division to remove these cases at that time and under those circumstances, from the licensed premises, they nevertheless were removed upon Davis' alleged representation that one of these cases was to be delivered to his sister who resides above the said premises. This was never done and the agents testified that, indeed, no effort was made at any time to do so. There were several other facts of cogent significance. Davis was intercepted near the Walt Whitman Bridge which leads from Camden to Philadelphia. He stated that he had intended to go to the home of his brother-in-law, but that his mind had wandered and he was about eight blocks south of the route which would usually be taken from the licensed premises. He could not explain a Philadelphia telephone number which he had in his possession, and when he returned to the premises, made the following poignant but clearly incriminating remark to Levin, 'Man, you got me in some mess.'

"These facts were pointed out to Levin on that very evening: The two cases of whiskey were received that very day by the licensee

according to an invoice in its possession, which reflected these two cases only; the serial number of the cases were torn off in violation of the rules and regulations of this Division; and no delivery slips, manifests or sales receipts were produced by the licensee. With respect to the serial numbers, Levin testified that it was his impression that some federal law made that procedure necessary. I know of no federal law relating thereto nor was any such law called to my attention by counsel for the licensee.

"To recapitulate, I believe that the story given by the ABC agents was an accurate and believable one. I believe that the Division has proved, by the greater preponderance of the credible evidence, that the defendant-licensee employed Davis on that evening for the purpose of delivering the two cases of alcoholic beverages; that in furtherance thereof, Davis, as the agent, servant or employee of defendant-licensee, transported alcoholic beverages in a vehicle which did not have a transit insignia affixed thereto, in violation of Rule 2 of State Regulation No. 17; and transported alcoholic beverages in a vehicle without the driver thereof having in his possession a bona fide, authentic and accurate delivery slip, in violation of Rule 3 of State Regulation No. 17; and I further believe that these activities took place, including the removal of alcoholic beverages, at approximately 10:15 p.m. on March 3, 1961, in violation of Rule 1 of State Regulation No. 38.

"I, therefore, recommend that the defendant be found guilty of charges contained in paragraphs 1, 3 and 4.

"However, I believe that the charges in paragraph 2 should be dismissed. Paragraph 2 charges the defendant with knowingly aiding and abetting another in the unlawful transportation of the above-mentioned alcoholic beverages, contrary to R.S. 33:1-2, in violation of R.S. 33:1-52. This charge appears to be inconsistent with the charges contained in paragraphs 3 and 4. Since it is my judgment that Davis was, in fact, the agent and employee of the defendant-licensee on the night in question (as defined in Kravis v. Hock, supra), it cannot be said that the defendant 'aided and abetted another' in the unlawful transportation of the above-mentioned alcoholic beverages. It appears probable and consistent with the usual procedure that this charge was made in the alternative to those contained in paragraphs 3 and 4. Since I have recommended that the defendant be found guilty of Charges 3 and 4, it would, ipso facto, follow that he cannot be guilty of the second charge, and I therefore recommend that the charge contained in paragraph 2 be dismissed.

"Defendant has a prior adjudicated record. Effective December 7, 1959, its license was suspended by this Division for forty days for (1) aiding and abetting the unlawful transportation of alcoholic beverages, (2) sale below the minimum resale price, (3) transportation of alcoholic beverages in a vehicle not having a transit insignia, (4) delivery without a bona fide invoice and (5) the licensed premises used in furtherance and aid of illegal activity resulting in criminal conviction. Re Bill's B. Bar (A Corp.), Bulletin 1314, Item 4. In addition, William Levin, the partner of the defendant-licensee, and the person who participated in the violations in question, received a suspension of twenty days by the Director, effective August 10, 1950, while he was a partner of Julius Levin in the license for the same business and at the same location, for possessing illicit liquor. Re Levin, Bulletin 883, Item 7. However, since the suspension last referred to occurred more than ten years prior to the date hereof, it will not be considered in the imposition of sentence. The usual penalty for a violation of Rule 1 of State Regulation No. 38 is fifteen days (Re Tafrow, Bulletin 1243, Item 3); to this should be added a suspension of forty-five days for the violations contained in Charges 3 and 4 (Re Caldwell's Liquor Store, Bulletin 1364, Item 6). In view of the fact that a similar violation has occurred within the past five years, I

recommend that an additional five days be imposed, making a total suspension on the three charges of sixty-five days."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorney for the defendant-licensee, pursuant to Rule 6 of State Regulation No. 16. The attorney appearing for the Division also filed written exceptions and written argument with respect to the sufficiency of the recommended penalty of sixty-five days' suspension of the license herein. Written answering exceptions thereto were filed by the attorney for the defendant-licensee.

After carefully considering the entire record in this case, including the transcript of the testimony, the Hearer's Report, the memorandum of the attorney for the defendant-licensee and the exceptions and written argument filed herein, I concur in the Hearer's findings and conclusions and adopt them as my conclusions herein with the exception that I do not view the facts in this case as constituting a second offense similar to the aforementioned 1959 violations (which involved prohibited transportation into Pennsylvania). I, therefore, find the defendant guilty of Charges 1, 3 and 4, and not guilty of Charge 2, and shall impose the recommended suspension of defendant's license for a period of sixty days for the instant violations, to which will be added five days for the prior dissimilar violations within five years.

Accordingly, it is, on this 12th day of September 1961,

ORDERED that Plenary Retail Consumption License C-202, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Bill's B. Bar, for premises 783 Spruce Street, Camden, be and the same is hereby suspended for sixty-five (65) days, commencing at 7:00 a.m., Monday, September 18, 1961 and terminating at 7:00 a.m., Wednesday, November 22, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - MINIMUM RESALE PRICE LIST (MALT ALCOHOLIC BEVERAGES), VIOLATION OF - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
Manuel Alberto da Fonseca, Alvaro  
A. Pinho & Joao R. Roque  
t/a Al & Al Tavern  
100 Ferry Street  
Newark 5, New Jersey  
Holders of Plenary Retail Consumption License C-74, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS  
AND  
ORDER

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

BY THE DIRECTOR:

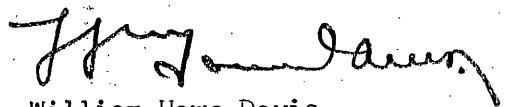
Defendants pleaded guilty to a charge alleging that they sold alcoholic beverages below the price listed in the Minimum Resale Price List then in effect, in violation of Rule 5 of State Regulation No. 30.

On Tuesday, August 15, 1961, an ABC agent purchased from Manuel Alberto da Fonseca, one of the defendants herein, a case (24 12-ounce cans) of Schaefer beer for \$4.20, the retail consumer price thereof for a case of said beer being \$4.40. The agent left with the case of beer but immediately returned to the premises with another agent and both identified themselves to da Fonseca, who verbally admitted the violation.

Defendants have no prior adjudicated record. I shall suspend defendants' license for the minimum period of ten days. Re Holtzman, Bulletin 1390, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 14th day of September, 1961,

ORDERED that Plenary Retail Consumption License C-74, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Manuel Alberto da Fonseca, Alvaro A. Pinho & Joao R. Roque, t/a Al<sup>o</sup> Al Tavern, for premises 100 Ferry Street, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, September 25, 1961, and terminating at 2:00 a.m., Saturday, September 30, 1961.



William Howe Davis  
Director