

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

Kremer

BULLETIN 1688

August 17, 1966

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BULLETIN 1688

August 17, 1966

L. DISCIPLINARY PROCEEDINGS - PROCUREMENT FOR PROSTITUTION - PRIOR
SIMILAR AND DISSIMILAR RECORD - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)

B & N Tavern, Inc.)
t/a Dealer's Inn)
7 Park Avenue)
Paterson, New Jersey,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-140, issued by the Board)
of Alcoholic Beverage Control for)
the City of Paterson.)
-----)

Harrison & Ferrante, Esqs., by Joseph M. Harrison, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Friday, February 11, 1966, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises viz., solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse; in violation of Rule 5 of Regulation No. 20."

Three ABC agents participated in an investigation of the licensed premises pursuant to a specific assignment which resulted in the preferment of the charge herein. Two of the agents testified at this hearing, and their testimony may be briefly summarized as follows.

At approximately 10:50 p.m. on Friday, February 11, 1966, Agents M, C and B entered the said licensed premises and seated themselves at the bar. As Agent M was about to take his place at the bar, a female (later identified as Susan Wallace, also known as Sunny O'Day) approached him, said "hello", placed her arms around his shoulder and told him that he looked like somebody she knew. Shortly thereafter this female (hereinafter Sunny) proceeded to a small stage behind the bar, stated that she was a "Go Go Girl" and started to dance about, raising her dress high above her waist, thereby exposing her panties. The bartender (later identified as Biaggi Amoresano -- also known as Bill), who had assisted her onto the stage, joined with the other patrons in

clapping and laughing in appreciation of her performance. After performing this dance for about five minutes, she was then assisted from the platform by Bill and took a seat at the bar next to Agent M. At this point another female patron performed some dances and, after her performance, Sunny returned to the stage and was assisted thereon by Bill. Again she performed the same type of dance, raising her skirt, exposing her underpants. During this dance she pointed to Agent M and said, "I want you." The agent noted that the bartender watched this performance and his back was turned to the patrons. After her performance she returned to the same position at the bar and, at her request, Agent M purchased a drink of alcoholic beverages, which she consumed. She engaged in conversation with Agent M, in which she asked if he wanted to take her home and have sexual intercourse with her, informing him that the price would be \$10 and that she had a room in the vicinity. Thereupon Sunny left to go to the ladies room and Agent M, in the presence of Agent B, told the bartender that she had offered to have sexual relations with him for \$10 and asked, "Do you think she can take all three of us?" Replied Bill, "I think she can without any trouble." Agent M added, "Well, they say it will stretch a mile before it tears an inch. Isn't that the way it goes?" And the bartender replied, "Yes, something like that."

At this point Agent C left the tavern to pick up his car which was parked about a block away. Upon Sunny's return to the bar, the two agents prepared to leave with her, and Agent B said to the bartender, "As long as we're all going out to get laid, we might as well take a fifth along." However, Bill refused to sell him any bottle because it was after hours. The two agents left the premises with Sunny who directed them to premises in the City of Paterson.

Agent M entered the premises with Sunny and, in due course, handed her a \$10 bill (the serial number of which had been previously recorded), which she accepted for the purpose of having sexual relations with him. At about 12:20 a.m. Agents C and B, in the company of a local police officer, were admitted into the said dwelling house and arrested Sunny. She was taken to the Paterson Police Department where the "marked" \$10 bill was found on her person. The agents and the local police officer returned to the licensed premises where they identified themselves to the bartender and informed him of the violation. The bartender then denied participating in or hearing any of the conversation hereinabove set forth, and stated that he had seen Sunny for the first time on that evening.

Biaggi Amoresano (Bill), testifying in behalf of the licensee, gave the following account: Sunny entered the licensed premises about twenty or twenty-five minutes after the agents arrived, and seated herself at the bar approximately six or seven stools away from the agents. She ordered a drink and informed this witness that she was a "Go Go Girl" and desired to perform. She then went onto the stage, but this witness did not see her lift her dress because he was serving patrons. Shortly after she returned to her seat at the bar, this witness went to answer the telephone and noticed that Agent M and Sunny were talking to each other near the telephone booth. When he returned to the bar he served her a drink at the request of the agents, and he heard Agent M remark something about "it stretches two ways, four-way stretches", but he couldn't get the entire conversation because "the juke box was loud."

Thereafter the agents prepared to leave, and Agent B offered him \$10 for a bottle of whiskey, which he refused because of the lateness of the hour. He specifically denied any conversation relating to alleged sexual relations or any knowledge that she had left the premises for the purpose of engaging in prostitution.

On cross-examination Bill stated that he is the brother-in-law of Frank Caramico (one of the stockholders of the licensee-corporation) and that he has been employed therein for approximately three years. He insisted that he first learned of Sunny's reputation after this incident; that she was a character known in Paterson as a former "stripper." He was not certain of the exact time when she entered the premises, and first took notice of her when she first went over to the juke box, placed a coin in the said box, and then told him that she was a "Go Go Girl." He added that he helped her onto the platform where she performed; that she did a twisting and shaking dance, and that he applauded with the audience after her performance, but he denied seeing her lift her dress. During her performances he only took one or two glances at her dance. He was then questioned about the telephone call that he had received, but he couldn't recall who called him or the content of the alleged conversation. He again admitted that the agent remarked something about "it stretches two ways; it stretches four ways" but "the juke box was playing and I didn't get the whole conversation, and I just kept on serving the people." He was then further questioned about whether the agent left with Sunny and his answer was, "Well, they all left together, I thought." A little later in this interrogation he stated that he did not see Sunny leave. However, he again changed his testimony and stated, "I saw them all leave together, I thought the three agents and the girl."

The agents were recalled in rebuttal and denied that the bartender had been called to the telephone booth at any time during their visit. They further denied that they offered him \$10 for a bottle of whiskey to take out, and insisted that the \$10 was part of the conversation with reference to the proposed charge requested by Sunny for engaging in sexual relations.

I have carefully evaluated the testimony presented herein both on behalf of the Division and on behalf of the licensee, and have had an opportunity to observe the demeanor of the witnesses as they appeared before me. A study of the entire record gives rise to the inescapable conclusion that this charge has been amply supported by the credible and forthright testimony of the agents.

Rule 5 of State Regulation No. 20 provides as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

The uncontradicted testimony of the two ABC agents clearly established that, upon these licensed premises at the time specified, there was immoral activity in the manner described by the charge. It is indisputable that Sunny propositioned the agents in the premises and offered to have sexual relations with

them at a price of \$10 per person. It has additionally been established by the testimony of the agents, and admitted by Bill, that the two agents left the premises with Sunny, and the setting for the illicit act was clearly delineated as detailed hereinabove. The marked money found on her possession at the address of this female was the natural consequence of the solicitation theretofore made in these premises.

The pivotal question, therefore, arises, did the licensee "allow, permit or suffer" it upon the licensed premises. In Conner v. Fogg, 75 N.J.L. 245, 247 (Sup.Ct. 1907), Justice Trenchard, in considering the terms "permit" and "suffer", stated:

"To permit is defined as meaning to authorize or to give leave (McHenry v. Winston, 49 S.W. Rep. 4), but the term 'permit' has been often used synonymously with 'suffer,' so that it may be said that one who suffers the doing of a thing which he might have prevented permits it."

The word "suffer" as used in the regulations of the Division of Alcoholic Beverage Control "imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority." Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31; Benedetti v. Bd. of Com'rs of Trenton, 35 N.J. Super. 30, 34 (App.Div. 1955); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1963), not officially reported, reprinted in Bulletin 1491, Item 1.

Furthermore, I am singularly unimpressed with the testimony of Bill. I am convinced that he knew of the character and reputation of Sunny and of her activity in the premises notwithstanding his protestation that he had never met her before the night in question. Support of the Division's charge is buttressed by the following specifics in Bill's testimony: His admission that the agent purchased a drink for this woman despite his contention that she was sitting a substantial distance from him at the bar; his denial that he saw her performance although admitting that he applauded and laughed with the audience; his admission that he heard that part of the conversation regarding the "tearing" and "stretching" although asserting that the noise from the juke box drowned out the rest of the conversation. This is particularly suspect because it obviously appears that he had no difficulty in hearing other conversation relating to the order for a drink and the request for the purchase of a bottle of liquor. Further, in self-contradiction he first stated that Sunny had left the premises with the agent, then denied that she had left with them, and further in his testimony retreated to his original admission that they had left together. That part of his version which refers to the alleged telephone conversation also appears incredible to me because the entire impact of what must obviously have been a traumatic experience by the confrontation on this night would have emphasized the importance of remembering the details of the alleged conversation. The fact that he could recall nothing about the details of the telephone call indicates to me that the alleged incident never occurred.

Finally, if the testimony of the agents is to be believed, and I do believe it, the licensee's witness knew exactly what was occurring, and contemplated, when the agents said to

him, "Do you think she can take all three of us", and this witness answered, "I think she can without any trouble."

Therefore I conclude that the licensee's agent knew, or should have known, of Sunny's activity and, by his conduct, permitted and suffered the occurrence of this violation. The licensee cannot avoid his responsibility by merely closing his eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent improper use of the premises. Re Ehrlich, Bulletin 1441, Item 5; Bilowith v. Passaic, Bulletin 527, Item 3.

The licensee is clearly inculcated by the profligacy of the deliberate misconduct of his employee. Such conduct constitutes a grave threat to the public health, welfare and morals and, unless eliminated, tends toward abuse and abasement. Kravis v. Hock, 135 N.J.L. 259 (Sup.Ct. 1947); In re Schneider, 12 N.J. Super. 449 (App.Div. 1951); Re Hardy, Bulletin 1579, Item 2.

Thus I find that the Division has proved, by a fair preponderance of the credible evidence, and indeed by substantial evidence, that the licensee allowed, permitted and suffered lewdness and immoral activity upon its licensed premises, viz., the solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse. Cf. Re Ritchie's, Inc., Bulletin 1426, Item 1; Essex Holding Corp. v. Hock, supra.

I therefore recommend that the licensee be found guilty of the said charge.

The licensee has a previous record of suspension of license by the Director (1) for thirty-five days effective January 28, 1963, for conducting the licensed place of business as a nuisance (permitting solicitation for drinks by female patrons and a bartender and permitting intoxicated bartender to work on the premises) (Re B & N Tavern, Inc., Bulletin 1498, Item 3) and (2) for two hundred thirty-five days effective July 2, 1964, for procurement for prostitution and permitting solicitation for prostitution, permitting foul language on the licensed premises and sale in violation of State Regulation No. 38 (Re B & N Tavern, Inc., Bulletin 1574, Item 1), and (3) by the municipal issuing authority for thirty days effective May 31, 1965, for sale to minors.

Under all of the circumstances, including the nature of the violation and considering the licensee's prior record of suspensions of license, particularly the record of suspension for similar violation in 1964, it is recommended that the license be revoked. Cf. Re New Peppermint Lounge, Inc., Bulletin 1666, Item 1; Re Charle's Tavern, Bulletin 1619, Item 2.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the oral summation of counsel, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 22d day of June, 1966,

ORDERED that Plenary Retail Consumption License C-140, issued by the Board of Alcoholic Beverage Control for the City of Paterson to B & N Tavern, Inc., t/a Dealer's Inn, for premises 7 Park Avenue, Paterson, be and the same is hereby revoked effective immediately.

JOSEPH P. LORDI
DIRECTOR

2. NEW LEGISLATION - OTHER MERCANTILE BUSINESS UNDER PLENARY RETAIL CONSUMPTION LICENSES - PLENARY RETAIL TRANSIT LICENSES.

On June 22, 1966 the Governor approved Assembly No. 628 which thereupon became Chapter 180 of the Laws of 1966, effective immediately. The Law amends Section 33:1-12 of the Revised Statutes (Class C Licenses) in the following respects:

Paragraph 1 of Revised Statutes, 33:1-12 has long provided that a plenary retail consumption license "shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on." The amendment effected by Chapter 180 of the Laws of 1966 adds to the quoted exceptions the following: "or, in commercial bowling establishments, the retail sale or rental of bowling accessories and the retail sale from vending machines of candy, ice cream and nonalcoholic beverages."

Heretofore, Paragraph 4 of Revised Statutes, 33:1-12 provided that the fee for a plenary retail transit license shall be \$150.00 "except for boats not exceeding 25 tons gross tonnage the fee for which shall be \$25.00, and further except for boats under 5 tons gross tonnage, the fee for which shall be \$10.00" Deleting the hereinabove-quoted provisions Chapter 180 of the Laws of 1966 provides that the fee for a plenary retail transit license "for use by a railroad or air transport company" shall be \$150.00 "and, for use on a boat, the fee for this license shall be \$25.00 on a boat 65 feet or less in length, \$50.00 on a boat more than 65 feet in length but not more than 110 feet in length, and \$150.00 on a boat more than 110 feet in length; such boat lengths shall be determined in the manner prescribed by the Bureau of Customs of the United States Government or any Federal agency successor thereto for boat measurement in connection with issuance of Marine Documents."

JOSEPH P. LORDI
DIRECTOR

DATE: July 13, 1966

3. APPELLATE DECISIONS - PASTRANA'S BAR, INC. v. BUENA.

PASTRANA'S BAR, INC.,)	
Appellant,)	
v.)	ON APPEAL
)	ORDER
BOROUGH COUNCIL OF THE)	
BOROUGH OF BUENA,)	
Respondent.)	

 Robert J. Halpin, Esq., Attorney for Appellant.
 Donald D. Phillips, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from denial by respondent on June 28, 1965 of its application for "renewal" of its plenary retail consumption license for the year 1965-66 for premises west side Harding Highway, north of North Boulevard, Buena.

Upon the filing of the appeal an order was entered on July 2, 1965 extending the term of appellant's 1964-65 license until further order herein pursuant to Rule 12 of State Regulation No. 15.

Appellant's application for renewal of license for 1964-65 had previously been denied by respondent, which denial was affirmed on appeal to the Director by Conclusions and Order dated June 24, 1965. Pastrana's Bar, Inc. v. Buena, Bulletin 1630, Item 1. On appeal to the Appellate Division the Director's Conclusions and Order were affirmed without opinion on April 12, 1966. Pastrana's Bar, Inc. v. Buena (App.Div. 1966), not officially reported, recorded in Bulletin 1671, Item 1.

On the date scheduled for hearing no one appeared on behalf of either the appellant or the respondent. Consequently the appeal will be dismissed pursuant to Rule 10 of State Regulation No. 15.

Accordingly, it is, on this 23rd day of June 1966,

ORDERED that the action of respondent in denying appellant's application for license for the 1965-66 licensing year be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed. It is further

ORDERED that the order entered on July 2, 1965, extending the term of appellant's license pending determination of the appeal herein be and the same is hereby vacated.

JOSEPH P. LORDI
DIRECTOR

4. APPELLATE DECISIONS - MULHEARN v. CLIFFSIDE PARK.

MURIEL H. MULHEARN, t/a ALIBI LOUNGE,)
)
 Appellant,) ON APPEAL
) ORDER
 v.)
)
 MAYOR and COUNCIL OF THE BOROUGH OF CLIFFSIDE PARK,)
)
 Respondent.)

 Robert W. Wolfe, Esq., Attorney for Appellant.
 Basile & Delchop, Esqs., by Paul L. Basile, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

Appellant appeals from denial by respondent on August 17, 1965, of application for transfer of Plenary Retail Consumption License C-33 from premises 251 Palisade Avenue to premises 452 Palisade Avenue, Cliffside Park.

After partial hearing, no one appeared on behalf of appellant at the continued hearing, whereupon the attorney for respondent moved to dismiss the appeal pursuant to Rule 10 of State Regulation No. 15.

No reason appearing to the contrary, it is, on this 22nd day of June 1966,

ORDERED that the action of respondent in denying the application for transfer is affirmed and the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

5. APPEAL CASES - JULY 1, 1965 THROUGH JUNE 30, 1966.

Undecided June 30, 1965 26

Filed July 1, 1965 through June 30, 1966 55

Total 81

Disposition

Affirmed 32
 Reversed 16
 Modified 1
 Withdrawn (after hearing)... 1
 Withdrawn (no hearing)..... 8
 Undecided (15 cases heard)
 8 " not " 23

Total 81

Dated: August 4, 1966

Emerson A. Tschupp
Deputy Director

DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - GAMBLING (WAGERING) - LICENSE SUSPENDED FOR 30 DAYS - NO REMISSION FOR PLEA ENTERED TO ONE CHARGE WHEN ANOTHER CONTESTED.

In the Matter of Disciplinary Proceedings against)

Francesco A. Marinaccio)
t/a Marino's Bar & Restaurant)
807-809-811 Main Street)
Asbury Park, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-39, issued by the City Council of the City of Asbury Park)

Julius J. Golden, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the first charge and non vult, at the time of the hearing herein, to the second charge, as follows:

"1. On Friday, March 25, 1966, at about 11:30 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a 4/5 quart bottle of Old Crow Kentucky Straight Bourbon 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.

"2. On Friday night March 25, 1966, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing of a pool game for stakes of money, in violation of Rule 7 of State Regulation No. 20."

The basic and essential facts necessary for the determination of the issue relating to the first charge were stipulated by and between counsel for the Division and the licensee, and therefore no witnesses were called in support or in supplement thereof.

It was stipulated that on March 25, 1966, at about 11:30 p.m., the licensee handed a 4/5 quart bottle of Old Crow Kentucky Straight Bourbon Whiskey to a man named Moreno, who put the bottle under his coat and left the licensed premises with it, being apprehended by ABC agents outside the licensed premises.

The contention of the licensee's witnesses, if they were to testify, would be that on March 25, 1966, before 10:00 p.m.,

Moreno entered the licensed premises and handed the bottle of whiskey to the licensee, Francesco A. Marinaccio, to hold for him until he left the tavern. The Division witnesses could not dispute this allegation, except that their testimony would be to the effect that, at the time, the licensee told them that this patron brought the bottle into the premises on the day before this alleged incident.

It was further stipulated that the bottle in fact contained an alcoholic beverage. The pivotal issues, therefore, to be decided are:

A. Was there a delivery of an alcoholic beverage in its original container for consumption off the licensed premises during prohibited hours?

B. Did the licensee allow, permit or suffer the removal of said alcoholic beverage in its original container after 10:00 p.m. on Friday, March 25, 1966?

Applicable Rule 1 of State Regulation No. 38 provides:

"No licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises, or allow, permit or suffer the removal of any alcoholic beverage in its original or opened container from retail licensed premises, on Sunday, or before 9:00 A.M. or after 10:00 P.M. on any other day of the week."

Counsel for the licensee argues that, in fact, this bottle of whiskey was the property of Moreno; that he merely entrusted it in the care of the licensee during his visit to the licensed premises. At no time thereafter, the argument runs, was it owned by the licensee, nor was there a sale of the said alcoholic beverage or an exchange of money. Further, there was no actual delivery because "'delivery' would infer he was delivering alcoholic beverages from his stock owned by him" and that since there was no sale, there was no delivery because it was the "intent of the legislature the licensee be the owner of the alcoholic beverage before a delivery could be made."

My examination and analysis of the applicable rule generate no doubt whatever that there was, in fact, a delivery of alcoholic beverages on the date in question by the licensee. The statute (R.S. 33:1-1(w)) defines "sale" (as applicable herein) as:

"Every delivery of an alcoholic beverage otherwise than by purely gratuitous title...delivering for value ...and the gratuitous delivery or gift of any alcoholic beverage by any licensee." (Emphasis supplied)

Therefore, the mere delivery of the alcoholic beverage, regardless of who was the owner, constitutes a violation of the statute, and it is immaterial and irrelevant whether the patron paid for it, received it as a gift, or was handed his own property.

The clear intention of the Legislature was to make the

mere delivery of alcoholic beverages a violation and it is further corollary that the Legislature never intended that this Division must bear the burden of showing that there was an actual exchange of money or valuable consideration.

As the court stated in Sportsman 300 v. Bd. of Com'rs of Town of Nutley, 42 N.J. Super. 488, 492:

"Courts cannot ascribe to the literal import of the phraseology of the statute a broadly inflated circumference in an administrative disciplinary prosecution where the common judicial realization is that the prevention of sales of intoxicating liquor...not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Ass'n. v. Board of Comm'rs of City of Hoboken, 135 N.J.L. 502 (E. & A. 1947); In re Schneider, 12 N.J. Super. 449, 456 (App. Div. 1951)."

Therefore, under the applicable statute and rule, intent is not essential to the violation thereof, and the mere delivery of alcoholic beverages constitutes a violation. 48 C.J.S. Intoxicating Liquors, Section 246, page 375; also Section 285, page 397.

The rule further provides that the licensee shall not "allow, permit or suffer the removal of any alcoholic beverage in its original or opened container" during prohibited hours. This particular provision is of historical significance because it was added as of January 1, 1957, as an amendment to the original rule, in order to meet the very situation presented in the present context.

As stipulated, at 11:30 p.m. the licensee handed Moreno this bottle of whiskey in its original container. Moreno put the bottle under his coat and left the premises with it. There is no question that the licensee allowed, permitted and suffered the removal of this alcoholic beverage because it was he who actually handed the bottle of whiskey to Moreno. Thus, it cannot be argued that he did not know or suffer the doing of a thing which he might have prevented; and it is undisputed that he had knowledge of the transaction and participated in it. He cannot say that he did not either permit or suffer the said delivery. Conner v. Fogg, 75 N.J.L. 245 (Sup. Ct. 1907). It makes no difference here whether the bottle of whiskey, which was admittedly removed from the premises, belonged to the patron or to the licensee. There is no alternative construction to the rule, other than its literal interpretation, nor has counsel produced any support of authority to the contrary.

Finally, counsel advocates, in his memorandum in summation, that there "should be some evidence of intent on his part to violate the regulation", and the licensee felt that, rightfully or wrongfully, he was doing no wrong in complying with the request of the patron to hold the package for him while he was patronizing the bar.

As pointed out hereinabove, intent is not a relevant element, and the rule was clearly designed to obviate the necessity of proving intent in order to establish the violation charged herein.

The rule is well settled that the reasons which prompted him, the spirit or intention which prompted the delivery, or its removal from the premises, are entirely immaterial and cannot excuse him from the legal consequences of his act. See 48 C.J.S. Section 285, p. 398.

Under all of the stipulated facts and applicable law, I am constrained to conclude that the Division has sustained the burden of proof of the licensee's guilt, and it is, therefore, recommended that the licensee be found guilty as charged.

Licensee has no prior adjudicated record. I further recommend that an order be entered suspending the license on the first charge for fifteen days (Re Nate Kates, Inc., Bulletin 1672, Item 4; Re Willow Cafe & Restaurant, Inc., Bulletin 1631, Item 10), and on the second charge for fifteen days without remission for the confessional plea, since the same was entered at the hearing and when hearing was held on the other charge (Re S. Amster, Inc., Bulletin 1657, Item 4; Re Keane, Bulletin 1673, Item 7), making a total suspension of thirty days.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the memorandum of counsel in summation and argument thereon, and the Hearer's report, I concur in the findings of the Hearer and adopt his recommendations.

As the Hearer pointed out, the licensee had specific knowledge of the transaction and participated in the delivery of the bottle of whiskey to the patron immediately prior to the removal of the said alcoholic beverage from the premises. Under the facts herein, it cannot be seriously argued that the licensee did not know or suffer the doing of a thing which he might have prevented.

Accordingly, it is, on this 21st day of June, 1966,

ORDERED that Plenary Retail Consumption License C-39, issued by the City Council of the City of Asbury Park to Francesco A. Marinaccio, t/a Marino's Bar & Restaurant, for premises 807-809-811 Main Street, Asbury Park, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1966, commencing at 3:00 a.m. Tuesday, June 28, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Thursday, July 28, 1966.

JOSEPH P. LORDI,
DIRECTOR

ACTIVITY REPORT FOR JUNE 1966

7.			
ARRESTS:			
Total number of persons arrested - - - - -			20
Licensees and employees - - - - -	10		
Bootleggers - - - - -	10		
SEIZURES:			
Distilled alcoholic beverages - gallons - - - - -			5.72
Wine - gallons - - - - -			4.62
Brewed malt alcoholic beverages - gallons - - - - -			77.49
RETAIL LICENSEES:			
Premises inspected - - - - -			778
Premises where alcoholic beverages were gauged - - - - -			609
Bottles gauged - - - - -			9,709
Premises where violations were found - - - - -			110
Violations found - - - - -			181
Unqualified employees - - - - -	78	Disposal permit necessary - - - - -	6
Reg. #38 sign not posted - - - - -	23	Prohibited signs - - - - -	3
Application copy not available - - - - -	22	Improper beer taps - - - - -	2
Other mercantile business - - - - -	9	Other violations - - - - -	38
STATE LICENSEES:			
Premises inspected - - - - -			30
License applications investigated - - - - -			26
COMPLAINTS:			
Complaints assigned for investigation - - - - -			510
Investigations completed - - - - -			462
Investigations pending - - - - -			144
LABORATORY:			
Analyses made - - - - -			93
Refills from licensed premises - bottles - - - - -			63
Bottles from unlicensed premises - - - - -			13
IDENTIFICATION:			
Criminal fingerprint identifications made - - - - -			4
Persons fingerprinted for non-criminal purposes - - - - -			750
Identification contacts made with other enforcement agencies - - - - -			417
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities - - - - -			6
Violations involved - - - - -			8
Sale during prohibited hours - - - - -	5	Failure to close premises during prohibited hours - - - - -	1
Sale to minors - - - - -	2		
Cases instituted at Division - - - - -			39
Violations involved - - - - -			56
Possessing liquor not truly labeled - - - - -	11	Unqualified employee - - - - -	2
Sale during prohibited hours - - - - -	9	Permitting hostesses on prem. - - - - -	2
Sale to minors - - - - -	7	Sale to intoxicated persons - - - - -	1
Permitting foul lang. on premises - - - - -	4	Failure to close prem. during prohibited hours - - - - -	1
Permitting lottery activity on prem. - - - - -	4	Acts of violence on prem. - - - - -	1
Conducting business as a nuisance - - - - -	4	Fraud in application - - - - -	1
Hindering investigation - - - - -	3	Employing female bartender (local reg.) - - - - -	1
Permitting immoral activity on prem. - - - - -	3		
Sale below filed price - - - - -	2		
Cases brought by municipalities on own initiative and reported to Division - - - - -			17
Violations involved - - - - -			19
Sale to minors - - - - -	9	Conducting business as a nuisance - - - - -	2
Sale during prohibited hours - - - - -	2	Permitting foul lang. on premises. - - - - -	1
Permitting gambling on premises - - - - -	2	Possession of opened containers on "D" lic. premises - - - - -	1
Permitting brawl on premises - - - - -	2		
HEARINGS HELD AT DIVISION:			
Total number of hearings held - - - - -			57
Appeals - - - - -	7	Seizures - - - - -	2
Disciplinary proceedings - - - - -	37	Applications for license - - - - -	3
Eligibility - - - - -	8		
STATE LICENSES AND PERMITS ISSUED:			
Total number issued - - - - -			4,978
Licenses - - - - -	1	Social affair permits - - - - -	410
Solicitors' permits - - - - -	2,723	Miscellaneous permits - - - - -	214
Employment permits - - - - -	804	Transit insignia - - - - -	620
Disposal permits - - - - -	144	Transit certificates - - - - -	61
Wine permits - - - - -	1		
OFFICE OF AMUSEMENT GAMES CONTROL:			
Licenses issued - - - - -	21		
Premises inspected - - - - -	166		
Enforcement files established - - - - -	15		
Premises where violations were found - - - - -	32		
Number of violations found - - - - -	39		

JOSEPH P. LORDI
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: July 11, 1966

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

In the Matter of Disciplinary)
Proceedings against)

Louis A. Levy)
t/a Levy's Club)
148 Lamberton St.)
Trenton, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-212, issued by the)
City Council of the City of Trenton)

- - - - -

Licensee, Pro se.
Morton B. Zemel, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
March 21, 1966, he possessed alcoholic beverages in three bottles
bearing labels which did not truly describe their contents, in
violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for
twenty days, with remission of five days for the plea entered,
leaving a net suspension of fifteen days. Re Birdland Nite
Club, Bulletin 1671, Item 11.

Accordingly, it is, on this 22d day of June, 1966,

ORDERED that Plenary Retail Consumption License C-212,
issued by the City Council of the City of Trenton to Louis A.
Levy, t/a Levy's Club, for premises 148 Lamberton Street, Trenton,
be and the same is hereby suspended for the balance of its term,
viz., until midnight June 30, 1966, commencing at 2:00 a.m.
Wednesday, June 29, 1966; and it is further

ORDERED that any renewal license that may be granted
shall be and the same is hereby suspended until 2:00 a.m.
Thursday, July 14, 1966.

JOSEPH P. LORDI,
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Root Beer and Checker Club
 5 Broad Street & portion of
 3 Broad Street
 Red Bank, N. J.
 Holder of Club License CB-4, issued
 by the Mayor and Council of the
 Borough of Red Bank

CONCLUSIONS AND ORDER

Parsons, Canzona, Blair & Warren, Esqs., by William R. Blair, Jr.,
 Esq., Attorneys for Licensee.
 David S. Piltzer, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 27, 1966, it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Roncskevitz, Bulletin 1674, Item 8.

Accordingly, it is, on this 29th day of June, 1966,

ORDERED that Club License CB-4, issued by the Mayor and Council of the Borough of Red Bank to Root Beer and Checker Club for premises 5 Broad Street and portion of 3 Broad Street, Red Bank, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, July 4, 1966, and terminating at 2:00 a.m. Saturday, July 9, 1966.

JOSEPH P. LORDI,
 DIRECTOR

10. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Anthony J. Raimondo)
208 Adams Street)
Hoboken, N. J.)

Holder of Plenary Retail Consumption Licenses C-142 for the year 1965-66 and C-132 for the year 1966-67, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.)

CONCLUSIONS AND ORDER

Licensee, Pro se.
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

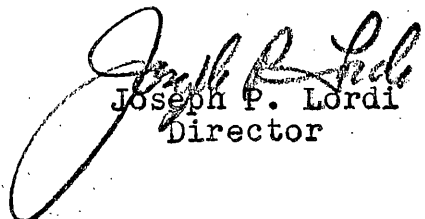
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 11, 1966, he possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Adams, Bulletin 1672, Item 6.

Accordingly, it is, on this 28th day of June, 1966,

ORDERED that Plenary Retail Consumption License C-132, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Anthony J. Raimondo, for premises 208 Adams Street, Hoboken, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, July 5, 1966, and terminating at 2:00 a.m. Friday, July 15, 1966.


Joseph P. Lordi
Director