

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

BULLETIN 1326

February 25, 1960

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

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BULLETIN 1326

APPELLATE DECISIONS - S. MORTIMER HIRSHORN, ESQ., TRUSTEE IN
BANKRUPTCY OF ESTATE OF SAM'S SHACK INC. v. ESTELL MANOR

S. Mortimer Hirshorn, Esq., Trustee)
in Bankruptcy of Estate of Sam's)
Shack Inc.,)

Appellant,)

ON APPEAL

v.)

CONCLUSIONS

Common Council of the City of Estell)
Manor,)

AND

Respondent.)

ORDER

-----)

Epstein & Fluharty, Esqs., by A. David Epstein, Esq.,
Attorneys for Appellant.
Glenn & Glenn, Esqs., by Benjamin A. Rimm, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent when, by resolution dated July 27, 1959, it rescinded its prior action of July 20, 1959 whereby it had renewed appellant's plenary retail consumption license for the current licensing term.

"For the sake of better understanding, it might be advisable to set forth in chronological order the uncontradicted facts appearing in the instant matter.

"On December 23, 1958, Sam's Shack Inc. (to which the license was originally issued) was adjudged a bankrupt and on May 11, 1959 appellant was appointed trustee of the bankrupt estate. On June 29, 1959, respondent extended the license in question for the balance of the 1958-59 licensing term to appellant as trustee. R.S. 33:1-26. On July 20, 1959 the respondent renewed the license to appellant for the current licensing term, but on July 27, 1959 rescinded its action in renewing the license and requested the return of the certificate which had been theretofore issued.

"Appellant's petition of appeal alleges that because appellant had no notice of the hearing of July 27, 1959 and because no reasons were given for the respondent's action in rescinding the renewal of the said license, the action taken thereon should be reversed.

"Respondent's answer alleges, among other reasons for its action, that appellant had no premises or any interest therein for which the renewal of the license was sought.

"There is no dispute that long prior to the application for renewal of the license, the premises for which the license was originally issued had been destroyed by fire and that said premises thereby became untenable. The fact of its destruction had been set forth in

the renewal application filed by appellant, and he testified that although he had never seen the premises, it was his understanding that it had been destroyed by fire. Appellant further testified that he never had any intention of operating the licensed business.

"It is well established that in the absence of statute or a fraud having been perpetrated upon the issuing authority, it may not reconsider its action. Lantz v. Hightstown, 46 N.J.L. 102; White v. Atlantic City et al, 62 N.J.L. 644; Vanaman v. Adams, 74 N.J.L. 125; Gulnac v. Board of Chosen Freeholders, 74 N.J.L. 543 (E & A 1906). However, the fact that respondent rescinded its previous action wherein it granted renewal of appellant's license under the circumstances appearing herein is immaterial. The action of respondent in renewing the appellant's license was illegal ab initio. The premises to which the license had been issued for the 1958-59 licensing year had been destroyed by fire. Even if the premises were in existence, the appellant herein has not shown any right to possession thereof. In fact, the renewal license certificate on its face was incomplete as it did not contain any address or location to which the license had been issued.

"It is essential that premises either be in existence or, if not in existence, that plans and specifications be filed with the application and, furthermore, that the applicant for said license have possession, a right to possession of, or interest in, the premises sought to be licensed. Richwine v. Pennsauken, Bulletin 1045, Item 2, and cases cited therein. Where it appears that licensee had neither legal nor equitable interest in the premises, the license will be declared void. White Castle Inc. v. Clifton et al., Bulletin 97, Item 13.

"In view of the illegal issuance of the renewal license to appellant, the license is void. Regardless of the action of respondent in rescinding its previous action whereby it had renewed the license, the Director of the Division of Alcoholic Beverage Control, by virtue of R.S. 33:1-39, should have and most certainly would have instituted proceedings to cancel the license because it was illegally issued. Such original jurisdiction was upheld in Liptak v. Division of Alcoholic Beverage Control, 44 N.J. Super. 140, wherein it was stated 'The fact that no separate appeal had been taken was not regarded as an obstacle to original agency action.'

"Under the circumstances appearing herein, it is recommended that the appeal herein be dismissed and that the license issued to appellant for the 1959-60 licensing period be cancelled forthwith."

No exceptions to the Hearer's Report submitted herein were filed within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered all the facts and circumstances appearing herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on the 14th day of January, 1960,

ORDERED that Plenary Retail Consumption License C-2, issued on July 20, 1959 by the Common Council of the City of Estell Manor to appellant S. Mortimer Hirshorn, Trustee in Bankruptcy of Estate of Sam's Shack, Inc. for the 1959-60 licensing year, as a renewal of the 1958-59 license extended to appellant on June 29, 1959, be and the same is hereby cancelled, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - BRICKLEY v. CLIFTON)

James John Brickley, t/a Brickley
Liquors,)

Appellant,)

v.)

Municipal Board of Alcoholic Beverage
Control of the City of Clifton,)

Respondent.)

ON APPEAL

CONCLUSIONS

AND

ORDER

John G. Dluhy, Esq., Attorney for the Appellant.
Edward F. Johnson, Esq., by Manfred Triebel, Esq.,
Attorney for the Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on September 28, 1959 it suspended appellant's Plenary Retail Distribution License D-27 for a period of twenty days, effective October 5, 1959, after finding him guilty on a charge alleging that on Monday, August 17, 1959, he sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

"Upon the filing of the appeal, an order was entered by the Director on October 2, 1959 staying respondent's order of suspension until further order herein. R. S. 33:1-31.

"Appellant, in his petition of appeal, alleges that respondent's action was erroneous in that it was arbitrary, capricious and discriminatory; that the members of respondent Board were biased and that the penalty imposed is unreasonable.

"Respondent, in its answer, denies appellant's allegation.

"The hearing on appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15.

"At the hearing herein it was stipulated that five weeks prior to the date alleged in the charge, Ronald ---, 19½ years old, purchased alcoholic beverages from appellant after exhibiting what purported to be a postal employee's driver's license indicating his age to be 22 years, and that thereafter, on August 17, 1959, appellant, relying upon the spurious document previously exhibited by Ronald and believing him to be of age, sold, served and delivered to him two six-packs of beer.

"James Brickley, the appellant, testified in substance that he did not require written representation of Ronald's age because, 'I felt that he was a young married man that had just moved into the neighborhood because we were getting a lot of new people in the neighborhood, and I felt that he was telling the truth and from his appearance I would say he was 22, with the card, of course' and that when Ronald came into his store on August 17, 1959, he sold him two six-packs of beer because 'his appearance to me was 22 but, of course, naturally the card with his signature I felt helped me to decide'. Appellant testified further that in June 1959 Mr. Stufko, a member of respondent Board, visited his premises and accused him of having called his (Stufko's) son a prevaricator; that heated words ensued

and Stufko left, saying, 'You know I can make trouble for you'.

"Mrs. Brickley testified in substance that when Ronald first visited the licensed premises, her husband asked 'How old are you?' and that when Ronald replied '22', her husband asked 'can you prove it?' and that Ronald stuck his hand in his pocket and gave him the card. Her testimony corroborated that of her husband respecting the alleged incident in June 1959.

"Ronald ---, called to the stand by the Hearer, testified that on August 17, 1959, he purchased alcoholic beverages from appellant and that he had visited appellant's store 'more than two times'.

"Benjamin Blackman, a member of respondent Board, testified in substance that he abstained from voting on the charge preferred against appellant because he patronized appellant's store occasionally and because, 'I do not feel that they were people that would with intent sell a minor liquor'. He testified further that when the Board met to consider the evidence, Mr. Stufko stated 'that the man was guilty and that he wanted to give him thirty days' and that at no time did anyone mention the alleged tiff between appellant and Stufko in June 1959.

"Thomas McEvoy, another member of respondent Board, testified in substance that, 'I felt that hearing all the evidence...I, as a member of the Board, would close Mr. Brickley for ten days' and that, 'We had to reach a happy medium and, in reaching this happy medium, Mr. Stufko said he would drop it down to twenty days' and 'I had conceded to go along with his judgment'.

"The only defense provided by the Alcoholic Beverage Law in the case of sale or service of an alcoholic beverage to a minor or consumption of an alcoholic beverage by a minor on licensed premises is that wherein all the following facts affirmatively appear: (a) that the minor falsely represented himself in writing to be of age, (b) that the minor's appearance was such that an ordinary prudent person would believe him to be of age, and (c) that the sale was made in reliance upon such written representation and appearance and in the reasonable belief that the minor was of age. R.S. 33:1-77; Re Butera, Bulletin 606, Item 4; Re Roey, Bulletin 747, Item 3 (certiorari denied by N. J. Sup. Ct. in Roey v. Hock, reprinted in Bulletin 758, Item 2). Hence, it is not a defense that mere verbal inquiry may have been made as to the age of the minor or that the minor had verbally misrepresented his age or that the minor had displayed some document (such as a driver's license or birth certificate) which represented his age as over 21. Bryla v. Newark, Bulletin 1136, Item 2.

"Considering the facts and circumstances herein, I find that appellant failed to comply with the provisions of the Alcoholic Beverage Law respecting the sale, service and delivery of alcoholic beverages to a minor. I find further that the evidence is insufficient to support a finding that any member of respondent Board was prejudiced or improperly motivated. In view of the undisputed evidence that appellant sold, served and delivered alcoholic beverages to Ronald on at least two different occasions within a five-week period, I find further that the twenty days suspension imposed by respondent Board is not excessive. I conclude therefore that appellant has not sustained the burden imposed upon him of establishing that respondent's action was erroneous and I recommend that an order be entered affirming respondent's action and dismissing the appeal and fixing effective dates for the suspension previously imposed."

Written exceptions to the Hearer's Report and written arguments with respect thereto were filed with me by appellant's attorney, pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the proceedings, the Hearer's Report, the written exceptions thereto and the arguments advanced by appellant's attorney, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 18th day of January, 1960,

ORDERED that the action of respondent Board be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the twenty-day suspension heretofore imposed by respondent and stayed during the pendency of these proceedings be and the same is hereby restored and reinstated against the license held by appellant for premises 586 Bloomfield Avenue, Clifton, to commence at 3:00 a.m., Tuesday, January 26, 1960, and to terminate at 3:00 a.m., Monday, February 15, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

APPELLATE DECISIONS - HOME OF THE ALLIANCE, INC. v. JEFFERSON

Home of the Alliance, Inc., t/a)
Home of the Alliance, Inc.)
Appellant,)
v.)
Township Committee of the)
Township of Jefferson,)
Respondent.)

On Appeal

CONCLUSIONS and ORDERS

Emanuel C. Schablik, Esq., Attorney for Appellant
Schenck, Smith & King, Esqs., by Alten W. Read, Esq., Attorneys
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Appellant appeals from respondent's action whereby it suspended appellant's license for fifteen days. The suspension was imposed after appellant pleaded nolo contendere in a disciplinary proceeding to a charge alleging that on August 9, 1959, it sold and permitted the sale of alcoholic beverages to Edward --- (age 18), in violation of Rule 1 of State Regulation No. 20.

"The resolution, which suspended appellant's license for twenty days, less five days for the plea, is dated September 24, 1959, and provided that the suspension was to be effective from midnight September 24, 1959, to midnight October 9, 1959. However, upon the filing of this appeal the Director entered an order on September 25, 1959, staying respondent's order of suspension until further order herein. R.S. 33:1-31.

"At the hearing herein the attorney for appellant conceded that, in view of the plea entered below, the sole issue to be decided was whether the suspension was unduly harsh and severe, as alleged in the petition of appeal and denied in the answer. After hearing the arguments of both attorneys as to this issue, I ruled that, under the circumstances, there was no need to present testimony in this case. State v. Mull, 30 N.J. 231 (Sup.Ct. 1959).

"In his argument the attorney for appellant stated that appellant is an Association Not For Pecuniary Profit; that its Certificate of Incorporation recites that it has been organized for the purposes of 'amusement, recreation and old-age security' and 'to give cooperative aid to its members and their families.' It is not disputed that appellant is a worthy association. However, a licensed association can no more evade its responsibility than an individual licensee. Re Polish National Home Association, Bulletin 621, Item 3.

"Its attorney also alleged that appellant has operated its licensed premises for twenty years and has no prior record; that on August 9, 1959, it employed three special officers to prevent violations at a picnic attended by thousands of persons; that three bartenders had previously refused to serve Edward ---, who is not a member of appellant association, and that a fourth bartender did serve beer to Edward --- after he verbally assured the bartender that he was twenty-one years of age. Even considering these mitigating circumstances, the suspension does not appear to be unduly harsh and severe. The suspension imposed by a municipal issuing authority in a disciplinary proceeding rests in the first instance within its sound discretion, and the power of the Director to reduce or modify such suspension will be sparingly exercised and only with the greatest caution. Dzieman v. Paterson, Bulletin 233, Item 10.

"After considering the arguments presented herein, I recommend that an order be entered affirming respondent's action. It has been represented that appellant's premises are operated throughout the year, but from the description of the licensed premises (a tract of one hundred and eighty-five acres with a dancing pavilion adjoining a lake and buildings where members spend a week or two weeks), it appears that no effective suspension can be imposed during the winter months. It is further recommended, therefore, that said order further provide that effective dates for the fifteen-day suspension will be fixed by a further order to be entered herein by the Director after he is satisfied that the licensed premises have been reopened for the 1960 season."

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

After carefully considering the record herein, I concur in the conclusions of the Hearer and adopt them as my conclusions herein. I shall enter orders as recommended.

Accordingly, it is, on this 18th day of January 1960,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the effective dates for the fifteen-day suspension be fixed by a subsequent order to be entered by me herein after I am satisfied that appellant's premises have fully reopened for the 1960 season.

WILLIAM HOWE DAVIS
DIRECTOR

4. ACTIVITY REPORT FOR JANUARY 1960

ARRESTS:		
Total number of persons arrested	-----	34
Licensees and employees	19	
Bootleggers	14	
ABC agent impersonator	1	
SEIZURES:		
Motor vehicles - cars	-----	2
- trailers	-----	1
Mash - gallons	-----	100.00
Distilled alcoholic beverages - gallons	-----	63.68
Wine - gallons	-----	891.00
Brewed malt alcoholic beverages - gallons	-----	17.56
RETAIL LICENSEES:		
Premises inspected	-----	613
Premises where alcoholic beverages were gauged	-----	461
Bottles gauged	-----	7,544
Premises where violations were found	-----	32
Violations found	-----	68
Unq ualified employees	49	Improper beer taps
Application copy not available	8	Other mercantile business
Reg. #38 sign not posted	5	Other violations
Prohibited signs	1	3
STATE LICENSEES:		
Premises inspected	-----	22
License applications investigated	-----	4
COMPLAINTS:		
Complaints assigned for investigation	-----	389
Investigations completed	-----	341
Investigations pending	-----	186
LABORATORY:		
Analyses made	-----	320
Refills from licensed premises - bottles	-----	37
Bottles from unlicensed premises	-----	50
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	11
Persons fingerprinted for non-criminal purposes	-----	175
Identification contacts made with other enforcement agencies	-----	154
Motor vehicle identifications via N. J. State Police teletype	-----	2
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	13
Violations involved	-----	19
Sale during prohibited hours	12	
Failure to close premises during prohibited hours	5	
Sale to minors	1	
Service to women at bar (local reg.)	1	
Cases instituted at Division	-----	20
Violations involved	-----	25
Possessing liquor not truly labeled	6	Solicitor engaging in conduct prohibited to employer
Sale to minors	3	Failure to file notice of change in license application
Permitting lottery activity (raffles, numbers) on premises	3	Fraud and front
Sale below minimum resale price	2	Sale during prohibited hours
Sale to intoxicated persons	1	Permitting bookmaking on premises
Employee working while intoxicated	1	Sale during license suspension
Failure to file tax reports within time	1	Sale on election day
Solicitor violating terms of permit	1	
Cases brought by municipalities on own initiative and reported to Division	-----	20
Violations involved	-----	25
Sale to minors	13	Failure to file notice of change in license application
Sale during prohibited hours	4	Permitting gambling (wagering)
Permitting brawl on premises	4	Permitting bookmaking on prem.
Sale to intoxicated persons	1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	48
Appeals	7	Seizures
Disciplinary proceedings	27	Tax revocations
Eligibility	9	3
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-----	905
Licenses	1	Wine permits
Solicitors' permits	50	Miscellaneous permits
Employment "	153	Transit insignia
Disposal "	89	Transit certificates
Social affair "	306	31

WILLIAM HOWE DAVIS
DIRECTOR

Dated: February 2, 1960

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
 Betty & Bill Umberger)
 t/a Clearwater Lodge)
 East Side Lake Iliff)
 on Clearwater or Wawayanda Rd.,)
 Andover Township)
 PO Box 180, RD 1, Newton, N. J.,)
 Holders of Plenary Retail Consumption License C-10, issued by the Township Committee of Andover Township)
 -----)

CONCLUSIONS
 AND
 ORDER

Dolan & Dolan, Esqs., by John T. Madden, Esq., Attorneys for Defendant-licenseses
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On October 30, 1959, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly to a person under the age of twenty-one (21) years, viz., Joseph ---, age 16; in violation of Rule 1 of State Regulation No. 20."

Acting on information received from the Newton Police Department, ABC agents obtained signed, sworn statements from Joseph --- (age 16) and three other minors. Joseph states that at about 8 p.m. on Friday, October 30, 1959, he and three minor companions drove to defendants' licensed premises to purchase some beer; that he alone entered the defendants' licensed premises and, without being required to make any written representation of his age, purchased four six-packs of beer from Bill Umberger (the licensee); that he carried the alcoholic beverages to the car; that he and his friends later consumed the beer and that he paid for said alcoholic beverages with money contributed by himself and one of his companions. The foregoing is substantially corroborated by the statements of the other three minors.

Thereafter the four minors identified the licensed premises as the place where the alcoholic beverages were obtained and Joseph identified aforesaid Bill Umberger as the person who sold him the beer.

By way of mitigation, the attorneys for the defendants have submitted statements of Mr. Umberger and four patrons who were in the licensed premises on the night in question. I have carefully read these statements, together with those of the minors and the reports of the agents. I, however, do not find any extenuating circumstances in this case which would impel me to impose less than the minimum penalty in cases of this kind.

Defendants, as partners, have no prior adjudicated record. However, when the license was held by Betty Umberger individually it was suspended by this Division for ten days effective September 30, 1943

for sale to minors (Re Umberger, Bulletin 585, Item 9). Since afore-
said prior violation occurred more than ten years ago, it will not be
considered in fixing the penalty herein. Re Holian, Bulletin 1298,
Item 7. I shall suspend defendants' license for twenty-five days,
the minimum penalty for sale of alcoholic beverages to a 16-year-old
minor. Re Rubin, Bulletin 1309, Item 3. Five days will be remitted
for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 14th day of January 1960,

ORDERED that plenary retail consumption license C-10, issued
by the Township Committee of Andover Township to Betty & Bill
Umberger, t/a Clearwater Lodge, for premises on East Side Lake Iliff
on Clearwater or Wawayanda Rd., Andover Township, be and the same is
hereby suspended for twenty (20) days, commencing at 7 a.m. Tuesday,
January 26, 1960, and terminating at 7 a.m. Monday, February 15, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE
REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR
PLEA.

In the Matter of Disciplinary)
Proceedings against)
L.F.A. Corporation)
t/a Wagon Wheel Tavern)
366 Union Avenue)
Paterson 2, N. J.)
Holder of Plenary Retail Consumption)
License C-73, issued by the Board of)
Alcoholic Beverage Control for the)
City of Paterson.)

CONCLUSIONS
AND
ORDER

James V. McNamara, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on
Wednesday, November 25, 1959 it sold during prohibited hours alcoholic
beverages in their original containers for off-premises consumption,
in violation of Rule 1 of State Regulation No. 38.

At 10:40 p.m. on the above-mentioned date, two ABC agents
at the defendant's licensed premises observed Frank Del Mastro, an
officer of the corporate-licensee then tending bar, sell 12 cans of
beer to a man who left the premises with the beer. At 11:57 p.m.
one of the agents purchased six cans of beer from another bartender
and, accompanied by the other agent, left the premises with the beer.
The agents returned almost immediately and revealed their identity to
Del Mastro, who recalled such sale, but said he was unaware of the
time. The other bartender admitted, verbally and in a signed state-
ment, his sale of the beer to the agent during prohibited hours.

Defendant has no prior adjudicated record. I shall suspend
its license for the minimum period of fifteen days and remit five
days for the plea entered herein, leaving a net suspension of ten days.
Re Bartoszak, Bulletin 1307, Item 7.

Accordingly, it is, on this 13th day of January 1960,

ORDERED that Plenary Retail Consumption License C-73, issued by the Board of Alcoholic Beverage Control for the City of Paterson to L.F.A. Corporation, t/a Wagon Wheel Tavern, for premises 366 Union Avenue, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., Monday, January 25, 1960 and terminating at 3:00 a.m., Thursday, February 4, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

Margaret Maloney)
t/a White Elephant)
207-209 Bergen Pike)
Little Ferry, N. J.)

CONCLUSIONS

and

ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Little Ferry.)
-----)

James F. McGovern, Jr., Esq., Attorney for Defendant-licensee David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

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

On August 12, 1959, Donald --- (age 20), accompanied by his twin brother, went to defendant's licensed premises where Donald purchased two quart-containers of beer from Fred VanBracht (the bartender) While seated in the parked car outside the premises, a police officer approached and, after ascertaining that the youths were minors and that Donald had purchased the beer in defendant's tavern, obtained one of the cartons which still contained some beer. The following day the police called the violation to VanBracht's attention and he remembered that a person fitting Donald's description had purchased containers of beer on the prior evening.

Defendant has a prior adjudicated record. Effective June 23, 1952, while defendant and Anthony Menotti held the license, it was suspended by the local issuing authority for three days for an "hours" violation. Again, effective April 4, 1955, the license, still in the name of defendant and Anthony Menotti, was suspended by the Director for twenty-five days for an "hours" violation. Re Maloney and Menotti, Bulletin 1059, Item 3. The dissimilar violation committed in 1952, which is more than five years ago, will not be considered in fixing the penalty herein. However, I shall suspend defendant's license for an additional five days for the other dissimilar violation which occurred during the past five years. The minimum suspension for sale to a 20-year-old minor is ten days. Re Murtagh, Bulletin 1287, Item 9. Under the circumstances, I shall suspend de-

defendant's license for fifteen days, less five days remission for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 13th day of January 1960,

ORDERED that plenary retail consumption license C-10, issued by the Mayor and Council of the Borough of Little Ferry to Margaret Maloney, t/a White Elephant, for premises 207-209 Bergen Pike, Little Ferry, be and the same is hereby suspended for ten (10) days, commencing at 3 a.m. Monday, January 25, 1960, and terminating at 3 a.m. Thursday, February 4, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
Tristell Corporation)
217-219 Straight Street)
Paterson 1, New Jersey)
Holder of Plenary Retail Consumption License C-105, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)
-----)

CONCLUSIONS
AND
ORDER

Defendant-licensee, by Estelle Tribucher, President.
Dora P. Rothschild, Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold during prohibited hours an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

On Sunday, November 22, 1959 at 1:25 p.m., after observing several patrons purchase alcoholic beverages in original containers for off-premises consumption, an agent ordered a pint of whiskey from Louis Lottenberg, a bartender. The latter, upon receiving payment for the whiskey, directed the agent to go to the rear of the premises where Lottenberg handed him a pint of whiskey remarking, "Put the bottle away before you leave". The agent did as directed and left the premises, but returned immediately thereafter with another agent and, after they identified themselves to Lottenberg, he admitted the violation.

Defendant has no prior adjudicated record. The minimum suspension for an "hours" violation such as that now under consideration is fifteen days. Re 677 Ocean Avenue Corporation, Bulletin 1301, Item 7. I shall suspend defendant's license for fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 13th day of January, 1960,

ORDERED that Plenary Retail Consumption License C-105, issued by the Board of Alcoholic Beverage Control for the City of

Paterson to Tristell Corporation, for premises 217-219 Straight Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., Monday, January 25, 1960, and terminating at 3:00 a.m., Thursday, February 4, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Orlando Barone, Harry Barone & Joseph Barone)
t/a Barone's Bar)
94-96-98 Logan Avenue)
Jersey City, New Jersey)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-483, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
-----)

Defendant-licensees, Pro se:
Dora P. Rothschild, Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendants pleaded guilty to a charge alleging that they sold during prohibited hours alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

On Friday, October 30, 1959, ABC agents visited defendants' licensed premises and observed therein Orlando Barone, one of the licensees, make six sales of alcoholic beverages after 10:00 p.m. for off-premises consumption. At 11:00 p.m. one of the agents purchased from Barone six twelve-ounce cans of beer and left with the merchandise. He then joined an agent outside the premises and, re-entering immediately, he identified himself and Barone admitted the after hours sales.

Defendants have no prior adjudicated record. I shall suspend their license for fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Clark, Bulletin 1312, Item 11.

Accordingly, it is, on this 12th day of January, 1960,

ORDERED that Plenary Retail Consumption License C-483, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Orlando Barone, Harry Barone & Joseph Barone, t/a Barone's Bar, for premises 94-96-98 Logan Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., Monday, January 18, 1960 and terminating at 2:00 a.m., Thursday, January 28, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

LO DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Vincent Niekrasz
 183 Pavonia Avenue
 Jersey City 2, New Jersey,
 Holder of Plenary Retail Consumption License C-343, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS
 and
 ORDER

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

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on Sunday, November 22, 1959, he sold during prohibited hours alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

At about 1 p.m. on the above mentioned date an ABC agent entered defendant's licensed premises. This agent, after observing several sales of alcoholic beverages for off-premises consumption, purchased from a bartender six cans of beer, left the premises with the beer and joined a fellow-agent who was stationed outside the premises. Both agents then entered the premises and revealed their identity to the bartender who verbally acknowledged the sale of beer to the agent.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Bartoszak, Bulletin 1307, Item 7.

Accordingly, it is, on this 12th day of January 1960,

ORDERED that plenary retail consumption license C-343, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Vincent Niekrasz, for premises 183 Pavonia Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, January 18, 1960, and terminating at 2 a.m. Thursday, January 28, 1960.

WILLIAM HOWE DAVIS
 DIRECTOR

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

In the Matter of Disciplinary Proceedings against
 John Gaggis & John Paskalis
 t/a Paramount Restaurant
 314-316 Market Street
 Paterson 3, New Jersey
 Holders of Plenary Retail Consumption License C-77, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS
 AND
 ORDER

 Edward Rubinstein, Esq., Attorney for Defendant-licensees.
 William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they possessed on their licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On November 17, 1959 an ABC agent tested defendants' open stock of liquors and detained the bottle in question for further analysis by the Division's chemist. The latter's analysis disclosed that the contents of the bottle were high in solids and low in acids when compared with the genuine product of the labeled brand.

Defendants have no prior adjudicated record. I shall suspend their license for ten days, the minimum penalty imposed in "refill" cases where one bottle is involved, and remit five days for the plea entered herein, leaving a net suspension of five days. Re Rossetti, Bulletin 1258, Item 7.

Accordingly, it is, on this 14th day of January 1960,

ORDERED that Plenary Retail Consumption License C-77, issued by the Board of Alcoholic Beverage Control for the City of Paterson to John Gaggis & John Paskalis, t/a Paramount Restaurant, for premises 314-316 Market Street, Paterson, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m., Monday, January 25, 1960 and terminating at 3:00 a.m., Saturday, January 30, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against
)
)
 The Union NewsCo.
 t/a Savarin)
 Pennsylvania R.R. Station)
 (Raymond Plaza West))
 Newark, New Jersey)
)
 Holder of Plenary Retail Consumption License C-838, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
)

CONCLUSIONS
 AND
 ORDER

Emory, Langan, Lamb & Blake, Esqs., by James J. Langan, Esq.,
 Attorneys for Defendant-licensee.
 William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

On October 13, 1959 an ABC agent tested defendant's open stock of liquor and seized a number of bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of three of the seized bottles were high in solids when compared with samples of the genuine product of the same named brand.

Defendant's attorneys submitted a letter in which they state that one of defendant's bartenders has been discharged for tampering with the liquor. They allege that a suspension of the license in this case will affect many innocent persons, such as bartenders and waitresses, and will prevent the licensee from rendering complete service to the travelling public. They suggest, if it is possible within my discretion, that a substantial fine be imposed on the licensee rather than a suspension of the license.

The imposition of a fine in proceedings of this kind is improper. See Bulletin 67, Item 7, and Bulletin 198, Item 9. R.S. 33:1-31 authorizes the Director or other issuing authority to suspend or revoke a license, but no power is granted to impose a fine in lieu of suspension or revocation and, in the absence thereof, no such power may be implied.

Defendant has a prior adjudicated record. Effective January 1, 1946 its license was suspended for two days by the local issuing authority for mislabeled beer taps. Since the prior violation occurred more than ten years ago, it will not be considered in fixing the penalty herein. I shall suspend defendant's license for twenty days, the minimum penalty imposed in "refill" cases involving three bottles. Re DiGiacomo & Grande, Bulletin 1269, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

On December 29, 1959, I issued Special Permit SM-3700 to American News Company authorizing said permittee to exercise the rights and privileges of defendant's license (not beyond March 1, 1960), pending adjudication by the local issuing authority of permittee's application to transfer to it the license issued to defendant. Said permit is subject to the outcome of these proceedings.

Accordingly, it is, on this 21st day of January 1960,

ORDERED that Special Permit SM-3700, issued by me to American News Company, authorizing said permittee to exercise the privileges of Plenary Retail Consumption License C-838, for premises Pennsylvania R.R. Station (Raymond Plaza West), Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Monday, February 1, 1960 and terminating at 2:00 a.m., Tuesday, February 16, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

NOTE: By order dated January 27, 1960, the Director changed the effective dates of the suspension to commence at 2:00 a.m. Tuesday, February 9, 1960 and to terminate at 2:00 a.m. Wednesday, February 24, 1960. On the date of said order, Special Permit SM-3700 was no longer in effect because the license had been transferred by the local issuing authority from The Union News Co. to American News Company. Accordingly, the amended order of suspension was applicable to Plenary Retail Consumption License C-838, then held by American News Company for premises Pennsylvania R.R. Station (Raymond Plaza West), Newark.


William Howe Davis
Director