

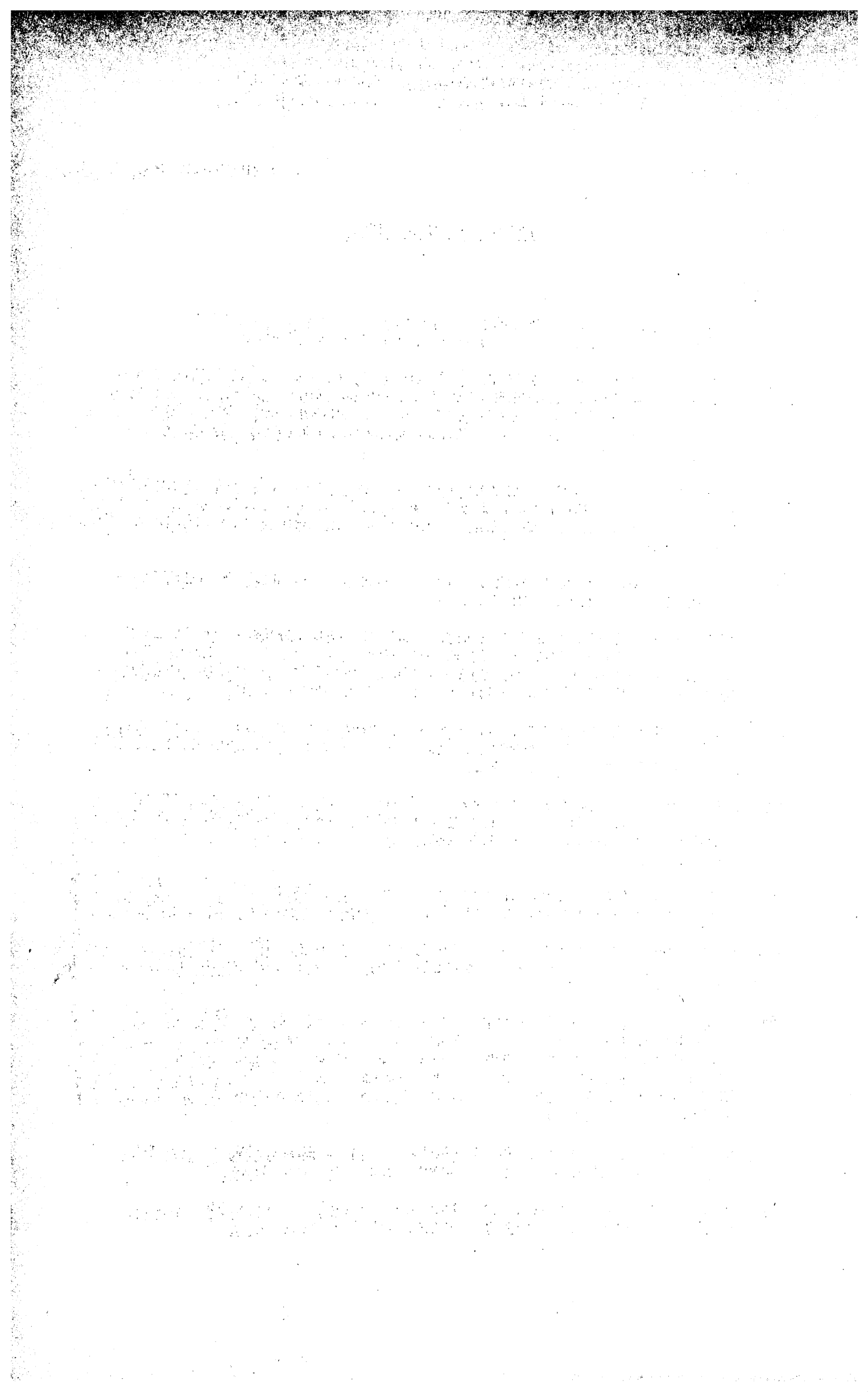
BULLETIN 1080

SEPTEMBER 21, 1955.

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

BULLETIN 1080

SEPTEMBER 21, 1955.

1. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BOB'S INC.)
131-133 Queen Anne Road)
Bogota, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-2 for 1954-1955 and 1955-1956 licensing years issued by the Borough Council of the Borough of Bogota.)

John F. McCann, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on June 3, 1955, it sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on the morning of June 3, 1955, David --- (age 18, and inadvertently referred to as Donald --- in the charge) purchased five quart bottles of beer and a half pint of whiskey from a bartender in defendant's licensed premises without being questioned as to his age. David --- returned later that day to such licensed premises and purchased two other half pint bottles of alcoholic beverages. Charles May, the defendant's bartender, acknowledged that he sold alcoholic beverages to the minor on June 3d, 1955 and did not question the minor as to his age.

Oral argument was presented before me in an attempt at explanation and mitigation of the offense.

Defendant has no prior adjudicated record. I shall suspend its license for ten days, the minimum penalty for the sale of alcoholic beverages to an 18-year-old minor. Re Joseph Kolodziej, Bulletin 1055, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 16th day of August, 1955,

ORDERED that Plenary Retail Consumption License C-2 for the 1955-56 licensing year, issued by the Borough Council of the Borough of Bogota to Bob's, Inc. for premises 131-133 Queen Anne Road, Bogota, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. August 22, 1955 and terminating at 2:00 a.m. August 27, 1955.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD OF PREDECESSOR IN INTEREST NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against VOGEL AND TANZER, INC. t/a VOGEL & TANZER LIQUOR STORE 502 Berckman Street Plainfield, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-4, issued by the Common Council of the City of Plainfield.

Vogel and Tanzer, Inc., Defendant-licensee, by Abraham Tanzer. Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that it sold an alcoholic beverage at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that on June 30, 1955, ABC agents, acting on a complaint that defendant was reputed to sell alcoholic beverages below minimum resale prices, entered defendant's combination food and liquor store and asked Abraham Tanzer (a principal stockholder of the defendant corporation) "What do you get for a bottle of Canadian Club?" Tanzer pointed to a tag below fifth bottles of the brand, reading "\$6.15" (the correct minimum resale price) and said "Six dollars and fifteen cents." When one of the agents asked, "Is that the best you can do?" Tanzer replied, "Six dollars if the price if you want it." The agents paid him \$6.00, took the merchandise and departed. They returned in a few minutes, identified themselves and obtained a signed sworn statement from Abraham Tanzer admitting the sale at the reduced price.

Defendant has no prior adjudicated record. However, effective March 18, 1940, the license, then held by Julius Vogel and Abraham Tanzer, partners, was suspended for five days by the then Commissioner for a Fair Trade violation. See Bulletin 393, Item 5. Since the prior violation occurred more than ten years ago, it will not be considered in fixing the penalty herein. Re Stein, Bulletin 1067, Item 4. I shall suspend defendant's license for the minimum period of ten days (Re Weintrob, Bulletin 1070, Item 7). Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 23rd day of August, 1955,

ORDERED that Plenary Retail Distribution License D-4, issued by the Common Council of the City of Plainfield to Vogel and Tanzer, Inc., t/a Vogel & Tanzer Liquor Store, for premises 502 Berckman Street, Plainfield, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. August 29, 1955, and terminating at 9:00 a.m. September 3, 1955.

WILLIAM HOWE DAVIS Director.

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

In the Matter of Disciplinary Proceedings against NOEL T. IMBORNONE T/a NOEL'S TAVERN 144 Bartholdi Avenue Jersey City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-487, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Noel T. Imbornone, Defendant-licensee, Pro se. Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

The file herein discloses that ABC agents entered defendant's licensed premises about 11:45 p.m. July 27, 1955 and took seats at the bar. At 12:15 a.m. and again at about 12:30 a.m. July 28, 1955, they observed two different patrons take canned beer from a refrigerated show case, place the price on the bar and depart with the merchandise. The bartender later rang up the sale on the register. About 1:00 a.m. the same morning, one of the agents asked for a quart of Schaeffer's. The bartender put a quart bottle of the requested brand in a paper bag, placed it on the show case and accepted payment. The other agent picked up the bag and both agents departed. Within a few minutes the agents returned and identified themselves to the bartender who, in a signed sworn statement, admitted the sale for off-premises consumption during prohibited hours.

Defendant has no prior adjudicated record. I shall suspend his license for fifteen days. Re Thurz, Jr., Bulletin 1070, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 23rd day of August, 1955,

ORDERED that Plenary Retail Consumption License C-487, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Noel T. Imbornone, t/a Noel's Tavern, for premises 144 Bartholdi Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. August 30, 1955, and terminating at 2:00 a.m. September 9, 1955.

WILLIAM HOWE DAVIS Director.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against

FRANK SYLVESTER & DOMINICK SYLVESTER

T/a NEW 7 CLUB

7 White Street

West Orange, N. J.,

CONCLUSIONS AND ORDER

 Holders of Plenary Retail Consumption License C-3 for 1954-1955 and 1955-1956 licensing years issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange.

Frank Sylvester and Dominick Sylvester, Defendant-licensees,
 Pro se.

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

BY THE DIRECTOR:

Defendants pleaded not guilty to the following charge:

"On April 18, 1955, and on divers days prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to a person under the age of twenty-one (21) years, viz., John P. ---, Jr., age 18, in violation of Rule 1 of State Regulations No. 20."

At the hearing herein the Division produced as witnesses John P. ---, Jr., Robert Allan --- and an ABC agent.

John P. ---, Jr. testified that he was born on July 24, 1936 and is 19 years of age; that between 6:30 and 7:00 p.m., April 18, 1955 he drove in his car, accompanied by Robert Allan ---, to the vicinity of defendants' licensed premises, parked his car and entered such premises; that one of the two licensees was tending bar, although he cannot definitely identify which is the one; John P. ---, Jr. asked the bartender for 4 quarts of Schaefer beer and the bartender placed such beer in a bag, handed the bag with the beer to John, who paid the bartender \$1.60 for such beer and John left the licensed premises with the beer. John further testified that he has been at defendants' licensed premises on the average of twice a week for a period of about ten weeks and purchased quarts of beer there; and that Robert Allan --- accompanied him on 6 or 7 of these occasions but did not at any time enter the licensed premises.

John P. ---, Jr. further testified that neither of the licensees nor any other person on the licensed premises ever asked him his age, or required him to produce proof of his age or sought to have him sign any written representation as to his age.

Robert Allan --- testified that he was born February 28, 1936 and is 19 years of age; that he accompanied John P. ---, Jr.

to the defendants' licensed premises on several occasions, the last of which was April 18, 1955; that on the last mentioned occasion John Parked his car across the street from the licensed premises, left the car, entered the premises and emerged therefrom with 4 quart bottles of Schaefer beer and that he had witnessed John make similar purchases on previous occasions under the same circumstances.

An ABC agent testified that on May 28, 1955 he was directed by John P. ---, Jr. to defendants' licensed premises, which they both entered and found the two licensees behind the bar. John P. ---, Jr. at that time stated that either one or the other of the licensees was the person who sold him the beer.

Frank Sylvester testified that he knew nothing of the incident until interviewed by the ABC agent on the above date. Asked if he knew John P. ---, Jr. he said, "I don't know. Maybe I seen him. Possibly"; that due to the lapse of time he did not remember serving beer or any other alcoholic beverage to John.

Dominick Sylvester testified to the same effect and added that he and his brother are the only bartenders in the licensed premises.

Testimony of the two minors is clear and explicit. It is natural that the incident would be more vivid in their recollection than that of the licensees who are, of course, unable to recall every person who patronizes their tavern. The fact that they have no specific recollection that John P. ---, Jr. was at their tavern does not in any way affect the credibility of the definitive evidence of the minors to that effect especially in the absence of any evidence that the minors had any reason unjustly to accuse the licensees of the offense. The failure of the minor to identify the specific person who sold him the beer is not fatal in disciplinary proceedings. Re Compton, Bulletin 1071, Item 3.

I find the defendant-licensees guilty of the charge and shall suspend their license for ten (10) days, the usual penalty for sale of alcoholic beverages to an 18-year-old minor where there are no aggravating circumstances. Re Joseph Kolodziej, Bulletin 1055, Item 4.

Accordingly, it is, on this 23rd day of August, 1955,

ORDERED that Plenary Retail Consumption License C-3 for the 1955-1956 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange to Frank Sylvester & Dominick Sylvester, t/a New 7 Club, for premises at 7 White Street, West Orange, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. August 30, 1955 and terminating at 2:00 a.m. September 9, 1955.

WILLIAM HOWE DAVIS
Director.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1954 to JUNE 30, 1955 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club No. Issued	Fees Paid	Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid			No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	489	\$ 208,750.00	71	\$ 25,575.00	18	\$ 1,750.00						578	\$ 236,075.00
Bergen	814	303,230.00	299	84,912.00	93	8,846.37	55	\$ 2,586.25	10	\$ 2,633.61	7	1264	402,208.23
Burlington	185	76,440.00	34	9,250.00	42	5,992.74	1	50.00				262	91,732.74
Camden	454	217,338.08	82	31,925.00	70	6,713.70			2	750.00	2	606	256,726.78
Cape May	133	73,550.00	11	4,000.00	18	2,150.00						162	79,700.00
Cumberland	80	39,375.00	14	3,850.00	31	4,182.58						125	47,407.58
Essex	1375	774,808.63	351	205,700.00	103	14,019.87	30	1,500.00	3	2,250.00	3	1859	998,278.50
Gloucester	108	34,350.00	13	2,750.00	18	1,691.23						139	38,791.23
Hudson	1550	672,549.66	298	117,810.00	76	9,004.53	67	2,900.00				1991	802,264.19
Hunterdon	79	26,200.00	7	2,011.78	6	700.00						92	28,911.78
Mercer	426	258,641.10	51	21,000.00	53	7,500.00			1	95.00	2	529	287,236.10
Middlesex	633	307,903.42	74	22,995.00	86	7,511.46	4	200.00				797	338,609.88
Monmouth	551	277,799.36	121	42,210.00	39	4,322.16	10	435.00	49	21,967.24	27	743	346,733.76
Morris	355	122,465.00	98	31,000.00	51	4,548.08	14	700.00	12	3,005.79	7	523	161,718.87
Ocean	197	106,421.20	47	19,313.00	21	2,248.63					1	264	127,982.83
Passaic	875	358,338.60	167	50,690.00	38	4,653.27	11	525.00			1	1090	414,206.87
Salem	51	19,700.00	8	1,600.00	16	1,425.00						75	22,725.00
Somerset	186	78,770.55	40	11,007.49	27	2,666.51						253	92,444.55
Sussex	169	46,105.00	20	3,955.00	9	535.00	1	50.00	2	450.00	1	200	51,095.00
Union	548	291,386.30	144	59,500.00	72	8,001.04	33	1,750.00			1	796	360,637.34
Warren	148	43,155.00	18	4,232.29	30	3,130.00	4	579.01			2	198	51,096.30
Totals	9406	\$4,337,276.90	1968	\$755,286.56	917	\$101,592.17	230	\$11,275.26	79	\$31,151.64	54	12546	\$5,236,582.53

6. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATE FIXED FOR SUSPENSION PREVIOUSLY IMPOSED AFTER TERMINATION OF PROCEEDINGS TO REVIEW.

In the Matter of Disciplinary Proceedings against)
)
 NEW TOWN TAVERN, INC.)
 T/a NEW TOWN TAVERN)
 7921 River Road)
 Pennsauken Township)
 PO Delair, N. J.,)
)
 Holder of Plenary Retail Consumption License C-30 for 1954-55,)
 issued by the Township Committee of the Township of Pennsauken and)
 extended by the State Director upon appeal from denial of renewal)
 for 1955-56.)
 -----))

O R D E R

BY THE DIRECTOR:

On March 17, 1955, the defendant's license was suspended for a period of seventy days. See Bulletin 1055, Item 2. Upon appeal to the Superior Court, Appellate Division, an order was entered by the Court staying the suspension pending the outcome of said appeal. By decision dated August 12, 1955, the suspension was affirmed and, thus, the penalty may now be reimposed.

Accordingly, it is, on this 24th day of August, 1955,

ORDERED that the suspension of seventy (70) days heretofore imposed against Plenary Retail Consumption License C-30, issued for the licensing year 1954-55 to New Town Tavern, Inc., t/a New Town Tavern, for premises 7921 River Road, Pennsauken Township, by the Township Committee of the Township of Pennsauken, be and the same is hereby reimposed against said license as extended upon appeal from the denial of renewal for the current licensing year, effective at 3:00 a.m. September 1, 1955, and terminating at 3:00 a.m. November 10, 1955.

WILLIAM HOWE DAVIS
Director.

7. AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)

FLORA FRANCESCHINI,)

To Lift the Automatic Suspension)
of Plenary Retail Consumption)
License C-6, issued by the Borough)
Council of the Borough of Penns)
Grove to)

ON PETITION
O R D E R

JOHN BANCO and FLORA FRANCESCHINI)
T/a RIVERSIDE CAFE)
207-209 W. Main Street)
Penns Grove, N. J.)

-----)
Louis F. DiNicola, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from a petition filed herein that on August 24, 1955, petitioner Flora Franceschini was fined \$100.00 in the Salem County Court after she pleaded non vult to a charge of selling alcoholic beverages to a minor, in violation of R. S. 33:1-77. Said conviction has resulted in the automatic suspension of the license held by John Banco and Flora Franceschini for the balance of its term. R. S. 33:1-31.1. The petition herein requests the lifting of said suspension.

By Order dated January 5, 1954, the Director suspended the license then held by John Banco and Flora Franceschini for a period of fifteen days (less five days for the plea) after the licensees had pleaded non vult in disciplinary proceedings to a charge alleging that they sold alcoholic beverages to a minor. Said suspension was effective from 2:00 a.m. January 12, 1954, to January 22, 1954. See Bulletin 999, Item 7:

The conviction in the criminal proceedings and the charge in the disciplinary proceedings were based upon the same facts. Since the suspension heretofore imposed is adequate, the relief sought herein will be granted.

Accordingly, it is, on this 24th day of August, 1955,

ORDERED that the automatic suspension of License C-6, issued by the Borough Council of the Borough of Penns Grove to John Banco and Flora Franceschini, t/a Riverside Cafe, for premises 207-209 W. Main Street, Penns Grove, be and the same is hereby lifted, and said license is restored to full force and operation; effective immediately.

WILLIAM HOWE DAVIS
Director.

8. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTIONS TO TRANSFER HELD TO BE WITHOUT MERIT - APPLICATION GRANTED.

In the Matter of Objections to)
 an Application for Transfer of)
 State Beverage Distributor's)
 License SBD-204 from Turiddo)
 Simoni, Administrator Estate of)
 Romeo DiLuigi, t/a Atlantic Bottling)
 Works, 211-13 North Massachusetts Ave.,)
 Atlantic City, New Jersey, to)
)
 DONALD PERRETTI)
 t/a VALLEY BEVERAGE DISTRIBUTORS)
 S.E. Cor. Paris Ave. & Livingston St.)
 Northvale, N. J.)

CONCLUSIONS

 Charles A. Stanziale, Esq. and Leo Berg, Esq., Attorneys for)
 Applicant.)
 Samuel Moskowitz, Esq., Attorney for Hudson-Bergen County)
 Retail Liquor Stores Association, Objector.)

BY THE DIRECTOR:

Written objections were filed on behalf of the Hudson-Bergen County Retail Liquor Stores Association and by various holders of retail liquor licenses in Northvale, Norwood and Haworth to the transfer of a state beverage distributor's license from Turiddo Simoni, Administrator of Estate of Romeo DiLuigi, t/a Atlantic Bottling Works, to Donald Perretti, t/a Valley Beverage Distributors, from premises 211-13 North Massachusetts Avenue, Atlantic City, to premises located at S.E. Cor. Paris Avenue and Livingston St., Northvale.

At the hearing on these objections applicant testified that during the past two years he was in the "soda business, distributing carbonated beverages to the home" and that he has between 450 and 500 customers who reside in "the northern part of Bergen County"; that numerous customers have inquired about purchasing malt alcoholic beverages from him. In substantiation thereof, applicant produced a petition signed by 222 customers who indicated their desire to purchase such beverages from him. Three witnesses produced by applicant testified that it would be convenient to them if they could obtain malt alcoholic beverages from applicant. Applicant further testified that he has made arrangements with a brewery to obtain beer, if and when he obtains a license.

Three objectors, each the holder of a plenary retail consumption license, two of whom have their business establishments in Norwood, and the third in Northvale, testified that in their opinion the various municipalities wherein applicant intends to deliver malt alcoholic beverages, are amply served by the existing liquor licensees at the present time.

The hearing in the instant matter was heard on July 19, 1955. On August 15, 1955 I received a letter dated August 12, 1955 from the municipal attorney for Northvale, wherein it was stated that the location of the proposed premises is zoned for retail business and does not permit wholesale business or warehousing. The testimony herein discloses that applicant is to engage exclusively in the sale of unchilled malt beverages at retail to his various customers. Inasmuch as this in itself would not conflict with the terms of the existing ordinance, it apparently does not constitute a violation thereof. In any

event, if there is a future violation by the applicant herein of the ordinance in question, the municipality may, in its discretion, invoke the proper legal procedure to remedy the situation.

The privileges of the state beverage distributor's license are statewide, and the question of public necessity and convenience cannot be determined on the narrow basis of the single municipality in which the prospective licensee will have its principal office. I am satisfied, after careful examination of all the evidence adduced herein, that there has been disclosed a sufficient public convenience and need to be served (by retail sales and deliveries of beer to private homes) in the area where applicant presently delivers its products, to warrant the proposed transfer. I conclude that the objections herein are without merit.

Therefore, I shall grant the transfer, in accordance with the application filed in this matter.

WILLIAM HOWE DAVIS
Director.

Dated: August 25, 1955.

9. SEIZURE - FORFEITURE PROCEEDINGS - FORFEITURE ORDER PREVIOUSLY ENTERED RESCINDED ON SUBMISSION OF VITAL EVIDENCE THERETOFORE OMITTED.

In the Matter of the Seizure on August 1, 1954, of 71 two-quart jars of alcohol and a Chevrolet sedan, on the northbound lane of the New Jersey Turnpike, in the Township of Woodbridge, County of Middlesex and State of New Jersey.) Case No. 8667)
ORDER)

Abe P. Friedman, Esq., by John B. Stone, Jr., Esq., Attorney for Alice Harris.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

I have heretofore denied the application of Alice Harris for return of the Chevrolet sedan seized in the case, in part because the evidence presented by her was insufficient to overcome the natural presumption that she knew or could have anticipated that her husband would use the car to transport illicit alcoholic beverages. I ordered the motor vehicle forfeited. Seizure Case No. 8667, Bulletin 1051, Item 9.

Thereafter application was made on Mrs. Harris' behalf that I should reconsider my decision and rescind my order of forfeiture. Oral argument was presented before me by counsel, who presented additional evidence concerning Mrs. Harris' financial background. Thereafter counsel was advised that I would permit him to present further evidence as to knowledge or lack of knowledge by Mrs. Harris of her husband's activities, and would then decide whether I would grant her application to reconsider the case.

Accordingly, a further hearing was held, at which Mrs. Harris' objective was to establish that the pattern of their marriage relationship and activities excluded the likelihood of knowledge on her part of her husband's wrongdoings.

A character witness testified that he has known Mr. Harris and his wife for between 25 to 30 years, during which period they mutually engaged in church activities; that at one time Mr. Harris was deacon and a trustee of the church, and sang in the choir; that Mr. Harris has been steadily employed throughout; and that Mr. Harris was regarded in the community as a fine man -- "good-hearted, broad-hearted, good Christian gentleman."

Another member of the church, who has known Mr. and Mrs. Harris for about 24 years, testified that they were of good repute; that they had a nice, respectable, religious home.

Joseph Stone, President of Hudson Transportation Company, testified that Mr. Harris has been employed by his company for about nine years and at present is foreman of the drivers; that he is an excellent employee. The transportation company commenced business by purchasing trucking equipment from Mr. Harris, who was then operating his own trucking business. The purchase price was \$7,000.00 or \$8,000.00. Harris holds some preferred stock of the company. The treasurer of the company endorsed a note for Mr. Harris upon which he obtained a bank loan. Mr. Harris' gross income from his employment was about \$6300.00 in 1953 and about \$6600.00 in 1954.

I am now satisfied from the additional evidence submitted as to the family finances that Mrs. Harris is the actual owner of the motor vehicle. The other additional evidence presented eliminates the doubts previously expressed in my original Order as to the absence of knowledge of Mrs. Harris of her husband's activities. I am also satisfied that she did not know or have any reason to suspect or anticipate that her husband intended to use her car for any illegal purpose. Cf. Seizure Case No. 8490, Bulletin 1009, Item 3, Seizure Case No. 8475, Bulletin 1009, Item 4.

Normally my decision on the evidence then before me is final and proper administrative procedure dictates that such decision should not be reconsidered or rescinded. However, where, as here, it definitively appears that vital evidence was not presented through no fault of the claimant's, it would not be fair to deny relief to a claimant merely because of the entry of a formal adverse decision theretofore.

Accordingly, so much of my previous Order of February 2, 1955 as denied the application of Mrs. Harris for return of the Chevrolet sedan and directed its forfeiture is rescinded and instead, it is DETERMINED and ORDERED that if on or before the 22nd day of August, 1955, Mrs. Harris pays the costs of seizure and storage of the Chevrolet sedan described in Schedule "A" attached hereto, it will be returned to her.

WILLIAM HOWE DAVIS
Director.

Dated: August 12, 1955.

SCHEDULE "A"

- 1 - Chevrolet sedan, Serial No. C53T, 194737, N. J. Registration EPV 64.

10. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - RETURN OF MOTOR VEHICLE TO PURCHASER AND TRANSPORTER OF SUCH BEVERAGES DENIED - APPLICATION FOR RECOGNITION OF LIEN ON MOTOR VEHICLE DENIED FOR FAILURE TO ESTABLISH VALID LIEN - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)
 April 8, 1955, of a pint bottle)
 of alcohol and a Pontiac sedan)
 at the intersection of White)
 Horse Pike and Albion Road, in)
 the Borough of Berlin, County of)
 Camden and State of New Jersey.)

Case No. 8858

ON HEARING
 CONCLUSIONS AND ORDER

Alexander Pettiford, Pro se.
 Seaboard Finance Company, by John L. Fowler, Field Representative.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a pint bottle of alcohol and a Pontiac sedan, described in a schedule attached hereto, seized on April 8, 1955 at the intersection of White Horse Pike and Albion Road, Berlin, New Jersey constitute unlawful property and should be forfeited.

When the matter came on for hearing, pursuant to R. S. 33:1-66, Alexander Pettiford, the registered owner of the Pontiac sedan, appeared and sought its return. An appearance was also entered on behalf of Seaboard Finance Company which sought recognition of its alleged lien on the motor vehicle. Forfeiture of the pint bottle of alcohol was not opposed.

The Hearer's Report setting forth the facts presented at the hearing in the case and his recommendations thereon was mailed to Alexander Pettiford and the Seaboard Finance Company. No objection or exception to such report was filed within the time limited therefor.

I have given careful consideration to the complete record in the case, have reviewed the Hearer's Report, and make the following findings as established by the evidence presented:

On April 8, 1955 a New Jersey State Trooper stopped the Pontiac sedan at the intersection of White Horse Pike and Albion Road, Berlin Borough, New Jersey, during a routine patrol of traffic on the highway. The car was being driven by Alexander Pettiford, its registered owner. The trooper inspected the automobile and found in the glove compartment a pint bottle containing an alcoholic beverage. The bottle did not have affixed thereto any label, or stamp indicating payment of tax on alcoholic beverages. Pettiford told the trooper that he bought the alcohol in Ancora, New Jersey from a stranger and paid \$2.00 therefor.

The trooper took Pettiford, the pint of alcohol and the motor vehicle into custody and thereafter the motor vehicle and alcohol were turned over to ABC agents. The contents of the pint bottle was analyzed by the Division chemist, who reports that it is alcohol and water fit for beverage purposes with an alcoholic content by volume of 47.6 per cent.

The alcohol in the pint bottle is illicit because of the absence of any label or tax stamp thereon. R.S. 33:1-1(i),

R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Alexander Pettiford seeks recovery of his car because, in his words, "I don't think that they should take it away from me because I am a poor man just trying to make a living and just one of those things that just happen, and just got into this mess." However, he acknowledges that he knew that it was unlawful to buy "moonshine" or bootleg liquor. He offers the excuse that "At that particular time (when he purchased the moonshine), you know, on the job, working, I just wasn't thinking about it."

A person who purchases bootleg alcoholic beverages has not acted in good faith and unknowingly violated the law and hence cannot receive the benefit of the Director's discretionary authority to return property subject to forfeiture. Re Seizure Case No. 8742, Bulletin 1060, Item 11. Alexander Pettiford's request for the return of his car is therefore denied.

The assistant manager of Seaboard Finance Company testified that the finance company received an application for a loan of \$325.00 to Alexander Pettiford which it granted after checking Alexander Pettiford's background and employment. This witness testified that the finance company had no conditional sales contract covering the motor vehicle; that when the finance company made a loan on an automobile it obtained a note from the buyer and a voluntary wage assignment, and a chattel mortgage, that "there is no information filled in on it or anything else"; that the omission of the description of motor vehicle from the chattel mortgage is not an oversight because it is the policy of the finance company not to use the chattel mortgage; that it is not used to prevent over-zealous company managers from repossessing furniture or other articles in seeking to collect a loan; and that the finance company considered such repossessing to be bad publicity.

He presented a chattel mortgage form signed by Alexander Pettiford and his wife wherein the mortgaged property is described in print, as "all of the household goods now located in or about mortgagor's residence at their address as above set forth." The acknowledgment and affidavit of consideration on the mortgage are not executed. A motor vehicle bill of sale dated February 21, 1955 issued by the Division of Motor Vehicles of the State of New Jersey, covering the Pontiac in question purporting to have noted thereon an encumbrance in favor of the finance company was also presented. Asked on the basis of what document sent to the Division of Motor Vehicles this notation was entered on the bill of sale, the witness replied, "There is no basis." Explaining, he said, "The encumbrance is put on there voluntarily by the person buying the car. In other words anyone can take a title up to a motor vehicle agent and have it encumbered by any company for a small amount."

I am afforded the discretionary authority to recognize a bona fide and valid lien. R.S. 33:1-66(f). Whether or not the parties intended to create a lien is the controlling factor. The chattel mortgage presented by the finance company does not specifically cover the motor vehicle and the witness for the finance company testified that such omission was deliberate in accordance with the company policy in making loans of this character. This is the primary evidence of the terms upon which the loan was made. The finance company is merely a general creditor. The notation on the motor vehicle bill of sale

without the knowledge or direction of the finance company, does not alter the primary agreement of the parties. See Seizure Case No. 8377, Bulletin 1014, Item 6. The request of Seaboard Finance Company for recognition of its lien is therefore denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS

Dated: August 25, 1955.

Director.

SCHEDULE "A"

- 1 - pint bottle of alcohol
- 1 - Pontiac sedan, Engine and Serial No. P6MA10398, N. J. Registration CPW74.

11. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ROLLY BESKIN & LOUIS J. SCHWARTZ)
T/a BOBALOO CAFE)
178 - 12th Avenue)
Paterson, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-165, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Louis E. Saunders, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charges:

- "1. On June 2, 3 and 7, 1955, you engaged in and allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20.
- "2. On June 2, 3 and 7, 1955, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20."

The file herein discloses that two ABC agents visited defendants' licensed premises about 11:00 a.m. on June 2, 1955; about 2:15 p.m. on June 3, 1955; and about 1:00 p.m. on June 7, 1955.

On their first visit one of the ABC agents was reading the racing page in a newspaper when a bartender, identified as "Bob", asked the agent if he bet on the horses. Upon receiving an affirmative answer, the bartender told the agent that he took numbers and horse bets. The agent then gave the bartender \$10.00, representing a \$5.00 bet on a horse running in the 5th race and a \$5.00 bet on a horse running in the 8th race at Belmont. The other agent gave "Bob" fifty-five cents to play on Number 502. On each occasion the bartender recorded the bet; placed the bet-slip in an envelope and deposited the money in the cash register.

On their second visit the agents gave "Bob" \$10.00, representing a \$5.00 bet on a horse in the 6th race and a \$5.00 bet on a horse in the 7th race at Belmont, and also seventy-five cents on various numbers. The bartender placed the money in the cash register.

On their third visit the agents had marked bills in their possession. At this time Louis J. Schwartz, one of the licensees, was tending bar. The investigators noted that Schwartz took slips of paper from various male customers, which ostensibly were bet slips. During a conversation with Schwartz the agents told him that they had played horses and numbers with "Bob". They then gave Schwartz two marked \$5.00 bills, representing a \$5.00 bet on a horse in the 5th race and a \$5.00 bet on a horse in the 7th race at Belmont. They also gave Schwartz two marked \$1.00 bills, representing fifty-cent bets on various numbers. After the licensee placed the marked bills in a cash register and the bet-slips in an envelope, members of the Paterson Detective Bureau entered, found the marked bills in the cash register and the slips in the envelope, and placed Schwartz under arrest.

Defendants have no prior adjudicated record. I shall suspend defendants' license for the minimum period of twenty days. Re Disner & Gordon, Bulletin 1051, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 6th day of September, 1955,

ORDERED that Plenary Retail Consumption License C-165, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Rolly Beskin & Louis J. Schwartz, t/a Bobaloo Cafe, for premises 178 - 12th Avenue, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. September 12, 1955, and terminating at 3:00 a.m. September 27, 1955.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary)
Proceedings against)

ALICE WANDA HACK CLARK)
T/a WAGON WHEEL CAFE)
1114 Main Street)
Asbury Park, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-27, issued by the)
City Council of the City of)
Asbury Park.)

Alice Wanda Hack Clark, Defendant-licensee, Pro se.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On June 28, 1955, you possessed, had custody of and
allowed, permitted and suffered in and upon your
licensed premises, an alcoholic beverage in a bottle
which bore a label which did not truly describe its
contents, viz.,

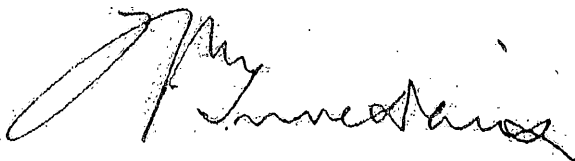
One quart bottle labeled 'Four Roses Blended
Whiskey 86.8 Proof';
in violation of Rule 27 of State Regulations No. 20."

The file herein discloses that on June 28, 1955, an
ABC agent, while on a routine inspection of defendant's licensed
premises, tested and gauged sixty-one open bottles of assorted
brands of alcoholic beverages. The contents of all but two
bottles of whiskey were apparently genuine as labeled. The
agent seized the two bottles and submitted them to the Division's
chemist for analysis. The chemist's report shows the contents
of a bottle of "Canadian Club, Blended Canadian Whiskey" to be
just a fraction short in proof. Under the circumstances I have
not included said bottle in the charge preferred herein. How-
ever, after analysis of the quart bottle labeled "Four Roses
Blended Whiskey 86.8 Proof", it was revealed that "the solids
were high and acids low" for this brand of whiskey.

Defendant has no prior adjudicated record. I shall
suspend defendant's license for a period of fifteen days, the
minimum suspension for a violation of the kind in question.
Five days will be remitted for the plea entered herein, leaving
a net suspension of ten days (Re Biggio, Bulletin 1071, Item 6).

Accordingly, it is, on this 30th day of August, 1955,

ORDERED that Plenary Retail Consumption License C-27,
issued by the City Council of the City of Asbury Park to Alice
Wanda Hack Clark, t/a Wagon Wheel Cafe, for premises 1114 Main
Street, Asbury Park, be and the same is hereby suspended for
ten (10) days, commencing at 3:00 a.m. September 6, 1955, and
terminating at 3:00 a.m. September 16, 1955.



New Jersey State Library

William Howe Davis
Director.