

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

BULLETIN 1350

September 9, 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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September 9, 1960

1. APPELLATE DECISIONS - HAND AND PETERS v. MIDDLE  
HAND AND PETERS v. MIDDLE AND MATTERA  
HOFF v. MIDDLE, R.B.L. CORP.; MATTERA;  
CARTER'S RESTAURANT, INC.  
FICHERA v. MIDDLE AND R.B.L. CORP.

Appeal No. 1 )  
Owen W. Hand and William J. )  
Peters, )  
 )  
Appellants, )  
 )  
v. )  
 )  
Township Committee of the )  
Township of Middle, )  
 )  
Respondent. )  
----- )

Appeal No. 2 )  
Owen W. Hand and William J. )  
Peters, )  
 )  
Appellants, )  
 )  
v. )  
 )  
Township Committee of the )  
Township of Middle, and Joseph )  
Mattera, Jr., )  
 )  
Respondents. )  
----- )

Appeal No. 3 )  
Edward Hoff and Anna Hoff, )  
 )  
Appellants, )  
 )  
v. )  
 )  
Township Committee of the )  
Township of Middle; R.B.L. Corporation; )  
Joseph Mattera, Jr.; Carter's )  
Restaurant, Inc., )  
 )  
Respondents )  
----- )

Appeal No. 4 )  
James S. Fichera, t/a The Patio )  
Restaurant, )  
 )  
Appellant, )  
 )  
v. )  
 )  
Township Committee of the Township )  
of Middle, and R.B.L. Corporation, )  
 )  
Respondents. )  
----- )

On Appeal

CONCLUSIONS AND ORDER

William J. Peters, Esq., Attorney for Appellants Owen W. Hand and  
 William J. Peters  
 Marvin D. Perskie, Esq., Attorney for Appellants Edward Hoff and  
 Anna Hoff  
 Edward A. Costigan, Esq., Attorney for Appellant James S. Fichera  
 Donald A. Gaver, Esq., Attorney for Respondent Township Committee  
 of the Township of Middle  
 Eloise Bright, Attorney for Respondent Joseph Mattera, Jr.  
 Louis J. Mattera, Esq., Attorney for Respondent R.B.L. Corporation  
 Weiss & DeLuccia, Esqs., by Joseph J. DeLuccia, Esq., Attorneys  
 for Respondent Carter's Restaurant, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"These four appeals have been taken from the actions of respondent Township Committee on February 4, 1960, and February 18, 1960, whereby it granted applications for licenses filed by various respondent-licensees herein and denied applications for licenses filed by the various appellants. The four cases were heard on the same day and all of the cases may be decided in a single opinion.

"Middle is a large township covering seventy-two square miles, with seven settlements -four of which are identified in the testimony as Cape May Court House, Mayville, Rio Grande and Swanton. According to the 1950 Federal census, Middle Township then had a population of about 4,600. Prior to the actions of the Township Committee from which these appeals have been taken, no plenary retail distribution licenses had been issued, but one plenary retail consumption license had been issued for premises in Cape May Court House and one plenary retail consumption license for premises in Mayville. It appears that, at least since 1957, efforts were made at various times to persuade the members of the Township Committee to amend the local ordinance to provide for the issuance of a plenary retail distribution license and two additional plenary retail consumption licenses, as permitted by R.S. 33:1-12.14 and 12.15. In August 1959 an ordinance to effect such a result was introduced but the Township Committee took no action thereon apparently because at a prior referendum a majority of votes had been cast against the issuance of additional licenses. Thereafter a second referendum was submitted to the voters of the Township at the General Election held in November 1959. At said election the majority voted in favor of additional licenses. After said election the Township Committee adopted an ordinance to authorize the issuance of a plenary retail distribution license and two plenary retail consumption licenses. During December 1959 and the early part of January 1960 five applications were filed for the plenary retail distribution license, and seven applications were filed for the two plenary retail consumption licenses.

"On January 21, 1960, the Township Committee held a public hearing because written objections to the issuance of the licenses had been filed. See Rules 6 and 7 of State Regulation No. 2. The Township Clerk testified that forty people attended the meeting; that the Township Committee considered one letter from a resident of Rio Grande opposing any licenses in that settlement, a letter and a petition from members of the Asbury Church in Swanton which opposed the issuance of a license to respondent Carter's Restaurant, Inc., a letter in favor of the issuance of said license and a letter objecting to the issuance of a license to Harry J. Lazarus (one of the applicants). It does not appear that any question was raised at said hearing as to the qualifications of any of the twelve applicants. The Township Committee was thus faced with the difficult problem of deciding which three, if any, of the twelve pending applications should be granted.

"On February 3, 1960, the members of the Township Committee held an informal meeting at which they discussed the pending applications for four hours.

"On February 4, 1960, at a regular meeting, the Township Committee adopted, by unanimous vote of its three members a resolution granting a plenary retail distribution license to Joseph Mattera, Jr. (hereafter Mattera), subject to a condition that the license would be issued when building is completed in accordance with plans and specifications filed. It then adopted a resolution denying the other four pending applications for a similar license. At the same meeting it adopted, by a two-to-one vote, a resolution granting a plenary retail consumption license to R.B.L. Corporation (hereafter RBL), subject to the same condition imposed when the Mattera license was granted. No action was then taken upon the other six pending applications for a similar license.

"On February 18, 1960, at a regular meeting, the Township Committee adopted, by a vote of two members with one not voting, a resolution granting a plenary retail consumption license to Carter's Restaurant, Inc. (hereafter Carter), and adopted by unanimous vote, a resolution denying the other five pending applications for a similar license.

"In Appeals No. 1 and No. 2, Owen W. Hand and William J. Peters, who had filed an application for the plenary retail distribution license, appealed from the denial of their application and from the granting of the application filed by Mattera.

"In Appeal No. 3, Edward Hoff and Anna Hoff, who had filed an application for the plenary retail distribution license and an application for a plenary retail consumption license, appealed from the denial of their applications and the granting of the applications filed by Mattera, RBL and Carter.

"In Appeal No. 4, James S. Fichera, who had filed an application for a plenary retail consumption license, appealed from the denial of his application and the granting of the application filed by RBL. At the hearing herein a motion was made to dismiss this appeal because it was not filed within time. Insofar as this appeal concerns denial of appellant's application, I find that this appeal (filed at the office of this Division on Monday, March 21, 1960) was filed within the time permitted by R.S. 33:1-22. Insofar as it concerns the RBL license, it was not filed within the time permitted by said section but, since RBL had previously been made a proper respondent in Appeal No. 3, I recommend that the motion to dismiss be denied.

"Considering first the license granted to Mattera, it appears that his application was accompanied by plans and specifications for a one-story building about 35 feet in width and 64 feet in depth on a plot of ground having a frontage of 100 feet on State Highway No. 47 and a depth of 135 feet. The building is to be set back 35 feet from the Highway, thus providing a parking space in front of the building with a driveway around the building. The application filed by appellants Hand and Peters was accompanied by plans and specifications for a one-story building, 30 feet in width by 50 feet in depth, to be erected on a plot of ground located on Vermont Avenue, in the rear portion of Marlyn Manor Shopping Center. It was stipulated that the Shopping Center, which fronts on State Highway No. 47, is about 800 feet from Mattera's premises. The application for a plenary retail distribution license filed by Edward Hoff and Anna Hoff was accompanied by plans and specifications for a one-story building 42 feet in width by 35 feet in depth on a plot of ground having a frontage

of 100 feet on State Highway No. 47, and a depth of 135 feet. The building is to be set back 75 feet from the Highway, thus providing a parking space in front thereof. The Hoff premises are in close proximity to the Mattera premises. All premises above described are located in Rio Grande. The appellants do not question the conclusion that the license should have been issued in that section of the Township, but each contends that public need and necessity would be better served by issuance of the license to them rather than to Mattera.

"Considering next the license granted to RBL, it appears that its application was accompanied by plans and specifications for a building 110 feet by 100 feet containing a dining room (about 65 feet by 70 feet), a cocktail lounge and bar. The building is separated by a 14-foot breezeway from an existing building containing bowling alleys owned and operated by Rio Bowling Lanes, Inc. The property fronts on Route 9. There appears to be ample parking space. The application for a plenary retail consumption license filed by Edward Hoff and Anna Hoff describes the premises as an existing building, 80 feet by 50 feet on a plot 200 feet by 135 feet fronting on State Highway No. 47. These premises are known as the Green Terrace Restaurant, having a seating capacity of 200, have ample parking space and are operated from the middle of June to the middle of September. The Hoff premises appear to be about a half-mile from the RBL premises. The application filed by James Fichera describes the premises as an existing two-story building located in the aforesaid Marlyn Shopping Center. These premises are known as the Patio Restaurant, have a total capacity of 300, and have been operated since December 12, 1959. The premises are about one-quarter mile from the RBL premises. All premises above described are located in Rio Grande. The contention of appellants is the same as that set forth in considering the Mattera license.

"Considering finally the license granted to Carter, it appears that the application was filed for an existing one-story building on Route 9, Swanton. These premises have been operated as a restaurant for the past six years, have a seating capacity of 100 and are located in the northern section of the Township about six miles from Cape May Court House and twelve miles from Rio Grande. They are in a sparsely-settled section, but on a highway which has heavy traffic especially during the summer. The entrance to the premises is 391 feet from the nearest entrance to the Asbury Church.

"All appellants seem to contend that the matter was predetermined by the members of the Township Committee, at least so far as the Mattera and RBL licenses are concerned. Thus, Owen W. Hand and Anna Hoff testified that there were common rumors prior to February 4, 1960, that those licenses would be issued. Harry J. Lazarus (one of the unsuccessful applicants) testified that on three or four occasions Mayor Daniels said that two licenses were going to Rio Grande -- one to Mattera and one to the bowling alley. However, Mayor Daniels, who voted in favor of each of the three licenses, testified that, although he had many conversations with Mr. Lazarus, he did not recall that he ever stated that the licenses were going to Mattera and the bowling alley. The Mayor further testified that he knew all the applicants casually but had no close friendship with any of them; that, when the applications were considered, he had an open mind; that he knew the location of each of the premises; that he considered traffic conditions and tax ratables in reaching his decision. Committeeman Robert B. Huff, who voted in favor of the three licenses, testified that he had an open mind when the applications were considered; that he never made a promise to anyone and that he considered substantially the same matters as the Mayor. Committeeman T. Everett Smith testified that he had an open mind when the applications were

considered; that he voted in favor of the Mattera license, against the RBL license and refrained from voting on the Carter license. He explained that he voted against the RBL license because minors visit the bowling alleys and refrained from voting on the Carter license because he felt that this license should be granted in another section of the Township. The evidence that the matter was predetermined is indefinite and unsatisfactory, particularly in view of the evidence given by the three members of the Township Committee. Cf. Stein v. West New York, Bulletin 101, Item 7; Longyear v. Jefferson, Bulletin 972, Item 4. It does not appear that any member of the Township Committee was improperly motivated in reaching his conclusion.

"Appellants Hand and Peters, and Fichera, apparently contend that public convenience and necessity required the issuance of licenses for premises at the Shopping Center. Admittedly, this development is a large one. However, the fact that premises are in a large shopping center is only one of the factors to be considered in the issuance or transfer of licenses. Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1.

"After considering the evidence, exhibits and briefs, I find that appellants have failed to show that the members of the Township Committee acted in bad faith or abused their discretion. Hence I conclude that the various appellants have failed to sustain the burden of proof in establishing that the action of respondent Township Committee was erroneous. Matweishyn et al. v. Hillside et al., Bulletin 783, Item 1; Sauer v. Readington et al., Bulletin 1069, Item 3; Klein and Tucker v. Fair Lawn et al., Bulletin 1175, Item 3 and Bulletin 1200, Item 1.

"There is one further matter to which reference should be made. At the hearing, the evidence established that Mary E. Nazaruk is a legal resident of New York State. She holds only ten per cent. of the stock of RBL and, hence, is not disqualified from holding said stock. R.S. 33:1-25. However, in the application filed by the Corporation, her residence is set forth as 'Dias Creek Rd., Cape May Court House.' She has a home there but, in view of the fact that her legal residence is elsewhere, the application should be promptly amended to set forth her address in New York. While, technically, the answer was not correct, there is no evidence of any intent to deceive or mislead the issuing authority.

"For the reasons aforesaid, it is recommended that an order be entered affirming the action of respondent Township Committee in each of the four appeals, and dismissing said appeals."

Written exceptions to the Hearer's Report and written argument thereon were filed with me by the attorneys for appellants in Appeals Nos. 1, 2 and 3, pursuant to Rule 14 of State Regulation No. 15.

After carefully considering the evidence, exhibits, briefs filed with the Hearer by each attorney appearing herein, and the exceptions to Hearer's Report and written argument thereon, I agree with the findings and conclusions of the Hearer and adopt them as my conclusions herein. The motion to dismiss the appeal in Appeal No. 4 is denied, and I shall enter an order affirming the action of respondent Township Committee in all of the above cases.

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



2. On February 11, 1960, you failed to facilitate and you hindered and delayed and caused the hindrance and delay of an investigation, examination and inspection being conducted by investigators of the Division of Alcoholic Beverage Control; in violation of R.S. 33:1-35.'

"The evidence presented on behalf of the Division includes the following: On February 11, 1960 two ABC agents were seated in a car parked near the defendant's licensed premises, located at 624-6 South Second Street, Camden. At about 2:00 p.m. the agents observed the truck of a licensed wholesale liquor dealer stop at the side entrance to such premises, located on Beckett Street. Immediately on parking, the driver of the truck walked to the rear of the truck. Within a minute or so a Chrysler sedan was driven alongside the truck and double-parked. The driver of the Chrysler, later identified as Patrick Caridi, joined the other driver at the back of the truck. There the driver of the truck opened the door thereof and Caridi opened the trunk of the Chrysler. The two men then proceeded to transfer a number of cases wrapped in brown paper from the truck to the car. Caridi then closed the trunk of the car and backed it to the curb behind the truck. Both drivers then entered the licensed premises. About five minutes later, Caridi came out of the premises, entered the Chrysler sedan and drove towards Second Street. The agents, in their car parked 150 feet or 200 feet from Caridi's car, started to follow him. Caridi traveled about 20 or 30 feet, stopped abruptly, backed his car to the point from which he had started, opened the trunk of his car and hurriedly carried one of the packages from the car into the licensed premises. He then came out with the driver of the truck and each carried a package into the licensed premises.

"Thereupon, one of the agents entered the premises, identified himself and directed the men not to remove any more packages from the car. The agent then inspected seven packages remaining in the car, ascertained that each contained a case of alcoholic beverages, called Caridi's attention to the fact that there was no transit insignia issued by this Division on the car and asked Caridi whether he was employed by defendant-licensee. Caridi replied that he was not so employed but that he was the manager of Caridi's Bar, Inc. Caridi did not have any way-bills or invoices for the alcoholic beverages in the car.

"Asked to explain his actions as observed by the agents, Caridi stated that defendant's bartender asked him to place the packages in the Chrysler because there was no room in the tavern and he did so as a favor. The bartender and the driver of the truck gave the same excuse. According to one of the agents, in his opinion, there was room for the packages to be stored in the service room, bar-room or behind the bar, although the bartender told him he was making room for the alcoholic beverages in the storage room. The agent was presented with an invoice from the wholesaler covering the C.O.D. delivery of approximately eleven cases of alcoholic beverages, for the most part, those transferred to the Chrysler car. Other than as stated, the agents were unable to ascertain the intended use or destination of such alcoholic beverages.

"The primary charge is that defendant-licensee aided and abetted Patrick Caridi to transport alcoholic beverages, in violation of the rules and regulations. The evidence presented on the Division's behalf that the alcoholic beverages were transported twenty to thirty feet stands uncontroverted and uncontradicted. The distance traveled is of no moment. It is a technical violation insofar as disciplinary proceedings are concerned. In seizure proceedings, the alcoholic beverages transported or intended to be trans-

ported in violation of the law constitute illicit alcoholic beverages, R.S. 33:1-1(1), and, together with the motor vehicle, are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2 and R.S. 33:1-66.

"The extent of the penalty in disciplinary proceedings and whether the forfeiture should be waived in the seizure proceedings depends upon whether it was an innocent, unwitting technical violation or, instead, whether it was part of a deliberate design by the defendant-licensee to evade proper liquor control.

"The excuse offered in the present instance is too absurd to be accepted or to require detailed comment other than to note that there were many places where the momentary storage of the alcoholic beverages could be available rather than the motor vehicle owned by another licensee whose license was then under suspension. Rejecting such excuse for the reason that it is a deliberate evasion of the true destination of the alcoholic beverages leaves the licensee in the position of refusing to divulge this information. In the face of the evidence presented, it was the obligation of the licensee to come forward with evidence that the transaction in question did not represent misconduct in the operation of its licensed business or unlawful alcoholic beverage activity and, in the absence thereof, the Division has a right to infer that it was not a legitimate transaction. Cf. In re E. J. McGovern Dairy Products Inc., 60 N.J. Super. 163, at page 166 (App. Div. June 5, 1959).

"In disciplinary proceedings, the licensee's failure to reveal the destination of the alcoholic beverages constitutes at the very least a failure to facilitate an investigation by the ABC agents. Re Rosner and Greenwald, Bulletin 1244, Item 5. Accordingly, I recommend a determination that the seven cases of alcoholic beverages be forfeited and that the defendant-licensee's request for waiver of forfeiture and return of the alcoholic beverages be denied on the ground that such licensee did not act in good faith and unwittingly violated the law.

"Defendant has no prior adjudicated record. Nevertheless, in view of the surreptitious nature of the transaction, I recommend that its license be suspended for a period of forty-five days.

"For clarity, it should be noted that a separate Hearer's Report will be made in proceedings against Caridi's Bar, Inc."

Written exceptions to the Hearer's Report and written argument in support thereof were filed with me by the attorneys for defendant, pursuant to Rule 6 of State Regulation No. 16.

I have carefully considered the transcript of the evidence submitted, the Hearer's Report, the exceptions thereto, and the written argument in support of said exceptions, and concur in the findings and conclusions of the Hearer and adopt his recommendation. Hence, I find defendant guilty as charged and deny its request for return of the seized alcoholic beverages.

Accordingly, it is, on this 30th day of June 1960,

DETERMINED and ORDERED that the seven cases of alcoholic beverages seized in the case, more fully described in Schedule "A" attached hereto, constitute unlawful property and the same be and are hereby forfeited in accordance with the provisions of R.S. 33:1-66 and 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; and it is

further

ORDERED that any renewal for the 1960-61 licensing year or transfer of Plenary Retail Consumption License C-197, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Betzel, Inc., t/a Marine Terminal Bar, for premises 624-6 South 2nd Street, Camden, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m., Monday, July 11, 1960 and terminating at 2:00 a.m., Thursday, August 25, 1960.

WILLIAM HOWE DAVIS,  
DIRECTOR.

SCHEDULE "A"

- 12 - 4/5 quart bottles of Scotch whisky
- 24 - 4/5 quart bottles of champagne
- 24 - 4/5 quart bottles of whiskey
- 24 - 26 oz. bottles of champagne

3. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

John Domalewski  
t/a Chubby's Bar  
395 West Side Avenue  
Jersey City, New Jersey

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-28, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

ORDER

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

BY THE DIRECTOR:

Defendant pleaded guilty to the following charges:

- "1. On May 26, 31 and June 2, 1960, you allowed, permitted and suffered gambling, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- "2. On May 26, 31 and June 2, 1960, 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 Regulation No. 20."

On each of the dates alleged in the charges John Jeter (a patron), who was introduced to an ABC agent by Jessie Gonzales, the bartender, accepted "numbers" bets, with the knowledge of Gonzales, in the licensed premises from the ABC agent. On June 2nd aforesaid

Jeter, after accepting payment of a bet from one of two agents on the premises, left the premises. The agents followed Jeter into the street where, as prearranged, they met the local police, accompanied by other ABC agents, and apprehended Jeter. A dollar bill (which had been marked by the agents) was found in Jeter's possession. The agent together with Jeter and the police, returned to the licensed premises and identified themselves to Gonzales, who orally admitted that he knew the agent had placed "numbers" bets with Jeter.

Defendant has no prior adjudicated record. Since his bartender arranged for the agent to place a bet on the licensed premises and permitted the acceptance of bets thereon by Jeter, I shall suspend his license for the minimum period of twenty-five days. Re Lafayette Mens Bar, Inc., Bulletin 1297, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 30th day of June, 1960,

ORDERED that any renewal for the 1960-61 licensing year or transfer of Plenary Retail Consumption License C-28, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Domalewski, t/a Chubby's Bar, for premises 395 West Side Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Thursday, July 7, 1960, and terminating at 2:00 a.m., Wednesday, July 27, 1960.

WILLIAM HOWE DAVIS,  
DIRECTOR.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against  
Alessandro Renda  
t/a Rendales  
Highway #22  
Greenbrook Township  
PO RD#2, Bound Brook, N.J.  
Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of Greenbrook Township.  
-----)

CONCLUSIONS  
AND  
ORDER

Walter P. Romer, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On Saturday, March 26, 1960, 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., Judith ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein, the Division called as its witnesses Judith --- and two ABC agents, hereinafter referred to as Agent V and Agent B.

"Judith testified she is 19 years of age (born January 6, 1941). Thereafter, on cross, redirect and recross examination she testified that at the time in question she was in the defendant's licensed premises in the company of Robert Lish; that on two occasions between dances, she joined Robert at the bar where she consumed portions of two mixed drinks of alcoholic beverages (vodka and seven-up) purchased for her by Robert; that both drinks were ordered from Joseph Murray, a bartender; that she had informed Robert that she could not be served any alcoholic beverages because she was not of legal age; that the first of said drinks was handed to her by Robert while she was standing in back of him; that the second drink was served to her by Murray while she was seated at the bar alongside of Robert; that the bartender had placed this drink directly in front of her on the bar; that at the time Robert had a bottle of beer and glass in front of him on the bar and was in the process of pouring some of the beer into his glass.

"Judith further testified that the bartender had not questioned her about her age; that immediately after the bartender had served her as aforesaid she picked up her drink, took a sip of the same and placed the glass back on the bar; that shortly thereafter, after she took a second sip, an ABC agent identified himself to her, seized her glass and poured its contents into a bottle and that she wrote her name and date on a sticker affixed to the bottle.

"Agent V testified that on Saturday, March 26, 1960, at about 12:20 a.m., he and Agent B arrived at defendant's licensed premises and took seats at a rectangular bar in the immediate vicinity of Robert Lish, Judith and Robert Friedlander; that there were in the premises about 125 patrons, 40 of whom were in a rear room where a five-piece rock and roll band was supplying music for dancing; that his attention was attracted to Judith because she appeared to be a minor and was holding a drink in her hand; that he observed Judith place her drink on the bar and accompany a third male to the dancing area in the rear of the premises; that after the dance, Judith rejoined Lish and Friedlander and took a seat at the bar between her male companions; that he heard Judith say to Lish that her drink had disappeared, following which Lish ordered a vodka and seven-up with a lemon twist from Joseph Murray, who was tending bar in their area; that at the time, Lish was consuming beer; that he observed Murray, in the presence of Judith, prepare the mixed drink as ordered, place it on the bar directly in front of Judith and accept 60 cents in payment thereof from Lish.

"Agent V further testified that after he had observed Judith consume a portion of her drink, he identified himself to her, ascertained that she was a minor and seized her drink; that he also identified himself to Michael Curcio, Bob Murray (bartenders) and aforesaid Joseph Murray, and informed them of the alleged violation; that at the suggestion of Rose Schaefer (identity undisclosed) he escorted Judith and her companions to a rear room in the premises where he poured the contents of her drink into a bottle and immediately capped the same; that after leaving the premises, he entered his car and, while parked there, sealed the bottle with wax; that he had placed his initials on the bottle's sticker; that the following Monday morning he brought the bottle to an ABC office where it was kept under lock and key until he delivered it to the Division's chemist. (The bottle and the report of the Division's chemist were placed in evidence; the report disclosed that the contents of the bottle were an alcoholic beverage, containing vodka, carbonated water

and lemon flavor, fit for beverage purposes, with an alcoholic content of 5.8 per cent by volume.)

"On cross-examination, Agent V repeated most of his direct testimony.

"Agent B was called as a witness by the Division and substantially corroborated the testimony of Agent V and Judith.

"At the close of the Division's case, counsel for the defendant moved to dismiss the charge on the ground that the evidence adduced by the Division had failed to prove a sale of alcoholic beverages to the minor. I see no merit in this contention. The service of the mixed drink (vodka and soda) to Judith, although not a sale in the ordinary sense, nevertheless, constitutes a sale as well as service of the alcoholic beverage to her for the purpose of the Alcoholic Beverage Law. Cf. Re Gahr, Bulletin 377, Item 7. I recommend that the motion be dismissed.

"Robert Lish, testifying for the defendant, stated that when he ordered the second mixed drink for Judith the bartender placed it on the bar 'more in front of me. It is hard for me to determine where it was placed.', and that he does not recall whether he handed this drink to Judith. In all other respects, Mr. Lish substantially corroborated the testimony of the Division's witnesses.

"On cross-examination, Lish testified that when he purchased the first drink for Judith, he had also ordered beer for himself; that Judith was standing about three to five feet from the bar; that he delivered her drink to her and that when he ordered the second drink for Judith, she was seated at the bar alongside of him, at which time he had a bottle of beer in front of him.

"Michael V. Curcio was called as a witness for the defendant and testified that for the past six years he has been employed as a bartender by the defendant; that on the morning in question, he was one of four bartenders on duty in the licensed premises; that he had observed Agents V and B standing at the bar to the right of Mr. Lish and separated from him by three stools, two of which were occupied; that at about 12:40 a.m. he had served three beers to Lish and two other males in his company and that he did not see Judith at the bar until about 1:10 a.m. when Agent V identified himself and after the agent had seized Judith's drink.

"Joseph Murray, on behalf of the defendant, testified that on the morning in question, he was tending bar in the licensed premises; that Lish had ordered and he served him two mixed drinks (vodka and seven-up) at an interval of about twenty-five minutes; that he placed these drinks on the bar; that on the last occasion, Lish 'had like his hand on it'; that he accepted 60 cents in payment of each drink from Lish; that prior thereto, he had not served any drinks to Lish; that he did not serve Judith any drinks and that he did not see Judith prior to the time Agent V had identified himself.

"Alessandro Renda, on his own behalf, testified that he arrived at the licensed premises on Friday, March 25, 1960, at 11:00 p.m. and remained therein until 2:30 a.m. the next morning; that during said period of time, he personally checked the ages of patrons who appeared to be minors; that he had instructed his four bartenders and waitress to do likewise and not to serve any patron who did not appear to be of legal age.

"I have carefully considered all the testimony adduced herein, together with the arguments of counsel and the exhibits, and find that, notwithstanding the exhaustive cross-examination of the Division's

witnesses, their testimony remained unshaken and that they gave an accurate and truthful account of what transpired in the case. Under the circumstances, I conclude that the Division has sustained the burden of proof of defendant's guilt by a fair preponderance of the believable evidence. Since the licensee cannot escape the consequences of the act of his agents (Rule 33 of State Regulation No. 20), it is recommended that the defendant be found guilty as charged. Cf. Re Campbell, Bulletin 1320, Item 10.

"Defendant has no prior adjudicated record. It is further recommended that an order be entered suspending the defendant's license for fifteen days, which is the minimum penalty imposed for sale of alcoholic beverages to a 19-year-old minor. Re Worrirow, Bulletin 1310, Item 8."

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

After carefully considering the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 29th day of June, 1960,

ORDERED that any renewal for the 1960-61 licensing year or transfer of Plenary Retail Consumption License C-1, issued by the Township Committee of Greenbrook Township to Alessandro Renda, t/a Rendales, for premises on Highway #22, Greenbrook Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Wednesday, July 6, 1960 and terminating at 2:00 a.m., Thursday, July 21, 1960.

WILLIAM HOWE DAVIS,  
DIRECTOR.

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

In the Matter of Disciplinary Proceedings against Anna Pross & Edna Orr 25-01 Broadway Fair Lawn, N. J.,  
Holders of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Fair Lawn.  
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CONCLUSIONS  
AND  
ORDER

Mandon & Schwartz, Esqs., by Martin S. Mandon, Esq., Attorneys for Defendant-licensees  
William F. Wood, Esq., Appearing for 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 May 21, 1960, an ABC agent tested defendants' open bottles of alcoholic beverages and seized two bottles for further tests by the

Division's chemist. William Pross (defendants' manager) denied tampering with the contents of the bottles. Subsequent tests by the Division's chemist disclosed that the contents of one of the seized bottles was low in proof and high in solids when compared with an analysis of the genuine product.

Defendants have no prior adjudicated record. I shall suspend defendants' license for the minimum period of ten days. Re Picklo, Bulletin 1338, Item 12. Five days will be remitted for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 28th day of June 1960,

ORDERED that any renewal for the 1960-61 licensing year or transfer of plenary retail consumption license C-2, issued by the Borough Council of the Borough of Fair Lawn to Anna Pross & Edna Orr, for premises 25-01 Broadway, Fair Lawn, be and the same is hereby suspended for five (5) days, commencing at 3 a.m. Monday, July 11, 1960, and terminating at 3 a.m. Saturday, July 16, 1960.

WILLIAM HOWE DAVIS,  
DIRECTOR.

6. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
Charles Joseph Maire  
428-430-432 First Avenue East  
Roselle, New Jersey  
Holder of Plenary Retail Distribution License D-3, issued by the Borough Council of the Borough of Roselle.  
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CONCLUSIONS  
AND  
ORDER

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

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that he 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 Regulation No. 30.

On Saturday, May 14, 1960, two ABC agents purchased from defendant a case of beer and a quart of "Seagram's Seven" whiskey, the consumer prices of which were \$4.40 and \$5.90, respectively. The agents paid \$5.61 for the whiskey and, when the amount was rung up on the cash register, they identified themselves and the licensee admitted the violation.

Defendant has a prior adjudicated record. Effective November 20, 1939, March 11, 1940 and August 19, 1940 his license was suspended by this Division for five days, fifteen days and the balance of the term, respectively, for selling liquor at less than the then Fair Trade price. (Bulletin 344, Item 14; Bulletin 392, Item 4; Bulletin 420, Item 8.) Since those violations occurred more than ten years ago, they will not be considered in fixing the penalty herein. I shall suspend defendant's license for the minimum period of ten days and remit five days for the plea entered herein, leaving a net sus-

pension of five days. Re Friedman, Bulletin 1338, Item 11.

Accordingly, it is, on this 30th day of June, 1960,

ORDERED that any renewal for the 1960-61 licensing year or transfer of Plenary Retail Distribution License D-3, issued by the Borough Council of the Borough of Roselle to Charles Joseph Maire, for premises 428-430-432 First Avenue East, Roselle, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m., Monday, July 11, 1960, and terminating at 9:00 a.m., Saturday, July 16, 1960.

WILLIAM HOWE DAVIS,  
DIRECTOR.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Albert A. Lagowitz  
t/a The Embers  
Highway 27  
South Brunswick  
PO Franklin Park, N.J.

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-11 (for the 1959-60 and 1960-61 licensing years), issued by the South Brunswick Township Committee.

ORDER

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

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold alcoholic beverages to two minors and permitted the consumption of such beverages by said minors on his licensed premises, in violation of Rule 1 of State Regulation No. 20.

Acting upon information obtained from the New Jersey State Police, ABC agents obtained signed, sworn statements from Richard --- and Walter ---. In his statement Richard --- says that he is 19 years of age; that at about 11:00 p.m. on May 6, 1960, he, Walter --- and another young man entered defendant's premises and remained there about twenty minutes; that he drank four glasses of beer and one shot of whiskey, served by a bartender who did not question him as to his age. In his statement Walter --- says that he is 20 years of age; that, at the time set forth above, he, Richard --- and another young man entered defendant's premises; that he also drank four glasses of beer and one shot of whiskey and that he was not questioned as to his age.

Defendant has a prior record. Effective September 12, 1954, a license he then held for 138 New Street, New Brunswick, was suspended by the local issuing authority for three days for selling to women at a public bar in violation of a local regulation. It further appears that Albert A. Lagowitz was president and a major stockholder of a corporation known as Andy's Inc., when the license of said corporation was suspended by the then Deputy Commissioner for ten

days, effective October 7, 1946, for selling to minors. However, since the dissimilar violation occurred more than five years ago and the similar violation by the corporation occurred more than ten years ago, I shall not consider them in fixing the penalty herein. Re Hill, Bulletin 1334, Item 9. The minimum penalty for selling to a 19-year-old minor and a 20-year-old minor is fifteen days. Re R & J Cottage Inn, Inc., Bulletin 1322, Item 12. Five days will be remitted for the plea herein, leaving a net suspension of ten days.

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

ORDERED that Plenary Retail Consumption License C-11 for the 1960-61 licensing year, issued by the South Brunswick Township Committee to Albert A. Lagowitz, t/a The Embers, for premises on Highway 27, South Brunswick, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., Tuesday, July 19, 1960 and terminating at 2:00 a.m., Friday, July 29, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

8. STATE LICENSES - NEW APPLICATIONS FILED.

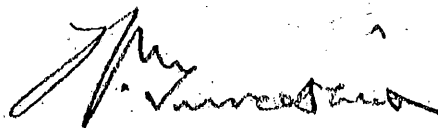
Gross' Highland Winery  
212 Leeds Road  
Galloway Township

PO Absecon Highlands, New Jersey

Application filed August 30, 1960 for place-to-place transfer of Plenary Winery License V-41 to include additional space.

Cesto Chiesa  
t/a Chiesa California Wines  
1114-1116 - 21st Street  
North Bergen, New Jersey

Application filed September 2, 1960 for Wine Wholesale License (Held Wine Wholesale License WW-14 from 1947 to June 30, 1960.)



William Howe Davis  
Director