

BULLETIN 1032

SEPTEMBER 22, 1954.

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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 1032

SEPTEMBER 22, 1954.

1. APPELLATE DECISIONS - HERBERT H. LEVINE, INC. v. HARRISON.

HERBERT H. LEVINE, INC., )	
Appellant, )	
-vs- )	ON APPEAL
TOWN COUNCIL OF THE TOWN OF )	CONCLUSIONS AND ORDER
HARRISON, )	
Respondent. )	

-----  
Anthony A. Cicchino, Esq., Attorney for Appellant.  
Daniel F. Gilmore, Esq., by Walter Michaelson, Esq., Attorney for Respondent.  
Pitney, Hardin & Ward, Esqs., by William H. Osborn, Jr., Esq.,  
Attorneys for Driver-Harris Co., an Objector.

BY THE DIRECTOR:

This is an appeal from the denial of appellant's application to transfer its plenary retail consumption license from 314 Manor Avenue to 239 Middlesex Street, Harrison.

After respondent had conducted a public hearing on said application on July 20, 1954, it unanimously adopted a resolution denying the application for reasons which may be summarized as follows:

- (a) There are sufficient plenary retail consumption licenses in the area;
- (b) The transfer would increase a parking problem in said area;
- (c) The residents of the area object because another tavern would not benefit the public health, safety and welfare;
- (d) Among the objectors was the Driver-Harris Co. which felt that a tavern in the area would be detrimental to its employees.

The evidence herein discloses that appellant has conducted its licensed business for more than five years last past at 314 Manor Avenue, which is located in an industrial "B" section in close proximity to various factories. The building in which appellant presently conducts business has been purchased by one of these factories which intends to expand its plant and appellant has, therefore, been notified to vacate said premises. The premises known as 239 Middlesex Street appear to be at least eight blocks from the present licensed premises, and are likewise situated in an industrial "B" district containing a number of factories and some residences.

As to (a): It appears that at the present time plenary retail consumption licenses have been issued for four premises in close proximity to 239 Middlesex Street. While it is true that prior to 1951 a plenary retail consumption license had been issued for other premises nearby, that fact was referred to by Councilman Giordano at the meeting held on July 20 before the members who were present at said meeting voted to deny the application for the reason, among others, that there were already enough licenses in that section of the Town.

As to (b), (c) and (d): It further appears from the testimony of Councilman Cifelli that there is a serious traffic problem because of the number of heavy industrial plants which are located in this

section; a petition signed by approximately thirty residents of this section, exclusive of competitors, who objected to the transfer, was presented to the members of the Town Council; the plant operated by Driver-Harris Co. is located directly opposite the proposed licensed premises.

The six Councilmen who voted to deny the application appeared at the hearing herein and testified that they had denied the application for the reasons set forth in the resolution.

The transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. VanSchoick v. Howell, Bulletin 120, Item 6. On the other hand, where it appears that refusal of a transfer is arbitrary and unreasonable, the action will be reversed. Shapley v. Delaware, Bulletin 294, Item 7.

After considering the evidence herein I conclude that appellant has not sustained the burden of establishing that the action of respondent was erroneous. Rule 6 of State Regulations No. 15. Albert v. New Brunswick, Bulletin 228, Item 5; Market Liquor Store Corp. v. Newark, Bulletin 1005, Item 2; DiGioacchino v. Atlantic City, Bulletin 1030, Item 3.

Accordingly, it is, on this 7th day of September, 1954,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - HALL LIQUOR CO. v. TOWNSHIP OF UNION.

HALL LIQUOR CO. (A corporation), )  
trading as FRANKLIN LIQUOR, )  
Appellant, )  
-vs- )  
TOWNSHIP COMMITTEE OF THE TOWNSHIP )  
OF UNION (Union County), )  
Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Michael Breitkopf, Esq., Attorney for Appellant.  
Kein & Scotch, Esqs., by Gustave G. Kein, Jr., Esq., Attorneys  
for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's plenary retail distribution license for ten days after adjudicating appellant guilty of charges alleging that on March 5, 1954, it (1) sold alcoholic beverages to a minor, in violation of R. S. 33:1-77 and in violation of local ordinances, and (2) sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages, directly or indirectly, to a minor in violation of Rule 1 of State Regulations No. 20.

Upon the filing of the appeal an order, dated June 11, 1954, was entered staying the suspension pending the determination of this appeal. R. S. 33:1-31.

Appellant contends that respondent's action was erroneous and improper because the order was adopted "without lawful proof."

Respondent denied this allegation.

This appeal was heard de novo, pursuant to Rule 6 of State Regulations No. 15.

The minor testified that, at approximately 10:30 a.m. on March 5, 1954, he went to the vicinity of appellant's licensed premises because he wanted a bottle of whiskey; that, since he was only 19 years of age, he waited for someone who would make the purchase for him; that he asked a man to purchase a "fifth" (4/5 quart bottle) of whiskey for him; that, when the man assented, he gave the man some money as they entered the store; that the man purchased the bottle of whiskey from the clerk and handed it to the minor as they were going out the door to the street; that said minor was apprehended by the police after he had walked a short distance; and that the police seized the bottle of whiskey and accompanied the minor to appellant's licensed premises where the clerk denied selling the bottle to the minor.

A police officer testified that he had interrogated the clerk at approximately 11:00 a.m., on March 5, 1954, concerning the aforementioned incident; that the clerk had told him the following: A short time earlier two policemen had confronted him with the minor; that he had denied selling a bottle of whiskey to said minor; that, at approximately 10:15 that morning, a youth whom he knew to be under 21 years of age had asked a man to buy a bottle of whiskey for him; that the man had agreed and had purchased from him a 4/5 quart bottle of Calvert Whiskey for which he paid \$4.49; that he (the clerk) had put the bottle in a bag and handed it to the man who in turn handed it to the minor "in the doorway just outside the door", informing the police officer that there was a difference between giving the bottle to the minor inside the store and outside the store. He further testified that the clerk showed him the cash register tape on which an item of \$4.49 appeared.

The clerk testified that he was the only clerk working at appellant's licensed premises at the time in question; that he knew the minor and knew him to be under age; that he had told the police officers that he had sold the bottle of whiskey to a man, not to the minor; that he had also told them that he did not see any money transferred or hear any conversation between the minor and the man. He denied that he had told the police officer that he heard the conversation and saw the money transferred but admitted that he had told him that it made a difference whether the man handed the bottle to the minor outside the premises as distinguished from handing it to him on the inside. However, his denials do not accord with his written statement, given to the police a short time after the incident, in which he stated that he knew the minor to be such; that when the minor entered there were two men in the store; that the minor asked one of the men to buy a bottle of whiskey for him in the store; that the man agreed to do so and asked him (the clerk) for a 4/5 quart of Calvert Whiskey which he placed in a paper bag and for which he charged the man \$4.49; and that the man gave the bottle of whiskey to the minor "in the doorway outside the door."

Although the clerk endeavored to explain and repudiate his written statement he admitted that he read it and that he was not compelled to sign it and the police officers testified that he requested no changes in the statement.

Counsel for appellant filed a memorandum and appeared before me in oral argument. He contended that no violation had been committed because the acts complained of did not occur upon the licensed premises. I cannot agree. The evidence clearly shows that most, if not all, of the acts were committed upon the licensed premises. Appellant does not deny that a sale and delivery of a bottle of whiskey

occurred on the licensed premises and a careful reading of all of the evidence leads inescapably to the conclusion that appellant through its employee, at the very least, violated Rule 1 of State Regulations No. 20, which prohibits sale, service or delivery of any alcoholic beverage, directly or indirectly, to a minor. In the factual situation present in this case, there is no magic in the fact, if it is a fact, that the bottle was delivered to the minor "in the doorway outside the door." The clerk knew full well for whom the whiskey was intended. His attempted distinction is completely spurious and is hardly the mark of one conscious of his responsibilities in the business of selling alcoholic beverages directly to the public. On the contrary, the very fact that he sought quick refuge behind this subterfuge clearly evidences his guilty knowledge. This attempted evasion cannot succeed. Counsel also contended that there is no evidence of the use to be made of the whiskey by the minor. Such evidence is unnecessary under any of the charges preferred herein.

Counsel further contended that, since "the officer in charge of this prosecution was the brother of one of the councilmen of the Town," the councilman should have disqualified himself and the complaint should be dismissed. This contention is wholly without merit. There is nothing in the record to indicate a relationship between any of the police officers and any of the members of the local issuing authority. Even if there were such evidence that fact, standing alone, would not warrant the inference of bias or improper motivation. Bias or improper motivation on the part of public officials may not be presumed but may be established only by direct proof or by proof of circumstances from which it may reasonably and cogently be inferred. There is no such proof here. Cf. Redfield v. Long Branch, Bulletin 1027, Item 1.

Under all of the circumstances I cannot disagree with respondent's finding of guilt.

Appellant has no prior adjudicated record. The action of respondent will be affirmed, the appeal will be dismissed and the ten-day suspension originally imposed will be reinstated.

Accordingly, it is, on this 8th day of September, 1954,

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

ORDERED that the ten-day suspension by respondent of appellant's 1953-54 D-14 license, for premises 2041-2043 Springfield Avenue, Union, is hereby restored and reimposed against appellant's 1954-55 D-16 license, for the same premises, to commence at 9:00 a.m. September 14, 1954, and terminate at 9:00 a.m. September 24, 1954.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - NO LOCUS POENITENTIAE - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against JANE E. SCHUYLER T/a LACKAWANNA HOTEL 18 Church Street Hampton (Hunterdon County), N.J., ) ) ) ) )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Hampton. )

----- Wesley L. Lance, Esq., Attorney for Defendant-licensee. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On July 4 and 30, 1954, 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 John Francis ---, a person under the age of twenty-one (21) years; in violation of Rule 1 of State Regulations No. 20.
"2. On or about July 10, 1954, 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 Thomas Edward ---, a person under the age of twenty-one (21) years; in violation of Rule 1 of State Regulations No. 20."

The file herein discloses that two ABC agents entered defendant's premises on the evening of July 30, 1954. At about 9:40 p.m. John Francis ---, a minor, entered and ordered six cans of beer from John Petit, the bartender. After the bartender gave the six cans of beer to the minor and accepted payment therefor, the agents identified themselves to the licensee and bartender and seized the alcoholic beverages.

During the course of subsequent investigation the agents obtained from John Francis --- a statement wherein he sets forth that he was born on September 3, 1936; that on July 30, 1954, he purchased alcoholic beverages as aforesaid; that on the evening of July 4, 1954, he had also purchased four or six quarts of beer in defendant's premises from the same bartender and that at that time he had exhibited to the bartender an application for a driver's license on which appeared the name of another person who represented thereon that he was twenty-one years of age.

In a statement subsequently obtained from the bartender he admitted both sales above referred to, and said that they were made in reliance on the information set forth in the application for the driver's license and on the fact that the minor appeared to him to be of full age. The bartender admitted that he had obtained no written representation from the minor that he was twenty-one years of age or over. See R. S. 33:1-77.

It further appeared from the statement obtained from John Francis --- that he had accompanied Thomas Edward --- to defendant's premises on July 10, 1954, at which time he observed the purchase of four cases of beer by said person. Subsequently ABC agents obtained

from Thomas Edward --- a statement wherein he sets forth that he was born on August 11, 1937, and that on the evening of July 10, 1954 he had entered defendant's premises and purchased from the licensee four cases of beer which were taken from the premises and consumed at a party.

Defendant has a prior record. Effective September 15, 1952, her license was suspended for twenty-five days after she had been found guilty of selling alcoholic beverages to a minor. See Bulletin 944, Item 3. In the present case it is alleged on behalf of defendant that, while the mere presentation of false evidence as to age does not constitute a defense, the fact that the first minor presented such evidence to the bartender should be considered a mitigating circumstance. It is also alleged, and appears from the file herein, that the second minor is six feet tall and weighs over two hundred pounds. It appears that no "locus poenitentiae" intervened between the violations which occurred on July 4th, July 10th and July 30th. Re Capestro, Bulletin 1000, Item 9. Under all the circumstances of this case I shall suspend defendant's license for a period of thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 13th day of September, 1954,

ORDERED that Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Hampton to Jane E. Schuyler, t/a Lackawanna Hotel, for premises 18 Church Street, Hampton (Hunterdon County), be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. September 21, 1954, and terminating at 2:00 a.m. October 21, 1954.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against )

KINNEY WINE & LIQUOR, INC. )  
147 Prince Street )  
Newark 3, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-106 for the 1953-54 and 1954-55 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
----- )

Michael N. Steinberg, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On December 10, 1953, you sold at retail a pint bottle of Hunter Blended Whiskey, an alcoholic beverage, at less than the price thereof listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulations No. 30."

At the hearing herein, three ABC agents appeared and testified. In the testimony and comment hereinafter set forth, their full names

will not be used but, instead, only the initial letter of the last name, "C," "M," and "P," and all will be referred to as investigators.

At approximately 5:00 p.m. they arrived in the vicinity of defendant's licensed premises to investigate a specific complaint that defendant was selling alcoholic beverages below the minimum resale price. Investigators "M" and "P" took from their pockets all of their money and placed it in separate envelopes which were put in the glove compartment of Investigator "M's" car, except that Investigator "M" retained \$1.75 (a one-dollar bill, a fifty-cent piece and a twenty-five cent piece) and Investigator "P" retained a dollar bill. Leaving Investigator "C" outside, the other two entered defendant's licensed premises where the clerk, Carl Kaplan, who is secretary-treasurer of defendant licensee-corporation, asked them what they wanted. Investigator "M" asked for a pint of Hunter Whiskey and Kaplan placed a gift box package containing a pint bottle of that brand in a paper bag and quoted the price of \$2.83, which was the price listed in the then current Minimum Consumer Resale Price List. Investigator "M" produced the \$1.75 which he had in his possession when he entered the premises and asked Investigator "P" if he could supply the rest of the money. The latter handed to Investigator "M" the \$1.00 bill which he had retained, as aforesaid, whereupon Investigator "M" said that together they had only \$2.75 and that if they didn't have the other 8 cents they were "out of luck." However, Kaplan agreed to accept the \$2.75, handed over the bag containing the bottle of whiskey, placed the money in the cash register and rang up \$2.83 (the correct listed price). The agents left the premises, notified Investigator "C" of the incident and all three returned to the store where Kaplan admitted the sale but claimed that he had received the correct amount, \$2.83.

All of the investigators were cross-examined with respect to their activities and particularly with respect to the amount of money which Investigators "M" and "P" had with them. While they could not recall the exact amount of money each had upon arriving in the vicinity of defendant's licensed premises, they reiterated that when they entered the premises they had only \$1.75 and \$1.00, respectively.

Kaplan testified that he is the holder of 25 per cent of defendant's capital stock; that he was in charge of the licensed premises on the day in question; that, although he did not remember all of the facts, he remembered the two agents entering the licensed premises and asking for a pint of Hunter whiskey; that he sold them the whiskey; that they put the money on the counter; that he picked up \$2.83; that he rang up \$2.83 on the cash register; and that, upon their return with the other agent, he insisted that he had made the sale for \$2.83 and denied receiving only \$2.75. He further testified that he did not see the agents put the money on the counter; that he does not remember the denominations; that he does not remember any conversation relative to price but that he might have quoted the price since he usually does so. He admitted that he was the person involved in a similar violation in 1950.

Counsel for defendant, in oral argument at the hearing and in further oral argument before the Director, contended that the agents' conduct constituted entrapment; that there were discrepancies in their testimony and that there was some testimony that they may have had some pennies with them in addition to the \$2.75.

A careful examination of the transcript of the testimony shows that none of these contentions has merit.

As to entrapment, there is no evidence that the agents implanted an unlawful scheme in the mind of an otherwise innocent individual. Neither did they by trickery, persuasion or fraud induce Kaplan to commit a wrongful act which he did not intend to commit.

The agents were investigating a specific complaint alleging the very misconduct charged and, during the course of such investigation, merely afforded Kaplan an opportunity to commit a violation which he promptly did by readily accepting the lesser amount while ringing up the correct amount on the cash register. Clearly, there was no entrapment. Cf. Zimmerman v. Bernards Township, Bulletin 228, Item 10 reviewing the authority on the subject.

The contention with respect to the alleged conflict in the testimony of the investigators and the claim that they may have had some pennies with them when they entered the store are not supported by the evidence.

I find defendant guilty as charged.

Defendant has a prior record. Its license was suspended by the State Director for five days, effective June 5, 1950, for a violation similar to the one here charged. Since this is a second similar violation occurring within a five-year period I shall suspend defendant's license for twenty days. Re Dankner, Bulletin 962, Item 5.

Accordingly, it is, on this 14th day of September, 1954,

ORDERED that Plenary Retail Distribution License D-106 for the 1954-55 licensing period, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Kinney Wine & Liquor, Inc., 147 Prince Street, Newark, be and the same is hereby suspended for a period of twenty (20) days, commencing at 9:00 a.m. September 21, 1954, and terminating at 9:00 a.m. October 11, 1954.

WILLIAM HOWE DAVIS  
Director.

5. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING THAT LICENSEE PERMITTED LEWDNESS AND IMMORAL ACTIVITIES ON LICENSED PREMISES DISMISSED.

In the Matter of Disciplinary Proceedings against  
MICHAEL De LUCCIA  
13 North Main Street  
Paterson 2, N. J.,  
Holder of Plenary Retail Consumption License C-162 (for the 1953-54 licensing year), issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS  
AND ORDER

Spitz & LaCava, Esqs., by Joseph A. LaCava, Esq., Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"On Thursday night, June 3, 1954 and Friday night, June 4, 1954, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20."

It appears from the evidence herein that three ABC agents entered defendant's licensed premises on June 3, 1954, at about 5:00 p.m. Defendant was tending bar. Two females, described herein as

Suzie and Alice, were seated at the bar. Suzie greeted one of the agents as if she had previously known him, and this agent went over to the portion of the bar where the females were seated and purchased glasses of beer for them. Suzie asked this agent "if you boys are looking for some fun" and, when the agent replied that they were but that they had only six or seven dollars, she told him "that would be enough, it would be five dollars for me and two dollars for the room." The agents testified that the licensee did not enter into this conversation and that they did not know whether or not defendant heard this conversation. Defendant testified that he did not hear the conversation. At about 5:30 p.m. Richard McDaniel, employed by defendant as a bartender, went behind the bar and defendant left the premises. The conversation between Suzie and the first agent thereafter continued, and Suzie told the agent that she and Alice would take them elsewhere for the purpose of having illicit sexual intercourse. Alice also spoke to the other agents concerning the same subject, but McDaniel did not participate in any of this conversation and he testified that he did not hear any of this conversation. Suzie and Alice left the premises at about 6:00 p.m. The first agent testified that he then asked the bartender if the girls were "clean" and that he received an affirmative reply. The bartender admits that this evidence is true. The agents left the premises about 6:30 p.m.

The three agents returned to the premises on the same evening at about 9:00 p.m. and left at about 10:30 p.m. Neither Suzie nor Alice was there during that period, but McDaniel told the agents that they had been there earlier in the evening.

The three agents returned to the premises with marked money on June 4, 1954, at about 9:00 p.m. Neither Suzie nor Alice was there, although the bartender admittedly had told Alice earlier in the day that the men would be in. The agents left at about 10:30 p.m. The first agent testified that thereafter he saw Suzie enter defendant's premises about 11:15 p.m., and that he and one of the other agents re-entered shortly thereafter; that there were twenty-five or thirty patrons then present; that he approached Suzie who asked "Are you ready to go?" and told him that they would "join Alice in the room;" that he gave Suzie fourteen marked dollar bills at the bar; that the agents left the premises, followed by Suzie, and were proceeding to a room elsewhere when they were stopped by other ABC agents and City detectives who found the marked money in Suzie's possession. McDaniel, who was acting as bartender on that evening, denied that he pointed out Suzie to the agent, that he heard any of the conversation between her and the agent, or that he saw any money being passed to her by the agent.

This is a serious charge. It is apparent that Suzie made arrangements on the licensed premises to have illicit sexual intercourse elsewhere with the agents. However, after considering all the evidence, I conclude that the Division has not established by a preponderance of the evidence that the licensee or his agent and employee allowed, permitted or suffered this unlawful activity on the licensed premises. Cf. Re Mansbach, Bulletin 939, Item 2; Re Goldfinger & Cohen, Bulletin 1013, Item 1; Re Zukowski, Bulletin 1014, Item 3. Hence I shall dismiss the charge herein.

Accordingly, it is, on this 26th day of August, 1954,

ORDERED that the charge herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

6. AUTOMATIC SUSPENSION - SUSPENSION OF LICENSE BY LOCAL ISSUING AUTHORITY ADEQUATE - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by )  
 JOHN W. McCARTHY & HELEN E. )  
 McCARTHY )  
 T/a McCARTHY'S TAVERN ) ON PETITION  
 Rockaway-Green Pond Rd., Marcella, ) O R D E R  
 Rockaway Township, Morris County, )  
 New Jersey, )  
 To Lift Automatic Suspension of )  
 Plenary Retail Consumption License )  
 C-17, issued by the Township Committee )  
 of Rockaway Township. )  
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It appears from a verified petition filed herein that on August 27, 1954, John W. McCarthy, one of the petitioners, was sentenced in the Morris County Court to pay a fine of \$300.00 and received a suspended sentence of six months after he had pleaded non vult to a charge of selling alcoholic beverages to minors. Said conviction has resulted in the automatic suspension of the license held by petitioners for the balance of its term. R. S. 33:1-31.1. The petition requests the lifting of said suspension.

It further appears from the records of this Division that on April 1, 1954, the local issuing authority suspended the license then held by petitioners for a period of forty days, effective April 5, 1954, after they had been found guilty in disciplinary proceedings on charges of selling alcoholic beverages to and permitting consumption of alcoholic beverages by minors in violation of Rule 1 of State Regulations No.20.

The conviction in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. The case concerns the sale of alcoholic beverages to six minors, one of whom was sixteen years of age.

The suspension heretofore imposed appears to be adequate. Hence the relief sought herein will be granted.

Accordingly, it is, on this 2nd day of September, 1954,

ORDERED that the automatic suspension of License C-17, now held by John W. McCarthy & Helen E. McCarthy, t/a McCarthy's Tavern, for premises on Rockaway-Green Pond Rd., Marcella, Rockaway Township, be and the same is hereby lifted and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS  
 Director.

By: Edward J. Dorton  
 Deputy Director.

7. DISCIPLINARY PROCEEDINGS - SALE 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 )

KENNETH MAIER & MINNIE SPECHT )  
T/a SANFORD INN )  
853 Summit Avenue )  
Jersey City 7, N. J., )

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Consumption License C-460, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )  
----- )

Alexander A. Abramson, 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 a charge alleging that they sold alcoholic beverages at retail in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that on Sunday, August 22, 1954, an ABC agent entered defendants' licensed premises and at about 1:40 p.m. asked the bartender for two quarts of Piel's. The bartender went to the rear, selected two quarts of Piel's beer, put them in a bag and placed the package on top of the cooler, remarking when he returned to the agent "I'll leave it down there. You can pick it up when you leave. You never can tell who is around." The agent paid 85¢ for his purchase, picked it up and departed. Shortly thereafter the agent and his co-worker returned and identified themselves to the bartender who admitted the sale.

Defendants allege that they are negotiating for the sale of the business and request that the suspension begin as soon as possible.

Defendants have no prior adjudicated record. I shall suspend defendants' license for the minimum period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Gallagher, Bulletin 1011, Item 6.

Accordingly, it is, on this 3rd day of September, 1954,

ORDERED that Plenary Retail Consumption License C-460, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Kenneth Maier & Minnie Specht, t/a Sanford Inn, for premises 853 Summit Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. September 10, 1954, and terminating at 2:00 a.m. September 20, 1954.

WILLIAM HOWE DAVIS  
Director.

8. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICES OR MANIFESTS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

EUGENE BODNAR )  
T/a BODNAR'S LIQUOR STORE )  
41 Georges Road )  
New Brunswick, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-2, issued by the Board of Commissioners of the City of New Brunswick. )  
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Leo J. Berg, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he transported and delivered alcoholic beverages in his licensed vehicle without the driver thereof having in his possession bona fide invoices or manifests, in violation of Rule 3 of State Regulations No. 17.

The file herein discloses that, on June 26, 1954, while defendant's employee was delivering alcoholic beverages in defendant's truck, agents of this Division found therein six cases of beer, one quart bottle and two 4/5 quart bottles of whiskey and a gallon bottle of wine for which the driver had in his possession no authentic, accurate delivery slips, invoices, manifests, waybills or similar documents stating the bona fide name and address of the purchaser or consignee, the brand, size of container and quantity of each item of alcoholic beverages being delivered and transported. In his statement defendant claimed that the items were for customers who had "standing" orders and that he had been busy and the invoices had been overlooked. This attempted explanation is neither a defense nor an excuse.

Defendant has no prior adjudicated record. I shall, therefore, suspend his license for ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Colaluca, Bulletin 973, Item 10.

Accordingly, it is, on this 7th day of September, 1954,

ORDERED that Plenary Retail Distribution License D-2, issued by the Board of Commissioners of the City of New Brunswick to Eugene Bodnar, t/a Bodnar's Liquor Store, 41 Georges Road, New Brunswick, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. September 13, 1954, and terminating at 9:00 a.m. September 18, 1954.

WILLIAM HOWE DAVIS  
Director.

9. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING UNLAWFUL SALE OF ALCOHOLIC BEVERAGES - SOLICITOR TRANSPORTING ALCOHOLIC BEVERAGES NOT IN COURSE OF EMPLOYER'S BUSINESS - PERMIT REVOKED.

In the Matter of Disciplinary Proceedings against

STEPHAN PAPIRNIK  
712 Third Avenue  
Elizabeth, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Solicitor's Permit 2701, issued by the Director of the Division of Alcoholic Beverage Control.

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Stephen Papirnik, Pro Se.

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

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) he aided and abetted the illegal sale of alcoholic beverages, in violation of R. S. 33:1-52; and (2) he transported alcoholic beverages, not in the course of his employer's business, in an automobile licensed by a licensee (his employer), in violation of R. S. 33:1-50.

The file herein discloses that on various dates between July 1, 1953 and June 25, 1954, defendant, while employed as a solicitor for a plenary wholesale licensee, falsely represented to his employer the sale of large quantities of alcoholic beverages (in value, at least \$10,000.00), purportedly ordered by some fifteen retail licensees on his assigned route. When the merchandise was ready for delivery, defendant secured the invoices, signed the names of the alleged purchasers on the delivery slips, which he transmitted to his employer, transported the alcoholic beverages in his employer's licensed vehicle and diverted the alcoholic beverages to his own use and profit. In a signed, sworn statement made to the Division's representatives, defendant admitted the aforesaid facts. Defendant is presently employed by another plenary wholesale licensee.

Defendant has no prior adjudicated record.

The illegal activities participated in by defendant indicate an utter disregard of the conditions and restrictions of his solicitor's permit. Heretofore a penalty of twenty-five days was imposed for a single similar infraction. Re Freedman, Bulletin 889, Item 5. However, the extensive and reprehensible practices of defendant in the instant case, involving so great a quantity of merchandise of considerable value, justify a penalty commensurate with the offenses, namely, revocation of defendant's solicitor's permit.

Accordingly, it is, on this 8th day of September, 1954,

ORDERED that Solicitor's Permit No. 2701 issued by the Director of the Division of Alcoholic Beverage Control to Stephan Papirnik, 712 Third Avenue, Elizabeth, be and the same is hereby revoked, effective September 13, 1954.

WILLIAM HOWE DAVIS  
Director.

10. DISCIPLINARY PROCEEDINGS - SALE 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 )

CELESTE CAPPADONA )  
T/a STERLING DELICATESSEN )  
801 West Side Avenue )  
Jersey City 6, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-17, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )  
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Frank J. Guarini, Jr., Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to a charge alleging that she sold alcoholic beverages in original containers for off-premises consumption on Sunday, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that at about 2:15 p.m. Sunday, August 22, 1954, an ABC agent entered defendant's licensed premises and purchased from Thomas Cappadona, a son of the licensee, two sandwiches and two quart bottles of beer. Thomas put the sandwiches and beer in a paper bag. The agent left the premises with his package, and returned later with a co-worker. Both made their identity known to Thomas who verbally admitted that he made the sale.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Fleming's Wine & Liquor, Inc., Bulletin 984, Item 6.

Accordingly, it is, on this 9th day of September, 1954,

ORDERED that Plenary Retail Distribution License D-17, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Celeste Cappadona, t/a Sterling Delicatessen, for premises 801 West Side Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. September 20, 1954, and terminating at 9:00 a.m. September 30, 1954.

WILLIAM HOWE DAVIS  
Director.

11. ELIGIBILITY - POSSESSION OF STOLEN GOODS - CRIME FOUND TO INVOLVE MORAL TURPITUDE UNDER CIRCUMSTANCES OF CASE.

September 9, 1954.

Re: Eligibility No. 656

Applicant seeks a determination as to whether or not he is ineligible for employment by the holder of a liquor license in New Jersey by reason of his conviction of crime.

In October 1953, applicant pleaded non vult to the crime of possession of stolen goods which, by its nature, ordinarily involves the element of moral turpitude. See Re Case No. 424, Bulletin 506, Item 3. However, the background in each case may be considered in determining whether that element is present. Re Case No. 194, Bulletin 577, Item 6.

Applicant testified that, at the time of his arrest (May 1953), he was employed by a real estate broker to sell houses in a development; that he had some money due him for commissions; that he asked the broker to pay him so that he could make some repairs to his dwelling; that the broker told him that if he needed materials he should take them from the housing development as other people apparently were doing but admonished him not to get caught; that he (applicant) took approximately \$750.00 worth of lumber and other materials; and that the builder to whom they belonged made the complaint which resulted in his arrest. He further testified that he made restitution by returning the stolen property and, in addition, endorsed over to the builder a check in the sum of \$500.00 which the broker had given him in payment of commissions. He also testified that the builder then gave him a letter stating that restitution had been made and that he did not wish to prosecute applicant; that the letter was turned over to the county prosecutor's office and that, because he believed it was the easiest way out, he entered a confessional plea.

While the matters hereinabove recited may be viewed as extenuating circumstances, the fact remains that applicant has been convicted of the crime of possession of stolen goods. In fact, by applicant's own admission, he personally took the property from its rightful owner intending to convert it to his own use. Under these circumstances I see nothing in the present case which frees applicant's crime of the element of moral turpitude.

I recommend that applicant be advised that, in the opinion of the Director, he has been convicted of crime involving moral turpitude and thus is ineligible to hold a liquor license or to be employed in the alcoholic beverage industry in this State. R. S. 33:1-25, 26. Since five years have not elapsed since his conviction, as aforesaid, applicant is not eligible for relief by way of removal of disqualification, pursuant to R. S. 33:1-31.2. He will not become eligible for such relief until after October 28, 1958.

APPROVED:

WILLIAM HOWE DAVIS  
Director.

Anthony Meyer, Jr.  
Attorney.

12. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

KENNETH WEIDNER & RAYMOND BUSH )  
T/a HIGHWAY TAVERN )  
64 E. McFarlan Street )  
Dover, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-16, issued by the Board of Aldermen of the Town of Dover. )

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Harold B. Domb, 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 a charge alleging that they sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at their licensed premises to a minor, and allowed, permitted and suffered the consumption of alcoholic beverages by said minor in and upon their licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on or about March 17, 1954, Robert ---, age 19, visited defendants' licensed premises and ordered a glass of beer. Kenneth Weidner, one of the licensees therein, made inquiry as to Robert's age and was shown an adult's Selective Service Registration Certificate, on which was a description that tallied closely with that of Robert. Weidner then served the youth three beers which he there and then consumed. On or about May 23, 1954, Robert --- and an adult friend again visited defendants' licensed premises where Weidner, who was tending bar, served each a glass of beer and accepted payment from Robert. The friend ordered two more beers, but Weidner refused to serve Robert after he was told by a patron that Robert --- was a minor.

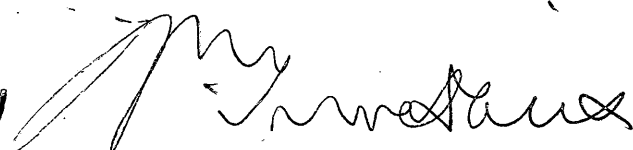
Contacted by ABC agents, Robert and his friend accompanied the agents to defendants' licensed premises and identified it as the place where Robert was served and had consumed beer, and also identified therein Weidner as the person who served him. Weidner declined to give a written statement, but admitted to the agents that he had served Robert on one occasion when satisfied that a "draft card" description "answered perfectly" the description of the minor.

Defendants have no prior adjudicated record. I shall suspend defendants' license for ten days, the minimum penalty for a violation of this kind involving a 19-year-old minor. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Highlander Hotel, Inc., Bulletin 985, Item 10.

Accordingly, it is, on this 10th day of September, 1954,

ORDERED that Plenary Retail Consumption License C-16, issued by the Board of Aldermen of the Town of Dover to Kenneth Weidner & Raymond Bush, t/a Highway Tavern, for premises 64 E. McFarlan Street, Dover, be and the same is hereby suspended for five (5) days, commencing at 1:00 a.m. September 20, 1954, and terminating at 1:00 a.m. September 25, 1954.

New Jersey State Library



William Howe Davis  
Director.