

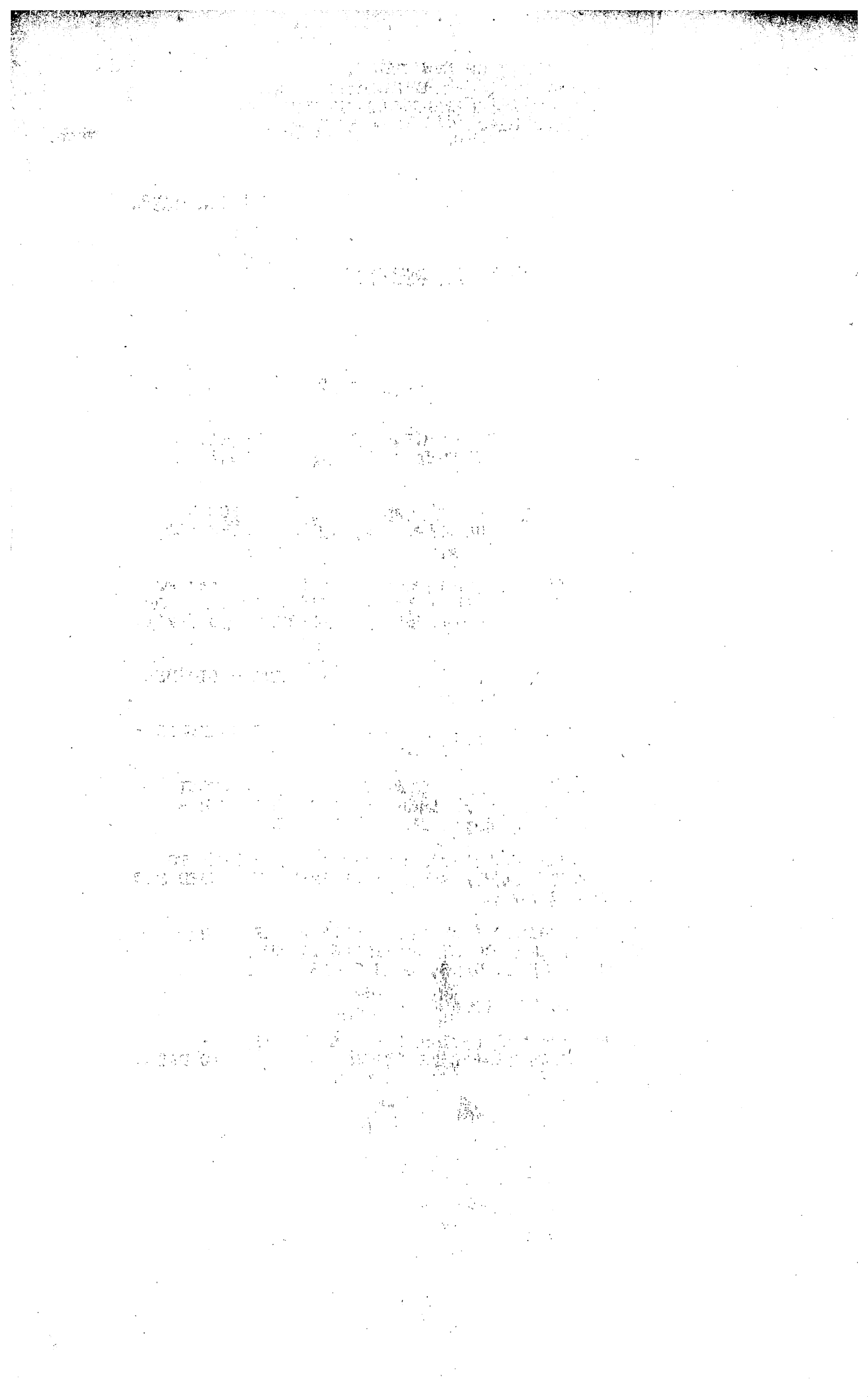
BULLETIN 1226

JUNE 18, 1958.

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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.

BULLETIN 1226

JUNE 18, 1958.

1. APPELLATE DECISIONS - RULE v. PARSIPPANY-TROY HILLS TOWNSHIP.

WILLIAM and CHARLOTTE RULE,)
trading as RULE'S TAVERN,)

Appellants,)

-vs-)

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF PARSIPPANY-TROY HILLS,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Camarata & Colonna, Esqs., by Michael T. Colonna, Esq.,
Attorneys for Appellants.

Jeffers, Mountain and Franklin, Esqs., by Edward T. Kenyon,
Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent whereby on December 2, 1957 it suspended appellants' license for a period of forty-five (45) days, effective December 16, 1957, after finding them guilty on a charge alleging that on Sunday, September 15, 1957, they sold, delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, at retail, in its original container for consumption off the licensed premises and allowed, permitted and suffered the removal of such alcoholic beverage in its original container from the retail licensed premises in violation of Rule 1 of State Regulation No. 38. Appellants' licensed premises are located on Route 46 and Summit Street, Parsippany-Troy Hills.

"Upon the filing of the appeal an order was entered on December 16, 1957 staying the aforesaid suspension until entry of a further order herein. R. S. 33:1-31.

"Appellants in their petition of appeal allege that respondent's action is erroneous for the following reasons:

1. The finding of guilt was not in accordance with the testimony adduced at the hearing, and contrary to the weight of evidence.
2. The testimony adduced at the hearing failed to prove a sale of an alcoholic beverage at retail for consumption off the premises during a prohibited time in violation of State Regulations.
3. An unauthorized person or persons were present and participated during the deliberations of the Township Council following the hearing and prior to the verdict.

"Respondent in its answer denies appellants' allegations and contends that the decision was made in accordance

with the facts presented at the hearing in the matter and, furthermore, that the respondent when imposing the penalty took into consideration the instant violation and the past record of appellants.

"Two ABC agents (hereinafter referred to as Agents McN and McD) participated in the investigation in the matter now under consideration. Agent McN's testimony discloses that he and Agent McD arrived in the vicinity of appellants' licensed premises at 5:45 p.m. on Sunday, September 15, 1957; that he entered the defendants' premises while his fellow agent remained outside in the automobile which was parked nearby; that he took a seat at the bar and was served a glass of beer by the bartender (subsequently identified as William Rule, one of the appellant-licensees); that at about 5:50 p.m. he observed the bartender talking to a male patron and then saw the bartender place something in a brown paper bag, proceed to the ice cooler, obtain three cans of Ballantine beer and place them in a paper bag wherein he had previously put the other item; that the patron handed him some money and the bartender rang up 'No Sale' on the cash register, returned to the patron and appeared to give him change after which the patron left the premises; that, shortly thereafter, Agent McN asked the bartender 'if he could have a pint of Imperial Whiskey to go'; that the bartender obtained a pint of the brand of whiskey which the agent had ordered and, after the agent gave him a ten-dollar bill, the bartender rang up 'No Sale' on the cash register and returned with \$7.30 in change which he handed to the agent; that the agent placed the bottle under his sweat shirt, walked out of the premises and, upon rejoining Agent McD, showed the pint of whiskey to him; that immediately thereafter (at 6:00 p.m.) both he and Agent McD walked into the appellants' premises and identified themselves to William Rule and also to Charlotte Rule who was at that time tending bar; that he confronted William Rule with the violation and asked him whether or not he cared to make a statement in writing; that William Rule replied that, inasmuch as they caught him, he would not give a statement; that Agent McN examined the license application while the other agent inspected the premises. Both agents left appellants' licensed premises at 6:30 p.m. Furthermore, Agent McN testified that the pint of Imperial Whiskey which he had purchased in appellants' licensed premises was produced at the hearing before the respondent on December 2, 1957.

"The testimony of Agent McD was substantially similar to that given by Agent McN insofar as their arrival at appellants' premises and McN's entering appellants' premises and emerging therefrom with a pint bottle of Imperial Whiskey. Agent McD testified furthermore that in order to avoid being seen he lay on the front seat of the automobile in a prone position and, while there, a local police officer came over to the automobile and told him that he could not park there because of it being private property; that he, in answer thereto, stated that he was a friend of one Officer Donald Gold of the local police force and asked whether or not the police officer would inquire of Officer Gold whether or not he might permit the car to remain where it was parked; that the police officer then entered the police car and drove away on Route 46; that, just as he and Agent McN were leaving appellants' premises at about 6:30 p.m., Officer Donald Gold drove up in a police car, alighted therefrom and said 'Mac, how the hell are you? What's up? Do you need any help?'; that in answer thereto he stated 'No, thanks. We just had a small violation here and we took care of it. We are leaving'.

"Agent Metzler, who testified that he is in charge of seizures and all Division property, recalled receiving the bottle in question from Agent McN after its seizure and the said bottle was returned to his custody after the hearing before the respondent. However, prior to the instant hearing on this appeal, the said bottle of whiskey was inadvertently turned over to a local hospital for medicinal purposes.

"Officer Eugene Ough, a member of the Parsippany-Troy Hills Police Department, testified that as he was passing by in a patrol car he observed a man driving toward a tool shed adjacent to the appellants' licensed premises; that because cars were not supposed to be parked at that particular location he went over to investigate and observed a 'colored man occupant driving and the other white male occupant was lying down in the front seat'; that he suggested to them that because this was private property they should move from the premises; that in reply thereto the white investigator told him he was from the ABC and that he knew one Officer Donald Gold, employed by the respondent municipality; that he thereupon advised him that the car could not be parked at that particular site and he drove off in order to have Officer Gold, who was at the desk at the time, come down to the place in question in order to identify the man who said that he knew him. Officer Ough further testified that Agent McD was lying on his left side and that he observed his gun on the right hip; that Agent McD did not have a jacket on at the time and that the gun was in plain sight.

"Officer Donald Gold testified that Officer Ough had gone on patrol at 4:15 p.m. but, within twenty to twenty-five minutes thereafter, came to headquarters and reported to him that a man carrying a weapon near the tool shed on Route 46 stated that he knew Officer Gold; that he (Officer Gold) drove down to appellants' tavern in the company of a special officer and, upon entering the establishment, noticed a man standing at the bar writing something and another man on the opposite side of the bar picking up bottles and putting them back; that at the time he did not recognize the man behind the bar because the man's back was to him but, subsequently, he did recognize him to be Agent McD who had gone to the State Police Academy with him some time previous thereto; that he had arrived at the appellants' premises at approximately 4:35 p.m.; that after speaking a few minutes to Agent McD he left to return to headquarters.

"Appellant William Rule testified that he had not made a sale of a pint of Imperial Whiskey at the time in question because at that time he was out of that particular brand in pint bottles; that the two agents were in the establishment after 6:00 o'clock, both of them coming into the place at the same time; that they flashed a badge and threw a pint bottle of Imperial Whiskey on the bar remarking 'You shouldn't have done it'; that Agent McN asked for the license and Agent McD went behind the bar to look around; that Agent McN stated 'This man is clean, let's go' and then they went away; that during the time they were there neither of them had anything to drink; that he had seen the agents at about 1:30 or 2:00 o'clock that day parked over near the tool shed and also observed around 4:00 o'clock Officer Ough questioning one of them who was walking around with a gun; that Agent McN had come into the premises on two or three occasions and on each occasion tried to 'get a bottle' but he told him that he did not sell on Sundays. Appellant William Rule produced an invoice of a distributor dated September 20, 1957 indicating

the purchase of a quantity of pints of Imperial Whiskey which he said had been ordered on September 13, 1957. He further produced a printed tape from a cash register allegedly for the date in question which had no indication thereon that there was any sale of liquor in the amount of \$2.70 and that, in the event a 'No Sale' is rung up on the register, three '0's' would appear.

"Agent McD was called in rebuttal at which time he testified that he was reclining on his left side with his head resting under the steering wheel when Officer Ough approached the passenger side of the vehicle; that he (Agent McD) was wearing a jacket which reached to about an inch below his hip line and kept the weapon covered at all times; that the jacket had a strong elastic bottom on it and he had it zipped at least a quarter of the way from the bottom which prevented it from opening; that he never wore his gun on the right side because by so doing it would not be effective when needed.

"I have given careful consideration to the testimony presented herein. It is apparent that the respective police officers were mistaken with relation to the time they were at or near appellants' licensed premises. This is confirmed by the testimony of William Rule, one of the appellants, that both the agents were in his premises after 6:00 o'clock on the day in question. The officers testified that they were there some time between the hours of four and five that day. I am satisfied that the agents have testified as to what took place and that Agent McN had purchased a pint of Imperial Whiskey from William Rule on September 15, 1957 in its original container for consumption off the licensed premises. The attorneys for the appellants contend that since the pint bottle of Imperial Whiskey was not produced at the hearing in the instant appeal, there is no proof that an alcoholic beverage had been purchased from appellants on the date in question. I am satisfied that such pint bottle of Imperial Whiskey was produced at the hearing before respondent and marked as an exhibit in evidence at that hearing.

"Furthermore, it has been established that when a person testifies that he had ordered an alcoholic beverage by name (e.g., beer, whiskey, etc.) and that he was served pursuant to that order, a permissible inference may be drawn that the alcoholic beverage ordered warrants judicial notice of the fact that such beverage has an alcoholic content of more than one-half of one per cent by volume and, hence, constitutes an 'alcoholic beverage' within the statutory definition. See State v. Marks, 65 N.J.L. 84, 87; Lewinsohn v. United States, 278 F., 421, 425, 426; Re LaCorte, Bulletin 469, Item 1; R. S. 33:1-1.1.

"The attorneys for the appellants contend that the determination of the respondent was invalid because Edward T. Kenyon, acting as township attorney at the hearing below, was present at the closed session of the respondent Committee during its deliberation with reference to the instant case. Attorney Kenyon contends, however, that he was merely present to answer any legal questions which might be asked by any of the members of the Committee but did not enter into any discussion with reference to the matter. The mere fact that the attorney sat in chambers with the members of the respondent Committee is not, in itself, sufficient to adversely affect the action of the respondent Committee. I am satisfied under the circumstances herein that this contention has no merit.

"The burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed

shall rest with the appellants. See Rule 6 of State Regulation No. 15. I am cognizant of the fact that the penalty imposed herein is quite severe. However, in view of the past record of the appellants it does not appear to be excessive. Moreover, a suspension imposed in a local disciplinary proceeding rests, in the first instance, within the sound discretion of the local issuing authority. The power of the Director to reduce or modify a penalty imposed by a local issuing authority will be sparingly exercised and only with the greatest caution. Robinson v. Newark, Bulletin 54, Item 2. I cannot find that the penalty was unreasonable or unduly oppressive, nor is there any other indication that the respondent was either arbitrary or unreasonable in imposing the penalty in question. Laurence Harbor Amusement Corporation v. Madison, Bulletin 955, Item 1. Under the circumstances appearing in this case, I find that appellants have failed to sustain the burden of establishing that the respondent Committee's action was erroneous and should be reversed. I recommend that an order be entered affirming respondent's action and dismissing the appeal."

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

Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 22nd day of April, 1958,

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

ORDERED that the forty-five days' suspension imposed by respondent which was stayed during the pendency of these proceedings be and the same is hereby reimposed and reinstated to commence at 3:00 a.m. April 28, 1958 and terminate at 3:00 a.m. June 12, 1958.

WILLIAM HOWE DAVIS
Director.

2. LIMITED WHOLESALE LICENSE - OBJECTIONS TO TRANSFER - TIME TO MAKE BONA FIDE SALE OF STOCK EXTENDED FOR 60 DAYS.

In the Matter of Objections to)
the Transfer of License WL-39)
from)
THE OLD READING BREWERY, INC.)
Ninth and Laurel Streets)
Reading, Pennsylvania,)
to)
CLINTON DISTRIBUTING COMPANY)
245 East Washington Avenue)
Washington, N. J.)

AMENDED CONCLUSIONS

-----)
Paul M. Salsburg, Esq., Attorney for Applicant.
Steelman, Lafferty & Rowe, Esqs., by James L. R. Lafferty, Esq.,
Attorneys for New Jersey Brewers' Association, Objector.
Leo J. Berg, Esq., Attorney for State Beverage Distributors'
Association, Objector.
William P. Reiss, Esq., Attorney for Anheuser-Busch, Inc.,
Objector.

Francis W. Brennan, Esq., Attorney for P. Ballantine & Sons,
Objector.
Alvin E. Heutchy, Secretary, appearing for F. & M. Schaefer
Brewing Co., Objector.

BY THE DIRECTOR:

On March 4, 1958, I entered Conclusions providing, in effect, that I would grant to Harry Fischman and Leo Fischman an opportunity to sell, within sixty (60) days, their shares of stock in Clinton Distributing Company to bona fide purchasers not connected with The Old Reading Brewery, Inc., and providing further that, if said sale were made, the pending application of Clinton Distributing Company would be reconsidered after it had amended its application and properly readvertised.

On April 9, 1958, the attorney for applicant advised me in writing that Harry Fischman and Leo Fischman have tried to sell said stock but have not yet effected such sale and requested an extension of the sixty-day period allowed for said sale until July 1, 1958. As to the request, the practical difficulty is that all proceedings by an applicant for a transfer of an existing license, including the required readvertising, must be completed before the license expires at midnight on June 30. Under the circumstances appearing herein, I shall extend the time within which said sale may be made until June 18, 1958. If the stock is sold on or before said date, prompt action concerning the amendment of the application and subsequent readvertising will permit completion of the necessary requirements for the transfer of the existing license before the license expires. I shall permit The Old Reading Brewery, Inc. to continue its present type of operation under the license it now holds until midnight June 30, 1958, unless the transfer is granted before that time.

The attorney for applicant has also advised me that The Old Reading Brewery, Inc., within the time required by law, will apply for a renewal of the WL license now held by it. I shall consider such an application on its merits.

WILLIAM HOWE DAVIS
Director.

Dated: April 17, 1958.

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BUNGALOW INN INC.)
Phila. Ave. & Naegele St.)
Egg Harbor City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Common Council of the City of Egg Harbor City.)

Defendant-licensee, by Charles H. Helveston, President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to six minors and permitted the consumption thereof by said minors on its licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that on Wednesday evening, March 19, 1958, six minors, one of whom was 18 years, three 19 years and two 20 years of age, purchased beer at defendant's licensed premises from Charles H. Helveston, who was acting as bartender. The amount of beer consumed, according to statements made by the minors, averaged approximately eight or ten glasses apiece. It further appears that none of the minors was questioned as to his age before service of the beer to him.

Defendant has no prior adjudicated record. The minimum penalty for a sale of alcoholic beverages to an 18-year-old minor is fifteen days. Re Endre and Rinaldi, Bulletin 1133, Item 6. Considering the number of minors involved in the instant case and the quantity of beer sold to and consumed by them, I shall suspend defendant's license for a period of thirty days. Re Potter, Bulletin 1196, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 21st day of April, 1958,

ORDERED that Plenary Retail Consumption License C-1, issued by the Common Council of the City of Egg Harbor City to Bungalow Inn Inc., for premises Phila. Ave. & Naegele St., Egg Harbor City, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. April 28, 1958, and terminating at 3:00 a.m. May 23, 1958.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOSEPH W. SCOTT, JR.
t/a SCOTTY'S TAVERN
E/S Delsea Drive
Franklin Township (Gloucester County)
PO Iona, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Franklin.

Moe A. Joseph, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On Sunday, March 2, 1958, 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., Dennis ---, age 19; in violation of Rule 1 of State Regulation No. 20.

"2. On Sunday, March 2, 1958, you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a 4/5 quart bottle of vodka, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of such beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

The file herein discloses that on Sunday, March 2, 1958, at about 3:00 p.m., Dennis --- (19 years of age) entered defendant's licensed premises and ordered a bottle of vodka from the man tending bar; that the latter told the minor to go around to the rear door where a man (subsequently identified as the defendant-licensee) handed him a 4/5 quart bottle of vodka and accepted payment therefor.

Defendant has no previous adjudicated record. The minimum suspension for sale of alcoholic beverages to a nineteen-year-old minor is fifteen days (Re Russakow Bulletin 1197, Item 5) and the sale of an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, is fifteen days (Re Bell Bar, Inc., Bulletin 1215, Item 9), making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 21st day of April, 1958,

ORDERED that Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Franklin to Joseph W. Scott, Jr., t/a Scotty's Tavern, for premises on E/S Delsea Drive, Franklin Township (Gloucester County), be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. April 28, 1958, and terminating at 3:00 a.m. May 23, 1958.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against
 JULIEN P. JASSOGNE, HARRIET JASSOGNE & LEONIE HOUCKES, a partnership
 t/a SILVER DOLLAR CAFE
 109 Butler Street
 Paterson 4, N. J.,
 Holders of Plenary Retail Consumption License C-254, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS AND ORDER

 Defendant-licensees, by Leonie Houckes, Partner.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On March 19 and 20, 1958, you 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 Regulation No. 20."

The file discloses that on March 19, 1958, at about 11:55 a.m., an ABC agent who was then on defendants' licensed premises placed with Julien P. Jassogne a \$6.00 bet "across the board" on a horse known as Royal Briar. The agent left the premises without disclosing his identity. On March 20, 1958, this agent and another ABC agent entered defendants' premises shortly after noon. Julien (who was acting as bartender) placed \$6.00 on the bar in front of the first agent because Royal Briar had been scratched on the previous day. Shortly thereafter this agent placed with Julien a \$6.00 bet "across the board" on a horse known as High Crest. In accordance with arrangements previously made, two Paterson police detectives and a third ABC agent who had remained outside entered the premises and found the agent's money (previously identified by serial number) and a number of bet slips in the possession of Julien P. Jassogne who stated that he turned all bets over to a man whom he does not know. Jassogne was placed under arrest.

Defendants have no prior record. I shall suspend defendants' license for twenty-five days, which is the minimum penalty now imposed for a violation of this character (Re Narducci, Bulletin 1206, Item 1). Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 14th day of April, 1958,

ORDERED that Plenary Retail Consumption License C-254, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Julien P. Jassogne, Harriet Jassogne & Leonie Houckes, a partnership, t/a Silver Dollar Cafe, for premises 109 Butler Street, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. April 22, 1958, and terminating at 3:00 a.m. May 12, 1958.

WILLIAM HOWE DAVIS
 Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOSEPH DOBROF
6516 Winchester Avenue
Ventnor City, N. J.,

Holder of Plenary Retail Distribution License D-13, issued by the Common Council of the City of Ventnor City.

CONCLUSIONS AND ORDER

Samuel Moskowitz, 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 sold and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

The file discloses that, acting upon information received from an officer of the Ventnor City Police Department, an ABC agent obtained a sworn statement from James --- (17 years of age) wherein he says that on the evening of March 29, 1958, he and four other youths went by automobile to the vicinity of defendant's premises; that he alone entered the premises and purchased one quart of beer from the licensee who did not question him as to his age; that he returned to the car, and that he and the other youths consumed most of the contents of the container of beer. Later James ---, in the presence of the ABC agent, identified defendant as the person who had made the sale to him.

Defendant has no prior record. The minimum penalty for sale to a seventeen-year-old minor is now twenty days (Re Arnts, Bulletin 1183, Item 8). I shall suspend defendant's license for a period of twenty days, less five days for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 15th day of April, 1958,

ORDERED that Plenary Retail Distribution License D-13, issued by the Common Council of the City of Ventnor City to Joseph Dobrof, for premises 6516 Winchester Avenue, Ventnor City, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. April 28, 1958, and terminating at 9:00 a.m. May 13, 1958.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - EMPLOYMENT PERMIT - ENGAGING IN CONDUCT PROHIBITED TO EMPLOYER - PERMIT SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

CAROLE GAGNER
35 East 68th Street
New York City, New York,

CONCLUSIONS
AND ORDER

Holder of Limited Employment Permit No. 903 (for the 1957-58 licensing year) and Limited Employment Permit No. 786 (for the 1958-59 licensing year), issued by the Director of the Division of Alcoholic Beverage Control.)

Carole Gagner, Defendant-permittee, Pro se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On February 21, 22, 26, 27, March 1, 5 and 6, 1958, you, the holder of a limited employment permit for a person failing to qualify as to age in the State of New Jersey, engaged in conduct prohibited to your employer, Holiday Lounge, Inc., holder of a plenary retail consumption license for premises 7051 Hudson Boulevard, North Bergen, New Jersey, by regulations adopted under the Alcoholic Beverage Law, as follows:

"On February 21, 22, 26, 27, March 1, 5 and 6, 1958, you, a female employed on the aforesaid licensed premises of Holiday Lounge, Inc., accepted beverages at the expense of or as a gift from customers and patrons, the allowing, permitting and suffering of which conduct was prohibited to your said employer by Rule 22 of State Regulation No. 20;

"all of which conduct by you was in violation of Rule 12 of State Regulation No. 13."

The facts upon which the charge herein is based are set forth in Re Holiday Lounge, Inc. (Bulletin 1224, Item 9) and disclose that the defendant engaged in the prohibited conduct on all of the dates alleged in the charge except February 21 and 22, 1958.

Defendant has no prior record. I shall suspend her employment permit for fifteen days. Five days will be remitted for the plea, leaving a net suspension of ten days (Re Colabella, Bulletin 1137, Item 5).

Accordingly, it is, on this 14th day of April, 1958,

ORDERED that Limited Employment Permit No. 786, issued by the Director of the Division of Alcoholic Beverage Control to Carole Gagner, 35 East 68th Street, New York City, New York, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. May 21, 1958, and terminating at 9:00 a.m. May 31, 1958.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ABE SOLOMON
t/a MORGANVILLE GEN. STORE
Cor. Old Tennent & Spring Valley Rds.
Marlboro Township
P.O. R.D. 1, Matawan, New Jersey,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-2, issued by the Township Committee of Marlboro Township.

James William Boyle, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that he sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that ABC agents, acting upon information transmitted to this Division by the Keyport Police Department, obtained a signed, sworn statement from Robert --- (age 20) in which he states that on Saturday, February 8, 1958, he and four other minors drove to defendant's licensed premises which he, alone, entered and that he purchased for off-premises consumption five six-pack cartons of beer from Abe Solomon (the licensee herein) who required no written proof of his age. Later he directed the agents to the licensed premises and identified therein the licensee as the person who made the sale. Solomon admitted the infraction but refused to give the agents a signed statement.

Defendant has no prior adjudicated record. The minimum penalty imposed for an unaggravated sale of alcoholic beverages to a twenty-year-old minor is ten days (Re Kownacke, Bulletin 1210, Item 5). However, in view of the quantity of alcoholic beverages sold to the minor, I shall suspend defendant's license for a period of fifteen days (Re Polato, Bulletin 1145, Item 11). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 17th day of April, 1958,

ORDERED that Plenary Retail Distribution License D-2, issued by the Township Committee of Marlboro Township to Abe Solomon, t/a Morganville Gen. Store, for premises at Cor. Old Tennent & Spring Valley Rds., Marlboro Township, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. April 28, 1958, and terminating at 9:00 a.m. May 8, 1958.

WILLIAM HOWE DAVIS
Director.

9. 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)

RAHWAY LIQUOR COMPANY)
t/a NATIONAL LIQUOR STORES)
431 West Grand Avenue)
Rahway, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-8, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway.)
-----)

Rahway Liquor Company, by Alma S. Cree, Treasurer.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold alcoholic beverages 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.

The file herein discloses that on March 26, 1958, Agnes McColgan (a clerk of the defendant-licensee) sold six cans of Linden Light Beer to an agent of this Division for seventy-five cents. The minimum consumer resale price then in effect for said six cans of beer was seventy-eight cents. After the sale was consummated, the agent and another who observed the purchase identified themselves to Joseph LeFlen (manager) and aforementioned clerk who admitted the violation.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of ten days (Re Safeway Stores, Inc., Bulletin 1157, Item 9). 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 April, 1958,

ORDERED that Plenary Retail Distribution License D-8, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway to Rahway Liquor Company, t/a National Liquor Stores, for premises 431 West Grand Avenue, Rahway, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. May 5, 1958, and terminating at 9:00 a.m. May 10, 1958.

WILLIAM HOWE DAVIS
Director.

10.

ACTIVITY REPORT FOR MAY 1958

ARRESTS:

Total number of persons arrested	-----	25
Licensees and employees	----- 20	
Bootleggers	----- 4	
ABC agent impersonator	----- 1	

SEIZURES:

Distilled alcoholic beverages - gallons	-----	.01
Wine - gallons	-----	1.75
Brewed malt alcoholic beverages - gallons	-----	6.82

RETAIL LICENSEES:

Premises inspected	-----	867
Premises where alcoholic beverages were gauged	-----	563
Bottles gauged	-----	9,198
Premises where violations were found	-----	84
Violations found	-----	102

Type of violations found:

Application copy not available	----- 27	Other mercantile business	----- 3
Unqualified employees	----- 20	Disposal permit necessary	----- 3
Prohibited signs	----- 17	Other violations	----- 16
Reg. #38 sign not displayed	----- 16		

STATE LICENSEES:

Premises inspected	-----	26
License applications investigated	-----	19

COMPLAINTS:

Complaints assigned for investigation	-----	433
Investigations completed	-----	412
Investigations pending	-----	146

LABORATORY:

Analyses made	-----	164
Refills from licensed premises - bottles	-----	4
Bottles from unlicensed premises	-----	28

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	-----	11
Persons fingerprinted for non-criminal purposes	-----	242
Identification contacts made with other enforcement agencies	-----	215
Motor vehicle identifications via N. J. State Police teletype	-----	2

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	-----	19	
Violations involved	-----	21	
Sale during prohibited hours	----- 15		
Sale to minors	----- 4		
Sale to non-members by club licensee	----- 1		
Failure to close premises during prohibited hours	----- 1		
Cases instituted at Division	-----	28	
Violations involved	-----	45	
Sale during prohibited hours	----- 9	Employing persons without requisite identification card (local reg.)	----- 2
Sale to minors	----- 7	Possessing contraceptives on premises	----- 1
Permitting lottery activity (numbers, punch board) on premises	----- 5	Sale during license suspension	----- 1
Possessing illicit liquor	----- 4	Hindering investigation	----- 1
Failure to have copy of license application on premises	----- 3	Permitting hostesses on premises	----- 1
Permitting bookmaking on premises	----- 2	Permittee engaging in conduct prohibited to employer	----- 1
Unqualified employees	----- 2	Mislabeling beer taps	----- 1
Failure to close premises during prohibited hours	----- 2	Sale below minimum consumer resale price	----- 1
		Sale to intoxicated persons	----- 1
		Permitting gambling (wagering) on premises	----- 1
Cases brought by municipalities on own initiative and reported to Division	-----	13	
Violations involved	-----	17	
Sale to minors	----- 7	Unqualified employees	----- 1
Permitting brawls on premises	----- 6	Permitting lottery activity on premises	----- 1
Permitting gambling on premises	----- 1	Permitting minors to loiter on premises	----- 1

HEARINGS HELD AT DIVISION:

Total number of hearings held	-----	40	
Appeals	----- 4	Tax revocations	----- 2
Disciplinary proceedings	----- 27	Applications for license	----- 3
Eligibility	----- 4		

STATE LICENSES AND PERMITS ISSUED:

Total number issued	-----	14,654	
Licenses	----- 2	Social affair permits	----- 393
Employment permits	----- 280	Miscellaneous "	----- 417
Solicitors "	----- 22	Transit insignia	----- 12,004
Disposal "	----- 88	Transit certificates	----- 1,448

WILLIAM HOWE DAVIS
DIRECTOR

Dated: June 4, 1958

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

In the Matter of Disciplinary Proceedings against)

FLORENCE WARNER, INC.)
t/a WARNER REXALL DRUGS)
1506 F Street)
Belmar, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-2, issued by the Board of Commissioners of the Borough of Belmar.)

-----)
Anshelewitz & Barr, Esqs., by Bernard A. Kaminsky, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On March 22, 1958, 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., Richard ---, age 19; in violation of Rule 1 of State Regulation No. 20."

The file herein discloses that ABC agents, acting on information received from the Wall Township Police Department, obtained a sworn, written statement dated March 23, 1958 from Richard --- (age 19) wherein he sets forth that on March 22, 1958, at about 7:30 p.m., he visited defendant's licensed premises; that he purchased four six-packs of Rheingold beer from Donald J. Aanensen, the clerk in charge; that prior to said sale the clerk inquired as to his age; that he stated he was 25 years of age; that he displayed a draft card of another which reflected that the person named thereon was over 21 years of age and that the said clerk did not ask him to sign any written representation as to his age (as required by R. S. 33:1-77).

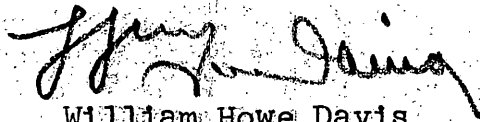
Thereafter, aforesaid minor pointed out the licensed premises to the ABC agents as the place where he obtained the beer and identified the aforementioned clerk as the person who sold the beer to him. The clerk told the agents that he did not remember the minor but admitted that, on the evening of March 22, 1958, he had sold beer to a young man who displayed a card indicating that he was over 21 years of age.

By way of mitigation of penalty, the attorneys for the licensee have submitted a statement setting forth therein that the licensee has a clear record during the nineteen years it has operated the business and that its officers had instructed its clerk to obtain written statements as to age as well as identifications of persons who appear to be minors. The licensee, however, cannot escape the consequences of aforementioned acts of his agent. (Rule 33 of State Regulation No. 20.) Cf. Re Czaplicki, Bulletin 1170, Item 6.

Defendant has no prior adjudicated record. Ordinarily, the penalty imposed for a sale to a 19-year-old minor is fifteen days. Re Russakow, Bulletin 1197, Item 5. However, in view of the circumstances appearing in the instant case, I shall suspend defendant's license for a period of ten days. Re Wine & Game Shop Incorporated, Bulletin 1180, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 21st day of April, 1958,

ORDERED that Plenary Retail Distribution License D-2, issued by the Board of Commissioners of the Borough of Belmar to Florence Warner, Inc., t/a Warner Rexall Drugs, for premises 1506 F Street, Belmar, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. April 28, 1958, and terminating at 9:00 a.m. May 3, 1958.



William Howe Davis
Director.