Director Davis
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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 1051 FEBRUARY 24, 1955.

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STATE OF NEW JERSEY
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1060 Broad Street Newark 2, N. J.

BULLETIN 1051 FEBRUARY 24, 1955.

1. APPELLATE DECISIONS - WINDING RIVER INN, INC. v. DOVER TOWNSHIP. (OCEAN COUNTY).

WINDING RIVER INN, INC.,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DOVER (OCEAN COUNTY),)
Respondent.)

I. V. DiMartino, Esq., Attorney for Appellant.
Percy Camp, Esq., Attorney for Respondent.
Jerome J. Doherty, Esq., appearing for Objectors.

BY THE DIRECTOR:

This is an appeal from respondent's action on September 14, 1954 whereby it denied, unanimously, appellant's application for a person-to-person transfer of the plenary retail consumption license held by Claude Cinelli for premises located on Route 37, Dover Township, Ocean County, N. J.

The sole ground for respondent's action as alleged in the petition of appeal and as appears from the undisputed facts submitted on this appeal was that the proposed transferor, Claude Cinelli, was personally indebted to certain of his creditors.

Respondent's answer sets forth the undisputed fact that said Claude Cinelli is the owner of 98% of the stock of appellant-corporation; that it appeared from a statement made by appellant's attorney that said Claude Cinelli intended to "forthwith sell and dispose of his shares of stock in said corporation as soon as the transfer was granted, which would make it difficult or impossible for the creditors of the present licensee to collect their bills from the present licensee unless he voluntarily paid same." The answer further stated that "The respondent was not seeking to act as a collection agency, but did not feel obliged to aid the present licensee in hindering or making more difficult the collection of monies which may be due to the creditors of the present licensee."

No testimony was taken on the hearing on this appeal. Instead, statements were made by the attorneys for the parties and the objectors. It was agreed that the sole reason for the denial of the person-to-person transfer was that Cinelli, the owner of 98% of the stock of appellant-corporation, was personally indebted to certain persons for matters and things arising out of the conduct of his licensed business. Counsel for respondent stated that "the Township officials were convinced that if this application were granted at that time, where the individual was transferring to a corporation of which he held all the stock, that undoubtedly some of the creditors would be left out in the cold, to say the least."

In Briody and Zinna v. Jersey City et als., Bulletin 879, Item 2, the then Director stated the applicable rule, as follows: "It has

specifically and consistently been held that, where an application is filed for transfer of license, the mere fact that the transferring licensee is indebted to creditors is not a valid objection against granting the transfer," citing Re Rhodes, Bulletin 176, Item 5. See also Ascher v. Asbury Park et al., Bulletin 828, Item 3. Cf. Re Hommell, Bulletin 123, Item 7.

Consequently, since the respondent's sole reason for denying the transfer is unsound, I must find that its said denial was arbitrary and an abuse of discretion. Such action will be reversed.

Accordingly, it is, on this 28th day of January, 1955,

ORDERED that the action of respondent Township Committee in denying appellant's application for transfer of the plenary retail consumption license held by Claude Cinelli for premises on Route 37, Dover Township, Ocean County, N. J., be and the same is hereby reversed and respondent is directed to issue forthwith such transfer.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES UPON LICENSED PREMISES DURING PERIOD OF SUSPENSION OF LICENSE - PRIOR RECORD - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against DAVID CAPLAN 457 Bergen Avenue Jersey City 4, N. J., Holder of Plenary Retail Distribution License D-24, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	CONCLUSIONS AND ORDER

Robert H. Wall, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded not guilty to a charge alleging that on August 14, 1954, while his license was then under suspension for a previous violation, he allowed, permitted and suffered the sale, service and delivery of alcoholic beverages in and upon his licensed premises, contrary to Rule 30 of State Regulations No. 20.

The evidence, none of which is controverted, discloses that the Municipal Board of Alcoholic Beverage Control of Jersey City had suspended the defendant's license for a net period of 35 days upon his confessive plea to a curfew violation and, by resolution, directed that such suspension should commence on July 19, 1954, and terminate on August 23, 1954. Notice of said suspension was given to the defendant by ordinary mail and the evidence is convincing that such notice was received by the defendant and that on August 14, 1954, when his clerk sold six cans of beer to an ABC agent, he was aware that his license was then under suspension until August 23, 1954.

The only issue in this case is whether the aforesaid notice of suspension was served upon the defendant "personally" within the meaning of R.S. 33:1-31 which, in pertinent part, provides that such notice "may be served upon the licensee personally or by mailing the same by registered mail addressed to him at the licensed premises."

In the case of Alexander v. Rekoon, 104 N.J.L. 1 (Sup. Ct. 1927), the statute provided that "the notice provided for shall be served either personally or by forwarding the same to the person to be served by registered mail to the last known post office address of such person." Notice was given by ordinary mail. In holding that the notice was properly given under the statute, the court said (at p. 3):

> "Where a statute provides for personal service of a notice, without requiring it to be made by an official or in a particular mode, the depositing of the notice with an agency of the federal government for the purpose of having it delivered, and the actual delivery thereof by such agency to the person to whom the notice is addressed, constitutes a personal service."

In support of its decision, the court relied upon the case of Wilson v. Trenton, 53 N.J.L. 645 (E. & A. 1891), in which the statutory municipal charter provided that notice of assessments shall be served upon every person whose residence is in the city, and it was held that this provision "must be construed to be personal service." Service was made by leaving the notice with a member of the family. In defining "personal" service, it was said (at p. 648):

> "Personal service, within the meaning of such acts, is to be distinguished, on one hand, from what may be called official service, such as the personal service of a summons in an action at law, which is required to be made by the officer on the defendant in person ***. The service required by this and similar statutes need not be made by an official or in a particular mode; if the required notice is conveyed to the person to be affected thereby, it is sufficient.
>
> "When a question of such service arises in a court of law on the trial of an issue, evidence of actual delivery to the party in person is conclusive proof. But in the absence of such direct evidence, indirect or circumstantial evidence would be admissible, and if it justified a reasonable inference that the notice came to the hands of the party to be affected, would be sufficient proof."

As already appears, I am convinced that the notice herein was actually received by the defendant. Since the statute does not provide for "official" service, or any particular mode thereof, it is clear that the defendant was served "personally" within the intent of R. S. 33:1-31. The principle of the cited cases is particularly applicable to the administration of the liquor laws, as to which our former court of last resort has said: "Meticulous technicalities should not be permitted to thwart so considerable an effort toward keeping a public convenience from becoming a social evil." Hudson Bergen etc. Assn. v. Hoboken, 135 N.J.L. 502, 509 (E. & A. 1947). Our present Supreme Court, in a case involving the failure of the state agency to give the requisite notice of decision under the Unemployment Compensation Act, stated: "Administrative failures or deficiencies cannot be made to serve the interests of one whose substantial rights have not been thereby invaded." Horsman Dolls, Inc. v. Unemployment, etc., of N. J., 7 N. J. 541, 548 (1951). See, also, R. S. 33:1-73, which provides:

> "This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."

I find the defendant guilty as charged.

The only prior proceeding involving the exercise of the privileges of a license during the period of a suspension is Re Kirdzik,

Bulletin 637, Item 2, in which the penalty imposed was a revocation of the license. That case, however, was seriously aggravated by the licensee's attempt to conceal the violation by the filing of false tax reports. While, in my opinion, an outright revocation would be unnecessarily severe in this case, a substantial penalty is indicated, especially when it is considered that, in addition to the aforesaid suspension being served during the occurrence of the instant violation, the defendant had also suffered a ten-day penalty during April 1954 for sales during prohibited hours. Thus, the instant infraction constitutes the defendant's third offense within a period of less than five months.

The license will be suspended for a period of ninety days.

Accordingly, it is, on this 3rd day of February, 1955,

ORDERED that Plenary Retail Distribution License D-24, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to David Caplan, for premises 457 Bergen Avenue, Jersey City, be and the same is hereby suspended for ninety (90) days, commencing at 9:00 a.m. February 10, 1955, and terminating at 9:00 a.m. May 11, 1955.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

THE VILLAGE BARN, INC. OF NEW JERSEY
T/a MIGLIORE'S BAR
1131 Elizabeth Avenue
Elizabeth 4, N. J.,

Holder of Plenary Retail Consumption License C-67, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.

CONCLUSIONS AND ORDER

Green and Yanoff, Esqs., by H. Kermit Green, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) it permitted the sale and consumption of alcoholic beverages on its licensed premises during prohibited hours, in violation of the local ordinance; and (2) through its President, James J. Migliore, it hindered and delayed and caused the hindrance and delay of an investigation by the investigators of the Division of Alcoholic Beverage Control, in violation of R. S. 33:1-35.

The file in the instant case discloses that on Saturday, November 20, 1954, between 3:00 a.m. and 3:23 a.m., in violation of the local ordinance, two ABC agents and other patrons were served divers drinks of alcoholic beverages by a bartender on defendant's licensed premises. At about 3:23 a.m. James J. Migliore, President of defendant corporate-licensee (hereinafter referred to as Migliore)

turned on the interior lights and called out, "Let's go folks, it's late." The agents then made known their identity to him. One of the agents requested Migliore to produce the license application. However, instead of producing the application Migliore tried to persuade the agents to forget the alleged violation and offered them a sum of money for so doing. When the agents persisted in continuing the investigation Migliore became very abusive and directed foul and indecent epithets at them. Furthermore, he threatened to write a letter to the Division of Alcoholic Beverage Control wherein he would falsely accuse the agents of attempting to extort money from him.

Defendant has a prior adjudicated record. Effective February 7, 1951, defendant's license was suspended for a period of ten days by the local issuing authority for sale of alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

Although the offense set forth in Charge (1) is a violation of a local regulation and the offense which resulted in the aforementioned prior suspension of defendant's license, which incidentally occurred within the past five years, is a violation of a State Regulation, both are nevertheless similar and the license will be suspended for thirty days on this charge. Cf. Re Woodland Bar & Grill, Inc., Bulletin 990, Item 4; Re Mekis & O'Shaughnessy, Bulletin 952, Item 6.

As to Charge (2): Hindering involves a type of violation which strikes at the very heart of enforcement and control. Where, as in the instant case, such hindering involves deliberate castigation and deliberate vilification of an enforcement agent coupled with threats of reprisal if the agents performed their honest duties, the minimum penalty should and will be a twenty-day suspension of the license. Cf. A. & J. Cocktail Lounge, Bulletin 1014, Item 8. I shall, therefore, suspend defendant's license on both charges for a period of fifty days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty-five days.

Accordingly, it is, on this 25th day of January, 1955,

ORDERED that Plenary Retail Consumption License C-67, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to The Village Barn, Inc. of New Jersey, t/a Migliore's Bar, 1131 Elizabeth Avenue, Elizabeth, be and the same is hereby suspended for a period of forty-five (45) days, commencing at 2:00 a.m. January 31, 1955, and terminating at 2:00 a.m. March 17, 1955.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against TESSIE N. DISNER and ESTHER GORDON 1478 South 9th Street Camden, N. J., Holders of Plenary Retail Consumption License C-69, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charges:

"1. On October 22 and 27, 1954, 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 Regulations No. 20.

"2. On October 22 and 27, 1954, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20."

The file herein discloses that on October 22, 1954, ABC agents visited defendants' licensed premises wherein they met a "bookie" with whom they placed bets on horses and "numbers" in the presence of the bartender who acquiesced in the selections. On October 27, the agents again visited defendants' tavern and placed a bet on a horse which the bartender predicted was a "sure winner." By prearranged signal another agent accompanied by a local detective entered the licensed premises, revealed their identities and seized from the "bookie", betting slips and paper currency used by the agents in making their bets, the serial numbers of which corresponded with those previously listed by the detective. The bartender, later identified as the husband of one of the licensees, admitted his participation in the violations.

Defendants have a prior adjudicated record. Effective March 1, 1954, their license was suspended for fifteen days by the State Director for a "numbers" violation in which this same bartender participated. Re Disner and Gordon, Bulletin 1004, Item 9. Thus this is a second similar offense within five years in which an employee participated. Following the usual practice in such cases, I shall double the minimum twenty-day penalty and suspend defendants' license for forty days. Re Weiner, Bulletin 1021, Item 4; cf. Re Backhaus, Bulletin 1005, Item 12. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 28th day of January, 1955,

ORDERED that Plenary Retail Consumption License C-69, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Tessie N. Disner and Esther Gordon, 1478 South 9th Street, Camden, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 7:00 a.m. February 7, 1955, and terminating at 7:00 a.m. March 14, 1955.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - UNQUALIFIED EMPLOYEES - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

WM. DeFREITAS, JR. and ELIZA ELLEN DeFREITAS
T/a INLET INN
S/W Cor. Rhode Island & Bay Aves.
Long Beach Township
P O. Beach Haven Crest, N. J.,

Holders of Plenary Retail Consumption License C-3, issued by the Board of Commissioners of the Township of Long Beach.

CONCLUSIONS AND ORDER

William B. Knight, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charges:

"1. On Saturday night, August 14, 1954 and early Sunday morning, August 15, 1954, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that a female entertainer performed in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulations No. 20.

"2. On the occasion aforesaid, you knowingly employed on your licensed premises Donald W. ---, Angelo --- and William ---, minors who had not obtained requisite employment permits from the Director of the Division of Alcoholic Beverage Control; in violation of Rule 3 of State Regulations No. 13."

The file herein discloses that on Saturday night, August 14th, and early Sunday morning, August 15, 1954, three ABC agents visited defendants' licensed premises. At 10:45 p. m. an orchestra composed of four youths ascended the bandstand and commenced to play. At 11:05 a man, acting as Master of Ceremonies, introduced several entertainers. Among those introduced was a female dancer who wore a pink bra, pink skirt and carried a pink parasol. She danced in a slow fashion, swaying her body and twirling the parasol. She then removed her skirt, held it in front of her for a short time, and finally put it aside, at which time she was clad only in a pink bra and a pink feathered "G" string. Thus attired, she executed "bumps and grinds" and assumed positions and performed other movements of her body in such manner as to simulate sexual intercourse. She reappeared and, after removing a white skirt, wore only a white bra and a white tasseled "G" string. She again performed as she had done on the previous appearance. The audience on both occasions became very excited and noisy. Performances such as the one described herein have no place on licensed premises. Re Bajewicz, Bulletin 902, Item 4.

Three of the four musicians comprising the orchestra employed by defendants were minors and, therefore, were ineligible for employment on licensed premises without first obtaining a requisite employment permit from this Division.

Defendants' license was suspended for ten days, effective May 3, 1944, for a false statement in license application. Re DeFreitas, Bulletin 617, Item 9. Because said violation is dissimilar in character to the one now under consideration and occurred more than five years ago, I shall not consider it in fixing the penalty herein. Re Banco and Franceschini, Bulletin 999, Item 7. I shall suspend defendants' license on charge (1) for a period of thirty days (Re Little Cotton Club, Inc., Bulletin 1005, Item 11), and on charge (2) for a period of five days (Re The Aloha, Inc., Bulletin 998, Item 4). Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Investigation discloses that defendants' business is conducted on a seasonal basis and that the premises are now closed. Thus, no effective penalty can be imposed at the present time. The effective dates for the suspension will be fixed by further order which will be entered by me herein after the licensed premises shall have opened for business for the 1955 season. Cf. Re Roesch, Bulletin 966, Item 4.

Accordingly, it is, on this 4th day of February, 1955,

ORDERED that Plenary Retail Consumption License C-3, issued by the Board of Commissioners of the Township of Long Beach to Wm. DeFreitas, Jr. and Eliza Ellen DeFreitas, t/a Inlet Inn, for premises at S/W Cor. Rhode Island & Bay Aves., Long Beach Township, or any further license issued to said Wm. DeFreitas, Jr. and Eliza Ellen DeFreitas, t/a Inlet Inn, or any license issued to any other person for the same premises, be and the same is hereby suspended for a period of thirty (30) days, the time to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - AGGRAVATED CASE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against NICHOLAS GORGO T/a TALK OF THE TOWN E/S Tuckahoe Road, Star Cross Franklin Township (Gloucester County) P. O. Franklinville, N. J., Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of Franklin Township (Gloucester County).	CONCLUSIONS AND ORDER

Ernest L. Alvino, 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 alcoholic beverages to minors and permitted said minors to consume such beverages upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that two ABC agents visited defendant's licensed premises on the night of December 17, 1954; that, at approximately 12:10 a.m., on December 18th, two young male patrons

entered the premises and ordered beer from the bartender who asked them their ages. One of the minors exhibited a driver's license which the bartender examined and returned. The other exhibited a military identification card to the bartender who, after looking at it, remarked that the patron would not be 20 years of age until next July. Nevertheless he served each minor a glass of beer with an admonition to tell the truth.

The agents overheard these remarks and, upon questioning these two patrons, learned that the first one was 20 years of age and had exhibited a driver's license on which his date of birth had been changed so that he would appear to be 22 years of age, while the second one was only 19 years of age, as hereinabove indicated.

Counsel for defendant, in alleged mitigation, states that defendant was not personally present when the violation occurred and that defendant had specifically instructed his bartender to refrain from sales of alcoholic beverages to minors. These factors are neither a defense nor an excuse. Rule 31 of State Regulations No. 20; Re Paton, Bulletin 898, Item 3.

Defendant has no prior adjudicated record. The minimum penalty for an unaggravated offense of this kind involving two minors 19 and 20 years old, respectively, is a suspension of the license for a period of ten days. Re Seaker & Davis, Bulletin 959, Item 9. While the bartender went through the motions of asking the minors for proof of their ages, and while one of them exhibited a driver's license which had been changed to indicate that he was an adult, nevertheless, when the 19-year-old minor exhibited his identification card showing his correct age, the same bartender recognized and commented upon the fact that said minor was not yet even 20 years of age and, despite this knowledge, proceeded to serve him. His entire course of conduct clearly demonstrates that his inquiry with respect to age was merely perfunctory. Under the circumstances I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 31st day of January, 1955,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of Franklin Township (Gloucester County) to Nicholas Gorgo, t/a Talk of the Town, E/S Tuckahoe Road, Star Cross, Franklin Township (Gloucester County), be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a. m. February 7, 1955, and terminating at 3:00 a.m. February 17, 1955.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

CARL TIENKEN
T/a TALLY HO
1478 White Horse Pike
Galloway Township
P.O. R.D. Absecon, N. J.,
Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Galloway.

CONCLUSIONS AND ORDER

Carl Tienken, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered alcoholic beverages to minors and permitted consumption thereof by said minors in his licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that ABC agents obtained signed, sworn statements from David ---, age 17 and Harry ---, age 20, a seaman in the U. S. Navy, relating that, on Saturday night, December 4, 1954, they entered defendant's licensed premises between 9:00 p.m. and 10:00 p.m. and remained until 1:00 a.m. or 1:30 a.m. Sunday, December 5, during which time each consumed approximately fifteen glasses of beer served by the bartender and a barmaid who made no inquiry as to their ages. Harry further related that he was feeling "High" and David stated he was "Drunk" when they departed. The two minors, accompanied by the agents, identified the premises and, therein, Carl Tienken, the licensee, as one of the persons who had served them.

Defendant has no prior adjudicated record. The minimum suspension for a violation of this kind involving a minor 17 years of age is fifteen days. Re Jacobs, Bulletin 995, Item 7. However, considering the amount of alcoholic beverages sold to and consumed by the minors, the fact that they were in the licensed premises for three or four hours, and the resultant effects, I shall suspend defendant's license for twenty-five days. Cf. Re Higgins, Jr., Bulletin 835, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 28th day of January, 1955,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Galloway to Carl Tienken, t/a Tally Ho, 1478 White Horse Pike, Galloway Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 7:00 a.m. February 3, 1955, and terminating at 7:00 a.m. February 23, 1955.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against THE HORSESHOE, INC. T/a HORSESHOE BAR 1268 White Horse Pike Galloway Township P.O. Absecon R.D., N. J., Holder of Plenary Retail Consumption License C-17, issued by the Township Committee of the Township of Galloway.	CONCLUSIONS AND ORDER

The Horseshoe, Inc., by Anna Manuk, 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 minors and permitted consumption thereof by said minors upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that ABC agents obtained signed, sworn statements from David --- (age 17), and Harry --- (age 20), a U. S. Navy Seaman, relating that, at about 1:30 a.m., Sunday, December 5, 1954, they entered defendant's licensed premises where each purchased and consumed several glasses of beer, served by a bar-maid and another woman known as "Pollock Annie," without being questioned as to their ages. Accompanied by the agents, the minors identified the licensed premises and therein Anna Manuk (president of defendant corporate-licensee) as one of the persons who had served them.

Defendant has no prior adjudicated record. However, its predecessor in interest, Anna Manuk, who participated in the instant violation, had her license suspended by the then Commissioner for eighty-two days, effective April 10, 1944, for violations involving immoral activity, hostess activity and sales to intoxicated persons, Re Manuk, Bulletin 612, Item 6; and, effective May 7, 1948, her license was again suspended for twenty days by the same authority for sales to minors, Re Manuk, Bulletin 802, Item 9. The minimum suspension for sale of alcoholic beverages to a minor as young as seventeen years is fifteen days, Re Main Central Hotel and Cafeteria, Inc., Bulletin 990, Item 7. In view of the prior similar record occurring more than five but less than ten years ago (Re Strickland, Bulletin 968, Item 6; Re Candell, Bulletin 973, Item 5), by a predecessor in interest (Re New Glass Bar, Inc., Bulletin 922, Item 4; Re Weinstein and Leventhal, Bulletin 999, Item 4), I shall suspend defendant's license for twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 3rd day of February, 1955,

ORDERED that Plenary Retail Consumption License C-17, issued by the Township Committee of the Township of Galloway to The Horseshoe, Inc., t/a Horseshoe Bar, 1268 White Horse Pike, Galloway Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 7:00 a.m. February 10, 1955, and terminating at 7:00 a.m. February 25, 1955.

WILLIAM HOWE DAVIS
Director.

9. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - APPLICATION FOR RETURN OF MOTOR VEHICLE BY WIFE OF TRANSPORTER DENIED BECAUSE OF FAILURE TO ESTABLISH ACTUAL OWNERSHIP THEREOF AND FAILURE TO OVERCOME PRESUMPTION FROM MARITAL RELATIONSHIP THAT SHE WAS AWARE OF HUSBAND'S ACTIVITIES - MOTOR VEHICLE ORDERED FORFEITED.

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

Irving Rubin, Esq., Attorney for Mrs. Alice Harris.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 71 two-quart jars of alcohol, and a Chevrolet sedan, described in a schedule attached hereto, seized on August 1, 1954 on the northbound lane of the New Jersey Turnpike, in Woodbridge, New Jersey, constitute unlawful property and should be forfeited.

A New Jersey State Trooper halted the Chevrolet sedan at the time and place above mentioned during his routine patrol of traffic on the highway. The motor vehicle was being driven by Charles Harris, husband of Alice Harris, its registered owner. Two other persons were in the car. The trooper discovered the 71 two-quart jars of alcohol in the car, and thereupon seized such alcohol and car. The Division of Alcoholic Beverage Control was notified and the alcohol and car were turned over to its agents.

There was no labe, or stamp indicating the payment of tax on alcoholic beverages, on any of the jars. The contents of one of the jars was analyzed by the Division chemist, who reports that it is an alcoholic beverage containing alcohol and water fit for beverage purposes with an alcoholic content by volume of 46.1 per cent.

Charles Harris gave the officers a signed statement wherein it appears that he left Newark on July 30, 1954, drove to a farm in the vicinity of Richmond, Virginia, and there purchased the alcohol for $198.00, from a person known to him as "Johnnie", whom he had previously met in Highland, New York; "Johnnie" transferred the alcohol from his motor vehicle to the Chevrolet sedan Harris was driving; and that he had purchased bootleg whiskey "back in prohibition time".

When the matter came on for hearing, pursuant to R.S. 33:1-66, Charles Harris and Alice Harris appeared without counsel, and sought return of the Chevrolet sedan. They did not oppose forfeiture of the alcohol.

Reports of ABC agents and other documents in the file, establishing the above recited facts, were admitted into evidence with the consent of Charles Harris and Alice Harris.

The alcohol is illicit because of the absence of any labels or tax stamps on any of the jars. R.S. 33:1-1(i), R.S. 33:1-88. From the manner of its purchase it is obviously bootleg alcohol. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

If the Chevrolet sedan is actually the property of Charles Harris he cannot avoid forfeiture thereof, even if the alcohol was not purchased for resale, because at this late date no one can successfully claim that he purchased bootleg alcohol unaware that he was violating the Alcoholic Beverage Law. Seizure Case No. 8341. On the other hand, if Mrs. Harris is the actual owner of the motor vehicle, she must overcome the presumption arising out of their marital relationship that she knew or should have known of her husband's unlawful alcoholic beverage activities. Seizure Case No. 8682, Bulletin 1045, Item 8. Mr. Harris' background, and the likelihood therefrom that his wife could anticipate his purchase of bootleg alcohol, is the vital issue.

The evidence presented on this score, in gist, is that Charles Harris is a truck driver, with modest earnings. He and his wife own a dwelling and have two roomers. There was no evidence presented that Mr. Harris had ample financial means or was of such good reputation so as to eliminate the possibility that he intended to sell the bootleg alcohol. 71 two-quart jars of alcohol are obviously far in excess of the quantity a person would purchase for personal use, as claimed by Harris.

The venture, as described by Mr. Harris, is that he met a fellow in a truck in Highland, New York, while on vacation, and, during their conversation, discussed the purchase by Harris of bootleg alcohol. Harris met the man two weeks later and purchased the alcohol in question. This was on the trip that resulted in the seizure. He claims that he told his wife he was going to Virginia for the weekend. On the other hand, Mrs. Harris testified that her husband told her he was driving to Baltimore with Mr. White (one of the persons in the car at the time of the seizure), who was to visit his daughter.

Concerning the actual ownership of the car, Mrs. Harris testified that "whatever we had since we were man and wife we had together". She does not drive a car. The purchase price of the car was $2300.00, of which Mr. Harris contributed $1600.00 which he borrowed on his personal note, endorsed by his employer. Mr. Harris testified that the balance of $700.00 was "family money", that some of this money was in a bank, and some in the "post office". Mrs. Harris testified that the car was purchased with $400.00 over and above the loan obtained by her husband, and that she borrowed the $400.00.

The evidence thus presented does not establish that Mrs. Harris is the actual owner of the Chevrolet sedan; on the contrary, Mr. Harris appears to have a substantial, if not the sole, interest therein. Cf. United States v. One 1941 Cadillac Sedan, 145 Fed. 2d 296. Furthermore, such evidence, especially the conflicting versions of what her husband told her when leaving for Virginia, does not overcome the natural presumption that she was aware of, or should have anticipated that her husband would use the car to transport the illicit alcohol.

After the conclusion of the original hearing, counsel for Mrs. Harris requested and was granted a supplemental hearing to afford him an opportunity to more clearly establish the exact transaction concerning the purchase of the motor vehicle, and to establish by independent evidence that the husband was of such outstanding character and so financially independent as to overcome the natural inference arising out of his purchase of a large quantity of moonshine that it was intended for resale.

Mrs. Harris was recalled and merely testified additionally as to her income from renting rooms, but did not produce the records which she claimed she had available to corroborate her alleged income. It did not alter in any way the previous testimony as to the

purchase price of the car, and the source of the moneys used in payment thereof. An attorney of this state testified that he represented Mr. Harris and Mrs. Harris in the sale and purchase of real estate in 1952 and 1953, and that Mr. Harris was of good repute in so far as payment of his obligations was concerned, and that so far as he knew Mr. Harris was a truck driver, and Mrs. Harris conducted a rooming house.

The additional evidence submitted does not alter the net effect of the testimony at the original hearing. It does not establish that Mr. Harris was of such good character and so financially independent as to dispel the inference that he intended to sell the bootleg alcohol. In sum, the picture presented is that of a husband who uses the family car, of which he is the sole owner, or has a substantial interest therein, for the purchase and transportation of bootleg alcohol, by strong inference intended for sale. Under such circumstances the wife cannot recover the car by such slim evidence of ownership, or by professing ignorance of her husband's activities without more definitive proof than she has submitted. The application of Mrs. Harris for return of the Chevrolet sedan is denied for the reason that she has not affirmatively established that she is the owner thereof, and further because she has not affirmatively established that she did not know or have any reason to suspect that Mr. Harris would use it to transport illicit alcoholic beverages.

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

WILLIAM HOWE DAVIS
Director.

Dated: February 2, 1955.

SCHEDULE "A"

71 - two-quart jars of alcohol
1 - Chevrolet sedan, Serial No. C53T, 184737, N. J. Registration EPV 64.

10. STATE LICENSES - NEW APPLICATION FILED.

Beth E. Richards, t/a Freightlines Equipment Co.
231-233 Cliff Street, Scranton, Pennsylvania.
Application filed February 16, 1955 for Transportation License.

WILLIAM HOWE DAVIS
Director.

11. MINIMUM CONSUMER RESALE PRICE PAMPHLET - NOTICE OF PUBLICATION.

The next complete and official publication of minimum consumer resale prices pursuant to Regulations No. 30 will become effective on April 1, 1955. Prices to be listed must be filed with the office of this Division not later than February 20, 1955. It is extremely important to note the following:

1. A listing of minimum consumer resale prices covering every brand and item sold to retailers in this state must be made either by the manufacturer or wholesaler who owns the brands; or a wholesaler who sells the brands and has written authorization from the owner of the brands to file price listings, or by any wholesaler who sells a brand whose owner does not file or is unable to file a schedule or designate an agent for such purposes, provided my approval is obtained for such filing. Each schedule of minimum consumer resale prices submitted by a manufacturer or wholesaler not owning the designated brands must be accompanied by an affidavit certifying that the lister has been authorized to file prices for such designated brands. Note particularly that every wholesaler is not required to file minimum consumer prices.

2. Manufacturers or wholesalers are not required to file a schedule of minimum consumer resale prices for any brand sold exclusively to one New Jersey retailer.

3. Where listers of brands choose to publish a permissive case lot discount of either 5 or 10 per cent, the phrase "Discount of __% permitted on case lot purchases" should be used.

4. True copies of labels or photostats of labels of brands to be listed in the Minimum Consumer Resale Price Pamphlet must be submitted with the schedule of price listings, if such labels have not been previously submitted. (A separate label for each type listed under a brand name and each label must be attached to a separate letterhead.)

5. Price listings may be submitted by letter in the same form as heretofore or, MAY BE CUT FROM THE CURRENTLY EFFECTIVE PAMPHLET, ATTACHED TO YOUR LETTERHEAD, CORRECTED AND SUBMITTED WITH APPROPRIATE INSTRUCTIONS.

NOTE OF CAUTION AND WARNING. Any brand of alcoholic beverage not listed in the minimum consumer resale price pamphlet to become effective April 1, 1955, may not be sold to a New Jersey retailer by any manufacturer or wholesaler on and after April 1, 1955.

Notification of the proportionate share of aggregate expenses involved in the publication of the new complete Minimum Consumer Resale Price Pamphlet will be made to participating listers as soon as the pamphlet is mailed to all retail licensees.

WILLIAM HOWE DAVIS
Director.

Dated: February 1, 1955.

12. DISQUALIFICATION - PRIOR APPLICATION DENIED - FIVE YEARS' GOOD CONDUCT - APPLICATION TO LIFT GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 1201.

CONCLUSIONS AND ORDER

BY THE DIRECTOR:

On September 17, 1947, applicant pleaded non vult to charges of issuing a series of seven checks with intent to defraud, and renting a motor vehicle with intent to defraud. He was sentenced by a Judge of the Court of Quarter Sessions to a term of six months in a county prison, from which he was released on March 9, 1948. The aforesaid crimes involve moral turpitude and preclude applicant from engaging in the alcoholic beverage industry in this State, unless and until his disqualification is removed.

On March 11, 1953, applicant filed a petition to have his disqualification removed and at a hearing held on March 30, 1953, applicant testified to the aforesaid conviction and to the fact that he had been employed on licensed premises on two occasions since 1948. However, an investigation by ABC agents disclosed that on August 15, 1950, applicant, then employed as a bartender, signed a fictitious name on a retail inspection report of the licensed premises, to avoid detection. In view of this attempt to perpetrate a fraud upon this Division, the then Director denied applicant's petition.

On January 2, 1955, applicant again filed a petition for removal of his disqualification and at the hearing held on January 31, 1955, he further testified that he is 39 years of age, is seasonally employed and that he has difficulty in supporting his wife and five minor children; that he has not been convicted of any crime since 1947 and has had no difficulty with the law; that he has had no connection with the alcoholic beverage industry since 1950 and now desires his disqualification removed so that he can accept employment as a bartender to implement his earnings. The Police Department of the city in which applicant resides reports no complaints or investigations presently pending against him.

Three witnesses (an electrician, a Standard Oil foreman and an insurance adjuster) appeared on behalf of applicant and testified as to their acquaintance with him ranging from seven to thirty years and respecting his good reputation in his community for more than five years last past.

While I ordinarily would be reluctant to remove applicant's disqualification prior to August 15, 1955, because of the deception practiced by him, heretofore referred to, I am mindful of the seriousness of his plight in being unable to support his large family adequately at the present time and I do not wish to add to his burdens.

Considering all the circumstances of this case, I am satisfied that applicant's association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 4th day of February, 1955,

ORDERED that petitioner's statutory disqualification, because of the conviction described herein, be and the same is hereby removed in accordance with the provisions of R. S. 33:1-31.2.

William Howe Davis
Director