

BULLETIN 1208

February 24, 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 1208

February 24, 1958

1. APPELLATE DECISIONS - JOHN AZZOLINA & SONS v. MIDDLETOWN
TOWNSHIP AND DORAN.

JOHN AZZOLINA & SONS, a corpora-)
tion of the State of New Jersey,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF MIDDLETOWN, and LEROY DORAN and)
MILDRED DORAN, trading as WHITE)
HOUSE,)

Respondents.)

Abramoff & Price, Esqs., by Milton Abramoff, Esq., Attorneys
for Appellant.

Roberts, Pillsbury & Carton, Esqs., by Lawrence A. Carton, Jr.,
Esq., Attorneys for Respondent Township Committee.

Parsons, Labrecque, Canzona & Combs, Esqs., by John T. Grause,
Esq., Attorneys for Respondents Leroy Doran and Mildred Doran.

Samuel Moskowitz, Esq., Attorney for New Jersey Retail Liquor
Stores Assn., Objector.

Edward A. Costigan, Esq., Attorney for United Tavern Owners
Assn.; Monmouth Tavern Owners Assn., and Middletown Township
Assn., Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Town-
ship Committee whereby it denied an application to transfer a
plenary retail consumption license (with broad package privilege)
from Leroy Doran and Mildred Doran to appellant and from premises
at Seabrook and Wilson Avenues to premises to be erected at State
Highway 35 and Mountain Hill Road, Township of Middletown.

"The proposed transferors of the license (namely, Leroy
Doran and Mildred Doran) are neither necessary nor proper parties
to this appeal. Livingston Land Corp. v. Livingston et al.,
Bulletin 1136, Item 3.

"At a meeting held on August 14, 1957, respondent Town-
ship Committee denied appellant's application for transfer for
the stated reason that 'they had not shown public necessity and
need for the same.' At said meeting two attorneys representing
liquor dealers associations and three retail licensees spoke in
opposition to the transfer, and a petition signed by six prop-
erty owners who favored the transfer of the license was presented
to the Township Committee.

"Appellant alleges herein that the action of the Town-
ship Committee in denying the transfer was erroneous because no
proper proof was adduced which would support a denial of the
application and because the action of the issuing authority was
arbitrary and unreasonable.

"It appears from the evidence herein that the Township
of Middletown has an area of thirty-eight square miles and

includes numerous sections bearing local names; that the premises for which the Doran license has been issued are located in a section known as Port Monmouth and that the premises to which appellant seeks to transfer the license are located in a section known as Middletown; that there are other sections of the Township known locally as East Keansburg and Belford; that, during recent years, the entire Township has experienced a phenomenal growth with an increase in population from about 16,000, according to the 1950 Federal census, to about 33,000 at the present time, and that the growth in population of the Port Monmouth section has been much smaller than the growth in population of the Middletown section.

"At the hearing held herein Joseph Azzolina (president of appellant corporation) testified that appellant corporation seeks a transfer of the license to a building to be erected on State Highway 35 at the intersection of Mountain Hill Road; that said building will adjoin a supermarket known as the Food Circus which is operated by another corporation controlled by him and members of his family. He further testified that appellant intends to sell package goods only and that numerous customers of the Food Circus 'have asked why we do not sell liquor.' Mr. Azzolina further testified that during the past three or four years approximately 2,400 new homes have been erected within a radius of one and one-half miles of this supermarket; that the town hall, the post office, the bank and a number of office buildings are located only a short distance from the supermarket, and that the Doran premises are located near a swamp area. On behalf of appellant twelve residents of the Township testified that it would be convenient for them to obtain their alcoholic beverages while shopping at the Food Circus but their testimony is somewhat weakened by the fact that only one of these witnesses resides within a half-mile of the Food Circus and that all of the other witnesses reside more than a mile away. Two persons who reside near Doran's licensed premises stated that they had no objection to the transfer of the license.

"On behalf of respondent Township Committee, Crawford Compton, who has resided in the Township all of his life and who has been a Township Committeeman for more than eight years, testified that the Doran license has been issued for a frame building which has been a licensed building as long as he can remember, and that said building is located near Port Monmouth Road, a heavily traveled road leading from East Keansburg to Belford; that the Port Monmouth section in which Doran's premises are located has a year-round population of approximately 2,500 which is increased by approximately 700 during the summer months. Mr. Compton further testified that at one time there were three licenses for premises in the Port Monmouth section; that one of these licenses ceased to operate many years ago, and that the license for another of these premises was transferred a few years ago to other premises on State Highway 35, so that at the present time the Doran license is the only license existing in the Port Monmouth section of the Township. Mr. Compton further testified that the members of the Township Committee felt that there was need for a license in the Port Monmouth section; that they felt that there are sufficient licenses on State Highway 35 and that it would not be in the public interest to grant the pending application for transfer. He further testified that, in his opinion, there is need for additional plenary retail distribution licenses in the Township, but that the Township Committee could not issue any additional distribution licenses until after the 1960 Federal census because of the State-wide limitation law, and that 'We can't rob one

community of everything they have got and transfer it over to another place just because there is a necessity there.' Township Committeeman John T. Lawley substantially corroborated the testimony of Committeeman Compton. Peter Andros (who holds a plenary retail consumption license for premises on Route 35) and Arthur Soden (who holds a plenary retail distribution license for premises on Route 35) testified that in their opinion there is no need for an additional license on said Highway.

"It further appears from the evidence that appellant seeks a transfer of the license a distance of approximately three and one-half miles from the Port Mommouth section to the Middletown section of the Township; that at the present time the total number of licensed places on that portion of Highway 35 which passes through the Township is seven, including two places for which plenary retail distribution licenses have been issued and which are located, respectively, about one and one-quarter and one and one-half miles south of the Food Circus, and two premises for which plenary retail consumption licenses have been issued and located, respectively, about one-half mile and one mile north of the Food Circus.

"A transfer of a liquor license is not an inherent or automatic right. An issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. VanSchoick v. Howell, Bulletin 120, Item 6. It has been determined that, where there is evidence to support respondent's conclusion that there are already a sufficient number of licenses in the vicinity to which the transfer is sought, the denial of the application for transfer was not an unreasonable exercise of the discretionary power vested in the issuing authority. Visidor Corp. v. Cliffside Park, Bulletin 1195, Item 1, and cases therein cited. I conclude that there was such evidence in this case. However, in his brief filed herein, the attorney for appellant argues that the testimony of Committeeman Compton, wherein he expressed the opinion that there is need for additional distribution licenses in the Township, indicates a need for an additional license at appellant's proposed premises. This does not necessarily follow but, in any event, it has also been decided that, where there is evidence to support respondent's conclusion that the transfer would disturb the proper geographical distribution of licenses in the municipality, the denial of the transfer was not an unreasonable exercise of the discretionary power vested in the issuing authority. Cf. Sadovsky v. Millstone, Bulletin 120, Item 4; Skeba v. Millstone, Bulletin 274, Item 1; National Liquor Co. v. Metuchen, Bulletin 1167, Item 2. On appeal from denial, the burden is on appellant to show that respondent abused its discretion. Rule 6 of State Regulation No. 15.

"After considering all the evidence and the excellent briefs submitted by the attorney for appellant and attorney for respondent Township Committee, I conclude that appellant has not sustained the burden of proof in establishing that the action of respondent Township Committee was erroneous and, therefore, recommend that an order be entered affirming said action and dismissing the appeal."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for appellant, pursuant to Rule 14 of State Regulation No. 15. The attorneys for respondent Township Committee filed answering argument thereto.

After carefully considering the entire record, including the transcript of testimony, the exceptions and

written arguments, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein. Hence I shall affirm the action of respondent Township Committee.

Accordingly, it is, on this 16th day of January, 1958,

ORDERED that the action of respondent Township Committee 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 - BILOW, INC. v. MIDDLETOWN TOWNSHIP.

BILOW, INC., A corp. of)
New Jersey,)
Appellant,)

-vs-

ON APPEAL
O R D E R

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF MIDDLETOWN, and WILLIAM C. GENTES)
and LORETTA MARY GENTES, t/a LEONARDO)
BAR AND GRILL,)
Respondents.)

Israel H. Saltman, Esq., Attorney for Appellant.
Roberts, Pillsbury & Carton, Esqs., by Lawrence A. Carton, Jr.,
Esq., Attorneys for Respondent Township Committee.
Samuel Moskowitz, Esq., Attorney for New Jersey Retail Liquor
Stores Assn., Objector.
Edward A. Costigan, Esq., Attorney for United Tavern Owners
Assn.; Monmouth Tavern Owners Assn. and Middletown Township
Assn., Objectors.

BY THE DIRECTOR:

The above appeal was filed from the action of respondent Township Committee whereby it denied an application to transfer a plenary retail consumption license (without the broad package privilege) from William C. Gentes and Loretta Mary Gentes to appellant and from 36 Center Avenue, Leonardo, to State Highway Route 35 corner of Middletown Road, Middletown, both in the Township of Middletown.

The proposed transferors of the license (William C. Gentes and Loretta Mary Gentes) are neither necessary nor proper parties to this appeal. Livingston Land Corp. v. Livingston et al., Bulletin 1136, Item 3.

The appeal was heard on October 1, 1957. After the Hearer's Report recommending entry of an order affirming the action of respondent Township Committee was entered herein, and after exceptions thereto and answering argument were submitted to me, the attorney for appellant advised me, in writing, that his client desired to withdraw the appeal. No reason appearing to the contrary,

It is, on this 16th day of January, 1958,

ORDERED that the above appeal be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - BILOW, INC. v. WALL TOWNSHIP.

BILOW, INC.,)

Appellant,)

-vs-)

ON APPEAL
O R D E R

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WALL,)

Respondent.)
-----)

Israel H. Saltman, Esq., Attorney for Appellant.
Mirne and Nowels, Esqs., by William C. Nowels, Esq., Attorneys
for Respondent.

Edward A. Costigan, Esq., Attorney for Objectors Thomas F.
Seery, Mary J. Seery, Manasquan-Shark River Retail
Licensed Beverage Assn., United Tavern Owners Assn.,
and Monmouth County Retail Liquor Stores Assn.

Samuel Moskowitz, Esq., Attorney for Objector New Jersey
Retail Liquor Stores Assn.

BY THE DIRECTOR:

The above appeal was filed from the action of respon-
dent whereby it denied an application to transfer Plenary
Retail Consumption License C-9 (without the broad package
privilege) from Walter and Beatrice A. Stock, t/a Hillside
Tavern, to appellant and from premises on Remsen Mill Road
to premises at the corner of State Highway #35 and Route 524,
Wall Township.

The appeal was heard on November 6, 1957. After the
Hearer's Report recommending entry of an order affirming
respondent's action was filed herein, and after exceptions
thereto and answering argument were submitted to me, the
attorney for appellant advised me, in writing, that his client
desired to withdraw the appeal. No reason appearing to the
contrary,

It is, on this 16th day of January, 1958,

ORDERED that the above appeal be and the same is hereby
dismissed.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary)
Proceedings against)

WILLARD C. SAUNDERS)
T/a SAXTON FALLS INN)
Hackettstown Waterloo Road)
Allamuchy Township)
PO Stanhope, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-2, issued by the)
Township Committee of Allamuchy)
Township.)

Willard C. Saunders, Defendant-licensee, Pro se.
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, served and delivered alcoholic beverages to two minors in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that ABC agents, acting upon information received from a New Jersey State Trooper stationed at the Washington Police Barracks located in Mansfield Township, obtained sworn, written statements dated December 14, 1957, from Theodore --- (age 18), Aris --- (age 19) and Richard --- (age 17), the substance of which is that on December 13, 1957, at about 8:45 p.m., Theodore and Aris entered defendant's licensed premises while Richard remained seated in a car parked nearby; that Theodore and Aris purchased two cases of Schaefer beer and potato chips from the licensee, who did not ask either boy his age or require either of them to sign any written representation thereof; and that the boys carried the beer and potato chips to the car and drove to Richard's home where they consumed some of the beer.

On December 14, 1957, the three boys directed ABC agents to defendant's licensed premises, which they identified from the exterior as the place where Theodore and Aris had purchased the beer, and the two last mentioned boys entered the tavern with the agents and identified the licensee as the person who sold them the beer.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days (Re Longo, Bulletin 1199, Item 8). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 7th day of January, 1958,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of Allamuchy Township to Willard C. Saunders, t/a Saxton Falls Inn, for premises on Hackettstown Waterloo Road, Allamuchy Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. January 20, 1958, and terminating at 2:00 a.m. January 30, 1958.

WILLIAM HOWE DAVIS
Director.

5. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED SALE OF ALCOHOLIC BEVERAGES - STOCK OF ALCOHOLIC BEVERAGES INTENDED FOR SUCH SALE ORDERED FORFEITED.

In the Matter of the Seizure on)	Case No. 9279
September 1, 1956 of a quantity)	
of alcoholic beverages on premises)	
known as Villa Rivera occupied by)	On Hearing
Adolfo Rivera, located on Route)	
#528, Cassville, Jackson Township,)	CONCLUSIONS and ORDER
County of Ocean and State of)	
New Jersey.)	

Walter Fox, Esq., Attorney for Adolfo Rivera and Maria Rivera.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether a quantity of alcoholic beverages, as described in a schedule attached hereto, seized on September 1, 1956 on premises known as Villa Rivera, occupied by Adolfo Rivera, located on Route #528, Cassville, Jackson Township, New Jersey constitute unlawful property and should be forfeited.

"Adolfo Rivera and his wife, Maria Rivera, appeared at such hearing and sought return of the alcoholic beverages.

"The substance of testimony of ABC agents is as follows:

"On August 26, 1956 an ABC agent and a companion entered the above mentioned premises on which there were four buildings -- a main house, which appeared to be occupied as living quarters; a one-story frame building directly behind the main house, a shed in the rear of the last-mentioned building, and another small building near the shed. The agent entered the one-story building, where he observed Adolfo Rivera, and another man drinking beer. A long table, a refrigerator and a stove were in this room. The agent asked Mr. Rivera for two cans of beer, who handed the beer to the agent and accepted payment therefor. The agent and his companion consumed the beer, and then the agent purchased two more cans of beer from Mr. Rivera. In all, the agent remained in the building for about a half-hour and then left without revealing his identity.

"The agent returned to the premises on August 31st with the same companion, entered the one-story building, where Mr. Rivera was present. The agent purchased two cans of beer from him, which he obtained from the refrigerator. The agent then left the premises without revealing his identity.

"On the next day, the agent obtained a search warrant for the premises which other agents and state troopers executed on that date. The first agent arrived after the other agents and troopers and identified Mr. Rivera, who was then in the main house, as the person who sold him beer on the two occasions.

"The agents seized 132 cans of beer, some in the

refrigerator and others nearby, a case of 48 cans and a case of 24 cans of beer and four 4/5 quarts of whiskey, which were in the one-story building and three gallons of wine and 25 cases of beer (24 cans to a case) in the shed.

"Adolfo Rivera did not hold any license authorizing him to sell alcoholic beverages and the premises were not licensed for that purpose. The alcoholic beverages were seized on September 1st, apparently on the presumption that they were intended to be sold without a license. See Seizure Case No. 7460, Bulletin 854, Item 1 and cases cited therein.

"Adolfo Rivera denies that he sold beer to the agent on either occasion, and both he and his wife contend that, in any event, all of the alcoholic beverages seized on September 1 were specifically purchased by her for a family picnic on Labor Day weekend, conducted under her auspices, and for which various persons contributed money towards their purchase, to be consumed at such picnic.

"Mr. Rivera testified that he has never seen, not even on the night of the raid, the agent who confronted him at the hearing, and testified that he had purchased beer from Rivera. He denies that he sold any beer at the premises.

"Maria Rivera gives the following account of her purchase of the seized alcoholic beverages and their intended use:

"It has been her custom to hold picnics at the premises on holidays such as Decoration Day, July 4th and Labor Day for an intimate group of persons. Such persons are, for the most part, residents of New York City and some are local residents related to her. She contacts members of the group in advance and each contributes whatever they can afford, usually \$5.00, \$6.00 or \$7.00. With the proceeds she purchases food and alcoholic beverages of her selection, prepares and serves the food and drink, and arranges for bus accommodations. Usually 80 or 85 persons are transported by bus from New York to her premises. She presented documents evidencing the hire by her of one bus for such purpose on May 12, 1955, two busses on June 21, 1956 and one bus on August 31, 1956. Whenever she has a picnic, '---they give me money, and they have the beer and the whiskey when they come over'. Such was her arrangement for the Labor Day weekend picnic, for which she purchased the seized alcoholic beverages, which she had delivered to the premises on Saturday afternoon, September 1st.

"Whatever is left, there is people that stay over for the following day due to the fact there is a holiday and they eat whatever is left,' and she utilizes the balance, including alcoholic beverages. If there is any money left over she keeps it for her work and for her family. There is always some money left over.

"Counsel for Adolfo Rivera and Maria Rivera has submitted a brief which in substance presents the contention that there is no preponderance of proof to establish that Adolfo Rivera sold beer to the agent, and that it is clear that the seized alcoholic beverages bore no relation to any alleged sales of beer by Adolfo Rivera.

"The detailed account by the agent of his purchase of beer from Rivera is not overcome by a mere blanket denial by

Adolfo Rivera that he has ever seen the agent. Moreover, although it is not a controlling factor because seizure proceedings require merely a preponderance of the evidence, while criminal proceedings require proof beyond a reasonable doubt, counsel for Adolfo Rivera has recently advised that on November 21, 1957, Adolfo Rivera was convicted by a jury in the local criminal court for unlawful sale of beer on August 26th and 31st, although he was acquitted on the charge of possessing alcoholic beverages for intended unlawful sale.

"Even though it is likely that some part of the seized alcoholic beverages would be sold after the picnic, it is not necessary to rest forfeiture solely on that ground, since the sale of alcoholic beverages at the premises in the manner described is unlawful, and subjects the alcoholic beverages to forfeiture.

"It is axiomatic that the service of alcoholic beverages at a function other than wholly gratuitous is unlawful unless authorized by an appropriate permit or license. Where persons are required to pay a fee to participate in refreshments, including alcoholic beverages, such alcoholic beverages are not really served free of charge. Re Tomoney, Bulletin 341, Item 11. The service of alcoholic beverages must be absolutely gratuitous in every respect and no fee may be charged directly or indirectly, by way of admission, assessment or other debit. Re Dog House Club of Springfield, Bulletin 342, Item 2. Where there is a charge of any kind, as for food or other refreshments, and beer will be served, it is necessary that a permit or license be obtained. The reason is that if a person has to pay anything, regardless of what the payment is supposed to be for, before he can get beer, then it is a sale in contemplation of the Alcoholic Beverage Law. Re Reilly, Bulletin 348, Item 10.

"Special social permits are issuable to bona fide mutual associations for the purpose of allowing them to sell alcoholic beverages for a limited time, as an incident to their general social activities, but not to individual promoters or business enterprises to exploit liquor for commercial advantage or private gain. Re Michaëls, Bulletin 231, Item 4.

"This construction of the law has been steadfastly maintained up to the present time. Hence, even accepting, at full face value, Mrs. Rivera's description of her practice in sponsoring picnics at her premises, it is clear that the sale of alcoholic beverages by her at such affairs was unlawful in the past and would be unlawful in the future since she could not obtain a social permit for such functions for the reasons above stated. On the statement of facts presented by Mrs. Rivera the seized alcoholic beverages were intended for unlawful sale and are subject to forfeiture as illicit alcoholic beverages. R.S. 33:1-1(i) and (y), R.S. 33:1-2, R.S. 33:1-66.

"I recommend that the alcoholic beverages seized in this matter be forfeited."

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended Conclusions in the Hearer's Report and I adopt them as my Conclusions herein.

Accordingly, it is DETERMINED and ORDERED that the

alcoholic beverages, more fully described in Schedule "A" attached hereto constitutes unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66 and that they 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: December 30, 1957.

SCHEDULE "A"

- 804 - cans of beer
- 3 - gallons of wine
- 4 - bottles of whiskey

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

In the Matter of Disciplinary Proceedings against
 Holiday Beverages, Inc.
 699 So. Orange Avenue
 Newark 6, New Jersey
 Holder of Plenary Retail Distribution License D-61, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
AND ORDER

 Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, 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 a charge alleging that it sold an alcoholic beverage at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulation No. 30.

The file herein discloses that at about 1:45 p.m., Wednesday, October 23, 1957, an ABC agent entered defendant's licensed premises and held a conversation concerning imported brandy with the clerk, later identified as James W. Strain. This conversation was overheard by another agent who was in the premises. The first agent noticed a bottle of Remy Martin V.S.O.P. Brand Cognac Brandy on the shelf with the price tag of \$8.43 underneath the bottle, and asked Strain if such was the price. Receiving an affirmative answer, the agent told Strain that he would purchase the bottle, whereupon Strain took the brandy from the shelf, placed it in a bag, received payment of \$8.43 therefor, stapled a cash register receipt in that amount to the bag and handed the bag with the bottle of brandy to the agent.

The agent proceeded towards that part of the super

market where other agents were stationed and all of such agents then returned to the area licensed for the sale of alcoholic beverages. There they revealed their identities to Strain who verbally admitted the sale of brandy to the agent at the above-mentioned price, and stated that he did not realize it was below the minimum price. The minimum consumer listed resale price then in effect for the brandy in question was \$8.89.

Defendant has no prior adjudicated record. However, it appears that a different corporate-licensee, Holiday Liquors, Inc., holder of a license for premises 207 Morris Avenue, Union, New Jersey, had its license suspended by the Director for five days effective November 28, 1955 for a similar violation. Re Holiday Liquors, Inc., Bulletin 1090, Item 11. The decision in that case discloses that Dorothy Antelmann, a clerk, made the below minimum sale and that Martin Berlin was president of such corporate-licensee. Martin Berlin is the holder of ten of the thirty shares issued by the corporate-licensee presently involved.

The basic reason underlying the imposition of an additional penalty against a corporate-licensee whose stockholder or officer had a like interest in different corporate-licensee whose license was previously suspended is that the principal stockholder or officer is substantially the same in each corporation. In some cases the common stockholder personally committed the violation or violations. Re Ralph & John's Tavern, Inc., Bulletin 1094, Item 4; Re Blackwood Corporation, Bulletin 1130, Item 2, and Re Nehoc Hotel Management Corp., Bulletin 1170, Item 5. In the instant case, the common stockholder did not personally participate in either violation. He holds but a third interest in Holiday Beverages, Inc. Two other shareholders who did not personally commit the violation hold a two-thirds interest in Holiday Beverages, Inc. Under such circumstances, it would be manifestly unfair to penalize such stockholders additionally for the previous violation committed by Holiday Liquors, Inc. at other premises.

I shall suspend defendant's license for the minimum period of ten days and remit five days for the plea entered herein, leaving a net suspension of five days. Re Salamandra Liquor Store, Inc., Bulletin 1196, Item 8.

Accordingly, it is, on this 30th day of December, 1957,

ORDERED that plenary retail distribution license D-61, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Holiday Beverages, Inc., for premises 699 South Orange Avenue, Newark, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m., January 6, 1958, and terminating at 9:00 a.m., January 11, 1958.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against)
)
 Nehoc Hotel Management Corp.,)
 t/a Clarendon Hotel)
 705 Madison Avenue)
 Lakewood, New Jersey)

Holder of Plenary Retail Consumption License C-36 (for the 1956-57 and 1957-58 licensing years), issued by the Township Committee of the Township of Lakewood.)

ORDER

BY THE DIRECTOR:

On April 23, 1957, I suspended defendant's license for twenty-five (25) days. Because defendant's premises usually close on or about May 1, the order provided that the effective dates for said suspension would be fixed by a further order which would be entered after the licensed premises reopened for the 1957-58 season. See Bulletin 1170, Item 5.

It appearing that defendant has obtained a renewal of its license for the 1957-58 licensing year, and an investigation having satisfied me that said premises are now open for business,

It is, on this 6th day of January, 1958,

ORDERED that plenary retail consumption license C-36 (for the 1957-58 licensing year), issued by the Township Committee of the Township of Lakewood to Nehoc Hotel Management Corp., t/a Clarendon Hotel, for premises 705 Madison Avenue, Lakewood, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. January 20, 1958, and terminating at 2 a.m. February 14, 1958.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 Jane R. Pfeiffer)
 t/a Jen's Inn)
 100 Billingsport Road)
 Paulsboro, New Jersey)

Holder of Plenary Retail Consumption License C-16, issued by the Borough Council of the Borough of Paulsboro.)

CONCLUSIONS
AND ORDER

Jane R. Pfeiffer, Defendant-Licensee, Pro se.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that

she possessed on her licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

The file herein discloses that on September 30, 1957, an ABC agent, while testing the licensee's opened bottles of alcoholic beverages, seized a number of bottles, including one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky 90.4 Proof", when the contents of the bottles appeared to be off in proof and color. Subsequent analysis made by the Division's chemist disclosed that the contents of a bottle labeled "Canadian Club Whisky" were low in proof and high in acids and solids when compared with the contents of genuine bottles of said item. In attempted mitigation defendant alleges that she did not tamper with the contents of said bottle, but it is well established that a licensee is responsible where a bottle containing a label which does not truly describe its contents is found upon the licensed premises. Re Miller, Bulletin 1180, Item 2.

Defendant has a prior adjudicated record. Effective March 18, 1936, the local issuing authority suspended her license for fifteen days for sale during prohibited hours, and effective October 23, 1950, the local issuing authority suspended her license for one day for a similar violation. However, since these dissimilar violations occurred more than five years ago, they will not be considered in fixing penalty in this case. The minimum penalty imposed for a violation similar to that charged herein is fifteen days (Re Roman, Bulletin 1156, Item 6; Re Miller, supra). I shall suspend defendant's license for fifteen days, and remit five days for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 8th day of January, 1958,

ORDERED that plenary retail consumption license C-16, issued by the Borough Council of the Borough of Paulsboro to Jane R. Pfeiffer, t/a Jen's Inn, for premises 100 Billingsport Road, Paulsboro, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. January 20, 1958, and terminating at 2 a.m. January 30, 1958.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBERS - PRIOR RECORD - LICENSE SUSPENDED FOR TWENTY DAYS LESS FIVE FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Bayonne Post #19, American Legion)
683 Broadway)
Bayonne, New Jersey)

CONCLUSIONS AND ORDER

Holder of Club License CB-157,)
issued by the Director of the)
Division of Alcoholic Beverage)
Control.)

Defendant-licensee, by Harold H. McCabe, Commander.
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to the following charge:

"On Saturday, November 16, 1957, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to persons not bona fide members of your club or bona fide guests of any such members; in violation of Rule 8 of State Regulation No. 7."

The file herein discloses that on Saturday, November 16, 1957, at about 12:35 a.m., an ABC agent, followed shortly by two other ABC agents, entered the defendant's licensed premises wherein they each purchased and consumed several bottles of beer, served to them by Robert J. Boyle, the bartender. Boyle did not inquire of the agents if they were members or bona fide guests of members of said club. At about 1:15 a.m. the agents (non-members) identified themselves to Boyle, informed him of the nature of aforesaid violation, and Boyle verbally admitted making aforesaid sales of beer to the agents.

Defendant has a prior adjudicated record. Effective March 29, 1954, the Director suspended defendant's license for ten days for an "hours" violation (cf. Bulletin 1007, Item 8). The minimum suspension for a sale by a club to non-members or bona fide guests of members is fifteen days. Re Morganville Independent Club, Bulletin 1199, Item 1. Because of the prior dissimilar violation within the past five years, I shall suspend defendant's license for twenty days (Re Harbor Inn, Inc. Bulletin 1199, Item 3). Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 13th day of January 1958,

ORDERED that club license CE-157, issued by the Director of the Division of Alcoholic Beverage Control to Bayonne Post #19, American Legion, for premises 683 Broadway, Bayonne, be

and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., January 20, 1958 and terminating at 2:00 a.m., February 4, 1958.

WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR FIVE DAYS LESS TWO FOR PLEA.

In the Matter of Disciplinary Proceedings against

Katherine Kraska
12 Wallington Avenue
Wallington, N. J.

)
)
) CONCLUSIONS
) AND ORDER

Holder of Plenary Retail Consumption License C-19, issued by the Mayor and Council of the Borough of Wallington.

Katherine Kraska, Defendant-licensee, Pro se.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that she 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 August 21, 1957, a bartender on duty at the defendant's licensed premises, sold three cans of Schaefer beer to an ABC agent for 55¢. The minimum consumer resale price then in effect for one can of Schaefer beer was 19¢ and, hence, the minimum price of three cans was 57¢. After the sale was consummated, the agent and another who accompanied him, identified themselves to the bartender who admitted the sale.

In mitigation of penalty, the defendant urges that she was aware that a pack of six cans of the brand of beer in question was \$1.10 and was of the opinion three cans might be sold for 55¢. Furthermore, she never intended to violate the regulation.

Defendant has no prior adjudicated record. Ordinarily, the minimum penalty for the type of violation now under consideration is ten days. However, I am satisfied that the defendant's claim in mitigation of penalty has some merit. I shall, therefore, suspend defendant's license for five days (Re Chmielowiec, Bulletin 1185, Item 2), less two days' remission for the plea entered herein, leaving a net suspension of three days. Cf. Re Club 209 Bar and Grill, Inc., Bulletin 1036, Item 4.

Accordingly, it is, on this 13th day of January 1958,

ORDERED that plenary retail consumption license C-19, issued by the Mayor and Council of the Borough of Wallington to Katherine Kraska for premises 12 Wallington Avenue, Wallington, be and the same is hereby suspended for three (3) days, commencing at 3:00 a.m., January 20, 1958 and terminating at 3:00 a.m., January 23, 1958.

WILLIAM HOWE DAVIS
Director.

11. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)	
)	
Nehoc Hotel Management Corp., t/a Clarendon Hotel 705 Madison Avenue Lakewood, N. J.)	ON PETITION ORDER
)	
Holder of Plenary Retail Consumption License C-36 (for the 1956-57 and 1957-58 licensing years), issued by the Township Committee of the Township of Lakewood.)	
)	

BY THE DIRECTOR:


On January 6, 1958, I entered an order herein fixing the effective dates for a twenty-five-day suspension previously imposed (Bulletin 1170, Item 5) and making said suspension effective from 2 a.m. January 20, 1958, to 2 a.m. February 14, 1958; and

It appearing from a petition filed herein that, prior to the entry of said order, arrangements had been made with several organizations for conventions to be held at defendant's premises during the period fixed for the suspension of the license; and

It appearing to my satisfaction that numerous persons would be inconvenienced by the suspension of the license during the period fixed for said suspension in my previous order,

It is, on this 14th day of January, 1958,

ORDERED that the suspension of twenty-five days heretofore imposed, instead of commencing at 2 a.m. January 20, 1958, shall, in lieu thereof, commence at 2 a.m. February 24, 1958, and terminate at 2 a.m. March 21, 1958.


William Howe Davis
Director