

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2207

December 2, 1975

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS - (Lyndhurst) - SALE TO A MINOR - LICENSEE PERMITTED TO PAY FINE IN LIEU OF 15 DAYS SUSPENSION.
2. DISCIPLINARY PROCEEDINGS (Paulsboro) - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS.
3. DISCIPLINARY PROCEEDINGS (Gloucester City) - PURCHASE OF ALCOHOLIC BEVERAGES FROM UNAUTHORIZED SOURCE - LACK OF PROOF - CHARGES DISMISSED.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2207

December 2, 1975

1. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSEE PERMITTED TO  
PAY FINE IN LIEU OF 15 DAYS SUSPENSION.

In the Matter of Disciplinary )  
Proceedings against )

Salvatore & Audrey Di Costanzo )  
t/a Carroll's Liquor Store )  
212-214 Stuyvesant Avenue )  
Lyndhurst, N.J., )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Distribu- )  
tion License D-11, issued by the )  
Board of Commissioners of the Town- )  
ship of Lyndhurst. )

-----  
Meyner, Landis & Verdon, Esqs., by Edwin C. Landis, Jr., Esq.,  
Attorneys for Licensees  
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees plead "not guilty" to the following charge:

"On Friday, January 10, 1975, you sold  
served and delivered and allowed, per-  
mitted and suffered the sale, service  
and delivery of alcoholic beverages,  
directly or indirectly, to a person  
under the age of eighteen (18) years,  
viz., Joseph C.---, age 17; in viola-  
tion of Rule 1 of State Regulation  
No. 20."

In behalf of the Division, Joseph C.--- testified that he  
was born on July 19, 1957. Thus, he was seventeen years of age on  
the date alleged in the charge.

On cross examination, the witness testified that, on the  
evening of January 10, 1975, while in the company of several school-  
mates, they decided "to go drinking". The youths pooled some money  
and Joseph offered to make the purchase. Joseph explained that he  
had in his possession a draft card bearing the name of a Brian  
McAllister, which represented that McAllister was born in the year  
1954. The draft card was given to him by the minor's brother, Anthony.  
Anthony informed Joseph that he had found the card. He thought that  
the card bore a signature thereon.

Joseph and one of his companions proceeded to the subject licensed premises, a liquor store, by car. Joseph entered the liquor store and asked Salvatore DiCostanzo, a co-licensee, for a case of Rolling Rock beer. Upon being requested to furnish identification, the minor showed him the draft card and informed him that it was his card.

The witness asserted that he had tried to make a purchase of an alcoholic beverage of DiCostanzo on January 1, 1975 and was refused service when he could produce no identification other than the aforesaid draft card. He was not asked to produce any additional identification on January 10. He did not know whether DiCostanzo had recognized him on January 10, as being in the licensed premises previously.

Joseph explained that he departed by way of the rear entrance of the premises, and entered his friend's car. As the car was about to pull away, they were intercepted by two ABC agents. Upon being requested to furnish proof of age, Joseph exhibited the McAllister draft card. The agents did not believe Joseph, and accompanied him into the liquor store, where he was again requested to furnish proof. Failing to do so, he was taken to the local police station.

Agent V testified that, accompanied by agent S, he proceeded to the licensed premises on the evening of January 10, 1975 in order to investigate a complaint that minors were being served alcoholic beverages. They positioned themselves in a car in front of the premises where they had an unobstructed view of the interior thereof.

The Agent observed the minor enter the premises, pick up two bottles of wine, two bottles of beer and two packs of beer and place them on the counter. He then observed DiCostanzo speak to the minor, after which the minor displayed a white card to DiCostanzo which he removed from his wallet. DiCostanzo looked and returned the card to the youth and accepted some currency from him. An employee, identified as Harry Schaub, bagged the items purchased by the minor.

Agent V explained that he confronted Joseph outside the premises and asked him how old he was and requested that he produce the card he showed DiCostanzo. Joseph informed him that he was twenty years of age and produced a draft card. He noted erasures on the card where the height and weight information is noted.

In defense of the charge, Salvatore DiCostanzo testified that, prior to finalizing the sale of the alcoholic beverages to Joseph, he asked him for identification. Joseph produced a draft card which contained a signature and a representation that the person to whom it was issued was twenty years of age. He did not observe any erasures thereon. He questioned Joseph, who asserted that the card was his card and that the signature was his. Upon being requested to produce other identification, Joseph asserted that he had none. Joseph appeared to him to be at least twenty years of age.

Shortly after leaving the premises, Joseph re-entered, accompanied by two ABC agents. They did not point out any alleged alterations on the draft card exhibited to DiCostanzo by the minor.

The witness asserted that he did not obtain a written representation from Joseph because he felt that he was twenty years of age. He did not recall seeing Joseph in his liquor store prior to January 10, 1975.

Henry Schaub, who was in the employ of the licensees, testified that he had returned to the licensed premises after making a delivery when he saw Joseph being served by DiCostanzo. His testimony was substantially corroborative of the testimony offered by DiCostanzo.

Thus, it is apparent that a sale, service and delivery of an alcoholic beverage was made to the minor as charged.

Counsel for the licensees argued that the display of the Selective Service card which bore the signature of the person to whom it was issued constituted a written representation sufficient to furnish them with the protective cloak afforded by N.J.S.A. 33:1-77.

However, a written representation as to age is an absolute requirement of R.S. 33:1-77 which contains the following provision:

"...that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) (now 18) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over." (Emphasis ours)

Such alleged fraud and misrepresentation were specifically anticipated by this Division in a special note in its rules (page 89 of the Rules and Regulations, effective August 30, 1973) which, in explanation of Rule 1 of State Regulation No. 20, state in part:

"...(c) that the sale was made in reliance upon such written representation and appearance and in the reasonable belief that the minor was of age. Hence it is not a defense that mere verbal inquiry may have been made as to the age of the minor or that the minor had verbally misrepresented his age or that the minor had displayed some document (such as a driver's license, birth certificate, military identification card, selective service registration certificate, or any other similar document) which represented his age as over 21 (now 18). The representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at or prior to the time of sale or service. Such a writing must be signed by the minor in the presence of the licensee or his employee and one in which the minor gives his name, address, age, date of birth and, by signing the writing makes a statement that he is making the representation as to his age to induce the licensee to make the sale. After the writing has been signed, the licensee should require that the person signing the representation adequately identify himself as that person and thus affirmatively avoid the acceptance of these representations from persons using fictitious names, addresses and ages. The signed representation should then be retained by the licensee...."

Obviously, the licensees did not take the minimum precaution of requesting the written representation to be made in the presence of their employee as imperatively required by the rule. Thus, the licensees have not satisfied the regulatory requirements.

In arriving at a determination herein, I am also mindful of the theorem expressed by the court in Sportsmen 300 v. Bd. of Com'rs of Town of Nutley, 42 N.J. Super. 488,492 (App. Div. 1956), as follows:

"The agency has not, however, considered that a false representation in writing by the minor was intended to embrace such writings as a driver's license, a draft card, or a social security card. We quote from the decision in Re Wedemeyer, Bulletin 1050, Item 8:

'Experiences in cases similar to this indicates that for some reason licensees or their agents are reluctant to 'embarrass' a minor by requiring him to reduce to writing his name, age and address. If licensees are willing to use their own methods of determining the age of a minor, rather than follow the statute, they do so at their peril and must accept the consequences of their own neglect. It would appear no more difficult for the licensee to follow the statutory requirement of having the patron sign a representation of his age than asking him to produce a draft card, driver's license or similar document for the licensee's purported examination. Where the licensee follows the statutory method, there is always the desirable and substantial possibility that the patron, if a minor, will refuse to commit himself to writing and will leave the establishment.' "

The doctrine expressed above has been followed most recently in Re Ano, Inc., Bulletin 2092, Item 4; Re Camden Liquor Corp., Bulletin 2076, Item 5; Re Urna, Bulletin 2042, Item 7; Obay, Incorporated, Bulletin 2014, Item 5, aff'd Appellate Division 1972, opinion not approved for publication.

The prevention of sales of intoxicating liquor to a minor not only justifies but necessitates the most rigid control. Hudson-Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

The attorney for the licensees objects to the Director's practice of offering a reduced penalty in cases where the party charged pleads guilty or non vult and does not contest the charge. He argues, that a licensee who exercises his constitutional right to a hearing is thereby wrongfully prejudiced.

This objection is without merit. In practice, in the absence of either extenuating or aggravated circumstances a similar penalty is meted against all licensees who are charged with similar violations and who exercise their right to a hearing.

As in the practice of criminal law where a licensee enters a culpatory plea, a part of the precedential penalty meted for the violation is remitted because he has saved the taxpayers the often tremendous expenses incurred in the conduct of a hearing. In the absence

of mitigating or aggravated circumstances, the standard penalty assessed for a particular violation is assessed in all cases that proceed to hearing. Thus, the licensees are not prejudiced herein. Cf. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (Sup. Ct. 1956).

Accordingly, after careful evaluation and consideration of the testimony adduced herein and the legal principles applicable thereto, I find that the Division has established the truth of the charge by a fair preponderance of the credible evidence, and recommend that the licensees be adjudged guilty thereof.

Licensees have no prior adjudicated record. I further recommend that the license be suspended for fifteen days.

#### Conclusions and Order

No Exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of testimony, and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein. I would accordingly, normally enter an order suspending the said license for fifteen days. However, the licensees have requested that, in the event that I adopt the said Hearer's report, I favorably consider licensees' petition for the payment of a fine, in compromise, in lieu of the suspension of license for fifteen days as recommended by the Hearer. In their petition, the licensees have waived all rights to appeal and judicial review of the within order.

I have favorably considered the said application, and have determined to accepted the payment by the licensees in the sum of \$450.00 in lieu of a suspension of the said license for fifteen days.

Accordingly, it is, on this 17th day of September 1975,

ORDERED that the payment by the licensees of the sum of \$450.00 be and the same is hereby accepted in lieu of a suspension of the within license for fifteen days.

Leonard D. Ronco  
Director

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

In the Matter of Disciplinary Proceedings against

Nabru, Inc.  
t/a Cross Inn Tavern  
31 East Broad Street  
Paulsboro, N.J.,

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Paulsboro.

-----  
Boakes, Lindsay and Smith, Esqs., by Donald A. Smith, Jr., Esq.  
Attorneys for Licensee  
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to the following charge:

"On April 12, 1975, you sold, served or delivered or allowed, permitted or suffered the sale, service or delivery of alcoholic beverages, directly or indirectly, to a person under the age of eighteen (18) years, viz., Kevin M., age 17, and allowed, permitted or suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

Most of the facts essential to a determination of this matter are not in dispute.

ABC agents G and B while in the course of their investigative duties on the night of April 12, 1975 in the licensed premises observed two males, the minor, Kevin M--- (whose age was established as seventeen years at the time of the alleged offense) and his older brother Vincent, age nineteen. The youths were served a pitcher of beer by the bartender, Larry Crossen, a principal officer of the corporate licensee, who was assisted behind the bar by his wife, Noreen Crossen, also a corporate officer.

The age of the minor was corroborated at the hearing by his mother, Marlene M---. The minor did not testify. He was out

of the State, serving in the National Guard at the time of the hearing. His identity was established through the production of his photograph by his mother. Thereafter, the agents identified the male in the picture as the individual whom they observed in the tavern drinking beer on April 12 and who had identified himself as Kevin M.

Upon being satisfied that Kevin's date of birth was September 20, 1957, agent G confronted Crossen and placed him under arrest. Crossen explained that Kevin had visited the premises earlier that evening, and had displayed identification which indicated that he was of age. The minor admitted, in the presence of Crossen, that he had displayed a false identification, viz., a selective service card issued to a Joseph Stipe, indicating that Stipe was born on October 30, 1956.

Crossen offered no further explanation concerning the sale of the beer to the minor.

In his testimony, Crossen asserted that, prior to serving the beer, he requested identification of both Kevin and Vincent. Kevin showed the selective service card representing that he was Joseph Stipe. His wife observed Crossen questioning Kevin and Vincent. He did not recall ever seeing Kevin in the tavern prior to the night of April 12, 1975. Two days later, his wife informed him that about four or five weeks prior to this date, she had obtained a written representation from Kevin to the effect that he was eighteen years of age. At that time he signed his name as Joseph Stipe. (underscoring added)

He did not recall whether or not he had produced the written representation at the Municipal Court hearing. He did not show the written representation to any Division agent at the time of the Municipal Court hearing.

Noreen Crossen testified that on April 12, 1975, she observed her husband speaking with the male who had represented himself to be Joseph Stipe. She recalled that, approximately one month prior thereto, she had requested Kevin to sign a written representation of age. At that time, she also saw the selective service card issued to a Joseph Stipe. She did not inform her husband that she had obtained a written representation of age from the minor until after he was placed under arrest by the agents on the night of April 12, 1975. She stated that the written representations were kept in her home at that time.

The witness conceded that she did not compare the signature on the written representation with the signature on the draft card. She explained that Kevin signed his name only on the written representation; that she filled in the remainder of the information contained thereon, including the date of birth; and that she crossed out the month September as the month of birth and substituted October therefor.

In rebuttal, agent G testified that he was in attendance at the Municipal Court hearing at which Crossen was tried on the charge of serving the within named minor. At no time was the aforesaid written representation offered in evidence.

Also in rebuttal, the minor's mother testified that the signature on the written representation did not appear to be in Kevin's handwriting.

The licensee contends that it had complied with all of the requirements dictated by the special note referred to in Rule 1 of the Division's rules and regulations and, in particular that the licensee had, not only, examined the proffered draft card, but also, obtained a written representation from the individual of his age.

The defense offered by the licensee makes the issue of credibility of paramount importance.

In arriving at a determination herein, I find implausible licensee's explanation that it had in its possession at the time it served the minor on the date mentioned in the charge, his written representation as to age. Common experience and observation of mankind dictates that if the licensee had such written representation in its possession or had obtained such representation prior to serving the minor on April 12, 1975, it would have informed the ABC agents of that fact, particularly in view of the fact that its principal corporate officer was placed under arrest. Failing to do that, it is inconceivable that it should fail to produce the written representation at the Municipal Court hearing involving the principal corporate officer.

Additionally, in arriving at a determination herein, I have also considered the fact that the signature on the draft card was that of a Joseph H. Stipe, whereas the signature on the representation was Joseph      Stite (underlining added). Although I do not profess to qualify as a handwriting expert, I find, from my examination of the signatures, that the signature on the representation admitted in evidence is quite dissimilar from the signature on the draft card.

The prevention of sales to a minor not only justifies but necessitates the most rigid control. Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

The general rule in these cases is that the finding must be based on competent legal evidence, and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

I find that the Division has established the charge based upon a reasonable certainty as to the probabilities arising

from a fair preponderance of the said evidence. Thus, the charge has been proved by a fair preponderance of the credible evidence. I, therefore, recommend that the licensee be found guilty as charged.

Licensee has no prior adjudicated record. I, further, recommend that the license be suspended for fifteen days.

Conclusions and Order

No Exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 24th day of September 1975,

ORDERED that Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Paulsboro to Nabru, Inc., t/a Cross Inn Tavern, for premises 31 East Broad Street, Paulsboro, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. on Wednesday, October 8, 1975 and terminating 2:00 a.m. on Thursday, October 23, 1975.

Leonard D. Ronco  
Director

3. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM UNAUTHORIZED SOURCE - LACK OF PROOF - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against )

J.P.S., Inc. )  
t/a Show Lounge )  
200 South Broadway )  
Gloucester City, N.J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-19 (for the 1974-75 license period and C-10 for the 1975-76 license period), issued by the Common Council of the City of Gloucester City. )

Novack and Trobman, Esqs., by Malcolm H. Trobman, Esq., Attorneys for Licensee )

Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded "not guilty" to the following charges:

- "1. On or about January 29, 1975, you knowingly aided and abetted Lapussycat, Inc., holder of a plenary retail consumption license for premises at 425 Nicholson Road, Gloucester City, New Jersey to sell to Admiral Bar & Liquor Store, Inc., holder of a plenary retail consumption license for premises at 2250 Admiral Wilson Boulevard, Camden, New Jersey, several cases of alcoholic beverages, to wit, quarts of Seagrams V. O. whisky, contrary to Rule 15 of State Regulation No. 20; in violation of N.J.S.A 33:1-52.
- 2. On or about January 29, 1975, you knowingly aided and abetted Lapussycat, Inc., holder of a plenary retail consumption license for premises at 425 Nicholson Road, Gloucester City, New Jersey to sell and offer for sale, at retail, directly or indirectly several cases of quarts of Seagrams V.O. whisky, an alcoholic beverage, at less than the price thereof filed with the Director of the Division of A.B.C., contrary to Rule 5 of State Regulation No. 30; in violation of N.J.S.A. 33:1-52.

3. On or about January 29, 1975, you knowingly aided and abetted Admiral Bar & Liquor Store, Inc., holder of a plenary retail consumption license for premises at 2250 Admiral Wilson Boulevard, Camden, New Jersey to purchase or obtain alcoholic beverages from other than the holder of a New Jersey Manufacturer's or Wholesaler's license and without having first obtained a Special Permit from the Director of the Division of Alcoholic Beverage Control, contrary to Rule 15 of State Regulation No. 20; in violation of N.J.S.A. 33:1-52."

At the hearing herein, the charges were amended so as to substitute "contrary to N.J.S.A. 33:1-49" in place of the cited Rule in each instance.

In behalf of the Division, Malcolm Perkins testified that he had been the owner of Freber's Liquor Store in Ventnor until he disposed of it on April 20, 1975. He explained that some time previous thereto, needing cash in order to pay some anticipated bills for prior deliveries, he contacted some acquaintances, and requested that they inform him in the event that they knew anyone who would purchase 45 or 50 cases of whiskey.

Thereafter, an individual, whom he identified as Paul Smith, came into his liquor establishment and informed him that he had some friends in the Gloucester City area who could use the liquor. Perkins requested his roommate, a Robert Brown, to make delivery of the liquor to an address in Gloucester City that was given as a home address. He did not know whether the purchasers were licensees. His sole contact was with Smith. He was not present when delivery was made.

Taylor Mills, principal officer and stockholder of licensed premises located in Gloucester, known as La Pussycat, t/a The Zodiac, testified that, pursuant to a telephone conversation he had with an individual, whom he knew both as Paul Smith and Paul Miller, who stated that a friend of his wanted to sell some whiskey because he needed cash, he purchased 45 cases of Seagrmas V.O. whiskey at \$75.00 a case. The whiskey was delivered to his home. Through a Douglas Smith, he communicated with a Guilford Gurk, a principal stockholder of Admiral Bar & Liquor Store, Inc., who offered to purchase twenty-five cases of the whiskey. Gurk arranged to, and did, pick up the whiskey at Mills' home.

Mills explained that he had been acquainted with Douglas Smith for approximately three years; that during that period of time Smith had been employed as manager at Admiral Bar in Camden; that he had been to Admiral Bar; and prior to

January 1975 he had business contacts with Douglas Smith in his capacity as manager thereof.

Relative to the purchase of the liquor, Smith referred him to Gurk. This took place at Mills' Zodiac liquor establishment. At that time he did not know that Smith either owned or was a stockholder in J.P.S., Inc. Additionally, Mills testified that he did not obtain a special permit from the Division to sell the aforesaid beverages to Admiral Bar.

Guilford Gurk testified that he and his wife are the principal stockholders of Admiral Bar & Liquor Store, Inc. He explained that Douglas Smith had been employed by him as his manager. Smith wanted Gurk to do a favor for a friend of Mills by purchasing 25 cases of Seagrams V.O. whiskey for \$75.00 a case. After agreeing to the purchase thereof, he picked up the liquor at Mills' residence in January 1975.

Gurk became aware that Douglas Smith acquired an interest in J.P.S., Inc., the licensee in the subject proceedings, in early December 1974. Smith continued to work for him full-time after he had acquired an interest in J.P.S., Inc.

At the time that Gurk informed Smith that he would purchase the liquor, he and Smith were in the Admiral Bar.

None of the liquor he purchased went to J.P.S.

In defense of the charges, James Douglas Smith testified that he had been employed as the manager of Admiral Bar for the past three and one-half years and was still in its employ as of the date of this hearing, May 28, 1975. He became the sole stockholder of the corporate licensee herein, in December 1974. He employs a manager to operate that establishment. He spends "a couple of hours there on Friday and Saturday nights." Otherwise, he goes there mainly to drop off change or pick up the receipts.

He never met Malcolm Perkins until he saw him in attendance at the hearing.

Smith explained that he was in Mills' liquor establishment when he (Mills) received a telephone call from an individual who said that a friend of his wanted to sell a number of cases of V.O. in order to raise some cash. Mills asked Smith whether he could use some of the liquor. Smith replied that he didn't do the purchasing and suggested that he call Gurk.

The contact with Gurk eventually resulted in the purchase by Gurk. Smith denied that he purchased any of the

said liquor for his own account or that he, in anywise, participated in the money transaction or the delivery thereof. He denied that he ever "touched, saw or handled the liquor." Whatever discussions were had concerning the liquor in his presence, occurred while he was at the Zodiac or at the Admiral Bar. At no time did he discuss the whiskey while he was at J.P.S., Inc. the subject licensed premises.

The Deputy Attorney General presenting the subject charges against the licensee, in his memorandum, aptly expressed the dispositive issue, as follows:

"The factual question to be determined by the Hearer in this matter is whether Douglas Smith acted in the transaction solely as an agent of the Admiral Bar and Liquor Store or also as the agent of J.P.S., Inc. If the Hearer finds that Mr. Smith did not in any way act as an agent of J.P.S., Inc., the Division can find no authority under which the corporation, J.P.S., Inc. can be found guilty of the charges based on the mere fact that its sole corporate stockholder was involved in a violation of the Alcoholic Beverage Control Law under circumstances having no connection with the corporation's licensed business."

During the course of the hearing, and upon motion to dismiss the charges, the Division attorney consented to the dismissal of Charge 2.

It is axiomatic that, in disciplinary proceedings, a finding of guilt of the said charge must be established by a fair preponderance of the credible evidence, and can not be based upon mere suspicion, no matter how reasonably inferable such suspicion may be. Re Doyle, Bulletin 469, Item 2. Doubtful questions of fact must be resolved in the licensee's favor. Re Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1; Luisi v. Orange, Bulletin 1814, Item 3; Willners Liquors v. Newark, Bulletin 2088, Item 1.

The guiding rule in these matters is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. While there is no set formula for determining the quantum of evidence required, each case must be governed by its own circumstances. A guilty verdict must be supported by substantial evidence. Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, 504-06 (App. Div. 1956).

A careful consideration of the testimony leaves me with serious doubt as to whether the Division has established

that Smith acted herein as an agent or in anywise in behalf of J.P.S., Inc., the licensee charged herein.

Parenthetically, it may be pertinent to note that the records of this Division disclose that both La Pussycat, Inc. (Zodiac) and Admiral Bar and Liquor Store, pleaded non vult to charges which arose out of the proscribed sale of the identical liquor alleged herein. Unquestionably, Smith was acting as an agent for his employer, Admiral Bar.

Since there appears to be a lack of the necessary preponderance of evidence to find the licensee guilty of the charges I recommend that the licensee be found not guilty and that the charges be dismissed.


#### Conclusions and Order

No Exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of testimony, and the Hearer's report, I concur in the findings and recommendation of the Hearer and adopt them as my conclusions herein. I find the licensee not guilty of the said charges.

Accordingly, it is, on this 24th day of September 1975,

ORDERED that the charges herein be and the same are hereby dismissed.

  
Leonard D. Ronco  
Director