

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1358

October 27, 1960

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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 1358

October 27, 1960

1. APPELLATE DECISIONS - 100 BAR, CORPORATION v. GLOUCESTER CITY

100 Bar, Corporation, t/a Marie's,)		
Appellant,)		ON APPEAL
v.)		CONCLUSIONS
Common Council of the City of)		AND
Gloucester City,)		ORDERS
Respondent.)		

Edward F. Menetti, Esq., Attorney for Appellant.
William E. Hughes, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent governing body whereby it suspended appellant's license for a period of thirty-five days effective May 23, 1960, after finding it guilty of selling alcoholic beverages to a minor on February 19, 1960 and permitting the consumption of such beverages by said minor in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20. Appellant's premises are located at 100 S. King Street, Gloucester City, New Jersey.

"Upon the filing of the appeal, an order was entered by the Director on May 20, 1960 staying respondent's order of suspension until further order herein. R. S. 33:1-31.

"Appellant in its petition of appeal alleges in substance that the suspension imposed is 'unreasonably severe and not commensurate with the circumstances and factors surrounding the alleged violation', and seeks a reduction of the penalty. Respondent in its answer denies appellant's allegations.

"Although appellant admitted the violation charged when the matter came on for hearing, nevertheless, it was deemed advisable that testimony be elicited to establish the facts which induced respondent to impose a thirty-five-day suspension. To that end, respondent called as its witnesses Van ---, Edmund ---, and respondent's clerk. Succinctly stated, Van --- testified that he is twenty years of age and a U. S. Coast Guardsman; that on February 19, 1960 he, Edmund ---, and another guardsman entered appellant's premises about 9:30 a.m.; that he remained there until about 1:00 p.m. when he left to see a discharged guardsman depart by plane for Texas; that he returned to appellant's premises about 2:30 p.m. and remained therein until 1:00 a.m. the following morning and that during these visits he consumed 'shots and beers' served to him by Stanley Gowkowski, his wife Marie (principal shareholders of the corporate licensee) and by the bartender, George Matchner, none of whom required any proof of his age, and that he spent approximately \$8.00 for the beverages he consumed.

"Edmund --- testified that he and Van -- entered appellant's tavern about 9:30 a.m., February 19, 1960 and remained until 1:00 p.m.; that during his stay he mingled with other guardsmen on the premises and that whenever he observed Van ---, he had a glass of beer in his hand, but he did not know whether or not Van --- had the same glass of beer that had been served to him when they first entered the premises.

"The clerk testified in substance that respondent governing body took into consideration appellant's prior record in imposing the thirty-five-day suspension of its license.

"Appellant called as its witnesses Stanley Gowkowski, Marie Gowkowski, George Matchner and two female patrons. The Gowkowskis admitted serving the minor Van --- after he exhibited an ID card showing him to be of age; Matchner was doubtful that he served Van --- and the three of them denied having seen Edmund --- in the tavern.

"Stanley Gowkowski testified further that when he arrived on the premises at 11:30 a.m., he saw Van --- with a glass of beer in his hand and that thereafter he served beers to an adult guardsman who passed the beverages to other guardsmen in the tavern; that Van --- left about 1:00 p.m. and returned at about 2:30 p.m. with a man and wife; that he served a glass of soda to the man's wife and that Van --- left with the couple who stated they were taking him home to dinner.

"Mrs. Gowkowski testified that she came on duty at 5:30 p.m., that Van --- came in about 6:45 p.m. and ordered a beer; that she requested identification and was shown an ID card; that she served Van --- one glass of beer which he partially consumed and departed; that he returned after 1:00 a.m. the following morning, intoxicated, and having annoyed a group seated at a table in the backroom, he was ushered out of the premises by her husband whom she called downstairs.

"One of the female patrons testified she was in appellant's tavern from 6:30 p.m. until closing time and that she saw Van --- leave at 7:00 p.m. and return after midnight in an intoxicated condition.

"The other female testified that she and others were celebrating their boss' birthday; that Van --- came into the premises in a 'stupor' and sat at the table in a seat which her daughter had just vacated; that when her daughter returned Van --- was asked to leave and that when he refused, a man in the party asked Marie to have him removed, and that thereafter Stanley Gowkowski escorted him from the premises.

"The usual penalty imposed by the Division for the unaggravated sale of alcoholic beverages to a 20-year-old minor is a suspension of the license for a period of ten days (Re Danny's Hide-A-Way, Inc., Bulletin 1329, Item 6) and when, as in this case (See Re 100 Bar, Inc., Bulletin 1249, Item 8), the licensee has a prior record of a similar violation which occurred within a five-year period, the penalty is doubled. Re Butts, Bulletin 1276, Item 7. However, it has been stated repeatedly that the penalty imposed by a local issuing authority should not be disturbed on appeal unless it appears that such penalty is manifestly unreasonable and clearly excessive. See Scuderi v. Paulsboro, Bulletin 1196, Item 2. This is particularly true where, as appears herein, a considerable number of drinks were served to the minor.

"I find, therefore, that the penalty imposed by respondent is not excessive and I recommend that an order be entered affirming respondent's action, dismissing the appeal, vacating the order entered on May 20, 1960 and fixing the effective dates during which the thirty-five-day suspension shall be effective."

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

After carefully considering the evidence herein, I concur in the findings and conclusions of the Hearer and shall adopt his recommendations.

Accordingly, it is, on this 30th day of August, 1960,

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

ORDERED that the thirty-five day suspension heretofore imposed by respondent, and stayed during the pendency of this appeal, be restored against License C-4 now held by 100 Bar, Corporation, t/a Marie's 100 Bar, for premises 100 S. King Street, Gloucester City, to commence at 2:00 a.m., Tuesday, September 6, 1960, and to terminate at 2:00 a.m., Tuesday, October 11, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - (COFFARO AND LUIZZA v. NEW BRUNSWICK
A. TAVERN, INC. v. NEW BRUNSWICK

Tony Coffaro and Jerry Luizza,)
Partners, t/a Coffaro's Restaurant,)
Appellants,)

v.)

Board of Commissioners of the City)
of New Brunswick,)
Respondent.)

On Appeal

-----)
A. Tavern, Inc.,)
Appellant,)

O R D E R

v.)

Board of Commissioners of the City)
of New Brunswick,)
Respondent.)

Eber & Eber, Esqs., by Alex Eber, Esq., Attorneys for Appellants
Tony Coffaro and Jerry Luizza
Mayo and Weiner, Esqs., by Benjamin Weiner, Esq., Attorneys for
Appellant A. Tavern, Inc.
Joseph J. Takacs, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Both appeals were taken from the action of respondent whereby it denied an application filed by appellants Tony Coffaro and Jerry Luizza to transfer License C-35 (for 1959-60 licensing year) from appellant A. Tavern, Inc. to them and from 198 Burnet Street to 76 Remsen Avenue and 151 Suydam Street, and from the further action of respondent whereby it denied an application filed by appellants Tony Coffaro and Jerry Luizza for a renewal of said license for premises

76 Remsen Avenue and 151 Suydam Street, New Brunswick.

In passing, it should be noted that appellant "A. Tavern, Inc." was not the applicant for the transfer or renewal and, apparently, was not a proper party to file an appeal from the action of respondent. R.S. 33:1-26 and 22.

Prior to the hearings scheduled to be held, the attorneys for both appellants, with the consent of the attorney for respondent, advised me in writing that they desired to withdraw the appeals. No reason appearing to the contrary,

It is, on this 30th day of August 1960,

ORDERED that both appeals be and the same are hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN POOL ROOM OPERATED BY TENANT - FURNISHINGS, FIXTURES AND EQUIPMENT OF ESTABLISHMENT RETURNED TO INNOCENT OWNER - ALCOHOLIC BEVERAGES AND CASH SEIZED IN THE ESTABLISHMENT ORDERED FORFEITED.

In the Matter of the Seizure)	
on May 22, 1960 of a quantity)	
of alcoholic beverages, fur-)	Case No. 10,303
nishings, fixtures, equipment,)	
and \$57.73 in cash, at a pool)	On Hearing
room conducted by Frank Rendeiro)	
located at 44 Monroe Street,)	CONCLUSIONS and ORDER
in the City of Newark, County of)	
Essex and State of New Jersey)	

Nathaniel L. Sunshine, Esq., Attorney for Lillie Pais.
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, and further pursuant to a stipulation dated June 2, 1960 signed by Lillie Pais, to determine whether a quantity of alcoholic beverages, \$57.73 in cash, and various fixtures, furnishings, and equipment, described in a schedule attached hereto, seized on May 22, 1960 at a pool room conducted by Frank Rendeiro located at 44 Monroe Street, Newark, N. J., constitute unlawful property and should be forfeited.

Pending seizure hearing in the case, Lillie Pais deposited \$150.00 under protest, pursuant to R. S. 33:1-66, with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of the fixtures, furnishings, and equipment, and thereupon obtained return of the property seized, excepting the alcoholic beverages and \$57.73 in cash. Lillie Pais has stipulated that such Director should determine in the present proceedings whether such sum shall be forfeited, or returned to her.

When the matter came on for hearing pursuant to R.S. 33:1-66 and such stipulation, an appearance was entered by Lillie Pais, who sought return of her deposit of \$150.00. No one appeared to oppose forfeiture of the \$57.73 in cash or the alcoholic beverages.

It was established by the testimony of an ABC agent that he

visited the pool room on May 15th and May 22, 1960; that on the first visit he observed a number of men in the place purchasing and consuming alcoholic beverages served to them by Frank Rendeiro, and the agent purchased drinks of alcoholic beverages from Rendeiro. On this occasion the agent left the premises without disclosing his identity.

The agent returned on May 22nd and observed the sale and consumption of alcoholic beverages by persons present. The agent purchased drinks of alcoholic beverages from Frank Rendeiro, for which he paid with two bills identified by serial numbers. Other ABC agents entered the premises and all of such agents revealed their identity. Thereupon Frank Rendeiro admitted his sale of alcoholic beverages without a license. The agents then seized the alcoholic beverages in the premises, \$57.73 in cash in the cash register, which included the marked money, and the furnishings and equipment of the pool room.

It further appears that Mrs. Pais arrived on the scene and informed the ABC inspector in charge of removal of the seized property that she was the owner of the furnishings and equipment in the pool room, and arranged to make the deposit of the aforesaid sum of \$150.00.

Frank Rendeiro did not hold any license authorizing his sale of alcoholic beverages, and the premises were not licensed for that purpose. The seized alcoholic beverages, obviously intended for unlawful sale, constitute illicit alcoholic beverages. R.S. 33:1-1(i). Such illicit alcoholic beverages, the money seized in the register, and all other personal property seized on the premises constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Lillie Pais testified that she is a widow, and that previous to her husband's death, he operated the pool room for about thirty years; that after her husband's death about a year and a half ago, she rented the pool room and equipment therein to Frank Rendeiro at the monthly rental of \$60.00; that although residing on the upper floor of the premises, she had no occasion to visit the pool room, since the rent was paid to her at her apartment; and that she had no knowledge that Rendeiro was selling alcoholic beverages in the pool room; and that she was casually acquainted with Rendeiro for a period of about twenty years, and knew that he was a construction worker and operated the pool room mainly on weekends.

Ralph Costa, Mrs. Pais' son, and her husband's stepson, testified that he was in the pool room the week after his stepfather died, and that the pool tables, television set, cash register, radio, tables and chairs, and other items seized were identical with those he observed on such visit when he and his brother cleaned the room; and that later he and his brother made the arrangement to rent the place to Rendeiro, whom he knew as a hard-working man. According to Frank Rendeiro's fingerprint records, he has no previous criminal record.

I am satisfied from the evidence presented that Lillie Pais is the owner of the furnishings, fixtures and equipment seized, and that she acted in good faith and did not know or have any reason to suspect that Frank Rendeiro was selling alcoholic beverages in the pool room. I shall therefore return the deposit of \$150.00 to her, after deducting the costs of seizure and storage. R.S. 33:1-66(f).

Accordingly, it is DETERMINED and ORDERED that the costs of the seizure of the seized property more fully described in Schedule "A" attached hereto, be deducted from the deposit of \$150.00, and that the balance be returned to Lillie Pais; and it is further

DETERMINED and ORDERED that the alcoholic beverages, and the sum of \$57.73, listed in the aforesaid Schedule "A" constitute unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and the money to be turned over

to the State Treasurer, and the alcoholic beverages 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.

Dated: August 30, 1960

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 2 - 1 gal. jugs of wine
- 1 - quart bottle of wine
- 1 - 4/5 quart bottle of whiskey
- 6 1/2 - cases of assorted soda
- 5 - tables
- 65 - packs of assorted cigarettes
- 1 - television set
- 1 - cash register
- 1 - radio
- 18 - chairs
- 1 - water heater
- \$57.73 in cash

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Walter Schwebel
 555 Ocean Avenue
 Jersey City 5, New Jersey,
 Holder of Plenary Retail Consumption License C-18, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS
 and
 ORDER

 Defendant-licensee, Pro se
 Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that during prohibited hours he sold and permitted the sale of an alcoholic beverage in its original container, in violation of Rule 1 of State Regulation No. 38.

On Sunday, July 24, 1960, an ABC agent entered defendant's premises and, at about 2:30 p.m., purchased a pint bottle of whiskey "to take home" from Anthony Gaito who was tending bar. The agent left with the bottle and immediately re-entered with another agent who had remained outside. Both agents identified themselves to the bartender who admitted the sale.

Defendant, while an officer of F. & S. Tavern, Inc., 1108 Clinton Ave., Irvington, sold beer on January 19, 1957, at less than minimum consumer resale price and, as a result, I suspended the corporation's license for five days effective February 25, 1957. See Bulletin 1160, Item 8. Considering the prior dissimilar violation within the past five years, I shall suspend defendant's license

for the minimum period of twenty days. Re Alexis, Bulletin 1343, Item 5. Five days will be remitted for the plea herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 29th day of August 1960,

ORDERED that plenary retail consumption license C-18, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Walter Schwebel, for premises 555 Ocean Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Tuesday, September 6, 1960, and terminating at 2 a.m. Wednesday, September 21, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS - CHARGE ALLEGING THAT DEFENDANT HINDERED INVESTIGATION DISMISSED - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

Walter Sherry
t/a The Tender Trap
344 Bergen Boulevard
Fairview, New Jersey

Holder of Plenary Retail Consumption License C-21 (for the 1959-60 licensing year), issued by the Borough Council of the Borough of Fairview, and transferred during the pendency of these proceedings to

Frank Sherry

for the same premises.

CONCLUSIONS
AND
ORDER

Cohen and Turtz, Esqs., by Theodore Cohen, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

- '1. On Sunday, April 3, 1960 between 4:00 A.M. and 4:25 A.M., you failed to have your entire licensed premises closed; in violation of a Resolution adopted by the Mayor and Council of the Borough of Fairview on November 15, 1938.
- '2. On Sunday, April 3, 1960 between 4:20 A.M. and 4:25 A.M., you, through agents, servants and persons employed on your licensed premises and in your behalf, failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by Investigators of the Division of Alcoholic Beverage

Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35.'

"To view the case in the proper perspective, it is helpful to review the previous conduct of the licensed business so far as it relates to closing hours. Effective June 23, 1958 defendant's license was suspended for various violations, which included a fifteen-day suspension for the service of alcoholic beverages after the 4:00 a.m. closing hour and permitting patrons to remain on the premises until after 4:15 a.m. Re Sherry, Bulletin 1236, Item 3. In that case, defendant pleaded non vult to the charges.

"On March 17, 1959 by a warning letter from the Director, the licensee's attention was directed to the fact that he may have sold and served alcoholic beverages right up to the weekday 'stop' hour of 3:00 a.m. and permitted patrons to remain on the licensed premises consuming their drinks as late as 3:10 a.m. It was suggested in the letter that in the future the licensee make the 'last call for drinks' about fifteen minutes before the 'stop' hour and see to it that all glasses are picked up for cleaning before the last minute and further see to it that the premises are closed by the fixed 'stop' hour; that in this last connection, it was pointed out that a tavern is deemed to be open even though the doors are locked, so long as the licensee or his employees continue to entertain members of the public therein.

"The circumstances which form the basis of the present charges, as described by two ABC agents, is as follows: The agents entered the licensed premises on Sunday morning, April 3, 1960 at 3:00 a.m. There were between 25 and 40 persons there. The closing hour on Sunday mornings is 4:00 a.m. At 3:45 a.m. the bartender and the barmaid who were behind the bar called out that it was the last call for drinks and then left the bar and went elsewhere on the licensed premises. At 3:55 a.m. Frank Sherry, the licensee's manager, went behind the bar and announced 'let's go, it's time to close', and told the agents, who were seated directly in front of him, to finish their drinks and leave because it was time to close; that there was no consumption after 4:00 a.m. The agents observed some persons commence to leave the premises. They finished their drinks and left exactly at 4:00 a.m. At this time there still remained about twenty people finishing their drinks.

"The agents returned at about 4:05 a.m. and parked their car about 300 feet from the entrance to the licensed premises. They observed nine persons enter the premises through the front door within a period of about ten minutes. At about 4:20 a.m. they observed four other persons (two couples) enter through the same door. The agents then walked over to the front door which they found locked. They heard laughter and conversation. They knocked on the door. Frank Sherry came to the door, which had three small panes of glass approximately 3" x 6" or 7", each covered on the interior with a drape or curtain. Sherry lifted the drape on one window and announced that the place was closed. One of the investigators stated that they were ABC agents and requested Sherry to open the door. At this time this agent took his credentials and placed them on the pane of glass and the other agent placed his badge next to the credentials. Sherry dropped the drape and the agents heard him say: 'Everybody out, State ABC'. The agents then pounded on the door and repeated that they were ABC agents. One of the agents then left the front door and went to the side door which led to the parking area. The agent who remained at the front door heard scuffling of feet and people walking and talking and someone telling some person to get out from behind the bar. Frank Sherry then opened the front door and admitted one agent, and simultaneously therewith, the other agent without any delay entered the premises through the side door which led to the cloak room of the premises. The elapsed time between the time the agents came to the front door and when they were admitted was about two or three minutes.

"The agent who entered the barroom observed that it was dimly lit; that there were some persons there but no one behind the bar. There were some empty glasses on the bar. Two glasses had some liquor therein. People were lined up to get out in the cloak room, where he and the other agent counted thirty-one persons. Frank Sherry said that these persons were his friends who were going for breakfast. Sherry called to the attention of the agents that there were no sales or service or consumption of alcoholic beverages on the licensed premises. Asked why he did not open the front door immediately for the agents, Sherry replied that he didn't see the credentials and that he had in mind some previous experiences of being 'held up' at night at the premises.

"Walter Sherry is in substantial accord with the account given by the agents as to what occurred on the licensed premises on the morning in question up to 4:00 a.m. He is of the opinion that there were about seventy persons there at 3:45 a.m., and that many of them left at his suggestion and others proceeded to the cloak room for their apparel. His further account is that he locked the front door and had someone stationed there to unlock the door for those who were leaving. He turned off all the lights except the night light. Everybody was on the way out except some employees who were waiting to be paid. He does not know exactly how many persons entered the premises after 4:00 a.m., but those that entered were friends who were there to furnish transportation for the employees.

"Concerning the denial of entry to the agents, he stated that he walked to the door, dimly observed two men whom he did not recognize, told them the place was closed and walked away. Then, thinking that perhaps they were calling for some of the employees, he called to his bartender to look and see if he could recognize them. The bartender came to the door, said he did not recognize them and advised Sherry not to let them in. However, when the agents started pounding at the door, he came back to the door, repeated that the place was closed and at this moment for the first time, the agents held up something to the window and told him that they were ABC agents. As soon as he realized they were ABC agents he opened the door. He had a previous experience of being robbed at night. When the agents entered he told them that the place was closed; that some of the persons were on their way out; that others were employees, then numbering ten, who were either waiting for their pay or for persons to give them a ride home, and others were persons who came to take them home; that he was of the impression that since a restaurant was also conducted there the people would have a reasonable time to leave the premises; that he did not understand that everybody actually had to be out of the premises by four o'clock; that it was impossible to do so; that part of the delay was due to confusion in the check room, the regular hat check girl not having been on duty because of illness.

"The bartender testified in general accord with that of Frank Sherry. The barmaid also testified to like effect and added 'You can't force them (patrons) out of the door no matter what you do. Others get belligerent and indignant and they say, "What do you mean ... you took our money all night and now you want to push us out of the door".' Another witness confirmed the fact that at 3:45 a.m. there was a last call for drinks at the premises and persons commenced to leave. Another witness testified that he came to the premises at about 4:05 a.m. to ride home with a musician employed there; that everyone was in the back room, no one in the barroom. Another witness testified that there was confusion in the cloak room; that she was helping patrons to find their garments.

"Even considering the evidence presented in a light most favorable to the defendant-licensee, and that what transpired was not a deliberate design by him to evade the 'hours' regulation, but instead was due to poor judgment and inadequate measures taken to speed the departing guests in time, it does not alter the fact that there were members of the public on the licensed premises after the closing hour, and that Frank Sherry refused to admit the agents upon demand and that he delayed the agents from entering the premises, even though it was only for a few minutes, and the side door appeared to be readily available for that purpose. This conduct, too, appears to have been the use of poor judgment rather than the willful design to impede the investigation. Hence, giving the licensee credit for trying to comply with the rules, he is, nevertheless, guilty of both charges and I recommend a finding to that effect.

"Normally, if the present 'hours' violation (although of a somewhat different nature than the previous offense) was to be considered as a second similar violation within a five-year period, with an intervening warning letter on the same subject, a hindering violation and a suspension of the license, effective August 3, 1959, for a 'refill' violation, a substantial penalty would be warranted. However, under the particular circumstances of the case as above outlined, I recommend that the penalty to be imposed should be suspension of the license for twenty days."

Pursuant to Rule 6 of State Regulation No. 16, exceptions and argument thereon were filed with me by the attorney for the Division and answering argument thereon was filed by the attorney for defendant-licensee. Thereafter, at my request, I heard oral argument on the exceptions.

I have carefully considered the record, Hearer's Report, exceptions and oral argument and, extending the benefit of the doubt to the license, his conduct was not so wilful or deliberate in design as to warrant a finding of guilt that he hindered and prevented the agents from entering the licensed premises as set forth in Charge 2. Hence, contrary to the views of the Hearer, I find the defendant not guilty of that charge. See Re Alexis and Alexopoulos, Bulletin 1328, Item 8.

I am in accord with the Hearer's recommendation that the evidence supports a finding of guilt on the charge that the licensee failed to have his entire licensed premises closed and I so find, but disagree with his recommended penalty of suspension of the license for twenty days.

Even with some credit for any difference in the nature of the previous "hours" violation from the instant violation and for the claimed inability, despite sincere effort, to have the patrons out of the premises, nevertheless, the fact remains that the licensed premises were open after hours despite the suspension in 1958, the warning in 1959, and the dissimilar violation in 1959. Making due allowance for the facts in favor of the licensee and those not in his favor, I shall suspend defendant's license for a period of thirty days.

Accordingly, it is, on this 31st day of August 1960,

ORDERED that Plenary Retail Consumption License C-21 for the 1960-61 licensing year, issued by the Borough Council of the Borough of Fairview to Frank Sherry, for premises 344 Bergen Boulevard, Fairview, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m., Monday, September 12, 1960 and terminating at 3:00 a.m., Wednesday, October 12, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

6. STATUTORY AUTOMATIC SUSPENSION - SALE TO MINOR - SUSPENSION STAYED PENDING ACTION BY LOCAL ISSUING AUTHORITY IN DISCIPLINARY PROCEEDINGS.

Auto. Susp. #186-)	
In the Matter of a Petition to)	
Lift the Automatic Suspension of)	
License C-30, issued by the)	
Board of Alcoholic Beverage)	On Petition
Control of the City of Clifton to)	
)	O R D E R
Cozy Brook Inn, Inc.,)	
1025 Main Avenue)	
Clifton, N. J.)	
-----)	

BY THE DIRECTOR:

The petition herein discloses that on August 30, 1960, John W. Beisswanger, vice president of Cozy Brook Inn, Inc., was fined the sum of \$50 and costs after he was found guilty in the Municipal Court of the City of Clifton of selling alcoholic beverages to a minor, in violation of R. S. 33:1-77. Said conviction resulted in the automatic suspension of the license held by the corporation. R.S. 33:1-31.1. Because the Division was informed that the licensee intended to apply for a stay, the license has not been picked up.

The Secretary of the Board of Alcoholic Beverage Control of the City of Clifton has advised me that the Board has instituted disciplinary proceedings against the corporation because of said sale to a minor and that hearing is scheduled to be held on September 26, 1960. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after said disciplinary proceedings have been decided. In fairness to the petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Krygier, Bulletin 1321, Item 3.

Accordingly, it is, on this 31st day of August 1960,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PERMITTING OBSCENE LANGUAGE ON PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Nettie Hastings)
t/a Nettie's Bar)
685-7 North Clinton Avenue)
Trenton 9, N. J.,)

CONCLUSIONS

and

Holder of Plenary Retail Consumption License C-67, issued by the Board of Commissioners of the City of Trenton.)

ORDER.

Casimir E. Bugdal, Esq., Attorney for Defendant-licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that (1) she sold during prohibited hours an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) she allowed and permitted on her licensed premises the use of filthy and obscene language, in violation of Rule 5 of State Regulation No. 20.

On the nights of July 8, 16 (to 12:35 a.m. the next morning) and 22, 1960, ABC agents were in the defendant's licensed premises and heard patrons and Joseph Odoresio (a bartender) freely and loudly use foul, filthy and obscene language, the repetition of which would serve no useful purpose.

At about 10:05 p.m. on their last visit the agents observed Odoresio sell a pint bottle of whiskey to a patron for off-premises consumption. At about 10:25 p.m. one of the agents made a similar purchase of a pint bottle of whiskey from the bartender and, accompanied by the other agents, left the premises with the alcoholic beverage. The agents immediately returned to the premises and identified themselves to the bartender who verbally admitted aforesaid unlawful sale in the presence of the licensee. Both Odoresio and the licensee stated they were aware of the use of obscene language by the patrons on the licensed premises.

By way of mitigation the attorney for the defendant has submitted a statement which I have carefully read, together with the file in the case and the reports of the agents. However, I do not find any extenuating circumstances in the case which would impel me to impose less than the minimum penalties in cases of this kind.

Defendant has a prior adjudicated record. Effective January 29, 1951, her license was suspended for two days by the then Director of this Division for mislabeled beer tap (Bulletin 896, Item 12) and effective September 1, 1958, her license was suspended for five days by the local issuing authority for sale to minors. Since the former of said dissimilar violations occurred more than five years ago it will not be considered in fixing the penalty herein. Re Grande and Schipani, Bulletin 1309, Item 7. I shall suspend her license for the minimum period of fifteen days on Charge 1 (Re Janulis, Bulletin 1346, Item 10) and for the minimum period of ten days on Charge 2 (Re Spillane, Bulletin 1259, Item 7), to which will be added five days because of the prior dissimilar violation which occurred within

the past five years (Re Alexis and Alexopoulos, Bulletin 1343, Item 5), making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 31st day of August 1960,

ORDERED that plenary retail consumption license C-67, issued by the Board of Commissioners of the City of Trenton to Nettie Hastings, t/a Nettie's Bar, for premises 685-7 North Clinton Avenue, Trenton, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, September 12, 1960, and terminating at 2 a.m. Friday, October 7, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary Proceedings against

Penn Brook Inn, Inc.
t/a Penn Brook Inn
33-35 West Grand Street
Elizabeth 2, N. J.

CONCLUSIONS

and

ORDER

Holder of Plenary Retail Consumption License C-111, issued by the City Council of the City of Elizabeth.

Pollis, Williams & Pappas, Esq., by Joseph J. Higgins, Esq., and Robert W. Wolfe, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"A plea of not guilty was entered on behalf of the defendant to the following charge:

"On August 27, 1959, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

Three quart bottles labeled "Schenley Reserve Blended Whiskey 86.0 Proof",

Fourteen quart bottles labeled "Seagram's Seven Crown American Blended Whiskey 86.0 Proof",

Three quart bottles labeled "Calvert Reserve American Blended Whiskey 86.0 Proof",

Six quart bottles labeled "Imported Seagram's V.O. Canadian Whisky A Blend 86.8 Proof",

One quart bottle labeled "Four Roses Blended Whiskey 86.0 Proof",

Two 4/5 quart bottles labeled "Chivas Regal Blended Scotch Whisky 86.0 Proof", and

One 4/5 quart bottle labeled "Cutty Sark Blended Scots Whisky 86.0 Proof";

in violation of Rule 27 of State Regulation No. 20."

"Agent C testified that on August 27, 1959 he visited defendant's licensed premises and while there, tested the contents of 160 open bottles of liquor; that he seized 56 bottles thereof when his tests indicated a variation in the ingredients of said liquor when compared with the genuine formulas of the respective brands; that he spoke to Sigmund Hauser (secretary of the defendant corporate-licensee) about the questionable bottles and Hauser admitted refilling them with a cheaper type of liquor and gave as the reason for so doing high 'overhead' and his desire to avoid an increase in the sales price of the whiskey; that because of Hauser's annoyance he telephoned the Division offices, and 'a half hour or 45 minutes later' Agent K arrived at the defendant's premises; that Agent K sealed the questionable bottles with sealing wax and placed them in cartons; that Hauser got a 'push cart' which was used to transport the cartons to Agent K's car; that he, in his car, followed Agent K's car to the Division offices and assisted in bringing the bottles to the laboratory where they were placed in custody of the Division chemist; that the next day he (Agent C) took the bottles in question to his desk which is located in a large office containing many employees and put a transmittal tag on each bottle before submitting the bottles to the chemist for further analysis.

"Agent K testified that he received a telephone call from Agent C and then went to defendant's licensed premises, arriving there at 12:15 p.m.; that upon his arrival he saw Hauser and a clean-up man and that Agent C was testing the contents of bottles of liquor; that after Agent C had completed his tests he (Agent K) sealed the bottles with corks and caps given him by Hauser; that the latter obtained a 'little truck' and that the cartons containing the questionable bottles were carried to the trunk of his (Agent K's) car and transported to the Division; that when he reached the Division, the cartons containing the questionable bottles and the five genuine bottles were brought to the Division laboratory and given to the chemist.

"Menoth G. Battista, employed as the Division's chemist, testified that he made an analysis of the contents of the 56 bottles which had been seized at defendant's premises. A report of the chemical analysis of the 56 bottles seized at the defendant's premises discloses that the contents of 30 bottles thereof were not in accordance with the labels of the respective brands.

"Sigmund Hauser testified that on the day in question he received a telephone call from an employee named Victor Kisch (now deceased) that an ABC man was at the licensed premises; that when he arrived at the establishment, Victor Kisch was outside of the building and stated to him that the ABC agent wished to get into the stockroom; that he went inside of the premises and introduced himself to the agent; that the agent then advised him, 'You have trouble here. What are you going to do about it?'; that he and the agent proceeded to the stockroom and the agent looked inside and then returned to the bar where he was testing liquor; that the agent then explained that there was something wrong with the liquor in the bottles which he had tested and stated that he knew what brand of liquor was in those bottles; that Agent K began sealing the bottles but there were six of the bottles with pourers still in them, which fact he called to the attention of Agent K; that thereafter he obtained a 'dolly' which was used to transport the cartons in which the bottles of liquor were placed to one of the agent's cars. During

cross-examination Hauser admitted that he did not check the bottles too carefully to see whether or not they were sealed.

"At the hearing in this matter there were accusations and counter-accusations concerning each other attributed to Agent C and Hauser, respectively, which each categorically denied. Whether or not there was any substance to them has no bearing herein, as the recommendations in this case shall be predicated solely on the evidence respecting the genuineness of the liquor in the seized bottles.

"I have carefully considered the pertinent testimony presented herein and find that there was no evidence produced on behalf of the defendant to contradict the chemist's analysis that the contents of the 30 bottles upon which the charge was based were not genuine as labeled. It has been steadfastly ruled that a licensee is responsible when alcoholic beverages not truly labeled are found on the licensed premises, irrespective of whether or not he is aware of their presence. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup. Ct. 1947); Re Kruvant, Bulletin 1291, Item 3. I, therefore, recommend a finding that the defendant is guilty of the charge preferred herein.

"Defendant has no prior adjudicated record. It is further recommended that an order be entered providing that defendant's license be suspended for a period of eighty-five days, the minimum suspension imposed in cases involving 30 bottles. Cf. Re Czerminski, Bulletin 1298, Item 2."

Written exceptions to the Hearer's Report and written argument thereon were filed with me by defendant's attorneys. Written answering argument was filed by the attorney appearing for the Division.

Many of the alleged facts set forth in defendant's written argument are not borne out by the testimony. As to the deceased Kisch, defendant's written argument alleges that the deceased would have testified as to certain facts but, of course, the testimony of this witness was not available. The alleged remark by Agent C as to the "\$1000 a minute" was not mentioned by Hauser when Agent K arrived at the premises. Defendant's written argument also omits any reference to the testimony of Agent K that he sealed the seized bottles in the presence of Hauser and transported them to the Division. Certainly, neither agent refilled these bottles at any time after Agent K arrived at the premises, and I simply cannot believe that Agent C refilled these bottles in the presence of the deceased employee.

I have made my own independent study of the record, as requested by defendant's attorney, and have carefully considered the entire record, as I do in all cases. As a result, I concur in the findings and conclusions of the Hearer and, hence, find defendant guilty as charged.

As to the recommended penalty, I conclude that the 85-day suspension suggested by the Hearer is excessive. Lesser penalties have been imposed in Re Schwartz, Bulletin 1280, Item 2, and Re Broad & Kinney Bar Inc., Bulletin 1286, Item 4, which are somewhat similar cases. I shall suspend defendant's license for sixty-five days.

Accordingly, it is, on this 6th day of September 1960,

ORDERED that plenary retail consumption license C-111, issued for the 1960-61 licensing year by the City Council of the City of Elizabeth to Penn Brook Inn, Inc., t/a Penn Brook Inn, for premises 33-35 West Grand Street, Elizabeth, be and the same is hereby suspended for sixty-five (65) days, commencing at 2 a.m. Tuesday,

September 13, 1960, and terminating at 2 a.m. Thursday, November 17, 1960.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Watchung Spring Water Co. Inc.

4700 South Clinton Avenue

South Plainfield, New Jersey

Application filed October 21, 1960 for
place-to-place transfer of State Beverage
Distributor's License SBD-137 from 434 West
4th Street, Plainfield, New Jersey.

Neighborhood Home Beverage Service

505 Old Post Road

Edison Township, New Jersey

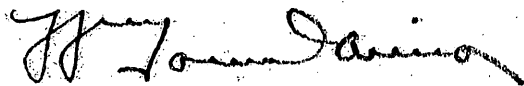
Application filed October 24, 1960 for
place-to-place transfer of State Beverage
Distributor's License SBD-60 from 169
Main Street, Edison Township, New Jersey.

Lyon Distributing Co., Inc.

6027 Crescent Boulevard

Pennsauken Township, New Jersey

Application filed October 24, 1960 for
person-to-person transfer of Limited
Wholesale License WL-37 from Lynn Distributing
Co., Inc.



William Howe Davis
Director