

BULLETIN 1443

April 23, 1962

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - BLANCK, et als., v. MAYOR AND BOROUGH COUNCIL OF MAGNOLIA, DIVISION OF ALCOHOLIC BEVERAGE CONTROL, et als. - DIRECTOR AFFIRMED.
2. DISCIPLINARY PROCEEDINGS (Hopewell Twp. Mercer Co.) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Hopewell Twp. Mercer Co.) - ORDER LIFTING SUSPENSION ON CERTAIN DATES AND EXTENDING SUSPENSION PERIOD.
4. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
5. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.
6. STATUTORY AUTOMATIC SUSPENSION - ORDER TEMPORARILY LIFTING SUSPENSION PENDING DETERMINATION OF DISCIPLINARY PROCEEDINGS
7. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION WITHOUT LICENSE - ALCOHOLIC BEVERAGES AND MOTOR VEHICLE ORDERED RETURNED ON CONDITION VALIDATING PERMIT OBTAINED.
8. DISQUALIFICATION REMOVAL PROCEEDINGS - CONVICTION OF CONSPIRACY TO COMMIT ARSON - DISQUALIFICATION REMOVED.
9. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.
10. DISCIPLINARY PROCEEDINGS (Hoboken) - POSSESSION OF INDECENT MATTER - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
11. DISCIPLINARY PROCEEDINGS (Upper Twp.) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
12. DISCIPLINARY PROCEEDINGS (Cedar Grove) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1443

April 23, 1962

1. COURT DECISIONS - BLANCK, et als., v. MAYOR AND BOROUGH COUNCIL OF MAGNOLIA, DIVISION OF ALCOHOLIC BEVERAGE CONTROL, et als. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-752-60

HORACE W. BLANCK and ANGELINE  
V. BLANCK, trading as BLANCK'S  
LIQUOR STORE, and the SOUTH  
JERSEY RETAIL LIQUOR STORES  
ASSOCIATION,

Appellants,

vs.

MAYOR AND BOROUGH COUNCIL OF  
MAGNOLIA, HARRY R. D'AMICO and  
CATHERINE D'AMICO, trading as  
D'AMICO LIQUOR STORE and  
DIRECTOR OF DIVISION OF ALCOHOLIC  
BEVERAGE CONTROL,

Respondents.

Argued February 5, 1962 - Decided March 28, 1962

Before Judges Price, Sullivan and Lewis.

Mr. Grover C. Richman, Jr., argued the cause for appellants (Messrs. Richman and Berry, attorneys).

Mr. Norman Heine argued the cause for respondents Harry R. D'Amico and Catherine D'Amico, trading as D'Amico Liquor Store.

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for Division of Alcoholic Beverage Control (Mr. David D. Furman, Attorney General).

The opinion of the court was delivered by  
SULLIVAN, J.A.D.

This Appeal grows out of the issuance of a plenary retail distribution liquor license by the Borough of Magnolia to Harry R. D'Amico and Catherine D'Amico for premises 200 South White Horse Pike, Magnolia, New Jersey.

In March 1940 the Borough of Magnolia adopted an ordinance limiting the number of liquor licenses within the Borough to three plenary retail consumption licenses and one club license. The ordinance did not provide for any plenary retail distribution license. In October 1960 by action of the Borough Council, the ordinance was amended so as to allow the issuance of one plenary retail distribution license in addition to the other licenses. Two applications for said license were made, one by Harry R. D'Amico and Catherine D'Amico who proposed to erect a \$30,000 building in the commercial zone for the operation of a liquor store, and the other by Roy C. Meyers, Jr., who proposed to use his existing residence as the liquor store and "probably anticipates building another building in the future for the liquor store."

As heretofore noted, the license was issued to Harry R. D'Amico and Catherine D'Amico on November 7, 1960. The licensees have since constructed the building and have been operating the liquor store therein.

Appellants, Horace W. Blanck and Angeline V. Blanck, hold one of the plenary retail consumption licenses in the Borough. This license includes the right to sell packaged goods. The appellant, South Jersey Retail Liquor Stores Association, is an unincorporated association consisting of holders of plenary retail distribution licenses in South Jersey.

Appellants appealed to the Director of the Division of Alcoholic Beverage Control from the issuance of the license to the D'Amicos. They charged inter alia, that the amendatory ordinance under which the license was issued was invalid because of the self-interest of Harry R. D'Amico who was alleged to have been a councilman and president of the Borough Council at the time the amendatory ordinance was adopted.

At the hearing in the Division the following facts were developed. Harry R. D'Amico had been a councilman of the Borough of Magnolia for a period of some ten years prior to August 1960, and during the summer of 1960 was president of the Borough Council. His brother, Samuel D'Amico, had been Borough Clerk since 1941.

In 1959 the Borough Council had considered amending its liquor ordinance to provide for a "liquor store", but nothing came of it. Early in the summer of 1960 inquiries were made by various people interested in putting a liquor store in the Borough. About the same time Councilman D'Amico had a discussion with Francis J. Scott, the Borough Mayor, presumably about amending the liquor ordinance. As a result of the discussion the Mayor "knew that if the ordinance was amended that he [D'Amico] would apply for a liquor license." The Mayor did not know "for sure whether he would apply". He "thought he would." The other councilmen testified that they were unaware of D'Amico's interest in obtaining a liquor license until after the amendment had been adopted.

The amendatory ordinance was introduced at an adjourned meeting held on August 24, 1960, and approved on first reading. Councilman D'Amico did not attend this meeting. Notice of the proposed amendment was published in the Camden Courier on September 23, 1960, with public hearing thereon scheduled for October 5, 1960.

The Council met on September 7, 1960, which meeting was attended by Councilman D'Amico who moved that the minutes of the regular and special meetings held in August be approved.

On October 1, 1960, Harry R. D'Amico submitted his resignation as councilman to the Borough Clerk. On October 5, 1960, at a meeting of the Borough Council, the amendment to the liquor ordinance was adopted, and at the same meeting the Council accepted D'Amico's resignation as councilman. D'Amico did not attend this meeting. Notice of the adoption of the amendment was published in the Camden Courier on October 14, 1960. Harry and Catherine D'Amicos' application for a license under the amendment to the ordinance was filed on October 7, 1960. As heretofore noted, one other application (Meyers) was also filed.

The Director found that the evidence did not support appellants' charge of self-interest. Appellants' other claims of error were also found to lack merit.

Appellants have appealed to this court from the Director's conclusions and order. The appeal makes two points: One, the amendatory ordinance is invalid because Harry R. D'Amico as president of the Borough Council at the time the amendment was adopted, had a personal and financial interest which conflicted with his public duty; two, since Harry R. D'Amico applied for the license less than forty-eight hours after he resigned as president of the Borough Council, the application should have been made directly to the Director of the Division of Alcoholic Beverage Control as provided by R.S. 33:1-20.

The latter point will be considered first. By R.S. 33:1-20 it is provided that no liquor license shall be issued by any issuing authority to any member thereof, and that in any such case, application may be made to the Commissioner (Director) who may issue the license. This provision does not apply to the instant case. Harry R. D'Amico had resigned as councilman prior to applying for the license. True, the time interval was short, but the Council did not issue a license to one of its members, so that the mandate of R.S. 33:1-20 was not disobeyed. Such circumstances would be pertinent to the charge of corruption or favoritism hereafter considered, but do not make out a violation of R.S. 33:1-20.

Appellants' other point is that the Director should have ruled that the amendatory ordinance was invalid because of Councilman D'Amico's obvious self-interest. In support of this argument appellants cite numerous cases where ordinances were declared to be invalid because of the self-interest of one or more of the municipal officials who participated in the passage of the ordinance. Pyatt v. Borough of Dunellen, 9 N.J. 548 (1952); Zell v. Borough of Roseland, 42 N.J. Super. 75 (App. Div. 1956); S & L Associates, Inc. v. Township of Washington, 61 N.J. Super. 312 (App. Div. 1960); McNamara v. Saddle River Borough, 64 N.J. Super. 426 (App. Div. 1960). However, in all of these cases the ordinance was directly attacked by a plenary court action and a judicial ruling made as to the invalidity of the ordinance. Here, appellants have not brought any action to have a judicial determination as to the validity of the amendatory ordinance. Instead, they appealed to the Director of Alcoholic Beverage Control from the issuance of the license and asked the Director to declare the amendatory ordinance void.

We conclude that the Director does not have the power to make such ruling. The Alcoholic Beverage Control law does vest the Director with broad powers to supervise and regulate the manufacture, distribution and sale of alcoholic beverages. Municipal bodies may by ordinance limit the number of licenses and the hours of sale but appeal may be had to the Director who may set aside, vacate, repeal or modify the limitation complained of. R.S. 33:1-41. This provision means exactly what it says. The Director "may \*\*\* repeal the limitation complained of \*\*\*." This does not empower the Director to repeal the ordinance however. If a person wished to challenge a municipal liquor ordinance on the ground that some step in the statutory procedure for adopting the ordinance had been omitted, it seems clear that he would not be entitled to bring such issue before the Director but would have to seek a judicial ruling by plenary suit; the reason being that the validity of the limitation would not be the issue. So, too, in the instant case. Appellants are not really attacking the limitation as such. They are saying that the ordinance was adopted contrary to law so that the limitation fixed by the ordinance must fall. However, this is not the situation provided for by R.S. 33:1-41.

In Phillipsburg v. Burnett, 125 N.J.L. 157, 161 (Sup. Ct. 1940) Justice Case in a dictum involving this precise issue said,

\*\*\* the proposition that a state administrative officer may flatly repeal a municipal ordinance, solemnly passed in accordance with statutory authority contained within the immediate text, is rather startling." Justice Heher in commenting on the scope of the powers of administrative agencies said the following in Swede v. City of Clifton, 22 N. J. 303, 313 (1956):

"The agency that must answer the pre-question whether somebody's marriage is valid does not have power to declare valid or annul marriages. It merely has the duty to treat as valid or invalid a marriage for the purpose of deciding another legal question that is properly before the agency, \*\*\*."

The conclusion is that appellants' claim as to the invalidity of the amendatory ordinance because of Councilman D'Amico's alleged self-interest could only be determined by judicial ruling in a plenary suit. Such issue was not justiciable in the administrative proceeding and will not be considered by this court on appeal from the Director's conclusions and order. We make no ruling as to Councilman D'Amico's alleged self-interest or its effect on the validity of the amendatory ordinance.

There is no question but that the Director could and did consider all of the facts and circumstances surrounding the passage of the amendatory ordinance in determining whether or not the issuance of the license to the D'Amicos was the product of corruption or favoritism. The Director, however, concluded that the granting of the license was not a violation of the Alcoholic Beverage Control Law or the Rules and Regulations of the Division. He determined that no abuse of discretion in issuing the license had been shown, nor did it appear that the Council's action was arbitrary or unreasonable. There is substantial evidence to support his determination. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956). There were only two applications for the license; the D'Amicos who proposed to erect a substantial building in the business area at the opposite end of the town from the existing Broad Package Privilege License held by Angeline and Horace Blanck; and Roy C. Meyers, Jr., who proposed to use his existing residence as the liquor store, at least temporarily. This location was about 500 feet from the Blanck premises. Under these circumstances, there is nothing to support the charge of corruption or favoritism. As between the two, the D'Amico application clearly presented the better situation.

We note that Meyers has not appealed the Council's action. The present appellants are other liquor dealers in the area who really don't want any license to issue to anyone, whether to the D'Amicos or anybody else.

We see no basis for disturbing the Director's ultimate ruling. Affirmed.

2. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

James Arcieri and Michael Arcieri t/a Royal Oak Inn Route #69 Hopewell Township (Mercer Co.) PO Hopewell, New Jersey

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Hopewell.

Defendant-licensees, by James Arcieri, A Partner. David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded guilty to a charge alleging that they possessed on their licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On December 18, 1961, an ABC agent tested and gauged defendants' open stock of assorted brands of liquor and seized nine bottles for further analysis by the Division's chemist. The chemist's report shows that one bottle labeled "Imported Seagram's V.O. Canadian Whisky a Blend 86.8 Proof" was high in solids and short in proof, and that seven bottles labeled "Seagram's Seven Crown American Blended Whiskey 86 Proof" are high in solids, low in acids and low in proof, when compared with samples of the genuine products of the labeled brands. In a signed acknowledgment, licensee James Arcieri admitted refilling all of the bottles with the same brand of a private label whiskey.

Defendant James Arcieri has a previous record of suspension of license then held for premises 59 Division Street, Somerville, for 18 days, effective June 26, 1947, for possession of contraceptives. Since this dissimilar violation occurred more than five years ago, I shall suspend their license for thirty days, the minimum penalty imposed in "refill" cases involving eight bottles. Re Club Mayfair, Inc., Bulletin 1300, Item 4. Five days will be remitted for the plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 20th day of February, 1962,

ORDERED that Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Hopewell to James Arcieri and Michael Arcieri, t/a Royal Oak Inn, for premises on Route #69, Hopewell Township, (Mercer County) be and the same is hereby suspended for twenty-five (25) days, commencing at 2:30 a.m., Monday, February 26, 1962, and terminating at 2:30 a.m., Friday, March 23, 1962.

WILLIAM HOWE DAVIS DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ORDER LIFTING SUSPENSION ON CERTAIN DATES AND EXTENDING SUSPENSION PERIOD.

In the Matter of Disciplinary Proceedings against )  
 )  
 James Arcieri and Michael Arcieri )  
 t/a Royal Oak Inn ) On Petition  
 Route #69 )  
 Hopewell Township (Mercer Co.) ) O R D E R  
 PO Hopewell, New Jersey )  
 )  
 Holders of Plenary Retail Consumption License C-9, issued by the )  
 Township Committee of the Township )  
 of Hopewell. )

-----  
Licensees by James Arcieri, Pro Se.

BY THE DIRECTOR:

On February 20, 1962, I entered an order suspending the license for twenty-five days commencing at 2:30 a.m. Monday, February 26, 1962, and terminating at 2:30 a.m. Friday, March 23, 1962.

A verified petition having been filed on behalf of the licensees for lifting said suspension because, prior thereto, licensees had made arrangements for several affairs to be held on the licensed premises on March 1, March 17, and March 20, 1962; and it appearing to my satisfaction that said affairs were previously scheduled and that innocent persons would be inconvenienced by a denial of the request (cf. Re K & S Operating Corp., Bulletin 1416, Item 6);

It is, on this 26th day of February, 1962,

ORDERED that the suspension heretofore imposed shall be lifted from 2:30 a.m. March 1, 1962 to 2:30 a.m. March 2, 1962, and from 2:30 a.m. March 17, 1962 to 2:30 a.m. March 18, 1962, and from 2:30 a.m. March 20, 1962 to 2:30 a.m. March 21, 1962, and that said suspension shall thereafter continue in effect for an additional three days beyond the date previously fixed, viz., until 2:30 a.m. Monday, March 26, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

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

In the Matter of Disciplinary Proceedings against )

Jesse Garcia )  
102 Bright Street )  
Jersey City, New Jersey )

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-151, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

ORDER

-----  
Jesse Garcia, Pro se.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that (1) on January 19 and 20, 1962, he permitted the playing of a pool game for money stakes, in violation of Rule 7 of State Regulation No. 20, and (2) on January 20, 1962 sold a pint bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent previous record, the license will be suspended for fifteen days on the first charge (Re Fredericks, Bulletin 1307, Item 4) and for fifteen days on the second charge (Re 74 Hamilton Ave., Corp., Bulletin 1428, Item 9), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 20th day of February, 1962,

ORDERED that Plenary Retail Consumption License C-151, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Jesse Garcia for premises 102 Bright Street, Jersey City, be and the same is hereby suspended for twenty-five (25) day, commencing at 2:00 a.m., Monday, February 26, 1962, and terminating at 2:00 a.m., Friday, March 23, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

5. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING  
SUSPENSION.

Auto. Susp. #201	)	
In the Matter of a Petition to	)	
Lift the Automatic Suspension	)	
of Plenary Retail Distribution	)	On Petition
License D-120, issued by the	)	
Municipal Board of Alcoholic	)	O R D E R
Beverage Control of the City	)	
of Jersey City to	)	
	)	
Herman Ruesch and Eugene H.	)	
Ruesch, t/a Ruesch's	)	
74 Nelson Ave. & 241 North St.	)	
Jersey City, N. J.	)	

-----  
BY THE DIRECTOR:

It appears from the petition filed herein that on January 12, 1962, Herman Ruesch, one of the petitioners herein, was fined \$250 in the Hudson County Court after he had pleaded guilty to a charge alleging that he sold alcoholic beverages to two minors in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of his license for the balance of its term. R.S. 33:1-31.1. The statutory automatic suspension has not been effectuated because of the pendency of these proceedings.

It further appears from the petition and the records of this Division that the local issuing authority suspended petitioners' license for forty-five days, less fifteen for the plea, after they pleaded guilty in disciplinary proceedings alleging sale to the same minors. Said suspension was effective from 2:00 A. M. Monday, January 8, 1962, to 2:00 A. M. Wednesday, February 7, 1962. The disciplinary proceedings were instituted by the local issuing authority on its own initiative and, the suspension imposed therein having been served, I shall grant the request to lift the automatic suspension.

Accordingly, it is, on this 19th day of February, 1962,

ORDERED that the statutory automatic suspension of said license D-120 be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS  
DIRECTOR

6. STATUTORY AUTOMATIC SUSPENSION - ORDER TEMPORARILY LIFTING SUSPENSION PENDING DETERMINATION OF DISCIPLINARY PROCEEDINGS.

Auto. Susp. #202	)	
In the Matter of a Petition to	)	
Lift the Automatic Suspension	)	
of Plenary Retail Distribution	)	On Petition
License D-1, issued by the	)	
Common Council of the City of	)	O R D E R
Estell Manor to	)	
	)	
Helen Magazzu	)	
t/a Helen's Liquor Store	)	
Route 50, Estell Manor	)	
PO Mays Landing, R. D. 2, N. J.	)	

-----  
Frank J. Ferry, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

Petition herein discloses that on February 7, 1962, Helen Magazzu, the petitioner herein, was fined \$50 and \$5 costs in the Atlantic County District Court after she had pleaded guilty to a charge alleging that she sold alcoholic beverages to two minors on January 26, 1962, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of her license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

Disciplinary proceedings have not yet been instituted against the licensee because of said sale of alcoholic beverages to the minors. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after the disciplinary proceedings have been decided. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Faessler, Bulletin 920, Item 15.

Accordingly, it is, on this 20th day of February, 1962,

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

WILLIAM HOWE DAVIS  
DIRECTOR

7. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION WITHOUT LICENSE - ALCOHOLIC BEVERAGES AND MOTOR VEHICLE ORDERED RETURNED ON CONDITION VALIDATING PERMIT OBTAINED.

Seizure Case No. 10,716

In the Matter of the Seizure on	)	
November 22, 1961, of a quantity	)	
of taxpaid alcoholic beverages	)	ON HEARING
and an Oldsmobile Station Wagon at	)	
the intersection of U. S. Highway	)	CONCLUSIONS AND ORDER
Route 46, Exit 157 and the Garden	)	
State Parkway in the Borough of	)	
East Paterson, County of Passaic	)	
and State of New Jersey.	)	

Richard J. Baker, Esq., Attorney for James Malcolm Macauley, Claimant.

I. Edward Amada, Esq., appearing for 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 taxpaid alcoholic beverages and an Oldsmobile Station Wagon, described in a schedule attached hereto and made part hereof, seized on November 22, 1961, at intersection of U. S. Highway Route 46, Exit 157 and the Garden State Parkway, East Paterson, constitute unlawful property and should be forfeited.

"At the hearing held herein on December 27, 1961, the attorney for James Malcolm Macauley, owner of the seized items, admitted that the alcoholic beverages which were being transported in the station wagon by his client at the time of seizure exceeded the quantity of alcoholic beverages which, in accordance with R.S. 33:1-2, may be transported in an unlicensed vehicle solely for personal consumption. The attorney also admitted that his client had no license or permit to transport the alcoholic beverages. He submitted the evidence hereinafter considered in mitigation.

"At the hearing James Malcolm Macauley testified that he has been employed at the Bendix Aviation Corp. premises (located in Teterboro, N.J.) for nearly three years; that on the date of the seizure he was transporting the 95 bottles to said premises; that some bottles were intended for his personal consumption and the balance were to be delivered to his co-workers at Bendix pursuant to orders which he had received from them. He further testified that he had been doing this for two or three years during the Thanksgiving and Christmas periods. He further testified that he had purchased the seized bottles at retail licensed premises and that the case-lots of these alcoholic beverages had been purchased at the discount permitted for case-lot purchases.

"On cross-examination he testified that he 'didn't get anything' out of the transaction; that he did it as a favor and that his co-workers who purchased one or more bottles saved the discount on his case-lot purchases. He identified thirty-one cards which were found in his possession at the time of seizure as memos received from people who wanted liquor. He further admitted that, when an ABC agent approached his car on the Bendix parking lot on the day prior to the seizure, he had whiskey in his car; that the agent attempted to purchase one bottle and that he told the agent he would have to give the order inside.

"On behalf of claimant, three men employed at the Bendix plant testified that they had ordered various quantities of alcoholic beverages from claimant prior to November 22, 1961, and that they had given similar orders to him during holiday periods in prior years. None of the three had a definite recollection as to the prices paid by them, but each testified that he saved twenty-five or thirty cents on each bottle purchased.

"The seized alcohol and the Oldsmobile station wagon in which it was transported constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

"R.S. 33:1-66(e) authorized the Director, upon being satisfied that a person whose property has been seized or forfeited has acted in good faith and has unknowingly violated the Law, to order that such property be returned upon payment of reasonable costs. Claimant testified that 'my impression was if you paid for it you could drive it.' Ignorance of the law in effect for many years cannot be accepted as an excuse. Moreover, I am not satisfied that claimant has acted in good faith. This is not an isolated transaction. Viewing the evidence in a light most favorable to claimant, I am not convinced that he obtained no profits from these transactions. For the reasons aforesaid, I recommend that claimant's application for return of the seized property be denied. Seizure No. 10,588, Bulletin 1415, Item 7, and cases therein cited.

"It is further recommended that the alcoholic beverages, miscellaneous items and the Oldsmobile station wagon be forfeited."

Pursuant to Rule 4 of State Regulation No. 28 exceptions to the Hearer's Report were submitted by the attorney for the claimant herein.

There is no question that the claimant violated the law in purchasing quantities of alcoholic beverages for his friends in transporting the same in his car notwithstanding if he alleges that he performed this service as a favor and without profit to himself. However, claimant has no prior record of similar violations. Furthermore he testified that he had no knowledge that he was violating the law with reference thereto. The penalty of forfeiture of his car and the quantity of alcoholic beverages seized as recommended by the Hearer would be unduly severe if I believe the claimant's story. However, it is bolstered by the sworn testimony of three of his friends for whom he performed the so-called "gratuitous service". Under the circumstances I shall give the benefit of the doubt to the claimant in this matter and the seized property will not be forfeited because of Macauley's unknowing violation.

Therefore, an application by James Macauley for a permit to retroactively validate the unlawful transportation will be accepted, at a fee of \$25.00 and he will be allowed thereby to transport the alcoholic beverages when returned to him to his home. In addition, he will be required to pay the costs of seizure and storage.

Upon issuance of such permit and the payment of the costs of seizure and storage the motor vehicle in question, the alcoholic beverages seized and an envelope with eight miscellaneous items, described in Schedule "A", attached hereto, will be returned to James Malcolm Macauley.

Accordingly, it is on this 20th day of February, 1962,

DETERMINED and ORDERED that if on or before the 5th day of March, 1962 James Malcolm Macauley pays the costs of seizure and storage of the Oldsmobile Station Wagon, the alcoholic beverages and the envelope with the eight miscellaneous items will be returned to him.

WILLIAM HOWE DAVIS  
DIRECTOR

SCHEDULE "A"

- 95 - bottles of assorted alcoholic beverages
- 1 - envelope with eight miscellaneous items
- 1 - Oldsmobile station wagon, Serial Number 607L03073, New York Registration RO-2948.

8. DISQUALIFICATION REMOVAL PROCEEDINGS - CONVICTION OF CONSPIRACY TO COMMIT ARSON - DISQUALIFICATION REMOVED

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33:1-31.2.	)	CONCLUSIONS AND ORDER
Case No. 1660	)	
-----	)	

BY THE DIRECTOR:

On March 28, 1939 petitioner received a suspended sentence after pleading guilty to the crime of conspiracy which involved out of a prior charge of attempted arson.

Whether a conspiracy involves moral turpitude should be determined by the type of conspiracy with which the defendant is charged. Re Case No. 236, Bulletin 279, Item 2. The crime of arson, per se, involves the element of moral turpitude. Re Case No. 370, Bulletin 644, Item 3. Inasmuch as the substantive offense involved in the conspiracy, per se, involves moral turpitude, the conspiracy to commit such a crime must necessarily involve the element of moral turpitude. Therefore, the petitioner was rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25,26.

At the hearing herein, petitioner testified that he is unemployed at present but has, in the past, owned and operated both a laundry and bowling alley. He further testified he is married and has one child and that he seeks relief in this proceeding in order that he might make application for a liquor license.

Three witnesses (a corporate president, a sales manager and an insurance salesman) testified that they have known the petitioner for over five years last past and he now bears a reputation for being a law-abiding citizen.

The police department of the municipality wherein the petitioner resides has advised that no complaint or investigation is pending involving the petitioner.

I am satisfied that petitioner has conducted himself in a law-abiding manner for more than five years last past and conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is on this 20th day of February, 1962,

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

WILLIAM HOWE DAVIS  
DIRECTOR

9. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING  
SUSPENSION.

Auto. Susp. #203	)	
In the Matter of a Petition to	)	
Lift the Automatic Suspension	)	
of Plenary Retail Distribution	)	On Petition
License D-9, issued by the	)	
Board of Commissioners of the	)	O R D E R
Township of Lyndhurst to	)	
James DeLellis & Concetta DeLellis	)	
t/a Ridge Wine & Liquor	)	
419 Ridge Road	)	
Lyndhurst, N. J.	)	

BY THE DIRECTOR:

Petition herein discloses that on February 7, 1962, James DeLellis, one of the petitioners herein, was fined \$50 and \$5 costs in the Lyndhurst Municipal Court after he had pleaded non vult to a charge alleging that he sold alcoholic beverages to a minor on October 13, 1961, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of his license for the balance of its term, R.S. 33:1-31.1. The statutory automatic suspension has not been effectuated because of the pendency of this proceeding.

By order dated December 28, 1961, I suspended the license in question for fifteen days effective January 8, 1962, after the licensees pleaded non vult in disciplinary proceedings to a charge alleging that they sold alcoholic beverages to the same minor. Under the said circumstances, I shall, upon my own motion, enter an order lifting the statutory automatic suspension, effective immediately.

Accordingly, it is on this 20th day of February, 1962,

ORDERED that the statutory automatic suspension of said license D-9 be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS  
DIRECTOR

11. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Point Inn, Inc. t/a The Inn Shore Road and Egg Harbor Bay Upper Township PO Beasley's Point, New Jersey

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of Upper Township.

Florence E. Josephson, Attorney for Defendant-licensee. David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe the contents, in violation of Rule 27 of State Regulation No. 20.

On August 11, 1961, an ABC agent gauged and tested defendant's open stock of assorted brands of liquors and seized one bottle for further analysis of the contents by the Division's chemist. The chemist's report shows that the contents of the seized bottle, labeled "Seagram's Seven Crown American Blended Whiskey 86 Proof" is higher in solids and darker in color than the genuine product of the named brand.

Defendant has a prior adjudicated record. Effective December 1, 1952 and effective August 22, 1960, its license was suspended for five days, respectively, by this Division for sales to minors. The minimum penalty imposed in "refill" cases involving one bottle is ten days. Re Al's Tavern, Inc., Bulletin 1397, Item 11. However, because of the 1960 dissimilar violation which occurred within the past five-years, an additional five days will be imposed, making a total suspension of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Investigation discloses that the licensed business is currently operated on a limited basis. Thus, no effective dates of suspension can be fixed at the present time, but will be fixed by further order to be entered after full-scale operation shall have resumed.

Accordingly, it is, on this 21st day of February, 1962,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of Upper Township to Point Inn, Inc., t/a The Inn, for premises on Shore Road and Egg Harbor Bay, Upper Township, be and the same is hereby suspended for ten (10) days, the time to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS DIRECTOR

12. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES  
NOT TRULY LABELED - PRIOR RECORD - LICENSE  
SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against )

Pompik Inn, Inc. )  
1131 Pompton Avenue )  
Cedar Grove, New Jersey )

CONCLUSIONS

AND

Holder of Plenary Retail Consumption )  
License C-9, issued by the Township )  
Council of the Township of Cedar Grove. )

ORDER

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Camarata and Colonna, Esqs., by Michael T. Colonna, Esq.,  
Attorneys for Defendant-licensee.  
David S. Piltzer, Esq., Appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on  
December 9, 1961, it possessed alcoholic beverages in three bottles  
bearing labels which did not truly describe their contents, in  
violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license  
by the Township Council for five days effective September 10, 1961,  
for sale to minors. The prior record of dissimilar violation con-  
sidered, the license will be suspended for the minimum period of twenty-  
five days, with remission of five days for the plea entered, leaving  
a net suspension of twenty days. Re Giordano, Bulletin 1423, Item 7.

Accordingly, it is, on this 23d day of February, 1962,

ORDERED that Plenary Retail Consumption License C-9,  
issued by the Township Council of the Township of Cedar Grove to  
Pompik Inn, Inc., for premises 1131 Pompton Avenue, Cedar Grove,  
be and the same is hereby suspended for twenty (20) days, commencing  
at 2:30 a.m., Tuesday, March 6, 1962, and terminating at 2:30 a.m.,  
Monday, March 26, 1962.

  
William Howe Davis  
Director