

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1000

FEBRUARY 1, 1954.

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1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - HINDERING INVESTIGATION - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary  
Proceedings against

JOSEPH JINGOLI  
416 Princeton Avenue  
Trenton, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribu-  
tion License D-7, issued by the  
Board of Commissioners of the City  
of Trenton.

-----  
Thomas P. Rhodes, Jr., Esq., Attorney for Defendant-licensee.  
David S. Piltzer, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On October 21, 1953, you sold at retail a pint bottle of Vincitore DeLuxe Burgundy Wine, an alcoholic beverage, at less than the price thereof listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulations No. 30.

"2. On October 21, 1953, while an inspector and an investigator of the Division of Alcoholic Beverage Control were conducting an investigation at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation; in violation of R. S. 33:1-35."

At the hearing herein, two ABC agents (hereinafter identified as the first agent and the second agent) testified. The first agent testified that he entered defendant's licensed premises at approximately 12:15 p.m. on October 21, 1953; that the second agent followed him into the premises a short time thereafter; that the licensee was behind the counter; that he (the first agent) ordered from said licensee a pint bottle of Vincitore DeLuxe Burgundy Wine and that the licensee took a bottle of that brand of wine from the shelf and placed it in a paper bag. The first agent further testified that he placed twenty-seven cents, a twenty-five cent piece and two one-cent pieces on the counter; that the licensee said, "It is thirty-two cents;" that the agent replied that he only had twenty-seven cents and that the licensee said, "All right, I will let you have it for twenty-seven cents," whereupon the licensee took the money and placed it in the cash register.

The second agent testified that, after giving the first agent a start of three or four yards, he (the second agent) entered the licensed premises and stood alongside the first agent who then had a bottle of wine in his hand; that he saw a quarter and two pennies on the counter which the licensee picked up and rang up in the cash register and that, although he heard no conversation between the first agent

and the licensee; he saw a twenty-seven cent sale appear on the cash register. He also testified that he had previously given the first agent "a quarter and two cents" because the latter "had nothing on him but bills."

Both agents testified that, thereafter, each identified himself to the licensee by showing his credentials, which consisted of two cards in a folder. One card bears the agent's photograph and signature while the other contains his commission and, on it, the letters ABC appear clearly in red. The agents further testified that the licensee became angry, first denying the sale and then admitting it, and tried to wrest the bottle from the first agent. They further testified that, when they requested to see the cash register, the licensee blocked the entrance to the space behind the bar with his body saying, "you can't come back here"; that later, after having produced a copy of the license application for inspection, the licensee delivered a tirade against the agents, threw down the copy of the license application and pushed one of the agents with his hand.

The bottle of wine was introduced in evidence and it was stipulated that the price as listed in the then effective minimum consumer resale price list was thirty-two cents. There was no tape in the cash register.

The licensee, who is 75 years of age and who came to this country when he was already an adult, testified in his own behalf. He testified that he had very little schooling and it was apparent from the testimony that he is excitable and that he experienced some language difficulties. He testified that the first agent entered alone, ordered the wine, paid thirty-two cents for it, using a quarter, a nickel and two pennies and then went outside and called the second agent. He further testified that the agents re-entered the licensed premises and made a "fuss" and opened the cash register. He further testified that he was frightened and thought that he was being robbed. However, he also testified that one of his steady customers, Percy McCloe, entered immediately after the first agent, witnessed the sale and remained during the entire time that the agents were upon the licensed premises. He admitted that the second agent had exhibited credentials and that he (the licensee) had not directed McCloe to call the police. In fact, he admitted that he did not speak to McCloe at all. He denied that he had berated the agents but did admit that he had pushed the first agent in the shoulder "just a little."

McCloe testified that he was a steady customer of defendant and that, on the day in question, he was inside the licensed premises with the first agent while the second agent was outside and that he had seen a quarter, a nickel and two pennies on the counter, which defendant picked up. He denied, however, that he had remained upon the licensed premises the entire time the agents were there, claiming that he ordered a bottle of Muscatel Wine from defendant because he was in a hurry and had "to get back to work"; that the licensee filled his order by the time the second agent was in the licensed premises and he (McCloe) walked out. He testified that he heard the first agent tell the licensee that he was "an ABC man."

Another witness was called who testified that he has known defendant for more than twenty-five years and that defendant bears a good reputation in the community. Other evidence was admitted tending to corroborate that testimony.

In rebuttal the agents testified that they had never seen McCloe before the day of the hearing, and the first agent corroborated the fact that he had obtained a quarter and two pennies from the second agent, saying, "I had no change at all on my person."

Counsel for defendant urged that, with respect to charge (2), the statute is in violation of the United States Constitution -- "which guarantees a man the right against seizure without due process of law -- it guarantees him the right to be shown a warrant before he

can be searched." Suffice to say that R. S. 33:1-35 provides that "Investigations, inspections and searches of licensed premises may be made without search warrant by the Director, his deputies, inspectors or investigators" and that, in the license application, the licensee consented to the search, without warrant, of the licensed premises and any other portion of the building under his control whether licensed or not. Furthermore, the power to make a determination with respect to the constitutionality of a statute rests with the courts, and administrative agencies must accept legislative enactments as constitutional until the courts have decided otherwise. Re Tulipano, Bulletin 980, Item 2, citing Schwartz v. Essex County Board of Taxation, 129 N.J.L. 129 (Sup. Ct., 1942).

After carefully considering all of the evidence, I am convinced that defendant sold the bottle of wine for twenty-seven cents as related by the agents and that he hindered and failed to facilitate the investigation. Therefore, I find defendant guilty on both charges.

The minimum suspension for an unaggravated first offense of the kind involved in charge (1) is ten days. Re Zotto, Bulletin 968, Item 9. However, defendant has a prior record. His license was suspended by the then State Commissioner, for five days, effective November 20, 1939, for a violation similar to that set forth in said charge (1). Re Jingoli, Bulletin 294, Item 1; Bulletin 362, Item 1. Inasmuch as the similar violation occurred more than ten years ago, I shall disregard it. Re Wally's Inc., Bulletin 931, Item 9. There are serious implications involved in charge (2) -- hindering an investigation. Indeed, "hindering" is a violation which strikes at the very heart of enforcement and control. Re Kelly, Bulletin 947, Item 1; Re Menzel, Bulletin 948, Item 2. However, taking into account the licensee's age and the other attendant circumstances, I shall suspend the license for fifteen days on charge (2), making a total suspension of twenty-five days.

Accordingly, it is, on this 7th day of January, 1954,

ORDERED that Plenary Retail Distribution License D-7, issued by the Board of Commissioners of the City of Trenton to Joseph Jingoli, for premises 416 Princeton Avenue, Trenton, be and the same is hereby suspended for twenty-five (25) days, commencing at 9:00 a.m. January 18, 1954, and terminating at 9:00 a.m. February 12, 1954.

DOMINIC A. CAVICCHIA  
Director.

2. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - LICENSE  
SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

MABEL & HOWARD BUTTEL  
T/a ORCHARD REST  
955 Valley Road  
Clifton, N. J.,

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Consump-  
tion License C-70, issued by the  
Municipal Board of Alcoholic Beverage  
Control of the City of Clifton.

Wall and Whipple, Esqs., by Robert H. Wall, Esq., Attorneys for  
Defendant-licensees.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they sold  
served and delivered alcoholic beverages to minors, and allowed the  
consumption of such beverages by said minors on their licensed prem-  
ises; in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that, at approximately 9:00 p.m., on  
Saturday, December 12, 1953, two ABC agents entered defendants' bar-  
room and sat at the bar. Two male bartenders were on duty. At  
approximately 9:45 p.m., three young males entered and sat at the bar.  
As they did so, one of the bartenders walked toward them, held up  
three fingers and said, "three beers?" The three males said "yes"  
and the bartender drew three glasses of beer from a tap and served  
one to each of the aforementioned males. In payment, he took some  
money from in front of one of the males later identified as David ---  
19 years of age.

The three males consumed their drinks and ordered and were  
served another round of drinks. While they were consuming these  
drinks of beer, the agents identified themselves and ascertained that  
David --- was 19 years of age and that Jerald --- was 20 years of age.  
Their companion was 21.

The bartender orally admitted that he had served beer to the  
minors without questioning them as to their ages, but refused to give  
a written statement.

The minimum suspension for sale to minors 19 and 20 years of  
age, respectively, is ten days. Re Lippitt and Applebaum, Bulletin  
923, Item 7. However, defendants have a prior record of similar  
violations. The license which they held for premises 865 Valley  
Road, was suspended by the local issuing authority on two different  
occasions for sale of alcoholic beverages to minors; the first time  
for five days, effective June 6, 1947 and the second time for ten  
days, effective May 31, 1948. While both prior violations are  
beyond the five year period, both are within the ten year period.  
Consequently, I shall suspend the license for twenty days.  
Re Livingston, Bulletin 853, Item 5. Five days will be remitted for  
the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 6th day of January, 1954,

ORDERED that Plenary Retail Consumption License C-70, issued by  
the Municipal Board of Alcoholic Beverage Control of the City of  
Clifton to Mabel & Howard Buttel, t/a Orchard Rest, for premises 955  
Valley Road, Clifton, be and the same is hereby suspended for fifteen  
(15) days, commencing at 3:00 a.m. January 13, 1954, and terminating  
at 3:00 a.m. January 28, 1954.

DOMINIC A. CAVICCHIA  
Director.

DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE AS TO CRIMINAL RECORD OF OFFICER AND DIRECTOR - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against )

HILLCREST TAVERN, INC. )  
194-196 Union Avenue )  
Paterson 2, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-338, issued by the Board of Alcoholic Beverage Control for the City of Paterson. )  
-----)

Harry Nadell, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"In your application dated June 2, 1953, filed with the Board of Alcoholic Beverage Control for the City of Paterson, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 33 which asks: 'Have you or has any person mentioned in this application, ever been convicted of any crime?', whereas in truth and fact ---, mentioned therein as your assistant secretary, assistant treasurer, director and 33 1/3% stockholder, had been convicted on or about June 2, 1910 in the Passaic County Court of Quarter Sessions (now Passaic County Court) of the crime of rape; said false statement being in violation of R. S. 33:1-25."

At the hearing herein the Division introduced a certified copy of the application filed by defendant for the current licensing year, which application is dated June 2, 1953, and in which the following question and answer appear:

"33. Have you or has any person mentioned in this application, ever been convicted of any crime? No."

The application is signed and sworn to by the president of the corporation and attested by the assistant secretary of the corporation referred to in the above charge. The Division also introduced in evidence a certified copy of the indictment of the assistant secretary for rape and proceedings thereon, from which it appears that on June 2, 1910, the assistant secretary was found guilty in the trial of said indictment in a Court of Quarter Sessions and that on June 10, 1910, he was sentenced to be confined at hard labor in a county penitentiary for a term of six years. The crime unquestionably involves moral turpitude. The Division also introduced in evidence statements given to ABC agents by two other stockholders of the corporation, each of whom owns one-third of the stock of the corporation and each of whom is an officer of the corporation. From said statements it appears that neither of the other two stockholders had any knowledge that the assistant secretary had been convicted of a crime as hereinabove set forth.

Defendant presented no evidence in this case. I find defendant guilty as charged.

Defendant has no prior record. In Re Case No. 1104 (decided herewith), I have entered an order removing the statutory disqualification of the assistant secretary of the corporation. Under the circumstances of this case I shall suspend defendant's license for a period of twenty days. Re Sirocco, Inc., Bulletin 679, Item 11.

Accordingly, it is, on this 8th day of January, 1954,

ORDERED that Plenary Retail Consumption License C-338, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Hillcrest Tavern, Inc., for premises 194-196 Union Avenue, Paterson be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. January 19, 1954, and terminating at 3:00 a.m. February 8, 1954.

DOMINIC A. CAVICCHIA  
Director.

4. DISQUALIFICATION - GOOD CONDUCT FOR MORE THAN FIVE YEARS LAST PAST - APPLICATION TO LIFT GRANTED.

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

CONCLUSIONS  
AND ORDER

Case No. 1104.  
-----)

BY THE DIRECTOR:

Petitioner herein, pursuant to the provisions of R. S. 33:1-31.2, seeks an order removing his disqualification from holding a liquor license because of his conviction of a crime which involves moral turpitude.

On June 2, 1910, when petitioner was eighteen years and four months of age, he and five other defendants were found guilty in a Court of Quarter Sessions on an indictment alleging that, during the previous month, they committed the crime of rape. The jury recommended clemency and defendants were sentenced to be confined to hard labor in a county penitentiary for various periods of time. Petitioner was sentenced to be so confined for a term of six years, and petitioner alleges that he was released from the penitentiary after serving three years of said term. Petitioner has no other criminal record.

From the evidence it appears that for the past forty years petitioner has been a law-abiding citizen. He resides with his wife, whom he married approximately thirty-five years ago, and they have three grown children. He has resided at his present address for the past forty-five years. He has conducted his own business as an electrician, in the community wherein he resides, for the past thirty-two years. The Police Department of said municipality has certified that there are no complaints or investigations involving petitioner presently pending, and three witnesses (two municipal officials and the president of a fuel company) testified at the hearing that they have known petitioner for at least twenty-five years last past, and that he bears a good reputation in the community wherein he resides.

It appears from the testimony that in 1940 petitioner and two other individuals who have known him for over twenty-five years formed a corporation known as Hillcrest Tavern, Inc., and that one-third of the stock of said corporation was issued to each of these three individuals. The records of this Division disclose that on June 10, 1941, a plenary retail consumption license was transferred from an individual to said corporation, and that said license has been renewed by the local issuing authority for each successive year to and including the



present licensing year. Each of the incorporators continues to hold one-third of the stock of said corporation, and petitioner is the assistant secretary and assistant treasurer of the corporation although at the hearing he testified that he has never been actively engaged in the conduct of the licensed business. It further appears that in each application filed by the corporation it was falsely denied that any person mentioned in the application had ever been convicted of any crime. The application for the current licensing year is attested by petitioner as assistant secretary of the corporation. I am satisfied from the evidence, however, that neither of the other two stockholders had any knowledge of petitioner's conviction.

The records of this Division further show that, after the application for the current licensing year had been filed with the local issuing authority, a complaint was received by this Division alleging that petitioner had a criminal record. During the course of this investigation petitioner admitted to an ABC agent that he had been convicted of the aforesaid crime in 1910 and stated that he was under the impression that, since he was a minor when he committed this crime, it was no longer held against him and it was not necessary for him to mention it in answer to Question 33 in the applications for liquor licenses. Apparently he foolishly depended upon his interpretation of the law without consulting his attorney who represented him for many years or making inquiry at this Division as he should have done.

This is an unusual case. It is apparent that petitioner has completely rehabilitated himself during the past forty years, and I can understand his attitude in concealing the fact of his conviction even from his closest associates. I would have no hesitancy in granting him relief except for the false statements in the corporation's applications. This raises a question as to whether I should deny relief in this proceeding and require the petitioner to sever his connection immediately with the licensed corporation. After carefully considering all the facts of this case I conclude that this would work an undue hardship on the petitioner. In proceedings decided herewith I have suspended the license of the corporation for a period of twenty days because of the false statement in the application, and I believe that this is a sufficient punishment.

Under the circumstances I find that petitioner has been law-abiding for a period of more than five years last past, and that his continued association with the alcoholic beverage industry will not be contrary to the public interest. Re Case No. 454, Bulletin 679, Item 12.

Accordingly, it is, on this 8th day of January, 1954,

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

DOMINIC A. CAVICCHIA  
Director.



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

In the Matter of Disciplinary Proceedings against )

WALTER SAURS & JOSEPHINE MacILWAIN )  
7 & 9 North Straight Street )  
Paterson, N. J., )

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Consumption License C-47, issued by the Board of Alcoholic Beverage Control of the City of Paterson. )

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Walter Saur's & Josephine Macilwain, Defendant-licensees, Pro Se.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On November 23, 1953, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz.,

One quart bottle labeled 'Seagram's Seven Crown Blended Whiskey 86.8 Proof';

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

The file herein discloses that, on November 23, 1953, an ABC agent entered defendants' licensed premises for the purpose of gauging the open bottles of whiskey. He observed Walter Saur's, one of the licensees, hurriedly closing the door of a cabinet behind the bar. The agent tested all of the open bottles of whiskey which he found on the back bar and all appeared to be genuine as labeled. He then opened the aforementioned cabinet and found a quart bottle labeled "Seagram's Seven Crown Blended Whiskey 86.8 Proof" which was approximately one-third full. When his field tests indicated a variance between the contents of the bottle and the description on the label he seized the bottle as evidence. Subsequent analysis disclosed that the contents of the seized bottle were not genuine as labeled.

Walter Saur's gave a written statement in which he stated that five days earlier while his daughter Josephine Macilwain (the other licensee) was tending bar he had noticed a bottle of Canadian Club whiskey behind the bar with the neck of the bottle broken off; that he had strained the contents of the broken bottle and had placed it in an empty bottle of Seagram's Seven Crown Blended whiskey and that the bottle which the agent seized was that same bottle.

Defendants have no prior adjudicated record. I shall suspend defendants' license for fifteen days, the minimum penalty imposed for an unaggravated first violation of this kind. Re Rudolph, Bulletin 680, Item 1. Five days will be remitted for the plea entered herein leaving a net suspension of ten days.

Accordingly, it is, on this 8th day of January, 1954,

ORDERED that Plenary Retail Consumption License C-47, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Walter Saur's & Josephine Macilwain, 7 & 9 North Straight Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m., January 18, 1954, and terminating at 3:00 a.m., January 28, 1954.

DOMINIC A. CAVICCHIA  
Director.

STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTION TO TRANSFER HELD TO  
BE MERITORIOUS - APPLICATION FOR TRANSFER DENIED.

In the Matter of Objections to )  
the Transfer of a State Beverage )  
Distributor's License held by )

VARIETY BEERS AND SODA )  
DISTRIBUTORS, INC., )

CONCLUSIONS

from 66 Bayview Avenue, Jersey City, )  
N. J., to Paterson-Hamburg Turnpike, )  
Township of Wayne, N. J. )  
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Leo J. Berg, Esq., Attorney for Applicant.  
Salvatore J. Ruggiero, Esq., Attorney for Township Committee of the  
Township of Wayne.

BY THE DIRECTOR:

Written objection filed on behalf of the Township Committee of the Township of Wayne alleges in substance that the Township is amply supplied with licensed premises and does not need any additional facilities at the present time.

The objection of the Township Committee is based upon the fact that forty-two plenary retail consumption licenses and three plenary retail distribution licenses have been issued in the Township which has a 1950 Federal census population of 11,822.

In considering this objection it must be borne in mind that municipal consent is not a statutory prerequisite to the issuance of a State license; that the privileges of a State Beverage Distributor's license are State-wide and, thus, that the question of public necessity and convenience cannot be determined on the narrow basis of the single municipality in which the prospective licensee will have its principal office or warehouse. Re Vigor Beverages Co., Inc., Bulletin 941, Item 9. Nevertheless, the transfer of a license, whether State or Municipal, to other premises is not a privilege inherent in a license. VanSchoick v. Howell, Bulletin 120, Item 6. If good cause appears, an application for transfer may be denied in the discretion of the issuing authority. Re Warren, Bulletin 945, Item 6.

From the testimony of Harry Levine, Secretary-Treasurer of Variety Beers and Soda Distributors, Inc., it appears that the applicant corporation has held a State Beverage Distributor's license for premises at 66 Bayview Avenue, Jersey City, since 1936; that it recently sold its beer routes to another State Beverage Distributor who is located in Jersey City; and that applicant corporation has no new accounts but continues to own its trucks and equipment. Mr. Levine further testified that, if the transfer is granted, applicant corporation intends to sell to consumers "within a circle of about eight or ten miles" of the Township of Wayne. The records of this Division indicate that, aside from the afore-said retail licensees in the Township, there are at least six State Beverage Distributors who sell to consumers in Passaic County. Under these circumstances I do not believe that public convenience and necessity require the transfer of the license to, and the establishment of what is essentially a new business thereunder in, the Township of Wayne. This case differs substantially in its facts and circumstances from Re Vigor Beverages Co., Inc., supra, and Re Sachs, Bulletin 926, Item 10.

For the reasons aforesaid, the application for transfer of the license will be denied.

DOMINIC A. CAVICCHIA  
Director.

Dated: January 8, 1954.

## 7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary  
Proceedings against

EAGLE PACKAGE LIQUOR CO.  
136 S. Broadway  
South Amboy, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distri-  
bution License D-1, issued by the  
Common Council of the City of South  
Amboy.  
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Toolan, Haney & Romond, Esqs., by John E. Toolan, Esq., Attorneys  
for Defendant-licensee.  
David S. Piltzer, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On Saturday, September 19, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Barry --- and Joseph ---, persons under the age of twenty-one (21) years; in violation of Rule 1 of State Regulations No. 20."

At the hearing herein Joseph --- testified that he was born on January 29, 1933; that between 9:00 and 10:00 p.m., Saturday, September 19, 1953, he and a companion, Barry ---, visited defendant's licensed premises; that he took twelve cans of beer from the refrigerator, placed them on the counter and paid John F. Melko, Jr. \$2.00 for the beer; that he carried six cans of the beer from the premises and that his friend carried the other six cans and also a bottle of wine therefrom; that on September 21, 1953, in the company of an ABC agent, a police officer and Barry, he returned to defendant's licensed premises and identified John F. Melko, Jr. as the person who sold him the twelve cans of beer on the evening of September 19, 1953. Under cross-examination, Joseph testified that on a prior occasion and at the request of John F. Melko, Jr. he showed him a draft card which represented his age to be twenty-one years.

Barry testified that he was born on January 5, 1938; that shortly after 9:00 p.m. on Saturday, September 19, 1953, he and Joseph went into defendant's licensed premises; that while there he took from a rack a bottle of wine for which he paid fifty cents to a woman clerk who was behind the counter; that Joseph purchased two "cases" of beer of six cans each from John F. Melko, Jr.; that Joseph carried a "case" and that he carried a "case" and also the bottle of wine when they left the premises.

John F. Melko, Jr., president and treasurer of defendant corporate-licensee, admitted the sale on the evening of September 19, 1953 to Joseph of two handy packs, each of which contained six cans of beer, for which he was paid \$2.00. He contended, however, that Joseph had on two prior occasions exhibited a draft card whereon his age was disclosed as twenty-one years. John F. Melko, Jr. further testified that his mother and father were on the premises on the evening in question and that, although his mother waited on customers, she did not sell anything to Barry; that after he placed the beer in a carton, Joseph picked it up; and that he did not see Barry pick up the wine or see what he carried from the store because, as he expressed it, "I didn't pay attention to him."

John F. Melko, Sr. testified that he and his wife were present on September 19, 1953; that his wife sat at a desk behind the counter; that he observed Joseph take two packages of beer from the "box" and place them on the counter; that his son, John F. Melko, Jr., placed the cans of beer in one package; that as Joseph started to leave with the package of beer he (Joseph) "took that bottle of wine off the rack and put it on the counter"; that he did not see Joseph pay for the wine. John F. Melko, Sr. was asked whether he heard his son (John F. Melko, Jr.) testify that he didn't sell Joseph any wine and John F. Melko, Sr. said, "That is right." Then, when reminded that he testified that his son sold wine to Joseph, John F. Melko, Sr. said, "Did I say he didn't sell him wine? I didn't say that. I think he sold him -- (L---) -- wine because I was there, and I'm quite sure --." When queried if the youths carried anything when they entered the premises, John F. Melko, Sr. answered, "I didn't notice them carrying anything. It wasn't of importance to me at that time whether they carried anything or not; I didn't notice that."

John F. Melko, Jr. was then recalled as a witness and testified that he sold a bottle of wine to Joseph, who put the fifty cents in payment therefor on the counter. On cross-examination John F. Melko, Jr. was asked why he failed to mention during direct examination by his attorney the fact that he sold wine to Joseph on the evening in question and he answered, "It wasn't asked. It was two separate sales, you must understand." He was also asked where his mother, Barbara Melko, was when the two youths left the premises and he answered, "She was behind the counter there -- behind the desk."

Barbara Melko testified that on the evening of September 19, 1953 she "was sitting at the desk at the head of the store. It is a rather high desk and, to tell you the truth, when they (Joseph and Barry) came in I didn't notice because I was looking at a magazine"; that, although she waited on customers that evening, she did not wait on either Joseph or Barry. She further testified that she observed her son put twelve cans of beer in a half carton which Joseph carried from the premises. When asked on cross-examination whether the purchases made by Joseph included both cans of beer and wine, she answered, "I guess it did." Thereafter Barbara Melko testified that she did not see Joseph purchase wine from her son although she saw him pick up a bottle of wine and carry it from the premises.

With respect to the contention of defendant's attorney that the testimony of Joseph is not worthy of belief, I cannot agree. While the presentation of the draft card by Joseph to John F. Melko, Jr. on prior occasions, where his incorrect age was given, may affect his credibility, it does not necessarily follow that all his testimony must be rejected. Moreover, in so far as Barry is concerned, there was nothing presented in the instant case which would indicate that he had committed any previous act or acts that might in any wise be a reflection on his credibility as a witness. Defendant advanced the theory that the testimony of Barry, wherein he stated that he made the purchase of the bottle of wine from a female clerk, was a figment of his imagination. With this I disagree. The defendant's attorney further contends that the defendant can be adjudged guilty of the violation charged only if it had knowledge thereof. Knowledge is not an essential ingredient in order to establish guilt. Cedar Restaurant & Cafe Co. v. Hock, 135 N. J. L. 156 (Sup. Ct. 1947); Greenbrier, Inc. v. Hock, 14 N. J. Super. 39 (App. Div. 1951); Rule 31 of State Regulations No. 20. Furthermore, the defendant's attorney contends that the defendant has a complete defense under the provisions of R. S. 33:1-77. There is no dispute that on previous occasions Joseph exhibited to John F. Melko, Jr. a draft card on which his age was given as twenty-one years. There is no contention, however, that Joseph ever signed any paper representing in writing that he was twenty-one (21) years of age or over. See R.S. 33:1-77(a). Under the facts in this case, no defense has been established under the

provisions of R. S. 33:1-77. Re Roey, Bulletin 747, Item 3; Roey v. Hock, Bulletin 758, Item 2; Vassos & Murphy, Bulletin 793, Item 7; Re Ferrone, Bulletin 799, Item 6; Re Morristown Colony Restaurant, Inc. v. Morristown, Bulletin 927, Item 10. The further contention by defendant's attorney that Barry failed to identify the female who, he claimed, sold him the bottle of wine is not fatal in disciplinary proceedings. See Re La Corte, Bulletin 469, Item 1; Re Cohen, Bulletin 495, Item 6; Re Dante, Bulletin 771, Item 9.

After careful review of all the evidence adduced herein, I find the defendant guilty as charged.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty-five days, the minimum penalty for a violation of this kind involving a minor fifteen years of age. Re Wachter, Bulletin 973, Item 4.

Accordingly, it is, on this 12th day of January, 1954,

ORDERED that Plenary Retail Distribution License D-1, issued by the Common Council of the City of South Amboy to Eagle Package Liquor Co., 136 S. Broadway, South Amboy, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 9 a.m. January 19, 1954, and terminating at 9 a.m. February 13, 1954.

DOMINIC A. CAVICCHIA  
Director.

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against  
  
JOHN MESZAROS  
T/a ROBIN HOOD INN  
1247 Woodbridge Avenue  
Raritan Township (Middlesex County)  
P. O. Fords, N. J.,  
  
Holder of Plenary Retail Consumption License C-29, issued by the Board of Commissioners of Raritan Township (Middlesex County).  
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CONCLUSIONS  
AND ORDER

Toolan, Haney & Romond, Esqs., by John E. Toolan, Esq., Attorneys for Defendant-licensee.  
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On Sunday, September 20, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Barry --- and Joseph ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

At the hearing Joseph --- testified that he was born on January 29, 1933; that he and Barry ---, visited defendant's licensed premises at "a little after 12" midnight on September 20, 1953; that he had a glass of beer which was served by the defendant and at the same time ordered two tomato pies and three quart cartons of beer "to go"; that he remained in the premises approximately twenty minutes during which

time he heard Barry ask the licensee "how much whiskey was" and observed Barry drinking a "shot of whiskey"; that after the pies were baked he obtained them from the defendant together with the three quart containers of beer, the payment for which being taken from the money placed on the bar by Barry and himself and that the two then left the licensed premises.

Barry, who was born on January 5, 1938, corroborated in substance the testimony of Joseph and testified in detail that he spoke to defendant about the price of a shot of whiskey; that when he was told it would cost forty cents he ordered a shot of Schenley whiskey; that defendant poured the whiskey and placed it on the bar and then walked away; that Barry took a quarter from his pocket, dropped it on the bar and Joseph contributed the difference necessary for the purchase of the drink. On cross-examination Barry was asked by the defendant's attorney, "Q. Isn't it a fact that you did not buy a drink of whiskey there that night? A. I did. Q. And if it was consumed by you it was bought by somebody else and paid by somebody else? A. I ordered it and consumed it, put money on the bar and paid for it. Q. Isn't it a fact, son, that is an absolute and complete falsehood? A. It isn't."

Defendant-licensee testified that he remembered Joseph and someone else coming into his premises on September 20, 1953; that Joseph ordered two tomato pies from him; after he returned from the kitchen where he placed the orders for the pies with his wife, Joseph said, "I'll have a glass of beer waiting and three containers of beer to go." That, as he served him the glass of beer Joseph said, "I will have a bag of peanuts." That, he noticed Barry between a few people; that when the pies were done he took the money from the bar in front of Joseph and that after counting the money advised him that it was thirty-five cents short; Joseph thereupon put his hand in his pocket and took out "a few silver coins"; that he did not remember speaking to Barry and that Barry did not order or consume any whiskey in his premises.

Constantino Montesanti testified that he formerly worked for the defendant-licensee; that on September 20, 1953, the day after he quit his job in the licensed premises, he met Joseph and Barry in front of the licensed premises and that he followed them in; that the boys occupied places at the bar a few stools away from the partition and that he continued on and occupied a seat approximately 27 feet away from them; that he knew Joseph from coming to the premises on prior occasions and he remembered checking him regarding his age; that Joseph exhibited a draft card to him which represented that he was over twenty-one years of age; that he did not see Barry drink any whiskey on the evening in question. Although Joseph showed the draft card to both the licensee and the former bartender this, in itself, was not sufficient to establish a defense under the provisions of R. S. 33:1-77. Admittedly on the part of the defendant-licensee Joseph did not represent in writing that he was twenty-one years of age or over. Roey v. Hock, Bulletin 758, Item 2.

I have carefully read the entire record. I believe the testimony of the minors. I conclude that they were present on defendant's premises and that alcoholic beverages were sold and served to them and consumed by them at the time mentioned in the charge.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty-five days, the minimum penalty for a violation of this kind involving a minor fifteen years of age. Re Wachter, Bulletin 973, Item 4.

Accordingly, it is, on this 12th day of January, 1954,

ORDERED that Plenary Retail Consumption License C-29, issued by the Board of Commissioners of Raritan Township (Middlesex County), to John Meszaros, t/a Robin Hood Inn, for premises 1247 Woodbridge Avenue, Raritan Township, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2 a.m. January 19, 1954 and terminating at 2 a.m. February 13, 1954.

DOMINIC A. CAVICCHIA  
Director.



9. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD - LOCUS POENITENTIAE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
 Proceedings against )

JOHN B. CAPESTRO and IDA C. )  
 FRIEDLANDER )

T/a J. B. CAPESTRO )  
 412 Highway #71 (formerly 4-N) )  
 Spring Lake Heights, N. J., )

CONCLUSIONS  
 AND ORDER

----- )  
 Holders of Plenary Retail Distribu- )  
 tion License D-1, issued by the )  
 Borough Council of the Borough of )  
 Spring Lake Heights. )  
 ----- )

Robert Friedlander, Esq., Attorney for Defendant-licensees.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charge:

"On June 12, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to John P. ---, a person under the age of twenty-one (21) years; in violation of Rule 1 of State Regulations No. 20."

From a statement given to ABC agents by John P. ---, it appears that he was born on July 26, 1935; that on an evening "some time in June" he met two other minors in Point Pleasant and took them for a ride in his car; that the minors "decided to chip in some money and get some beer"; that they drove to defendants' premises and John P. --- and one of the other minors entered defendants' premises; that John P. --- purchased, from a man who was behind the counter, a half-case of canned beer which was carried from the licensed premises and the contents of which were later consumed elsewhere by the three minors. The facts set forth in the foregoing statement are substantially corroborated in statements given to ABC agents by the two other minors.

Defendants have a prior adjudicated record. On July 23, 1953, the local issuing authority suspended their license for a period of five days, effective September 14, 1953, after they had pleaded non vult to a charge of selling alcoholic beverages to another minor. The minimum penalty in an unaggravated first offense case involving sale of alcoholic beverages to a minor 17 years of age is fifteen days. Re Drayman, Bulletin 946, Item 2; Re Roesch, Bulletin 966, Item 4. The prior violation also involved sales to a minor. However, because no locus poenitentiae intervened, the present violation will not be considered in the same manner in which a second similar violation is ordinarily considered. In other words, to be considered as a second similar violation it must appear that there is an adjudication of guilt followed by punishment, and then, still unregenerate, a subsequent violation and adjudication. Rose v. Bellmawr, Bulletin 411, Item 9. Yet the prior record cannot be ignored but must be considered as aggravating the present violation. See Re Drayman, supra. Under all the circumstances, I shall, instead of doubling the usual fifteen-day penalty, suspend defendants' license in this case for a period of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 11th day of January, 1954,



ORDERED that Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Spring Lake Heights to John B. Capestro and Ida C. Friedlander, t/a J. B. Capestro, for premises at 412 Highway #71 (formerly 4-N), Spring Lake Heights, be and the same is hereby suspended for fifteen (15) days, commencing at 9 a.m. January 18, 1954, and terminating at 9 a.m. February 2, 1954.

DOMINIC A. CAVICCHIA  
Director.

STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTION TO TRANSFER HELD TO BE MERITORIOUS - APPLICATION FOR TRANSFER DENIED.

In the Matter of Objections to the )  
Transfer of a State Beverage Distri- )  
butor's License from )  
  
PACKMAN BROTHERS, INC. )  
310-316 North Indiana Ave. )  
Atlantic City, N. J., )  
  
to )  
  
EDWARD BAKER )  
T/a BAKER BEVERAGE COMPANY )  
123-125 North Lafayette Ave. )  
Ventnor City, N. J. )

CONCLUSIONS

-----  
Paul M. Salsburg, Esq., Attorney for Packman Brothers, Inc.

BY THE DIRECTOR:

Numerous written objections to the transfer of the license in question were filed by persons who reside in the vicinity of 123-125 North Lafayette Avenue, Ventnor City. Written objection was filed also by the Rev. Earl Townsend Hann, Minister of the local Trinity Methodist Church. Said objections raise no question as to the qualifications of the applicant, Edward Baker, but all allege in substance that the premises to which the transfer is sought are located in a residential district and that the transfer to the premises in question would result in undue noise and would be otherwise detrimental to the interests of the people residing in the neighborhood of said premises.

At the hearing held upon said objections, Mr. & Mrs. Everett G. Somers, who reside at 121 North Lafayette Avenue; Mrs. Elsie Giberson, who resides at 112 North Lafayette Avenue; Mrs. Vencent Vitro, who resides at 114 North Lafayette Avenue; Mrs. Matthew Davenport, who resides at 101 North Lafayette Avenue and Mrs. Arthur Strunk, who resides at 119 North Lafayette Avenue, appeared and testified in objection.

The building to which the transfer is sought is located on the northwest corner of Monmouth Avenue and North Lafayette Avenue. The named objectors reside in two-family houses or bungalows located to the south of said building. It appears from the testimony of Mr. Somers that the building at 123-125 North Lafayette Avenue has been unoccupied for more than a year last past, and that it was previously used as a place of business by a wholesale grocery company; that there is an adjoining business building, used by a trucking company, at the northeast corner of Monmouth Avenue and Wyoming Avenue, but that otherwise this section of Ventnor City is residential in character. The objectors testified that they were opposed to the transfer because it would result in undue noise and annoyance and would depreciate the value of their respective properties.

The evidence produced on behalf of the applicant discloses that the building in question was erected in 1917; that it has been used as

a garage and more recently by a wholesale grocery company which occupied the building from 1950 to 1952; that said building and the adjoining building, referred to above, are located in a business district on the Ventnor City Building Zone Map, but that the area surrounding these buildings is zoned for residential purposes on said map. In a business district the zoning ordinance of Ventnor City permits the property to be used for certain purposes including the following:

"Wholesale merchandizing subject to the provision of adequate enclosed off-street loading and unloading facilities on the premises."

The evidence of Lawrence A. Carlin, an employee of Edward Baker, indicates that trucks can be loaded and unloaded within the building; and a letter dated November 13, 1953, was introduced in evidence wherein Edward S. Collins, Building Inspector of Ventnor City, certified that he had inspected the premises in question and found "that they have adequate facilities for enclosed off street loading and unloading on the premises as required by the zoning ordinance, and they "therefore may be used for wholesale merchandizing." However, also introduced in evidence was a telegram subsequently sent to the Division by the same Building Inspector wherein he states that on further investigation and consideration he is of the opinion that the premises in question "for which Edward Baker ... has applied to use for a wholesale beer distributorship ... is inadequate for this specific purpose as required in our zoning ordinance", and that it is his "belief that the transfer of the license should be denied, in respect to the premises above mentioned."

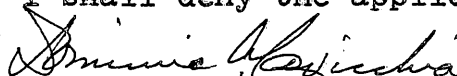
Subsequent to the above hearing I received the following letter, dated December 15, 1953, from Hiram Steelman, Esq., City Solicitor for Ventnor City:

"A meeting of Ventnor City Council was attended last night by over fifty residents and tax payers protesting against the transfer of a distribution license from Packmans in Atlantic City to Baker and Carlin at the premises 123 and 125 North Lafayette Avenue, Ventnor City. At the same time they presented a petition signed by approximately 275 persons from the neighborhood voicing their protest. No one appeared in behalf of the proposed transferees.

"In view of this protest I am directed by Ventnor City Council to state that the municipality objects to the aforesaid transfer and urges that it be denied."

The transfer of a license to other premises is not a right inherent in a license. If good cause appears, an application for transfer may be denied in the discretion of the issuing authority. Re Warren, Bulletin 945, Item 6.

I have carefully considered the evidence. It indicates that if the premises are not now in compliance with the local zoning measure they might readily be changed to comply therewith. But it shows plainly, as pointed out, that applicant is seeking to establish his business in a small business section surrounded by residences, and (quite apart from and in addition to the indicated, numerous objections by petition and the numerous written objections filed with me before the hearing herein) the six persons residing nearby appeared and objected at the hearing to the transfer of the license to the premises in question. Furthermore, although municipal consent to the transfer is not a statutory prerequisite, I must give due consideration to the fact that the Ventnor City Council objects to the transfer sought. There is before me no evidence or indication to the effect that any objection to the granting of the transfer was improperly motivated. Considering all the circumstances, I am constrained to believe that my granting of the application would not be in sound exercise of my discretionary authority. Accordingly I shall deny the application.

  
Dominic A. Cavicchia  
Director.