

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

December 5, 1960

BULLETIN 1364

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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.

December 5, 1960

BULLETIN 1364

1. APPELLATE DECISIONS - MEMORIAL PRESBYTERIAN CHURCH ET AL v.
VINELAND AND LEE TAYLOR'S, INC.

MEMORIAL PRESBYTERIAN CHURCH and)
PETER MENDINI,)

Appellants,)

ON APPEAL
ORDER

v.)

CITY COUNCIL OF THE CITY OF)
VINELAND, AND LEE TAYLOR'S, INC.,)
t/a ANTOINE'S LIQUOR STORE,)

Respondents.

Paul Van Embden, Esq., Attorney for Appellants.
Martin L. Pagliughi, Esq., Attorney for Respondent City Council
Robert J. Halpin, Esq., Attorney for Respondent Lee Taylor's, Inc.

BY THE DIRECTOR:

This is an appeal from the action of respondent City Council whereby on June 14, 1960, it granted an application filed by respondent Lee Taylor's, Inc. for the transfer of its 1959-60 plenary retail consumption license (with broad package privilege) from 518 Landis Avenue to 631 Chestnut Street, subject to a completion-of-premises special condition. The application was granted after an order remanding the matter to the City Council was entered by me in previous appeals between the same parties. See Bulletin 1346, Item 2.

It appears that on June 28, 1960, the City Council granted an application filed by Lee Taylor's, Inc. for the renewal of said license for the 1960-61 licensing year for its premises at 518 Landis Avenue. It further appears that, as a result of subsequent correspondence, the parties hereto were advised, by letter dated October 5, 1960, that, if the present appeal is withdrawn, Lee Taylor's, Inc. may file a new application for a transfer of the renewed license to other premises and may voluntarily agree to operate under its license at the new premises solely as a package goods store. The Original Tavern Owners Association v. Newark et al., Bulletin 1360, Item 1.

Prior to the hearing herein a stipulation signed by all attorneys was filed wherein it is set forth that appellants withdraw the pending appeal on the terms outlined in the letter dated October 5, 1960, and the attorneys for the respective respondents agree to said withdrawal. No reason appearing to the contrary,

It is, on this 18th day of October 1960,

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

WILLIAM HOWE DAVIS
DIRECTOR

2. AUTOMATIC SUSPENSION - SUSPENSION LIFTED AT A FUTURE DATE.

Auto. Susp. #186)
 In the Matter of a Petition to)
 Lift the Automatic Suspension)
 of License C-30, issued by the) ORDER
 Board of Alcoholic Beverage)
 Control of the City of Clifton to)
)
 COZY BROOK INN, INC.)
 1025 Main Avenue)
 Clifton, New Jersey)

BY THE DIRECTOR:

On August 31, 1960, I entered an order temporarily staying the automatic suspension of the license held by Cozy Brook Inn, Inc., until the entry of a further order herein. At that time disciplinary proceedings had been instituted by the local issuing authority on its own initiative, but no hearing had been held therein.

The Secretary of the Board of Alcoholic Beverage Control of Clifton has advised me that the licensee pleaded guilty to the charge of selling alcoholic beverages to a minor, and that the Board suspended its license for ten days, effective from 3 a.m. October 3, 1960, to 3 a.m. October 13, 1960. I shall, therefore, enter an order lifting the automatic suspension at the termination of the suspension imposed in the disciplinary proceedings.

Accordingly, it is, on this 11th day of October 1960,

ORDERED that the statutory automatic suspension of License C-30, held by Cozy Brook Inn, Inc., be lifted at 3 a.m. Thursday, October 13, 1960.

WILLIAM HOWE DAVIS
 DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure) CASE NO. 10,354
 on July 18, 1960 of a quantity)
 of alcohol and a Mercury sedan on) ON HEARING
 the New Jersey Turnpike, Milepost) CONCLUSIONS
 111, in the Town of Secaucus, County) AND ORDER
 of Hudson and State of New Jersey.)

Davis and Roth, Esqs., by Horace G. Davis, Esq., Attorneys for
 Edward R. Dillard.

Green and Yanoff, Esqs., by George J. Lasky, Esq., Attorneys for
 Universal C.I.T. Credit Corporation.

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, to determine whether 12 two-quart jars of alcohol and a Mercury sedan, described in a schedule attached hereto, seized on July 18, 1960 on the New Jersey Turnpike at the 111 Milepost, Secaucus, New Jersey constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66

an appearance was entered on behalf of Universal C.I.T. credit Corporation which sought recognition of its alleged lien on the Mercury sedan. An appearance was also entered on behalf of Edward R. Dillard, the registered owner of the motor vehicle, who sought its return on claim that he was unaware of the presence of the alcohol in his car. Forfeiture of such alcohol is not opposed.

Reports of ABC agents and other documents in the file, presented in evidence with consent of counsel for the finance company and Dillard, disclose the following facts:

A New Jersey State Trooper halted the Mercury sedan on the above date and location during his routine patrol of traffic on the highway. The trooper ascertained that the motor vehicle was being operated by Lemuel Gilliam, with Dillard and two women as passengers therein, and discovered the 12 two-quart jars of alcohol in the trunk of the car. None of the jars had affixed thereon any stamp indicating the payment of tax on alcoholic beverages. Thereupon the trooper took into custody the alcohol and car, which were later turned over to ABC agents.

The contents of one of the jars was analyzed by the Division chemist, who reports that it is alcohol and water fit for beverage purposes, with an alcoholic content by volume of 43.5 percent.

At the time of the seizure Edward R. Dillard, in a signed statement, asserts that on July 16, 1960 he drove to the home of his mother-in-law located in Virginia, and during the course of his visit, he entered into an arrangement with his brother-in-law whereby they drove to a nearby wooded area where the illicit alcohol was placed in his car, to be sold by Dillard for the best price and he was to forward part of the proceeds to the brother-in-law.

The seized alcohol is illicit because of the absence of a tax stamp on any of the jars. R.S. 33:1-1(1), R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Edward R. Dillard testified that he was aware that there was a cardboard box in the trunk of his car, but was unaware that it contained the jars of illicit alcohol until the car was stopped by the trooper. Obviously, this claim is a mere present pretense and without foundation in fact.

Universal C.I.T. Credit Corporation has presented in evidence a conditional sales contract dated July 23, 1959, signed by Edward Dillard and Catherine R. Dillard evidencing the conditional sale of the Mercury sedan in question for the purchase price of \$2917.89, which contract the finance company holds by assignment. It also presented in evidence a certificate issued by the Pennsylvania Department of Revenue evidencing the lien of the finance company on such motor vehicle. The present balance due thereon, after rebate for prepayments, is \$1518.07.

The branch manager of the finance company testified that before extending credit to finance the purchase of the motor vehicle and accepting such contract, the finance company received information that Edward Dillard was 39 years of age, married, resided at a New York address for over eight years, was employed as a general helper by an industrial concern for over six years, earned \$360.00 a month; that his wife's name was Catherine and she was employed at a salary of \$250.00 a month; that he had a savings account, and had a previous account with a motor vehicle finance company. The finance company checked this information and found it to be correct.

It appears that Dillard's address on the sales contract is in Philadelphia, not in New York, which suggested the possibility that Dillard used such address with the design of concealing his activities, and that the finance company knew or should have known of his intention. However, the question was thoroughly explored at the hearing, and the evidence establishes that Dillard has been separated from his wife, and legitimately maintains both addresses.

I am satisfied from the evidence presented that the finance company acted in good faith and did not know or have any reason to suspect that Edward R. Dillard would unlawfully transport alcoholic beverages in such vehicle. I shall therefore recognize the lien of Universal C.I.T. Credit Corporation upon the motor vehicle in question to the extent of \$1518.07.

It appears that the appraised retail value of the Mercury sedan does not exceed the amount of the lien claim and the costs of the seizure and storage of the motor vehicle. Such motor vehicle will therefore be returned to Universal C.I.T. Credit Corporation upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 21st day of October, 1960 Universal C.I.T. Credit Corporation pays the costs of the seizure and storage of the Mercury sedan, more fully described in Schedule "A" attached hereto, it will be returned to Universal C.I.T. Credit Corporation; and it is further

DETERMINED and ORDERED that the alcoholic beverages, as listed in Schedule "A", constitute unlawful property and that the same be and hereby are forfeited, in accordance with the provisions of R.S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

Dated: October 11, 1960

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 12 - two-quart jars of alcohol
- 1 - Mercury sedan, Serial No. K8TG502360,
Engine No. 13214951, Pennsylvania
Registration S-71-493.

RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1960 THROUGH SEPTEMBER 30, 1960

	JULY	AUG.	SEPT.	TOTAL
ARRESTS:				
Total number of persons arrested	31	25	37	93
Licensees and employees	16	16	15	47
Bootleggers	15	9	22	46
SEIZURES:				
Motor vehicles - cars	1	2	8	11
- trucks	1	-	-	1
- trailers	1	-	-	1
Stills - over 50 gallons	1	-	-	1
- 50 gallons or under	-	2	1	3
Mash - gallons	5,500.00	475.00	300.00	6,275.00
Distilled alcoholic beverages - gallons	18.07	36.51	66.36	120.94
Wine - gallons	325.72	-	6.37	332.09
Brewed malt alcoholic beverages - gallons	18.81	180.22	14.81	213.81
RETAIL LICENSEES:				
Premises inspected	508	434	561	1,503
Premises where alcoholic beverages were gauged	490	407	495	1,392
Bottles gauged	7,968	7,224	8,489	23,681
Premises where violations were found	44	46	49	139
Violations found	58	61	70	189
Unqualified employees	28	29	32	89
Application copy not available	15	8	8	31
Reg. #38 sign not posted	6	9	8	23
Disposal permit necessary	1	3	4	8
Prohibited signs	1	1	5	7
Other mercantile business	1	1	1	3
Improper beer taps	1	-	1	2
Other violations	5	10	11	26
STATE LICENSEES:				
Premises inspected	18	22	22	62
License applications investigated	13	7	15	35
COMPLAINTS:				
Complaints assigned for investigation	418	446	421	1,285
Investigations completed	385	446	381	1,212
Investigations pending	(187)	(174)	180	180
LABORATORY:				
Analyses made	100	285	180	565
Refills from licensed premises - bottles	6	36	50	92
Bottles from unlicensed premises	30	71	60	161
IDENTIFICATION:				
Criminal fingerprint identifications made	17	12	16	45
Persons fingerprinted for non-criminal purposes	432	270	219	921
Identification contacts made with other enforcement agencies	284	217	165	666
Motor vehicle identifications via N.J.State Police teletype	-	2	4	6
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	23	20	16	59
Violations involved	27	21	18	66
Sale during prohibited hours	15	10	10	35
Sale to minors	6	4	5	15
Sale to non-members by club	3	3	-	6
Failure to close premises during prohibited hours	3	-	2	5
Service to women at the bar (local reg.)	-	4	-	4
Possessing contraceptives on premises	-	-	1	1
Cases instituted at Division	20	26	19	65
Violations involved	27	32	26	85
Sale during prohibited hours	9	6	5	20
Sale to minors	4	6	2	12
Possessing liquor not truly labeled	4	1	5	10
Permitting lottery activity on premises	3	1	1	5
Permitting foul language on premises	2	1	2	5
Sale to intoxicated persons	1	2	2	5
Permitting immoral activity on premises	2	2	-	4
Conducting business as a nuisance	-	2	2	4
Sale below filed price	-	3	-	3
Failure to close premises during prohibited hours	-	2	1	3
Purchase from improper source	-	-	1	1
Sale outside scope of license	1	-	1	2
Hindering investigation	1	-	-	1
Permitting bookmaking on premises	-	1	-	1
Permitting hostess activity on premises	-	1	-	1
Possessing contraceptives on premises	-	1	-	1
Sale to non-members by club	-	1	-	1
Failure to file tax reports within time	-	1	-	1
Permitting gambling (cards) on premises	-	1	-	1
Filing false tax reports	-	-	1	1
Service to women at the bar (local reg.)	-	-	1	1

	July	Aug.	Sept.	Total
DISCIPLINARY PROCEEDINGS (Continued)				
Cases brought by municipalities on own initiative and reported to Division	16	11	10	37
Violations involved	17	13	14	44
Sale to minors	7	8	4	21
Failure to close premises during prohibited hours	2	-	1	3
Sale during prohibited hours	-	-	3	3
Permitting brawl on premises	4	1	2	7
Possessing slot machines on premises	1	-	-	1
False statement in license application	1	-	-	1
Conducting business as a nuisance	-	1	-	1
Permitting persons of ill-repute on premises	-	1	-	1
Employee w/o requisite identification card (local reg.)	-	1	-	1
Failure to provide constable to maintain law and order in violation of special condition	-	1	-	1
Hindering investigation	-	-	1	1
Sale to intoxicated persons	-	-	1	1
Failure to afford view into premises during prohibited hours	-	-	1	1
Permitting bookmaking on premises	-	-	1	1
HEARINGS HELD AT DIVISION:				
Total number of hearings held	40	46	32	118
Appeals	10	9	10	29
Disciplinary proceedings	16	21	12	49
Eligibility	8	7	4	19
Seizures	5	4	4	13
Tax revocations	-	5	2	7
Applications for license	1	-	-	1
STATE LICENSES AND PERMITS ISSUED:				
Total number issued	2,228	1,309	1,333	4,870
Licenses	656	11	6	673
Solicitors' permits	50	52	48	150
Employment "	484	286	226	996
Disposal "	110	23	88	226
Social affair "	366	503	485	1,354
Wine "	-	2	58	60
Miscellaneous "	264	152	198	614
Transit insignia	259	264	196	719
Transit certificates	39	11	28	78
OFFICE OF AMUSEMENT GAMES CONTROL				
Licenses issued	13	5	1	21
Premises inspected	55	570	1	626
Premises where violations were found	8	12	-	20
Number of violations found	10	12	-	22
Enforcement files established	19	126	51	196
Disciplinary proceedings instituted	-	1	-	1
Violations involved: fraud and front	-	1	-	1

WILLIAM HOWE DAVIS

Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: October 17, 1960

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

In the Matter of Disciplinary Proceedings against)

CAYARD, INC.)
Hooper Avenue & corner Moore)
Road, Silverton)
Dover Township)
PO Toms River, N.J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-18, issued by the Township Committee of Dover Township.)

Joseph A. Citta, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On August 4, 1960, you sold and offered to sell at retail, directly or indirectly, alcoholic beverages, viz., one case of 5th bottles of Schenley Reserve Blended Whiskey, at less than the then currently effective price filed with the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30."

On August 4, 1960, an ABC agent, in the presence of another agent, purchased a case of twelve 4/5 quart bottles of Schenley reserve Blended Whiskey for \$52.70 from a clerk at the defendant's licensed premises. The minimum consumer resale price then in effect for such case of whiskey, less permissible discount, was \$54.61. When the agents disclosed their identities, the clerk verbally admitted aforesaid violation and stated he had made the same through a misunderstanding of the price.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of ten days. Re C & D Wine & Liquor Co. (A Corp.), Bulletin 1309, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 13th day of October 1960,

ORDERED that Plenary Retail Consumption License C-18, issued by the Township Committee of Dover Township to Cayard, Inc., for premises on Hooper Avenue & corner Moore Road, Silverton, Dover Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, October 24, 1960 and terminating at 2:00 a.m., Saturday, October 29, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - TRANSPORTING ALCOHOLIC BEVERAGES IN VEHICLE WITHOUT TRANSIT INSIGNIA - DELIVERY OF ALCOHOLIC BEVERAGES WITHOUT PROPER INVOICE OR MANIFEST - PRIOR RECORD - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against)

CALDWELL'S LIQUOR STORES)
t/a CALDWELL'S LIQUOR STORES)
3301-3303 Atlantic Avenue)
Atlantic City, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-3, issued by the Board of Commissioners of the City of Atlantic City.)

Shanley and Fisher, Esqs., by Harold H. Fisher, Esq., Attorneys for Defendant-licensee.
David S. Piltzer, 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 December 14, 1959, you transported alcoholic beverages in a vehicle not having a transit insignia affixed thereto; in violation of Rule 2 of State Regulation No. 17.
- '2. On December 15, 1959, you delivered and transported alcoholic beverages in a vehicle without the driver thereof having in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating the bona fide name and address of the purchaser or consignee and the brand, size of container and quantity of each item of the alcoholic beverages being delivered and transported; in violation of Rule 3 of State Regulation No. 17.'

"Two enforcement officers employed by the Pennsylvania Liquor Control Board testified that in Philadelphia, at approximately 2:05 p.m. on December 15, 1959, they stopped a 1959 Plymouth sedan owned and driven by Jacob H. Feinstein; that the car contained 429 bottles of alcoholic beverages which did not bear the seals of the Pennsylvania Liquor Control Board; that after the car and the driver thereof were taken into custody, it was ascertained that the car had no transit insignia affixed thereto issued by the State of New Jersey and that the driver did not have in his possession any invoices or waybills with reference to the alcoholic beverages; that upon the request of one of the enforcement officers, Feinstein produced a yellow sheet of paper upon which was written 'transfer' and dated '12-15-59' and which contained a written list of bottles of assorted sizes and brands of alcoholic beverages and opposite the printed words 'Ship To' was written 'Route 70' and opposite printed words 'How Shipped' was written '3301 Atl. Ave.'; that among the various brands of alcoholic beverages contained in the car were 12 4/5 quart bottles of Bellows Partners Choice Whiskey with serial number 390972 printed on the case and also number 247 on the container made by use of a crayon.

"An ABC agent testified that on December 16, 1959 he called at the offices of the Pennsylvania Liquor Control Board and assisted in preparation of the inventory of the alcoholic beverages allegedly found in Feinstein's automobile; that a check of the alcoholic beverages disclosed five cases of Bellows Partners Choice Whiskey with serial numbers on the cases of 390972, 390951, 390956, 390982 and 390969, respectively; that there was a crayon marking of 247 on three cases of whiskey and 626 on one other case and no marking on the fifth case thereof; that on December 18, 1959 he visited defendant's premises at 3301 Atlantic Avenue and, when advised that the necessary records were at the office of defendant's accountant, he left, but, on December 21st returned to defendant's aforementioned premises and examined the records produced for him which disclosed 'the earnings of Jack Feinstein beginning January 3, 1959 showing actual working hours, deductions, and total pay up until the week of December 12, 1959'; that the defendant's check book showed payments to Feinstein for wages starting January 19, 1959 until December 14, 1959; that among the cancelled checks was a check dated May 19, 1959 drawn to the order of Chidsey Auto Fair in the amount of \$1,626.10 which Morton Shiekman (president and treasurer of defendant corporate-licensee) explained was a loan to Feinstein toward the purchase of an automobile; that three samples of wrapping paper were obtained from defendant's licensed premises on Atlantic Avenue which were similar to the type of paper found on some of the packages of alcoholic beverages found in Feinstein's car.

"Louis Kay testified that he is employed as sales manager and secretary by Merchants' Wine and Liquor Company and, on request, produced invoices dated November 19, 1959 and November 23, 1959, respectively, wherein it was disclosed that among divers cases containing 4/5 quart bottles of Bellows Partners Choice Whiskey shipped to defendant the serial numbers on various cases thereof were identical to those appearing on the cases found in Feinstein's car by the Pennsylvania liquor authority. Also on three of said cases of Bellows was a number 247 and on another case a number 626 made by a crayon, which numbers coincided with the last three numbers of the serial number of the respective invoices. Kay testified that such crayon marking was similar to the type of marking used by his company.

"Morton Shiekman, aforementioned, testified that on December 12, 1959, Feinstein, then in the employ of defendant, requested 'a few day off' the following week to take care of some personal business; that he advised Feinstein that because at this time it would be 'the peak period of our Christmas season' he could not accede to his request; that Feinstein then informed Shiekman that he had to have the time off and that Shiekman 'might as well know he was going to leave anyhow and he was going to return to some phase of the automobile business doing with automobile parts and repairs'; that on December 14, 1959 he wrote a letter to the Division of Alcoholic Beverage Control wherein he advised the Division that on December 12, 1959 the lease for a 1959 Plymouth sedan owned by Feinstein was 'abrogated' because Feinstein was no longer in the defendant's employ and that the defendant no longer had the automobile in its possession; that the letter aforementioned was returned to defendant by the Post Office with a stamp thereon indicating its return for additional postage; that he then called Samuel Gold of the Division of Alcoholic Beverage Control on December 18, 1959 and informed him about the return of the letter and requested that the envelope be retained at the Division offices; that on January 6, 1960, an ABC investigator called at the defendant's premises and spoke to him about having an interview with Feinstein; that he then called Feinstein at his home and explained that an ABC agent was in the premises and wished to see him; that Feinstein indicated that he was not interested in seeing the agent because his attorney had told him not to discuss the matter with anyone; that he

prevailed upon Feinstein to grant an interview to the agent and that, pursuant thereto, the agent left to go to Feinstein's home; that about an hour and a half later, Feinstein called and stated that the agent was asking questions which he knew his lawyer did not want him to answer and he (Shiekman) requested Feinstein to permit the agent to speak to him and, as a result thereof, both came to the licensed premises where the agent interviewed Feinstein; that he advised the agent that Feinstein had worked primarily in another establishment on Route 70 which he referred to as the 'Camden premises', which license had been transferred some time prior to December 15, 1959.

"Theodore Bufano testified that he is vice-president and general manager of defendant corporate-licensee and that one of his duties is to keep track of the employees' time cards which are located in a rack adjacent to the time clock; that on Monday, December 14, 1959, he did not place a time card in the rack for Feinstein because he was advised by Shiekman on the previous Saturday that Feinstein was no longer in defendant's employ.

"Samuel Gold, supervisor, employed by the Division, testified that he had received a phone call from Shiekman in which he stated that he wished to cancel a transit insignia and lease and explained that he had written a letter to the Division but that it had been returned by the postal authorities because of insufficient postage; that Shiekman requested that the envelope be retained when it was received at this Division and that he (Gold) spoke to the employee in charge of that particular phase of the work and requested its retention.

"Hugh Jacobs, an employee of the United States Post Office in Newark, testified that in the event of insufficient postage stamps on a letter being mailed first class, the procedure would be to mark the 'postage due' with a rubber stamp and insert the amount due and forward it to the addressee; that if the addressee refused to pay the additional postage, the letter would be returned to the sender; that the stamped memorandum on an envelope 'return for additional postage' does no longer apply. During cross-examination, however, the attorney for the defendant produced four letters which he had mailed in Newark for delivery to his home in Upper Montclair whereon he had placed no stamp on one, and insufficient postage on the others, which letters were delivered to his home without any indication whatsoever that postage was due.

"I have carefully examined the record in this case in order to determine the guilt or innocence of the defendant as a result of Feinstein's activities on the day in question. The first and foremost thing to be decided herein is whether Feinstein was in the employ of the defendant on December 15, 1959 when the car containing the alcoholic beverages which was owned and driven by Feinstein was apprehended by the two enforcement officers employed by the Pennsylvania Liquor Control Board. The evidence is uncontradicted that Feinstein had been employed by defendant for several years and, therefore, it would be presumed that he had continued such employment unless it was satisfactorily shown by the evidence to the contrary. The ABC agent who examined the records of defendant testified that they disclosed that Feinstein had left the defendant's employ the week ending December 12, 1959 and received a check dated December 14, 1959 in payment for such services. Shiekman's testimony, as well as that of Bufano, that Feinstein was not employed by defendant on December 15, 1959, corroborated the data or information gleaned by the agent as a result of the examination of defendant's records. It is readily understandable because of various other factors uncovered by the investigation that one might be justifiably suspicious and sincerely believe that Feinstein was an employee of defendant on December 15, 1959. However, suspicion cannot be accepted

as a substitute for proof. The inference to be drawn based on the suspicion engendered does not appear sufficient to sustain the necessary proof of Feinstein's employment by the defendant in the instant case.

"In view of this finding that Feinstein was neither employed by nor was the agent of defendant at the time in question, it will be unnecessary to consider the other evidence presented herein.

"Under the circumstances, it is recommended that defendant be found not guilty and that an order be entered dismissing the charges herein."

Pursuant to Rule 6 of State Regulation No. 16, written exceptions to the Hearer's Report and written argument in support thereof were filed with me by the attorney appearing for the Division and written answering argument was filed with me by the attorneys for the defendant-licensee. Such attorneys also presented oral argument before me at my request.

This case involves basically a determination as to whether or not Feinstein was employed by the defendant on December 15, 1959. After carefully considering the entire record herein, including the trial transcript and exhibits, the Hearer's Report and the briefs, exceptions and written and oral arguments of counsel, I find that such employment has in fact been established by a fair preponderance of the believable evidence presented.

I am not impressed with the testimony of defendant's two witnesses concerning the alleged termination of Feinstein's employment on December 12, 1959. Shiekman's testimony on cross examination, confused and contradictory in many respects, does not ring with the sound of truth. It is implausible that, as claimed by Shiekman, defendant-licensee would loan Feinstein \$1,626.10 to purchase the auto in question, without charging interest or securing any written note or lien on the vehicle, and nevertheless not utilize the auto at any time to deliver alcoholic beverages in the course of the licensed business; nor is it likely that it would lose the services of Feinstein at the height of the busiest season of the year, in the manner described. And it is also highly unlikely that the letter written by Shiekman to the Division was actually written and mailed on December 14, 1959, as asserted by Shiekman. The unusual four-day delay in the return of the letter and the unexplained failure of Shiekman to advise the Division investigator of its existence when subsequently questioned by the agent (although Shiekman admittedly recognized the importance of the letter) buttresses my conclusion that the letter was not in fact returned to the defendant contrary to post office procedure, but was probably mailed on December 18, 1959, the day before it was postmarked in the Atlantic City post office, and followed up by the 'phone call by Shiekman to the Division's Mr. Gold.

I also find that the five cases of Bellows whiskey seized from Feinstein were in fact delivered to defendant-licensee's store in Atlantic City by Merchants Wine & Liquor, Inc. in accordance with the two invoices admitted as exhibits, and that Feinstein took these cases of whiskey to Pennsylvania from said store. In this connection, the list of alcoholic beverages found in Feinstein's possession on the date of his apprehension bore both the address of defendant's Atlantic City store and the date of December 15, 1959, indicating that Feinstein was still engaging in activity for defendant on that date.

There are so many circumstances linking Feinstein with defendant's licensed business on December 15, 1959, that I cannot accept defendant's disclaimer thereof. And once Feinstein's employment by defendant is established, defendant becomes responsible for the proven violations committed by him and the subject of these

charges. See Rule 33 of State Regulation No. 20.

Consequently, I shall not accept the Hearer's recommended dismissal of the charges. Instead, I find that defendant's guilt with respect to both charges has been established by a fair preponderance of the believable evidence presented.

Defendant's license was suspended for five days by this Division, effective March 7, 1955, for transporting alcoholic beverages in New Jersey in a vehicle not bearing transit insignia and not accompanied by proper invoices. Re Caldwell's Liquor Stores, Bulletin 1253, Item 12. The usual minimum penalty imposed in this type of case is suspension of license for forty-five days. Re Cork'N Bottle, Inc., Bulletin 1232, Item 3. I shall therefore suspend defendant's license for forty-five days, to which will be added five days for defendant's prior violation within five years of the current violations, or a total suspension of fifty days.

Accordingly, it is, on this 13th day of October 1960,

ORDERED that Plenary Retail Distribution License D-3, issued by the Board of Commissioners of the City of Atlantic City to Caldwell's Liquor Stores, t/a Caldwell's Liquor Stores, for premises 3301-3303 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for fifty (50) days, commencing at 9 a.m. Monday, October 24, 1960, and terminating at 9 a.m. Tuesday, December 13, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

GOLDRIC, INC.)
t/a WHITEY'S)
144 Terrill Road)
Scotch Plains, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Scotch Plains.)

Abrams & Kestenbaum, Esqs., by Norman J. Abrams, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it permitted the sale of alcoholic beverages to a minor and permitted the consumption of alcoholic beverages by said minor on its licensed premises, in violation of Rule 1 of State Regulation No. 20.

Acting upon information received from the New Jersey State Police, ABC agents obtained signed, sworn statements from Thomas --- and another minor. In his statement Thomas --- says that he was born on August 17, 1944; that on the evening of August 24, 1960, he and the other minor entered defendant's premises; that he went to the bar where he purchased and consumed a glass of beer and a shot of whiskey served by James Eckerson (a bartender); that he then joined the other minor at a table where he ordered and was served a glass of beer by

Wilma Panckeri (a waitress); that prior to said sale the waitress inquired as to his age and he told her he was 26 and showed her a picture of his brother in a sailor's uniform; that, after drinking the beer, he returned to the bar and purchased a glass of beer and a shot of whiskey from the same bartender; that the bartender did not question him as to his age and that he and his companion left the premises at about midnight. In his statement the other minor says that he and Thomas --- entered defendant's premises on August 24, 1960, at about 11 p.m.; that Thomas --- went to the bar and, later, rejoined him at a table where the waitress served a soft drink to him and a glass of beer to Thomas.

Defendant has no prior record. In alleged mitigation defendant's attorney refers to the fact that Thomas is six feet tall and weighs over 200 pounds, and refers to the further fact that the minor admitted that he misrepresented his age to the waitress. The usual penalty in cases involving sales to a 16-year-old minor is twenty-five days. Re Tecza, Bulletin 1344, Item 6. However, under the circumstances of this case, I shall suspend defendant's license for twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 17th day of October 1960,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Scotch Plains to Goldric, Inc., t/a Whitey's, for premises 144 Terrill Road, Scotch Plains, be and the same is hereby suspended for fifteen days, commencing at 2 a.m. Tuesday, November 1, 1960, and terminating at 2 a.m. Wednesday, November 16, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

8. AUTOMATIC SUSPENSION - SUSPENSION LIFTED AFTER TERMINATION OF SUSPENSION IN DISCIPLINARY PROCEEDINGS.

Auto. Susp. #187)
In the Matter of a Petition to)
Lift the Statutory Automatic)
Suspension of License D-46, issued) ON PETITION
by the Board of Alcoholic Beverage) ORDER
Control for the City of Paterson to)
)
HERMAN SILVER)
t/a SLOTY'S LIQUOR STORE)
795 Market Street)
Paterson, N. J.)

Herman Silver, Petitioner, pro se.

BY THE DIRECTOR:

The petition herein discloses that on August 16, 1960, Herman Silver (the licensee) was fined the sum of \$50 after he pleaded guilty in the Municipal Court of the City of Paterson to a charge of selling alcoholic beverages to a minor. Such conviction resulted in the automatic suspension of his license R.S. 33:1-31.1.

The petition herein sets forth that disciplinary proceedings were instituted by the Board of Alcoholic Beverage Control for the City of Paterson for the same sale of alcoholic beverages; that petitioner pleaded guilty to the charge in the disciplinary proceedings and, as a result thereof, the Board of Alcoholic Beverage Control for the City of Paterson, on October 5, 1960, suspended his license for

five days effective from 9 a.m. November 7, 1960, to 9 a.m. November 12, 1960. The file discloses that the minor was 20 years of age.

Accordingly, it is, on this 18th day of October 1960

ORDERED that the aforesaid automatic suspension be stayed until the effective date of the suspension imposed in the disciplinary proceedings instituted herein, and further stayed from the termination of said suspension until the expiration of the license.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against

CONVERST CUTTINO
t/a SPRINGWOOD BAR & GRILL
26 Valley Street
Union Township (Union Co.), N. J.

)
)
) CONCLUSIONS
) AND ORDER

Holder of Plenary Retail Consumption License C-43, issued by the Township Committee of Union Township (Union Co.).)
)

Defendant-licensee, Pro se.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his 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 September 1, 1960, an ABC agent tested defendant's open stock of liquor and seized a number of bottles for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of five of said bottles varied substantially from the contents of genuine bottles of the labeled brands.

Defendant in attempted mitigation of penalty denies knowledge of the violation and states that although the bartenders in his employ deny any refilling, one of them through inadvertence may have done so. However, a licensee is responsible when alcoholic beverages in bottles bearing labels which do not truly describe their contents 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.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty-five days, the minimum penalty imposed in cases involving five bottles. Re Fishman, Bulletin 1349, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 17th day of October 1960,

ORDERED that Plenary Retail Consumption License C-43 issued by the Township Committee of Union Township (Union Co.) to Converst Cuttino, t/a Springwood Bar & Grill, for premises 26 Valley Street,

Union Township (Union Co.), he and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Tuesday, October 25, 1960 and terminating at 2:00 a.m., Monday, November 14, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - PERMITTING OBSCENE LANGUAGE - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

ANGELO LA ROCCA)
t/a LA ROCCA'S)
73 Washington Street)
Paterson 1, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-203, issued by the Board)
of Alcoholic Beverage Control for the)
City of Paterson.)

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

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On August 20, 1960, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- "2. On August 20, 1960, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

On Saturday, August 20, 1960, three ABC agents at defendant's licensed premises observed a man stagger into the premises at about 10:00 p.m. and come to the bar. His hair was disheveled, his eyes were bloodshot and glassy and his head was bowed and moved from side to side. The bartender served a glass of beer to this man while in such condition. Another man entered the premises shortly afterwards and began to argue with the first man and challenged him to come outside and fight. Thereupon, the bartender came from behind the bar and stated that the first man was in no condition to fight and remarked to his fellow bartender that every time the first man came in drunk, he wants to fight. The bartender at this time served a drink of whiskey and a drink of beer to the intoxicated man. The agents then disclosed their identity and attempted to question the intoxicated person but he was incoherent in speech. When the agents asked the bartender if this person should be served alcoholic beverages, the bartender replied that this man was not that drunk that he should be refused and that he had seen him in a worse condition at other times. When the other bartender was questioned he stated that he would not

have served him if the man had been on his side of the bar, but that the man was not "too drunk".

During the course of their visit the agents overheard many patrons and the bartender freely indulge in filthy and obscene language.

Defendant has no prior adjudicated record. When entering his plea, the defendant submitted what he alleged were mitigating circumstances but, upon examination, the matters set forth do not justify the imposition of any less than the minimum penalty for such violations. I shall suspend defendant's license for the minimum period of fifteen days on Charge 1 (Re 300 Club Inc., Bulletin 1348, Item 2) and for a period of ten days on Charge 2 (Re Mann's Manor, A Corp., Bulletin 1308, Item 4), making a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 19th day of October 1960,

ORDERED that Plenary Retail Consumption License C-203, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Angelo LaRocca, t/a LaRocca's, for premises 73 Washington Street, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Tuesday, October 25, 1960, and terminating at 3:00 a.m., Monday, November 14, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

11. STATE LICENSES - NEW APPLICATIONS FILED.

Sanford Kalb
t/a Kalb Beverage Company
R.D. #4, U.S. Highway #9
Howell Township, P.O. Freehold, New Jersey,
Application filed November 29, 1960 for place-to-place transfer of Salesroom on State Beverage Distributor's License SBD -97 from R.D. #4, U. S. Highway #9, Howell Township, PO Freehold, New Jersey, to Addison Lane, Howell Township, R.D. #3, PO Farmingdale, New Jersey

Elliott Home Beverages
Rear 326 Talmadge Avenue
Bound Brook, New Jersey
Application filed November 30, 1960 for person-to-person transfer of State Beverage Distributor's License SBD-154 from Michael Honchar, t/a Elliott Home Beverages.


William Howe Davis
Director