

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

April 24, 1962

BULLETIN 1444

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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.

April 24, 1962

BULLETIN 1444

1. COURT DECISIONS - OTT'S INCORPORATED v. DIVISION OF ALCOHOLIC  
BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-942-60

OTT'S INCORPORATED, t/a LAUREL )  
RUN INN, )  
 )  
Defendant-Appellant, )  
 )  
v. )  
 )  
DIVISION OF ALCOHOLIC BEVERAGE )  
CONTROL, )  
 )  
Respondent. )  
-----

Argued March 12, 1962 - Decided March 29, 1962.

Before Judges Price, Sullivan and Lewis.

Mr. Paul R. Kramer argued the cause for appellant  
(Messrs. Powell and Davis, attorneys).

Mr. Samuel B. Helfand, Deputy Attorney General,  
argued the cause for respondent (Mr. David D. Furman,  
Attorney General, attorney).

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

Appellant appeals from the order of the Director of the Division of Alcoholic Beverage Control suspending its liquor license for twenty-five days. The suspension was based on a determination that appellant had fallowed, permitted and suffered the sale, service and delivery of alcoholic beverages (a six-pack of beer) to a minor contrary to Rule 1 of State Regulation No. 20.

The sole basis of appeal is that the State did not sustain the burden of proof of the violation because the person tentatively identified by the minor as the one who made the sale to him was demonstrated to have been away from the premises when the alleged sale was made.

We have reviewed the record and find that there was substantial evidence to support the Director's findings. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956).

The beer was found in the car occupied by the minors and interrogation of them led to the instant charge against appellant. At the hearing in the Division, the minor who made the purchase and his two companions who remained in the car while the purchase was made, also minors, unequivocally stated that the beer had been obtained at appellant's store. True, there was some uncertainty as to the identity of the person actually making the sale to the minor. However, it has long been established by a series of administrative rulings by the Director that the gravamen of the violation is a sale of alcoholic beverage to a minor on the licensed premises. The identity of the particular person making the sale need not be established. Such administrative

interpretation of its own rules and regulations is entitled to great weight and will not be lightly disturbed by the courts. Kravis v. Hock, 137 N.J.L. 252, 255 (Sup. Ct. 1948). Cf. In re Plainfield-Union Water Co., 57 N.J. Super. 158, 177 (App. Div. 1959).

Appellant concedes that ordinarily the State need not identify the person who made the alleged sale but avers that when the State "chooses to delimit the suspects to one person," and it then is clearly shown that it could not have been that person, the burden of proof of establishing a violation has not been met.

We do not agree that the State so limited its case. Nor do we agree that it was clearly shown that it could not have been the person identified by the minor.

The administrative ruling in Re Kessler and Silver, Bulletin 876, Item 6, relied on by appellant is not pertinent. There, in view of the testimony, the Director was unable to conclude that the minors had purchased alcoholic beverages from the particular licensee.

Here, the minors were found with beer in their possession. They positively identified appellant's package store as the place where they bought the beer. The Director believed their story. We find no basis for setting aside his ruling.

Affirmed.

## 2. APPELLATE DECISIONS - ZICARO v. NEWARK AND HOME LIQUORS.

FRANK ZICARO AND ANGELO ZICARO,	)	
Appellants,	)	
v.	)	ON APPEAL
	)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC	)	AND ORDER
BEVERAGE CONTROL OF THE CITY	)	
OF NEWARK, AND HOME LIQUORS	)	
(a corp. of N. J.),	)	
Respondents.	)	

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 Salvatore E. Intintola, Esq., Attorney for Appellants.  
 Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for  
 Respondent Municipal Board.  
 Abe W. Wasserman, Esq., Attorney for Respondent Home Liquors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Municipal Board on September 20, 1961, whereby it granted the transfer of plenary retail distribution license D-66 from Tantleff Beef Company, Inc., 109 Mulberry Street, to respondent Home Liquors for premises at 552 Bloomfield Avenue, Newark.

"The petition of appeal alleges that said action was erroneous for various reasons which may be summarized as follows:

- (a) The transfer will deprive appellants of some of their livelihood;
- (b) There is a liquor store having a similar license within 200 feet of 552 Bloomfield Avenue;

- (c) Respondent Board did not take into consideration the fact that a similar application had been denied five years ago and ignored the petition of property owners, residents and businessmen in the neighborhood;
- (d) There were a sufficient number of licensed places in the area to which the license was transferred;
- (e) Betterment of the neighborhood does not call for an additional outlet in that area.
- (f) The decision of respondent Board was contrary to the weight of the evidence presented at the hearing.

"At the hearing held herein on December 7, 1961, the transcript of the proceedings before respondent Board and exhibits showing the distance between various licensed premises were received in evidence, in accordance with Rule 8 of State Regulation No. 15.

"At the hearing below, Joseph F. Melillo (Councilman of the North Ward of the City of Newark) testified that he was appearing not in his official capacity but as an attorney and because of the site to which the transfer was sought. He testified that many residents in the neighborhood had requested him to appear on their behalf and to voice objection to the transfer. He stated that efforts were being made to beautify the upper end of Bloomfield Avenue; that there are numerous licensees who dispense package goods within five or six blocks of the proposed premises and that, in his opinion, the transfer would be a great detriment to the area.

"Austin B. Johnson, Jr., testified that he is an attorney representing the owners of a building at 555-559 Bloomfield Avenue and extending over the City line to include 2 Bloomfield Avenue, Belleville. He testified that the transfer would adversely affect Bell Liquor Store which holds a similar license for that part of the building known as 2 Bloomfield Avenue, Belleville, and thus affect the value of the entire building.

"Salvatore E. Intintola (attorney for appellants herein) stated that he is President of Bloomfield Avenue Businessmen's Association which objected to the transfer. He presented various letters objecting to the transfer, including a letter from Father Doöling, Pastor of St. Francis Xavier Church, Abington Avenue and North 8th Street, and a letter from North Ward Civic Pleasure Club to which was attached a petition containing more than one hundred names of objectors. He called attention to the numerous licensed places in the area and stated that he also appeared on behalf of Columbus Hospital located on North 13th Street, and that the hospital is in the process of redevelopment.

"David Rosenstein (who conducts business under a plenary retail consumption license with a 'broad-package' privilege at 507 Bloomfield Avenue), Angelo Zicaro (one of the appellants herein, who is a partner in a business under a similar license at 544 Bloomfield Avenue) and Appollo Poten (who owns a building at 326 Bloomfield Avenue and conducts a business at said address) testified that, in their respective opinions, there was no need for an additional license of any class at 552 Bloomfield Avenue. On cross-examination, David Rosenstein testified that he is Chairman of the North Ward Civic Pleasure Club and that some of the signatures to the petition presented with the letter from the club were solicited in his licensed premises and in the licensed premises conducted by the Zicaros and by Bell Liquors.

"The evidence shows that the licensed premises of Rosenstein

are about 500 feet from 552 Bloomfield Avenue; the licensed premises of Zicaro are about 75 feet from said premises, and the licensed premises of Bell Liquors (in Belleville) are more than 250 feet from said premises. In the City of Newark numerous other plenary retail consumption licenses have been issued in this area, but the nearest premises for which a plenary retail distribution license has been issued is more than 3,000 feet from 552 Bloomfield Avenue.

"At the close of the public hearing respondent Board reserved decision. At a meeting held on September 20, 1961, Commissioners Cerefice and Walsack voted to grant the application for transfer and Commissioner Marshall voted to deny said application.

"As to (a): It has been consistently held that the mere fact that an appellant might suffer loss of business by the transfer of a license is not a proper reason to deny such application. In Kelley v. Manalapan, Bulletin 531, Item 3, Commissioner Driscoll said:

'An issuing authority is not obligated to consider, when reaching a determination of whether to grant a liquor application, whether the financial interests of any pre-existing license will be promoted or harmed. The test in the issuance of liquor licenses is the welfare of the entire community and not the interference with the private rights of any individual.'

"See also Knast & Krause v. Camden et al., Bulletin 810, Item 2; Triangle Corporation et al. v. Camden et al., Bulletin 1276, Item 1.

"As to (b): Section 3.29 of the Revised Alcoholic Beverage Ordinances of Newark provides (with exceptions not here material) that no plenary retail distribution license, except renewals for the same premises and transfers from person to person, shall be granted or transfer made to other premises within a distance of one thousand feet from any other premises then covered by a plenary retail distribution license. It appears that the premises at 552 Bloomfield Avenue are more than one thousand feet from any other premises in the City of Newark for which a plenary retail distribution license has been issued. While the premises at 2 Broad Street, Belleville, may properly be considered in determining whether there are sufficient licenses in the vicinity, they should not be considered in construing the Newark ordinance.

"As to (c), (d), (e) and (f): It appears that on October 7, 1954, the then members of respondent Board denied a transfer of a plenary retail distribution license to 548 Bloomfield Avenue. However, no present member of the Board was a member thereof in 1954. Where the municipal issuing authority reasonably entertains the opinion that it is in the public interest to do so, it is free to alter an earlier policy determination and this is particularly true where it was made by predecessor members who no longer hold office. Lubliner et al. v. Paterson et al., 33 N.J. 428 (Sup.Ct. 1960). The weight to be accorded to petitions is a matter within the discretion of the issuing authority. Dunster v. Bernards, Bulletin 99, Item 1. It has been decided in numerous cases that the question as to the number of licenses which should be permitted in any given area of a municipality must be decided in the sound discretion of the issuing authority. Miles et al. v. Paterson et al., Bulletin 1306, Item 2. In this case the license was transferred to premises on one of the principal business streets of Newark.

"After reviewing all the evidence and the exhibits, I conclude

that appellants have not sustained the burden of proof in showing that the action of respondent Board was erroneous. Rule 6 of State Regulation No. 15. Shiloh Baptist Church v. Atlantic City et al., Bulletin 1387, Item 2; Helms v. Newark et al., Bulletin 1398, Item 3; Jacobs v. Newark et al., Bulletin 1398, Item 4.

"For the reasons aforesaid, it is recommended that an order be entered affirming the action of respondent Board and dismissing the appeal."

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

Having carefully considered the entire record herein, including the testimony taken, exhibits introduced into evidence at the hearing of the appeal and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. Hence, I shall enter an order as recommended.

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

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (HOMOSEXUALS) - HOSTESS ACTIVITY - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

32 CLUB, INC. )  
t/a LATIN QUARTER )  
47 Pennington Street )  
Newark 2, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-347, issued by the Municipal )  
Board of Alcoholic Beverage Control of )  
the City of Newark. )

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Irving J. Zwillman, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for 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 August 1, 10, 27, September 2 and 3, 1961, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g. females impersonating males, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

'2. On Saturday night September 2 and early Sunday morning, September 3, 1961, you allowed, permitted and suffered a female employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.'

"Five ABC agents testified at the hearing held herein. They testified with reference to four visits which were made to defendant's premises, namely, on August 1, 1961, August 10, 1961, August 27, 1961, and September 2 and the early morning hours on September 3, 1961. The principal testimony was presented by Agents S, J and R, and the other two agents corroborated all or part of their testimony.

"Agent S testified that he and other ABC agents were in the premises from 2:20 p.m. to 4 p.m. on August 1. He testified that there were seven males and three females in the premises; that a man known to him as 'Bert' was tending bar and that the three females who were seated at the bar attracted his attention. Two of these females (who wore dungarees and male-type shirts and who wore no facial make-up) continually displayed affection toward the third female (who wore normal female attire). One of the females who wore male attire hugged and kissed the third female several times. In reply to a remark made by one of the agents concerning the conduct of these females, Bert said 'You know they are like three-dollar bills. They don't mess around with outsiders, but you have to get to know them before they will bother with you.'

"Agent S testified that he and another ABC agent visited the premises from 1:25 p.m. to 2:55 p.m. on August 10. He testified that there were three males and five females in the premises; that Bert was again tending bar and that four of the females were seated together at the bar. Two of these four females wore dungarees and male-type shirts and had no facial make-up. He testified that at times these four placed their arms around each other's waist or shoulder.

"Agent J testified that he and another ABC agent visited the premises from 12:45 p.m. to 1:10 pm. on August 27. He testified that there were twenty males and thirty females in the premises; that there were three male bartenders, including one known as 'Lucky', and that seven of the females attracted his attention. These seven wore dungarees and male-type shirts and wore no facial make-up. He observed some of the females so attired hugging and at times kissing other females who wore normal female attire. On cross-examination, he testified that he heard no conversation between these females and that neither agent spoke to any of the bartenders.

"Agent R testified that he and another ABC agent visited the premises from 9:20 p.m. on September 2 until 1:20 a.m. on September 3, when they identified themselves. He testified that, when they entered, there were eight males and seven females in the premises; that 'Lucky' and another male were tending bar and that Anthony Faliveno was walking around. The seven females attracted his attention because they were seated in a group and because four of them wore dungarees and loafers and had no facial make-up. He stated that one of the four danced with a female who wore normal female attire. Eight other females entered while the agents were present and only two of these females wore normal female attire. Agent R testified that, when the other agent asked 'Lucky' if these females were lesbians, 'Lucky' replied 'I don't know nothing.' When he questioned Faliveno, the latter replied 'How am I supposed to know what they are?'



"On behalf of defendant, Louis Anderson (who had been identified as 'Lucky' by the agent) and Anthony Faliveno testified as to Charge 1.

"Louis Anderson testified that he was tending bar when an ABC agent asked him if he knew a lesbian and that he replied 'Do you know one when you see it? How?' Anderson denied that he saw any female kissing or embracing another female.

"Anthony Faliveno testified that he is manager of the licensed premises and that he remembers seeing the two ABC agents in the premises on the evening of September 2. He denied that he permits lesbians on the premises and says that he walks up and down to watch everything. He stated that many women 'in the whole country' dress in very masculine attire and denied that he saw female patrons kissing or fondling each other. He denied that he ever employed a bartender named Bert, but qualified this by stating 'unless he worked there three or four days.'

"After considering all the evidence herein as to Charge 1, I am satisfied that the Division has proven the violation therein by a fair preponderance of the evidence. Re Carelis, Bulletin 1393, Item 2; aff'd. sub nom. Carelis v. Division of Alcoholic Beverage Control, by Appellate Division on Dec. 21, 1961. The facts in this case are substantially the same as the facts in the cited case. Hence I recommend that defendant be found guilty as to Charge 1.

"The only evidence to support Charge 2 is that given by Agent R who testified that, about one hour after the agents entered on September 2, Mrs. Avant Anderson played the piano for fifteen minutes; thereafter played the piano for another fifteen minutes and, at some time during the evening, accepted drinks purchased for her by the agents. Mrs. Avant Anderson testified that she has been married to Louis Anderson (the bartender) for twenty-three years; that she was never an entertainer; that she played while waiting for her husband, and that she is not and never was employed by defendant corporation. The agents admit there was no entertainment and no other music, except a juke-box, on the premises. Anthony Faliveno denied that Mrs. Anderson was ever employed by defendant and testified that the piano is very old and is played only occasionally by patrons. In order to establish employment on licensed premises it is not necessary to show that the person has been paid for his services. Nevertheless, under the facts of this case I conclude that the Division has not established by a fair preponderance of the evidence that Mrs. Anderson was an employee of the corporation. Hence, it is recommended that defendant be found not guilty as to Charge 2.

"Defendant has a prior record. Effective June 23, 1958, the Director suspended for twenty-five days the license which defendant then held for premises at 132 Orchard Street after defendant pleaded non vult to charges of permitting bookmaking and a lottery. Bulletin 1237, Item 4. Effective January 3, 1961, the local issuing authority suspended defendant's license for twenty days for selling during prohibited hours. It is recommended, therefore, that an order be entered herein suspending defendant's license for forty days because of the finding of guilt as to Charge 1 (Re Rubinroit, Bulletin 1356, Item 2; Re Carelis, supra; Re Borisewski, Bulletin 1405, Item 3), and for an further period of five days because of the two dissimilar violations committed within the past five years (Re Schwebel, Bulletin 1431, Item 7), making a total suspension of forty-five days."

No exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.



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

ORDERED that Plenary Retail Consumption License C-347, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to 32 Club, Inc., t/a Latin Quarter, for premises 47 Pennington Street, Newark, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. Monday, March 5, 1962, and terminating at 2:00 a.m. Thursday, April 19, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

FRANK J. WASILEWSKI )  
t/a BRIDGE TAVERN )  
1 So. Bay Avenue )  
Highlands, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-9, issued by the Mayor and )  
Council of the Borough of Highlands. )

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Nicholas Sylvester LaCorte, Esq., Attorney for the licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging sale on January 19, 1962, of alcoholic beverages to six minors (three age 16, one 19 and two 20), in violation of Rule 1 of State Regulation No. 20.

Absent previous record and considering this to be an aggravated violation by reason of the tender age of three of the minors, I shall suspend the license for forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days. Cf. Re Begley, Bulletin 1411, Item 2.

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

ORDERED that Plenary Retail Consumption License C-9, issued by the Mayor and Council of the Borough of Highlands to Frank J. Wasilewski, t/a Bridge Tavern, for premises 1 So. Bay Avenue, Highlands, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Monday, February 26, 1962, and terminating at 2:00 a.m. Monday, April 2, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

5. ACTIVITY REPORT FOR MARCH 1962**ARRESTS:**

Total number of persons arrested	33
Licenseses and employees	19
Bootleggers	14

**SEIZURES:**

Motor vehicles - cars	2
Stillis - over 50 gallons	1
Mash - gallons	3,700
Distilled alcoholic beverages - gallons	26.130
Wine - gallons	11.000
Brewed malt alcoholic beverages - gallons	15.659

**RETAIL LICENSEES:**

Premises inspected	784
Premises where alcoholic beverages were gauged	557
Bottles gauged	8,876
Premises where violations were found	100
Violations found	110
Reg. #38 sign not posted	36
Application copy not available	26
Unqualified employees	24
Disposal permit necessary	5
Other mercantile business	4
Prohibited signs	2
Improper beer taps	2
Other violations	11

**STATE LICENSEES:**

Premises inspected	28
License applications investigated	14

**COMPLAINTS:**

Complaints assigned for investigation	466
Investigations completed	469
Investigations pending	194

**LABORATORY:**

Analyses made	247
Refills from licensed premises - bottles	20
Bottles from unlicensed premises	30

**IDENTIFICATION:**

Criminal fingerprint identifications made	10
Persons fingerprinted for non-criminal purposes	305
Identification contacts made with other enforcement agencies	244
Motor vehicle identifications via N. J. State Police teletype	4

**DISCIPLINARY PROCEEDINGS:**

Cases transmitted to municipalities	22
Violations involved	23
Sales to minors	10
Sale during prohibited hours	9
Permitting hostesses on premises	2
Cases instituted at Division	27
Violations involved	48
Sale to minors	11
Sale during prohibited hours	7
Permitting immoral activity on prem.	3
Permitting hostesses on premises	3
Possessing contraceptives on prem.	2
Possessing liquor not truly labeled	2
Fraud and front	2
Conducting business as nuisance	2
Failure to afford view during proh. hrs.	1
Allowing females at bar (local reg.)	1
Combination sale	1
Sale at discount	1
Possessing indecent matter	1
Possessing slot machines on premises	1
Cases brought by municipalities on own initiative and reported to Division	26
Violations involved	32
Sale to minors	17
Sale during prohibited hours	3
Permitting brawls on premises	2
Hindering investigation	2
Conducting business as nuisance	2
Failure to close prem. during proh. hrs.	2
Sale of alc. bevs. on credit (local Reg.)	1
Failure to close premises during proh. hours	1
Permitting bookmaking on premises	1
Permitting lottery activity (numbers, horse race pools)	1
Sale below filed price	1
Sale to intoxicated person	1
Serving women at bar (local reg.)	1
Permitting foul language on prem.	1
Permitting brawls on premises	1
Permitting gambling (slot machines) on premises	1
Sale to non-members by club	1
Failure to file notice of change in application	1

**HEARINGS HELD AT DIVISION:**

Total number of hearings held	43
Appeals	6
Disciplinary proceedings	22
Eligibility	12
Seizures	1
Tax revocations	1
Applications for license	1

**STATE LICENSES AND PERMITS ISSUED:**

Total number issued	1,008
Licenses	3
Solicitors' permits	47
Employment permits	442
Disposal permits	79
Social affair permits	251
Wine permits	1
Miscellaneous permits	161
Transit insignia	322
Transit certificates	2

**OFFICE OF AMUSEMENT GAMES CONTROL:**

Licenses issued	144
Enforcement files established	18

Dated: April 5, 1962

WILLIAM HOWE DAVIS  
 Director of Alcoholic Beverage Control  
 Commissioner of Amusement Games Control

6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - APPLICATION OF OWNER AND CLAIMANT FOR RETURN OF MOTOR VEHICLE DENIED FOR FAILURE TO ESTABLISH GOOD FAITH - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on	)	Case No. 10,695
October 23, 1961 of a quantity of	)	
alcohol and an Oldsmobile convertible	)	ON HEARING
in a public highway at White Horse	)	CONCLUSIONS
Pike, Route 130, Collingswood, in the	)	AND ORDER
County of Camden and State of New Jersey.	)	

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Dorothy Lowe, Pro se.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey and State Regulation No. 28, to determine whether 18 - two-quart 'Mason' jars of alcohol and an Oldsmobile convertible, described in an inventory hereinafter referred to, seized on October 23, 1961 at White Horse Pike, Route 130, Collingswood, 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 the registered owner who sought its return.

"No one appeared to oppose forfeiture of the alcoholic beverages.

"The facts as they appear from the reports of ABC agents and other documents in the file, presented in evidence, with the consent of the claimant herein, reflect the following: On October 23, 1961 at about 9:05 a.m., a New Jersey State Trooper stopped the motor vehicle in question on the aforesaid highway. This motor vehicle bore New York plates registered in the name of Dorothy Lowe, the claimant herein, and was being operated by her husband, Davell Lowe, accompanied by some passengers. An inspection of the interior disclosed the 18 - two-quart 'Mason' jars of alcoholic beverages in the trunk of the car. None of these jars had affixed to them stamps indicating payment of tax on alcoholic beverages. The trooper thereupon took custody of the alcohol and the motor vehicle, both of which were later surrendered to agents of this Division. On November 9, 1961, a sample of the contents of one of said 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 47.5 percent.

"The seized alcohol is illicit because of the absence of a tax stamp on the said jar. R.S. 33:1-1(1); R.S. 33:1-88.

"Lowe was arrested, charged with the possession and transportation of untaxed alcohol under R.S. 33:1-2; R.S. 33:1-50 and arraigned on said charges in the Collingswood Municipal Court. He signed a voluntary written statement in which he admitted the transportation and possession of the said alcoholic beverages.

"At the hearing herein, he gave the following explanation of his possession of the said untaxed alcohol. He agreed, for a consideration, to drive a friend, one Jimmy Herring, to Gallands,

Virginia, on October 20, 1961. While visiting a relative of Herring Lowe was given for his own personal consumption the said jars of alcohol and knowing that this was illicit he nevertheless stated, 'Maybe I won't get caught with it. I'll take a chance. I took it and started back with it.'

"Lowe further stated that the motor vehicle was purchased by him for \$200.00 and he registered it in his wife's name because the insurance premiums were less, when registered in that way.

"Dorothy Lowe, the claimant, testified that she did not know that the car was being used for transportation of illicit alcoholic beverages. However, she corroborated the testimony of her husband that this motor vehicle was purchased by him with his money and that the only reason that the said vehicle was registered in her name was because, 'The insurance is cheaper that way.' She readily admitted that this was done merely as an accommodation to her husband, and the said motor vehicle really belonged to him.

"It is abundantly clear, on the basis of the forthright testimony of the claimant and Lowe, that the motor vehicle was the sole property of Lowe, and was registered in his wife's name as an accommodation. He paid for this motor vehicle with his own funds and was the sole driver thereof. Under these circumstances, I am constrained to conclude that he is the equitable owner thereof and the claimant has no valid recognizable claim before this tribunal. Since it is my view that Lowe is the equitable owner of this motor vehicle, the measure of his action will be the determinant in the adjudication of the claim herein. It is abundantly clear that he manifested an absence of good faith and a careless indifference to what use his car was put by the transportation of these alcoholic beverages. In the absence of these essential elements, the Director has no authority to relieve the claimant of forfeiture. R.S. 33:1-66(e); Seizure Case No. 9989, Bulletin 1276, Item 8; Seizure Case No. 10,608, Bulletin 1421, Item 3; Seizure Case No. 10,535, Bulletin 1412, Item 6; Seizure Case No. 9921, Bulletin 1297, Item 7.

"I therefore recommend that the claim of Dorothy Lowe for the return of the said motor vehicle be refused, and that an Order be entered directing the forfeiture of the Oldsmobile convertible and the alcoholic beverages."

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

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

DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 or 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.

WILLIAM HOWE DAVIS  
DIRECTOR

SCHEDULE "A"

- 18 - two quart "Mason" jars of alcohol
- 1 - 1954 Oldsmobile convertible, Serial No. V265512,  
New York Registration 3990-CK

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

In the Matter of Disciplinary  
 Proceedings against

CLUB 29, Inc.  
 29-31 South Center Street  
 Orange, N. J.

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption  
 License C-65, issued by the Municipal  
 Board of Alcoholic Beverage Control  
 of the City of Orange.

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 Anthony E. Grasso, Esq., Attorney for Licensee.  
 David S. Piltzer, Esq., Appearing for the Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on  
 October 24, 1961, it possessed six bottles of alcoholic beverages  
 not truly labeled, in violation of Rule 27 of State Regulation  
 No. 20.

Although Daniel Mita, holder of 1% of the stock of the  
 licensee corporation, as an individual has a previous record of  
 suspension of license for premises 79 North Center Street, Orange,  
 for nine days effective January 15, 1938 for sale during prohibited  
 hours, since such dissimilar violation occurred more than five  
 years prior to the instant violation, it will be disregarded in  
 fixing the penalty herein, viz., suspension of license for twenty-  
 five days (the minimum period where six bottles are involved) with  
 remission of five days for the plea entered, leaving a net suspension  
 of twenty days. Re Simmons, Bulletin 1423, Item 6.

Accordingly, it is, on this 26th day of February, 1962,

ORDERED that Plenary Retail Consumption License C-65, issued  
 by the Municipal Board of Alcoholic Beverage Control of the City of  
 Orange to Club 29, Inc., for premises 29-31 South Center Street,  
 Orange, be and the same is hereby suspended for twenty (20) days,  
 commencing at 2:00 a.m., Tuesday, March 6, 1962, and terminating at  
 2:00 a.m., Monday, March 26, 1962

WILLIAM HOWE DAVIS  
 DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 (TWO SEPARATE CHARGES) - EMPLOYMENT OF NON-RESIDENT WITHOUT PERMIT - PRIOR RECORD OF STOCKHOLDER - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA ON EACH OF TWO SEPARATE CHARGES.

In the Matter of Disciplinary )  
 Proceedings against )

ELBAR, INC. )  
 t/a Bobaloo Cafe )  
 178 - 12th Avenue )  
 Paterson, N. J. )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption )  
 License C-165, issued by the Board of )  
 Alcoholic Beverage Control for the City )  
 of Paterson. )

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 George S. Grabow, Esq., Attorney for Licensee.  
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Licensee pleaded non vult to a charge dated October 2, 1961 alleging that (1) on September 24, 1961, at about 1:12 p.m., it permitted the removal from its licensed premises in original containers of two 12-ounce cans of beer and a pint of wine, in violation of Rule 1 of State Regulation No. 38, and (2) on said September 24, 1961 and prior thereto, it employed without requisite employment permit a bartender who was not a bona fide resident of New Jersey, in violation of Rule 4 of State Regulation No. 13.

Licensee also pleaded non vult to a subsequent charge (3) alleging that on January 14, 1962, it sold a pint of whiskey in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Although licensee has no prior adjudicated record, Louis J. Schwartz, its president and holder of 98% of the capital stock, was a partner of one Rolly Beskin when, on two occasions, their license was suspended. Effective September 12, 1955, their license was suspended for fifteen days for gambling (Re Beskin & Schwartz, Bulletin 1080, Item 11) and again, effective March 21, 1957, for thirty days for sale to minors and intoxicated persons (Re Beskin & Schwartz, Bulletin 1164, Item 2). Inasmuch as I shall not consider the 1955 suspension in fixing the penalty herein, the suspension of the license will be as follows: for charges 1 and 2 for a period of twenty days, and for the similar "hours" violation, committed on January 24, 1962 (charge 3), an additional thirty days. Moreover, because of the dissimilar violation committed on September 28, 1956 and occurring within a five-year period preceding the instant violations, an additional five days will be added, making a total suspension of fifty-five days. The instant charges will be considered as separate and distinct from each other and, thus, five days on each charge or ten days in all will be remitted for the pleas entered herein, leaving a net suspension of forty-five days.

Accordingly, it is, on this 7th day of March 1962,

ORDERED that Plenary Retail Consumption License C-165, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Elbar, Inc., t/a Bobaloo Cafe, for premises 178 - 12th Avenue, Paterson, be and the same is hereby suspended for forty-five (45) days, commencing at 3:00 a.m., Monday, March 12, 1962, and terminating at 3:00 a.m. Thursday, April 26, 1962.

WILLIAM HOWE DAVIS  
 DIRECTOR

## 9. DISCIPLINARY PROCEEDINGS - ORDER DEFERRING EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary  
Proceedings against

ELBAR, INC.  
t/a Bobaloo Cafe  
178 - 12th Avenue  
Paterson, N. J.

AMENDED ORDER

Holder of Plenary Retail Consumption  
License C-165, issued by the Board  
of Alcoholic Beverage Control for the  
City of Paterson.

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George S. Grabow, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

On March 7, 1962, I entered an order suspending the license herein for a period of forty-five days commencing March 12, 1962. The licensee has now filed a petition requesting that the imposition of the suspension be deferred and, for good cause appearing therein, I shall grant such petition.

Accordingly, it is, on this 9th day of March 1962,

ORDERED that Plenary Retail Consumption License C-165, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Elbar, Inc., t/a Bobaloo Cafe, for premises 178 - 12th Avenue, Paterson, be and the same is hereby suspended for forty-five (45) days, commencing at 3 a.m. Monday, March 26, 1962, and terminating at 3 a.m. Thursday, May 10, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR



10. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION  
NO. 38 - SALE IN VIOLATION OF MUNICIPAL HOURS ORDINANCE -  
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

ROCCO AURIEMMA & DIANE AURIEMMA  
t/a ROCKY'S WINE & LIQUORS  
203 Monticello Avenue  
Jersey City 4, N. J.

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Distribution  
License D-48, issued by the Municipal  
Board of Alcoholic Beverage Control of  
the City of Jersey City.

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Rocco Auriemma and Diane Auriemma, Licensees, Pro se.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging sale of a pint  
bottle of whiskey at 10:35 a.m. on Sunday, February 4, 1962, (1) in  
violation of Rule 1 of State Regulation No. 38, and (2) in violation  
of municipal hours ordinance.

Absent previous record, the license will be suspended for  
twenty days, with remission of five days for the plea entered, leaving  
a net suspension of fifteen days. Re Kardakis, Bulletin 1219,  
Item 4.

Accordingly, it is, on this 26th day of February, 1962,

ORDERED that Plenary Retail Distribution License D-48,  
issued by the Municipal Board of Alcoholic Beverage Control of  
the City of Jersey City to Rocco Auriemma and Diane Auriemma,  
t/a Rocky's Wine & Liquors, for premises 203 Monticello Avenue,  
Jersey City, be and the same is hereby suspended for fifteen (15)  
days, commencing at 9:00 a.m., Monday, March 5, 1962, and terminating  
at 9:00 a.m., Tuesday, March 20, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

## 11. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

FRAN'S LIQUOR'S, INC.  
t/a FRAN'S LIQUOR'S, INC.  
70 Fourth Street  
Passaic, N. J.

)  
)  
) CONCLUSIONS  
) AND ORDER  
)

Holder of Plenary Retail Distribution )  
License D-22, issued by the Board of )  
Commissioners of the City of Passaic. )

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Harry Kampelman, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

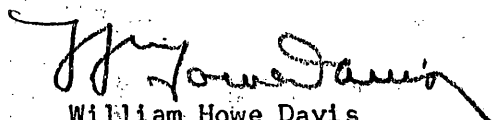
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 19, 1962, it sold alcoholic beverages (three pint bottles of wine) to a 17-year-old minor, in violation of Rule 1 of State Regulation No. 20.

Absent previous record, the license will be suspended for twenty days, the minimum in cases involving sale to a 17-year-old minor, with remission of 5 days for the plea entered, leaving a net suspension of fifteen days. Re DeLessis, Bulletin 1432, Item 10.

Accordingly, it is, on this 7th day of March, 1962,

ORDERED that Plenary Retail Distribution License D-22, issued by the Board of Commissioners of the City of Passaic to Fran's Liquor's, Inc. for premises 70 Fourth Street, Passaic, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. Monday, March 12, 1962, and terminating at 9:00 a.m. Tuesday, March 27, 1962.

  
William Howe Davis  
Director