

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1783

March 19, 1968

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLET IN 1783

March 19, 1968

1. APPELLATE DECISIONS - DOOLAN v. SPRING LAKE HEIGHTS.

MICHAEL J. DOOLAN,
t/a VILLAGE BARN,

Appellant,

V. 5

BOROUGH COUNCIL OF THE
BOROUGH OF SPRING LAKE
HEIGHTS,

Respondent.

Feinberg, Dee & Feinberg, Esqs., by Vincent T. Dee, Esq.,
Attorneys for Appellant.
William C. Nowels, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from imposition by respondent of special conditions on its 1967-68 plenary retail consumption license for premises 700 State Highway #71, Spring Lake Heights.

Prior to the hearing of the appeal, appellant's attorneys advised by letter dated February 5, 1968, that the appeal was withdrawn.

No reason appearing to the contrary, the appeal will be dismissed.

Accordingly, it is, on this 8th day of February 1968,

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

JOSEPH M. KEEGAN
DIRECTOR

2. APPELLATE DECISIONS - SUPPA v. HARRISON.

DOMINICK SUPPA & LUKE SUPPA,)	
t/a SUPPA'S TAVERN,)	
Appellants,)	ON APPEAL
)	CONCLUSIONS
v.)	AND ORDER
)	
MAYOR AND COUNCIL OF THE)	
TOWN OF HARRISON,)	
Respondent.)	

 Samuel Raffaello, Esq., Attorney for Appellants
 Walter Michaelson, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants, holders of a plenary retail consumption license for premises 115 John Street, Harrison, were found guilty by respondent (hereinafter Council) on a charge alleging that on August 20, 1967, they allowed, permitted and suffered in and upon their licensed premises a brawl, act of violence, disturbance and unnecessary noises, and allowed, permitted and suffered their licensed place of business to be conducted in such manner as to become a nuisance, in violation of Rule 5 of State Regulation No. 20. Their license was suspended on the said charge for a period of thirty days effective December 15, 1967.

An order dated November 16, 1967, was entered staying the effect of the suspension imposed by respondent pending the appeal herein and until the further order of the Director.

In their petition of appeal challenging said determination, appellants allege that the Council's action was erroneous because (a) it was not based upon the preponderance of the evidence and (b) appellants "exercised every possible precaution and did everything possible to prevent the violation." They further contend that the penalty imposed was "harsh, excessive and unduly severe."

In its answer Council admits the jurisdictional allegations and defends that its action was based on "proper and serious consideration of the evidence submitted, and the penalty thereon was proper and fair under the evidence."

This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded counsel to present testimony under oath and cross-examine witnesses.

The testimony adduced at this plenary hearing with respect to the said charge reflects the following: Ronald Johansen patronized the said licensed premises on August 20 during the late afternoon and observed that one Felice Macchiello was on duty as a bartender. He remained in the premises for a short time and returned later that evening at

about 9:45 p.m. At that time there were approximately twenty-five patrons in the premises, and both Macchiello and the co-licensee Dominick Suppa were on duty as bartenders.

Shortly after Johansen seated himself at the bar, the wife of Macchiello entered and seated herself at the stool next to his. Macchiello served him beer, receiving payment therefor, and he also served beer to his wife. Some time thereafter, Johansen received a telephone call and, when he returned to the bar, an argument ensued when Macchiello's wife accused him of taking her pack of cigarettes. This argument culminated in an assault upon him with a beer bottle by Macchiello which caused a laceration on his face. With the assistance of his friend, he left the tavern and proceeded to police headquarters where he complained of the said assault to Lieutenant Vincent Pagano. In the company of Pagano and several other local police officers, he returned to the tavern and noted that Macchiello was still behind the bar. A confrontation took place and Macchiello was placed under arrest.

On cross examination, the witness admitted that when he later returned to police headquarters, he executed a statement in which he stated that he was struck by Macchiello with his fist, rather than with a beer bottle. He explained that he was confused and nervous at the time the statement was taken. However, the true version of what had occurred was given at both the hearing before the Council and at the hearing herein. He added that Suppa was present at the time of the assault and was also present at the time of the confrontation with the police officers.

Felice Macchiello testified that he was not employed at these premises at any time, but was merely a patron on the night in question. He gave the following version: He entered the premises at about 8:30 p.m. on August 20 and his wife entered the tavern a short time later. He asked Dominick Suppa if he could get a book of matches and, with Suppa's permission, walked behind the bar and took the matches. While he was there he served a bottle of beer to Johansen and accepted payment therefor from him. During this time, an argument ensued between Johansen and his wife about a pack of cigarettes, and Johansen grabbed his wife by the arm. "I threw a shot at him with my hand, with my fist."

On cross examination, he was questioned closely about his denial that he was actually employed as a bartender, and asked specifically why he served Johansen. His answer, "I figured he [Suppa] was busy, so I figured I'd just get a bottle of beer and give it to him." He admitted accepting payment therefor but denied that he rang it up on the cash register. He emphatically denied hitting him with a beer bottle but insisted that he hit him with his fist. He also admitted that when the police returned with Johansen to the tavern, he was still on the service side of the bar.

Lieutenant Vincent Pagano testified that shortly before midnight on the date herein, Johansen entered police headquarters and complained that he had been struck by the bartender at the above licensed premises. After questioning him for a short period and noting that he had suffered a laceration on his face, he returned with him and two other police officers to the tavern and observed that Macchiello was standing behind the bar. Johansen identified Macchiello as his assailant and Macchiello was then placed under arrest. He questioned Dominick Suppa about the said incident, and Suppa denied that any incident took place in

his premises. Pagano added that neither the licensees nor anyone else in the tavern called police headquarters as a result of this incident. On cross examination, the officer stated that when Johansen first came to headquarters, he merely told them that he was assaulted but did not indicate that he was assaulted with a beer bottle or any other instrument.

The testimony of Lieutenant Pagano was corroborated by Sergeant James P. Ross and Patrolman John A. Trucillo.

Dominick Suppa (the co-licensee herein), testifying in his own behalf, denied that Macchiello was employed as a bartender in these premises or that he had ever been employed at that tavern. On the night in question he recalled that Macchiello asked him for a book of matches and, because he was busy, Macchiello came behind the bar to take the matches. While he admitted giving Macchiello permission to go behind the bar for the purpose of taking the matches, he never authorized him to serve alcoholic beverages to anyone. He emphatically denied either seeing or hearing any altercation between any of the patrons. He also denied that Macchiello was behind the bar at the time that Johansen returned with the police officers.

When the officers entered his tavern with Johansen, he did not approach them because he was "waiting for somebody to approach me, one of the police officers. I was waiting for a police officer to approach me why he made the arrest. I only found out through mail that I had to go to court for this." On cross examination he admitted that he did give Macchiello permission to go behind the bar, but he was too busy serving patrons to notice whether or not Macchiello actually served any of the patrons, including Johansen.

Luke Suppa (the co-licensee) testified that he saw Johansen enter the tavern earlier that evening; that Macchiello was not in the premises at that time; nor was he employed as a bartender at any time.

I have carefully considered the entire record herein and have had an opportunity to observe the demeanor of the witnesses as they appeared and testified before me. From my careful evaluation and examination of their testimony, I am persuaded that the evidence adduced herein establishes without dispute that an act of violence and a disturbance occurred on appellants' licensed premises on the night of August 20, 1967. The issue to be decided is whether appellants, through their agents or employees (Rule 33 of State Regulation No. 20), allowed, permitted or suffered such occurrence.

In Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947), the court said that, within the meaning of the Alcoholic Beverage Regulations, the word "suffer" imposes disciplinary responsibility on a licensee, regardless of knowledge, where there is a "failure to prevent prohibited conduct by those occupying the premises with his authority." I am satisfied that Macchiello was actually employed (i.e., his services were being utilized) as the bartender in these premises on the date herein charged and that the Council could have reasonably determined that he was so employed. The fact that he served Johansen and received payment therefor in the presence of Dominick Suppa (the co-licensee), the fact that Macchiello was observed by Johansen earlier that evening performing duties as a bartender, the fact that, when the police returned with Johansen to the tavern after the altercation, Macchiello was still behind the bar, all indicate

quite clearly that Macchiello was engaged in performing such duties. Furthermore, appellants neither produced employment records or other documentary proof to support their contention that Macchiello was not an employee at these premises.

Thus the question involved here is whether the licensees could reasonably have taken steps to prevent the act of violence and disturbance that took place on their licensed premises, but failed to do so.

Dominick Suppa denied that any altercation took place or, at least, that he saw anything or heard anything at that time. I find his testimony totally unconvincing. The Division has consistently held that:

"Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises." Bilowith v. Passaic, Bulletin 527, Item 3; Jackson v. Newark, Bulletin 1600, Item 2.

It is a well established principle that a licensee is responsible for the misconduct of his employees and is fully accountable for their activities during their employ on licensed premises. In re Olympic, Inc., 49 N.J. Super. 299; In re Schneider, 12 N.J. Super. 449; Rule 33 of State Regulation No. 20. The licensee is not relieved even if the employee violates his express instructions. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39; F. & A. Distrib. Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34.

While it is true that a licensee has been held not to be responsible for a sudden flare-up on his premises, where he could not have reasonably been aware of its imminence, such is not the case here. The evidence indicates that this argument took place over a period of approximately ten minutes, and the act of violence was committed not by a patron but by an employee of the licensee, who was the aggressor. See Bernstein v. Paterson, Bulletin 1186, Item 2; Re Gutman, Bulletin 936, Item 4.

Suppa's testimony regarding the confrontation by the police is particularly revealing. The logical and realistic reaction of a licensee who is confronted with a complaint that a patron has been assaulted and that the bartender is being arrested therefor would be to question the police officers as to the reason for the arrest, if, in fact, the licensee was unaware of the occurrence. Yet Suppa states that when the police officers came in and arrested Macchiello for the alleged assault on this patron, Suppa just sat by, said nothing and did nothing. He was asked specifically:

"Q Do you mean you saw a bartender being arrested on your premises and you never went up to any of the officers to ask him why he was being arrested?

A No."

In order to meet the burden required under Rule 6 of State Regulation No. 15, appellants must show manifest error and that indeed the action of the Council was clearly against the logic and effect of the presented facts. That burden was not met

here. Hudson Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L. 502. I therefore conclude that the Council has established the truth of the charge by a fair preponderance of the believable evidence and that it acted reasonably thereon in reaching the determination that appellants were guilty of the said charge. Greenberg v. Middlesex, Bulletin 1079, Item 5; Whitley v. Kenilworth, Bulletin 1376, Item 5.

A liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585 (1888); Mazza v. Cavicchia, 15 N.J. 498 (1954). In the exercise of that power, the Legislature invested the issuing authority (Council) with the power to suspend or revoke licenses, after hearing, for certain enumerated violations, including violation of the law or of State or local regulations. R.S. 33:1-31.

It has generally been held by this Division that a suspension imposed in a disciplinary proceeding rests in the first instance within the sound discretion of the local issuing authority. The power of the Director to reduce or modify it will be sparingly exercised, and only with the greatest caution. Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2; Buckley v. Wallington, Bulletin 1772, Item 1.

The Council, in imposing the thirty-day suspension, had before it the licensees' previous record of suspensions. This record shows that the license held by the licensees for premises 89½ Seventh Avenue, Newark, was suspended by the municipal issuing authority for ten days effective January 5, 1959, and twenty-five days effective March 12, 1962, both for sale in violation of State Regulation No. 38, and for fifteen days effective January 9, 1967, for sale to a minor. Under all of these circumstances it cannot be seriously contended that the penalty of thirty days is unduly harsh, or that an order should be entered reducing the said period of suspension of appellants' license. Benedetti v. Trenton, 35 N.J. Super. 30.

It is, therefore, recommended that an order be entered affirming the Council's action, dismissing the appeal and fixing the effective dates for the suspension imposed by the Council.

Conclusions and Order

By letter dated January 22, 1968, the attorney for the appellants advised that he did not intend to file exceptions to the Hearer's report and requested that the suspension heretofore imposed by the Council, and stayed pending the determination of this appeal, be reinstated and reimposed to become effective upon the expiration of currently effective suspension imposed in Re Suppa, Bulletin 1775, Item 4, viz., at 2 a.m. February 1, 1968.

In view of the representation and request of appellants' attorney, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 25th day of January 1968,

ORDERED that the action of the respondent Mayor and Council of the Town of Harrison be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-67, issued by the Mayor and Council of the Town of Harrison to

Dominick Suppa & Luke Suppa, t/a Suppa's Tavern, for premises 115 John Street, Harrison, be and the same is hereby suspended for thirty (30) days, commencing at 2 a.m. Thursday, February 1, 1968, and terminating at 2 a.m. Saturday, March 2, 1968.

JOSEPH M. KEEGAN
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION (UNDISCLOSED INTEREST OF NON-RESIDENT) - CRIMINALLY DISQUALIFIED EMPLOYEE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 50 DAYS UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against)

HUBRO INDUSTRIES, INC.)
t/a Matawan Wine & Liquor Store)
120 Main Street)
Matawan, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution)
License D-2 issued by the Borough)
Council of the Borough of Matawan)

Fox, Yanoff and Fox, Esqs., by Leo Yanoff, Esq., Attorneys
for Licensee.

David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to the following charges:

"1. By notice dated August 16, 1966, amending your answer to Question No. 22 of your then current license application dated June 6, 1966, filed with the Borough Council of the Borough of Matawan, upon which you obtained your plenary retail distribution license for the licensing year 1966-67, you listed Julia Medoff as the holder of 10 shares (50%) of your issued and outstanding stock, whereas in truth and fact Jacob Fichtelberg was the true and beneficial owner of said 10 shares of stock; in violation of R.S. 33:1-25.

"2. You failed to file with the Borough Council of the Borough of Matawan, within ten days of the occurrence hereinafter stated, written notice of change of facts set forth in your answer to Question No. 23 of your above mentioned license application dated June 6, 1966, such change being that on July 9, 1966, Jacob Fichtelberg became the owner of the beneficial interest in the 10 shares (50%) of your stock held in the name of Julia Medoff; in violation of R.S. 33:1-34.

"3. From July 9, 1966, to date, you knowingly aided and abetted Jacob Fichtelberg to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail distribution licenses; in violation of R.S. 33:1-52.

"4. From July 9, 1966, to date, you employed and had connected with you in a business capacity Fred Fichtelberg, a person, who, on December 22, 1965, had been convicted in the Essex County Court of conspiracy to defraud, a crime involving moral turpitude; in violation of Rule 1 of State Regulation No. 13."

The facts are sufficiently set forth in the quoted charges, when there is added the fact that Jacob Fichtelberg is a non-resident of New Jersey, viz., a resident of New York.

Licensee has a previous record of suspension of license by the Director for five days effective February 22, 1965, for sale below filed price. Re Hubro Industries, Inc., Bulletin 1607, Item 11.

The license will be suspended on Charges 1, 2 and 3 for thirty days (Re Hy-Lite Tavern, Bulletin 1681, Item 5) and on the fourth charge for twenty days (Re American Legion Post #380, Bulletin 1661, Item 3), to which will be added five days by reason of the record of suspension of license for dissimilar violation within the past five years (Re Boysen's Sunset Tavern, Inc., Bulletin 1766, Item 3), or a total of fifty-five days, with remission of five days for the plea entered, leaving a net suspension of fifty days.

Since to date no correction of the unlawful situation has been accomplished, the license will be suspended for the balance of its term with leave granted to the licensee or any bona fide transferee of the license to apply for the lifting of the suspension whenever the unlawful situation has been corrected but in no event sooner than fifty days from the date of the commencement of the suspension herein.

Accordingly, it is, on this 15th day of January, 1968,

ORDERED that Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Matawan to Hubro Industries, Inc., t/a Matawan Wine & Liquor Store, for premises 120 Main Street, Matawan, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1968, effective 9:00 a.m. Monday, January 22, 1968, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation for lifting of the suspension of the license on or after 9:00 a.m. Tuesday, March 12, 1968.

EMERSON A. TSCHUPP
ACTING DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary
Proceedings against

C.D.S. CORP.
t/a Brownie's Green Goose
251½ Kaighn Avenue
Camden, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-70 issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Camden

Asbell & Ambrose, Esqs., by Benjamin Asbell, Esq., Attorneys
for Licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee has pleaded not guilty to the following charge:

"On August 12, 1967, you sold, and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages directly or indirectly, to a person under the age of twenty-one (21) years, viz., Thomas ---, age 16; in violation of Rule 1 of State Regulation No. 20."

The Division offered the testimony of Thomas ---, Charles ---, Agent L and Agent B to substantiate the charge.

Thomas testified that he was born on September 3, 1950 and was 16 years of age on August 12, 1967. On that date at approximately 8:10 p.m., he and Charles left their place of employment in Mount Ephraim, crossed the street and about ten or fifteen minutes thereafter boarded a bus for Camden; that in "about ten or fifteen minutes" they got off the bus at the corner of Broadway and Market Street; that he and his companion walked up Broadway a distance of twelve blocks to Kaighn Avenue, turned right on Kaighn, proceeded for a distance of "three or four blocks" and entered the liquor establishment of the licensee; that he went to the bar and ordered two four-fifth quarts of Tiger Rose wine from a barmaid; that the latter "took two fifths off a shelf to her left and set them on the bar and got a brown paper bag and put them in. I handed her two dollar bills. She rang up the purchase on the register and gave me my change" which he put in his pocket and left the premises by the same door through which he had entered; that the barmaid did not inquire as to his age.

On cross examination, Thomas testified that after leaving the bus at Broadway and Market Street, "It took us about 20 or 25 minutes to walk." The licensee's attorney asked Thomas if Mabel Upshur (who was at the hearing herein) had waited on him on the night in question and Thomas answered that she was not

the person. Thomas also testified that he saw a bartender at the end of the bar but could not identify him as Charles Brown because he had not paid much attention to the man. Thomas further testified that he drank the contents of a bottle of the wine outside his companion's home.

Charles --- (age 16) testified that on August 12, 1967, after finishing work at 8:00 p.m., he and Thomas "took the bus to Broadway and Market, which then we got off and walked down Broadway to Kaighn Avenue and made a right and went to the Green Goose bar;" that he gave Thomas \$2 to buy wine; that Thomas was in the licensee's tavern about two or three minutes when he came out carrying a brown paper bag containing "two fifths of Tiger Rose wine" in sealed bottles; that he and Thomas took the bus back to the municipality where they both reside and went to his (Charles') home where he consumed the contents of one bottle of the wine; that on the following morning, he went with an ABC agent and identified the licensee's premises.

ABC Agent L testified that in the course of investigating the alleged sale of alcoholic beverages to Thomas, he visited the licensed premises on Monday, August 14, 1967; that he had picked up Thomas and Charles at the latter's home and, pursuant to directions, drove to the licensee's premises at Second Street and Kaighn Avenue, Camden, wherein the boys alleged Thomas had purchased the wine the preceding Saturday night; that he (Agent L) entered the premises, spoke to Charles Brown who was alone at the time and asked that he produce on the following Wednesday the barmaid employed by the licensee; that on the appointed date, Mabel Upshur came to the premises, at which time Thomas said she was not the woman who sold him the wine at the time in question.

Mabel Upshur testified that between 5 and 12 o'clock on the night of August 12, 1967, she alone was on duty as barmaid with the exception that from 8:30 to after 10:00 p.m. Charles Brown was there attempting to fix the cash register which was out of order; that although Tiger Rose wine is sold at the premises "every day", none was sold to Thomas on the day alleged in the charge. Miss Upshur also testified that she had never seen Thomas prior to the date when the ABC agent brought him to the tavern. Miss Upshur further testified that she has been employed by the licensee since October 1966 and during that time no other person has ever worked in the tavern with the exception of Charles Brown and his father.

Charles Brown testified that he was in the licensed premises from 8:30 to about 10:15 p.m. on August 12, 1967, repairing the cash register but that he did not see Thomas or any white customer making any purchase of alcoholic beverages. He further said he rang up on the cash register the sales made by Miss Upshur but did not "remember seeing her or hearing her say two fifths of Tiger Rose. Maybe one but I don't remember two at one time." Furthermore, Brown stated, "I only have one brand of fifths of wine, and that is Tiger Rose."

In rebuttal, Agent B testified that on the night of May 6, 1967, while participating in an undercover investigation, he remained in the licensee's premises for approximately half an hour, during which time Miss Upshur and another colored female bartender were on duty serving drinks.

The matter herein is a disciplinary action and such action is civil in nature and not criminal. In re Schneider, 12

N.J. Super. 449 (App.Div. 1951). Thus, the proof must be supported by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Inasmuch as the matter sub judice is strictly factual in nature, the credibility of witnesses must necessarily be weighed. Evidence to be believed must not only come from the mouths of credible witnesses but must be credible in itself and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (1961).

I am satisfied from the testimony herein that the minors positively identified the licensed premises as the place where Thomas was sold the two bottles of wine in question. I was also impressed by the fact that the minors directed Agent L to the licensed premises. Although Thomas did not identify the woman who had made the sale of the wine to him, this in itself is not fatal in disciplinary proceedings provided that it had been established that the minor purchased the alcoholic beverages in the licensed premises. Re Kurinsky & Ancel, Bulletin 1127, Item 6; Re Dante, Bulletin 771, Item 9; Ott's Incorporated v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1444, Item 1.

I have carefully noted the demeanor of the minors and carefully examined the record herein and I fail to detect any improper motivation on the part of the minors. On the other hand, the evidence produced by the licensee is far from substantial. Charles Brown, an officer of the licensee corporation, did not remember any white person purchasing Tiger Rose wine on the evening in question. He was operating the cash register during part of the evening when the sales and prices of alcoholic beverages were announced by Miss Upshur. Brown stated that he did not recall the sale of two bottles of Tiger Rose wine to one customer at the same time. Miss Upshur testified that never since her employment in October 1966, had any other person but herself and Charles Brown and his father worked in the licensed premises. However, the testimony of Agent B (which I am satisfied is accurate) rebuts this fact by his statement with respect to being in the licensee's premises on May 6, 1967, when two female bartenders, Miss Upshur and another, were on duty serving drinks while he was there.

Where there may be a serious conflict with reference to the evidence presented in so far as innocence or guilt may be concerned, a categorical denial by employees of the licensee who were in the premises on the evening in question, in itself, should not be permitted to overcome clear and logical evidence to the contrary. I am, therefore, of the opinion that a fair evaluation of the evidence clearly leads to the conclusion that the evidence presented by the minors preponderates in favor of a finding of guilt and I so recommend.

Licensee has a previous record of suspension of license by the Director for fifty-five days effective April 19, 1966, for permitting acceptance of numbers bets on the licensed premises. Re C.D.S. Corporation, Bulletin 1676, Item 4.

It is therefore further recommended that the license be suspended for twenty-five days (Re Nace, Inc., Bulletin 1738, Item 6), to which should be added five days by reason of the

prior record of suspension of license for dissimilar violation within the past five years (Re Boysen's Sunset Tavern, Inc., Bulletin 1766, Item 3), or a total suspension of thirty days.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of 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 15th day of January 1968,

ORDERED that Plenary Retail Consumption License C-70, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to C.D.S. Corp., t/a Brownie's Green Goose, for premises 251- $\frac{1}{2}$ Kaighn Avenue, Camden, be and the same is hereby suspended for thirty (30) days, commencing at 2 a.m. Monday, January 22, 1968, and terminating at 2:00 a.m. Wednesday, February 21, 1968.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. DISCIPLINARY PROCEEDINGS -- ALCOHOLIC BEVERAGES NOT TRULY LABELED -- PRIOR DISSIMILAR RECORD -- LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

SILVER STAR CAFE, INC.
t/a Del's Tavern
452 Market Street
Paterson, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-196, issued by the Board
of Alcoholic Beverage Control for
the City of Paterson

Licensee, by Anthony D'Alesandro, Secretary, Pro se.
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 11, 1967 it possessed alcoholic beverages in thirteen bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Commissioner for ten days effective September 21, 1943, again for twenty days effective April 28, 1944, and again for sixty days effective August 15, 1946, all for sale to minors. Re Silver Star Cafe, Inc., Bulletin 586, Item 5; Bulletin 616, Item 2; Bulletin 724, Item 6. In addition, the license was suspended by the municipal issuing authority for fifteen days effective February 8, 1960 and again for twenty-five days effective March 19, 1962, both for sale to minors; for fifteen days effective November 2, 1964, for sale during prohibited hours,

and for twenty-five days effective October 25, 1965, for sale to minors.

The prior record of suspensions of license for dissimilar violation between 1943 and 1962 occurring more than five years ago disregarded, the license will be suspended for forty-five days (Re Coleman Bros., Inc., Bulletin 1566, Item 4), to which will be added ten days by reason of the record of two suspensions of license for dissimilar violations in 1964 and 1965 within the past five years (Re Eileen Corp., Bulletin 1756, Item 14), or a total of fifty-five days, with remission of five days for the plea entered, leaving a net suspension of fifty days.

Accordingly, it is, on this 25th day of January 1968,

ORDERED that Plenary Retail Consumption License C-196, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Silver Star Cafe, Inc., t/a Del's Tavern, for premises 452 Market Street, Paterson, be and the same is hereby suspended for fifty (50) days, commencing at 3 a.m. Thursday, February 1, 1968, and terminating at 3 a.m. Friday, March 22, 1968.

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE
SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

PATRICK J. HEANEY)
t/a Hi-Hat Bar)
20 Main Street)
Keansburg, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-5 issued by the Municipal)
Council of the Borough of Keansburg)

Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on September 14, 1967, he possessed alcoholic beverages in five bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20, and (2) in his current application for license failed to disclose his record of prior suspensions of license, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective October 17, 1960 and again for thirty days effective January 2, 1962, both for sale to minors, non-disclosure of which being the subject of the second charge.

The prior record of suspensions of license for dissimilar violation more than five years ago disregarded for penalty purposes, the license will be suspended on the first charge for twenty-five days (Re McGin, Inc., Bulletin 1764, Item 4) and on the second charge for ten days (Re Midtown Tavern, Inc., Bulletin 1766, Item 8), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 23d day of January, 1968,

ORDERED that Plenary Retail Consumption License C-5, issued by the Municipal Council of the Borough of Keansburg to Patrick J. Heaney, t/a Hi-Hat Bar, for premises 20 Main Street, Keansburg, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Tuesday, January 30, 1968, and terminating at 2:00 a.m. Thursday, February 29, 1968.

JOSEPH M. KEEGAN
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

BUDDY ROGERS, INC.
t/a Rogers Liquor Store
411-13 N. White Horse Pike
Lindenwold, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-2 issued by the Mayor and
Council of the Borough of Lindenwold

Licensee, by Buddy Rogers, President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 5, 1967, it sold six 4/5 quart bottles of whiskey at less than filed price, in violation of Rule 5 of State Regulation No. 30.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Ridgewood Wine & Liquor Co., Bulletin 1751, Item 10.

Accordingly, it is, on this 23d day of January, 1968,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Lindenwold to Buddy Rogers, Inc., t/a Rogers Liquor Store, for premises 411-13 No. White Horse Pike, Lindenwold, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. Monday, January 29, 1968, and terminating at 3:00 a.m. Saturday, February 3, 1968.

JOSEPH M. KEEGAN
DIRECTOR