

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

BULLETIN 973

JUNE 15, 1953.

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

BULLETIN 973

JUNE 15, 1953.

1. APPELLATE DECISIONS - CAMDEN LEATHER WORKERS UNION v. CAMDEN.

CAMDEN LEATHER WORKERS UNION,)
LOCAL 206 OF THE INTERNATIONAL)
FUR AND LEATHER WORKERS OF THE)
UNITED STATES AND CANADA,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
CAMDEN,)

Respondent.)

Evoy, Feinberg and Deighan, Esqs., by Neil F. Deighan, Jr., Esq.,
Attorneys for Appellant.

John J. Crean, Esq., by Louis L. Goldman, Esq., Attorney for
Respondent.

BY THE DIRECTOR:

This is an appeal from the denial of appellant's application for a club license for premises known as 317 State Street, Camden.

The answer filed herein alleges that the application was denied, among other reasons, because the property is in close proximity to a school and because the neighborhood is not a commercial neighborhood.

At the hearing herein respondent amended its answer, without objection, to set forth as an additional reason for denial that the issuance of the license would violate the provisions of a local ordinance limiting the number of club licenses to be issued in the municipality.

At the hearing held herein it was stipulated that appellant held a club license from September 1947 until June 30, 1951, for premises at 245 Erie Street, Camden; that on June 5, 1951, respondent denied an application to transfer said license to 317 State Street; that an appeal to the Director from said order was subsequently dismissed by consent of the parties, and that appellant did not renew its license for the licensing year beginning July 1, 1951. Thus, the application considered herein is an application for a new license.

The evidence herein indicates that appellant filed the application which is the subject of this appeal on October 7, 1952, and that its application was denied by the Municipal Board on November 6, 1952, when two members voted to deny the application and one member voted to grant the application.

On behalf of appellant, Stephen V. Coyle, President of appellant Union, identified photographs indicating that the building known as 317 State Street has the appearance of a two-family dwelling and that there are similar buildings on both sides thereof. However, he testified that there are a number of business places in the neighborhood of 317 State Street. He also testified that, prior to 1939, two club licenses had been issued for premises in the same block. He admitted that there is a public school "around 214 feet" from appellant's premises. His testimony was substantially corroborated by William H. Ridge, chairman of the trustees of appellant Union.

On behalf of respondent, Milton F. Stone, one of the members of respondent Board who voted to deny the application, testified that he inspected the neighborhood between October 7 and November 6 and stated that "I felt it was a residential area. I knew it was very close to the Cassady School there." Cassady School is a public grammar school. Clarence J. Eichel, the other Board member who voted to deny the application, testified that between the said dates he made a similar investigation and "noticed the proximity of the Cassady School." He stated that the proximity of the school to the premises in question was the main basis of his denial "along with the residential area." The third member of respondent Board (who voted in favor of granting the application) did not appear or testify at the hearing.

There is no doubt that the public school is in close proximity to appellant's premises even if it is slightly more than two hundred feet therefrom. The evidence also indicates that the section is predominantly residential in character, and both members of respondent Board who testified at the hearing stated that they would have voted to deny appellant's application even if they had knowledge that club licenses had been issued in the said neighborhood approximately fourteen years ago. There is no evidence that either of these members was improperly motivated, and the reasons given by the two members for voting to deny the application are valid and sufficient. Michael A. Kelly Post v. Union, Bulletin 919, Item 2; Iacovone v. Gloucester, Bulletin 644, Item 4.

Moreover, on December 24, 1952, the Board of Commissioners of the City of Camden amended Section 7A of "An Ordinance to fix license fees, to regulate the sale and distribution of Alcoholic Beverages and to provide penalties for violation thereof" to read as follows:

"Not more than twenty-five (25) Club Licenses shall be in effect in this municipality at any one time hereafter; provided, however, that the within ordinance shall not apply to any renewal or transfer of any existing licenses."

It was stipulated at the hearing that there are forty-four club licenses outstanding in Camden. A municipal issuing authority has no jurisdiction to grant an application for a license in contravention of an operative numerical limitation ordinance. Local #2111 United Steelworkers of America, C.I.O. v. Trenton, Bulletin 899, Item 3. The fact that the limitation was adopted subsequent to the denial of the application is immaterial; the ordinance presently precludes the issuance of the license and the question presented by this appeal is whether the license should be granted now. Shaw v. Rockaway, Bulletin 771, Item 2. The law which prevails at the time I render my decision is controlling. See DeShields v. Cinnaminson, Bulletin 798, Item 8, and cases there cited.

For the reasons aforesaid, the action of respondent will be affirmed.

Accordingly, it is, on this 26th day of May, 1953,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

2. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

VITO CAMARDA
S/W Corner Route 39 & Powell Road
Eastampton Township
P.O. Mt. Holly, N. J.,

CONCLUSIONS AND ORDER

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

Christopher N. Peditto, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On Tuesday night, January 20 and early Wednesday morning, January 21, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Pvt. Paul F. ---, U. S. Army, Pvt. Vincent J. ---, U. S. Army and Pvt. Thomas J. ---, U. S. Army, persons under the age of twenty-one (21) years and allowed, permitted and suffered the consumption of alcoholic beverages by such persons, in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

The three minors, all members of the United States Army, named in the charge preferred herein appeared and testified at the within hearing. At the time of the alleged violation, two of the minors were 18 years, and the other was 19 years, of age. Two of four adult servicemen, alleged to have accompanied the minors to defendant's licensed premises on the night of January 20, 1953, also testified at the hearing. The other two adult servicemen had been transferred before the date of the hearing and consequently could not be produced to testify. The testimony of the five witnesses aforementioned is substantially in agreement with reference to what occurred on the defendant's licensed premises on the night in question.

It appears from the aforesaid testimony that the seven servicemen traveled by automobile from Fort Dix to defendant's licensed premises. They arrived there about 9:00 p.m. Upon entering the premises, four of the soldiers, including the three minors, found places together at the bar and the other three found three vacant seats at another part of the bar. The group of four pooled their money. Each soldier ordered a bottle of beer from a bartender, subsequently identified as Robert M. Stemmer. During the course of the evening they also consumed types of drinks which were referred to as Singapore Slings and "Rebel on the Rocks," the latter drink consisting of Southern Comfort liqueur and ice. One of the minors testified that during the evening he had nine or ten bottles of beer, two or three Singapore Slings and a drink of Southern Comfort whiskey; a second minor testified he had three or four bottles of beer and one "Rebel on the Rocks"; and the third minor testified that he drank fifteen drinks consisting of six or seven of Southern Comfort whiskey, three Singapore Slings and four or five bottles of beer. Some of the drinks were served by another bartender, subsequently identified as Herman Rossi. The fact that the minors were served alcoholic beverages at various times during the evening in question was corroborated by the two adult servicemen.

It further appears from the testimony of the soldiers that an argument or fight ensued during the latter part of the evening, as the result of which one of the minor soldiers was ejected from the premises. However, this soldier returned to the premises, and all of the soldiers left the premises at approximately 1:00 a.m. on Wednesday, January 21st.

Private George L. Travis, an adult soldier attached to the Medical Detachment, testified that he was present on defendant's licensed premises on the evening of January 20, 1953, arriving there at 10:30 or 10:45 p.m.; that he saw the five soldiers who testified at the trial for the first time on the evening in question; that one of the minor soldiers fell on the floor and he and the son of the defendant gave the soldier first aid; that, thereafter, they took the minor soldier to a car outside the premises and requested the driver to take the soldier to the hospital; that he did not observe the defendant checking the ID cards of the servicemen that evening; that while outside the tavern he heard Nacy (Ignatius Camarda) tell Private Paul --- that he was "cut-off -- couldn't drink any more"; that, although he did not recall seeing the soldiers in the licensed premises when he arrived there, he did help break up the fight in which Private Paul --- participated.

An ABC agent testified that on January 23, 1953, two of the minor soldiers and two adult soldiers pointed out to him and his fellow agent the defendant's licensed premises. Upon entering the premises, one of the minors identified Herman Rossi and Robert Stemmer as the two bartenders who had served him during the course of the evening on January 20, 1953. The other minor identified only Herman Rossi as a bartender who served him on the evening in question. It was stipulated that the other agent, if called upon to testify, would corroborate the testimony of his fellow agent.

On behalf of the defendant, a number of witnesses, including the licensee, his son, two bartenders, the orchestra leader, and three patrons, testified at the hearing.

The defendant testified that near 12 o'clock on the evening in question he refused entry to a "couple soldiers" when they refused to show him "the cards"; that a few minutes later they reappeared and that he again refused to permit them to enter; that they argued with him and one displayed some money, saying "I got money (indicating); tomorrow we leave, and we got to raise hell, spend this money, get drunk"; that he said "You already drunk. Go back; don't come in here, go back where you got it"; that he looked around and saw Private Edward J. Maloney and Private Vincent J. --- at the bar; that he asked for the latter's "ID card" and when he could not produce it, he ordered Private Vincent J. --- from the licensed premises; that Vincent J. --- returned, showed him a card and when he observed Vincent was under age, he ordered both Private Edward J. Maloney and Private Vincent J. --- from the premises; that no drinks were served any of the seven soldiers in defendant's tavern that evening; that no argument occurred and neither was anyone injured, to his knowledge, during the night in question.

Herman Rossi and Robert Stemmer, employed as bartenders by defendant, both denied serving alcoholic beverages to the minor soldiers on the evening of January 20, 1953. Both were in agreement that they only saw Private Edward J. Maloney and Private Vincent J. --- on the premises on that evening. Robert Stemmer testified that during the late evening he heard "quite a bit of commotion" and observed a crowd in the rear of the tavern.

Two of the three patrons who testified on behalf of the defendant remembered in particular seeing Private Edward J. Maloney in the

premises on the evening of January 20, 1953. One of the witnesses did not remember seeing any of them at that time. All were in agreement that they weren't paying much attention to what was going on as they were more concerned with their friends during the evening. Furthermore, all remembered some commotion or confusion in the premises that night.

The orchestra leader testified that he saw the defendant-licensee talking to Private Paul --- outside of the premises but could not identify any of the other soldiers in the tavern that evening.

Ignatius Camarda, son of the defendant-licensee, testified that, although he recognized three of the soldiers who testified at the within hearing, they neither sat at the bar nor were they served alcoholic beverages on the night of January 20, 1953. He further testified that while outside the premises, he told Private Paul --- that there was "No sense going back in because you're not going to get served. The best thing to do is go on your way"; that he did not make the statement attributed to him by Private George L. Travis to the effect that Private Paul --- was "cut-off -- couldn't drink any more." He further testified that he was off duty that night and was there "primarily for social purposes, but I knew more or less what was going on."

I am satisfied after careful review of all the testimony adduced herein that the five soldiers have given a truthful version of what happened in the licensed premises on the evening of January 20 and early morning of January 21, 1953. No reason appears why the five soldiers should deliberately give false testimony. I am impressed with the testimony of the soldier, Private George L. Travis not one of the seven soldiers, who related that he helped to break up the fight wherein Private Paul --- was engaged and later, in conjunction with the son of defendant-licensee, assisted Private Thomas J. --- who had sustained injuries as a result of a fall on the floor of the licensed premises. He also quoted the son of the defendant-licensee as saying that Private Paul --- was "cut-off -- couldn't drink any more." This witness had no reason to falsify his testimony as he apparently was a patron of defendant, referring to Ignatius Camarda, the son of the licensee, as Nancy. On the other hand, the defendant-licensee denied that either a fight took place on the licensed premises that evening or that anyone sustained injuries from a fall. His testimony is unworthy of belief. Neither does the testimony of the bartenders ring true.

From all of the evidence, I find defendant guilty as charged.

Defendant has a prior adjudicated record. Effective October 14, 1952, his license was suspended for ten days after he pleaded guilty to sale of alcoholic beverages to three minors. Re Camarda, Bulletin 946, Item 3. Inasmuch as the violation in the present case is similar thereto with three minors again involved, and considering the amount of alcoholic beverages served, I shall suspend defendant's license for a period of thirty days.

Accordingly, it is, on this 25th day of May, 1953,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Eastampton to Vito Camarda, S/W corner Route 39 and Powell Road, Eastampton Township, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. June 1, 1953, and terminating at the expiration of the license, namely, 12 midnight, June 30, 1953.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOSEPH BADER
59 North Main Street
Paterson, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-52, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Joseph Bader, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold a pint bottle of whiskey in an original container for off-premises consumption on Sunday, May 3, 1953, in violation of State Regulations No. 38.

The file herein discloses that, at approximately 12:15 p.m., Sunday, May 3, 1953, two ABC agents arrived in the vicinity of defendant's licensed premises. Shortly thereafter, one of the agents entered the barroom while the other agent remained outside. Not long thereafter, the agent heard the sound of a buzzer emanating from the rear room, whereupon the bartender went to the rear room, returned to the barroom and proceeded to a small room in the rear of the back bar. When he emerged, he returned to the rear room and appeared to be hiding something under his apron. Thereafter, the bartender returned to the barroom, rang up \$2.50 on the cash register and made a notation on the cash register recording tape.

At approximately 1:30 p.m., the agent asked the bartender for a pint of Four Roses. The bartender then went to the small room behind the back bar and returned with a pint bottle of Four Roses Whiskey which he handed to the agent. The bartender, after accepting payment, rang up \$3.05 on the cash register and again made a notation on the cash register tape. The agent placed the pint bottle of whiskey in his pocket and left the licensed premises, but returned immediately with his companion, who had remained outside.

When questioned by the agents, the bartender orally admitted having made the sale of the pint of whiskey and further admitted that he had also sold a pint bottle of Imperial Whiskey to a woman. An examination of the cash register tape disclosed that the bartender had noted the sale of the Imperial Whiskey and the sale of the Four Roses Whiskey on the tape. Further investigation disclosed that there was a buzzer connected to the door that leads from the rear room to the street.

The defendant came to the licensed premises in response to a telephone call from his bartender and was informed of the aforementioned violations. In alleged mitigation, the licensee has pointed out that he was not personally present when the sales were made. Such fact is neither a defense nor an excuse. Rule 31 of State Regulations No. 20; Re DiSalvo, Bulletin 964, Item 7.

Defendant has a prior record. His license was suspended by the Acting Director of this Division for 25 days, effective February 18, 1952, after he had pleaded non vult to the same offense as is here charged and two dissimilar offenses. (Re Bader, Bulletin 927, Item 2). In view of the fact that this is defendant's second offense of a similar nature occurring within a five-year period, I shall suspend his license for thirty days. Re Brogowski, Bulletin 962, Item 3. Five days will be remitted for the plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 25th day of May, 1953,

ORDERED that Plenary Retail Consumption License C-52, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Joseph Bader, 59 North Main Street, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. June 1, 1953, and terminating at 3:00 a.m. June 26, 1953.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
FREDA WACHTER
T/a F. WACHTER'S DELICATESSEN & LIQUOR
653 Ridge Road
Lyndhurst, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-3, issued by the Board of Commissioners of the Township of Lyndhurst.

Samuel Moskowitz, Esq., Attorney 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 she sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages at her licensed premises to a minor, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that the North Arlington Police Department notified this Division that a 14-year-old boy had become intoxicated as the result of drinking whiskey purchased by another minor at defendant's licensed premises. Consequently agents of this Division obtained signed and sworn statements from John ---, the 14-year-old minor who consumed the whiskey; from Dominic V. ---, the 15-year-old minor who purchased the whiskey and from their three companions, Paul V. ---, James --- and Robert ---, all 16 years of age.

From these statements it appears that, on Friday evening, February 20, 1953, the five minors and another youth, known only as "Red", met at an appointed place in North Arlington where they discussed the question of buying alcoholic beverages. It was agreed that they would drive in "Red's" car to defendant's licensed premises in nearby Lyndhurst to make the purchase. John gave Dominic

3 one-dollar bills and asked him to buy a pint of whiskey for him. Thereupon Dominic, James and Robert drove with "Red" to defendant's licensed premises where James handed Dominic a five-dollar bill and asked him to buy three quart bottles of beer. At approximately 7:30 p.m., while the others remained in the automobile, Dominic entered defendant's licensed premises where a man, later identified as the licensee's husband, was acting as clerk. When the licensee's husband asked Dominic for his order Dominic asked for a pint bottle of Seagram's Seven Crown Blended Whiskey. Pursuant to that order defendant's husband placed a pint bottle of that brand in a paper bag and handed it to Dominic who in turn gave him 3 one-dollar bills and received change. Dominic then asked for three quart bottles of beer and pursuant thereto the licensee's husband placed three quart bottles of beer in another paper bag and handed the package to Dominic, who then handed a five-dollar bill to the licensee's husband and received some bills and coins in change. Dominic, who was not questioned by anyone on the licensed premises as to his age, left the licensed premises with the beer and whiskey. The whiskey was ultimately handed over to John who left the group to go to a basketball game. The beer was consumed by the other members of the group.

On February 25, 1953 Dominic and Robert directed ABC agents to defendant's licensed premises, which both identified from the outside and Dominic identified on the inside as the place where Dominic had purchased the whiskey and beer as hereinabove set forth. Dominic also identified the licensee's husband as the person who sold the whiskey and beer to him. Although the agents offered opportunity to the licensee's husband to make a written statement he declined the offer but admitted orally that he had been acting as clerk in defendant's licensed premises on the evening of February 20, 1953 at 7:30 p.m. He claimed, however, that he did not "recall" having seen Dominic in the store at that time.

The licensee has no prior adjudicated record. In view of the tender age of the minor (fifteen) I shall suspend defendant's license for twenty-five days. Re Grembowiec, Bulletin 946, Item 4; Re Schuyler, Bulletin 944, Item 3. Five days will be remitted for the plea entered herein leaving a net suspension of twenty days.

Accordingly, it is, on this 26th day of May, 1953,

ORDERED that Plenary Retail Distribution License D-3, issued by the Board of Commissioners of the Township of Lyndhurst to Freda Wachter, t/a F. Wachter's Delicatessen & Liquor, 653 Ridge Road, Lyndhurst, be and the same is hereby suspended for a period of twenty (20) days, commencing at 9:00 a.m. June 3, 1953, and terminating at 9:00 a.m. June 23, 1953.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD -
LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary
Proceedings against

LEON CANDELL
T/a "LEON'S BAR & GRILL"
75 Maple Avenue
Rockaway, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-3, issued by the
Borough Council of the Borough of
Rockaway.

David Young, 3rd, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On April 6, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Patrick J. --- and Frederick C. ---, persons under the age of twenty-one (21) years and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises: in violation of Rule 1 of State Regulations No. 20."

The minors named in the above charge are the same minors referred to in Re Hill and Re Chlodnicki (both of which cases are decided herewith).

At the hearing Patrick J. --- (who is 17 years of age and has no driver's license) testified that he drove the automobile from Chlodnicki's premises to defendant's premises. He testified that he and Frederick C. --- entered defendant's premises on April 6, 1953, about 11:35 p.m., went to the bar and asked an unidentified male bartender for two glasses of beer; that the bartender served to each of the minors a glass of beer, the contents of which they consumed after the witness had paid the bartender for the drinks. This witness testified "I'm not too sure" but thought that a second glass of beer was sold and served to each of the minors (himself and his companion) before they left the premises at 11:45 p.m.; that there were no other patrons in the premises while they were there.

Frederick C. ---, 19 years of age, testified that he permitted Patrick J. --- to drive the car because "I wasn't feeling too good." He further testified that he and Patrick --- entered defendant's premises on April 6, 1953, about 11:30 p.m.; that no other patrons were present, and that an unidentified male bartender sold and served to each of them two glasses of beer, the contents of which they consumed before they left the premises about 11:45 p.m. At the hearing neither minor could identify the licensee as the bartender.

While both minors admittedly had consumed beer elsewhere on the night of, and before, their alleged visit to defendant's premises, Patrick --- testified that he "wasn't affected by the beer" and Frederick --- testified that the beer had affected him "a little bit."

An ABC agent testified that on April 9, 1953, the two minors, who were in his car, directed him to defendant's premises and that,

after entering, they said "that was the tavern" at which they drank on April 6. At that time the licensee was present, but both minors stated that they could not identify him as the person who had served the drinks.

Defendant testified that he employs no bartender and that he conducts the business himself with occasional help from his wife. He further testified that on the evening of April 6, 1953, he and his wife watched television until "a little after ten"; that, because there were no patrons, he had his wife lock the door about 10:20 p.m.; that he and his wife went upstairs about 10:30 p.m., and that he did not reopen that evening.

On behalf of defendant, Michael Gosden, a part-time police officer of the Borough of Rockaway, testified that he had driven back from Pennsylvania on Easter (April 5) and that he was tired after completing his police duty on the following afternoon; that on the evening of April 6 he "dozed off" while watching television. He further testified as follows:

"Around twenty to eleven I decided to take the dog out and let let him run around. I thought I would go to Leon's. I noticed it was drizzling. I had bedroom slippers on. As I started to the place -- got to the place -- it was closed. That was twenty or a quarter to."

Calvin Troutman, Jr. testified that he quit work at 10:30 p.m. on April 6 and drove from his place of employment in Boonton to defendant's premises; that he arrived there fifteen or twenty minutes later and found the door locked and the place entirely closed down.

This case presents a clear conflict between the evidence given by the two minors and the evidence adduced on behalf of defendant.

On the one hand, there is the testimony of the defendant that his licensed premises had already been closed for the night and that, therefore, the alleged visit of the minors could not have occurred. In this connection, in so far as the testimony of defendant's two witnesses (Gosden and Troutman) purports to support defendant's testimony that his licensed premises were closed, it is not very helpful for the reason that their alleged respective visits to the premises occurred earlier than the time of night the minors insisted they were there and both (Gosden and Troutman) admitted they did not revisit the premises that night. In fact, each admitted that he did not know whether the place was open or not afterwards. While defendant testified that he did not reopen his premises later (i.e., after his alleged closing thereof) on the night in question, it is significant that the one person who could have been a very important witness for the defendant -- his wife -- did not appear at the hearing. On cross-examination, defendant attempted to explain his wife's absence from the hearing by saying "She is half-crippled. I would have loved to take her down." Yet, whatever her physical handicap may unfortunately be, it does not prevent her from tending bar, according to defendant's own testimony, "during the day if I have a little errand to run or if I do shopping"; nor did it prevent her from moving around sufficiently to lock up the premises "a little after ten" (as claimed by defendant). On this point defendant's testimony is revealing: "I told the wife, I said, 'Here is the key; lock the door.'"

On the other hand, both minors were unshaken in their testimony that they were at defendant's licensed premises and were served, and that they consumed, beer between about 11:30 p.m. and 11:45 p.m., on

the night in question. Their description of the premises appeared correct in its essential aspects. Without any difficulty, they had led ABC agents to the premises at the time of the Division's investigation. True, they could not identify the defendant as the bartender who served them. But it is well established that mere failure to identify the specific person is not fatal in proceedings of this nature. Re Roesch, Bulletin 966, Item 4; Re Dante, Bulletin 771, Item 9.

With the evidence in this posture, I must determine this case upon the narrow basis of believing either the defendant or the two minors. No reason appears why the minors should falsify their testimony; and considering all of the circumstances in this case, I am constrained to believe their testimony. I conclude that defendant's guilt has been established by a preponderance of the evidence. I therefore find defendant guilty.

Defendant has a prior record. His license was suspended by the local issuing authority for fifteen days, effective May 13, 1946, for sales of alcoholic beverages to minors. The minimum suspension for sales of alcoholic beverages to a minor as young as 17 years is fifteen days. Re Roesch, supra. However, in view of the prior similar violation occurring more than five years ago, I shall suspend defendant's license for twenty days. Re Strickland, Bulletin 968, Item 6.

Accordingly, it is, on this 25th day of May, 1953,

ORDERED that Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Rockaway to Leon Candell, t/a "Leon's Bar & Grill", for premises 75 Maple Avenue, Rockaway, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. June 2, 1953, and terminating at 2:00 a.m. June 22, 1953.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME -- LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

JAMES FRANCIS HILL
T/a THE KNOTTY PINE
Northerly side of Morris Ave., about
1200 feet easterly of Park Ave.
Hanover Township, P.O. Box 341
Morristown, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Hanover.

Louis Winer, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On April 6, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Patrick J. --- and Frederick C. ---, persons under the age of twenty-one (21) years and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

At the hearing herein Patrick J. ---, 17 years of age, testified that he and Frederick C. --- entered defendant's premises on April 6, 1953, at some time between 9:00 p.m. and 9:30 p.m. and took places at the bar. He further testified that the licensee, who was then tending bar, asked them if they wanted a beer and, when they replied in the affirmative, licensee drew two glasses of beer and placed one glass in front of each of the minors; that, after they had paid for these drinks and consumed them, the licensee sold and served to each of them two additional glasses of beer, the contents of which they also drank. This witness also testified that thereafter Frederick C. purchased two quart bottles of beer from the licensee, which the minors took with them when they left the premises at approximately 10:00 p.m.

Frederick C. ---, 19 years of age, testified that he and Patrick J. --- entered defendant's premises on April 6, 1953, between 9:00 p.m. and 10:00 p.m. His testimony concerning the sale and delivery by the licensee of three glasses of beer to each minor and two quart bottles of beer to him is substantially the same as the testimony given by the previous witness. Both minors definitely identified the licensee as the person who made the sales of alcoholic beverages to them.

Defendant testified that he was in charge of his barroom on the evening of April 6, 1953. He stated that he was not busy; that the two boys did not come into his tavern on that evening, and that the only patrons who were present in his premises between 9:00 p.m. and 10:00 p.m. on April 6 were James Brophy, Wally Rudella and Joe Kuzmiski. On behalf of defendant James Brophy testified that he is employed as a salesman for Morristown Plumbing and Supply Company and that, prior to June 1952, he had been a sergeant of the Morristown Police Department for a period of thirteen years. He testified that he was present in defendant's premises from approximately 8:45 p.m. to 9:20 p.m., and that he did not see either of the minors in the premises during that period of time. He testified also that Wally Rudella and Joseph Kuzmiski were in defendant's premises when he left at about 9:20 p.m. Wally Rudella and Joseph Kuzmiski testified that they entered defendant's premises at approximately 9:05 p.m. and left the premises at approximately 9:45 p.m.; that these minors did not enter during that period of time; that James Brophy left the premises about 9:20 p.m., and that thereafter they were the only patrons on the premises until they left about twenty-five minutes later. Accepting the testimony of these three witnesses as true, it is quite possible that the minors entered after these patrons left the premises.

Considering all the testimony herein, I believe the testimony given by the minors at the hearing and, hence, find defendant guilty as charged.

Defendant has a prior record. Effective January 1, 1947, the local issuing authority suspended his license for a period of ten days after he had pleaded guilty to charges of a dissimilar character. Since more than five years have elapsed since the effective date of said suspension, I shall not consider the prior record in imposing a penalty in this case. Re Sotak, Bulletin 962, Item 9. Since it appears that one of the minors mentioned in the charge was 17 years of age, I shall suspend defendant's license for a period of fifteen days. Re Heslin & Scott, Bulletin 947, Item 5.

Accordingly, it is, on this 25th day of May, 1953,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Hanover to James Francis Hill, t/a The Knotty Pine, for premises on northerly side of Morris Ave. about 1200 feet easterly of Park Ave., Hanover Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. June 1, 1953, and terminating at 2:00 a.m. June 16, 1953.

DOMINIC A. CAVICCHIA
Director.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS - ADDITIONAL CHARGE ALLEGING FAILURE TO HAVE CURRENT LICENSE CONSPICUOUSLY DISPLAYED, DISMISSED.

In the Matter of Disciplinary Proceedings against
ADAM CHLODNICKI
T/a ADAM'S BEER GARDEN
Rockaway Green Pond Rd.
Rockaway Township
P.O. Rockaway, N. J.,
Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Rockaway.

CONCLUSIONS
AND ORDER

David Young, 3rd, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On April 6, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Patrick J. --- and Frederick C. ---, persons under the age of twenty-one (21) years and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20.

"2. On April 6, 1953, you conducted your licensed business without having your current license certificate conspicuously displayed on your licensed premises in such plain view as to be easily read by all persons visiting thereon; in violation of Rule 16 of State Regulations No. 20."

As to charge 1: The minors named in charge 1 are the same minors referred to in Re Hill (decided herewith). At the hearing herein both minors testified that on the evening of April 6, 1953, after leaving Hill's licensed premises, they each consumed elsewhere the contents of a quart bottle of beer which had been purchased in Hill's premises, and that they then drove to the premises owned by defendant herein.

Patrick J. ---, 17 years of age, testified that they entered defendant's premises about 11:00 p.m. and that he purchased two glasses of beer from the licensee who was then tending bar; that one of these glasses was placed in front of him, and the other glass in front of his companion; that, after the contents of these glasses

were consumed, the witness purchased two more glasses of beer from defendant, one of which was served to him and one to his companion; that they consumed the contents of these glasses before leaving the premises at about 11:30 p.m.

Frederick C. ---, 19 years of age, testified that he and the other minor arrived at defendant's premises "somewhere around eleven." He corroborated the previous witness' testimony concerning the purchase of a total of four glasses of beer from the licensee and the consumption of the contents of two of the glasses by each of the minors. He testified that they left defendant's premises "about 11:30 or so." At the hearing both minors definitely identified the licensee as the person who was tending bar on the evening in question.

Defendant testified that he was behind the bar on his licensed premises from 2:00 p.m. on April 6 until shortly after 1:00 a.m. the following morning. He named seven patrons who were in his premises between 11:00 p.m. and 11:30 p.m. on April 6, but denied that either of the two minors was in his licensed premises on that evening. He further testified that the first time he saw either of the minors was when they entered his premises with ABC agents on April 9, 1953, during the course of an investigation of the facts of this case.

On behalf of defendant, Cyril P. Conauer testified that he and his wife entered defendant's premises at approximately 9:30 p.m. on April 6, 1953, and remained there until a little after 1:00 a.m. on the following morning. He testified that neither of the minors entered defendant's premises during the time he was present. This witness further testified that he recalled the date because it was Easter Monday and because he and his wife went out on that evening to get a few drinks because they did not drink during Lent. Russell H. Kaiser testified that he was in defendant's premises between 9:00 p.m. on April 6, 1953, and 1:10 a.m. on the following morning. He denied that either of the minors was in defendant's premises at any time while he was present. While both of these witnesses denied that the minors entered the premises, they did admit that other persons entered and left the premises while they were present. It is quite possible that the minors entered and drank two glasses of beer apiece without being noticed by these two witnesses. After reviewing all the evidence I conclude that the minors are telling the truth and, hence, I find defendant guilty as to charge 1.

As to charge 2: The Division failed to establish evidence necessary to a finding of guilt. Hence the charge is dismissed.

Defendant has a prior record. Effective May 31, 1938, the local issuing authority suspended his license for three days for sale to minors and employment of an ineligible bartender. Effective November 1, 1944, the then State Commissioner of Alcoholic Beverage Control suspended his license for fifteen days after he had pleaded non vult to a charge alleging the sale of alcoholic beverages during prohibited hours in violation of Rule 1 of State Regulations No. 38. Re Chlodnicki, Bulletin 638, Item 10. Since the similar violation occurred more than ten years ago and the dissimilar violation occurred more than five years ago, I shall not consider them in aggravation of charge 1 herein. Re Wally's Inc., Bulletin 931, Item 9. I shall suspend defendant's license for a period of fifteen days because of the violation set forth in charge 1 (Re Heslin & Scott, Bulletin 947, Item 5).

Accordingly, it is, on this 25th day of May, 1953,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Rockaway to Adam Chlodnicki, t/a Adam's Beer Garden, for premises on Rockaway Green Pond Road, Rockaway Township, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. June 1, 1953, and terminating at 3:00 a.m. June 16, 1953.

DOMINIC A. CAVICCHIA
Director.

8. DISCIPLINARY PROCEEDINGS - SUSPENSION REIMPOSED AFTER AFFIRMANCE BY COURT OF DIRECTOR'S DECISION.

In the Matter of Disciplinary Proceedings against BLUE MIRROR INN, INC. T/a RAINBOW GRILLE 3905 Federal Street Pennsauken Township P.O. Camden, N. J., Holder of Plenary Retail Consumption License C-25, issued by the Township Committee of the Township of Pennsauken.

ORDER REIMPOSING SUSPENSION

BY THE DIRECTOR:

It appearing that, by Order heretofore entered on March 5, 1953, the defendant's license was suspended for a period of ten days (see Bulletin 961, Item 5), and that the defendant has abandoned its appeal to the Superior Court, Appellate Division, which granted a stay of the suspension pending the appeal, and that the suspension may, therefore, now be reimposed,

It is, on this 25th day of May, 1953,

ORDERED that the ten-day suspension heretofore ordered against Plenary Retail Consumption License C-25, issued by the Township Committee of the Township of Pennsauken to Blue Mirror Inn, Inc., t/a Rainbow Grille, for premises 3905 Federal Street, Pennsauken Township, be and the same is hereby reimposed, effective at 3:00 a.m. June 1, 1953, and terminating at 3:00 a.m. June 11, 1953.

DOMINIC A. CAVICCHIA Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Warren Distributing Co. 405 Thomas Street Phillipsburg, N. J. Application filed June 3, 1953 for transfer of State Beverage Distributor's License SBD-56 from 9 Hanover Street, Phillipsburg, N. J.

Isadore, Sidney and Jacob Singer T/a M. Singer & Sons 5-6 Van Houten St. Paterson, N. J. Application filed June 9, 1953 for transfer of State Beverage Distributor's License SBD-136 from Isadore, Sidney and Jacob Singer, Executors of the Estate of Michael Singer.

Preston Trucking Company, Inc. 418-434 Duncan Avenue Jersey City, N. J. Application filed June 12, 1953 for transfer of Transportation License T-150 from 1039 Paterson Plank Road, Secaucus, N. J.

DOMINIC A. CAVICCHIA Director.

10. DISCIPLINARY PROCEEDINGS - STATE BEVERAGE DISTRIBUTOR LICENSEE - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICES OR MANIFESTS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ANTHONY COLALUCA)
Lincoln Boulevard)
Middlesex, N. J.,)

CONCLUSIONS AND ORDER

Holder of State Beverage Distributor's License SBD-3, issued by the Director of the Division of Alcoholic Beverage Control.)

Anthony Colaluca, Defendant-licensee, Pro Se.)
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.)

BY THE DIRECTOR:

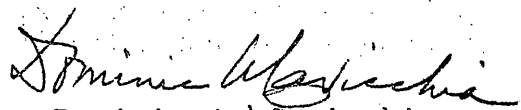
Defendant pleaded non vult to a charge alleging that he transported and delivered alcoholic beverages in his licensed vehicle without the driver thereof having in his possession bona fide invoices or manifests, in violation of Rule 3 of State Regulations No. 17.

The file in the instant case discloses that, on April 17, 1953, the defendant was apprehended by a local police officer for peddling in the Borough of Manville without first obtaining a peddler's license. As a result thereof, an investigation by ABC agents established that defendant, by virtue of a State Beverage Distributor's License, transported and delivered alcoholic beverages to customers from March 27, 1952 until apprehended on April 17, 1953. During that period of time, according to his own admission, defendant failed to have in his possession authentic and accurate delivery slips, invoices, manifests, waybills or similar documents setting forth the bona fide name and address of the purchaser or consignee, the brand, size of container and quantity of each item of alcoholic beverages being delivered and transported. In his statement the defendant, while admitting all of these facts, stated that he did not know that his method of transporting and delivering alcoholic beverages was contrary to the State Regulations. Ignorance of the law or regulations is no excuse in disciplinary proceedings. Re Saul, Bulletin 890, Item 5.

Defendant has no prior adjudicated record. I shall, therefore, suspend his license for a period of ten days. Five days will be remitted because of the plea entered herein, leaving a net suspension of five days. Re Kucinski, Bulletin 839, Item 1; Re Glassman, Bulletin 856, Item 5.

Accordingly, it is, on this 25th day of May, 1953,

ORDERED that State Beverage Distributor's License SBD-3, issued by the Director of the Division of Alcoholic Beverage Control to Anthony Colaluca, Lincoln Boulevard, Middlesex, be and the same is hereby suspended for a period of five (5) days, commencing at 7:00 a.m. June 1, 1953, and terminating at 7:00 a.m. June 6, 1953.


Dominic A. Cavicchia
Director.