

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

BULLETIN 1274

MAY 5, 1959.

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THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
530 SOUTH EAST ASIAN AVENUE
CHICAGO, ILLINOIS 60607

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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.

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MAY 5, 1959.

1. APPELLATE DECISIONS - ROCCO v. FANWOOD.

ANTONIO ROCCO,)
Appellant,)
-vs-) ON APPEAL
BOROUGH COUNCIL OF THE) CONCLUSIONS AND ORDER
BOROUGH OF FANWOOD,)
Respondent.)

Hetfield and Hetfield, Esqs., by George F. Hetfield, Esq.,
Attorneys for Appellant.
Beard and McGall, Esqs., by William M. Beard, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Borough Council on November 12, 1958, whereby it denied an application for a place-to-place transfer of plenary retail distribution license D-1 from 193 Terrill Road to 252 South Avenue, Fanwood. At the meeting five of the six members of respondent Council (one member did not attend the meeting) voted unanimously to deny the transfer in question. No reasons for its action were given by the respondent Council at the time the transfer was denied. It appears, however, that at the meeting Councilman Hazel stated that he voted in opposition to the transfer because of objections from the church and from individuals to whom he spoke and it was his belief that a majority of the people in the Borough wished him to vote in such manner. Councilman Weisiger stated that he opposed the transfer because the proposed premises were too close to stores where teenagers congregate. In fairness to appellant, the respondent should have at the time stated its reasons for the denial of the application. Rosenvinge v. Metuchen, Bulletin 249, Item 6; Paini v. Bloomsbury, Bulletin 300, Item 13.

"Appellant contends, in his petition of appeal, that the action of respondent was erroneous for the following reasons:

- (a) Refusal to grant application for transfer cannot be based on the political issues of prohibition. Sole objector is located approximately 900 feet from proposed place of transfer;
- (b) Four or five of Borough Council members are members of objecting church; and
- (c) Proposed place of transfer is located in the business section of Borough, which will be of great convenience to public.

"Respondent, in its answer, denies the allegations set forth by appellant in its petition of appeal and contends, in substance, that in past years all applications for a plenary

retail distribution license for any and all premises situated on Martine Avenue and South Avenue were denied because the people of the Borough did not desire a retail liquor store in that particular section. It might be well to mention here that respondent has no authority to issue another plenary retail distribution license in the municipality because the population thereof as shown by the last then preceding Federal census precludes it from doing so. R. S. 33:1-12.14. Respondent also contended that the transfer of the license to the proposed premises would be contrary to the interests of the residents of the Borough as it would be located within a block of the objecting church and one and one-half blocks from the location of a public school. It also contended that there has always been strong sentiment in the Borough against any more retail liquor stores.

"Anthony Rocco, Jr. testified that he is the son of appellant, who could not attend the within hearing because of illness. He testified that his father has held the license in question since repeal of national prohibition; that the building to which the transfer is requested is located in the business district of the Borough; that the objecting church is approximately 700 feet distant therefrom and a school is located at a greater distance from the proposed premises; that there is a parking lot at the rear of the premises and the particular block in which the proposed store is to be located contains other stores, among which is a confectioner having a 'warm beer' license, a real estate office and a barber shop; that around the corner on Martine Avenue there is a delicatessen, a shoemaker, a cleaning shop, a drug store and a bank.

"Councilman Hazel testified that because of the church's objections and as a result of discussions with various fellow commuters, he was opposed to a liquor store in the center of the Borough where children congregate; that there are places in the vicinity where people who purchase liquor might have an opportunity to consume it and for that reason previous applications for a retail liquor license in the area have been denied; that the section wherein the proposed premises are located is a principal business center of the Borough; that he is a member of the objecting church, but holds no official position, and there is a confectionery store nearby which is patronized by teenagers.

"Councilmen Harris, Hansen, Matthews and Weisiger testified that they are members of the objecting church and the objections given by them were, in substance, similar to those voiced by Councilman Hazel. Councilman Agnoli testified that he did not attend the meeting when appellant's application was denied. However, he stated that his sentiments with reference to the matter in question were similar to those of his fellow councilmen.

"John M. Coulter testified that he is a member of the session of the objecting church and was appointed by the minister to represent the session at the hearing; that the church is opposed to permitting a liquor license in the center of the Borough because it is the church's task to influence people toward moral improvement and that the presence of a liquor license at the proposed location would, in his opinion, be detrimental to the health, safety, morals and general welfare of the Borough. He further testified that nine of the eighteen members of the session attended the meeting when it was decided to enter an objection to the transfer of the license and that at a meeting thereafter, the entire membership

of the session ratified the action; that to his knowledge none of the members of the session contacted the active members of the church to ascertain their views in the matter. Another witness, one Ronald F. Riblet, testified that he served on many of the municipal boards and also acted as Mayor and councilman for a term of years, and that his opposition to the transfer was that there are 'two beer stores within a hundred feet at the present time'. Another witness, one William P. Lukens, a member of the Board of Education, testified that, speaking as an individual, he opposed the transfer as he did not believe it would be in the best interests of the community.

"Mayor Todd testified that he attended the meetings when the matter of transfer was discussed but that it was not necessary for him to vote on the issue. He further testified that he concurred in the reasons given by the members of the Council because he felt that the proposed premises were located too close to a place where teenagers congregate. On cross-examination Mayor Todd stated that on other occasions the Council has refused to issue a new liquor license in the general area of the proposed premises and voiced the opinion, which he stated was concurred in by members of the Council, that if a license were to be issued in the area, it should go to the number one applicant, whoever he might be. Earlier time of filing application does not, in itself, afford preferential consideration. 'First come, first served' is not a rule or principle in the issuance of liquor licenses or the granting of license transfers. Jensen v. Washington, Bulletin 889, Item 2.

"No challenge was made to appellant's character or to the suitability of the proposed premises.

"The undisputed evidence discloses that the immediate area of South and Martine Avenues is the principal business section of the Borough. The proposed premises, now vacant, are located in a block containing other types of business establishments. Since it appears that the proposed premises are located in a business district, general objections in themselves do not justify the issuing authority in refusing to transfer a license. The license in question gives the holder thereof the privilege of selling alcoholic beverages in original containers for off-premises consumption on weekdays between the hours of 9:00 a.m. and 10:00 p.m. and he must remain closed all day on Sundays. Thus, Sunday services in the objecting church cannot in any manner whatsoever be affected by appellant's license. It appears to be merely conjecture on the part of the Borough officials that persons will buy alcoholic beverages at the proposed establishment and then will consume them near the premises.

"The allegation that the licensed premises would create a moral hazard for young folks using the facilities of the corner confectionery store carries little weight. If the premises are conducted in a law-abiding manner, persons under twenty-one years of age will not, under any circumstances, be sold or served alcoholic beverages at the proposed premises. If the appellant should violate the law in this respect, his license will be subject to suspension or revocation. It is apparent that at the proposed location it would be less difficult for the police to supervise the establishment because of its being in the center of town.

"When the denial of a transfer of the license is arbitrary or unreasonable, the action of the local issuing authority will be reversed. When the transfer is denied for good cause, the action of the local issuing authority will be affirmed. Such cause, generally speaking, is that it would be necessary and proper to accomplish the object of the Alcoholic Beverage Law and secure compliance with its provisions, e.g., that the premises are unsuitable or that there are too many licenses in the vicinity. See Gruhler and Edwards v. Phillipsburg, Bulletin 718, Item 3; cf. Cielukowski v. Jersey City, Bulletin 716, Item 6. Although the issuing authority's discretionary powers are broad, the presumption in favor of the validity of the authority's action is not conclusive. Ways and Witteborn v. Egg Harbor et al., Bulletin 951, Item 3; Olko v. Saddle River et al., Bulletin 914, Item 3. The reasons assigned for its action must be reasonably supported by the evidence in order for such action to be sustained. O'Bertz v. Perth Amboy, Bulletin 1011, Item 1; Palmer v. Atlantic City, Bulletin 1017, Item 1.

"The objections made herein do not appear to be meritorious as the proposed location of the license is in a business section and the operation of a package goods store under proper supervision would not, in any way, be detrimental to the community. Appellant has operated his liquor establishment for many years in a lawful manner. It cannot be anticipated that appellant, in the future, will break the law so as to deprive him the privilege of operating his liquor establishment at the new location. After careful examination of all of the evidence presented herein, I conclude that the action of the respondent Council in denying the transfer of appellant's license was arbitrary and unreasonable. I therefore recommend that respondent's action be reversed.

"In view of the fact of my aforesaid recommendation on the merits of the case, it will not be necessary to decide whether the contention raised by the appellant that there was a conflict of interest because of the fact that the voting members of the respondent Council were also members of the objecting church."

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

Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 25th day of March, 1959,

ORDERED that the action of respondent be reversed and respondent is directed to transfer the license in accordance with the application filed by appellant.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - MACK WINE & LIQUOR CO., INC. v. CLIFTON.

MACK WINE & LIQUOR CO. INC.,)
trading as MACK WINE & LIQUOR)
CO. INC.,)

Appellant,)

-vs-

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

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Theodore D. Rosenberg, Esq., Attorney for Appellant.
Manfred Triebel, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent on November 24, 1958, whereby it suspended appellant's license D-22 for sixty days commencing December 1, 1958. The suspension was imposed after respondent had found appellant guilty of a charge alleging that on October 3, 1958, it had sold and permitted the sale of alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20. Appellant's licensed premises are located at 1057 Main Avenue, Clifton.

"The appeal herein was filed on December 3, 1958, at which time the Director entered an order staying the effect of the suspension until entry of a further order herein. R.S. 33:1-31.

"The petition of appeal alleges that the action of respondent was erroneous because it denied a request for an adjournment of the hearing scheduled to be held in the disciplinary proceedings and denied appellant's right to be represented by counsel. The petition of appeal also alleges that the verdict was contrary to the evidence.

"From the pleadings it appears that on November 13, 1958, respondent caused to be duly served on appellant a 'Notice to Licensee of charges and hearing' wherein appellant was notified of the pending charge and further notified that a hearing thereon would be held on Monday, November 24, 1958, and that a plea to the charge should be made not later than November 19, 1958. On the evening of November 24, 1958, Anthony Ventura (president of appellant corporation) appeared at the scheduled hearing and requested an adjournment because his counsel was not able to be present. At the hearing herein Commissioner Blackman testified that he and Chairman Stufko were present to conduct the hearing; that this was the first notification they received that a postponement would be requested; that everyone subpoenaed by the Board was present, and that they believed an adjournment would be quite an imposition on these witnesses; that on the same evening the Chairman had heard a rumor that Mr. Ventura wanted an adjournment so that he could avoid penalty over the Christmas-New Year's holiday; that they denied the request for adjournment and proceeded to hear the Board's witnesses; that they afforded an opportunity

to Mr. Ventura to question the witnesses and to make a statement at the conclusion of the hearing. An application for adjournment is addressed to the discretion of the court and this discretion will not be interfered with unless it appears that injury was done. Wait v. Krewson, 59 N. J. L. 71; Heinz v. Atlantic Stages, Inc., 113 N.J.L. 321 (Ct. of E. & A. 1934). In Pepe v. Urban, 11 N. J. Super. 385 (A.D. 1951) it was held unreasonable to deny a postponement so that a witness, whose testimony was found to be material, might be produced. However, that is not the situation in this case and, in fact, Mr. Ventura was the sole witness who testified on behalf of appellant at the hearing herein. Appellant had at least ten days to arrange for the appearance of an attorney at the hearing below and cannot be heard to complain if, as indicated, Mr. Ventura did not consult an attorney until the morning of November 24, 1958. Under the facts of this case, I find no merit in appellant's contention that the action of respondent should be reversed because the request for adjournment was denied or because appellant was not represented by counsel at the hearing below.

"There remains to be considered appellant's contention that the verdict was contrary to the evidence. At the hearing herein Officer Iandoli, of the Passaic County Park Police, testified that on the evening of October 3, 1958, a group of boys in Weasel Brook Park dispersed as the police car approached them; that he apprehended two of them and ascertained that one was intoxicated; that subsequent investigation disclosed that they were drinking alcoholic beverages which had been obtained by Howard ---. At the hearing herein Howard --- testified that he was born on January 22, 1940; that on the evening of October 3, 1958, he alone entered appellant's premises and purchased four pints of wine and six cans of beer from Anthony Ventura who did not question him as to his age. On cross-examination Howard --- testified that he is six feet three inches in height. On behalf of appellant Anthony Ventura testified that he does not know whether or not he sold alcoholic beverages to Howard ---. Clearly, the verdict was not contrary to the evidence.

"Although not specifically mentioned in the petition of appeal, appellant's attorney appears to contend that the penalty is excessive because the minor appears to be older than his actual age. On May 27, 1954, the Director entered an order lifting the statutory automatic suspension of appellant's license which resulted from a conviction of Anthony Ventura on April 13, 1954, in the Clifton Municipal Court on charges of selling alcoholic beverages to minors. See Bulletin 1022, Item 7. From said order it appears that respondent Board had previously suspended appellant's license for forty days after appellant had pleaded guilty in disciplinary proceedings to charges of selling alcoholic beverages to the same minors. On October 17, 1958, the Director entered an order staying the effect of a statutory automatic suspension of appellant's license which resulted from a second conviction of Anthony Ventura on October 14, 1958, in the Clifton Municipal Court on a charge of selling alcoholic beverages to the minor mentioned in this case. The stay was entered, in fairness to the licensee, pending the hearing scheduled to be held by the Municipal Board in the disciplinary proceedings which is the subject of the present appeal. See Bulletin 1251, Item 5. At the hearing herein Commissioner Blackman testified that the Board considered the prior record and would have imposed a ninety-day suspension except for the fact that the suspension then imposed covered the holiday season. The

measure or extent of penalty to be imposed in a disciplinary proceeding rests within the sound discretion of the issuing authority. Dzieman v. Paterson, Bulletin 233, Item 10. Under all the circumstances, the penalty herein was not excessive.

"It appears that appellant's premises were closed for one day under the second automatic suspension and on December 1 and 2, 1958, under the suspension imposed by respondent in this case. It is recommended that appellant be given credit for the three days already served as a result of this violation.

"After considering all the evidence and the oral arguments at the hearing held herein, I recommend that an order be entered affirming the action of respondent and fixing the dates during which the fifty-seven-day balance of the sixty-day suspension shall be effective."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered the entire record, including the testimony, the oral argument of appellant's attorney at the hearing and the Hearer's Report, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 26th day of March, 1959,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the fifty-seven-day balance of the sixty-day suspension imposed by respondent, and stayed during the pendency of these proceedings, be reinstated against the license held by appellant for premises 1057 Main Avenue, Clifton, to commence at 7:00 a.m. Monday, April 6, 1959, and to terminate at 7:00 a.m. Tuesday, June 2, 1959.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - LOTTERY - SALE DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATION NO. 38 AND LOCAL REGULATION - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
FRANCIS BEESLEY
t/a PACKY'S TAVERN
203 South 4th Street
Harrison, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-22, issued by the Town Council of the Town of Harrison.

Edmond J. Dwyer, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging (1) he allowed, permitted and suffered the making and accepting of bets in a lottery known as "numbers game" in and upon his

licensed premises, in violation of Rule 7 of State Regulation No. 20; (2) he allowed, permitted and suffered tickets and participation rights in a lottery known as "numbers game" to be sold and offered for sale in and upon his licensed premises, in violation of Rule 6 of State Regulation No. 20; (3) he allowed, permitted and suffered a lottery, i.e., fight pool, to be conducted on his premises, in violation of Rule 6 of State Regulation No. 20; (4) he sold alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38; and (5) he conducted his licensed business during prohibited hours, in violation of a local ordinance.

On August 29, 1958 two ABC agents observed the bartender employed by defendant accept money from various patrons who participated in a pool on the outcome of a fight being televised that evening. The holder of the slip for the "10th round" was declared the winner and was paid the proceeds of the pool. On this visit the agents did not identify themselves.

On September 13 and 18, 1958, respectively, Frank Treanor (a patron) aided and abetted by the bartender, accepted "numbers" bets from an agent. Also at 2:19 a.m. on September 13th, the bartender sold six 12-ounce cans of beer to an agent who then left the premises with the package containing the beer. Although the local ordinance provides that licensed premises be closed at 2:00 a.m., the defendant's premises were open on September 13th after 2:00 a.m. and patrons were permitted to remain therein to purchase and consume alcoholic beverages.

Defendant has no prior adjudicated record. Considering all the circumstances of this case, I shall suspend defendant's license for a period of fifty days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty-five days.

Accordingly, it is, on this 24th day of March, 1959,

ORDERED that Plenary Retail Consumption License C-22, issued by the Town Council of the Town of Harrison to Francis Beesley, t/a Packy's Tavern, for premises 203 South 4th Street, Harrison, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. Monday, March 30, 1959, and terminating at 2:00 a.m. Thursday, May 14, 1959.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD -
 LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

MEURY'S BARN, INC.)

t/a EWING GARDENS)

Parkside Avenue)

Ewing Township)

PO RD 1, Trenton, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-25, issued by the)
 Township Committee of the Township)
 of Ewing.)

-----)
 Edward A. Costigan, 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 it sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

On February 15, 1959, two ABC agents at defendant's licensed premises observed Loreto --- (age 19) and Donald --- (age 20) enter the premises. Donald purchased two bottles of beer at the bar from the bartender and handed one bottle of beer to Loreto. Both drank their beer while playing shuffleboard. Afterwards Loreto went to the bar, purchased two bottles of beer from the same bartender, handed one bottle to Donald, and both drank from their said bottles of beer. The bartender did not request either minor to present any identification or to sign any written representation as to his age. The agents disclosed their identity, and the bartender verbally admitted the above stated facts.

Defendant has a prior adjudicated record. Effective June 3, 1957, its license was suspended for fifteen days by the local issuing authority for sale of alcoholic beverages to minors. Effective March 24, 1958, its license was again suspended, by the Director, for thirty days for sale of alcoholic beverages to a minor (Bulletin 1220, Item 5). This is the third suspension of defendant's license within five years for sale to minors. Therefore, I shall suspend defendant's license for a period of forty days (Re Joe Crine's Tavern, Inc., Bulletin 1250, Item 3). Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 23rd day of March, 1959,

ORDERED that Plenary Retail Consumption License C-25, issued by the Township Committee of the Township of Ewing to Meury's Barn, Inc., t/a Ewing Gardens, for premises on Parkside Avenue, Ewing Township, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:30 a.m. Wednesday, April 1, 1959, and terminating at 2:30 a.m. Wednesday, May 6, 1959.

WILLIAM HOWE DAVIS
 Director.

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

In the Matter of Disciplinary Proceedings against)
 EARL B. GORDON)
 N/S of Cookstown-New Egypt Rd.)
 North Hanover Township)
 P. O. Cookstown, N. J.,)
 Holder of Plenary Retail Distribution License D-1, issued by the Township Committee of North Hanover Township, and transferred during the pendency of these proceedings to)
 HENRY FRECK and DOROTHY FRECK)
 t/a Henry's Liquor Store)
 (North Hanover Township)
 P.O. R.D. 1, Wrightstown, N.J.))
 for the same premises.)
 -----)

CONCLUSIONS
AND ORDER

Earl B. Gordon, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

Acting upon information transmitted to this Division by a New Jersey Parole Officer and the State Police, ABC agents obtained a signed, sworn statement from Jesse ---, age 18, wherein he states that at 8:15 p.m. December 24, 1958, he and two minor companions drove to defendant's licensed premises and parked their car in front thereof; that he alone entered the premises and purchased a pint of liquor from one of the clerks therein who required no written representation as to his age; that after driving away from the premises, he and one of his companions consumed a good percentage of the whiskey and were later apprehended by State troopers. The three minors directed the agents to defendant's liquor store which they identified as the place where the liquor was purchased. Jesse, however, was unable to identify the specific person who made the sale.

A minor's failure to identify the specific person who made the sale is not fatal in disciplinary proceedings when, as in the instant case, it has been established that the minor purchased and had served to him alcoholic beverages. Re Dante, Bulletin 771, Item 9.

Defendant has no prior adjudicated record. I shall suspend his license for fifteen days, Re Vinci & Rich, Bulletin 1178, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 12th day of March, 1959,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of North Hanover Township to Earl B. Gordon and transferred to Henry Freck and Dorothy Freck, t/a Henry's Liquor Store, for premises N/S of Cookstown-New Egypt Rd., North Hanover Township, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. Monday, March 23, 1959 and terminating at 9:00 a.m. Thursday, April 2, 1959.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against
 McHALE'S CORNER (A Corp. of N.J.)
 t/a MOCAMBO CAFE
 S/W Corner of Spruce & New Jersey Avenues
 North Wildwood, PO Wildwood, N.J.,
 Holder of Plenary Retail Consumption License C-17, issued by the Mayor and Common Council of the City of North Wildwood.

CONCLUSIONS AND ORDER

 George B. Francis, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

It appears from the reports herein that ABC agents obtained a signed sworn statement from Raymond ---, age 19, wherein he states that on Wednesday evening, December 31, 1958, he and three minor companions drove to defendant-licensee's premises and parked their car in front thereof; that he alone entered the tavern and purchased a case of canned beer from the bartender who required no written proof of his age; that he left the premises with his purchase, put it in the car and that all four drove away. It appears further that the other minors gave the agents signed sworn statements in which they state that they saw Raymond enter defendant's premises empty-handed and emerge therefrom carrying a case of beer, part of which was consumed by Raymond and two of them after leaving the vicinity of the tavern; that thereafter the four minors directed the agents to defendant's premises and pointed it out as the place where the beer was obtained.

Defendant has no prior adjudicated record. The minimum period of suspension for sale of alcoholic beverages to a 19-year-old minor is fifteen days. Re Russakow, Bulletin 1197, Item 5. I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 12th day of March, 1959,

ORDERED that Plenary Retail Consumption License C-17, issued by the Mayor and Common Council of the City of North Wildwood to McHale's Corner (A Corp. of N.J.), t/a Mocambo Cafe, for premises S/W Corner of Spruce and New Jersey Avenues, North Wildwood, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, March 23, 1959, and terminating at 2:00 a.m. Thursday, April 2, 1959.

WILLIAM HOWE DAVIS
 Director.

7. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR,
DISMISSED.

In the Matter of Disciplinary)
Proceedings against)

FELIX CHIZUN)
t/a JOHN'S INN)
Hwy. #33, Manalapan Twp.)
PO Freehold, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-1, issued by the)
Township Committee of Manalapan)
Township.)

James T. Kirk, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to a charge alleging that on Saturday, October 11, 1958, he sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

"To support the charge, the Division called as its witnesses four minors and an ABC agent.

"One of the minors, Harold ---, testified in substance that he is 16 years of age; that at a little past 4:00 p.m., Saturday, October 11, 1958, he and three minor companions drove to defendant's licensed premises and parked their car outside; that he alone entered the tavern and purchased two six-packs of canned beer from the bartender, who required no written proof of his age; that he left the premises with his purchase, put it in the car and that all four drove off. On cross-examination he testified that he again visited the licensed premises between October 11th and 17th, asked for a drink and that Felix (the licensee) said 'I can't serve you'; that at a later date he, accompanied by ABC agents, returned to the licensed premises, at which time the licensee and his bartenders were present and that he was unable to identify the person who made the sale. In describing the means by which he entered the barroom, he testified that there are steps leading to the front door, 'You go in that door. There is like a cooler in there. You go through another door and get to the bar'; that 'I can't say for sure whether it was him (the bartender) or somebody else' who went outside the barroom and got the beer in the big cooler; that he had been in the licensed premises several times during the summer and, on one of those occasions, 'Frances' sold him ten six-packs (60 cans) of beer.

"The other three minors testified that on the date alleged they saw Harold go in the front door of defendant's tavern empty-handed and emerge through the same door carrying a package which they later found to be two six-packs of canned beer. They admitted that they did not and could not see Harold enter the barroom.

"The ABC agent testified that on October 18, 1958 he, together with another agent and a county warden, were directed

by Harold and one of the other minors to defendant's tavern; that the minors identified the premises as the place which Harold entered on October 11, 1958; that therein at the time were the licensee and Frances Skrobiszeski; that both stated that Joseph Skrobiszeski was on duty on the date alleged; that on October 21st he, the other agent and Harold returned to defendant's tavern wherein Joseph Skrobiszeski was questioned and that Joseph stated that on October 11, 1958 he was on duty from 3:00 o'clock on and that Harold stated that he wasn't positively sure that Joseph Skrobiszeski was the person who made the sale. On cross-examination the agent testified that the front door opens into a porch storeroom approximately 12 feet wide by 12 feet deep; that there were a counter and numerous boxes in that room and that he was not certain that a refrigerator was there. He stated further that Joseph Skrobiszeski denied that he had ever seen Harold before.

"Frances Skrobiszeski testified, in substance, that she tends bar a few times a week in the licensed premises, the enclosed porch of which 'is a storage room where we have canned beer, bottled beer, boxes and a refrigerator'; that on a Saturday night beer had been stolen from the storage room and that on the following Monday materials for the construction of a partition in that room had been ordered from a lumber mill; that the materials were delivered the same day and that a carpenter commenced work on the partition which was completed prior to the date the agents and the minors visited the tavern. She testified further that in July 1958, Harold and an adult male came into the premises and were playing the juke box in a side room when a woman who said she was Harold's mother entered and 'grabbed him by the neck', and that as the woman was leaving she said 'Lady, I don't want you to sell him anything to drink', to which she (Frances) replied 'I didn't sell him and I don't intend to'. She also stated that it was the first and last time that she saw Harold until he came to the tavern with the agents. She denied that she had ever sold him anything to drink.

"Felix Chizun (the licensee) testified, in substance, that on Saturday, October 11, 1958, someone had stolen beer from his storage room; that to prevent a recurrence of any theft, he and a carpenter went to the Millhurst Mills on the following Monday and ordered materials to construct a partition in the storage room; that the materials were delivered to his premises the same day and the construction work started, and that on October 17, 1958, after the partition had been erected, he paid the Millhurst Mills for the materials supplied. He denied that Harold was in his establishment twenty or thirty times during the summer. The invoices of the Millhurst Mills were received in evidence and verify the licensee's testimony respecting the date the materials were ordered and the date they were paid for. It is not alleged that the licensee ever served the minor.

"Joseph Skrobiszeski testified that he is the husband of Frances Skrobiszeski; that he tends bar occasionally for the licensee; that the first time he ever saw Harold was when he came to the tavern with the ABC agents, at which time Harold, when asked if he could identify him, stated that 'He wasn't sure, he didn't think so, an older man'.

"The failure to identify the particular employee making the sale or service of alcoholic beverages to a minor is not

fatal in disciplinary proceedings provided it be established that the minor purchased, had served to him or was permitted to consume an alcoholic beverage in the licensed premises. Re LaCorte, Bulletin 469, Item 1; Re Cohen, Bulletin 495, Item 6; Re Dante, Bulletin 771, Item 9; Re Cutillo, Bulletin 1133, Item 3; cf. Re Polish Peoples Home, Inc., Bulletin 1137, Item 1; cf. Re Kabe, Inc., Bulletin 1165, Item 4.

"Considering all the facts and circumstances herein, I find that the minor not only failed to identify the person who made the sale but that there is no corroboration of his testimony that the alleged sale was actually made. Cf. Re Heck, Bulletin 1184, Item 3. I conclude, therefore, that the Division has failed to establish the guilt of defendant by a fair preponderance of the believable evidence and I recommend that an order be entered dismissing the charge."

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

I concur in the conclusions of the Hearer that the charge should be dismissed but not for the reason stated in the Hearer's Report. Specifically, I find that there is some evidence to corroborate the minor's testimony that he purchased the beer in the defendant's premises. Moreover, the mere fact that there may not be corroboration of a minor's testimony is not necessarily fatal in disciplinary proceedings. However, after considering all the facts and circumstances, I conclude that defendant's guilt has not been established by the necessary preponderance of the evidence. While, as hereinabove indicated, there is some evidence to corroborate the minor's testimony, there is sufficient conflict in the testimony to cause me to give the defendant the benefit of the doubt.

Accordingly, it is, on this 16th day of March, 1959,

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

WILLIAM HOWE DAVIS
Director.

8. AUTOMATIC SUSPENSION - LICENSE SUSPENDED BY LOCAL ISSUING AUTHORITY -- APPLICATION TO LIFT GRANTED AT EXPIRATION OF SUSPENSION NOW IN EFFECT.

Auto. Susp. #163)
In the Matter of a Petition to)
Lift the Automatic Suspension of)
Plenary Retail Distribution License)
D-6, issued by the Board of Commis-)
sioners of the Township of Lyndhurst)
to)
LEON & DOROTHY HOCHHEISER)
t/a HOCKY'S LIQUORS)
11 Ridge Road)
Lyndhurst, N. J.)

O R D E R

Dante DePamphilis, Esq., Attorney for Licensees.

BY THE DIRECTOR:

On February 6, 1959, I entered an order herein staying the automatic suspension of the license held by Leon & Dorothy Hochheiser pending the entry of a further order.

On March 2, 1959, the Board of Commissioners of the Township of Lyndhurst conducted disciplinary proceedings against

the licensees and, as a result thereof, suspended their license for ten days effective March 13, 1959, at 10:00 p.m. The suspension imposed in the disciplinary proceedings appears to be adequate and, hence, I shall enter an order lifting the automatic suspension at the expiration of the suspension imposed in the disciplinary proceedings.

Accordingly, it is, on this 18th day of March, 1959,

ORDERED that the automatic suspension of the license held by Leon & Dorothy Hochheiser, t/a Hocky's Liquors, for premises 11 Ridge Road, Lyndhurst, be lifted at 10:00 p.m. March 23, 1959, at which time the license will be restored to full force and operation.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WILLIAM RUSH & CHARLES STEINMETZ)
154 - 71st Street)
Guttenberg, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-24, issued by the Mayor and Board of Council of the Town of Guttenberg.)

Defendant-licensees, Pro se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded guilty to the following charge:

"On December 24 and 31, 1958 and January 10, 1959, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

On December 24, 1958, three ABC agents at defendants' licensed premises each placed various horse-race bets with a person subsequently identified as Jack Dawson after observing him accept a horse-race bet from another patron. On December 31, 1958, two of these agents and another agent were at the premises. Charles Steinmetz (one of the licensees) was acting as bartender and Dawson was present. Dawson gave one of the agents his winnings on a bet placed by him on December 24 and, turning to Steinmetz, directed him to pay another agent his winnings. Steinmetz took \$4.00 from the cash register and paid the money to the agent. Both of these agents then placed a horse-race bet with Dawson.


The three ABC agents who were at the premises on December 31 returned on January 10, 1959. Charles Steinmetz was tending bar and Dawson was present. Dawson told one of the agents that he had won \$30.00 on the bet placed on his previous

visit. Dawson spoke with another patron who evidently owed Dawson \$15.00 on a horse-race bet. Ultimately, at this patron's request, Steinmetz took that amount from the register and handed the money to Dawson who then paid \$30.00 to the agent. Two of the agents then placed horse-race bets with Dawson. At this point local police officers entered the premises and the agents and the officers revealed their identity. They recovered from Dawson the marked money used by the agents to place their bets with him. Steinmetz threw a horse-race bet slip in the waste basket which was recovered by one of the agents.

Defendants have no prior adjudicated record. I shall suspend their license for twenty-five days, the usual penalty in a case of this kind. Re Karba, Bulletin 1265, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 24th day of March, 1959,

ORDERED that Plenary Retail Consumption License C-24, issued by the Mayor and Board of Council of the Town of Guttenberg to William Rush & Charles Steinmetz, for premises 154 - 71st Street, Guttenberg, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Tuesday, April 7, 1959, and terminating at 3:00 a.m. Monday, April 27, 1959.


William Howe Davis
Director