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

BULLETIN 1059 APRIL 27, 1955.

TABLE OF CONTENTS

ITEM

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

BULLETIN 1059 APRIL 27, 1955.

1. APPELLATE DECISIONS - SMALLHEER v. CLIFTON.

CORNELIUS SMALLHEER, t/a NEIL'S GRILL, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CLIFTON, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Louis P. Bertoni, Esq., Attorney for Appellant.
Manfred Triebel, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action on January 3, 1955 whereby it suspended appellant's plenary retail consumption license for ten days, effective February 1, 1955, upon finding appellant guilty of two charges of sale of alcoholic beverages to a minor.

Upon the filing of this appeal I entered an order on January 19, 1955 staying respondent's order of suspension pending the determination of the appeal. This appeal was heard de novo, pursuant to Rule 6 of State Regulations No. 15.

At the hearing on this appeal the minor, Ellen ---, testified that she was arrested on October 7, 1954 for being drunk and disorderly; that she had been served "a few shots" and beer at appellant's licensed premises that afternoon by appellant's bartender, William D. Parent; that appellant served her "one drink" around supper time; and that on October 1st she had consumed a number of glasses of beer at appellant's licensed premises with a young woman named "Mickey". Later in her direct testimony she testified that, on October 7, appellant had served her a drink and then had taken it away from her because of her intoxicated condition and that she did not consume any part of that drink. Also on direct examination she admitted that she had told the police that she had been drinking at the "Arcadia" but that she didn't know why she told them that.

On cross-examination she admitted that some of her testimony at the hearing below was at variance with her testimony on this appeal. For example, she admitted that, at the previous hearing, she had not testified that she had been served liquor on appellant's licensed premises. In addition, some of her testimony at the hearing on this appeal was contradictory. After testifying that appellant had served her a drink on October 7th she later admitted that he had not served her any drink on that occasion. In addition, when a young woman (Edna Smith), whose nickname is "Mickey", was produced as a witness the minor claimed that she was not the "Mickey" in question and gave a vague attempted explanation of her claim that there was another girl called "Mickey" whom she had met at a diner in Paterson. She admitted, however, on cross-examination that when she had seen Edna Smith at the Clifton Municipal Building at the hearing below she had approached appellant's attorney to ask "what is Mickey doing here" and "what is she going to testify to".

Two detectives who had questioned the minor on the night of October 7 and the morning of October 8, testified that, when apprehended, she was intoxicated; that, at first, she refused to talk, but later mentioned the "Arcadia" as the place where she had been drinking; that, thereafter, she said that she had been in appellant's licensed premises first at 2:00 p.m. and later at 4:45 to 5:00 p.m.; that on the first occasion she was served Seven Crown Whiskey and 7-Up by the bartender and on the second occasion the licensee had also served her Seven Crown Whiskey and 7-Up; that she had been there with "Mickey" on October 1st and had been served beer by the bartender; and that she described "Mickey" as a woman twenty-five years of age, who worked in a Clifton diner with her, married and living in Newark or Kearny.

One of the detectives testified that through one of the minor's friends they had located Edna Smith ("Mickey") who denied that she had ever been out drinking with the minor and further denied knowing the location of appellant's licensed premises. He also testified that both the licensee and the bartender denied serving the minor or ever seeing her upon the licensed premises until approximately 5:00 p.m. on October 7, 1954 and that the licensee had said that he had served her only 7-Up and had given her 50¢ for taxi fare to go home.

The police officer who apprehended the minor testified that, when he first saw her at approximately 6:30 p.m. on October 7, 1954 she was intoxicated and abusive and, at first, would give him no information. He further testified that she finally said that she had been drinking Seagram's Seven Crown Whiskey at the "Arcadia" and that she did not mention appellant's licensed premises.

The licensee and his bartender denied that they had served the minor any alcoholic beverages at any time. The bartender testified that he was on duty on the afternoon of October 1, 1954 and also on the afternoon of October 7, 1954. He denied that he had ever seen the minor before she entered in an intoxicated condition at approximately 5:00 p.m. on October 7, 1954. Both he and the licensee testified that, although the minor asked for Seven Crown Whiskey and 7-Up, the licensee told her that he would serve her 7-Up but no whiskey and that he did in fact serve her a glass of 7-Up which she drank. Both denied that the licensee had put any whiskey in a glass for her and both testified that she asked for and received 50¢ taxi fare to go home after which she left the licensed premises. Two male patrons who had been upon the licensed premises on both afternoons in question denied that the minor had been there at all on October 1st and one of the men who left the licensed premises with the bartender testified that the only time he had ever seen the minor was when she entered the licensed premises at approximately 5:00 p.m. on October 7, 1954 at which time the licensee served her only 7-Up.

Edna Smith testified that her nickname is "Mickey"; that she knows the minor; that she (Edna Smith) is only twenty years of age and does not frequent taverns; and that she was not with the minor at appellant's licensed premises on October 1, 1954. She also testified that she worked in a diner in Clifton where, several months ago, the minor also worked.

The burden of proving that respondent's action was erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 15. The case for respondent rests almost entirely upon the testimony of the minor. While other witnesses testified on behalf of respondent their source material came almost entirely from the minor. A careful reading of all of the testimony clearly demonstrates that there are a number of discrepancies between the minor's testimony and some of her previous utterances and, indeed, in her testimony itself. Under all the circumstances the conclusion is inescapable that there is not sufficient credible evidence to support a finding of guilt. I find respondent's action erroneous and such action will be reversed.

Accordingly, it is, on this 31st day of March, 1955,

ORDERED that respondent's action in finding appellant guilty of the charges hereinabove referred to and suspending his license for a period of ten days, which suspension was stayed during the pendency of these proceedings, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING HOSTESS ACTIVITIES DISMISSED - LICENSEE FOUND GUILTY OF PERMITTING LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - UNQUALIFIED EMPLOYEES - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against

CADILLAC BAR CORPORATION
T/a CADILLAC BAR CORPORATION
330 Connecticut Avenue
Hamilton Township (Mercer County)
P.O. Trenton 9, N. J.,

Holder of Plenary Retail Consumption License C-41, issued by the Township Committee of the Township of Hamilton, County of Mercer, which license was transferred during the pendency of these proceedings to

1320 East State Street
Hamilton Township (Mercer County).

CONCLUSIONS AND ORDER

Theodore G. Fitzgeorge, 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 Saturday night, June 26 and early Sunday morning, June 27, 1954, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that a female entertainer performed in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulations No. 20.

"2. On the occasion aforesaid you allowed, permitted and suffered a female employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20.

"3. On the occasion aforesaid you knowingly employed on your licensed premises Jaimee Samm, Linwood H. Ewell, Jr,, Clayton R. Brown and Howard G. Whalley, non-residents of New Jersey, who had not obtained any requisite employment permits from the Director of the Division of Alcoholic Beverage Control; in violation of Rule 4 of State Regulations No. 13."

At the hearing herein ABC agents testified, in substance, that they visited defendant's licensed premises at about 9:00 p.m. Saturday, June 26, 1954, and occupied seats at a table so situated that

they had an unobstructed view of the premises and the activities there in progress; that a three-piece orchestra was entertaining some one hundred thirty patrons; that at 10:30 p.m. the "stellar attraction of the evening" was introduced; that a female, clad in an evening gown, appeared upon a raised platform and, to the accompaniment of syncopated music, engaged in a sensuous dance which gradually degenerated into a vulgar exhibition of "bumps and grinds; that during the performance she tantalizingly removed her outer garment and, in abbreviated attire, suggestively caressed her body, quivered her buttocks and simulated sexual coition; that at 1:30 a.m., following, the performance was repeated; that during the intermission they observed the bartender serve the dancer three glasses of whiskey and take payment "from some money on the bar which had been placed there by one of the men in the company she was;" that after the last show they identified themselves and obtained a signed sworn statement from the manager, and in his presence interrogated the musicians and the dancer who stated that they lived in Philadelphia and held no permits to work in New Jersey; that the manager stated "I told her not to do bumps and grinds, but she did anyway;" and stated further, "I did not know these men (musicians) were to have permits to work on licensed premises in New Jersey."

Defendant produced as witnesses four employees, one former employee and a patron. The patron described the dance as "interpretive;" the others testified it was "calisthenic" or "Hawaiian." The employees, however, testified that they did not see the entire performance. The manager testified that the dancer was not an employee but a guest performer who wanted to "try her new gown" and that her employment as per contract was not to commence until the following Monday. He further testified that the musicians lived in New Jersey during their employment and, on cross-examination, confirmed his signed sworn statement that he didn't know that permits were required of out-of-State entertainers.

After carefully considering the entire record I am satisfied that the performance was lewd, indecent and immoral and of the type which cannot be tolerated on licensed premises. Re M.L.C. Corporation, Bulletin 934, Item 7. I am also satisfied, from the evidence, that the entertainers were non-residents employed on the licensed premises without requisite permits. Therefore, I find defendant guilty as to charges 1 and 3.

As to charge 2: Respecting defendant's contention that the dancer was merely a guest performer, "The word 'employee' as used in the Alcoholic Beverage Law and the rules and regulations of this Department (now Division) has been construed to include all persons whose services are utilized by the licensee ***. Salary or compensation is not a requisite to employment." Re William Street Bar and Grill, Inc., Bulletin 466, Item 8, and cases cited therein. In consonance with that construction I find that the dancer was in fact an employee on the days in question. However, the guilt of the defendant as to charge 2 has not been established by the necessary preponderance of evidence and I, therefore, find defendant not guilty as to said charge.

Since defendant has no prior adjudicated record, I shall suspend its license for the minimum period of thirty days on charge 1 (Re Victoria Lodi Bar, Inc., Bulletin 1041, Item 4), and for a further period of five days on charge 3 (Re Nevins Bankers Club, Bulletin 942, Item 2), making a total suspension of thirty-five days.

Accordingly, it is, on this 28th day of March, 1955,

ORDERED that Plenary Retail Consumption License C-41, issued by the Township Committee of the Township of Hamilton, County of Mercer, to Cadillac Bar Corporation, t/a Cadillac Bar Corporation, for premises at 330 Connecticut Avenue and transferred to 1320 East State Street, Hamilton Township (Mercer County), be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. April 4, 1955, and terminating at 2:00 a.m. May 9, 1955.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MARGARET MALONEY and ANTHONY MENOTTI
T/a WHITE ELEPHANT
207-209 Bergen Pike
Little Ferry, N. J.,

Holders of Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Little Ferry.

CONCLUSIONS AND ORDER

Herbert F. Myers, Jr., Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to charges alleging that on Sunday, February 27, 1955, they (1) sold, served and delivered and allowed, permitted and suffered the sale, service, delivery and consumption of alcoholic beverages on their licensed premises during prohibited hours, and (2) failed to have their entire licensed premises closed during said hours, both in violation of a local ordinance.

An ordinance of the Borough of Little Ferry prohibits the sale, service, delivery and consumption of alcoholic beverages on Sundays between the hours of 4:00 a.m. and 8:00 a.m., and requires that licensed premises (with certain exceptions not material herein) shall be closed between said hours.

The file herein discloses that at 4:30 a.m. Sunday, February 27, 1955, ABC agents, after making their identities known, were admitted to defendants' licensed premises wherein they observed eight patrons consuming drinks. Two bartenders were in attendance, one of whom identified himself as Anthony Menotti (a licensee herein). The agents seized from patrons at the bar three drinks which were analyzed by the Division's chemist and found to be alcoholic beverages.

Defendants have a prior adjudicated record. Effective June 23, 1952, their license was suspended for three days by the local issuing authority for an "hours" violation. The minimum suspension for the instant violations is fifteen days. Re Angelicola, Bulletin 1026, Item 6. However, where a defendant has a prior record of a similar violation within a five-year period, the penalty will be doubled. Re Golden Gate, A Corp., Bulletin 1052, Item 12. I shall

suspend defendants' license for thirty days and remit five days for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 28th day of March, 1955,

ORDERED that Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Little Ferry to Margaret Maloney and Anthony Menotti, t/a White Elephant, for premises 207-209 Bergen Pike, Little Ferry, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. April 4, 1955, and terminating at 3:00 a.m. April 29, 1955.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ROBERT D. McCARTHY and ROBERT A. BENHAM T/a WINE & GAME SHOP 6 Nassau Street Princeton, N. J.,) CONCLUSIONS AND ORDER

Holders of Plenary Retail Distribution License D-7, issued by the Mayor and Council of the Borough of Princeton.)

Samuel Moskowitz, Esq., Attorney for Defendant-licensees.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On or about December 16, 1954, you sold at retail 16 cases and 25 additional bottles of various brands of alcoholic beverages, and on or about December 22, 1954 you sold at retail 3 cases of various brands of such beverages, at less than the price thereof listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulations No. 30."

The file herein discloses that, shortly before Christmas 1954, a purchasing agent of a corporation who had formerly done business with defendants approached one of the licensees in connection with a large order for alcoholic beverages. When it became evident that the prospective purchaser was "shopping" for lower prices, the licensee, apparently fearful of losing a good customer, agreed to sell the merchandise at a 10 per cent discount despite the fact that he knew the permissible discount to be only 5 per cent for sales in case lots only. On December 16, 1954, pursuant to this arrangement, 16 cases and 25 additional bottles of alcoholic beverages were sold for a net price of $1,057.85, representing the full price of $1,175.39 less the 10 per cent discount amounting to $117.54.

On December 22, 1954, three additional cases of whiskey were sold to the same customer for $201.53, representing the full price of $223.92, less the 10 per cent discount of $22.39.

Counsel for defendants appeared before the Director and, in attempted mitigation of penalty, adverted to the fact that defendants, whose record is otherwise clear, fully cooperated in the investigation and made no effort to conceal the facts.

While defendants have no prior adjudicated record, because of the quantities of alcoholic beverages involved, a greater-than-usual penalty is not only warranted but required. I shall suspend defendants' license for twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 28th day of March, 1955,

ORDERED that Plenary Retail Distribution License D-7, issued by the Mayor and Council of the Borough of Princeton to Robert D. McCarthy and Robert A. Benham, t/a Wine & Game Shop, for premises 6 Nassau Street, Princeton, be and the same is hereby suspended for twenty (20) days, commencing at 9:00 a.m., April 5, 1955, and terminating at 9:00 a.m., April 25, 1955.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - NO LOCUS POENITENTIAE - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against

ANTHONY J. PENTA
T/a BROADWAY INN
369-371 Broadway
Long Branch, N. J.,

Holder of Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the City of Long Branch.

CONCLUSIONS AND ORDER

Walter J. George, 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, March 1, 1955, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Pvt. Sidney A. ---, U. S. Army, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

At the hearing herein the minor, Sidney A. ---, 20 years of age, and his two adult male companions appeared and testified. Their testimony may be summarized as follows: On the evening of March 1, 1955, some time between 7:00 p.m. and 8:15 p.m., said minor, who was

in Army uniform, and his companions Wolfe and Weiser, who were in civilian clothes, entered defendant's barroom and walked through to the dining room where they sat in a booth. There appeared to be no one waiting on the tables in the dining room. After waiting a short period of time Wolfe went into the barroom where he purchased from the bartender three bottles of beer. He returned to the dining room with the three bottles of beer, which had been opened, and three glasses. He placed the bottles and glasses on the table and the minor and each of the adults took a bottle of beer and a glass. They poured the beer into their glasses and proceeded to consume it. The two adults finished their beer but the minor did not finish his beer immediately. Weiser went into the barroom where he purchased two bottles of beer from the bartender and brought them back to the table. The minor still had the bottle of beer which had been purchased for him on the first round. Before he completely consumed his beer the minor was removed from the licensed premises by officers of the Military Police who had entered the premises after Weiser had obtained the round of beer for himself and Wolfe. The minor was not questioned concerning his age by anyone connected with the licensed premises.

After the minor was taken from the licensed premises by the Military Police, Carolyn Penta, sister-in-law of the licensee, who had been working in the kitchen, asked Wolfe and Weiser why the Military Police had taken the minor from the licensed premises and they told her that he was underage and had been drinking beer.

Carolyn Penta, testifying on behalf of the licensee, testified that she had seen a soldier and two other men in the dining room on the night in question; that she did not talk with them in the beginning but later stopped at their table to see whether they had ordered a tomato pie. She further testified that she had seen the two adults drinking beer; that there were four bottles and only two glasses on the table; that she did not see them obtain the beer and that she had not noticed any glass or bottle in front of the minor. She also testified that, after the minor left the premises with the Military Police, she asked the adults the reason therefor and they had told her that the Military Police officers were not sure whether the minor had been drinking alcoholic beverages on the licensed premises; that she then asked them if the minor had been drinking at said premises; that they replied that they didn't think so and agreed to testify that he had not been drinking alcoholic beverages there that night. She admitted that she had not paid particular attention to their table and that her conversation with them had been brief.

The licensee testified that he was not present at the time the minor was upon the licensed premises; that he had left his brother in charge; that, because of a misunderstanding, there was no waitress on duty that night; and that he returned to the licensed premises after the minor had left the premises. He further testified that he has taken many precautions to prevent sale of alcoholic beverages to minors; that he has instructed his bartender not to serve more than one drink to a patron without finding out for whom the additional drinks are intended; that he asks apparent minors for identification and requests them to make written representations with respect to their ages. He admitted that he had no personal knowledge of the incident.

Wolfe and Weiser, called in rebuttal, denied that they had told Mrs. Penta that they would swear that the minor had not had anything to drink at the licensed premises.

After considering all of the evidence I am convinced that the minor obtained and consumed beer at defendant's licensed premises as testified by said minor and his two companions.

Defendant has a prior record. His license was suspended by the State Director for twenty days, effective March 15, 1955, on two charges of sale of alcoholic beverages to minors. Re Penta, Bulletin

1054, Item 5. As was pointed out in that case the second of the two offenses occurred before the charge arising out of the first violation had been adjudicated. Thus, no locus poenitentiae intervened and the usual penalty for a second offense was not imposed. The same situation prevails in the instant case. The offense occurred on March 1 and the decision on the two earlier violations was not made until March 3, 1955. While it is true that no locus poenitentiae intervened, I cannot disregard the fact that this is defendant's third similar violation within a little more than two months. Under all the circumstances I shall suspend defendant's license for twenty-five days.

Accordingly, it is, on this 30th day of March, 1955,

ORDERED that Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the City of Long Branch to Anthony J. Penta, t/a Broadway Inn, 369-371 Broadway, Long Branch, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. April 4, 1955, and terminating at 2:00 a.m. April 29, 1955.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against LOU VIN BAR, INC. 501 Summit Avenue Union City, N. J., Holder of Plenary Retail Consumption License C-129, issued by the Board of Commissioners of the City of Union City.	CONCLUSIONS AND ORDER

Lou Vin Bar, Inc., Defendant-licensee, by Vincent J. Basso, President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to a minor, and permitted the consumption of such beverages by said minor, in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that at about 12:10 a.m. Sunday, March 6, 1955, ABC agents observed an apparent minor consuming beer at the bar of defendant's licensed premises. Shortly thereafter the youth seated himself alongside of the agents and, when he requested another glass of beer, the bartender (later identified as Louis Basso) refilled his glass. When the youth had sipped some of the beer, the agents made known their identities and questioned him. The youth produced an adult's draft card for the agents, but they found among his effects a driver's license bearing a different name. The youth finally admitted that the driver's license was his. In a signed sworn statement made in the presence of Vincent Basso, president of defendant corporation, he identified himself as Michael --- (age 19); stated that, when previously questioned by Vincent Basso

as to his age, he had shown the adult's draft card to him; that no written representation as to his age was required of him; that he had found the draft card a few weeks previously, and that he had been served two glasses of beer while in the licensed premises.

Defendant has no prior adjudicated record. I shall suspend its license for ten days (the minimum penalty for a violation of this kind involving a nineteen-year-old minor). Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Szadkowski, Bulletin 1052, Item 14.

Accordingly, it is, on this 25th day of March, 1955,

ORDERED that Plenary Retail Consumption License C-129, issued by the Board of Commissioners of the City of Union City to Lou Vin Bar, Inc., for premises 501 Summit Avenue, Union City, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. April 4, 1955, and terminating at 3:00 a.m. April 9, 1955.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SLOT MACHINES ON LICENSED PREMISES DISMISSED.

In the Matter of Disciplinary Proceedings against	)	
PASSAIC MEMORIAL POST 200 AMERICAN LEGION 72-74 Hoover Avenue Passaic, N. J.,	)	CONCLUSIONS AND ORDER
Holder of Club License CB-204, issued by the Director of the Division of Alcoholic Beverage Control.	)	

Nicholas Martini, 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 January 8, 1955, you possessed, allowed, permitted and suffered in and upon your licensed premises, two slot machines or devices in the nature of slot machines which might be used for the purpose of playing for money or other valuable thing; in violation of Rule 8 of State Regulations No. 20."

It appears from the testimony of the Division's witnesses that on January 8, 1955, at about 7:10 p.m., the local Chief of Police, in the company of an investigator and of a detective attached to the County Prosecutor's office, visited defendant's licensed premises. After making known their identity the three law-enforcement officers informed the bartender that, on order of the Prosecutor, they were to check for slot machines allegedly used on the defendant's premises. All proceeded to the boiler-room to a door with a small padlock on it; the lock and door were opened by the bartender and entry was made to a storage room with a dirt floor underneath the front porch where two slot machines were found against a wall. These machines were very dusty and the handles on same were rusty. The Chief of Police then inserted a coin in a five-cent machine and attempted to pull the handle thereof but could not do so. The machines were confiscated by the officers and taken to the Prosecutor's office and placed in the vault. The testimony of the Prosecutor's aide,

who later assisted in dismantling the slot machines, was to the effect that the machines were quite old and the wheels on the inside were rusty and had cobwebs on them, and that it was his opinion that the machines had not been in use for many years. This fact was corroborated by officers and members of the Post who testified for defendant that the machines had been placed in the cellar of the premises when they gave up the old quarters of their organization and removed all property, including the machines, to their present clubhouse (which occurred about 1940), and that the machines had never been used since that time. I am satisfied that the slot machines had not been in use for some time and were abandoned. Under all the circumstances of this case, I shall dismiss the within charge. Cf. Re Lambertville Lodge Loyal Order of Moose, Bulletin 937, Item 6.

Accordingly, it is, on this 29th day of March, 1955,

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

WILLIAM HOWE DAVIS
Director.

8. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY DIRECTOR - SUSPENSION LIFTED.

In the Matter of a Petition by)
CARL TIENKEN)
T/a TALLY HO)
1478 White Horse Pike) ON PETITION
Galloway Township) O R D E R
P.O. R.D. Absecon, N. J.,)
To Lift the Automatic Suspension)
of Plenary Retail Consumption)
License C-11, issued by the Township)
Committee of the Township of Galloway.)

BY THE DIRECTOR:

It appears from a verified petition herein that on March 7, 1955, petitioner, Carl Tienken, was fined $100.00 in the Atlantic County Criminal Court after he pleaded non vult to a charge of selling alcoholic beverages to minors in violation of R.S. 33:1-77. Said conviction has resulted in the automatic suspension of his license for the balance of its term. R.S. 33:1-31.1. The petition requests the lifting of said suspension.

By order dated January 28, 1955, I suspended the license for a period of twenty-five days (less five days for the plea) after the licensee had pleaded non vult in disciplinary proceedings to a charge alleging that he sold alcoholic beverages to minors. Said suspension was effective from 7:00 a.m. February 3, 1955, to 7:00 a.m. February 23, 1955.

The conviction in the criminal proceedings and the charge in the disciplinary proceedings were based upon the same facts. Since the suspension heretofore imposed is adequate, the relief sought herein will be granted.

Accordingly, it is, on this 30th day of March, 1955,

ORDERED that the automatic suspension of License C-11, issued by the Township Committee of the Township of Galloway to Carl Tienken,

t/a Tally Ho, for premises 1478 White Horse Pike, Galloway Township, be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
Director.

9. SEIZURE - FORFEITURE PROCEEDINGS - CLAIM FOR RETURN OF MOTOR VEHICLE PRESENTED AFTER FORFEITURE BY INSURANCE COMPANY WITHOUT FAULT FOR DELAY - MOTOR VEHICLE ORDERED RETURNED BECAUSE STOLEN FROM INNOCENT OWNER.

In the Matter of the Seizure on July 29, 1954 of 20 - 5-gallon cans of alcohol and a Chevrolet sedan at the 56.9 Mile Post on the northbound lane of the New Jersey Turnpike located in the Township of Chesterfield, County of Burlington and State of New Jersey.	Case No. 8664 ON PETITION ORDER

Waxman and Waxman, Esqs., by Ira I. Waxman, Attorney for Merrimac Mutual Fire Insurance Company and General Exchange Insurance Company.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On September 14, 1954 my order was entered directing the forfeiture, among other matters, of the Chevrolet sedan seized in the case. On October 20, 1954 such motor vehicle was turned over to the Director of the Division of Purchase and Property pursuant to R.S. 52:27B-68.

Shortly thereafter, while such motor vehicle was still in custody of the Division of Purchase & Property, the Division of Alcoholic Beverage Control was advised that the motor vehicle had been stolen from its original owner, who had received payment therefor from his insurance carriers, and that the latter were seeking recovery of the car. Thereupon, pending receipt of formal proof of such claim, the Division of Purchase and Property agreed to retain possession of the motor vehicle, and return it to the Division of Alcoholic Beverage Control for delivery to the claimants if they established their claim to the satisfaction of the Director of the Division of Alcoholic Beverage Control.

A verified petition and other pertinent documents have since been presented, there having been some delay by the difficulty of assembling the proof.

The Chevrolet sedan was seized on July 29, 1954 with 1954 license plates issued for the car by the State of Georgia to Ernest Carter of Route #1, Augusta, Georgia.

The actual owner of the car was John Mangano of Jackson Heights, New York. He purchased the motor vehicle on December 5, 1952. On May 20, 1954 John Mangano reported the theft of said motor vehicle to the police stationed at the 13th Precinct located on E. 22nd St., New York City. He also reported the theft to the two above named insurance concerns, which carried theft insurance on his car.

Insurance adjusters investigated and reported that John Mangano was a doll assembler (?) and construction worker, temporarily tending bar at 6 East Broadway, New York City; and that the car was stolen while parked in the vicinity of 104 E. 31st St., New York City.

The insurance carriers being satisfied as the result of their investigation that Mangano had a genuine claim, each paid to Mangano half of the retail value of the vehicle, amounting to $575.00, or a total of $1150.00. Thereupon, on June 21, 1954, Mangano executed a bill of sale for the car to both insurance companies.

Neither the driver of the motor vehicle when seized, nor Ernest Carter appeared at the seizure hearing to explain their possession of the motor vehicle. It is probable the Georgia license plates were obtained for the vehicle without establishing true ownership thereof. For some reason the independent investigating agency did not discover the whereabouts of the car. The matter came to light when this Division advised the Motor Vehicle License Unit in Atlanta, Georgia of the forfeiture and returned to it the Certificate of Registration for the car. Thereupon such Unit contacted the investigating agency, which, in turn, on or about December 10, 1954, notified the above claimants that the motor vehicle was in possession of the Division of Alcoholic Beverage Control.

From the events above recited it appears that John Mangano, and his successors, the Merrimac Mutual Fire Insurance Company and General Exchange Insurance Company, are wholly innocent in the matter, and the actual owners of the stolen Chevrolet sedan. Although considerable time has elapsed since the proceedings resulting in the forfeiture of the car terminated in due course according to law, the claimants were not responsible for the delay in presenting their claim. The motor vehicle is still available for return. Its retail value is less than $1150.00. Simple justice dictates that the car should be returned to the claimants upon payment of the costs of its seizure and storage.

Accordingly, so much of my Order of September 14, 1954 as directs the forfeiture of the Chevrolet sedan therein described is hereby rescinded and, instead, it is

DETERMINED and ORDERED that if on or before the 7th day of April, 1955, Merrimac Mutual Fire Insurance Company and General Exchange Insurance Company pay the costs of seizure and storage of the Chevrolet sedan, such motor vehicle will be returned to them.

WILLIAM HOWE DAVIS
Director.

Dated: March 29, 1955.

10. DISQUALIFICATION REMOVAL PROCEEDINGS - FIVE YEARS' GOOD CONDUCT - APPLICATION TO LIFT DISQUALIFICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33:1-31.2.

Case No. 1214.

CONCLUSIONS AND ORDER

BY THE DIRECTOR:

In 1929, when petitioner was 12 years of age he was convicted of juvenile delinquency because of the theft of an automobile with another boy on an alleged "joy ride." In connection therewith, or because of truancy, he was sent to the Jamesburg State Home for Boys where he remained for nine months. In October 1934, when he was 17 years of age, petitioner was arrested for grand larceny because of stealing an automobile with several other boys, again allegedly

for a "joy ride." At approximately the same time, or shortly thereafter, he was also arrested for breaking, entering and larceny during which he and several other boys broke into a building and stole a quantity of brass and copper valued at $200.00. Petitioner was convicted in both matters; was fined $25.00 (and was apparently ordered to make restitution) and was sentenced to Annandale Reformatory for an indefinite period, where he remained fourteen months. In February 1950, petitioner was convicted of sale of alcoholic beverages to a minor and was fined $100.00.

On May 26, 1950, petitioner was advised that he was ineligible to be employed by any liquor licensee (or to hold any liquor license) in New Jersey because the crime of which he had been convicted in 1934 involved moral turpitude. On petitioner's request for reconsideration, that determination was reaffirmed September 3, 1952. Re Eligibility Case No. 619, Bulletin 943, Item 10.

At the hearing herein, petitioner testified that, for five years last past, he has been employed as a butcher in a food market and as a hotel clerk. He further testified that since February 1950, he has not been convicted of any crime and has not had any difficulty with the law since that time. This is confirmed by the fingerprint returns and the Chief of Police of the municipality in which petitioner resides reports that there is no complaint or investigation involving petitioner presently pending. Petitioner also testified that he would like to obtain a plenary retail consumption license.

Petitioner produced as witnesses three persons (the manager of a motel and two retail storekeepers) who testified that petitioner bears a good reputation in the community and has been law-abiding for at least five years last past.

Petitioner's record, particularly as a youth, is unenviable and, as an adult, he has been convicted of a violation of the Alcoholic Beverage Law (sale of alcoholic beverages to a minor). However, under all the circumstances, I find that he has been law-abiding for more than five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest. Petitioner is hereby admonished to avoid any further violations of the law or state or local alcoholic beverage regulations. His failure to heed this warning may have serious consequences.

Accordingly, it is, on this 31st day of March, 1955,

ORDERED that petitioner's statutory disqualification because of the conviction of the crimes referred to herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

WILLIAM HOWE DAVIS
Director.

11. LIMITED WHOLESALE LICENSE - OBJECTION TO TRANSFER OF LICENSE HELD TO BE WITHOUT MERIT - APPLICATION FOR TRANSFER GRANTED.

In the Matter of Objections to an Application for Transfer of Limited Wholesale License WL-62 from Horlacher Brewing Co., 311 Gordon Street, Allentown, Pennsylvania, to

R. S. WOOD, INC.
Washington Highway, Route 24 and Hensfoot Road
Lopatcong Township, N. J.

CONCLUSIONS

Paul M. Salsburg, Esq., Attorney for Applicant.
Leo J. Berg, Esq., Attorney for Objector-licensees.

BY THE DIRECTOR:

This is an application for the transfer of a Limited Wholesale License from Horlacher Brewing Co. to R. S. Wood, Inc., and from premises 31 Gordon Street, Allentown, Pennsylvania, to premises Washington Highway, Route 24 and Hensfoot Road, Lopatcong Township, New Jersey. Written objections were filed to the transfer of the license in question, as a result of which a hearing was held at this Division. At the hearing twenty-one persons, either speaking for themselves individually or as officers of corporate-licensees, appeared in opposition to the transfer. All of these objectors, with the exception of one holding a Wholesale License and two holding Limited Wholesale Licenses, were holders of State Beverage Distributor's Licenses and were members of the State Beverage Distributors' Association. The objections made were to the effect that there was no need or necessity for the transfer of the license as requested.

It appears from the record that the Horlacher Brewing Co. has held the Limited Wholesale License since July 16, 1947, to date, for premises 311 Gordon Street, Allentown, Pennsylvania. It has consented to transfer the said license to the applicant herein so that its beer might be distributed in New Jersey from a point therein rather than making distribution thereof from without the State.

It is to be noted that the municipality in which the premises sought to be licensed (leased by applicant) has not objected to the transfer of the license.

I have read the transcript of the record prepared in the instant matter, and I am of the opinion that the objections made are not of sufficient weight for me to deny the transfer applied for. I am satisfied that the transfer to the applicant and to the proposed premises would not in any way be harmful to the alcoholic beverage industry. Therefore, I shall grant the transfer in accordance with the application filed in this matter.

WILLIAM HOWE DAVIS
Director.

Dated: March 22, 1955.

12. STATE LICENSES - NEW APPLICATION FILED.

August F. Blume
T/a Rae Motor Lines
929 South 19th Street
Newark, N. J.
Application filed April 25, 1955 for Transportation License

William Howe Davis
Director.