

Greenberg

Ambrose

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

BULLETIN 2000

September 23, 1971

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - CHANCELLOR DELICATESSEN v. NEWARK.
2. DISCIPLINARY PROCEEDINGS (Woodbury) - SALE TO MINOR - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Newark) - GAMBLING (NUMBERS) - LICENSE SUSPENDED FOR 60 DAYS.
4. DISCIPLINARY PROCEEDINGS (Guttenberg) - GAMBLING (NUMBERS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 12 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Belmar) - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.
6. DISCIPLINARY PROCEEDINGS (East Orange) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Red Bank) - LEWDNESS AND IMMORAL ACTIVITY (OBSCENE LITERATURE) - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Asbury Park) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Hackensack) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.
10. DISCIPLINARY PROCEEDINGS (Trenton) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.
11. DISCIPLINARY PROCEEDINGS (Pohatcong Township) - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

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

BULLETIN 2000

September 23, 1971

1. APPELLATE DECISIONS - CHANCELLOR DELICATESSEN v. NEWARK.

Chancellor Delicatessen &)
Restaurant, Inc.,)
)
Appellant,)
v.) On Appeal
)
Municipal Board of Alcoholic) CONCLUSIONS and ORDER
Beverage Control of the City)
of Newark,)
Respondent.)
-----)

Jacob M. Goldberg, Esq., by Gerald B. Goldberg, Esq., Attorney for
Appellant
William H. Walls, Esq., by Althea A. Lester, Esq., Attorney for
Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which by resolution dated March 31, 1971, denied appellant's request to extend its bar in the licensed premises in accordance with a sketch submitted.

Appellant alleges that the decision of the Board was rendered without proofs having been adduced by any actual testimony nor was its conclusion the result of any determination that such extension would be adverse to public health, safety or welfare.

The Board answered that its decision was based upon an investigation of the licensed premises and that its conclusion was that such extension of the bar would be contrary to the health, safety and public welfare of the "citizens in that community."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. There was no transcript available of any hearing relating to the action before the Board.

Max Melnick (appellant's president and a principal stockholder) testified that appellant conducted a liquor-delicatessen and over the past few years the character of the clientele has changed significantly. While previous patrons preferred to be seated at tables while eating and consuming beverages, the present patronage used the short service-type bar to overfilling; hence the application.

In recounting the long history of its establishment, with a description of the present facilities, it became apparent that the premises contained the bar as reflected in the sketch, but it was merely covered and not used. The extended portion had been unused for some years and, because appellant desired to uncover it and use it again, he assumed an application for that purpose would have to be made to the Board. Appellant's counsel

was personally unaware of the bar's existence and represented that, had he known these presently revealed facts, no application would have been made nor, indeed, have been required. Counsel for the Board indicated this information had not been presented to the Board and he could not give its expression concerning it. The hearing was then adjourned to a continued date, with the following direction:

"From the discussion that ensued at side bar, it appears that a question has arisen whether or not this application in this matter ever needed to have been made. From the testimony of this witness it would appear that the premises have contained a bar not in use at the present time but available for usage for many years.

"As this question cannot here be resolved today, it is, therefore, remanded to the city board for the purposes of (a) determining if an application ever needed to be filed, (b) assuming that it needed to be filed, whether or not disposition of the matter by the city would be identical to its original conclusion mindful of the existing bar and (c) if (a) and (b) are not resolved easily then for the municipal board of alcoholic beverage control to develop a resolution in its denial setting forth the grounds of it, all of which to be done and to return here so the matter may be continued up until June 28, at two p.m."

Jurisdiction was, of course, retained by this Division.

On the return date of continued hearing counsel for the Board failed to appear, nor did he request a further adjournment thereof. Furthermore, neither the Division nor appellant's attorney received any written memoranda from the Board respecting the questions posed to it. Further testimony of appellant was taken relating to visits made to the licensed premises by two of the members of the Board (Messrs. Slaughter and MacDonald). Appellant's witness stated that from their visits his impression was that they were satisfied that appellant's bar, as existed then and present now, was as he described it. The original bar and its present size, inclusive of the portion covered, is twenty-two feet. At the conclusion of the testimony counsel for appellant moved that the Director establish appellant's right to use the prior existing bar.

It is a long-established principle that the Director does not issue ex parte orders against a municipality (Re Wiener, Bulletin 169, Item 13). However, that principle is not applicable here since the Board's action was final. It adopted the resolution from which an appeal was taken, responded to the petition of appeal, and appeared by counsel at the initial hearing before this Division. Samuel Berelman, Inc. v. Camden, Bulletin 1940, Item 1; White v. Atlantic City, 62 N.J.L. 644 (1899). In short, the Board can be said to have abandoned its defense or at least entered no testimony in support thereof.

In light of the evidence adduced at the plenary de novo hearing indicating that the existing bar in the premises, which is twenty-two feet in length, has been there for more than fifteen years, and it further appearing from the testimony that two members of the Board have visited the premises and apparently have satisfied themselves of the right of appellant to use this existing bar, I recommend that an order be entered reversing the action of the Board, and authorizing full use of the bar in the said premises as set forth in the sketch hereinabove referred to.

Conclusions and Order

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

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

Accordingly, it is, on this 28th day of July 1971,

ORDERED that the action of respondent be and the same is hereby reversed, and that appellant be and is hereby authorized to make full use of the bar in its licensed premises as set forth in sketches filed with respondent Board.

Richard C. McDonough
Director

2. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Charles H. Bensel
t/a Thrifty Beer & Soda Mart
Rear building 666 Mantua Avenue
Woodbury, N. J. 08096

)
)
) CONCLUSIONS
) AND ORDER
)

Holder of State Beverage Distributor's License SBD-39 issued by the Director of the Division of Alcoholic Beverage Control.

Alvin G. Shpeen, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 8, 1971 he sold alcoholic beverages to a minor, age 15, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for thirty days (Re Castellucia, Bulletin 1949, Item 4) with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 23rd day of July 1971,

ORDERED that State Beverage Distributor's License SBD-39 issued by the Director of the Division of Alcoholic Beverage Control to Charles H. Bensel, t/a Thrifty Beer & Soda Mart for premises Rear building 666 Mantua Avenue, Woodbury be and the same is hereby suspended for twenty-five (25) days commencing 9:00 a.m. Monday, August 9, 1971 and terminating 9:00 a.m. Friday, September 3, 1971.

Richard C. McDonough
Director

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against

Mariner's Bar, Inc.
t/a Ben's Round Bar
500 Broadway
Newark, N. J.,

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-523, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

-----)
James R. Schlosberg, Esq., Attorney for Licensee
Francis P. Meehan, Jr., Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On October 31, November 4, 6 and 17, 1970, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery commonly known as the 'numbers game', and further on said date of November 17, 1970, you allowed, permitted and suffered in and upon your licensed premises, slips, tickets, records, documents, memoranda and other writings pertaining to the aforementioned gambling activity; in violation of Rule 7 of State Regulation No. 20.
- "2. On October 31, November 4, 6 and 17, 1970, you allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises, and further on said date of November 17, 1970, you allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The Division offered the testimony of two ABC agents in substantiation of the charges.

Both charges were amended to read "October 30" in place of October 31.

Agent R, who possessed sufficient experience in investigating gambling activities including numbers betting, testified that pursuant to specific assignment to investigate alleged gambling activity in the licensed premises, he visited the licensed premises on four occasions in October and November 1970.

In furtherance of the investigation, he first entered the licensed premises (a tavern) on October 30 at 1:15 p.m. and positioned himself at the bar. A male identified as "Leon" was tending bar. Agent R inquired of Leon whether he knew Willy's (later identified as Willy Martin) whereabouts. He identified Willy as "Willy, the short guy, the numbers man". Leon responded "Oh, you mean the guy who works next door?" and then informed him that Willy would be in at approximately 1:30 p.m. At approximately 1:30 p.m. Willy entered the tavern and sat next to agent R. Agent R ordered a drink for himself and for Willy. While the drinks were being served he handed Willy a dollar bill and said "Give me 343, 50 cents and 50 cents." Willy "took out a slip of paper, wrote down the bets on the slip of paper, accepted the dollar bill, put the slip of paper and the dollar bill together and placed it in his pocket." Leon was the width of the bar distant at the time. Willy informed the agent that if he hit, he should return the following day to collect.

Agent R returned to the licensed premises on November 4 at approximately 1:00 p.m. and positioned himself at the bar. Leon was tending bar. At 1:15 p.m. agent G entered and positioned himself next to agent R. Willy entered the premises at 1:30 p.m. and after informing agent R that he had to deliver a package, departed from the premises. Upon inquiring of Leon whether Willy could be relied upon to pay off a hit, Leon replied, "He's good that way. If you have a hit, he'll pay."

Upon his return Willy positioned himself near the ABC agents. Agent R handed Willy a dollar bill and in his natural tone of voice said, "I want 343 for 50 and 50". Agent G handed Willy a dollar bill and in his natural tone of voice said, "Give me 508 for 50 and 50". Willy recorded the bets on a slip of paper and pocketed the slip and the money. Leon was positioned across the bar from agent R consuming food at the time of these transactions.

Agents R and G revisited the licensed premises on November 6, 1970 at approximately 1:00 p.m. Although I am of the opinion that numbers betting activity was engaged in by agent R with an individual whom he identified by name as Gabriel Bronson and as Willy's father-in-law, the placing of the numbers bets occurred at a location not in the barroom proper and not within the sight, presence or hearing of any of the corporate licensee's employees.

On November 17, 1970, ABC agents R and G met with State Troopers Moaba, Bellecolle and DeFranco, prior to proceeding to the licensed premises and prepared a marked money list containing the serial numbers of two five-dollar bills and a one dollar bill. The currency was in agent G's possession. The agents entered the licensed premises at 1:00 p.m. and seated themselves at the bar. Agent R sat next to Bronson. A female, identified as Ruby Hilliard was tending bar. Moaba and Bellecolle entered the barroom at 1:05 p.m. and joined the agents at the bar. Agent G said to Bronson, "I owe you nine dollars from last week's bet". He then wrote on a slip of paper on the bar the following: "508 for 25 and 25, 264 for 25 and 25, 601 for 25 and 25, and 343 for 25 and 25." Bronson looked at the slip. Agent G then said to Bronson, "With those bets that's a total of \$11, right?" Bronson responded "Right". Agent G handed Bronson the two marked \$5 bills and the \$1 bill. Bronson pocketed the marked money and the slip. The troopers and the ABC agents identified themselves to

Bronson. The aforesaid numbers bet slip and the marked money was recovered from Bronson and received in evidence. The agents also identified themselves to Benjamin Long, president of the corporate licensee, who approached the bar after exiting from a rear room. Long denied having any knowledge of the betting activity.

It was stipulated that the testimony of agent G on direct examination would be corroborative of the testimony offered by agent R.

On cross examination agent G denied that he engaged in betting activity with Willy on the sidewalk adjacent to the licensed premises.

In defense of the charges, Willy Martin testified that he was employed part time at a package store adjacent to the subject licensed premises. Although he had conversed with the AEC agents in the licensed premises on dates which he could not recall and that on one occasion, one of the agents inquired of him of the whereabouts of his father-in-law, Gabe Bronson, in order to play some numbers, he at no time accepted numbers bets from either agent while in the licensed premises. On one occasion while he was in front of the package store one of the agents handed him a rolled up slip of paper and requested him to give it to Gabe. Later, upon looking at the slip in the package store, he observed numbers written thereon.

Leon Moore (previously identified as "Leon" by agent R) testified that he was employed as a bartender by the licensee. He was specifically instructed by Long not to permit gambling in any form in the licensed premises. On October 30, he observed agent R and Willy in conversation and upon hearing them converse about something he didn't think should be discussed in the licensed premises he requested them to leave. They did leave. Finally, he testified as follows:

"Q Was Willy Martin engaged in any form of gambling activity with either or both of these agents on October 30th or November 4th in the tavern premises?

A Well, I don't know."

Gabriel Bronson testified that on November 17, agent R entered the licensed premises and reached out to hand him money saying, "I owe you some money." He did not take the money. A State Trooper took money out of his pocket and picked up two five-dollar bills off the floor and placed it with the money taken from his pocket.

Ruby Hilliard who was tending bar on November 17, testified that she was serving drinks to "two detectives" who were seated next to Bronson. Three males entered the barroom. One of them (agent G) said to Bronson "Here's the \$11 that I owe you." The money and a slip of paper fell to the floor. Bronson was told to take everything out of his pockets onto the pinball machine. The money lying on the floor was picked up by one of the agents. Long had instructed her that he didn't want gambling or soliciting on the licensed premises.

On cross examination the witness asserted that she did not see what was written on the slip of paper that the agent attempted to hand to Bronson nor did she observe the agent write on the paper.

Benjamin Long testified that he usually reports at the licensed premises daily, between 1:00 p.m. and 2:30 p.m., has a drink at the bar and goes to his office. He seldom socializes in the barroom. He instructed his employees that he would not tolerate gambling of any kind or prostitution in the tavern.

Thus, it is apparent that a purely factual question is presented.

In evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

I have had an opportunity to observe the demeanor of the witnesses as they testified and, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony.

I am imperatively persuaded that the version given by agent R relative to the occurrences to which he testified is credible, factual and a true version. It is obvious that he was not improperly motivated in testifying as he did, nor did he have any personal animus against the licensee. The testimony as to the numbers betting activity engaged in by Martin and Bronson upon the licensed premises on October 30, November 4 and 17, 1970, was clear and convincing. On the other hand, I was totally unimpressed by the testimony of the witnesses for the licensee.

The testimony given by agent R and corroborated by the other agent, wherein he so graphically described the betting activities at the bar, amply justifies the conclusion that the proscribed activities were carried on in such open manner that the licensee's employees could have, or should have, observed such activity.

A licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. A licensee may not avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Inc., Bulletin 1557, Item 1. Most certainly, the licensee "suffered" the aforesaid gambling activities to take place on the licensed premises. See Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947).

Additionally, it is basic that, in disciplinary proceedings, a licensee is fully accountable for all violations committed or permitted by his agents, servants or employees. Rule 33 of State Regulation No. 20. Cf. in re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

A careful evaluation and consideration of the testimony adduced herein, and the legal principles applicable thereto, compel me to conclude that the Division has established the truth of the Charges 1 and 2 as to all dates mentioned therein except for the date of November 6, 1970, and I so find. Accordingly, I recommend that the licensee be found guilty of said charges, except for the date of November 6, 1970.

Concerning the date of November 6, 1970, in Charges 1 and 2, I am of the opinion that there is lacking the necessary preponderance of evidence to find guilt. Hence, I recommend that the licensee be found not guilty as to the date of November 6, 1970, referred to in both charges.

Licensee has a prior adjudicated record of suspension of license by the local issuing authority for fifteen days, effective November 11, 1963, for permitting a brawl. I further recommend that the prior record of suspension for dissimilar violation having occurred more than five years ago be disregarded and that an order be entered suspending the license for sixty days. Re Arnone, Bulletin 1971, Item 3.

Conclusions and Order

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

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

Since these violations occurred prior to March 23, 1971 when the increased penalty for said violations under the new policy (Re Arnone, Bulletin 1971, Item 3) went into effect, the licensee will be given the benefit of the prior established penalty therefor.

Accordingly, it is, on this 29th day of July 1971,

ORDERED that Plenary Retail Consumption License No. 523, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Mariner's Bar, Inc., for premises 500 Broadway, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, August 16, 1971, and terminating at 2:00 a.m. Friday, October 15, 1971.

Richard C. McDonough
Director

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 12 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Joseph DeAngelo & Anthony Merlino)
6912 Bergenline Avenue)
Guttenberg, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-17 (for the 1970-71 and 1971-72 license periods), issued by the Mayor and Board of Council of the Town of Guttenberg.)

-----)

Licensees, Pro se
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensees plead guilty to a charge alleging that on December 29 and 30, 1970 and January 5, 1971 they permitted the sale of lottery tickets, commonly known as the "numbers game" and possessed such tickets on their licensed premises, in violation of Rule 6 of State Regulation No. 20.

Absent prior record and the offenses having occurred prior to March 1971 (when a new policy increasing the penalty for such violation was established) Re Jean Arnone, Bulletin 1971, Item 3, the license will be suspended for sixty days (Re Three Joe's Tavern, Inc., Bulletin 1985, Item 2) with remission of twelve days for the plea entered, leaving a net suspension of forty-eight days.

Accordingly, it is, on this 28th day of July 1971,

ORDERED that Plenary Retail Consumption License C-17, issued by the Mayor and Board of Council of the Town of Guttenberg to Joseph DeAngelo and Anthony Merlino for premises 6912 Bergenline Avenue, Guttenberg, be and the same is hereby suspended for forty-eight (48) days, commencing at 3:00 a.m. on Friday, August 13, 1971 and terminating 3:00 a.m. on Thursday, September 30, 1971.

Richard C. McDonough
Director

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

Five Seasons, Inc.)
t/a Spirits Inn)
1401-A H Street)
Belmar, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2 issued by the Board of Commissioners of the Borough of Belmar.)

Licensee, Pro Se.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee was found guilty of a charge preferred by the Borough of Belmar that on March 18, 1971, it sold alcoholic beverages to a minor (age 17) in violation of Rule 1 of State Regulation No. 20, in consequence of which its license was suspended for a period of fifteen days.

The aforesaid suspension was stayed upon application of licensee to this Division for the imposition of a fine in lieu of said suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

It also appears that the local issuing authority adopted a resolution concurring with the request of the licensee for the imposition of a fine herein.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$600 in lieu of suspension.

Accordingly, it is, on this 23rd day of July 1971,

ORDERED that the payment of a fine of \$600 by the licensee is hereby accepted in lieu of a suspension of fifteen days.

Richard C. McDonough
Director

7. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (OBSCENE LITERATURE) - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA..

In the Matter of Disciplinary Proceedings against
 Raffaele G. Tomaino
 t/a Tomaino's Liquors
 161 Shrewsbury Avenue
 Red Bank, N. J.
 Holder of Plenary Retail Distribution License D-8 issued by the Borough Council of the Borough of Red Bank.

CONCLUSIONS AND ORDER

 Licensee, Pro Se.
 Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 23, 1971 he possessed lewd and obscene tabloid publications on the licensed premises, in violation of Rule 17 of State Regulation No. 20.

Absent prior record the license will be suspended for 30 days with remission of five days for the plea entered, leaving a net suspension of 25 days Re Hausner, Bulletin 1956, Item 1.

Accordingly, it is, on this 28th day of July 1971,

ORDERED that Plenary Retail Distribution License D-8 issued by the Borough Council of the Borough of Red Bank to Raffaele G. Tomaino, t/a Tomaino's Liquors for premises 161 Shrewsbury Avenue, Red Bank be and the same is hereby suspended for twenty-five (25) days commencing 2:00 a.m. Monday, August 16, 1971 and terminating 2:00 a.m. Friday, September 10, 1971.

Richard C. McDonough
Director

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Francesco A. Marinaccio)
t/a Marino's Bar & Restaurant)
807-809-811 Main Street)
Asbury Park, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-68 (for 1970-71 and 1971-72 license periods), issued by the City Council of the City of Asbury Park.)
-----)

Novogrod & Introcaso, Esqs., by Louis R. Di Lieto, Esq., Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 14, 1971 he possessed alcoholic beverages, consisting of one bottle of whiskey, the label of which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a prior record of suspensions: (1) for thirty days effective June 28, 1966 for violation of Rule 1 of State Regulation No. 38 and for permitting gambling on premises in violation of Rule 7 of State Regulation No. 20 (Re Marrinaccio, Bulletin 1688, Item 6); (2) for twenty-five days effective August 5, 1968 for permitting gambling on premises, in violation of Rule 7 of State Regulation No. 20 (Re Marrinaccio, Bulletin 1812, Item 7); (3) for sixty-five days effective November 11, 1968 for permitting gambling on premises, in violation of Rule 7 of State Regulation No. 20 (Re Marrinaccio, Bulletin 1831, Item 2); for forty-five days effective July 1, 1971, by the municipal issuing authority for sale to minors, in violation of Rule 1 of State Regulation No. 20, which suspension was stayed by order of the Director upon filing of an appeal therefrom.

The record of suspension of license which was to have been effective July 1, 1971 disregarded for penalty purposes since it is the subject of an appeal to this Division, but the prior record considered, the license will be suspended for twenty-five days (Re Rusin, Bulletin 1788, Item 8), with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 30th day of July 1971,

ORDERED that Plenary Retail Consumption License C-68, issued by the City Council of the City of Asbury Park to Francesco A. Marinaccio, t/a Marino's Bar & Restaurant, for premises 807-809-811 Main Street, Asbury Park, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. Tuesday, August 10, 1971, and terminating at 3 a.m. Monday, August 30, 1971.

Richard C. McDonough,
Director.

9. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

Leon Alston)
t/a Leon's Cocktail Lounge & Bar)
204 Central Avenue)
Hackensack, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-21 (for the 1970-71 and 1971-72 license periods), issued by the City Council of the City of Hackensack.)

Gladstone, Hart, Kronenberg, Mandis, Rathe & Shedd, Esqs., by Joseph C. Woodcock, Jr., Esq., Attorneys for licensee.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 5, 1971 about 11:15 p.m. he sold an alcoholic beverage for consumption off licensed premises, in violation of Rule 1 of State Regulation No. 38.

Absent prior record the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Shuffle Inn Incorporation, Bulletin 1976, Item 9. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$400.00 in lieu of suspension.

Accordingly, it is, on this 30th day of July 1971,

ORDERED that the payment of a \$400.00 fine by the licensee is hereby accepted in lieu of a suspension of license for ten days.

Richard C. McDonough
Director

10. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against

Leon Rosen and Isie Rosen, Partnership t/a Leon & Eddie's Tavern 531 Perry Street Trenton, N. J.

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-203 (for the 1970-71 and 1971-72 license periods), issued by the City Council of the City of Trenton.

Licensees, Pro Se.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensees plead guilty to a charge alleging that on Sunday, May 16, 1971 at 1:40 P.M. they sold alcoholic beverages in original container for off-premises consumption in violation of Rule 1 of State Regulation No. 38.

Licensees have a record of prior suspension of license by local issuing authority effective April 21, 1963 for sale to minors; this suspension for a dissimilar offense occurring more than five years ago disregarded, the license would normally be suspended for fifteen days with remission of five days for the plea entered, leaving a net suspension of ten days. Re Shuffle Inn Incorporation, Bulletin 1976, Item 9. However, licensees have made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensees to pay a fine of \$630.00 in lieu of suspension.

Accordingly, it is, on this 30th day of July 1971,

ORDERED that the payment of a \$630.00 fine by the licensees is hereby accepted in lieu of a suspension of license for ten days.

Richard C. McDonough
Director

11. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against Marvin Heater, Jr. t/a River Side Tap Room Riegelsville-Carpenterville Road Pohatcong Township R.D. Box 720, Phillipsburg, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6 (for the 1970-71 and 1971-72 license periods), issued by the Township Committee of the Township of Pohatcong.

Licensee, Pro Se. Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on May 14, 1971, it sold alcoholic beverages to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Buckwald, Bulletin 1982, Item 8. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$200.00 in lieu of suspension.

Accordingly, it is, on this 30th day of July 1971,

ORDERED that the payment of a \$200.00 fine by the licensee is hereby accepted in lieu of a suspension of license for five days.

Richard C. McDonough
Richard C. McDonough
Director