

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

BULLETIN 1382

March 23, 1961

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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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1. COURT DECISIONS - SMITH v. BOSCO, JERSEY CITY TAVERN OWNERS ASSOCIATION, MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF JERSEY CITY AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-15-60

MARIE AGNES SMITH)
t/a SMITTY'S TAVERN,)

Appellant)

vs.)

JOHN BOSCO AND PATSY BOSCO,)
JERSEY CITY TAVERN OWNERS)
ASSOCIATION AND MUNICIPAL BOARD)
OF ALCOHOLIC BEVERAGE CONTROL OF)
THE CITY OF JERSEY CITY, AND)
DIVISION OF ALCOHOLIC BEVERAGE)
CONTROL,)

Respondents.)

Argued February 20, 1961 -- Decided March 9, 1961

Before Judges Conford, Freund and Kilkenny

Mr. John J. Corcoran, Jr. argued the cause for Appellant.

Mr. James F. McGovern, Jr. argued the cause for Respondents, John Bosco and Patsy Bosco and Jersey City Tavern Owners Association.

The opinion of the court was delivered by FREUND, J.A.D.

This appeal raises the issue of whether economic hardship, brought about by inability to operate the licensed premises profitably, is a legally sufficient basis for permitting transfer of a Plenary Retail Consumption License under a Jersey City ordinance limiting such permission, if involving transfer to within 750 feet of other licensed premises, to cases where the licensee "shall be compelled to vacate for any reason * * * not caused by any action" on its part. The Municipal Board of Alcoholic Beverage Control of the City of Jersey City had granted the application to transfer, but its decision was reversed on appeal by the State Division of Alcoholic Beverage Control, the Director adopting in toto the conclusion of his hearing officer. The present appeal is from the Director's order.

Appellant, Marie Smith, t/a Smitty's Tavern, made application on April 18, 1960 for a transfer of her license from 220 Newark Avenue to 577 Jersey Avenue, Jersey City. The latter property being situated within 500 feet of the licensed premises, but within 750 feet of the licensed premises of the respondent Bosco, appellant sought to come under one of the exceptions contained in Section 4 of the applicable city ordinance, the relevant portion of which reads as follows:

"Section 4. From and after the passage of this ordinance, no Plenary Retail Consumption License shall be granted for or transferred to any premises, the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail Consumption License, provided, however, that if any licensee holding a Plenary Retail Consumption License, shall be compelled to vacate the licensed premises for any reason that in the opinion of the Municipal Board of Alcoholic Beverage Control was not caused by any action on the part of the licensee, or if the landlord of said licensed premises shall consent to a vacation thereof, said licensee may, in the discretion of the Municipal Board of Alcoholic Beverage Control, be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated."

At the hearing before the Jersey City Board, appellant's application was opposed by respondent Bosco and by respondent Jersey City Tavern Owners Association. The evidence adduced and facts stipulated established that appellant had been a tenant in the licensed premises at 220 Newark Avenue under a two-year lease from May 1, 1958 to April 30, 1960, at a monthly rental of \$200, with option to renew for an additional two years at a rent to be negotiated; that at the expiration of the lease, she had continued as a monthly tenant at the same rental rate for the month of May 1960, but had given the landlord notice of intention to vacate on June 1, 1960; that the rent for the premises at 577 Jersey Avenue would be \$75 per month for the first year and \$100 per month thereafter; that she wants the license transferred "because we are losing money"; and that her reason, therefore, for seeking to relocate the license is "purely an economic one."

By resolution filed May 3, 1960, the Municipal Board granted appellant's application to transfer on the ground that she had "conformed with all requirements as set forth in Section #4" of the ordinance.

On respondent's appeal to the Division, the case was submitted to the hearer on the transcript below and the additional testimony of Louis Guss, owner of the premises at 220 Newark Avenue. Guss testified that he had offered to renew appellant's lease at the existing rental of \$200 a month, and that although a provision for \$20 a month additional to cover water and sewerage charges would be continued in the new lease, he would, as previously, waive the payment of that charge. He further said that he "did everything in our power" to keep the appellant as a tenant, including "offering to give them some consideration in the rent and fix up the place and make some improvements * * * ." The hearer determined in his report that:

"It is perfectly clear that the respondent-licensee's inability to operate the licensed business profitably cannot form the basis of a finding that thereby the licensee was compelled to vacate for any reason not caused by any action on the part of the license. The entire design of the distance-between-premises ordinance would be set for naught if the licensee could transfer his license anywhere within 500 feet of his licensed premises merely on the basis that he could do better business at the new location."

Appellant's argument on this appeal is twofold. She claims, first, that her landlord's insistence on maintaining the \$200 monthly rental and \$20 water charge is, in the light of changed neighborhood

conditions reducing the possible value of the licensed premises, tantamount to raising the rent exorbitantly and therefore a disguised variety of compulsory vacation of the premises. Alternatively, she urges that inability to operate at a profit constitutes sufficient hardship to bring a licensee within the local Board's discretionary power to grant exceptions under Section 4.

The ordinance under consideration has been before this court on prior occasions. In Tube Bar, Inc. v. Commuters Bar, Inc., 18 N.J. Super. 351 (App. Div. 1952), the court, as an alternate ground of decision, held that a licensee whose lease had two years and five months to run, who had never been given any notice to terminate, and who was not imminently exposed to a lease renewal conditioned on an "exorbitant increase in the rental," or to any other action amounting to compulsion, was not entitled to be excepted from the distance requirements of the ordinance. Dal Roth v. Division of Alcoholic Beverage Control, 28 N.J. Super. 246 (App. Div. 1953), held that the benefit of the transfer restriction exceptions in Section 4 extended only to existing licensees and did not embrace an applicant for the license of one who had previously gone out of business and had no premises to vacate. The court there indicated, ibid. at p. 254, in language with which we are entirely in accord, that the alleviating provisions in the ordinance, inserted in fairness to licensees and not by statutory compulsion, should be strictly construed, in conformance with the public policy behind R.S. 33:1-40, enabling local governing bodies to limit the number of retail liquor outlets within their jurisdiction.

With respect to appellant's initial contention, the record is devoid of evidence from which it might reasonably be inferred that her landlord's rent demand was exorbitant. In her exceptions to the hearer's report, appellant charges that depreciation of the neighborhood and the exodus of former customers have created a situation in which a rental of \$200 per month is unreasonable; however, no evidence of comparable rentals or land values in the neighborhood was received. While there might be circumstances in which a landlord's insistence on maintaining past rentals, in the face of depressed local conditions, could arguably be characterized as an "exorbitant" demand and possibly be held grounds for granting the licensee a transfer, no such situation has been presented by appellant in her proofs.

Turning to the appellant's second point, we are in agreement with the Director that vacation of the premises because of inability to operate the enterprise profitably is not the type of external compulsion, unrelated to "any action on the part of the licensee," which is contemplated by the ordinance as a basis for waiving the distance restrictions. To hold otherwise would invite temporary manipulation of management in order to achieve the desired level of loss warranting a transfer to ultimately more profitable business locations; would introduce into license transfer proceedings the complex and subjective issues of what constitutes an adequate return and whether the allegedly meager return of the applicant has been caused by his own mismanagement or by external economic conditions; and would generally encourage personal efforts on the part of licensees to subvert and undermine the policy supporting the distance regulations -- the spacing of drinking establishments in a pattern consistent with the public interest.

Our conclusions herein were foreshadowed by and implicit in Dal Roth v. Alcoholic Beverage Control, supra, where the licensee was adjudicated insolvent and its license was sold through a receiver. The court distinguished vacation by external compulsion from that brought about by internal financial disaster, noting that

"if the licensee is forced to vacate, the policy behind the ordinance and the law pursuant to which it was adopted will be relaxed to take care of his hardship, but if he is forced not only to vacate but also to sell, no aid can be extended to him." (at p. 255)

It is elementary that concern for the licensee's own financial misfortunes will not be elevated above the public interest. Cf. Hudson Bergen County Retail Liquor Stores Ass'n. v. Board of Com'rs. of City of Hoboken, 135 N.J.L. 502, 510 (E. & A. 1947). Administrative efforts to accommodate individual licensees must be accomplished within the framework of the existing legislation, construed in terms of the overriding public policy. So viewed, appellant's application and reasons therefor were properly held by the Director to be outside the scope of the relief clause of Section 4 of the ordinance. It would hardly further the salutary principle of keeping "the door of the escape clause as nearly shut as possible," Dal Roth v. Alcoholic Beverage Control, *supra*, at pp. 254-55, to provide every economically dissatisfied licensee with a potentially powerful opening wedge.

Affirmed.

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

In the Matter of Disciplinary Proceedings against

DOROTHY TOWNS STRITTMATTER
9 Hyers Street
Dover Township (Ocean County)
PO Toms River, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of Dover Township.

James F. McGovern, Jr., 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 the following charge:

"On November 4, 7, 10 and 14, 1960, 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 November 4, 7 and 14, 1960, two ABC agents at defendant's licensed premises placed horse race bets with Elisha P. Hyres, the husband of the barmaid, Hilda Hyres, who was on duty on aforesaid dates. On November 10, 1960, Hilda Hyres, on behalf of her husband, accepted horse bets on the premises from the two agents. On November 14th aforesaid, through prearrangement with the local police authorities and the county prosecutor's office, two officers, accompanied by other ABC agents, came into the premises and found \$137, including eight one-dollar bills (which had been marked by the agents) in Elisha P. Hyres' possession. During the course of the raid one of the officers answered the telephone and "accepted" a \$20 horse race bet for Mr. Hyres.

By way of mitigation the attorney for the defendant has sent me an affidavit made by Mrs. Hyres and a letter setting forth therein, among other things, that the licensee was not in the licensed premises at any of the times that the alleged violations occurred, nor did she have any knowledge whatsoever of any such activity taking place within her establishment. I have carefully read this letter, the affidavit and the reports of the agents and do not find mitigating circumstances of sufficient weight to warrant imposition of a penalty less than the minimum imposed in cases of this character. A licensee is under a duty to exercise close supervision over his licensed premises and violations occurring therein cannot be excused because he had no personal knowledge of them. Re Beerman, Bulletin 1352, Item 8. Moreover, a licensee cannot escape the consequences of the acts of his agents. Rule 33 of State Regulation No. 20.

Defendant has a prior adjudicated record. On June 27, 1950 the local issuing authority suspended her license for five days for a sale of alcoholic beverages to a minor and remitted the penalty. The prior violation, which occurred more than ten years ago, will not be considered in fixing the penalty herein. Re Beerman, supra. I shall suspend the defendant's license for twenty-five days (the minimum suspension for gambling as herein when an employee of the licensee is involved). Re Lucignano, Bulletin 1253, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 23rd day of February, 1961,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of Dover Township to Dorothy Towns Strittmatter, for premises 9 Hyers Street, Dover Township, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Thursday, March 2, 1961, and terminating at 2:00 a.m., Wednesday, March 22, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

3. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

Auto. Susp. #191)
 In the Matter of a Petition to Lift the)
 Automatic Suspension of Plenary Retail)
 Distribution License D-28, issued by)
 the Board of Commissioners of the City)
 of Atlantic City to)
 PHILIP AND ROSE LAVAN)
 t/a LAVAN'S LIQUOR STORE)
 400 N. Massachusetts Avenue)
 and 503 Adriatic Avenue)
 Atlantic City, N. J.)

ON PETITION
ORDER

 Lawrence Milton Freed, Esq., Attorney for Petitioners.

BY THE DIRECTOR:

It appears from the petition filed herein that, on February 6, 1961, Rose Lavan was fined the sum of \$50 after she pleaded non vult in the Atlantic County Court to a charge of selling alcoholic beverages to a minor in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of the license held by petitioners for the balance of its term. R.S. 33:1-31.1. The license

has not been picked up because of the pendency of this proceeding.

It further appears that the local issuing authority suspended petitioners' license for fifteen days, less five for the plea, after petitioners pleaded non vult in disciplinary proceedings to a charge alleging sale to the same minor. The suspension was in effect from 9 a.m., January 2, 1961 until 9 a.m., January 12, 1961. Said suspension appears to be adequate. I shall grant the request to lift the automatic suspension.

Accordingly, it is, on this 16th day of February 1961,

ORDERED that the statutory automatic suspension of said license D-28 be and the same is hereby lifted and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM LIFTED UPON CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against)

WHIPPOORWILL SOCIAL CLUB)
327 Evesham Avenue)
Lawnside, N. J.)

ON PETITION ORDER

Holder of Club License CB-2, issued by the Borough Council of the Borough of Lawnside.)

David Novak, Esq., Attorney for Petitioner.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

By order dated January 4, 1961, the license of Whippoorwill Social Club was suspended for the balance of its term, effective at 3:00 a.m., January 11, 1961, with leave to file a petition to lift said suspension upon correction of the illegal situation then existing. In said order it was provided that said petition would not be considered prior to the expiration of twenty days from the date upon which the suspension became effective. Bulletin 1376, Item 7.

The petition filed herein by Whippoorwill Social Club sets forth that at a meeting duly held it adopted a new Constitution and By-Laws and elected new Officers and Directors. It further sets forth that new books of account have been established in which a complete record of all monies received and disbursed will be recorded and that a bank account, in which the money belonging to the Club will be deposited and from which withdrawals will be made as authorized by the club, has been opened in its name at the Haddonfield National Bank. As a result of subsequent correspondence, I have been advised that checks to be drawn on its bank account will be signed by the President and Treasurer of the Club.

Since it now appears that the unlawful situation has been corrected and since the minimum period of suspension imposed in the prior order has been served, the petition to lift the suspension will be granted.

Accordingly, it is, on this 24th day of February, 1961,

ORDERED that Club License CB-2 issued by the Borough Council of the Borough of Lawnside to Whippoorwill Social Club, 327 Evesham Avenue, Lawnside, be and the same is hereby restored to full force and operation effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ALEXANDER'S DELICATESSEN & CATERERS CORP.)
266 Jackson Avenue)
Jersey City, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-7, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Lester Miller, 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 that it sold alcoholic beverages at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulation No. 30.

On January 24, 1961, at 11:40 a.m., ABC agents visited corporate defendant's premises, which are operated as a combination delicatessen and packaged liquor store, and Agent J purchased a pint of J. W. Dant Kentucky Bourbon Whiskey from the saleswoman, later identified as Mrs. Amelia Rinkacs, secretary of the corporate defendant, for \$3.00, whereas the listed price was \$3.29. This transaction was witnessed by Agent S, who was standing nearby, and his statement is corroborative of the facts above set forth.

Mrs. Rinkacs then admitted the violation and called her husband, Charles J. Rinkacs, president of the corporate defendant, who surrendered the register tape showing the sale in question.

By way of mitigation, the attorney for the defendant has submitted a statement which has received my careful consideration. The statement sets forth that one Grace Reilly, the wife of an officer of the corporate defendant, was buried on the date of the aforesaid violation, and because of the funeral the store was being operated by an inadequate and inexperienced staff; that Mrs. Rinkacs, who completed the transaction which is the basis for the within charge, was a close friend of Grace Reilly, and was apparently so distraught and bewildered that she has no clear present recollection of the facts of the transaction.

Defendant has a prior adjudicated record. Effective April 8, 1957, its license was suspended for ten (10) days for selling alcoholic beverages during prohibited hours, in violation of Rule 1 of State Regulation No. 38. Bulletin 1167, Item 4. The minimum

penalty for the violation charged herein is ten days. Re Toms River Liquors, Inc., Bulletin 1362, Item 5. Considering the prior dissimilar violation within the past five years, I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea herein, leaving a net suspension of ten days. Cf. Re Gorcica, Bulletin 1189, Item 9.

Accordingly, it is, on this 27th day of February, 1961,

ORDERED that Plenary Retail Distribution License D-7, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Alexander's Delicatessen & Caterers Corp., for premises 266 Jackson Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m., Monday, March 6, 1961, and terminating at 9:00 a.m., Thursday, March 16, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

- 6. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - OBSTRUCTING PUBLIC VIEW TO PREMISES IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

RALPH DI BUONO)
t/a PHIL'S TAVERN)
655 McBride Avenue)
West Paterson)
PO Paterson, R.D., N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Mayor and Borough Council of the Borough of West Paterson.)

Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges that (1) he hindered, delayed and failed to facilitate an inspection, investigation and examination of his licensed premises by investigators of the Alcoholic Beverage Control, in violation of R.S. 33:1-35, and (2) he failed to keep blinds, shutters and/or curtains in his licensed premises fully opened or raised during prohibited hours, in violation of Section 2 of an Ordinance adopted by the Board of Council of West Paterson on December 14, 1949, as amended February 13, 1952.

On Sunday, January 15, 1961, between 12:05 p.m. and 12:25 p.m., ABC agents observed several males enter the licensed premises through the rear entrance thereto, and shortly thereafter sought to enter through said rear entrance. They found the same barred, and finally Agent P walked to the front entrance, attracted the attention of the licensee, identified himself, displayed his credentials and requested that he open the door. The defendant-licensee refused to do so, stating: "No, I'm closed. No one can come in until one o'clock"; and walked away. The defendant then walked to a sitting room, adjacent to and adjoining the main barroom. The door leading to the sitting room was bolted, and defendant entered the said room by a side entrance. The sitting room had its shades drawn and its interior was not visible from

the exterior. At about 12:20 p.m., the defendant finally admitted ABC agents into said licensed premises.

An examination of the premises disclosed that the sitting room, hereinabove referred to, was smoke-filled, apparently caused by recent occupancy, and four beer glasses and three whiskey glasses were found in the women's rest room.

Defendant has no adjudicated prior record. In mitigation of these offenses, I have read and carefully considered a letter written in defendant's behalf by his son, Joseph DiBuono, dated February 6, 1961, wherein he states that his father is 72 years of age, has poor eyesight, hearing in only one ear, and appears to be in constant fear of burglars. He has been in this type of business for nearly fifty years without any adjudicated violations prior to these above charged.

In consideration of all of the facts and circumstances herein, I shall suspend the defendant's license for the minimum period of fifteen days (Re Iacouzzi, Bulletin 1295, Item 8) on the first charge, and five days on the second charge (Re Greco, Bulletin 1016, Item 10). Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 27th day of February 1961,

ORDERED that Plenary Retail Consumption License C-14, issued by the Mayor and Borough Council of the Borough of West Paterson to Ralph DiBuono, t/a Phil's Tavern, for premises 655 McBride Avenue, West Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m., Monday, March 6, 1961, and terminating at 3:00 a.m., Tuesday, March 21, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

7. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED SALES - APPLICATION FOR RETURN OF MONEY DEPOSITED UPON RETURN OF MOTOR VEHICLE DENIED BECAUSE OF CARELESS INDIFFERENCE OF OWNER - ALCOHOLIC BEVERAGES FORFEITED.

In the Matter of the Seizure)	Case No. 10,404
on September 21, 1960 of a)	
quantity of alcoholic beverages)	ON HEARING
and a De Soto sedan in Seabrook)	CONCLUSIONS
Farms, off First Palantine Road,)	AND ORDER
in Upper Deerfield Township,)	
County of Cumberland and State)	
of New Jersey.)	

Mary Dixon, Pro Se.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether four - one-gallon jugs of wine and a De Soto sedan, described in a schedule attached hereto, seized on September 21, 1960 in Seabrook Farms, off First Palantine Road, in Upper Deerfield Township, Cumberland County, New Jersey, constitutes unlawful property and should be forfeited.

Mary Dixon, the registered owner of the De Soto sedan, appeared at the hearing and sought its return. No one opposed forfeiture of the alcohol.

Mary Dixon deposited under protest, the sum of \$60.00, the retail value of the said motor vehicle, as appraised for the Director, and the motor vehicle was delivered to her possession. Mary Dixon has stipulated that the Director should determine in the present proceedings whether such sum shall be forfeited or returned to her, pursuant to R.S. 33:1-66.

Reports of ABC agents and other documents in the file, presented in evidence, with the consent of Mary Dixon, disclosed the following facts:

As a result of information received from the Upper Deerfield Police Department, ABC agents questioned and obtained a sworn, written statement from one Bruce Bryant to the following effect; Bryant, a resident of Philadelphia, is a field worker at the Seabrook Farms. Transportation for him and other workers was arranged by the Seabrook Farms with one Marie McNish, in the De Soto sedan owned and registered in the name of Mary Dixon, who is a niece of the said Marie McNish.

Bryant stated that on the morning of September 21, 1960, he purchased from Marie McNish two glasses of wine which she poured from a container kept in the trunk of the said De Soto sedan, and he paid her thirty-five cents per drink. He also stated that he purchased wine from Marie McNish on several other occasions and that the said Marie McNish had sold wine to other persons.

Claimant testified that she has been a crew manager for about two years; that Marie McNish, her aunt, who lives near her home in Philadelphia, sells food to the crew workers at the Seabrook Farm and other farms; that she didn't know that her aunt was selling alcoholic beverages to the men. Upon cross-examination, claimant admitted that she knew that Marie McNish had been arrested "a couple of times, but I didn't inquire because I seen her out and everything, I didn't know what happened, I had too much of my business, you know what I mean."

Claimant and her aunt appear to be very intimate, not only in terms of their social contacts but in their business dealings. The record, in evidence, indicates that Marie McNish was charged with "keeping and maintaining a disorderly house" and violating the liquor laws in Philadelphia. She was again arrested in Philadelphia for violating the liquor act. Again in January 1959 and on March 7, 1960, she was arrested and charged with the illegal sale of liquor in Philadelphia.

It is incredible and inconsistent with normal experience to believe claimant's assertion that she was not aware of Marie McNish's illegal activities. I believe that claimant knew or should have known of the illegal activity of her aunt in transporting the alcoholic beverages in the trunk of her car and dispensing same. The alcoholic beverages, so found, constitutes unlawful property and are subject to forfeiture. R.S. 33:1-1(y), and R.S. 33:1-2, R.S. 33:1-66.

The believable evidence in this case establishes that Mary Dixon's conduct was one of careless indifference as to the use made of her car by Marie McNish. Under such circumstances, the request of Mary Dixon for the return of the deposit of \$60.00 will be denied. Seizure Case No. 8737, Bulletin 1065, Item 4; Seizure Case No. 9965, Bulletin 1297, Item 4.

Accordingly, it is on this 28th day of February, 1961

DETERMINED and ORDERED that the alcoholic beverages, described in Schedule "A", constitute unlawful property and the same be and hereby are forfeited in accordance with R.S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal

institutions, or destroyed in whole or in part, at the discretion of the Director of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the motor vehicle listed in Schedule "A" constitutes unlawful property and that the sum of \$60.00 representing the appraised retail value thereof, paid under protest to the Director by Mary Dixon to obtain the return thereof, be and the same is hereby forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with the law.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 4 - one-gallon jugs of wine
- 1 - De Soto sedan, Serial No. 32573, New Jersey Registration FCV 496.

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

In the Matter of Disciplinary Proceedings against)

MRS. DOROTHY B. SHAPIRO)
t/a DOUBLE R BAR)
S/S Wheat Road, East of)
Brewster Road)
Buena, PO RFD Vineland, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Buena.)

Shapiro, Brotman & Eisenstat, Esqs., by Samuel L. Shapiro, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"You sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Carmen ---, age 19, on Monday night, January 1, 1961 and Frederick ---, age 16, and Graham ---, age 19, on Monday night, January 1, early Tuesday morning, January 2, 1961 and on divers dates prior thereto, and allowed, permitted and suffered the consumption of alcoholic beverages by all said persons in and upon your licensed premises on the above stated respective dates; in violation of Rule 1 of State Regulation No. 20."

This matter was referred to this Division by the State Police. ABC agents obtained sworn statements from Frederick ---, age 16, Carmen ---, age 19, and Graham ---, age 19, wherein they stated that between 10:00 p.m., January 1, 1961, and 3:30 a.m., January 2, 1961, they were served and did consume alcoholic beverages at the defendant's licensed premises. It appears that they were served nip-sized bottles of beer by two bartenders, whom they knew as

"Frank" (later identified as Melvin Frank Jackson) and "Polly" (later identified as Polly Jackson). No inquiry was made nor were they required to make any representation of their ages.

Frederick --- and Graham --- admit that they were served six and eight bottles of beer, respectively, and were similarly served alcoholic beverages, without inquiry or representation as to age, on at least six prior dates, by the same bartenders at the defendant's premises. Thereafter, the above named minors identified the licensed premises as the place where they were served and consumed the alcoholic beverages.

The defendant-licensee was not present at the licensed premises on the dates referred to. However, she is answerable for the acts of her employees committed on her licensed premises, as set forth in Rule 33 of State Regulation No. 20.

By way of mitigation, the attorneys for the defendant have submitted a statement which I have carefully read and considered. They state that the licensee is an absentee operator who was herself-victimized by the bartenders, who absconded with a sum of money belonging to her; that the business has been placed with several brokers for sale and has been advertised for sale in the Atlantic City Press and that she is very desirous of disposing of the business as soon as possible. I do not, however, find such extenuating circumstances in this case, which would impel me to impose less than the established penalties in cases of this type.

Defendant has a prior adjudicated record. Effective June 16, 1958, her license was suspended for five days by the local issuing authority for sale during prohibited hours. Again, effective January 5, 1959, her license was suspended for twenty-five days by the local issuing authority for sale during prohibited hours.

The minimum penalty for the sale of alcoholic beverages to a 16-year-old minor is twenty-five days. Re Campbell, Bulletin 1133, Item 7. However, considering the number of minors involved, the amount of alcoholic beverages consumed, the length of the stay of the minors on the licensed premises and the prior record of dissimilar violations by defendant during the past five years, I shall suspend her license for forty days. Cf. Re Primiterra, Bulletin 1197, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 28th day of February, 1961,

ORDERED that Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Buena to Mrs. Dorothy B. Shapiro, t/a Double R Bar, for premises on S/S Wheat Road, East of Brewster Road, Buena, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m., Tuesday, March 7, 1961, and terminating at 3:00 a.m., Tuesday, April 11, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

RALPH KAPLUS & IDA KAPLUS t/a "105" CLUB 105 Washington Street Newark 2, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-517, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Morris Barr, Esq., Attorney for Defendant-licensees
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed on their licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On January 19, 1961, an ABC agent made a preliminary test of the open stock of alcoholic beverages in defendants' licensed premises and seized a 4/5 quart bottle labeled "Cutty Sark Blended Scots Whisky, 86 Proof" when his test indicated that the contents thereof appeared to be off in color.

Subsequent analysis by the Division's chemist disclosed that the contents of the bottle were low in solids and acids, and had added artificial color when compared with an analysis of the contents of a genuine bottle of the same item.

Defendants, through their attorney, have submitted a statement by way of mitigation wherein it is stated that ABC agent examined seventy-three bottles and found only one bottle contained contents not truly reflected by the label, and that defendants were not aware of the discrepancy. In disciplinary proceedings it is not necessary to establish that a licensee has knowledge that an alcoholic beverage found in his possession is not truly labeled. Cedar Restaurant v. Hock, 135 N.J.L. 156.

Defendants as partners have no prior adjudicated record. However, effective April 29, 1953, when defendant Ralph Kaplus held a license with one Harry Seligman for these premises, said license was suspended for forty days for (1) foul language on licensed premises, (2) sale of alcoholic beverages to intoxicated persons, and (3) sale of alcoholic beverages during prohibited hours. Bulletin 967, Item 4. The prior dissimilar record having occurred more than five years ago will not be considered in fixing the penalty herein. Re Wilcox, Bulletin 1232, Item 4.

Under the circumstances, I shall suspend defendants' license for a minimum period of ten days for the said violation. Re Carson, Bulletin 1333, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 2nd day of March 1961,

ORDERED that Plenary Retail Consumption License C-517, issued

by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ralph Kaplus & Ida Kaplus, t/a "105" Club, for premises 105 Washington Street, Newark, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, March 13, 1961, and terminating at 2 a.m. Saturday, March 18, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

10. STATUTORY AUTOMATIC SUSPENSION - SUSPENSION STAYED PENDING ACTION BY LOCAL ISSUING AUTHORITY IN DISCIPLINARY PROCEEDINGS.

Auto. Susp. #193)	
In the Matter of a Petition to)	
Lift the Automatic Suspension)	
of License C-152, issued by the)	ON PETITION
Board of Alcoholic Beverage Control)	ORDER
for the City of Paterson to)	
)	
NELSON "B" INC.)	
120 - 16th Avenue)	
Paterson, N. J.)	

BY THE DIRECTOR:

The petition herein discloses that on February 23, 1961, Lawrence Wilson (President of Nelson "B" Inc.) was fined \$50 in the Municipal Court of the City of Paterson after he was found guilty of selling alcoholic beverages to a minor, in violation of of R.S. 33:1-77. Said conviction resulted in the automatic suspension of the license held by the corporation. R.S. 33:1-31.1. Because the Division was informed that the licensee intended to apply for a stay, the license has not been picked up.

The petition sets forth that disciplinary proceedings have been instituted against the licensee by the local Board because of said sale and that hearing is scheduled to be held on March 8. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after said disciplinary proceedings have been decided. I conclude that at this time the effect of the automatic suspension should be stayed. Re Krygier, Bulletin 1321, Item 3.

Accordingly, it is, on this 2nd day of March 1961.

ORDERED that the aforesaid automatic suspension be stayed pending entry of a further order herein.

WILLIAM HOWE DAVIS
DIRECTOR

11. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED -
LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

CHARLES LOTCPEICH)
100 Somerset Street)
Garfield, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-52, issued by the Mayor and)
Council of the City of Garfield.)

Wallisch & Wallisch, Esqs., by Louis Wallisch, Jr., Esq., Attorneys
for Defendant -licensee.

William F. Wood, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed, on his licensed premises, alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On January 10, 1961, an ABC agent made a preliminary test of the open stock of alcoholic beverages in defendant's licensed premises, and seized two quart bottles labeled "Seagram's Seven Crown, American Blended Whiskey, 86 Proof", when his tests indicated that the contents thereof appeared to be low in proof and off in color.

Subsequent analysis by the Division's chemist disclosed that the contents of the bottles, when compared with the contents of a genuine bottle of the same product, varied substantially in solids.

By way of mitigation, the attorney for the defendant-licensee states that the defendant has no knowledge of how the violation occurred. Defendant has no prior adjudicated record. I shall suspend defendant's license for a minimum period of fifteen days for the said violation. Re Aston, Bulletin 1373, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 2nd day of March, 1961,

ORDERED that Plenary Retail Consumption License C-52, heretofore issued by the Mayor and Council of the City of Garfield to Charles Lotcpeich, for premises 100 Somerset Street, Garfield, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., Monday, March 13, 1961, and terminating at 3:00 a.m., Thursday, March 23, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

12. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE REPORTS WITH BEVERAGE TAX BUREAU - PREVIOUS SUSPENSION FOR BALANCE OF TERM LIFTED UPON FILING OF REPORTS AND PAYMENT OF PENALTIES.

In the Matter of Disciplinary Proceedings against)
)
 JAMES HECTOR MC NEILL)
 MC NEILL'S LIQUOR STORE)
 435 Broadway)
 Passaic, N. J.)
)
 Holder of Plenary Retail Distribution License D-21, issued by the Board of Commissioners of the City of Passaic.)
 -----)

ORDER

BY THE DIRECTOR:

By order dated December 5, 1960, I suspended defendant's license for the balance of its term, effective December 12, 1960, at 9:00 a.m., after finding him guilty of a charge alleging that he failed to file required reports with the Director of the Division of Taxation (Beverage Tax Bureau). Bulletin 1372, Item 9. In said order defendant was granted leave to apply to lift said suspension after the expiration of ten days from effective date thereof, provided the tax reports have been filed and the penalties and costs of these proceedings have been paid.

By letter dated March 7, 1961, the State Supervisor of the Beverage Tax Bureau has certified to me that defendant has filed all delinquent Beverage Tax Reports and paid the penalties assessed. It further appears that the suspension has been in effect for more than ten days.

Accordingly, it is, on this 8th day of March 1961,

ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated, and defendant's license restores to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR.

13. STATE LICENSE - NEW APPLICATION FILED.

Frank J. Heck Inc.
 546 Midland Avenue
 Saddle Brook, New Jersey
 Application filed March 20, 1961 for
 place-to-place transfer of State
 Beverage Distributor's License SBD-65
 from 230 Monroe Street, Passaic, New Jersey.

William Howe Davis
 William Howe Davis
 Director.