

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

BULLETIN 970

MAY 27, 1953.

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

BULLETIN 970

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MAY 27, 1953.

1. COURT DECISIONS - IN RE CLUB 17, INC. - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
NO. A-186-52, September Term, 1952

In the Matter)

of)

Disciplinary proceedings against)

17 CLUB, INC.)

17 William Street)

Newark 2, New Jersey,)

Holder of Plenary Retail Consump-)
tion License C-861 for the 1951-52)

and 1952-53 licensing years,)

issued by the Municipal Board of)

Alcoholic Beverage Control of the)

City of Newark, and transferred)

during pendency of proceedings to)

36-38 William Street)

Newark 2, N. J.)

Argued May 4, 1953. Decided May 25, 1953.

Before Judges Eastwood, Bigelow, and Jayne.

Mr. Maurice C. Brigadier argued the cause for appellant.

Mr. Samuel B. Helfand, Deputy Attorney General, argued
the cause for respondent (Mr. Theodore D. Parsons,
Attorney General of New Jersey).

The opinion of the court was delivered by

JAYNE, J.A.D.

The uncertainty of those future eventualities that are reasonably comprehensible must be considered ordinarily to inhere in one's choice of what is best to do. But one cannot always expect to rescue oneself from the disadvantageous consequences of a speculative choice of action by means of grasping upon some thin thread of the law however ably the strand is polished.

This corporate licensee holding a plenary retail consumption license was charged by the Director of the Division of Alcoholic Beverage Control with the violation of Rules 5 and 6 of State Regulations No. 20. Confidently supposing that a plea of non-vult would be conducive to the imposition of a relatively light and slender penalty, such a plea was submitted and as contemplated a hearing was waived. But, alas, the license was not suspended pro tempore but revoked.

It then became realistically apparent to the licensee that the expectation to lose the anchor but save the ship was fanciful and imaginative. Figuratively expressed, the licensee naturally desired to play his hand over again, but the Director of the Division would

not accede. The application of the licensee to subduct the unserviceable plea of non-vult and contest the charges was denied. The licensee feels aggrieved, hence this appeal.

We note initially that the licensee in the submission of the plea of non-vult was represented by an attorney. Counsel now engaged to prosecute the appeal proposes that a plea of non-vult is legally inappropriate and unauthorized in a proceeding of this nature; that the order of revocation of the license was grossly excessive in its punitive effect and constituted a punishment incommensurable with such a plea, and that the Director erroneously denied the licensee a hearing on the petition to permit a retraction of the plea and supplant it by a plea of not guilty.

The diligently prepared briefs of counsel treat of the origin, nature, import, purpose, and effect of a so-called plea of non-vult or nolo contendere in other than capital cases in the courts of criminal jurisdiction. Despite the inducement we refrain from a profuse discussion of the general subject. Suffice here to state that in our courts the plea of non-vult or nolo contendere has the equivalent pragmatical effect of a plea of guilty in the case in which it is entered, and its acceptance does not legally abridge or reduce the power of the court to impose the maximum penalty fixed by our pertinent statute as the punishment for the specific offense. Peacock v. Hudson Quarter Sessions, 46 N.J.L. 112 (Sup. Ct. 1884); State v. Henson, 66 N.J.L. 601, 608 (E. & A. 1901); State v. Osborne, 79 N. J. Eq. 430, 435 (Ch. 1911); State v. Alderman, 81 N.J.L. 549 (E.&A. 1911); Waters v. Court of Special Sessions, 132 N.J.L. 44 (Sup. Ct. 1944); Kravis v. Heck, 136 N.J.L. 161, 165 (E.&A. 1947); State v. Griffith, 14 N. J. Super. 77, 84 (App. Div. 1951); State v. Phillips, 20 N. J. Super. 60, 63 (App. Div. 1952), affirmed, 10 N. J. 503 (1952).

The early records reveal that the declaration or plea has long been recognized as an implied confession in which the defendant "doth not directly own himself guilty but in a manner admits it by yielding to the king's mercy." 2 Hawkins P. C. 31; 1 Chitty Crim. Law (1819 ed.) 430, c. 10. In practice the effect of the plea left nothing for the court to do except to impose sentence. Commonwealth v. Ingersoll, 145 Mass. 381 (1888); U. S. v. Norris, 281 U. S. 619, 623, 50 S. Ct. 424, 425, 74 L. ed. 1076 (1930); State v. Alderman, supra.

The plea has been advantageous to a defendant in that while it produces the implied confession of guilt in the criminal prosecution, it is not operative against him in a civil action arising from the commission of the same wrong. State v. Henson, supra.

It is not surprising that the plea has become the prototype of an answer or response of an accused to charges and complaints in punitive or disciplinary proceedings conducted by administrative agencies.

While statutes creating an administrative agent or body quite uniformly confer upon the agent or body the power to prescribe rules of practice and procedure to govern the proceedings before them, yet we have little, if any, doubt of the implied power of such agencies to adopt any fair and reasonable practice and procedure conducive to the ascertainment of the facts upon which the agency is authorized to decide and act and which will promote the ends of justice in the administration and effectuation of the statutory purpose. 73 C.J.S. 399, 434; 42 Am. Jur. 447; Cooper, Am. Agencies and the Courts (1951), p. 102.

Our legislature has empowered the Director of the Division of Alcoholic Beverage Control "to do, perform, take and adopt all other (in addition to those specified) acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration" of our Alcoholic Beverage Law, R. S. 33:1-23, 39. Pleas of

non-vult in proceedings of this nature have been heretofore recognized in Vesey v. Driscoll, 132 N.J.L. 293 (Sup. Ct. 1944); Galsworthy, Inc. v. Hock, 3 N. J. Super. 127 (App. Div. 1949).

Ought we participate in toying technically with terminology? Suppose this licensee upon being served with a copy of the charges and informed of the date designated for the hearing had not in his response employed the symbolic Latin term "non-vult" but replied, "A hearing is unnecessary. I do not desire to contest the charges," would the consequential import and effect of his answer be significantly different? We think not.

The axis of this appeal is the denial of the licensee's petition to withdraw his previous answer to the charges, now to deny them and to contest their verity at a hearing. The denial of that privilege by the Director is said to have been an unfair and mistaken exercise of discretion. We consequently inquire into the relevant circumstances.

On June 4, 1952 a copy of the charges was dispatched by registered mail to the licensee together with a notice of the date, time and place of the hearing thereof. The communication contained the following instructions:

"You must enter a plea of guilty or non vult or not guilty not later than Thursday, June 12, 1952 or at any time before that date. The plea may be submitted by letter provided it reaches us not later than that date."

The latter request is made in pursuance of the recommendations of a bulletin the pertinent portion of which reads:

" * * * Effort should be made to obtain the licensee's plea to the charges prior to the hearing date so that, in the event that a confessional plea of guilty or non vult is entered (thus making formal hearing unnecessary), the Director may be notified so that witnesses from the Division will not needlessly be compelled to attend the hearing."

The mature aforethought devoted by the officers of the licensee and its attorney to the submission of the plea of non-vult is clearly exhibited by a reproduction of the following correspondence between the attorney of the licensee and the representatives of the Director. It begins with the letter of the attorney dated June 12, 1952:

"I represent the 17 Club, Inc. of 17 William Street, Newark, New Jersey, upon whom you have served notice and charges and have advised that plea must be entered on or before June 12, 1952.

In behalf of said 17 Club, Inc. I wish to enter a plea of 'not guilty' to both charges.

I will be unable to prepare my defense for hearing on June 19, 1952 because I have a crowded calendar prior to and on that date.

I expect to be away from the office from June 23rd through July 4th and shall appreciate your adjourning the date for hearing to a date subsequent to July 5, 1952 and advising me of said date."

The Deputy Director replied on the same day:

"This acknowledges your letter dated June 12, 1952 entering a plea of not guilty on behalf of the above named licensee in pending disciplinary proceedings and requesting adjournment of the hearing presently scheduled for June 19th.

The plea of not guilty has been entered and pursuant to your request and for the reasons stated in your letter, the hearing is being adjourned to Wednesday, July 9, 1952, at 10:00 a.m."

Further adjournments of the hearing eventuated and on August 20, 1952 the attorney of the licensee transmitted the following communication:

"I have been requested and authorized by my client in the above matter to enter a change of plea on each of the charges from 'not guilty' to 'non vult.'

I herewith make such change of plea on each of the charges so that the plea now stands as one of 'non vult' and ask that you accept the change.

I appreciate the courtesies and cooperation afforded me by you in this matter.

As to the charge commonly called 'permitting solicitation for prostitution' I wish to state that no such thing took place on the licensed premises with the participation, knowledge or consent of the licensee or its agents and certainly there was no knowledge or participation or consent on the part of the licensee or its agents in connection with the charge commonly called 'permitting gambling (pool).'

These matters were heard by a Magistrate of the Family Court in the City of Newark the other day, and were dismissed in their entirety with respect to the licensee or its agents or employees.

In view of the action taken by the Family Court and in view of the fact that the change of plea herewith will result in expediting this complicated matter, I wish to urge that such judgment or penalty that may be rendered by your Board be made the minimum and become effective immediately.

I shall appreciate your acknowledging receipt of the change of plea and furnishing me with a copy of the conclusion to be entered to these charges."

The exchange of letters continued:

"This acknowledges your letter of August 20, 1952, received the same date, changing the plea in the above case from not guilty to non vult, alleging circumstances in mitigation of penalty and requesting that any penalty in the case be made effective 'immediately.'

The plea is being accepted and, consequently, the hearing scheduled will not be held. Hence, no appearance at this Division need be made by anyone on the hearing date heretofore fixed.

The statement of mitigating circumstances is also being accepted except to the extent that it may be in conflict with the non vult plea, and is being made a part of the file for the Director's consideration when deciding the case. Should he desire any hearing, you will be duly notified.

Copy of the Director's conclusions will be sent you when entered."

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"Confirming our telephone conversation of this date relative to the above matter, I wish to amend my letter addressed to the Department, attention of Edward F. Ambrose, dated August 20, 1952, so that this letter may supersede the letter of August 20, 1952.

I have been requested and authorized by my client in the above matter to enter a change of plea on each of the charges from 'not guilty' to 'non vult.'

I herewith make such change of plea on each of the charges so that the plea now stands as one of 'non vult' and ask that you accept the change.

These matters were heard by a Magistrate of the Family Court in the City of Newark the other day, and were dismissed in their entirety with respect to the licensee or its agents or employees.

In view of the action taken by the Family Court and in view of the fact that the change of plea herewith will result in expediting this complicated matter, I wish to urge that such judgment or penalty that may be rendered by your Board be made the minimum and become effective immediately.

I shall appreciate your acknowledging receipt of the change of plea and furnishing me with a copy of the conclusion to be entered to these charges, and wish to express my sincere thanks to you for the courtesies and cooperation afforded me in these matters."

It is not apparent that any microbe of deception, coercion, or unfairness on the part of the representatives of the Division wormed its way into the premeditations of those acting for the licensee. Cf. State v. Miller, 16 N. J. Super. 251 (App. Div. 1951); State v. Lenkowski, 24 N. J. Super. 444 (App. Div. 1953). To the contrary it is manifest that the course ultimately pursued by the licensee had been duly premeditated and freely chosen. In reality, that which is objectionable to the licensee is the degree of the resultant penalty.

The essence of the argument on behalf of the licensee is that the acceptance of a plea of non-vult is necessarily contingent and provisional upon the imposition of a mitigated penalty or forfeiture. While in practice some favorable consideration is normally given to the submission by an accused of such a plea, we are not aware of any precedential authority that unqualifiedly attaches such a provisional limitation on the acceptance of the plea.

In revoking the license the Director chose to impart in detail the characteristics of the charges which the licensee voluntarily refrained from attempting to refute and which the Director deemed to be of a nature warranting a revocation of the privilege further to vend intoxicating liquor. The alleged infractions of the rules were that the licensee had permitted upon the licensed premises solicitation for prostitution and lotteries commonly known as "fight pools."

"The sale of intoxicating liquor has, from the earliest history of our state, been dealt with by legislation in an exceptional way. It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied." Paul v. Gloucester County, 50 N. J. L. 585 (E. & A. 1888); Hudson Bergen, & c., Assn. v. Hoboken, 135 N. J. L. 502 (E. & A. 1947); Essex Holding Corp. v. Hock, 136 N. J. L. 28 (Sup. Ct. 1947); In re Schneider, 12 N. J. Super. 449 (App. Div. 1951).

The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support. In re Schneider, supra.

The allowance by the Director of a formal hearing on the petition to reinaugurate the proceedings was essentially a discretionary matter. Cf. Clark v. State, 57 N. J. L. 489 (Sup. Ct. 1895), affirmed, 58 N. J. L. 383 (E. & A. 1895); State v. Piracci, 14 N. J. Super. 319 (App. Div. 1951); State v. Pometti, 23 N. J. Super. 516 (App. Div. 1952). Our courts do not after the imposition of sentence interfere with the denial of a motion to withdraw a plea of nolo contendere unless it is necessary to do so to correct manifest injustice. Vide, Rule 2:7-10(e). In analogy, we discern no cogent reason to do so in the present instance. The revocation of the license does not appear to have been arbitrary or capricious but amply justified by the infractions of the licensee.

The determinations of the Director here brought under review are affirmed.

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2. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against JOSEPH ITALIANO T/a PARK TAVERN 250 Park Avenue East Rutherford, N. J., Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of East Rutherford.

CONCLUSIONS AND ORDER

Leo J. Berg, Esq.; Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold, served and delivered alcoholic beverages at his licensed premises to minors and allowed, permitted and suffered the consumption of alcoholic beverages by said minors in and upon his licensed premises in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that the North Arlington Police Department notified this Division that it had information indicating that a group of minor boys had been served drinks of alcoholic beverages on a number of occasions at defendant's licensed premises where there is also conducted a so-called "pizza pie" business. Accordingly investigators of this Division obtained signed sworn statements from Dominic V. --- and Andrew G. ---, both 15 years of age, and from Robert J. --- and James ---, both 16 years of age, all of whom stated that they had been served and had consumed drinks of beer at defendant's licensed premises on a number of occasions between October 1952 and February 1953. Statements were also taken from two other minors, one 14 years of age and the other 16 years of age, who, although they accompanied the four minors hereinabove named, apparently were not served any alcoholic beverages nor did they consume any such beverages at defendant's licensed premises.

From these statements it appears that the six minors are friends and are frequently in each other's company; that they started

to frequent defendant's licensed premises in October 1952; that they went there for "pizza pie" and for drinks; that between October 1952 and February 1953 Dominic, Andrew, Robert and James all were served drinks of beer by the glass or bottle at least once and some of them on five or six occasions by a waitress called "May", later identified as May Costanzo; that, on one occasion, Dominic drank an "old fashioned" cocktail; that, while the minors claimed, on one occasion when questioned, that they were 21 years of age and produced "identification" cards so indicating, neither the waitress nor the licensee, who was upon the licensed premises on several of the occasions, nor anyone else ever required any of them to make any written representation as to age.

On March 9, 1953, all of the minors directed ABC agents to defendant's licensed premises where each identified the premises as the place where the four minors hereinabove named were sold and served and consumed drinks of beer, as hereinabove related. All but the 14-year-old minor identified "May" (May Costanzo) as the person who had served all of such drinks of beer. While May Costanzo declined the agents' offer to make a written statement, she stated orally that she had been employed at defendant's licensed premises as a waitress at night for more than a year but claimed that she did not "recall" having seen any of the six minors in the tavern at any time.

Defendant has a prior adjudicated record. His license was suspended by the local issuing authority for three days, effective October 6, 1941 for sale of alcoholic beverages to minors and by the State Director for thirty-five days, effective February 19, 1951, for (1) allowing bookmaking and gambling on the licensed premises, (2) permitting sale of lottery tickets on his licensed premises and (3) sale of alcoholic beverages to a person actually or apparently intoxicated. The instant case is aggravated by the number (four) of minors involved (Re Camarda, Bulletin 946, Item 3) and by the fact that all four of the minors are 16 years of age or younger. Under the circumstances, including the licensee's prior record and considering the plea entered herein, I shall impose a net suspension of forty-five days. Defendant should give serious consideration to the possibility that any further violation may well result in the loss of his license.

Accordingly, it is, on this 18th day of May, 1953,

ORDERED that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of East Rutherford to Joseph Italiano, t/a Park Tavern, for premises 250 Park Avenue, East Rutherford, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. May 25, 1953; and it is further

ORDERED that, if any license be issued to this licensee or to any other person for the premises in question for the 1953-54 licensing year, such license shall be under suspension until 2:00 a.m. July 9, 1953.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - AGGRAVATED CIRCUMSTANCES - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

CHARLES SOLITAIRE
T/a ORIENTAL LIQUOR STORE & BAR
514 Oriental Avenue
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-186, issued by the Board of Commissioners of the City of Atlantic City.

Charles Solitaire, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold an alcoholic beverage at less than its price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that on December 12, 1952, defendant sold to an Atlantic City hotel, then unlicensed, 150 cases of 12 quart bottles each of Jericho Concord Grape Wine at \$6.40 per case. The minimum consumer resale price of the item in question, as listed in the Minimum Consumer Resale Price List effective October 1, 1952, was 75¢ per quart less a permissible discount of 10% on case-lot purchases. Thus the price at which each case was sold was \$1.70 less than the minimum price.

Defendant has a prior record. Effective October 29, 1942, the local issuing authority suspended his license for ten days for selling alcoholic beverages to minors. After defendant pleaded guilty in a criminal court to an indictment based upon the same sales, the Commissioner lifted the resulting automatic suspension of his license after the expiration of a total of twenty days from the date when the aforesaid suspension became effective. Re Solitaire, Bulletin 538, Item 4. However, since the prior violation was of a dissimilar character and occurred more than five years ago, I shall not consider it in fixing a period of suspension in this case. But circumstances are present which aggravate the violation herein charged. As already noted, the sale encompassed a large quantity of the alcoholic beverage (150 cases of 12 quart bottles each). Moreover, in a signed statement defendant explained: "I didn't make a record of it (the sale) because of the City 3% sales tax. Neither did I include the purchase in my disbursements...." Referring to the check received for the sale, he said: "I didn't deposit the check. I cashed it and made no record of it."

Defendant's calculated conduct was so aggravated as to warrant a more-than-ordinary penalty. In fixing the period of suspension, however, I shall take into account the confessional plea entered herein and shall suspend the license for a net period of thirty days.

Accordingly, it is, on this 18th day of May, 1953,

whether or not personally present (Rule 31 of State Regulations No. 20; Re DiSalvo, Bulletin 964, Item 7) and it is immaterial that the person who served the drinks received no compensation from the licensee. Re Gutman, Bulletin 936, Item 4. With respect to (3), mere verbal misrepresentation of age is not enough. R. S. 33:1-77. Furthermore, whenever multiple drinks are served, the licensee must see to it that they are not consumed by minors. Re Morganstern and Oliner, Bulletin 292, Item 9; Re Liss, Bulletin 941, Item 7; Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947).

The licensee has no prior record. The minimum penalty for sale of alcoholic beverages to a minor as young as 16 years is a 20-day suspension of the license. Re Gordon, Bulletin 906, Item 8. However, because of the number of minors involved, I shall suspend defendant's license for twenty-five days. Cf. Re Camarda, Bulletin 946, Item 3; Re Harbor Inn, Inc., Bulletin 949, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 14th day of May, 1953,

ORDERED that Plenary Retail Consumption License C-27, issued by the Township Committee of the Township of Galloway, to Helen Poirier, t/a Parisian Bar Lounge Restaurant, 2329 White Horse Pike, Galloway Township, P. O. Egg Harbor R. D., be and the same is hereby suspended for a period of twenty (20) days, commencing at 7:00 a.m. May 20, 1953, and terminating at 7:00 a.m. June 9, 1953.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - FRAUD IN APPLICATION AS TO CRIMINAL RECORD OF OFFICER OR DIRECTOR - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PENNS GROVE LODGE #820,
LOYAL ORDER OF MOOSE
Naylor Ave. & West Main St.
Penns Grove, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-104,
issued by the Director of the
Division of Alcoholic Beverage
Control.

John M. Summerill, Jr., Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that, in its license application for the current license year, it falsely denied that its governor had been convicted of any crime, in violation of R. S. 33:1-25. The file discloses that in 1943 the officer in question pleaded guilty in a federal court to the crime of unlawful possession, use and transfer of ration stamps, as a result of which he was sentenced to pay a fine. The conviction resulted from a criminal information filed against the officer in question and consequently his conviction upon his plea of guilty is a conviction of crime. It appears that the person involved is no longer an officer of defendant.

Defendant has a prior record. Its license was suspended twice by the State Commissioner (now Director): the first time for 35 days, effective April 20, 1944, for (1) selling alcoholic beverages during prohibited hours contrary to local ordinance, (2) sale of alcoholic beverages to nonmembers and (3) possession of slot machines on the licensed premises (Re Penns Grove Lodge #820, Loyal Order of Moose, Bulletin 615, Item 2); the second time for 25 days, effective November 17, 1947, for hindering and failing to facilitate an investigation (Re Penns Grove Lodge #820, Loyal Order of Moose, Bulletin 783, Item 2). The minimum penalty for a violation of the type involved in the instant case is a ten-day suspension of the license. Re Bridgeton Lodge #733, B.P.O. Elks, Bulletin 947, Item 4. However, in view of defendant's aforesaid prior record, I shall suspend the license for a period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 1st day of May, 1953,

ORDERED that Club License CB-104, issued by the Director of the Division of Alcoholic Beverage Control to Penns Grove Lodge #820, Loyal Order of Moose, Naylor Ave. & West Main St., Penns Grove, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 11, 1953, and terminating at 2:00 a.m. May 21, 1953.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against)
CARMELO PRIMICERI)
T/a HAMILTON HOTEL)
Bayview & Hamilton Avenues)
Seaside Heights, N. J.,)
Holder of Plenary Retail Consumption License C-18, issued by the Mayor and Council of the Borough of Seaside Heights, and transferred during the pendency of these proceedings to)
HAMILTON HOTEL, INC.)
T/a HAMILTON HOTEL, INC.,)
for the same premises.)

O R D E R

BY THE DIRECTOR:

It appearing that by Order dated November 6, 1952, the license then held by Carmelo Primiceri was suspended for a period of twenty days and that the effective dates of said suspension were to be fixed by subsequent order (Re Primiceri, Bulletin 948, Item 5); and

It further appearing that the license has been transferred, subject to said suspension, to Hamilton Hotel, Inc. for the same premises, and that the premises have now been reopened for business;

It is, on this 29th day of April, 1953,

ORDERED that the twenty-day suspension heretofore imposed shall commence at 2:00 a.m. May 5, 1953, and terminate at 2:00 a.m. May 25, 1953.

DOMINIC A. CAVICCHIA
Director

7. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against)

WILLIAM L. KING & ALICE W. KING)
T/a BLACKSTONE HOTEL)
234 East Cedar Ave. & 235 East)
Schellenger Ave.)
Wildwood, N. J.,)

O R D E R

-----)
Holders of Plenary Retail Consump-)
tion License C-5, issued by the)
Board of Commissioners of the)
City of Wildwood.)
-----)

BY THE DIRECTOR:

It appearing that by Order dated April 15, 1953, the license held by the above named defendants was suspended for a period of twenty days, and that the effective dates of said suspension were to be fixed by subsequent order (Re King, Bulletin 966, Item 1); and

It further appearing that defendants' premises have now been reopened for business;

It is, on this 29th day of April, 1953,

ORDERED that the twenty-day suspension heretofore imposed shall commence at 2:00 a.m. May 6, 1953, and terminate at 2:00 a.m. May 26, 1953.

DOMINIC A. CAVICCHIA
Director.

8. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against)

BENJAMIN MARTIN)
T/a THE RIPTIDE)
245-47-49 East Oak Avenue)
Wildwood, N. J.,)

O R D E R

-----)
Holder of Plenary Retail Consump-)
tion License C-9, issued by the)
Board of Commissioners of the)
City of Wildwood.)
-----)

BY THE DIRECTOR:

It appearing that by Order dated April 15, 1953, the license held by the above named defendant was suspended for a period of twenty days, and that the effective dates of said suspension were to be fixed by subsequent order (Re Martin, Bulletin 966, Item 3); and

It further appearing that defendant's premises have now been reopened for business;

It is, on this 15th day of May, 1953,

ORDERED that the twenty-day suspension heretofore imposed shall commence at 2:00 a.m. May 22, 1953, and terminate at 2:00 a.m. June 11, 1953.

DOMINIC A. CAVICCHIA
Director

9. CANCELLATION PROCEEDINGS - LICENSE IMPROVIDENTLY ISSUED IN VIOLATION OF P. L. 1952, CH. 284 - LICENSE CANCELLED.

In the Matter of Cancellation)
Proceedings against)

FRED BUCKMANN)
38 West Madison Avenue)
Dumont, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Limited Retail Distri-)
bution License DL-6, issued by)
the Mayor and Council of the)
Borough of Dumont.)
-----)

Fred Buckmann, Licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee was ordered to show cause why his limited retail distribution license should not be suspended, revoked or cancelled and declared null and void because:

"Said license was improvidently issued in violation of P.L. 1952, ch. 284 (R.S. 33:1-12.26 et seq.) prohibiting the issue of new limited retail distribution licenses, in that it is a new limited retail distribution license issued after May 23, 1952, the effective date of said Act."

Prior to the return day of the order to show cause, the licensee advised me in writing that he did not intend to contest the matter.

The file herein discloses that the Mayor and Council of the Borough of Dumont issued a new limited retail distribution license to Fred Buckmann for the above premises on April 28, 1953. However, Section 2 of P.L. 1952, ch. 284 (which became effective on May 23, 1952) provides:

"2. No new limited retail distribution license shall be issued in any municipality after this act becomes effective, except as provided in section four of this act."

There is nothing in Section 4 of the Act which would apply to the facts of this case and, hence, it appears that the license was issued in violation of the provisions of P.L. 1952, ch. 284.

The licensee has also advised me that no business has been transacted under the license and that the license certificate has been turned over to the Borough Clerk for safekeeping. Under the circumstances I shall cancel the license.

Accordingly, it is, on this 11th day of May, 1953,

ORDERED that Limited Retail Distribution License DL-6, issued by the Mayor and Council of the Borough of Dumont to Fred Buckmann, for premises 38 West Madison Avenue, Dumont, be and the same is hereby cancelled and declared null and void, effective immediately.

DOMINIC A. CAVICCHIA
Director.

10. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICE OR MANIFEST COVERING SHIPMENT - AGGRAVATED CIRCUMSTANCES - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against MAX BURDAY & HENRY BUDOWSKY T/a "ASHLAND FOOD MARKET" 75 yards above PRR on Evesham Ave. Delaware Township (Camden County) P.O. Ashland, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Delaware, Camden County.

Max Burday & Henry Budowsky, Defendant-licensees, Pro Se. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On December 15, 1952, you transported alcoholic beverages from Delaware Township (Camden County), New Jersey into the State of Pennsylvania in a vehicle without the driver thereof having in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating the bona fide name and address of the purchaser or consignee, and the brand name or size of the container and quantity of each item of alcoholic beverages being delivered and transported; in violation of Rule 3 of State Regulations No. 17."

The file discloses that, on December 15, 1952, agents of the Pennsylvania Liquor Control Board observed an automobile, owned by defendants and driven by one of the licensees, Henry Budowsky, being operated on a street in Philadelphia, Pa. When the agents searched this automobile they found a considerable quantity of alcoholic beverages. None of the bottles bore Pennsylvania tax stamps. Budowsky was unable to produce any invoices for these alcoholic beverages as required by Rule 3 of State Regulations No. 17. In a signed statement, he admitted that the alcoholic beverages had come from defendants' licensed premises and claimed that they were intended for delivery in New Jersey. I do not believe this claim. Unquestionably, defendants were attempting to sell and deliver a considerable quantity of alcoholic beverages in a neighboring state, apparently in violation of the laws of that state.

When the license was held by Henry Budowsky, it was suspended by the then State Commissioner for the balance of its term, effective February 4, 1946, for concealing the interest of Max Burday in the licensed business (Re Budowsky, Bulletin 692, Item 12). The suspension was lifted on February 28, 1946, following transfer of the license to Budowsky and Burday as partners. Re Budowsky, Bulletin 698, Item 8. Since said dissimilar offense occurred more than five years ago, I shall disregard it (Re Goldberg, Bulletin 962, Item 4).

Under the circumstances, I shall suspend defendants' license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Cf. Re Meisler, Bulletin 835, Item 7.

Accordingly, it is, on this 12th day of May, 1953,

ORDERED that Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Delaware, Camden County, to Max Burday & Henry Budowsky, t/a "Ashland Food Market", for premises located 75 yards above PRR on Evesham Avenue, Delaware Township, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. May 18, 1953, and terminating at 9:00 a.m. May 28, 1953.

DOMINIC A. CAVICCHIA
Director.

11. STATE LICENSES - NEW APPLICATIONS FILED.

Frank Russo
T/a Frank Russo Contract Carrier
205 N. Vermont Avenue
Atlantic City, N. J.

Application filed May 20, 1953 for Transportation License.

Carmine Coccaro and Annette Bonnie Coccaro
T/a Millville Beverage Company
Snyder Avenue
Vineland, N. J.

Application filed May 21, 1953 for transfer of State Beverage Distributor's License SBD-12 from Carmine Coccaro, t/a Millville Beverage Company.

DOMINIC A. CAVICCHIA
Director.

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

In the Matter of Disciplinary Proceedings against

ANTHONY GHIO
1441-51 - 45th Street
North Bergen, N. J.,

ON PETITION
O R D E R

Holder of Plenary Retail Consumption License C-39, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen.

BY THE DIRECTOR:

On March 30, 1953, I suspended defendant's license for the balance of its term, effective at 3:00 a.m. April 7, 1953, after he had pleaded non vult to charges alleging in substance that he was a "front" for Carmen Lateano. See Bulletin 968, Item 1. In said order it was provided that, upon correction of the illegal situation, defendant or other qualified person might petition me for an order lifting the suspension after at least twenty days of the suspension had been served.

Ernest Buzzerio has filed a verified petition wherein he sets forth that on May 11, 1953, the Board of Alcoholic Beverage Control of the Township of North Bergen transferred License C-39 from Anthony Ghio to Ernest J. Buzzerio, Nicholas Buzzerio and Samuel C. Buzzerio (a partnership), t/a Tonnele Cafeteria, and from premises known as 1441-51 - 45th Street to premises known as 7208 Tonnele Avenue, subject to the suspension now in effect. A certified copy of the resolution of the local Board is attached to the petition.

The verified petition filed herein further recites that neither Mr. Ghio nor Mr. Lateano will have any further interest in the license.

Petitioner requests me to lift the suspension.

It appearing from the verified petition that the unlawful situation has been corrected and that more than twenty days of the suspension have been served,

It is, on this 12th day of May, 1953,

ORDERED that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-39, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen be restored to full force and operation effective on the endorsement on the license certificate by the Secretary of said Board of the transfer of said license to Ernest J. Buzzerio, Nicholas Buzzerio and Samuel C. Buzzerio (a partnership), t/a Tonnele Cafeteria, for premises known as 7208 Tonnele Avenue, North Bergen.

Dominic A. Cavicchia
Dominic A. Cavicchia
Director.