

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

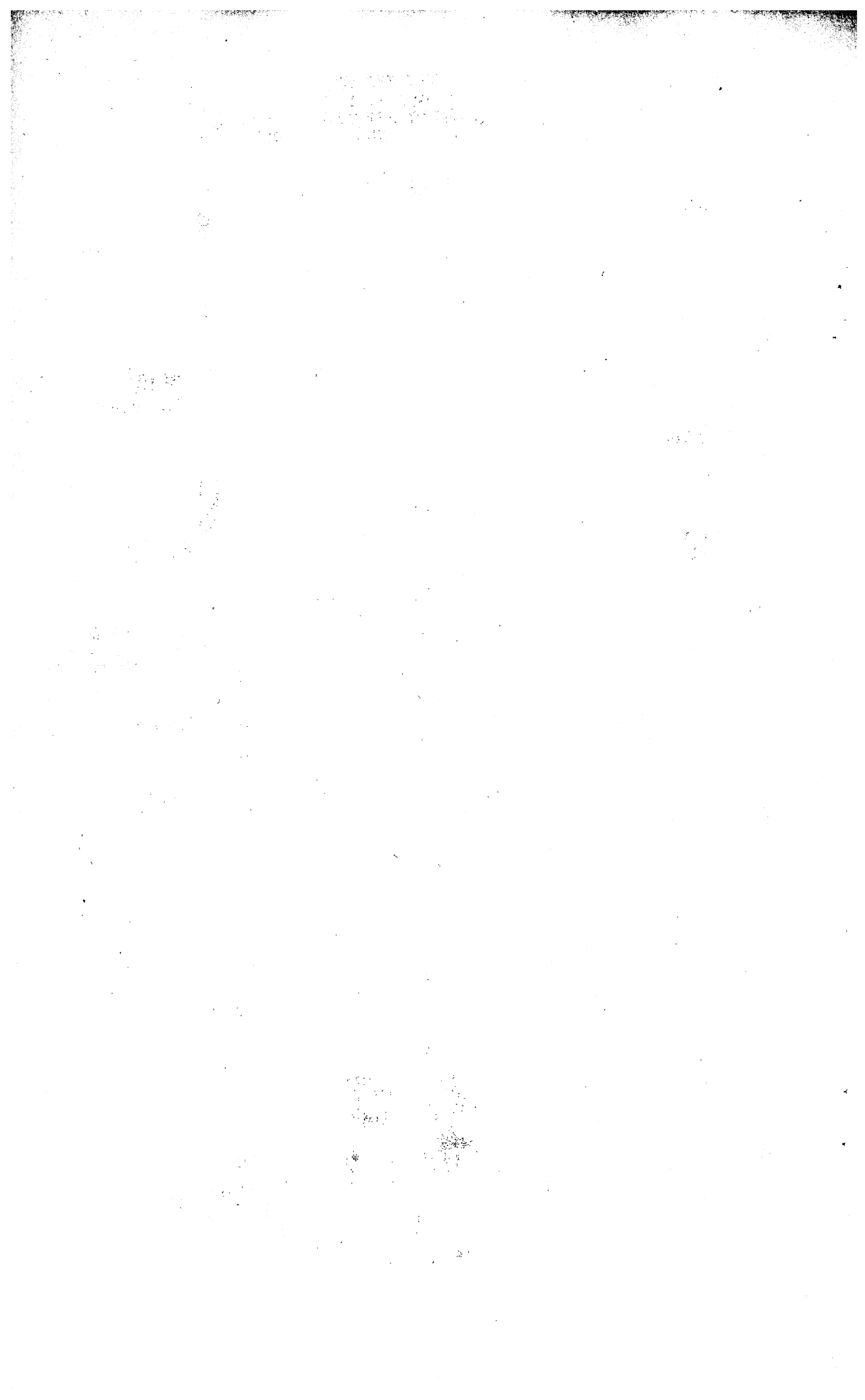
July 31, 1958.

BULLETIN 1235

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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.

July 31, 1958.

BULLETIN 1235

1. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - SALE TO
INTOXICATED PERSONS - PRIOR RECORD - LICENSE SUSPENDED
FOR 40 DAYS.

In the Matter of Disciplinary)
Proceedings against)

LOUIS SCHWARTZ)
t/a LOU'S BAR)
154 Fort Dix Street)
Wrightstown, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-9, issued by the)
Borough Council of the Borough of)
Wrightstown.)

Parker, McCay and Criscuolo, Esqs., by Robert W. Criscuolo,
Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to charges alleging that (1) he sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverage by said minor in and upon his licensed premises and (2) he sold, served and delivered alcoholic beverages in and upon his licensed premises to persons actually or apparently intoxicated, both in violation of Rule 1 of State Regulation No. 20.

"At the hearing herein, the Division called as its witnesses three ABC agents who participated in the investigation of defendant's licensed premises. Succinctly stated, their testimony is as follows: At about 10:15 p.m., March 15, 1958, they visited defendant's tavern wherein two bartenders and a waiter were serving some twenty patrons. During their stay they observed the waiter serve several glasses of beer to two males who were seated in a booth, one of whom appeared to be a minor, and later they saw those males stagger to the bar where each was served another glass of beer by one of the bartenders. Both males appeared to be intoxicated. At about 11:30 p.m. they observed through the glass entrance door an inebriated and disheveled male fumbling with the outer doorknob and saw the licensee admit him to the premises wherein he staggered to the bar and ordered a drink. They also observed the licensee gesture to the bartender who was heard to say to the male 'You are too drunk already. You have had enough'. When the male stated in reply 'All right, so I am a little drunk, but I'm not going to start a fight or anything, just give me a beer', the licensee instructed the bartender to 'give him a bottle of beer'. At this point the agents identified themselves, seized the unfinished portion of the drinks in front of the three intoxicated or apparently intoxicated males and ascertained that one of them was Charles ---, age 19, and that he had not been required to produce any written proof of his age.

"The licensee and one of his bartenders testified in substance that none of the aforesaid male patrons was in their opinion intoxicated or apparently intoxicated; that Charles appeared to them to be of age and that, when the agents were questioning the three males, Charles produced and left with the licensee a photostatic copy of his birth certificate falsely representing himself to be 21 years of age.

"The only defense provided by the Alcoholic Beverage Law in the case of the sale or service of an alcoholic beverage to a minor or consumption of such beverage by a minor on licensed premises is that wherein all the following facts affirmatively appear: (a) that the minor falsely represented himself in writing to be of age, (b) that the minor's appearance was such that an ordinarily prudent person would believe him to be of age and (c) that the sale was made in reliance upon such written representation and appearance and in the reasonable belief that the minor was of age. See R. S. 33:1-77; Re Butera, Bulletin 606, Item 4; Re Roey, Bulletin 747, Item 3. The representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at the time of sale or service. Re Fornaro, Bulletin 339, Item 10.

"Considering all the facts and circumstances herein, I find that the Division has established the violations charged herein by more than a fair preponderance of the evidence. I recommend, therefore, that defendant be found guilty of the charges preferred.

"Defendant has a prior adjudicated record. Effective June 3, 1942 his license was suspended for ten days by the then Director for misstatements in his license application, Re Schwartz, Bulletin 514, Item 8; effective March 24, 1952 his license was suspended for two days by the local issuing authority for an 'hours' violation; again effective May 15, 1955 his license was suspended for ten days by the same authority for an 'hours' violation; and, when the defendant was a 98% shareholder in Pioneer Cafe, Inc., the license for those premises at 1 Main Street, Wrightstown, was suspended by the Director for fifteen days, effective September 18, 1957, for sale to minors, Re Pioneer Cafe, Inc., Bulletin 1193, Item 7. The minimum penalty for the sale of alcoholic beverages to a 19-year-old minor is fifteen days' suspension, Re Russakow, Bulletin 1197, Item 5, and the usual penalty for serving alcoholic beverages to intoxicated or apparently intoxicated persons is twenty days' suspension, Re Joe's White Birch Bar, A Corp., Bulletin 1206, Item 9. However, because of the dissimilar violations which occurred within the past five years, an additional five days' suspension is indicated. Re Denner, Bulletin 1116, Item 5. I, therefore, further recommend that defendant's license be suspended for a period of forty days."

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

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

Accordingly, it is, on this 16th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-9, issued by the Borough Council of the Borough of Wrightstown to Louis Schwartz, t/a Lou's Bar, for premises 154 Fort Dix Street,

Wrightstown, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 25, 1958; and it is further

ORDERED that any renewal or transfer of such license be and remain under suspension until 2:00 a.m. August 4, 1958.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - EMPLOYING BARTENDER WITHOUT REQUIRED MUNICIPAL PERMIT - FAILURE TO HAVE COPY OF APPLICATION ON PREMISES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HERBERT PORTER)
t/a PORTER'S TAVERN)
201 Halladay Street)
Jersey City 4, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-328, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

-----)
Herbert Porter, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On Thursday, May 8, 1958, at about 12:27 a.m., 1:30 a.m. and 1:58 a.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of three separate orders of alcoholic beverages at retail in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

"2. On May 8, 1958 and prior thereto, you engaged and employed on your licensed premises in connection with your licensed business as a bartender a person known as Thomas McGurk, Jr., who had not been issued an identification card by the Department of Public Safety of the City of Jersey City in conformity with Sections 13 and 14 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950; in violation of Section 15 of said Ordinance.

"3. On May 8, 1958, you conducted your licensed business without having a photostatic or other true copy of your application for your current license on the licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20."

The file herein discloses that at midnight, Thursday, May 8, 1958, two ABC agents arrived in the vicinity of the licensed

premises and kept the same under surveillance. At about 12:07 a.m. and again at 12:27 a.m., the agents observed a male leaving the licensed premises and carrying a brown paper bag. At 12:30 a.m. one of the agents entered the premises, took a seat at the bar and, at about 1:25 a.m., saw Thomas McGurk, Jr., the bartender, make a sale of a bottle of wine for off-premises consumption. A few minutes before the closing hour (2:00 a.m.) the agent asked the bartender for a bottle of Mr. Boston's Pinch Bottle Liqueur. The bartender thereupon took a bottle of the requested alcoholic beverage from the shelf, placed it on the bar in front of the agent and accepted \$1.40 in payment thereof. At 2:03 a.m. the agent left the premises with his purchase and forthwith returned to the same in the company of the second agent but found the premises closed. The bartender, however, unlocked the door and admitted the agents who immediately identified themselves. Upon question by the agents, the bartender admitted the three unlawful sales charged herein.

An inspection of the premises failed to disclose that a photostatic or other true copy of the licensee's application for his current license was available for inspection.

The investigation of the case also discloses that the licensee permitted the aforesaid bartender, Thomas McGurk, Jr., who had not been issued an identification card by the Department of Public Safety of Jersey City, to act as bartender on the licensed premises.

By way of mitigation the defendant has submitted a statement which I have carefully read. The reports of the agents disclose that they and the bartender searched the premises for twenty minutes and could not find a copy of the application. The licensee was then contacted by telephone and said it was on the premises but he didn't know where. I do not find any extenuating circumstances in this case which would impel me to impose less than the established penalty for violations of this kind.

The defendant has no prior adjudicated record. I shall suspend defendant's license for twenty days on Charges 1 and 2, Re Giordano, Bulletin 1197, Item 3, and for an additional ten days on Charge 3, cf. Re Kalasarines & Vlismas, Bulletin 1211, Item 3, making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 12th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-328, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Herbert Porter, t/a Porter's Tavern, for premises 201 Halladay Street, Jersey City, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 23, 1958; and it is further

ORDERED that any renewal or transfer of such license shall be and remain under suspension until 2:00 a.m. July 18, 1958.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - EMPLOYING BARTENDER WITHOUT REQUIRED MUNICIPAL PERMIT - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CLENDENNY TAVERN, INC.)
60 Clendenny Avenue)
Jersey City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-335, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Defendant-licensee, by Richard McHale, President.
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to the following charges:

"1. On Sunday, May 18, 1958, you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., 11 cans of Rheingold Beer, at retail in their original containers for consumption off your licensed premises and you allowed, permitted and suffered the removal of such alcoholic beverages from your retail licensed premises; in violation of Rule 1 of State Regulation No. 38.

"2. On Sunday, May 18, 1958, you engaged and employed on your licensed premises an agent and bartender in connection with your licensed business, who had not been issued an identification card by the Department of Public Safety of the City of Jersey City in conformity with Sections 13 and 14 of an Ordinance adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950; in violation of Section 15 of this mentioned Ordinance."

The file herein discloses that on Sunday, May 18, 1958, shortly after 1:00 p.m., an ABC agent entered defendant's licensed premises and observed four patrons seated at the bar, behind which was Patrick F. Gannon, a bartender. At about 1:55 p.m. and again at about 2:05 p.m., the agent saw the bartender make a sale of alcoholic beverages for off-premises consumption to a patron. Following aforesaid sales the agent asked the bartender for 12 cans of Rheingold Beer "to go". Mr. Gannon thereupon took a number of cans of aforementioned brand of beer from the refrigerator, placed them in a brown paper bag, brought the package to the agent and accepted \$2.40 in payment thereof. The agent left the premises with the alcoholic beverages and immediately returned to the same in the company of another agent. Both agents identified themselves to the bartender who then admitted the aforesaid illegal sales.

The basis for the second charge herein is Mr. Gannon's statement on May 18, 1958 to the agents that he had not been issued an identification card by the Department of Public Safety of Jersey City. However, it has since been ascertained that Mr. Gannon had been issued an identification card for the 1957-58

licensing period. Under the circumstances and in fairness to the licensee, I shall dismiss the second charge.

Defendant has a prior adjudicated record. Its license was suspended on three occasions, two of which occurred prior to 1947 and, therefore, will not be considered in fixing the penalty herein. Cf. Re Tsibikas, Bulletin 1188, Item 10. Effective December 3, 1956 defendant's license was suspended by me for a net period of ten days for a violation similar to Charge 1 herein. Bulletin 1147, Item 6. The minimum penalty for a violation set forth in Charge 1 herein is fifteen days. Re The Lope Inn, A Corp., Bulletin 1191, Item 4. Since the defendant committed a similar violation within five years, the penalty will be doubled. Re The Lope Inn, A Corp., *supra*. I shall suspend defendant's license for thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 16th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-335, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Clendenny Tavern, Inc., for premises 60 Clendenny Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 23, 1958; and it is further

ORDERED that any renewal for the 1958-59 licensing year or transfer of said license shall be and remain under suspension until 2:00 a.m. July 18, 1958.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against
SAFADEN ALI SHEH, Administrator of the Estate of Louise Ali Sheh t/a NEW CASCINO
32 Passaic Street
Garfield, N. J.,
Holder of Plenary Retail Consumption License C-2, issued by the City Council of the City of Garfield.

CONCLUSIONS
AND ORDER

Sullivan & Sullivan, Esqs., by Arthur J. Sullivan, Jr., Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to a charge alleging that he sold, served and delivered alcoholic beverages to three minors, and permitted the consumption of such beverages by such minors in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

"At the hearing herein, Gloria ---, age 17; Dolores ---, age 17; Peter ---, age 19; Frederick ---, an adult, and an ABC agent, testified on behalf of the Division.

"The three minors and the adult testified that they left a tavern located in a nearby municipality at about 3:00 a.m. on the morning of January 11, 1958. Gloria testified as follows: They drove from said tavern to defendant's tavern, arriving there some time between 3:00 a.m. and 3:30 a.m.; that they took seats at a table in the rear barroom, where singers dressed as cowboys were entertaining; that Frederick went to the bar while the girls went to the rest room; that when they returned they found on the table four bottles of beer, one of which she drank and that she also had some pizza pie after singing with the cowboys and dancing. Gloria does not remember what Peter and Dolores had to drink. Gloria further testified that one of the bottles fell off the table, whereupon a bartender came to their table; that she does not remember what he looked like; that the bartender asked if they were 21 years of age and three minors said yes; that Frederick displayed some proof of his age but that the minors did not exhibit any identification and that none of the minors were asked by the bartender to sign any written representation of age; that they remained in the premises for about a half hour, and that the girls were the first to leave.

"Dolores testified substantially to the same effect and added the following details: She drank her beer and observed Peter and Frederick drink beer. She identified George Ali as the bartender who brought some beer to the table after the incident of the falling bottle and display of identification by Frederick. After they left the tavern the girls were walking towards Gloria's car parked nearby. Peter and Frederick hailed them and offered them a ride in Frederick's car. They refused and shortly afterward Peter hailed them from his car and they accepted a ride with him to where Gloria's car was parked. When they arrived at such place, Frederick was there with his car. Gloria attempted to start her car while the others helped, and discovered the distributor cap had been stolen. Unable to start the car, Dolores left in Frederick's car which she drove while Frederick slept. After riding for a short time, they returned to where Gloria's car was parked, but Peter and Gloria were not there. She drove away and, when in the vicinity of her home, became involved in an accident. She ran home, to which police officers came shortly thereafter investigating the accident.

"Peter corroborated Gloria's account and further testified that, shortly after they entered, Frederick went to the bar and brought back four bottles of beer, placed them on the table, and he drank his beer; that he cannot recall whether the girls drank the beer; that the bartender, whom he cannot identify, came over to their table and, after his above recited inquiry of the group, brought four bottles of beer to their table, one of which he drank and that he had some pizza pie; that he and Frederick had some argument with the girls, whereupon the girls left first and they followed shortly thereafter.

"It was stipulated on the record that, if called, Frederick would testify on direct to the same effect as Peter. On cross-examination, he testified that he went to the bar and obtained four bottles of beer without any question by the bartender, and that George Ali brought four more bottles of beer to their table after he displayed his driver's license to Ali; that he also had some pizza pie.

"Defendant contends that the statements admitted in evidence made by these four persons to police officers immediately after the accident vary in vital aspects from their above accounts and, hence, seriously affect the credibility of their testimony.

"There is no variance in Gloria's statement from her testimony; defendant has merely underlined excerpts which conform to her testimony.

"The excerpts from Dolores' statement upon which defendant lays considerable stress are the statements therein that 'Freddie' and 'Pete' did not have anything to drink in her presence; that she did not know where they had been drinking or bought beer and that Frederick had been driving the car at the time of the accident. These statements were brought to her attention at the hearing, and she explained that she was injured, excited and under considerable strain at the time of making the statements, but that her present testimony represents what actually occurred. It is to be noted that the police evidently did not ask her to state whether she or Gloria had consumed any alcoholic beverages, and that she revealed that such was the fact for the first time when an ABC agent interviewed her on January 15th.

"Similarly, it is urged that Peter's statement demonstrates vital variances, in that in such statement, referring to his visit at another tavern with Frederick, he says that he had something to drink there -- 'he sipped from two bottles', whereas in his testimony, asked if he were drinking there, he answered 'No'; further, it appears from his statement, that the four persons in the group were served beer and highballs in two named taverns in Passaic and defendant's tavern, whereas in his testimony he states that he only had beer. Peter explains that it was bottles of Seven-Up that he sipped, and that it was the girls who had highballs and he had beer.

"The attack on Frederick's testimony is that in his statement he declares that Dolores was driving with his permission, whereas at a hearing in criminal court on charge of permitting her to drive, he claimed that he had not given her such permission.

"It does not appear logical to conclude from the above claimed variances, especially those which relate to the operation of Frederick's motor vehicle, that they have any bearing on or impeach the clear-cut and detailed account of the four witnesses as to the service of beer to them in defendant's premises.

"Since defendant admitted on the record that the three minors and the adult were actually in his tavern on January 11th, the sole issue to be determined is whether or not they were served with and consumed beer there, as they allege. The ABC agent's testimony as to what occurred when he, the minors and the adult confronted George Ali and accused him of selling the beer may aid in evaluating where the truth rests.

"An ABC agent testified that he accompanied Gloria and Dolores on January 14, 1958 to defendant's licensed premises which the girls identified as the place where they had been served alcoholic beverages on January 11, 1958; that George Ali appeared on the scene and was identified by Dolores as the bartender who asked their age on that day; that thereupon George

denied that he had seen them or that they were there that morning. Asked by the agent whether he was sure that such was the fact, he replied that he saw a group of four come in and questioned them as to their age, did not believe they were 21 and asked them to leave; that now he definitely remembered that Dolores was there, but was not sure about Gloria.

"The agent further testified that on January 15th he accompanied Peter to the licensed premises, which Peter similarly identified; that George Ali was summoned to the place and Peter said that he looked like the bartender who served him, but was not sure, and George denied that he ever saw him in the establishment; that on January 22nd the agent accompanied Frederick, who likewise identified the licensed premises, confronted George Ali, and stated that George was the person from whom he had purchased four bottles of beer and who brought four more bottles of beer to the table on the morning in question; that George stated that he remembered Frederick, had questioned him, and was shown some sort of identification which he refused to accept and refused to serve him; that thereupon Frederick reiterated that George had served him and served the rest of them; that then there was a discussion between Frederick and George, and that George said something to the effect that he might have served Frederick but he was not sure.

"George Ali, the licensee's son, testified as follows: He is employed as bartender at the licensed premises. He observed the three minors and the adult enter the premises on January 11th. He went over to them and three of them looked so young he asked for identification. One male displayed his driver's license. He would not accept that as proof. He asked them to leave, and returned to his place behind the bar. He did not serve any alcoholic beverages to the group of four at the table or at the bar. He did not serve any pizza pie because such food was not served after 2:30 a.m. About ten minutes elapsed from the time the group came in until he approached the group. A bottle of beer did not fall from the table. He did not see the group leave the tavern, but they were not there when he looked about fifteen minutes later.

"It seems clear that the preponderance of the believable evidence establishes that alcoholic beverages were served to the minors as charged. However, before the transcript of the record was available, counsel requested a supplemental hearing on the basis of an affidavit of the licensee wherein he alleged that subsequent to the hearing, Frederick appeared at his tavern and during the course of a discussion between them, Frederick states that 'we weren't drinking here; I did not want to do it, but the law made me do it.' Thereafter the Division obtained a signed, sworn statement from Frederick wherein he positively and directly denies any such visit or conversation with the licensee and reaffirms his previous testimony. I therefore advised counsel that I was of the opinion nothing would be gained by a supplemental hearing, forwarded to him a copy of such affidavit, and denied the request. The full record demonstrates that the decision as to whether defendant is guilty does not depend merely on Frederick's testimony.

"The application for a supplemental hearing may be treated as an application for a new trial. Cf. Shore v. Shore, 11 N. J. 23. It has been the rule for many years that it is

within the discretion of the trial court to grant a new trial on the basis of revelation of wilfully false testimony substantially affecting the result. Balip Automotive Repairs, Inc. v. Schroeder, 8 N. J. Super. 238 at page 246, affirmed by the Supreme Court in 7 N. J. 152.

"To justify the granting of a new trial upon the ground of newly discovered evidence it must appear that such evidence would probably have changed the result of the trial. Minter v. Bendix Aviation Corp., 26 N. J. Super. 268 at page 271.

"To quote from Rice v. Bauer, 59A 2nd 885, 359 Pa. 544:

'Testimony of two of plaintiff's witnesses, in depositions taken five months after trial, that one of defendant's witnesses told deponents on way home from trial that his testimony for defendant was false, did not entitle plaintiff to new trial, where such witness gave counter-deposition, denying perjury and reaffirming his testimony at trial, and such testimony was only corroborative of that given by another witness for defendant.'

"For the reasons above expressed I recommend that defendant be found guilty and, since he has no prior adjudicated record, that an order be entered suspending his license for the period of twenty days for sale to a 17-year-old minor, Re Mitchell, Bulletin 1214, Item 3, to which five days should be added because three minors were involved, Re Belann Tavern, Inc., Bulletin 1211, Item 8, making a total suspension of twenty-five days."

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

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

Accordingly, it is, on this 9th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-2, issued by the City Council of the City of Garfield to Safaden Ali Sheh, Administrator of the Estate of Louise Ali Sheh, t/a New Cascino, for premises 32 Passaic Street, Garfield, be and the same is hereby suspended for the balance of its term, effective at 4:00 a.m. June 16, 1958; and it is further

ORDERED that any renewal for the 1958-59 licensing year or transfer of said license shall be and remain under suspension until 4:00 a.m. July 11, 1958.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - FAILURE TO HAVE COPY OF APPLICATION ON PREMISES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

BLODGETT'S INC.
Route 4-9, 200 feet south of Harles Lane
Madison Township, PO South Amboy, N.J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Madison.

Defendant-licensee, by Milton Rapfogel, President.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On October 14 and November 1, 1957 and on January 23, 1958, you, through your directors, officers, agents and employees, upon demand, failed to exhibit your books, records, accounts, documents and papers to an Inspector and Investigator of this Division and failed to facilitate, hindered and delayed, caused the hindrance and delay and attempted to cause the hindrance and delay of the investigation, inspection and examination being conducted by said Inspector and Investigator at your licensed premises; in violation of R. S. 33:1-35.

"2. On October 14 and November 1, 1957, you, a retail licensee, conducted your licensed business without keeping a photostatic or other true copy of the application for your current license on your licensed premises available for inspection by an Inspector and Investigator of this Division; in violation of Rule 16(b) of State Regulation No. 20."

Although the file herein is replete with specific instances of factors contributing to the violations charged, the facts set forth in the above charges obviate the necessity of a more detailed statement. It must, however, be recorded that Milton Rapfogel (president of the corporate licensee herein) is the person whom the agents interviewed and who, by his reprehensible conduct, coupled with threats of reprisal, hindered and delayed them in their investigation. In alleged mitigation of his actions Milton Rapfogel alleges that, shortly prior to the dates mentioned in the charges, he had acquired the controlling interest in the corporation and had worked so many hours on the premises that he was "near exhaustion" at the time the investigation was being conducted.

Defendant has no prior adjudicated record. I shall suspend its license for a period of twenty days on both charges (Re C. & D. Tavern, Bulletin 1189, Item 4). Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 9th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Madison to Blodgett's Inc., for premises on Route 4-9, 200 feet south of Harles Lane, Madison Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. June 16, 1958, and terminating at the expiration of the license at midnight June 30, 1958.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - PERMITTING REMOVAL OF ALCOHOLIC BEVERAGES IN AN OPENED CONTAINER - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

FOSTER'S TAVERN, INC.
T/a FOSTER'S TAVERN, INC.
312 Passaic Street
Passaic, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-146, issued by the Board of Commissioners of the City of Passaic.

Arnold M. Smith, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On Sunday, February 2, 1958, at about 2:15 p.m., you allowed, permitted and suffered the removal of an alcoholic beverage in an opened container from your licensed premises, viz., approximately twenty-eight ounces of wine in an opened bottle labeled Fedwin 100% Pure California Port Wine; in violation of Rule 1 of State Regulation No. 38.'

"It appears from the evidence adduced at the hearing herein that two ABC agents (hereinafter referred to as Agent McN and Agent McD, respectively) visited defendant's licensed premises on the afternoon of Sunday, February 2, 1958. Agent McN testified that he entered the premises at approximately 1:45 p.m. while Agent McD remained outside; that he took a seat at the bar and ordered a bottle of beer from the bartender (subsequently identified as Floyd Foster, president of defendant-corporation); that after consuming the beer, Foster asked him if he wanted anything else and in reply thereto Agent McN asked whether or not he sold pints of wine; that Foster stated that he did not sell pints but did sell quarts; that Agent McN ordered a quart of wine 'to go'; that Foster produced a bottle of wine, broke the seal thereon and poured some of the contents in a six-ounce glass which he handed to Agent McN who drank same; that Foster then replaced the cap on the bottle; that Agent McN paid \$1.25 for the wine and Foster obtained a bag in which he placed the bottle of wine and rang up 'no sale' on the cash register

and remarked to the agent that he had better place the item under his coat; that Agent McN placed the bag containing the bottle in his right-hand coat pocket and left the premises; that immediately thereafter he and Agent McD came into the premises, identified themselves and informed Foster of the violation; that Foster stated that he thought that Agent McN was going to drink the wine on the premises.

"Agent McD corroborated, in substance, the testimony of Agent McN concerning their arrival in the vicinity of defendant's licensed premises and their re-entry into the premises after Agent McN had emerged from the premises with a bottle of wine. He also testified that Foster, Agent McN and himself were the only persons in the premises at the time in question.

"Floyd Foster testified that Agent McN came into the premises at about 2:00 p.m. and after consuming a bottle of beer, asked for a pint of wine; that he advised Agent McN that he could give him a quart of wine which could not be taken from the premises because of it being a Sunday; that he opened the wine and provided the agent with a set-up composed of ice and a glass in which the agent poured a portion of the wine; that when he turned his back to check the cash register, the agent was leaving the premises and he (Foster) shouted after him, 'Today is Sunday, not supposed to take wine out at no time on Sunday after ten at night'; that regardless, the agent went out of the door and in about five minutes returned with Agent McD; that when he was being questioned concerning the transaction he told the agents that he sold the bottle of wine to Agent McN on the condition that it would be consumed on the premises and not taken therefrom.

"After reviewing all of the testimony presented herein, I am satisfied that the agents have accurately described what took place on the day in question. Floyd Foster appeared somewhat confused with reference to the rule which defendant is charged with violating, because according to Foster's testimony he remarked that wine might not be taken out of the premises after ten o'clock on Sunday night. He is mistaken in his interpretation of the rule because the latter provides that no alcoholic beverages such as that in question may be taken out of the premises at any time on Sunday. His story to the effect that he had provided a set-up in order that a full quart of wine could be consumed on the licensed premises does not ring true. Furthermore, I am satisfied that Foster furnished a paper bag (the latter being marked as an exhibit in evidence in the case herein) to carry the bottle of wine from the premises. Under the circumstances, I recommend the defendant be found guilty of the charge preferred herein.

"Defendant has a prior adjudicated record. Effective September 21, 1952 its license was suspended for a period of five days by the local issuing authority for sale of alcoholic beverages to minors. Again, effective March 19, 1953 defendant's license was suspended for a period of twenty days by Director Cavicchia for sale to a minor. Re Foster's Tavern, Inc., Bulletin 961, Item 8. Inasmuch as the violations hereinabove mentioned occurred more than five years ago and are dissimilar in character, they will not be considered in fixing the penalty herein. Re Bergenfield Liquor Shop, Inc., Bulletin 924, Item 9. I recommend that an order be entered suspending defendant's license for a period of fifteen days. Re Palace Bar, Inc., Bulletin 1218, Item 4."

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

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 9th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-146, issued by the Board of Commissioners of the City of Passaic to Foster's Tavern, Inc., t/a Foster's Tavern, Inc., for premises 312 Passaic Street, Passaic, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. June 16, 1958, and terminating at midnight, June 30, 1958.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - FRONT - ILLEGAL SITUATION
CORRECTED - SUSPENSION FOR BALANCE OF TERM LIFTED.

In the Matter of Disciplinary Proceedings against)

JANET ANETTE NEMIS
346 Market Street
Perth Amboy, N. J.,)

ON PETITION
O R D E R

Holder of Plenary Retail Consumption License C-99, issued by the Board of Commissioners of the City of Perth Amboy.)

Edward J. Dolan, Esq., Attorney for John Solewin, Petitioner.

BY THE DIRECTOR:

By Order dated February 26, 1958, I suspended defendant's license for the balance of its term, effective at 2:00 a.m. March 10, 1958, after defendant had pleaded non vult to charges alleging that she had made a false statement in her application for license and that she knowingly aided and abetted a non-licensee to exercise the rights and privileges of her license. Leave was given to a bona fide transferee of the license to file a petition with me requesting the lifting of said suspension after the expiration of ninety days from the effective date thereof (Re Nemis, Bulletin 1216, Item 2).

The petition of John Solewin discloses that on June 5, 1958, the Board of Commissioners of the City of Perth Amboy granted a transfer of defendant's license to him subject to the suspension previously imposed. The petition requests the lifting of the suspension.

It appearing that the unlawful situation has been corrected and that the suspension has been in effect for more than ninety days,

It is, on this 9th day of June, 1958,

ORDERED that the suspension heretofore imposed be lifted and that License C-99 be restored to full force and operation as soon as the transfer of the license to John Solewin is endorsed on the face of the license certificate by the City Clerk of the City of Perth Amboy.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SERVICE TO FEMALES AT BAR IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 5 DAYS, LESS 2 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ALFRED J. PAWLOWSKI and)
JOHN J. KEARNS)
t/a JOURNAL SQUARE RECREATION)
912-20 Bergen Avenue)
Jersey City, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-207, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Jersey City.)

Alfred J. Pawlowski and John J. Kearns, 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 April 18, 1958, you permitted the service of alcoholic beverages to females at a public bar on your licensed premises and the sale of alcoholic beverages over said bar to females for consumption by them on your licensed premises; in violation of Section 6 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950."

The file herein discloses that on Saturday, April 18, 1958, at about 9:30 p.m., an ABC agent, followed shortly thereafter by another agent, entered the defendants' licensed premises and took seats at the bar which was being tended by Stanley Pawlowski. At about 10:10 p.m. and again at about 10:20 p.m. the agents observed the bartender serve a bottle of beer to a female seated at the bar. At about 10:25 p.m. the agents saw another female approach the bar and the bartender serve her a glass of beer. Five minutes later, while both of these females were consuming aforesaid alcoholic beverages at the bar, the agents identified themselves to the females and the bartender who admitted aforesaid violation.

The local regulations prohibit the service of alcoholic beverages directly over the bar to females.

Defendants have no prior adjudicated record. I shall suspend defendants' license for five days. Cf. Re Bednarko's, Inc., Bulletin 1179, Item 4. Two days will be remitted for the plea entered, leaving a net suspension of three days.

Accordingly, it is, on this 2nd day of June, 1958,

ORDERED that Plenary Retail Consumption License C-207, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Alfred J. Pawlowski and John J. Kearns, t/a Journal Square Recreation, for premises 912-20 Bergen Avenue, Jersey City, be and the same is hereby suspended for three (3) days, commencing at 2:00 a.m. June 9, 1958, and terminating at 2:00 a.m. June 12, 1958.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ARTHUR WEBER
560 Newark Avenue
Jersey City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-244, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Defendant-licensee, Pro se.
Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

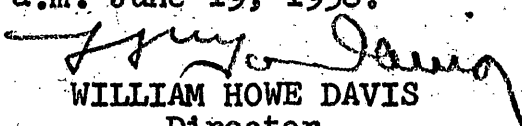
Defendant has pleaded non vult to a charge alleging that during prohibited hours he sold, served and delivered, for off-premises consumption, alcoholic beverages in their original containers, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that at 5:25 p.m. Sunday, April 13, 1958, an ABC agent who had been in defendant's licensed premises purchased from Arthur Weber (the licensee herein) six cans of beer which he took with him off the premises. Later the agent and a fellow-agent identified themselves to Weber who admitted the unlawful sale but refused to give a signed, sworn statement to that effect.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of fifteen days (Re DiGrezia, Bulletin 1139, Item 2). 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 June, 1958,

ORDERED that Plenary Retail Consumption License C-244, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Arthur Weber, for premises 560 Newark Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 9, 1958, and terminating at 2:00 a.m. June 19, 1958.


WILLIAM HOWE DAVIS
Director.