

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

BULLETIN 1892

January 7, 1970

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

BULLETIN 1892

January 7, 1970

1. APPELLATE DECISIONS - OCEAN CLUB, CORPORATION v. JERSEY CITY:

Ocean Club, Corporation,)

Appellant,)

v.)

On Appeal

Municipal Board of Alcoholic
Beverage Control of the City)
of Jersey City,)

O R D E R

Respondent.)

-----)
Michael Halpern, Esq., Attorney for Appellant
James F. Ryan, Esq., by Louis P. Caroselli, Esq., Attorney for
Respondent

BY THE DIRECTOR:

Appellant appeals from denial by respondent by resolution of June 26, 1969, of its application for renewal for 1969-70 of its plenary retail consumption license for premises 521 Ocean Avenue, Jersey City.

Prior to hearing, appellant's attorney advised that on November 7, 1969 respondent adopted a resolution rescinding the resolution of June 26, 1969 and granting the application for renewal, in consequence of which the appeal was withdrawn.

Accordingly, it is, on this 12th day of November 1969,

ORDERED that the appeal herein be and the same is hereby dismissed.

Joseph M. Keegan,
Director.

2. DISCIPLINARY PROCEEDINGS - PROCUREMENT FOR PROSTITUTION -
SUPPLEMENTAL ORDER MODIFYING REVOCATION - LICENSE SUSPENDED
FOR 215 DAYS.

In the Matter of Disciplinary)
Proceedings against)

Murphy's Bar and Lounge, Inc.)
735 East State Street)
Trenton, N.J.)

SUPPLEMENTAL
CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption
License C-159, issued by the City)
Council of the City of Trenton.)

----- 2
Harvey L. Stern, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following supplemental report herein:

Supplemental Hearer's Report

On August 21, 1968, by Conclusions and Order entered herein, the Director revoked the license after finding the licensee guilty of a charge of permitting procurement for prostitution on the licensed premises. Re Murphy's Bar and Lounge, Inc., Bulletin 1818, Item 1.

On the licensee's appeal to the Appellate Division, the Court held:

"Although we conclude that the Director's finding of guilt was fully supported by the proofs, we are satisfied that, based upon the present record, the penalty imposed, the revocation of appellant's license was excessive.

* * * * *

"We conclude that the ends of justice will best be served by a remand to the Director for re-determination of the penalty to be imposed. In connection therewith additional proofs as to the licensee's prior record may be received and the licensee should be afforded the opportunity to be heard and to produce witnesses, including character witnesses, directed to the penalty issue." Murphy's Bar and Lounge, Inc. v. Keegan (App, Div. 1969), not officially reported, recorded in Bulletin 1846, Item 1.

At the hearing held pursuant to the remand, Edward F. Franks, Jr., who holds the rank of detective in the police force of the City of Trenton, and Hugh E. Lindcaskey, employed as an investigator by the City of Trenton (both of whom were assigned to the local ABC Board), were called as witnesses by the attorney for the licensee.

Detective Franks testified that he investigated, prepared and presented the charge wherein the local issuing authority suspended the license of the licensee herein for three days effective February 19, 1968 for permitting minors on the premises in violation of a local ordinance. The detective expressed an opinion that there were mitigating circumstances surrounding this particular offense.

The licensee operated the tavern business in its present location, characterized as a "rough-type neighborhood" since January 20, 1966. The principals of the corporate licensee were cooperative with the local ABC Board and conducted a clean operation.

On cross examination the detective asserted that he routinely inspected all taverns in the city, including the licensed premises herein. He had no knowledge of the particulars concerning the subject matter encompassed in the charge filed herein. Finally, it was his opinion that the licensed premises had a "very good reputation."

Investigator Lindcaskey testified that he visited the licensed premises on numerous occasions. He found the Murphys cooperative in everything requested of them. John Murphy requested the local ABC personnel to stop in more frequently than any other tavern. In his opinion there were mitigating circumstances surrounding the violation of the local ordinance. He was not aware of the particulars concerning the solicitation charge. He was on vacation at that time.

On cross examination the witness asserted that, to his knowledge, John Murphy had on occasion requested minors to leave the premises and if they refused, he would call the local police to place them under arrest.

Inasmuch as the issue of guilt has been adjudicated with finality, the sole issue to be decided herein is that of fixing a reasonable penalty.

Upon reassessing the nature of the offense of which the licensee was found guilty, upon considering the circumstances surrounding the prior violation and, further, considering the reputation of the licensee, it is recommended that the license be suspended for two hundred ten days (Re McCarthy, Bulletin 1870, Item 2, and cases cited therein), to which should be added five days by reason of the record of suspension of license within the past five years for dissimilar violation (Re Mugil, Bulletin 1867, Item 5), or a total of two hundred fifteen days.

Supplemental Conclusions and Order

Written exceptions to the Supplemental Hearer's report and argument thereto were filed by the attorney for the licensee, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the supplemental Hearer's report and the exceptions and argument filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of November 1969,

ORDERED that Plenary Retail Consumption License C-159, issued by the City Council of the City of Trenton to Murphy's Bar and Lounge, Inc., for premises 735 East State Street, Trenton, be and the same is hereby suspended for two hundred fifteen (215) days, commencing at 2 a.m. Wednesday, November 26, 1969, and terminating at 2 a.m. Monday, June 29, 1970.

Joseph M. Keegan,
Director.

3. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary)
Proceedings against)

Shamrock Bar, Inc.)
t/a Shamrock Bar)
28 South Warren Street)
Trenton, N.J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-214, issued by the City)
Council of the City of Trenton.)

Daniel F. Gilmore, Esq., Attorney for Licensee
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On August 9, 15, September 6, 11, and 21, 1967, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse races; in violation of Rule 7 of State Regulation No. 20."

The Division relied on the testimony of three State police officers in substantiation of the charge.

State Trooper Thomas B. Gallagher, who possessed ample experience in conducting gambling investigations including horse race betting, testified that at noontime on August 9, 1967 he was in a barroom in the neighborhood of the licensed premises when he observed two males standing at the bar reading the National Armstrong. One male made a notation on a slip and said "he was going to play Poor Soul in the 3rd at AC." The other male handed the first male paper currency and said, "Put two on it for me to win.... Are you going to give it to Charlie?" The first male said "Yes" and left the barroom and entered the licensed premises involved herein, followed by Gallagher. Gallagher observed the male proceed to the rear of the barroom to a desk or a table. Charles P. O'Donnell (later identified as an officer and stockholder of the licensee corporation) who was tending bar walked to the rear desk or table. The male handed O'Donnell a slip of paper and paper currency. The male had held the slip of paper in his hand from the time that he left the first barroom to the time that he entered the licensed premises. Gallagher did not see what was written on the paper. It was the witness' opinion that O'Donnell had accepted a horse bet.

Gallagher returned to the licensed premises on August 15, 1967 at 12:45 p.m. and sat at the bar. O'Donnell was tending bar. He observed a male go to O'Donnell (while O'Donnell was seated at the table), confer with him and hand him paper currency. O'Donnell made notations. This male then asked another male if he had a play for the day. Later the second male went to the table and spoke with O'Donnell. O'Donnell made notations and accepted paper currency.

Gallagher re-entered the licensed premises on September 11, 1967 at approximately 1:15 p.m., sat at the bar and ordered a drink from O'Donnell who was again tending bar. A male seated at a rear table who had been reading the National Armstrong went to O'Donnell who was then seated at the rear table or desk, spoke with O'Donnell, handed him paper currency and proceeded to the bar. A female who was also seated at the bar asked the male who had conferred with O'Donnell "if he had played it to win or across the board." The male responded that he had played it to win. Based upon what he had observed, Gallagher applied to the court for a search warrant.

On cross examination the witness confirmed that he did not know whether there was a table or a desk in the rear. It had a light on it. He did not know what kind of a seat O'Donnell sat on while at the desk or table. It appeared to the witness that what was handed to O'Donnell was paper currency.

John J. Latawiec, who holds the rank of lieutenant in the State police force, testified that, accompanied by Detective Sergeant George Dix, he entered the licensed premises (described as a barroom) on September 21, 1967 at about 1:20 p.m. for the purpose of executing a search warrant. The officers identified themselves to O'Donnell who was tending bar. At this point the testimony revealed the following:

"Q. After you identified yourselves what took place?
A. I told him we have a warrant, search warrant. I asked him to come around the bar. As he started to walk toward the rear he leaned over, and he threw something back through an opening in the wall. I went back there and found a water bucket with like a paper rapidly dissolving."

Among the items found in O'Donnell's shirt pocket was a tally sheet containing writings which in the opinion of the witness referred to horse bets. The witness uncovered in the licensed premises a quantity of paper which would dissolve upon immersing it in water, commonly known as rice paper or soluble paper, frequently used by bookies in order to destroy evidence. During the search Latawiec asked O'Donnell how much money he took in horse bets over the bar and over the telephone. O'Donnell responded one hundred dollars over the bar and twenty-five dollars over the telephone. The questioning then proceeded thusly:

"Q. Did you ask him [O'Donnell] anything else?
A. I asked him, 'Charlie, is that part of today's horse bets you threw in the bucket there?' He said, 'Yes.' I said, 'Why did you throw it in there?' He said, 'What would you have done?'"

Detective Sergeant George Dix of the New Jersey State Police testified that he accompanied Lieutenant Latawiec in the raid of the licensed premises on September 21. Dix answered the telephone on several occasions when the caller asked for Charlie. Dix answered that he was Charlie. On some of these occasions the caller said, "You aren't Charlie" and hung up. On some other occasions the caller just hung up. On one occasion the caller said he wanted 1 and 9 in Atlantic City. Dix responded, "O.K." and the caller then said, "You aren't Charlie" and hung up.

Lieutenant Latawiec, upon being recalled to the witness stand, testified that in his opinion the caller who said to Dix that he wanted 1 and 9 in Atlantic City was referring to a daily double horse bet at the race track in Atlantic City.

In defense of the charge Charles P. O'Donnell testified that there was never a desk or a table at the end of the bar. He did recall Trooper Gallagher visiting the barroom on occasions. He did not recall the dates. He did not on August 9 accept a slip of paper and what appeared to be paper currency. No one handed him a slip which contained the name Poor Soul in the barroom.

It is possible that someone came into the barroom on August 15, September 6 and September 11 while Gallagher was in the premises, proceed to the end of the bar and give him what appeared to be paper currency. However, this had nothing to do with horse race betting activity. He did not on any of those dates or on September 21 accept bets on horses.

In so far as the National Armstrong publication and the papers characterized as tally sheets were concerned, it was his practice to read the National Armstrong for the purpose of seeing what horses were picked to win by the various handicappers and then compare the results to see which handicapper was most successful.

Concerning the paper that he threw away on the day of the raid, he asserted that it contained the number of empty bottles that he was returning to the delivery man. It appeared that the delivery man was in a hurry to leave the premises and did not remove the empty bottles and for that reason he rolled up the piece of paper and threw it away.

At no time did he discuss with Lieutenant Latawiec the amount of bets he took over the bar and over the telephone.

On cross examination O'Donnell asserted that he kept the water-soluble paper on the premises merely for the purpose of jotting notes. It was used as scrap paper and had no connotation with racing.

As to the names Sam, Mikey, M.C.F., Green, which appeared on Exhibit D-3 in evidence (described as a tally sheet by Lieutenant Latawiec), the witness asserted that they were names of handicappers. He did not recall where they handicapped. The records were kept strictly for his own use, to compare the records of the respective handicappers.

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

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

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

I find credible Trooper Gallagher's testimony that O'Donnell accepted a horse bet on Pour Soul on August 9 and that on August 15 O'Donnell accepted a horse bet from an unknown male after the male had been asked by another male if he had a play for the day. On August 15 O'Donnell was observed making notations and accepting paper currency. Concerning the occurrence of September 11, I am persuaded that the fact that a female at the bar and a male (who had been observed conferring with and to hand something to O'Donnell) engaged in a colloquy concerning the type of a bet he had made confirmed that the male had given a horse bet to O'Donnell.

My view is strongly buttressed by the fact that on the day of the raid a tally sheet dealing with horse racing and denoting bets thereon was found in O'Donnell's possession; that O'Donnell threw water-soluble paper in a bucket and that a quantity of water-soluble paper was found in the barroom. I dismiss as imaginative O'Donnell's explanation of the use to which he put the tally sheet; that the water-soluble paper which he threw away contained notations of the number of empty bottles he was returning, and his denial that he had informed Lieutenant Latawiec of the amount of bets he had taken in.

An additional basic principle is worthy of emphasis. In disciplinary proceedings the licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951).

After carefully considering and evaluating all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of said charge which particularly refers to the dates of August 9, 15, September 11 and 21, 1967, and I further recommend that there be a finding of not guilty as to that part of the charge which relates to September 6, 1967.

The licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended for sixty days. Re Beachwood Tavern, Inc., Bulletin 1879, Item 5.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions and argument filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 17th day of November 1969,

ORDERED that Plenary Retail Consumption License C-214, issued by the City Council of the City of Trenton to Shamrock Bar, Inc., t/a Shamrock Bar, for premises 28 South Warren Street, Trenton, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, November 24, 1969, and terminating at 2 a.m. Friday, January 23, 1970.

Joseph M. Keegan,
Director.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - FALSE STATEMENT
IN APPLICATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED
FOR 35 DAYS.

In the Matter of Disciplinary)
Proceedings against)

Marcella Bar, Inc.)
t/a Marcella Bar)
115 No. Burlington St.)
Gloucester City, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-21 for the 1968-69 license)
year and C-17 for the 1969-70 license)
year, issued by the Common Council)
of the City of Gloucester City.)

John F. Strazzullo, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On January 24, 1969, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Violet ---, age 18; in violation of Rule 1 of State Regulation No. 20.
- "2. In your application filed with the Common Council of Gloucester City, dated June 3, 1968, and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question No. 35 which asks: 'Has the applicant or has any person mentioned in this application having a beneficial interest in the license applied for or in the business to be conducted under said license ever had any interest directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled? If so state details with respect to each surrender, suspension, revocation or cancellation', whereas in truth and fact the plenary retail consumption license held by you for these same premises had been suspended by the municipal issuing authority for ten (10) days, effective June 13, 1966, for conducting the licensed place of business as a nuisance; such false answer, statement, evasion and suppression being in violation of R.S. 33:1-25."

With respect to the first charge, Violet --- testified that she was born on July 27, 1950. On January 29, 1969 (then being age 18), at about 10:30 p.m., she entered the licensee's premises and purchased five containers of beer from Marguerite

Jenkins (president of the corporate licensee) and paid her therefor. She had visited these premises on three or four prior occasions and neither on this occasion nor on the prior occasions was she asked to produce any identification or make any written representation as to her age.

After leaving the premises, she was confronted by ABC agents and admitted the purchase. She returned to the premises with them and identified Mrs. Jenkins as the person who sold her the beer.

On cross examination this witness stated that she was accompanied by two minors but she was the only one who entered the premises. Upon her return to the premises with the agents, Mrs. Jenkins admitted selling the beer to her.

ABC Agent G testified that on the date charged herein, in the course of his investigation (pursuant to a specific assignment) of an allegation that the licensee was selling alcoholic beverages to minor he observed the aforementioned minor enter the premises without any packages in her hands and leave the said premises carrying alcoholic beverages. After identifying himself to Violet, she exhibited a New Jersey driver's license which indicated that she was under twenty-one. She had in her possession two brown paper bags containing five containers of beer. She admitted to the agent that she purchased the beer at the said licensed premises. When they returned to the premises and spoke to Mrs. Jenkins, Mrs. Jenkins stated that she had made the sale to the minor but that on a prior occasion the minor had shown identification to the effect that she was over twenty-one years of age.

The agent seized the alcoholic beverages and submitted them to the Division chemist for analysis. The chemist's report, certified by the Director and admitted into evidence, shows that the beer was in fact an alcoholic beverage.

Agent G further testified that the application for license filed by this licensee and admitted into evidence falsely answered Question No. 35 to the effect that the licensee had no prior record of suspension of license, whereas in fact the license had been suspended by the local issuing authority for ten days in 1966 for conducting the business as a nuisance.

The testimony of Agent G was corroborated by ABC Agent D who accompanied him on this investigation on the date charged herein.

John Starbransky (a witness on behalf of the licensee) testified that he had sold alcoholic beverages to this minor on a prior occasion when, upon his request, she had exhibited a birth certificate indicating that she was twenty-two years of age. She purchased alcoholic beverages on other occasions thereafter and was not asked to produce any written proof of age on those occasions.

Marguerite Jenkins testified that she had served this minor on the prior Thanksgiving Day and at that time asked her for identification because "anybody looks under twenty-five I want to see proof of age." The minor produced a birth certificate which satisfied her that she was of statutory maturity. She admitted that on the date charged herein she did not ask for any proof of age, nor ask this minor at any time to make any written representation as to her age.

With respect to the second charge, this witness testified that her accountant filled out the application form, as he had done in prior years, and she signed the application without reading its contents. She explained that she has full faith and trust in her accountant and, therefore, did not bother to read the application before signing and swearing to the truthfulness of its contents.

I have carefully analyzed the testimony and have had an opportunity to observe the witnesses as they appeared at this hearing. I am persuaded that the account given by Violet was accurate and forthright and, in fact, her version was corroborated by the Division agents. Fully dispositive of the first charge herein is the fact that no written representation of age was requested by the licensee nor given by the minor at the time of the alleged sale or at any time. This is frankly admitted by Mrs. Jenkins and conceded by the licensee's attorney.

A written representation as to age is an absolute requirement of R.S. 33:1-77 which contains the following proviso:

"... that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over." (Emphasis ours)

The licensee could easily have protected itself, particularly since there was some question in the minds of its agents regarding the true age of this minor. Such alleged fraud and misrepresentation were specifically anticipated by this Division in a special note in its rules (page 86 of the Rules and Regulations) which, in explanation of Rule 1 of State Regulation No. 20, states in part:

"...(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. Hence it is not a defense that mere verbal inquiry may have been made as to the age of the minor or that the minor had verbally misrepresented his age or that the minor had displayed some document (such as a driver's license, birth certificate, military identification card, selective service registration certificate, or any other similar document) which represented his age as over 21. The representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at or prior to the time of sale or service. Such a writing must be signed by the minor in the presence of the licensee or his employee and one in which the minor gives his name, address, age, date of birth and, by signing the writing, makes a statement that he is making the representation as to his age to induce the licensee to make the sale. After the writing has been signed, the licensee should require that the person signing the representation adequately identify himself as that person and thus affirmatively avoid the acceptance of these representations from persons using fictitious names, addresses and ages. The signed representation should then be retained by the licensee...."

Obviously the licensee did not take the minimum precaution of requesting the written representation imperatively required

by the rule. Thus the licensee has not satisfied the regulatory requirements.

The prevention of sales of intoxicating liquor to a minor not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); In re Schneider, 12 N.J. Super. 449 (App.Div. 1951); Mazza v. Cavicchia, 15 N.J. 498 (1954); Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Guill v. Hoboken, 21 N.J. 574 (1956).

With respect to the second charge, Mrs. Jenkins stated that she signed and swore to the truthfulness of the contents of the application without reading the same, and relied upon her accountant who prepared the form for her. This explanation does not constitute an excuse for her failure to properly and truthfully answer the question. The licensee's attorney argues that guilt of this charge can be established under R.S. 33:1-25 only where any material fact is "knowingly" misstated. He obviously misreads the statutory provision. Knowledge of a misstatement of material facts is applicable only with respect to any criminal violation as set forth in the said section. The element of willfulness does not enter into the statutory provision that any false or misleading statement or suppression of a material fact in the securing of a license are grounds for suspension or revocation of the license. All statements in license applications are deemed material and must be fully and truthfully answered. Re Scarne Enterprises, Inc., Bulletin 998, Item 2.

It is therefore recommended that the licensee be found guilty of both charges.

The licensee has a prior record of suspension of license by the municipal issuing authority for ten days effective June 13, 1966, for conducting its licensed place of business as a nuisance (the failure to so set forth in its application forming the basis of the second charge herein) and by the Director for fifteen days effective September 11, 1968, for sale to another retail licensee. Re Marcella Bar, Inc., Bulletin 1820 Item 11.

It is accordingly recommended that the license be suspended on the first charge for fifteen days (Re Jer-Barb, Inc., Bulletin 1848, Item 8) and on the second charge for ten days (Re Culver, Bulletin 1874, Item 4), and that there be added ten days by reason of the prior record of two suspensions for dissimilar violations within the past five years (cf. Tunnel Hill Corporation, Bulletin 1877, Item 4), or a total of thirty-five days.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are devoid of merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions and argument filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 17th day of November 1969,

ORDERED that Plenary Retail Consumption License C-17, issued by the Common Council of the City of Gloucester City to Marcella Bar, Inc., t/a Marcella Bar, for premises 115 No. Burlington Street, Gloucester City, be and the same is hereby suspended for thirty-five (35) days, commencing at 2 a.m. Monday, November 24, 1969, and terminating at 2 a.m. Monday, December 29, 1969.

Joseph M. Keegan,
Director

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

In the Matter of Disciplinary
Proceedings against

Nicholas Critelli
t/a New Music Box Cafe
324½ Seventh Street
Jersey City, N.J.,

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption
License C-143, issued by the Municipal)
Board of Alcoholic Beverage Control of)
The City of Jersey City.)

Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Sunday, September 7, 1969, he sold six cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee (then in partnership with George Critelli) has a previous record of suspension of license by the Municipal issuing authority for three days effective January 22, 1951, for sale during prohibited hours.

The prior record of suspension for similar violation occurring more than ten years ago disregarded, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Dale Rose, Inc., Bulletin 1879, Item 3.

Accordingly, it is, on this 31st day of October 1969,

ORDERED that Plenary Regail Consumption License C-143, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Nicholas Critelli, t/a New Music Box Cafe, for premises 324½ Seventh Street, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, November 10, 1969, and terminating at 2 a.m. Thursday, November 20, 1969.

Joseph M. Keegan,
Director.

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

In the Matter of Disciplinary)
Proceedings against)

Belva Doornbos)
t/a Belle Tavern)
8 Belle Avenue)
Paterson, N.J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-40 issued by the Board of)
Alcoholic Beverage Control for the)
City of Paterson)

-----)

Licensee, Pro Se

Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on
September 20, 1969, she sold six cans of beer for off-premises
consumption during prohibited hours, in violation of Rule 1 of
State Regulation No. 38.

Absent prior record, the license will be suspended for
fifteen days, with remission of five days for the plea entered,
leaving a net suspension of ten days. Re Dale Rose, Inc.,
Bulletin 1879, Item 3.

Accordingly, it is, on this 3d day of November, 1969,

ORDERED that Plenary Retail Consumption License C-40,
issued by the Board of Alcoholic Beverage Control for the City of
Paterson to Belva Doornbos, t/a Belle Tavern, for premises 8 Belle
Avenue, Paterson, be and the same is hereby suspended for ten (10)
days, commencing at 3:00 a. m. Tuesday, November 11, 1969, and
terminating at 3:00 a. m. Friday, November 21, 1969.

Joseph M. Keegan
Director

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary)
 Proceedings against)

Leonard Luizzi)
 614 Second St.)
 Hoboken, N.J.,)

CONCLUSIONS
 and
 ORDER

Holder of Plenary Retail Consumption
 License C-80 (for the 1968-69 license)
 year) and C-69 (for the 1969-70 license)
 year), issued by the Municipal Board)
 of Alcoholic Beverage Control of the)
 City of Hoboken.)

 Russell & Conaghan, Esq., by John P. Russell, Esq., Attorneys for
 Licensee
 Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On March 25, 1969, you possessed, had custody of and
 allowed, permitted and suffered in and upon your li-
 censed premises, alcoholic beverages in bottles which
 bore labels which did not truly describe their contents.
 viz.;

One quart bottle labeled 'Kinsey Silver
 Blended Whiskey, 86 Proof', and

One 4/5 quart bottle labeled 'The Blended
 Scotch Whisky of the White Horse Cellar,
 86.8 Proof';

in violation of Rule 27 of State Regulation No. 20."

ABC Agent M. testified that on March 25, 1969 he "gauged"
 (i.e., tested for proof and color) thirty-four open bottles of al-
 coholic beverages in the licensed premises and his preliminary
 tests indicated that the contents of several of the bottles did
 not correspond with their labels in that they were low in proof
 and off in color. The bottles, which contained pourers, were
 thereupon sealed and submitted to the Division chemist.

The chemist's report, certified by the Director, was
 introduced into evidence and established that both the one quart
 bottle labeled "Kinsey Silver Blended Whiskey, 86 proof" and the
 one 4/5 quart bottle labeled "The Blended Scotch Whisky of the
 White Horse Cellar, 86.8 proof" bore labels which did not truly
 describe their contents in that both were not genuine because
 their solids and color were low. This was established by compari-
 son with the genuine brands of the respective whiskies. The
 chemist's report concluded that these two bottles seized by the
 agent were not genuine as labeled. The subject bottles and their
 contents were also admitted into evidence.

Leonard Luizzi (the licensee) testified that, after the agent gauged the bottles, the agent said to him, "I found a few bottles off." He replied, "I can't imagine how they got off." He asserted that the bottles, which were taken from the back bar, were there for a long period of time and that the change in color may have been due to the fact that they were exposed to the sun. In any event, he denied ever having tampered with the contents of these bottles. Upon examination it was revealed that these bottles had dispensing pourers on them. He also stated that he employed a Mr. Dorrington as bartender for the past eleven years. Mr. Dorrington was not produced as a witness in these proceedings. His explanation for that was that he was then employed at the premises and therefore did not attend this hearing.

Rule 27 of State Regulation No. 20, in its pertinent part, provides as follows:

"No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage....in any keg, barrel, can, bottle, flask or similar container which ... (b) bears a label which does not truly describe its contents"

The language of this regulation is clear and unambiguous.

There is no denial that the two bottles now under consideration were found by the agent in the licensed premises on the day in question.

The licensee is responsible for any alcoholic beverages not truly labeled found upon its licensed premises. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156. As the court stated in that case at page 159:

"...We find nothing within the Alcoholic Beverage Control Act, R.S. 33:1-1, et seq., to indicate an intent that the holder of a retail consumption license must have knowledge that he possesses illicit beverages in order to make him amenable to disciplinary action. Our courts have consistently held that such knowledge is not an essential ingredient to conviction for possession under statutes similar to the one under consideration."

Furthermore, since the regular bartender is presently employed by the licensee, presumably possesses special knowledge of the facts, was available and could have been produced as a witness, the failure to produce him raises an adverse inference against the licensee. Wild v. Roman, 91 N.J. Super. 410 (1966).

After careful consideration of the testimony, I find as a fact that the charge herein has been established by a fair preponderance of the evidence, and recommend that the licensee be found guilty thereof.

The licensee has no prior adjudicated record. It is therefore recommended that the license be suspended for fifteen days. Re Bowl-O-Mat Paramus Operations Corp., Bulletin 1874, Item 11.

Conclusions and Order

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

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

Accordingly, it is, on this 17th day of November 1969,

ORDERED that Plenary Retail Consumption License C-69, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Leonard Luizzi, for premises 614 Second Street, Hoboken, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, November 24, 1969, and terminating at 2 a.m. Tuesday, December 9, 1969.

Joseph M. Keegan,
Director.

8. STATE LICENSES - NEW APPLICATION FILED.

Gallo Wine Sales of New Jersey, Inc.
520 Division Street
Elizabeth, New Jersey

Application filed January 6, 1970 for plenary wholesale license and additional salesroom license for premises South Second and Beckett Streets, Camden, New Jersey.


Joseph M. Keegan
Director