

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

BULLETIN 1156

MARCH 14, 1957.

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - DOWNIE v. SOMERDALE AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL.
2. DISCIPLINARY PROCEEDINGS (Union City) - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - EMPLOYMENT OF MINORS WITHOUT EMPLOYMENT PERMITS - PRIOR RECORD NOT CONSIDERED BECAUSE NO LOCUS POENITENTIAE INTERVENED - PRIOR RECORD OF A PRINCIPAL STOCKHOLDER - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Newark) - HOSTESS - LEWDNESS AND IMMORAL ACTIVITIES (OBSCENE LANGUAGE - INDECENT ACTIONS) - PRIOR WARNING RE SIMILAR VIOLATION - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Paterson) - FALSE ANSWERS IN APPLICATION AS TO BENEFICIAL OWNER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - UNLAWFUL SITUATION CORRECTED - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT WRITTEN MATTER AND PICTURES) - LICENSE SUSPENDED FOR 40 DAYS.
5. DISCIPLINARY PROCEEDINGS (Union City) - ILLICIT LIQUOR - AGGRAVATING CIRCUMSTANCES - PRIOR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Hoboken) - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Wallington) - PERMITTING THE PLAYING OF A RECORDED INDECENT SONG ON LICENSED PREMISES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
9. ACTIVITY REPORT FOR JANUARY 1957.
10. DISCIPLINARY PROCEEDINGS (Pemberton Township) - CHARGE ALLEGING SALES TO MINORS, DISMISSED.
11. DISCIPLINARY PROCEEDINGS (Paterson) - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
12. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 1156

MARCH 14, 1957.

I. COURT DECISIONS - DOWNIE v. SOMERDALE AND DIVISION OF
ALCOHOLIC BEVERAGE CONTROL.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-49-56

JOHN DOWNIE,)
)
Appellant,)
)
-vs-)
)
BOROUGH COUNCIL OF THE BOROUGH)
OF SOMERDALE and DIVISION OF)
ALCOHOLIC BEVERAGE CONTROL,)
)
Respondents.)
-----)

Argued February 18, 1957. Decided March 4, 1957.

Before Judges Clapp, Jayne and Francis

Mr. Anthony L. Cecere argued the cause for
Appellant (Mr. Leo J. Berg, attorney)

Mr. Samuel B. Helfand argued the cause for the
Division of Alcoholic Beverage Control
(Mr. Grover C. Richman, Jr., Attorney General)

Mr. William C. Gotshalk argued the cause for the
Borough Council of the Borough of Somerdale
(Mr. Charles L. Rudd, attorney)

The opinion of the Court was delivered by

CLAPP, S.J.A.D.

The Borough Council of the Borough of Somerdale refused to renew John Downie's plenary retail liquor consumption license for the licensing year July 1, 1956 to June 30, 1957. The State Division of Alcoholic Beverage Control affirmed, and he now appeals to us.

Mr. Downie contends that he was not informed of the reasons for the Borough's action. On the contrary he seems to have been quite aware that the Borough's action was predicated entirely on the basis of two offenses, namely, sales made after hours, for which Downie's license was suspended for ten days in 1954, and sales made to two minors in 1956, of which more will be said below. That Downie was aware of this is indicated by his petition of appeal to the Division and also by a stipulation between his attorney and the Borough's attorney at the hearing before the Division. Further as to the necessity for a statement of reasons on the part of the Council, see Wharton Sand & Stone Co. v. Montville Tp., 39 N. J. Super. 278, 283 (App. Div. 1956).

Mr. Downie contends also that he was not given a hearing before the Borough Council to which he claims to have been entitled under N.J.S.A. 33:1-24 and under constitutional guarantees of due process. First it is to be observed, as the

Borough points out, that this point was not raised in the Division. But, aside from that, we see no merit in the point. The argument rests on Mazza v. Cavicchia, 15 N. J. 498 (1954), which held that the Director of Alcoholic Beverage Control could not, in arriving at his decision, make use of a hearer's secret report without supplying the licensee with a copy of it, and also affording the licensee an opportunity "to refute * * * to supplement, explain and give different perspective to the hearer's view of the case." 15 N. J. at 515. Mr. Downie's contention seems to be that the Borough Council should have furnished him with some statement of its reasons to which he might take exception before the Council came to its decision. But the law does not impose on the Council an obligation of this sort. Mr. Downie perhaps thinks that on a hearing before the Borough he was entitled to sit back and wait for it to put in its case. On the contrary, upon such a hearing, the burden of proof falls on the applicant for the renewal of the license. Nordco, Inc. v. State, 43 N. J. Super. 277, 287 (App. Div. 1957).

The significant circumstance here is (as amply demonstrated at the hearing before the Division) that there is no factual issue in the case. Factually the case rests on the two offenses above stated, of which appellant was admittedly convicted. In that situation testimony and cross-examination before the Council would have served no purpose at all. Nordco, Inc. v. State, 43 N. J. Super. 277 (App. Div. 1957); Boots 'N Saddle v. A. B. C., --- N. J. Super. --- (App. Div. 1957).

Appellant's next point is that in affirming the action of the Borough, the Director abused his discretion. This contention requires us to give some attention to a prior proceeding in the Division. Appellant's license had been revoked by the Borough Council in April 1956 because of the above-mentioned sales to minors. On appeal, the Director modified the action taken by the Council; instead of revoking the license, he suspended it for the balance of the licensing year, that is, for 34 days. The Director did this primarily because under N.J.S.A. 33:1-31 the revocation of the license would have disqualified appellant from continuing his association with another retail liquor establishment in which he had an interest. But these circumstances do not indicate an abuse of discretion in the present case. The mere fact that the license was suspended because of these two offenses (the Director in the prior proceeding also took into account the above-mentioned sales after hours), does not necessarily mean that a refusal thereafter to renew the license because of the same offenses is assailable as a double penalty. Zicherman v. Driscoll, 133 N. J. L. 586, 588 (Sup. Ct. 1946). Taking into consideration the Director's reason for refusing to revoke the license, as above stated, it cannot be said that his subsequent refusal to renew the license constitutes an abuse of discretion.

Appellant's final point is that where the circumstances warrant it, it is only fair that a reasonable opportunity be afforded licensees to liquidate their investments before refusing to renew their licenses. His claim apparently is that he should have been granted a renewal on a condition permitting him to transfer the license within a stated time. Apparently appellant had been negotiating for the sale of the license. We have considered a similar contention in Nordco, Inc. v. State, 43 N. J. Super. 277, 288, 289 (App. Div. 1957), and may say shortly that we see no basis for reversing the Division on this point.

Affirmed.

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - EMPLOYMENT OF MINORS WITHOUT EMPLOYMENT PERMITS - PRIOR RECORD NOT CONSIDERED BECAUSE NO LOCUS POENITENTIAE INTERVENED - PRIOR RECORD OF A PRINCIPAL STOCKHOLDER - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against 715 CLUB, INC. 715 - 8th Street Union City, N. J., Holder of Plenary Retail Consumption License C-216, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS AND ORDER

715 Club, Inc., Defendant-licensee, by Fred Marchitto, President. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On August 18, 19, September 7 and November 2, 1956, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that you allowed, permitted and suffered male and female patrons to dance and otherwise make gestures and movements with their bodies having lewd, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20.

"2. On November 2, 1956, and prior thereto, you knowingly employed on your licensed premises Roger---, Don --- and Otis ---, minors who had not obtained requisite employment permits from the Director of the Division of Alcoholic Beverage Control; in violation of Rule 4 of State Regulation No. 13."

The file herein discloses that ABC agents visited the licensed premises between the hours of 10:00 p.m. and 1:00 a.m. on Saturday, August 18; Sunday, August 19; Friday, September 7, and Friday, November 2, 1956. On each of these occasions the premises were occupied by about eighty patrons (male and female). Some of these patrons were seated at a bar in the front part of the premises and others had gathered in an adjoining room which consisted of a small dancing area surrounded by tables and chairs, a bar and a bandstand from which four musicians supplied "Rock and Roll" music for dancing.

On each of the aforesaid visits, the agents observed a couple giving an exhibition of a new "dance" referred to as the "Fish". Briefly, the "Fish" may be described as follows: the dancing partners face each other from a distance of about two feet and in time with the "Rock and Roll" music, move toward each other, simultaneously assuming certain indecent positions and performing gyratory movements of their bodies in such manner as to simulate sexual intercourse. The vulgarity of these performances was further accentuated by an execution of "bumps and grinds".

Upon interrogation, the agents learned that three members of the band were minors (17, 20 and 20 years of age) who had failed

to obtain the requisite employment permits from this Division.

Defendant has a prior adjudicated record. Effective January 2, 1957, its license was suspended by the local issuing authority for twenty days for sale to minors and permitting a brawl upon the licensed premises. However, since the violation herein preceded the suspension in that matter, no locus poenitentiae intervened and that violation will not be considered in arriving at the penalty herein. Re Thaler, Bulletin 1042, Item 3. It, however, appears that Gabriel Marchitto, the vice-president and holder of 49% of the stock of the corporate licensee herein, while in partnership with one Anthony Riccardi, held a license for the within described premises which license was twice suspended, once effective March 7, 1955 by the Director of this Division for five days for sale to minors (Re Marchitto and Riccardi, Bulletin 1054, Item 7), and the second time, effective May 30, 1955 by the local issuing authority for fifteen days for permitting a brawl on the licensed premises. On June 16, 1955, Gabriel Marchitto and Anthony Riccardi effected a transfer of their license to the corporate licensee herein.

Considering all the facts and surrounding circumstances in this case, I shall suspend the defendant's license for fifty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty days.

Accordingly, it is, on this 15th day of January, 1957,

ORDERED that Plenary Retail Consumption License C-216, issued by the Board of Commissioners of the City of Union City to 715 Club, Inc., 715 - 8th Street, Union City, be and the same is hereby suspended for a period of fifty (50) days, commencing at 3:00 a.m. January 22, 1957, and terminating at 3:00 a.m. March 13, 1957.

WILLIAM HOWE DAVIS
Director.

- 3. DISCIPLINARY PROCEEDINGS - HOSTESS - LEWDNESS AND IMMORAL ACTIVITIES (OBSCENE LANGUAGE - INDECENT ACTIONS) - PRIOR WARNING RE SIMILAR VIOLATION - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
VAGABOND BAR, INC.
112 Elizabeth Avenue
Newark 8, N. J.,
Holder of Plenary Retail Consumption License C-288, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
AND ORDER

Vagabond Bar, Inc., Defendant-licensee, by John Cappo, 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 Sunday morning, August 19, 1956, you allowed, permitted and suffered females, Dona --- and Marchalneil ---, employed on your licensed premises, to accept drinks of beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.

"2. On Sunday morning, August 19, 1956, you allowed, permitted and suffered in and upon your licensed premises lewdness and immoral activity and foul, filthy and obscene language and conduct, in that you allowed, permitted and suffered persons employed on your licensed premises as entertainers to perform in a lewd, indecent and immoral manner, sing songs, utter words and phrases and make gestures and movements having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20."

The file herein discloses that on August 19, 1956, shortly after midnight, three ABC agents entered the licensed premises and took seats at the bar which was attended by four bartenders. The premises were filled to capacity with about one hundred patrons (male and female), some of whom were seated at the bar and others at tables in booths surrounding a dancing area. Behind the bar was an elevated platform from which two three-piece bands supplied the music and two female entertainers (Dona and Marchalneil) performed and sang. Marchalneil was introduced by the "M.C." and rendered three popular songs with a double entendre, accompanied at times by certain hand gestures and language clearly indicative of indecency. At intervals during her performance Marchalneil, with her back to the audience, sat on a chair, placed both her hands on the piano and then assumed positions and performed other movements of her body in such manner as to simulate sexual intercourse. In addition, the "M.C." made a filthy remark through the microphone. During their visit to the licensed premises the ABC agents saw the bartenders serve these two female entertainers with numerous mixed drinks of alcoholic beverages, paid for by various patrons. Shortly before identifying themselves, the three ABC agents observed Dona consume part of a "Vodka and Orange Juice" drink served to her by a bartender at the expense of one of the agents.

Upon interrogation by the ABC agents, both female entertainers orally admitted drinking alcoholic beverages paid for by patrons. Marchalneil also admitted she had been employed by the licensee for the past three weeks and the Master of Ceremonies admitted making the aforementioned vulgar remark. John Cappo (a member of one of the bands and president of the within corporate licensee as well as holder of ninety-eight per cent. of its stock) declined to give a statement.

Defendant has no prior adjudicated record, but the records of the Division disclose that on January 26, 1956, a warning letter as to similar activities was sent to the licensee. I shall suspend defendant's license for twenty days on Charge 1 (Re Pleasant Hour Cocktail Lounge, Inc., Bulletin 1096, Item 2) and for an additional thirty days on Charge 2 (Re Little Cotton Club, Inc., Bulletin 1005, Item 11). Five days will be added because of the warning letter, making a total suspension of fifty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty days.

Accordingly, it is, on this 21st day of January, 1957,

ORDERED that Plenary Retail Consumption License C-288, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Vagabond Bar, Inc., for premises 112 Elizabeth Avenue, Newark, be and the same is hereby suspended for fifty (50) days, commencing at 2:00 a.m. January 29, 1957, and terminating at 2:00 a.m. March 20, 1957.

WILLIAM HOWE DAVIS
Director.

- 4. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION AS TO BENEFICIAL OWNER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - UNLAWFUL SITUATION CORRECTED - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT WRITTEN MATTER AND PICTURES) - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against)
)
 UNION BAR & GRILL, A CORP.)
 T/a UNION BAR & GRILL)
 209 Preakness Avenue)
 Paterson 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-252, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)
)

 Brenman, Susser and Tanis, Esqs., by Herbert Susser, Esq., Attorneys for Defendant-licensee.
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. In your application dated June 12, 1956, filed with the Board of Alcoholic Beverage Control for the City of Paterson, upon which you obtained your current plenary retail consumption license and wherein you listed your stockholders in answer to Question 22 as James Codirolì (8 shares or 80%), Irene Codirolì (1 share or 10%) and Elvira Budeshein (1 share or 10%), you falsely stated 'No' in answer to Question 23, which asks: 'Has any . . . individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', whereas in truth and fact Frank Codirolì (not mentioned in the application as a stockholder or as beneficially interested in any of your stock) had such an interest in that he was the real and beneficial owner of all of your stock; said false statement being in violation of R. S. 33:1-25.

"2. From about August 25, 1954 until the present time, you knowingly aided and abetted Frank Codirolì to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R. S. 33:1-52.

"3. On August 20, 1956 and prior thereto you allowed, permitted and suffered in and upon your licensed premises and had in your possession and distributed or caused to be distributed matter containing obscene, indecent, filthy, lewd, lascivious and disgusting printing, writing, picture or other such representation; in violation of Rule 17 of State Regulation No. 20."

The file herein discloses that Frank Codioli, whose name did not appear in the application dated June 12, 1956 upon which defendant obtained its current liquor license, was the sole owner of all the capital stock of defendant corporation.

During the investigation, it was ascertained that Frank Codioli's name was undisclosed as the real and beneficial owner of said capital stock of defendant corporation because on April 30, 1947 he had been convicted of assault and fined \$25.00. After an examination of the facts resulting in the aforesaid conviction, I was of the opinion that it did not involve the element of moral turpitude which would disqualify him from being engaged in the alcoholic beverage industry in this State and he was so advised by letter dated November 19, 1956.

I have since been advised that the eight shares of stock have been transferred from James to Frank and that written notification thereof has been given to the local issuing authority. R. S. 33:1-34. Thus, the proper correction has been made in the matter.

While ABC agents were at defendant's licensed premises on August 20, 1956, various indecent pictures and filthy written material were found therein.

Defendant has no prior adjudicated record. As to Charges (1) and (2), I shall suspend defendant's license for thirty days, the minimum suspension when the undisclosed owner has a non-disqualifying criminal record. Re Stagg, Bulletin 846, Item 5. As to Charge (3), an additional suspension of ten days will be imposed (Re Sisco, Bulletin 1067, Item 5), making a total suspension of forty days.

Accordingly, it is, on this 21st day of January, 1957,

ORDERED that Plenary Retail Consumption License C-252, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Union Bar & Grill, A Corp., t/a Union Bar & Grill, 209 Preakness Avenue, Paterson, be and the same is hereby suspended for a period of forty (40) days, commencing at 3:00 a.m. January 28, 1957, and terminating at 3:00 a.m. March 9, 1957.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - AGGRAVATING CIRCUMSTANCES - PRIOR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SPORTS BAR & GRILL, INC.)
4012-14 Hudson Boulevard)
Union City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the City of Union City.)
-----)

Sports Bar & Grill, Inc., Defendant-licensee, by William E. Morse, President.

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

BY THE DIRECTOR:

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

The file herein discloses that on November 19, 1956 an ABC agent, while testing and gauging the licensee's open bottles of alcoholic beverages, seized a number of such bottles because their contents appeared to be low in proof and submitted such bottles to the Division's chemist for analysis. The chemist's report shows that when compared with samples of the genuine product of the labeled brands, the contents of eight of these bottles varied substantially in solids, acids and color, the contents of four additional bottles in color and acids, and the contents of one additional bottle in acids.

This case is seriously aggravated by the large number of bottles involved and the fact that such bottles represent nearly one-half of defendant's open stock of whiskey.

In mitigation of penalty, defendant submitted a statement which I have carefully considered. I, however, do not find any extenuating circumstances in this matter which would impel me to impose less than the established minimum penalty in cases of this type.

Defendant has a prior adjudicated record. Effective July 5, 1956, the Director of this Division suspended defendant's license for thirty-five days for (1) an "hours" violation, (2) possession of lottery tickets, and (3) possession of indecent matter on its licensed premises. Re Sports Bar & Grill, Inc., Bulletin 1124, Item 2. The usual suspension for the violation as set forth in the charge herein is sixty days. Re Tumulty, Bulletin 742, Item 8. However, since the aforesaid prior dissimilar violations occurred within a five-year period, an additional five-day penalty will be added, Re DeFreitas, Bulletin 1139, Item 1, making a total suspension of sixty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of sixty days.

Accordingly, it is, on this 21st day of January, 1957,

ORDERED that Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the City of Union City

to Sports Bar & Grill, Inc., 4012-14 Hudson Boulevard, Union City, be and the same is hereby suspended for a period of sixty (60) days, commencing at 3:00 a.m. January 28, 1957, and terminating at 3:00 a.m. March 29, 1957.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ALFRED ROMAN)
216 Willow Avenue)
Hoboken, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-176, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.)

Alfred Roman, 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 possessed on his licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe the contents therein, in violation of Rule 27 of State Regulation No. 20.

The file herein discloses that on October 16, 1956, an ABC agent making a routine inspection of defendant's licensed premises tested and gauged a number of opened bottles of assorted brands of liquor among which he found one bottle, the contents of which appeared to be off in color and low in proof. The agent seized the bottle and submitted it to the Division chemist for an analysis of its contents. The chemist's report shows the liquor to be only 1 proof short but excessively high in solids and acids when compared with the genuine product.

Defendant has a prior adjudicated record. Effective March 21, 1956, a license held by defendant for 142 Garden Street, Hoboken, was suspended for ten days by the local issuing authority for sales to minors. The minimum penalty imposed for a violation such as charged herein is fifteen days. Re Pchola, Bulletin 1119, Item 7. However, because the prior dissimilar violation occurred within a five-year period, an additional five days will be added. I shall suspend defendant's license for twenty days and remit five days for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 8th day of January, 1957,

ORDERED that Plenary Retail Consumption License C-176, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Alfred Roman, 216 Willow Avenue, Hoboken, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. January 15, 1957, and terminating at 2:00 a.m. January 30, 1957.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - PERMITTING THE PLAYING OF A RECORDED INDECENT SONG ON LICENSED PREMISES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BERNICE CARBONE)
T/a NEW HAYWARD LODGE)
63 Union Boulevard)
Wallington, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Mayor and Council of the Borough of Wallington.)

-----)
Nicholas D. Introcaso, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she allowed, permitted and suffered on her licensed premises the playing of a recorded song which had a suggestive import and meaning, in violation of Rule 5 of State Regulation No. 20.

The file herein discloses that on October 11, 1956, ABC agents visited defendant's licensed premises wherein they observed several male and female patrons seated at tables and at the bar. During most of their stay a juke box record, the lyric of which had a suggestive connotation, was played incessantly. The agents later seized the record which defendant's manager admitted had been on the licensed premises for about two weeks.

Defendant, by way of mitigation, states that a vending company has exclusive control over the juke box and that she assumed that the records placed therein were proper and legal. The reasons advanced have no merit. "Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises." Bilowith v. Passaic, Bulletin 527, Item 3.

Defendant has no prior adjudicated record. While this is a case of first impression involving juke box records, I shall, nevertheless, suspend her license for fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Sickie, Bulletin 977, Item 6.

Accordingly, it is, on this 9th day of January, 1957,

ORDERED that Plenary Retail Consumption License C-6, issued by the Mayor and Council of the Borough of Wallington to Bernice Carbone, t/a New Hayward Lodge, 63 Union Boulevard, Wallington, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. January 16, 1957, and terminating at 3:00 a.m. January 26, 1957.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

HENRY D. GALLO and ANGELO MacRAE
T/a TIOGA TAVERN
589 Communipaw Avenue
Jersey City 4, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-126, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Henry D. Gallo and Angelo MacRae, Defendant-licensees, Pro se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded guilty to charges alleging that (1) on Sunday, December 16, 1956, they sold alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38; and (2) on said date they sold said beverages during prohibited hours, in violation of a local ordinance.

The file herein discloses that at about 9:15 a.m. on Sunday, December 16, 1956, an ABC agent purchased from the licensees six 12-ounce cans of beer for off-premises consumption. The local ordinance prohibits the sale of alcoholic beverages between the hours of 2:00 a.m. and 1:00 p.m. on Sundays, and State Regulation No. 38 prohibits the sale on Sundays of said beverages in original containers for off-premises consumption.

Defendants have no prior adjudicated record. I shall suspend their license for a period of twenty days (Re Gardianos, Bulletin 1133, Item 5). Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 14th day of January, 1957,

ORDERED that Plenary Retail Consumption License C-126, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Henry D. Gallo and Angelo MacRae, t/a Tioga Tavern, for premises 589 Communipaw Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. January 21, 1957, and terminating at 2:00 a.m. February 5, 1957.

WILLIAM HOWE DAVIS
Director.

ACTIVITY REPORT FOR JANUARY 1957

ARRESTS:		
Total number of persons arrested	-----	36
Licensees and employees	-----14	
Bootleggers	-----22	
SEIZURES:		
Motor vehicles - cars	-----	2
Stillis - 50 gallons or under	-----	1
Mash - gallons	-----	.16
Distilled alcoholic beverages - gallons	-----	13.71
Wine - gallons	-----	1.84
Brewed malt alcoholic beverages - gallons	-----	4.12
RETAIL LICENSEES:		
Premises inspected	-----	692
Premises where alcoholic beverages were gauged	-----	513
Bottles gauged	-----	8,567
Premises where violations were found	-----	39
Violations found	-----	45
Type of violations found:		
Application copy not available	-----24	Reg. #38 sign not posted
Unqualified employees	-----9	Other mercantile business
Disposal permit necessary	-----3	Other violations
STATE LICENSEES:		
Premises inspected	-----	31
License applications investigated	-----	15
COMPLAINTS:		
Complaints assigned for investigation	-----	400
Investigations completed	-----	354
Investigations pending	-----	136
LABORATORY:		
Analyses made	-----	180
Bottles from unlicensed premises	-----	15
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made	-----	25
Persons fingerprinted for non-criminal purposes	-----	147
Identification contacts made with other enforcement agencies	-----	132
Motor vehicle identifications via N. J. State Police teletype	-----	8
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	12
Violations involved: 14		
Sale during prohibited hours	-----7	
Sale to minors	-----4	
Permitting brawl on premises	-----1	
Sale to non-members by club	-----1	
Employing female bartender (local reg.)	-----1	
Cases instituted at Division	-----	28
Violations involved: 32		
Sale to minors	-----10	Failure to afford view into premises
Sale during prohibited hours	-----6	during prohibited hours
Sale below minimum resale price	-----5	Sale during license suspension
Possessing illicit liquor	-----2	Possessing pin ball machine on prem.
Conducting business as a nuisance	-----2	Sale outside scope of license
Failure to close premises during prohibited hours	-----1	Service to women at a bar (local reg.)
Sale to non-members by club	-----1	Sale to non-members by club
Cases brought by municipalities on own initiative and reported to Division	-----	16
Violations involved: 22		
Sale to minors	-----9	Delivery without bona fide invoice
Sale during prohibited hours	-----3	Storage off licensed premises
Permitting brawl on premises	-----3	Unqualified employees
Permitting minors to loiter on premises (local reg.)	-----1	Permitting persons of ill repute on premises
Unauthorized transportation	-----1	Permitting lottery activity on premises
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	52
Appeals	-----7	Seizures
Disciplinary proceedings	-----29	Tax revocations
Eligibility	-----7	
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-----	919
Licenses	-----4	Social affair permits
Employment permits	-----128	Miscellaneous "
Solicitors' "	-----37	Transit insignia
Disposal permits	-----126	Transit certificates
Wine permits	-----28	

Dated: February 8, 1957

WILLIAM HOWE DAVIS
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALES TO MINORS, DISMISSED.

In the Matter of Disciplinary Proceedings against)

FRANK P. & ANNA O'BRIEN)
T/a O'BIE'S CAFE)
S/S Pemberton-Browns Mills Rd.)
Pemberton Township)
PO Browns Mills, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-4, issued by the Township Committee of Pemberton Township.)

Conroy and Supple, Esqs., by John S. Conroy, 3rd, Esq.,
Attorneys for Defendant-licensees.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"Defendants pleaded not guilty to a charge alleging that on August 7, 1956, they sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a minor in and upon their licensed premises, in violation of Rule 1 of State Regulation No. 20.

"The following is a summary of the evidence presented by the Division: On August 7, 1956, four boys joined two other boys who were in a car in which there were six cans of Ballantine's beer purchased by one of the two boys at a nearby tavern. The six boys then rode in the car to defendants' tavern where they arrived between 8:30 and 8:45 p.m. Leon --- (age 19), one of the boys, testified that he left his companions seated in the parked car, entered the tavern and there purchased two six-packs of Ballantine's beer which he took to the car. One of his companions states that he saw Leon go up 'two steps' of the tavern; the others did not see him enter the tavern, and none of his companions observed Leon emerge from the tavern.

"On the morning of August 8 Leon and his companions directed ABC agents to defendants' licensed premises which they identified from the exterior as the place where the car was parked the previous evening. On August 8, at about 7:00 p.m., Leon entered defendants' tavern with the agents and identified the interior by its physical arrangements but could not tell whether Francis or James O'Brien (bartenders) or some other bartender sold the beer to him.

"On cross-examination the attorney for defendants developed that Leon had been convicted of petty larceny and that two of his companions also had criminal records as juvenile delinquents; that Leon could not recollect whether there was a television set or a music machine in the tavern; that Leon claimed that the bar was dark with only one other patron present and that he did not see two of the defendants' witnesses there -- Thomas McPherson (with whom he is well acquainted) or Joseph W. Pierce; that he could not recall how it came about that the

group decided they need more beer or why they drove to the defendants' tavern or why he was selected to make the purchase; that on August 8, having arranged to meet ABC agents at 7:00 p.m. to attempt to identify the person who served him beer at the premises, he and a companion, at about 4:30 p.m. while passing by a building supply store operated by the O'Briens, sent his companion into the store to call out one of the O'Briens, none of whom he knew, and one such person came out, whom he informed that some people are trying to get him into trouble about the beer; that Leon had no specific reason for contacting them except to warn them to exercise more care in checking minors.

"One of Leon's companions testified that, when they arrived at defendants' tavern, they all chipped in money and gave it to Leon; that he got out of the car first and then Leon got out; that he saw Leon go to the foot of two steps (towards the door of the tavern) and did not see him come out, but that Leon came over to the car with Ballantine beer; that he had been convicted of crime on at least two occasions.

"Another of the boys who did not see Leon enter or leave the tavern, and whose appearance is considerably older than that of Leon, testified that it would have been easier for him to go for the beer but he did not have any specific reason why he did not do so; that it was decided to go to defendants' tavern after he picked up the four boys at a carnival and parked at a dam where it was decided to get more beer; and that the dam is a couple of yards from another tavern where he had purchased the Ballantine beer which was in the car. Asked why he did not, therefore, purchase the additional beer at such tavern he answered 'We weren't going to walk around the carnival with beer in our hands.' The discrepancy between his account that he picked up the boys at a carnival and parked at the dam and decided to get more beer and that they parked at the dam, decided to get beer and then picked up the boys at the carnival remains unexplained. He acknowledged that there were other licensed premises in the vicinity.

"Each of the other three boys stated that his testimony in general would be the same as that of the other boys. One of these three boys said that he had been convicted of crime on fifteen or twenty occasions as a juvenile.

"James O'Brien, a son of the licensees and employed by them as a bartender, stated that he was on duty the night of August 7 from 6:00 p.m. until 8:30 p.m., at which time his brother Francis came on duty, and that there were no other bartenders there that night; that Leon was not in the licensed premises while he was on duty and he did not sell him any beer; that there is a television set and music box clearly visible in the premises; that when he left, shortly after 8:30 p.m., Thomas McPherson and Joseph Pierce (two patrons) remained in the tavern, and that it is a well-lighted bar. His version of the remarks to him by Leon on August 8 is that Leon said 'Some of the boys in town are getting you in trouble -- some of them say I bought beer in your place last night.'

"Francis O'Brien testified that he came on duty at 8:25 or 8:30 p.m.; that Thomas McPherson was there and a few other persons; that Joseph Pierce came in with him; that he remained on duty until about 11:00 p.m., and that Leon did not come into the tavern during those hours and he did not sell him any beer.

"Joseph W. Pierce testified that he is employed as a radio and television service mechanic; that he entered the tavern with Francis O'Brien at about 8:30 p.m. and that he remained until about 10:00 p.m.; that Thomas McPherson and a man and woman were in the tavern; that the bar is well-lighted; that he knows Leon very well and is acquainted with four of the other boys, and that none of them came into the tavern while he was there.

"Thomas McPherson testified that he is employed by an automobile dealer; that he arrived at defendants' tavern on the night of August 7 at about 6:30 or 7:00 p.m. and remained there until after 10:00 o'clock; that James O'Brien was the bartender until about 8:30 p.m., when Francis O'Brien went on duty; that there were at least three patrons in the tavern at all times; that he is acquainted with all of the boys, and that neither Leon nor any of the other boys was in the tavern while he was there.

"In my opinion the doubts that present themselves from the testimony of the minors, and the conflict between their testimony and that of the defendants' witnesses must be resolved in favor of the defendants. In consequence, I recommend that the charge should be dismissed. Re Borstelmann, Bulletin 1127, Item 3; Re Moore, Bulletin 1136, Item 6."

Pursuant to Rule 6 of State Regulation No. 16, the prosecuting attorney filed exceptions to the Hearer's Report, wherein he contended that the evidence was sufficient to establish the guilt of defendant.

After careful examination of all the evidence presented in the case and the written argument filed by the prosecuting attorney and the attorney for defendants, I have decided to adopt the conclusions of the Hearer as my conclusions in the case. Several of the minors have long criminal records and one minor, while on the witness stand, even boasted of his lengthy record. Considering their testimony against the positive testimony of defendants' witnesses, I conclude that the Division has failed to establish the guilt of defendants by a fair preponderance of the evidence (Re Borstelmann, supra; Re Moore, supra). Hence I shall dismiss the charge.

Accordingly, it is, on this 9th day of January, 1957,

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

WILLIAM HOWE DAVIS
Director.

11. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JACOB VENOLA)
T/a VENOLA'S LIQUOR STORE)
620 River Street)
Paterson, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-25, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

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

BY THE DIRECTOR:

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

The file herein discloses that on December 21, 1956, the defendant sold to an agent of this Division two 4/5 quart bottles of Schenley's Reserve Blended Whiskey and accepted \$8.53 in payment thereof. The minimum consumer resale price then in effect for each of the aforesaid 4/5 quart bottles was \$4.49 or \$8.98 for both items. The licensee was on the premises when the sale was made by Joseph Venola, his son, who later admitted making the same at the reduced price.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Levine, Bulletin 1104, Item 8.

Accordingly, it is, on this 23rd day of January, 1957,

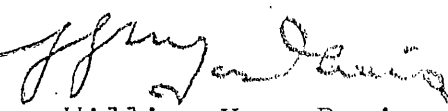
ORDERED that Plenary Retail Distribution License D-25, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Jacob Venola, t/a Venola's Liquor Store, 620 River Street, Paterson, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 30, 1957, and terminating at 9:00 a.m. February 4, 1957.

WILLIAM HOWE DAVIS
Director.

12. STATE LICENSES - NEW APPLICATION FILED.

City Beverage Distributors, Inc.
415 West Grand Street
Elizabeth, N. J.

Application filed March 11, 1957 for person-to-person transfer of State Beverage Distributor's License SBD-106 from City Beverage Company, Inc.

New Jersey State Library 
William Howe Davis
Director.