

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

BULLETIN 1855

May 15, 1969

TABLE OF CONTENTSITEM

1. APPELLATE DECISIONS - SLOBODIAN v. PASSAIC.
2. APPELLATE DECISIONS - LEE-JAY LIQUOR CENTER v. ORANGE.
3. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION AND POSSESSION OF STOLEN ALCOHOLIC BEVERAGES - MOTOR VEHICLE RETURNED TO INNOCENT OWNER - CLAIM OF OWNER OF STOLEN WHISKEY TO BE CONSIDERED AT SUPPLEMENTAL HEARING.
4. ACTIVITY REPORT FOR MARCH 1969.
5. DISCIPLINARY PROCEEDINGS (Passaic) - UNQUALIFIED EMPLOYEE - CHARGE DISMISSED.
6. DISCIPLINARY PROCEEDINGS (Paterson) - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Perth Amboy) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS.
8. DISCIPLINARY PROCEEDINGS (Freehold Township) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Gloucester Township) - SALE TO A MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
10. DISCIPLINARY PROCEEDINGS (Mahwah) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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

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May 15, 1969

1. APPELLATE DECISIONS - SLOBODIAN v. PASSAIC.

JOHN B. SLOBODIAN, t/a)
John's Bar & Restaurant,)
Appellant,)
v.)
Municipal Board of Alcoholic)
Beverage Control of the City)
of Passaic,)
Respondent.)

On Appeal

CONCLUSIONS

and

ORDER

-----)
Goodman & Rothenberg, Esqs., by Robert I. Goodman, Esq., Attorneys
for Appellant
Charles E. Miller, Esq., by Milton J. Pashman, Esq., Attorney
for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal is from the action of respondent (hereinafter Board) which by unanimous vote of its members on June 24, 1968 denied the application of appellant for renewal of his plenary retail consumption license for 1968-69 for premises 57 Lexington Avenue, Passaic.

The resolution adopted by the Board, which relates (among others) to appellant's license, reads as follows:

"BE IT RESOLVED, that Alcoholic Beverage Licenses for the year beginning July 1, 1968 and expiring June 30, 1969 be and the same are not renewed, for the reason that the public necessity and convenience dictates that they not be renewed:

"C-2 John B. Slobodian, t/a John's Bar
and Restaurant

* * * * *

Appellant in his petition of appeal alleges that the action of the Board was erroneous in that it was arbitrary and an abuse of discretion.

The Board's answer filed in this matter denies the aforesaid allegations of appellant and avers "that the respondent considered all the facts and circumstances pertaining to the refusal to renew the license, and that the grounds not to renew same was reasonable and proper and in the best interest of public welfare."

At the time of filing this appeal the Director entered an order dated July 1, 1968, extending the term of the appellant's license pending determination of the appeal.

This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the attorneys for the respective parties to present testimony and cross-examine witnesses.

Detective Sergeant John Magdziak, of the Passaic Police Department, testified that he was assigned to work on liquor matters in the municipality and had in his possession the police records pertaining to appellant's liquor license which included a report of a larceny of money at the tavern on December 13, 1962, but that there was no disposition of the incident. He further testified that on February 22, 1968, according to the records, there was a report of a fight in progress in the appellant's tavern and that the police officers who responded stopped the fight and apprehended the participants; that neither of the men involved would lodge a complaint in the matter. Sergeant Magdziak further testified that on March 1, 1968 he investigated a report of a shooting which resulted in the death of the wife of the licensee. He also testified that on June 12, 1968, the record indicates that the police were notified that money had been stolen at appellant's licensed premises but that the alleged thief was never apprehended.

Milton I. Mostel, chairman of the Board, testified that in reaching his decision to vote against renewal of appellant's license, he considered the contents of appellant's application, including that in 1952 appellant had been found guilty of assault and battery and that in 1963 appellant was placed on probation after being found guilty of keeping a gambling resort. Furthermore, Chairman Mostel, during cross examination, indicated that he considered the June 12, 1968 incident wherein "we determined that there was a fight and that it involved someone who had allegedly -- who alleged that they had been robbed." He further stated that he had no knowledge that there was a contract in existence to sell the liquor business but "it wouldn't mean anything to us unless it came to us in the manner in which these things do come, a request for a transfer. We would then give it every consideration, but this did not come to us. It never came to our attention. It was never on file. There was no applications." When he was asked whether he had knowledge that the two criminal convictions aforementioned were set forth in the prior applications for renewal of the license in question, Chairman Mostel testified that he did not have such knowledge because he was not a member of the respondent Board and "I didn't ask about it that far back." He also said that no charges were preferred by respondent against the appellant for any alleged violation of the Alcoholic Beverage Law.

Theresa Chayka testified that she and Jean Fisher were presently under contract to purchase appellant's licensed premises and, if the appellant's license would be renewed for the current licensing period, an application for transfer of the license would be filed immediately.

The appellant's last adjudicated record was suspension of his license effective November 25, 1963 (Re Slobodian, Bulletin 1541, Item 10), but his license was renewed for each successive term thereafter by the local issuing authority.

It is well established that there is no inherent right to the renewal of a license. Zicherman v. Discoll, 133 N.J.L. 586; Kleinberg v. Harrison, Bulletin 984, Item 2; Bumball v. Burnett, 115 N.J.L. 254. No one has a right to demand a license.

A license is a special privilege granted to the few, denied to the many. Meehan v. Jersey City, 73 N.J.L. 382. As Justice Field stated in Crowley v. Christensen, 137 U.S. 86, 92:

"...There is no inherent right in a citizen to thus sell intoxicating liquors by retail As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rests in the discretion of the governing authority"

The municipal issuing authority has within its sound discretion the determining authority in the first instance to decide whether an applicant is worthy of his license. However, such exercise of discretion must be based on valid and substantial grounds, and may not be denied capriciously, or merely to reduce the number of licenses in the municipality. If such a denial is not based on reasonable grounds, it will be reversed. Costa v. Red Bank, Bulletin 133, Item 5; B & L Tavern, Inc. v. Bayonne, Bulletin 1459, Item 1.

The resolution denying the renewal of appellant's license for the current licensing period gave as its reason that "the public necessity and convenience dictates" that it should not be renewed. Thus it appears that a prime reason for respondent's action was to reduce the number of licenses presently existing in the municipality. Although the desire to reduce the number of licenses because in the opinion of the Board members too many were outstanding is commendable, they should have attempted to accomplish this through some less arbitrary means. An owner of a license or privilege acquires through his investment therein an interest which is entitled to some measure of protection. Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462,466. In view of the fact that appellant disclosed in detail all pertinent information required in the application for renewal is proof that there was no attempt of concealment so as to practice a fraud upon the issuing authority. Mere fact that an alleged brawl occurred in the licensed premises on February 22, 1968 (as to which no disciplinary proceedings were instituted) is insufficient to warrant a denial of the renewal of the license.

Under the circumstances appearing herein, I find the action of the respondent Board in denying renewal of appellant's license was unreasonable. Therefore I recommend that an order be entered reversing the Board's action.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, the attorney for respondent Board filed written exceptions to the Hearer's report and written argument thereto.

I have carefully considered the entire record herein, including the transcript of testimony, the Hearer's report and the exceptions thereto, which I find without merit. Hence I adopt the Hearer's findings and conclusions as my conclusions herein.

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

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Passaic be and the same is hereby reversed, and it is directed that said Board grant appellant's application for license for the 1968-69 license year in accordance with the application filed therefor.

JOSEPH M. KEEGAN
DIRECTOR

2. APPELLATE DECISIONS - LEE-JAY LIQUOR CENTER v. ORANGE.

LEE-JAY LIQUOR CENTER (a corporation),)	
)	
Appellant,)	
)	
v.)	On Appeal
)	
Municipal Board of Alcoholic Beverage Control of the City of Orange,)	CONCLUSIONS and ORDER
)	
Respondent.)	
-----))	
James A. Palmieri, Esq., Attorney for Appellant)	
Joseph L. Magrino, Esq., by Phillip F. Guidone, Esq.,)	
Attorney for Respondent)	

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the twenty-day suspension, effective November 18, 1968, of its plenary retail distribution license for premises 401 Main Street, Orange, after it entered a plea of guilty to a charge preferred by respondent Municipal Board of Alcoholic Beverage Control of the City of Orange (hereinafter Board), as follows:

"On Saturday, September 28, 1968, you sold, served and delivered, allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to Leonard --- and Frank ---, persons under the age of twenty-one years, in violation of Rule 1 of State Regulation No. 20."

Appellant, in substance, alleges in its petition of appeal that (a) it was assured by the attorney for the Board that the suspension to be imposed would be five days; (b) that it had a meritorious defense to the charge; (c) that appellant was given notice on Saturday, November 16, that the suspension of its license would become effective on Monday, November 18; and (d) that irreparable harm would be done appellant by suspending its license over Thanksgiving Day and during the busiest season of the year.

The Board's answer denies all the allegations in appellant's petition, excepting the allegations relating to a meritorious defense to the charge, which allegation the Board neither

admits nor denies.

Upon the filing of this appeal, an order dated November 18, 1968 was entered by the Director staying the effect of the Board's order of suspension pending determination of the appeal.

At the hearing herein, appellant's attorney admitted that on September 28, 1968, Jerry Vernon, an officer of appellant corporation, sold two quart bottles of beer each to Leonard --- and Frank ---, each 17 years of age. As the minors were leaving appellant's premises, a police officer observed each minor carrying a bag containing beer and followed them when they immediately re-entered appellant's licensed premises; that Vernon, when questioned by the police officer, admitted the sale to the minors.

The attorney for appellant, in his plea for mitigation of penalty imposed by the Board, said that he had discussed the extent of the penalty with the attorney for the Board if a guilty plea were entered by appellant. He further stated that there was a misunderstanding by the Board's attorney because he understood that "if I entered a [guilty] plea the five days he was talking about would be subtracted from the penalty by virtue of the plea." It was conceded that because of the entry of the confessional plea, the question to be decided was whether, in view of the surrounding circumstances, the suspension imposed by the Board was excessive.

The suspension of license imposed in a local disciplinary proceeding rests in the first instance within the sound discretion of the municipal issuing authority, and the power of the Director to reduce or modify it will be sparingly exercised and only with the greatest caution. Robinson et al. v. Newark, Bulletin 54, Item 2; Russo v. Lincoln Park, Bulletin 1177, Item 7; Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296; Item 2.

I have considered the allegations advanced by appellant herein and the oral argument of its attorney. Moreover, I have taken into consideration that there were sales of alcoholic beverages to two 17-year-old minors and that there appears to be no prior assurances by the members of the Board in so far as the length of the suspension was concerned. The suspension imposed, because of the violation herein, cannot be described as severe. Cf. Re Wisniewski, Bulletin 1812, Item 8, illustrating Division practice to impose such a penalty where sale to two minors, age 17, is involved.

Under the circumstances, I recommend that an order be entered affirming the Board's action and dismissing the appeal and fixing the effective dates for the suspension imposed by the Board which had been stayed pending entry of the order herein.

Conclusions and Order

Exceptions to the Hearer's report were filed by appellant pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the evidence, the argument of counsel for appellant at the hearing herein, the Hearer's report and the exceptions thereto, which I find to be without merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 18th day of March, 1969,

ORDERED that the action of respondent Board be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Distribution License D-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Lee-Jay Liquor Center (a corporation) for premises 401 Main Street, Orange, be and the same is hereby suspended for twenty (20) days, commencing at 9:00 a.m. Tuesday, March 25, 1969, and terminating at 9:00 a.m. Monday, April 14, 1969.

JOSEPH M. KEEGAN
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION AND POSSESSION OF STOLEN ALCOHOLIC BEVERAGES - MOTOR VEHICLE RETURNED TO INNOCENT OWNER - CLAIM OF OWNER OF STOLEN WHISKEY TO BE CONSIDERED AT SUPPLEMENTAL HEARING.

In the Matter of the Seizure)
on November 28, 1968 of a)
quantity of alcoholic beverages)
and a 1965 Dodge Van on the)
public highway, Route 561,)
Berlin Township, County of Camden)
and State of New Jersey.)
-----)

Case No. 12,135
On Hearing
CONCLUSIONS
and
ORDER

Robert C. Beck, Esq., appearing for claimant, Anthony J. Senteneri.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey and State Regulation No. 28 to determine whether 684 containers of alcoholic beverages and a 1965 Dodge Van truck, more particularly described in a schedule attached hereto, made part hereof and marked Schedule "A", seized on November 28, 1968 on the public highway, Route 561, Berlin Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Anthony J. Senteneri, represented by counsel, appeared and sought the return of his motor vehicle.

Reports of ABC agents and other documents in the file presented in evidence with the consent of the claimant, reflect the following: At about 10:30 P.M. on Thursday, November 28, 1968, a New Jersey State trooper, while on routine patrol of traffic, stopped the motor vehicle in question on the public highway aforesaid. The truck was being operated by Charles J. Snyder who was accompanied by Eugene M. Borden. The truck bore New Jersey license plates N.J. X77932, registered in the name of the claimant

herein of West Berlin, New Jersey. The trooper observed numerous cases of taxpaid whiskey in the vehicle. Snyder was unable to produce a transportation permit and the truck bore no transit insignia.

The trooper thereupon took possession of the truck and the alcoholic beverages and arrested Snyder and Borden. They were charged with the transportation and possession of alcoholic beverages contrary to R.S. 33:1-2 in violation of R.S. 33:1-50 and Borden was additionally charged with conspiracy under R.S. 2A:98-1(d). They were released in bail pending arraignment in the Berlin Township Municipal Court.

The truck and the whiskey were thereafter adopted by agents of this Division. Subsequent investigation by the New Jersey State police established that the seized whiskey was part of a shipment stolen from the Eastern Freight Ways of 1606 Union Avenue, Pennsauken, N.J.

On December 30, 1968 the contents of one of the seized bottles of whiskey was analyzed by the Division chemist who reports that it is an alcoholic beverage fit for beverage purposes, with an alcoholic content, by volume, of 43%.

The records of this Division do not disclose any license or permit issued to Charles J. Snyder, Eugene M. Borden or Anthony J. Senteneri authorizing the transportation of alcoholic beverages in the said truck, nor did the said motor vehicle contain any transit insignia affixed thereto or inscription in lieu of such insignia painted thereon, as required by Rule 2 of State Regulation No. 18. Since these alcoholic beverages were being transported without the requisite transportation license or permit required by R.S. 33:1-13 and Rule 2 of State Regulation No. 18 and in an unlicensed vehicle which did not bear any transit insignia affixed thereto, they are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages and the vehicle in which they were transported are, therefore, unlawful property and subject to forfeiture. R.S. 33:1-1(y); Seizure Case No. 11,989, Bulletin 1805, Item 6.

Anthony J. Senteneri produced a certificate of ownership of the said motor vehicle and gave the following account: He has frequently loaned his truck to neighbors and on at least a dozen occasions loaned this truck to Snyder. Snyder owned his own open van tractor but would borrow the claimant's truck when the weather was inclement and he required a closed truck for moving furniture. On a number of these occasions Snyder told him that he needed his truck because the property he was transporting was valuable and could not be transported in his own open truck.

On the date aforesaid, when Snyder requested the use of this truck the claimant was on his way to the funeral home where his mother was being prepared for burial. The claimant was upset and because of this tragic situation did not ask Snyder to what use he intended to put the truck. Because Snyder was a neighbor, he assumed that he was going to use it for the usual purposes (of hauling furniture) and had no reason to believe that this motor vehicle would be used in unlawful liquor activity.

The attorney for the claimant stated to the court that he endeavored to produce Snyder as a witness to corroborate the claimant's account but that Snyder, on advice of counsel, refused to appear because of the criminal proceedings pending against him.

From the proofs in this case, there is nothing that would indicate or suggest knowledge on the part of this claimant

that his motor vehicle would be used in unlawful activity. The version given by Senteneri appears to be forthright and credible.

I am satisfied from the evidence presented that the claimant acted in good faith, and did not know or have any reason to believe that the said motor vehicle would be used in unlawful transportation of alcoholic beverages. I, therefore, shall grant the request for the return to him of the seized motor vehicle. Seizure Case No. 11,307, Bulletin 1594, Item 4; Seizure Case No. 10,584, Bulletin 1419, Item 2; Seizure Case No. 11,156, Bulletin 1545, Item 5.

A Hearer's Report has been expressly waived by the attorney for the claimant.

Subsequent to this hearing, a letter was received from the attorney representing the Eastern Freight Ways advising that he decided to enter a claim for the return of the seized alcoholic beverages which were stolen on November 26, 1968. Since the said proceedings against Snyder and Borden are presently pending and the seized alcoholic beverages may be needed as evidence in those proceedings, action on the said request will be reserved. Therefore, no order will be entered herein with respect thereto.

Accordingly, it is on this 14th day of March, 1969

DETERMINED and ORDERED that the said motor vehicle be returned to Anthony J. Senteneri and under the facts and circumstances in this matter, the costs of seizure and storage are hereby waived.

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

- 684 - containers of alcoholic beverages
- 1 - 1965 Dodge Van, Serial No. 1962033465Z,
N.J. Registration X77932

4.

ACTIVITY REPORT FOR MARCH 1969

ARRESTS:		
Total number of persons arrested	-----	10
Licensees and employees	8	
Bootleggers	2	
SEIZURES:		
Distilled alcoholic beverages - gallons	-----	3.49
Wine - gallons	-----	.187
Brewed malt alcoholic beverages - gallons	-----	78.92
RETAIL LICENSEES:		
Premises inspected	-----	922
Premises where alcoholic beverages were gauged	-----	761
Bottles gauged	-----	12,011
Premises where violations were found	-----	196
Violations found	-----	282
No Form E-141-A on premises	95	No disposal permit 4
Unqualified employees	57	Prohibited signs 3
Form E-141-A incomplete	32	Other mercantile business 1
Application copy not available	30	Other violations 60
STATE LICENSEES:		
Premises inspected	-----	7
License applications investigated	-----	13
COMPLAINTS:		
Complaints assigned for investigation	-----	428
Investigations completed	-----	462
Investigations pending	-----	198
LABORATORY:		
Analyses made	-----	84
Refills from licensed premises - bottles	-----	26
Bottles from unlicensed premises	-----	12
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	1
Persons fingerprinted for non-criminal purposes	-----	313
Identification contacts made with other enforcement agencies	-----	285
Motor vehicle identifications via N.J. State Police teletype	-----	1
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	3
Violations involved	-----	3
Sale to minors	2	
Sale during prohibited hours	1	
Cases instituted at Division	-----	32
Violations involved	-----	35
Beverage Tax Law non-compliance	8	Permitting lottery acty. on premises 1
Possessing liquor not truly labeled	8	Permitting hostess acty. on premises 2
Sale to minors	8	Sale below filed price 1
Misc. gambling on premises	2	Possessing indecent matter 1
Sale during prohibited hours	2	Permitting immoral acty. on premises 1
Fraud and front	1	
Cases brought by municipalities on own initiative and reported to Division	-----	16
Violations involved	-----	19
Sales to minors	7	Unqualified employees 1
Sale during prohibited hours	3	Sale during license suspension 1
Permitting brawl, etc. on prem.	3	Permitting illegal acty. on prem. 1
Failure to afford view into premises		Permitting misc. gambling on prem. 1
during prohibited hours	1	Eligibility of new stockholders 1
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	46
Appeals	10	Eligibility 3
Disciplinary proceedings	31	Tax revocations 2
STATE LICENSES AND PERMITS:		
Total number issued	-----	892
Licenses	5	Wine permits 2
Solicitors' permits	50	Miscellaneous permits 143
Employment permits	154	Transit insignia 123
Disposal permits	45	Transit certificates 10
Social affair permits	360	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued	-----	246

JOSEPH N. KEEGAN
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: April 8, 1969

5. DISCIPLINARY PROCEEDINGS - UNQUALIFIED EMPLOYEE - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against)

ARTHUR'S INC.)
t/a Arthur's)
765 River Drive)
Passaic, New Jersey)

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-67 issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic)
- - - - -)

Licensee, by Alex Komar, Secretary-Treasurer, Pro se Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The licensee pleaded not guilty to a charge alleging that it employed a disqualified person who was an alien national of Poland, a country with which the United States has no existing reciprocal trade treaty, without requisite employment permit, in violation of Rule 6 of State Regulation No. 13.

The testimony presented by the Division witness and that of the Secretary and Treasurer of the licensee appears to be contradictory. Both witnesses gave an honest account of their knowledge in this matter. Inasmuch as there is a doubt that the alien in question ever actually performed any services for the licensee at the licensed premises, such doubt must be resolved in favor of the licensee.

In view of the fact that the evidence presented by the Division is insufficient to warrant a finding of guilt in this case, it is recommended that the charge herein be dismissed.

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 conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of March, 1969,

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

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against HAROLD KRONES t/a Cascone Liquor Store 353-21st Avenue Paterson, New Jersey

CONCLUSIONS and ORDER

Holder of Plenary Retail Distribution License D-15, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Sellinger & Chester, Esqs., by Robert H. Chester, Esq., Attorneys for Licensee Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 30, 1968 he sold a case of gallon bottles of wine below filed price, in violation of Rule 5 of State Regulation No. 30.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Lincoln Engine Company #2, Bulletin 1799, Item 3.

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

ORDERED that Plenary Retail Distribution License D-15, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Harold Krones, t/a Cascone Liquor Store, for premises 353 - 21st Avenue, Paterson, be and the same is hereby suspended for five (5) days, commencing at 9 a.m. Monday, March 24, 1969, and terminating at 9 a.m. Saturday, March 29, 1969.

JOSEPH M. KEEGAN DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
Labeled - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)	
)	
ANN ANDERSCH)	CONCLUSIONS
t/a Oak Inn)	and
284 Smith Street)	ORDER
Perth Amboy, New Jersey)	

Holder of Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the City of Perth Amboy.

 Leo S. Lowenkopf, Esq., Attorney for Licensee
 Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On September 10, 1968, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz.,

One quart bottle labeled 'Early Times Kentucky Straight Bourbon Whisky, 86 Proof';

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

Agent S testified that he visited the licensed premises for the purpose of gauging open bottles of alcoholic beverages on September 10, 1968. Of the fifty open bottles of alcoholic beverages located on the back bar, he seized two because a preliminary test indicated to him that the contents of the bottles were either low in proof or off in color.

The seized bottle of Early Times whisky mentioned in the charge and a duly certified report of analysis of that bottle made by John P. Brady (a graduate chemist regularly employed by the Division) were received in evidence. Brady's report disclosed that the contents of that bottle were not genuine as labeled. Specifically he found that the proof was low (74.2), and the color was low and the solids and acids high.

In defense of the charge the licensee claimed that the bottle of Early Times whisky was purchased approximately five years prior to its seizure by the ABC agent; that the bottle had a pourer affixed to it which allowed the alcohol to evaporate, and that neither she nor her husband (who were the sole bartenders at the licensed premises) tampered with the contents of the bottle.

In adjudicating this matter I find that the uncontroverted report of the chemist indicating that the bottle bore a

label which did not truly describe its contents is fully dispositive of that issue.

Knowledge on the part of the licensee that the contents of a bottle are not genuine as labeled is not a prerequisite to a finding of guilt. See Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup. Ct. 1947).

I am persuaded that the evidence is clear and convincing that the licensee is guilty of said charge, and I therefore recommend that the licensee be found guilty thereof.

Licensee has a previous record of suspension of license (then held in partnership with Anne Sasale) by the municipal issuing authority for five days effective January 25, 1954 for sale to minors and, as an individual, by the municipal issuing authority for fifteen days effective January 9, 1956 and (1) sale to minors and (2) permitting disturbances and a brawl.

It is further recommended that the prior record of suspensions of license for dissimilar violations in 1954 and 1956 occurring more than five years ago be disregarded, and that the license be suspended for ten days. Re Juniewicz, Bulletin 1822, Item 13.

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 conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 18th day of March 1969,

ORDERED that Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the City of Perth Amboy to Ann Andersch, t/a Oak Inn, for premises 284 Smith Street, Perth Amboy, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, March 25, 1969, and terminating at 2 a.m. Friday, April 4, 1969.

JOSEPH M. KEEGAN
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

JOSEPH E. LIPSKI)
t/a Shady Rest Inn)
Route #33)
Freehold Township)
PO Freehold, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Freehold)
- - - - -)

Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 17, 1968 he possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective April 5, 1948, and for twenty-five days effective March 27, 1950, both for sale during prohibited hours.

The prior record of suspensions of license for dissimilar violation occurring more than five 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 Richlitsky, Bulletin 1839, Item 9.

Accordingly, it is, on this 18th day of March 1969,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Freehold to Joseph E. Lipski, t/a Shady Rest Inn, for premises on Route #33, Freehold Township, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, March 25, 1969, and terminating at 2 a.m. Friday, April 4, 1969.

JOSEPH M. KEEGAN
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUS-
PENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
RICHARD'S LIQUOR STORE, INC.
1225 Black Horse Pike
Gloucester Township
PO Blackwood, New Jersey

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Gloucester

Licensee, by Raymond T. Richards, President, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 7, 1969 it sold twenty-four 16-ounce bottles of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Rocky & Joe's, Inc., Bulletin 1839, Item 6.

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

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Gloucester to Richard's Liquor Store, Inc., for premises 1225 Black Horse Pike, Gloucester Township, be and the same is hereby suspended for five (5) days, commencing at 9 a.m. Monday, March 24, 1969, and terminating at 9 a.m. Saturday, March 29, 1969.

JOSEPH M. KEEGAN
DIRECTOR

10. 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)

MICHAEL WARHOL, SR.)
Corner Valley & Island Roads)
Mahwah, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Mahwah.)

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Andora & Baron, Esqs., by Anthony D. Andora, Esq., Attorneys for Licensee)
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control)

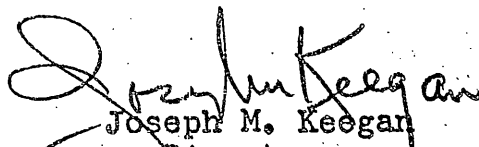
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 27, November 2 and 30, 1968, he sold a pint bottle of whiskey on the first date and six cans of beer on the other dates 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 Rodrigues, Bulletin 1839, Item 11.

Accordingly, it is, on this 24th day of March 1969,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Mahwah to Michael Warhol, Sr., for premises corner Valley and Island Roads, Mahwah, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, March 31, 1969, and terminating at 2 a.m. Thursday, April 10, 1969.


Joseph M. Keegan
Director