

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

BULLETIN 1885

November 24, 1969

TABLE OF CONTENTSITEM

1. COURT DECISIONS - AMERICAN B.D. COMPANY AND NATIONAL WINE & LIQUOR CO. v. HOUSE OF SEAGRAMS, INC. - DIRECTOR AFFIRMED.
2. COURT DECISIONS - JOELI WINE DISTRIBUTORS, INC. v. BROWNE-VINTNERS COMPANY - DIRECTOR AFFIRMED.
3. COURT DECISIONS - FLAGSTAFF LIQUOR CO. v. BROWNE-VINTNERS COMPANY - DIRECTOR AFFIRMED.
4. DISCIPLINARY PROCEEDINGS (Paterson) - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.
5. DISCIPLINARY PROCEEDINGS (Woodstown) - HINDERING INVESTIGATION - EMPLOYING PERSON CONVICTED OF CRIME INVOLVING MORAL TURPITUDE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS.
6. DISCIPLINARY PROCEEDINGS (Dumont) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Hoboken) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Paterson) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Newark) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 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

BULLETIN 1885

November 24, 1969

1. COURT DECISIONS - AMERICAN B.D. COMPANY AND NATIONAL WINE & LIQUOR CO. v. HOUSE OF SEAGRAMS, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-891-68

AMERICAN B. D. COMPANY, a
New Jersey Corporation,

Petitioner-Respondent

v.

HOUSE OF SEAGRAMS, INC., t/a
Browne-Vintners Company,

Respondent-Appellant

-----N.J. SUPER.-----

NATIONAL WINE & LIQUOR CO., a
New Jersey Corporation,

Petitioner-Respondent

v.

HOUSE OF SEAGRAMS, INC., t/a
Browne-Vintners Company,

Respondent-Appellant.

Argued September 29, 1969 - Decided October 22, 1969

Before Judges Sullivan, Carton and Halpern.

On appeal from the Division of Alcoholic Beverage Control, Department of Law and Public Safety, State of New Jersey.

Mr. Philip Lindeman, II, argued the cause of appellant (Mr. Stephen H. Roth, on the brief; Messrs. Hellring, Lindeman & Landau, attorneys).

Mr. Joseph M. Jacobs argued the cause for respondents (Messrs. Harrison & Jacobs, attorneys).

The opinion of the Court was delivered by
SULLIVAN, P.J.A.D.

House of Seagrams, Inc. (Seagrams) appeals from a decision of the Division of Alcoholic Beverage Control (Division) which in effect denied it the right to "go Exclusive" in the distribution of its liquor products and ordered it to sell and continue to see to respondents-wholesalers. (American B.D. Company and National Wine & Liquor Company v. House of Seagrams, Inc., Bulletin 1845, Item 2.)

Prior to June 8, 1967 Seagrams had been utilizing the services of some 25 wholesalers in the distribution of its liquor products in the State of New Jersey. On that day respondents herein, American B.D. Company (American) and National Wine & Liquor Co. (National), were notified by Seagrams that their services as distributors were being discontinued effective immediately. (At the same time Seagrams decided to discontinue the service of 23 other wholesalers.) When American and National placed purchase orders with Seagrams they were not honored. American and National thereupon filed petitions with the Division charging that Seagrams, by terminating its business dealings with them and by refusing to accept further orders from them, was discriminating against them contrary to the provisions of the 1966 amendment of the Alcoholic Beverage Control Act (Act). N.J.S.A. 33:1-93.6 et seq. Acting on the petitions and Seagrams' answers, which averred that its going exclusive was a legitimate business decision, a formal hearing was held at which voluminous testimony and exhibits were received. The hearing examiner's report found Seagrams' actions to be discriminatory and in violation of the Act. After exceptions and answer to exceptions were filed and considered, the Director entered his Conclusions and Order, concurring in the Hearer's Findings and Conclusions, and ordering Seagrams to sell and continue to sell its products (except Kayser and Brolio wines) to American and National.

The Director held that although the original statutory prohibition against discrimination in sales of nationally advertised brands of alcoholic beverages to wholesalers, N.J.S.A. 33:1-93.1, applied to all wholesalers, the 1966 amendment to the statute restricted its applicability to wholesalers then or thereafter authorized by importers, distillers or rectifiers to handle their products. (All parties to the appeal agree that this interpretation is correct.) The Director also held that a proper application of the amendment prohibited the termination of business dealings in nationally advertised brands with any such wholesaler who had the ability to pay. (It was stipulated that American and National had the ability to pay.)

The Director recognized that an importer, distiller, or rectifier would have the right to terminate a business relationship with a wholesaler who disparaged the product, showed unfair preferment in sales effort for those of a competitor, or engaged in improper or proscribed trade practices. However, no such contention was made in the present case. In the absence of any such contention, the Director held that it would be discrimination within the meaning of the amendment for Seagrams to eliminate American and National even though the decision to do so was the result of a business judgement that the sale of Seagrams' products would be stimulated by "going exclusive" in distributorship.

We agree with the Director's interpretation of discrimination as used in the amendment. The original statutory provision relating to discrimination in sales of alcoholic liquors to wholesalers required the Commissioner (now Director) to determine whether a refusal to sell to a wholesaler was "arbitrary" or not. N.J.S.A. 33:1-93.2.

In Canada Dry Ginger Ale, Inc. v. F & A Distrib. Co., 28 N.J. 444 (1958), decided under the original statute, it was held that a distiller's initial decision to reduce its number of wholesalers within the State did not of itself contravene the statute, and might not be arbitrary if the distiller showed that the selection of certain wholesalers to the exclusion of others was made on the basis of a standard reasonably related to the legitimate business goal sought to be achieved and not conducive to the evils which the Act is designed to prevent. The standard, said the court, must be of such a tangible or objective nature as will enable the Director to determine from the proofs whether its application to the wholesalers in question is reasonable.

The 1966 amendment restricted the Director's scope of inquiry to determination of whether or not the refusal to sell was "discriminatory."

N.J.S.A. 33:1-93.7. It seems clear that the Legislature, after limiting the class of wholesalers to whom the statute was applicable, extended the prohibition of the statute so as to bar any discrimination as to wholesalers in the protected class.

The Director's interpretation gives a clear and workable formula for application and has the virtue of taking the Division of Alcoholic Beverage Control out of the difficult position of evaluating and determining what is or is not a legitimate business judgement based on tangible and objective standards with all of the problems that such a determination entails.

Even if it be held that discrimination has a meaning other than that given it by the Director, and that the holding in Canada Dry, 28 N.J. at 444, is applicable to the present statutory provision, our review of the record leads us to conclude that Seagrams has failed to demonstrate that its decision to eliminate American and National was made on the basis of tangible and objective standards reasonably related to legitimate business goals and not conducive to the evils which the Act seeks to prevent.

In essence, all that was shown was a subjective decision to go exclusive in an effort to increase sales. Moreover, no consideration was given to the impact on the industry as a whole and the effect it would have on the wholesalers eliminated. The Director's decision herein points out that the record "dramatically demonstrates" that the smaller wholesalers proposed to be eliminated would have their ability to survive critically impaired, and might be compelled to resort to improper business practices.

The Decision and Order of the Director is in all respects affirmed.

2. COURT DECISIONS - JOELI WINE DISTRIBUTORS, INC. v. BROWNE - VINTNERS COMPANY - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-820-68

JOELI WINE DISTRIBUTORS, INC., t/a
Perrone Wines & Spirits, 560 Bercik
Street, Elizabeth, New Jersey,

Petitioner - Respondent

v.

BROWNE-VINTNERS COMPANY, 375 Park
Avenue, New York, N.Y.,

Defendant - Appellant

Argued September 29, 1969 - Decided October 22, 1969

Before Judges Sullivan, Carton and Halpern.

On appeal from the Division of Alcoholic Beverage Control, Department of Law and Public Safety, State of New Jersey.

Mr. Philip Lindeman, II, argued the cause for appellant (Mr. Stephen Roth, on the brief; Messrs. Hellring, Lindeman & Landau, attorneys).

Mr. Meyer Sugarman argued the cause for respondent.

Statement in Lieu of Brief filed on behalf of the Division of Alcoholic Beverage Control (Mr. Joseph P. Schiappa, Deputy Attorney General, of counsel; Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

PER CURIAM

The Decision and Order of the Division of Alcoholic Beverage Control (Joeli Wine Distributors, Inc. v. Browne-Vintners Company, Bulletin 1845, Item 1.) is affirmed for the reasons stated in our opinion filed in A-891-68 (American B.D. Company and National Wine & Liquor Co. v. House of Seagrams, Inc., -- N.J. Super. --, reprinted in Bulletin 1885, Item 1) decided this day.

Affirmed.

3. COURT DECISIONS - FLAGSTAFF LIQUOR CO. v. BROWNE-VINTNERS COMPANY
- DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-821-68

FLAGSTAFF LIQUOR CO., a
corporation,

Respondent

v.

BROWNE-VINTNERS COMPANY, a
division of the House of
Seagrams, Inc., a corporation,

Appellant

Argued September 29, 1969 - Decided October 22, 1969

Before Judges Sullivan, Carton and Halpern.

On appeal from the Division of Alcoholic Beverage Control, Department of Law and Public Safety, State of New Jersey.

Mr. Philip Lindeman, II, argued the cause for appellant (Mrs. Stephen Roth, on the brief; Messrs. Hellring, Lindeman & Landau, attorneys).

Mr. Sidney Berg argued the cause for respondent.

Statement in Lieu of Brief filed on behalf of the Division of Alcoholic Beverage Control (Mr. Joseph P. Schiappa, Deputy Attorney General, of counsel; Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

PER CURIAM

The Decision and Order of the Division of Alcoholic Beverage Control (Flagstaff Liquor Co. v. Browne-Vintners Company, Bulletin 1845, Item 3.) is affirmed for the reasons stated in our opinion filed in A-891-68 (American B. D. Company and National Wine & Liquor Co. v. House of Seagrams, Inc., --N.J. Super.---, reprinted in Bulletin 1885, Item 1) decided this day.

Affirmed.

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)

Aloys Reminsky & Phyllis Reminsky t/a Wagon Wheel Tavern 366 Union Avenue Paterson, N.J.,)

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-73, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Stein & Einhorn, Esqs., by Theodore E.B. Einhorn, Esq., Attorneys for Licensees Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees pleaded not guilty to the following charges:

- "1. On January 9, 1969, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery commonly known as the 'numbers game' and on horse races, and allowed, permitted and suffered in and upon your licensed premises, slips, tickets, records, documents, memoranda, and other writings pertaining to the aforementioned gambling activity; in violation of Rule 7 of State Regulation No. 20.
- "2. On January 9, 1969, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The Division offered the testimony of three ABC agents in substantiation of the charges.

Agent R (who possessed ample and considerable experience in gambling investigations, including horse race betting and numbers lottery) testified that, accompanied by two law enforcement officers attached to the Passaic County Prosecutor's office, a New Jersey State Police officer and Division agents S and G, proceeded to the vicinity of the licensed premises (described as a neighborhood tavern) on January 9, 1969, at 12:55 p.m. He entered the tavern accompanied by Agent G and took seats at the bar.

Upon entry he had in his possession an original slip containing a horse bet and two numbers bets and four marked one-dollar bills. A Male known as Bill (later identified as William C. Massaker) was tending bar. Ten persons (including the agents) were in the barroom.

Agent R described a transaction with a male identified as

Joseph John Tesauro thusly:

"Joe approached G--- and myself, and I said to Joe, I said, 'Can we get our bets in or are things still too hot?' Joe turned to G--- and myself, and he said, 'no. What is it you want to bet?' I then said, 'Here is my bets,' and I handed Joe the slip with the horse bet on it and the number bets. Joe read the slip, and he repeated the bet, he said, 'Sir Hot, 3rd at Tropical, \$2 to win'; right? I said, 'That is right.' He said, '364 and 318 both 50 cents and 50 cents'? I said, 'That is right.' I then gave Joe the 4 \$1 bills that the serial numbers were recorded on the list. Joe accepted the money and placed them in his right-hand front pocket, and he placed the slip in his coat. He had a car coat on. He placed it in his right-hand coat pocket."

At the time the transaction took place the bartender was behind the bar opposite where the agents were positioned and approximately three feet distant from the agents. He was serving the agents a drink. Continuing, Agent R testified that the transaction was performed openly and not secretively and that he spoke in a normal tone of voice, and that Joe "read the horse bet and numbers bet back to me aloud." Agent R departed from the premises and contacted Agent S and the other officers. The other officers entered the licensed premises from the rear exit and Agent R re-entered through the front door and rejoined Agent G and Joe. As the officers were entering through the rear door, Massaker said to Joe, "Get rid of the slip! Get rid of it! Get rid of it!" Joe took the slip from his right front pocket and threw it on the floor. Upon being questioned concerning a conversation which had ensued between him and Massaker, Agent R replied, "We asked him about Joe taking any bets, and he denied any knowledge of Joe taking any bets, and I had asked him why did he tell Joe to get rid of the slip, and Mr. Massaker replied to me, 'I don't know anything, and I didn't see anything.' That was the gist of the occurrence."

Agent S testified that he collaborated with the various law enforcement officers assigned to investigate the licensed premises on January 9, 1969 and accompanied them to the vicinity of the tavern on that date. Upon receiving a signal from Agent R, officers Beckish, Soter and Petinelli entered the premises by way of the rear entrance and he entered through the front entrance. Upon being questioned as to what he did upon entering, the agent replied, "I approached our agents immediately, and Agent R pointed with his index finger under the chair of a male who was later identified as Joseph Tesauro, also known as Joe Trowse, and I saw a slip of paper on the floor, and I ran down and picked it up, and it was the bet slip pre-prepared by R prior to his entry." A search of Tesauro revealed that he had the \$4 marked money in his possession. Concerning Agent R's questioning of the bartender Massaker, which occurred in his presence, Agent S testified, "R asked him about did he observe he was aware of the fact that he placed a bet with Joe Trowse, also known as Tesauro. He said he didn't see anything, he didn't know anything. R said to the bartender, 'Why did you say when the police came in, "Get rid of the slip. Get rid of it! Get rid of it!?"' He refused to answer any more questions. He didn't know anything. He didn't see anything."

It was stipulated that the testimony of ABC Agent G on direct examination would be similar to the testimony offered by Agent R. On cross examination Agent G's testimony corroborated the salient features of the testimony given by Agent R as to the matters relevant to the charges.

In defense of the charges, William C. Massaker (who had been employed by the licensee as a bartender for a period of two-and-one-half years, testified that Joseph Tesauro visited the tavern and was "frequently in and out." He had never seen Tesauro accept a bet and

that he (Tesauro) "had been told time and time again not to; he had strict orders", and that, further, he was told "stay out."

He further testified that on the date in question Agents R and G came in the tavern, ordered a drink, and they called over to Tesauro who was located at the rear of the barroom. After Tesauro joined the agents at the bar, the agents offered Tesauro a drink. Thereupon Massaker walked a distance of ten to twelve feet to obtain a glass of beer for Tesauro. Upon returning with the glass of beer for Tesauro, he observed that the agents were conversing with Tesauro. Upon serving the drink, he walked away. He did not overhear the conversation. He did not observe Tesauro accept a bet from the agents. Finally, he testified as follows:

- "Q Did you hear Mr. R testify that two gentlemen came in and then you yelled to the bookie Joe, 'Joe, get rid of the slip! Get rid of it! Get rid of it!'"
- A Yes, I heard what he said. My words that I recall, and I don't have nothing to go back to, I said, 'Get going! Get going!' because one pushed him. They wedged him. I figured there was going to be trouble. I didn't know what it was about.
- Q Why did you yell?
- A Panic! You would do the same thing if they did it to you. They wedged him against the bar."

On cross examination Massaker admitted that he had heard that Tesauro was a bookie. Upon being queried as to whether or not he saw Tesauro throw something on the floor, Massaker testified that Tesauro went into his pocket (indicating his right breast pocket) but did not know as to whether or not he threw anything on the floor.

Aloys Reminsky (one of the licensees) testified that he instructed his bartenders not to allow any gambling activities. He was not in the barroom at the time of the alleged occurrence and, therefore, had no knowledge thereof.

On cross examination Reminsky asserted that he works at the tavern "off and on when Billy Massaker is sick, yes." In response to the question "Did you know he Tesauro was known to take bets or that he was a gambler?", Reminsky answered, "Yes." He had known Tesauro a period of approximately three years. He did not consider him to be a personal friend; he characterized him as "a pain in the neck." Reminsky then testified as follows:

- "Q Did you ever have a discussion with Bill Massaker about Joe?"
- A Sure. He used to get sick on account of Joe. Joe made him nervous coming in there, and would get sick on me and can't do his job.
- Q Knowing he was personally involved with this type of activity and knowing Bill would get sick, did you tell Joe not to come in?
- A Many times, many times. In fact, I put him out many times, and after I leave he would come back and sit there and defy the fellow.
- Q Did you ever call the local authorities?
- A No, I didn't. I should have I suppose but I didn't."

Licensee argued that the Division had failed to sustain the burden of proving the charges.

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.

The evidence is incontrovertible that a Joe Tesauro accepted a horse race and two numbers lottery bets from Agent R on January 9 in the licensed premises. The marked money used by Agent R in consummating the transaction was found in Tesauro's possession. Further, I am persuaded that the testimony of Agent R to the effect that the gambling transaction occurred within the immediate presence and hearing of the bartender employed by the licensee and that the bartender was aware of the gambling transaction was factual and credible. I am further persuaded that the bartender, being fully aware of the passing of bet slip from Agent R to Tesauro, admonished Tesauro to rid himself of the slip and that, pursuant to that admonition, Tesauro removed the bet slip from his right front pocket and threw it on the floor. It is worthy of note that the bartender (on cross examination) admitted that Tesauro reached into his right breast pocket for something. It is also worthy of comment that the bartender and one of the co-licensees were aware of Tesauro's propensity for engaging in the acceptance of bets. It is evident that both abdicated their responsibility and duty to operate the establishment in a lawful manner.

A licensee who acts in a vacillatory or irresolute manner in failing to exclude an undesirable type of patronage does so at his peril.

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).

I conclude that a fair evaluation of the evidence clearly and reasonably preponderates in favor of a finding of guilt of the charges alleged.

Licensee has no prior adjudicated record of suspension of license. I further recommend that the licensee be suspended for sixty days. Re Max Waterstradt, Inc., Bulletin 1873, Item 8.

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, the argument of counsel and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 6th day of October 1969,

ORDERED that Plenary Retail Consumption License C-73, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Aloys Reminsky & Phyllis Reminsky, t/a Wagon Wheel Tavern, for premises 366 Union Avenue, Paterson, be and same is hereby suspended for sixty (60) days, commencing at 3 a.m. Monday, October 13, 1969, and terminating at 3 a.m. Friday, December 12, 1969.

Joseph M. Keegan,
Director

5. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - EMPLOYING PERSON CONVICTED OF CRIME INVOLVING MORAL TURPITUDE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against

Alfred T. Sanderson
23 North Main Street
Woodstown, New Jersey,

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Borough Council) of the Borough of Woodstown.

Licensee, Pro se
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 charges:

- "1. On Thursday, February 6, 1969, you, directly or indirectly, through a person employed on your licensed premises as a bartender, failed to facilitate and hindered, delayed, caused the hindrance and delay, and attempted to hinder, delay and cause the hindrance and delay of an investigation and inspection of your licensed business and licensed premises and search thereof, then and there being conducted by an Inspector of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of Rule 35 of State Regulation No. 20.
- "2. On February 6, 1969, and prior thereto, you employed and had connected with you in a business capacity one James Mayes, a person who had been convicted of crimes involving moral turpitude; in violation of Rule 1 of State Regulation No. 13."

ABC Agent S testified that at "about 2:15, 2:20" p.m. on February 6 he visited the licensee's premises and tested "about ten bottles" of the open stock of whiskey; that James Mayes was tending bar and in charge of the premises; that, when he (Agent S) made a color check, the contents of a bottle of Calvert and one of Four Roses, when compared with samples of the same brands, disclosed variations in color; that he questioned Mayes about his findings and the bartender agreed that there were differences in color between the said whiskey and genuine samples of the same brands; that Mayes stated he had not tampered with the two bottles of whiskey and asked permission of the agent to pour the contents of the suspected bottles down the drain. Agent S told Mayes this could not be done as he "had to take them in to the lab." Mayes became excited and said, "I was lying about the bottles being off in color, I was trying to crucify him, I was lying about a previous occasion there." Agent S testified that he told Mayes, "if you are sure there is nothing wrong with them, they haven't been tampered with, the chemist will find out when he checks them." He took the two bottles, together with his testing equipment, to the end of the bar in order to continue his work. Thereafter, as Mayes was walking past him, Mayes suddenly picked up the two questionable bottles, cracked them against a galvanized trash can situated under the bar, and threw the pieces of the bottles into the can saying, "Now you don't have any bottles." Agent S advised Mayes that, by reason of his action, he had interfered with and hindered the inspection.

The testimony of James Mayes substantially corroborated the agent's testimony with reference to the incident which occurred on the licensed premises on February 6. In explanation of his conduct Mayes testified that he became excited and upset because of the two questionable bottles and admitted that he "dropped the whiskey in the sink and broke the bottles up." However, he stated that he later advised the agent that he was sorry for his action with reference to the two bottles in question.

During further investigation by Agent S it was ascertained that Mayes had been convicted in another State in December 1936 of armed robbery while armed with an offensive weapon, as a result of which he was sentenced to fifteen to thirty years in a penitentiary. According to Mayes' testimony, he spent eighteen months in the penal institution and was placed on parole until 1952. It also appears from the records of this Division that a petition to remove Mayes' disqualification was filed on April 13, 1965 on behalf of Mayes by the licensee (who is an attorney-at-law of New Jersey). The matter was scheduled for hearing but, on application of the licensee, was adjourned from time to time. The last time it was scheduled for hearing was June 7, 1965, but Mayes failed to appear and the licensee (as the attorney) and Mayes were both advised that his petition was dismissed by the Director.

At the time the license was transferred on August 15, 1967 to the present licensee, Mayes was employed on the licensed premises and the present licensee continued such employment. At the hearing, when Mayes' criminal record was called to the attention of the attorney (who is the licensee), who represented Mayes at that time, he (the licensee) said he had forgotten about the incident. I am satisfied that the licensee had knowledge of the employee's criminal record and had known that he was ineligible to be associated with the alcoholic beverage industry in this State. The crime of robbery, of which Mayes was convicted, involves the element of moral turpitude (Re Case No. 1436, Bulletin 1260, Irem 5), and thus Mayes is ineligible to be associated in this State with the liquor business. R.S. 33:1-25, 26.

In mitigation the licensee stated that it was his understanding that Mayes had received a "waiver" so that he became eligible to be engaged in the liquor industry. The licensee, being Mayes' attorney, should have checked with this Division to ascertain if this was true.

I cannot accept the explanation given by Mayes for destruction of the evidence herein or that of the licensee that he was of the opinion Mayes could be employed in a liquor establishment. Under the circumstances I find the licensee guilty of both charges preferred in this matter.

Licensee has a previous record of suspension of license by the Director for five days effective April 29, 1968, for possession of an alcoholic beverage not truly labeled. Re Sanderson, Bulletin 1794, Item 9.

It is recommended that the license be suspended on the first charge for ten days (Re Farrelly, Bulletin 1681, Item 8) and on the second charge for twenty days (Re Sajdik, Bulletin 1817, Item 7), to which should be added five days by reason of the record of suspension for dissimilar violation within the past five years (Re Boysen's Sunset Tavern, Inc., Bulletin 1766, Item 3), or a total of thirty-five days.

Conclusions and Order

Exceptions to the Hearer's report and argument with reference thereto directed to the penalty recommended (as insufficient) were filed by the attorney appearing for the Division, pursuant to Rule 6 of State Regulation No. 16. Answering argument and exceptions to the penalty recommended (as excessive) in the Hearer's report were filed by the licensee.

I find the exceptions filed by the respective parties to be without merit and that the penalty recommended is consonant with previous practice.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions and arguments filed with reference thereto, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 23d day of 1969, and terminating at 6:00 a.m. Tuesday, November 4, 1969.

Accordingly, it is, on this 23d day of September, 1969,

ORDERED that Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Woodstown to Alfred T. Sanderson for premises 23 North Main Street, Woodstown, be and the same is hereby suspended for thirty-five (35) days, commencing at 6:00 a.m. Tuesday, September 30, 1969, and terminating at 6:00 a.m. Tuesday, November 4, 1969.

Joseph M. Keegan
Director

6. 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)

Gerald F. Donohue t/a Jerry's Tavern 130 New York Ave. Dumont, New Jersey,)

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Dumont.)

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

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Sunday, August 24, 1969, he sold twelve bottles of beer for off-premises consumption, 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 Leftwich, Bulletin 1872, Item 8.

Accordingly, it is, on this 6th day of October 1969,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Dumont to Gerald F. Donohue, t/a Jerry's Tavern, for premises 130 New York Avenue, Dumont, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, October 13, 1969, and terminating at 2 a.m. Thursday, October 23, 1969.

Joseph M. Keegan
Director

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

In the Matter of Disciplinary Proceedings against)

Halde Corporation)
56 Third St.)
Hoboken, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-60, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.)

-----)

Bernard Ss Glick, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 7, 1969 it 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.

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 Bowl-O-Mat Paramus Operations Corp., Bulletin 1874, Item 11.

Accordingly, it is, on this 6th day of October 1969,

ORDERED tha Plenary Retail Consumption License C-60, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Halde Corporation, for premises 56 Third Street, Hoboken, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, October 13, 1969, and terminating at 2 a.m. Thursday, October 23, 1969.

Joseph M. Keegan,
Director.

8. 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
 Ralph Sincaglia
 t/a Ralph's Bar & Grill
 764 Main Street
 Paterson, New Jersey
 Holder of Plenary Retail Consumption License C-306 issued by the Board of Alcoholic Beverage Control for the City of Paterson

CONCLUSIONS and ORDER

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

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Sunday, August 24, 1969, he sold six cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective November 13, 1961, for permitting conduct of a baseball pool on the licensed premises.

The prior record of suspension for dissimilar violation occurring more than five years ago disregarded, in 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 Leftwich, Bulletin 1872, Item 8.

Accordingly, it is, on this 6th day of October, 1969,

ORDERED that Plenary Retail Consumption License C-306, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Ralph Sincaglia, t/a Ralph's Bar & Grill, for premises 764 Main Street, Paterson, be and the same is hereby suspended for (10) days, commencing at 3:00 a.m. Monday, October 13, 1969, and terminating at 3:00 a.m. Thursday, October 23, 1969.

Joseph M. Keegan
Director

98. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
)	
Cal-Jac Corporation)	CONCLUSIONS
t/a Front Room)	and
46 Broadway)	ORDER
Newark, N.J.)	
Holder of Plenary Retail Consumption License C-315 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark)	
)	

Licensee, by Roy Jackson, Secretary, Pro se
Walter H. Cleaver, Esq., Appearing for the Division

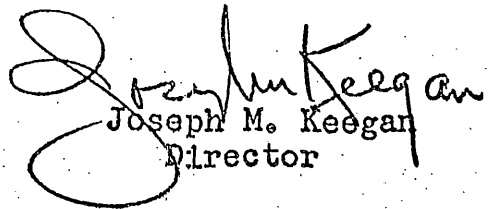
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 23, 1969, it possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 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 Addas, Bulletin 1875, Item 6.

Accordingly, it is, on this 6th day of October, 1969,

ORDERED that Plenary Retail Consumption License C-315, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Cal-Jac Corporation, t/a Front Room, for premises 46 Broadway, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, October 13, 1969, and terminating at 2:00 a.m. Saturday, October 18, 1969.


Joseph M. Keegan
Director