

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

June 23, 1958.

BULLETIN 1227

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - WHITLEY v. KENILWORTH.
2. APPELLATE DECISIONS - WHITLEY v. KENILWORTH.
3. DISCIPLINARY PROCEEDINGS (Kenilworth) - FALSE ANSWER IN APPLICATION RE SHARING OF PROFITS - FRONT - LICENSE SUSPENDED FOR 10 DAYS.  
  
DISCIPLINARY PROCEEDINGS (New York, New York) - EMPLOYMENT PERMIT - FALSE ANSWER AS TO INTEREST IN LICENSE - PERMITTEE FOUND GUILTY OF CHARGE.
4. DISCIPLINARY PROCEEDINGS (Atlantic City) - SALES TO MINORS - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Nutley) - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Atlantic City) - SALE TO MINOR - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF UNREGISTERED STILL PARTS - MOTOR VEHICLE RETURNED TO INNOCENT U-DRIVE RENTAL CONCERN UPON APPLICATION IN ADVANCE OF STATUTORY HEARING.
8. DISCIPLINARY PROCEEDINGS (West Point Pleasant) - SOLICITOR'S PERMIT - ENGAGING IN CONDUCT PROHIBITED TO EMPLOYER - PERMIT SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Delaware Township, Camden County) - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - 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 2, N. J.

June 23, 1958

BULLETIN 1227

1. APPELLATE DECISIONS - WHITLEY v. KENILWORTH.

WALTER ANDREW WHITLEY, trading )  
as MAPLE INN, )

Appellant, )

-vs- )

BOROUGH COUNCIL OF THE )  
BOROUGH OF KENILWORTH, )

Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Joseph Butt, Esq., Attorney for Appellant.  
Earl Pollack, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on July 24, 1957 it suspended appellant's license for a period of 45 days commencing August 1, 1957 after finding him guilty of the following charges:

'1. On Saturday, July 13th, 1957 and Sunday, July 14th, 1957, you did allow, permit and suffer in and upon your licensed premises the use of foul, filthy and obscene language and conduct, and a brawl, act of violence, disturbance and unnecessary noise, all in violation of Rule 4 of State Regulation No. 20 of the Division of Alcoholic Beverage Control.

'2. On Saturday, July 13th, 1957 and Sunday, July 14th, 1957, you did allow, permit and suffer in and upon your licensed premises a disturbance, a brawl, unnecessary noise, and the use of vile language, all in violation of Section 9 of Ordinance No. 154 of the Borough of Kenilworth.

'3. On Saturday, July 13th, 1957 and Sunday, July 14th, 1957, you did allow, permit and suffer in and upon your licensed premises boisterous persons, persons actually and apparently intoxicated and persons of ill repute, all in violation of Section 8 of Ordinance No. 154, of the Borough of Kenilworth.

'4. On Saturday, July 13th, 1957 and Sunday, July 14th, 1957, you did allow and permit a licensed place of business to be conducted in such a manner as to become a public nuisance, all in violation of Rule 5 of State Regulation No. 20.

'5. Between the 15th day of April, 1956 and the 14th day of July, 1957, you did continue to allow, permit and suffer in and upon your licensed premises, brawls, acts of violence, disturbances and unnecessary noise and did allow or permit the licensed place of business to be continuously conducted in such a manner as to become a public nuisance, all in violation of Rule 5 of said Regulation No. 20.

'6. Between the 15th day of April, 1956 and the 14th day of July, 1957, you did maintain a place of business which was opened and frequented by persons who conducted themselves there as to violate law and good order, thereby maintaining a disorderly house and thereby maintaining a public nuisance.'

"Appellant in his petition of appeal alleges that respondent's action was erroneous for the following reasons:

- 'a. There was no competent evidence before the Borough Council to justify a finding supporting any of the six charges.
- 'b. There was no evidence and no proof that anything of an illegal nature occurred in and upon the licensed premises.
- 'c. The Borough Council violated rules of evidence by admitting statements of third persons, which were incompetent as being in violation of the hearsay rule.
- 'd. All of the evidence, even though incompetent, showed that the alleged disturbances occurred outside of the licensed premises in a vacant lot which was neither owned, leased or under the control of the licensee.'

"Respondent in its answer contends in effect that its action was based upon a consideration of a specific incident originating in appellant's licensed premises on Saturday, July 13, 1957, and terminating outside thereof on Sunday, July 14, 1957, and upon a consideration of some seventeen complaints respecting appellant's premises received and investigated by the Borough Police Department from April 15, 1956 to July 14, 1957.

"Upon the filing of the appeal, the Director entered an order on July 29, 1957 staying respondent's action pending entry of a further order herein, pursuant to R. S. 33:1-31.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"Although the transcript of the proceeding herein is voluminous (439 pages), the evidence adduced in support of Charges 1, 2, 3 and 4 is mainly concerned with the alleged brawl. It appears from the testimony that, among the patrons who were in appellant's licensed premises on Saturday night, July 13, 1957, were a male named William Fudge, his girl friend, two other females and their male companions, named John Odums and Alexander Sampson; that Sampson made some remark respecting the actions of Fudge and his girl friend who were kissing each other; that, thereafter, Fudge slapped or shoved Odums (why he did it is not indicated); and that the licensee immediately grabbed Odums and escorted him outside the premises where he was joined by his companions, all of whom motored to a nearby city. It appears further that Odums and some of his companions returned to the vicinity of appellant's tavern at about 2:00 a.m. and parked their car in a vacant lot adjacent thereto but in no way controlled by the licensee and that as the licensee, who had closed his premises, was

proceeding with Fudge to their respective cars, two shots were fired by a person coming from the direction of Odums' car, one of which struck Fudge who was taken to a hospital. When the police arrived none of the parties involved in the shooting was present. The licensee testified that he told the police about the shooting but that he didn't know the person who did it.

"Considering the aforesaid testimony, I find that the prompt action of the licensee effectively averted an imminent brawl in and upon the licensed premises and that there is no evidence to sustain respondent's allegation that the ensuing act of violence, which concededly occurred outside appellant's tavern some hours later, originated in and upon the licensed premises. I find further that there is not one scintilla of evidence to support a finding of guilt as to the other alleged infractions set forth in Charges 1, 2, 3 and 4, and I conclude that those charges, in their entirety, should be dismissed. Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3; Zicherman v. Newark, Bulletin 613, Item 5; Fuer v. Newark, Bulletin 1073, Item 3; Ferdinand v. Newark, Bulletin 1084, Item 3.

"The evidence produced by respondent in support of Charges 5 and 6 is that five persons made a total of fourteen calls to the Borough Police complaining about excessive noise emanating from a juke box in appellant's premises and about the parking of cars in the area thereto. Other calls were received by the police respecting alleged fights in the licensed premises. It appears from the police reports introduced in evidence that the licensee was cooperative with the police in subduing the noise and that, in but one instance, the licensee was asked by the police to warn his patrons about the illegal parking of their cars. With respect to the alleged fights, disciplinary proceedings were instituted by respondent and, after hearings thereon, the charges were dismissed.

"While the aforesaid evidence presented in support of Charges 5 and 6 and that presented in support of Charges 1, 2, 3 and 4 might well be material if this were a case involving the question of whether or not the license should be renewed, it is too vague and uncertain to sustain charges that the licensed place of business was conducted in such a manner as to become a nuisance. I find that the evidence fails to support Charges 5 and 6 and I conclude that those charges should also be dismissed. Black v. Camden, Bulletin 1135, Item 3.

"Having reached the aforesaid conclusions, it is deemed unnecessary to consider the other reasons advanced by appellant in support of his plea for reversal. I recommend, therefore, that an order be entered reversing respondent's action."

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument in support thereof were filed with me by respondent's attorney as was an answering argument by appellant's attorney and, thereafter, I decided to hear oral argument.

Having carefully considered the entire record herein, including the transcript of testimony, the Hearer's Report, the exceptions taken thereto and the written and oral arguments of the attorneys for the respective parties herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 24th day of April, 1958,

ORDERED that the action of respondent be and the same is hereby reversed.

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - WHITLEY v. KENILWORTH.

WALTER ANDREW WHITLEY, )  
trading as MAPLE INN, )  
Appellant, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE )  
BOROUGH OF KENILWORTH, )  
Respondent. )

-----)  
Joseph Butt, Esq., Attorney for Appellant.  
Earl Pollack, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on March 19, 1957, it suspended appellant's license for a period of five days after finding him guilty on a charge alleging that on Saturday, October 13, and Sunday, October 14, 1956, he knowingly employed on his licensed premises a non-resident of New Jersey who had not obtained a requisite employment permit from the Director of the Division of Alcoholic Beverage Control, in violation of Rule 4 of State Regulation No. 13.

"Upon the filing of the appeal, an order was entered on April 19, 1957 staying the effect of respondent's order until the entry of a further order herein.

"Appellant contends, in substance, that the action of respondent was erroneous and should be reversed in that there was no competent evidence before it to justify its finding.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"At the close of respondent's case, appellant's attorney moved to dismiss the charge herein and thereafter rested his case without calling any witnesses.

"Testimony of respondent's witnesses, Joseph Elias and Philip J. McGevena, the Borough Clerk, shows that appellant's brother-in-law was employed as a bartender on appellant's licensed premises on October 13, 1956, at which time he was a resident of the State of New York, and that he had not obtained a requisite employment permit from the Director of the Division of Alcoholic Beverage Control.

"Appellant's attorney contends that the word 'knowingly' which appeared in Rule 4 of State Regulation No. 13 at the time of the alleged violation and which was deleted from the rules effective January 1, 1957, is a crucial word requiring proof by respondent of appellant's knowledge of the violation charged. Under the admitted facts such contention hardly deserves serious consideration. Appellant was well-acquainted with his employee, knew he was a non-resident, and if he didn't know that a permit was required for such employee, he failed in his duty as a licensee to familiarize himself with the rules and regulations pertaining to his licensed business and is accountable for this omission.

"Considering all the facts and circumstances herein, I conclude that respondent has made out a prima facie case and I recommend that the motion for dismissal of the charge be denied and that an order be entered affirming respondent's action and reimposing the five-day suspension of the license."

Written exceptions to the Hearer's Report and written argument in support thereof were filed with me by appellant's attorney as were answering arguments by respondent's attorney, pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the transcript of the testimony, the Hearer's Report, the exceptions and arguments with respect thereto, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 24th day of April, 1958,

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

ORDERED that the five-day suspension imposed by respondent and stayed during the pendency of these proceedings be and the same is hereby restored and reimposed against appellant's license for premises at 17th Street and Monroe Avenue, Kenilworth, to commence at 2:00 a.m. May 5, 1958 and to terminate at 2:00 a.m. May 10, 1958.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION RE SHARING OF PROFITS - FRONT - LICENSE SUSPENDED FOR 10 DAYS.

DISCIPLINARY PROCEEDINGS - EMPLOYMENT PERMIT - FALSE ANSWER AS TO INTEREST IN LICENSE - PERMITTEE FOUND GUILTY OF CHARGE.

In the Matter of Disciplinary Proceedings against  
WALTER ANDREW WHITLEY  
t/a MAPLE INN  
17th Street and Monroe Avenue  
Kenilworth, N. J.,

Holder of Plenary Retail Consumption License C-5 (for the 1956-57 and 1957-58 licensing years) issued by the Kenilworth Borough Council.

CONCLUSIONS  
AND  
ORDER

In the Matter of Disciplinary Proceedings against  
OLIVER SIMMONS  
162 West 144th Street  
New York, New York,

Holder of Employment Permit No. 3980 (for the 1956-57 licensing year) issued by the Director of the Division of Alcoholic Beverage Control.

Joseph Butt, Esq., Attorney for Walter Andrew Whitley and Oliver Simmons.

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

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The defendant-licensee pleaded not guilty to charges alleging that (1) he falsely denied in his license application, upon which he obtained his then current plenary retail consumption license, that anyone other than himself was interested in the license and the business conducted thereunder, whereas Oliver Simmons had such an interest in that he was co-owner with him of the licensed business, in violation of R. S. 33:1-25, and that (2) he falsely denied in such license application that he had agreed to pay any person a portion or percentage of the gross or net profits of the licensed business, whereas he had agreed to pay Oliver Simmons 50% of the profits derived from the licensed business, in violation of R. S. 33:1-25, and that (3) since April 10, 1956 he permitted Oliver Simmons to exercise, contrary to R. S. 33:1-26, the rights and privileges of his license, in violation of R. S. 33:1-52.

"The defendant-permittee pleaded not guilty to a charge alleging that he falsely denied in his application for a non-resident's employment permit that he had an interest in and was co-owner with Walter Andrew Whitley of the plenary retail consumption license known as 17th Street and Monroe Avenue, Kenilworth, in violation of R. S. 33:1-25.

"The primary basis for the charges are three signed, sworn statements, one from Whitley and two from Simmons, his brother-in-law. The pertinent excerpts from Whitley's statement, dated November 8, 1956, are as follows:

- Q. What agreement do you have with Oliver Simmons to cover his investment of \$2,000?
- A. We have agreed that when Oliver puts up another \$2,000, making his total investment \$4,000, then he will be placed on the license with me.
- Q. Who receives the profits of the business?
- A. Until the present time there have been no profits; if and when we do make a profit it will be shared equally between Oliver Simmons and myself. At the present time we are only taking out enough so that we can buy food and the necessary things of life.
- Q. How and when will Oliver Simmons have to pay the \$2,000 he still owes in the business?
- A. There is no agreement other than when he does pay the balance of \$2,000 he will be placed on the license.
- Q. If there are any losses in this business, who will assume them?
- A. If there are any losses they will be assumed by Oliver Simmons and myself although at the present time I would most likely lose most because I presently have the most money in the business.
- Q. What proprietary interest does Simmons have in this business?
- A. He now has a 25% interest in the business. However, we have agreed to share the profits on an equal basis. When he puts up the other \$2,000 he will have 50% interest and will be placed on the license.
- Q. Isn't it true that Simmons as of this day is a 25% partner in the Maple Inn at Kenilworth, N. J.?
- A. Yes.
- Q. How long has Simmons been a partner in the business?
- A. Since we bought the place.

"The statements of Simmons dated November 8 and 13, 1956, are to the same effect as Whitley's, with the following additional excerpts:

- Q. Is Walter Whitley obligated to pay you \$2,000 if both your investment and his are lost for any reason?
- A. No, I will assume my share of the losses.
- Q. Do you draw any money out of the business?
- A. Yes, I take \$50 per week and Whitley also takes the same. Any money that is left over is put back in the business and I receive credit for half of it. There are times that Whitley does not take any money and he is then credited with a larger share.

"The defense that was presented at the hearing is that the entire arrangement was to take effect in the future, since from the time Whitley acquired the business until the time of the investigation there had, in fact, not been any profits; that it was a loan in contemplation of a partnership; that such was what Whitley and Simmons had meant when interviewed by the agents; and that anything which could be construed to the contrary in such statements was the result of language used by the agents in preparing such statements, without Whitley and Simmons realizing that an adverse construction would be placed on such language. Both Whitley and Simmons have been fully cooperative throughout.

"The hearing consumed three days with over 300 pages of testimony and represents an exhaustive inquiry into the true nature of the agreement between the parties and their statements to the agent concerning the same. No purpose will be served by a detailed analysis thereof.

"In sum, Whitley personally purchased the tavern for \$8,000, provided \$6,000 of the purchase price from his own funds, personally purchased equipment and merchandise for the business, and opened a checking account in his name and that of his wife for the business. There apparently were no profits to divide, probably because the tavern had been closed for a number of months. Simmons, Whitley's brother-in-law, was provided with employment at the premises (perhaps in consideration of his advance of \$2,000). While there is no question that, ultimately, it was intended to be a joint venture, reasonable men can differ as to whether it was factually a partnership in being, or, to the contrary, a partial payment on account of a partnership to become effective in the future. For the reasons expressed, I recommend that the parties be given the benefit of the doubt and the charges against Walter Andrew Whitley and Oliver Simmons be dismissed."

Written exceptions to the Hearer's Report, pursuant to Rule 6 of State Regulation No. 16, together with written argument in substantiation thereof, were filed with me by the prosecuting attorney. Written answering argument to the argument advanced by the prosecuting attorney was filed by the attorney for the defendants. Such attorneys also presented oral argument before me at my request.

I have carefully considered the entire record in the case, including the transcript of testimony, the Hearer's Report and the exceptions and written and oral arguments of counsel.

I shall sustain the exceptions filed by the prosecuting attorney and disapprove the Hearer's Report, in that I conclude

that while the facts are accurately stated in such report, I do not agree that either in fact or in law there can be any determination other than that there was an actual partnership in existence between the parties, albeit fruitless and unproductive of profits at the time. Hence, there is no room to afford either defendant the benefit of the doubt.

I therefore find the defendant-licensee and the defendant-permittee guilty of the charges set forth. It appears that the illegal operation of the licensed business no longer continues; that the defendant-permittee is no longer employed there and does not presently hold any employment permit. In view of the full and frank disclosure of the facts by both defendants, no purpose will be served in imposing any restriction upon any application the defendant-permittee may make in the future for an employment permit. However, the fact of the matter is that the law was violated by the defendant-licensee who is presently operating the licensed business and proper penalty must be imposed.

Defendant-licensee has no prior adjudicated record except a five-day suspension imposed by the local issuing authority for an offense arising out of the same facts herein involved and sustained on appeal by decision rendered contemporaneously herewith. Under all the circumstances, I shall suspend his license for ten days. Cf. Re C. M. Family Liquor Store, Inc., Bulletin 956, Item 11.

Accordingly, it is, on this 24th day of April, 1958,

ORDERED that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Kenilworth to Walter Andrew Whitley, t/a Maple Inn, for premises at 17th Street and Monroe Avenue, Kenilworth, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. May 10, 1958, and terminating at 2:00 a.m. May 20, 1958.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ESTYRE STEWART )  
t/a MIDTOWN BAR & CAFE )  
1719 Pacific Avenue )  
Atlantic City, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-84, issued by the Board of Commissioners of the City of Atlantic City. )

-----  
Edward I. Feinberg, 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 sold, served and delivered alcoholic beverages to three minors and permitted the consumption of such beverages by said minors in and upon her licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that ABC agents, acting upon information transmitted to this Division by the State Police, obtained signed, sworn statements from John --- (age 19), Joe --- (age 19) and Richard --- (age 20), Airmen in the U. S. Navy. The three minors stated that at about 1:00 a.m. Tuesday, February 4, 1958, they visited defendant's licensed premises and remained therein until 3:30 or 4:00 a.m. During their stay "Al" (the bartender) served each of them four or five rounds of whiskey highballs with beer chasers and an alcoholic concoction known as a "grasshopper" without requiring any written proof of their ages. Later the minors directed the agents to the licensed premises which they identified as the place wherein they had been served, but did not identify the bartender who had served them. Jessie Woods (who was tending bar at the time) informed the agents that another bartender named Al Miller tended bar from 11:00 p.m. to 8:00 a.m.

Defendant has no prior adjudicated record. The minimum suspension imposed for an unaggravated sale of alcoholic beverages to a nineteen-year-old minor is fifteen days (Re Egg Harbor Bowling Center, Bulletin 1194, Item 9). However, considering the number of minors involved, the quantity and type of alcoholic beverages served to and consumed by them and the length of time they were permitted to remain on the licensed premises, I shall suspend defendant's license for a period of thirty days (cf. Re Potter, Bulletin 1196, Item 4). Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 21st day of April, 1958,

ORDERED that Plenary Retail Consumption License C-84, issued by the Board of Commissioners of the City of Atlantic City to Estyre Stewart, t/a Midtown Bar & Cafe, for premises 1719 Pacific Avenue, Atlantic City, be and the same is hereby suspended for twenty-five (25) days, commencing at 7:00 a.m. April 28, 1958, and terminating at 7:00 a.m. May 23, 1958.

WILLIAM HOWE DAVIS  
Director.

5. DISCIPLINARY PROCEEDINGS - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SAMUEL NASCO t/a OASIS BAR & GRILL 522 Franklin Avenue Nutley, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-21, issued by the Board of Commissioners of the Town of Nutley.

Horace R. Bogle, 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 the following charge:

"On March 7, 11 and 13, 1958, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

The file herein discloses that on the dates alleged in the charge two ABC agents visited the defendant's licensed premises wherein on each occasion one of them placed a horse race bet with James C. Renn, the licensee's bartender. On the last visit, after Renn had accepted from the agent a bet slip and marked money, local police entered the premises as pre-arranged and found in Renn's possession the slip and the marked money.

In mitigation of the penalty defendant has submitted an affidavit wherein he states, in substance, that he was confined in a hospital from March 3 to March 15, 1958; that he did not re-enter his place of business until March 19, 1958; that he had no knowledge that his bartender had engaged in betting activities and that, upon learning of Renn's participation in the aforesaid violation, he immediately discharged him.

The fact that the licensee had no knowledge of the violation or did not participate in it or that his agent, servant or employee acted contrary to instructions or that the violation did not occur in the licensee's presence does not constitute a defense to charges preferred in disciplinary proceedings. Rule 33 of State Regulation No. 20.

Defendant has no prior adjudicated record. I shall suspend his license for twenty-five days, the minimum penalty in such cases. Re Guadagno, Bulletin 1175, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

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

ORDERED that Plenary Retail Consumption License C-21, issued by the Board of Commissioners of the Town of Nutley to Samuel Nasco, t/a Oasis Bar & Grill, for premises 522 Franklin Avenue, Nutley, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. April 23, 1958, and terminating at 2:00 a.m. May 13, 1958.

WILLIAM HOWE DAVIS Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 HICKORY HOUSE, INC.  
 t/a HICKORY HOUSE  
 1087 Absecon Blvd.  
 Atlantic City, N. J.,  
 Holder of Plenary Retail Consumption License C-235, issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS AND ORDER

Hickory House, Inc., Defendant-licensee, by Lawrence E. McCall, President.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that ABC agents, acting upon information transmitted to this Division by the Brigantine Police Department, obtained signed, sworn statements from Robert --- (age 19) and from one of his companions (Patrick ---) who corroborated Robert's statement. Robert stated that on Thursday, March 20, 1958, he and two companions visited defendant's licensed premises wherein he purchased eighteen quarts of beer for off-premises consumption from the clerk who required no written proof of his age. Later Robert and Patrick directed the agents to defendant's licensed premises and identified therein Lawrence McCall (one-third shareholder of defendant corporate licensee) as the person who made the sale.

Defendant has no prior adjudicated record. However, when the license was held by Lawrence McCall in his own name for premises 136 N. New York Avenue and 1500-1502 Baltic Avenue, Atlantic City, it was suspended by the local issuing authority for one day effective October 25, 1943, for possession of a mislabeled beer tap. The prior record, having occurred more than ten years ago, will not be considered in fixing the penalty herein. The minimum suspension imposed for an unaggravated sale of alcoholic beverages to a nineteen-year-old minor is fifteen days (Re Egg Harbor Bowling Center, Bulletin 1194, Item 9). However, considering the quantity of alcoholic beverages sold to the minor, I shall suspend defendant's license for twenty days (Re Polato, Bulletin 1145, Item 11). Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 23rd day of April, 1958,

ORDERED that Plenary Retail Consumption License C-235, issued by the Board of Commissioners of the City of Atlantic City to Hickory House, Inc., t/a Hickory House, for premises 1087 Absecon Blvd., Atlantic City, be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m. May 5, 1958, and terminating at 7:00 a.m. May 20, 1958.

WILLIAM HOWE DAVIS  
 Director.

7. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF UNREGISTERED STILL PARTS - MOTOR VEHICLE RETURNED TO INNOCENT U-DRIVE RENTAL CONCERN UPON APPLICATION IN ADVANCE OF STATUTORY HEARING.

In the Matter of the Seizure on March 28, 1958 of various still parts and equipment and a Chevrolet truck on the White Horse Pike, Devonshire, in Mullica Township, County of Atlantic and State of New Jersey.	)	Case No. 9676
	)	APPLICATION FOR RETURN OF SEIZED PROPERTY IN ADVANCE OF STATUTORY HEARING
	)	ORDER

Ballard, Spahr, Andrew & Ingersoll, Esqs., by Edward G. Bauer, Esq., Attorneys for P T C Truck Rental Co. I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Application has been made, pursuant to Rule 1 of State Regulation No. 28, for the return of a Chevrolet truck seized in this case on the allegation that irreparable injury will result if the applicant is required to await a statutory hearing, and requesting a preliminary hearing.

The evidence presented at such preliminary hearing establishes that one Moses A. Jones was transporting unregistered still parts and equipment in such Chevrolet truck on White Horse Pike in Devonshire, Mullica Township, New Jersey, and that such still parts and the vehicle were seized by a New Jersey State Trooper and turned over to ABC agents.

It appears that the owner of the Chevrolet truck is the P T C Truck Rental Co., a U-Drive-It truck rental concern, which is a subsidiary of the Philadelphia Transport Co. The truck rental concern has a fleet of 76 vehicles for rental to the general public, of which the seized truck is one of three of the same type and character and, hence, it has immediate and frequent need thereof.

It further appears that the truck in question was rented at one of its two locations where motor vehicles are rented on a daily or weekly basis to the general public. The practice of the concern is to require a prospective customer to present his driver's license and other means of identification and state the purpose and locality where the truck is to be used.

On March 28, 1958 at about 4:15 p.m., Moses Jones applied to the applicant for the rental of a truck. He displayed his driver's license which, with his address, was noted on a rental form used by the concern. Jones stated that he intended to move three rooms of furniture from his home to another location in Philadelphia. The employee of the truck rental concern accepted his explanation because for a number of months many such rentals had been made to persons of low income who personally moved their belongings and that it had encountered no previous difficulty with such rentals. Furthermore, from Jones' appearance the employee concluded that he appeared to be trustworthy.

The only truck then available was rented to Jones. Accompanied by a woman and a child, Jones returned after he had traveled six miles and stated that the truck was unsuitable for the purpose of moving furniture because it had a narrow rear door. At that time the Chevrolet truck with two rear doors which opened

completely, was available and an exchange of trucks took place and appropriate notation thereof was entered by the employee on the rental agreement.

I am satisfied by the evidence presented that the U-Drive-It concern followed the normal procedure of such business and such procedure will continue to be accepted as evidencing good faith and reasonable prudence, for the reasons expressed in Seizure Case 8612, Bulletin 1038, Item 2.

Accordingly, it is DETERMINED and ORDERED that if on or before the 28th day of April, 1958, the P T C Truck Rental Co. pays the costs incurred in the seizure and storage of the Chevrolet truck, described in Schedule "A" attached hereto, such motor vehicle will be returned to such concern.

WILLIAM HOWE DAVIS

Director.

Dated: April 17, 1958.

SCHEDULE "A"

- 1 - Chevrolet panel truck, serial #6C578101475, engine #F-1011K, bearing Pennsylvania license #U2818F.

8. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - ENGAGING IN CONDUCT PROHIBITED TO EMPLOYER - PERMIT SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

LEIGH GRANT MILLAR  
2700 Lakewood Road  
W. Point Pleasant, N. J.,

CONCLUSIONS  
AND ORDER.

Holder of Unlimited Solicitor's Permit No. 2844, issued by the Director of the Division of Alcoholic Beverage Control.

-----  
Leigh Grant Millar, Defendant-Permittee, Pro se.  
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. You, the holder of an Unlimited Solicitor's Permit, engaged in conduct prohibited to your employer, Dorchester, Inc., holder of a New Jersey Plenary Wholesale License, by the Alcoholic Beverage Law and Regulations, as follows:

- (a) On or about December 20, 1957 you sold and distributed alcoholic beverages to Karl Baron, a person neither a licensed retailer nor a licensed wholesaler, which conduct was contrary to and beyond the terms of the license of your employer as defined by R. S. 33:1-11(1) and in violation of R. S. 33:1-2;
- (b) On or about November 15, 1957 you transported alcoholic beverages in a vehicle not having a transit insignia affixed thereto, which conduct was prohibited to your employer by Rule 2 of State Regulation No. 17;

- (c) On or about December 20, 1957 you aided and abetted Karl Baron in the unlawful transportation of alcoholic beverages, which conduct was prohibited to your employer by R. S. 33:1-2 and R. S. 33:1-50(d);

all of which conduct by you was in violation of Rule 12 of State Regulation No. 14.

"2. On or about November 15 and December 20, 1957 you aided and abetted the unwitting unlawful sale and distribution of alcoholic beverages by your above mentioned employer to yourself, you being neither a licensed retailer nor a licensed wholesaler, contrary to the terms of your employer's license as defined by R.S. 33:1-11(1) and in violation of R. S. 33:1-2, in that you procured such sale and distribution by presenting false papers representing to your employer that the alcoholic beverages were ordered by and delivered to a New Jersey retail licensee, Ervel Powers, t/a Club Ervel, Route 35, Eatontown, while in truth and fact they were not so ordered or delivered; in violation of R. S. 33:1-50(d)."

The file herein discloses that on November 15, 1957 and on December 20, 1957 the defendant obtained a quantity of alcoholic beverages from his employer, a wholesale licensee, by placing fictitious orders for the same in the name of one of his customers who had no knowledge of the transactions and who did not receive any of the alcoholic beverages.

The first of said orders, a case of whiskey, was transported by the defendant in his automobile which bore no transit insignia and was retained by him for his personal use.

The second order consisted of four cases of Seagram's VO Whiskey and 22 bottles of various brands of alcoholic beverages. On December 22, 1957 the defendant sold and delivered aforesaid four cases of whiskey at the wholesale price to Karl Baron, a non-licensee, and effected delivery thereof by transferring the whiskey from his automobile to the motor vehicle of said Karl Baron. The defendant kept the remaining 22 bottles for his own use.

The illegal activities indulged in by the defendant indicate a disregard of the conditions and restrictions of his solicitor's permit. I find no excuse for his actions.

Defendant has no prior adjudicated record. Considering all the facts and circumstances of this case, I shall suspend defendant's permit for thirty days. Cf. Re Freedman, Bulletin 889, Item 5, and Re Bakun, Bulletin 1204, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 23rd day of April, 1958,

ORDERED that Unlimited Solicitor's Permit No. 2844, issued by the Director of the Division of Alcoholic Beverage Control to Leigh Grant Millar, 2700 Lakewood Road, W. Point Pleasant, be and the same is hereby suspended for twenty-five (25) days, commencing at 9:00 a.m. May 1, 1958, and terminating at 9:00 a.m. May 26, 1958.

WILLIAM HOWE DAVIS  
Director.

9. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
MAX BURDAY and HENRY BUDOWSKY,  
a partnership of New Jersey  
t/a "ASHLAND FOOD MARKET"  
Evesham Ave., 75 yds. above P.R.R.  
Delaware Township (Camden County)  
PO Ashland, N. J.,

CONCLUSIONS AND ORDER

-----  
Holders of Plenary Retail Distribution License D-2, issued by the Board of Commissioners of the Township of Delaware.

-----  
Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq.,  
Attorneys for Defendant-licensees.  
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they 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 November 27, 1957 Henry Budowsky, one of the aforesaid licensees, sold a fifth (4/5 quart) bottle of Seagram's Seven Crown Blended Whiskey to an agent of this Division for \$4.50. The minimum consumer resale price then in effect for said alcoholic beverages was \$4.79. After the sale was consummated the agent, and another who joined him, identified themselves to Mr. Budowsky who admitted the aforesaid illegal sale.

By way of mitigation, the attorneys for the defendants have submitted a statement which I have examined together with the file in the case and the reports of the agents. I, however, do not find any extenuating circumstances in the case which would impel me to impose less than the established penalties in cases of this kind.

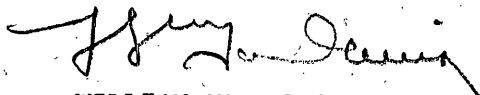
Defendants have a prior adjudicated record. Effective February 4, 1946, when Henry Budowsky held this license in his individual name, it was suspended by this Division for the balance of its term because of a "front" violation. Re Budowsky, Bulletin 692, Item 12. (Suspension was lifted February 28, 1946, Bulletin 698, Item 8.) Effective May 18, 1953 defendants' license was suspended by this Division for ten days for the transportation of alcoholic beverages without an invoice. Bulletin 970, Item 10.

The minimum suspension for a violation as charged herein is ten days. Re Kugel & Glick, Bulletin 1214, Item 6. The first dissimilar violation, having occurred more than five years ago, will not be considered in fixing the penalty herein. Re Erceg, Bulletin 1214, Item 8. However, since the second dissimilar violation took place within a five-year period, an

additional five day penalty will be added (Re Sports Bar & Grill, Inc., Bulletin 1156, Item 5), making a total suspension of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 24th day of April, 1958,

ORDERED that Plenary Retail Distribution License D-2, issued by the Board of Commissioners of the Township of Delaware to Max Burday and Henry Budowsky, a partnership of New Jersey, t/a "Ashland Food Market", for premises located on Evesham Ave., 75 yards above P.R.R., Delaware Township, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. May 5, 1958, and terminating at 9:00 a.m. May 15, 1958.



WILLIAM HOWE DAVIS  
DIRECTOR