

BULLETIN 1068

JUNE 15, 1955.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - BRIGANTINE BEACH HOTEL CORP. v. BRIGANTINE.
2. APPELLATE DECISIONS - EMPIRE LIQUOR CO., et als. v. NEWARK AND RAJAH LIQUORS.
3. ELECTION DAY - RULE 2 OF STATE REGULATIONS NO. 20 CONSTRUED AS TO "RUN-OFF" ELECTIONS - BULLETIN 971, ITEM 2, SUPERSEDED IN PART.
4. APPELLATE DECISIONS - HALL LIQUOR CO. v. UNION - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED AFTER TERMINATION OF PROCEEDINGS TO REVIEW.
5. DISCIPLINARY PROCEEDINGS (Stafford Twp.) - SALES TO MINORS - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Lakewood) - SALES TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Jersey City) - CONDUCTING BUSINESS AND PERMITTING PERSONS OTHER THAN THE LICENSEE AND EMPLOYEES ON LICENSED PREMISES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Hopewell Twp., Mercer County) - PIN BALL MACHINES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Waldwick) - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.
10. DISCIPLINARY PROCEEDINGS (Waldwick) - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 30 DAYS.
11. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street, Newark 2, N. J.

BULLETIN 1068

JUNE 15, 1955.

1. APPELLATE DECISIONS - BRIGANTINE BEACH HOTEL CORP. v.
BRIGANTINE.

BRIGANTINE BEACH HOTEL CORP.,)
t/a Brigantine Hotel,)

Appellant,)

v.)

BOARD OF COMMISSIONERS OF THE)
CITY OF BRIGANTINE,)

Respondent.)
-----)

On Appeal

CONCLUSIONS AND ORDER

Joseph H. Blumberg, Esq., Attorney for Appellant.
John Lloyd, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's plenary retail consumption license for a period of forty-five days, effective December 10, 1954, after it adjudged appellant guilty in disciplinary proceedings on a charge alleging that on August 28 and 29, 1954, it sold, served and delivered alcoholic beverages to, and permitted the consumption thereof by, minors, in violation of Rule 1 of State Regulations No. 20. The licensed premises are located at 15th Street South and Beachfront, Brigantine.

Upon the filing of the appeal, an order dated December 20, 1954, was entered by me staying respondent's order of suspension until the entry of a further order herein. R.S.33:1-31.

The petition of appeal alleges in substance that respondent's action was erroneous because (1) there was insufficient evidence, (2) it was induced by bias and prejudice, and (3) the penalty was harsh and excessive.

On the appeal the matter was heard de novo. Rule 6, State Regulations No. 15.

At the hearing herein respondent produced as witnesses Sergeant Moore of the Brigantine Police Department, two ABC agents and five minors. Each minor, for obvious reasons, will be referred to herein by his first name.

Sergeant Moore testified, substantially, that at about 1 a.m. Sunday, August 29, 1954, he investigated a car parked near an abandoned clubhouse and found two boys who had been "definitely drinking", one of whom "was quite sick;" that they identified themselves as George --- and Andrew ---, and stated they had been drinking at the Brigantine Hotel; that he escorted them home and on the following day he obtained signed statements in their own handwriting; that he then learned that other boys were involved and obtained signed statements from Carl --- and Daniel ---; that he contacted the Division of

Alcoholic Beverage Control and that evening (Sunday) met with its agents who, in his presence, obtained signed sworn statements from George, Andrew and Carl; that he and the agents were directed to the Brigantine Hotel by the three boys who identified it as the place in which they had purchased and consumed alcoholic beverages; that the next morning (Monday, August 30, 1954) he brought Earl Clemens, an employee of the Brigantine Hotel, to Police Headquarters where, in his presence and in the presence of the ABC agents, George, Andrew and Carl, independently of one another, identified Clemens as the bartender who had served them alcoholic beverages. The Sergeant further testified that Earl Clemens denied serving alcoholic beverages to the boys, admitting, however, that he had served them Coca-Cola.

One of the ABC agents who participated in the investigation corroborated the police Sergeant in those matters in which the Sergeant and the agents participated, and further testified that on Monday, August 30, 1954, he and another agent obtained signed sworn statements from Robert --- and the aforesaid Daniel ---.

George, Andrew, Robert, Daniel and Carl testified at the hearing herein that at the time in question they were, respectively, 15, 17, 16, 16 and 15 years of age; that they had attended the Lifeguards Ball at the Brigantine Hotel which they entered between 9 and 10:30 p.m. Saturday, August 28, and left in separate groups between 12 midnight and 1 a.m. Sunday, August 29, 1954. George and Andrew testified they attended the affair together and that each purchased and consumed on the licensed premises seven to ten bottles of beer. Robert and Daniel testified that they went to the dance and were together all evening; that Robert purchased three bottles of beer on the premises which he consumed together with another bottle of beer purchased by his companion. Daniel furthermore testified that he purchased and consumed on the licensed premises fourteen to sixteen bottles of beer; that he didn't feel too good; and that "I tripped down the steps." Carl, who went stag to the affair, testified that he purchased two bottles of beer on the licensed premises and accepted another from a friend, all of which he consumed on the licensed premises. Each minor testified that the bartender who served him made no inquiry as to his age.

Appellant produced on its behalf the hotel clerk, a porter and David Josephson, general manager of the corporate licensee.

The clerk testified that he was "cashiering" behind the bar in the ballroom during the Lifeguards Ball and that, although many teenagers were in attendance, he didn't observe any of them purchasing or partaking of alcoholic beverages. The porter testified that he was behind the bar all evening; was busy and "didn't pay much attention to the patronage." Josephson testified that he is a majority stockholder of the corporate licensee; that he permitted the lifeguards to use the premises gratis; that the only benefits the licensee received were the profits from the sale of refreshments; that he was behind the bar ninety-eight per cent. of the time that the Lifeguards Ball was in progress, and that no one under twenty-one years of age was served alcoholic drinks on the licensed premises while he was present.

With respect to appellant's contention that the action of the local issuing authority was induced by bias and prejudice, Josephson testified that civil litigation had been instituted

against him by Joseph L. Soloff (a real estate broker with whom Mayor Spero, a member of the Board of Commissioners of Brigantine, was associated) to collect commissions allegedly owing to Soloff in connection with the sale of the Brigantine Hotel; that a jury awarded Soloff a judgment of \$3,000, which was reversed on appeal to the Appellate Division of the Superior Court; that thereafter Soloff caused insolvency proceedings to be brought against the Brigantine Hotel; that Mr. Peacock, another member of the Board of Commissioners of Brigantine, was appointed Receiver; that on the day of Peacock's appointment appellant instituted reorganization proceedings in the Federal Court; that a different Receiver took over; and that Peacock was not "too satisfied about being replaced ***. The fees he could have made and so on."

In rebuttal Mayor Spero testified that he, Mr. Peacock and Mr. Crane are and were members of the Board of Commissioners of Brigantine who conducted the disciplinary proceedings against appellant-licensee; that the legal proceedings involving Josephson and/or the Brigantine Hotel were not instigated by him and had no bearing upon his decision respecting the guilt of the licensee herein. The record shows that the decision of the Appellate Division in the legal proceeding was dated August 4, 1952. Mayor Spero further testified that he and the other commissioners had actually helped the licensee by causing a jetty to be erected on the beach in front of its hotel to keep the ocean from washing under the premises; by causing a street to be paved that benefited the licensee's property; and by permitting the corporate licensee to use city property for a parking lot with a sign on it "Parking for the Hotel Only."

Mr. Peacock testified that, after the hearing on the complaint against the Brigantine Hotel, he was fully satisfied that the licensee had committed a violation of the law; that he had no ill-will against Josephson; that, on the contrary, he was associated with Josephson's attorney at the trial and on the appeal from the judgment obtained by Soloff.

The three commissioners testified that the disciplinary proceedings against the licensee herein were the first and only proceedings of that nature to come before them; that they sought information from the Division of Alcoholic Beverage Control; and that, using its standard as a guide, they imposed a minimum penalty of forty-five days after having found the licensee guilty as charged.

Appeals to the Director from action of the local issuing authority are heard de novo and the burden of establishing that the action of such issuing authority was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15.

With respect to the first point raised by appellant, I find that the testimony of the five minors, which was unshaken at the hearing herein, presents a true picture of what transpired at the time and place in question. Hence, the finding of guilt is affirmed.

As to the second point, I have carefully considered the proof as to alleged bias and prejudice, and I am satisfied from the evidence that improper motivation has not been established. Cf. Redfield v. Long Branch, Bulletin 1027, Item 1.

As to the third point, it is well established that the quantum of penalty rests within the sound discretion of the local

issuing authority and will not be disturbed by the Director on appeal unless the penalty is clearly excessive and manifestly unreasonable. Cf. Laurence Harbor Amusement Corp. v. Madison, Bulletin 955, Item 1. I cannot find that the penalty was unreasonable or unduly oppressive, nor is there any other indication that the respondent was either arbitrary or unreasonable in imposing the penalty in question.

After considering all the evidence and circumstances of this case, I find that appellant has failed to sustain the burden of establishing that the respondent Board's action was erroneous and should be reversed.

The action of respondent will be affirmed; the present appeal will be dismissed, and the forty-five-day suspension originally imposed (less the ten days already served) will be reinstated.

Accordingly, it is, on this 16th day of May, 1955,

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

ORDERED that the thirty-five-day balance of the forty-five-day suspension by respondent of appellant's plenary retail consumption license C-6, for premises at 15th Street South and Beachfront, Brigantine, be and the same is hereby restored to commence at 7 a.m. May 23, 1955, and to terminate at 7 a.m. June 27, 1955.

William Howe Davis,
Director.

2. APPELLATE DECISIONS - EMPIRE LIQUOR CO., et als. v. NEWARK AND RAJAH LIQUORS.

EMPIRE LIQUOR CO., et als.,)
Appellants,)
v.)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK, AND RAJAH LIQUORS,)
Respondents.)
-----)

On Appeal

CONCLUSIONS AND ORDER

Robert C. Gruhin, Esq., Attorney for Appellants.
Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control.
Mayer & Mayer, Esqs., by Abraham I. Mayer, Esq., Attorneys for Respondent Rajah Liquors.

BY THE DIRECTOR:

This is an appeal from the renewal for the current licensing year of the plenary retail consumption license held by Rajah Liquors for premises at 269-271 Springfield Avenue, Newark.

The history of this case begins with the denial of Rajah Liquors' application to transfer its 1952-53 license from

274 Fifteenth Avenue to the aforesaid premises on Springfield Avenue. Upon appeal, the denial was affirmed. See Bulletin 993, Item 2. When the Newark Board subsequently granted an identical transfer application of the 1953-54 license, its action was reversed because of the unexplained change in the position of the dispositive member of the local Board. See Bulletin 1031, Item 2. The Appellate Division of the Superior Court affirmed the reversal of the transfer (33 N.J. Super. 598 (App.Div. 1955)), and the Supreme Court, on May 2, 1955, denied Rajah Liquors' petition for certification.

Hearing in the instant case was stayed pending the outcome of the cited court proceedings. Upon the denial of certification by the Supreme Court, hearing was scheduled before me to hear argument "on the question whether the renewal of the license for the current licensing year shall be reversed", in view of Rule 13 of State Regulations No. 15 which reads:

"When appeal is taken in any matter, any transfer or extension or renewal of any license involved therein shall be subject to the ultimate outcome of such appeal, unless otherwise ordered by the Director for proper cause."

See Greenspan v. Division of Alcoholic Beverage Control, 12 N.J. 456, 459 (1953); cf. Brush v. Hock, 137 N.J.L. 257, 261 (Sup.Ct. 1948).

Rajah Liquors does not contest the applicability of the cited Rule to the instant proceedings. Its primary contention is that it should be permitted, in this case, to present testimony concerning an alleged change in circumstances since the entry of my decision reversing the transfer. Assuming the existence of any such change, it has pertinency, if at all, to the transfer of the license, and not to its renewal, and evidence thereof may be offered to the local Board in connection with any relevant proceedings before it in the future. None of the proffered proof, however, militates against the present application of Rule 13 of State Regulations No. 15 and, accordingly, the action of the local Board in renewing the license for the current licensing year for the premises on Springfield Avenue must be reversed.

Rajah Liquors has further requested that it "be given some reasonable opportunity to transfer to some other premises." Pursuant to R.S. 33:1-38 and 39, such relief has heretofore been afforded, in similar situations, to licensees who, through no personal fault, would otherwise have been faced with an outright loss of their licenses. See Oreb v. Camden, Bulletin 487, Item 4; Zahorbenski v. Jersey City, et als., Bulletin 706, Item 5; Delaware Tavern, Inc., et al. v. Atlantic City, et al., Bulletin 758, Item 1; Venos v. Jersey City, Bulletin 808, Item 5; VanHouten v. Deal, Bulletin 895, Item 1. Although Rajah Liquors must refrain from further alcoholic beverage activity at its present premises, it would be an inordinately harsh result if, under the circumstances herein, it would be completely deprived of an opportunity of securing a proper location. I shall, therefore, permit Rajah Liquors to continue its past status as a licensee at its former address at 274 Fifteenth Avenue in order that it may be in a position to apply to the local Board for a place-to-place transfer. In the event that the limitation of time prevents the consummation of any contemplated transfer prior to the termination of the current licensing year on June 30th, the respondent Board may, in its sound discretion, grant a 1955-56 renewal of said license for the Fifteenth Avenue premises, solely for the purpose,

however, of permitting, in its sound discretion, a place-to-place transfer thereof upon submission of a proper application.

Accordingly, it is, on this 25th day of May, 1955,

ORDERED that the action of the Newark Board in renewing Plenary Retail Consumption License C-740 to Rajah Liquors for premises at 269-271 Springfield Avenue be and the same is hereby reversed, and Rajah Liquors is directed to cease all alcoholic beverage activity thereunder on Tuesday, May 31, 1955, at 2:00 a.m.; and it is

FURTHER ORDERED that the Newark Board cause the said license certificate to be amended by substituting the address of 274 Fifteenth Avenue in place of the present address appearing thereon, solely for the purpose of permitting, in its sound discretion, a place-to-place transfer thereof, and also to cause its records to be so amended.

William Howe Davis,
Director.

3. ELECTION DAY - RULE 2 OF STATE REGULATIONS NO. 20 CONSTRUED AS TO "RUN-OFF" ELECTIONS - BULLETIN 971, ITEM 2, SUPERSEDED IN PART.

May 24, 1955.

Hon. John F. Reynolds,
Chief of Police,
Hoboken, N. J.

We have been advised by City Clerk Malone that a run-off election for councilman will be held in the First, Third, Fourth and Sixth Wards of Hoboken on Tuesday, June 14, 1955, with polling hours from 7 A.M. to 8 P.M., presumably in accordance with R.S. 40:69A-161.

Since the run-off election is being held pursuant to the provisions of R.S. 40:69A-161 and since R.S. 40:69A-151 provides that the election shall be "conducted in the same manner so far as possible as the general election", the run-off election is therefore a special election within the purview of Rule 2 of State Regulations No. 20. Re Malone, Bulletin 971, Item 2. That Rule provides:

"No licensee shall sell or offer for sale at retail or deliver to any consumer any alcoholic beverage, or allow, permit or suffer the consumption of any alcoholic beverage in or upon the licensed premises, in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

I am aware that in Re Malone, supra (which concerned a run-off election in a single ward), it was ruled by my predecessor that during such run-off election, Rule 2 of State Regulations No. 20 applied only to the licensed premises in the affected ward and not to all licensed premises in the municipality. Now, however, it is not just a single ward but four. Upon reflection, I conclude that the Rule applies not only in the ward or wards

wherein the election is being held but in the entire municipality. Any other interpretation would produce unjustified administrative and law enforcement complications inimical to sound liquor control and the salutary purpose of the election day rule. In this connection, it should be noted that the Rule explicitly provides that "No licensee ... in any municipality in which a ... special election is being held" shall sell, etc. No reference is made to wards or other subdivisions of the municipality.

Accordingly, you should advise all Hoboken retail liquor licensees that they must not sell or offer for sale at retail or deliver to any consumer any alcoholic beverages, or permit the consumption of any alcoholic beverages on their licensed premises between 7 A. M. and 8 P. M. on Tuesday, June 14, 1955.

It is your duty to enforce the quoted Rule. See R. S. 33:1-24. If a violation is found, please order the licensee to discontinue immediately, seize any alcoholic beverages involved as evidence, and report the licensee to me for disciplinary proceedings, giving name, address, license number, time, nature and details of violation.

Thank you for your continuing cooperation.

William Howe Davis,
Director.

4. APPELLATE DECISIONS - HALL LIQUOR CO. v. UNION - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED AFTER TERMINATION OF PROCEEDINGS TO REVIEW.

HALL LIQUOR CO. (a corporation),)
trading as Franklin Liquor,)
Appellant,)
v.)
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UNION (UNION COUNTY),)
Respondent.)

On Appeal
O R D E R

BY THE DIRECTOR:

On September 8, 1954, I affirmed the 10-day suspension theretofore imposed by respondent against the appellant's plenary retail distribution license. See Bulletin 1032, Item 2. Pending an appeal to the Superior Court, Appellate Division, the suspension was stayed by the Court. The decision was recently affirmed by the Court and the mandate has been issued. The penalty may, therefore, now be reimposed.

Accordingly, it is, on this 26th day of May 1955,

ORDERED that the 10-day suspension of Plenary Retail Distribution License D-16, issued to Hall Liquor Co. (a corporation), trading as Franklin Liquor, by the Township Committee of the Township of Union (Union County), for premises 2041-2043 Springfield Avenue, Union, be and the same is hereby reimposed, commencing at 9 a.m., June 1, 1955 and terminating at 9 a.m., June 11, 1955.

William Howe Davis,
Director.

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

OTTO SCHMID & THEKLA SCHMID, t/a Bay Shore Bar, North Side Bay Avenue, Cedar Bonnett Island, Stafford Township, PO Manahawkin, New Jersey,)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Stafford.)

William T. Cahill, Esq., Attorney for Defendant-licensees. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold, served and delivered alcoholic beverages to minors and permitted the consumption thereof by said minors upon their licensed premises; in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that at 9:30 or 10:00 p.m. on April 16, 1955, two minor youths, 16 years and 18 years of age, respectively, visited defendants' licensed premises. They remained in said premises until midnight during which time each minor purchased, was served and consumed several glasses of beer and a few shots of whiskey. One of the minors stated that both were feeling "high" when they left defendants' premises.

Defendants have no prior adjudicated record. The minimum penalty for an unaggravated first offense of sale of alcoholic beverages to two minors is ten days. Re Soerensen, Bulletin 1058, Item 6. In view of the fact that one of the minors involved was only 16 years of age, the length of time the minors remained on the licensed premises and the number and kind of drinks consumed, I shall suspend defendants' license for twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days. Cf. Re McCollum, Bulletin 1052, Item 5.

Accordingly, it is, on this 24th day of May 1955,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Stafford to Otto Schmid & Thekla Schmid, t/a Bay Shore Bar, North Side Bay Avenue, Cedar Bonnett Island, Stafford Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2 a.m., June 1, 1955, and terminating at 2 a.m., June 21, 1955.

William Howe Davis, Director.

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JACOB & IRVING LAVITZ, t/a Lavitz Liquors, 33 Fourth Street, Lakewood, New Jersey,)

CONCLUSIONS

AND

Holder of Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Lakewood.)

ORDER

Albert Spitzer, Esq., Attorney for Defendant-licensees. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on April 9, 1955, an ABC agent obtained a signed sworn statement from Arthur ---, stating his age to be 16; that at about 8:30 p.m., April 8, 1955, he and four other minors drove to defendants' licensed premises and parked their car directly across the street therefrom; that he and one of his companions entered defendants' place of business, carrying two cases of empty beer bottles; that he purchased from the clerk therein a case (12 quart bottles) of beer; that the clerk made no inquiry respecting his age, and accepted the "empties" in part payment of the purchase; that he and his companion returned to the parked car and drove with the others to a nearby "dump" where each drank some of the beer; and that he became sick. After signing the statement, Arthur directed the agent to the licensed premises which he pointed out as the place where he had purchased the beer and therein identified Jacob Lavitz (a licensee herein) as the clerk who had served him. The agents obtained from the minors, corroborating statements of Arthur's version of the events of April 8, 1955. Jacob Lavitz stated that he made the aforesaid sale after Arthur produced an identification card showing that he was 22 years of age. This, even if true, does not establish a complete defense, but might be considered a mitigating circumstance. Re Roey, Bulletin 747, Item 3.

Defendants have no prior adjudicated record. I shall suspend defendants' license for a period of twenty days, which is the minimum penalty for sale of alcoholic beverages to a sixteen-year-old minor. Re O'Brien & Cronin, Bulletin 1052, Item 6. 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 May 1955,

ORDERED that Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Lakewood to Jacob & Irving Lavitz, t/a Lavitz Liquors, 33 Fourth Street, Lakewood, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m. May 31, 1955 and terminating at 9:00 a.m. June 15, 1955.

William Howe Davis, Director.

7. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AND PERMITTING PERSONS OTHER THAN THE LICENSEE AND EMPLOYEES ON LICENSED PREMISES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against BERNARD J. DLUGOLENCKI and EDWARD H. DLUGOLENCKI, (t/a Barney's Tavern), 236 Erie Street, Jersey City 2, N. J., Holders of Plenary Retail Consumption License C-219, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS

AND

ORDER

Bernard J. Dlugolencki and Edward H. Dlugolencki, Defendant-licensees, Pro se. Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to charges alleging that on Sunday, April 24, 1955, they (1) conducted their licensed business between 11:35 a.m. and 12:30 p.m.; and (2) suffered and permitted persons other than their actual employees and agents in and upon their licensed premises during said hours; both in violation of the provisions of a local ordinance.

The file herein discloses that at 11:35 a.m., Sunday, April 24, 1955, ABC agents observed two men knock on the front window of defendants' tavern, proceed to a side door of the building and enter. At 11:55 a.m., one of the agents investigated and found that the side entrance opened into a hallway at the rear of which was a door through which emanated music and male voices. In response to his knock the agent was admitted to the barroom of the licensed premises wherein he observed five males at the bar consuming alcoholic beverages. The male who admitted him, later identified as a casual employee of the licensees, served the agents three drinks of whiskey and accepted \$.80 in payment. At 12:15 p.m. there was a knock on the door and the agent, reasonably certain that his partner was seeking admission, identified himself to the group and ordered the employee to unlock the door, which he did. The agents then seized two drinks from the patrons for evidential purposes and when one of the licensees, who resides above the licensed premises, arrived, they informed him of the violation which the employee then and there verbally admitted.

Defendants have no prior adjudicated record. I shall suspend defendants' license for fifteen days. Re The Glenwood Tavern, Inc., Bulletin 1009, Item 7. 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 May 1955,

ORDERED that Plenary Retail Consumption License C-219, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Bernard J. Dlugolencki and Edward H. Dlugolencki, (t/a Barney's Tavern), 236 Erie Street, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2 a.m., May 30, 1955, and terminating at 2 a.m., June 9, 1955.

William Howe Davis, Director.

8. DISCIPLINARY PROCEEDINGS - PIN BALL MACHINES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHARLES M. MARTINETTE & RICHARD H. MANTEL, t/a Hiehela Sportland, Route #69, Hopewell Township (Mercer County), PO RD Pennington, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Hopewell.)

Charles M. Martinette & Richard H. Mantel, Defendant-licensees, by Richard H. Mantel. William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging they allowed, permitted and suffered in and upon their licensed premises three bagatelle or pin ball machines, in violation of Rule 7 of State Regulations No. 20.

The file herein discloses that on April 30, 1955, an ABC agent, while making a routine inspection of defendants' licensed premises, observed therein three pin ball machines, two of which he operated in the presence of one of the licensees who informed him that the devices had been on the premises since January 1955.

Defendants have no prior adjudicated record. I shall suspend their license for the minimum period of ten days. Re Devino, Bulletin 1042, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 25th day of May 1955,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Hopewell to Charles M. Martinette & Richard H. Mantel, t/a Hiehela Sportland, Route #69, Hopewell Township (Mercer County), be and the same is hereby suspended for a period of five (5) days, commencing at 2:30 a.m., June 6, 1955, and terminating at 2:30 a.m., June 11, 1955.

William Howe Davis, Director.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

LAWRENCE V. and ANNA M. MARTIN, n/e Corner Crescent & Wyckoff Avenues, Waldwick, New Jersey,)

CONCLUSIONS

AND

ORDER

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

Daniel Amster, Esq., Attorney for Defendant-licensees. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded not guilty to a charge alleging that they sold, served and delivered alcoholic beverages and permitted the consumption thereof on their licensed premises during prohibited hours, in violation of a local ordinance.

An ordinance of the Borough of Waldwick prohibits sale or consumption of alcoholic beverages on licensed premises on Sundays between the hours of 2 a.m. and 12 noon.

An ABC agent testified that at 2:52 a.m., Sunday, January 30, 1955, he and another agent arrived in the vicinity of defendants' licensed premises; that he peered through the window and observed three persons seated at the bar and a man behind the bar; that in response to his knock on the door, Lawrence V. Martin, one of the defendant-licensees, permitted him to enter the premises; that he seized a glass containing beer from a female seated at the bar; two shot glasses containing whiskey, one from in front of the bartender and the other from a man subsequently identified as Harvie Davis, respectively; and a mixed drink, one of the ingredients of which was whiskey, from Lawrence V. Martin, aforementioned. The agent further testified that although he did not see any drinks being poured, Lawrence V. Martin and the bartender stated that the drinks "had just been poured and they were having a business conference."

It was stipulated by the attorneys for the respective parties hereto that if the other agent, who had accompanied the one whose testimony was given, were called as a witness his testimony would corroborate that given by his fellow agent.

Lawrence V. Martin, one of the defendant-licensees, testified that at 1:50 a.m. on the morning in question he closed the licensed premises and permitted no one to enter thereafter until the agents were admitted. He testified that he could not recall whether any drinks were served after 2 a.m. and that he consumed a portion of his drink between the time he closed the establishment and the time the agents arrived.

William Kouker, a bartender employed by defendants, testified that he made service of the drinks to those present after the place was closed and then began to clean the premises;

and that he had not consumed his drink prior to the time the agents arrived, which he judged was "at about 25 minutes to three."

Francis J. McGrogan, Captain of Police in the municipality wherein the defendants' premises are located, testified that on orders of the Police Commissioner, no liquor was to be served after 2 a.m. but a reasonable length of time would be allowed all licensed premises "to clean out the taverns of their customers" and that all licensees were so notified.

After careful consideration of all the testimony given in the instant case, I am satisfied that although there is no direct proof of service of drinks of alcoholic beverages after 2 a.m., there is sufficient evidence that such drinks were consumed after that hour in violation of the local ordinance. The ordinance prohibits not only service of alcoholic beverages, but also consumption thereof on Sundays between the hours of 2 a.m. and 12 noon. Lawrence V. Martin, one of the licensees, admitted consuming alcoholic beverages after 2 a.m. As was said by Commissioner Driscoll in commenting on an ordinance containing a provision similar to that now under consideration, "The clear intent of the ordinance is to prevent the consumption of alcoholic beverages on the licensed premises during prohibited hours by the licensee or any person." Reeves v. Newark, Bulletin 547, Item 5.

Defendants contend that because the Police Commissioner permitted the licensees a reasonable time to clear the premises of customers after the closing hour, the defendants could not be charged with committing a violation. However, Captain McGrogan stated, in quoting the instructions of the Police Commissioner, that there was to be no liquor served after 2 a.m. and that a reasonable time was to be given to the licensees to endeavor to have the customers leave the premises. There was no mention, however, that anyone was to be permitted to consume alcoholic beverages on the licensed premises during the prohibited hours applicable to the matter now under consideration.

I find defendants guilty as charged.

The minimum penalty for an "hours" violation such as that committed herein is fifteen days. Cf. Re Erie Post #1049, V.F.W., Bulletin 1026, Item 10. However, defendants have a prior adjudicated record. Effective June 2, 1947, defendants' license was suspended for ten days for sale of alcoholic beverages in original containers, in violation of Rule 1 of State Regulations No. 38. Re Martin, Bulletin 766, Item 6. Although the offense here charged involves violation of a local ordinance and the offense of which defendants were convicted in 1947 involved a violation of a State Regulation, both are nonetheless similar. Re Mekis & O'Shaughnessy, Bulletin 952, Item 6. The former violation occurred beyond the five-year period but within the ten-year period. Consequently, I shall suspend defendants' license for a period of twenty days.

Accordingly, it is, on this 26th day of May 1955,

ORDERED that Plenary Retail Consumption License C-6 issued by the Borough Council of the Borough of Waldwick to Lawrence V. and Anna M. Martin, n/e corner Crescent & Wyckoff Avenues, Waldwick, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2 a.m., June 7, 1955, and terminating at 2 a.m., June 27, 1955.

William Howe Davis,
Director.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)

FRANK J. WEBER, t/a Stasny's Casino, Franklin Turnpike near Hohokus Line, Waldwick, N. J.,)

CONCLUSIONS

AND

ORDERS

Holder of Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Waldwick.)

Milton, McNulty & Augelli, Esqs., by William E. Bannon, Esq., Attorneys for Defendant-licensee. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On Sunday, January 30, 1955, between 2:00 A.M., and 2:12 A.M., you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and allowed the consumption of alcoholic beverages on your licensed premises; in violation of Section 10 of an Ordinance adopted by the Mayor and Council of the Borough of Waldwick on September 7, 1934, as amended April 18, 1941, which prohibits any such activity between the hours of 2:00 A.M. and Noon on Sundays.

"2. On Sunday, January 30, 1955, at about 2:12 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of two separate orders of alcoholic beverages at retail in their original containers for consumption off your licensed premises; in violation of Rule 1 of State Regulations No. 38."

An ABC agent testified that at exactly 2 a.m., on Sunday, January 30, 1955 both he and a fellow agent were served a glass of beer by the defendant; that the two agents finished their respective drinks at 2:12 a.m., when he ordered another drink but was refused by the defendant who said, "No, that's enough"; that defendant then poured himself another drink and came from behind the bar and took a seat at the patrons' side thereof; that between 2 a.m. and 2:12 a.m., he observed the defendant make service of alcoholic beverages to patrons at the bar; that at about 2:07 a.m. the agent saw the waitress talking to defendant in the kitchen and when she came out she carried two paper bags, walked to a booth where two men and a woman were seated and handed a bag to each of the two men; that the said three persons and the waitress left the premises shortly thereafter; that the agents followed and at the parking lot identified themselves to the group and obtained from them the two paper bags, each of which contained a bottle of whiskey; that the agents returned to the premises and spoke to the defendant who was seated at the bar who told them that the waitress had asked for the whiskey because she intended to have a party at home and needed some liquor.

It was stipulated by the attorneys for the parties hereto that if the other agent who was present were called as a witness, his testimony would corroborate that of the agent who testified.

Defendant produced Francis J. McGrogan, a Police Captain employed by the municipality wherein the licensed premises are located, who testified that the Police Commissioner had given orders to tavern proprietors that they would be allowed 15 to 20 minutes after the closing hour designated in the local ordinance "to get rid of the people."

Defendant denied making service of alcoholic beverages after 2 a.m. on the morning in question but admitted allowing the consumption thereof by the patrons then in the premises. Defendant also admitted delivering two bottles of whiskey to the waitress employed by him after 2 a.m., but explained that she had asked for the bottles of liquor when she reported for work at 5 p.m. the day previous. He also said that, "if I had a good night I probably gave them to her." The testimony of the waitress corroborated that of the defendant with reference to the ordering and delivery of the two bottles of whiskey in question.

Examination of the record herein clearly indicates that defendant is guilty of both charges preferred herein. With reference to Charge (1), the fact that taverns were permitted by the local police authorities to remain open for 15 or 20 minutes after the hour for closing set forth in the ordinance for the purpose of persuading patrons to leave does not give the licensees the privilege of permitting the patrons to consume alcoholic beverages during prohibited hours. Even though the local Police Commissioner permitted consumption during the prohibited hours (which it does not appear was the case here), such permission was beyond his authority and in violation of the local ordinance. Furthermore, the defense interposed with reference to Charge (2), that the waitress ordered the whiskey to take out with her during legal hours but that delivery was made of the said alcoholic beverages during prohibited hours, is without merit. Even though the licensee might not have intended to charge for the two bottles of whiskey, the fact remains that "delivery" is prohibited by Rule 1 of State Regulations No. 38, and, in addition, the Alcoholic Beverage Law defines "sale" as including delivery. R.S. 33:1-1(w). Re Corado, Bulletin 621, Item 2.

Defendant has no previous adjudicated record. The two violations constitute two separate offenses. Cf. Wayne v. United States, 138 F. 2d 1. Each offense carries a minimum suspension of fifteen days, making a total suspension of defendant's license for a period of thirty days. Cf. Re Trombley, Bulletin 784, Item 9.

Accordingly, it is, on this 26th day of May 1955,

ORDERED that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Waldwick to Frank J. Weber, t/a Stasny's Casino, Franklin Turnpike near Hohokus Line, Waldwick, be and the same is hereby suspended for the balance of its term, effective at 2 a.m., June 7, 1955; and it is further

ORDERED that, if any license be issued to this licensee or to any other person for the premises in question for the 1955-56 licensing year, such license shall be under suspension until 2 a.m., July 7, 1955.

William Howe Davis,
Director.

11. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 WILLIAM SORIERO,)
 t/a Bill's Corner,)
 587 Ocean Avenue,)
 Jersey City, New Jersey,)
 Holder of Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
 -----)

CONCLUSIONS

AND

ORDER

Harold Krieger, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

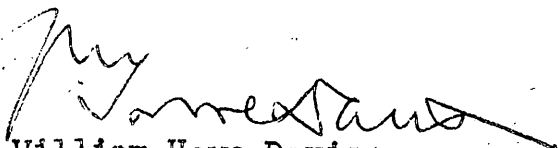
Defendant has pleaded non vult to a charge alleging that he sold, served and delivered alcoholic beverages to minors and permitted the consumption of such beverages upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on Saturday, April 23, 1955, two minors, 19 and 20 years of age, respectively, were each served a glass of beer in defendant's licensed premises by an employee of defendant.

Defendant has no prior adjudicated record. Inasmuch as the within violation does not appear to be an aggravated offense, I shall suspend defendant's license for a minimum period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Cf. Marchitto & Riccardi, Bulletin 1054, Item 7.

Accordingly, it is, on this 26th day of May 1955,

ORDERED that Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to William Soriero, t/a Bill's Corner, 587 Ocean Avenue, Jersey City, be and the same is hereby suspended for a period of five (5) days, commencing at 2 a.m., June 6, 1955, and terminating at 2 a.m., June 11, 1955.


 William Howe Davis,
 Director.