

Kremer

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

BULLETIN 1697

October 26, 1966

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New Jersey State Library

STATE OF NEW JERSEY
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1100 Raymond Blvd. Newark, N. J. 07102

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October 26, 1966

1. APPELLATE DECISIONS - C & E LIQUOR & DELICATESSEN, INC. v.
BOGOTA.

C & E LIQUOR & DELICATESSEN, INC.)
Appellant,) ON APPEAL
v.) CONCLUSIONS
BOROUGH COUNCIL OF THE BOROUGH) AND ORDER
OF BOGOTA,)
Respondent.

Walsh, Siegel and Picinich, Esqs., by Ronald J. Picinich, Esq.,
Attorneys for Appellant.
Robert A. Baron, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent on February 17, 1966, whereby it suspended appellant's license for premises 56 West Main Street, Bogota, for twenty-five days effective February 21, 1966, after finding it guilty in disciplinary proceedings of sale of an alcoholic beverage to a minor, in violation of Rule 1 of State Regulation No. 20.

Upon filing of the appeal an order dated February 21, 1966, was entered by the Director staying the effect of respondent's order of suspension pending the determination of said appeal.

Appellant alleges in its petition of appeal that the action of respondent was erroneous in that it was against the weight of the evidence, and that the penalty imposed was excessive under the circumstances in the case.

Respondent's answer in substance contends that the testimony presented at the hearing before respondent sufficiently sustained the charge preferred in this matter.

At the de novo hearing on appeal, Thomas --- (a minor) testified that on November 24, 1965 he gave Philip --- (a minor) \$2.50 to be used for the purchase of a bottle of vodka. Thereafter he and Philip walked to appellant's store, which Philip entered while Thomas remained outside. A short time thereafter, when Philip approached Thomas, he (Philip) had a brown paper bag in his hand which he thought was in his pocket, which bag he subsequently handed to Thomas. When Thomas opened the top of the bag he observed a bottle with a white cap and a seal on it. Philip also gave him five cents in change. After he and Philip parted, he (Thomas) went home and placed the bottle behind the garage. On the following night, following the incident, Thomas examined the bottle in question and found it to be Puerto Rican rum, with the name on the label being "Bacardi."

Philip testified that he was born on September 17, 1949, and that around 8:30 p.m. on November 24, 1965 (being then age 16) he received \$2.50 from Thomas to purchase a bottle of vodka. He further stated that he alone entered the appellant's premises while Thomas stayed outside. Upon entering the store, a man (identified by him at this hearing as Anthony Sparta) took his order for a bottle of vodka and then "turned around and walked over to the liquor shelves. He turned around. He seemed to put his hand in and took it out and take a bottle down and come around. I asked him how much it was. He said \$2.45. I gave him \$2.50. He put it in a paper bag and gave me a nickel change." Philip described the bottle as being of "green tint glass and white top, and it said 'Bacardi' on it. I didn't look any further." Philip further stated that he didn't have "the slightest idea" whether there is a Bacardi vodka. After the purchase Philip came out of the appellant's store carrying the bottle in his right hand, and rejoined Thomas, both of whom then proceeded up Main Street. When half-way up the hill Philip said that he handed the bag containing the bottle and five cents in change to Thomas.

Lengthy cross examination of both Thomas and Philip failed in any way to change their testimony.

Henry Meyer (vice president of appellant corporate licensee) testified that, although he was not present on the evening of November 24, 1965, as he had finished his work at 5 p.m., he had previously given instructions to Sparta concerning the sale of liquor on the premises. He further testified that commodities other than liquor are also sold on the licensed premises. Mr. Meyer stated that the price of a pint of Bacardi rum is \$2.45.

Anthony Sparta testified that he was working on the evening of November 24, 1965, but did not see Philip in the premises then or any other time previous thereto. Sparta further testified that the price of rum is \$2.45 and, when asked if he had ever had a problem of giving a customer the wrong bottle, he said "In beginning, naturally, take time before reach place, look for the place, naturally, happen to everybody."

It is the function of an administrative agency to weigh the evidence presented by witnesses in order to determine the credibility of said witnesses and to draw inferences and conclusions from said evidence. Cf. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App.Div. 1956).

In the instant case the minor, who allegedly made the purchase of the bottle of liquor, told a direct and straightforward story as to what had occurred at the time in question. Thomas, his companion, also told what occurred that evening when both went to the appellant's licensed premises, Philip entering while he (Thomas) remained outside and, upon Philip's exit from the licensed premises, Philip had a bag containing a bottle which subsequently, upon careful inspection, was found by him (Thomas) to be Bacardi rum.

The only variation in the testimony of Thomas and Philip is that the latter stated that when he left appellant's premises he carried the bottle in his right hand whereas Thomas thought he held the bottle in his hand which at the time was in his pocket. This difference in testimony is inconsequential. Moreover, the fact that Philip did not get the specific type of alcoholic beverages that he had ordered has no bearing in this matter.

I am satisfied that Philip did make the purchase of the bottle of Bacardi rum (an alcoholic beverage) from Sparta and paid \$2.45 therefor. The price of this item, being \$2.45, was corroborated by both Mr. Meyer (vice president of the appellant corporation) and by Anthony Sparta who had made the sale. Therefore I am satisfied from the evidence adduced herein that the appellant is guilty of sale of an alcoholic beverage to a minor pursuant to the charge preferred herein.

Appellant contends in its petition of appeal that the penalty imposed in this matter was excessive. It has been generally held by this Division that a suspension imposed in a local disciplinary proceeding rests in the first instance within the sound discretion of the municipal issuing authority; and the power of the Director to reduce or modify it will be sparingly exercised and only with the greatest caution. Melstan Corporation v. Randolph, Bulletin 1496, Item 1; Harrison Wine and Liqueur Co., Inc. v. Harrison, Bulletin 1296, Item 2. I do not agree with the argument of the appellant that the penalty of twenty-five days imposed herein was so severe as to form a basis for reversal or even modification on this appeal. In fact, it has been the long established policy of this Division to impose a minimum twenty-five-day suspension for sale to a sixteen-year-old minor. See, for example, Re Saffos, Bulletin 1616, Item 5, the most recent of a long line of similar cases.

After careful consideration of the entire record herein, I conclude that appellant has not met the burden of establishing that the action of respondent was erroneous. Rule 6 of State Regulation No. 15. Therefore, it is recommended that an order be entered affirming respondent's action and dismissing the appeal, fixing the effective dates for the suspension imposed by respondent and stayed pending the entry of the order herein.

Conclusions and Order

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

Having carefully considered the record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I adopt the conclusions and recommendations of the Hearer as my conclusions herein.

Accordingly, it is, on this 7th day of September, 1966,

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

ORDERED that Plenary Retail Distribution License D-4, issued by the Borough Council of the Borough of Bogota to C & E Liquor & Delicatessen, Inc., for premises 56 W. Main Street, Bogota, be and the same is hereby suspended for twenty-five (25) days, commencing at 9 a.m. Monday, September 12, 1966, and terminating at 9 a.m. Friday, October 7, 1966.

JOSEPH P. LORDI,
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - ORDER DEFERRING EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)

One Eleven Wines & Liquors, Inc.)
111-113 Albany Street)
New Brunswick, N. J.,)

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Board of Commissioners of the City of New Brunswick.)

Busch & Busch, Esqs., by Malcolm R. Busch, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On September 2, 1966 I entered a supplemental order herein reimposing suspension of the license following affirmance by the Appellate Division of the Superior Court of my previous order of suspension. Re One Eleven Wines & Liquors, Inc., Bulletin 169, Item 2.

It now appears that petition for certification to the Supreme Court has been filed by the licensee and that consent to stay pending disposition of the petition has been obtained.

Accordingly, it is, on this 9th day of September, 1966,

ORDERED that the supplemental order of September 2, 1966 be and the same is hereby vacated pending entry of further order herein.

JOSEPH P. LORDI,
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

August J. Beckert)
126 Linden Avenue)
Jersey City, N. J.,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-520, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Krivit & Krivit, Esqs., by Maurice M. Krivit, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers dates between February 4 and April 27, 1965, he permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license (1) then held for premises 160 Mallory Avenue, Jersey City, by the municipal issuing authority for three days effective February 19, 1940, and (2) by the Director for ten days effective August 6, 1963, both for "hours" violations. Re Beckert, Bulletin 1526, Item 12.

The prior record of suspension of license in 1940 for dissimilar violation occurring more than ten years ago disregarded but the record of suspension in 1963 considered, the license will be suspended for sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days. Re Weigner's, Inc., Bulletin 1626, Item 5.

Accordingly, it is, on this 6th day of September, 1966,

ORDERED that Plenary Retail Consumption License C-520, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to August J. Beckert, for premises 126 Linden Avenue, Jersey City, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, September 12, 1966, and terminating at 2 a.m. Friday, November 11, 1966.

JOSEPH P. LORDI,
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Alice P. Russo t/a Star-Lite Bar 48 N. Main Street Paterson, New Jersey Holder of Plenary Retail Consumption License C-52, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS AND ORDER

Louis R. Cerefice, Esq., Attorney for Licensee Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 27, 1966 she sold a pint bottle of gin for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for fifteen days effective June 14, 1965, and again for forty-five days effective August 16, 1965, both for similar violation. Re Russo, Bulletin 1627, Item 4; Bulletin 1636, Item 11.

The prior record of two suspensions of license for similar violation within the past five years considered, the license will be suspended for forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days. Re Macciocca, Bulletin 1668, Item 2.

Accordingly, it is, on this 7th day of September, 1966,

ORDERED that Plenary Retail Consumption License C-52, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Alice P. Russo, t/a Star-Lite Bar, for premises 48 N. Main Street, Paterson, be and the same is hereby suspended for forty (40) days, commencing at 3 a.m. Wednesday, September 14, 1966, and terminating at 3 a.m. Monday, October 24, 1966.

JOSEPH P. LORDI, DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against)
)
 Kit-Kat Club, Inc.)
 t/a Kit-Kat Club)
 42 West Broadway)
 Paterson, N. J.)
)
 Holder of Plenary Retail Consumption License C-148, issued by the Board of Alcoholic Beverage Control for the City of Paterson)
 -----)

CONCLUSIONS AND ORDER

Sidney B. Rosenthal, Esq., Attorney for Licensee.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On February 11, 1966, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Barbara ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

At the hearing herein, the charge was amended to include Leah Carol ---, age 18, whose true age was first ascertained when she appeared as a witness on behalf of the Division.

In support of its case, the Division presented the testimony of two ABC agents who visited the licensed premises on Friday evening, February 11, 1966, through the early morning of February 12, 1966, pursuant to a specific assignment to investigate alleged sales and service of alcoholic beverages to minors.

Upon entering the said premises, they were informed by George Shaw, president of the corporate licensee, that they would be required to pay an admission fee at the door. After taking seats at the bar, they observed two bartenders who were later joined by another bartender (identified as Leonard Shaw, treasurer of the corporate licensee).

During the course of the evening, their attention was drawn to three persons who appeared to them to be minors, and were later identified as Barbara ---, Leah Carol ---, and Robert Forbes. Leonard Shaw received an order from Forbes for alcoholic beverages for these three persons and served Forbes two bottles of beer and one glass of orange juice and J and B Scotch whisky. Forbes paid

for the drinks and brought them to his table, whereupon Barbara took a few sips of her drink.

Upon questioning the females, the agents were satisfied that they appeared to be under the statutory age. Their drinks were seized and they retired to the rear room for further interrogation. Barbara insisted that she was twenty-one years of age, although she had no proof of her age. Leah Carol said that she was twenty-five. The agents then accompanied Barbara to her home and were informed by her father that she was, in fact, nineteen years of age.

The agents returned to the premises and questioned Leonard Shaw who admitted that he did not require any written age verification from these individuals. At this time, the agents appeared to be satisfied that Leah Carol was of age; and they were also satisfied that Robert Forbes was twenty-two years old.

Agent J testified that he saw Barbara served a shot of J and B Scotch with orange juice, Leah Carol served a bottle of beer, and both persons consume part of their drinks before the said drinks were seized. He, however, was not satisfied that either one of these girls was over age despite their protestations, and he insisted that Barbara show him some identification. In company with his fellow agent, he accompanied her to her home where her father admitted that she was only nineteen years of age. With respect to Leah Carol, she called her mother on the telephone and her mother stated to Agent B that Leah Carol was twenty-six years of age.

On cross examination, it was developed that Barbara told the agents that on February 8, 1966 (several days before this confrontation), she signed a printed form, at the request of the licensee's agent, wherein she affirmed that she was of full age, and she had used the name of Sandra Harris, which is the name of her father's present wife. Sandra Harris, it was developed, is twenty-two years of age.

The chemist's report, certifying that the drinks received by the agents were alcoholic beverages, was admitted into evidence.

Robert Forbes, testifying on behalf of the Division, stated that he purchased alcoholic beverages at the licensed premises on the date in question for these two females and served Barbara the J and B Scotch and orange Juice. He also served the bottle of beer to Leah Carol.

Leah Carol, called as a witness by the Division, admitted that she misrepresented her age, and that she was eighteen years of age and was born on June 6, 1947. She further stated that she misrepresented her age not only to the agents but to the bartender. She informed him that she was twenty-six years of age. She was not required to make any written representation of her age, nor was she required to produce any verification thereof. The agents, who were skeptical of her assertion, spoke to her mother on the telephone, and her mother similarly misrepresented her true age and told the agent that she was twenty-six years of age.

Cleveland---, the father of Barbara, gave the following account. His daughter is nineteen years of age and was born in June or July, 1946. He is presently married to Sandra Harris, who is twenty-two years of age, and both Barbara and Sandra appear to him to be about the same age. Barbara is presently in Florida, having recently been married. He was unable to produce a photograph

of her at the continued hearing in this matter pursuant to a request by the Division's attorney. He was unable also to give any information regarding her exact present address.

On cross examination, the witness was shown the written representation allegedly signed by his daughter and stated that the handwriting looked like the handwriting of his daughter. "I can't say exactly but it looks like it." Recalled by the licensee's attorney, he stated more positively that he recognized the handwriting; that it was, in fact, his daughter's writing, and that she signed the name of his wife, Sandra Harris, to the said statement.

Leah Carol, recalled by the licensee, stated that when she entered the licensed premises, she was questioned about her age and informed them that she was twenty-five years of age. At that time, she exhibited her sister's affidavit of birth which she misrepresented to be her own, upon which she based her representation that she was twenty-five years of age. However, she was not asked by the licensee to make any written representation with respect to her true age.

Annie Pearl Wright gave the following account: She was employed by the licensee on February 11 and was engaged in collecting the entrance fee from patrons and checking identifications. She questioned Barbara when she entered the premises and was told she was over the age of twenty-one. She did not require Barbara, however, to sign a written representation because she recalled that, several nights before then, Barbara had signed a statement under the name of Sandra Harris wherein she misrepresented her age to be twenty-two.

The signed age statement was entered into evidence. Barbara also, on this night, produced a birth certificate of Sandra Harris which supported her representation that she was over twenty-one. With respect to Leah Carol, the witness also questioned her about her age and was satisfied that she appeared to be twenty-five or twenty-six years of age as represented. Leah Carol was not required to make any written representation.

Clifford Brackin, a bartender employed by the licensee on February 11 and 12, stated that, in his opinion, Leah Carol appeared to be twenty-three or twenty-four years of age.

I have carefully analyzed the testimony and have had an opportunity to observe the witnesses as they appeared at this hearing. With respect to Barbara, it must first be noted that she did not appear at this hearing and the Division was unable to produce her as a witness because she was out of the state and unavailable. Thus I had no opportunity to determine whether she did, in fact, appear to be twenty-one years of age or older. I am persuaded that she had misrepresented her age to the licensee's agents and made a written misrepresentation thereof to the licensee by using the name of Sandra Harris, her stepmother, who is twenty-two years of age. Agent J frankly agreed that when he confronted her, she told him she had made such representation and that was corroborated by Miss Wright, an employee of the licensee. In addition thereto, her father identified her handwriting on the said written representation. Her written representation having been made in close proximity to the date alleged in the charge, it is considered sufficient to meet the requirements of the applicable rule. Since this witness was not produced, I must, in fairness to the licensee, accept the testimony of its witnesses that Barbara appeared to be twenty-one years of age and thus it appears that the licensee has complied with Rule 1 of State Regulation No. 20 in this instance.

Under the facts and circumstances herein, I am unable to find that the Division has established the charge with respect to Barbara by a fair preponderance of the credible evidence, I therefore recommend that the charge so far as it refers to her be dismissed.

However, with respect to Leah Carol, it is abundantly clear that she was eighteen years of age on February 11, 1966, and was served alcoholic beverages at the licensed premises on that date. It is admitted that no written representation of her age was given by her or required by the licensee's agents. I am frank to state that, because of her appearance and her height (five feet, ten inches), she could be mistaken for a person of statutory maturity although she appeared to me to be under 21 years of age. While this is not complete defense, counsel for the licensee forthrightly argues, "I say if it isn't a defense it is at least something in mitigation." However, a written representation as to age is an absolute requirement of R.S. 33:1-77 which contains the following proviso:

"...that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over." (Emphasis ours)

The licensee, therefore, could easily have protected itself, particularly since there was some question in the minds of its agents regarding the true age of this minor. Such alleged fraud and misrepresentation were specifically anticipated by this Division in a special note in its rules (page 77 of the Rules and Regulations) which, in explanation of Rule 1 of State Regulation No. 20, states in part:

"...(c) that the sale was made in reliance upon such written representation and appearance and in the reasonable belief that the minor was of age. Hence, it is not a defense that mere verbal inquiry may have been made as to the age of the minor or that the minor had verbally misrepresented his age or that the minor had displayed some document (such as a driver's license, birth certificate, military identification card, selective service registration certificate, or any other similar document) which represented his age as over 21. The representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at or prior to the time of sale or service. Such a writing must be signed by the minor in the presence of the licensee or his employee and one in which the minor gives his name, address, age, date of birth and, by signing the writing, makes a statement that he is making the representation as to his age to induce the licensee to make the sale. After the writing has been signed, the licensee should require that the person signing the representation adequately identify himself as that person and thus affirmatively avoid the acceptance of these representations from persons using fictitious names, addresses and ages. The signed representation should then be retained by the licensee."

Obviously the licensee did not take the minimum precaution of requiring the written representation imperatively required by the rule. Thus the licensee has not satisfied the regulatory requirements.

The prevention of sales of intoxicating liquor to a minor not only justified but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Mazza v. Cavicchia, 15 N.J. 498 (1954); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Guill v. Hoboken, 21 N. J. 574 (1956).

It is, therefore, recommended that the licensee be found guilty of sale and service of alcoholic beverages to the minor Leah Carol.

Licensee has a prior record of suspension of license by the Director (1) for five days effective February 22, 1965 and (2) for forty days effective May 5, 1965, both for sale to minors. Re Kit-Kat Club, Inc., Bulletin 1607, Item 10; Bulletin 1620, Item 4. In addition, the license then held by George Shaw (40% stockholder of the licensee corporation) for premises 415 Washington Street, Newark, was revoked by the Director effective August 9, 1954, for permitting solicitation for prostitution (Re Shaw, Bulletin 1028, Item 1) and the license of Brick's Bar, Inc. (in which corporation George Shaw was treasurer and principal stockholder) for premises 205-207 Water Street, Paterson, was suspended by the Director for fifteen days effective January 4, 1960, for sale in violation of State Regulation No. 38 (Re Brick's Bar, Inc., Bulletin 1322, Item 6).

The prior record of dissimilar violations which took place more than five years ago disregarded, but the prior record of two suspensions for similar violation within the past five years considered, it is further recommended that the license be suspended for thirty-five days. Re Cappy's Hideaway, Inc., Bulletin 1504, Item 2.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 8th day of September, 1966,

ORDERED that Plenary Retail Consumption License C-148, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Kit-Kat Club, Inc., t/a Kit-Kat Club, for premises 42 West Broadway, Paterson, be and the same is hereby suspended for thirty-five (35) days, commencing at 3 a.m. Thursday, September 15, 1966, and terminating at 3 a.m. Thursday, October 20, 1966.

JOSEPH P. LORDI,
DIRECTOR

6. MORAL TURPITUDE - CONVICTION OF BOOKMAKING HELD TO INVOLVE MORAL TURPITUDE.

Re: Eligibility No. 749

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of his conviction of a crime.

Applicant's criminal record discloses that on January 28, 1966, following a plea of guilty in the Bergen County Court to an indictment of bookmaking, he was sentenced to serve from one to two years in New Jersey State Prison (suspended), fined \$1000.00 and placed on probation for three years. A hearing was held at the Division to inquire into the "underlying facts to determine whether there existed moral turpitude" in the commission of such crime. State v. McNally, 91 N.J. Super. 513.

At the hearing held herein, applicant testified that he is employed by a company that operates two plants in the same municipality; that he works in one of the plants and a female friend is employed in the other; that thrice weekly for about two months previous to his arrest resulting in aforesaid conviction, he had picked up horse race betting slips and money from his female friend and delivered them at his place of employment to a co-worker whom he refused to identify; that he knew the slips were horse race bets that the slips contained only the personal bets of aforesaid female that he performed this service without pay as an accommodation for aforesaid female, but that on occasions she would give him some money. Applicant further testified that he believes his unlawful activities were those of a "runner."

Based on the indictment, guilty plea, sentence and the sworn testimony of the applicant, it is my opinion that the crime of which applicant was convicted on January 28, 1966 involves the element of moral turpitude. State v. Ivan, 33 N.J. 197, 202 (1960) Applicant "worked at the fingertips of the hand which directed and controlled the criminal enterprise", State v. Hozer, 19 N.J. 301, 309 (1955); he acted as an agent or representative, linking the "betting transactions between the bettor and the 'bookmaker'", State v. Kuznitz, 36 N.J. Super. 521, 530 (App.Div. 1955); he participated in a bookmaking combination, which has been judicially characterized as holding "great power for evil", State v. Lennon, 3 N.J. 337, 343 (1949). See also Re Elig. No. 726, Bulletin 1558, Item 3.

Under the circumstances, I recommend that applicant be advised that (1) in the opinion of the Director, he has been convicted of a crime involving moral turpitude; (2) the Alcoholic Beverage Law of this State (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3) R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him, in any business capacity whatsoever, a person so disqualified.

I. Edward Amada,
Attorney

Approved:

Joseph P. Lordi
Director

Dated: September 7, 1966

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR DISSIMILAR RECORD OF CORPORATION WITH COMMON STOCKHOLDER - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Sovat Corporation t/a Caldwell's Liquor Store s/e cor. Frontenac & Ventnor Aves. Margate City, New Jersey, Holder of Plenary Retail Distribution License D-1, issued by the Board of Commissioners of the City of Margate City.

CONCLUSIONS and ORDER

Edward I. Feinberg, Esq., Attorney for Licensee Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on July 15, 1966 it sold a 4/5 quart bottle of whiskey and two 6-packs of bottles of beer to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

Although the licensee corporation has no previous record of suspension of license, the license then held by Caldwell's Liquor Stores (a corp.) for premises 3301-3303 Atlantic Avenue, Atlantic City, in which Roberta E. Sheikman (a 98% stockholder of the licensee corporation) was a 49% stockholder, was suspended by the Director for five days effective March 7, 1955, for fifty days effective October 10, 1961 and for ninety days effective March 22, 1963, all for unlawful transportation, and the latter suspension for unlawful storage and hindering an investigation in addition. Re Caldwell's Liquor Stores, Bulletin 1053, Item 12; Bulletin 1420, Item 7; Bulletin 1508, Item 3.

The prior record of suspension of license of Caldwell's Liquor Stores (to which the licensee corporation is linked by the stockholding interest of Roberta E. Sheikman -- cf. Re Val's Bar Inc., Bulletin 1685, Item 1) for dissimilar violation in 1955 occurring more than five years ago disregarded, but the prior record of suspensions for dissimilar violations occurring in 1961 and 1963 within the past five years considered, the license will be suspended for twenty-five days (Re Lavrentiev, Bulletin 1680, Item 3; Re Sussman, Bulletin 1674, Item 5), with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 8th day of September, 1966,

ORDERED that Plenary Retail Distribution License D-1, issued by the Board of Commissioners of the City of Margate City to Sovat Corporation, t/a Caldwell's Liquor Store, for premises s/e cor. Frontenac & Ventnor Aves., Margate City, be and the same is hereby suspended for twenty (20) days, commencing at 9 a.m. Thursday, September 15, 1966, and terminating at 9 a.m. Wednesday, October 5, 1966.

JOSEPH P. LORDI, DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 9320 Ventnor Avenue Corp.
 t/a Bob's Liquor Store
 9320 Ventnor Avenue
 Margate City, N. J.,
 Holder of Plenary Retail Distribution License D-4, issued by the Board of Commissioners of the City of Margate City.

CONCLUSIONS AND ORDER

Sherman L. Kendis, Esq., Attorney for Licensee
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 2, 1966 it sold twenty-four 12 ounce cans of beer and a half-gallon of wine to a minor, age 19, in violation of Rule 1 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 Kearney Yacht Club, Bulletin 1685, Item 9.

Accordingly, it is, on this 6th day of September, 1966,

ORDERED that Plenary Retail Distribution License D-4, issued by the Board of Commissioners of the City of Margate City to 9320 Ventnor Avenue Corp., t/a Bob's Liquor Store, for premises 9320 Ventnor Avenue, Margate City, be and the same is hereby suspended for ten (10) days, commencing at 9 a.m. Tuesday, September 13, 1966, and terminating at 9 a.m. Friday, September 23, 1966.

JOSEPH P. LORDI,
 DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Bird G. Clutter & Elizabeth A. Clutter t/a Acme Hotel 529 Dock Road Beach Haven, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Beach Haven)

Robert J. Novins, Esq., Attorney for Licensees.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on July 23-24, 1966, they sold drinks of beer to two minors, both age 19, in violation of Rule 1 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 Santora, Bulletin 1663, Item 3.

Accordingly, it is, on this 6th day of September 1966,

ORDERED that Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Beach Haven to Bird G. Clutter & Elizabeth A. Clutter, t/a Acme Hotel, for premises 529 Dock Road, Beach Haven, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, September 13, 1966, and terminating at 2 a.m. Friday, September 23, 1966.

JOSEPH P. LORDI,
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

John & Katherine Sohanchak, t/a "Oaklyn Manor Bar", 190-98 W. Clinton Ave., Oaklyn, New Jersey,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Oaklyn.)

Cahill, Wilinski & Mohrfeld, Esqs., by Robert Wilinski, Esq., Attorneys for Licensees
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on March 18, 1966 they possessed an alcoholic beverage in one 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 Rosati, Bulletin 1684, Item 8.

Accordingly, it is, on this 6th day of September, 1966,

ORDERED that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Oaklyn to John & Katherine Sohanchak, t/a "Oaklyn Manor Bar", for premises 190-98 W. Clinton Avenue, Oaklyn, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, September 12, 1966, and terminating at 2 a.m. Saturday, September 17, 1966.

JOSEPH P. LORDI
DIRECTOR

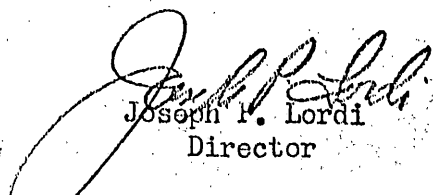
11. STATE LICENSES - NEW APPLICATIONS FILED.

J & J Distributing Co., t/a J & J Distributing Co. of South Jersey
430 North Pennsylvania Avenue, Atlantic City, N. J.
Application filed October 19, 1966 for plenary wholesale license.

Herbert L. Konrad, t/a Laurel Beverage Supply
191 N. Hurffville Rd., Deptford, N. J.
Application filed October 20, 1966 for place-to-place transfer of State Beverage Distributor's License SBD-108 from N.E. Corner White Horse Pike & Suburban Avenue, Stratford, N. J.

Konrad Beer Distributor, Inc., 191 Hurffville Rd (north) Deptford, N. J.
Application filed October 20, 1966 for place-to-place transfer of State Beverage Distributor's License SBD-223 from N.E. Corner White Horse Pike & Suburban Ave., Stratford, N. J.

Admiral Wine & Liquor Company, 115 Coit St., Irvington, N. J.
Application filed October 20, 1966 for place-to-place transfer of Plenary Wholesale License W-38 from 170-172 S. 12th St., Newark, N. J.


Joseph P. Lordi
Director