

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

August 28, 1968

BULLETIN 1808

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1. APPELLATE DECISIONS - FOSTER'S TAVERN, INC. v. PASSAIC.

FOSTER'S TAVERN, INC.,)
t/a FOSTER'S TAVERN, INC.,)
APPELLANT,) ON APPEAL
V.) CONCLUSIONS
CITY COUNCIL OF THE CITY) AND ORDER
OF PASSAIC,)
RESPONDENT.)

Feder & Rinzler, Esqs., by Jack Rinzler, Esq., Attorneys for
Appellant
Milton J. Pashman, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent whereby it suspended appellant's license for thirty days effective February 5, 1968, after finding appellant guilty in disciplinary proceedings of a charge alleging that on April 29, 1967, it sold alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20. Appellant's premises are located at 312 Passaic Street, Passaic.

Upon the filing of the appeal, an order dated February 6, 1968, was entered by the Director staying the effect of respondent's order of suspension pending the determination of the appeal.

Appellant alleges in its petition of appeal that the determination of respondent was erroneous and should be reversed.

Respondent's answer denies the said allegation and "asserts that the City Council considered all the facts and circumstances pertaining to the suspension, objections thereto, and the suspension was reasonable and proper and in the best interest of public welfare."

It appears from the testimony of Lee --- that he was born on February 27, 1949, and that on April 29, 1967, when the violation allegedly occurred, he was eighteen years of age. On the aforesaid date, according to Lee, he visited the licensed premises and, when entering, went directly to the men's room where he remained for a period of about five minutes; that thereafter he went to the back section of the bar and ordered and was served a bottle of beer by Floyd Foster (hereinafter Floyd), an officer of the appellant corporation; that after consuming said beer, he left the premises and went to the "housing authority building, apart-

ment house", which is located about a block away from appellant's licensed premises; that he then returned to the vicinity of the licensed premises and, while standing on a corner across the street from said premises, he was apprehended by police and taken into custody.

On cross examination, in answer to a question whether he had been in appellant's licensed premises on February 12, 1967, Lee testified that he could not remember the date but knew that at one time prior to April 29, 1967, he had been in the premises when the police were called by Floyd. Lee further testified that when he was there on that occasion, he made no attempt to purchase alcoholic beverages. In answer to a question put to him by the attorney for appellant, Lee said that although some people were in the premises on April 29, he could not recall who they were.

Walter --- (father of Lee) testified that when he found out that Lee was being held in bail at police headquarters, he went to see Floyd to obtain \$50 to put up his bail in order to obtain the release of his son, but Floyd refused to let him have any money. He stated that he reminded Floyd that he had seen his son in the tavern where he had been served alcoholic beverages on April 22. Walter stated, however, that he made no threat to lodge a complaint against Floyd for selling alcoholic beverages to his son but that the incident was brought up the following week in the municipal court.

Floyd Foster testified that on February 12, 1967, Lee was in the tavern with three or four boys, all of whom went to the men's room; that they kept the door closed so no one else could enter; that he walked over, pushed the door open and thereafter Lee came out, walked to the bar where he asked the barmaid (Bertha Greene) for a drink but she refused to serve him. Lee then asked him (Floyd) to serve him a drink but he also refused to do so, at which time an argument started. Floyd called the police and Lee was ejected from the premises. Floyd further testified that on April 30 Walter spoke to him concerning Lee's being apprehended by the police, saying "I need fifty bucks to get him out of jail. I need fifty bucks to get him out;" that when he refused to give \$50 to Walter, an argument ensued which nearly resulted in a fist fight. Floyd further testified that Lee was not in the licensed premises at any time on April 29, 1967.

Bertha Greene (hereinafter Bertha) testified that she is an employee of appellant and tends bar at the licensed premises. Bertha corroborated the testimony of Floyd about Lee's being in appellant's licensed premises on February 12, 1967, and her refusal to serve him any alcoholic beverages. Moreover, she stated that when Lee "started getting real loud", Floyd called the police. Insofar as April 29, 1967 is concerned, she stated that she was on duty during that night and that Lee was not in the licensed premises at any time.

I am not impressed with the testimony given by either Lee or his father at the hearing herein. Appellant's witnesses' testimony appears to be more convincing that Lee was not served alcoholic beverages at the time in question.

The guiding rule in these matters is that a finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from

a fair consideration of the evidence. 34 C.J.S. Evidence, sec. 1042. While there is no set formula for determining the quantum of evidence required, each case being governed by its own circumstances, the verdict must be supported by substantial evidence. Cf. Walter v. Alt, 152 S.W. 2d 135, 141.

It was apparent that Lee's memory was poor concerning various questions put to him regarding his prior visit to appellant's licensed premises. He admitted that he was there on one occasion but could not give any accurate statement as to when that occasion happened to be. In disciplinary proceedings a preponderance of the evidence is necessary to support and justify a finding of guilt and, in fairness, doubtful questions of fact must be resolved in a defendant's favor. Re Keansburg Steamboat Co., Bulletin 1287, Item 2. There was no corroboration of Lee's testimony of the alleged sale of beer on the night of April 29, 1967. Thus, a serious question arises whether, in view of Lee's lack of memory concerning other things, a sale took place. The testimony of appellant's witnesses stands in a more convincing posture. Re Chizun, Bulletin 1274, Item 7. Weighing the uncorroborated testimony of the minor against the testimony given on behalf of appellant, I conclude that the finding of guilt was not supported by a fair preponderance of the credible evidence. The testimony given by Walter in explanation of his attempt to obtain money from Floyd to be used as bail for the release of his son does not have the ring of truth. It appears that an attempt was made to intimidate Floyd with a story that Lee had been served alcoholic beverages in the licensed premises at a previous time.

It is, therefore, recommended that an order be entered reversing the action of respondent. Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1; Chase v. Washington Township, Bulletin 1272, Item 4; Schwartz Drug Stores, Inc. v. Newark, Bulletin 1361, Item 2; Collazo v. Elizabeth, Bulletin 1410, Item 1.

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 entire record herein, including the transcript of the testimony, the summation of the attorneys for the respective parties and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 14th day of June 1968,

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

JOSEPH M. KEEGAN
DIRECTOR

Gary ---, born on May 5, 1947 (age 20), testified that he and Robert entered the licensed premises about 12:30 a.m. on October 13, 1967; that he purchased a couple of bottles of beer and identified Lila Gertenlauer as the person who served him; that the establishment was crowded that evening and, when he ordered the drink from Miss Gertenlauer, he was not questioned concerning his age.

Granden ---, whose date of birth was October 28, 1946 (age 20), testified that he was at the licensee's premises on October 13, 1967 and, as he entered, some people seated at a table handed him a glass of beer which a person had poured from a pitcher and that that evening he drank a few beers on the licensed premises.

Lila Gertenlauer (employed as a barmaid) testified she was employed as a barmaid and was on duty on October 13, 1967 and, although she did see Gary, she said that she did not serve him. When Gary ordered a beer Miss Gertenlauer stated she requested identification as to his age and, when he made no attempt to show her anything, she told Flo (Florence Chandrinos), the head barmaid, and "I guess she went and told Freddie, because I was busy." Moreover, Miss Gertenlauer testified that, when Gary did not show any identification, she served the bottle of beer "to another party. I didn't serve it to him. I don't know if he took it from the other party or not, because when there is a crowd of people you can't stand around and watch them." When questioned concerning whether she took the money for the beer, she stated, "Not from him, I don't think I did. I am not sure." Miss Gertenlauer also said that she did not remember seeing Robert in the premises on the evening in question but did see Granden dancing.

Florence Chandrinos testified that she is employed as the chief barmaid and was on duty on October 13, 1967. During the evening Miss Gertenlauer came over and said something to her "about these fellows wouldn't show their age cards" and that she walked over to them and said "I don't know where you got the beer, boys, but if you can't tell me how old you are, you better leave." Thereafter she called the licensee who "went over, took care of it, threw them out. He asked them to leave"

The licensee corroborated the testimony of Mrs. Chandrinos with reference to the events that took place concerning proof of age, concerning his seizing beer from a patron on the night in question and, although Gary did not have any beer in his hand at the time, he (the licensee) told him, if he could not prove he was twenty-one, he had to leave. Moreover, the licensee stated that "it is not uncommon for a barmaid when someone asks her to give them six Rolling Rocks, you know, this happens, you don't know who they are for."

I am satisfied, after examining the testimony herein, that the three minors in question consumed alcoholic beverages on the licensee's premises, in violation of a local ordinance, also of Rule 1 of State Regulation No. 20. The testimony of Miss Gertenlauer was far from positive with reference to the minors in question. The licensee also admitted that it is not uncommon for a barmaid to serve a number of drinks at one time to a patron and without knowing for whom they were ultimately intended.

In Essex Holding Corp. v. Hock, 136 N.J.L. 28 (1947), Justice Wachenfeld, speaking for the New Jersey Supreme Court,

stated, where pitchers containing beer got into the hands of minors who consumed some of the contents thereof, as follows:

"The prevention of the sale to, or the consumption by, minors of liquor upon licensed premises is of the utmost importance. Its purpose is to protect our youth and thereby make more secure the foundation of society. The intent of the legislature and the rules and regulations of the department governing enforcement clearly encompass the responsibility of the licensee for the consumption of alcoholic beverages by minors under the circumstances complained of.

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. *Guastamachio v. Brennan*, 128 Conn. 356; 23 Atl. Rep. (2d) 140."

I find as a fact that each of the three minors consumed alcoholic beverages on the licensee's premises, as alleged.

The question to be decided is whether, in view of the circumstances appearing in the instant case, the suspension imposed by respondent is excessive. A suspension imposed in a local disciplinary proceeding rests in the first instance within the sound discretion of the local issuing authority. The power of the Director to reduce or modify a penalty imposed by a local issuing authority will be sparingly exercised, and only with the greatest caution. *Delroz, Inc. v. West Orange*, Bulletin 1755, Item 1, and cases cited therein. The suspension does not appear so severe as to warrant modification. However, a plea for mitigation should be made, if at all, to respondent, which may grant relief in the event that members of the local issuing authority determine that such action is advisable. *Re Bischhoff*, Bulletin 53, Item 5.

I find that the guilt of appellant on the charge preferred has been established by a fair preponderance of the credible evidence. I therefore conclude that appellant has not met the burden of establishing that the action of respondent in finding him guilty of the charge was erroneous.

It is, therefore, recommended that an order be entered affirming respondent's action, dismissing the appeal and fixing the effective dates for the suspension imposed by respondent and stayed pending the determination 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 entire record herein, including the transcript of testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 12th day of June 1968,

ORDERED that the action of 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 Consumption License C-10, issued by the Borough Council of the Borough of Paulsboro to Fred C. Allegra, t/a Club Stardust, for premises 525 West Broad Street, Paulsboro, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1968, commencing at 2 a.m. Wednesday, June 19, 1968; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Friday, July 19, 1968.

JOSEPH M. KEEGAN
DIRECTOR

3. APPELLATE DECISIONS - CZUBAK v. FRANKLIN and CLARE'S FOOD MARKET.

WALTER CZUBAK,
t/a WALTER'S LIQUOR STORE,

APPELLANT,

V.

MAYOR AND COUNCIL OF THE BOROUGH
OF FRANKLIN, AND CLARE'S FOOD
MARKET, t/a SHOP-RITE,

RESPONDENTS.

)
)
) ON APPEAL
) CONCLUSIONS
) AND ORDER
)
)
)

Adler and Winick, Esqs., by Leonard Adler, Esq., Attorneys for Appellant
Honig and Kovach, Esqs., by Emanuel A. Honig, Esq., Attorneys for Respondent Mayor and Council
Shanley & Fisher, Esqs., by Harold H. Fisher, Esq., Attorneys for Respondent Clare's Food Market

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Council whereby on June 29, 1967, by a vote of four to one (one member abstaining) it approved the application of respondent Clare's Food Market, t/a Shop-Rite (hereinafter Clare's) for renewal of its plenary retail consumption license for the 1967-68 license period for premises to be constructed on Munsonhurst Road (also known as Route 517) in accordance with plans and specifications theretofore filed in the matter.

Appellant alleges in his petition of appeal that such action was erroneous for reasons that may be summarized as follows: (a) although the transfer of the license in question to the proposed site was approved in October 1965, no premises were ever constructed thereon; (b) the licensed premises, if and when

constructed, will be ultimately operated by another corporation; (c) the Council erred in granting the renewal of the license in question as such approval was tantamount to the issuance of a new license prohibited under the state limitation law; and (d) the type of alcoholic beverages to be sold were private brands at a reduced price, so as to be unfair to competitors in the municipality.

The answers filed on behalf of the respective respondents deny the aforesaid allegations and respondent Council also contends that its action was in all respects proper and valid.

The history of the license in question begins with the grant of a transfer to Clare's. On October 25, 1965, Clare's application for transfer was approved by the Council, subject to the condition that acceptable premises be constructed on Munsonhurst Road prior to issuance of the license. By resolution dated June 27, 1966, Clare's application for renewal of the license for the 1966-67 licensing year was approved by respondent Council, with the same condition as theretofore specified. On June 29, 1967, a resolution issuing the license to Clare's was adopted for the sole purpose of permitting consideration of Clare's application for renewal for the 1967-68 licensing term, whereupon the said renewal application for the same premises on Munsonhurst Road was approved with a similar condition as that contained in the prior resolutions.

This appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15, with full opportunity for all parties to present testimony.

During the hearing of the instant appeal, it was contended by appellant that at the time the application for Clare's license for renewal was considered and approved, Clare's neither had possession nor the right to possession at the location sought to be licensed. It appears that by deed dated July 6, 1966, recorded in the Sussex County Clerk's office on July 12, 1966, Clare's conveyed all its right, title and interest in the land situated on Munsonhurst Road (also known as Route 517) to Consolidated Supermarkets, Inc. (hereinafter Consolidated).

R.S. 33:1-12.13 authorizes the renewal of alcoholic beverage licenses provided that the renewed license "is of the same class and type as the expired or expiring license, covers the same licensed premises, is issued to the holder of the expired or expiring license and is issued pursuant to an application therefor which shall have been filed with the proper issuing authority prior to the commencement of said new license term or not later than thirty days after the commencement thereof. Licenses issued otherwise than as above herein provided shall be deemed to be new licenses" (underscoring added).

It is essential in order for a valid renewal of an existing license to be granted that the premises either be in existence or that plans and specifications be filed with the application and, furthermore, that the applicant for said license have possession, a right to possession or an interest in the premises sought to be licensed. Richwine v. Pennsauken, Bulletin 1045, Item 2, and cases cited therein.

Where it appears that at the time renewal of a license is sought the licensee had neither legal nor equitable interest in the premises, the license will be declared void. White Castle Inc. v. Clifton and Weiss, Bulletin 97, Item 13; Hirshorn, Trustee etc. v. Estell Manor, Bulletin 1326, Item 1.

It is apparent that when Clare's voluntarily conveyed the proposed site to Consolidated, it had no further right to the land whereon premises could be constructed. During the hearing herein Thomas J. Clare, secretary and treasurer of Clare's, testified that because of inability to obtain municipal water and insurance, it was too expensive and impracticable to erect and maintain premises at the proposed location. Therefore, Clare's sold the premises to Consolidated which, it is alleged, had intentions of building a shopping center on Route 23 in the Borough of Franklin. It appears that an agreement was entered into between Clare's and Consolidated whereby Clare's conveyed not only all its right, title and interest to the land on Munsonhurst Road but also to the liquor license in question. Consolidated never applied for the transfer of the license from Clare's. However, one Alfred Tarasiewicz, who was described as affiliated with Consolidated, had filed for transfer of the license to him, which application was denied in May 1967 by the municipal issuing authority. Since respondent Clare's had no right to possession of the premises on Munsonhurst Road when its application for the 1967-68 "renewal" was filed, or when the approval was given, respondent Council had no power to grant such "renewal." Terlizzi v. Union City et al., Bulletin 860, Item 2; Montclair Athletic Club v. Montclair, Bulletin 859, Item 1. It is well established that an applicant for a liquor license, as already stated, must have possession or right to possession of, or interest in, the premises sought to be licensed. If the applicant does not have possession of, or right to possession, or any interest in, the premises, no license may be lawfully issued. Ways and Witteborn v. Egg Harbor et als., Bulletin 951, Item 3. The attorney for respondent Council argues that since the question as to right to possession was not alleged by appellant as a ground of appeal, it should not be considered when determining the appeal herein. However, it was held that when an appeal is heard de novo by the Director, he may properly rely on additional evidence brought out during the hearing of the appeal. Florence Methodist Church v. Florence, 38 N.J. Super. 85 (App. Div. 1955).

Inasmuch as the renewal of Clare's license was illegally approved for the 1967-68 licensing term, it is recommended that the resolution dated June 29, 1967, approving such renewal, be set aside because of respondent Council's lack of jurisdiction in the matter.

In view of the foregoing, it is unnecessary to consider any of the other matters set forth in the petition of appeal.

It is further recommended that, under the circumstances, the action of respondent Council be reversed, and that the license herein be cancelled and declared null and void.

Conclusions and Order

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's report and written argument thereto were filed by the attorneys for the respective respondents and written answering argument was filed by the attorney for appellant.

After carefully considering the transcript of testimony, exhibits, briefs filed with the Hearer, the Hearer's report and the exceptions and written arguments thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 17th day of June 1968,

ORDERED that the action of respondent Mayor and Council of the Borough of Franklin, whereby it purported to approve the renewal of the license to Clare's Food Market, t/a Shop-Rite, be and the same is hereby reversed; and it is further

ORDERED that the license in question be and the same is hereby cancelled and declared null and void.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - UNQUALIFIED EMPLOYEE - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

RAY RUSSO, INC.)
1130 McBride Avenue)
West Paterson, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3 issued by the Mayor and Council of the Borough of West Paterson)

-----)
Ralph A. Nuzzo, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On March 9, 1968, you sold and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Gail ---, age 19, and Anthony ---, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"2. On divers days between January 5 and March 9, 1968, you employed and allowed, permitted and suffered the employment in and upon your licensed premises of a person under the age of twenty-one (21) years, viz., the above-named Anthony ---, age 20, contrary to and in violation of Rule 3 of State Regulation No. 13."

The Division's case was presented through the testimony of two ABC agents and the two minors involved.

Anthony --- testified that on the dates alleged, he was 20 years of age and was employed as a musician and entertainer by the licensee. He secured such employment by exhibiting a forged draft card to the licensee which misrepresented his true age.

Gail --- testified that she was 19 years old on March 9 and, in obtaining entry to these premises, displayed an altered driver's license which incorrectly reflected her age as over 21.

ABC Agent De gave the primary testimony in behalf of the Division. Pursuant to specific assignment to investigate alleged sale of alcoholic beverages to minors, he visited the licensed premises on Saturday, March 9, at about 9:00 p.m. in the company of Agent D. While seated at the bar, at about 9:15 p.m. he observed a male and two females enter the premises, one of which females he later learned was Gail ---. Gail ordered a VO whiskey and ginger ale from the barmaid (later identified as Carol Steed), was served with and paid for the same, and drank a portion thereof. Shortly thereafter, Anthony ---, a member of the band, entered the premises. He ordered a scotch and water from Carol Steed, paid her for the drink and consumed a portion of it. The agents thereupon identified themselves, seized the remaining portions of the said drinks, and questioned these two individuals.

Gail at first denied that she was under 21 but, upon close interrogation, admitted that her driver's license had been altered and that she was in fact 19 years of age. Anthony readily admitted that he was 20 years old. Both minors stated they had made no written representation of age to the licensee's employees.

Anthony admitted to the agents that he did not have a valid employment permit on the dates charged; that a permit had been issued to him in June 1965 which had then expired. He indicated that he intended to obtain the required permit in order to continue to perform as an entertainer. Anthony joined the band and performed immediately prior to the agents' leaving the premises.

Ray Russo responded to a telephone call made by his barmaid and, when informed of the violation, explained that he was under the impression that the minors were of statutory maturity because they had shown the identification as hereinabove stated.

On cross examination, Agent De asserted that in his opinion, both minors "appeared to be under twenty-one." He further stated that the license which Gail displayed was a pink license which is issued to minors and that the alteration of the date of birth thereon was quite obvious. Anthony had no documentary proof of age in his possession at the time of the interrogation. Furthermore, Russo acknowledged that he possessed no forms on which persons may sign representation of age.

The testimony of Agent D, by stipulation of counsel, corroborated the testimony of his fellow-agent.

Raymond J. Russo, president of the corporate licensee, testified that he had been in business for only about seven or

or eight months prior to the dates of the alleged violations and was not familiar with the rules and regulations of this Division. Although he normally employed a special police officer to check the ages of patrons, on the evening of March 9 the said officer failed to report for work. He has a book on the premises which contains written representation of age of suspected minors, but the names of these two minors were not recorded in that book.

We are dealing with disciplinary measures and their alleged infraction. Such measures are civil in nature and not criminal. Thus, the proof must be supported by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956); Atkinson v. Parsekian, 37 N.J. 143 (1962).

The evidence is clear and uncontraverted and, indeed, was conceded by the licensee's attorney in his summation, that no written representation of age was requested or obtained from the said minors at any time.

R.S. 33:1-77 provides as follows:

"Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor; provided, however, 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 added)

Rule 1 of State Regulation No. 20 states in pertinent part:

"No licensee shall sell, serve or deliver... any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years..."

In a Special Note to the rule, following Appendix 5 of the state regulations (Disciplinary Proceedings), the Director defines the defense provided by R.S. 33:1-77 available to licensees. Pertinent to the facts herein, that note sets forth:

"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... The signed representation should then be retained by the licensee."

In view of the fact that no such representation was obtained, the licensee has failed to adequately establish a complete defense, as provided in the Alcoholic Beverage Law and the applicable rule. The prevention of sales of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Butler Oak Tavern v. Div. of Alcoholic Beverage Control, supra.

Furthermore, I have had the occasion to observe the appearance of the minors at the hearing and it is inconceivable to me that anyone could mistake their being of legal age. I find that there was sale and service of alcoholic beverages to the minors herein, as set forth in the first charge.

The records of this Division disclose that an employment permit was issued on March 21, 1968 to Anthony. However, since this minor was employed on the licensed premises between January 5 and March 9, 1968, and did not obtain the permit within ten days from the first day of his employment, as required by Rule 3 of State Regulation No. 13, the licensee was in violation of the said regulation. I find that the licensee permitted and suffered the employment of a minor without requisite employment permit, as set forth in the second charge, and recommend a finding of guilt on both charges.

Licensee has no prior adjudicated record. It is, therefore, recommended that the license be suspended on the first charge for fifteen days (Re The Nut Club, Inc., Bulletin 1759, Item 9) and on the second charge for five days (Re Club New Orleans, Inc., Bulletin 1756, Item 8), making a total suspension of twenty days.

Conclusions and Order

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

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

Accordingly, it is, on this 13th day of June 1968,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of West Paterson to Ray Russo, Inc., for premises 1130 McBride Avenue, West Paterson, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1968, commencing at 3 a.m. Thursday, June 20, 1968; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Wednesday July 10, 1968.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 RAY RUSSO, INC.
 1130 McBride Avenue
 West Paterson, N. J.
 Holder of Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of West Paterson

CONCLUSIONS AND ORDER

Ralph A. Nuzzo, Esq., by Joseph C. Nuzzo, Esq., Attorney for Licensee
 Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 4-5, 1968 it sold mixed drinks of alcoholic beverages to two minors, ages 19 and 20, in violation of Rule 1 of State Regulation No. 20.

Licensee has a record of suspension of license by the Director for twenty days effective June 20, 1968, for sale to minors and employing a minor without requisite employment permit. Re Ray Russo, Inc., Bulletin 1808, Item 4.

It is to be noted that the instant violation occurred while charges in the previous proceeding were still pending and undetermined.

The license will be suspended for fifteen days (Re The Nut Club, Inc., Bulletin 1759, Item 9), to which will be added ten days by reason of the record of suspension for similar violation within the past five years (Re Absecon Lanes, Inc., Bulletin 1751, Item 8) and an additional fifteen days by reason of the aggravating circumstance of the occurrence of the instant violation while the previous proceeding was pending (Re Kearny Yacht Club, Bulletin 1750, Item 3), or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 13th day of June 1968,

ORDERED that any renewal of Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of West Paterson to Ray Russo, Inc., for premises 1130 McBride Avenue, West Paterson, for the 1968-69 license year, be and the same is hereby suspended for thirty-five (35) days, commencing at 3 a.m. Wednesday, July 10, 1968, and terminating at 3 a.m. Wednesday, August 14, 1968.

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
Labeled - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

JOHN ROMA)
t/a Johnny's Tavern)
179 First Avenue)
Atlantic Highlands, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-9, issued by the Borough)
Council of the Borough of Atlantic)
Highlands.)
-----)

Howard A. Roberts, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on
March 7, 1968 he possessed alcoholic beverages in nine bottles
bearing labels which did not truly describe their contents, in
violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for
thirty-five days, with remission of five days for the plea en-
tered, leaving a net suspension of thirty days. Re Lyric Tavern,
Inc., Bulletin 1538, Item 4.

Accordingly, it is, on this 17th day of June 1968,

ORDERED that Plenary Retail Consumption License C-9,
issued by the Borough Council of the Borough of Atlantic Highlands
to John Roma, t/a Johnny's Tavern, for premises 179 First Avenue,
Atlantic Highlands, be and the same is hereby suspended for the
balance of its term, viz., until midnight June 30, 1968, commenc-
ing at 2 a.m. Monday, June 24, 1968; and it is further

ORDERED that any renewal license that may be granted
shall be and the same is hereby suspended until 2 a.m. Wednesday,
July 24, 1968.

JOSEPH M. KEEGAN
DIRECTOR

