

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

January 24, 1966

BULLETIN 1655

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DISCIPLINARY PROCEEDINGS - SALE TO ANOTHER RETAILER - AIDING AND
ABETTING UNLAWFUL TRANSPORTATION - CHARGES DISMISSED.

In the Matter of Disciplinary)
Proceedings against)

Anton's Wines & Liquors, Inc.,)
257 Broad Avenue)
Palisades Park, N. J.,)

Holder of Plenary Retail Distribution)
License D-8, issued by the Borough)
Council of the Borough of Palisades)
Park.)

-----)
In the Matter of Disciplinary)
Proceedings against)

Jackson Enterprises, Inc.,)
t/a Jackson Liquors)
220 Graham Avenue)
Paterson, New Jersey,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Distribution)
License D-70, issued by the Board of)
Alcoholic Beverage Control for the)
City of Paterson.)

-----)
In the Matter of Disciplinary)
Proceedings against)

Helen Grzybowski, Barney Grzybowski)
& J. Eleanor Meisner)
136 Garfield Avenue,)
Jersey City, New Jersey,)

-----)
Holders of Plenary Retail Consumption)
License C-106, issued by the Municipal)
Board of Alcoholic Beverage Control of)
the City of Jersey City.)

-----)
Louis R. Cerefice, Esq., Attorney for Licensee Anton's Wines, etc.)
Herman W. Steinberg, Esq., Attorney for Licensee Jackson)
Enterprises, Inc.)
James F. McGovern, Jr., Esq., Attorney for Licensees Helen)
Grzybowski et als.)
David S. Piltzer, Esq., Appearing for Division of Alcoholic)
Beverage Control)

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee Anton's Wines & Liquors, Inc. (hereinafter Anton's) pleaded not guilty to the following charges:

"1. On divers between June 25, 1964 and July 30, 1964, while your plenary retail distribution license was under suspension, you ordered and received delivery of alcoholic beverages; in violation of Rule 32 of State Regulation No. 20.

"2. On the aforesaid dates, you purchased and obtained alcoholic beverages other than from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director of the Division of Alcoholic Beverage Control, viz., from the following retail licensees: Helmer Bros., Inc., 331 Broad Avenue, Leonia, N.J., Helen Grzybowski, Barney Grzybowski, & J. Eleanor Meisner, 136 Garfield Avenue, Jersey City, N.J. and Jackson Enterprises, Inc., t/a Jackson Liquors, 220 Graham Avenue, Paterson, N.J.; in violation of Rule 15 of State Regulation No. 20.

"3. On the aforesaid dates, you transported alcoholic beverages in a vehicle not having a transit insignia affixed thereto or an inscription painted thereon; in violation of Rule 2 of State Regulation No. 17."

Licensee Jackson Enterprises, Inc. (hereinafter Jackson) pleaded not guilty to the following charges:

"1. On divers dates between June 26, 1964 and July 17, 1964, you sold alcoholic beverages to another retailer, viz., Anton's Wines & Liquors, Inc., 257 Broad Avenue, Palisades Park, New Jersey; in violation of Rule 15 of State Regulation No. 20.

"2. On divers dates between July 7 and July 17, 1964, you sold and offered to sell at retail, directly or indirectly, various alcoholic beverages at less than the price thereof then filed with the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30."

Licensees Helen Grzybowski, Barney Grzybowski & J Eleanor Meisner (hereinafter Grzybowski) pleaded not guilty to the following charges:

"1. On divers dates between June 25, 1964 and July 17, 1964 you sold alcoholic beverages to another retailer, viz., Anton's Wines & Liquors, Inc., 257 Broad Avenue, Palisades Park, New Jersey; in violation of Rule 15 of State Regulation No. 20.

"2. On the aforesaid dates, you aided and abetted another to transport alcoholic beverages without a license, contrary to R.S. 33:1-50(a) and 33:1-2; in violation of R.S. 33:1-52."

(And, for completeness of reference, licensee Halmer Bros., Inc., 331 Broad Avenue, Leonia, pleaded non vult to the following charges:

- "1. On divers dates between July 1, 1964 and July 30, 1964, you sold alcoholic beverages to another retailer, viz., Anton's Wines & Liquors, Inc., 257 Broad Avenue, Palisades Park, New Jersey; in violation of Rule 15 of State Regulation No. 20.
- "2. On the aforesaid dates, you sold and offered to sell at retail, directly or indirectly, various alcoholic beverages at less than the price thereof then filed with the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30.
- "3. On the aforesaid dates, you aided and abetted another to transport alcoholic beverages without a license, contrary to R.S. 33:1-2; in violation of R.S. 33:1-52.
- "4. On August 27, 1964, you hindered and delayed, caused the hindrance and delay and attempted to hinder and delay an investigation, examination and inspection being conducted by the Director of the Division of Alcoholic Beverage Control; in violation of R.S. 33:1-35."

As a result thereof, its license was suspended for forty days. Re Helmer Bros., Inc., Bulletin 1613, Item 4.)

The genesis of the charges against these three licensees was a seizure made by ABC agents on July 28, 1964 of a quantity of alcoholic beverages totaling 2,779 bottles of various types of said beverages which were unlawfully stored and warehoused in a truck at the Vanore Bros. Mobil gasoline station, 1630 Bergen Boulevard, Fort Lee, New Jersey.

Forfeiture proceedings were instituted by this Division against the said quantity of alcoholic beverages. When the matter was set down for hearing on March 19, 1965, no appearances were entered nor was any claim made for the return thereof. Accordingly, by authority of R.S. 33:1-66, an order was entered on May 28, 1965, determining that the said alcoholic beverages constitute unlawful property. They were thereby forfeited and were ordered retained for the use of hospitals and state, county or municipal institutions or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control. Re Seizure #11,310.

An exhaustive investigation of the source of these alcoholic beverages culminated in the preferment of the above charges, and it was considered expedient to consolidate these matters for hearing. The hearings thereon took place on March 19, 1965 and March 29, 1965, and the testimony taken therein reflects the following:

The licensee Anton's Wine & Liquors, Inc. was under suspension by the Director for forty-five days (from June 15, 1964 until August 6, 1964) for sale of quantities of alcoholic beverages at less than filed prices, transportation of alcoholic beverages not accompanied by requisite invoice, and hindering investigation. Re Anton's Wines & Liquors, Inc., Bulletin 1571, Item 2.

Acting upon the receipt of certain information, ABC agents on July 28, 1964, at approximately 7 p.m., initiated an investigation at the Vanore Brothers Mobil gasoline station, 1630 Bergen Boulevard, Fort Lee, New Jersey, to ascertain whether a quantity of alcoholic beverages was being stored in a truck parked on these premises. Interrogation of Anthony and John Vanore (brothers), the operators of the said station, elicited the information that they were presently storing a quantity of alcoholic beverages in a truck owned by John Vanore and then located at the said gasoline station. They were further informed that this truck was immobile and observed that it had a 1963 license plate.

John Vanore admitted that the truck contained about one hundred fifty cases of liquor which belonged to Anton's. He explained that Anton's is a regular customer of this station, and Vanore does repair work for and sells gasoline to Anton's. One of the partners or owners of Anton's informed him that Anton's was presently under suspension and he requested the Vanores to "store some alcoholic beverages in this truck because he feared that his licensed premises or his place of business might be burglarized." Vanore consented to permit such storage, and stated that he received no compensation but was doing it as a favor.

At the request of the agents, a telephone call was made by John Vanore, and a person (later identified as James Daly, a 15% stockholder in Anton's and its night manager) arrived at the station in a red-and-white colored Cadillac. Shortly after Daly arrived, he had a long, private conversation with the Vanore brothers, at the conclusion of which John Vanore then stated to the agents that the stored alcoholic beverages actually belonged to him and not to Anton's; that it was his intention to give them away as presents to his customers.

Nevertheless, as a result of John Vanore's early admission with respect to the alleged ownership of the said liquor, John Vanore was thereupon arrested and charged with warehousing alcoholic beverages in a vehicle, in violation of R.S. 33:1-50(a), contrary to R.S. 33:1-2. He was subsequently arraigned on these charges in the Fort Lee municipal court. Both John and Anthony Vanore refused to execute signed, voluntary statements with reference to the said alcoholic beverages.

Testimony given by ABC agents R, T and H delineated the methods used in tracing the source of the said alcoholic beverages from wholesalers and suppliers. When this quantity of liquor after its seizure was examined at the Division warehouse, the agents recorded various serial numbers and crayon markings which appeared on the cases. These were traced to specific wholesalers, namely, Gallo Wine Sales of New Jersey, Inc.; Galsworthy, Inc. (and its affiliates Fleming and McCaig and Reitman Industries, Inc.); Federal Wine & Liquor Co., and National Wine & Liquor Co.

Norman Feldman (president of Federal Wine & Liquor Co.), called as a witness on behalf of the Division, described the methods used and the practice of his company with respect to drop numbers stamped on its invoices for delivery to retailers. He stated that, when the orders are prepared for delivery, they are first routed in the sequence in which they will be delivered. As the route process has been completed, the routeman stamps each invoice with the number which is on that particular truck. These numbers are inscribed with crayon on each particular case. Accordingly it is not difficult to identify with reasonable certainty the actual cases of liquor sold, the person to whom the said

liquor is sold, and the dates on which they are sold. Similar testimony with respect to the practices used in marking cases before they are routed and loaded on the truck, and the identification of the said cases from the said invoices was given by Morris A. Fertig, comptroller of Galsworthy, Inc.

A check of the records of the above named wholesalers identified the specific markings found on the cases seized, and the agents were able to trace the sale of the seized cases through those markings to the following retailers: Helmer Bros., Inc., 331 Broad Avenue, Leonia, N. J.; Helen Grzybowski, Barney Grzybowski & J. Eleanor Meisner, 136 Garfield Avenue, Jersey City, N.J., and Jackson Enterprises, Inc. A total of thirty exhibits were introduced into evidence, including the copies of the related invoices, markings and photographs of the cases of alcoholic beverages. There was also received in evidence voluntary, signed statement executed by Grzybowski dated July 30, 1964; a statement by Joseph L. Jackson (a 50% stockholder of Jackson Enterprises, Inc.) and a complete detailed inventory of the 2,779 bottles of liquor seized on July 28.

In the course of this investigation the agents noted that the markings on a case of Gallo wine found at the Vanores' premises was reflected on an invoice dated July 1, 1964, for the sale of thirty-eight cases of pint-sized wine billed to Helmer Bros., Inc. They thereupon visited the premises of Helmer Bros., interrogated John Helmer (its president) and obtained a voluntary, signed statement from him.

At the hearing before me, John Helmer testified to the following effect: He was acquainted with Daly for the past eight years and knew him to be a stockholder and manager of Anton's. In the latter part of June or early July 1964, Daly came into Helmer's premises with a friend of his; informed him that Anton's was under suspension, and "can I help his friend and customer out in supplying him his liquor." He agreed to do so on a friendly term which he defined as "I mean at wholesale, probably about five per cent over the cost price." Helmer then filled the order at that time and continued to fill about ten succeeding orders for Daly until July 30, 1964.

He identified one of the orders (Exhibit D-4 in evidence) as being fifteen cases of pints of Twisters, fifteen cases of pints of Gypsy Rose and eight cases of pints of Cocktail Sherry, which he admitted to ABC agents that he filled for Daly, and stated that Daly paid him for these orders. These orders were picked up in a red vehicle from the premises of Helmer Bros. It should be noted that, in his testimony before me, Helmer asserted that, after the first transaction, it was actually Vanore, dressed in a gas station attendant's uniform, who picked up the liquor and paid for it. This, of course, is at variance from his statement to the agents. Lending persuasive force to this testimony is the fact that, as noted above, Helmer Bros., Inc. pleaded non vult to charges alleging that between July 1 and July 30, 1964, it (1) sold alcoholic beverages to another retailer, in violation of Rule 15 of State Regulation No. 20; (2) below filed price, in violation of Rule 5 of State Regulation No. 30; (3) aided and abetted their unlawful transportation from the licensed premises, contrary to R.S. 33:1-2, in violation of R.S. 33:1-52, and (4) on August 24, 1964, hindered investigation of premises by attempted suppression of evidence, in violation of R.S. 33:1-35, resulting in the suspension of its license for forty days. Re Helmer Bros., Inc., Bulletin 1613, Item 4.

Continuing their investigation of the seized liquor and the invoices issued therefor, the ABC agents then visited the premises of Grzybowski. They interrogated Grzybowski and obtained a written statement from him. Grzybowski was also called as a witness by the Division. He gave the following account: He is one of the partners and serves as the manager and cashier at these premises. He also is in charge of placing orders for this licensee, and admitted engaging in the transactions on four occasions with a person identified to him as Jim Daly. In his direct testimony he stated that he did not know Daly's name and that in fact that name was given to him by the agents. When his signed and sworn statement was shown to him, he admitted signing the statement wherein he stated, "Jim Daly... That's his name." However, he insisted that he did not actually know this individual's name.

Grzybowski gave the following account: Daly came into this restaurant and bar and ordered a few bottles of liquor. Daly then stated, "Can you get some liquor for me? I'm going to have a wedding in my family." It further appears that Daly had been a patron of this restaurant on several previous occasions, and on this occasion represented himself as the owner of a large factory. He agreed to sell the liquor to him, and agreed to order the same if Daly left a deposit. Daly thereupon left a deposit and paid for the liquor at full list price in cash, and personally removed the liquor from the premises. In his statement given to ABC agents, Grzybowski could recall only one transaction, and that Daly purchased the liquor on only one occasion. Grzybowski was then asked about the said removal, and he answered as follows: "I wasn't there. I was just sitting in my chair where the cashier's cage is. Maybe one of the workers, the employees, I might have told him 'You go and show him where the stuff is' and he took it and put it in his car." On cross examination Grzybowski stated that he could not identify Daly except that he was "a big man."

Continuing their investigation of the seized liquor, the agents visited Jackson's and questioned Joseph Jackson (its secretary-treasurer) with reference to the seized liquor and the identified invoices. Jackson gave the following account: He is a "part-owner" of this liquor licensed operation and, from the end of June 1964 until July 17, 1964, he had occasion to handle the exceptionally large orders reflected in Exhibit D-12. He stated that a person who identified himself as Robert Preston made these purchases, and Jackson delivered the liquor to a Mobil gas station operated by Vanore and located on Route 46 in Fort Lee. He identified the invoices and sales slips in Exhibits D-12 and D-14, one of which invoices is in the sum of \$5,691.67. He also admitted that he identified an individual at the gas station who signed the sales slips as Robert or James Preston. However, he was not paid for the last few deliveries and claims that he is now owed about \$5,000 from Preston. Finally he admitted that he had never known Preston before the commencement of these transactions, nor did he make any inquiry at the time of these transactions as to what disposition was being made of the alcoholic beverages by Preston.

Examination of the sales slips indicates that a considerable amount of this liquor was sold below the retail filed prices. This witness explained that the sales slips were made by his wife, who was sick, and she must have made the mistakes. He was questioned closely about the prices which were reflected on these slips and the payment made for the liquor. He admitted that these were all cash sales and there was nothing in his records to support any written evidence of the actual prices. He

explained that Preston would make a part-payment on account of each sale, and he would collect the balance at the time of delivery. He did not give Preston any receipts for the alleged payments. This procedure was followed with the exception of the last sale. He could not, however, state what the exact prices were for each case; he left the sales slip with the wrong prices stating that he would remember what the true balance was at the time of payment. He was not paid the balance, however, on the last two deliveries, and he was asked the following question:

"Q How much did the last two deliveries amount to?

A I couldn't tell you, offhand. I don't remember figures that well."

Furthermore, he insisted that he was able to calculate the figures based on the retail price "from the retail price, the bottle price, from which I know each bottle off the shelf." He did not refer to any price list because he insisted that he remembers the prices for each article. In short, what he did, according to his testimony, was to have the lower prices put on the sales slips and then to collect the difference between the stated prices and the lawful prices at the time of payment.

Further continuing their investigation, the agents visited the premises of Anton's on August 17, 1964, and interrogated James Daly. An examination of the liquor license application of Anton's satisfied them that this person was the same person who was present at Vanore's Mobil station at the date of the seizure of the said alcoholic beverages. Daly acknowledged that he was the night manager of Anton's, a holder of 15% of Anton's issued and outstanding stock, and had been associated with Anton's for approximately fifteen months. He further acknowledged that he operates a 1957 red-and-white Cadillac for which he had no transit insignia.

He produced several bills to show that Anton's is a regular customer at Vanore's gas station and is billed for gas purchases and automotive repairs. While he admitted that he was at the station on the evening of July 28, 1964, he denied to the agents that he ever transported alcoholic beverages to Vanore's gas station. However, he was at a loss to explain why Vanore pointed him out to the agents as the owner of the said seized liquor.

The records of this Division disclose that James Daly is not a liquor licensee, nor was he the holder of such license at any time prior to the date of this hearing.

Agent H testified that, at the time of the seizure at Vanore's, he observed that the truck also contained certain "tall paper bags, brown paper bags, a little bit larger than you get in the supermarket with groceries. They're heavy-weight paper and from what I've seen they pack a case of liquor in each paper bag." This agent has been associated with this Division for the past nine years as an investigator and, during the course of his investigation of many licensed premises, has noticed that only Anton's uses this particular type of paper bag; he has never seen it used by any other licensee. Finally, Daly was still employed in his above-stated capacity with Anton's at the date of this hearing.

No witnesses were produced by or testified on behalf of Anton's, nor was any evidence submitted in its behalf.

Before making findings of fact with respect to the evidence herein presented, it might be well to restate fundamental

operating principles which are applicable in these proceedings. We are dealing here with purely disciplinary measures and their alleged infractions. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252. These cases require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 378 (1956); Freud & Pittala v. Davis et al., 64 N.J. Super. 242, 248.

No testimony need be believed but, rather, the hearer must always credit as much or as little as he finds reliable. 7 Wigmore Evidence, sec. 2100 (3rd ed. 1940); Greenleaf Evidence, sec. 201. Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J. Super. 1. The accepted standard of persuasion governing the triers of the facts is that the determination be probably founded in truth. Riker v. John Hancock Mutual Life Insurance Company, 129 N.J.L. 508, 511. Further, it is well established that a licensee is responsible for the conduct of its employees and is fully responsible for their activities during their employment on licensed premises. Essex Holding Corp. v. Hock, 136 N.J.L. 28; Kravis v. Hock, supra. In fact, it has been held that a licensee is not relieved even if the employee violates the express instruction of the licensee. Mazza v. Cavicchia, 28 N.J. Super. 280; 15 N.J. 498; F & A Distributing Co. v. Division of Alcoholic Beverage Control, 36 N.J. 34.

My careful analysis and evaluation of the testimony and the exhibits herein lead me to make the following findings of fact and recommendations:

I

As to Anton's: (1) The alcoholic beverages seized by the ABC agents on July 28, 1964, at the premises of Vanore's gas station were the property of Anton's. This conclusion is supported by the following: (a) the initial admission of John Vanore to the agents that he stored them at his premises as an accommodation and courtesy to this licensee and received no consideration therefor; (b) Vanore stated that this warehousing was undertaken at the specific request of one of the "owners" or "partners" of Anton's whom he volunteered to contact; (c) immediately after he made a telephone call, James Daly arrived at the premises in a red-and-white colored Cadillac and remained at the gas station for a long period of time; (d) Vanore's later repudiation of his original admission, and assertion of his ownership of the said alcoholic beverages, are unpersuasive. It is logical that, if he were in fact the lawful and legitimate owner of the said liquor, he would have asserted a claim for the return of that property at the hearing of the forfeiture proceedings instituted against the said alcoholic beverages by this Division. Since no claim was made by Vanore, or indeed by anyone else, a forceful inference may be drawn that Vanore did not in fact own the said property.

(2) Jim Daly is not a liquor licensee nor was he a liquor licensee at the time of the said transaction. He is the manager and a stockholder of Anton's, and I find that, in the transactions recorded in the testimony, he did not act on his own behalf but as an agent and employee of Anton's. This is further fortified by the fact that he is still employed by this licensee, and I am persuaded that, in the light of common experience, he

would not have continued such employment upon the disclosure of these facts. The logical conclusion to be drawn, therefore, is that he acted on behalf of his principal and with its knowledge. Cf. In re E. J. McGovern Dairy Products, Inc., 60 N.J. Super. 163, at pp. 166-167.

(3) On divers dates between June 25, 1964 and July 30, 1964, while the license of the corporate licensee was under suspension, Daly on its behalf ordered and received deliveries of the substantial quantity of alcoholic beverages as noted hereinabove, in violation of Rule 32 of State Regulation No. 20.

(4) On the aforesaid dates, through its agent and employee Daly, Anton's purchased and obtained alcoholic beverages other than from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director of Alcoholic Beverage Control, namely, from the following retail licensees and in the following manner: (a) Daly informed Helmer Bros., Inc. (a retail licensee) that Anton's was under suspension and sought to purchase alcoholic beverages from the said Helmer Bros., Inc. Helmer agreed to and transacted with Daly numerous and large sales which Daly purchased on behalf of Anton's at a cost of five per cent. above wholesale licensees; (b) Daly made purchases of alcoholic beverages which were included among the liquor seized at the Vanore Mobil station from Helen Grzybowski, Barney Grzybowski and J. Eleanor Meisner, although there is no affirmative evidence to support the Division's contention that he was acting for Anton's; (c) Daly also made large purchases of alcoholic beverages in the proscribed manner from Jackson Enterprises, Inc., t/a Jackson Liquors. All of these purchases and transactions were made in violation of Rule 15 of State Regulation No. 20.

(5) The red-and-white Cadillac motor vehicle was identified as the vehicle used in the transportation and delivery of some of these alcoholic beverages. There is strong evidence to associate Daly as the operator of this vehicle which was parked at the Vanore gas station on July 28, 1964. His operation of this vehicle was further supported by the testimony of Helmer. I, therefore, find on this count that, on the aforesaid dates, Anton's, through its agent and employee, transported alcoholic beverages in this vehicle which admittedly did not have a transit insignia affixed thereto or an inscription painted thereon, in violation of Rule 2 of State Regulation No. 17.

(6) I further conclude that these transactions followed a pattern and were undertaken in order to enable Anton's to carry on its business because it was then under suspension by order of this Division. Obviously Anton's could not make lawful purchases directly from wholesalers, and engaged in these transactions in clear defiance and violation of the said order of suspension. I therefore determine that the Division has established the truth of these charges by a fair preponderance of the believable evidence and, indeed, by substantial evidence.

The licensee has a prior adjudicated record. As stated at the opening of this report, on June 15, 1964 its license was suspended on the charges as detailed hereinabove for forty-five days effective June 22, 1964 until August 6, 1964. Further, its license (then held for premises 252 Broad Avenue, Palisades Park) was suspended by the Director for thirty-five days effective February 13, 1951, for transportation in an unlicensed vehicle and without requisite invoice, aiding and abetting unlawful transporta-

tion and storage on unlicensed premises. Re Anton's Wine & Liquors, Inc., Bulletin 898, Item 5. In addition, the license then held by Matthew Weinstein and Ruth Weinstein (the latter president and principal stockholder of the licensee), t/a Library Delicatessen & Liquor Shop, for premises 275 Main Street, Hackensack, was suspended by the Director for five days effective January 17, 1949, for sale below minimum price. Re Weinstein, Bulletin 829, Item 4. Further, the license of Ruth Weinstein and Melvin Leventhal, for premises 252 Broad Avenue, Palisades Park, was suspended by the Director for twenty days effective January 5, 1954, for sale below minimum price. Re Weinstein and Leventhal, Bulletin 999, Item 4. Finally, the license of Matthew Weinstein and Ruth Weinstein, for premises 257 Broad Avenue, Palisades Park, was suspended by the Director for forty-five days effective January 8, 1962, for filing inaccurate beverage tax reports, failure to file notice of changes in the license application, conviction of Matthew Weinstein of a crime involving moral turpitude, and his employment on the licensed premises after conviction. Re Weinstein, Bulletin 1393, Item 3; aff'd. Weinstein v. Div. of Alcoholic Beverage Control, 70 N.J. Super. 164, reprinted in Bulletin 1424, Item 2; Re Weinstein, Bulletin 1433, Item 1.

Under all of the circumstances and considering its prior record, it is further recommended, as to Anton's, that its license be suspended for two hundred seventy days.

II

As to Jackson: (1) I find from the testimony that certain of the alcoholic beverages found at the premises of Vanore's Mobil gas station on July 28, 1964, were purchased by Anton's agent Daly from Jackson.

(2) I have had the opportunity to observe the demeanor and to analyse the testimony of Joseph Jackson (partner of this licensee), and disbelieve his account of his transaction with a person whom he identified as Robert or Jim Preston. I believe it does violence to human experience for a person to sell such substantial quantities of alcoholic beverages and deliver the same to a gasoline station without requiring payment therefor, particularly in view of the fact that he did not know or have any prior dealings with this individual. The factual situation herein is substantially different from that of Grzybowski because the transactions here were not based upon a representation that they were to be used by Preston personally. Indeed, there is no affirmative showing of the use to which they were intended.

(3) I am convinced that the physical description given of Robert Preston, or James Preston as he was also known to Jackson, fits the description of James Daly as given by other witnesses.

(4) I am satisfied from the circumstances of this case that a proper inference can be drawn that Jackson knew that the sales were being made to another licensee. This is particularly fortified by the similarity of the dealings herein as with Helmer Bros.

(5) I find totally incredible and unbelievable the explanation given by Jackson for the prices reflected on the sales slips which were less than the prices filed with the Director of this Division. He explains that some of them were placed on the

sales slips by his sick wife who was unfamiliar with the lawful prices to be charged for those items. In any event, he asserts that, regardless of what price was noted on the sales slip, he intended to collect the difference between the stated price and the lawful price at the time he received payment. This reason is transparent, senseless and unbelievable.

(6) Under the facts of this case, I do not believe that this licensee was unaware of the identity and relationship of Daly to Anton's, in view of the fact that he admits that there is approximately \$5,000 due to him on the sale of these alcoholic beverages. I am not persuaded that this licensee would permit a total stranger, whose affiliation he claims to be unknown to him, to owe him this substantial sum of money on such an allegedly casual and ephemeral relationship.

I therefore conclude that, on the basis of the evidence, Jackson sold alcoholic beverages to another retailer, namely, Anton's, on divers dates between June 29, 1964 and July 17, 1964, in violation of Rule 15 of State Regulation No. 20; and that on divers dates between July 7 and July 17, 1964, it sold and offered to sell at retail, directly or indirectly, various alcoholic beverages at less than the price thereof then filed with the Director of the Division of Alcoholic Beverage Control, in violation of Rule 5 of State Regulation No. 30. Accordingly I conclude that the Division has established the truth of these charges by a fair preponderance of the believable evidence, and recommend that the licensee be found guilty on both charges.

Licensee has no prior adjudicated record. I therefore recommend that an order be entered suspending its license on the first charge for fifteen days, and on the second charge for ten days, making a total suspension of twenty-five days. Re Helmer Bros., Inc., supra.

III

As to Grzybowski: (1) I find that certain of the alcoholic beverages which were seized on July 28 at the premises of Vanore's Mobil gas station were in fact purchased from Grzybowski.

(2) There has been no affirmative showing that Grzybowski knew, or had any reason to believe, that these sales were made by him to another retailer and particularly to one who was then under suspension by order of this Division.

(3) The defense of Grzybowski appears to be logical and consistent with human experience. He is an arthritic and has great difficulty in moving around, and also has difficulty with the English language. He states that a person, whose name he did not know, had patronized his place of business, which is primarily a restaurant, on several prior occasions; that on one occasion he requested the sale of a substantial amount of liquor by representing himself as a responsible owner of a large factory who needed a large quantity of liquor for a wedding, as well as "gifts for his business."

Grzybowski thereupon requested and received a deposit on account of the purchase and, when this person returned, he received the full balance of the purchase price. There is no evidence to suggest that the amount paid for this liquor was below the filed prices for such alcoholic beverages and, under the circumstances, Grzybowski had every reason to believe that this transaction was consummated for the purpose as represented.

I do not believe it was Grzybowski's duty to make a further investigation to determine the exact use to which these were to be put under the particular factual complex herein. While it was admitted that this transaction, involving nearly \$4,000 worth of liquor, was not consistent with his usual pattern of sales, it is also reasonably arguable that such purchase, made for the purpose as represented, is not wholly improbable. Fairness has always been the touchstone of administrative processes and, in the interpretation, application and implementation of the rules of this Division, we have consistently sought to avoid injustice where the factual circumstances demonstrate prejudice to an unwitting and innocent licensee. Cf. Eberhard v. Eberhard, 4 N.J. 535, 545, where the court stated that the proof must have sufficient force to support a legal inference, as contrasted with a mere speculation.

I therefore conclude that the evidence to support this charge falls short of the mark, and recommend a dismissal of the first charge.

(4) With respect to the charge that this licensee aided and abetted another to transport alcoholic beverages without a license, the only evidence in this connection is that of Grzybowski that, when he was paid for this transaction, Daly went to the rear of the premises where the merchandise was stored and, with the assistance of an employee, Daly removed the said merchandise from the premises. There is no evidence herein to show what vehicle was used; how the merchandise was transported, or who assisted therein. In the absence of such affirmative showing, I similarly recommend that this charge be dismissed.

Conclusions and Order

Pursuant to Rule 6 of State Regulation No. 16, written exceptions to the Hearer's report and argument thereto were filed with me by Anton's and Jackson. Additionally, on my own motion, I heard oral argument presented by the attorneys for all three licensees.

Anton's argues (1) that the Division case is based upon illegally seized evidence, (2) that the Hearer impermissibly relied on matters outside the record, specifically the plea of non vult entered by Helmer Bros., Inc., in Division disciplinary proceedings arising from the same factual complex involved herein, and made findings supported only by hearsay, specifically the admission of John Vanore that he was storing alcoholic beverages on behalf of Anton's, (3) that the Hearer inaccurately summarized in his report some of the evidence adduced at the hearing, and (4) that the recommended findings of facts, particularly with respect to the agency of Daily, are not supported by and are against the weight of the competent evidence in the record.

Jackson joins in the exceptions and argument filed by Anton's and, additionally, contends that the Hearer's recommended finding of guilt with respect to Jackson's alleged sale of alcoholic beverages to Anton's is inconsistent with his recommended finding of dismissal of the similar charge against Grzybowski.

I shall discuss separately the cases against the three licensees.

I

During the hearing, and in its exceptions to the Hearer's report, Anton's objected to the admission into evidence of nine

cases of the alcoholic beverages seized from the Vanore truck by Division agents and moved to strike this evidence from the record upon the ground that the beverages were unlawfully seized, citing Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684 (1961). I am denying the motion for a number of reasons.

Initially, it is noted that Anton's has filed to cite any case squarely supporting the application of the Mapp exclusionary rule to civil proceedings such as these. The case of One Plymouth Sedan v. Pennsylvania, 14 L. Ed. 2d 170 (decided April 29, 1965), cited by Anton's, may be distinguished from the instant type of case since it involved a forfeiture proceeding before a State court. This proceeding was held to be quasi-criminal, flowing from and incidental to, the commission of a crime and therefore constituted a penalty for a criminal offense. In the instant proceeding no criminal allegation is made against Anton's nor is the temporary deprivation of the utilization of an alcoholic beverage license deemed to be a criminal proceeding or a property forfeiture within the ambit of the One Plymouth Sedan case. Butler Oak Tavern v. Division of Al. Bev. Control, 36 N.J. Super. 512 (App. Div. 1955), aff'd 20 N.J. 373 (1956); Kravis v. Hock, 137 N.J.L. 252 (E. & A. 1948).

Secondly, it is questionable whether this agency is the proper forum in which the issue of suppression of evidence because of unlawful seizure should be raised, assuming these are such penal proceedings as to which the One Plymouth Sedan case should be deemed applicable. The record is barren of any pretrial motion proceeding being instituted in the County or Superior Court to determine such question, although R.R. 3:2A-6(a) of the Rules of Criminal Practice requires that such procedure be employed whenever "a person claiming to be aggrieved by an unlawful search and seizure, and having reasonable grounds to believe that the evidence obtained may be used against him in a penal proceeding, may apply only to the Superior Court or County Court for the county in which the evidence was obtained for the return of property seized and to suppress the evidence obtained...." (emphasis added). See State v. Fiorvanti, 78 N.J. Super. (App. Div. 1963).

Thirdly, Anton's lacks standing to challenge the legality of the seizure. Generally, a person seeking to suppress relevant evidence upon the basis of the legality of a search must allege that he himself was the victim of an invasion of privacy, i.e., he must claim either to have owned or possessed the seized property or to have had a substantial possessory interest in the premises searched. Jones v. United States, 362 U.S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697 (1960). Cf. State v. Robinson, 74 N.J. Super. 305, 312 (County Ct. 1962). An exception to this general rule exists where possession (and by parity of reasoning, ownership) both convicts and confers standing -- this "eliminates any necessity for a preliminary showing of an interest in the premises searched or the property seized, which ordinarily is required when standing is challenged." Jones, supra, 4 L. Ed. 2d, p. 703. However, this exception has been limited to the situation where "proof of possession was enough to convict;" the exception is not deemed applicable where "Possession is only one element of the crime charged." United States v. Konigsberg, 336 F. 2d 844, 847 (Third Circuit, 1964), cert. denied 379 U.S. 930. See also Wong Sun v. United States, 371 U.S. 471, 492, 9 L. Ed. 2d 441, 458, 83 S. Ct. 407 (1963).

Here there is no allegation or proof that Anton's had a possessory interest in the truck in question or the service station upon which it was located. Nor has Anton's alleged any ownership or possession of the alcoholic beverages seized at the time of the seizure. It is also clear that mere ownership or possession of the

said alcoholic beverages by Anton's would not suffice to establish Anton's guilt in this proceeding. Consequently it is apparent that Anton's lacks adequate standing in this matter.

Furthermore, "It is clear that when a search has been validly consented to, it may lawfully be made without a search warrant." State v. Bindhammer, 44 N.J. 372, 380 (1965). The truck in question was here unlocked by John Vanore after his arrest on charges of warehousing alcoholic beverages without a license. The record reflects undisputed testimony to the effect that Vanore voluntarily unlocked the truck, thereby permitting a consent search. As the court stated in the above Bindhammer case (p. 381):

"... while a court will critically view a consent by one in custody who has made no confession, it will more readily accept a consent by a confessing defendant who has told where the incriminating evidence is hidden."

See also State v. King, 44 N.J. 346 (1965).

And finally, I find that the search in question was conducted as an incident to a valid arrest. "No search or arrest warrant having previously issued, the vital question is whether the search was incidental to a lawful arrest, which depends, in turn, on the arresting officer's having probable cause to believe that the crime was being or had been committed by the defendant." State v. Contursi, 44 N.J. 422, 425 (1965). Probable cause is "a reasonable basis for the 'belief' that a crime has been or is being committed;" it exists where an officer has received reasonably trustworthy information or knowledge sufficient to warrant a man of reasonable caution to believe that an offense has been or is being committed; the officer may act upon hearsay, with something to give it credit, and other evidence not admissible at trial. Contursi, *ibid*, pp. 29, 30.

The record discloses that the Division agents had been advised by their supervisor that "the F.B.I." had been to the Vanore station on the afternoon of the day of the seizure and had observed the contents of the truck in question, apparently finding liquor that was not the stolen liquor that they were seeking. The agents then visited the station and were advised by John Vanore (one of its owners and the owner of the truck) that the inoperative truck contained about one hundred fifty cases of liquor which belonged to "Anton's Wines & Liquors" and which he was keeping for Anton's during the period of its license suspension. This information, though in part hearsay, and regardless of whether or not Vanore's admission against his interest is assertively binding on Anton's in this disciplinary proceeding, formed a reasonable basis for the agents to believe that Vanore was committing a crime, viz., the warehousing of alcoholic beverages without a license, contrary to R.S. 33:1-2 and in violation of R.S. 33:1-50(a), a misdemeanor punishable by fine or imprisonment of not more than three years (see State v. Doyle, 42 N.J. 334, 349 (1964)), or both. The arrest being valid, the search of the truck and the seizure of its contents, being reasonably contemporaneous to the arrest (the testimony shows continuous custody of the truck by policemen or Division agents from the arrival of the agents at the station until Vanore unlocked the truck (State v. Bindhammer, *supra*, at p. 380), and made for the purpose of seizing the contraband liquor within the immediate possession and control of Vanore, were valid as incidental to the arrest. State v. Doyle, *supra*, at pp. 343-4.

As to points (2) and (3) of Anton's exceptions heretofore mentioned, I have entirely disregarded the disciplinary proceeding against Helmer Bros., Inc. and the statements of John Helmer (not introduced in evidence), Barney Grzybowski and Joseph

Jackson (both of whose statements were received in evidence). Also, I have not considered the verbal statements of John Vanore as assertive admissions binding on Anton's in this proceeding. Nor have I drawn any inference from the failure of anyone to claim return of the seized alcoholic beverages in the forfeiture proceedings in question.

Nevertheless, based upon the record before me I find: (a) that the approximately ten sales made by Helmer Bros., Inc. on divers dates between the latter part of June and about July 30, 1964, involving more than seventy-two cases of alcoholic beverages, were in fact made to Anton's through its agent, one of the aforementioned Vanore brothers, who, acting at the behest of Anton's stockholder and co-manager John Daly, ordered and received these alcoholic beverages on behalf of Anton's; (2) that at least on one of these occasions the alcoholic beverages were transported by Anton's said agent in a red car bearing no requisite transit insignia; (3) that on divers dates between July 7 and July 17, 1964, Anton's, through its agent Anthony William Vanore, ordered, received, purchased and obtained seven orders of alcoholic beverages (totaling one hundred forty-seven cases) from the Jackson licensee; and (4) that on divers dates between approximately June 25 and July 17, 1964, Anton's through its agent John Daly ordered, received, purchased and obtained four or five orders of alcoholic beverages (totaling about seventy-five cases) from the Grzybowski licensee.

Other than the testimony of Barney Grzybowski that he sold several orders of alcoholic beverages to James Daly (whom he pointed out at the hearing as the man in question but whom he admitted he was "not sure" was the man in question), the Division relied principally on circumstantial evidence to connect Anton's with the purchase of the alcoholic beverages in question from the three retailers. Anton's argues that the inferences drawn from such evidence were based on "conjecture, surmise and speculation."

In Ciuba v. Irvington Varnish & Insulator Co., 27 N.J. 127, 139 (1958), our highest court, in discussing circumstantial evidence in civil cases, said:

"Circumstantial or presumptive evidence, as a basis for deductive reasoning in the determination of civil issues, is defined as 'a mere preponderance of probabilities, and, therefore, a sufficient basis for decision.' Jackson v. Delaware, L. & W.R.R. Co., 111 N.J.L. 487 (E. & A. 1933). It need not have the attribute of certainty, but it must be a presumption well founded in reason and logic; mere guess or conjecture is not a substitute for legal proof. The determinative inquiry is whether the evidence demonstrates the offered hypothesis as a rational inference, that is to say, a presumption grounded in a preponderance of the probabilities according to the common experience of mankind. The accepted standard of persuasion is that the determination be probably based on truth. A bare quantitative preponderance is not enough. The evidence must be such in quality as to lead a reasonably cautious mind to the given conclusion. The measure of the weight of the evidence is 'the feeling of probability which it engenders.' Joseph v. Passaic Hospital Association, 26 N.J. 557 (1958)." (emphasis added).

"The only requirement is that the claimed conclusion from the offered fact must be a probable or more probable hypothesis with reference to the possibility of other hypothesis." Jochim v. Montrose Chemical Co., 3 N.J. 5, 8 (1949).

Also,

"We may add that it is this preponderance of the aggregate probabilities juridically termed 'the weight of the evidence' which furnishes the legal standard of proof in civil causes, as contradistinguished from the rigid rule applicable in the trial of criminal causes, based on circumstantial evidence, which requires as a basis for conviction the elimination of every other reasonable hypothesis which could afford a rational explanation for the commission of the crime." Miller v. New Amsterdam Casualty Co., 94 N.J.L. 508, 511 (E. & A. 1920).

In State v. Rogers, 19 N.J. 218 (1955), a criminal prosecution, the court stated:

"If the State relies, as it often does, upon circumstantial rather than direct proof, the trial judge is obligated to accord to the State's case the benefit of all legitimate inferences of which the proof is susceptible ... each piece of proof is not to be dealt with in severe isolation from the rest of the circumstances submitted but is to be adjudged and weighed as it relates to and is associated with all other relevant circumstances which comprise the State's case."

It is to be noted that Division disciplinary proceedings are purely civil in nature and not criminal, Butler Oak Tavern v. Division of Alcoholic Beverage Control, *supra*, and require proof of guilt only by a mere preponderance of the believable evidence. Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408 (Sup.Ct. 1943), *aff'd* 130 N.J.L. 554 (E. & A. 1943), certiorari denied 320 U.S. 801.

Judging and weighing each piece of proof not in isolation from the rest of the circumstances present, but as it relates to and is associated with all other relative circumstances comprising the Division case, and bearing in mind that it is this agency's function to determine, within a reasonable latitude of choice, the weight of the proofs adduced and the legitimate inferences of which they are susceptible, can it reasonably be held, as a matter of law, that there is not sufficient evidence in the record herein to support the above findings? Can it be said that the inferences drawn from the facts adduced do not constitute a probable hypothesis, i.e., "a presumption grounded in a preponderance of the probabilities according to the common experience of mankind"? In this connection I find the following considerations particularly pertinent:

The proofs here clearly establish that John Daly was acting in concert with the Vanores in the purchase and possession of the alcoholic beverages in question. A large proportion of the alcoholic beverages seized from Vanore's truck was purchased from three retailers during a period that commenced shortly after the imposition of Anton's suspension. Alongside the alcoholic beverages, the agents found brown paper bags, the type used by Anton's to package alcoholic beverages, which use was unusual in the trade. While the agents were attempting to ascertain the owner of the alcoholic beverages, Daly arrived at the service station and drove his auto directly to where the truck was parked, although there was plenty of parking space "all around the gas station." Daly refused to give the agents his name, address, place of business or answer any questions, despite the agents' prior identification to him as State officers. Daly spoke to the Vanore brothers in private and immediately thereafter John Vanore retracted his prior identification of Anton's as the owner of the alcoholic beverages.

Daly remained at the station from approximately 8 p.m. to 3 a.m., after the seized alcoholic beverages had been removed by the Division.

Further, I find that Daly introduced one of the Vanore brothers to John Helmer and arranged for Helmer to sell him large quantities of alcoholic beverages at slightly above the wholesale price. I also find that the purchases from Jackson were part of a common plan to obtain a supply of alcoholic beverages for Anton's, Anthony William Vanore being the person who signed the sales slips as "Robert Preston", and that Daly was the person who purchased the alcoholic beverages from Grzybowski. The weakness of the identification of Daly by Barney Grzybowski is strengthened by the part played by Daly in the purchase of the alcoholic beverages from Helmer, his connection with the possession of the self-same alcoholic beverages obtained from Grzybowski while they were stored in the Vanore truck and Anton's unexplained failure to present any evidence contrary thereto. See State v. Cerce, 22 N.J. 236, 244 (1956).

Consequently the only question that remains is whether Anton's is responsible for Daly's aforementioned activities. In this connection Anton's cites Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup.Ct. 1947) for the proposition that the violation must occur on the licensed premises before such responsibility accrues. However, this case does not support such a requirement.

In Mazza v. Cavicchia, 15 N.J. 498, 505 (1954), the New Jersey Supreme Court held:

"It is well settled that a state may without violating the due process clause of the Federal Constitution establish presumptions which according to general experience reasonably tend to prove the fact in question.... Rule 31 comes within this test as a reasonable presumption ..." (citations omitted).

The Rule 31 of which the court spoke and the constitutionality of which it upheld is now Rule 33 of State Regulation No. 20, and provides as follows:

"In disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings."

Although the Mazza case dealt with violations committed on the licensed premises and necessarily involved language concerning such area, the quoted rule is not so limited. Heretofore it has been applied as well to violations committed off the licensed premises. Re Cork 'N Bottle, Inc., Bulletin 1232, Item 3; Re Caridi's Bar, Inc., Bulletins 1324, Item 6 and 1344, Item 4; Re Caldwell's Liquor Store, Bulletins 1364, Item 6 and 1395, Item 2, affirmed in Caldwell's Liquor Store v. Division of Alcoholic Beverage Control on appeal to the Superior Court, Appellate Division, on June 26, 1961, in a decision not officially reported, but reprinted in Bulletin 1395, Item 2 (cert. denied Sept. 19, 1961, by the New Jersey Supreme Court); Re Galsworthy, Inc., Bul-

let in 822, Item 4, affirmed on appeal in Galsworthy, Inc. v. Hock, 3 N.J. Super. 127 (App.Div. 1949), reprinted in Bulletin 841, Item 1.

In this case it is not necessary to decide whether the licensee is responsible for the acts of its employee when committed both off the licensed premises and in the course of conduct not being performed on behalf of the licensee, since I find that Daly's activities were in fact performed on behalf of his employer Anton's. No other reasonable hypothesis has been projected by Anton's. The possibility that Daly and the Vanore brothers had obtained such large quantities of alcoholic beverages for their personal use or personal resale, rather than for the use of Anton's to supply Anton's customers during its lengthy suspension, is too remote to be accepted. When Daly brought Vanore to Helmer's store he stated that he wanted Helmer to sell liquor to Vanore because Anton's could not do so, indicating that he was acting on behalf of Anton's.

Moreover, Anton's offered no evidence to rebut either the reasonable presumption grounded in Rule 33 (Mazza, supra) or the deducible inference arising from the factual complex that Daly, as its employee and minority stockholder, was furthering its interests on the hereinbefore described occasions. Anton's made no disclaimer of participation in the prohibited conduct of Daly, either by way of testimony of Daly or its other corporate officers, nor did it offer any rational explanation for its failure to do so. See State v. Clawans, 38 N.J. 162, 170 (1962).

Under the circumstances, and after a most careful consideration of the entire record herein, I shall accept the Hearer's ultimate findings and conclude that the licensee's guilt on all three preferred charges has been established by more than a preponderance of the believable evidence. Likewise I shall accept the Hearer's recommended penalty.

II

I have carefully considered the entire record herein as it pertains to Jackson and, as a result, I find that on July 7, 9, 14, 15, 16 (two orders) and 17, 1964, Jackson sold alcoholic beverages (one hundred forty-seven cases) to Anton's, a retail licensee, in that the man who signed his name as "Robert Preston" on the seven Jackson sales slips in evidence was Anthony William Vanore, who received such alcoholic beverages on behalf of Anton's. I further find that the alcoholic beverages listed on the five Jackson sales slips, comprising Exhibit D-14 in evidence, were sold at or slightly above the prices listed thereon which were below the minimum consumer resale prices then filed with this Division.

In arriving at such conclusion I have considered herein the same circumstantial evidence hereinbefore related to connect Anton's with the activities of Anthony William Vanore, and have also disregarded the Helmer Bros., Inc. disciplinary proceeding, John Helmer's statement, the verbal statement of John Vanore and the failure of anyone to claim return of the seized alcoholic beverages in the forfeiture proceeding. I also incorporate herein the search and seizure discussion set forth in Part I hereof.

I do not accept Joseph Jackson's claim that he knew the purchaser of these beverages as only "Robert Preston" or "Jim Preston" without any other information as to his identity or background. The extension of credit to such person in the

"neighborhood" of \$5,000 as testified to by Jackson is very difficult to understand. It is more understandable that the sales in question, at a wholesale price level as hereinafter discussed, were made to a known fellow licensee rather than a comparative stranger.

Further, when a licensee sells very large quantities of alcoholic beverages such as here to a stranger under unusual circumstances, he is under a duty to ascertain the use to which the purchaser intends to put the beverages. A licensee may not take the position that he is not interested in such information, for such conduct could well result in the unlawful supply of alcoholic beverages to illicit operators or the infraction of the Division regulations by other licensees. The instant record discloses a complete failure by Jackson to meet this standard.

As to the price violations, I find Jackson's attempted explanation of the under-priced sales slips to be unbelievable. The more rational explanation of these prices is that they were utilized to determine a percentage of the wholesale price as the profit that Jackson would receive for his sale to another retailer, similar to the "friendly" sale of Helmer to Anton's at five per cent. above wholesale price.

Consequently I shall accept the Hearer's ultimate findings and conclude that the licensee's guilt on both of the preferred charges has been established by more than a preponderance of the believable evidence, and I shall impose the Hearer's recommended penalty.

III

In the Grzybowski case, I agree with the Hearer that the evidence is insufficient to establish either of the two charges preferred against the licensee. The factual situation herein may be differentiated from the Jackson case with respect to the sale-to-another-retailer charge by reason of Grzybowski obtaining from Daly a representation of the purported use of the alcoholic beverages sold to him and the absence of any proof that such sales were made below consumer resale prices or on suspicious credit terms.

I shall therefore dismiss both charges against Grzybowski.

Accordingly, it is, on this 20th day of December 1965,

ORDERED that Plenary Retail Distribution License D-8, issued by the Borough Council of the Borough of Palisades Park to Anton's Wines & Liquors, Inc., for premises 257 Broad Avenue, Palisades Park, be and the same is hereby suspended for two hundred seventy (270) days, i.e., commencing at 9 a.m. Monday, January 3, 1966, for the balance of its term, viz., until midnight June 30, 1966, and any renewal license that may be granted be and the same is hereby suspended until 9 a.m. Friday, September 30, 1966, and it is further

ORDERED that Plenary Retail Distribution License D-70, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Jackson Enterprises, Inc., t/a Jackson Liquors, for premises 220 Graham Avenue, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 9 a.m. Monday, January 3, 1966, and terminating at 9 a.m. Friday, January 28, 1966; and it is further

