

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

I. E. Amada

BULLETIN 1249

November 25, 1958

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

November 25, 1958.

BULLETIN 1249

1. APPELLATE DECISIONS - SANDO v. ENGLEWOOD CLIFFS.

PETER SANDO,)
Appellant,) CONCLUSIONS
-vs-)
MAYOR AND BOROUGH COUNCIL OF)
THE BOROUGH OF ENGLEWOOD CLIFFS,)
Respondent.)

William V. Breslin, Esq., Attorney for Appellant.
Harry L. Towe, Esq., Borough Attorney, by Daniel Gilady, Esq.,
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it denied an application for a person-to-person and place-to-place transfer of a plenary retail consumption license from North Beach Construction Corp. to appellant and from premises 464 Sylvan Avenue to proposed premises located at Sylvan Avenue and Hollywood Boulevard, Englewood Cliffs.

"On June 26, 1958, at a regular meeting of the respondent Mayor and Council, resolutions were passed renewing the license of North Beach Construction Corp. for premises at 464 Sylvan Avenue but denying the application of appellant for a transfer of the license to him for proposed premises at Sylvan Avenue and Hollywood Boulevard, respectively.

"The respondent, in its answer filed herein in support of its action in denying the transfer in question, alleges:

'(a) North Beach Construction Company, Inc., (sic) the present owner and prospective transferee had failed to meet its obligations to its creditors and had made payments to such creditors or promises to pay only when objections to the transfer to the appellant were filed.

'(b) Appellant seeks a transfer of the above mentioned license to an area which is zoned for residential use and approval of such a transfer would re-establish a non-conforming use. Further, one year ago, the present owner signed a sublease at the present premises for a period of seven (7) years with a three year option to renew and used said lease as an argument in requesting the transfer to the present premises, which transfer was approved over objections.

'(c) The Mayor and Council are of the opinion that the present Licensee, North Beach Construction Company, Inc., (sic) has not acted in good faith in that objections made at the hearing indicate that an oral contract was made to sell the above mentioned license to one Anthony Tauro, owner of the premises located at 464 Sylvan Avenue, Englewood Cliffs, and that for it said Anthony Tauro paid a deposit which was returned to him

four (4) to six (6) weeks later without explanation. The Council recognizes that such oral contract may not be legally binding upon the parties but is a factor to be considered in the transfer application.

'(d) The Council is of the opinion that the granting of the transfer of the present license, under the application filed, would not be in the best interests of the citizens of the Borough of Englewood Cliffs.'

"I shall consider the said reasons advanced by respondent in the order in which they are set forth in its answer. The first reason given -- that the transfer shall be denied because North Beach Construction Corp. is indebted to creditors - has been ruled by this Division to lack merit. The applicable rule as stated in Briody and Zinna v. Jersey City et al., Bulletin 879, Item 2, and reiterated in Winding River Inn, Inc. v. Dover, Bulletin 1051, Item 1, is as follows:

'It has specifically and consistently been held that, where an application is filed for transfer of license, the mere fact that the transferring licensee is indebted to creditors is not a valid objection against granting the transfer.'

"Respondent contends as the second reason for denial of the transfer that, if the proposed premises be permitted to be located in an area now zoned for residential purposes, the approval for such transfer would re-establish a non-conforming use. In the case of Haulenbeek v. Allenhurst et als., (Court of Errors and Appeals), 136 N.J.L. 557, it was held that, in order to constitute an abandonment of a non-conforming use, the change must be substantial and the evidence such as to afford a rational basis to support it. Periods of interruption due to lack of demand, inability to get a tenant and financial difficulty do not change the character of use.' In said case it appears that a building erected in 1901 on the premises in question, and which had been operated as a hotel or inn for a number of years, was destroyed by fire and was replaced by a more pretentious hotel. On March 4, 1929, the municipality adopted a zoning ordinance that the district wherein the hotel was situated was to be zoned exclusively for one-family dwellings. Thereafter, in December 1929, the hotel was destroyed by fire. A permit was issued in March 1930 to erect a new hotel on the site which was in the course of construction when financial difficulties prevented the owners from any further construction thereof. The completed portion of the building for a period of several years thereafter was furnished and used for the entertainment of guests. As a result of foreclosure proceedings the property was acquired by a financial institution, and various efforts were made until 1939 to operate the building for the purpose for which it had been intended. That year it was vacant. For the following two years the building was rented and operated as an adjunct to a beach club. During 1942 it was again vacant. In 1943 and 1944 it was occupied by the U. S. Army. The relator in the cited case acquired the property in 1943 and since this time has pursued his efforts to put it to its appropriate use. The Court concluded that the non-conforming use of the property had been established and that there had been no abandonment thereof.

"In the case sub judice it appears that the proposed site had been used for many years as a retail liquor licensed

premises. Fred H. Witte (a Captain of Police in the municipality where the license is located) testified that prior to the destruction of the premises by fire on December 22, 1956, the establishment known as the Old Hearth operated at the proposed site as a bar and supper club without entertainment; that, to his knowledge, the operation thereof was proper as the police records did not indicate that there had been any trouble at the licensed premises at any time. After the fire the liquor license was transferred to the North Beach Construction Corp. for premises 464 Sylvan Avenue. A zoning ordinance was passed in 1954 which designated the area of the proposed site as residential in character. Thus the occupation by a liquor licensee of the site would constitute a non-conforming use. Inasmuch as licensed premises were conducted on the site in question after the adoption of the zoning ordinance and until the date of the fire in December 1956, the fact that it had not been used since its destruction by fire would not, by virtue of the case of Haulenbeek v. Allenhurst et als., supra, constitute an abandonment of the non-conforming use. Such use would still prevail. See also Scavone et al. v. Totowa et al., 49 N. J. Super. 423.

"The third reason advanced -- that the North Beach Construction Corp. had entered into an oral contract with the landlord to transfer the license to him -- is insufficient to deny appellant's application. In Richmond Realty Corporation v. Plainfield et al., Bulletin 411, Item 1, it was stated:

'*** Although it may perhaps seem harsh thus to preclude a landlord ***, it must be significantly remembered that the question whether a local issuing authority shall grant or transfer a retail liquor license in the municipality is not to be determined in light of private controversies between the applicant and his landlord or creditors. Such controversies, if not adjustable between the parties themselves, must be settled in the courts. For a local issuing authority to seek to unravel them would merely result in bogging down the whole machinery of issuing or transferring liquor licenses, convert the forum into an arena for personal fights between debtor and creditor, and lose sight of the fact that the true test as to whether a license should be denied or a transfer refused is, after all, the public interest.***'

See Olko v. Saddle River et al., Bulletin 914, Item 3.

"The final reason given by the respondent for denying the transfers in question was that it would not be in the best interest of the people in the municipality. Sherwin D. Lester (one of the members of the respondent Council) testified that he was of the opinion that, although there is an over-abundance of licensed premises near the Borough Hall (where the licensed premises in question are presently located), he felt it would not be to the best interest of the Borough 'to move and spread out the area. We are stuck with that area anyhow, and I don't want to extend it any more.'

"Appellant testified, if the transfers in question are granted, that 'I contemplate operating exactly the way the Hearth did; a steak, lobster, and chicken specialty restaurant catering to the families;' that he did not contemplate any dancing and entertainment and would be willing to assure the municipality of that by agreeing to a limitation on the license.

"The evidence herein does not lead me to conclude that the transfer of the license under consideration will have any adverse effect or inure to the detriment of the people in the municipality in view of the manner in which appellant intends to conduct the operation of the licensed business. The respondent, if it so desires, may take advantage of the offer made by appellant by the imposition of special conditions in the license relating to dancing and entertainment in the licensed premises. Kelly v. Margate City, Bulletin 472, Item 7.

"There is no inherent right to the transfer of a liquor license but, where it appears that there is an arbitrary or unreasonable refusal to transfer a license, the action of the local issuing authority will be reversed. DeLotto et als. v. West Paterson, Bulletin 1172, Item 1, and cases cited therein.

"After careful examination of all the evidence presented herein, I conclude that the action was arbitrary and unreasonable and must be reversed. Hence I recommend that an order be entered reversing the action of respondent."

No exceptions to the Hearer's Report were taken within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered all the facts and circumstances herein, I concur in the Hearer's finding and conclusion and adopt his recommendation.

The license sought to be transferred expired at midnight June 30, 1958. North Beach Construction Corp. has obtained a renewal of its license for the current licensing year for premises 464 Sylvan Avenue. Thus, the decision herein is merely advisory.

Although the action of respondent is reversed, nevertheless, since the license which is the subject of this appeal has expired, no order requiring respondent to transfer said license will be entered herein.

Under the circumstances, the appellant may file an application for the transfer of the renewal license to himself and to the premises located at Sylvan Avenue and Hollywood Boulevard.

In the event that said transfer is granted, the resolution granting said transfer must contain an express condition that the transfer is granted subject to the completion of the premises in accordance with plans and specifications filed with said application. It is further recommended that the resolution should contain appropriate condition to insure the type of operation which appellant has represented he will conduct on the licensed premises.

WILLIAM HOWE DAVIS
Director.

Dated: October 14, 1958.

2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE PREVIOUSLY SUSPENDED ON THREE OCCASIONS - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against DANIEL CZAPLICKI t/a DAN'S CORNER 587 Ocean Avenue Jersey City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Daniel Czaplicki, Defendant-licensee, Pro se. Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on Saturday, August 16, 1958, he sold during prohibited hours alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that on Saturday, August 16, 1958, at about 10:10 p.m., three ABC agents, investigating a specific complaint that sales were being made in violation of State Regulation No. 38, entered defendant's licensed premises and took seats at the bar. At about 11:00 p.m. one of the agents asked Donald Bozzone, the bartender, for a half case of beer "to go" and stated that he would be ready to take it following the news telecast (fifteen minutes). At 11:15 p.m. the aforesaid agent asked Bozzone to fill his aforementioned order. The bartender thereupon left the bar, returned with a brown paper bag containing 12 - 12 ounce cans of Ballantine Beer, placed the same on the bar in front of the agents and accepted \$2.20 in payment thereof. At about 11:18 p.m. the three agents, one of them in possession of the alcoholic beverages, left the premises, returned immediately and identified themselves to Bozzone who refused to make any statement, written or oral.

Defendant has a prior adjudicated record. Defendant's license has twice been suspended by the Director of this Division: (A) for fifty days, effective October 15, 1956, for an "hours" violation (State Regulation No. 38), alcoholic beverage activity during prohibited hours contrary to local regulation, violation of local screen ordinance, permitting foul, filthy and obscene language and conduct on licensed premises and failure to facilitate and hindering an investigation (see Bulletin 1137, Item 3); and (B) for twenty-five days, effective April 29, 1957 for an "hours" violation (Rule 1 of State Regulation No. 38) (see Bulletin 1170, Item 6).

In addition the defendant's license has been suspended by the local municipal authority for thirty days, effective March 15, 1958, for permitting a brawl on licensed premises and permitting dancing, in violation of a local ordinance.

It is quite apparent from the foregoing that the defendant has displayed a persistent unwillingness to adhere to the regulations of this Division and the local ordinances pertaining to the liquor industry. In a span of less than two years he has thrice been adjudged guilty of violating Rule 1 of State Regulation No. 38, has violated two parts of another State Regulation, a statutory provision (hindering) and three local liquor ordinances. It is clear that the penalty in this case must, of necessity, be severe if it is to make the proper impression on the defendant and deter him from any future violations. Under all the circumstances and considering the plea entered herein, I shall suspend the defendant's license for ninety days.

Accordingly, it is, on this 15th day of October, 1958,

ORDERED that Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Daniel Czaplicki, t/a Dan's Corner, for premises 587 Ocean Avenue, Jersey City, be and the same is hereby suspended for ninety (90) days, commencing at 2:00 a.m. October 28, 1958, and terminating at 2:00 a.m. January 26, 1959.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - NUISANCE - FILTHY AND OBSCENE LANGUAGE - HOSTESSES - SALE TO MINOR - UNQUALIFIED EMPLOYEE - PRIOR RECORD - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOE'S WHITE BIRCH BAR, A CORP.)
t/a JOE'S WHITE BIRCH BAR)
185 Paterson Street)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-313 (for the 1957 58 and 1958-59 licensing years), issued by the Board of Alcoholic Beverage Control for the City of Paterson.)
-----)

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On May 3, 17 and 24, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you, through Joseph Damanio, a 98% shareholder of your corporation while acting as a bartender, made offers to procure females for a male patron for purpose of prostitution and introduced females to said male patron for such purpose; solicited drinks of alcoholic beverages for consumption by himself and by other persons employed on your licensed premises and by patrons; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On May 3 and 24, 1958, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20.

"3. On May 17 and 24, 1958, you allowed, permitted and suffered a female employed on your licensed premises to accept beverages at the expense of and as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.

"4. On May 24, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Richard ---, age 20 and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"5. On May 24, 1958 and prior thereto, 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., Richard ---, age 20, contrary to and in violation of Rule 3 of State Regulation No. 13."

The file herein refers to events which occurred while ABC agents were in defendant's premises on May 3, May 17 and May 24, 1958.

On May 3 a female patron known as "Sonny" offered to take one of the ABC agents to another place for the purpose of having illicit sexual intercourse and, during the course of the conversation between her and the agent at the bar, she frequently used filthy language. Neither Joseph Damanio nor "Sal", who were tending bar, participated in this conversation. However, "Sal" came to the portion of the bar at which they were seated and said, "You two are too slow;" whereupon he emptied their glasses, refilled their glasses, poured a drink for himself and took the price of the three drinks from the agent's money on the bar.

On May 17 the same ABC agent asked Joseph Damanio, who was tending bar, where Sonny was, to which Damanio replied that she was not then on the premises but added "Don't worry, I'll fix you up with that broad" and pointed to an unescorted female, identified as Mildred. After conversing with Mildred, the bartender returned to the agent and said, "You're all set, but it takes time." Later another unescorted female, identified as Kaye, entered the premises and Damanio introduced the agent to her and wished him "good luck." On six occasions during this visit the bartender filled the glass of either of the two females and poured drinks for himself at the agent's expense. At one time the bartender told a male patron that "he really had a good sucker going there" and pointed to the agent. Sonny entered later in the evening and the bartender served a drink to her at the agent's expense.

On May 24 an ABC agent entered defendant's premises and observed that Sonny and her male partner and Richard --- and his male partner were acting as entertainers on the premises. It was later ascertained that Richard --- was 20

years of age and had no employment permit. The agent observed also an unescorted female. Joseph Damanio served drinks to the agent and, later in the evening, called Richard --- and his partner to that portion of the bar where the agent was seated. During this visit Joseph Damanio served alcoholic beverages to the agent and to Richard --- and his partner on several occasions and also served a couple of drinks to Sonny and her partner. The price of all of the aforesaid drinks and the price of numerous drinks poured by the bartender for himself were taken from the agent's money. On three different occasions Joseph Damanio used filthy language and promised the agent that he would "fix him up" with a female, although he made no attempt to carry out his promises. Other ABC agents entered later in the evening and all agents identified themselves to the bartender.

Defendant has a prior record. Effective January 6, 1958, its license was suspended by the Director for fifteen days for sale to an intoxicated person. See Bulletin 1206, Item 9. I shall suspend defendant's license for thirty days on Charges 1 and 2, which are closely related (Re Olympic, Inc., Bulletin 1190, Item 4); for twenty days on Charge 3 (Re Young, Bulletin 1040, Item 3), and for fifteen days on Charges 4 and 5 (Re Pistilli, Bulletin 1236, Item 4, and Re Ferraro, Bulletin 1142, Item 3). Five days will be added because of the dissimilar violation within five years, making a total suspension of seventy days. Five days will be remitted for the plea, leaving a net suspension of sixty-five days.

Accordingly, it is, on this 15th day of October, 1958,

ORDERED that Plenary Retail Consumption License C-313 (for the 1957-58 and 1958-59 licensing years), issued by the Board of Alcoholic Beverage Control for the City of Paterson to Joe's White Birch Bar, A Corp., t/a Joe's White Birch Bar, for premises 185 Paterson Street, Paterson, be and the same is hereby suspended for sixty-five (65) days, commencing at 3:00 a.m. October 20, 1958, and terminating at 3:00 a.m. December 24, 1958.

WILLIAM HOWE DAVIS
Director.

4. LIMITED WHOLESALE LICENSE - OBJECTION TO ISSUANCE THEREOF HELD TO BE MERITORIOUS.

In the Matter of Objections to)
the Issuance of a Limited)
Wholesale License to)

CONCLUSIONS

PARK BEVERAGES, A CORPORATION)
t/a PARK BEVERAGES)
165 Central Avenue)
Rochelle Park, N. J.)

-----)
Applicant, by Joseph Woznica, President and Treasurer.
Leo J. Berg, Esq., Attorney for State Beverage Distributors'
Association, Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Written objection to the issuance of the license having been filed, a hearing was duly held thereon.

"During the prior licensing year applicant applied for a similar license for premises located at 15-17 Hackensack Avenue, Ridgefield Park. After objections to said application were filed, a hearing was held thereon on May 7, 1958. Thereafter a Hearer's Report recommending that the application be denied was sent to the applicant and attorney for objector. No further action was taken prior to June 30, 1958. On July 1, 1958, the pending application for a license for the 1958-59 licensing year was filed. Rochelle Park is also in Bergen County, about four miles from Ridgefield Park.

"At the hearing held herein it was stipulated that the evidence taken on May 7, 1958 should be considered in deciding this case and the only additional evidence presented was a second letter from Fuhrmann & Schmidt Brewing Co. to Joseph Woznica advising him that they would issue a franchise to the applicant to sell their products in Bergen, Hudson and Passaic Counties if and when the license is issued.

"From the testimony given at the prior hearing it appears that applicant has conducted a soda business for many years and that it desires the license so that it may also sell malt alcoholic beverages manufactured by Carling Brewing Company and Fuhrmann & Schmidt Brewing Co. to licensed retailers in Hudson, Bergen and Passaic Counties.

"Said evidence also discloses that the products of Carling Brewing Company are now being sold to licensed retailers in Hudson County by United Beer Distributors Co.; in Bergen County by H. B. Haring Distributing Co., and in Passaic County by Famous Brands Agency, Inc. There was also evidence that the products of Fuhrmann & Schmidt Brewing Co. are now being sold in Passaic County by Haledon Distributing Co. Each of the aforementioned companies holds a State Beverage Distributor's license. There are no distributors for Fuhrmann & Schmidt Products in Hudson or Bergen Counties.

"On behalf of applicant, Mr. Woznica testified at the prior hearing that he checked with the operators of various liquor stores to whom he sells soda and that they think there is a definite demand for both brands of beer. On behalf of

the objector, Charles Nash, who is associated with Charles Nash & Sons (holder of a limited wholesale license) and Norman H. Beim (who is associated with Schwarz-Crescent Company, also the holder of a limited wholesale license) each then testified that in his opinion there is no need for an additional Limited Wholesale license to take care of the distribution of Carling products, and that there is no consumer demand for Fuhrmann & Schmidt products in Hudson, Bergen or Passaic Counties. No representative of either of the aforesaid breweries appeared at said hearing, but Mr. Woznica presented a prior letter which he received from Fuhrmann & Schmidt Brewing Co. advising him that they would be pleased to sell their complete line for distribution in Bergen and Passaic Counties if and when a license was obtained. While it is true that the only Limited Wholesale licensee whose place of business is located in one of the three named counties is Charles Nash & Sons, nevertheless it also appears that twenty-nine State Beverage Distributor licensees have their respective place of business in one of said three counties. The holder of a State Beverage Distributor's license may sell unchilled, brewed, malt alcoholic beverages in original containers, in quantities of not less than 144 fluid ounces, to licensed retailers. R. S. 33:1-11, 2c.

"After reviewing all the evidence in this case, I conclude that the applicant has failed to establish the need or necessity for the issuance of the license. I, therefore, recommend that the application be denied."

Written exceptions to the Hearer's Report were filed with me by the President of applicant corporation.

After carefully considering the entire record, including the transcript of testimony, the Hearer's Report and exceptions thereto, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein and, hence, I shall deny the application considered herein.

WILLIAM HOWE DAVIS
Director.

Dated: October 8, 1958.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LOUIS SILVERSTEIN)
 t/a LOU'S TAVERN)
 807 "F" Street)
 Belmar, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the Borough of Belmar.)
 -----)

Norman N. Schiff, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.)

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On July 18 and 21, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz.; Walter ---, age 17; in violation of Rule 1 of State Regulation No. 20."

The file herein discloses that on July 18, 1958 Walter ---, 17 years of age, purchased twelve 12-ounce cans of beer and again on July 21, 1958 purchased eighteen 12-ounce cans of beer from the defendant-licensee. The file further discloses that on the first occasion the minor was questioned as to his age but before he could submit any proof in furtherance thereof, the defendant stated that he appeared to him to be twenty-one years. On the second occasion no inquiry was made. Thus, no written representation as to the minor's age was obtained.

Defendant has a prior adjudicated record. Effective October 12, 1939 his license was suspended for ten days for a fair trade violation and sales during prohibited hours. See Bulletin 351, Item 11. Again effective October 24, 1944 his license was suspended for twenty days for permitting book-making and gambling on the licensed premises. See Bulletin 637, Item 1. Inasmuch as the aforesaid violations are dissimilar in character to the instant violation and occurred more than five years ago, they will not be taken into consideration in fixing the penalty herein. I shall suspend defendant's license for a period of twenty days. Re Weaver, Bulletin 1231, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 7th day of October, 1958,

ORDERED that Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the Borough of Belmar to Louis Silverstein, t/a Lou's Tavern, for premises 807 "F" Street, Belmar, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. October 15, 1958 and terminating at 2:00 a.m. October 30, 1958.

WILLIAM HOWE DAVIS
 Director.

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - SALE BEYOND SCOPE OF LICENSE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against WILLIAM ROSS t/a ROSS'S BAR & GRILL Rt. 23, West Milford Township PO Newfoundland, N. J., Holder of Plenary Retail Consumption License C-16, issued by the Township Committee of the Township of West Milford.

CONCLUSIONS AND ORDER

William Ross, Defendant-licensee, Pro se. Dora P. Rothschild, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On Sunday, August 24, 1958, at about 1:15 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., 6 cans of Rheingold beer, at retail, in their original containers for consumption off your licensed premises, and allowed, permitted and suffered the removal of such alcoholic beverages from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

"2. On Sunday, August 24, 1958, at about 1:15 p.m., you sold alcoholic beverages not pursuant to and within the terms of your plenary retail consumption license as defined by R. S. 33:1-12(1), contrary to R. S. 33:1-26 and R. S. 33:1-1(w), in that you accepted an order for and sold alcoholic beverages at a place other than your licensed premises, viz., on the grounds outside the licensed premises near the gasoline station; in violation of R. S. 33:1-2."

The file herein discloses that on Sunday, August 24, 1958, after ABC agents left defendant's licensed premises, they ordered six 12-ounce cans of beer from defendant who was seated outside the premises. Defendant returned to the establishment and within a short period of time emerged therefrom with six cans of beer in a paper bag. He handed the package to one of the agents and received payment therefor. Defendant declined to sign a written statement but orally admitted the violation.

Defendant has no prior adjudicated record. Both charges herein arose from a single transaction and under the circumstances I shall suspend defendant's license for twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 6th day of October, 1958,

ORDERED that Plenary Retail Consumption License C-16, issued by the Township Committee of the Township of West Milford to William Ross, t/a Ross's Bar & Grill, for premises on Rt. 23, West Milford Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. October 14, 1958, and terminating at 2:00 a.m. October 29, 1958.

WILLIAM HOWE DAVIS Director.

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

In the Matter of Disciplinary Proceedings against)

MAX H. BERGMANN)
t/a BERGMANN'S INN)
Pitney & Great Creek Rd.)
Galloway Twp., N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Galloway.)
-----)

Max H. Bergmann, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"You sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly and indirectly, to persons under the age of twenty-one (21) years, viz., Edwin ---, age 19 on September 8, 1958, and divers dates prior thereto, Arthur ---, age 18 on divers dates between August 1 and September 6, 1958 and Daniel ---, age 18 on a date between August 1 and August 9, 1958, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises on the above stated respective dates and occasions; in violation of Rule 1 of State Regulation No. 20."

Acting upon information obtained from the Pleasantville Police Department, ABC agents obtained signed and sworn statements from each of the minors mentioned in the charge. In his statement Edwin --- states that he is 19 years old; that on September 8, 1958, he entered defendant's premises at about 9:20 p.m. and purchased from defendant a glass of beer which he consumed and six cans of beer which he carried from the premises. He further states that he had purchased beer in said premises on several occasions prior to September 8 and that on his first visit he told the licensee that he was 21 years of age but was not required to sign any written representation as to his age. In his statement Arthur --- says that he is 18 years old and that, on several occasions prior to September 8, he purchased and consumed glasses of beer which were served by defendant who did not question him as to his age. In his statement Daniel --- says that he is 18 years of age and that on one occasion during the first week of August 1958 he entered defendant's premises and purchased and consumed three glasses of beer which were served to him by defendant who did not question him as to his age.

Defendant has no prior record. As a mitigating circumstance defendant alleges that he had questioned the minors before making the sales and that each had told him that he was over the age of 21. However, it does not appear that any of the minors made a written representation that he was 21 years of age or over and, hence, defendant has not established a

defense under R. S. 33:1-77. The minimum penalty imposed for an unaggravated sale to three minors, all of whom are 18 years of age or over, is twenty days. Re S. D. Perna & Sons, Bulletin 1221, Item 2. I shall suspend defendant's license for twenty days and remit five days for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 7th day of October, 1958,

ORDERED that Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Galloway to Max H. Bergmann, t/a Bergmann's Inn, for premises at Pitney & Great Creek Rd., Galloway Twp., be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m. October 15, 1958, and terminating at 7:00 a.m. October 30, 1958.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REFERENDUM - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)
100 BAR, INC.)
t/a MARIE'S "100" BAR)
100 S. King Street)
Gloucester City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-18, issued by the)
Common Council of Gloucester City.)

Cahill and Wilinski, Esqs., Attorneys for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The following charges were served upon the defendant:

"1. On June 8, 1958 you sold, served 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., Loren ---, age 18, and Kenneth ---, age 18, and you 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 Sunday, June 8, 1958 between the hours of 2:00 a.m. and midnight you permitted the sale of alcoholic beverages; in violation of the referendum held in Gloucester City on November 4, 1952, as modified by referendum held in Gloucester City on November 3, 1953."

As to Charge 1, defendant entered a plea of non vult because of the ruling in Essex Holding Corp. v. Hock, 136 N. J. L. 28.

As to Charge 2, defendant entered a technical plea of not guilty but stated that it did not dispute the facts set forth in statements obtained by ABC agents from the minors and which facts are hereinafter set forth.

Loren --- and Kenneth --- are members of the United States Coast Guard stationed at Gloucester. From their statements it appears that on the afternoon of Sunday, June 8, 1958, they and others were in the rear room of defendant's licensed premises at a party given for Loren --- and another Coast Guardsman by Stanley and Marie Gawkowski who are officers and majority stockholders of defendant corporation; that during the party Mr. and Mrs. Gawkowski gratuitously served food and pitchers of beer to their guests and that Loren drank about three quarts of beer and Kenneth drank about nine or ten glasses of beer before they left the licensed premises at midnight. The statements further allege that the front and side doors to the licensed premises were locked and that the guests who attended the party entered the rear room after passing through the living quarters attached to the licensed premises.

R. S. 33:1-1(w) defines a "sale" to include the "gratuitous delivery or gift of any alcoholic beverage by any licensee." Moreover, there is no doubt that the minors were permitted to consume alcoholic beverages on the licensed premises. Hence, defendant's guilt as to Charge 1 is clear. As a result of a referendum held on November 4, 1952, and a further referendum held on November 3, 1953, the sale of alcoholic beverages at retail in Gloucester City is prohibited on Sunday after 2:00 a.m. Considering the definition of the word "sale" in the aforesaid section, I find defendant guilty of Charge 2 despite the fact that no charge was made for the beer delivered to those who attended the party.

Defendant has no prior record. In mitigation it is alleged that Mr. and Mrs. Gawkowski originally intended to hold the party in their living-room which is not part of the licensed premises, but decided to hold it in the rear room of the licensed premises because that room is air-conditioned. It is also alleged that they "did not understand that a violation could take place during a private party." In reviewing the file I note from the statement given by Loren --- that he was born on July 4, 1940, and hence was actually 17 years of age on June 8, 1958. If this were the usual type of case involving sales to minors who were then 17 and 18 years of age and sale to the general public on Sunday, a substantial penalty would be imposed. However, considering all the facts, I shall suspend defendant's license for fifteen days on both charges. Cf. Re Rutt's Hut Inc., Bulletin 1139, Item 3. Five days will be remitted for the plea herein, leaving a net suspension of ten days.

Accordingly, it is, on this 9th day of October, 1958,

ORDERED that Plenary Retail Consumption License C-18, issued by the Common Council of Gloucester City to 100 Bar, Inc., t/a Marie's "100" Bar, for premises 100 S. King Street, Gloucester City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. October 20, 1958, and terminating at 2:00 a.m. October 30, 1958.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against
 KELLER'S TAVERN AND GROVE, INC.
 94 Camptown Road
 Berkeley Heights, N. J.,
 Holder of Plenary Retail Consumption License C-2 (for the 1957-58 and 1958-59 licensing periods), issued by the Township Committee of Berkeley Heights.
 -----)

ON PETITION
O R D E R

BY THE DIRECTOR:

An order having been entered on September 22, 1958, suspending defendant's license for twenty-five days commencing at 2:00 a.m. October 13, 1958, and terminating at 2:00 a.m. November 7, 1958, and

It appearing that, prior to the imposition of the suspension, arrangements had been completed to hold a dinner on defendant's premises on the evening of Saturday, November 1, 1958, and that numerous persons would be inconvenienced by the suspension of the license on said date;

It is, on this 14th day of October, 1958,

ORDERED that the suspension now in effect shall be lifted from 2:00 a.m. November 1, 1958, to 2:00 a.m. November 2, 1958, at which time the suspension shall be reinstated and continue in effect until 2:00 a.m. November 8, 1958.

William Howe Davis
 William Howe Davis
 Director