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

BULLETIN 1565 June 22, 1964

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ITEM

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

BULLETIN 1565 June 22, 1964

1. COURT DECISIONS - JAMES M. McCUNN & CO., INC. v. FLEMING & McCAIG, INC. AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-144-62 and A-560-62

JAMES M. McCUNN & CO., INC., a corporation,

Appellant,

-vs-

FLEMING & McCAIG, INC., a corporation, and DIVISION OF ALCOHOLIC BEVERAGE CONTROL OF THE STATE OF NEW JERSEY,

Respondents.

Argued April 27, 1964 - Decided May 27, 1964

Before Judges Conford, Freund and Sullivan

Mr. Joseph M. Jacobs argued the cause for appellant (Messrs. Harrison and Jacobs, attorneys).

Mr. Max Mehler argued the cause for respondent, Fleming & McCaig, Inc.

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondent, Division of Alcoholic Beverage Control (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

The opinion of the court was delivered by

SULLIVAN, J.A.D.

This case involves an appeal by James M. McCunn & Co., Inc. (McCunn) from the conclusions and order of the Acting Director (Director) of the Division of Alcoholic Beverage Control requiring McCunn to sell and continue to sell to Fleming & McCaig, Inc. (McCaig) alcoholic beverages "on terms usually and normally required" by McCunn. (Fleming & McCaig, Inc. v. James M. McCunn & Co., Inc., Bulletin 1506, Item 1.)

The appeal was originally argued in September 1963, as a result of which we continued the Director's order, retained jurisdiction of the appeal but remanded the matter for additional findings and conclusions. Our opinion which is reported in 81 N.J. Super. 97 (App. Div. 1963) (reprinted in Bulletin 1541, Item 1) sets forth the factual background and details of the case.

Following the remand the Director filed "Supplemental Conclusions" in which he determined:

(1) That McCunn's establishment of a sales quota for its distributor was inimical to the meaning and purpose of the Alcoholic Beverage Control Act and was therefore an invalid objective criterion.

(2) Assuming a sales quota or goal was not per se invalid, the 8,000 case figure was unrealistic in the light of past sales and was therefore arbitrary and unreasonable.

(3) McCunn had not offered McCaig a reasonable opportunity to demonstrate its ability to handle the distributorship.

(4) McCunn was not justified in refusing to sell to McCaig in view of the relationship between the parties and their experience with each other.

(5) McCunn's decision "to discontinue the distributorship to McCaig and invest it in the Reinfeld Company was not based upon terms usually and normally required by the importer since the criterion applied to McCaig was not similarly applied or sought to be applied to the Reinfeld Company." (Fleming & McCaig, Inc. v. James M. McCunn & Co., Inc., Bulletin 1554, Item 1.)

After the filing of the Supplemental Conclusions, additional briefs were submitted on behalf of the parties and further oral argument was had. At the latter hearing, the Attorney General argued, as had McCunn on the original appeal, that the Director's order directing McCunn to "sell and continue to sell . . . on terms usually and normally required by the respondent" was broader than permitted by the legislative delegation and should be modified so as to be confined to a direction to McCunn to complete the sale of the particular order which McCaig had presented and McCunn had refused to fill.

Our conclusion is that the Director's order should be affirmed for the following reason.

The scope of the order was warranted by the circumstances. The evidence is clear that McCunn's refusal to sell to McCaig was a refusal to have any further dealings with McCaig and was not limited to the one sale. An order from the Director to complete the particular sale would not have afforded McCaig any real relief. As to the statutory power of the Director to enter an order of such scope, we note that the terms of the order in question to "sell and continue to sell . . . on terms usually and normally required by respondent" were taken verbatim from the Division order reviewed in Canada Dry Ginger Ale, Inc. v. F & A Distrib. Co., 28 N.J. 444 (1958). True, the legality of the scope of the order was not involved in that case. Nevertheless, the Supreme Court, in affirming the Division's ruling, noted the precise terms of the order. The purpose of N.J.S.A. 33:1-93.1 et seq., is to prevent discrimination in the sale of alcoholic liquors by distillers, importers, etc., to duly licensed wholesalers of alcoholic liquors in this State. We are satisfied that the statute confers upon the Director adequate power to effectively carry out the legislative intent and that the order entered was necessary for that purpose.

As heretofore noted, the Director in his Supplemental Conclusions determined that McCunn's establishment of a sales quota for its distributor was inimical to the meaning and purpose of the Alcoholic Beverage Control Act.

It is clear that the 8,000 case commitment in the instant case, while in form a matter of agreement between the parties, was in substance a sales quota set by McCunn. As noted in our earlier opinion, McCaig had "misgivings" as to whether the market could absorb this amount of Begg scotch. Undoubtedly it agreed to the 8,000 case figure in order to obtain the distributorship.

We do not agree, however, that a sales quota is per se inimical to the meaning and purpose of the statute. A quota which is reasonable in amount and is not applied in an inflexible manner is not at odds with the purpose of the statute. The facts of economic life apply to the liquor industry. A distiller or importer, as any other businessman, has the right to expect that his distributor will attain at least minimum standards of reasonable sales performance. We recognize that the use of a quota to over-stimulate liquor sales would be contrary to the statutory purpose. See Canada Dry Ginger Ale, Inc. v. F & A Distrib. Co., 28 N. J., supra, at p. 455. However, the over-stimulation would inhere in the amount of the quota, or in the manner of its application rather than in the concept that a distributor was expected to attain at least a minimum reasonable sales goal.

As noted above, the Director determined that even if a sales quota was not per se invalid, the 8,000 case commitment in the instant case was unreasonable, and that McCunn had not afforded McCaig a reasonable opportunity to demonstrate its ability to handle the distributorship.

Without reviewing the evidence in detail we are satisfied that there was substantial credible evidence to support these findings. The Director based his determination that the 8,000 case figure was unreasonable on an analysis of past sales and depletion experiences. He found that the 8,000 case figure was "more than a thirty per cent. increase over and above the best depletion figure theretofore attained."

The finding that McCunn did not afford McCaig a reasonable opportunity to demonstrate its ability to handle the distributorship was based on the eight-month period involved, the evidence that Barry had stocked up his customers immediately prior to turning his accounts over to McCaig and that McCaig had unexpectedly lost many of the Barry accounts. In view of these factors the Director concluded that eight months was an insufficient time to enable McCaig to demonstrate its ability to handle the distributorship.

The Director's reference to the relationship between the parties and their experience with each other is based upon the evidence, referred to in our original opinion, that McCaig had been selling McCunn's products either as sole distributor or sub-dealer since at least 1947, and that in 1961 when McCaig purchased the Barry accounts for $15,000, it did so with the knowledge and concurrence of McCunn. The Director concluded that this was a factor to be considered in judging whether McCunn's subsequent refusal to sell to McCaig was arbitrary. The Director also found it significant that while McCaig had been required to order on the basis of a fixed annual commitment, no such quota system was applied to McCaig's successor, the Reinfeld Company.

The Director determined that all of the foregoing, namely, the excessive quota, inadequate time, relationship between the parties and requiring a fixed annual commitment of McCaig but not of its successor, added up to discrimination within the intent of the statute. N.J.S.A. 33:1-93.1 et seq.

These findings and conclusions are substantially supported by the record as a whole and we must accept them. On the basis of such findings and conclusions the adjudication of discrimination was well founded.

The order of the Director is affirmed.

2. COURT DECISIONS - WEST END CLUB OF NEWARK, N. J., INC. v. NEWARK - DIRECTOR REVERSED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1032-62

WEST END CLUB OF NEWARK, N. J., INC.,

Plaintiff-Respondent,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,

Defendant-Appellant.

Argued March 23, 1964 - Decided May 4, 1964.

Before Judges Gaulkin, Lewis and Matthews.

Mr. William H. Walls, Assistant Corporation Counsel, argued the cause for appellant (Mr. Norman N. Schiff, Corporation Counsel of the City of Newark, attorney).

Mr. Stanley Blasi appeared and argued the cause for respondent (no brief filed).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for Division of Alcoholic Beverage Control (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

The opinion of the court was delivered by

LEWIS, J. A. D.

(Appeal from Director's decision in West End Club of Newark, N. J., Inc. v. Newark, Bulletin 1524, Item 1. Director reversed. Opinion not approved for publication by the Court committee on opinions.)

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3. STATE LICENSES - PLENARY WHOLESALE LICENSE - APPLICATION FOR LICENSE WITHOUT SPECIAL CONDITION DENIED.

September 27, 1963

Hon. Emerson A. Tschupp
Acting Director
Division of Alcoholic Beverage Control

Re: Louis L. Epstein and Julius E. Epstein
t/a Stratford International Tobacco Co.
504 Clinton Avenue, Newark, N. J.

On August 19, 1963, you filel Conclusions wherein you announced that you were granting the application of the above named for a plenary wholesale license, subject to a special condition. By letter dated August 21, 1961, Mr. Gossweiler advised me that a new application would be necessary with respect to the 1963-1964 period, since the earlier application was for a license for the balance of the 1962-1963 fiscal period.

I enclose herewith an application of the above named for a plenary wholesale license for the balance of the 1963-1964 fiscal year and a certified check in the amount of $2,276.71 as the pro-rated fee for the new license.

Please be advised that the applicants are of the opinion that they are entitled to an unrestricted plenary wholesale license without any limitations or conditions. They object to the imposition of the condition which you said in your Conclusions you would impose on the license. They are unwilling to accept a license with such condition.

Since a license with the special condition is unacceptable, I trust that you will issue a license without any condition.

Very truly yours,
MAX MEHLER

September 27, 1963

Hon. Emerson A. Tschupp
Acting Director
Division of Alcoholic Beverage Control

Re: Louis L. Epstein and Julius E. Epstein
t/a Stratford International Tobacco Co.
504 Clinton Avenue, Newark, N. J.

Supplementing my letter of September 27th in the captioned matter, I would appreciate your immediate determination with respect to my clients' 1963-1964 application upon the basis of the views set forth in my letter of September 27th and the record adduced at the previous hearing upon my clients' 1962-1963 application.

Very truly yours,
MAX MEHLER

September 30, 1963

Max Mehler, Esq.
Newark 2, N.J.

This acknowledges your communications of September 27, 1963, enclosing application, with deposit fee of $2,276.71, of Louis L. and Joseph E. Epstein, t/a Stratford International Tobacco Co., for a plenary wholesale license.

You state that your clients are unwilling to accept the license if made subject to the condition (viz., "That no sales of alcoholic beverages will be made in New Jersey under this license except only such sales as are made in bond to steamship companies to become part of ships' stores for use beyond the jurisdiction of this state") expressed in my Conclusions of August 19, 1963, following a hearing upon their then application for a 1962-63 plenary wholesale license. Re Epstein, Bulletin 1528, Item 4. You request my immediate determination with respect to the current 1963-64 application in view of your clients' expressed declination of license with such condition.

It is my determination, based upon the record developed at the previous hearing, that no public need has been established

for issuance of a plenary wholesale license without limiting condition to your clients and, hence, in view of their unwillingness to accept such license with condition, you are advised that their application for 1963-64 license is hereby denied.

Very truly yours,
EMERSON A. TSCHUPP
Acting Director.

4. COURT DECISIONS - EPSTEIN v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-98-63; A-168-63

LOUIS L. EPSTEIN and JULIUS E. EPSTEIN, partners, etc.,

Plaintiffs-Appellants,

-vs-

DIVISION OF ALCOHOLIC BEVERAGE CONTROL OF THE STATE OF NEW JERSEY,

Defendant-Respondent.

Argued April 27, 1964 - Decided May 21, 1964.

Before Judges Conford, Freund and Sullivan

Mr. Max Mehler argued the cause for appellants.

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondent (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

PER CURIAM

(Appeal from Director's decisions in Re Epstein, Bulletin 1528, Item 4, and Re Epstein, Bulletin 1565, Item 3. Director affirmed. Opinion not approved for publication by the Court committee on opinions.)

5. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED SALE OF ALCOHOLIC BEVERAGES TO CO-WORKERS - MOTOR VEHICLE ORDERED RETURNED TO INNOCENT CLAIMANT - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on December 13, 1963 of a quantity of alcoholic beverages, and a Ford Falcon Station Wagon, in the parking area of N.J. Bell Telephone Lab. Co., on Whippany Road, in Hanover Township, County of Morris and State of New Jersey.	Case No. 11,164 ON HEARING CONCLUSIONS AND ORDER

Davidson, Miniutti & Nester, Esqs., by Joseph S. Nester, Esq., appearing for claimant.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of R.S. 33:1-66 and State Regulation No. 28, and further pursuant to a stipulation dated December 24, 1963, signed by Ruth A. Oswald, to determine whether 3 quart bottles of whiskey and 9 - 4/5 quart bottles of gin and a Ford Falcon Station Wagon, more particularly described in an inventory hereinafter referred to, attached hereto, made part hereof and marked "Schedule A", seized on December 13, 1963 in the parking area of the N.J. Bell Telephone Company on Whippany Road, Hanover Township, constitute unlawful property and should be forfeited; and, further, to determine whether the sum of $1200.00 representing the appraised retail value of the said motor vehicle, paid under protest by the said Ruth A. Oswald, whereby the said motor vehicle was returned to her, should be forfeited or returned to her.

When the matter came on for hearing pursuant to R. S. 33:1-66, Ruth A. Oswald, represented by counsel, appeared and sought the return of the money deposited by her on the basis of the stipulation herein entered. No one appeared to oppose forfeiture of the alcoholic beverages.

The Division's case was presented with the testimony of Sergeant Harry Hominuk of the Hanover Township Police Department and ABC Agent D and may be summarized as follows: As a result of a complaint that alcoholic beverages were being sold in the N. J. Bell Lab parking lot in Whippany, Sergeant Hominuk stationed himself at a point of observation on December 13, 1963 and noted that David Oswald was standing back of a Ford Station Wagon, more particularly described in the inventory hereinbefore referred to. Oswald opened the trunk of the car and handed packages to fellow co-workers. At the same time Oswald was apparently checking names of these persons from a list which he held in his hand.

After Oswald distributed some of the packages of liquor, he closed the trunk of his car, whereupon Hominuk approached him and asked him whether he had a license to transport or sell liquor. Oswald stated that he had no such license. He was then requested to open the trunk of his car, which he did, and

Hominuk observed that there were 9 bottles of gin and 3 bottles of Seagram's 7 in a whiskey case. Oswald was thereupon taken into custody, and the motor vehicle and alcoholic beverages were thereafter turned over to this Division.

In a voluntary signed statement, Oswald admitted that he purchased the said alcoholic beverages at a 15% discount and that on his lunch hour on December 13, 1963 he distributed a total of 12 bottles of the said liquor to fellow employees who had previously placed an order with him. He insisted that he had made no profit from this transaction and that "There was no intention on my part to make a profit." In his statement which was admitted in evidence, he admitted transporting the liquor "in my car" to the parking lot, before distributing the same. The statement of Oswald was prepared by Agent D, was voluntarily signed by Oswald after reading the same and acknowledging that he understood the contents thereof. Oswald further stated that the car was his car "but the registration was made out to his wife."

The records of this Division disclose that no license was issued to David Oswald for the transportation or sale of alcoholic beverages and no transit insignia had been issued for the automobile in question. Oswald was charged with a sale of alcoholic beverages without a license, contrary to R.S. 33:1-2 and R.S. 33:1-50(a), was arraigned in the Hanover Township Municipal Court and released on bail for action by the Morris County Grand Jury.

The seized whiskey is illicit because it was intended for unlawful sale. R.S. 33:1-1(i). It is unlawful even for a licensee to sell alcoholic beverages from an unauthorized parked vehicle. Seizure Case No. 9576, Bulletin 1212, Item 3. Such illicit whiskey and the motor vehicle in which such whiskey was found, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 10,759, Bulletin 1469, Item 5.

Since the evidence supports the charge that the said seized alcoholic beverages are illicit because they were intended for illegal sale and were transported unlawfully, I recommend that they be forfeited. R.S. 33:1-1(x and y); R.S. 33:1-2; R.S. 33:1-66, and cf. Seizure Case No. 10,759, supra.

Ruth A. Oswald, the claimant of the motor vehicle, testified that she is the wife of David Oswald and her testimony may be summarized as follows: She is the registered owner of the said motor vehicle which she purchased in October 1962, and the said motor vehicle is registered in her name as are certain automobile insurance policies. This was a second-hand automobile and the purchase price was met by surrendering, for credit, another motor vehicle which she had purchased, before marriage. The balance was obtained from an $800.00 loan which she received from David's mother, and from certain AT&T stock, held in both names. Part of the purchase price was also realized from the sale of Public Service stock registered in her name in the sum of $300.00.

She further testified that she permits her husband to use the car for business and that she pays for the gas when she actually uses the car. However, her husband pays for the repairs and maintenance. She denies that she knew that her husband has used this car to transport or sell whiskey nor did she have any reason to believe that he engaged in such transactions.

My evaluation of the testimony persuades me that the claim of Ruth Oswald should be allowed and the car returned to her for the following reasons:

1. The evidence clearly manifests the fact that David Oswald purchased the whiskey for fellow employees with no intention of violating the law nor with any intention of making a profit by the said transaction. The motor vehicle was seized because of the unlawful transportation of this whiskey and the purported sale of the same. While these facts in themselves are no obstacle to forfeiture, the position of Oswald places him in a favorable light. Oswald was not engaged in a commercial transaction, such as in other cases where purveyors of food and drink on parking lots of large companies were earning a livelihood therefrom. Oswald was earning a reasonable salary as an employee of the Bell Laboratories, and in accommodating his co-workers was not advancing any business venture in which he was engaged. Hence, ignorance of the law, insofar as forfeiture of the motor vehicle is concerned, may be an acceptable consideration.

A similar situation was presented in Seizure Case No. 9501, Bulletin 1224, Item 6, where the Director after considering the facts therein denied forfeiture and stated: "This (forfeiture) would be a very harsh penalty and, therefore, under the particular circumstances in the case, the deposit will be returned to him".

2. Since I would not recommend a forfeiture if the motor vehicle actually belonged to Oswald, it would logically follow that the same recommendation would be made with respect to the claimant herein. Although Oswald referred in his statement to "my car" and did not take the stand to refute such statement, although he was present at the hearing herein, nevertheless, I am satisfied that there are sufficient facts herein to justify and sustain her claim.

In addition, it is clear that she did not know or have any reason to believe that this car was being used in unlawful liquor activity. The Director is authorized to return property subject to forfeiture to the owner thereof if such person establishes to his satisfaction that the owner has acted in good faith.

I would recommend such finding, namely, that this claimant acted in good faith and did not know or have any reason to believe that her husband would use this car to transport and sell alcoholic beverages in violation of the law. I therefore recommend that the aforesaid deposit of $1200.00, made by Ruth A. Oswald in accordance with the stipulation, be returned, less the costs of seizure and storage of said motor vehicle.

Conclusions and Order

No exceptions to the Hearer's Report were filed within the time limited by Rule 4 of State Regulation No. 28. After carefully considering the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt them as my conclusions herein.

Accordingly, it is DETERMINED and ORDERED that the costs of the seizure and storage of the Ford Falcon Station Wagon, more fully described in Schedule "A", attached hereto, be deducted from the deposit of $1200.00 and the balance thereof be returned to Ruth A. Oswald; and it is further

DETERMINED and ORDERED that the alcoholic beverages are hereby forfeited and shall be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI
Director.

Dated: April 27, 1964

SCHEDULE "A"

3 - quart bottles of whiskey
9 - 4/5 quart bottles of gin
1 - 1962 Ford Falcon Station Wagon, Serial & Engine No. 07854, N. J. Registration GAW 176.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FALSE STATEMENT IN APPLICATION FOR LICENSE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
PASTRANA'S BAR, INC.)
W/S Harding Highway north of North Boulevard) CONCLUSIONS AND ORDER
Buena)
PO Landisville, N. J.,)
Holder of Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of Buena.)

Frederick B. Edwards, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on March 19, 1964, it sold drinks of beer to two minors, both age 18, in violation of Rule 1 of State Regulation No. 20, and (2) in its application for current license, it falsely concealed its prior record of suspension of license, in violation of R.S. 33:1-25.

The previous record of suspension, the concealment of which is the subject of the second charge, consists of suspension of license by the Director for twenty days effective March 14, 1963 on a "refill" charge. Re Pastrana's Bar, Inc., Bulletin 1505, Item 5. In addition, Felix S. Rodriguez, vice-president and minority stockholder of the licensee-corporation, from whom the license was transferred, has a record of suspension of license by the municipal issuing authority for five days effective July 7, 1958 for an hours violation.

The prior record of suspension of license of Rodriguez for dissimilar violation disregarded because occurring more than

five years ago, the license will be suspended on the first charge for fifteen days (Re Stabile, Bulletin 1506, Item 6) and on the second charge for ten days (Re Kickey's, Inc., Bulletin 1541, Item 9), to which will be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Vamos, Bulletin 1541, Item 5), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 4th day of May, 1964,

ORDERED that Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of Buena to Pastrana's Bar, Inc. for premises on the west side of Harding Highway north of North Boulevard, Buena, be and the same is hereby suspended for twenty-five (25) days commencing at 3:00 a.m. Monday, May 11, 1964, and terminating at 3:00 a.m. Friday, June 5, 1964.

JOSEPH P. LORDI
Director.

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against STUMBLE INN, INC. t/a CLUB DOMINO 169 Westminster Place Lodi, N. J., Holder of Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of Lodi.	CONCLUSIONS AND ORDER

Licensee, by Dominick DiChiara, Vice-President, Pro se.
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on April 8, 1964, it possessed alcoholic beverages in six bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Stanley Laurence Associates, Inc., Bulletin 1508, Item 6.

Accordingly, it is, on this 5th day of May, 1964,

ORDERED that Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of Lodi to Stumble Inn, Inc., t/a Club Domino, for premises 169 Westminster Place, Lodi, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Tuesday, May 12, 1964, and terminating at 3:00 a.m. Monday, June 1, 1964.

JOSEPH P. LORDI
Director.

8. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAPS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HENRY BEUN
778 Belmont Avenue
North Haledon
PO Paterson, N. J.,) CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of North Haledon.)

Licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on April 9, 1964, he permitted mislabeled beer taps on the licensed premises, in violation of Rule 26 of State Regulation No. 20.

Report of inspection discloses that two beer taps marked "Schaefer" were connected to a barrel of Schmidt's beer, apparently deliberately.

Absent prior record, the license will be suspended for ten days (Re Club Benmar, Inc., Bulletin 1317, Item 1), with remission of five days for the plea entered, leaving a net suspension of five days.

Accordingly, it is, on this 4th day of May, 1964,

ORDERED that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of North Haledon to Harry Beun for premises 778 Belmont Avenue, North Haledon, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, May 11, 1964, and terminating at 2:00 a.m. Saturday, May 16, 1964.

JOSEPH P. LORDI
Director.

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

In the Matter of Disciplinary Proceedings against	)	
DINTY MOORE CORPORATION t/a Dinty Moore's 5215 Bergenline Avenue West New York, N. J.,	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-9, issued by the Board of Commissioners of the Town of West New York.	)	

Alexander A. Abramson, Esq., Attorney for Licensee.
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 24, 1964, it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Pal, Bulletin 1546, Item 11.

Accordingly, it is, on this 4th day of May, 1964,

ORDERED that Plenary Retail Consumption License C-9, issued by the Board of Commissioners of the Town of West New York to Dinty Moore Corporation, t/a Dinty Moore's, for premises 5215 Bergenline Avenue, West New York, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. Monday, May 11, 1964, and terminating at 3:00 a.m. Saturday, May 16, 1964.

JOSEPH P. LORDI
Director.

10. DISQUALIFICATION REMOVAL PROCEEDINGS - ARSON - ORDER REMOVING DISQUALIFICATION - DEFERRED EFFECTIVE DATE.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.	CONCLUSIONS AND ORDER
Case No. 1820	

Halpin and Bailey, Esqs., by Robert E. Bailey, Esq., Attorneys for Petitioner.

BY THE DIRECTOR:

Petitioner's criminal record discloses that on April 17, 1959, following a plea of non vult in a county court to a charge of arson, he was fined $500.00. Since the crime of arson involves the element of moral turpitude (Re Case No. 1609, Bulletin 1400, Item 5), the petitioner was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (46 years old) testified that for the past thirty-four years he has resided in two neighboring municipalities; that he is married and living with his wife; that between August 1962 and January 1964 he was employed as a clerk in licensed premises in this State; that in January 1964 he obtained employment as a solicitor; that, prior to entering upon his duties, he had, at the request of his employer, obtained a solicitor's permit (now cancelled) based on an application in which he denied he was ever convicted of any crime; that he did not believe that his conviction constituted a conviction of a crime because his sentence did not carry any prison term.

Petitioner further testified that, ever since January 31, 1964, when notified by this Division of his ineligibility to be employed by a licensee in New Jersey, he has been unemployed and that, previous thereto, he had no knowledge of his ineligibility for such employment.

Petitioner further testified he is asking for the removal of his disqualification to be free to resume his employment as a solicitor and that, ever since his conviction on April 17, 1959, he has not been convicted of any crime or arrested.

The Police Department of the municipality wherein the petitioner resides reports that there are no complaints or investigations presently pending against the petitioner.

Petitioner produced three character witnesses (a postman, a retired maintenance man, and an operator of a car-washing business) who testified that they have known the petitioner for more than five years last past and, in their opinion, he is now an honest, law-abiding person with a good reputation.

I hesitate to grant the relief sought for two reasons: (1) petitioner's false statement in his aforesaid application for employment by a licensee and (2) although disqualified, he worked for a licensee in this State. I am, however, favorably influenced by the fact that his criminal record shows one conviction, the testimony of his character witnesses, petitioner's

sworn testimony that he was unaware of his ineligibility to be employed by a licensee, and his present attitude. Knowledge of the law, moreover, is not an essential prerequisite to removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7. I, nevertheless, cannot ignore petitioner's false statement under oath in his aforesaid application for employment.

Considering all of the aforesaid facts and circumstances, I shall grant his application but shall withhold relief until fifteen days from the date hereof. Cf. Re Case No. 1242, Bulletin 1087, Item 10.

Accordingly, it is, on this 1st day of May, 1964,

ORDERED that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby removed in accordance with the provisions of R. S. 33:1-31.2, effective Saturday, May 16, 1964; provided, however, that petitioner shall not in the interim be associated with the alcoholic beverage industry in this State in any manner whatsoever.

JOSEPH P. LORDI
Director.

11. DISCIPLINARY PROCEEDINGS - FOUL LANGUAGE AND CONDUCT - SALE TO INTOXICATED PERSONS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against FRANCIS (FRANK) SCOLA & ANGELO SCOLA t/a Scola's Bar & Grille 13 So. Egg Harbor Road Hammonton, N. J., Holders of Plenary Retail Consumption License C-9, issued by the Town Council of the Town of Hammonton.	)	CONCLUSIONS AND ORDER

Cahill, Wilinski & Mohrfeld, Esqs., by Robert Wilinski, Esq., Attorneys for Licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that on April 16-17, 1964 they (1) permitted foul, filthy and obscene language and conduct on the licensed premises, in violation of Rule 5 of State Regulation No. 20; (2) sold drinks of alcoholic beverages to intoxicated persons, in violation of Rule 1 of State Regulation No. 20, and (3) on April 17, 1964, sold six cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended on the first charge for ten days (Re Rogers, Bulletin 1546, Item

8); on the second charge for twenty days (Re Club Del Rose, Bulletin 1556, Item 1), and on the third charge for fifteen days (Re Bun, Bulletin 1556, Item 10), or a total suspension of forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 11th day of May, 1964,

ORDERED that Plenary Retail Consumption License C-9, issued by the Town Council of the Town of Hammonton to Francis (Frank) Scola & Angelo Scola, t/a Scola's Bar & Grille, for premises 13 So. Egg Harbor Road, Hammonton, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. Wednesday, May 13, 1964, and terminating at 2:00 a.m. Monday, June 22, 1964.

JOSEPH P. LORDI
DIRECTOR

12. STATE LICENSES - NEW APPLICATION FILED.

Unique Beverages, 89-91-93 Warwick Street, Newark, N. J. Application filed June 17, 1964 for person-to-person transfer of State Beverage Distributor's License SBD-197 from Benjamin Kralik, t/a Golden Star Bottling Company.

Joseph P. Lordi
Director