

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

BULLETIN 1473

September 25, 1962.

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because the mercantile business to be conducted by appellant was different from that then being conducted by the transferor.

"The ordinance referred to is as follows:

'Sec. 3.40. Limitation on Type of Establishment.

No plenary retail distribution license, after the effective date of this ordinance, shall be issued or transferred in or upon any premises in which any other mercantile business is carried on, except the retail sale of non-alcoholic beverages, as accessory beverages to alcoholic beverages; provided, however, that where prior to the effective date of this ordinance, alcoholic beverages in original containers for off premises consumption were sold and displayed for sale by the holder of such license in or upon any premises in which any other mercantile business is carried on, such sale and display shall be permitted as heretofore, and notwithstanding renewal or transfer from person to person, and place to place, but as presently constituted only, subject to rules and regulations of the Municipal Board of Alcoholic Beverage Control of the City of Newark.'

"Appellants, in their petition of appeal, contend, in substance, that the transfer sought was improperly denied and that action of respondent was without basis in law or fact.

"Respondent insists that, under the circumstances herein, the provision in the aforementioned ordinance 'as presently constituted only' prohibits the person-to-person transfer of the license. Respondent relies upon the interpretation of a release promulgated by the Director with reference to North Central Counties Retail Liquor Stores Association v. Edison et als., 68 N.J. Super. 351, which release stated, among other things:

'The provision of the Alcoholic Beverage Law involved was R.S. 33:1-12(1), which provides, in pertinent part:

"...this license (plenary retail consumption license) shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on..."

'The court held, in effect, that when premises licensed under plenary retail consumption license (and, by parity of reasoning, under plenary retail distribution license in municipalities having an ordinance prohibiting conduct of other mercantile business on such premises) are directly accessible by members of the public from unlicensed premises on which other mercantile business is conducted, and vice versa, such licensing was violative of the Alcoholic Beverage Law.' (Underscoring mine)

"In Retail Liquor Distributors Association of Atlantic City v. Atlantic City et al., Bulletin 99, Item 4, wherein the appellants contended that the respondent erred in issuing a plenary retail distribution license to a department store (excepted in the ordinance) when the ordinance prohibited the issuance of plenary retail distribution licenses to all other premises where any other mercantile business of any kind, nature or description was carried on. Commissioner Burnett, in reversing the action of the local issuing authority, stated that:

'The requirement that distribution licenses be issued only to stores devoted exclusively to liquor is supported by a reasonable social policy. The exception of department stores, however, finds no support in social policy and is merely an attempt to grant a special privilege to a particular person or group of persons and to the exclusion of others substantially similarly situated. If the sale of alcoholic beverages in premises where groceries, drugs, etc. are sold is socially undesirable, then its sale in a department store, where all types of mercantile articles are sold, is at least equally undesirable.'

"In Re West New York, Bulletin 141, Item 10, in ruling on a proposed ordinance submitted for his consideration, Commissioner Burnett stated:

'...there is no authority conferred to impose the restriction with respect to some mercantile businesses and not others. If a municipality desires to restrict plenary retail distribution licenses to the sale of alcoholic beverages exclusively, it must prohibit all other mercantile business without discrimination. It cannot allow the conduct of some, such as in delicatessens and food stores, and prohibit the conduct of others. The statute declares that at the option of the municipal governing body, the conduct of all other mercantile business may be denied to distribution licenses as a class. It provides for no exceptions. Hence, the exceptions cannot be approved. Special privileges may not be conferred upon certain groups at the expense of others equally well qualified and standing essentially in the same position. See re Verona, Bulletin 105, Item 5 and the items cited therein.

'Now, as regards the proposed ordinance:

'Section 1 of the ordinance would provide that no plenary retail distribution license shall thereafter be issued or transferred to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on. Section 2, that no present licensee may change his business so as to include the carrying on of any other mercantile business. Section 3, that those presently conducting other mercantile business may obtain renewals allowing them to continue doing so.

'Section 1 will be approved. It is, according to the statute, within your legal power to enact. Section 2 also will be approved. Section 1 restricts only those distribution licenses issued after the effective date of the ordinance and Section 2 prevents present license

holders from adding other mercantile lines. Thus, distribution licensees presently conducting other mercantile businesses could continue to do so until the expiration of their licenses on June 30th next, at which time they, as well as all others, would have to conform with Section 1. Each year all licenses are issued new. By allowing present license holders until June 30th to segregate their alcoholic beverage businesses, you will have given them ample time in which to comply.

'But Section 3 which would exempt those presently conducting other mercantile business from complying with the regulation at any time in the future, is disapproved. The purpose of the regulation in the first place is to divorce the sale of alcoholic beverages from the sale of other commodities so that persons desiring to purchase one, need not of necessity be brought into contact with the other. I assume that your Board of Commissioners determined that the public good required this segregation. But what is required of one licensee for the public good must also be required of the others. It is not necessary, in order to save present licensees from undue economic loss, to permit them for all time to conduct their businesses in a way that the governing body has declared to be socially undesirable. The most they are entitled to, as a matter of fairness, is a reasonable opportunity in which to liquidate their investments and to alter the conduct of their businesses so as to comply. This you have given them by wording as you did Sections 1 and 2. Anything more would intrench present licensees with special privileges and discriminate unfairly against new licensees of the same class. Section 3 must, therefore, be excised.'

"Ordinances must be uniform, fair and impartial in their operation. They must not discriminate in favor of one person or class of persons over others. And, although the governing body may classify for the purpose of regulation, such classification must have some reasonable relation to the end in view. A classification manifestly has no such reasonable relation where it forbids one person to carry on the same business on the ground that it is dangerous to the community, and allows another person similarly situated to carry on the same business simply because he happens to be engaged in it at the time of the passage of the ordinance. Standard Oil Co. v. City of Charlottesville, 42 F.(2d) 88 and cases cited therein. Also Cf. 55 A.L.R. 252; 37 Am. Jur. 777.

"Under the circumstances, I am of the opinion that the ordinance in question is unreasonable and inapplicable with respect to the person-to-person transfer sought. Blanck et al. v. Mayor and Borough Council of Magnolia et als., 73 N.J. Super 306 (reprinted in Bulletin 1443, Item 1). Thus, I recommend that the action of the respondent be reversed and that the transfer sought by appellants be granted."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the record herein, including the exhibits and the argument of the respective attorneys, I concur in the findings and conclusions of the Hearer and adopt his recommendation. Hence I shall reverse the action of the respondent in this case.

It would be an empty gesture at this time to order the granting of appellants' application for transfer of the 1961-62 license. However, the pertinent order of reversal herein will give appellants the standing of a licensee as of June 30, 1962, and respondent shall grant appellants' renewal application if timely filed.

Accordingly, it is, on this 23rd day of July 1962,

ORDERED that the action of the respondent in denying the appellants' application for the person-to-person transfer of the 1961-62 license be and the same is hereby reversed; and it is further

ORDERED that the respondent shall grant the renewal application of appellants for the 1962-63 license if said application is timely filed and all necessary prerequisites are complied with.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - POSSESSION OF INDECENT MATTER - LICENSE SUSPENDED FOR 65 DAYS - NO REMISSION FOR PLEA ENTERED TO ONLY ONE CHARGE.

In the Matter of Disciplinary Proceedings against
Novelty Inn (A Corporation)
85 West Main Street
Rahway, New Jersey
Holder of Plenary Retail Consumption License C-10, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway.

CONCLUSIONS
AND
ORDER

Novelty Inn (A Corporation), by Edward Bodnar, President.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

licensee: "The following charges were preferred against the

"1. On April 6, 1962, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

Four quart bottles labeled "Fleischmann's Preferred Blended Whiskey, 90 Proof",

Four quart bottles labeled "Four Roses Blended Whiskey, 86 Proof",

One quart bottle labeled "Schenley Reserve Blended Whiskey, 86 Proof",

One 4/5-quart bottle labeled "Schenley Reserve Blended Whiskey, 86 Proof",

Two 4/5-quart bottles labeled "Haig & Haig
Finest Pinch Blended Scots Whisky, 86.8
Proof",

Two 4/5-quart bottles labeled "Chivas Regal
Blended Scotch Whisky, 86 Proof",

One 4/5-quart bottle labeled "Blended Scotch
Whisky Johnnie Walker Black Label, 86.8 Proof"
and

One 4/5-quart bottle labeled "Teacher's High-
land Cream Perfection of Blended Scotch Whisky,
86 Proof";

in violation of Rule 27 of State Regulation No. 20.

'2. On May 28, 1962, and prior thereto, you allowed permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting pictures and representations, viz., a group of photographic illustrations of male and female persons in obscene, indecent, filthy, lewd, lascivious and disgusting poses, positions, practices and acts; in violation of Rule 17 of State Regulation No. 20.'

"The licensee pleaded non vult to Charge 1 and not guilty to Charge 2.

"To substantiate the contested charge, the Division called as its witness an ABC agent, hereinafter referred to as Agent P.

"Agent P testified that at about 1:20 P.M. on May 28, 1962, he visited the licensed premises to make a routine check of the same; that Andrew Bodnar was tending bar; that he observed a safe with its front door open in the stock room of the licensed premises; that the safe contained a locked compartment, the key to which he learned was in the possession of Edward Bodnar, president of the corporate-licensee; that Edward Bodnar was summoned to and arrived at the premises at about 1:30 P.M.; that at his request, Edward Bodnar opened the locked compartment and that the compartment contained 'twenty four Polaroid-type pornographic pictures in nature', divided into three sets, each of which was enclosed in white paper.

"It further appears that Edward Bodnar gave the agent a signed, sworn statement (in evidence) setting forth therein that on or about May 7, 1962, the pictures were left with him for safekeeping by a patron known to him as 'Happy' and that he had placed the pictures in the locked compartment 'so that nobody else would see them. I did not show them to anyone.'

"Edward Bodnar, on behalf of the licensee, testified that he had not seen the pictures prior to the time they were shown to him by the agent on May 28, 1962; that if he had known that the pictures were obscene, he would not have kept them in the premises and that 'I didn't know whether they were family pictures or what.'

"On cross examination, Mr. Bodnar testified that the aforesaid patron had visited the premises on about fifteen occasions prior to May 28, 1962, ever since which time he has not seen him; that the patron stated he would return for the pictures in two weeks and that the pictures were in an unsealed envelope.

"I have examined the photographs and find that they are il-

lustrations of a male and females in obscene, filthy and disgusting poses and positions.

"Licensee contends that Charge 2 does not constitute a violation under the rules because he had no knowledge that the pictures were obscene prior to May 28, 1962. There is no merit to this contention. Cf. Re Kulinski, Bulletin 1272, Item 8. Moreover, I find as a fact from the testimony that the licensee knew that the photographs were obscene from the very moment he had received them.

"I am satisfied that the Division has amply proven the licensee guilty of the contested charge and recommend that it be found guilty as charged therein.

"Licensee has no prior adjudicated record. It is recommended, therefore, that an order be entered suspending the license for fifty days on Charge 1 (cf. Re Broad and Kinney Bar, Inc., Bulletin 1286, Item 4; cf. Re Bowl More Restaurant Corp., Bulletin 1410, Item 4) and for fifteen days on Charge 2 (Re The Lagoon, Inc., Bulletin 1438, Item 10), making a total suspension of sixty-five days, without remission for the confessional plea entered herein, since it was necessary to try the affiliate charge. Re Konner's Grill, Inc., Bulletin 1359, Item 7."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 25th day of July, 1962,

ORDERED that Plenary Retail Consumption License C-10, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway to Novelty Inn (A Corporation), for premises 85 West Main Street, Rahway, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m., Monday, July 30, 1962, and terminating at 2:00 a.m., Wednesday, October 3, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - COMBINATION SALE IN VIOLATION OF RULE 19 OF STATE REGULATION NO. 20 - DISCOUNT GRANTED IN VIOLATION OF RULE 20 OF STATE REGULATION NO. 20 - SALE TO MINOR - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against
 Elmer Vamos
 t/a Ramble Inn
 Main Street
 Lebanon Township
 PO New Hampton, New Jersey
 Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of Lebanon Township.

CONCLUSIONS

AND

ORDER

Herrigel and Herrigel, Esqs., by A. Warren Herrigel, Esq.,
 Attorneys for Licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The following charges were preferred against the licensee:

- '1. On Friday, March 23, 1962, at about 1:00 P.M. and again at about 7:00 P.M., you, directly or indirectly, sold and offered for sale at retail alcoholic beverages for consumption off your licensed premises except at specified prices per bottle or per case, viz., on each occasion, a pint bottle of Seagram's Seven Crown Blended Whiskey and a half case (twelve 12-ounce cans) of Schaefer beer as a "combination sale" at a single aggregate price; in violation of Rule 19 of State Regulation No. 20.
- '2. On Friday, March 23, 1962, at about 1:00 P.M. and again at about 7:00 P.M., you, in connection with each of the above mentioned sales and offers for sale of alcoholic beverages at retail for consumption off your licensed premises, directly or indirectly, offered and furnished a discount in price; in violation of Rule 20 of State Regulation No. 20.
- '3. On March 23 and 24, 1962, and on divers days prior thereto, 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., Samuel ---, age 19 and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises on divers dates prior to March 23, 1962; in violation of Rule 1 of State Regulation No. 20.
- '4. On Saturday, March 24, 1962, at about 12:30 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., twelve 12-ounce cans of Schaefer beer, at retail, in

their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of such alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

- '5. On Sunday, April 1, 1962, at about 2:00 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., twenty-four 12-ounce cans of Schaefer beer, at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of such alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.'

"The licensee pleaded non vult to Charge 5; non vult to that part of Charge 3 which alleges that the licensee sold alcoholic beverages to Samuel --- (age 19) on divers days prior to March 23, 1962; not guilty to the balance of Charge 3 and not guilty to the remaining charges herein.

"To substantiate the contested charges the Division called as its witnesses Samuel ---, Donald --- and an ABC agent hereinafter referred to as Agent D.

"Samuel --- (age 19, born August 10, 1942) testified that he knew the licensee (identified at the hearing) for over six months; that on Friday, March 23, 1962, at about 1:00 p.m., and again at about 7:00 p.m., he, Donald and two other companions drove to the licensed premises; that he parked his car in the vicinity thereof; that he and his three companions entered the licensed premises; that Elmer Vamos (the licensee) was tending bar; that on each visit he asked Mr. Vamos if he could have two six-packs of Schaefer beer (minimum filed price \$1.10 each) and a pint of Seagram's 7 Whiskey (minimum filed price \$3.00); that on both occasions the licensee replied that he would place the alcoholic beverages in a package on the side porch of the premises; that in payment of each purchase he gave the licensee a five-dollar bill and received five cents in change; that he did not observe what the licensee did with the five-dollar bills; that, after each purchase, his companions returned to the car; that he went to the porch, picked up the package, carried the same into his car and rejoined his friends; that he examined the contents of both packages; that they contained aforesaid alcoholic beverages and that he and his companions consumed the same.

"Samuel further testified that on Saturday, March 24, 1962, at about 1:00 a.m., he drove to the licensed premises with Donald and another companion; that he, followed shortly by his two friends, entered the premises; that the licensee was tending bar; that he paid the licensee \$2.20 for two six-packs of Schaefer beer; that the licensee stated that the beer would be in a package on the side porch of the premises, following which the trio left the premises; that his two friends returned to the car; that, as heretofore, he went to the porch, picked up the package and carried it into his car; that he later examined the same; that the package contained two six-packs of Schaefer beer and that on none of his aforesaid visits did the licensee require him to make a written representation of his age.

"Samuel further testified that, after he and his two companions had consumed some of the beer, they were taken into custody by two police officers in Washington Borough (about 15 miles from the licensed premises) and that the officers had taken the remaining cans of beer from the car.

"Samuel further testified that, for over a period of about four months prior to March 1962, the licensee had served him alcoholic beverages over the bar on about thirty occasions; that on one of these visits the licensee had questioned him about his age; that he was noncommittal with respect thereto; that on or about March 2, 1962, he, Donald and Gilbert Smith entered the licensed premises; that he and Gilbert asked the licensee for a glass of beer; that the licensee refused to serve them over the bar and stated, 'If you want anything, order it and I will put it on the back porch'; that the licensee informed them that the reason for this change in service was due to some problems he was experiencing with some boys from Califon.

"On cross examination Samuel reiterated the pertinent parts of his direct examination and further testified that the retail price of a six-pack of Schaefer beer is \$1.10; that he did not know the retail price of a pint of Seagram's 7 Whiskey; that he never discussed prices with the licensee; that he did not know whether the licensee placed the two \$5 bills in his cash register; that on occasions he had also purchased alcoholic beverages in other licensed premises; that in January 1962, the licensee, after serving him a glass of beer, instructed him 'if anyone walked in strange to get up and walk away', and that the reason why the licensee discontinued to serve him over the bar was 'because he was worried about getting caught giving it to me over the bar'.

"On further cross examination, Samuel testified that on January 13, 1961, he pleaded guilty to a charge of breaking, entering and larceny (North Hunterdon Municipal Court, fined \$25 plus \$10 costs); that on April 11, 1961, he pleaded guilty to possession and consumption of alcoholic beverages (in aforesaid Municipal Court, fined \$50 and \$10 costs); that he did not obtain these alcoholic beverages at the licensed premises, and that on August 19, 1961, he pleaded guilty in the Municipal Court of Central Warren County to three motor vehicle violations.

"Donald testified that he was 17 years old, substantially corroborated the testimony of Samuel and further testified that he looked into each of the packages that Samuel picked up from the porch; that each package contained the alcoholic beverages testified to by Samuel and that he had consumed a portion of the beer from the same.

"On cross examination Donald reaffirmed the relevant parts of his testimony on direct examination.

"Agent D testified that on Wednesday, April 4, 1962, he, accompanied by another ABC agent, Samuel and Donald, drove from the Washington Borough police headquarters to the licensed premises; that, upon arrival in the immediate vicinity of the premises, Samuel pointed out to him the side porch where the licensee had placed the alcoholic beverages in question following which the quartet entered the premises; that he identified himself to Elmer Vamos who was behind the bar; that he informed the licensee that he was investigating a complaint against him for alleged sales of alcoholic beverages to Samuel; that Samuel, in the presence of the licensee, identified the licensee as the person who had sold him the alcoholic beverages on March 23 and March 24 aforesaid; that Donald made a similar identification of Vamos; that Vamos denied ever selling any package goods to Samuel; that Vamos stated, 'That boy is nineteen, I haven't served him anything over the bar in the last three months'; that about three months ago he learned Samuel was 19 years of age and that Samuel on one of his visits to the premises displayed a false identification to him.

"Agent D further testified that at the times in question, the minimum consumer resale price was \$3.00 for a pint bottle of Seagram's 7 Whiskey and \$1.10 for a six-pack of Schaefer beer.

"Elmer Vamos, testifying on his behalf, repeated the denials he had made to the agent and further stated that Samuel began visiting the licensed premises about the middle of 1961; that 'I thought he was 21'; that he learned Samuel was 19 years old in January 1962, when Samuel was hospitalized as the result of an automobile accident following a visit to the premises; that Samuel next visited the licensed premises in the latter part of February 1962, at which time he informed him 'There are no minors being served in this place'; that, in the afternoon of March 23 aforesaid, Samuel, Donald and two others came into the premises; that each was served soda at the bar; that he is unable to recall whether they returned to the premises later in the day or in the early morning of March 24, and that he was on duty behind the bar during said period of time.

"Mr. Vamos further testified that on March 9, 1962, and prior thereto, the 'Califon gang' had been creating disturbances in the licensed premises; that on March 14 he asked Detective York, of the New Jersey State Police at Clinton, for assistance; that on March 16, Detective York visited the premises, told 'these boys' to discontinue their patronage and informed him that he was serving minors; that the following day Detective York informed him that four or five boys were using false I.D. cards and that, ever since March 17, 1962, he has not served any minors.

"Vamos further testified that he rings up each sale of alcoholic beverages on his cash register; that, when a patron makes more than one purchase, he rings up the aggregate sum thereof; that, occasionally on busy nights, he accumulates the proceeds of small sales and rings up the total amount; that, as a rule, he is busy on Friday nights; that this was not the case on the Friday and Saturday nights in question; that the tape (placed in evidence) reflects the sales of alcoholic beverages for March 23 and March 24; that the tape does not show any sale of \$4.95, \$5.20 or \$2.20.

"Norton H. Euart, a detective sergeant of the State Police, testifying from a daily record book kept by the State Police, stated that on March 10, 1962, at 11:50 p.m., Mr. Vamos requested a patrol check of the premises in anticipation of a possible disturbance therein by some patrons whom he does not intend to serve; that two troopers were detailed in the area, checked the premises and reported 'All Quiet'; that on March 14, 1962, at 12:45 a.m., Mr. Vamos came to the station, stated he anticipated trouble on Friday night, March 16, 1962, and was advised that patrols would be available.

"This case presents a conflict between the testimony of the licensee and the two minors. However, I find as a fact, from the testimony of the minors, that (a) on March 23, at 1:00 p.m., and again at 7:00 p.m., licensee sold to Samuel in the licensed premises a combination of alcoholic beverages at a discount, in violation of Rules 19 and 20 of State Regulation No. 20; (b) on March 23 and March 24 the licensee sold and delivered alcoholic beverages in his licensed premises to Samuel, in violation of Rule 1 of State Regulation No. 20; (c) on Saturday, March 24, 1962, at about 12:30 a.m., the licensee sold to Samuel in the licensed premises alcoholic beverages for off-premises consumption, in violation of Rule 1 of State Regulation No. 38. I do not believe that the minors had any motive to accuse the licensee unjustly, nor do I believe that they conspired against the licensee.

"After reviewing the evidence, the exhibit and the oral arguments of counsel, I believe that the Division has established

the truth of the contested charges by a fair preponderance of the believable evidence, and I recommend that the licensee be found guilty of the contested charges.

"Licensee has no prior adjudicated record. It is further recommended, therefore, that an order be entered suspending the license for ten days on Charges 1 and 2 (Re Golden, Bulletin 868, Item 9); for fifteen days on Charge 3 (Re New Raritan Liquors, Inc., Bulletin 1453, Item 9) and for fifteen days on Charges 4 and 5 (which might well have been one charge--Re Sabo, Bulletin 1449, Item 3), making a total suspension of forty days, without remission for the confessive pleas entered since it was necessary to try the affiliate charges. Re Konner's Grill, Inc., Bulletin 1359, Item 7."

Pursuant to Rule 6 of State Regulation No. 16, exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for the licensee.

Having carefully considered the record herein, the Hearer's Report, the exceptions and written argument thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein.

However, for clarity and explanation as to penalty, it is pointed out with respect to Charges 1 and 2 that, usually, a separate penalty of suspension of license is imposed for each violation charged, except where, as here, the multiple charges are based on a single kind or type of violation, e.g., a so-called "price violation", only one penalty is imposed (Re Golden, supra; cf. Re Wilson, Bulletin 1437, Item 5); also, with respect to entry of a non vult plea to part of the charges and not guilty to the other part, that it is established Division practice, where the licensee is found not guilty on the contested charges, to take the non vult plea into account in fixing penalty by remitting part of the usual suspension (Re Wilcox, Bulletin 1252, Item 4) but not so where the licensee is found guilty on the contested part of the case (Re Konner's Grill, Inc., supra).

Accordingly, it is, on this 19th day of July, 1962,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of Lebanon Township to Elmer Vamos, t/a Ramble Inn, for premises on Main Street, Lebanon Township, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m., Thursday, July 26, 1962, and terminating at 2:00 a.m., Tuesday, September 4, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

5. ACTIVITY REPORT FOR AUGUST 1962

ARRESTS:		
Total number of persons arrested	-----	23
Licenses and employees	----- 8	
Bootleggers	----- 15	
SEIZURES:		
Stills - over 50 gallons	-----	1
- 50 gallons or under	-----	1
Mash - gallons	-----	450
Distilled alcoholic beverages - gallons	-----	49.040
Wine - gallons	-----	.375
Brewed malt alcoholic beverages - gallons	-----	22.596
RETAIL LICENSEES:		
Premises inspected	-----	734
Premises where alcoholic beverages were gauged	-----	642
Bottles gauged	-----	9,759
Premises where violations were found	-----	74
Violations found	-----	116
Unqualified employees	----- 65	Other mercantile business
Reg. #58 sign not posted	----- 24	Prohibited signs
Application copy not available	----- 7	Other violations
Disposal Permit necessary	----- 3	14
STATE LICENSEES:		
Premises inspected	-----	7
License applications investigated	-----	11
COMPLAINTS:		
Complaints assigned for investigation	-----	372
Investigations completed	-----	464
Investigations pending	-----	172
LABORATORY:		
Analyses made	-----	243
Refills from licensed premises - bottles	-----	50
Bottles from unlicensed premises	-----	33
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	7
Persons fingerprinted for non-criminal purposes	-----	302
Identification contacts made with other enforcement agencies	-----	197
Motor vehicle identifications via N.J. State Police teletype	-----	2
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	23
Violations involved	-----	24
Sale during prohibited hours	----- 17	Failure to close prem. during prohibited hours
Sale to minors	----- 6	1
Cases instituted at Division	-----	19
Violations involved	-----	32
Sale during prohibited hours	----- 5	Permitting lottery activity (numbers) on premises
Hindering investigation	----- 5	2
Possessing liquor not truly labeled	----- 3	Permitting foul language on premises
Sale below filed price	----- 2	1
Sale to minors	----- 4	Failure to afford view into premises during prohibited hours
Sale outside scope of license	----- 2	1
Permitting bookmaking on premises	----- 2	Sale to intoxicated person
Fraud in application	----- 2	1
Act of violence	----- 1	Permitting hostesses on premises
		1
		Failure to close premises during prohibited hours
		1
		Serving women at bar (local Reg.)
		1
Cases brought by municipalities on own initiative and reported to Division	-----	15
Violations involved	-----	16
Sale to minors	----- 8	Permitting bookmaking on premises
Permitting brawls on premises	----- 2	1
Sale during prohibited hours	----- 2	Conducting business as a nuisance
Permitting lottery on premises	----- 1	1
		Failure to close premises during prohibited hours
		1
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	46
Appeals	----- 49	Eligibility
Disciplinary proceedings	----- 28	6
		Seizures
		3
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-----	1,486
Licenses	----- 6	Wine permits
Solicitors' permits	----- 42	2
Employment permits	----- 296	Miscellaneous permits
Disposal permits	----- 75	137
Social affair permits	----- 494	Transit insignia
		425
		Transit certificates
		11
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued	----- 89	Disciplinary proceedings instituted
Premises inspected	----- 843	2
Premises where violations were found	----- 20	Violations involved
Number of violations found	----- 22	3
Enforcement files established	----- 20	Redemption of prize for money
		1
		Operating controlled game
		1
		Operating unlicensed game
		1

WILLIAM HOWE DAVIS
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

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

In the Matter of Disciplinary Proceedings against)

Morris A. Perkel and Angelo R. Soscia)
1 Corbin Avenue)
Jersey City 6, New Jersey)

CONCLUSIONS

AND

Holders of Plenary Retail Consumption License C-238, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

ORDER

Licensees, Pro se.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on June 5, 1962, they possessed on the licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Licensee Morris Perkel, as an individual licensee, had his license suspended by the local issuing authority for five days, effective May 11, 1942, for an "hours" violation. Licensees had their license suspended by the local issuing authority for five days, effective May 19, 1952, for an "hours" violation, hindering investigation and permitting a brawl on the licensed premises. Inasmuch as the above violations are dissimilar in character to that now under consideration and occurred more than five years ago, they will not be considered in fixing the penalty herein. I shall suspend the license for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Hibbits, Bulletin 1451, Item 9.

Accordingly, it is, on this 16th day of July, 1962,

ORDERED that Plenary Retail Consumption License C-238, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Morris A. Perkel and Angelo R. Soscia for premises 1 Corbin Avenue, Jersey City, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, July 23, 1962, and terminating at 2:00 a.m., Saturday, July 28, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

William Schmelz)
t/a Schmelz's Tavern)
226 Webster Avenue)
Jersey City, N. J.,)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-442, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Licensee, Pro se
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

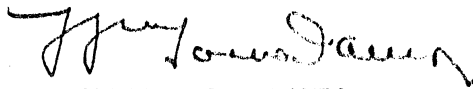
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 10, 1962, he possessed on the licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a prior adjudicated record of suspension of license for five days effective June 11, 1947, imposed by the local issuing authority for sale of alcoholic beverages during prohibited hours. However, since the dissimilar violation occurred more than five years before the instant violation, it will not be considered in fixing the penalty to be imposed, viz., suspension of license for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Hibbits, Bulletin 1451, Item 9.

Accordingly, it is, on this 16th day of July 1962,

ORDERED that plenary retail consumption license C-442, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to William Schmelz, t/a Schmelz's Tavern, for premises 226 Webster Avenue, Jersey City, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, July 23, 1962, and terminating at 2 a.m. Saturday, July 28, 1962.


WILLIAM HOWE DAVIS
Director