

26 Rose Avenue,
Madison,
STATE OF NEW JERSEY
Morris County, New Jersey.
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

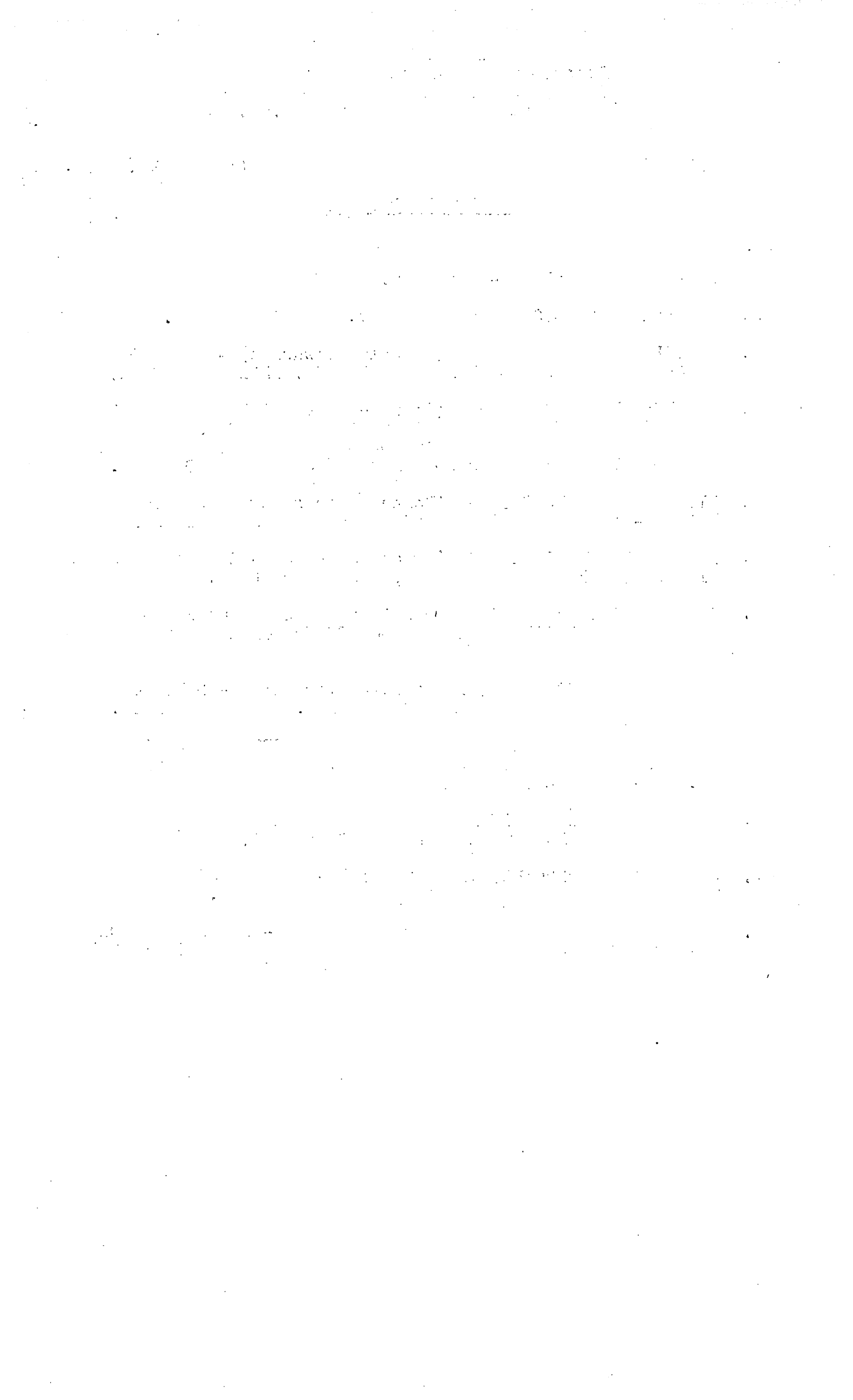
BULLETIN 1035

October 25, 1954.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1035

October 25, 1954.

1. APPELLATE DECISIONS - AQUINO v. BELLEVILLE.

CYRUS AQUINO, ADMINISTRATOR OF THE)
ESTATE OF JOSEPHINE C. AQUINO,
TRADING AS BELL LIQUORS)

Appellant)

v.)

BOARD OF COMMISSIONERS OF THE)
TOWN OF BELLEVILLE)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Robert C. Gruhin, Esq., Attorney for Appellant.
Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's plenary retail distribution license for a period of ten days after it had adjudged appellant guilty in disciplinary proceedings on a charge alleging that on October 23, 1953, he sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20. During the pendency of this appeal the license was transferred to Cyrus Aquino, individually.

Upon the filing of the appeal an order dated February 26, 1954, was entered staying the suspension pending the determination of this appeal. R. S. 33:1-31.

Appellant contends that respondent's action was contrary to the weight of the evidence.

On this appeal the matter was heard de novo. Rule 6 of State Regulations No 15. In addition, the transcript of the testimony below was introduced without objection.

The minor, who was eighteen years of age on the date in question, testified that some time between 11 a.m. and Noon on October 23, 1953, he drove from his home (in Newark) to the vicinity of appellant's licensed premises; that he was accompanied by his wife and a friend; that, while they remained in the car, he entered appellant's licensed premises where he purchased a pint bottle of Seagram's 7 Crown whiskey from a male clerk; that he handed the clerk \$5 which he had received from his friend; that the price of the whiskey was \$2.83 but the clerk rang up \$2.85 on the cash register, and that he received \$2.17 in change. He later identified the clerk as Renal Patetta who, admittedly, is one of appellant's employees. The minor further testified that he took his wife to her father's home in East Orange and returned to Newark where he and his friend entered a poolroom; that they took the pint bottle of whiskey into the poolroom where they opened it and consumed part of its contents; that shortly thereafter the police entered the poolroom, seized the bottle of whiskey (which they had him initial) and took him to Police Headquarters.

On cross-examination he admitted that there were other full bottles of whiskey in the poolroom at the time he was apprehended but claimed that they were not Seagram's 7 Crown whiskey and were 4/5 quart bottles, not pint bottles. He further testified that, so far as he knew, those bottles were not open.

The chemist for the Police Department of the City of Newark who analyzed the contents of the pint bottle of whiskey testified that it contained 43.18% of alcohol by volume and thus was an alcoholic beverage. On cross-examination he admitted that he had received the bottle in an envelope marked with the minor's name; that he did not know whether it was in fact Seagram's 7 Crown whiskey; that the bottle had contained approximately four and one-half ounces when he received it. The bottle which was introduced in evidence was in fact a bottle labeled Seagram's 7 Crown whiskey and bore a small sticker-label bearing the name "Bell Liquors", similar to labels introduced in evidence by appellant.

A detective of the Belleville Police Department testified that on October 26, 1953, he had entered appellant's licensed premises with the minor and that the minor had pointed out to him Patetta as the person who had sold him the bottle of whiskey as alleged in the charge. On cross-examination he admitted that Patetta had immediately denied having seen the minor before, and that Patetta was fully cooperative.

Appellant testified in his own behalf, as did Patetta and another clerk, Gene Bond.

Appellant testified that he had been out of the country on the day in question, and identified Patetta and Bond as his employees who work upon the licensed premises during his absence. He testified with respect to the method of placing sticker-labels on bottles of alcoholic beverages sold upon his licensed premises and explained the use of a removable portion of the sticker-label in the perpetual inventory. Sample sticker-labels, together with the portions of such labels which are removed at the time of sale and in use during the period in question, were introduced in evidence together with the perpetual stock record of Seagram's 7 Crown whiskey pints and the cash register tape for October 23, 1953. On the basis of said inventory he testified that no pint bottle of Seagram's 7 Crown whiskey had been sold on that day.

Patetta corroborated the testimony of appellant with respect to a perpetual inventory and the aforementioned exhibits, and denied that any Seagram's 7 Crown pint bottles of whiskey had been sold on the day in question. He further testified that he had told the detectives that he had not previously seen the minor; that he had given a statement to that effect; that Bond, the other clerk, uses a different symbol on the cash register; that \$2.83 is the price for several other items, and claimed that none of the items of that amount appearing on the cash register tape for the day in question could represent a sale of a pint of Seagram's 7 Crown whiskey because the inventory would be "out of the way" at the end of the month.

Bond admitted that he is one of appellant's employees and corroborated the testimony of the other witnesses with respect to the inventory system. While admitting that he had been in the licensed premises on the day in question between 11 a.m. and 1 p.m., he denied that he had seen the minor or that he had ever sold him a pint bottle of Seagram's 7 Crown whiskey. He also denied that he had seen Patetta sell the minor such a bottle of whiskey. While he admitted that he may have been in the back room when a sale was made, he testified that he could see the cash register from the rear part of the licensed premises.

Appeals to the Director from the action of the local issuing authority are heard de novo and the burden of establishing that the action of such issuing authority was erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 15; Neu v. Irvington, Bulletin 923, Item 3; Laurence Harbor Amusement Corp. v. Township of Madison, Bulletin 955, Item 1; Roth v. Newark, Bulletin 993, Item 5; Tumulty v. Dunellen, Bulletin 1024, Item 3.

The case for respondent rests primarily upon the testimony of the minor. Respondent did not produce as witnesses either the minor's wife or his male companion who allegedly accompanied him to appellant's licensed premises on the day in question. Their testimony would have been most valuable. Nevertheless, certain circumstances, including the fact that the seized bottle contained one of appellant's sticker-labels, tend to corroborate the testimony of the minor which was basically and substantially identical at the hearing below and at the hearing on this appeal. Furthermore, a careful examination of all of the evidence submitted by appellant with respect to his perpetual inventory and other business records fails to support appellant's contention that the alleged sale could not have been made on the day in question.

After carefully considering the entire record before me I am unable to find that respondent's finding of guilt was erroneous and should be reversed.

The action of respondent will be affirmed, the appeal will be dismissed, and the ten-day suspension originally imposed will be reimposed.

Accordingly, it is, on this 8th day of October, 1954,

ORDERED that the ten-day suspension by respondent of License D-5, for the 1953-54 licensing period, issued to appellant, Cyrus Aquino, Administrator of the Estate of Josephine C. Aquino, trading as Bell Liquors, for premises 2 Bloomfield Avenue, Belleville, be and the same is hereby restored and reimposed against License D-5, for the 1954-55 licensing period, issued to appellant, Cyrus Aquino, individually, trading as Bell Liquors, for the same premises, to commence at 9 a.m. October 18, 1954, and terminate at 9 a.m. October 28, 1954.

WILLIAM HOWE DAVIS
Director

2. APPELLATE DECISIONS - MORRISSEY v. EGG HARBOR CITY.

DONALD T. MORRISSEY, TRADING AS)
ROCK 'N' ROLL INN)
Appellant)

v.)

COMMON COUNCIL OF THE CITY OF)
EGG HARBOR CITY)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Frank Thompson, Jr., Esq., Attorney for Appellant
Myrtle Frank, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

After the entry of Conclusions and Order dated June 15, 1954, in a previous appeal between the same parties (Bulletin 1022, Item 2), respondent renewed for the present licensing year the plenary

retail consumption license held by Joseph R. Darwicki for premises at 57-59 Philadelphia Avenue and thereafter, on August 12, 1954, denied an application filed by appellant for transfer of the renewed license from Joseph R. Darwicki to appellant for the same premises. This appeal has been filed from the action of respondent in denying said application for transfer.

The petition of appeal alleges that the action of respondent was arbitrary, capricious and unreasonable. The answer alleges that respondent, under the circumstances of the case, acted properly within its discretion in denying said application for transfer.

It appears from the evidence herein that the license in question was transferred in the early part of 1953 from another individual to Joseph R. Darwicki and that, as a result of certain statements allegedly made by present or former members of the City Council concerning said transfer, an indictment has been returned against the City Clerk and a civil action for slander instituted by him against said individuals. Apparently both of these proceedings are still pending. It appears from the resolution denying appellant's present application for transfer that the application was denied "because of the fact that the present licensee (Darwicki) is involved as an important witness in two court proceedings arising out of the circumstances under which the license was transferred to him." However, it further appears from the evidence herein, and it is admitted by respondent, that appellant is fully qualified to hold a license and that he has no connection whatsoever with the pending court proceedings. Appellant has purchased the premises in question, and I can find no valid reason in the record for denying the transfer of the license to him irrespective of the ultimate outcome of the pending court proceedings. I conclude, therefore, that the action of respondent was unreasonable under the circumstances of this case and, hence, said action will be reversed.

Accordingly, it is, on this 11th day of October, 1954,

ORDERED that the action of respondent in denying appellant's application for transfer to him of plenary retail consumption license held by Joseph R. Darwicki, for premises 57-59 Philadelphia Avenue, Egg Harbor City, be and the same is hereby reversed, and respondent is directed to issue forthwith the transfer for which application was made by appellant.

WILLIAM HOWE DAVIS
Director

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

HAZEL LAPADULA, T/a THE TORCH)
St. Hwy. Route #10 & South Salem St.)
Randolph Township, PO Dover, New Jersey)

CONCLUSIONS AND ORDER

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

Hilda H. Less, Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge that she sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to three minors, and

allowed, permitted and suffered the consumption of alcoholic beverages by said minors in and upon her licensed premises; in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on Saturday night, August 21, 1954, at about 9:30 p.m., William --- (age 19) and a female (age 14) visited defendant's licensed premises wherein each was served and consumed several glasses of beer prior to 10 p.m. when they left. Returning to the said premises an hour or so later, they became acquainted with Thomas --- (age 17) and an adult male, all of whom consumed a quantity of beer, served to them prior to 12:30 a.m. Sunday, August 22, when they departed.

Later, accompanied by ABC agents, each minor identified Hazel Lapadula (licensee) and John Quist, her bartender, as the persons who had served the alcoholic beverages.

Defendant has no prior adjudicated record. However, in view of the youthfulness of the female involved, I shall suspend defendant's license for a period of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days. Re Folejewski, Bulletin 790, Item 9.

Accordingly, it is, on this 4th day of October, 1954,

ORDERED that plenary retail consumption license C-9, issued by the Township Committee of Randolph Township to Hazel Lapadula, t/a the Torch, for premises St. Hwy. Route #10 & South Salem Street, Randolph Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. October 11, 1954, and terminating at 2 a.m. November 5, 1954.

WILLIAM HOWE DAVIS
Director

- 4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATIONS - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

TONY'S WHITE TAVERN, INC.)
T/a TONY'S WHITE TAVERN, INC.)
171-173 South Main Street)
Lodi, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-30, issued by the Mayor and Council of the Borough of Lodi.)
- - - - -)

Tony's White Tavern, Inc., by Peter Castiglia, Secy.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On Saturday, September 4, 1954, at about 5:28 A.M., you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and suffered the consumption of such beverages on your licensed premises; in violation of Section 2 of Ordinance No. 775 adopted by the Mayor and Council of the Borough of Lodi on April 12, 1954, which prohibits such activity between the hours of 5:00 A.M. and 6:00 A.M. on Saturdays.

"1. On July 21, 1954, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Gary M. ---, a person under the age of twenty-one (21) years; in violation of Rule 1 of State Regulations No. 20.

"2. On July 12, 1954 and on divers occasions prior thereto, particularly during the month of May 1954 and on June 17, 1954, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Arthur E. ---, a person under the age of twenty-one (21) years; in violation of Rule 1 of State Regulations No. 20."

The file herein discloses that the Roxbury Township Police Department notified this Division that it had information indicating that minors had obtained and consumed a quantity of beer. An investigation was instituted during which the minors mentioned in the charges, both of whom are 17 years of age, were interrogated. Gary --- stated that he had purchased six quarts of beer at defendant's licensed premises on July 21, 1954, and that he and two minor companions drank the beer and became intoxicated. He identified defendant James Kanakis as the person who sold it to him without him being questioned or supplying any information as to his age. James Kanakis admitted the sale, but claimed that the minor exhibited a card indicating that he was over 21 years of age. However, since it appears that the minor did not falsely represent in writing that he was twenty-one years of age or over, defendants have not established a valid defense pursuant to R. S. 33:1-77. Re Villa Valley Inn, Bulletin 1002, Item 1; Re Koper, Bulletin 962, Item 8.

Arthur --- stated that he had bought 24 cans of beer at defendant's licensed premises in May 1954 (date unspecified) and 12 cans of beer on June 17, 1954 and that he had purchased a bottle of wine at said premises on July 12, 1954. He identified Christ Kanakis as the person who made the sales on June 17 and July 12, but could not identify the person who made the sale in May. Arthur further stated that he was not questioned as to his age. The licensees claimed that Christ Kanakis never waits on customers.

Defendants have no prior adjudicated record. However, in view of all of the circumstances, including the number of sales involved and the fact that, in each instance, the minor was only 17 years of age, 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 22nd day of September 1954,

ORDERED that Plenary Retail Distribution License D-4, issued by the Township Committee of the Township of Roxbury to James Kanakis and Christ Kanakis, t/a Community Delicatessen and Luncheonette, Route #46, Roxbury Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m. September 29, 1954 and terminating at 9:00 a.m. October 14, 1954.

WILLIAM HOWE DAVIS
Director

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHARLIE D. CARPENTER)
T/a CHARLIE'S PLACE)
Route #206)
Byram Township)
PO RD Stanhope, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Byram.)
-----)

Mackerley and Friedman, Esqs., by Peter Friedman, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging (1) that on June 6, 1954, and on divers dates prior thereto, he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a minor, and allowed, permitted and suffered the consumption of alcoholic beverages by said minor in and upon his licensed premises and (2) that on May 30, 1954, and on divers dates prior thereto, he did likewise respecting another minor; both in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that ABC agents obtained a statement from William ---, 20 years of age, wherein he says that on Sunday, June 6, 1954 at about 3:45 a.m., he, Thomas ---, age 18, and Robert A. Brown, an adult, visited defendant's licensed premises and that Thomas --- departed within a few minutes. This statement further sets forth that Brown met therein a female who ordered and paid for two rounds of bottle beer; that a bartender placed the rounds of beer, when ordered, on the bar without making inquiry as to the ages of the customers and that Brown each time passed to William a bottle of the beer which William consumed. The service of the beer, although not a sale to the minor in the ordinary sense, constituted a sale as well as service to the minor for the purpose of the Alcoholic Beverage Law. Grippio v. Hoboken, Bulletin 999, Item 2. William further stated that he had been served whiskey sours, shots of whiskey and beer on two or three previous occasions by a bartender in defendant's premises.

The file further discloses that ABC agents obtained a statement from said Thomas ---, wherein he says that on eight different occasions, commencing in July, 1953 and terminating on May 30, 1954, he had purchased beer in defendant's premises, served by both the licensee and his bartender, and that no inquiry was ever made as to his age.

Defendant has no prior adjudicated record. However, in view of all the circumstances, including the number of sales, I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 23rd day of September 1954,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Byram to Charlie D. Carpenter, t/a Charlie's Place, Route #206, Byram Township, be and the same is hereby suspended for ten (10) days, commencing at 5:00 a.m. October 4, 1954, and terminating at 5:00 a.m. October 14, 1954.

WILLIAM HOWE DAVIS
Director

7. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

INDIAN LAKE COMMUNITY CLUB, INC.)
East Shore Road)
Denville, N. J.)

CONCLUSIONS AND ORDER

Holder of Club License CB-240, issued by the Director of the Division of Alcoholic Beverage Control.)

Joseph P. Hanrahan, Esq., Trustee and Attorney for Defendant-licensee.

Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On July 31, and August 14, 1954, you sold, served and delivered and allowed, permitted and suffered the sale service and delivery of alcoholic beverages to persons not bona fide members of your club or bona fide guests of such members; in violation of Rule 8 of State Regulations No. 7."

The file herein discloses that on the nights of July 31 and August 14, 1954, ABC agents entered defendant's licensed club wherein they purchased and consumed several bottles of Blatz beer, served by club trustees who did not inquire if the agents were members or bona fide guests of members of said club. The agents, non-members, made known their identity and obtained a signed sworn statement from a trustee who admitted serving beer to one agent, stating, "I thought I knew you. Your face was familiar."

Defendant has no previous adjudicated record. I shall suspend devendant's license for the minimum period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Burlington Lodge, Bulletin 983, Item 8.

Accordingly, it is, on this 16th day of September 1954,

ORDERED that Club License CB-240, issued by the Director of the Division of Alcoholic Beverage Control to Indian Lake Community Club, Inc., for premises on East Shore Road, Denville, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., September 27, 1954 and terminating at 3:00 a.m., October 7, 1954.

WILLIAM HOWE DAVIS
Director

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

NATHAN KOZAK)
T/a LITTLE BROADWAY TAVERN)
Sussex Turnpike)
Randolph Township)
PO Mt. Freedom, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of Randolph Township.)

Irving Mandelbaum, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On August 21, 1954 and on divers dates prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to William ---, a person under the age of twenty-one (21) years, 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 Regulations No. 20.

The file herein discloses that ABC agents obtained a signed statement from William --- (age 19) relating that on August 21, 1954, he visited defendant's licensed premises with a minor female; that he purchased from the licensee and consumed five glasses of beer, and that the minor female drank only non-alcoholic beverages. William further stated that, earlier the same day, he and two adults were in defendant's tavern; that he then consumed three glasses of beer therein, and that on or about August 7, 1954, he purchased from the licensee and consumed several glasses of beer in the same tavern. He further stated that at no time was he questioned as to his age.

Defendant has no prior adjudicated record. I shall suspend defendant's license for ten days (the minimum penalty for a violation of this kind involving a 19-year-old minor). Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Weidner & Bush, Bulletin 1032, Item 12.

Accordingly, it is, on this 24th day of September, 1954,

ORDERED that plenary retail consumption license C-1, issued by the Township Committee of Randolph Township to Nathan Kozak, t/a Little Broadway Tavern, for premises on Sussex Turnpike, Randolph Township, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. October 4, 1954, and terminating at 2 a.m. October 9, 1954.

WILLIAM HOWE DAVIS
Director

9. DISCIPLINARY PROCEEDINGS - IMPROPERLY ACCEPTING RETURNS FROM RETAILERS IN VIOLATION OF STATE REGULATIONS NO. 34 - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against

JARLYN, INC.
170-172 Malvern Street
Newark 5, New Jersey

CONCLUSIONS AND ORDER

Holder of Wine Wholesale License WW-34, issued by the Director of the Division of Alcoholic Beverage Control.

Jarlyn, Inc., Defendant-licensee, by Jack Rosenberg, Pres. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On June 8, 1954, you accepted from retailer Clayton L. Kostenbader, t/a Hackettstown Beverage Store, 127 Main Street, Hackettstown, return of alcoholic beverages delivered to the retailer more than 30 days prior to such return, for credit, not pursuant to requisite waiver, viz., 62 quarts of 'Tito' wine, for which you granted credit of \$55; in violation of Rule 9 of State Regulations No. 34."

The file herein discloses that sometime before June 1, 1954, the above named retailer, who is one of defendant's customers, requested defendant to pick up the wine in question (and some other wine not involved in the charge) for exchange because it was cloudy and had spoiled and that, on June 8, 1954, defendant accepted the return of said wine.

The retailer gave a signed, sworn statement in which he stated that he did not know from whom he had bought the wine but that he had moved it from his former licensed premises in 1948. The particular brand has been discontinued.

The file also discloses that, under date of May 20, 1954, defendant had written to this Division for "approval" of the replacement of the wine and that, under date of June 3, 1954, was advised by letter that, pursuant to the Division's policy, an investigation would be made and defendant would be informed of the Division's decision on its request. However, without waiting for that decision, defendant accepted the wine from the retailer, as aforementioned, and gave the retailer the credit as stated in the charge.

The regulation provides as follows:

"No manufacturer or wholesaler of alcoholic beverages other than malt alcoholic beverages shall accept from any retailer any return of alcoholic beverages for credit unless such alcoholic beverages were originally delivered to the retailer by the manufacturer or wholesaler not more than thirty days prior to such return, except pursuant to waiver of the provisions of this Rule granted by the Director upon petition setting forth good cause."

Defendant seeks to explain the violation by claiming that similar requests for permission (waiver) to exchange wine had been made on previous occasions and such permission had been granted by

letter and that one of defendant's clerks apparently mistook the aforementioned letter of the Division for a grant of such waiver. This attempted explanation is entitled to little credence in view of the following clear and unequivocal language of the Division's aforementioned letter:

"Pursuant to present policies of this Division, when requests to accept returns are made involving more than one case and replacement is not to be made with identically the same brand and type, the request must first be referred to the Enforcement Bureau for an investigation of the facts before permission can be granted. Upon completion of our investigation, you will be informed of the decision to accept the return and make the proposed replacement."

Defendant has no prior adjudicated record. However, when the license was held by its predecessor, Jack Rosenberg, who is president and treasurer of defendant corporation, the license was suspended by the State Director for twenty days, effective August 15, 1951, for a violation similar to that here charged and other violations. Re Rosenberg, Bulletin 915, Item 7. In the Conclusions and Order entered in that case the Director said that if the violations there charged were permitted to continue, they might well result in the "complete breakdown" of the prohibition against the practices which the regulations were designed to prevent. Under the circumstances, the instant violation, whether deliberate or the result of careless mistake, must be viewed as having serious implications. Apparently, the lessons of the past, if learned at all, have been forgotten.

In view of all of the circumstances, including the plea and the fact that defendant had written to the Division for a waiver, as aforementioned, I shall suspend defendant's license for ten days.

Accordingly, it is, on this 20th day of September 1954,

ORDERED that Wine Wholesale License WW-34, issued by the Director of the Division of Alcoholic Beverage Control to Jarlyn, Inc., 170-172 Malvern Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m., September 27, 1954, and terminating at 12:01 a.m., October 7, 1954.

WILLIAM HOWE DAVIS
Director

10. MORAL TURPITUDE - COMMERCIALIZED GAMBLING HELD NOT TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

September 23, 1954.

RE: ELIGIBILITY No. 657

Applicant seeks a determination as to whether or not he is ineligible for employment by the holder of a liquor license in New Jersey by reason of his conviction of crime.

Applicant was arrested in November 1951, and charged with bookmaking in violation of R.S. 2:135-3. Upon his plea of non vult on May 7, 1952, he was sentenced to one to three years in State Prison, which sentence was suspended. He was placed on probation for three years and required to pay \$5 a week.

Applicant testified that, at the time of his arrest, he and his brother conducted a plenary retail distribution establishment; that, for some time previous thereto, he had been betting on the outcome of horse races; that a raid was made on their licensed premises where certain betting slips were found; that four betting slips were found on his person and that he and his brother were arrested. He denied that he had been engaged in the business of taking bets or that he had "made book" on the outcome of horse races, but admitted that, on occasion, while he transmitted his own bets to the bookmaker, he also transmitted bets of other persons as an accommodation. He denied that he received any benefit from these activities or that he had any business connection with the bookmaker, and explained that he pleaded non vult to the charge upon advice of counsel.

The crime of bookmaking may or may not involve moral turpitude depending on the circumstances. Re Case No. 651, Bulletin 1020, Item 9. Where one is a principal or a "lieutenant" in commercialized gambling, particularly where such gambling is conducted on a large scale, it has been ruled that the crime involves moral turpitude. Re Case No. 635, Bulletin 946, Item 10; Re Case No. 641, Bulletin 963, Item 5. In the instant case it is possible that applicant may not have been associated with the bookmaker in any business capacity whatsoever. However, the fact still remains that he entered a confessional plea to the charge. At best, applicant's participation in the bookmaking was neither as principal nor as a "lieutenant." Under the circumstances, I conclude that the crime of which he was convicted does not involve moral turpitude. CF. Case No. 634, Bulletin 947, Item 8; Re Case No. 651, supra.

It is recommended that subject be advised that, in the opinion of the Director, he is not disqualified by statute because of said conviction from being associated with the alcoholic beverage industry in this State

Anthony Meyer, Jr.
Attorney

APPROVED:
WILLIAM HOWE DAVIS
Director

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MARGARET C. BLATTNER, EXECUTRIX)
OF THE EST. OF CLAUDE A. BLATTNER)
28-30 Cross Street)
Paterson 1, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-363, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Margaret C. Blattner, Executrix, Defendant-licensee, Pro se.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On August 23, 1954, 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.,

One 4/5 quart bottle labeled 'Canadian Club Blended Canadian Whisky 90.4 Proof,'

One 4/5 quart bottle labeled 'Four Roses Blended Whiskey 86.8 Proof,'

One 4/5 quart bottle labeled 'Schenley Reserve Blended Whiskey 86 Proof,' and

One 4/5 quart bottle labeled 'Seagram's Seven Crown Blended Whiskey 86.8 Proof';

in violation of Rule 27 of State Regulations No. 20."

The file herein discloses that on August 23, 1954, an ABC agent entered defendant's licensed premises and tested and gauged the five opened bottles of liquor. When the agent found that one of the bottles labeled Canadian Club Blended Canadian Whisky (90.4) was 11 points lower than the label in proof, the licensee admitted that she had poured another brand of whiskey in each of the four bottles mentioned in the charge. She explained her action by saying that her stock of whiskey was very low and that she poured other whiskey into the aforementioned bottles so that it would appear that she had more than one brand of whiskey. The report of the Division chemist shows that the contents of the four bottles are not genuine as labeled.

Defendant has no previous adjudicated record. I shall suspend defendant's license for a period of twenty days, the minimum suspension for a violation of this kind involving four bottles. Re Milestone Catering Co., Inc., Bulletin 906, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 4th day of October 1954,

ORDERED that Plenary Retail Consumption License C-363, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Margaret C. Blattner, Executrix of the Est. of Claude A. Blattner, for premises 28-30 Cross Street, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m., October 11, 1954, and terminating at 3:00 a.m. October 26, 1954.

WILLIAM HOWE DAVIS
Director

12. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD NOT CONSIDERED - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

FRANK TUMULTY
T/a T-TAVERN
427 George Street
New Brunswick, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-66, issued by the Board of Commissioners of the City of New Brunswick.

Frank Tumulty, Defendant-licensee, Pro se.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"On July 28, 1954, and on divers days prior thereto, particularly on July 23 and 27, 1954, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Pvt. Clayton C. ---, U. S. Army, a person under the age of twenty-one (21) years, 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 Regulations No. 20."

Pvt. Clayton ---, 17 years of age, testified that about 8:15 p.m., on July 28, 1954, he and Pvt. Kenneth F. Shattwell visited a licensed premises in New Brunswick which he described as consisting of a "stone front; as you walk in, to the right is a juke box, tables and chairs; on the left side there is a bar; television in back"; that they sat at the front end of the bar where they remained until 9 p.m.; during the time spent in the licensed premises he was served and consumed about six drinks of Vodka Collins and beer, respectively; that he had been in the same premises on two prior occasions and was served beer; that he could not identify the person or persons who at any time served him; that on July 30, 1954, he directed two ABC agents to defendant's licensed premises where on July 28, 1954 he was served the drinks of alcoholic beverages and pointed out to the agents the place at the bar where he was seated at the time.

Pvt. Kenneth F. Shattwell, an adult, testified that on July 28, 1954, he accompanied Pvt. Clayton --- to a licensed premises in New Brunswick. Pvt. Kenneth F. Shattwell corroborated, in substance, the testimony given by Pvt. Clayton ---, especially with reference to the description of the outside and inside of the premises which they visited on July 28, 1954; the service of beer and Vodka Collins to Pvt. Clayton --- and the directions given to the ABC agents as to the location of defendant's licensed premises where the drinks of alcoholic beverages were served to them.

Two ABC agents, assigned to investigate the alleged sale of alcoholic beverages to the minor in question, testified that on July 30, 1954 both the minor and Pvt. Kenneth F. Shattwell described to them the premises where they were served alcoholic beverages on July 28, 1954 and then directed them to defendant's licensed premises as the place where the alcoholic beverages were obtained.

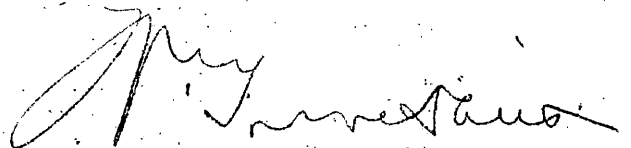
Defendant in his testimony agreed that the description given by the two soldiers "fitted his place fairly well." He further testified that he was on duty at the time in question, but had no recollection of seeing the two service men in the premises. He further testified that he serves Vodka Collins in his establishment, but it is "a very poor seller." He could not remember whether he served said type of drink on July 28, 1954.

I am satisfied, after carefully considering all of the evidence presented herein, that the two soldiers gave a truthful version of what happened in the licensed premises which they visited on the evening of July 28, 1954. I am further satisfied that they visited defendant's licensed premises on that occasion. No reason appears why the two soldiers should deliberately give false testimony. It is true that neither soldier could identify the bartender who served them. However, it is well established that mere failure to identify the specific person who made service of the alcoholic beverages is not fatal in proceedings of this nature. Re Roesch, Bulletin 966, Item 4; Re Dante, Bulletin 771, Item 9. I conclude that defendant's guilt has been established by the preponderance of the evidence and, therefore, I find defendant guilty of the charge preferred herein.

Defendant has a prior adjudicated record. Effective March 28, 1939, defendant's license was suspended by the local issuing authority for a period of twenty days for an "hours" violation. Again, effective March 15, 1943, defendant's license was suspended by the then State Commissioner for a period of five days because of a fraudulent statement in his application for a liquor license. Re Tumulty, Bulletin 558, Item 2. In view of the fact that both violations are of a dissimilar character to the one now under consideration, and the effective dates thereof are in excess of five years, I shall not consider them in fixing a penalty herein. Since, however, the minor mentioned in the charge was 17 years of age at the time of service of the alcoholic beverages to him I shall suspend defendant's license for a period of fifteen days. Re Banco and Franceschini, Bulletin 999, Item 7.

Accordingly, it is, on this 4th day of October 1954,

ORDERED that plenary retail consumption license C-66, issued by the Board of Commissioners of the City of New Brunswick to Frank Tumulty, t/a T-Tavern, for premises 427 George Street, New Brunswick, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. October 11, 1954, and terminating at 2:00 a.m. October 26, 1954.



WILLIAM HOWE DAVIS
Director