

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 RAYMOND BLVD. NEWARK 2, N. J.

BULLETIN 1339

June 6, 1960

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

BULLETIN 1339

June 6, 1960

1. APPELLATE DECISIONS - LOMBARDO'S GRILL, INC. v. ELIZABETH.

LOMBARDO'S GRILL, INC., )  
 )  
Appellant ) ON APPEAL  
 ) CONCLUSIONS  
v. ) AND ORDER  
 )  
CITY COUNCIL OF THE CITY OF )  
ELIZABETH, )  
 )  
Respondent.

-----  
Ryan, Saros, Davis & Conant, Esqs., by John B. Stone, Esq.,  
Attorneys for Appellant.  
Raymond A. Leahy, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent, on November 12, 1959, whereby it suspended appellant's license for twenty-five days commencing at 6 a.m. November 19, 1959. The suspension was imposed after respondent heard testimony in disciplinary proceedings as a result of which it found appellant guilty of a charge alleging that on April 16, 1959, it sold and delivered alcoholic beverages to a minor in violation of Rule 1 of State Regulation No. 20. Appellant's licensed premises are located at 715 Fourth Avenue, Elizabeth.

"Upon the filing of the appeal an order was entered by the Director on November 17, 1959, staying respondent's order of suspension until entry of a further order herein. R.S. 33:1-31.

"In its petition of appeal appellant alleges that the action of respondent was erroneous for reasons which may be summarized as follows:

- (1) the decision was contrary to the weight of the evidence;
- (2) the ordinance of the City of Elizabeth providing that the members of City Council may sit as a municipal Board of Alcoholic Beverage Control is invalid and unconstitutional;
- (3) the decision was invalid because only six votes were cast in favor of the motion to suspend;
- (4) the decision was based upon legally insufficient evidence, improper rulings on objections by counsel for appellant, and was the result of mistake, passion and prejudice.

"The answer filed by respondent denies the aforesaid allegations.

"At the hearing herein the transcript of the proceedings held before respondent and various exhibits referred to therein were presented in evidence with consent of counsel and pursuant to Rule 8 of State Regulation No. 15. Each attorney argued orally and submitted a brief.

"As to (1): From the transcript of testimony taken below in the disciplinary proceedings it appears that Samuel McC--- was called as a witness on behalf of respondent. He testified that he was born on March 1, 1940; that his mother was Helen C---; that he has lived with his grandmother Esther McC--- since he was a baby; that he visited his mother in Virginia about five years ago; that 'when he was little' he was known as Alfred C--- but that a few years ago he was adopted by his grandmother in proceedings instituted in Union County, New Jersey, and that in said proceedings he was authorized to assume the name of Samuel McC---, by which name he is now known. In support of the testimony of the witness as to age, the attorney for respondent then introduced into evidence a photostatic copy of a birth certificate issued by the Commonwealth of Virginia, which indicated that a child Albert C--- was born on March 1, 1940. The maiden name of the mother of the child was given as Helen C---. The space provided for the name of father of the child was blank. The natural inference is that the child was born out of wedlock and subsequently adopted by his grandmother. The testimony of the witness himself is legally sufficient to establish his age. State v. Higgins, 83 N.J.L. 43; State v. Andoloro, 108 N.J.L. 47. The photostatic copy of the birth certificate was properly received in evidence and corroborates the testimony given by the witness as to his age. Moreover, David Bradshaw (a witness for appellant herein) testified on cross-examination that he knew Samuel McC--- in 1948 and that he was then about eight years old. The proof clearly establishes that Samuel McC--- was a minor on April 16, 1959. Re Abrams, Bulletin 562, Item 8.

"Samuel McC--- further testified at the hearing below that at about 9 p.m. April 16, 1959, he and Robert --- entered a car driven by Luke ---; that they drove around awhile and stopped in front of defendant's premises; that he, alone, entered the premises at about 9:30 p.m. and purchased a pint of Muscatel wine from a bartender later identified as Vincent Zengaro. On cross-examination he testified that he saw no patrons in the premises; that, after he got the bottle, he entered the car which was later stopped by a police officer for a motor vehicle violation and that the officer found the unopened bottle of wine on the floor of the car.

"Robert --- (19 years of age) called at the hearing below as a witness on behalf of respondent, testified that on the evening in question Luke parked the car directly in front of defendant's premises; that Samuel went in alone and came out about five minutes later with a paper bag which he later learned contained a bottle of wine.

"At the hearing below, defendant called as its witness Luke --- who had been subpoenaed but not called by respondent. The only material testimony given by this witness is that Samuel --- and Robert --- were in his car when it was stopped by the police officer. Vincent Zengaro testified that he was tending bar that night; that he did not sell a bottle of wine to anyone; that Samuel did not enter the premises, and that there were at least six patrons present between 9 p.m. and 11 p.m. Frank Candelino, David Bradshaw and William Thompson testified that they were in defendant's premises between 9 p.m. and 11 p.m. and that Samuel did not enter. On cross-examination each admitted that he watched a television show while in the premises. It was stipulated that the testimony of Joseph McDaniels, if called, would be similar.

"After reviewing the evidence and reading the briefs herein, I conclude that the evidence of Samuel McC--- was sufficiently corroborated by Robert --- and Luke ---. Even if the patrons who testified on behalf of the licensee were in the premises on the evening in question, they admittedly were watching television and may not have seen the young man who was in the premises only a short period of time when he purchased the bottle of wine. I conclude that the decision was not

contrary to the weight of the evidence.

"As to (2): On March 5, 1952, a Municipal Board of Alcoholic Beverage Control was established by an ordinance adopted by the governing body of the City of Elizabeth. See R.S. 33:1-5. On June 29, 1959, said governing body approved an amendment to said ordinance. The pertinent portions of the amendment are as follows:

Section 1. That the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth shall be under the control of the City Council as a whole, and any and all resolutions heretofore creating a three-man municipal board shall be null and void.

Section 1A. For the purpose of this ordinance whenever the word 'Board' or 'Municipal Board of Alcoholic Beverage Control' is used, the same shall mean the City Council of the City of Elizabeth.

"R.S. 33:1-19 provides:

It shall be the duty of the governing board or body of each municipality, except in such municipalities as shall have created municipal boards pursuant to this chapter, in which latter event it shall be the duty of such respective municipal boards, to administer the issuance of all other licenses within their respective municipalities, in accordance with this chapter, and forthwith to report the issuance of all such licenses to the commissioner. The issuing authorities constituted by this section are sometimes hereinafter referred to as 'other issuing authority.'

"R.S. 33:1-24 provides:

It shall be the duty of each other issuing authority to receive applications for such licenses as such other issuing authority is authorized to issue; to investigate applicants and to inspect premises sought to be licensed; to conduct public hearings on applications and revocations; to enforce primarily the provisions of this chapter and the rules and regulations so far as the same pertain or refer to or are in any way connected with retail licenses, except plenary retail transit licenses; to maintain proper records; to keep full and correct minutes; and to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this chapter. The enumeration of the above specific duties shall not be construed to limit or restrict in any way the general authority given by this chapter to each said other issuing authority.

"Clearly, the governing body of each municipality is 'the other issuing authority' unless it establishes a Municipal Board. After it abolishes a Board thus established, the governing body of the municipality again becomes 'the other issuing authority.' There is no evidence in this case that the amendment approved on June 29, 1959, is invalid or unconstitutional.

"As to (3): The City Council of the City of Elizabeth consists of thirteen members, nine of whom were present at the hearing of the disciplinary proceedings. By a vote of six-to-three, the quorum of the Council found defendant therein guilty and suspended its license. The attorney for appellant alleges that a majority of all thirteen members of the Council was necessary to suspend the license and cites

Paragraph 43 of Rules for the Government of the City Council, now in effect, which provides that 'No ordinance or resolution shall be passed by the City Council, except with the concurrence of the majority of all the members of City Council.' However, when it conducted the disciplinary proceedings, the City Council was acting as 'the other issuing authority' pursuant to the provisions of the Alcoholic Beverage Law, which contains no provision requiring a majority of all members for valid action. The decision of the Council was not invalid because only six votes were cast in favor of the motion to suspend. Manno v. Clifton, 14 N.J. Super. 100 (App.Div. 1951) which is directly in point.

"As to (4): There is no evidence of any improper rulings below or that the suspension was the result of mistake, passion or prejudice. The decision of respondent was based on legally sufficient evidence.

"For the reasons aforesaid, it is recommended that an order be entered affirming respondent's action, vacating the order entered herein on November 17, 1959, and fixing the effective dates for the twenty-five-day suspension imposed by respondent."

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

After carefully considering the evidence, exhibits, oral argument at the hearing and briefs filed by both attorneys, I concur in the findings and conclusions of the Hearer and shall adopt his recommendation.

Accordingly, it is, on this 25th day of April 1960,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the twenty-five-day suspension heretofore imposed by respondent be and the same is hereby restored and reinstated against the license held by appellant for premises at 715 Fourth Avenue, Elizabeth, to commence at 6 a.m. Monday, May 2, 1960, and to terminate at 6 a.m. Friday, May 27, 1960, and that the order staying said suspension be vacated when said suspension becomes effective at 6 a.m. Monday, May 2, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING - OBSCENE PRINTED AND WRITTEN MATTER - FALSE ANSWER IN APPLICATION (AS TO PRIOR RECORD) - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against NIGHT OWL CLUB, INC. 98 Holland Street and 149-51 Sixteenth Avenue Newark 3, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-848, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Defendant-licensee, by Rocco Carfello, President Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On February 6, 9, 13, 16 and 18, 1960, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of horse race bets on all of said dates and the playing of a card game for stakes of money on the first mentioned date; in violation of Rule 7 of State Regulation No. 20.
"2. On February 18, 1960, and prior thereto, you allowed, permitted and suffered in and upon your licensed premises and had in your possession 'business cards', 'menus' and other papers, folders and cards with printing, writings, pictures and representations thereon having obscene, indecent, filthy, lewd, lascivious and disgusting import and meaning, and a group of photographic illustrations and representations of male and female persons depicted in obscene, indecent filthy, lewd, lascivious and disgusting poses, positions, practices and acts; in violation of Rule 17 of State Regulation No. 20.
"3. In your application filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question No. 41 which asks: 'Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other State which was surrendered, suspended, revoked or cancelled?', whereas in truth and fact the plenary retail consumption license held by you for these same premises effective July 1, 1958 for the 1958-59 period was suspended by the Municipal Board of Alcoholic Beverage Control of the City of Newark for ten days beginning August 25, 1958 for permitting a brawl, act of violence, disturbance and unnecessary noise on the licensed premises and permitting the licensed place of business to be conducted as a nuisance, contrary to state regulation; said false answer being in violation of R.S. 33:1-25."

On the dates set forth in Charge 1 herein, Rocco Carfello, president of the corporate-licensee, while acting as bartender, accepted horse race bets from an ABC agent or patrons on the licensed premises. On February 18, 1960, as prearranged, local police, accompanied by other ABC agents, came into the licensed premises and found a horse race slip (prepared by the agents) and six one-dollar bills (which had been marked by the agents) in Carfello's possession. The agents searched the premises and found a number of lewd articles in the vicinity of the cash register.

On his first visit to the licensed premises, the agent also observed Carfello playing pinochle with two patrons at the bar. At the conclusion of each game, the winner was paid a dollar by each of the other players.

Subsequent investigation disclosed that the defendant in its current application stated, contrary to fact, that its license had not been previously suspended.

Defendant has a prior adjudicated record. Effective August 25, 1958 defendant's license was suspended by the local issuing authority for ten days for permitting a brawl on its licensed premises. The minimum suspension for accepting bets on horse races as herein, when the licensee is involved, is twenty-five days. Re Maplewood Hotel, Inc., Bulletin 1302, Item 10. Since Carfello also engaged in card playing for money, I shall suspend the defendant's license for thirty days on Charge 1, to which will be added ten days on Charge 2 (Re Diaz, Bulletin 1316, Item 4), ten days on Charge 3 (Re Jasinski, Bulletin 1306, Item 6) and five days for the dissimilar violation which occurred within the past five years (Re Jasinski, supra.), making a total of fifty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty days.

Accordingly, it is, on this 20th day of April 1960,

ORDERED that Plenary Retail Consumption License C-848, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Night Owl Club, Inc., for premises 98 Holland Street and 149-51 Sixteenth Avenue, Newark, be and the same is hereby suspended for fifty (50) days, commencing at 2:00 a.m., Wednesday, April 27, 1960, and terminating at 2:00 a.m., Thursday, June 16, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against C. & D. TAVERN (A Corp.) 550 Market Street Newark 5, N. J.

Holder of Plenary Retail Consumption License C-122 (for the 1958-59 licensing year), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, and transferred effective June 19, 1959 during the pendency of these proceedings to, and renewed for the 1959-60 licensing year by

CONCLUSIONS AND ORDER

MARIA CZEREUTA

for the same premises.

Michael J. Hynda, Esq., Attorney for Defendant-licensee. William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant entered pleas of not guilty to the following charges:

'1. On April 6, 1959, 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 "Fleischmann's Preferred Blended Whiskey 90 Proof",

One 4/5 quart bottle labeled "Lord Calvert American Blended Whiskey 86 Proof",

One quart bottle labeled "Calvert Reserve American Blended Whiskey 86 Proof", and

One 4/5 quart bottle labeled "Four Roses Blended Whiskey 86 Proof";

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

'2. On April 16, 1959, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz.,

One 4/5 quart bottle labeled "Lord Calvert American Blended Whiskey 86 Proof";

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

"To substantiate the charges, the Division called as its witnesses the ABC agents who participated in the investigation, Max

LeViton, bottling superintendent of Calvert Distillery, Maryland, and the Division's chemist.

"The agents testified in substance that on April 6, 1959 they visited defendant's licensed premises and made a routine inspection of defendant's open stock of assorted brands of liquors and seized several bottles, the contents of which appeared to be at variance with the labels thereon. One of the seized bottles was located behind sealed bottles of wines and liquors in a lower cabinet behind the bar, and Mr. Czereuta, president of the corporate licensee, told them that he did not dispense the liquor from that bottle because it was mixed with a highball. The agents testified further that they obtained from Czereuta sealed bottles of some of the brands seized and turned all of the bottles over to the Division's chemist. One of the agents testified that on April 16, 1959 he returned to defendant's licensed premises and obtained a sealed bottle of Lord Calvert which he turned over to the chemist.

"The Division's chemist testified that he analyzed the contents of all of the bottles and found that the contents of five bottles were low in proof; that the solids and acids were high in the contents of four of said bottles; that the acids were low in the contents of one of them; that one bottle contained liquor mixed with carbonated water and ginger ale flavor and that the contents of none of the bottles compared with samples of the genuine product of the labeled brand. The chemist further testified that each of three of the five bottles, one labeled Calvert Reserve, one labeled Lord Calvert and one labeled Four Roses, had affixed thereon two Federal Strip Stamps, one overlapping the other. The five bottles were received in evidence.

"Max LeViton testified that he is the bottling superintendent of the only plant anywhere which manufactures, bottles and distributes Lord Calvert Whiskey and that Federal Strip Stamps with the name Browne Vintners, New York City, imprinted thereon would not be affixed to bottles of Lord Calvert Whiskey. When shown one of the bottles received in evidence bearing a Lord Calvert label with a Federal Strip Stamp on which was imprinted Browne Vintners, New York, he testified that none of the products bottled at the Calvert plant was distributed by Browne Vintners and that the plant did not use 'overprinted stamps'.

"Iwan Czereuta, president of the corporate-licensee, testified in substance that he told the agents that after he had served each of two patrons a 'shot' of whiskey and a chaser of ginger ale, he went into the kitchen and that the two men took the bottle and left; that he saw the men in a car across the street and called a police officer who retrieved the bottle and that he put it in a cabinet 'because it may have had glass in it or it may have had impurities in it'. He denied that he had tampered with any of the whiskey in the bottles.

"Considering the evidence adduced herein, I conclude that the Division has established the guilt of defendant by more than a fair preponderance of the believable evidence. I, therefore, recommend that defendant be found guilty as charged.

"Defendant has a prior adjudicated record. Effective September 16, 1957 its license was suspended by this Division for forty-five days for (a) an 'hours' violation; (b) sale of alcoholic beverages outside scope of license; (c) failure to have copy of license application on premises and (d) hindering investigation. Re C. & D. Tavern (A Corp.), Bulletin 1189, Item 4. The minimum penalty imposed in 'refill' cases where five bottles are involved is twenty-five days. Re Dolan, Bulletin 1267, Item 10. Since the prior dissimilar violation occurred within a five-year period, I recommend that the minimum penalty be increased by five days and that an order be entered suspending the license now held by Maria Czereuta for a

period of thirty days."

No exceptions to the Hearer's Report were filed by the attorney representing the defendant-licensee, pursuant to Rule 6 of State Regulation No. 16. However, Maria Czereuta, who presently holds the license, addressed a letter to me alleging factors which she feels should be considered in mitigation of the penalty to be imposed herein.

Having carefully considered the transcript of the proceedings, the Hearer's Report and the alleged mitigating circumstances, I cannot find that the result reached by the Hearer was improper or that the recommended thirty-day suspension should be modified. I, therefore, am in accord with the Hearer's findings and his conclusion that defendant be found guilty as charged and I adopt his recommendation respecting the penalty to be imposed.

Accordingly, it is, on this 18th day of April, 1960,

ORDERED that Plenary Retail Consumption License C-122 (for the 1959-60 licensing year), issued by the Municipal Board of Alcoholic Beverage Control to Maria Czereuta, for premises 550 Market Street, Newark, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m., Monday, April 25, 1960, and terminating at 2:00 a.m., Wednesday, May 25, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
  
BERTHA GROWER  
t/a SUSQUEHANNA TAVERN  
20 Mercer Street  
Hackensack, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-46, issued by the City Council of the City of Hackensack.

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

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that she possessed on her 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.

On March 3, 1960, ABC agents tested defendant's open stock of liquor and seized a number of bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of one bottle labeled "Black & White Blended Scotch Whisky 86.8 Proof" varied in proof, acids and solids from the contents of a genuine bottle of the same brand.

In attempted mitigation defendant has advised me in writing

that she was not on the premises when the bottle was seized and that she does not know how the contents of the bottle were changed. However, a licensee is responsible when illicit alcoholic beverages are found on the premises, irrespective of whether or not he is aware of their presence. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156.

Defendant has a prior record. Effective January 20, 1959, her license was suspended for fifteen days after she pleaded guilty to a similar charge. Re Grower, Bulletin 1263, Item 6. The minimum suspension imposed in a case of this type involving one bottle is ten days. Re Pachucki & Czaya, Bulletin 1315, Item 3. However, because of her similar violation within the past five years, I shall suspend defendant's license in this case for twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of April 1960,

ORDERED that Plenary Retail Consumption License C-46, issued by the City Council of the City of Hackensack to Bertha Grower, t/a Susquehanna Tavern, for premises 20 Mercer Street, Hackensack, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Tuesday, April 26, 1960, and terminating at 2 a.m. Wednesday, May 11, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - DELIVERY WITHOUT INVOICE OR MANIFEST - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

WILLIAM KURUC  
t/a KURUC FINEST WINES, LIQUOR &  
BEER STORE  
248 Ackerman Avenue  
Clifton, N. J.

)  
)  
) CONCLUSIONS  
AND ORDER  
)  
)

Holder of Plenary Retail Distribution License D-30, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton.

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

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On December 8, 1959 and divers dates prior thereto, you sold numerous items of alcoholic beverages at less than the prices thereof listed in the then currently effective Minimum Consumer Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30.
- "2. On December 8, 1959 and on divers dates prior thereto, you delivered and transported alcoholic beverages in a vehicle without the driver thereof having in his possession a bona fide, authentic

and accurate delivery slip, invoice, manifest, waybill or similar document stating the bona fide name and address of the purchaser or consignee and the brand, size of container and quantity of each item of the alcoholic beverages being delivered and transported; in violation of Rule 3 of State Regulation No. 17."

During the course of an affiliate investigation by ABC agents, an officer of an industrial concern displayed two invoices, dated December 8, 1959, issued by defendant licensee, evidencing the sale to such concern of nine and one half cases of alcoholic beverages for the total purchase price of \$551.24. At the time of such purchase, the correct price for these alcoholic beverages was \$606.70.

Thereafter, ABC agents visited the defendant-licensee, who acknowledged that the facts above set forth are accurate. The licensee also presented his carbon copy of delivery tickets or bills, which he asserted were carried by the driver making deliveries of alcoholic beverages. A number of these documents, including those hereinbefore specifically referred to, did not state the brand name of the alcoholic beverages being delivered, as required by Rule 3 of State Regulation No. 17.

Defendant has a prior adjudicated record. Effective July 1, 1957 his license was suspended for fifteen days by the local issuing authority for sales to minors. Because of the large amount of alcoholic beverages involved, I shall suspend defendant's license for twenty days on Charge 1 (Re Bond Wine and Liquor Store, Bulletin 1142, Item 4); for ten days on Charge 2 (Re Yacker, Bulletin 1275, Item 7) and for an additional period of five days by reason of the dissimilar violation within the past five years (Re Sussman, Bulletin 1328, Item 7), making a total suspension of thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 18th day of April 1960,

ORDERED that Plenary Retail Distribution License D-30, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to William Kuruc, t/a Kuruc Finest Wines, Liquor & Beer Store, for premises 248 Ackerman Avenue, Clifton, be and the same is hereby suspended for thirty (30) days, commencing at 9:00 a.m., Monday, April 25, 1960, and terminating at 9:00 a.m., Wednesday, May 25, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - LICENSE  
SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

JOSEPH M. PLUHAR )  
t/a PLUHAR'S TAV. )  
107 E. Main Street )  
Bound Brook, N. J. )

CONCLUSIONS )  
AND ORDER )

Holder of Plenary Retail Consumption )  
License C-14, issued by the Borough )  
Council of the Borough of Bound Brook. )

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Paul G. Fleischer, Esq., Attorney for Defendant-licensee  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to a charge alleging that he sold, served and delivered alcoholic beverages to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such person upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

"An ABC agent (hereinafter referred to as Agent D) testified that at 10:45 p.m. on October 30, 1959 he and a fellow-agent (hereinafter referred to as Agent S) entered the defendant's licensed premises and observed the defendant tending bar; that about five minutes after their arrival the agents' attention was attracted to a man (subsequently referred to as Richard) who staggered while walking from the entrance of the premises to the bar; that in the opinion of Agent D, Richard appeared to be intoxicated; that Richard, after consuming a shot of brandy served by the defendant, put his head on the bar where it remained for approximately two minutes; that he then left his seat and staggered to where the agents were seated; that his eyes were glassy; that his speech was slurred and incoherent and that on twenty or twenty-five occasions within ten minutes he repeated a profane word. The agent further testified that at 11:30, a quarter to 12 the agents walked to the dart board followed by Richard who threw a dart at the board but failed to hit the board; that at 11:45 p.m., although in the agent's opinion Richard was definitely intoxicated, the defendant served him another shot glass of brandy which he immediately consumed; that 'at twelve midnight' the defendant refused to serve Richard a drink saying, 'You had enough now'; that at 12:10 a.m. on October 31, the defendant served a shot glass containing brandy to Richard and as he put the glass to his lips, Agent S took it from his hand; that the agents identified themselves to the defendant and Richard and all proceeded to the rear room, the agents walking with Richard between them for the reason given by Agent D, 'We didn't want to create a scene, and he wouldn't be able to walk back there by himself very steadily, he was intoxicated'; that in the rear room, at the agents' request, Richard took an identification card from his wallet and then both the defendant and Richard said the latter lived next door; that Agent D escorted Richard to the rear door from where he left the premises that when the defendant stated that he did not think Richard was intoxicated, the agents asked him why he refused to serve him at twelve midnight and then served him ten minutes later, to which defendant replied that 'he didn't look as intoxicated as he was before, he drank a glass of water in between'.

"Agent D was cross-examined at length by the attorney for the defendant with little, if any, variation from the pertinent testimony given when examined by the attorney appearing for the Division.

"It was stipulated and agreed by the attorneys representing the respective parties in this matter that if Agent S were examined by the attorney appearing for the Division, the testimony elicited during direct examination would be similar to that given by Agent D. Agent S was cross-examined by the attorney for the defendant and his testimony substantially corroborated that given by Agent D.

"Defendant testified that on each occasion before serving Richard he was of the opinion that the man was not intoxicated; that Richard is a steady customer and usually drinks blackberry brandy because he is under the doctor's care; that he put his head on the bar because he was 'broken up' on account of his mother's illness; that he had been crying which accounted for the redness of his eyes. Defendant further testified that he at no time refused Richard a drink and when the last drink was ordered Richard said that he intended to go home; that when the agents accused him of being intoxicated Richard remarked that if he was drunk, everyone else in the barroom was drunk. Defendant further testified that inasmuch as Richard did not appear intoxicated, he served him 'because I thought he could stand a couple more drinks'.

"Richard testified that he has flat feet and at times has trouble balancing himself; that on the night in question, because of his mother's condition, he had been crying and remembered putting his head on the bar; that during the evening he had about three or four shot glasses of brandy in defendant's licensed premises; that he believed one of the agents assisted him out of the back door, but that he reached the second floor of the building next door without experiencing any difficulty; that he did not report for work on Friday, October 30, and about ten or eleven o'clock that morning visited his brother's home where he had 'two cans of beer'; that 'around 5:30, 6' he left his brother's house and about 8:00 p.m. stopped at another licensed premises where he remained for an hour; that while there he had 'four or five' glasses of beer; that he then went home, remaining there until '10, 10:30 p.m.', at which time he proceeded to defendant's premises; that the first time he remembered seeing the agents was when one of them took the drink of brandy out of his hand; that he remembered talking to somebody but could not recall whom; that 'maybe the couple of shots I had affected me in a way'; that he also recalled throwing a dart to see if he 'could shoot darts' but didn't figure that he 'could shoot, so I didn't bother with it'; that when he gets disgusted or in lieu of saying 'yes' when someone asks a question, he uses the profane expression (as testified to by the agents).

"An examination of the testimony presented herein leads to the conclusions that Richard was intoxicated on the evening in question. Aside from the testimony of the agents with reference to Richard's condition, he, himself, substantiates the agents' testimony to a large degree. He admitted that he had been drinking beer at his brother's home and also at another licensed premises before he visited defendant's establishment. His failure to remember seeing the agents in defendant's premises and his decision after tossing one dart that he was in no condition to play the game, is also significant. Despite the condition of Richard, the defendant continued to serve him alcoholic beverages when it was obvious to any discerning person that the man was apparently intoxicated. I am satisfied that there is a preponderance of evidence presented herein to find that Richard was apparently intoxicated on the evening in question.

"I recommend that defendant be found guilty of sale to an apparently intoxicated person in accordance with the charge preferred



two days for a mislabeled beer tap. Re Graham, Bulletin 954, Item 10. Since the prior dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. I shall suspend defendant's license for fifteen days, the minimum penalty in cases involving two bottles. Re Sefchick, Bulletin 1331, Item 9. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 19th day of April 1960,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of Union Township to Charles A. Graham, t/a Barnegat Tavern, for premises on U. S. Highway #9, Union Township (Ocean County), be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, April 26, 1960, and terminating at 2 a.m. Friday, May 6, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

S & S BAR & GRILL, INC. )  
t/a THE SPOT )  
904 Springwood Avenue )  
Asbury Park, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-37, issued by the City )  
Council of the City of Asbury Park. )

-----  
Henry A. Kaplan, Esq., Attorney for Defendant-licensee  
William F. Wood, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On March 15, 1960, an ABC Agent tested defendant's open stock of liquor and seized a number of bottles for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of three of said bottles varied substantially from the contents of genuine bottles of the labeled brands.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty days, the minimum penalty imposed in cases involving three bottles. Re DiGiacomo & Grande, Bulletin 1269, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of April 1960,

ORDERED that Plenary Retail Consumption License C-37, issued by the City Council of the City of Asbury Park to S & S Bar & Grill, Inc., t/a The Spot, for premises 904 Springwood Avenue, Asbury Park, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Monday, April 25, 1960, and terminating at 3 a.m. Tuesday, May 10, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR 25-DAY SUSPENSION PREVIOUSLY IMPOSED.

In the Matter of Disciplinary Proceedings against )

MARY E. O'BYRNE, ADMINISTRATRIX OF THE ESTATE OF JOSEPH A. O'BYRNE Bass Harbor Bridge & Longport Blvd. Egg Harbor Township PO Somers Point, N. J. )

ORDER

Holder of Plenary Retail Consumption License C-20 (for the 1958-59 and 1959-60 licensing years), issued by the Township Committee of Egg Harbor Township. )

----- Enoch A. Higbee, Jr., Esq., Attorney for Defendant-licensee.

BY THE DIRECTOR:

By order dated October 27, 1959, I suspended defendant's license for twenty-five days. Because it appeared that the licensed premises were then being operated only on a reduced basis, the order provided that the effective dates for said suspension would be fixed by a subsequent order after the business was resumed on a full-time basis in the Spring of 1960. Bulletin 1311, Item 8.

It now appearing to my satisfaction that defendant's business is now being conducted on a full-time basis,

It is, on this 18th day of April 1960,

ORDERED that the twenty-five-day suspension heretofore imposed shall commence at 7 a.m. Monday, April 25, 1960, and terminate at 7 a.m. Friday, May 20, 1960.

WILLIAM HOWE DAVIS DIRECTOR

10. STATE LICENSES - NEW APPLICATIONS FILED.

Joeli Wine Distributors, Inc. t/a Pirrone Wine Sales, Perrone Wine & Spirits, Alda Import Co., Charlotte Vinicole Cie, Edelweiss Distributing Co., Esther Distributing Co. & Leona Wine Co. 327 North 14th Street Kenilworth, New Jersey Application filed June 2, 1960 for Plenary Wholesale License for the 1960-61 year.

Gold Star Liquors, Inc. Route 46 and Trenton Avenue Clifton, New Jersey Application filed June 3, 1960 for place-to-place transfer of Plenary Wholesale License W-59, from 183-187 Monroe Street, Passaic, New Jersey, for the 1960-61 year.

*William Howe Davis*  
William Howe Davis  
Director