

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 2014

December 2, 1971

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 2014

December 2, 1971

1. NOTICE TO RETAILERS - APPROVAL OF CERTAIN SPECIFIED VENDING MACHINES TO DISPENSE ALCOHOLIC BEVERAGES IN LICENSED HOTEL AND MOTEL ROOMS ONLY.

NOTICE TO ALL RETAIL LICENSEES:

Recently I received requests from several licensed hotels and motels for permission to install in their guest rooms an electronic dispensing machine known as the "Bell Captain" to provide in-room food and beverage service, notwithstanding this Division's long-standing disapproval of the dispensing of alcoholic beverages by vending machines. These requests were made by holders of retail consumption licenses seeking to place these machines only on that portion of their premises which is licensed for the sale and consumption of alcoholic beverages. Additionally, the New Jersey Hotel Motel Association, on behalf of its membership, has requested that I permit these machines to be installed in licensed hotels and motels throughout the State.

The machine under consideration is not coin operated, but is operated electronically from a central location and each machine is activated by the use of a key which must be obtained from the front desk at the time of registration. Upon registration, guests are screened by the desk clerk and only those over 21 years of age may receive such a key.

Each individual machine is located in a guest room on the licensed premises. A master switch which turns it on and off also permits the dispensing of non-alcoholic beverages only and is located at the main desk. The special key which is individual to each machine is necessary to activate the machine in the room once the master switch has been turned on. There are three positions on the master switch, "off", "on but no alcoholic beverages" and "on". Normally there are some 12 items that are dispensed by an individual machine, including alcoholic beverages, non-alcoholic beverages and snacks. In addition, ice is available in each machine. Upon use by the customer the charge for the items purchased is relayed to the main desk and reflected upon the bill of the guest much the same way that message units in telephone service are recorded. Upon checking out, the cost of the purchases from the machine is paid along with the bill for the room.

In the applications that have been made to me the main argument for approval has been the public convenience of this new concept in room service. Of course, the public convenience is a consideration at all times in the administration of the alcoholic beverage laws by this Division, but only in the context of the overall public interest. Convenience in this instance is said to be found in the fact that this machine provides in-room food and beverage service during permissible hours, a form of "instant room service" with no waiting for room service and with complete privacy. In addition to the alcoholic beverages, soft drinks, snacks and ice, added features of the machines include hot water for morning coffee, a bun warmer for continental breakfast and a refrigerator compartment, all in the privacy of the guest's room.

In the past, when novel matters have come before me for consideration I have sought the views of the various segments of

the industry as well as that of other state liquor control agencies. In this instance I have sought specific information from the several states which have approved the use of this machine in the dispensing of alcoholic beverages. I have corresponded with the state agencies of Pennsylvania, District of Columbia, Florida, Puerto Rico, Hawaii and New Mexico and in each instance the authorities have advised me that their experience with this type of service has been good, the service well accepted by the public and that no enforcement problems have resulted from the use of the machine. In addition, the States of Oregon, Colorado (beer and wine only) and Louisiana have recently approved the machines.

Of particular note is the experience of the State of Pennsylvania with respect to this type of service. I personally visited one location in that State to see the machine in operation. Members of my staff who would be charged with the responsibility of overseeing the use of these machines accompanied me on this inspection. It was their belief upon a complete review of the method of operation from an enforcement standpoint that no enforcement problems would be created by the use of this machine. I personally spoke with the Chief of Enforcement for the State of Pennsylvania and he confirmed the total absence of enforcement problems in their State since the approval of this type of machine several years ago. Furthermore, I spoke with several persons who have used this machine as guests in the course of their travels and in all instances they described the machine in a most complimentary manner, feeling that it was a real convenience to the traveling public.

Some concern has been expressed that several enforcement problems, such as sales to or consumption by minors, overindulgence by or sales to intoxicated persons and sales or consumption after permissible hours, will be created by approval of this machine. However, all three of these matters are now an everyday problem faced by the licensee in the conduct of his business, particularly so with respect to the consumption of alcoholic beverages by minors and intoxicated persons and during prohibited hours at presently licensed hotel and motel rooms of alcoholic beverages obtained elsewhere and brought to such rooms. It should be noted that these machines will only be installed on the licensed premises and that the licensee is responsible for everything which occurs on the licensed premises. The licensee has the affirmative duty to conduct his business in accordance with the Alcoholic Beverage Law and Regulations. I find no reason to suspect the licensee will be any less responsible with respect to this type of service as he is with respect to the rest of his licensed business. I know that this Division will so hold him responsible, with the jeopardy of his license hanging in the balance.

The requirement that a guest must be a charge customer and must submit proof of age to a non-tip employee at the registration desk, that the entire unit can be turned on and off from the front desk to insure compliance with the hours of sale in that community and that a special key is necessary to activate the machine in the individual room are all safeguards to insure compliance with the law. In the states that have approved this method of distribution these safeguards have apparently been sufficient; with over 3,500 machines in use in the U.S. (and over 8,000 in the world), they report no abuses or problems from an enforcement standpoint.

I have carefully considered this entire matter seeking to harmonize my continuing duty to the public interest with my duty to hear and consider new ideas and to be receptive to the

consideration of new and modern techniques for the dispensing of alcoholic beverages. The duty to the public is foremost - the ideal is to have progress within the framework.

I have sought the views of those with actual experience in supervision of these installations; I have inspected the machine; I have listened to the licensees who are trying to solve the problem of room service and provide for the greater public convenience; and I have carefully considered the safeguards in question. As a result, I have concluded that this type of service would not be contrary to the public interest and therefore should be approved for use in this State by our licensees.

Accordingly, licensees are advised that the hereinbefore described type of service is hereby approved with respect to licensed hotel and motel rooms only, subject to the express reservation that should any control problems arise in the future concerning such service, consideration will be given to the modification or complete withdrawal of this approval. It should be expressly noted that this approval does not extend to the sale of alcoholic beverages in vending machines generally, which type of activity remains disapproved.

Richard C. McMcDonough  
Director

Dated: October 28, 1971

2. COURT DECISIONS - 111 PARK STREET CORPORATION v. ORANGE and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-2369-69

111 PARK STREET CORPORATION  
t/a THE GALAXY,

Appellant,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE  
CONTROL OF THE CITY OF ORANGE, and  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Respondents.

Argued October 18, 1971 - Decided October 22, 1971.

Before Judges Goldmann, Collester and Mintz.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Louis M. Minotti argued the cause for appellant (Messrs. Friedman & D'Alessandro, attorneys).

Mr. Mark D. Larner argued the cause for respondent Municipal Board of Alcoholic Beverage Control of Orange (Mr. Martin G. Picillo, attorney).

Mr. George F. Kugler, Attorney General, filed a statement in lieu of brief on behalf of respondent Division of Alcoholic Beverage Control.

PER CURIAM

(Appeal from decision in Re 111 Park Street Corporation Bulletin 1935, Item 1. Director affirmed Opinion not approved for publication by the Court Committee on Opinions.)

3. COURT DECISIONS - JOHN COLEMAN v. JERSEY CITY and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-429-70

In the Matter of Disciplinary )  
 Proceedings against )  
 )  
 JOHN COLEMAN )  
 643 Communipaw Avenue )  
 Jersey City, N. J. )  
 )  
 Holder of Plenary Retail Consumption )  
 License C-362, issued by the Municipal )  
 Board of Alcoholic Beverage Control of )  
 the City of Jersey City. )  
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Argued October 18, 1971 - Decided November 3, 1971.

Before Judges Sullivan, Leonard and Carton.

On appeal from Division of Alcoholic Beverage Control.

Mr. Peter Valentine argued the cause for appellant (Messrs. Glickman & Valentine, attorneys).

Mr. Charles R. Parker, Deputy Attorney General, argued the cause for respondent (Mr. George F. Kugler, Jr., Attorney General, attorney; Mr. Stephen Skillman, Assistant Attorney General, of Counsel).

PER CURIAM

(Appeal from decision in Re Coleman, Bulletin 1941, Item 1, Director affirmed. Opinion not approved for publication by the Committee on Opinions.)

4. DISCIPLINARY PROCEEDINGS - NARCOTICS - NUISANCE - LICENSE  
SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

Milnorm, Inc. )  
t/a Nite Cap Bar )  
440 N. New Hampshire Ave. )  
Atlantic City, N. J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption )  
License C-91 for the 1970-71 license )  
period and C-155 for the 1971-72 )  
license period, issued by the Board )  
of Commissioners of the City of )  
Atlantic City. )  
----- )

Feinberg & Ginsburg, Esqs., by Isaac C. Ginsburg, Esq., Attorneys  
for Licensee  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee entered a plea of not guilty to the follow-  
ing charges:

- "1. On February 11, 1971, you allowed, permitted and suffered unlawful activity pertaining to narcotic drugs, as defined by R.S. 24:18-2, in and upon your licensed premises, and on said date you allowed, permitted and suffered the unlawful possession of such narcotic drugs in and upon your licensed premises; in violation of Rule 4 of State Regulation No. 20.
- "2. On February 11, 1971, you allowed, permitted and suffered immoral activity in and upon your licensed premises, and your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that on said date, you, through a person employed on your licensed premises, made offers to and arrangements with customers and patrons to obtain and procure for and/or sell narcotic drugs to them, and in furtherance of such offers and arrangements sold a narcotic drug to customers and patrons on your licensed premises on said date; in violation of Rule 5 of State Regulation No. 20."

Pursuant to specific assignment to investigate alleged narcotics activity within the licensed premises, ABC Agents J and B participated in the investigation which resulted in the charges preferred.

Agent J testified that he entered the premises about 12:10 a.m. on February 11, 1971 accompanied by Agent B and a

police informer. The bartender (later identified as Israel Alvarez) served them drinks and the informer placed a ten-dollar bill under an ash tray. Each agent did likewise. The informer called the bartender over and told him he wished to buy some cocaine. The bartender had the informer move to the end of the bar where the informer passed over the three ten-dollar bills which had previously been placed under ash trays. In exchange the bartender gave the informer three aluminum packages; all of which was in full view of the agents.

The witness, the other agent and the informer all left the licensed premises together and were met by waiting detectives of the Atlantic City Police Department, to whom the aluminum packages were turned over. One month thereafter the bartender (Alvarez) was arrested and charged with possession and sale of narcotics. The witness was not a participant of that phase of the investigation and knew of it only from others.

ABC Agent B testified in full corroboration of that of Agent J.

Eric Ostberg (chemist with the New Jersey State Police) testified as to the contents of the aluminum packages which he identified as .57 grams of procaine, a derivative of cocaine.

On behalf of the licensee, Israel Alvarez testified that he was the bartender who was arrested for sale of narcotics and is awaiting trial. He was immediately discharged from his post by the owner on the night of the arrest. He denied ever selling narcotics to agents or anyone.

John Monroe Butler, Sr. testified that he is secretary of the corporate licensee and "I run the place...." He knew nothing of the sale of narcotics until the night the bartender was arrested. He visited the premises nightly and maintains close liaison with the police. He has pride in the way he runs the place and his employees have strict orders to keep known law violators out of the licensed premises. On cross examination he admitted narcotic cutting chemicals were found in the premises but alleged that these were found in a handbag that someone had left at the bar.

A sergeant and two police officers of the Atlantic City Police Department volunteered testimony on behalf of the licensee. Sergeant Henry E. Tynner stated, "He [Butler] has always called us when necessary." Patrolman Levi C. Bell added, "He [Butler] asked me personally to have the squad check the place out ...." Patrolman Wardell P. Alexander asserted, "He [Butler] has come to most of us who work the radio cars in that area and he has asked us to check the place inside and out."

By stipulation, a letter written by Detective Adolphus Young (one of the arresting detectives) was admitted into evidence. The letter best characterized the attitude and testimony of his fellow officers:

"Please note that Mr. Monroe Butler, proprietor of the Nite-Cap Bar, has on numerous occasions has been extremely helpful to the undersigned Officer and the Special Investigation Squad of the Atlantic City Police Department.

"From May 10, 1971 to June 5, 1971, this subject assisted and gave invaluable information that led to the arrest and subsequent convictions of four (4) persons.

\* \* \* \* \*

Other bartenders (Henry A. Tucker and Nathaniel Seldon) testified concerning instructions given them by Butler; they were to prevent as far as possible any violation of the law and they were to call upon the police in the event of trouble. Oftimes they did.

Neither bartender nor porter could recall the ABC agents or informer purchasing narcotics from Alvarez, nor could they recall the agents being in the premises.

There was no testimony offered by the licensee or its witnesses concerning the narcotic transaction other than denial by the bartender. That testimony of the bartender Alvarez, denying the allegations of the agents, had a hollow ring, empty of truth. Even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrences of incidents, such as hereinabove related, on his licensed premises. He cannot hide behind his employees. Hodes Corporation v. Newark, Bulletin 1730, Item 1.

In the matter sub judice, the evidence is clear that a purchase of narcotics was made from the bartender by the informer and agents. The testimony of the agents was convincing and remained unshaken under vigorous cross examination.

"... The quantum of proof in a criminal trial is different from and higher than that in proceedings before an administrative agency. In the former the proof must establish guilt beyond a reasonable doubt; in the latter, 'it is only necessary to establish the truth of the charges by a preponderance of the believable evidence and not to prove guilt beyond a reasonable doubt....'" In re Darcy, 114 N.J. Super. 454, 458 (App.Div. 1971).

Benedetti v. Bd. of Com'rs of Trenton, 35 N.J. Super. 30.

It is hallmark that "... testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances ...." Spagnuolo v. Bonnet, 16 N.J. 546, 554 (1954).

The testimony of the agents and the testimony of the chemist from the State Police and the exhibit of the narcotic were all believable evidence; the investigation, the obtaining of the evidence in the form of the narcotic, and the subsequent arrest of the bartender were all part of thorough police work.

The defense could create only the supposition that the licensee's principal stockholder (Butler) was the unwitting victim of a greedy and evil bartender. However, the fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee constitutes no defense to the charges preferred in such disciplinary proceedings. Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1; In re Olympic, Inc., 49 N.J. Super. 299; Greenbrier, Inc. v.

Hock, 14 N.J. Super. 39 (App.Div. 1951). The licensee is, therefore, fully responsible for the activities of its employees during their employment on the licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948).

Under the circumstances herein and after examination of the facts of this case it is recommended that the licensee be found guilty of the charges herein.

The penalty usually imposed for charges involving sale of narcotics on the licensed premises is revocation of license. El Torero, Inc. v. Newark, Bulletin 1989, Item 1; Re Elite, Inc., Bulletin 1951, Item 1; Re Richards, Bulletin 1838, Item 1; Re Smithpaul Corporation, Bulletin 1777, Item 1; Hodes Corp. v. Newark, *supra*; Smith v. Newark, Bulletin 1726, Item 1; Re Gnewcenski, Bulletin 1722, Item 1.

Revocation of license would be recommended as the penalty here save for circumstances brought forth through the testimony of the members of the Atlantic City Police Department. Their testimony indicated that the licensed premises are in an area where drug activity, as well as other criminal activity, exists and, in consequence, Butler has used constant effort to keep his own premises under surveillance.

The Director of this Division has said, in connection with a similar matter, "... Since revocation is such a harsh penalty, it seems to me that each case should be thoroughly reviewed and its particular facts carefully scrutinized to determine if the penalty accomplishes its purpose, that is, to penalize the violator and to deter others from future similar conduct..." Re Gi-Mo-Do Enterprises (A Corp.), Bulletin 1979, Item 1.

The licensee has an adjudicated record of prior suspensions by the municipal issuing authority, i.e., for ten days effective June 20, 1960, and for thirty days effective October 18, 1965, both resulting from sales to minors. Prior dissimilar violations having occurred more than five years ago disregarded for penalty purposes, it is accordingly recommended that the license be suspended for one hundred eighty days. Re Kyle, Bulletin 1993, Item 1; Re Gi-Mo-Do Enterprises (A Corp.), *supra*.

#### Conclusions and Order

Exceptions to the Hearer's report and written argument in support thereof have been filed by the licensee pursuant to Rule 6 of State Regulation No. 16.

Contention is made that the account by the agents of their visit to the licensed premises is so incredible a story as to be completely fabricated. Such contention is without merit and displays a gross lack of understanding of standard investigatory procedure. An implication was raised that the agents were improperly motivated in their duties and could have planted the narcotics to entrap the licensee. There is not the slightest scintilla of supportive evidence in the record to support this charge.

Licensee further urges that the absence of testimony by the informer was fatal to the finding against it. Commonwealth v. Carter, 427 Pa. 53, is cited as support. However, that case involved a criminal violation whereas this matter is civil in nature. None the less, N.J.S. 2A:84A-28 provides immunity from disclosure of

an informant unless "...disclosure of identity is essential to assure a fair determination of the issues."

In the instant matter the money and packages of the narcotics were exchanged between the bartender and the informer in plain sight of the agents seated twenty feet from them and with an unobstructed view of the alleged transaction. Upon exchange, the informant then handed a package of the narcotic directly to each agent. To that point the informant acted merely as a conduit; his testimony was not necessary to a fair determination of the issue. Cf. State v. Dolce, 41 N.J. 422, 435 (1964); State v. Oliver, 50 N.J. 39 (1967); State v. Booker, 86 N.J. Super. 175 (App. Div. 1965).

Licensee further argues that, upon the finding of guilt on both charges, the Hearer did not apportion the penalty between them. It is apparent from the citations in support of the penalty contained in the report that the penalty recommended was on the first charge alone; had there been any penalty recommended for the finding on the second charge, such would have been set forth.

Lastly, the contention is advanced that the penalty is too severe, if in fact there should be any penalty at all. To bolster this thesis the licensee cites Ishmal v. Division of Alcoholic Beverage Control, 58 N.J. 347 (1971). However, a significant difference exists between this case and Ishmal. There the licensee was the victim of drug addicted patrons, who were ruining her business. It was she who repeatedly sought police help and who initiated two arrests in her tavern. No employee of hers was a party to or participated in the narcotic activity. Here we have the bartender, solely in charge, who was the vendor of the narcotic, making the licensee fully responsible therefor. Kravis v. Hock, supra.

The penalty usually imposed upon a finding of guilt permitting narcotic sales within licensed premises is outright revocation. However, in view of the cooperative attitude of Butler with the Atlantic City Police Department, the Hearer recommended the imposition of a one-hundred-eighty day suspension, citing those few instances where penalties less than revocation were invoked.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, and the written exceptions filed with respect thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 19th day of October 1971,

ORDERED that Plenary Retail Consumption License C-155, issued by the Board of Commissioners of the City of Atlantic City to Milnorm, Inc., t/a Nite Cap Bar, for premises 440 N. New Hampshire Avenue, Atlantic City, be and the same is hereby suspended for one-hundred-eighty (180) days, commencing at 7:00 a.m. Monday, November 1, 1971, and terminating at 7:00 a.m. Saturday, April 29, 1972.

Richard C. McDonough  
Director

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against )

Obay, Incorporated )  
t/a Oyster Bay )  
901 Bergen Avenue )  
Jersey City, N. J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-25, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

-----)  
John J. La Fianza, Jr., Esq., Attorney for Licensee  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On December 19, 1970, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Jean ---, age 20, Karen ---, age 20, and Eileen ---, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

At the first of two hearings in this matter Karen H --- testified for the Division that she was born on March 6, 1950; that on December 18, 1970, she entered the licensed premises in the company of Eileen --- and Jean ---, at approximately 11:15 p.m. They proceeded to a table in a rear room, ordered and were each served a bottle of beer. At no time was she ever requested to show any proof of age.

Shortly thereafter, ABC agents B, H, C and N approached and requested proof of age. The agents then escorted the girls to the kitchen for questioning. She concluded that this had been her first visit to the licensed premises and that she had never signed or been requested to sign a written representation with respect to her age.

On cross examination, she testified that she and the other two girls had walked to the licensed premises from home; she was not stopped at the door; she was not required to pay an entrance fee; she denied ever signing a printed representation form with respect to her age, and denied signing such a form shown to her at the hearing by the attorney for the licensee.

She pointed out inconsistencies in the form as to the spelling of her name, an incorrect birth date and an incorrect address. It was further established that the handwriting on the printed form and the signature on her present drivers license were distinctly dissimilar.

Eileen testified that she was born on December 14, 1950 and was twenty years of age on December 18, 1970. She entered with Karen and Jean, and was similarly served. She stated that she had not previously been in the premises; had never signed any written representation as to her age, and was not required to pay an entrance fee. She accompanied Karen, Jean and the ABC agents to the back room and admitted giving a fictitious name and showing fictitious identification to the agents.

On cross examination, she testified that she had a car on the evening in question. She showed the agents an expired drivers license; she had signed her name fictitiously, and the license shown was in the name of a student at the same school of nursing which she attended.

She denied having signed a written representation form as to age shown to her by the attorney for the licensee. She admitted it showed her correct name and address but noted that it showed an incorrect birth date. She concluded that she did not give the agents her correct name at any time during the incident.

At the adjourned hearing date, Jean testified that she was born on September 25, 1950 and was twenty years of age on December 18, 1970. She had been on the premises on prior occasions, and on the night in question she and Eileen had arrived with Karen in Karen's car. She corroborated the testimony of Karen and Eileen with respect to their entrance, the service to them of alcoholic beverages and the subsequent incident with the ABC agents.

She continued that she had never, on this or any prior occasion, signed any written representation with respect to her age. She conceded having shown the agents fictitious identification upon their request for proof of age.

On cross examination she admitted having been in the premises on three or four occasions. She had on one occasion been turned away because she could not produce proof of age. She denied signing a written representation as to her age as shown to her by the attorney for the licensee and pointed out that the address thereon was incorrect.

Upon being questioned by the Hearer, she testified that she had been required to pay an admission fee on prior occasions but on only one prior occasion was she requested to show proof of age.

ABC agent B testified that, pursuant to a specific assignment he entered the licensed premises at approximately 11:00 p.m. on December 18, 1970 in the company of ABC agents H, C and N. He observed Karen, Jean and Eileen enter the rear room at approximately 12:00 p.m., take seats at a table and order alcoholic beverages from a waitress. He and agent H then identified themselves to the three girls, while agents N and C investigated other patrons. He and agent H then requested proof of age, seized the unconsumed portion of the alcoholic beverages, and escorted the three girls to the kitchen where, in the presence of the manager, they attempted to perfect identification and proof

of age. Karen admitted to being twenty years of age, and she further stated that her two companions were the same age. She produced no identification; Eileen was uncooperative and did not give her correct name; Jean reluctantly admitted to being twenty years of age. The following direct testimony is pertinent:

"Q On the evening in question after you determined or were satisfied the three girls were minors and you seized their drinks was there any mention made of a written representation so far as any members of the management was concerned.

A Yes, sir. They said they had their cards which they have of people they are skeptical of, to sign. At this time no cards were shown to myself or any other agent. Mr. Regante said he believed he had cards but he didn't produce them at this time."

On cross examination he testified that he was required to pay a \$2.00 admission fee at the door and saw patrons being required to show identification. He did not observe any age representation forms nor did he observe any patrons sign or being requested to sign any such forms.

He did not observe Karen, Jean or Eileen enter the premises nor did he make further observation of the entrance procedures with respect to patrons.

Agent H testified that he had been with agent B throughout the entire evening and corroborated his direct testimony.

On cross examination he testified that Karen had no documentary proof of her age and that Eileen and Jean gave fictitious proof of age.

Joseph Gallo testified, on behalf of the licensee, that he is a regular Jersey City police officer, engaged by the licensee one evening a week while off duty, to check identifications at the door and to help maintain order. He was not present on the night in question and his testimony was presented to indicate the means taken by the licensee to maintain order and to observe ABC regulations.

Jerry Regante testified that he is the manager of the licensed premises and that on the night in question, as on all busy nights, two men are stationed at the entrance to collect entrance fees, examine proof of age and take signatures on age representation forms from questionable patrons. On the night in question, this procedure was in effect.

Further, on the night in question, he was not furnished with the names of the girls, the girls were known to the management and:

"...we knew they had proof on them. We knew that definitely. We also knew under some name we had a warning slip with these girls on it because the man at the door told me he remembered definitely one of them signed a warning slip...."

He identified a quantity of alleged "warning slips" and specifically those slips purporting to have been signed by Eileen, Karen and Jean.

He further testified that the licensee's files contain some twenty-five hundred such slips. The three slips placed in evidence as hereinbefore described indicated the birth dates of Karen, Jean and Eileen as being such that they would have attained their majority prior to December 18, 1970. He concluded that he was not apprised of the last names of Karen, Eileen and Jean until April 6, 1971.

James Monroe testified on behalf of the licensee that he is a school teacher and on two evenings a week he is employed by the licensee and is stationed at the entrance to the licensed premises checking identifications. On the night in question the identification procedure began at 8:30 p.m. and was maintained continuously until 2:00 a.m. He has seen Karen on the premises on one or two prior occasions.

Preliminarily it is observed that no affirmative evidence has been presented that written representations were taken from Karen, Eileen and Jean on the night in question. Further, no attempt was made to present such written representation taken on prior occasions notwithstanding the proofs that two of the young ladies identified themselves correctly while being questioned by the ABC agents, and that Regante was present during such questioning.

Minors who employ such deceptions as fictitious identification and outright lying do a great disservice to the industry and their testimony is subject to close scrutiny. While they may find some gratification in successfully outwitting the licensee, they have committed a grave injustice against such licensee.

Where, as here, three intelligent young ladies, one a legal secretary, another a nursing student and the third a secretary commit such despicable acts they should be severely censured.

However, Appendix 5 of the State Alcoholic Beverage Control regulation, states that the only defense to the instant charge in these circumstances available to the licensee is an affirmative showing that:

"(a) that the minor falsely represented himself in writing to be of age; and

(b) that the minor's appearance was such that an ordinary prudent person would believe him to be of age; and

(c) That the sale was made in reliance upon such written representation and appearance and in the reasonable belief that the minor was of age." Appendix 5, at p.86 of the Rules and Regulations of this Division.

Although the testimony of Karen, Eileen and Jean is subject to cautious analysis, considering the circumstances I find that the licensee did not act in reliance on the written representations of the minors herein. Assuming that at least one of the minors had been previously on the premises, it is difficult to believe that all three could have been recognized as having signed on a prior occasion. Further, all three have denied ever signing such representation.

It stands uncontradicted that no representations were signed on the night in question. The most recent such instrument placed in evidence was dated November 4, 1970, approximately six weeks prior to the night in question. Considering all of the circumstances, it is obvious that the sales herein were not made in compliance with the requirements of the applicable law and regulation of this Division.

Accordingly, I find the licensee has failed to establish all the necessary elements to constitute a complete defense to the charge herein and recommend that he be found guilty of the charge.

Absent prior record it is recommended that the license be suspended for fifteen days. Re O'Hara's Bar, Inc., Bulletin 1821, Item 9.

#### Conclusions and Order

Exceptions to the Hearer's report and written argument in support thereof have been filed by the licensee.

Licensee cites the case of Laurino v. State of N.J., Div. of Alcoh. Bev. Contr., 81 N.J. Super. 220 (App.Div. 1963) in support of its argument that licensee has successfully established all of the necessary elements to provide a complete defense to the charge herein, viz.:

"(a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over." N.J.S.A. 33:1-77.

In Laurino two female minors (ages twenty and sixteen) sought employment on licensed premises. Both girls orally represented themselves to be twenty-one years of age and submitted what purported to be genuine baptismal certificates reciting dates of birth indicating their ages to be twenty-two and twenty-one respectively. The licensee thereafter escorted the two young ladies to local police headquarters where they were fingerprinted, issued proper identification and certified by the local Police Department as having complied with the provisions of the local ordinance respecting ages of employees on licensed premises.

In a subsequent disciplinary proceeding against the licensee on charges alleging employment of the said minors and sale of alcoholic beverages to them, the then Director concluded that each minor's appearance was such that an ordinary prudent person would not believe them to be of age. Hence the defense failed.

On appeal the Appellate Division reversed. The court said inter alia:

"... We discern no greater efficacy in a false representation in writing as to age made to the licensee on a recommended A.B.C. form at the time of the sale, upon which he honestly relies in making the sale, than in a similar written false representation made only a few weeks anterior to sale on a form prescribed by the local liquor control board, upon which both the local board and the licensee relied in good faith...." (emphasis added) Laurino, supra, at p. 225.

In the instant matter the facts are quite distinguishable. Here all three minors deny ever having signed any written representation. Further, two of the three minors deny ever having been on the licensed premises prior to the date of the violation. The most recent of the purported written representations is dated November 4, 1970, some forty-five days prior to the instant occurrence. Lastly, the licensee made no effort to produce the written representations for the agents on the night of the violation.

Under the circumstances I find that the reasonable reliance on the written representations found to have been present in Laurino has been properly found by the Hearer to have been lacking herein. Hence, an essential element of the necessary complete defense is sorely lacking. Furthermore, this Division has interpreted Laurino to be limited to the particular circumstances and facts therein. See Sportsman's 300 v. Bd. of Com'rs of Town of Nutley, 42 N.J. Super. 488 (App.Div. 1956) as the expression of established and prevailing principles relative thereto.

I would be remiss if I did not comment on the purported written representation which must be considered suspect herein. The discrepancies in the information on those representations, the obvious dissimilarities in handwriting and the denial by the girls that they ever signed these representations subject them to considerable question as to their authenticity. I therefore find the exceptions to the Hearer's report to be lacking in merit.

Having carefully considered the entire record herein, including transcripts of the testimony, the exhibits, the Hearer's report and the exceptions to the said report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of October 1971,

ORDERED that Plenary Retail Consumption License C-25, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Obay, Incorporated, t/a Oyster Bay, for premises 901 Bergen Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, November 1, 1971, and terminating at 2 a.m. Tuesday, November 16, 1971.

Richard C. McDonough,  
Director.

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF LOCAL HOURS ORDINANCE - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against The Maples, Inc. t/a Lagoda's Bar Route #35 and Melrose Avenue Sayreville, PO South Amboy, N.J., Holder of Plenary Retail Consumption License C-39, issued by the Borough Council of the Borough of Sayreville.)

CONCLUSIONS and ORDER

Licensee, Pro se Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Saturday, September 4, 1971, between the hours of 3:00 a.m. and 3:50 a.m., it sold and permitted consumption on the licensed premises of alcoholic beverages, in violation of local ordinance.

Licensee has a prior record of suspension for five days effective June 6, 1965 for similar violation by the local issuing authority, and for fifteen days by the Director effective August 27, 1968 for possessing liquor not truly labeled. Re The Maples, Inc., Bulletin 1812, Item 15.

The previous record of suspension of license for similar violation occurring within the past ten years and the prior suspension for dissimilar violation occurring within the past five years considered, the license would normally be suspended for twenty-five days with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Feeney, Bulletin 1936, Item 6.

However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$800 in lieu of suspension.

Accordingly, it is, on this 21st day of October 1971,

ORDERED that the payment of a fine of \$800 by the licensee is hereby accepted in lieu of a suspension of license for twenty days.

Richard C. McDonough Director