

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Dr. Cranford, N.J. 07016

BULLETIN 2067

October 10, 1972

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2067

October 10, 1972

1. APPELLATE DECISIONS - PETERSON'S TAVERN, INC. v. MIDDLE TOWNSHIP.

Peterson's Tavern, Inc., t/a)
Peterson's Tavern,)
Appellant,) On Appeal
v.) ORDER
Township Committee of the)
Township of Middle,)
Respondent.)

Edwin W. Bradway, Esq., Attorney for Appellant
George M. James, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from respondent's denial of its application for a place-to-place transfer of Plenary Retail Consumption License C-1, from premises on the east side of Route 9, Mayville, Middle Township, to the west side of Route 585, Jamesway Shopping Center, Dennisville Road, Middle Township.

Prior to hearing, appellant's attorney by letter dated September 5, 1972 requested that the appeal be "withdrawn".

Accordingly, it is, on this 8th day of September 1972,

ORDERED that the appeal herein be and the same is hereby dismissed.

Robert E. Bower
Director

2. DISCIPLINARY PROCEEDINGS - LICENSE IMPROVIDENTLY ISSUED - ORDER DEFERRING CANCELLATION OF LICENSE PENDING CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against)
 Ellison Straight Corp.)
 t/a Blue Ribbon Cafe)
 207 Straight Street)
 Paterson, N.J.,)
 Holder of Plenary Retail Consumption License C-26, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)
 -----)

CONCLUSIONS and ORDER

William J. Rosenberg, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee did not contest an order to show cause why its license should not be suspended, revoked or cancelled for the following reason:

"Said license was improvidently issued in violation of R.S. 33:1-31 by reason of the fact your corporation was ineligible to hold or receive such license in that Austin V. Baines, an officer, director and holder of more than 10% of the stock of your corporation was ineligible to hold or receive an alcoholic beverage license by reason of his having been the president, director and 95% stockholder of Tuck Inn, Inc., whose license was revoked effective June 9, 1959 and his having been a partner with Reverta Marie Gray, whose license was revoked effective April 11, 1967."

The facts are sufficiently set forth in the quoted charge. Division investigation disclosed that the corporate stockholders of the licensed premises, in addition to the revocations cited, have an extensive record of prior violations too numerous to require citations here.

It is reported to the Division by licensee's attorney that Austin V. Baines, a principal stockholder of the licensee corporation, named in the above charge, is presently making arrangements to sell all of his interest in the licensee corporation. However, to date there is no evidence before the Division that such transfer of interest has been accomplished.

Accordingly, it is, on this 6th day of September 1972,

ORDERED that Plenary Retail Consumption License C-26, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Ellison Straight Corp., t/a Blue Ribbon Cafe, for premises 207 Straight Street, Paterson, be and the same is hereby cancelled effective 3 a.m. October 1, 1972. However, before October 1, 1972 the said corporate licensee may make application to me for reconsideration and discharge of this order in my discretion by establishing, through a verified petition, adequately supported by documentary evidence, that Austin V. Baines has completely divested himself of any and all interest in the corporate stock of the said corporate licensee.

Robert E. Bower,
Director.

3. DISCIPLINARY PROCEEDINGS - ORDER.

In the Matter of Disciplinary)
 Proceedings against)
 Ellison Straight Corp.)
 t/a Blue Ribbon Cafe)
 207 Straight Street)
 Paterson, N.J.,)

ORDER

Holder of Plenary Retail Consumption)
 License C-26, issued by the Board of)
 Alcoholic Beverage Control for the)
 City of Paterson.)

 William J. Rosenberg, Esq., Attorney for Licensee
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

On September 6, 1972, Conclusions and Order were entered herein cancelling the license, effective October 1, 1972, with leave granted the licensee to make application to me before October 1, 1972 for reconsideration and discharge of the said Order, by filing a verified petition establishing that Austin V. Baines, the president and principal stockholder of the corporate licensee, has completely divested himself of any and all interest in the corporate stock of the said licensee.

It appearing from a verified petition submitted by the licensee, in the form of an Affidavit of Austin V. Baines, that he has resigned as an officer and director of the said licensee, accompanied by an executed form of resignation therefrom, and a copy of the executed sales agreement with respect thereto, manifesting that the unlawful situation has been corrected, I shall grant the petition requesting discharge of the said cancellation.

Accordingly, it is, on this 22nd day of September, 1972

ORDERED that the Order heretofore entered cancelling the said license as of October 1, 1972, be and the same is hereby vacated, effective immediately.

Robert E. Bower,
 Director

4. ACTIVITY REPORT FOR AUGUST 1972

ARRESTS:		
Total number of persons arrested- - - - -		15
Licensees and employees- - - - -	5	
Bootleggers - - - - -	5	
Minors- - - - -	5	
SEIZURES:		
Alcohol - gallons - - - - -		.125
Distilled alcoholic beverages - gallons - - - - -		5.70
Wine - gallons- - - - -		1.73
Brewed malt alcoholic beverages - - - - -		36.07
COMPLAINTS AND INVESTIGATIONS:		
Inspections & visits made on assigned investigations- - - - -		1,489
Complaints assigned for investigation - - - - -		342
Investigations completed- - - - -		340
Investigations pending- - - - -		337
Premises where alcoholic beverages were gauged- - - - -		543
Bottles gauged- - - - -		9,624
Premises where violations were found- - - - -		201
Number of violations found- - - - -		316
License applications investigated - - - - -		11
Contacts made with other law enforcement agencies - - - - -		454
LABORATORY:		
Analyses made - - - - -		114
Refills from licensed premises - bottles- - - - -		95
Bottles from unlicensed premises- - - - -		10
IDENTIFICATION:		
Criminal fingerprint identifications made - - - - -		14
Persons fingerprinted for non-criminal purposes - - - - -		456
Identification contacts made with other enforcement agencies- - - - -		342
DISCIPLINARY PROCEEDINGS:		
Cases instituted at Division- - - - -		33
Violations involved - - - - -		35
Sale during prohibited hours- - - - -	6	Hindering - - - - - 2
Sale to minors- - - - -	11	Narcotics - - - - - 1
Possession liquor not truly labeled - - - - -	6	Sales to non-members - club - - - - - 2
Fraud and front - - - - -	2	Nuisance- - - - - 1
Aiding and abetting- - - - -	1	License improvidently issued- - - - - 1
Permit Gambling (Numbers) - - - - -	2	
Cases brought by municipalities on own initiative and reported to Division- - - - -		12
Violations involved - - - - -		13
Sale to minors- - - - -	9	Act of violence - - - - - 1
Sale during prohibited hours- - - - -	2	Employing intoxicated person- - - - - 1
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		52
Appeals - - - - -	10	
Disciplinary proceedings- - - - -	41	
Eligibility - - - - -	1	
STATE LICENSES AND PERMITS:		
Total number issued - - - - -		1,696
Licenses- - - - -	10	Wine Permits- - - - - 14
Solicitors permits- - - - -	50	Miscellaneous - - - - - 238
Employment permits - - - - -	424	Transit insignia- - - - - 241
Disposal permits- - - - -	84	Transit certificates- - - - - 176
Social affair permits - - - - -	459	
OFFICE OF AMUSEMENT GAMES CONTROL		
Licenses issued - - - - -	3	Number violations found- - - - - 9
Premises inspected- - - - -	295	State Fair licenses issued - - - - - 120
Premises where violations found- - - - -	9	Enforcement files established- - - - - 9

Dated September 18, 1972

ROBERT E. BOWER
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

5. DISCIPLINARY PROCEEDINGS - SALE OF DRINKS FOR OFF-PREMISES CONSUMPTION - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)

Wildwood Crest Liquors, Inc.)
t/a Crest Tavern)
9600 Pacific Avenue)
Lower Township)
PO Wildwood, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-17 (for the 1971-72 license period) and C-15 (for the 1972-73 license period), issued by the Township Committee of Lower Township.)

-----)
George M. James, 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 pleads not guilty to a charge that on Saturday, July 31, 1971, it sold alcoholic beverages not within the terms of the plenary retail consumption license, as defined by R.S. 33:1-12 (1) for off-premises consumption, in violation of N.J.S.A. 33:1-2.

Agent G, appearing for Division, testified that he, in the company of agent P, visited the licensed premises about 6:00 p.m. on Saturday, July 31, 1971. He remained in the car, parked in the licensee's parking lot for about a half an hour, during which time he saw what he presumed to be two waiters, the presumption arising from the identical dress of the waiters, carrying trays with what appeared to him to be alcoholic beverages, from the door of the licensed premises to the door of a restaurant located diagonally across the street.

Inspecting the trays carried by the waiters at closer range, and being satisfied the contents of the glasses so carried contained alcoholic beverages, agent G entered the licensed premises, while agent P visited the restaurant. Within a few minutes thereafter, agent G saw the two waiters approach the bar, saw the bartender prepare drinks and place them on trays. The waiters promptly departed the licensed premises carrying the trays on which had been placed glasses containing vodka-martinis and two bottles of opened beer. The waiters left the premises, one of whom was followed to the restaurant by the agent. There the agent joined his colleague who, meanwhile, had received two bottles of opened Budweiser beer. The restaurant at that time possessed no retail consumption license for the sale of alcoholic beverages of any kind. The agents seized the contents of the bottles of beer and poured a part thereof into a sample bottle carried for that purpose.

Both agents then returned to the licensed premises where they identified themselves to the bartender, later identified as John Murphy, who promptly called the president of the licensee corporation, George M. James. They obtained identification from the waiters; James denied that either waiter was an employee of the licensee corporation.

The sample bottle was introduced into evidence but withdrawn upon the stipulation that the bottle contained beer.

On cross examination agent G stated that he sat at the "T-shaped" bar at a particular position which he marked on a sketch of the bar drawn by the licensee's counsel. He admitted that had the bottles of beer given to the waiters been unopened, there would have been by that act no violation of the alcoholic beverage law or regulations. He further admitted that he did not see the bottles opened or further noticed any "outdoor sidewalk cafe" directly in front of and part of the licensed premises.

Agent P testified that he had initially observed waiters carrying trays from the licensed premises to the restaurant and he was satisfied that the trays supported glasses of alcoholic beverages. Upon entry and being seated in the restaurant, he was asked by a waitress if he desired a cocktail, which he declined in preference to beer. The waitress went to one of the two waiters whom the agent had seen from the car, held a short inaudible conversation, whereupon the waiter departed and returned in a few minutes with two bottles of opened beer, for which the agent paid \$1.50. He was joined at that point by his fellow agent.

Agent P agreed on cross examination that he could not recall the existence of a sidewalk cafe in front of the licensed premises. He admitted that the waiter served other patrons with what appeared to be vodka-martinis, but he could not state where such drinks came from. He did affirm that the same waiter had been coming in and out of the licensed premises several times with both beer and apparent cocktails.

The bartender, John Murphy, testified that he is in sole charge of the bar; a clerk is in charge of the "package area". He denied that, from agent G's position at the bar, it would have been possible to see outside the licensed premises in the direction of the restaurant. He described the custom of the restaurant and that of the licensed premises as a comfortable arrangement, by which patrons of the restaurant who otherwise would wait in an outside line in front of the restaurant would repair to the sidewalk cafe of the licensee and there be served by one of the waiters of the restaurant. He denied that stem or straight glasses were ever used at the outside sidewalk cafe because of the possibility of glass breakage; hence, only plastic glasses are used. He denied that the person whom the agents identified as a waiter was employed by either the licensed premises or by the restaurant on that day.

On cross examination Murphy admitted Budweiser beer was popular and that on a busy day there might be thirty patrons within the premises and the same number outside in the cafe. He was the sole bartender, save for a period when he and the day bartender worked simultaneously. He admitted waiters would buy drinks from him for resale to patrons waiting in the sidewalk cafe.

Frank Murphy, brother of John, testified that he is the "day" bartender and worked daily until six p.m. About that hour, he and his brother work together for a short time because of the increase of dinner-hour patrons of the restaurant who visit the licensed premises. On cross examination he denied that he ever sold opened beer for off-premises consumption. He did provide waiters with plastic glasses and drinks for patrons of the sidewalk cafe, which cafe was part of the licensed premises.

At the close of the hearing, the attorney for licensee requested an opportunity to furnish a photo of the outside of the licensed premises as well as copies of advertisements which emphasize the existence of the sidewalk cafe. Shortly after the hearing these items were furnished.

The crucial issue in this matter is a factual one: Did the licensee's employee permit the sale of alcoholic beverages by the open glass or other open receptacle for off-premises consumption. In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. Evidence to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1, (App. Div. 1961).

The demeanor of the witnesses and their testimony must lead to some definite conclusions, i.e.:

"The court canvasses the record, not to balance the persuasiveness of the evidence on one side as against the other, but in order to determine whether a reasonable mind might accept the evidence as adequate to support the conclusion and, if so, to sustain it."

Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501, 506 (App. Div. 1956).

It strains credibility to assume that the waiters, not employed by the licensee, purchasing drinks from the bar, as was readily admitted, necessarily confined themselves to the strict limits of the sidewalk cafe, when a few steps more would take them to the restaurant that presumably employed them. The licensed premises accommodated as many persons outside in the sidewalk cafe as inside. The bartender, as sole employee in the evening, was required to leave the building to serve patrons in the cafe. As a great number of these patrons were awaiting a table in the restaurant, service to them developed by way of the restaurant's waiters who were not under the control of the licensee or bound by its admonitions. The bartender would have us believe that despite being busy in a crowded bar, the waiters taking varied drinks from the bar were never out of his sight or seen going to the restaurant. Such testimony is implausible.

The testimony of the agents relating to their observations of alcoholic beverages being carried between the licensed premises and the restaurant; the suggestion of cocktails by a waitress; the order to her and her conversation with the waiter; his departure from the restaurant and return with the order; the fulfilling of an order by the bartender and the removal of that order by the waiter -- all impressed me as forthright and credible, and go to the substantiation of the charge by a preponderance of the believable evidence.

Vigorous cross examination of the agents respecting their failure to recollect the existence of the sidewalk cafe, when the photo clearly shows its attractive setting does not destroy their credibility; conversely it admits to the supposition that, in the absence of an accurate physical description in their reports, their recollection of the details of the premises became vague after the passage of almost a year. It must be realized that these agents were assigned to hundreds of inspections of other licensed premises during that period. The major focus of their assignment being the apparent violation, their peripheral observation of the detailed physical lay-out of the licensed premises was irrelevant to the matter herein considered.

In disciplinary proceedings, a licensee is fully accountable for all violations committed or permitted and suffered by his agents, servants or employees. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

Hence, I recommend that the licensee be found guilty of the charge herein and further recommend, absent prior adjudicated record, that the license be suspended for ten days (Re Heide's Tavern, Inc., Bulletin 1944, Item 4; Re Plain and Fancy Tavern, Bulletin 1934, Item 4; Re Triano, Bulletin 1760, Item 13).

In view of the character of the business conducted by the licensee and the accommodation the premises afford the vacationing public, I further recommend that, should the licensee make timely application for the imposition of a fine in lieu of suspension, such application be favorably considered.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 7th day of September 1972,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of Lower Township to Wildwood Crest Liquors, Inc., t/a Crest Tavern for premises 9600 Pacific Avenue, Lower Township, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Tuesday, September 19, 1972 and terminating at 3:00 a.m. Friday, September 29, 1972.

Robert E. Bower
Director

6. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - DISMISSED.

In the Matter of Disciplinary Proceedings against
)
)
 Pier Bar, Inc.
 38-40 First Avenue)
 Atlantic Highlands, N. J.,)
)
 Holder of Plenary Retail Consumption License C-8 (for 1971-72 and 1972-73) license periods), issued by the Borough Council of the Borough of Atlantic Highlands.)
 -----)

CONCLUSIONS and ORDER

Saling, Moore, O'Mara & Coogan, Esqs., by Francis X. Moore, Esq.,
 Attorneys for Licensee
 Dennis M. Brew, 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 November 24, 1971, you allowed,permitted and suffered the consumption of alcoholic beverages in and upon your licensed premises by a person under the age of twenty-one (21) years, viz., Mary-Ann L. M---, age 16; in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division, Mary-Ann --- testified that she was born on May 25, 1955 and was sixteen years of age on the date alleged in the charge.

ABC Agent B testified that he entered the licensed premises on November 24, 1971 at 9:30 p.m. and seated himself at the rear part of the bar. The bartender on duty was identified as Philip A. Loori. Among the approximately twenty-five patrons he identified the minor Mary-Ann seated three or four stools to his left almost diagonally across on the other side of the bar. He then testified, "I observed her to have in front of her a glass with an amber liquid with a white foamy head, and next to this there was a bottle, beer bottle, bearing the label 'Schaefer's.' I observed her consuming a portion of this glass."

Shortly thereafter Agent M entered and positioned himself at the front end of the bar. Thereupon Loori moved to Mary-Ann's position at the bar, removed the bottle and the glass from her location, placed it on the sub-bar and later emptied it in the sink. Loori then drew a liquid, which appeared to be a carbonated drink, and placed it in front of the minor. The agent observed no conversation related to that service.

Thereafter Agent M departed from the premises. Twenty minutes later Agent B departed from the premises. Agent M returned to the premises through the front door and Agent B returned through the side door. At this time Agent B did not observe any beverage at all in front of Mary-Ann. Agent B then identified himself to the minor and to the bartender and informed the bartender of the alleged violation.

On cross examination Agent B testified as follows:

"Q During the entire time you were there up until the time you left the first time did you see any alcoholic beverages before her? In other words, between the time your partner left and you left did you see her consume or have in front of her any alcoholic beverage?

A I did not observe her to consume, no."

On recross examination Agent B testified as follows:

"Q Can you tell the Court whether you saw her [Mary-Ann] ingest anything from that glass?

A. No.

Q So that your testimony whether or not she consumed something is conditioned upon the fact that you couldn't see or tell this tribunal she actually ingested anything?

A No, I could not."

Later, on redirect examination Agent B's testimony revealed the following:

"Q Do you know what the word 'ingest' means?

A No, only from the way it was used.

Q What was your understanding of the word 'ingest' the way it was used?

A To allow a portion of the substance to be imbibed.

Q From your observations of the glass with the amber-colored fluid and head on it you said in front of [the minor] at any time during your visit did you observe the line in that glass to go down?

A No, I can't say I did.

Q Did you observe [the minor] to pick up the glass and put it to her lips?

A Yes, I did.

Q Did you observe if her mouth was open?

A No, I did not."

Called to testify by the licensee, ABC Agent M testified that on the date mentioned in the charge he saw Mary-Ann and her husband together at the bar. He did not see an amber-colored drink in front of Mary-Ann; he observed a beverage in front of her which had the appearance of a "coke."

Mary-Ann testified that (accompanied by her husband) she entered the licensed premises on November 24 at approximately 8 p.m. Her husband consumed alcoholic beverages and she drank a "coke."

James --- (husband of the previous witness) testified that on the night in question he did not order any alcoholic beverages for his wife nor did he see her consume any alcoholic beverage.

Philip A. Loori testified that he is the "owner" of the licensed premises and on the night in question he was tending bar. He served James beer. James then switched to vodka and tonic. He did not serve any alcoholic beverages to Mary-Ann nor did he place beer in front of her.

John H. Landis testified that he tends bar occasionally at the licensed premises in order to relieve Loori. On the night of November 24 he was seated two or three stools distant from Mary-Ann and her husband. He did not observe beer placed in front of Mary-Ann. She was served Coca-Cola.

It is apparent that the dispositive issue for determination is factual.

The charge leveled against the licensee is that it allowed, permitted and suffered the consumption of an alcoholic beverage by the minor named therein. In the subject case, as in all disciplinary proceedings, the Division has the burden of proving the truth of the charge by a preponderance of the credible evidence. Re Varsity Bar, Incorporated, Bulletin 1785, Item 5.

In the subject case the uncorroborated testimony of the agent was affirmatively refuted by a number of witnesses for the licensee, including the minor herself. Additionally, the agent's testimony relating to the vital element of consumption was vacillatory in nature.

It is my view that the Division has failed to prove the consumption of an alcoholic beverage by the minor which is the essential ingredient of the violation charged herein and I therefore recommend that the licensee be found not guilty and the charge be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 7th day of September 1972,

ORDERED that the charge herein be and the same is hereby dismissed.

Robert E. Bower
Director

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)
)
 Gene Bulmer's Enterprises, Inc.)
 t/a Hi-Hat Bar)
 20 Main Street)
 Keansburg, N. J.,)
 Holder of Plenary Retail Consumption License C-5, for 1971-72 and 1972-73 license years, issued by the Municipal Council of the Borough of Keansburg.)
 -----)

CONCLUSIONS and ORDER

Saling, Moore, O'Mara & Coogan, Esqs., by Francis X. Moore, 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 pleads not guilty to the following charge:

"On October 20, 1971, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of an alcoholic beverage, directly or indirectly, to a person under the age of twenty-one (21) years, viz., John P. C., Jr. ---, age 16, and allowed, permitted and suffered the consumption of an alcoholic beverage by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division John --- testified that he was born on June 8, 1955, and was sixteen years of age on October 20, 1971. Accompanied by his mother, aunt and two sisters, he entered the licensed premises on the date charged herein at 2 p.m. He took a glass of beer to the pool table and partially consumed it. ABC Agent D identified himself and poured the remainder of the beer into a bottle. The bartender did not question John concerning his identify or age. John stated that he did not pay for the drink nor did he know who paid for or ordered the beer.

On cross examination John testified that he had no conversation with the bartender; he did not request anyone in the establishment to serve him; he did not pay anyone for the beer; the beer was not handed to him and the beer was not placed in front of him. The beer was placed in front of his mother who was seated next to his aunt. When his mother left the bar momentarily, he took the beer without asking anyone's permission.

Agent D testified that accompanied by Agent C he entered the licensed premises on October 20 at noontime and sat at the bar. At 2 p.m. he observed the minor John and two females (one of whom was identified as John's mother and the other as John's aunt) enter the premises. John positioned himself at the bar next to his aunt. John's mother (Mrs. Catherine ---) was served a mixed drink. John and his aunt were each served a seven-ounce bottle of Budweiser beer. He observed John pour the beer into a glass, consume some and then proceed to the pool table and shoot pool. He did not observe the bartender and John engage in conversation prior to the beer being served to John.

After John engaged in playing pool approximately five minutes, Agent D observed John remove the beer bottle from the bar and resume playing pool. John consumed all of the beer. Agent D challenged him in a game of pool. During the course of the game John returned to the bar and the bartender placed another bottle of beer on the bar where the empty bottle and glass were located. John poured about a half-glass of beer, took a sip and returned to the pool table.

After engaging in conversation Agents D and G identified themselves to John. Agent D then identified himself to John's mother and to the bartender. The agent confiscated the remaining contents of the glass from which John had been drinking.

A chemical analysis established that the seized alcoholic beverage was in fact beer. The bartender, who was identified as Thomas McMahon, admitted serving John and said he didn't pay any attention to him. He had never tended bar prior to this occasion. He tended bar because the regular bartender was sick and the "boss" had to attend to some important business.

On cross examination Agent D testified that John, his mother and his aunt were positioned approximately twenty to twenty-five feet distant from him. John was standing to the right of his aunt who was seated, and John's mother was seated to the left of his aunt. The agent observed that the bartender served John's mother a mixed drink, placed a bottle of beer and a glass in front of John's aunt, and set a bottle of beer and a glass in front of John. John poured the beer into the glass himself. He did not hear who ordered the drinks, nor did he see who paid for the drinks. He did not identify himself to John until John returned to the bar after playing pool and picked up a full bottle of beer placed in front of him by the bartender. John then poured beer in the glass and consumed some of it. He does not know who paid for the beer consumed by the minor.

Recalled as a witness for the licensee, John testified that he did not consume two bottles of beer; the beer was in front of his mother; she left the bar at which time he took the beer; he took the beer without receiving anyone's permission; he did not drink beer at the bar; he took the glass of beer to the pool table and consumed it while at the table; he did not order any drink; he did not request anyone to order drinks for him nor did he pay for any drinks.

Catherine --- (mother of John) testified that she visited the licensed premises in order to celebrate her anniversary. Her sister (John's aunt) ordered a highball and a beer. She didn't want the highball and therefore ordered a beer. The bartender placed a beer in front of her sister and a beer and a highball in front of her. She consumed the highball and thereafter consumed some of the beer. She then went to the telephone booth and, upon her return, she observed that Agent D had confronted her son John. At no time did John request permission to remove the glass or the bottle from the bar or to drink beer. He did not consume any beer in her presence.

On cross examination the witness asserted that the bartender did serve two bottles of beer and a mixed drink on the first round.

Although I agree with licensee's contention that it did not sell the alcoholic beverage to the minor or allow, permit or suffer the sale thereof, I find licensee's contention that it did not deliver the alcoholic beverage (beer) and that it did not suffer the consumption of alcoholic beverages lack merit.

Assuming, but not conceding, that I were to find that the licensee did not deliver the beer to the minor, nor allowed, permitted or suffered the delivery thereof to the minor, I take cognizance of the fact that the charge in its pertinent part alleges that the licensee allowed, permitted and suffered the minor to consume an alcoholic beverage in violation of Rule 1 of State Regulation No. 20.

In adjudicating this matter I find it to be an uncontroverted fact that the sixteen-year-old youth consumed beer in the licensed premises.

The fact that the minor did not pay for the drink or that it was not ordered directly by him does not relieve the licensee of its responsibility since it has been held, under the broad sweep of the Alcoholic Beverage Law and the principle of rigid control underlying its administration, that service, even indirectly, to a minor by service by the minor's companion is a violation of the statute. Cf. Fran-Bo-Car, Inc. v. Englewood, Bulletin 1186, Item 3; Grippe v. Hoboken, Bulletin 999, Item 2; Re Gahr, Bulletin 377, Item 7.

Succinctly stated, the licensee further contended that, inasmuch as it was without knowledge of the act complained of, it did not allow, permit or suffer the act. However, I find that this case clearly comes within the ambit of Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup.Ct. 1947), wherein several minors (who were accompanying adults at a banquet) admitted imbibing beer which they "sneaked" when the older men were not looking and the waiters were not present. Judge (later Justice) Wachenfeld held as follows (at pp. 30, 31):

"In construing this section consideration must be given to the legislative intent, and inquiry should be made to determine if it concluded to make the offense complete without guilty knowledge. The lawmakers may declare an act criminal irrespective of the knowledge or motive of the doer of such act and the court has no right to insert an element not intended by the legislature.

* * * * *

"The prevention of the sale to, or the consumption by, minors of liquor upon licensed premises is of the utmost importance. Its purpose is to protect our youth and thereby make more secure the foundation of society. The intent of the legislature and the rules and regulations of the department governing enforcement clearly encompass the responsibility of the licensee for the consumption of alcoholic beverages by minors under the circumstances complained of.

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Trennan, 128 Conn. 356; 23 Atl.Rep. (2d) 140."

Licensees are under the full responsibility of seeing to it that no minor is sold or served or allowed to consume any alcoholic beverages on the licensed premises. Grippe v. Hoboken, supra.

I therefore find and recommend that the licensee be found guilty of the said charge.

Licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended for twenty-five days. Re Allsop, Bulletin 2007, Item 3.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 6th day of September 1972,

ORDERED that Plenary Retail Consumption License C-5, issued by the Municipal Council of the Borough of Keansburg to Gene Bulmer's Enterprises, Inc., t/a Hi-Hat Bar for premises 20 Main Street, Keansburg, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. on Thursday, September 21, 1972, and terminating at 2:00 a.m. on Monday, October 16, 1972.

Robert E. Bower
Director

8. DISCIPLINARY PROCEEDINGS - ORDER.

In the Matter of Disciplinary)
 Proceedings against)
)
 Black Bart's, Inc.)
 West Side Route 206)
 Montgomery Township)
 PO Skillman, N.J.,)

O R D E R

Holder of Plenary Retail Consumption)
 License C-2, issued by the Township)
 Committee of the Township of)
 Montgomery.)

-----)
 Edward A. Costigan, Esq., Attorney for Licensee
 Dennis M. Erew, Appearing for Division

BY THE DIRECTOR:

On June 27, 1972, an Amended Order was entered herein suspending the license, issued for the current licensing period, for the balance of its term commencing on July 6, 1972, with leave for the licensee or any bona fide transferee of the license to file a verified petition establishing correction of the unlawful situation for lifting of the suspension on or after thirty-six days from the commencement of the said suspension. Re Black Bart's, Inc., Bulletin 2064 , Item 8 .

It appearing from the verified petition submitted by the licensee and a corroborative letter from the Township Administrator of the Township of Montgomery that the unlawful situation has been corrected, and it further appearing that more than thirty-six days has elapsed since the commencement of the said suspension, I shall grant the petition requesting termination of the suspension.


Accordingly, it is, on this 15th day of August 1972,

ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated, effective immediately.

Robert E. Bower
 Director

9. STATE LICENSES - NEW APPLICATION FILED.

Jack Daniel Distillery, Lem Motlow, Prop. Inc.
 1620 Route 22, Union, New Jersey
 Application filed September 29, 1972 for place-to-place transfer
 of Plenary Wholesale License W-58 from Lynchburg, Tennessee.


 Robert E. Bower
 Director