

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

BULLETIN 1517

JUNE 13, 1963

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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 1517

JUNE 13, 1963

1. TAX INCREASE - NOTICE RE MINIMUM CONSUMER RESALE PRICE FILINGS.

TO ALL FILERS OF MINIMUM CONSUMER RESALE PRICES FOR LIQUORS:

The New Jersey tax on liquors (as defined by the New Jersey Alcoholic Beverage Tax Law) has been increased from \$1.50 to \$1.80 per gallon, effective June 1, 1963 by P.L. 1963, C. 43.

Minimum consumer resale price filings for the third quarter-annual pamphlet effective July 1, 1963 are reopened to permit filing new minimum resale prices on liquors effective July 1, 1963.

New prices are to be in this office on or before May 29, 1963.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

DATED: May 21, 1963.

2. TAX INCREASE - NOTICE RE WHOLESALE PRICE FILINGS.  
STATE REGULATION NO. 34 - AMENDMENT OF CURRENTLY EFFECTIVE WHOLESALE PRICE LIST.

TO ALL FILERS OF WHOLESALE TO RETAIL PRICES ON LIQUOR:

P. L. 1963, c. 43, amending R.S. 54:43-1 (the Alcoholic Beverage Tax Law), increasing the tax on liquors from one dollar and fifty cents (\$1.50) to one dollar and eighty cents (\$1.80) a gallon, is effective June 1, 1963.

In order to establish a uniform procedure in the application of the increased state tax to wholesale prices presently on file, I rule that, not later than May 29, 1963, all wholesalers subject to the provisions of State Regulation No. 34 shall submit to the Division a schedule of bottle and case prices of liquors permissibly reflecting the increased tax and the wholesaler's mark-up on the tax increase, to become effective June 1, 1963, in form similar to usual price filing.

Such price filing will constitute an amendment (effective June 1, 1963) to the currently effective quarter-annual Wholesale Price List which was effective April 1, 1963 and will also be accepted as an amendment to the price filing already made for publication in the third quarter-annual Wholesale Price List unless a separate price filing for that list is submitted not later than May 29, 1963.

Such amended prices shall become effective June 1, 1963 and continue in effect until midnight June 30, 1963 or, pursuant to Rule 7 of State Regulation No. 34, until the effective date of the publication of the third quarter-annual Wholesale Price List.

In addition to the required price filing with the Division, wholesalers are required to notify all of their retailers of the increased prices to become effective June 1, 1963. Such notice shall be given in the same manner as notice of "post-offs" pursuant to Rules 8 and 9 of State Regulation No. 34.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

DATED: May 22, 1963

3. TAX INCREASE - NOTICE TO RETAIL LICENSEES.

ADVERTISING - PROHIBITION OF PRICE ADVERTISING NOT INCLUDING TAX INCREASE AND MARK-UP - PROHIBITION OF ADVERTISING OF ABSORPTION OF TAX INCREASE.

STATE REGULATION NO. 30 - EXTENSION OF CURRENTLY EFFECTIVE MINIMUM CONSUMER RESALE PRICE LIST.

TO ALL RETAIL LICENSEES:

P. L. 1963, c. 43, amending R.S. 54:43-1 (the Alcoholic Beverage Tax Law) increasing the tax on liquors from one dollar and fifty cents (\$1.50) to one dollar and eighty cents (\$1.80) a gallon, is effective June 1, 1963.

"Liquors" is defined by R.S. 54:41-2 to mean all alcoholic beverages other than malt alcoholic beverages, wines, sparkling wines and vermouth.

Wholesalers have been authorized to increase their prices on liquors effective June 1, 1963 to reflect the tax increase and their mark-up thereon. They are required to notify their retailers of such increased prices in the same manner as with post-offs.

To prevent circumvention of the purpose of State Regulation No. 30 (Minimum Consumer Resale Prices of Alcoholic Beverages) and still permit retail licensees to pass on any increased cost of liquors to them after June 1, 1963, pursuant to power conferred by R.S. 33:1-39 it is hereby ruled that, effective June 1, 1963 and continuing only until the effective date of publication of the third quarter-annual list of minimum consumer resale prices (anticipated to be on July 1, 1963 or as soon thereafter as is possible):

1. Retailers may choose for themselves whether to absorb the price increase or pass on to the consumer the increase with or without mark-up thereon. However, if the tax increase is absorbed, there may be no advertising to the general effect that "We absorb the tax increase" or "No increase in price because of tax increase" or other similar advertisement indicating that bargain prices are available. Such advertisement may be deemed in violation of Rule 6 of State Regulation No. 21 and cause for suspension or revocation of license.

2. On and after Saturday, June 1, 1963, no liquor item listed in the currently effective Minimum Consumer Resale Price Pamphlet or any private label brand or exclusive brand of liquor may be price-advertised by any retailer in any periodical,

publication, circular, handbill, or direct mailing piece unless the advertised price constitutes the listed or filed price plus the price increase plus mark-up thereon which shall be computed at not less than 33-1/3% on distilled spirits and mixtures thereof and 45% on cordials and liqueurs.

3. The provisions of Rule 6 of State Regulation No. 30 prohibiting price displays on retail licensed premises and advertising of any retail price other than that filed with the Director are temporarily modified to authorize pricing and price-advertising as above indicated.

Pursuant to Rule 4 of State Regulation No. 30, the currently effective list of minimum consumer resale prices effective April 1, 1963, will be continued in effect until the effective date of publication of the third quarter-annual minimum consumer resale price list.

It is emphasized that the list of minimum consumer resale prices are prices below which the listed item may not be sold -- there is no objection to their sale at any higher price, whether computed by the retailer or as may be suggested by the supplier.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

DATED: May 28, 1963

4. APPELLATE DECISIONS - MAHR v. LACEY.

KARL C. MAHR,	)	
Appellant,	)	
v.	)	ON APPEAL
	)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE	)	AND ORDER
TOWNSHIP OF LACEY,	)	
Respondent.	)	

-----  
George G. Tartar, Esq., Attorney for Appellant.  
No Appearance on behalf of Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent whereby it denied an application for a plenary retail consumption license for the period expiring June 30, 1963, for alleged hotel premises located at U.S. Route 9 and Railroad Avenue, Forked River, Lacey Township.

"In its resolution denying the said application on December 7, 1962, the respondent set forth the following reasons for its action: (a) the applicant does not operate a bona fide hotel containing fifty sleeping rooms equipped and furnished for the accommodation of guests; (b) the applicant has failed to comply with Rule 2 of State Regulation No. 2 in that proper plans and specifications of the proposed licensed premises were not filed for examination at the office of the municipal clerk; (c) there

are sufficient licensed premises for the dispensation of alcoholic beverages in the immediate vicinity and in the area of the proposed license and, accordingly, no need exists for the issuance of the said license; (d) the public interest will be best served by the denial of this application.

"In his petition of appeal the appellant alleges that the action of the respondent was erroneous for the following reasons: (1) the applicant had been heretofore the holder of a plenary retail consumption license issued by the respondent for the hotel conducted on said premises from 1953 until the end of 1957 when a fire gutted the major portion of the building; (2) said building has been repaired and reconstructed and restored .... Said building is operated under the name of Greyhound Inn and contains 50 sleeping rooms and the number of persons that can be accommodated is 75 and (3) the applicant has performed all acts necessary for the 'continuation' of such license.

"The applicant, therefore, prays that the action of the respondent be reversed, and that it be ordered to issue a plenary retail consumption license.

"The respondent did not file a formal answer to these proceedings. However, in a letter to this Division dated January 21, 1963, respondent sets forth the reasons for its position in declining to file such answer and gives the following history: These premises were operated for more than fifty years as a well-known and historic hotel. On December 8, 1957, it was destroyed by a fire. Certain of the walls and structures remained standing thereafter in a dilapidated and burned-out condition which constituted a hazard to the public safety; on February 21, 1958, an order was made directing that the second and third stories of this building be removed and demolished, and this was done.

"By letter dated January 22, 1958, the Clerk of the respondent was informed by this Division that all operation under the license previously held by the appellant herein was 'suspended pending reconstruction of a hotel containing at least fifty bona fide sleeping rooms equipped and furnished for the accommodation of guests.'

"The appellant made application for renewal of his license in 1958, 1959, 1960 and 1961, all of which applications were denied because of the failure of the appellant to prove satisfactorily that he was in operation of a bona fide fifty-room hotel.

"With respect to the 1960 application, an appeal from the denial thereof was taken, which resulted in the conduct of a hearing on several days at this Division. At this hearing it was established by the proofs that the building was in very poor condition and required considerable repairs. The barroom section had no ceiling and the floors were in disrepair. At the time of the inspection by the representative of respondent, the owner did not permit him to go into the basement because he 'feared for his safety' due to the condition of that area. The steam-heating system was not in operation, and the plumbing system of the entire building consisted of eight water closets, ten lavatories and three metal stall showers. Further evidence was adduced to the effect that many of the rooms were not divided by walls but merely had curtains dividing the same, and they were not adequately or even marginally equipped for use as hotel bedrooms. The matter was remanded to the Township Committee for further consideration

because of certain procedural deficiencies in the said application. Mahr v. Lacey Township, Bulletin 1380, Item 2.

"In June 1962 an application was made and denied by respondent for substantially the same reasons. At that time it was found that the applicant and his family were occupying three or four rooms in the rear portion of the building which were heated by a kerosene stove or space heater. The remainder of the building was unheated, and no radiators were provided in many of the rooms.

"The applicant stated that the steam pipes passing through the same would provide adequate heat. There were only two or three lavatories, in at least one of which privacy was provided by a shower curtain. The building was in a general state of disrepair and was incomplete. Under these circumstances the respondent denied the application. No appeal was taken from such action.

"Respondent's attorney further states in this letter that it (respondent) has been put to a great deal of legal expense in defending the various actions by this appellant and has, therefore, directed its attorney not to file an answer to the petition nor to appear at the hearing and, in lieu thereof, has been directed to 'request merely that prior to the entry of any order directing the Committee to issue the license, a representative of your office be sent to inspect the premises with the Committee. If as a result of such inspection you are satisfied that a license should be issued, the Committee, without hesitation, will comply.'

"The hearing on appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses. Low's Liquors, Inc. v. West New York, Bulletin 1497, Item 2. At this hearing it was first stipulated that the Hearer's Report in the prior action (Mahr v. Lacey Township, supra), together with all the relevant testimony in those proceedings might be considered by me in the determination of the issues herein.

"Karl C. Mahr (the appellant) testified that he had complied with the procedural requirements by filing plans and specifications with the municipal clerk and causing notice thereof to be published in accordance with statutory requirements. He further testified substantially as follows: He does not operate the hotel at the present time because of the poor health of his wife, but does contemplate operating the same in the future. He has fifty sleeping rooms in this hotel which has now been vacant for over ten years. One part of the building is about 150 years old, and one part is about eighty years old.

"He repaired all of the rooms on the first floor since the second and third floors have been burned out, so that the first floor is the only usable portion of the building except for his own apartment on the second floor. The rooms are furnished with 'antique' furniture consisting of a bureau, bed, chair, and night cabinet in each room. The place is not in operating condition now, but it can be fixed up and painted and made to look attractive so that it can be operated within a week after favorable action is taken. There are forty-six rooms on the first floor and four rooms on the second floor, and all of

these would be available for rental since they all have furniture, equipment and partitions. However, some of these partitions consist of curtains. There is a central heating system which would not be used unless the whole place is in operation.

"The place could not be operated, however, without a liquor license because it would not be practicable to do so. The appellant further explained that this hotel normally caters to fishermen and hunters, and it was never contemplated that they would receive first-class accommodations.

"In order to obtain an up-to-date objective picture of the present structure to enable me to make a fair determination herein, I suggested that a representative of this Division inspect the premises and render a report thereon. Counsel for appellant consented to this arrangement. It was agreed that such inspection would be made in the presence of the appellant, and a report by Agent Miller of this Division, dated April 15, 1963, was presented to me pursuant thereto.

"This report shows the following conditions to exist:

- (a) Premises are in a 'very poor ramshackle condition. In fact, premises is nothing more than a shack and no one in their right mind would use any room on the premises as a sleeping room;'
- (b) premises has no front highway entrance to same; a closed side entrance to the alleged restaurant section of the lunchroom contains junk; a rear entrance to the bedrooms located in the rear of premises (this agent was advised by the appellant that he contemplates constructing a front entrance through a front lounge room);
- (c) the entrance to the alleged hotel rooms is made via a two-step ladder bench about 18" wide located behind a former lunch counter located on corner of premises;
- (d) the rooms on the left side of the premises, some of which are former kitchens, contained large galvanized kitchen sinks, a cot and a chair;
- (e) some bedrooms contained a bed, bureau and a chair; some alleged bedrooms just contained a chair; all inside alleged bedrooms contained no windows; many had no doors; 'there is absolutely no privacy in any of the interior rooms;'
- (f) the premises contained a toilet in the lunchroom section, a toilet on left side of premises having a sink and two toilets and the rear toilet which contains a sink, and a tin shower;
- (g) the right side of the premises contains a large room piled with junk;
- (h) it was the impression of this agent that the building is a dangerous fire trap;
- (i) most of the rooms have an electric plug outlet and no electric light fixtures;
- (j) appellant admitted to the agent that it would be entirely impractical to renovate the premises in order to make it operable as a hotel, and that 'he stated that he wouldn't stand a chance of selling the premises without a liquor license.'

"It should be noted, of course, that the determination of the respondent was grounded, in part, upon the plans and specifications submitted by the appellant, and not upon the condition of the premises as they were observed by the ABC agent. However, at the hearing the appellant testified that it would take him about a week in which to put the premises in operating condition. He indicated that he had no intention of making any substantial structural changes so that, for our purposes, we may consider that the premises as they exist today are practically the same as reflected in the said plans and specifications. From the description given by the agent it would appear that it would take at least a week merely to clear out the debris from the premises, much less make any other changes. Therefore, our consideration of the

issue herein is based upon the plans and specifications which we are satisfied are the same as exist at the time of the preparation of this Report.

"I am persuaded from the report of Agent Miller that there is no bona fide hotel containing fifty sleeping rooms presently in existence at these premises. As the report indicates, a number of these rooms do not even have the minimum equipment required for a sleeping room, nor the minimal structural requirements therefor. Some of them are absent beds and lighting equipment, and many of them have no windows or partitions. I seriously question the credibility and veracity of the appellant who testified that all of these rooms are adequately equipped for hotel purposes.

"It seems abundantly clear that the appellant was less than honest in his testimony, and that his sole purpose in obtaining a liquor license was to dispose of these premises. I am equally convinced that he had no intention of engaging in a bona fide operation of a hotel, and that he lacked candor in his representations to the respondent.

"The New Jersey statute 33:1-12.20 provides as follows:

'Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel containing fifty sleeping rooms or who may hereafter construct and establish a new hotel containing at least fifty sleeping rooms.'

This statute has been interpreted by this Division to require not only that the building is a hotel containing fifty sleeping rooms but that, in addition thereto, the said fifty sleeping rooms must be furnished and equipped for the accommodation of guests of the hotel.

"A hotel has been defined as 'a house providing lodging and usually meals for the public.' Webster's New International Dictionary, Second Edition. Thus it is clear that the Legislature intended that the issuing authority shall have the right to determine in each instance whether or not a license should be granted to a person who operates a hotel. It must be pointed out that this statute is merely permissive and not mandatory, and it is axiomatic that, in exercising its discretion in making the exception permitted by such statute, an issuing authority must act with circumspection.

"Decisional authority, expressed through the adjudicated opinions of this Division, add force to the established doctrine that there is no inherent right to the issuance of a license or the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586; Kleinberg v. Harrison, Bulletin 984, Item 2; Bumball v. Burnett, 115 N.J.L. 254. No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. Meehan v. Jersey City, 73 N.J.L. 382. As Justice Field stated in Crowley v. Christensen, 137 U.S. 620, at p. 624:

'There is no inherent right in a citizen to thus sell intoxicating liquors by retail .... As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to

the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority.'

Hudson-Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502. As the court stated in Crowley v. Christensen, supra:

'That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licenses for that purpose. It is a matter of legislative will only. As in many other cases, the officers may not always exercise the power conferred upon them with wisdom or justice to the parties affected. But that is a matter which does not affect the authority of the State, or one which can be brought under the cognizance of the courts of the United States.'

See Fanwood v. Rocco, 59 N.J. Super. 306.

"Since it is apparent that there is no bona fide hotel, as defined hereinabove, in existence at the present time, nor any bona fide intention to alter or reconstruct the premises so that it would in fact be a bona fide hotel, it would seem a clear abuse of authority for the respondent to have acted in a manner other than that in which it did act in denying this application.

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people are undoubtedly the best equipped to pass initially upon these applications. Fanwood v. Rocco, supra; cf. Ward v. Scott, 16 N.J. 16; Tranchito v. Elizabeth, Bulletin 1296, Item 1.

"It has long been established that the question of whether or not a license should be permitted in a certain location is a matter within the discretion of the issuing authority, and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine if reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Grand Union Company v. West Orange, Bulletin 1155, Item 3; Baker v. Newark et als., Bulletin 1018, Item 1; Bowling Green Civic Association v. Cinnaminson and Dinerman, Bulletin 1474, Item 1. The action of the local Board may not be reversed by the Director unless he finds 'the action of the Board was clearly against the logic and effect of the presented facts.' Hudson-Bergen County Retail Liquor Stores Assn. v. Hoboken, supra; cf. Fanwood v. Rocco, supra.

"After careful examination of all the facts and circumstances herein, I find that the action of the respondent in denying the application of the appellant was proper and within the sound exercise of its statutory discretion. Since the dispositive issue has been identified and determined, it is unnecessary to discuss the other matters raised in the pleadings.

"It is, therefore, my recommendation that an order be entered herein affirming the action of the respondent and dismissing the appeal."

No exceptions to the Hearer's Report were filed with me

within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the testimony, exhibits, argument of counsel for the appellant, 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 13th day of May, 1963,

ORDERED that the action of the respondent Township Committee of the Township of Lacey be and the same is hereby affirmed and that the appeal be and the same is hereby dismissed.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

5. DISCIPLINARY PROCEEDINGS (Paterson) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR VIOLATIONS - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against

ELBAR, INC.  
t/a BOBALOO CAFE  
178 - 12th Avenue  
Paterson, N. J.

)  
)  
) CONCLUSIONS  
) AND ORDER  
)

Holder of Plenary Retail Consumption License C-165, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

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Mayer and Mayer, Esqs., by Abraham I. Mayer, Esq., Attorneys for Licensee.  
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charge:

'On Sunday, August 19, 1962, you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage at retail in its original container for consumption off your licensed premises and you allowed, permitted and suffered the removal of such alcoholic beverage from your retail licensed premises; in violation of Rule 1 of State Regulation No. 38.'

"To substantiate the charge the Division produced ABC Agents S and Mc who participated in the investigation of the licensee's business.

"Succinctly stated, the testimony of Agent S is as follows: At about 8:30 p.m. Sunday, August 19, 1962, he and Agent Mc arrived in the vicinity of the licensee's premises. Agent Mc remained at a point of vantage and he proceeded to a point across from the licensed premises. At about 8:50 p.m. he entered the tavern and seated himself at the bar behind which

were three bartenders, two of whom were later identified as Louis Schwartz (president and 98% stockholder of the corporate licensee) who was serving patrons at the center section of the bar, and Walter Thompson who was serving the section at which he was seated and from whom he ordered two bottles of beer, one for himself and another for an unidentified patron seated next to him. While quaffing his beer, a male (later identified as Robert Wilkins) entered the premises and asked Thompson for a pint of Thunderbird wine. Thompson took a pint of the named brand wine from a refrigerator case behind the bar, gave it to Wilkins and accepted some coins in payment which he threw in the open drawer of the cash register near him. When Wilkins left the premises with his purchase, he followed and apprehended him. After identifying himself, he 'asked him for the bottle he had just bought in the premises' and Wilkins handed him the bottle of wine which was ice cold. After summoning Agent Mc and two police officers who were nearby, he, Agent Mc and the officers accompanied Wilkins into the tavern where they identified themselves to Schwartz and Thompson. When he asked Thompson if he had sold the pint of wine to Wilkins, Thompson looked at Schwartz who shook his head, and then Thompson denied that he had sold the wine to Wilkins. However, he admitted serving him (Agent S) a bottle of beer. Schwartz was then asked if he had seen Thompson serve Wilkins a pint of wine and he replied 'He could have sold it when I turned my back. I can't keep my eyes on everything.'

"The bottle of wine was marked Exhibit S-1 in evidence.

"The testimony of Agent Mc corroborates that of Agent S in so far as his participation in the investigation was concerned. Upon completion of Agent Mc's testimony, the licensee's attorney moved to dismiss the charge on the ground that the testimony of Agent S respecting the purchase and delivery of the wine at the licensed premises by Wilkins was not corroborated. Decision on the motion was reserved, and the licensee proceeded with its defense.

"Appearing on behalf of the corporate licensee were Louis Schwartz and Walter Thompson, Jr.

"Schwartz testified in substance that on the evening of the date alleged, he saw Agent S in the tavern but didn't see Wilkins at the bar or didn't see Thompson hand Wilkins a bottle of wine; that the first time he saw the bottle of wine was when Agent S walked in and said he wanted to speak to Thompson; that he called Thompson over and that, if he shook his head when Thompson was being questioned, 'it was done maybe I was nervous, not to try to stop him from saying anything'; that Thompson said he didn't sell Wilkins the wine, and that Wilkins stated that he didn't buy it in the licensed premises. Schwartz further testified that there are three cash registers in the tavern, one on each end of the back bar and another in the center; that packaged goods are kept on shelves and, when sold, the sale is rung up on the center register which records the sale on the tape and emits a receipted slip with the date of sale on it; that the procedure used in the tavern respecting sales of bottled goods is to stick the receipted slips on a spindle rather than give them to customers; that on the date alleged, no receipted slips were on the spindle to indicate that bottled goods had been sold, and that he had given specific orders to his bartenders not to sell bottled goods for off-premises consumption during prohibited hours.

"Walter Thompson testified in substance that he remembers Agent S coming into the tavern with a bottle of wine and asking him if he sold it to Wilkins; that he hesitated a moment because the agent 'raised his voice at me. I looked at the boss. I looked at him. I said, "No"; that Wilkins denied that he bought the bottle of wine in the licensed premises; that when Wilkins first entered the tavern, he was served 'a glass of beer and shot of whiskey' and paid fifty-five cents for both, and that no wine is kept under refrigeration.

"Agent S was recalled and testified that Schwartz and Thompson were present when he mentioned that the bottle of wine was cold, and that neither stated that only warm wine was sold. He further testified that, while he was present in the licensed premises, the money that Wilkins paid for the pint of wine was thrown in the drawer of the cash register at the end of the bar where he was seated but not rung up.

"Agent Mc was recalled and testified that, in the course of the investigation, he ascertained that Wilkins lived at 133 12th Avenue, Paterson.

"Considering the evidence adduced herein, I find that, although much ado is made of the temperature of the bottle of wine, the agent's handling of his gun, and the licensee's unique manner of recording sales of bottled goods, the simple issue to be resolved herein is whether or not the licensee's bartender sold and delivered to Wilkins a pint of Thunderbird wine for off-premises consumption on the date alleged. To determine that issue it is only necessary to evaluate the testimony of Thompson and that of Agent S, since Agent Mc was not present when the alleged sale was made and the licensee feigned ignorance of the transaction. Thompson testified that when he first saw Agent S and Wilkins on the date alleged, they were at the bar about twenty feet away from each other; that he served a bottle of beer to Agent S and a glass of beer and a shot of whiskey to Wilkins who paid fifty-five cents for his purchase, and that he didn't see him leave the premises.

"Agent S testified that he and Wilkins were about ten feet apart at the bar; that he observed Thompson hand Wilkins a pint bottle of Thunderbird wine and accept some coins in payment and that, when Wilkins left the premises, he followed and apprehended him about twenty to twenty-five feet from the entrance. It is unlikely that Agent S would have followed and apprehended Wilkins if he had not observed the transaction between Thompson and Wilkins. Furthermore, the bottle of wine which Wilkins handed to Agent S was the same brand of wine admittedly sold by the licensee and precludes any conjecture that Wilkins purchased it elsewhere.

"I believe the testimony of Agent S and disbelieve the testimony of Thompson and, since the licensee is responsible for the acts of its agent, I find as a fact that the sale was made as alleged and conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence. I recommend, therefore, that the licensee be adjudged guilty as charged.

"The licensee has a prior adjudicated record. Effective March 26, 1962, its license was suspended for forty-five days by the Director for its first and second 'hours' violations and the employment of a non-resident without employment permit.  
Re Elbar, Inc., Bulletin 1444, Items 8 and 9. Additionally, the

license of Louis J. Schwartz (president and 98% stockholder of the current corporate licensee), while he was in partnership with Rolly Beskin for premises 245-249 Grand Street, Paterson, was suspended by the Director for fifteen days effective September 12, 1955, for a gambling violation (Re Beskin & Schwartz, Bulletin 1080, Item 11), and it was again suspended by the Director for thirty days effective March 21, 1957, for selling to minors and intoxicated persons (Re Beskin & Schwartz, Bulletin 1164, Item 2). Since these dissimilar violations occurred more than five years ago, it is recommended that they not be considered in fixing the penalty to be imposed.

"The minimum penalty imposed for a first offense of the violation charged herein is fifteen days. Re Forrester, Bulletin 1503, Item 9. However, in view of the two prior similar violations which occurred within a five-year period, I further recommend that the license herein be suspended for sixty days. Cf. Re Celtic Bar, Inc., Bulletin 1414, Item 8."

Written exceptions to the Hearer's Report and written argument to substantiate the exceptions were filed with me by the licensee's attorney within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the testimony, the exhibits, the memorandum on behalf of the licensee submitted to the Hearer, the Hearer's Report and the written exceptions and arguments with respect thereto, I concur in the findings and conclusion of the Hearer and adopt his recommendations.

Accordingly, it is, on this 13th day of May, 1963,

ORDERED that Plenary Retail Consumption License C-165, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Elbar, Inc., t/a Bobaloo Cafe, for premises 178 - 12th Avenue, Paterson, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1963, effective at 3:00 a.m. Monday, May 20, 1963; and it is further

ORDERED that any renewal license granted shall be and remain under suspension until 3:00 a.m. Friday, July 19, 1963.

EMERSON A. TSCHUPP  
ACTING DIRECTOR



7. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE  
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 Lighthouse Tavern, Inc. )  
 Route #9 )  
 Ocean Township )  
 PO Waretown, N. J. )  
 )  
 Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Ocean, County of Ocean )  
 )  
 -----)

CONCLUSIONS  
AND ORDER

Dorothy V. Reeve, Esq., Attorney for Licensee.  
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 19, 1963, it sold drinks and two 6-packs of beer to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

Absent prior chargeable record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Strike & Spare Lanes Corp., Bulletin 1503, Item 5.

Accordingly, it is, on this 15th day of May, 1963,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Ocean, County of Ocean, to Lighthouse Tavern, Inc. for premises on Route #9, Ocean Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A. M. Tuesday, May 21, 1963, and terminating at 2:00 A. M. Friday, May 31, 1963.

EMERSON A. TSCHUPP,  
 ACTING DIRECTOR.

8. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - FOUL LANGUAGE - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Frances M. Pregnor )  
t/a Billingsport Grill )  
106 Billingsport Road )  
Paulsboro, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Paulsboro )  
----- )

Licensee, Pro se.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that on May 3, 1963, she (1) sold drinks of alcoholic beverages to an intoxicated person, in violation of Rule 1 of State Regulation No. 20, (2) engaged in use of foul, filthy and obscene language, in violation of Rule 5 of State Regulation No. 20, and (3) hindered an investigation (viz., advised a patron to refuse to furnish requested information), in violation of R.S. 33:1-35.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days, effective October 26, 1958, for sale to minors.

The license will be suspended on the first charge for twenty days (Re D.E.L. Corp., Bulletin 1495, Item 3), on the second charge for ten days (Re Snyder, Bulletin 1507, Item 1) and on the third charge for ten days (Re Edward J. Power, Inc., Bulletin 1487, Item 5), to which will be added five days by reason of the previous dissimilar violation (cf. Re Dzialo, Bulletin 1428, Item 10), making a total of forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 22d day of May, 1963,

ORDERED that Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Paulsboro to Frances M. Pregnor, t/a Billingsport Grill, for premises 106 Billingsport Road, Paulsboro, be and the same is hereby suspended for the balance of term, viz., until midnight, June 30, 1963, commencing at 2:00 A. M. Wednesday, May 29, 1963; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 A. M. Monday, July 8, 1963.

EMERSON A. TSCHUPP,  
ACTING DIRECTOR.

9. DISCIPLINARY PROCEEDINGS - ORDER IMPOSING DEFERRED SUSPENSION.

In the Matter of Disciplinary Proceedings against )

THE ARCTIC CORPORATION )  
t/a Club Esquire )  
N/W Cor. Arctic & Spicer Aves. )  
Wildwood, N. J. )

ORDER

Holder of Plenary Retail Consumption License C-28, issued by the Board of Commissioners of the City of Wildwood. )

Perskie & Perskie, Esqs., by Marvin D. Perskie, Esq., Attorneys for Licensee.

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

BY THE ACTING DIRECTOR:

On October 15, 1962, the Director entered an order in the above matter deferring the license suspension of twenty days (for possession of alcoholic beverages not truly labeled) because it appeared that the licensed business was not then being conducted. Re The Arctic Corporation, Bulletin 1482, Item 14.

Report of inspection discloses that the conduct of the licensed business was resumed on April 12, 1963, substantially on a full time basis. Consequently, the deferred suspension may now be imposed.

Accordingly, it is, on this 29th day of May, 1963,

ORDERED that Plenary Retail Consumption License C-28, issued by the Board of Commissioners of the City of Wildwood to The Arctic Corporation, t/a Club Esquire, for premises northwest corner Arctic and Spicer Avenues, Wildwood, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Thursday, June 6, 1963, and terminating at 3:00 a.m. Wednesday, June 26, 1963.

EMERSON A. TSCHUPP,  
ACTING DIRECTOR

10. STATE LICENSES - APPLICATION FOR REMOVAL OF RESTRICTION

The Westminster Corporation, 45-21 33d Street, Long Island City, New York. Request filed June 10, 1963 for removal of restriction on plenary wholesale license that no sales thereunder shall be made to retail licensees.

  
Emerson A. Tschupp,  
Acting Director.