

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

BULLETIN 907

MAY 28, 1951.

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

BULLETIN 907

MAY 28, 1951.

1. COURT DECISIONS - GREENBRIER, INC. v. HOCK - ORDER OF DIRECTOR
AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

No. A69-50, September Term, 1950

GREENBRIER, INC.,)
Appellant,)
-vs-)
ERWIN B. HOCK, Director of the)
Division of Alcoholic Beverage)
Control, in the Department of Law)
and Public Safety,)
Respondent.)
- - - - -)

Argued April 9, 1951; decided May 17, 1951.

Before McGeehan, Jayne and Wm. J. Brennan, Jr., JJ.

Mr. Abraham I. Mayer argued the cause for Appellant
(Mr. Thomas L. Hanson, Attorney).

Mr. Samuel B. Helfand, Deputy Attorney General,
argued the cause for Respondent (Mr. Theodore D.
Parsons, Attorney General of New Jersey, Attorney).

The opinion of the Court was delivered by

McGEEHAN, S. J. A. D.

The appellant is the holder of a plenary retail liquor consumption license. It was found guilty of charges that it allowed, permitted or suffered the following prohibited conduct: (1) lewdness and immoral activities on its licensed premises, in violation of Rule 5 of State Regulation No. 20; (2) sale and service of alcoholic beverages on its licensed premises during prohibited hours, in violation of local ordinance, and (3) during such prohibited hours it failed to have its entire licensed premises closed and permitted persons other than the licensee and its employees to remain thereon, in violation of local ordinance. An order was entered by the Director of the Division of Alcoholic Beverage Control suspending the appellant's license for a period of ninety days.

Both the state regulation and the local ordinance provide that the licensee shall not "allow, permit or suffer" the prohibited conduct. The licensee concedes that the prohibited conduct as charged was proved, but argues that there was a failure to prove that it allowed, permitted or suffered such conduct.

At about 5:45 A. M. on April 21, 1950, one William Berry, who resided next door to the licensed premises, gained access to the tavern for himself and others, by the use of a key given to him by the president of the corporate licensee. William Berry participated in the prohibited conduct which occurred on the licensed premises between 5:45 A.M. and 6:45 A.M. on that day. The licensed premises

are located in a building owned by a corporation controlled by William Berry and his two brothers, James and Ellie. The licensee obtained the license in September, 1948, by transfer from Vella Berry, the wife of William Berry. The licensee is a corporation in which the stock is held as follows: Patsy Giuliano, eight shares; James Berry, brother of William, one share; and Ellie Berry, brother of William, one share. Patsy Giuliano, the president of this corporation, lives about forty miles from the licensed premises. He employed two bartenders, each of whom resides near the tavern and has a key to the premises. Giuliano visited the tavern only two or three times a week. He testified that he gave a key to the tavern to William Berry "about a couple of weeks before" the prohibited conduct occurred, in order to permit him to paint the inside of the premises, fix a pump, and fix the sewer system, but denied that William Berry was an agent, servant or employee of the licensee.

The licensee argues that there was error in the finding that it allowed, permitted or suffered the prohibited conduct, because there was no proof that the licensee or any agent, servant or employee of the licensee participated in the violation. The licensee relies on Rule 31 of State Regulation No. 20, which provides:

"In disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. 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 or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings."

It is argued that under this regulation there can be no finding of guilt of the licensee. But the finding of guilt here did not depend upon Rule 31 of State Regulation No. 20. This rule contains no prohibition and is merely declaratory of certain applicable court decisions. Cf. Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408 (Sup. Ct. 1943), aff'd, 130 N.J.L. 554 (E. & A. 1943), cert. denied 320 U. S. 801, 88 L. Ed. 484 (1944); Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup. Ct. 1947); Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947); Galsworthy, Inc. v. Hock, 3 N. J. Super. 127 (App. Div. 1949). That this rule does not even purport to be exclusive in its application is clear from its language "it shall be sufficient, in order to establish the guilt of the licensee, to show."

Next, it is contended that it was error to hold that the licensee allowed, suffered or permitted the conduct, because William Berry was a trespasser and the conduct occurred without the licensee's knowledge or consent. The following citation from Essex Holding Corp. v. Hock, above, (p. 31) is relied upon: "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. Brennan, 128 Conn. 356, 23 A. 2d 140 (Sup. Ct. of Err., Conn., 1941)." We think that "trespasser" as used in the Essex Holding Corp. case was intended to refer to one who enters the premises without any privilege to enter, either general, conditional or restricted. William Berry was not such a trespasser; he had a privilege to enter. The licensee gave him the means of access and authority to occupy the premises. When a privilege to enter is given, whether general, conditional or restricted, the licensee has the duty of taking such measures as the circumstances of the particular case require to prevent prohibited conduct on the

licensed premises arising out of the grant of the privilege. This licensee cannot avoid this duty on the technical argument that William Berry was a trespasser on the particular occasion because he entered the premises for a purpose other than the authorized purpose. Cf. Restatement, Torts, § 168. As was aptly said in Hudson Bergen etc., Ass'n. v. Hoboken, 135 N. J. L. 502, 507 (E. & A. 1947):

"The reason and the need for singling out the liquor traffic for peculiar limitation and strict supervision may be read in our statutes from early colonial times. . . . Thus, through nearly 250 years the legislature has struggled with the conditions arising out of the sale of liquor. The current statute is to be construed in the light of the long series of statutes of which it is the culmination and of the decisions of the courts regarding those statutes. Meticulous technicalities should not be permitted to thwart so considerable an effort toward keeping a public convenience from becoming a social evil. The state authorities should be given every reasonable opportunity to work out the mandate of the legislature."

Again, in Essex Holding Corp. v. Hock, above, the court said (at p. 31):

"Although statutes penal in character must be construed strictly, the injunction of the legislature as hereabove indicated enjoins us to the contrary in reference to liquor traffic. . . . Our courts have held that it 'is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied.'"

The proofs and the legitimate inferences which might be drawn therefrom are sufficient to support the finding of the Director that the licensee suffered the prohibited conduct because it entrusted the means of access to the licensed premises to William Berry and failed in its duty to take effective measures to prevent the prohibited conduct by those occupying the premises, through the means provided by it. Cf. Guastamachio v. Brennan, above, and Essex Holding Corp. v. Hock, above.

Affirmed.

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2. APPELLATE DECISIONS - SANTHOUSE v. TOTOWA.

HARRY SANTHOUSE, trading as
TOTOWA RECREATION,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH
OF TOTOWA,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Samuel Doan, Esq., Attorney for Appellant.
Albert H. Kreamer, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from the action of respondent whereby his plenary retail consumption license for premises 266 Union Boulevard, Borough of Totowa, was suspended for a period of fifteen days.

Respondent instituted two separate disciplinary proceedings against appellant. In both proceedings the charges were identical except for the fact that the charge in one proceeding referred to James ---, a minor, and the charge in the other proceeding referred to Kenneth ---, a minor. In both proceedings the charges alleged that on December 30, 1950, appellant sold, served and delivered, or allowed, permitted and suffered to be sold, served and delivered, an alcoholic beverage to the respective minor named in the charge and that he allowed, permitted and suffered the consumption of such beverage by said minor in violation of Rule 1 of State Regulations No. 20.

At a hearing held by respondent, testimony was taken stenographically as to both charges and, after the conclusion of the hearing, a resolution and order was entered in each case. In each resolution and order appellant was found guilty as charged, and his license was suspended for a period of fifteen days but it was provided that the periods of suspension were to run concurrently.

Upon the filing of the appeal I entered an order staying the effect of the suspension until the entry of a further order herein. R. S. 33:1-31.

By agreement of the respective attorneys herein, this appeal has been submitted upon the stenographic transcript of the hearing below in accordance with the provisions of Rule 8 of State Regulations No. 15.

The evidence herein discloses that at about 1:45 a.m. on December 30, 1950, two members of the Police Department of the Borough of Totowa found James --- and Kenneth --- sleeping in a car which was parked in a lot adjoining appellant's licensed premises. When they awoke the young men, they noticed that they had been drinking and asked them where they had been. The young men said that they had been in appellant's premises and one of the young men said that he had six or seven glasses of beer in appellant's premises and the other young man said that he had seven or eight glasses of beer in appellant's premises. The policemen then took the two young men to the licensed premises. The young men identified the premises as the place in which they had been drinking, but denied that appellant, who was present, had served them. At that time they said the drinks had

been served by "Jerry". On the following day both young men signed statements which contained substantially the same information that they had previously given to the policemen. They did not swear to the truth of said statements.

At the hearing below the statements given by the young men to the policemen were admitted into evidence over objections of the attorney for appellant. The objections to the admission of these statements were that they are not binding on appellant and not the best evidence because the young men were present and ready to testify. Thereafter both young men were duly sworn, and both denied under oath that they had ever purchased or consumed any alcoholic beverages in appellant's premises. They admitted that they had been drinking on the evening in question, but stated that they had purchased a bottle of beer in a licensed place which they could not identify but which, they said, is located in Paterson. Appellant and his son-in-law, Gerald Shane (also known as "Jerry"), denied that either of the young men had ever purchased or consumed alcoholic beverages on appellant's premises.

It should be noted that the statements which were introduced in evidence were not made by the defendant in the disciplinary proceedings, but by witnesses therein. The established rule is that the statement of a witness may be used on cross-examination to attack his credibility, but prior contradictory statements given by witnesses are admissible solely to impeach the witnesses and for no other purpose. They are ineffective as direct and affirmative proof of the facts to which they relate. Goglia v. Janssen Dairy Co., 116 N.J.L. 396 (E. & A. 1936); Link v. Eastern Aircraft, 136 N.J.L. 540 (E. & A. 1948); Kulinka v. Flockhart, 9 N. J. Super. 495 (decided Sept. 12, 1950). Hence, at most, the statements introduced into evidence merely neutralized the sworn testimony given by the two young men. State v. D'Adame, 84 N.J.L. 386 (E. & A. 1913). In any event, there is no competent evidence in the case to support the finding of guilt. The policemen did not witness the sale or service or consumption of alcoholic beverages on appellant's premises. Defendant and "Jerry" both denied that the young men had purchased or consumed any alcoholic beverages on appellant's premises. Moreover, when the young men were confronted with "Jerry", they failed to identify him as the person who had made the sales to them.

It may well be, as respondent contends, that the rules for the admission of evidence in disciplinary proceedings are not as strict as the rules for the admission of evidence in criminal proceedings. Nevertheless, a finding of guilt in disciplinary proceedings must be based upon legal evidence. Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943).

Under the circumstances, I have no alternative except to reverse the action of respondent.

Accordingly, it is, on this 17th day of May, 1951,

ORDERED that the action of respondent in both disciplinary proceedings referred to herein be and the same is hereby reversed.

ERWIN B. HOCK
Director.

3. DISCIPLINARY PROCEEDINGS - BOOKMAKING AND GAMBLING - ALLOWING PREMISES TO BE USED IN FURTHERANCE AND AID OF AND IN CONNECTION WITH AN ILLEGAL ACTIVITY (GAMBLING) RESULTING IN A CONVICTION IN A CRIMINAL PROSECUTION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

ALBERT J. GRISSONI
T/a DUBLIN HOUSE
208 River Street
Hoboken, N. J.,

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consump-
tion License C-93, issued by the
Board of Commissioners of the
City of Hoboken, and transferred
during the pendency of these
proceedings to

JOHN TORRY and EDWARD STINSON, JR.,
T/a DUBLIN HOUSE,

for the same premises.

Albert J. Grissoni, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that he (1) allowed, permitted and suffered bookmaking and gambling in and upon his licensed premises, in violation of Rule 7 of State Regulations No. 20; and (2) allowed, permitted and suffered his licensed premises and licensed business to be used in furtherance and aid of and in connection with an illegal activity, resulting in a conviction in a criminal prosecution, in violation of Rule 4 of State Regulations No. 20.

On June 4, 1949, officers connected with the Hudson County Prosecutor's Office arrested one John Grissoni at defendant's licensed premises and charged him with bookmaking, in violation of R. S. 2:135-3. A search of the licensed premises disclosed therein a "scratch sheet" and several slips containing memoranda of various bets. On January 13, 1950, John Grissoni was convicted on a plea of non vult to the indictment and fined \$1,000.00.

Defendant is guilty as charged.

Defendant has no prior adjudicated record and, as the charges apparently refer to the one action (that of John Grissoni, a brother of defendant, and then employed by him), only one penalty will be imposed. Cf. Blockburger v. United States, 284 U. S. 299, 76 L. ed. 306; Gavieres v. United States, 220 U. S. 338, 55 L. ed. 489. I shall suspend the license for twenty days. Remitting five days for the plea will leave a net suspension of fifteen days. Re Jarvis, Jr., Bulletin 897, Item 9.

Accordingly, it is, on this 8th day of May, 1951,

ORDERED that Plenary Retail Consumption License C-93, issued by the Board of Commissioners of the City of Hoboken to Albert J. Grissoni, for premises 208 River Street, Hoboken, and transferred during the pendency of these proceedings to John Torry and Edward Stinson, Jr., t/a Dublin House, for the same premises, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. May 14, 1951, and terminating at 2:00 a.m. May 29, 1951.

ERWIN B. HOCK
Director.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD FOR
SIMILAR OFFENSE COMMITTED MORE THAN FIVE YEARS AGO - LICENSE
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

BRIGHTON HOTEL CORPORATION
T/a JONES BOYS CAFE
3317-19-21 New Jersey Avenue
Wildwood, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-39, issued by the
Board of Commissioners of the
City of Wildwood.

A. J. Cafiero, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it
sold, served and delivered alcoholic beverages to two minors, in
violation of Rule 1 of State Regulations No. 20.

An examination of the file herein discloses that on Friday
evening, April 6, and Saturday morning, April 7, 1951, two Seaman
Apprentices, United States Coast Guard, each nineteen years of age,
purchased and were served alcoholic beverages in defendant's
licensed premises.

Defendant has a previous adjudicated record. Effective
October 25, 1943, defendant's license was suspended for a period of
fifteen days for sale and service of alcoholic beverages to minors.
Bulletin 590, Item 15.

Ordinarily, the penalty for sale of alcoholic beverages to
minors where no aggravating circumstances are present is ten days.
Re Modrowski, Bulletin 582, Item 1. In view of the fact that over
five years have elapsed since defendant was guilty of an offense
similar to the one herein, I shall, instead of doubling the penalty,
add only five days thereto. Defendant's license will be suspended
for fifteen days, less five days' remission for the plea, leaving a
net suspension of ten days.

Accordingly, it is, on this 8th day of May, 1951,

ORDERED that Plenary Retail Consumption License C-39, issued
by the Board of Commissioners of the City of Wildwood to Brighton
Hotel Corporation, t/a Jones Boys Cafe, for premises 3317-19-21 New
Jersey Avenue, Wildwood, be and the same is hereby suspended for
ten (10) days, commencing at 2:00 a.m. May 14, 1951, and terminating
at 2:00 a.m. May 24, 1951.

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - SALE FOR OFF-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES IN OTHER THAN ORIGINAL CONTAINER, IN VIOLATION OF R. S. 33:1-2 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

PEARL & JOSEPH LANGER and
MILT BERSHAW
107-109 Belmont Avenue
Newark 3, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-
tion License C-672, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Newark.

Pearl & Joseph Langer and Milt Bershaw, Defendant-licensees, Pro Se.
Vincent T. Flanagan, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge as follows:

"On April 6, 1951, at about 11:20 p.m., you sold an alcoholic beverage not pursuant to and within the terms of your license as defined by R. S. 33:1-12(1) by selling a pint bottle of Four Roses Blended Whiskey in other than the original container, for consumption off the licensed premises, in that you opened such container by breaking the Federal strip stamp thereon, thereby destroying its original character before making delivery thereof to the purchaser; in violation of R. S. 33:1-2."

On April 6, 1951, at about 11:20 p.m., an ABC agent purchased from Charles S. Jones, a bartender employed by defendants on defendants' licensed premises, a one pint bottle of "Four Roses Blended Whiskey" after advising the said bartender that he desired the liquor to "take out". The bartender broke the Federal strip stamp on the bottle, and handed the bottle, together with a bottle of "soda", all in a paper bag, to the agent, charging him \$3.50 for the whiskey. This breaking of the "strip stamp" clearly destroyed the character of the bottle as an original container. Re McGinn, Bulletin 885, Item 8; Re Slatnick and Weinstein, Bulletin 864, Item 10. The sale of the bottle as an original container after 10:00 p.m. would have constituted a violation of Rule 1 of State Regulations No. 38.

Defendants have no prior adjudicated record. I shall suspend the license for fifteen days. Remitting five days for the plea will leave a net suspension of ten days. Re McGinn, supra.

Accordingly, it is, on this 10th day of May, 1951,

ORDERED that Plenary Retail Consumption License C-672, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Pearl & Joseph Langer and Milt Bershaw, for premises 107-109 Belmont Avenue, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 21, 1951, and terminating at 2:00 a.m. May 31, 1951.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - VIOLATION OF SPECIAL CONDITION - PRIOR SUSPENSION FOR BALANCE OF TERM LIFTED UPON CORRECTION OF ILLEGAL SITUATION - SUSPENSION LIFTED EFFECTIVE AFTER 5 DAYS OF SUSPENSION HAVE BEEN SERVED.

In the Matter of Disciplinary
Proceedings against

BAUMEL'S LIQUOR AND DELICATESSEN, INC.
202 Westfield Avenue
Clark Township
P.O. RFD #2, Rahway, N. J.,

ON PETITION
O R D E R

Holder of Plenary Retail Distribution
License D-1, issued by the Board of
Commissioners of Clark Township.

Julius R. Pollatschek, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

On April 20, 1951, I suspended petitioner's license for the balance of its term, effective at 9:00 a.m. April 30, 1951, after petitioner was found guilty of violation of a special condition in its 1950-51 plenary retail distribution license. In said order there was a provision that petitioner might apply to me for a lifting of the suspension imposed therein. The order further provided that in no event could the suspension be lifted until the license had remained suspended for a period of five days.

Petitioner, pursuant to said leave, has presented a verified petition disclosing that, by resolution adopted on April 26, 1951 by the Board of Commissioners of the Township of Clark, the special condition heretofore imposed on petitioner's license has been rescinded. A true copy of said resolution of the Board of Commissioners of the Township of Clark is annexed to said petition.

It appearing, therefore, that the situation has been corrected, and it further appearing that the five-day suspension will expire at 9:00 a.m. on May 5, 1951, the suspension will be lifted at that time.

Accordingly, it is, on this 1st day of May, 1951,

ORDERED that the suspension heretofore imposed against Plenary Retail Distribution License D-1, issued by the Board of Commissioners of Clark Township to Baumel's Liquor and Delicatessen, Inc., 202 Westfield Avenue, Clark Township, be lifted, and the said license restored to full force and operation, effective May 5, 1951, at 9:00 a.m. Until then, the license remains suspended.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - LOTTERY - PRIOR RECORD - LICENSE
SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

MANASQUAN RIVER GOLF CLUB)
North Side Riverview Drive)
Brielle, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-179, issued by the)
Director of the Division of)
Alcoholic Beverage Control.)
- - - - -)

Manasquan River Golf Club, Defendant-licensee, by James McAfee,
President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On March 17, 1951, and on divers days prior thereto, you allowed, permitted and suffered a lottery, commonly known as a 'raffle' or 'drawing', to be conducted in and upon your licensed premises, and possessed, had custody of and allowed, permitted and suffered tickets and participation rights in such aforementioned lottery in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20."

The file herein discloses that defendant-licensee allowed, permitted and suffered the sale of participation shares in a lottery sponsored by defendant club. A drawing was held on March 17, 1951 and a watch was awarded to the person whose ticket was selected at the time.

Rule 6 of State Regulations No. 20 provides:

"No licensee shall allow, permit or suffer in or upon the licensed premises any lottery to be conducted or any ticket or participation right in any lottery to be sold or offered for sale; nor shall any licensee possess, have custody of, or allow, permit or suffer any such ticket or participation right, in or upon the licensed premises."

Defendant has a previous adjudicated record. Effective April 12, 1948, its license was suspended for five days as a result of its plea of non vult to possession of slot machines. Bulletin 800, Item 4.

Ordinarily, the penalty for a violation of the type in question is five days. Re Villotto Riggin Post #67, American Legion, Inc., Bulletin 750, Item 9. In view of the previous suspension, I shall suspend defendant's license for a period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 8th day of May, 1951,

ORDERED that Plenary Retail Consumption License C-179, issued by the Director of the Division of Alcoholic Beverage Control to Manasquan River Golf Club, for premises North Side Riverview Drive, Brielle, be and the same is hereby suspended for a period of five (5) days, commencing at 5:00 a.m. May 14, 1951, and terminating at 5:00 a.m. May 19, 1951.

ERWIN B. HOCK

8. DISCIPLINARY PROCEEDINGS - PRIOR SUSPENSION FOR BALANCE OF TERM
LIFTED UPON CORRECTION OF ILLEGAL SITUATION - 90 DAYS' SUSPENSION
ALREADY SERVED - SUSPENSION LIFTED EFFECTIVE IMMEDIATELY.

In the Matter of Disciplinary)
Proceedings against)

HELEN MONTEYNE)
1111 Madison Avenue)
Paterson 3, N. J.,)

ON PETITION
O R D E R

Holder of Plenary Retail Consump-)
tion License C-233, issued by the)
Board of Alcoholic Beverage Control)
of the City of Paterson.)

Joseph N. Donatelli, Esq., Attorney for Petitioners, Peter Semezko
and Alex Szymeczko.

BY THE DIRECTOR:

On November 20, 1950, I suspended defendant's license for the balance of its term, effective at 3:00 a.m. November 27, 1950, after she had pleaded non vult to charges alleging in substance that she was a "front" for her husband, Romain Monteyne. See Bulletin 890, Item 3. In said Order it was provided that a transferee of the license might petition me for an order lifting the suspension after at least ninety days of the suspension had been served.

Peter Semezko and Alex Szymeczko have filed a petition wherein they set forth that on April 25, 1951, the Board of Alcoholic Beverage Control for the City of Paterson transferred the license to them, subject to the suspension now in effect. A certified copy of the resolution of the local Board is attached to the petition. Petitioners request me to lift the suspension.

It appearing that the unlawful situation has been corrected and that more than ninety days of the suspension have been served,

It is, on this 1st day of May, 1951,

ORDERED that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-233, issued by the Board of Alcoholic Beverage Control of the City of Paterson, be restored to full force and operation, effective on the endorsement of the transfer on the license certificate by the Secretary of said Board.

ERWIN B. HOCK
Director.

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

In the Matter of Disciplinary
Proceedings against

AUGUST VITO and ALBERT MARTA
T/a THE BIG GOOSE CAFE
3404-06 Pacific Avenue
Wildwood, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-28, issued by the)
Board of Commissioners of the)
City of Wildwood.)
- - - - -)

August Vito and Albert Marta, Defendant-licensees, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The defendants have pleaded non vult to a charge alleging that they sold, served and delivered alcoholic beverages to minors, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on Friday, April 6, 1951, alcoholic beverages were sold and served to two Seaman Apprentices, United States Coast Guard, each nineteen years of age.

Defendant has no prior adjudicated record. No aggravating circumstances being present, I shall impose the usual penalty of ten days. Re Modrowski, Bulletin 582, Item 1. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 8th day of May, 1951,

ORDERED that Plenary Retail Consumption License C-28, issued by the Board of Commissioners of the City of Wildwood to August Vito and Albert Marta, t/a The Big Goose Cafe, for premises 3404-06 Pacific Avenue, Wildwood, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. May 14, 1951, and terminating at 2:00 a.m. May 19, 1951.

ERWIN B. HOCK
Director.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

THOMAS MURPHY
115 North Burlington Street
Gloucester City, N. J.,

Holder of Plenary Retail Consump-
tion License C-25, issued by the
Common Council of Gloucester City.

CONCLUSIONS
AND ORDER

Bruce A. Wallace, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

On March 28, 1951, an ABC agent, during a routine inspection of defendant's licensed premises, seized thereon one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky 90.4 Proof" and one 4/5 quart bottle labeled "Schenley Reserve Blended Whiskey 86 Proof" when his field tests indicated a variance between the respective labels thereon and the contents of the said bottles. Subsequent analysis by the Division chemist disclosed that the labels on the respective bottles did not truly describe the contents thereof.

Defendant has no prior adjudicated record.

Finding no aggravating circumstances, I shall suspend the license for the minimum period in such cases (fifteen days).
Re Rudolph, Bulletin 680, Item 1. Remitting five days because of the plea will leave a net suspension of ten days.

Accordingly, it is, on this 11th day of May, 1951,

ORDERED that Plenary Retail Consumption License C-25, issued by the Common Council of Gloucester City to Thomas Murphy, for premises 115 North Burlington Street, Gloucester City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. May 21, 1951, and terminating at 2:00 a.m. May 31, 1951.

ERWIN B. HOCK
Director.

11. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES
IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 - LICENSE
SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

ALEXSANDRA DOLINSKI)
T/a KEYSTONE BOTTLING WORKS)
1166 Mechanic Street)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distri-)
bution License D-8, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)

Frank M. Lario, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has entered a plea of nolo contendere to a charge
alleging that she transported alcoholic beverages in violation of
Rule 3 of State Regulations No. 17.

On Friday, March 16, 1951, at about 9:35 a.m., ABC agents
observed a delivery truck, owned by or leased to defendant and bear-
ing proper transportation insignia, as it was being driven away from
defendant's licensed premises. Following the truck, and after watch-
ing some six or seven deliveries, the agents stopped the driver and
asked to inspect his delivery slips. Checking these slips with the
balance of the load, they found sixteen cases of beer and a quantity
of other alcoholic beverages on the truck in excess of that called
for by the delivery slips. Defendant's son, who was driving the
delivery truck, explained this large overloading by saying it was
convenient if the customer required more than he had ordered, and
helpful in subsequent loadings the same day. In addition, the seized
"slips" do not contain the information required by the Rule. I again
point out that the Rule requires, in part, that a "bona fide, authen-
tic and accurate delivery slip....stating the bona fide name and
address of the purchaser....the brand, size of container, and quantity
of each item of the alcoholic beverages being delivered...." be in the
possession of the driver.

Defendant has no previous adjudicated record. I shall suspend
the license for ten days. Remitting five days because of the plea
will leave a net suspension of five days. Re Benash, Bulletin 891,
Item 7.

Accordingly, it is, on this 11th day of May, 1951,

ORDERED that Plenary Retail Distribution License D-8, issued by
the Municipal Board of Alcoholic Beverage Control of the City of
Camden to Alexsandra Dolinski, t/a Keystone Bottling Works, for prem-
ises 1166 Mechanic Street, Camden, be and the same is hereby suspended
for five (5) days, commencing at 9:00 a.m. May 21, 1951, and termin-
ating at 9:00 a.m. May 26, 1951.

ERWIN B. HOCK
Director.

12. AUTOMATIC SUSPENSION - SALE TO MINORS - LICENSE SUSPENDED FOR PERIOD OF 5 DAYS BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED UPON TERMINATION OF AN ADDITIONAL 5-DAY SUSPENSION.

In the Matter of a Petition by)

MARIO DiLODOVICO and IDA M. CAPONE)
T/a TERMINAL MUSICAL BAR)
49 N. Arkansas Avenue)
Atlantic City, N. J.,)

ON PETITION
CONCLUSIONS AND ORDER

To Lift the Automatic Suspension of)
Plenary Retail Consumption License)
No. C-158, issued by the Board of)
Commissioners of the City of)
Atlantic City.)

Mario DiLodovico and Ida M. Capone, Petitioners, Pro Se.

BY THE DIRECTOR:

From the petition filed herein it appears that on May 7, 1951, both petitioners pleaded non vult in the County Court of Atlantic County to indictments alleging the sale of alcoholic beverages to minors, as a result of which each was sentenced to pay a fine of \$50.00, which fines have been paid.

On May 10, 1951, at 9:00 a.m., an ABC agent picked up the license held by petitioners and no business has been conducted thereunder since that time.

It further appears from the records of the Division of Alcoholic Beverage Control that the Board of Commissioners of Atlantic City suspended the license held by petitioners for a net period of five days, effective from 12:01 a.m. March 10, 1951, to 12:01 a.m. March 15, 1951, after they had pleaded guilty in a disciplinary proceeding to charges alleging that they had sold alcoholic beverages to minors.

The indictments in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. The convictions in the criminal proceedings have resulted in the automatic suspension of the license for the balance of its term. R. S. 33:1-31.1. The petition herein prays that the automatic suspension of the license may be lifted.

In my opinion, the penalty imposed in the disciplinary proceedings was inadequate. The case concerned the sale of alcoholic beverages to four minors, two of whom were then seventeen years of age and two of whom were then eighteen years of age. I believe that a suspension for a period of at least fifteen days (less five days for the plea) should have been imposed in the disciplinary proceedings conducted by the local issuing authority.

It has been the policy to lift an automatic suspension when, and only when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. Re Solitare, Bulletin 538, Item 4. The automatic suspension has been in effect since 9:00 a.m. May 10, 1951. Allowing for the five days served under the suspension imposed by the local issuing authority, a total suspension of ten days will have been served at 9:00 a.m. on Tuesday, May 15, 1951. I shall not lift the automatic suspension until that time.

Accordingly, it is, on this 11th day of May, 1951,

ORDERED that the automatic suspension of the license aforesaid be lifted, effective at 9:00 a.m. Tuesday, May 15, 1951. Until then the license stands suspended.

ERWIN B. HOCK
Director

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

In the Matter of Disciplinary
Proceedings against)

THE WILDWOOD HOF-BRAU)
T/a THE WILDWOOD HOF-BRAU)
S/W Cor. Oak & Atlantic Avenues)
Wildwood, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-6, issued by the)
Board of Commissioners of the City)
of Wildwood.)

A. J. Cafiero, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to minors, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on Friday, April 6, 1951, alcoholic beverages were sold and served to two Apprentice Seamen, United States Coast Guard, each nineteen years of age.

Defendant has no prior adjudicated record. No aggravating circumstances being present, I shall impose the usual penalty of ten days. Re Modrowski, Bulletin 582, Item 1. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 14th day of May, 1951,

ORDERED that Plenary Retail Consumption License C-6, issued by the Board of Commissioners of the City of Wildwood to The Wildwood Hof-Brau, t/a The Wildwood Hof-Brau, S/W Cor. Oak & Atlantic Avenues, Wildwood, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. May 21, 1951, and terminating at 2:00 a.m. May 26, 1951.

ERWIN B. HOCK
Director.

14. STATE LICENSES - NEW APPLICATIONS FILED.

Anthony Balio, Louis Balio and Philip Ruggiero
T/a B & R Trucking Co.

2723 Tonnelle Avenue, North Bergen, N. J.

Application filed May 18, 1951 for Transportation License.

Silvio Ferretti, t/a Ferretti & Best Wines

510 - 81st Street, North Bergen, N.J.

Application filed May 22, 1951 for Wine Wholesale License.

Erwin B. Hock
Director.