

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

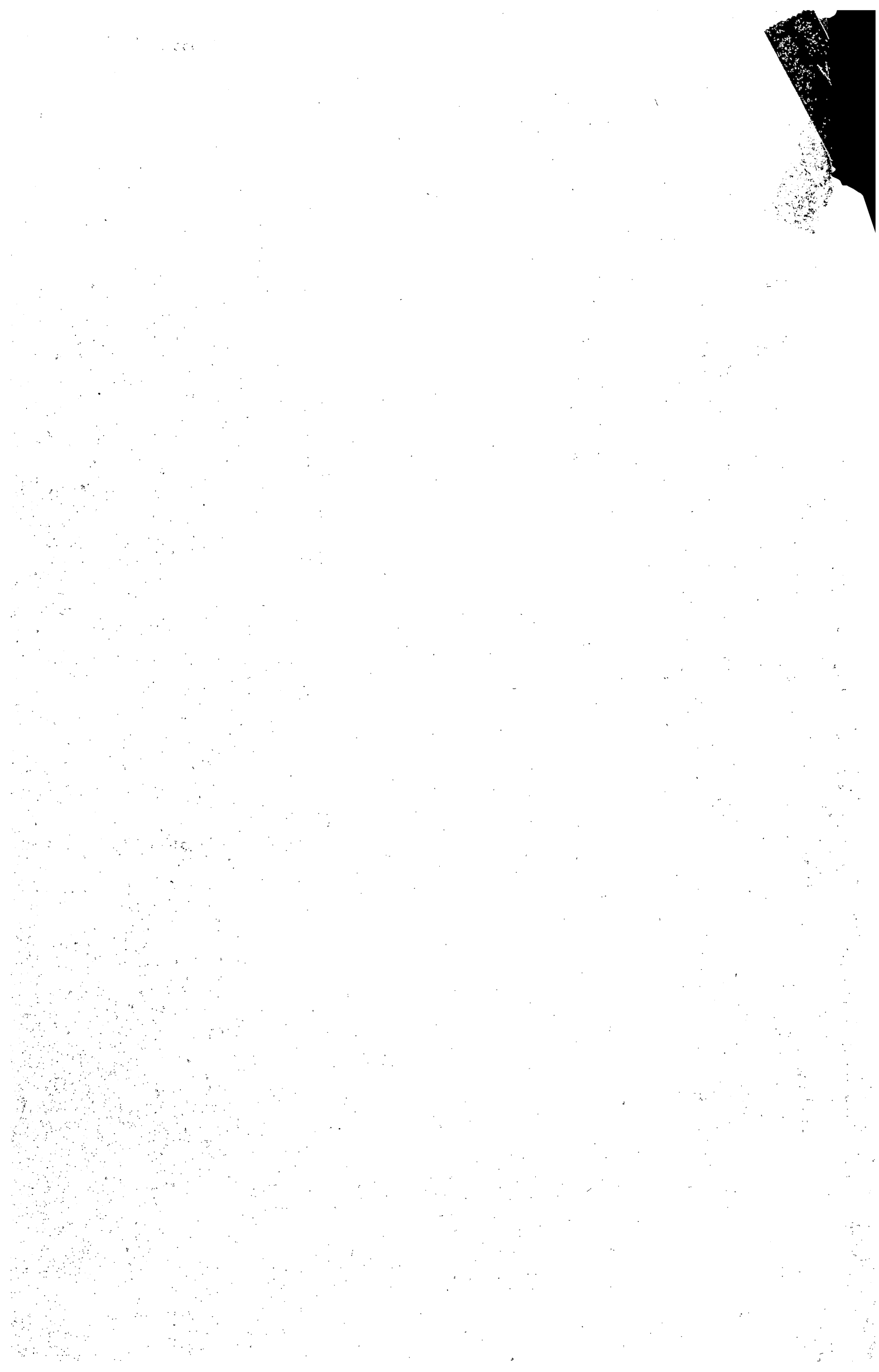
BULLETIN 1641

October 22, 1965

TABLE OF CONTENTSITEM

1. APPELLATE DECISIONS - FORBES LIQUORS, INC. v. BRICK and KENMALL, INC.
2. DISCIPLINARY PROCEEDINGS (Atlantic City) - HOSTESS ACTIVITY - ALCOHOLIC BEVERAGES NOT TRULY LABELED - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Camden) - SALE TO A MINOR - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS.
4. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Newark) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN STORE - SEARCH AND SEIZURE BASED ON SEARCH WARRANT AND ON PROBABLE CAUSE SUSTAINED - APPLICATION OF CLAIMANT FOR RETURN OF FURNITURE AND EQUIPMENT DENIED - ALCOHOLIC BEVERAGES AND PERSONAL PROPERTY ORDERED FORFEITED.
7. DISCIPLINARY PROCEEDINGS (Avon-by-the-Sea) - SALE TO MINORS - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA - DEFERRED EFFECTIVE DATE OF PENALTY.
8. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

New Jersey State Library



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BULLETIN 1641

October 22, 1965

1. APPELLATE DECISIONS - FORBES LIQUORS, INC. v. BRICK and
KENMALL, INC.

FORBES LIQUORS, INC.,)
Appellant,)
v.) ON APPEAL
TOWNSHIP COMMITTEE OF THE) CONCLUSIONS
TOWNSHIP OF BRICK, and) AND ORDER
KENMALL, INC.,)
Respondents.)

Samuel Voltaggio, Esq., Attorney for Appellant.
William E. O'Connor, Jr., Esq., Attorney for Respondent Committee.
Bernard A. Kannen, Esq., Attorney for Respondent Kenmall, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant appeals from the action of respondent Brick Township Committee (hereinafter Committee) granting respondent licensee's application for person-to-person and place-to-place transfer of a plenary retail consumption license for the 1964-65 licensing period from Sciarappa, Inc. and from premises 536 Club House Plaza to premises at Kennedy Mall Shopping Center, Brick Boulevard, Brick Township.

Four members of the five-member Committee voted to grant the application and one member thereof abstained from voting.

Although the hearing in the matter was held on March 18, 1965, decision was reserved until May 3, 1965, when the Committee made known that the transfer had been granted.

Appellant's petition of appeal alleges that the action of respondent Committee was erroneous in that "the appellant was not afforded the opportunity to present its objections properly; that the application for transfer was granted over objections of others; that the transferee will be located within 200 feet of appellant's place of business."

The answers filed by the respective respondents deny the aforesaid allegations in the petition of appeal. Furthermore, the Committee, by way of defense of its action, states that appellant was represented by an attorney at the hearing before it; that its determination granting the transfer was for the best interests of the public; that all objectors were given an opportunity to make their objections known; and that the Committee's action was legal and proper in all respects.

John Villani, vice-president and manager of appellant corporate licensee, which has its place of business in Brick Plaza Shopping Center directly across Brick Boulevard from the shopping center where the proposed premises is located, testified that, in his opinion, there is no necessity for another liquor outlet in the area. In explanation, he stated, "We in the bar business or package store business are supposed to be well controlled. It's quite an expensive thing for both of us, either side. It's not one sided. And we feel we deserve a little protection and it comes with the license." Mr. Villani named five liquor outlets, the nearest thereof being one mile distant from appellant's licensed premises.

Another objection voiced was that prior to March 18, 1965 when the matter was heard, and for the reason that appellant's attorney was out of the state, a request was made to the township attorney to adjourn the hearing on the application but Mr. Villani was told that "it couldn't be switched." However, he and another attorney (Thomas J. Gunning, Esq.) retained by appellant attended the hearing on March 18, at which time no further application for an adjournment was made. He also testified that said attorney was permitted to enter objections to the transfer requested and was given the opportunity to examine witnesses.

Charles A. Villano, president of appellant corporate licensee, testified that he was present on March 18, 1965, when the matter was heard by the Committee, and in an informal discussion was told that the matter could not be postponed. Thereafter, he voiced objections to the transferee's having "a bar and package goods store" and to its "using too much area to display package goods." Mr. Villano testified further that one of the two attorneys appellant had retained to represent it was present at the hearing and participated therein.

Committeeman Byrne testified that he voted in favor of the transfer and his reasons therefor were as follows:

"First of all, I took into consideration that this license that had been transferred was in a residential area that has built up quite a bit. There was no other stores around it. It was on the beach.

"Secondly, I took inventory of the Plaza for many days, the shopping center. We have a 25,000 all-year-round population in Brick Township. The time Forbes Liquor was given out it was 1958. The population must have been about 15,000.

"In the summertime we go up to 75,000 in population in Brick Township alone. Brick Township is the biggest shopping hub in Ocean County in the Plaza. We have people come in from Monmouth County, all surrounding Ocean County, Burlington County and all over to do their shopping in Brick Township.

"I took this into consideration. I took the highway that's running in between the two shopping centers into consideration. I took how the area in Brick Plaza has built up. It has built up at least ten times, fifteen times, bigger than it was in 1958 or '59. I took into consideration Kennedy Mall Shopping Center. They have John's Bargain Store coming in with a Firestone store.

They have a large Shop-Rite, a gas station and there is more stores going in there."

Committeeman Cucci and Mayor Neri, who also voted in favor of the transfer, expressed reasons substantially similar to those given by Committeeman Byrne.

A letter dated May 3, 1965, in answer to the present attorney's letter addressed to the municipal clerk dated April 22, 1965, advised "that the application by Kenmell, Inc. for transfer of License #C-1 will be considered at the meeting on May 17, 1965."

This advice was obviously inaccurate. The hearing had already been completed on March 18 and all that remained was the announcement by the Committee of its action in the matter. Thus, the aforesaid incorrect advice as to the meeting was not in any manner prejudicial to appellant. Furthermore, since in this appeal the entire matter was heard de novo and all objectors were afforded an opportunity to be heard, their rights have been fully protected.

Appellant is apprehensive concerning the area in the proposed premises to be used for the display of alcoholic beverages in original containers. There is nothing before me with reference to the intended display of said containers or the contemplated method of operation. However, if respondent licensee's premises is operated in violation of R.S. 33:1-12.23 and State Regulation No. 32, appropriate action may be taken to suspend or revoke the license. See Re Krystyniak, Bulletin 1021, Item 2.

I shall now consider the case on its merits. It is apparent that existing liquor licensed premises are fairly well distributed throughout the Township and, under the circumstances appearing herein, the transfer in question to the proposed site will not in any appreciable degree aggravate the number of licenses in the area. In view of the tremendous increase in population in the Township wherein the shopping center is located, appellant's contention that the Committee erred in approving the transfer because of a lack of need for a liquor outlet carries little weight. It has been consistently ruled that the number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the local issuing authority. DiGiacchino v. Atlantic City, Bulletin 1030, Item 3.

In cases such as that now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. Curry v. Margate City, Bulletin 460, Item 9; Mulcahy v. Maplewood and Topf, Bulletin 658, Item 4; Krogh's Restaurant, Inc. v. Sparta et al., Bulletin 1258, Item 1; Jacobs v. Newark et al., Bulletin 1398, Item 4; Smith et als. v. Newark et al., Bulletin 1481, Item 2.

In Fanwood v. Rocco, 59 N.J. Super. 306, 321, it is stated:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof "[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an

original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511."

At the instant hearing, John Villani, testifying on behalf of appellant, agreed that from 1959 when appellant first moved into the Brick Plaza Shopping Center to the present time, said shopping area had doubled and also an additional food market had been erected. It was implied that transfer of the license to respondent licensee at the shopping center located on the opposite side of the highway would have an adverse effect upon appellant's business. In Kelley v. Manalapan, Bulletin 531, Item 3, where transfer of a license to a location directly opposite Kelley's tavern was permitted, Director Davis said on appeal:

"An issuing authority is not obligated to consider, when reaching a determination of whether to grant a liquor application, whether the financial interests of any pre-existing licensee will be promoted or harmed. The test in the issuance of liquor licenses is the welfare of the entire community and not the interference with the private rights of any individual. It is settled that a denial of a license may not be predicated upon the sole ground of injury to the profitable conduct of the business of existing licensees. Sobocienski et al v. Newark et al., Bulletin 239, Item 8; Licata v. Camden, Bulletin 342, Item 1; Delia v. New Providence et al., Bulletin 408, Item 3; Turetsky v. Garfield, Bulletin 524, Item 3."

No evidence was presented which in any way has indicated that the Committee, in granting the transfer of the license in question, acted arbitrarily or abused the discretion vested in it. After examination of the entire record herein, it is apparent that appellant has failed to sustain the burden of proof in showing that the action of the Committee was erroneous. Rule 6 of State Regulation No. 15. Shiloh Baptist Church v. Atlantic City et al., Bulletin 1387, Item 2, and cases cited therein.

Thus, it is recommended that an order be entered affirming the action of the Committee granting the transfer, and dismissing the appeal.

Conclusions and Order

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

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 14th day of September, 1965,

ORDERED that the action of the Township Committee of the Township of Brick be and the same is hereby affirmed and that the appeal filed herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - ALCOHOLIC BEVERAGES NOT TRULY LABELED - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ASK, INC.)
t/a Hialeah Club)
1917 Atlantic Ave. & 13-15 N.)
Michigan Ave.)
Atlantic City, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-126 for the year 1964-65 and C-57 for the year 1965-66, issued by the Board of Commissioners of the City of Atlantic City.)

Thomas W. Rauffenbart, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on May 28-29 and June 6, 1965, it permitted hostess activity, viz., female entertainers drinking at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20, and (2) on June 6, 1965 it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Reports of investigation disclose that the hostess activity involved ten female entertainers who were customarily served champagne cocktails ("champagne" over ice) at a cost of \$2.50 each, but that the "champagne" was in one instance discovered to be ginger ale that had been poured from a champagne bottle and in another instance champagne that had been so diluted that it was almost pure water.

Absent prior record and deeming both violations aggravated, the license will be suspended on the first charge for thirty days (cf. Re Jamaica Room, Inc., Bulletin 1584, Item 3) and on the second charge for thirty days (cf. Re Leona Corporation, Bulletin 1515, Item 5), or a total of sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 15th day of September, 1965,

ORDERED that Plenary Retail Consumption License C-57, issued by the Board of Commissioners of the City of Atlantic City to Ask, Inc., t/a Hialeah Club, for premises 1917 Atlantic Avenue and 13-15 N. Michigan Avenue, Atlantic City, be and the same is hereby suspended for fifty-five (55) days, commencing at 7:00 a.m. Wednesday, September 22, 1965, and terminating at 7:00 a.m. Tuesday, November 16, 1965.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against

CENTRAL LIQUOR CO., INC.
643-45 Market Street
Camden, New Jersey

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-15 for the 1964-65 period, and D-19 for the 1965-66 period, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Richman, Berry & Ferren, Esqs., by Grover C. Richman, Jr., Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On February 12, 1965, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years of age, viz., George ---, age 17; in violation of Rule 1 of State Regulation No. 20."

The Division offered the testimony of George ---, Dennis --- and Agent S to substantiate the charge.

George testified that he was born on August 3, 1947, and that he was seventeen years of age on February 12, 1965. On that date he picked up Dennis and three other companions. He drove around for awhile and arrived at the vicinity of the licensed premises (a retail liquor store) which he described as being located at the northwest corner of 7th and Market Streets, Camden. He parked the car in a parking lot nearby and entered the licensed premises with six dollars collected among the occupants of the car. Dennis waited outside the licensed premises in front of the large window.

The witness stated that he asked Louis Rosenberg (who was behind the counter) for two six-packs of Big Cat malt liquor and a fifth of vodka. Upon request for identification he displayed his social security card which contained his social security number and his name. Rosenberg wrapped the malt liquor and the vodka separately, gave them to him and received \$5.89 in payment therefor. He was not asked his age nor was he requested to make any written representation as to his age. Upon emerging from the licensed premises he handed the bag containing the vodka to Dennis who was waiting in front of the store window.

Cross examination proved to be mainly corroborative of the material facts. In addition he stated that he directed the agents to the licensed premises subsequent to February 12, 1965, and

furnished the name of licensee corporation to the authorities.

Dennis (age 17) testified that he was a passenger in the car operated by George, and that he waited in front of the large store window of the licensed premises while George entered therein to purchase liquor in payment of which the male occupants of the car had contributed. He identified Louis Rosenberg as being the man behind the counter. He saw George hand Louis Rosenberg a card which he removed from his wallet. Rosenberg then returned the card to George, put two six-packs of malt liquor in one bag and a bottle of vodka in another bag and received payment therefor. Upon emerging, George handed a bag to Dennis. Dennis noted that the bag contained a bottle of vodka. He identified the contents of the other package to be two six-packs of malt beer.

Agent S testified that, in the course of investigating the charge against the licensee, he visited the licensed premises on three occasions. On February 16, 1965 George and Dennis directed Agent S (who was driving the automobile) to the licensed premises. Prior thereto the minors furnished the agents with the name of the licensed premises and a description thereof. On the occasion of this visit Alexander Rosenberg (a brother of Louis Rosenberg) was on duty. George identified Alexander Rosenberg as being the clerk who sold him the alcoholic beverages on the night of February 12, 1965; Dennis said he wasn't sure. Alexander Rosenberg then stated that he wasn't on duty on the night in question; denied selling the alcoholic beverages to the minors, and declared that his brother Louis was on duty on February 12, 1965. Thereupon a request was made for Louis Rosenberg to be at the premises on the evening of February 17, 1965.

The agents entered the licensed premises on the evening of February 17, 1965. Louis Rosenberg was on duty. He admitted to the agents that he was on duty on the evening of February 12, 1965. The agents called in the two minors (George and Dennis). Both of them identified Louis Rosenberg as being the clerk on duty on the night of February 12, 1965. This was denied by Louis Rosenberg who said that he doesn't serve minors. An inspection revealed that the licensed premises did stock the specific brands that the minors alleged were obtained therein.

On cross examination the witness admitted that, because of the denial by Alexander Rosenberg and the uncertainty on the part of Dennis, he was not satisfied with the identification of Alexander Rosenberg on February 16, 1965. Hence arrangements were made to have Louis Rosenberg present on the next evening.

In behalf of the licensee Louis Rosenberg testified that he was employed part-time by the licensee for about a year, and that he was on duty in the licensed premises on the evening of February 12, 1965. He categorically denied seeing George in the licensed premises on the night in question and selling him alcoholic beverages of any kind. He also denied seeing Dennis on February 12, 1965.

On cross examination the witness stated that he was sixty-nine years of age, and that his brother Alexander Rosenberg is two years older. He admitted that there was a marked resemblance between him and his brother Alexander Rosenberg. This Hearer has noted that there is a physical resemblance between the brothers.

The witness did not recall selling two six-packs of Big Cat malt on the night in question or specifically recollecting the customers who made purchases that evening.

On redirect examination Louis Rosenberg reiterated his denial of selling George any alcoholic beverages on the night in question.

On recross examination the witness was asked "Didn't you tell us you didn't have any recollection of what you sold or to whom you sold?" He responded, "No, I couldn't recollect that at all; never keep a record what was sold."

Alexander Rosenberg testified that he was a brother of the previous witness Louis Rosenberg, and that he was employed as a clerk at the licensed premises. On Tuesday night, February 16, 1965, Agent S entered the licensed premises, engaged in a conversation with him and then called George and Dennis into the liquor store. George identified Alexander Rosenberg as the clerk who sold the alcoholic beverages, and Dennis declared he was not sure that he was the person.

On cross examination he testified that he wasn't working in the liquor store on February 12, 1965, and that his brother Louis was employed there on the night in question.

Edward A. Wolcoff, the major stockholder and secretary-treasurer of the licensee corporation, testified that the liquor store was not on the corner. Pursuant to a telephone conversation he had with Agent S, he arranged to have Louis Rosenberg at the licensed premises for identification purposes. He stated that the testimony of the various witnesses relative to the events surrounding the identification of Louis Rosenberg (at which he was present) was substantially correct. He confirmed as being correct the total price of \$5.89 for the two six-packs of Big Cat beer and the vodka.

On cross examination he stated that the liquor store in question occupies the second and the third door from the corner and the corner is occupied by a restaurant which is of the same type construction as the licensed premises. Standing in front, a person could see the entire interior of the liquor store. Over the window and against the building there is a large neon sign, the lighting of which is controlled by clock.

Inasmuch as this proceeding presents a purely factual question, I have set forth in detail a large quantum of the material testimony adduced herein so that we may develop a proper perspective thereof.

At the outset it should be indicated that we are dealing here with a purely disciplinary action, and such action is civil in nature, and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since this is strictly a factual situation, 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).

I have had an opportunity to observe the demeanor of the witnesses as they testified and, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony .

Although I strongly deplore the conduct of the minors on the date in question, none the less I am imperatively persuaded that their version had a substantial ring of truth with respect to the alleged purchase of the alcoholic beverages upon the licensed premises.

I am impressed by the fact that the minors directed the agents to the licensed premises. It is apparent that, despite a searching cross examination, both minors unequivocally identified the licensed premises and the particular employee involved in making the sale. Assuming (for the purpose of argument only) that both minors had failed to identify the particular employee making the sale or service, it has long been established that the failure to identify the particular employee making the sale or service of alcoholic beverages to a minor is not fatal in disciplinary proceedings provided it be established that the minor purchased, had served to him or was permitted to consume an alcoholic beverage in the licensed premises. Re Kurinsky and Ancel, Bulletin 1100, Item 7; Re Dante, Bulletin 771, Item 9; Ott's Incorporated v. Division of Alcoholic Beverage Control (App.Div.), decided March 29, 1962, not officially reported, reprinted in Bulletin 1444, Item 1.

I have carefully noted the demeanor of the minors and carefully examined the entire record herein, and I failed to detect any semblance of improper motivation on their part.

While a finding of guilt should not be made where the evidence is in serious conflict and equally as consistent with innocence as with guilt, nevertheless a categorical denial by the licensee and his witnesses should not be permitted to overcome clear and logical evidence to the contrary. I am of the opinion that a fair evaluation of the evidence clearly leads to the conclusion that the evidence of the minors preponderates in favor of a finding of guilt, and I so recommend.

The licensee has a previous record of suspension of license by the Director as follows: (1) five days effective January 5, 1959 for sale below filed price (Re Central Liquor Co., Inc., Bulletin 1261, Item 3); (2) for forty days effective May 2, 1960 for making delivery in a vehicle without insignia and permitting licensed premises to be used in connection with illegal activity (Re Central Liquor Co., Inc., Bulletin 1340, Item 6), and (3) for twenty days effective January 6, 1965 for sale to a minor (Re Central Liquor Co., Inc., Bulletin 1603, Item 8).

It is therefore further recommended that the prior record of suspension of license for dissimilar violation occurring in 1959 be disregarded because occurring more than five years ago, but that the record of suspension for dissimilar violation in 1960 and for similar violation in 1965, both within the past five years, be considered, and that the license be suspended for thirty-five days. Re One Twenty Eight, Inc., Bulletin 1451, Item 4; Re Hauge, Bulletin 1629, Item 3.

Conclusions and Order

No exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 15th day of September 1965,

ORDERED that Plenary Retail Distribution License D-19, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Central Liquor Co., Inc., 643-45 Market Street, Camden, be and the same is hereby suspended for thirty-five (35) days, commencing at 9 a.m. Wednesday, September 22, 1965, and terminating at 9 a.m. Wednesday, October 27, 1965.

JOSEPH P. LORDI
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN E. COLEMAN)
t/a RICOE'S)
614 Communipaw Ave.)
Jersey City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-162, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Licensee, Pro se.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on August 3, 1965, he sold a half-pint bottle of liqueur for off premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Licensee, then t/a Club 21, has a previous record of suspension of license then held for premises 545 Boulevard, Bayonne, by the municipal issuing authority for ten days effective July 26, 1954, for sale to minors and permitting a brawl on the premises, and with respect to the present licensed premises by the Director for fifteen days effective July 21, 1958, for sale in violation of State Regulation No. 38, and again for thirty days effective May 29, 1963, for sale in violation of State Regulation No. 38 and municipal hours ordinance. Re Coleman, Bulletin 1239, Item 10; Bulletin 1518, Item 4.

The prior record of suspension of license for dissimilar violation in 1954 disregarded because occurring more than five years ago but prior record of similar violation occurring in 1958,

more than five but less than ten years ago, and in 1963 within the past five years considered, the license will be suspended for thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days. Re Lou's Tavern, Inc., Bulletin 1631, Item 5.

Accordingly, it is, on this 14th day of September 1965,

ORDERED that Plenary Retail Consumption License C-162, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John E. Coleman, t/a Ricoe's, for premises 614 Communipaw Avenue, Jersey City, be and the same is hereby suspended for thirty (30) days, commencing at 2 a.m. Tuesday, September 21, 1965, and terminating at 2 a.m. Thursday, October 21, 1965.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WOLFIE'S WAGON WHEELS (A CORP.))
60 Frelinghuysen Avenue)
Newark, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-227, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Licensee, Pro se.
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 2, 1965, it possessed alcoholic beverages in six bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective January 14, 1963, for sale to minors.

The prior record of suspension of license for dissimilar violation within the past five years considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Smarsch, Bulletin 1630, Item 4.

Accordingly, it is, on this 13th day of September 1965,

ORDERED that Plenary Retail Consumption License C-227, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Wolfie's Wagon Wheels (A Corp.), for premises 60 Frelinghuysen Avenue, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, September 20, 1965, and terminating at 2 a.m. Friday, October 15, 1965.

JOSEPH P. LORDI
DIRECTOR

- 6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN STORE - SEARCH AND SEIZURE BASED ON SEARCH WARRANT AND ON PROBABLE CAUSE SUSTAINED - APPLICATION OF CLAIMANT FOR RETURN OF FURNITURE AND EQUIPMENT DENIED - ALCOHOLIC BEVERAGES AND PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure) Case No. 11,439
 on March 12, 1965 of a quantity)
 of alcoholic beverages, fixtures,) ON HEARING
 furniture and equipment in a) CONCLUSIONS
 dwelling at 82 Magnolia Street) AND ORDER
 and 436 Bergen Street, City of)
 Newark, County of Essex and State)
 of New Jersey.

 Nathaniel Alper, Esq., appearing for Zema Haire.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter comes on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 163 containers of alcoholic beverages, fixtures, furniture and equipment, more particularly described in an inventory attached hereto, hereinafter referred to and marked Schedule "A", seized on March 12, 1965 in a dwelling at 82 Magnolia Street and 436 Bergen Street, Newark, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Zema Haire, represented by counsel, appeared and entered a claim for the return of the seized property. However, he did not testify or produce any witnesses in substantiation thereof.

The established facts, as reflected in the testimony of ABC agents and the local police officer, are as follows: Local police officers had the above premises under surveillance on March 10, March 11 and March 12, 1965 and observed numerous persons enter the premises empty-handed and leave with brown paper bags in their hands, presumably containing alcoholic beverages.

The premises consist of a three-story building on the ground floor of which is a store which appeared to be a confectionery store. At his direction a person was sent in to make a "buy". The police thereupon obtained three search warrants covering the entire building.

On Friday, March 12, 1965 the same undercover agent made another "buy" of alcoholic beverages and immediately upon leaving the building with the said alcoholic beverages, police officers in the company of ABC agents, having satisfied themselves that such transaction was consummated, entered the premises. They arrested Mrs. Almetia Baskerville and Zema Haire and made a search of the store and first floor. In the refrigerator in the kitchen thereof they seized a large quantity of applejack, together with various brands of whiskey which were located in a closet.

Haire was charged with the manufacture, sale and possession of illicit alcoholic beverages in violation of R.S. 33:1-50, R.S. 33:1-2. Mrs. Baskerville was charged with the sale of illicit alcoholic beverages in violation of R.S. 33:1-50 and R.S. 33:1-2. Both individuals were held for arraignment in the Newark Municipal Court.

Haire admitted to the ABC agents that he manufactured illicit raisin wine from raisins, sugar, water and malt.

The agents further testified that the records of this Division disclose that no permits were issued to either Baskerville or Haire or to the premises in question authorizing the sale of alcoholic beverages.

A chemical analysis of the seized wine offered under the certificate of the Director as authorized by R.S. 33:1-37 indicates that one quart soda bottle containing thirty ounces of alleged illicit raisin wine was an alcoholic beverage fit for beverage purposes with alcohol by volume of 11.6%.

The affidavit of mailing and affidavit of publication were admitted into evidence.

The evidence herein clearly and convincingly supports the Division's allegation that the claimant possessed alcoholic beverages in containers bearing no tax stamps, intended the same for unlawful sale and that they were, in fact, sold without the statutory requisites.

Hence, such beverages are illicit. R.S. 33:1-1(i). Such illicit beverages, and the fixtures, furniture and equipment and all of the other property seized in the establishment, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(i); R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 10,898, Bulletin 1500, Item 2; Seizure Case No. 10,044, Bulletin 1313, Item 6.

Counsel for the claimant argues that the search warrant, which was admitted into evidence, was improperly issued and consequently, any search and seizure based upon the search warrant was invalid. However, no affirmative testimony was adduced to support this contention. It should be further pointed out, however, that regardless of the validity of the search warrant the testimony here clearly shows that the officers acted upon probable cause after a purchase of the said illicit alcoholic beverages was made by one of its agents.

As the court held in State v. Doyle et al, 42 N.J. 334 (1964):

"It is important to note also that when a person is arrested lawfully, with or without a warrant, a search of his person or of the things within his immediate possession or control, or of the place of arrest to the extent that it is within his immediate possession or control, is considered incidental to the arrest."

Having entered the store without breaking in and indeed, as an invitee, and having made the arrest upon the probable cause upon the facts hereinabove stated, the agents' search following the arrest was clearly valid and within the scope of their authority. State v. Smith, 37 N.J. 481, 497-500 (1962). See also State v. Bindhammer, 44 N.J. 372 (1965).

As mentioned hereinabove, claimant offered no testimony in support of his claim nor did he produce any witnesses.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established by affirmative proof ownership of the property and that he has acted in good faith and did not know or have any reason to believe that the property would be used in unlawful liquor activity. In the absence of these essential elements the Director has no authority to relieve the claimant of forfeiture. R.S. 33:1-66 (e and f); Seizure Case No. 11,059, Bulletin 1533, Item 8; Seizure Case No. 10,695, Bulletin 1444, Item 6.

The claimant has failed to establish these necessary statutory requisites.

Accordingly, I recommend that an Order be entered directing the forfeiture of all of the personal property, including the alcoholic beverages, as set forth in the schedule annexed hereto.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of September, 1965,

DETERMINED and ORDERED that the seized property, more fully described in Schedule "A", attached hereto, constitutes unlawful property, and the same be and is hereby forfeited in accordance with the provisions of R.S. 33:1-66, and shall be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of Alcoholic Beverage Control.

JOSEPH P. LORDI
DIRECTOR

SCHEDULE "A"

- 163 - containers of alcoholic beverages
- 1 - bottle capper and 2 boxes of bottle caps
- 1 - crock, empty
- 1 - gallon, empty
- 1 - frigidaire
- 4 - wooden tables
- 1 - showcase
- 1 - light fixture
- 1 - table
- 2 - refrigerators
- 1 - clock
- 1 - television set
- 1 - cigarette machine
- 1 - makeshift bar
- 1 - cash register
- 1 - coca cola cooler
- 1 - juke box
- 1 - hot dog cooker
- 1 - makeshift counter

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA - DEFERRED EFFECTIVE DATE OF PENALTY.

In the Matter of Disciplinary Proceedings against)
)
 STRATFORD INN, INC.)
 t/a STRATFORD INN) CONCLUSIONS
 n/w Corner Garfield & Second Aves.) AND ORDER
 Avon-by-the-Sea, N.J.)
)
 Holder of Seasonal Retail Consumption License CS-3, issued by the Board of Commissioners of the Borough of Avon-by-the-Sea.)

 Joseph M. Keegan, Esq., Attorney for Licensee.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 8-9, 1965, it sold drinks of beer to four minors, two age 18 and two age 19, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for five days effective June 18, 1951, for mislabeling beer taps and failure to display license certificate (Re Stratford Inn, Inc., Bulletin 886, Item 8; Bulletin 911, Item 13), and by the municipal issuing authority for nine days effective August 11, 1955, for sale to minors.

The prior record of dissimilar violation occurring more than five years ago disregarded, the license will be suspended for twenty days (Re Moniello, Bulletin 1521, Item 4), to which will be added five days by reason of the record of suspension of license for similar violation occurring more than five but less than ten years ago (Re Woodland Grove, Inc., Bulletin 1625, Item 4), or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Report of investigation discloses that the licensed business is customarily discontinued in mid-September each year and is not resumed until the commencement of the summer season of the following year. Hence, the imposition of the penalty to take effect at the present time would be substantially nugatory and therefore the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the business under the renewal license for the summer season of 1966 shall have been fully resumed on a substantial basis.

Accordingly, it is, on this 14th day of September 1965,

ORDERED that any renewal for the summer season May 1 - November 1, 1966 of Seasonal Retail Consumption License CS-3 for the summer season May 1 - November 1, 1965, issued by the Board of Commissioners of the Borough of Avon-by-the-Sea to Stratford Inn, Inc., t/a Stratford Inn, for premises northwest corner Garfield and Second Avenues, Avon-by-the-Sea, be and the same is hereby suspended for twenty (20) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI
 DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Chester Parkes, Robert Perlowski & Irene Guzek, t/a Stanley's Bar)
432 Grove Street)
Jersey City, New Jersey)

CONCLUSIONS and ORDER

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Holders of Plenary Retail Consumption License C-250, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City)

Davidson, Minnitti & Nester, Esqs., by Joseph S. Nester, Esq., Attorneys for Licensees.
Morton B. Zemel, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on August 21, 1965, they sold six cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior 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 Consavage, Bulletin 1633, Item 8.

Accordingly, it is, on this 14th day of September, 1965,

ORDERED that Plenary Retail Consumption License C-250, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Chester Parkes, Robert Perlowski and Irene Guzek, t/a Stanley's Bar, for premises 432 Grove Street, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, September 20, 1965, and terminating at 2:00 a.m. Thursday, September 30, 1965.


Joseph P. Lordi
Director