

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

BULLETIN 1330

March 14, 1960

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1100 Raymond Blvd. Newark 2, N. J.

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March 14, 1960

1. COURT DECISIONS - TUBE BAR, INC. v. DIVISION OF ALCOHOLIC
BEVERAGE CONTROL - DIRECTOR AFFIRMED.

TUBE BAR INC.,

Appellant,

vs.

DIVISION OF ALCOHOLIC BEVERAGE
CONTROL, DEPARTMENT OF LAW AND
PUBLIC SAFETY, STATE OF NEW JERSEY,

Respondent.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-692-58

Argued February 9, 1960 -- Decided February 25, 1960

Before Judges Gaulkin, Sullivan and Foley

Mr. John Drewen argued the cause for
appellant (Mr. Benjamin Gross, attorney).

Mr. Samuel B. Helfand, Deputy Attorney
General, argued the cause for respondent,
(Mr. David D. Furman, Attorney General,
attorney).

PER CURIAM

Appeal is taken from an order of the Director of the
Division of Alcoholic Beverage Control imposing a suspension of plain-
tiff's liquor license for twenty-five days.

After a plenary hearing plaintiff was found guilty of
four violations of departmental regulations: (1) Sunday sale of
packaged goods for off-premises consumption (2) failure to have
available for inspection its application for a current license (3)
employment of two bartenders who did not have on file on the premises
identification cards issued by the municipal authority and (4)
hindrance of the investigation on the premises. A penalty of 15 days
closing was imposed on the first of the enumerated violations; the
remaining three were treated as a group and a ten day penalty was
imposed thereon.

The prosecutor's proofs on the Sunday sales charge showed
three sales between the hours of 1:35 P.M. and 2:47 P.M. on Sunday,
September 28, 1959. The first and third incidents involved sales of
canned beer. As to these two sales counsel for the appellant conceded
that the testimony presented factual disputes which the Director re-
solved upon substantial evidence and which therefore may not be dis-
turbed by this court on appeal.

Appellant's attack is aimed at the second incident, an
alleged sale to an unidentified person of a bottle of whiskey in the
presence of defendant's investigators at 2:05 P.M. The investigators
testified that about 15 minutes after this had taken place one of them

unsuccessfully attempted to purchase a bottle of whiskey from the bartender who had made this sale. Admittedly the refusal to sell did not evoke from either investigator any comment concerning the prior sale. As already noted, counsel for the appellant in withdrawing his challenge to the Director's findings on the first and third sales recognized that the gauge of administrative finality of factual findings is whether they are supported by "substantial evidence," that is, such relevant evidence as a reasonable mind may accept as adequate to support the conclusion reached, Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501, 504-06 (App. Div. 1956); see also Borough of Fanwood v. Rocco, et al., N.J. Super (App. Div. 1960); and also that since the choice of accepting or rejecting competent testimony rests with the administrative agency, the choice when reasonably made is conclusive on appeal. Hornauer v. Div. of Alcoholic Beverage Control, supra.

But appellant urges that the silence of the investigators concerning the sale of whiskey in their presence, especially when sale of whiskey was later refused them, renders their testimony relating to the prior transaction totally incredible and thus devoid of probative value. On such premise it is contended that the record is barren of competent evidence to support a finding of guilt on this particular segment of the charge.

We cannot accept this premise. On the contrary we find that the circumstance of silence was only one factor in the totality of the testimony of these witnesses. The appraisal of its significance was for the fact finder in the assayal of credibility and his finding thereon is beyond attack.

We also find the remaining charges to have been sufficiently proved. Here the appellant's point is that the unavailability of the documents involved was merely a "fortuitous happening," and that the hindrance of the investigation was occasioned by "a legitimate misunderstanding as to the identity of the agents." The administrative agency is empowered by statute to promulgate regulations and ordinarily non-compliance leaves the licensee without a defense if in the judgment of the agency the circumstances surrounding the violation warrant disciplinary action. The court will not interfere with such a conclusion save in the case where the regulations are successfully challenged as being arbitrary, unreasonable or otherwise ultra vires. Such is not the case here.

In overall view the objective of this appeal appears to be a reduction of the penalties imposed. It is well settled that it is within the sound discretion of the Director to determine how long a license is to be suspended. Mitchell v. Cavicchia, 29 N.J. Super. 11, 15 (App. Div. 1953). The penalties imposed do not reflect abuse of such discretion.

Affirmed.

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2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(RENTING ROOMS FOR ILLICIT SEXUAL INTERCOURSE) - CONTRACEPTIVES -
SECOND SIMILAR VIOLATION - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)	
)	
Hickey's Villa Ridgefield, Inc. 540 Studio Road Ridgefield, New Jersey)	CONCLUSIONS
)	AND
Holder of Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of Ridgefield.)	ORDER

Joseph M. Harrison, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On December 4, 1959, and on divers days prior thereto, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for the renting of rooms, the offering to rent and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.
- "2. On December 4, 1959, you possessed prophylactics against venereal disease and contraceptives and contraceptive devices in and upon your licensed premises; in violation of Rule 9 of State Regulation No. 20."

The file herein discloses that pursuant to assignment to investigate a specific complaint that rooms were being rented at the licensed premises for immoral purposes, ABC agents S and F arrived at the licensed premises on Wednesday, November 18, 1959, at about 9:05 p.m. The licensed premises consists of a two and one-half story brick building containing two barrooms and kitchen on the first floor with an entrance to a hallway and stairs leading to five bedrooms on the second floor. The agents observed a number of patrons (male and female) seated at the bar, which was being tended by Amy B. Hickey (an officer and holder of twenty per cent of the stock of the corporation). The agents introduced themselves as airline employees to Mrs. Hickey and engaged her in general conversation and, at about 10:45 p.m., left the premises when they had observed no activity of room renting.

On Saturday, November 28, 1959, at about 11:25 p.m., the agents returned to the licensed premises to continue their investigation and met Daniel W. Hickey (President and the holder of eighty per cent of the stock of said corporation). The agents told Hickey that they were employed at the Newark Airport and, in a general way, discussed with him the immorality of some of their female co-employees. Toward the end of their conversation (at about 12:00 midnight) the agents asked Hickey if he had two rooms available that they could use in the near future for meretricious relations with their girl friends. Mr. Hickey replied that, "You can bring the girls here any time at all, as long as it is before 12:00 midnight" and further stated he had all motel accomodations. At 12:10 a.m. the agents left the premises.

Pursuant to the aforementioned arrangement and in furtherance of the investigation, Agents S and F, accompanied by Agent J, arrived in the vicinity of the licensed premises on Saturday, December 4, 1959, at about 9:45 p.m. While Agent J remained outside, Agents S and F entered the premises (each carrying a "marked" five-dollar bill) and observed that Hickey was not in the tavern and requested Gerald Greer, the bartender on duty, to call him. At about 10:10 p.m. Mr. Hickey, in response to Greer's signal (a buzzer under the bar), entered the barroom through the kitchen, greeted the agents and asked them why they were not accompanied by their girls. The agents assured him that the girls would arrive between 10 and 10:30 p.m. In the interim the telephone rang, Mr. Hickey answered it and informed Agent S it was a female calling for him. (This call was prearranged by the agents.) Agent S went to the telephone and, upon his return to the bar, informed Mr. Hickey that the girls were on their way and that they had asked him to make all the arrangements for the rooms in advance of their arrival to avoid being seen on the premises. Hickey indicated that it would not be necessary for the girls to come through the barroom as the rooms could be reached by use of the hallway and then fixed the rate of each room at \$5. Shortly thereafter, the agents went into an unused back barroom where Hickey handed each of them a hotel registration card. The agents signed their cards and returned the same to Hickey, together with their "marked" \$5 bills. Hickey placed the cards and "marked" bills on the back bar and assigned by number the respective rooms which the agents were to occupy. The agents inquired if they might wait in their rooms for the girls, to which Hickey replied that the rooms were presently being used by two couples who would be leaving soon and suggested to the agents that they wait outside for their friends.

Agent F returned to the barroom. Agent S left the premises, met Agent D, who had temporarily replaced Agent J at the post of observation, and informed him of the aforementioned arrangements made with Hickey.

At about 10:40 p.m. Agent D entered the tavern, took a seat at the bar, and, at about 10:50 p.m., was joined by Agent J (the identities of these agents remained undisclosed). Agent F, while waiting for Agent S to return, outlined (within the hearing of Agents D and J) to Greer the aforesaid plans that had been made with Mr. Hickey and also informed him of the apprehension their girl friends had of being seen on the premises. Greer advised that there was no need for worry; that the premises are not frequented by strangers; that the location of the premises does not invite suspicion and continued to state that Hickey handles the renting of the rooms and that presently there are two couples upstairs.

Agent F then left the premises and joined Agent S on the outside to discuss plans to complete the investigation and while there encountered Hickey in the parking area. Hickey, whose suspicions were aroused by reason of the failure of the girls to arrive as promised, anxiously urged the agents to take back their money and "forget the whole thing". At the invitation of the agents, Hickey accompanied them into the building and again beseeched them to leave the premises, following which the agents identified themselves to Hickey. The agents requested and Hickey produced the two "marked" \$5 bills from his wallet and surrendered the registration cards of two couples, respectively, registered in rooms 6 and 7 on the second floor.

Agents F and S, together with Hickey, proceeded to rooms 6 and 7. Hickey knocked on the door of each of said rooms and called the occupants by the names which appeared on their registration cards. Within a few minutes a male, partially dressed, opened the door of room number 7 wherein the agents observed a female lying in bed, covered by a sheet. The agents made similar observations of a male and female in room number 6. Shortly thereafter, each of the couples

admitted that they were not man and wife; that they had engaged in illicit sexual relations on prior visits to the premises, and that they were there that night for the same purpose. Upon being questioned, Hickey admitted that he had rented the rooms to the agents with the knowledge that they intended to use them for immoral purposes.

The investigation further discloses that the agents found three packs of contraceptives on the premises.

The attorney for the licensee has supplemented the plea of non vult by written argument as to penalty (Rule 6 of State Regulation No. 16) in which he urges leniency on four points, viz., that (1) a purchaser has been obtained for licensed premises; (2) the licensee has suffered financial losses in the operation of its business; (3) revocation of the license would impose severe financial losses and (4) the licensee had decided to place its license on the market.

The defendant has a prior adjudicated record. Effective October 1, 1956 the Director suspended defendant's license for 180 days for renting of rooms for illicit sexual intercourse and for possessing indecent matter. Re Hickey's Villa Ridgefield, Inc., Bulletin 1136, Item 5. It is quite obvious that the licensee has shown a callous disregard for the rules and regulations of this Division; that it has wantonly abused the privileges of its license and that it has utterly failed to adhere to the standards of public morality and common decency. It has long been established that the renting of rooms for immoral purposes cannot and will not be tolerated on licensed premises.

In view of all the facts and circumstances in this case, and particularly in view of the prior similar violation (in which Hickey actively participated) within the past three years, the only appropriate penalty is outright revocation. The matters urged by way of mitigation cannot affect the penalty in a matter involving repeated violations of the kind in question. A licensee cannot allow a licensed business to be recklessly operated and, when apprehended, be permitted to escape the inevitable by transfer of the license; nor should the prospect of a licensee sustaining a substantial loss or even total financial loss, through revocation of license, be cause for deviating from the course of revocation where such penalty is required. As was said in Benedetti v. Board of Commissioners of Trenton, Bulletin 1040, Item 1, affirmed in Benedetti v. The Board of Commissioners of the City of Trenton, et al, 35 N. J. Super. 30 (App. Div. 1955), reprinted in Bulletin 1058, Item 1, "... proper protection of the public interests and morals can not be made to depend upon the size of a licensee's business or the amount of his investment".

Accordingly, it is, on this 8th day of February, 1960,

ORDERED that Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of Ridgefield to Hickey's Villa Ridgefield, Inc., for premises 540 Studio Road, Ridgefield, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Elizabeth Cook)
t/a Seven Seas Tavern)
302 Hudson Street)
Hoboken, New Jersey)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.)

ORDER

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

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On January 12 and 13, 1960, you allowed, permitted and suffered gambling, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- "2. On January 12 and 13, 1960, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On the afternoon of January 12, 1960, an ABC agent who was then in defendant's premises placed two fifty-cent bets on certain numbers with Charles E. Holton (the bartender). The agents observed two other patrons place number bets with the same bartender.

On the afternoon of January 13, 1960, the aforesaid agent and another ABC agent entered defendant's premises with marked money in their possession. Both agents placed two fifty-cent bets on certain numbers with the aforesaid bartender. By prearrangement other ABC agents and a member of the Hoboken Police Department then entered the premises and found the marked money and four slips containing notations of money bets in the bartender's possession. Charles E. Holton was arrested on a charge of possessing lottery slips by the Hoboken policeman.

Defendant has no prior adjudicated record. The minimum penalty imposed for a violation of this nature, where the licensee or his employees are involved, is a suspension of the license for twenty-five days. Re Egresi, Bulletin 1317, Item 3. I shall suspend defendant's license for twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 8th day of February, 1960,

ORDERED that plenary retail consumption license C-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of

Hoboken to Elizabeth Cook, t/a Seven Seas Tavern, for premises 302 Hudson Street, Hoboken, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Tuesday, February 16, 1960, and terminating at 2:00 a.m., Monday, March 7, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

4. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

Auto. Susp. #181)
In the Matter of a Petition to)
Lift the Automatic Suspension)
of Plenary Retail Consumption)
License C-163 issued by the)
Board of Commissioners of the)
City of Atlantic City to)

On Petition
O R D E R

John S. Sadownik)
t/a Golden Gate)
27-29 So. Missouri Avenue)
Atlantic City, New Jersey.)

-----)
John S. Sadownik, Petitioner, Pro se.

BY THE DIRECTOR:

It appears from the petition filed herein that on January 18, 1960, John S. Sadownik was fined the sum of \$100 after he pleaded non vult in the Atlantic County Court to an indictment for selling alcoholic beverages to a minor in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of his license for the balance of its term. R.S. 33:1-31.1. The license has not been picked up because of the pendency of this proceeding.

It further appears from the petition and the records of this Division that the local issuing authority suspended petitioner's license for fifteen days, less five days for the plea, after he pleaded non vult in disciplinary proceedings to a charge alleging sale to the same minor. The suspension was in effect from 12:01 a.m. September 14, 1959, to 12:01 a.m. September 24, 1959. Under all the circumstances of the case said suspension appears to be adequate. I shall grant the request to lift the automatic suspension.

Accordingly, it is, on this 29th day of January 1960,

ORDERED that the statutory automatic suspension of said license C-163 be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - SOLICITING ORDERS FROM PERSONS NOT HOLDING A WHOLESALE OR RETAIL LICENSE - PERMIT SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Martin Emanuel Lerit)
225 Weequahic Avenue)
Newark, New Jersey,)

CONCLUSIONS

and

Holder of Solicitor's Permit No. 3149, issued by the Director of the Division of Alcoholic Beverage Control.)
-----)

ORDER

Arthur Slavitt, Esq., Attorney for Defendant-permittee
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On November 19, 1959 you, the holder of a solicitor's permit, offered for sale and solicited orders for the purchase and sale of alcoholic beverages otherwise than to the extent duly allowed and permitted by law and by the New Jersey license of your employer, National Wine and Liquor Co., in that you offered alcoholic beverages for sale to, and solicited orders for the purchase and sale of alcoholic beverages from, several persons in Newark, New Jersey, not holding a retail or wholesale license, which conduct was contrary to and beyond the terms of the plenary wholesale license of your said employer, as defined by R.S. 33:1-11(1) and contrary to R.S. 33:1-2; in violation of Rule 5 of State Regulation No. 14.

"2. On November 19, 1959 you, the holder of a solicitor's permit, engaged in conduct prohibited to your employer, National Wine and Liquor Co., holder of a plenary wholesale license, in that you sold alcoholic beverages to, and solicited the sale of alcoholic beverages from, several persons in Newark, New Jersey, not holding a retail or wholesale license, which conduct was contrary to and beyond the terms of the license of your said employer, as defined by R.S. 33:1-11(1) and contrary to R.S. 33:1-2; in violation of Rule 12 of State Regulation No. 14."

The file herein discloses that on November 19, 1959, defendant visited three industrial plants in Newark and solicited from a person in each plant an order for various brands of alcoholic beverages distributed by his employer. There is no evidence that defendant received any orders as a result of his solicitation and defendant states that his employer had no knowledge that he was soliciting at industrial plants. Nevertheless it is clear that the activity of defendant constituted a violation of Rules 5 and 12 of State Regulation No. 14.

Defendant has no prior record. This is a case of first impression. I am inclined to be lenient in the quantum of penalty. However, the conduct of the solicitor is clearly beyond the scope of his permit and, if allowed, would open the door for similar practices by others holding like positions. Should I find that such type of

violation poses a problem in the future, I shall not hesitate to increase the penalties and possibly withhold the renewal of the permits in question. I shall suspend defendant's permit for fifteen days. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 3rd day of February 1960,

ORDERED that Solicitor's Permit No. 3149, issued by the Director of the Division of Alcoholic Beverage Control To Martin Emanuel Leric, 225 Weequahic Avenue, Newark, New Jersey, be and the same is hereby suspended for ten (10) days, commencing at 9 a.m. Monday, February 15, 1960 and terminating at 9 a.m. Thursday, February 25, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Ralph Calia
t/a "500" Club
262 Monroe Street
Passaic, N. J.

Holder of Plenary Retail Consumption License C-138, issued by the Board of Commissioners of the City of Passaic.
-----)

CONCLUSIONS

AND

ORDER

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

BY THE DIRECTOR:

Defendant pleaded guilty to the following charge:

"On December 30, 1959, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., William ---, age 18 and Ardie ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

On Wednesday, December 30, 1959, at about 11:35 p.m., two ABC agents at defendant's licensed premises observed Harry Rifkowitz, one of two bartenders on duty, serve a bottle of beer to William ---, age 18, and Ardie ---, age 19, without requiring them to make any written representation of their ages. After observing the minors consume a portion of their beer, the agents identified themselves to the minors, the bartender and Ralph Calia, the licensee. In an oral statement, Rifkowitz admitted aforesaid violation.

By way of mitigation, defendant has submitted a statement which I have carefully read, together with the file in the case and the reports of the agents. I, however, do not find any extenuating circumstances in this case which would impel me to impose less than

the minimum penalty in cases of this kind.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days, the minimum penalty for sale of alcoholic beverages to an 18 and 19-year-old minor. Re The Aloha, Inc., Bulletin 1307, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 3rd day of February 1960,

ORDERED that Plenary Retail Consumption License C-138, issued by the Board of Commissioners of the City of Passaic to Ralph Calia, t/a "500" Club, for premises 262 Monroe Street, Passaic, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., Tuesday, February 9, 1960 and terminating at 3:00 a.m., Friday, February 19, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Philmore Liquor Sales, Inc.)
946-956 Market Street)
611-633 E. 36th Street)
10-24 Lakeview Avenue)
Paterson, New Jersey)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Distribution License D-18, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)
-----)

Defendant-licensee, by Philip Wolf, President.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that on December 29, 1959, it sold alcoholic beverages at less than the price listed in the minimum consumer resale price list then in effect, in violation of Rule 5 of State Regulation No. 30.

On December 29, 1959, two ABC agents went to the liquor counter where one of them purchased a case (four one-gallon bottles) of Fior Di California Brand California Burgundy Scelto wine from Richard Gigli, a clerk employed by the defendant, for the price of \$9 asked by said employee. At the time of purchase, the correct price for a case (four one-gallon bottles) was \$9.68. The agents left the defendant's establishment but returned immediately thereafter and informed Gigli of the violation. He referred them to Philip Wolf, president of defendant-corporate licensee, to whom the agents showed the sales receipt given to them by Gigli and then the agents pointed to the cash register which still had registered thereon the sum of \$9 representing payment for the wine.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of ten days. Re Central Liquor Co., Inc., Bulletin 1261, Item 3. Five days will be remitted for the plea

entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 1st day of February 1960,

ORDERED that Plenary Retail Distribution License D-18, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Philmore Liquor Sales, Inc., for premises 946-956 Market Street, 611-633 E. 36th Street, 10-24 Lakeview Avenue, Paterson, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m., Monday, February 8, 1960 and terminating at 9:00 a.m., Saturday, February 13, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

8. AUTOMATIC SUSPENSION - SALES TO MINORS - SUSPENSION STAYED PENDING ACTION BY LOCAL ISSUING AUTHORITY IN DISCIPLINARY PROCEEDINGS.

Auto. Susp. #182)	
In the Matter of a Petition)	
to Lift the Automatic Suspension)	
of License C-126, issued by the)	
Board of Commissioners of the City)	On Petition
of Passaic to)	
)	O R D E R
Charles Trentacosta)	
t/a Four Deuces Bar)	
172 Monroe Street)	
Passaic, New Jersey.)	

Morris Ploshnick, Esq., Attorney for Petitioner

BY THE DIRECTOR:

The petition herein discloses that on January 13, 1960, Charles Trentacosta was fined the sum of \$100 and costs after he was found guilty in the Municipal Court of the City of Passaic of a charge alleging that he sold alcoholic beverages to minors in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of his license for the balance of its term. R.S. 33:1-31.1. The case was adopted by this Division on January 27, 1960, and the license has not been picked up because the Division was informed that the licensee intended to apply for a stay.

Disciplinary proceedings have not yet been instituted against the licensee because of said sales to minors. A supplemental petition to lift the automatic suspension may be filed with me by the petitioner after the disciplinary proceedings have been decided. In fairness to petitioner I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Salvio and Bednarz, Bulletin 1294, Item 8.

Accordingly, it is, on this 2nd day of February 1960,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

WILLIAM HOWE DAVIS
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE PROPER REPORTS WITH DIVISION OF TAXATION - LICENSE SUSPENDED FOR 5 DAYS, LESS 2 FOR PLEA.

In the Matter of Disciplinary Proceedings against James H. McNeill t/a McNeill's Liquor Store 435 Broadway Passaic, New Jersey Holder of Plenary Retail Distribution License D-21, issued by the Board of Commissioners of the City of Passaic.

CONCLUSIONS

AND

ORDER

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

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"You failed, in violation of R.S. 54:45-1, to file with the Director of the Division of Taxation (Beverage Tax Bureau), of the New Jersey Department of the Treasury, within time, reports disclosing the alcoholic beverages distributed, transported, imported, purchased and sold by you during the months of July, August, September, October and November 1959."

Upon information received from the Division of Taxation (Beverage Tax Bureau) of the State of New Jersey that defendant had failed to file required reports with it from July to November 1959, inclusive, the aforementioned charge at the direction of said Division was preferred against defendant.

Prior to the hearing in this matter, scheduled for January 12, 1960, word was received from the Division of Taxation (Beverage Tax Bureau) certifying that defendant had satisfied the requirements of the Bureau. Ordinarily, when such is the case and certification has been received that the penalty heretofore imposed has been paid and that the licensee is not delinquent in the filing of any report or payment of any tax or penalty, I would enter an order dismissing the proceedings. However, the defendant herein has become a habitual violator in failing to file the required tax reports. On seven prior occasions from 1955 to and including 1959 (exclusive of the case now under consideration), tax revocation proceedings were instituted by this Division. The defendant on each prior occasion had been very apologetic when "paying up" in these prior cases and assured the Division that "it will never happen again", but it has happened again with the result that this is the eighth tax revocation proceeding within a five-year period.

Under the circumstances, a suspension of defendant's license is warranted. Therefore, I shall suspend his license for a period of five days, less two days remission for the plea entered herein, leaving a net suspension of three days.

Accordingly, it is, on this 1st day of February, 1960,

ORDERED that Plenary Retail Distribution License D-21, issued

by the Board of Commissioners of the City of Passaic to James H. McNeill, t/a McNeill's Liquor Store, for premises 435 Broadway, Passaic, be and the same is hereby suspended for three (3) days commencing at 9:00 a.m., Monday, February 8, 1960, and terminating at 9:00 a.m., Thursday, February 11, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

John and Walter Kowal)
t/a Butch Kowal's Tavern)
950 St. George Avenue)
Rahway, N. J.)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-17, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway.)

Joseph M. Feinberg, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they sold alcoholic beverages at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulation No. 30.

On January 8, 1960 at about 2:40 p.m., two ABC agents entered defendants' premises. One of the agents purchased from Walter Kowal one case containing twelve 4/5 quart bottles of Four Roses Blended Whiskey for the sum of \$50. The minimum resale price then in effect for said item, less permissible 5% for a case lot, was \$56.43. The agent who made the purchase left the premises with the case and thereafter, in the presence of the other agent, Walter Kowal gave the money he had received to John Kowal who placed the money in his pocket. The agent who had left the premises returned, and both agents identified themselves to the licensees.

Defendants have no prior adjudicated record. I shall suspend defendants' license for the minimum period of ten days. Re Jay, Bulletin 1254, Item 2; Re Foti, Bulletin 1284, Item 6. Five days will be remitted for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 1st day of February 1960,

ORDERED that Plenary Retail Consumption License C-17, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway to John and Walter Kowal, t/a Butch Kowal's Tavern, for premises 950 St. George Avenue, Rahway, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, February 15, 1960 and terminating at 2:00 a.m., Saturday, February 20, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

11. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 John L. Flanigan)
 t/a The Hofbrau)
 441 Crooks Avenue)
 Clifton, N. J.)
 Holder of Plenary Retail Consumption License C-33, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton.)
 -----)

CONCLUSIONS

AND

ORDER

Defendant-licensee, Pro se.
 William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On October 20, 1959, an ABC agent tested defendant's open stock of liquor and seized one bottle for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of the seized bottle were low in solids and acids when compared with samples of the genuine product of the same labeled brand.

Defendant has no prior adjudicated record. I shall suspend his license for ten days, the minimum penalty imposed in "refill" cases involving one bottle, and remit five days for the plea entered herein, leaving a net suspension of five days. Re Rossetti, Bulletin 1258, Item 7.

Accordingly, it is, on this 4th day of February, 1960,

ORDERED that Plenary Retail Consumption License C-33 issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to John L. Flanigan, t/a The Hofbrau, for premises 441 Crooks Avenue, Clifton, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m., Monday, February 15, 1960 and terminating at 3:00 a.m., Saturday, February 20, 1960.

WILLIAM HOWE DAVIS
 DIRECTOR

12. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Charles W. Smith
 t/a Buck Smiths
 S/W Cor. Thompson and Palmer Avenues
 Middletown Township
 PO East Keansburg, N. J.
 Holder of Plenary Retail Consumption License C-15, issued by the Township Committee of Middletown Township.

CONCLUSIONS
 AND
 ORDER

 Edmond J. Dwyer, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge that he sold alcoholic beverages during prohibited hours in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

On Sunday, July 19, 1959 at about 1:40 p.m., an ABC agent, while in defendant's licensed premises, observed the licensee in conversation with two men, Frank Chandler, a patron, and John O'Brien, a part-time employee. Immediately thereafter, Chandler left the premises and the licensee, accompanied by O'Brien, walked into a side room. Another ABC agent who had remained on the outside saw Chandler leave the premises by its front door, walk to the rear of the building and pick up a brown paper bag containing three one-quart bottles of Schaefer beer which had been placed there by O'Brien. At about 1:45 p.m. this agent identified himself to Chandler, seized the alcoholic beverages and, together with Chandler, entered the licensed premises. Both agents identified themselves to the licensee who denied he had sold the alcoholic beverages to Chandler.

By way of mitigation, the attorney for defendant has submitted a statement which I have carefully read, together with the file in the case and the reports of the agents. I cannot conceive that the alcoholic beverages were removed without defendant's knowledge. I do not find any extenuating circumstances in the case which would impel me to impose less than the established penalty in cases of this kind.

Defendant has a prior adjudicated record. His license was twice suspended by the local issuing authority, effective April 29, 1943 for five days for an "hours" violation and effective October 16, 1950 for five days for sales to minors. Since the prior similar violation occurred more than ten years ago and the prior dissimilar violation more than five years ago, they will not be considered in fixing the penalty herein. I shall suspend the defendant's license for the minimum period of fifteen days. Re Palestis, Bulletin 1304, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. I have been advised that defendant has many social affairs of charitable organizations booked through February 21st.

Accordingly, it is, on this 9th day of February 1960,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of Middletown Township to Charles W. Smith, t/a Buck Smiths, for premises S/W Cor. Thompson and Palmer Avenues, Middletown Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., Tuesday, February 23, 1960 and terminating at 2:00 a.m., Friday, March 4, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

13. AUTOMATIC SUSPENSION - SALES TO MINORS - SUSPENSION STAYED PENDING ACTION BY LOCAL ISSUING AUTHORITY IN DISCIPLINARY PROCEEDINGS.

Auto. Susp. #183)	
In the Matter of a Petition to)	
Lift the Automatic Suspension)	
of Plenary Retail Consumption)	
License C-40, issued by the)	On Petition
Board of Commissioners of the)	
City of Perth Amboy to)	O R D E R
G. & Z. Company, Inc.)	
t/a G. & Z. Bar & Liquor Store)	
254 Smith Street)	
Perth Amboy, New Jersey.)	

Seaman and Williams, Esqs., Attorneys for Petitioner

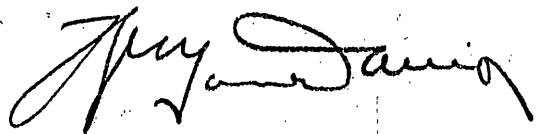
BY THE DIRECTOR:

The petition herein discloses that on February 3, 1960, Iwanna Kozak (holder of ten per cent. of the stock of G. & Z. Company, Inc.) was fined the sum of \$50 and costs in the Municipal Court of the City of Perth Amboy after she had been found guilty of selling alcoholic beverages to minors, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of the license held by the corporation. R.S. 33:1-31.1. The petition requests a stay of said suspension. Because the Division was informed that the licensee intended to apply for a stay, the license has not been picked up.

Disciplinary proceedings have not yet been instituted against the licensee because of said sale to minors. A supplemental petition to lift the automatic suspension may be filed with me by the licensee after the disciplinary proceedings have been decided. In fairness to the licensee, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Salvio & Bednarz, Bulletin 1294, Item 8.

Accordingly, it is, on this 9th day of February 1960,

ORDERED that the automatic suspension be stayed pending the entry of a further order herein.



William Howe Davis
Director