

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

BULLETIN 2080

January 23, 1973

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Orange) - PURCHASE OF ALCOHOLIC BEVERAGES WHILE ON NON-DELIVERY LIST - HINDERING - SALE TO LICENSEE ON NON-DELIVERY LIST - PRIOR SIMILAR RECORD OF PURCHASER - LICENSE SUSPENDED FOR 40 DAYS - SUSPENSION OF SELLER'S LICENSE FOR 15 DAYS - FINE IN LIEU OF 15 DAY SUSPENSION.
2. APPELLATE DECISIONS - SUN DANCE LODGE, INC. v. FAIRFIELD.
3. DISCIPLINARY PROCEEDINGS - AMENDED ORDER. (Englewood)
4. DISCIPLINARY PROCEEDINGS (Pompton Lakes) - ORDER STAYING SUSPENSION.
5. DISCIPLINARY PROCEEDINGS (Elizabeth) - ORDER TERMINATING SUSPENSION.
6. SEIZURE - FORFEITURE PROCEEDINGS - CLAIM FOR RETURN OF AUTOMOBILE IN WHICH ALCOHOLIC BEVERAGES AND STILL PARTS WERE DISCOVERED - CAR RETURNED TO INNOCENT OWNER - ALCOHOLIC BEVERAGES AND STILL PARTS ORDERED FORFEITED.
7. DISCIPLINARY PROCEEDINGS (Camden) - AMENDED ORDER.
8. DISCIPLINARY PROCEEDINGS (Palisades Park) - SUPPLEMENTAL ORDER - EFFECTIVE DATES OF SUSPENSION DETERMINED.
9. DISCIPLINARY PROCEEDINGS (Plainfield) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS.
10. STATE LICENSES - NEW APPLICATIONS FILED .

STATE OF NEW JERSEY
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1. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES WHILE ON
NON-DELIVERY LIST - HINDERING - SALE TO LICENSEE ON NON-DELIVERY LIST -
PRIOR SIMILAR RECORD OF PURCHASER - LICENSE SUSPENDED FOR 40 DAYS -
SUSPENSION OF SELLER'S LICENSE FOR 15 DAYS - FINE IN LIEU OF 15 DAY
SUSPENSION.

S-9089; X-34,972-K)
In the Matter of Disciplinary)
Proceedings against)

Vito Politi)
t/a Vito's Cocktail Bar)
143-145 Lincoln Avenue)
Orange, N. J.,)

Holder of Plenary Retail Consumption)
License C-15, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Orange)
and)

CONCLUSIONS
and
ORDER

S-9090; X-47,304-B)
Orange Colony Liquors, Inc.)
t/a Colony Liquors)
322 Central Avenue)
Orange, N. J.,)

Holder of Plenary Retail Distribution)
License D-20, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Orange.)

Vito Politi, Licensee, Pro se
Gerald Poss, Esq., Attorney for Orange Colony Liquors, Inc.
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The licensees pleaded not guilty to the following
charges:

As to Vito Politi:

- "1. On November 19, 1971, you the holder of a New Jersey
plenary retail consumption license, without authority
of special permit first obtained from the Director of
the Division of Alcoholic Beverage Control, while on
the non-delivery list, purchased or obtained from
Orange Colony Liquors, Inc., t/a Colony Liquors,
holder of a plenary retail distribution license, from
premises 322 Central Avenue, Orange, New Jersey, sev-
eral bottles and cases of alcoholic beverages of sev-
eral brands, kinds and sizes; in violation of Rule 15
of State Regulation No. 20.

- "2. On November 19, 1971 while an Investigator of the

Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey, was conducting an investigation, inspection and examination of your licensed business and premises you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of Rule 35 of State Regulation No. 20."

As to Orange Colony Liquors, Inc.:

- "1. On November 19, 1971, you, a holder of a New Jersey plenary retail distribution license, without authority of special permit first obtained from the Director of the Division of Alcoholic Beverage Control, sold to Vito Politi, t/a Vito's Cocktail Bar; holder of a plenary retail consumption license for premises at 143-145 Lincoln Avenue, Orange, New Jersey, several bottles and cases of alcoholic beverages of several brands, kinds and sizes; in violation of Rule 15 of State Regulation No. 20.
- "2. On November 19, 1971 and on November 22, 1971 you, directly or indirectly, failed to facilitate, hindered and delayed and caused the hindrance and delay and attempted to hinder, delay and cause the hindrance and delay of an investigation of your licensed business and premises and of a search thereof then and there being conducted on the former date above and by failure to appear at the Division offices on the latter date above when so ordered, in both instances by an Investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of Rule 35 of State Regulation No. 20."

The matters were consolidated for hearing because all charges arose out of the same facts and circumstances.

On behalf of the Division, Agent W testified that, pursuant to a specific assignment, he entered the licensed premises of Vito Politi, t/a Vito's Cocktail Bar, at approximately 3:45 p.m. on November 19, 1971. It appears from Division records that on that date, and for some time prior thereto, the licensee's name appeared on the Division's non-delivery list. Noticing a stock of alcoholic beverages behind the bar, the agent, after identifying himself, began questioning the licensee Vito Politi with regard to his source of supply.

About ten minutes later, a young man, subsequently identified as Gary Pecarelli (an employee of the licensee Orange Colony Liquors, Inc.) entered the premises carrying a package containing "... some beer and liquor." He placed it on the bar and said, "Where do you want it, Vito?" to which Politi replied, "Just leave it on the bar." Politi thereupon advised Agent W that the delivery was for his sister.

There followed a dispute between Agent W and Politi as to where this delivery should be placed. Agent W instructed Pecarelli to leave it on the end of the bar while Politi instructed him to take the said alcoholic beverages to his sister's home. Pecarelli placed the packages on the bar and departed. Agent W followed him outside and learned the name of Pecarelli's employer.

Thereafter, although Agent W had instructed Politi not to remove the alcoholic beverages from their present location on the bar, Politi took the alcoholic beverages outside to his car. After having warned Politi that such act constituted hindering his investigation, Agent W departed.

Agent W identified an invoice which he obtained during this investigation containing a list of all the items found to be included in this delivery. The invoice, being mutilated, does not disclose the name of Orange Colony Liquors, Inc.

After departing the premises Agent W contacted his superior and was advised to proceed to Orange Colony Liquors, Inc. to continue the investigation. Upon arriving at Orange Colony Liquors, Inc., Agent W observed the delivery vehicle, described earlier, parked in front of the premises. Upon entering he confronted Gerald Hirsh (a principal officer of the said licensee) and requested a copy of the original invoice.

It should be noted that no retail licensee shall deliver or transport any alcoholic beverages unless the driver of the vehicle has in his possession a bona fide, authentic and accurate delivery slip or similar document and that the original of such slip shall be retained by the licensee at his licensed premises for a period of one year from the date of delivery, available for inspection. Rule 3 of State Regulation No. 17.

Hirsh was unable to produce a copy of the bill, and explained that he was unable to find it. Furthermore, he stated that he was unaware that a delivery to a license on the "default" list constituted a violation.

Agent W then attempted to go behind the counter to investigate the records which were visible, and Hirsh refused to permit him access to the area behind the counter. Agent W informed Hirsh that failure to permit inspection of the premises would constitute hindering investigation. Agent W thereupon advised Hirsh to appear at Division headquarters on the following Monday.

On cross examination Agent W testified that he gained possession of the delivery slip from Pecarelli outside at the truck. Further, at the premises of Orange Colony Liquors, Inc. he noticed that Hirsh was quite busy and that he went behind the counter without asking permission. He investigated "delivery books, whatever was behind there." He remained behind the counter five to seven minutes. He then advised Hirsh to present himself at Division headquarters on the following Monday. Hirsh was quite busy during the entire investigation. The space behind the counter was approximately four feet in depth.

Vito Politi testified that he is the sole owner of the license, known as Vito Politi, t/a Vito's Cocktail Bar. He described the incident as follows: Agent W entered and identified himself. Shortly thereafter Pecarelli entered and asked where his delivery should be placed. He advised Pecarelli to leave it on a table and advised Agent W that the delivery was for his sister; that it was to go eventually to her home. Agent W "wanted to take the stuff." He explained to Agent W that he had a limited stock of alcoholic beverages because he had been open for business only intermittently and that he had been engaged in other employment. Further, he had traveled recently for a two-month period. In the past year the premises were opened only on Friday night; he was attempting to sell the license.

On cross examination he admitted being on the Division non-delivery list continually from March 8, 1971 until November 19, 1971, the date of the alleged violation herein. During the two months in which he traveled, the premises were completely closed; the balance of the time he opened only on week-ends. He reiterated that the delivery was for his sister and that she ordered the beverages from Orange Colony Liquors, Inc. He denied any connection at all with Orange Colony Liquors and he insisted that his sister frequently had packages delivered to her in care

of the licensed premises. He did not see the invoice; he placed the alcoholic beverages in his car and he had a friend deliver them to his sister; he had never had a delivery from Orange Colony before; his sister had been subpoenaed to appear at the hearing but illness prevented her appearance.

With respect to removing the delivery from the premises, the following testimony was elicited:

"Q Did you at one time tell the delivery boy to take the packages out of the tavern?

A Yes.

Q Was he permitted to take them out of the tavern?

A No.

Q Did the investigator, Mr. W---, stop him from taking them out of the tavern?

A Yes, because he was going to take it. I said, 'No, it is got to go home. It is got to go home.'

* * * * *

"Q Did you take the liquor out to your car?

A Yes.

Q Mr. W--- followed you?

A Yes, sir. He said, 'It is illegal on the premises. Get it home.'

The attorney for the licensee Orange Colony Liquors, Inc. moved to dismiss all charges on the ground that the Division had failed to present a "prima facie case at this point." Under the circumstances herein described, I recommend that the motion be denied.

Gerald Hirsh testified that on the date in question (November 19, 1971), at approximately 4 p.m., he received a phone call in which a female voice ordered the alcoholic beverages herein and requested that they be delivered to "Vito's ... between Matthew Street and Mechanic Street." He thereafter prepared the invoice herein on which he designated the recipient as "Lady at Vito's." He then listed the items ordered. He identified the mutilated invoice in evidence as the one he prepared for the order herein. He had never sold to Vito's before; he has not sold to Vito's since nor was he aware that Vito's Cocktail Bar existed. Pecarelli returned to the licensed premises and advised Hirsh as to what had occurred. At approximately 6:30 p.m. Agent W entered the premises. He remained on the patrons' side of the counter for approximately thirty minutes, discussing the matter at Vito's. Prior thereto, but after the return of Pecarelli, he had looked for his copy of the invoice made out to "Lady at Vito's" but was unable to find it.

Agent W later proceeded behind the counter and proceeded toward the cash register which Hirsh, after some delay, reluctantly opened. Agent W then made a cursory inspection of sales slips in the register. He would not advise Hirsh of what he was looking for but thereafter continued his search under the counter and on shelves behind the counter. After some fifteen minutes of this he became busy with customers and phone calls. He then, after asking if Agent W had completed his investigation, insisted that Agent W vacate the cramped area behind the bar so that Hirsh could conduct his business.

He concluded that, earlier, Agent W had advised him that he might have to appear at Division offices and, after Hirsh indicated that such an appearance would cause great inconvenience, Agent W departed. Hirsh received no formal, written notice to appear.

Gary Pecarelli testified on behalf of Orange Colony Liquors, Inc. that he made the delivery; the bill was made out to "a lady at Vito's;" he had never been in Vito's before; he left the package on the bar; he was not paid for the merchandise; Politi asked him to put the delivery in his car but Agent W ordered him to leave it on the bar; he gave the invoice to Agent W in the delivery truck; he had never heard of Vito's before, and he did not recall addressing Politi as "Vito" upon his arrival.

Gertrude Hirsh (mother of Gerald Hirsh) testified that she was in the premises of Orange Colony Liquors, Inc. when Agent W arrived. She described the busy, crowded condition behind the counter and further overheard Agent W advise Hirsh "You may have to come down Monday" and he would let him know. Agent W spent some twenty minutes behind the small counter making his investigation and departed approximately at 7:30 p.m.

Preliminarily it should be observed that disciplinary proceedings against licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). Further, testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954), at 554.

With respect to the charges against Vito Politi, I find that the testimony of Agent W has the ring of truth, is credible and accurately sets forth the facts and circumstances herein. I find that Politi was indeed making "purchases" of alcoholic beverages while on the Division non-delivery list without authorization or special permit.

I reject Politi's explanation with respect to his sister as the attempt of a licensee to avoid the consequences of his act. Similarly, his conduct, as described by Agent W, clearly constitutes action which hindered and delayed the investigation. By violating the express instruction of Agent W, who had properly identified himself to Politi and who had made Politi aware of the purpose of his visit, Politi hindered the investigation when he removed the alcoholic beverages from the bar and placed them in his car. To hinder is to impede or obstruct. Whether an act impedes or obstructs is determined not by the length of time which expires but, rather, by the events which take place during that period. Re Conrad's Wines & Liquors, Bulletin , Item .

It is therefore recommended that the licensee Vito Politi be found guilty of the charges herein.

With respect to the charges against Orange Colony Liquors, Inc., I find that the licensee knew or should have known the recipient of the order which he delivered. I cannot accept the licensee's testimony that "a lady at Vito's" was sufficient information to warrant his delivering an order of alcoholic beverages. The licensee is charged with knowledge of the provisions of the rules and regulations of the Division. I find that the licensee herein had knowledge of the true recipient of his delivery. This finding is buttressed by Agent W who testified that the delivery boy did identify Vito by name when he entered the premises. The only party who could deny this, the delivery boy himself, could testify only that he did not recall identifying Vito by name.

With respect to the charge of hindering investigation, I find that Hirsh took all reasonable steps to cooperate with Agent W at his licensed premises. Agent W was afforded ample opportunity to conclude his investigation. The crowded conditions behind the counter, about which all witnesses agree, made reasonable Hirsh's concern for the proper conduct of his business and his dilemma in attempting to satisfy Agent W and his patrons. Mrs. Hirsh, whose testimony I accept, buttresses this position and further satisfies me that the suggestion by Agent W with respect to Hirsh's appearance at Division headquarters was not couched in such a manner as to be mandatory. Without further formal notice to appear at Division headquarters, Hirsh's failure to do so did not constitute an act which hindered or delayed the said investigation.

Accordingly it is recommended that the licensee Orange Colony Liquors, Inc. be found guilty of charge number one and that charge number two be dismissed.

Licensee Vito Politi has a prior adjudicated record. On October 1, 1969 his license was suspended for ten days for the purchase of alcoholic beverages from an unauthorized source. Re Politi, Bulletin 1883, Item 12. It is further recommended that his license be suspended for fifteen days on charge one (Re The Main of Rahway, Bulletin 2062, Item 10) and for ten days on charge two (Re New McQueen's Lounge, Bulletin 2052, Item 9), to which should be added fifteen days for the prior similar record with respect to the first charge occurring within the past five years, or a total of forty days.

Licensee Orange Colony Liquors, Inc. has no prior adjudicated record. It is further recommended that its license be suspended for fifteen days (Re Root, Bulletin 1882, Item 10).

Conclusions and Order

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

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

Accordingly, it is, on this 30th day of November 1972,

ORDERED that Plenary Retail Consumption License C-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Vito Politi, t/a Vito's Cocktail Bar, for premises 143-145 Lincoln Avenue, Orange, be and the same is hereby suspended for forty (40) days, commencing at 2 a.m. Thursday, December 14, 1972, and terminating at 2 a.m. Tuesday, January 23, 1973.

The Hearer's Report was the same as that involved in Re Politi since these matters were consolidated for hearing because all charges arose out of the same facts and circumstances. The following is the Conclusions and Order with respect to Orange Colony Liquors, Inc.

Conclusions and Order

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

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

However, the licensee has made application for the imposition of a fine in lieu of the suspension of license for fifteen days as recommended herein, which application is in accordance with Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$615 in lieu of the suspension.

Accordingly, it is, on this 16th day of November, 1972,

ORDERED that the payment of a \$615 fine by the licensee is hereby accepted in lieu of the suspension of license for fifteen days.

ROBERT E. BOWER
DIRECTOR

2. APPELLATE DECISIONS - SUN DANCE LODGE, INC. v. FAIRFIELD.

Sun Dance Lodge, Inc.,)	
Appellant,)	
v.)	On Appeal
Mayor and Council of the)	
Borough of Fairfield,)	O R D E R
Respondent.)	

John J. Greco, Esq., Attorney for Appellant
Hoey & San Filippo, Esqs., by W.Eugene San Filippo, Esq.,
Attorneys for Respondent
Brass & Brass, Esqs., by Leonard Brass, Esq., Attorneys for Objector
BY THE DIRECTOR:

Appellant appeals from the action of respondent whereby it denied a person-to-person and place-to-place transfer of its plenary retail consumption license; and

At the hearing herein appellant's attorney requested that he be permitted to withdraw the appeal filed herein in order to afford appellant an opportunity to file an amended application and amended plans with respondent Council. Good cause appearing, I shall grant the request.

Accordingly, it is, on this 14th day of November 1972,

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

3. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary
Proceedings against

Jo-Vin Corp.
t/a Vinnie's Do-Drop Inn
46-48 West Street
Englewood, N.J.,

AMENDED
ORDER

Holder of Plenary Retail Consumption
License C-6, issued by the Common
Council of the City of Englewood.

Liebowitz, Krafte & Liebowitz, Esqs., by William H. McLeester, Esq.,
Attorneys for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

On November 3, 1972 I entered an order suspending the subject license for thirty-two days, commencing November 14, 1972 and terminating December 16, 1972, upon its plea of non vult to two charges alleging that (1) in its application for renewal of license it failed to reveal a prior suspension of license, in violation of N.J.S.A. 33:1-25; and (2) on Sunday, February 27, 1972, it permitted sale and consumption of alcoholic beverages on its licensed premises during hours prohibited by local ordinance. Re Jo-Vin Corp., Bulletin 2074 , Item 1(M).

The licensee has requested that the said order be amended to provide that the suspension be deferred until January 2, 1973 because of commitments for social affairs scheduled at the premises through December 31, 1972. Good cause appearing I shall grant the request.

Accordingly, it is, on this 13th day of November 1972,

ORDERED that the order heretofore entered on November 3 , 1972 be and the same is amended as follows:

ORDERED that Plenary Retail Consumption License C-6, issued by the Common Council of the City of Englewood to Jo-Vin Corp., t/a Vinnie's Do-Drop Inn for premises 46-48 West Street, Englewood, be and the same is hereby suspended for thirty-two (32) days, commencing 1:00 a.m. on Tuesday, January 2, 1973 and terminating 1:00 a.m. on Saturday, February 3, 1973.

Robert E. Bower
Director

4. DISCIPLINARY PROCEEDINGS - ORDER STAYING SUSPENSION.

In the Matter of Disciplinary
Proceedings against

Washington Delicatessen of
Pompton Lakes, Inc.
119 - 121 Wanaque Avenue
Pompton Lakes, N.J.

Holder of Plenary Retail Distribution
License D-1, issued by the Borough
Council of the Borough of Pompton
Lakes.
-----")
Robert H. Chester, Esq., Attorney for Licensee.
Walter H. Cleaver, Esq., Appearing for Division.

O R D E R

BY THE DIRECTOR:

On November 2, 1972 I entered an Order suspending the subject license for 15 days after finding it guilty of a sale to an 18-year-old minor in violation of Rule 1 of State Regulation No. 20. Washington Delicatessen of Pompton Lakes, Inc., Bulletin 2074, Item 6 . Application has been made in the above matter for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Good cause appearing, it is, on this 14th day of November, 1972,

ORDERED that the suspension heretofore imposed upon Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Pompton Lakes to Washington Delicatessen of Pompton Lakes, Inc., for premises 119-121 Wanaque Avenue, Pompton Lakes for 15 days commencing on Wednesday, November 15, 1972 and terminating on Thursday, November 30, 1972 be and the same is hereby stayed until the entry of a further order herein.

Robert E. Bower,
Director

5. DISCIPLINARY PROCEEDINGS - ORDER TERMINATING SUSPENSION.

In the Matter of Disciplinary Proceedings against
Fortuna Club, Inc.
t/a The Meadow Club
579-581 Jackson Avenue
Elizabeth, N.J.
Holder of Plenary Retail Consumption License C-220, issued by the City Council of the City of Elizabeth.
.....
Anthony P. Spirito, Esq., Attorney for Licensee.
Walter H. Cleaver, Esq., Appearing for Division.

O R D E R

BY THE DIRECTOR:

On April 7, 1972 I entered Conclusions and Order herein suspending the license for the balance of its term commencing on April 21, 1972 with leave to the licensee or any bona fide transferee of the licensee to file a verified petition establishing correction of the unlawful situation for lifting of the suspension of the license on or after May 19, 1972. Re Fortuna Club, Inc., Bulletin 2044, Item 8.

It appearing from the verified petition submitted by Joseph Sacco, the transferee of the said license, that the said license was transferred to him; the transfer of license was approved by the City Council of the City of Elizabeth; that no member of the said corporate licensee is connected with him in any manner or has an interest therein; and that the unlawful situation has been corrected, I, therefore, shall grant the petition requesting termination of the suspension, effective immediately.

Accordingly, it is, on this 16th day of November, 1972

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

Robert E. Bower,
Director

6. SEIZURE - FORFEITURE PROCEEDINGS - CLAIM FOR RETURN OF AUTOMOBILE IN WHICH ALCOHOLIC BEVERAGES AND STILL PARTS WERE DISCOVERED - CAR RETURNED TO INNOCENT OWNER - ALCOHOLIC BEVERAGES AND STILL PARTS ORDERED FORFEITED.

In the Matter of the Seizure : Case No. 12,774
on May 16, 1972 of a container :
of alcoholic beverages, nine : On Hearing
still parts and a 1967 Pontiac :
automobile seized at 461 South : CONCLUSIONS and ORDER
10th Street, in the City of :
Newark, County of Essex and :
State of New Jersey. :
.....:
Barbara Harrell, Pro Se.
Harry D. Gross, Esq., Appearing for Division.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of N.J.S.A. 33:2-1 and State Regulation No. 28 to determine whether a container of alcoholic beverages, nine still parts and a 1967 Pontiac automobile, as set forth in an inventory attached hereto and marked Schedule "A" seized on May 16, 1972 adjacent to unlicensed premises at 461 South 10th Street, Newark, constitute unlawful property and should be forfeited.

When the matter came on for hearing, Barbara Harrell appeared and sought return of the motor vehicle.

The Division file was admitted into evidence with the consent of the parties. In addition thereto, Sergeant Frank Peake testified that he and other officers conducted a raid, pursuant to a search warrant, on premises 461 South 10th Street, Newark, in the afternoon of May 16, 1972.

They discovered an operating still and supplies in a one-story cement building, adjacent to the rear of which was a red Pontiac automobile, showing N.J. Registration MTB591 in the trunk of which there were numerous cardboard boxes containing Mason jars filled with alcohol.

Arthur Lee Harrell, then loading the trunk of the car, was arrested and the car and the still were seized. The car also contained some parts for a still located in the trunk. Sergeant Peake further testified that the car was registered in the name of Barbara Harrell of 287 Rose Street, Newark but she was not present at the time of arrest of Arthur Lee Harrell.

Barbara Harrell testified that she is a student nurse, has eight children and is the wife of Arthur Lee Harrell, who is employed as a painter by his father. On occasion, she lends her car, which she bought in 1967, to her husband whenever the trunk in which he usually uses is in disrepair. May 16, 1972 was one of the days when her husband borrowed the car for that purpose.

She had no knowledge of any illicit alcoholic beverage activity, never has visited 461 South 10th Street and knew of the containers of alcohol in the trunk of her car only after it had been seized. She vehemently denied any knowledge whatever of her husband's illicit activity.

The Division file also included the Director's certification that no alcoholic beverage license or permit of any kind had ever been issued to Arthur Harrell, Barbara Harrell, the owner of the vehicle or for premises, 461 South 10th Street, Newark. The file also included an inventory of the items seized and affidavits and notices of the hearing.

A still, or parts thereof, and still equipment, ingredients used in the manufacture of the said alcohol and all of the personal property contained on said premises, constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-1(i); N.J.S.A. 33:2-2,5. Seizure Case 11,208, Bulletin 1563 Item 3. This applies to motor vehicles used in connection with the still operation, and which, when seized, was on the premises or within close proximity to the said still Patrick V. Driscoll, 133 N.J.L. 478.

The Director has discretionary authority to return property subject to forfeiture to a party who establishes to the satisfaction of the Director that he has acted in good faith and did not know or have any reason to suspect that his property would be used in violation of the Alcoholic Beverage Law. N.J.S.A. 33:2-7; Rule 3(c) of State Regulation No. 28.

Under the circumstances, there was no proof advanced that the claimant, Barbara Harrell knew or should have known of the illicit use to which her automobile was put. Her explanation that the occasional uses by her husband were, by his explanation, instances when other means of transportation were denied him, was unrefuted. Such knowledge of unlawful activity could be imputed to her only because she was her husband's wife. Such conclusion has no valid basis in this instance.

Accordingly, it is on this 17th day of November, 1972

DETERMINED and ORDERED that the 1967 Pontiac automobile bearing N.J. Registration MTB591 belonging to Barbara Harrell shall, upon payment of the requisite seizure and storage fees, be returned to her; and it is further

DETERMINED and ORDERED that the alcoholic beverages and the still parts be and the same are hereby forfeited, and the said alcoholic beverages 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 the Division of Alcoholic Beverage Control.

Robert E. Bower,
Director

SCHEDULE "A"

- 1 - container of alcoholic beverages
- 9 - still parts
- 1 - 1967 Pontiac, convertible,
Serial No. 26267 7E 204899
N.J. Registration MTB591.

7. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary
Proceedings against

3121 Westfield Avenue Corporation
t/a Stockton Liquors
3121 Westfield Avenue
Camden, N.J.,

AMENDED
ORDER

Holder of Plenary Retail Consumption
License C-155, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Camden.

Leonard A. Cinaglia, Esq., Attorney for Licensee

BY THE DIRECTOR:

On November 15, 1972, Conclusions and Order were entered herein suspending the license for thirty-two days commencing November 28, 1972 and terminating December 30, 1972, after licensee pleaded non vult to a charge alleging that on August 19, 1972 it sold alcoholic beverages to a minor, age 17, in violation of Rule 1 of State Regulation No. 20.

The suspension of forty days was predicated upon a suspension of twenty days for the charge to which an additional twenty days was added by reason of a prior similar violation occurring within the past five years. I have determined to modify the suspension to twenty days on the charge herein, with an additional ten days for the prior violation for a total of thirty days, in accordance with Division precedent (Re Admiral Bar & Liquor Store, Inc., Bulletin 2042, Item 5), making a total of thirty days with remission of five days for the plea entered leaving a net suspension of twenty-five days.

Accordingly, it is, on this 21st day of November 1972,

ORDERED that my order dated November 15, 1972 be and the same is hereby amended as follows:

ORDERED that Plenary Retail Consumption License C-155, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to 3121 Westfield Avenue Corporation, t/a Stockton Liquors, for premises 3121 Westfield Avenue, Camden, be and the same is hereby suspended for twenty-five (25) days,* commencing 2:00 a.m. on Tuesday, November 28, 1972 and terminating 2:00 a.m. on Saturday, December 23, 1972.

Robert E. Bower
Director

* By Amended Order dated November 27, 1972, the effective date of suspension was ordered to commence at 2:00 a.m. Tuesday, January 2, 1973 and terminate 2:00 a.m. Saturday, January 27, 1973.

8. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER - EFFECTIVE DATES OF SUSPENSION DETERMINED.

In the Matter of Disciplinary
Proceedings against

Kiefer's Tavern, Inc.
215-217 Broad Avenue
Palisades Park, N. J.,

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption
License C-4, issued by the Mayor and
Council of the Borough of Palisades
Park.

.....
Frederick Klaessig, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

On September 29, 1971 an Amended Order was entered herein suspending the subject license for ninety (90) days commencing October 28, 1971 after finding the licensee guilty of charges alleging that it allowed, permitted and suffered immoral activity on its licensed premises, in violation of Rule 5 of State Regulation No. 20, and possessed and caused to be distributed obscene matter, i.e., motion pictures, in violation of Rule 17 of State Regulation No. 20. Re Kiefer's Tavern, Inc., Bulletin 2010, Item 13.

Prior to the effectuation of the order of suspension on appeal filed, the Appellate Division of the Superior Court, by order dated October 26, 1971 stayed the operation of the suspension until the outcome of the appeal. The Court affirmed the action of the Director on November 2, 1972 Re In the Matter of Disciplinary Proceedings Against Kiefer's Tavern, Inc. (App. Div. 1971) not officially reported, recorded in Bulletin 2075, Item 2. The suspension may now be reimposed.

Accordingly, it is on this 28th day of November, 1972

ORDERED that Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Palisades Park to Kiefer's Tavern, Inc., for premises 215-217 Broad Avenue, Palisades Park, be and the same is hereby suspended for ninety (90) days, commencing at 3 a.m. Tuesday, December 12, 1972 and terminating at 3 a.m. Monday, March 12, 1973.

Robert E. Bower,
Director

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary
Proceedings against

Toby's, Inc.
308-310 West Second Street
Plainfield, N. J.,

Holder of Plenary Retail Consumption
License C-6, issued by the Common
Council of the City of Plainfield.

Licensee, by William Nadler, President, Pro se
Walter H. Cleaver, Esq., Appearing for Division

CONCLUSIONS
and
ORDER

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On January 27, 1972, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

- One quart bottle labeled 'Imperial Hiram Walker Blended Whiskey, 86 Proof', and
- Two one quart bottles labeled 'Schenley Reserve Blended Whiskey, 86 Proof';

in violation of Rule 27 of State Regulation No. 20."

The testimony reflected that ABC Agent B visited the licensed premises on January 27, 1972 for the purpose of gauging alcoholic beverages. He seized seven bottles which, upon preliminary tests made by him, appeared to be low in proof.

The bottles were analyzed by John P. Brady, a graduate chemist, and his report, certified by the Director and admitted into evidence pursuant to N.J.S.A. 33:1-37, established that the three seized bottles mentioned in the charge were low in proof and therefore bore labels which did not truly describe their contents.

In defense of the charge William Nadler, the principal stockholder and president of the corporate licensee, testified that he at no time tampered with the bottles; that he never knowingly violated any law or was dishonest, and vouched for the honesty of his bartender.

In adjudicating this matter I find that the uncontroverted report of the chemist indicating that the bottles bore a label which did not truly describe their contents is fully dispositive of that issue.

Knowledge on the part of the licensee that the contents of a bottle are not genuine as labeled is not a prerequisite to a finding of guilt. See Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup.Ct. 1947).

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dwr

Buc

Based upon the above, I am persuaded that the evidence is clear and convincing that the licensee is guilty of said charge, and I therefore recommend that the licensee be found guilty thereof.

Licensee has a prior record of suspension of license by the municipal issuing authority for three days effective April 8, 1968 for sale to minors.

It is further recommended that the license be suspended for twenty days on the charge herein (Re Pink's Bar & Grill, Inc., Bulletin 1987, Item 11), to which should be added five days for the prior dissimilar violation occurring within the past five years, making a total of twenty-five days.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been fully considered by the Hearer in his report or are without merit.

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

Accordingly, it is, on this 30th day of November 1972,


ORDERED that Plenary Retail Consumption License C-6, issued by the Common Council of the City of Plainfield to Toby's, Inc., for premises 308-310 West Second Street, Plainfield, be and the same is hereby suspended for twenty-five (25) days, commencing at 1 a.m. Thursday, December 14, 1972, and terminating at 1 a.m. Monday, January 8, 1973.

Robert E. Bower,
Director.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Braceras, Incorporated
c/o Carlos M. Braceras
18 Birkendene Road
Caldwell, New Jersey
Application filed January 22, 1973
for wine wholesale license.

The Buckingham Wine Corporation
Gateway 1, Suite 1500
Newark, New Jersey
Application filed January 23, 1973 for
wine wholesale license.


Robert E. Bower
Director