

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

BULLETIN 1255

JANUARY 5, 1959.

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New Jersey State Library

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JANUARY 5, 1959.

1. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - VIOLATION OF STATE REGULATION NO. 38 - PERMITTING MINOR TO SERVE ALCOHOLIC BEVERAGES - EMPLOYING BARTENDER WITHOUT REQUIRED LOCAL PERMIT - PRIOR RECORD - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary
Proceedings against

PANTALEO DITERLIZZI
200 Grand Street
Hoboken, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-64 for the 1957-58
and 1958-59 licensing years, issued
by the Municipal Board of Alcoholic
Beverage Control of the City of
Hoboken.

Albert J. Shea, Esq. and Rudolph R. Naddeo, Esq.,
Attorneys for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following
charges:

'1. 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., Richard ---, age 17, Eugene ---,
age 17, and Philip ---, age 18, on Friday night,
May 16 and early Saturday morning, May 17, 1958 and
Giovanni ---, age 18, George ---, age 18, and John
---, age 20, during the early morning hours of
Saturday, May 17, 1958 and allowed, permitted and
suffered the consumption of alcoholic beverages by
such persons in and upon your licensed premises on
the above stated respective dates; in violation of
Rule 1 of State Regulation No. 20.

'2. On Saturday, May 17, 1958, at about 12:17
a.m., you sold and delivered and allowed, permitted
and suffered the sale and delivery of alcoholic bever-
ages, viz., two quart cans of Ballantine Beer, at
retail in their original containers for consumption
off your licensed premises and allowed, permitted and
suffered the removal of said alcoholic beverages in
their original containers from your licensed premises;
in violation of Rule 1 of State Regulation No. 38.

'3. On Wednesday night, May 14, Friday night,
May 16 and early Saturday morning, May 17, 1958, you
allowed, permitted and suffered a person under the

age of twenty-one (21) years, viz., Martha ---, age 17, to sell, serve and solicit the sale of alcoholic beverages in and upon your licensed premises; in violation of Rule 2 of State Regulation No. 13.

'4. On Friday night, May 16 and early Saturday morning, May 17, 1958, you permitted a person, called Vito Giardina, to work in your licensed premises as a bartender without his first having complied with Article VI of an Ordinance adopted by the Mayor and Council of the City of Hoboken on December 7, 1955, thereby yourself violating said Article VI of the aforementioned Ordinance.'

"At the hearing the Division called as its witnesses Richard ---, Eugene ---, Philip ---, Giovanni ---, George --- and four ABC agents, hereinafter referred to as Agents H, Y, S and St.

"Richard, Eugene, Philip, Giovanni and George testified their respective dates of birth are December 21, 1940, June 7, 1940, December 25, 1939, July 23, 1939 and September 20, 1939. John did not appear and it was stipulated by counsel that if he were called, he would testify that he was born on October 11, 1937. Agent H testified that on May 16, 1958, at about 11:00 p.m., he and Agent Y entered the defendant's licensed premises and took seats at the bar which was being tended by the licensee and a bartender, Vito Giardina; that a young girl (Martha ---, age 17) and an elderly female were acting as waitresses on the premises. Agent H further testified that shortly after 11:00 p.m. he observed Martha order two bottles of beer from the licensee and carry them (with caps removed) on a tray into the sitting room; that at about 11:30 p.m. a group of seven males entered the premises and approached the bar where they each consumed a glass of beer served to them by the licensee; that at about 11:40 p.m. three of these young men (Richard, Eugene and Philip) took seats alongside of Agent Y; that between 11:40 p.m. and 12:17 a.m. the following morning, Richard, Eugene and Philip each consumed four additional glasses of beer served by the licensee and by Giardina; that at about 12:00 midnight he observed the licensee and Giovanni in a short conversation at the bar, following which the licensee handed him three bottles of beer after removing their caps; that at about 12:15 a.m. the licensee served two opened bottles of beer to George who carried them into the sitting room; that at about 11:55 p.m. and again at about 12:05 a.m., he saw the licensee make a sale of alcoholic beverages for off-premises consumption to a patron; that at about 12:10 a.m. he asked the bartender for two quarts of beer 'to go'; that in compliance therewith the bartender handed him a bag containing two quart cans of Ballantine beer; that after paying for the same he left the premises with the alcoholic beverages, returned immediately and rejoined Agent Y. Agent H continued to testify that Agent Y and he identified themselves to Richard, Eugene, Philip, the licensee and the bartender; that Giardina, in response to questioning, orally admitted selling him the aforesaid two quart cans of Ballantine beer at 12:17 a.m. on May 17, 1958 aforesaid; that the licensee executed a sworn, written statement dated May 17, 1958 (marked in evidence Exhibit S-4, wherein he admits that he served alcoholic beverages to aforesaid minors as testified by Agent H; that Martha is 17 years of age and that 'she was helping me out by serving in the sitting room'); and that the records of this Division do not disclose the issuance of an employment permit to Martha to work upon the licensed premises.

"The Division called Agent Y as a witness and it was stipulated by counsel that his testimony would be the same as Agent H's, exclusive of that part which related to Martha. In addition Agent Y testified that shortly after 11:00 p.m. on May 16, 1958 aforesaid, he saw Martha approach the bar and obtain two bottles of beer (with caps removed) from the licensee and carry them into the rear room; that the licensee was unable to produce a permit authorizing Giardina to work as a bartender on the licensed premises and that Giardina had also informed him he had not applied for a permit.

"Agent S testified that on May 16, 1958, at about 11:00 p.m., Agent St and he entered the licensed premises and took seats at a table in a sitting room which was occupied by about 25 patrons who were being waited upon by Martha and another waitress; that about 11:30 p.m. he ordered two bottles of beer from Martha, who thereupon proceeded to the barroom and returned shortly carrying two opened bottles of beer which she served to Agent St and him. Agent S further testified that at about midnight on May 16, 1958 aforesaid, he saw Giovanni, George and John enter the sitting room and take seats at a table; that a few minutes thereafter Giovanni went to the barroom and returned with three opened bottles of beer which were consumed at the table by the three minors; that fifteen minutes later George went to the barroom, returned with two opened bottles of beer, gave one to John and kept one for himself and that, after observing John consume part of his beer, he and Agent St identified themselves to the three minors.

"The Division called Agent St as a witness and it was stipulated by counsel that his testimony would be the same as Agent S's.

"At the outset of the hearing, counsel for the defendant stated that he will not enter any defense to Charge 1 herein because he did not wish to jeopardize his clients (the licensee and the bartender) who were facing criminal charges based on the allegations set forth in Charge 1 aforesaid. With respect to the remaining charges, he limited his defense to the cross-examination of the Division's witnesses.

"I have carefully examined all of the testimony in the case and am satisfied that the Division has amply proven the defendant guilty of all the charges herein except that part of Charge 3 (which refers to May 14 and May 17, 1958). Under the circumstances, it is recommended that the defendant be found guilty of Charges 1, 2 and 4 and so much of Charge 3 as refers to May 16, 1958.

"Defendant has a prior adjudicated record. His license was twice suspended by the local issuing authority, effective June 7, 1943 for four days for sale to minors and effective August 9, 1945 for ten days for gambling. Inasmuch as these two violations occurred more than ten years ago, it is recommended that they be not considered in fixing the penalty herein. Cf. Re Clendenny Tavern, Inc., Bulletin 1147, Item 6. However, it also appears that the defendant's license was suspended by the Director of this Division for ten days, one of which was served on December 28, 1954 and the remaining nine days became effective January 10, 1955 following the defendant's automatic suspension of his license upon his criminal conviction on December 21, 1954 for sale to minors. Re DiTerlizzi, Bulletin 1049, Item 8.

"Since the violation set forth in Charge 1 herein is a second similar violation within five years, and considering the tender age of two of the minors (17), the number of minors involved and the remaining charges herein, it is further recommended that an order be entered providing the defendant's license be suspended on all the charges herein-above set forth for a period of sixty-five days."

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

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 13th day of November, 1958,

ORDERED that Plenary Retail Consumption License C-64 (for the 1958-59 licensing year), issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Pantaleo DiTerlizzi, for premises 200 Grand Street, Hoboken, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m. Monday, December 1, 1958, and terminating at 2:00 a.m. Wednesday, February 4, 1959.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS - GAMBLING - FAILURE TO HAVE TRUE COPY OF APPLICATION ON PREMISES - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against

ANTHONY J. VENUTO
t/a TONY'S TAVERN
76 South Street
Newark 5, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-787, for the 1957-58 and 1958-59 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

James P. Lordi, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to the following charge:

'1. On May 9, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated, and allowed, permitted and suffered the consumption of such beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

and pleaded guilty to the following charges:

'2. On May 9, 1958, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing on a device or apparatus designed as a "bowling machine" for stakes of money; in violation of Rule 7 of State Regulation No. 20.

'3. On May 9, 1958, you conducted your licensed business without having a photostatic or other true copy of your application for your current license on your licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20.'

"Two ABC agents testified with respect to the alleged sale of alcoholic beverages to a person actually or apparently intoxicated. The substance of their testimony is as follows: They entered the licensed premises on May 9, 1958 at about 9:00 p.m. Thomas O'Neil was tending bar and the licensee was present. The agents observed a male and female, both apparently intoxicated, drinking alcoholic beverages served to them by O'Neil. The female's clothing and hair were disheveled, her eyes were bleary and bloodshot and she mumbled when she spoke. The male stood at the bar holding on with both hands and swaying. His head was bowed, nearly touching his chest, and he experienced difficulty in standing erect. At about 9:15 p.m., the female staggered from the bar towards the licensee, placed both arms around him, apparently to keep from falling, then staggered back and resumed her seat at the bar. The agents heard her mumble something to the effect that no one cared for her, then rested her head against her male companion and started to cry. When the bartender served her with another drink of whiskey, she spilled a considerable quantity thereof because her hand appeared to be unsteady. Thereafter she staggered around the barroom on several other occasions, each time returning to the bar. The male, for his part, was heard to exclaim 'Boy, I'm drunk'.

"The agents revealed their identity to the male and female and to O'Neil. Asked to comment on the female's condition, the bartender said 'I couldn't say she was sober, but I wouldn't say she was drunk. I know her capacity and I stopped her last night'. The licensee had left but returned about 10:30 p.m. He was then informed by the agents of the alleged violation and remarked to O'Neil 'Why did you serve her? I told you not to serve any drunks'.

"Richard Thomas Brady, employed as a bartender by the licensee, testified on his behalf as follows: He was in defendant's tavern from 8:45 p.m. and left shortly after 9:00 p.m. He observed the male and female in question while in the tavern. He knew the female from about 1953 and has seen her on various occasions. She is emotionally disturbed since the death of her husband and gets 'crying jags' and appears to be drunk even when she is sober. On the night in question, he could not tell whether she was drunk or sober. He agrees that she did not appear well dressed -- that her clothes 'didn't fit her'.

"The licensee testified that the female was not intoxicated; that when he came back to the tavern about 10:30 p.m. the agents did not say anything about the female being drunk -- that he doesn't know what they said -- that he has forgotten what they said and does not remember making the statement to the bartender attributed to him.

"The description by the agents of the appearance and actions of the male, and more especially of the female evidences, by common experience, that both patrons were actually intoxicated, or at least apparently intoxicated, at the time the drinks were served to them. It is sufficient to show that the sale, service or delivery was made to a person apparently intoxicated, without the necessity of showing that the person was actually intoxicated. Re Carbone and Benedetto, Bulletin 1236, Item 8. The evidence presented by the licensee and his bartender in some aspects corroborates the agents' conclusions that both persons were apparently intoxicated.

"The meager evidence presented by the defendant is insufficient to establish that the female's outward appearance of intoxication actually was due to emotional instability rather than the influence of alcoholic beverages, especially since, although she is well known to the licensee, she was not present at the hearing. In my opinion, the evidence presented clearly establishes the defendant's guilt of the violation set forth in Charge 1. Cf. Re Glass Ceiling Bar, Inc., Bulletin 1234, Item 6.

"Concerning the gambling charge, the file discloses that on the above date the agents observed patrons playing a 'small bowling machine' for money bets in the presence of the licensee.

"The basis for the charge of not having a copy of the license application available on the premises is that the only application available was that of the previous owner of the premises. The present licensee stated that he had purchased the business about a month previous and that his lawyer had all of his papers.

"Defendant has no prior adjudicated record. I recommend that the following penalties be imposed: suspension of the license for the minimum period of fifteen days on Charge 1, Re Carbone and Benedetto, supra; suspension of the license for ten days on Charge 2, cf. Re Lyons-Schepsco Post No. 1451, V.F.W., Bulletin 1230, Item 3; and suspension of the license for ten days on Charge 3, Re Gentile, Bulletin 1241, Item 4, making a total suspension of thirty-five days."

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

After carefully considering the facts and circumstances appearing herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 13th day of November, 1958,

ORDERED that Plenary Retail Consumption License C-787, for the 1958-59 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Anthony J. Venuto, t/a Tony's Tavern, for premises 76 South Street, Newark, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Tuesday, November 18, 1958, and terminating at 2:00 a.m. Tuesday, December 23, 1958.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SELLING AND FAILING TO CLOSE PREMISES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - VIOLATION OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

PETER SCANGARELLO

t/a OAK INN

301 Oak Street

Passaic, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-106 issued by the
Board of Commissioners of the City
of Passaic.

Peter Scangarello, Defendant-licensee, Pro se.
Dora P. Rothschild, appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to charges alleging that
(1) during prohibited hours he sold, served and delivered
alcoholic beverages in and upon his licensed premises,
(2) he failed to have his entire premises closed during
said hours, both in violation of a local ordinance, and
(3) during said hours he sold and delivered alcoholic bev-
erages in original containers for off-premises consumption,
in violation of Rule 1 of State Regulation No. 38.

An ordinance of the City of Passaic prohibits the
sale, service and delivery of alcoholic beverages on Sundays
between the hours of 3:00 a.m. and 1:00 p.m. and requires
that the licensed premises shall be closed between said
hours. State Regulation No. 38 prohibits the sale on Sunday
of alcoholic beverages in original containers for off-premises
consumption.

The file herein discloses that at about 12:10 p.m.,
Sunday, October 26, 1958, an ABC agent and two men whom he
met at the rear door of the licensed premises, entered the
kitchen in the rear of the barroom. There they were met by
the licensee who inquired what they wanted. The agent asked
for a pint of Fleischmann's whiskey and handed the licensee
\$3.00. One of the other men asked for six cans of Ballantine
beer and paid the licensee therefor. The licensee went to
the barroom, returned and handed the agent the bottle of
whiskey in a paper bag, and handed the beer to the other man.
The men then left the premises with such alcoholic beverages.
The agent joined a fellow-agent who had remained outside and
both agents entered the kitchen. There they found another
man who told them he was purchasing six cans of beer. In a
few moments the licensee entered the kitchen from the bar-
room carrying these cans of beer, handed them to the man who
then and there paid the licensee for such beer. The agents
then revealed their identities to the licensee who admitted
making the aforesaid sales of alcoholic beverages.

During the past ten years defendant's license was
suspended effective March 5, 1951 by the local issuing author-
ity for an "hours" violation, and his license was suspended
effective August 14, 1957 by the Director for sale of alco-
holic beverages to a minor. Bulletin 1188, Item 6. I shall

suspend defendant's license for a period of twenty days for the violation herein involved, Re Parlegneco, Bulletin 1232, Item 7, and for an additional ten days for the prior similar violation over five and less than ten years ago and the dissimilar violation within the past five years, making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 17th day of November, 1958,

ORDERED that Plenary Retail Consumption License C-106, issued by the Board of Commissioners of the City of Passaic to Peter Scangarello, t/a Oak Inn, for premises 301 Oak Street, Passaic, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Friday, November 28, 1958, and terminating at 3:00 a.m. Tuesday, December 23, 1958.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PLEA ENTERED AT HEARING - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

HENRY F. ZIELINSKI
t/a NEW SEASIDE HOTEL-CIRCUS BAR
134-136 Sumner Avenue
Seaside Heights, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Mayor and Borough Council of the Borough of Seaside Heights.

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

BY THE DIRECTOR:

Defendant pleaded not guilty to a charge alleging that he sold, served and delivered alcoholic beverages to three minors and permitted the consumption of such beverages by said minors in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

The matter came on for hearing on October 14, 1958, and near the close of the Division's case the licensee's attorney, after conferring with his client, entered a plea of non vult to the charge and submitted the case on the evidence secured by the Division's agents.

It appears from the file herein that on September 26, 1958, ABC agents, acting upon information transmitted to the Division by the New Jersey State Police, obtained signed, sworn statements from Robert H. --- (age 17), Charles --- (age 17) and Robert E. --- (age 18) wherein each states that he consumed alcoholic beverages served to him in defendant's licensed premises by bartenders who required no written proof of his age. Robert H. and Charles state that they made three visits to defendant's tavern on Saturday, September 20, 1958.

Robert states that he consumed about ten bottles of beer therein on those visits, and Charles states that he couldn't remember the number of bottles of beer that he consumed. Charles and Robert E. state that they visited the same premises on Sunday, September 21, 1958, and consumed therein Voda collins, singapore slings and beer in bottles and cans. The three minors then directed the agents to defendant's licensed premises, pointed it out as the place where they were served the alcoholic beverages, and therein identified Warren L. Crouse (the manager) and Alfred Mesler as the persons who made the sales.

Defendant has no prior adjudicated record. The minimum penalty imposed for an unaggravated sale of alcoholic beverages to a 17-year-old minor where three minors are involved is twenty-five days (Re Keller's Tavern and Grove, Inc., Bulletin 1245, Item 4), to which five days will be added because of the quantity and type of beverages sold. I shall suspend defendant's license for a period of thirty days. No remission will be allowed since the confessional plea was not entered prior to the date of hearing.

Accordingly, it is, on this 6th day of November, 1958,

ORDERED that Plenary Retail Consumption License C-10, issued by the Mayor and Borough Council of the Borough of Seaside Heights to Henry F. Zielinski, t/a New Seaside Hotel-Circus Bar, for premises 134-136 Sumner Avenue, Seaside Heights, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Monday, November 17, 1958, and terminating at 2:00 a.m. Wednesday, December 17, 1958.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - PREMISES CLOSED - LICENSE SUSPENDED FOR 25 DAYS, EFFECTIVE DATES TO BE FIXED BY SUBSEQUENT ORDER.

In the Matter of Disciplinary Proceedings against

ROBERT, CATHERINE, EDWARD J.
CASEY and MARY JENNINGS
t/a "CASEY'S"
93-97 Beachway
Keansburg, N. J.,

CONCLUSIONS
AND ORDER

*See previous
1282-7*

Holders of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Keansburg.

James F. McGovern, Jr., Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to a charge alleging that on Wednesday, July 16, 1958, they sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to minors and allowed, permitted and suffered said minors to consume alcoholic beverages on the licensed premises, in violation of Rule 1 of State Regulation No. 20.

"At the hearing herein Robert ---, age 18, and William ---, age 19 (both members of the United States Army) testified that on the evening of July 16, 1958 they and two other soldiers (both of whom had been transferred prior to the hearing in the instant case) were in defendants' licensed premises; that during two hours spent in the establishment each had four and five 12-ounce bottles of beer, respectively; that no inquiry was made of them concerning their ages; that while in the premises a band and a female vocalist furnished the entertainment. Robert further testified that there was a sign extending over the sidewalk in front of the building with the name 'Casey's' in white lettering upon a dark background and also the word 'Bar', the color of the lettering of which he did not recollect.

"William testified that the building in which the licensed premises were located is a one-story or two-story building and that in the front thereof was a sign which 'protruded' over the sidewalk with the name 'Casey's Bar' in red.

"An ABC inspector testified that on July 22, 1958 he and another agent were directed by Robert and William to the licensed premises where they alleged that on the evening of July 16, 1958 they had obtained alcoholic beverages; that the licensed premises were located in a 2 1/2 story cement building with a sign above one of the doors extending over the sidewalk, reading 'Casey's' in green neon and 'Bar' in small lettering of red neon and that the sign had a dark background; that upon entering the premises they (the agents) spoke to Edward Casey, one of the defendant-licensees, concerning the statement by the two minors to the effect that between 9:30 and 11:30 p.m. on July 16, 1958 they were served alcoholic beverages in the establishment; that Mr. Casey informed the agents that he, Charles Banzaca and Frank Dragatta were tending bar that evening.

"On behalf of defendants, Charles Banzaca testified that he was on duty as bartender in defendants' premises on the evening of July 16, 1958 but that he neither saw nor served the minors in question. He further testified that one James Malynaux was also on duty on said evening but he could not recall whether or not Edward Casey had helped behind the bar; that on July 23, 1958 he learned about the alleged violation.

"James J. Malynaux testified that occasionally he is employed as a bartender by the defendants and was on duty on July 16, 1958 when two youths, whom he identified as Robert and William, came into the premises; that when they ordered drinks from him he told them, 'You are too young and I think you had enough', whereupon they left the premises. Malynaux testified that on July 26, 1958 Edward Casey questioned him if he had served alcoholic beverages to minors on the evening of July 16, 1958 and he then recalled refusing to serve Robert and William on that evening.

"William Herlihy (a member of the municipal police department), testified that on July 16, 1958, he visited the tavern of the defendants at least on three to five occasions but did not see either Robert or William that evening.

"Edward Casey, one of the licensees, testified that he was mistaken when he told the agents on July 22, 1958 that

Frank Dragatta was on duty as Dragatta had taken the night off and Malynaux worked in his stead. Casey further testified that the sign in front of the establishment shows 'Casey's' in large lettering in green and the word 'Bar' being in small lettering in red. He further testified that although he does employ a female vocalist, she appears only on Friday, Saturday and Sunday nights. Furthermore, when the minors were at the licensed premises with the two ABC agents, they could not identify any of the bartenders alleged to have served alcoholic beverages to them on the evening of July 16, 1958.

"It is quite apparent that both Robert and William failed to describe accurately the color of the lettering on the sign which is hung outside of the licensed premises. However, both testified to the fact that the sign contained the words 'Casey's' and 'Bar'. James Malynaux testified that the minors in question were in the defendants' establishment on the night of July 16, 1958. However, the testimony of the witnesses for the respective parties is at variance with regard to whether or not the minors were served alcoholic beverages on the evening of July 16, 1958. The minors directed two ABC agents to the premises on July 22, 1958 and identified the said establishment as the one where they had been on the night in question. Edward Casey, one of the licensees, and Charles Banzaca both contend that they did not observe the minors in the premises as alleged. The testimony of Officer Herlihy that he visited defendants' premises for a short period on several occasions during the evening does not necessarily preclude the fact that the minors were there.

"I am satisfied after consideration of all the testimony presented in this case that the two minors were in defendants' place of business on the evening of July 16, 1958 and, while there, were served alcoholic beverages. I conclude that the Division has established its case by a preponderance of the evidence and therefore recommend that defendant-licensees be found guilty of the charge preferred herein.

"Defendants have a prior adjudicated record. Effective June 11, 1956 defendants' license was suspended for a period of fifteen days for sale of alcoholic beverages to minors. Bulletin 1098, Item 8; Bulletin 1123, Item 6. The minimum penalty for an unaggravated sale of alcoholic beverages to minors 18 and 19 years old, respectively, is fifteen days. Re Drayer et al., Bulletin 1214, Item 7. In view of the similar record which occurred during the past five years, it is recommended that an order be entered providing that defendants' license be suspended for a period of twenty-five days. Re Peek, Bulletin 1145, Item 8."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the defendants' attorney, pursuant to Rule 6 of State Regulation No. 16.

After carefully considering the entire record in this case, including the transcript of testimony, the Hearer's Report and the exceptions and written argument of counsel, I concur in and adopt the conclusions as recommended by the Hearer as my conclusions herein.

Investigation discloses that defendants' business is conducted on a seasonal basis and that the premises are now

closed. Thus, no effective penalty can be imposed at the present time. The effective dates of the suspension will be fixed by further order which will be entered by me after the licensed premises shall have reopened for business for the 1959 season. Cf. Re Edelson, Bulletin 1160, Item 3.

Accordingly, it is, on this 5th day of November, 1958,

ORDERED that Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Keansburg to Robert, Catherine, Edward J. Casey and Mary Jennings, t/a "Casey's", for premises 93-97 Beachway, Keansburg, be and the same is hereby suspended for a period of twenty-five (25) days, the time to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SELLING AND FAILING TO CLOSE PREMISES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

THE BARRACUDA (A N. J. Corp.)
813 Summer Avenue
Newark 4, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-633 (for the 1957-58 and 1958-59 licensing years) issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

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 charges alleging that (1) on Sunday, May 25, 1958, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery and consumption of alcoholic beverages on its licensed premises during prohibited hours; (2) on Sunday, May 25, 1958 and Saturday, June 7, 1958, it failed to have its entire licensed premises closed during prohibited hours; both in violation of a local ordinance; and (3) on June 7, 1958, it failed to facilitate and hindered and delayed ABC agents in their investigation, inspection and examination of its licensed premises, in violation of R. S. 33:1-35.

The file herein discloses that two ABC agents visited defendant's licensed premises in the early morning hours of Sunday, May 25, 1958. At 1:55 a.m. the bartender served them with drinks of alcoholic beverages, at which time he and other persons in charge of the licensed premises commenced to ask patrons to leave. At 2:02 a.m. a male and female entered and took seats at the bar. A bartender served the male with a drink of whiskey. At 2:05 a.m. one of the agents was requested to and left the premises. At 2:10 a.m. the other agent attempted

to purchase another drink, was refused and, instead was asked to leave the premises, and he complied. At this time three bartenders, two persons who appeared to be employed as managers and three other men and two women remained on the premises.

On Saturday, June 7, 1958, at about 2:00 a.m., these two ABC agents placed the licensed premises under surveillance. They observed about twenty patrons at the bar and a bartender behind the bar. Shortly before 2:30 a.m. two men and a woman left the premises. At this time about fifteen patrons remained therein. One of the agents then knocked on the front door after finding it locked. A man, later identified as Ernest Micone, came to the door but would not open it. One of the agents displayed his credentials by placing the same where it could be observed by Micone. At this time both agents called out in a loud voice "Open up, we are State ABC agents". Micone turned away and was overheard saying "All glasses off the bar -- everybody out the back way". About three minutes later Micone admitted the agents to the premises. At this time Micone, Frank DeCicco, a bartender, and four other men were in the place. The last-mentioned men stated that they were not connected with the premises but were waiting for the bartender to close up. The other patrons had left through the rear door. Micone stated he was not connected with the licensed premises -- only helps out and watches the place for his sister. He claimed that he would not open the door because he thought the agents were burglars.

An ordinance of the City of Newark prohibits the sale, service, delivery and consumption of alcoholic beverages on Sundays between the hours of 2:00 a.m. and noon, and 2:00 a.m. and 7:00 a.m. on weekdays, and requires that the entire licensed premises (with certain exceptions not material herein) shall be closed between said hours.

Defendant has no prior adjudicated record. I have considered the alleged mitigating circumstances urged on defendant's behalf and do not find any justification therein for imposing less than the minimum penalty for the violations involved. I shall suspend the defendant's license for a period of fifteen days on Charges 1 and 2, Re Funicelli and Falvo, Bulletin 1231, Item 7, and for ten days on Charge 3, Re Villavecchia, Bulletin 1157, Item 3, making a total suspension of 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 13th day of November, 1958,

ORDERED that Plenary Retail Consumption License C-633, for the 1958-59 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to The Barracuda (A N. J. Corp.), for premises 813 Summer Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Friday, November 28, 1958, and terminating at 2:00 a.m. Thursday, December 18, 1958.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - POSSESSING LIQUOR NOT TRULY
LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

HARRY S. and VINCENTINE)

PODLINSKI)

t/a LEON'S CAFE)

600 Mt. Vernon Street)

Camden, N. J.,)

CONCLUSIONS

AND ORDER

-----)
Holders of Plenary Retail Consump-)
tion License C-116, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)

Defendant-licensees, Pro se.

William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed on their licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

The file discloses that on September 25, 1958, an ABC agent, while testing and gauging the licensees' open bottles of alcoholic beverages on the licensed premises, seized a number of bottles which appeared to be off in proof. These bottles were submitted to the Division's chemist for analysis. The chemist's report discloses that the contents of five of these bottles -- listed in the charge -- differ in various respects in proof, solids, acids and color from the contents of genuine bottles of the respective brands.

Defendants have no prior adjudicated record. I shall suspend defendant's license for twenty-five (25) days (which is the minimum suspension imposed in cases involving five bottles). Re Wilcox, Bulletin 1232, Item 4. Five days will be remitted for the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 13th day of November, 1958,

ORDERED that Plenary Retail Consumption License C-116, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Harry S. and Vincentine Podlinski, t/a Leon's Cafe, for premises 600 Mt. Vernon Street, Camden, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Friday, November 28, 1958, and terminating at 2:00 a.m. Thursday, December 18, 1958.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - DELIVERY WITHOUT INVOICE -
 ACCEPTING ORDERS AT OTHER THAN LICENSED PREMISES -
 PEDDLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

FRED ALAMPI)
 t/a ALAMPI'S LIQUOR STORE)
 1101 Delaware Street)
 Paulsboro, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Distri-)
 bution License D-1, issued by the)
 Mayor and Council of the Borough)
 of Paulsboro.)

-----)
 Fred Alampi, Defendant-licensee, Pro se.
 Edward F. Ambrose, Esq., appearing for the Division of
 Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that
 (1) he transported and delivered alcoholic beverages without
 having in his possession or at his licensed premises a bona
fide delivery slip or invoice, in violation of Rule 3 of
 State Regulation No. 17; (2) he accepted orders for and sold
 alcoholic beverages at premises other than his licensed prem-
 ises, in violation of R. S. 33:1-2; (3) he sold alcoholic
 beverages from a vehicle on a public highway, in violation
 of Rule 3 of State Regulation No. 17.

The file herein discloses that on Saturday, August 2,
 1958, ABC agents followed a licensed vehicle having a liquor
 transportation insignia and observed the driver thereof, later
 identified as Fred Alampi, the licensee herein, make three
 separate deliveries of alcoholic beverages. One of the agents
 left the car in which he was riding and took up a position on
 the highway, at which point he hailed Alampi and purchased
 from him a case of beer. The other agents arrived during
 the transaction and, after all agents made their identities
 known, they obtained from Alampi a signed, sworn statement in
 which he states that on the date alleged he was carting fifty-
 six cases of beer, one case of ale, two 4/5 pints of rum and
 three quarts of whiskey, without having any invoices there-
 for, and that he did not have the required route cards in
 his possession.

Defendant has no prior adjudicated record. I shall
 suspend his license for ten days on Charge 1 (Re Ceasar,
 Bulletin 1211, Item 4) and, since Charges 2 and 3 arose out
 of the same transaction, for an additional fifteen days on
 these charges (cf. Re Rutter's Inc., Bulletin 894, Item 8),
 making a total suspension of 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 12th day of November, 1958,

ORDERED that Plenary Retail Distribution License D-1,
 issued by the Mayor and Council of the Borough of Paulsboro to
 Fred Alampi, t/a Alampi's Liquor Store, for premises 1101
 Delaware Street, Paulsboro, be and the same is hereby suspended
 for twenty (20) days, commencing at 9:00 a.m. Friday, November
 28, 1958, and terminating at 9:00 a.m. Thursday, December 18,
 1958.

WILLIAM HOWE DAVIS

9. APPELLATE DECISIONS - KIRK v. CLINTON AND KLINGLER.

CECILE KIRK and VICTOR KIRK,)

Appellants,)

-vs-

ORDER OF DISCONTINUANCE

COMMON COUNCIL OF THE TOWN OF
CLINTON and WILLIAM KLINGLER,)

Respondents.)

Italo M. Tarantola, Esq., Attorney for Appellants.

Philip R. Gebhardt, Esq., Attorney for Respondent Common
Council.Hunt & Faherty, Esqs., by Philip J. Faherty, Jr., Esq.,
Attorneys for Respondent William Klingler.

BY THE DIRECTOR:

The attorneys for the respective parties hereto
having stipulated to discontinue the within appeal, and no
reason appearing to the contrary,

It is, on this 19th day of November, 1958,

ORDERED that the within appeal be and the same is
hereby discontinued.

WILLIAM HOWE DAVIS
Director.

10. STATE LICENSES - NEW APPLICATION FILED.

Van the Soda Man (A Corporation)

1288 Van Houten Avenue

Clifton, N.J.

Application filed December 29, 1958 for person-to-person
transfer of State Beverage Distributor's License SBD-4
from Ceil Van Vliet, t/a Van the Soda Man.

William Howe Davis
Director.