

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

BULLETIN 1271

APRIL 17, 1959.

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

BULLETIN 1271

APRIL 17, 1959.

1. COURT DECISIONS - DeLUCCIA v. BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

MICHAEL DE LUCCIA, trading as  
CLUB 25,

Appellant,

-vs-

BOARD OF ALCOHOLIC BEVERAGE  
CONTROL FOR THE CITY OF PATERSON,  
and DIVISION OF ALCOHOLIC BEVERAGE  
CONTROL,

Respondents.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-634-57

Argued January 5, 1959 -- Decided March 17, 1959.

Before Judges Price, Schettino and Gaulkin.

Mr. Robert Goodman argued the cause for appellant.

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondent Division of Alcoholic Beverage Control (Mr. David D. Furman, Attorney General of New Jersey, attorney).

Mr. Harry Smith argued the cause for respondent Board of Alcoholic Beverage Control for the City of Paterson.

PER CURIAM.

Appellant is a tavern keeper in Paterson. After a hearing his license was suspended for ten days by the Paterson Board of Alcoholic Beverage Control (hereafter called Paterson) because he had failed to have a "constable" upon his premises "each night of the week from 10:00 P.M. to the hour of closing", as required by the condition placed on his license by Paterson. He appealed from the suspension to the Director of Alcoholic Beverage Control, who affirmed. From that affirmance appellant prosecutes this appeal.

Appellant argues that the suspension must be set aside because the condition was imposed by Paterson without prior notice, a hearing, or the taking of testimony, and hence in violation "of his constitutional right to due process of law"; and because the condition "is unconstitutional in that it discriminated against appellant".

The case has been submitted to us upon a stipulation of facts. From it we learn that:

The following limitation was placed on the license at the time of its renewal on or about June 27, 1957:

"Pursuant to a resolution adopted by the Board on June 26, 1957, the above mentioned licensee must employ a constable each night of the week to maintain law and order in and adjacent to his licensed premises."

On December 18, 1957, the local board amended the above resolution. The next day the licensee was requested to submit his license to the said Board's Secretary and the following was endorsed on the license:

"Pursuant to an amended resolution adopted by this Board on December 18, 1957, the above mentioned licensee must employ a constable each night of the week from 10:00 P.M. to the hour of closing."

The Paterson Board of Alcoholic Beverage Control did not in June or December, 1957, give the licensee notice of any intention to place any limitation or special requirements on his license. The licensee was never given an opportunity to show cause why such limitation or requirement should not be placed on the license; nor did the local Board either in June or December take testimony or have a hearing on the issue, of whether or not the aforesaid restrictions should be placed on the license.

Appellant argues that the decision to impose the condition was "quasi-judicial" and hence required antecedent notice, an adversary proceeding at which testimony could be presented by both sides, and adequate findings. The argument is interesting and very ably presented, but see Adams Theatre Co. v. Keenan, 12 N. J. 267, 278 (1953); Metropolitan Motors v. State, 39 N. J. Super. 208, 212 (App. Div. 1956). However we need not pass upon this argument for it has no bearing upon the case at bar.

Here appellant accepted his license with the condition and without demur. Assuming he was denied the rights which he claims should have been given him before the imposition of the condition, his remedy was to appeal to the Director (under R. S. 33:1-22) who would then have heard it de novo in an adversary proceeding. Neiden Bar & Grill v. Municipal Board, etc. of Newark, 40 N. J. Super. 24 (App. Div. 1956). One may not accept a license with such a condition, ignore it, and then collaterally attack it as is attempted here, in a proceeding taken to enforce it. Iannella v. Johnson, 136 N.J.L. 514 (Sup. Ct. 1948), aff'd 137 N.J.L. 659 (E. & A. 1948), app. diss. 336 U.S. 932 (1949); Hoboken v. Martin, 121 N.J.L. 214 (Sup. Ct. 1938); Home Fuel Oil Co. v. Glen Rock, 118 N.J.L. 340 (Sup. Ct. 1937). Cf., State v. New York Central R.R. Co., 52 N. J. Super. 206 (Ch. 1958).

For the same reasons appellant may not in these proceedings assert that the insertion of this condition in his license was an unconstitutional discrimination against him. Furthermore the only statement in the stipulation of facts to support this contention is that "The instant restriction has not been imposed on any other licensee in the City of Paterson, although there are at least 9 other plenary license holders within a radius of 500 feet of the licensee in question." That alone does not establish discrimination. It may be that no other tavern in Paterson needs a constable to keep order.

We hold that having accepted the conditional license without challenge appellant was bound by the condition, and the suspension was properly imposed for its violation.

Affirmed.

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## 2. APPELLATE DECISIONS - MEYER'S TAVERN v. NEWARK.

MEYER'S TAVERN (a corporation), )

Appellant, )

-vs- )

ON APPEAL  
CONCLUSIONS AND ORDERMUNICIPAL BOARD OF ALCOHOLIC  
BEVERAGE CONTROL OF THE CITY  
OF NEWARK, )

Respondent. )

-----)  
Samuel Voltaggio, Esq., Attorney for Appellant.Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney  
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board which, by resolution dated November 18, 1958, it suspended appellant's license for sixty days effective December 1, 1958, after finding it guilty on a charge alleging that it 'did allow, permit and suffer the removal of an alcoholic beverage in an opened container from the licensed premises after 10:00 p.m. on Wednesday, July 23, 1958; in violation of Rule 1 of State Regulation No. 38.' Appellant's premises are located at 294 Belmont Avenue, Newark.

"Upon the filing of the appeal an order was entered on November 25, 1958, staying respondent's order of suspension until entry of a further order herein. R. S. 33:1-31.

"The parties hereto have submitted the case upon the evidence set forth in the transcript of the proceedings before respondent Board, supplemented by additional evidence adduced at the hearing herein, as provided by Rule 8 of State Regulation No. 15.

"Appellant in its petition of appeal alleged in substance that respondent's action was erroneous in that it was against the weight of the evidence.

"Respondent in its answer denies appellant's allegation and contends that its determination was based on the factual testimony adduced before it.

"Succinctly stated, the evidence in support of the charge shows that at 11:15 p.m. Wednesday, July 23, 1958, an ABC agent visited appellant's licensed premises and asked William Vaughn (the bartender therein) for a pint of port wine 'to take out;' that the bartender took a pint bottle of wine from the shelf, broke the seal, removed the cap, poured some of the wine in a glass and placed the bottle and cap in front of the agent saying 'You have to drink some here first;' that the agent paid for his purchase, drank some of the decanted wine and, in the presence of the bartender, recapped the bottle, concealed it in his waist-band and left the premises; that the agent contacted a fellow ABC agent who had remained outside, showed him his purchase and then both entered the premises and informed the bartender and the licensee of the violation.

"Appellant admits that the bartender sold the pint bottle of wine to the agent after 10:00 p.m. on the date alleged, but denies that it was sold for off-premises consumption.

"Vaughn (the bartender) testified that the agent said 'I'd like to get a bottle of port wine to take out', and that he stated 'You can't take it out, you'd have to drink it here, it's after 10:00 o'clock', to which the agent replied 'All right;' that 'I then proceeded to walk back to the shelf, brought it over to the bar and set a glass down. I cut the top, took the cap off the bottle and proceeded to pour the wine into the glass and then set it down and took the cap and dropped it off the bar...down in the front where we have a box for it;' that he then proceeded to wait on other customers and that, when he came back, the agent was missing. He testified further that, whenever he serves a bottle of wine in its original container, the practice is to throw away the cap. Three of appellant's patrons, who testified they were in the licensed premises when the incident occurred, stated that they heard the agent say 'I'd like this to go', and that the bartender replied 'It's after hours, you don't take it out.' One of the patrons testified that the cap from the bottle of the wine which he and his friends were drinking 'was on the bar in front of us.'

"Having carefully considered the testimony herein, I find that the agent clearly indicated that he desired to purchase the wine for off-premises consumption and that the action of the bartender in requiring him to drink some of the wine was a mere subterfuge in order to avoid a violation of Rule 1 of State Regulation No. 38. I also find as a fact that the bartender permitted the agent to remove the bottle from the premises after the agent had recapped the bottle. This constitutes a violation of the cited Rule. I find further that the testimony of the bartender is replete with inconsistencies and that the testimony of the patrons is entitled to little weight in considering the issue in this case. I conclude, therefore, that appellant has failed to carry the burden of establishing that respondent's action was erroneous, and I recommend that an order be entered affirming the action of respondent and fixing the dates during which the sixty-day suspension shall be effective."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by appellant's attorney within the time limited by Rule 14 of State Regulation No. 15.

Having carefully examined the entire record, including the Hearer's Report and the exceptions and argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 26th day of February, 1959,

ORDERED that the action of respondent Board be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the sixty-day suspension imposed by respondent Board and Stayed during the pendency of these proceedings be reinstated against the license held by appellant for premises 294 Belmont Avenue, Newark, to commence at 2:00 a.m. Monday, March 9, 1959, and to terminate at 2:00 a.m. Friday, May 8, 1959.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - ACCEPTING ORDERS FOR ALCOHOLIC BEVERAGES AT OTHER THAN LICENSED PREMISES - DELIVERY WITHOUT INVOICE OR MANIFEST - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - AIDING AND ABETTING SALE OF ALCOHOLIC BEVERAGES BY RAFFLE - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

GERAY LIQUORS, INC.  
t/a GERAY LIQUORS  
41 Garden Street  
Passaic, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribution License D-16, issued by the Board of Commissioners of the City of Passaic.

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Defendant-licensee, by Andrew Muniak, President.  
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 divers days during the months of October, November and December 1958, you sold alcoholic beverages not pursuant to and within the terms of your plenary retail distribution license, as defined by R.S. 33:1-12(3)a, contrary to R. S. 33:1-26 and R.S. 33:1-1(w), in that you accepted orders for and sold numerous bottles and cases of various brands and kinds of alcoholic beverages at places other than your licensed premises, viz., in and about premises of U. S. Rubber Co., Passaic, N.J. and in and about premises of Singer Engineering Co., Livingston, N.J.; in violation of R. S. 33:1-2.

"2. On divers days during the months of October, November and December 1958, you delivered and transported alcoholic beverages in a vehicle without the driver thereof having in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating the bona fide name and address of the purchaser or consignee and the brand, size of container and quantity of each item of the alcoholic beverage being so delivered and transported; in violation of Rule 3 of State Regulation No. 17.

"3. On divers days during the months of October, November and December 1958, you sold, at retail, numerous bottles and cases of various brands and kinds of alcoholic beverages at less than the prices thereof listed in the then currently effective Minimum Consumer Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30.

"4. On or about December 19, 1958, you knowingly aided and abetted a group or organization comprising employees of Singer Engineering Co., Livingston, N.J., not the holder of any alcoholic beverage license or special permit, to sell alcoholic beverages by means of a raffle or drawing, contrary to R.S. 33:1-2 and R.S. 33:1-50; such aiding and abetting by you being in violation of R. S. 33:1-52."

The basis for the specific violations set forth in the above charges is that Andrew Muniak, President, and Ettore DeMarchi, Treasurer of the corporate-licensee, both also employed in different industrial plants, carried out a practice of selling alcoholic beverages at retail at less than the permissive retail price as set forth in the Minimum Consumer Resale Price List. Each of the corporate officers accepted from fellow-employees many orders for alcoholic beverages at such prices at their place of employment and delivered such alcoholic beverages to said fellow-employees at their respective plants. They also sold and delivered alcoholic beverages to other persons at such lesser prices. Some of these alcoholic beverages were delivered without an accompanying invoice setting forth fully the details of the sale. Furthermore, in one instance a quantity of alcoholic beverages was delivered at a cut price to the plant where the employees held a raffle with such liquor given as a prize.

The sales and deliveries of the above nature are evidenced by 296 sales and delivery slips found on the licensed premises covering various periods in October, November and December 1958. Thirty-four slips were for deliveries of alcoholic beverages to fellow-employees of Muniak, 41 were for deliveries of alcoholic beverages to fellow-employees of DeMarchi, and the balance to other persons.

The corporate-licensee has no prior adjudicated record, but evidently its responsible officers have very loose ideas concerning the rules governing the sale and delivery of alcoholic beverages. Considering the wholesale scale upon which the defendant-licensee engaged in prohibited practices in the sale of alcoholic beverages, its license will be suspended for a period of sixty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 3rd day of March, 1959,

ORDERED that Plenary Retail Distribution License D-16, issued by the Board of Commissioners of the City of Passaic to Geray Liquors, Inc., t/a Geray Liquors, for premises 41 Garden Street, Passaic, be and the same is hereby suspended for fifty-five (55) days, commencing at 9:00 a.m. Tuesday, March 10, 1959 and terminating at 9:00 a.m. Monday, May 4, 1959.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - CHARGE ALLEGING HINDERING DISMISSED - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

CHALET STEAK HOUSE, INC.  
t/a CHALET STEAK HOUSE  
7420 Hudson Boulevard  
North Bergen, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-16, issued by the  
Board of Alcoholic Beverage Control  
of the Township of North Bergen.

-----  
Defendant-licensee, by Joseph Rinaldi, Manager.  
Edward F. Ambrose, Esq., appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The following charges were preferred against the defendant:

'1. On Sunday, November 2, 1958 between 4:00 a.m. and 5:02 a.m., you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and allowed the consumption of alcoholic beverages on your licensed premises; in violation of Section 9 of an Ordinance adopted by the Board of Commissioners of the Township of North Bergen on December 4, 1940.

'2. On Sunday, November 2, 1958 between 5:02 a.m. and 5:20 a.m., while an inspector and an investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises, you, through agents, servants, employees and other persons in your behalf failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R. S. 33:1-35.'

"Defendant pleaded non vult to Charge 1 and not guilty to Charge 2.

"At the hearing herein two ABC agents testified that on Sunday, November 2, 1958, at about 4:40 a.m., they were in defendant's licensed premises; that about seventy patrons (male and female) were seated at two bars, the larger of which (where they sat) was being tended by three bartenders and the smaller one by two bartenders; that at about 5:02 a.m., after observing an 'hours' violation (which is the basis of Charge 1 herein), they identified themselves to Ralph Grimaldi, one of the bartenders, and to Joseph Rinaldi, the manager of the licensed premises; that Joseph Rinaldi and they retired to the kitchen where they informed him of the 'hours' violation and requested him to instruct the aforesaid five bartenders to remain on the premises for questioning and to produce them individually for that purpose. The agents further testified



that they informed Rinaldi that failure to cooperate might result in an additional charge of hindering; that Rinaldi produced and they interrogated three of aforesaid bartenders; that Rinaldi informed them that the other two bartenders had left the premises despite his request that they remain to be questioned, and that Rinaldi also stated that he knew their names and addresses but preferred not to divulge the same.

"Joseph Rinaldi, on behalf of the defendant, testified that about two weeks prior to November 2nd aforesaid he was employed as manager of the licensed premises; that before he reported for work on Saturday night, November 1, 1958, an officer of the licensee had called a bartenders' union and hired the two bartenders in question as extra help for one day; that he, pursuant to the request of the agents, instructed the five bartenders to remain on the premises until they were questioned by the agents; that two of the bartenders left the premises without his consent; that he could not prevent their departure except by the use of force; that he only knew the Christian names of these two men and was reluctant to admit he was not familiar with their full names. Rinaldi further testified that because of the lateness of the hour (5:02 a.m.) the members of the corporate licensee and its bookkeeper were not available to obtain the information requested by the agents and that the names and addresses of the bartenders in question are George LaTerra, 8502 Newkirk Avenue, North Bergen, and Neil Corso, 60th Street, West New York.

"Licensees and their agents must fully cooperate with ABC agents during an investigation, but I do not believe that, under the circumstances of this case, the Division has established defendant's guilt by a fair preponderance of the believable evidence. I, therefore, recommend that Charge 2 herein be dismissed.

"Defendant has a prior adjudicated record. Effective July 7, 1958 its license was suspended for ten days by the local issuing authority for an 'hours' violation. The minimum penalty for an 'hours' violation is fifteen days. Cf. Re R.C.F., Inc., Bulletin 1240, Item 6. Considering the similar violation which occurred within the past five years, and the confessional plea entered to Charge 1 herein, it is further recommended that an order be entered providing that defendant's license be suspended for thirty days, less five days for said plea, making a net suspension of twenty-five days. Re Zlotkowski, Bulletin 1188, Item 5."

Written exceptions to the Hearer's Report wherein he recommended dismissal of Charge 2 were filed with me by the prosecuting attorney within the time limited by Rule 6 of State Regulation No. 16. The prosecuting attorney contended that such dismissal "is erroneous in that it is wholly contrary to the weight of the evidence".

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

Accordingly, it is, on this 2nd day of March, 1959,

ORDERED that Plenary Retail Consumption License C-16, issued by the Board of Alcoholic Beverage Control of the Township of North Bergen to Chalet Steak House, Inc., t/a Chalet Steak House, for premises 7420 Hudson Boulevard, North Bergen, be and the same is hereby suspended for twenty-five (25) days,

commencing at 3:00 a.m. Monday, March 9, 1959, and terminating at 3:00 a.m. Friday, April 3, 1959.

WILLIAM HOWE DAVIS  
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

ELIZABETH C. NEILLEY )  
t/a NEILLEY'S LONG BAR )  
E/S of Randall Avenue )  
Point Pleasant Beach )  
PO Point Pleasant, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-15, issued by the )  
Mayor and Council of the Borough )  
of Point Pleasant Beach. )

----- )  
Blair and Blair, Esqs., by Stanley J. Blair, 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 charge:

'On October 27, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Salvatore ---, age 19; in violation of Rule 1 of State Regulation No. 20.'

"Salvatore ---, 19 years of age, testified that he visited defendant's licensed premises on two occasions on October 27, 1958; that the first visit was at 2:15 p.m. when he purchased two six-packs of Rheingold beer from the bartender who he identified as Harold Delaney; that on the second visit, at approximately 3:30 p.m., he purchased three six-packs of Rheingold beer from a male bartender whom he could not identify, and that when he ordered the beer the man looked toward Delaney and the latter, who was seated at the patron's side of the bar, signified that it was all right to fill the order; that on the first visit he handed Delaney \$3.00 and received 70 cents in change; that he 'guessed' that Delaney put the \$3.00 in the cash register because he heard the register 'ring'; that on the second visit he handed a five-dollar bill to the man who served him and then left for the men's room; that when he returned therefrom the three six-pack cans of beer in two paper bags and a dollar and some change were on the bar; that on the second visit he observed a woman at the bar who was identified by him at the hearing as Elizabeth Donaghue. Salvatore further testified that on both visits Thomas --- and Robert --- accompanied him to the defendant's premises but both waited outside.

"Thomas testified that on October 27, 1958 he and Robert accompanied Salvatore to defendant's licensed premises on the two occasions and remained in the car outside the premises while Salvatore went into the tavern; that the first visit was about 2:15 p.m. when Salvatore went into defendant's premises and, about five minutes thereafter, came out with a package containing beer in his arm; that he placed the package in the car and then drove the truck which he (Salvatore) had used to go to defendant's premises toward his home; that the car which Bob was driving and in which he was an occupant followed him; that Salvatore left the truck near his home and entered the car which he and Robert occupied and Robert drove off to a wooded section where they consumed the beer; that at about 3:30 p.m. the three again went to defendant's premises and parked in the vicinity thereof and Salvatore entered the premises and later returned with three six-packs of beer; that he believed it was six-packs of Schaefer beer on the first occasion and Rheingold on the second.

"The testimony of Robert was substantially similar to that of Thomas with reference to the two visits to defendant's licensed premises on the afternoon of October 27, 1958; that on the first visit he observed Salvatore leave the truck in which he had driven to defendant's premises and go toward the defendant's place of business and return with two six-packs of beer; that on the second visit he had driven to defendant's establishment in the car operated by Robert and he observed him leave the car and go into the licensed premises and return with three six-packs of beer.

"An ABC agent testified that on October 28, 1958 Salvatore directed two police officers and himself to the defendant's licensed premises and when they entered two bartenders were present, but Salvatore stated that they were not the ones who served him on the day in question.

"Defendant testified that Harold Delaney was on duty during the daytime on October 27th and she produced a tape from the cash register which she stated represented the sales of bottled goods on the day in question; that there was no indication thereon of either amount Salvatore claimed to have paid for the beer; that if the said five six-packs had actually been sold, she would have ascertained this when she made the check of business done on that particular day. Furthermore, the defendant testified that they have never sold Schaefer beer on the licensed premises.

"Harold Delaney's testimony substantiated that given by defendant as to the manner in which the records are kept; that he was the only person on duty at the time Salvatore alleged he was in the premises and he did not recall ever seeing Salvatore at any time in the licensed premises.

"Nester Matthews testified that he went on duty at about 4 o'clock in the afternoon but did not see Salvatore until the following day when he was brought in by the ABC agent.

"Elizabeth Donaghue testified that she was in defendant's licensed premises on October 27, 1958 and assisted Delaney in cleaning the back bar; that she had never seen Salvatore prior to the time when the agent came into the premises with him.

"The defendant relies primarily upon the fact that the amounts claimed to have been paid by Salvatore for the beer

do not appear on the cash register tape for the day in question. This fact, standing alone, is not complete assurance that the alleged sales could not have been made on the day in question. Salvatore's testimony with reference to payment for the beer on the first visit merely mentions that he heard a bell ring and he 'guessed' the money given by him to Delaney was placed in the cash register. Furthermore, there is nothing to indicate that Salvatore looked at the cash register at the time. On the second visit there is no testimony that Salvatore observed the cash register being used when he made payment for the alcoholic beverages. The testimony is that after he placed the five-dollar bill on the bar he left the barroom to go to the men's room; that upon his return he testified the change and beer were on the bar.

"There appears to be no reason whatsoever to disbelieve Salvatore's testimony that he visited defendant's licensed premises on two occasions during the afternoon of October 27, 1958. He identified Delaney as the person who had sold him the beer on the first occasion and also stated that Delaney was in the premises on the second occasion and gave his approval to the bartender to fill his order for three six-packs of beer. Thomas and Robert testified that they remained in Robert's car when Salvatore went to defendant's premises and that he returned each time with beer. Salvatore testified he saw Elizabeth Donaghue in the premises on the second visit. Mrs. Donaghue admitted being there although she did not remember seeing Salvatore at that time. Under the circumstances, I am satisfied that Salvatore made two visits to defendant's licensed premises on October 27, 1958 and purchased two and three six-packs of beer, respectively, for off-premises consumption.

"Defendant has no prior adjudicated record. The minimum penalty for sale of alcoholic beverages to a 19-year-old minor is fifteen days. Re Hanover Liquor Store, Inc., Bulletin 1253, Item 6. I recommend that the defendant be found guilty of the charge preferred herein and that her license be suspended for a period of fifteen days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by defendant's attorney within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of the testimony, the Hearer's Report and the exceptions and argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 2nd day of March, 1959,

ORDERED that Plenary Retail Consumption License C-15, issued by the Mayor and Council of the Borough of Point Pleasant Beach to Elizabeth C. Neilley, t/a Neilley's Long Bar, for premises E/S of Randall Avenue, Point Pleasant Beach, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Monday, March 9, 1959 and terminating at 2:00 a.m. Tuesday, March 24, 1959.

WILLIAM HOWE DAVIS  
Director.

6. 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 )

NATHAN SIEGELMAN )  
332 Jackson Avenue )  
Jersey City 5, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distri- )  
bution License D-57, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Jersey City. )

-----)  
Samuel Moskowitz, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on February 6, 1959, he 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.

At 9:36 p.m. on the date set forth in the charge herein an ABC agent purchased a can apiece of Ballantine, Schaefer and Rheingold beer and a half-pint bottle of Bardinet Napoleon Brand French Grape Flavored Brandy from an employee of defendant. The clerk charged fifty-five cents instead of fifty-seven cents for three cans of beer, and \$1.50 instead of \$1.55 for the brandy, thus violating Rule 5 of State Regulation No. 30. The agent left the defendant's licensed premises but returned immediately thereafter with another agent, at which time they identified themselves to the defendant and to the clerk who had made the sale. The employee who made the sale admitted the violation.

Defendant has a prior adjudicated record. Effective January 18, 1940, his license was suspended for five days for a similar violation as that committed herein. Re Siegelman, Bulletin 377, Item 4. In view of the fact that over ten years have elapsed since defendant's previous record, I will not take it into consideration when fixing the penalty herein. I shall suspend defendant's license for ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Central Liquor Co., Inc., Bulletin 1261, Item 3.

Accordingly, it is, on this 3rd day of March, 1959,

ORDERED that Plenary Retail Distribution License D-57, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Nathan Siegelman, for premises 332 Jackson Avenue, Jersey City, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. Monday, March 9, 1959, and terminating at 9:00 a.m. Saturday, March 14, 1959.

WILLIAM HOWE DAVIS  
Director.

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

In the Matter of Disciplinary  
Proceedings against

MITCHELL Z. KAMINSKI & CARL  
KAMINSKI  
t/a MERCER OLD GLORY TAVERN  
175 Mercer Street  
Jersey City, N. J.,

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Consump-  
tion License C-480, issued by the  
Municipal Board of Alcoholic  
Beverage Control of the City of  
Jersey City.

-----)  
Mitchell Z. Kaminski & Carl Kaminski, Defendant-licensees,  
Pro se.

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

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that on Sunday, February 15, 1959, they sold during prohibited hours alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

At about 2:15 p.m. on the above mentioned day and date, an ABC agent in the licensed premises observed the bartender sell five cans of beer which the purchaser carried off the premises. A few minutes later, the agent purchased a pint bottle of Four Roses blended whiskey for off-premises consumption. The agent left the premises with the bottle of whiskey, joined a fellow agent who had been stationed outside, and both entered the premises and identified themselves to the bartender, who verbally admitted the violation.

The defendants have no prior adjudicated record. I shall suspend their license for the minimum period of fifteen days. Re Smaguler, Bulletin 1261, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 4th day of March, 1959,

ORDERED that Plenary Retail Consumption License C-480, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Mitchell Z. Kaminski & Carl Kaminski, t/a Mercer Old Glory Tavern, for premises 175 Mercer Street, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, March 16, 1959, and terminating at 2:00 a.m. Thursday, March 26, 1959.

WILLIAM HOWE DAVIS  
Director.

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

In the Matter of Disciplinary )  
Proceedings against )

HANS MAACK )  
224 Broad Avenue )  
Palisades Park, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-19, issued by the )  
Mayor and Council of the Borough )  
of Palisades Park. )

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Hans Maack, Defendant-licensee, Pro se.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following  
charge:

"On January 22 and 29, 1959, you allowed, permitted  
and suffered gambling, viz., the making and accepting  
of horse race bets, in and upon your licensed premises;  
in violation of Rule 7 of State Regulation No. 20."

On January 22, 1959, ABC agents at defendant's licensed  
premises observed the bartender (subsequently identified as  
Joseph F. Gannon) accept a horse-race bet from a patron.  
Thereafter two of the agents each placed a horse-race bet with  
Gannon. On January 29, 1959, these agents were again at the  
licensed premises and each placed a horse-race bet with  
Gannon. Local police officers then entered the premises and  
the agents and officers disclosed their identity. Gannon  
surrendered the marked money used by the agents to place the  
aforementioned bets and various horse racing slips. Gannon  
admitted that he accepted horse-race bets in the premises,  
including those above referred to which were placed by ABC  
agents.

Defendant has no prior adjudicated record. I shall  
suspend his license for twenty-five days, the usual penalty  
in a case of this kind (Re Karba, Bulletin 1265, Item 6).  
Five days will be remitted for the plea entered herein,  
leaving a net suspension of twenty days.

Accordingly, it is, on this 9th day of March, 1959,

ORDERED that Plenary Retail Consumption License C-19,  
issued by the Mayor and Council of the Borough of Palisades  
Park to Hans Maack, for premises 224 Broad Avenue, Palisades  
Park, be and the same is hereby suspended for twenty (20)  
days, commencing at 3:00 a.m. Wednesday, March 18, 1959, and  
terminating at 3:00 a.m. Tuesday, April 7, 1959.

WILLIAM HOWE DAVIS  
Director.

9.

## ACTIVITY REPORT FOR MARCH 1959

## ARRESTS:

Total number of persons arrested	- - - - -	28
Licensees and employees	- - - - - 8	
Bootleggers	- - - - - 20	

## SEIZURES:

Motor vehicles - cars	- - - - -	7
- trailers	- - - - -	2
Still - over 50 gallons	- - - - -	1
- 50 gallons or under	- - - - -	1
Mash - gallons	- - - - -	200.00
Distilled alcoholic beverages - gallons	- - - - -	1,112.94
Wine - gallons	- - - - -	203.95
Brewed malt alcoholic beverages - gallons	- - - - -	17.88

## RETAIL LICENSEES:

Premises inspected	- - - - -	546
Premises where alcoholic beverages were gauged	- - - - -	904
Bottles gauged	- - - - -	16,397
Premises where violations were found	- - - - -	40
Violations found	- - - - -	53
Unqualified employees	- - - - - 20	Reg. #38 sign not posted - - - - - 2
Application copy not available	- - - - - 15	Prohibited signs - - - - - 1
Other mercantile business	- - - - - 6	Other violations - - - - - 6
Disposal permit necessary	- - - - - 3	

## STATE LICENSEES:

Premises inspected	- - - - -	11
License applications investigated	- - - - -	7

## COMPLAINTS:

Complaints assigned for investigation	- - - - -	473
Investigations completed	- - - - -	487
Investigations pending	- - - - -	192

## LABORATORY:

Analyses made	- - - - -	296
Refills from licensed premises - bottles	- - - - -	57
Bottles from unlicensed premises	- - - - -	70

## IDENTIFICATION:

Criminal fingerprint identifications made	- - - - -	21
Persons fingerprinted for non-criminal purposes	- - - - -	212
Identification contacts made with other enforcement agencies	- - - - -	147
Motor vehicle identifications via N. J. State Police teletype	- - - - -	1

## DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	- - - - -	15
Violations involved	- - - - -	16
Sale during prohibited hours	- - - - - 7	
Sale to minors	- - - - - 6	
Sale to non-members by club	- - - - - 2	
Sale of drinks on credit (local reg.)	- - - - - 1	

Cases instituted at Division	- - - - -	46
Violations involved	- - - - -	61

Sale to minors	- - - - - 17	Sale outside scope of license	- - - - - 1
Possessing liquor not truly labeled	- - - - - 13	Sale to non-members by club	- - - - - 1
Sale during prohibited hours	- - - - - 4	Employee without requisite identification card (local reg.)	- - - - - 1
Permitting lottery activity (numbers)	- - - - - 3	Possessing contraceptives on premises	- - - - - 1
Fraud in application	- - - - - 3	Sale to intoxicated persons	- - - - - 1
Sale below minimum resale price	- - - - - 2	Unqualified employees	- - - - - 1
Permitting gambling (cards, wagering)	- - - - - 2	Permitting hostesses on premises	- - - - - 1
Permitting foul language on premises	- - - - - 2	Failure to file notice of change in application	- - - - - 1
Hindering investigation	- - - - - 2	Permitting bookmaking on premises	- - - - - 1
Failure to have copy of license application on premises	- - - - - 2		
Permitting immoral activity on prem.	- - - - - 2		
Cases brought by municipalities on own initiative and reported to Division	- - - - -		23
Violations involved	- - - - -		28
Sale to minors	- - - - - 11	Failure to close premises during prohibited hours	- - - - - 1
Sale during prohibited hours	- - - - - 8	Permitting premises to be used in connection with illegal activity	- - - - - 1
Permitting brawl on premises	- - - - - 3	Employee without requisite identification card (local reg.)	- - - - - 1
Permitting bookmaking on premises	- - - - - 1		
Hindering investigation	- - - - - 1		
Permitting immoral activity on prem.	- - - - - 1		

## HEARINGS HELD AT DIVISION:

Total number of hearings held	- - - - -	54	
Appeals	- - - - - 6	Seizures	- - - - - 3
Disciplinary proceedings	- - - - - 28	Tax revocations	- - - - - 4
Eligibility	- - - - - 12	Applications for license	- - - - - 1

## STATE LICENSES AND PERMITS ISSUED:

Total number issued	- - - - -	1,057	
Licensees	- - - - - 3	Social affair permits	- - - - - 344
Employment permits	- - - - - 96	Miscellaneous "	- - - - - 144
Solicitors "	- - - - - 103	Transit insignia	- - - - - 279
Disposal "	- - - - - 64	Transit certificates	- - - - - 24

WILLIAM HOME DAVIS  
DIRECTOR

DATED: April 2, 1959



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

Auto. Susp. #164	)	
In the Matter of a Petition by	)	
CARL'S RIDGE CLUB, INC.	)	
t/a CARL'S RIDGE CLUB	)	
744 Ridge Road	)	ON PETITION
Lyndhurst, N. J.,	)	
	)	O R D E R
To Lift the Statutory Automatic	)	
Suspension of License C-26, issued	)	
by the Board of Commissioners of	)	
the Township of Lyndhurst.	)	

-----  
Hilowitz & Stein, Esqs., by David Hilowitz, Esq., Attorneys  
for Petitioner.

BY THE DIRECTOR:

A petition filed herein discloses that on August 8, 1958, Carl Cihoski (president of Carl's Ridge Club, Inc.) was fined the sum of \$60.00 after he had pleaded non vult in Lyndhurst Municipal Court to a charge of selling alcoholic beverages to a minor, in violation of R. S. 33:1-77. Said conviction resulted in the automatic suspension of the license held by the corporation. The petition requests the lifting of said suspension.

It further appears from the petition and from the records of this Division that the local issuing authority adopted a resolution suspending the corporation's license for a period of four days effective from 3:00 a.m. August 10, 1958 to 2:00 a.m. August 14, 1958, after the corporation pleaded non vult in disciplinary proceedings to the charge of selling alcoholic beverages to the same minor, in violation of Rule 1 of State Regulation No. 20. The minor was 16 years of age at the time.

The suspension imposed by the local issuing authority was less than that usually imposed by the Director in cases involving a 16-year-old minor. However, the file in this case indicates that the minor appeared to be older than his actual age. Since said suspension has been served, the relief requested herein will be granted.

Accordingly, it is, on this 19th day of February, 1959,


ORDERED that the automatic suspension of License C-26 held by Carl's Ridge Club, Inc., t/a Carl's Ridge Club, for premises 744 Ridge Road, Lyndhurst, be and the same is hereby lifted and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS  
Director.

11. STATE LICENSES - NEW APPLICATION FILED.

S & S Beverage Co., Inc.  
321 North Rhode Island Avenue, Atlantic City, N.J.  
Application filed April 15, 1959 for additional warehouse on State Beverage Distributor's License SBD-134 for premises at 118-120 Spruce Street, North Wildwood, N.J.

New Jersey State Library

  
William Howe Davis  
Director.