

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

BULLETIN 1418

October 31, 1961

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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 1418

October 31, 1961

1. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE -
PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

Pappy's Bar, Inc.)
t/a Pappy's Bar)
117 S. Mississippi Avenue)
Atlantic City, New Jersey)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption)
License C-55, issued by the Board of)
Commissioners of the City of Atlantic)
City.)

Edward A. Costigan, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On June 10, 11, July 1 and 2, 1961, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct by such persons and by others in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

ABC agents visited defendant's licensed premises on the dates set forth in the charge herein. The agents report that on their first visit on Saturday, June 10, 1961 between 11:35 p.m. until 2:45 a.m. on June 11, 1961, there were approximately twenty-five males and two females present; that at the height of the activity during this visit, there were approximately sixty-five males and three females on the premises. Most of the males were apparently homosexuals who were dressed in tight-fitting trousers, multi-colored sport shirts or bulky-knit sweaters, with sleeves pushed up to the elbows, white sneaker shoes, loafers or suede bucks. Their conduct followed the usual pattern: the swishing of the hips from side to side in an effeminate manner, the limp wrist, the high-pitched voice, the frequent use of such terms of endearment as "honey", "dear", "baby" and "mother", when addressing each other.

A female, known as Morgan, who had charge of the kitchen, gave the unmistakable appearance of a lesbian -- she wore male type clothing such as a sport shirt, man's sweater, male trousers and loafer shoes. She wore her hair in a masculine fashion, had no facial makeup, spoke in a rough, raspy tone of voice, and her movements were rough and manly. Dick, the bartender, also appeared to be a homosexual and possessed the above-described characteristics of most of the other patrons. The agents observed these apparent homosexuals holding each other's hands, caress each other affectionately and dance by themselves to the music of a juke box in an effeminate manner. As the agents departed, one of them said to the bartender, "This really is a very nice gay spot you have here", to which the bartender replied, "Thank you, dear."

On Saturday, July 1, 1961 at about 11:15 p.m., the agents returned to the subject premises and remained there until 2:55 a.m. on July 2, 1961, during which time they observed Dick, the bartender, later identified as Ralph Newton Herschner, and Kelly, later identified as Henry Kalisewicz, vice-president of the subject corporation, as two of the bartenders who had been on duty on June 10th. On this visit, there were about ninety males and one escorted female on the premises, most of whom wore the same type of clothing as hereinabove described, and affected the same mannerisms and effeminate conduct which characterized the homosexuals on the previous visit. Dick engaged in obscene and lewd actions, interspersed with obscene language, an exact description and repetition of which would serve no useful purpose in this account. The agents then identified themselves to Dick, who then summoned a person known as "Pappy" (later identified as Frank Bozzi, secretary-treasurer of the defendant corporate-licensee). Informed of these violations, "Pappy" stated, "This place has been gay for twenty years." He then explained that he had taken over the business two years ago, but couldn't change the reputation overnight, and had been trying to "clean the place up" all along.

While Mr. Bozzi, the major stockholder of this corporate-licensee, has insisted that he has tried to "clean his place up", he has not made a very effective effort. By way of alleged mitigation, the attorney for the defendant-licensee has submitted a letter which I have carefully read and considered. His statement asserts that the officers of defendant attempt to run the premises in a businesslike manner, complying with the rules and regulations of this Division. He further states that Dick, the bartender, has been discharged because of his lewd actions.

Proper liquor control dictates that licensed premises are not to become a haven for homosexuals or lesbians. As Judge Jayne stated in Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N.J. Super. 405, at page 408:

"Assuredly, it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud."

Defendant has a prior adjudicated record. Effective June 25, 1960, its license was suspended for ten days by the Board of Commissioners of Atlantic City for conducting its business as a nuisance (permitting homosexuals on licensed premises).

Considering all of the circumstances in this case, including the prior similar violation which occurred within five

years of the date of this offense, I shall suspend defendant's license for a period of sixty days. Re Stewart, Bulletin 1366, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 18th day of September 1961,

ORDERED that Plenary Retail Consumption License C-55, issued by the Board of Commissioners of the City of Atlantic City to Pappy's Bar, Inc., t/a Pappy's Bar, for premises 117 S. Mississippi Avenue, Atlantic City, be and the same is hereby suspended for fifty-five (55) days, commencing at 7:00 a.m., Tuesday, September 26, 1961 and terminating at 7:00 a.m., Monday, November 20, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Jimmy's Tavern, Inc.
t/a Jimmy's Tavern
2802 Buren Avenue
Camden 5, N. J.,

Holder of Plenary Retail Consumption License C-166, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS

AND

ORDER

Defendant-licensee, by James W. Eskridge, Officer and Stockholder Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On August 25, 1961 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., Anthony ---, age 18, Donald ---, age 20, Michael ---, age 20, Peter ---, age 20 and Leonard ---, age 18, and you allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- "2. On August 25, 1961 you, through James W. Eskridge and Joseph H. Marrini, officers, directors and stockholders of your corporation, failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35."

On the evening of August 25, 1961, two ABC agents entered defendant's premises. At about 10:50 p.m. one of the agents observed the sale and service of glasses of beer by Melva Larson (a barmaid) to three apparent minors who were seated at a bar. Both agents then identified themselves to the bartender; questioned the three apparent minors and also questioned two other apparent minors who were consuming beer at another portion of the bar. The five apparent minors identified themselves as Anthony --- (age 18), Donald --- (age 20), Michael --- (age 20), Peter --- (age 20) and Harry --- (age 18). Subsequently the agents took the five apparent minors to Camden Police Headquarters where each voluntarily signed a statement. From these statements it appears that one glass of beer had been served to each of four of the minors, and five or six glasses of beer had been served to the fifth minor by Melva Larson who did not question any of them as to his age.

Charge 2 is based upon the following incidents which are set forth in the agents' reports: After the minors had been questioned in the premises, they left with the agents to go to Police Headquarters. The minors had entered an agent's car, which was parked in a parking-lot opposite defendant's premises, when James W. Eskridge appeared, prevented the agent from closing the door of the car, ordered the agents to let the minors out and said "You are going to stay right here, I'm not going to let you go anywhere." Eskridge then made a disparaging remark about the agents (who had previously identified themselves to him) and instructed a man who accompanied him to call the Police. Two police officers, who arrived in a radio car, advised Eskridge that the agents were legitimate ABC agents and then accompanied the agents and minors to Police Headquarters where the statements were taken from the minors without further interference. As the agents were leaving Headquarters, Eskridge and Joseph Marrini (a minority stockholder) approached the agents and demanded the names of the minors. When the agents refused to give the names of the minors, Eskridge used "insulting" language and tried to prevent the agents from leaving.

Defendant has no prior adjudicated record. However, when the license for the same premises was in the name of James W. Eskridge, said license was suspended by the Director for fifteen days, effective January 15, 1946, for "refills", and for five days, effective June 7, 1954, for selling to women directly over the bar. See Bulletin 689, Item 11, and Bulletin 1022, Item 10. Since these dissimilar violations were committed more than five years ago, they will not be considered in fixing the penalty herein. I shall suspend defendant's license for twenty days on Charge 1 (cf. Re Fox, Jr., Bulletin 1345, Item 9, and Re Woodland Grove, Bulletin 1401, Item 3). Considering all the facts, including a letter from Eskridge in which he states that he now realizes he was wrong and apologizes for his conduct, I shall suspend defendant's license for an additional fifteen days on Charge 2 (cf. Re Austin Club, Inc., Bulletin 1345, Item 8), making a total suspension of thirty-five days. Five days will be remitted for the plea, leaving a net suspension of thirty days.

Accordingly, it is, on this 18th day of September 1961,

ORDERED that plenary retail consumption license C-166, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Jimmy's Tavern, Inc., t/a Jimmy's Tavern, for premises 2802 Buren Ave., Camden, be and the same is hereby suspended for thirty (30) days, commencing at 7 a.m. Monday, September 25, 1961, and terminating at 7 a.m. Wednesday, October 25, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

explanation of why he had not unpacked the other cases in the same immediate area. Mazer informed the agents that the empty crates had been taken to the garbage dump in the usual garbage collection. He was advised that unless these crates were returned, he might be subject to a charge of hindering the investigation, whereupon his son, Marvin Mazer, assured the agents that these crates would be returned within the next hour. The agents returned to the premises shortly thereafter and the crates were produced and they were informed that they had been reclaimed from the city garbage dump. The agent further testified that before these cases were unloaded, there were several shelves full of Cutty Sark Whisky. The two cases (in which the twenty-four bottles had been replaced) were marked in evidence.

"Agent F's testimony substantially corroborated that of Agent T.

"Herbert L. Williams, called by the Division, testified, substantially, that he is a Supervisor, Customs Officer, Bureau of Customs, United States Treasury Department; that according to the strip stamp numbers on his usage sheet, he can state with certainty that these two cases were part of a shipment of Cutty Sark Scotch Whisky transported on the SS American Manufacturer, and arrived in this country on August 31, 1960. The official date of entry was September 2, 1960.

"Leon Mickleman, called as a witness on behalf of the Division, testified that he is the vice-president and general manager of Crest; that this company is the exclusive distributor of Cutty Sark Scotch Whisky in South Jersey, which includes the area in which the licensee is located; that a shipment of 800 cases of this whiskey was received by his company on September 9, 1960; that according to his invoices, the last sale and shipment to the licensee of Cutty Sark Scotch Whisky was made on September 7, 1960 and that his company does not have any record of any sale made to the licensee during the month of September after September 7, 1960. Thus, according to the invoices, Mr. Mickleman stated there is no record of any sale of these particular cases to the licensee.

"Marvin Mazer, testifying as a witness on behalf of the defendant-licensee, stated that he helps his father, Isadore Mazer, on the licensed premises and gives the following version in explanation of the presence of these two cases: On September 20, 1960, while he was moving two sealed cases of Cutty Sark, he heard a breakage in both of the cases and he called Crest and spoke to someone in the warehouse. He was told not to open these cases and that they would be replaced immediately with two other cases of Cutty Sark Scotch Whisky. Within a half-hour, a warehouseman came to the store, picked up the two cases and replaced them with the cases that were found by the ABC agents. No invoices were given, no receipts were signed, no papers were given to him by this warehouseman. In fact, he did not recall the name of the man to whom he had spoken or who had delivered this merchandise in exchange. Under cross-examination, he stated that he did not speak to the office of Crest, but insisted upon speaking to the warehouse directly. He further testified that he was the one who retrieved the two cases from the city dumps and he was accompanied on that trip by his brother-in-law, William Levin. He was asked why he didn't inform the agents at the time of their visits to the premises that these two cases were really in exchange for the two cases previously purchased. His answer was, 'I discussed it with my attorney and, upon his advice, because of the trouble I was in, I was advised not to answer or volunteer any information.' In any event, as far as he knows, neither he nor his father ever advised the ABC agents of this exchange of cases because of the alleged breakage.

"Leon Mickleman was recalled as a witness on behalf of the defendant-licensee. He testified that there had been a considerable amount of breakage of Cutty Sark Scotch Whisky, but that the records of Crest do not list any particular retailers who suffered breakage. He further testified that after October 20, 1960, his warehouseman admitted to him that he had made this exchange without authorization, and without informing him or the office of this transaction. Under cross-examination, he admitted that it was most irregular for a person to call the warehouse directly; that such transactions usually take place through complaints made to the office for exchange or adjustments; that invoices are properly prepared to reflect such exchanges and that the driver is required to get a signature on such invoice before he can drop the new cases off. He further stated that his warehouseman, one August E. Spackman, was severely censured and would have been dismissed except for the fact that he was employed by this company for 25 years. Mickleman further testified that some time in the latter part of 1960 he made his own independent investigation and, after speaking again to his warehouseman, his warehouseman admitted that he had made an error in making this exchange on the date in question.

"In a brief submitted on behalf of the defendant-licensee, it is asserted that, 'The Division Prosecutor has the burden of proving the case against the defendant by evidence that establishes guilt beyond a reasonable doubt.' This is not the measure. Disciplinary proceedings against liquor 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, 378 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, 504 (1956); Freud and Pittala v. Davis, Bulletin 1368, Item 2. In the Hornauer case, the court stated that the accepted gauge of administrative factuality finality is whether the factual findings are supported by substantial evidence. By substantial evidence is meant 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion'. Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477; 71 Sup. Ct. 456, 459; 95 L. Ed. 456 (1951). The evidence must be based on the entire record, including the inference to be drawn therefrom. See Stason, "Substantial Evidence" in Administrative Law, 89 Univ. of Pennsylvania Law Review 1026, 1038 (1941).

"The Division has clearly proven a prima facie case in support of its charge. This is admitted by defendant in its memorandum. The defendant states in substance that it admits that it received two cases of Cutty Sark Scotch Whisky and did not have the normal invoice that corresponded to the shipment. It further states that the defendant has proved by voluminous evidence that these cases were delivered to it after the last invoice shipment on September 7, 1960 and, indeed, 'the defendant would have clearly stipulated this fact and does not dispute that the two cases in question were delivered after the last invoice shipment of September 7, 1960.'

"The only issue, therefore, is whether the defense of the defendant, to the effect that these cases represent an exchange of cases theretofore purchased by the defendant, has been satisfactorily proved.

"Thus, we have in issue the weight and credibility of the testimony offered by the defendant. The defendant's version should be examined in the light of the apposite testimony given by the Division's agents. When the ABC agents entered the premises and ascertained that these two cases did not correspond with any invoices then in the possession of Isadore Mazer, president of defendant-corporation and manager of the premises, he failed or refused to give them

an explanation. It seems more consistent with believable behavior that an explanation consistent with the present defense would have been given to the ABC agents. It seems clear that he had something to hide; otherwise why would these two cases have been uncrated and the crates removed from the premises during the brief absence of the ABC agents in their investigation of these invoices.

"When the agents returned to the premises, they were told that the reason these bottles were uncrated was that there was need for additional room in that area of the premises. This is refuted by the fact that these crates had been placed on top of other crates which were not removed; and the contents thereof were not placed on the regular display shelves, but underneath the counter.

"Isadore Mazer was not called as a witness to explain his actions on the date of this investigation. It seems clear, according to the testimony, that since he was the only one who had engaged in full conversation with the agents, and was in full control of the premises during this period, that his testimony would be important in support of the defense. His son states that he was not well and, therefore, unable to appear and testify. However, no medical corroboration of that statement was offered at this hearing.

"Marvin Mazer testified that the crates were retrieved from the city dumps by him and he was accompanied by William Levin, his brother-in-law. This version is a most incredible one and should have been fortified by the testimony of Levin. Levin, however, did not appear or testify.

"Mickleman, the vice-president and general manager of Crest Wine and Liquors, the wholesaler, similarly failed to give the proper reason offered for the presence of these two crates of whiskey when he was first questioned on September 28, 1960. His explanation is that he first ascertained the 'true facts' several months later when he spoke to his warehouseman. His warehouseman, according to his testimony, broke down and admitted that he was upset by the incident and, therefore, withheld the information from his employer. However, even this version bears examination. Does it seem likely that a man who has been the head of a warehouse for 25 years, would personally deliver two cases of whiskey to a customer, in clear defiance and violation of well-known Alcoholic Beverage Control rules and regulations? Certainly he had nothing personally to gain either financially or in any other way, by any secretive delivery of these goods. It would have been more consistent with his duties to have one of his subordinates deliver these goods in the usual course of business and with the proper application of the prescribed invoices. In fact, it would also seem logical that the whole transaction would not have been put into operation in the usual course of events unless authorization were received by the front office. This warehouseman, who had been so employed for quarter of a century was well aware of that fact.

"It should further be observed that although it was testified that he was available, he was not called to testify with respect to this alleged transaction. He would have been in the best position to state what really happened with respect to the whiskey in question. Where suspicious circumstances connected with a transaction are capable of explanation by the parties, their failure to explain gives rise to an inference adverse to such parties. 33 C.J.S. Evid. page 53. As a general rule, in the absence of an explanation, the non-appearance of a party or his failure to testify as to material facts within his knowledge, creates an inference that he refrained from testifying because the truth would not aid his contention. Similarly, where a party has a witness or witnesses available, and where they possess peculiar knowledge concerning the facts essential to a party's case, the failure to call said witness or

witnesses gives rise to an inference that, if called, the testimony elicited therefrom would be unfavorable to said party. Jacoby v. Jacoby, 6 N.J. Misc. 86. This principle of law, therefore, applies not only to the failure of the warehouseman to take the stand but, similarly, to the failure of Isadore Mazer and William Levin to testify in these proceedings. 31 C.J.S. Evidence Section 156, page 860. Lone Star Cement Corp. v. Palmer, 129 N.J.Eq. 214; 18 Atl. 2nd 711; Camden Safe Deposit and Trust Co. v. Green, 124 Eq. 221, 1 Atl. 2nd 308; Wratchford v. Millburn Township, 105 N.J.L. 657; 146 Atl. 201 affirming 6 N.J. Misc. 483, 141 Atl. 740. I am of the conviction that the failure of the defendant to present the testimony of these witnesses was fatal to its case and I am, therefore, constrained to doubt the testimony given in support of the defense. 7 Wigmore Evid. Section 2100 (3rd edition 1940).

"After examining the evidence and exhibits herein, and considering the brief filed by defendant's attorney, I conclude that the Division has established defendant's guilt by a fair preponderance of the believable evidence. Hence, it is recommended that defendant be found guilty as charged.

"Defendant has no prior record. It is further recommended than an order be entered suspending defendant's license for fifteen days, which is the minimum penalty imposed in these cases. Re Rosner & Greenwald, Bulletin 1244, Item 5; Re Fahey's Bottle Shop Inc., Bulletin 1352, Item 10."

No exceptions were taken to the Hearer's Report 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 19th day of September 1961,

ORDERED that Plenary Retail Consumption License C-158, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Liquor Towne, A Corporation, for premises 938 Kaighn Avenue, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m., Tuesday, September 26, 1961 and terminating at 7:00 a.m., Wednesday, October 11, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (CARD GAME) - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
Andrew Carpentier and Louis Kumburis)	CONCLUSIONS
24 - 69th Street)	
Guttenberg, New Jersey)	AND
Holder of Plenary Retail Consumption License C-25, issued by the Board of Council of the Town of Guttenberg.)	ORDER

Nathan J. Littauer, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they allowed, permitted and suffered gambling (card game for money) in and upon their licensed premises, in violation of Rule 7 of State Regulation No. 20.

At 7:30 p.m. on May 7, 1961, an ABC agent entered defendants' licensed premises and Louis Kumburis (one of the defendant-licensees) was tending bar. Kumburis asked the agent and two other patrons to play pool and darts and, during the course of the games, Kumburis would go into the rear room where a card game was in progress. At 8:15 p.m., by prearrangement, another agent and several police officers, including Chief Campbell, entered and apprehended Kumburis and also the players who had engaged in a poker game for money stakes. On the table were the sums of \$7.25 for the game in progress, \$8.75 to be used for payment of drinks, and \$65.50 belonging to the various players.

Although the license in question had never been suspended a license held by defendant Carpentier and Fred Rozzo for other premises was suspended for twenty-five days, effective January 7, 1957, for sale of alcoholic beverages to minors and possession of indecent matter. Re Rozzo and Carpentier, Bulletin 1153, Item 2. Under the circumstances, the prior record of defendant Carpentier must be considered in fixing the penalty herein. I shall, therefore, suspend defendants' license for fifteen days for the instant violation (Re Cioban, Bulletin 1336, Item 9; Re Sklodowski, Bulletin 1396, Item 8), plus an additional five days for the dissimilar past record of defendant Carpentier which occurred within the past five years, making a total suspension of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of September, 1961,

ORDERED that Plenary Retail Consumption License C-25, issued by the Board of Council of the Town of Guttenberg to Andrew Carpentier and Louis Kumburis, for premises 24 - 69th Street, Guttenberg, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m., Tuesday, September 26, 1961, and terminating at 3:00 a.m., Wednesday, October 11, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

5. 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)

Jack Harris)
t/a Jack's Bar & Restaurant)
357 1/2 - 359 West Side Avenue)
Jersey City 5, New Jersey)

CONCLUSIONS
AND

Holder of Plenary Retail Consumption License C-214, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

ORDER

Defendant-licensee, Pro se.
Dora P. Rothschild, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging sale during prohibited hours, he sold and delivered and permitted the sale and delivery of alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

On Wednesday, August 9, 1961 at about 11:40 p.m., ABC agents observed a man enter the licensed premises. After a discussion with one John Malloy, one of the bartenders on duty, the man received from Malloy a pint bottle of Seagram's Seven Crown Whiskey which Malloy had taken from a shelf and had placed in a brown paper bag. This patron (later identified as Howard Scorion), gave Malloy an undetermined amount of money which Malloy placed on the cash register without ringing up the sale. The agents followed Scorion as he left the tavern, took the bottle from him on the outside of the premises and then returned with him to the premises where he identified Malloy as the bartender who had made the sale. Malloy verbally admitted the violation in question.

By way of alleged mitigation, the licensee has submitted a statement wherein he sets forth that Scorion actually purchased this pint of whiskey at 3:15 that afternoon and requested permission to pick it up at about 9:00 p.m. When the patron arrived after the time proscribed by State Regulation, defendant's employee failed to note the time and delivered the alcoholic beverages to him. It should be noted that the bartender actually received payment at the time of delivery. In any event, the mere delivery after 10:00 p.m. constitutes a violation of the Rule. A licensee cannot escape the consequences of the acts of his agents or employees. Re Dressler, Bulletin 1189, Item 3.

Defendant has a prior adjudicated record. Effective February 24, 1947, his license was suspended by this Division for twenty-five days for possession of illicit liquor. Re Harris, Bulletin 745, Item 9, and Bulletin 749, Item 2. However, since this dissimilar violation occurred more than five years prior to the date hereof, it will not be considered in fixing the penalty herein. I shall suspend defendant's license for a minimum period of fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re "Five Points Cafe" (A Corporation), Bulletin 1369, Item 4.

Accordingly, it is, on this 18th day of September 1961,

ORDERED that Plenary Retail Consumption License C-214, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Jack Harris, t/a Jack's Bar & Restaurant, for premises 357½-359 West Side Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., Monday, September 25, 1961 and terminating at 2:00 a.m., Thursday, October 5, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY (BASEBALL POOL) - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Herman E. Fischer)
t/a Fischer's Tavern)
40 Highland Avenue)
Clifton, New Jersey)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-60, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton.)

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

BY THE DIRECTOR:

Defendant pleaded guilty to the following charges:

- "1. On August 12, 1961 and prior thereto, you engaged in and allowed, permitted and suffered gambling, viz., the conduct of a lottery, commonly known as a 'baseball pool', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- "2. On August 12, 1961 and prior thereto, you allowed, permitted and suffered a lottery, commonly known as a 'baseball pool' to be conducted in and upon your licensed premises, and sold and offered for sale and possessed, had custody of and allowed, permitted and suffered tickets and participation rights in such aforementioned lottery, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On August 12, 1961, an ABC agent, while on the defendant's licensed premises, observed a large baseball score board on the wall behind the bar. In the drawers of the back bar, the agent found \$138 in a cigar box, a pad bearing names of patrons, dates and totals of money taken in and paid out, and also a canvas bag containing chips with the names of teams and other paraphernalia dealing with baseball pools.

The agent identified himself to the licensee, who admitted that he has been conducting a baseball pool on the licensed premises. He stated that each participating patron paid one-dollar a week and that there was a weekly pay-off for the highest score.

By way of mitigation, defendant has submitted a letter setting forth therein that he has been running the pool on a non-profit basis and that any monies left in the pool at the end of the baseball season were to be used to defray the expenses of a dinner for the benefit of players and their wives.

Defendant has no prior adjudicated record. Inasmuch as this case does not appear to be one of commercialized gambling, I shall suspend defendant's license for a period of ten days. Re Gorda, Bulletin 1331, Item 10, and cases cited therein. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 18th day of September, 1961,

ORDERED that Plenary Retail Consumption License C-60, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Herman E. Fischer, t/a Fischer's Tavern, for premises 40 Highland Avenue, Clifton, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m., Monday, September 25, 1961, and terminating at 3:00 a.m., Saturday, September 30, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against
Jeremiah A. McCloskey
811 Abbott Blvd., Palisade
Fort Lee, N. J.
Holder of Plenary Retail Consumption License C-24, issued by the Mayor and Council of the Borough of Fort Lee.

CONCLUSIONS
AND
ORDER

Defendant-licensee, Pro. se.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

On June 13, 1961, an ABC agent tested defendant's open bottles of alcoholic beverages and seized a quart bottle labeled "J & B Blended Scotch Whisky, 86 Proof" for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of the seized bottle, when compared with an analysis of the contents of a genuine bottle of the same brand, varied substantially in acids and solids.

Defendant has no prior adjudicated record. Defendant

alleges that the violation was committed by a bartender whom he has discharged. Nevertheless, defendant is responsible for the acts of his employee. Rule 33 of State Regulation No. 20. I shall suspend his license for ten days, the minimum period where one bottle is involved. Re Pieretti, Bulletin 1400, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 18th day of September 1961,

ORDERED that Plenary Retail Consumption License C-24, issued by the Mayor and Council of the Borough of Fort Lee to Jeremiah A. McCloskey, for premises 811 Abbott Blvd., Palisade, Fort Lee, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m., Monday, September 25, 1961 and terminating at 3:00 a.m., Saturday, September 30, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Robert L. and Sem G. Zachar)
t/a Zachie's Friendly Tavern)
Route 69)
Washington Township (Warren County))
PO RD Washington, N. J.,)

CONCLUSIONS
AND
ORDER

Holders of Plenary Retail Consumption License C-4, issued by the Common Council of Washington Township.)

Hauck & Sutton, Esqs., by Anthony M. Hauck, Jr., Esq., Attorneys for Defendant-licensees
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they possessed in and upon 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.

On June 23, 1961, an ABC agent tested defendant's open stock of liquor and seized three bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of the three bottles, when compared with the contents of genuine bottles of the same brands, varied substantially in solids and acids.

Defendants have no prior record. In a letter setting forth alleged mitigating circumstances, the attorneys for defendants state that both licensees have excellent reputations in the community and that neither has any personal knowledge as to how the violation occurred. I shall suspend defendants' license for twenty days, the minimum penalty imposed in a case involving three bottles. Re Sunset Inn, Inc., Bulletin 1397, Item 5. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of September, 1961,

ORDERED that plenary retail consumption license, C-4, issued by the Common Council of Washington Township to Robert L. and Sem G. Zachar, t/a Zachie's Friendly Tavern, for premises on Route 69, Washington Township (Warren County), be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Monday, October 2, 1961, and terminating at 3 a.m. Tuesday, October 17, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

Catherine Boczar)
t/a Shady Grove Tavern)
70 Jabez Street)
Newark 5, N. J.)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-776, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
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Defendant-licensee, Pro se.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

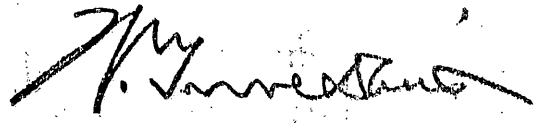
Defendant pleaded non vult to a charge alleging that she possessed on her licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On June 12, 1961, an ABC agent tested defendant's opened bottles of alcoholic beverages and seized four bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of the four bottles, when compared with the contents of genuine bottles of the same brands, varied substantially in solids and acids.

Defendant has a prior record. Effective January 23, 1956, the local issuing authority suspended her license for ten days for selling during prohibited hours; effective February 27, 1956, the local issuing authority suspended her license for fifteen days for sales of alcoholic beverages to minors and, effective June 22, 1959, the Director suspended her license for fifteen days for possessing alcoholic beverages not truly labeled. Bulletin 1287, Item 10. Since the two dissimilar violations in 1956 occurred more than five years ago, they will not be considered in fixing the penalty herein. The minimum suspension imposed in cases where four bottles are involved is twenty days. Re Lynch, Bulletin 1396, Item 2. Because of the similar violation which occurred within the past five years, I shall suspend defendant's license for a period of thirty days. Five days will be remitted for the plea, leaving a net suspension of twenty-five days. Re Riverview Tavern, Inc., Bulletin 1384, Item 5.

Accordingly, it is, on this 20th day of September 1961,
New Jersey

ORDERED that Plenary Retail Consumption License C-776, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Catherine Boczar, t/a Shady Grove Tavern, for premises 70 Jabez Street, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, October 2, 1961 and terminating at 2:00 a.m., Friday, October 27, 1961.



William Howe Davis
Director