

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

BULLETIN 1426

January 3, 1962

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STATE OF NEW JERSEY
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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BULLETIN 1426

January 3, 1962

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(PERMITTING ARRANGEMENTS FOR SEXUAL INTERCOURSE) - LICENSE
SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary
Proceedings against

Ritchie's Inc.
274 Halsey Street
Newark 2, New Jersey

Holder of Plenary Retail Consumption
License C-927, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Newark.

CONCLUSIONS

AND

ORDER

Mario V. Farco, 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 pleaded not guilty to the following charge:

'On March 29, 30 and April 4, 1961, you allowed,
permitted and suffered lewdness and immoral
activity in and upon your licensed premises,
viz., the making of overtures and arrangements
for illicit sexual intercourse and/or other
illicit and unnatural acts of perverted sexual
relations; in violation of Rule 5 of State
Regulation No. 20.'

"The evidence given herein by ABC Agent R may be briefly
summarized as follows: ABC Agents R and S visited the licensed prem-
ises on a number of occasions, in pursuance of an investigation con-
cerning alleged immoral activities thereon. On their third visit to
these premises, which was made on March 29, 1961, Agents R, S and Sa
entered the said premises at about 9:25 p.m. and were followed shortly
thereafter by Agent M, who sat away from the other agents. In the
course of this visit, Agent R engaged in conversation with Vinnie,
the bartender (later identified as Vincent Agrifolio), concerning a
female known as Ricky. He had seen this woman on these premises on
previous occasions and he asked the bartender, 'What's the story with
Ricky?' The bartender replied, 'She moves. She goes for \$10.' The
agent thereafter engaged in playing pool with the bartender and there-
after Ricky came over and joined the general conversation. Agent S
also participated at this time and Ricky then told them that her boy-
friend does not come to this tavern on Tuesdays and Thursdays and
that this would be a good time for them to return, 'with money, of
course'. She assured them that having sexual relations with them
here would be much more reasonable than in New York, and that she was
willing to be compromised for \$20.

"On April 4, 1961 at about 8:00 p.m., Agents R and S entered the premises, followed shortly thereafter by Inspector M. On this occasion, Agent R engaged in a conversation with one Richard D'Ambola, later identified as the president of the corporate-licensee, and owner of 90% of its outstanding shares of stock. They then involved Ricky, the female in a conversation in furtherance of their conversation on the previous evening. She informed them that she could not go out with them immediately as she had a prior commitment to engage in abnormal sexual relations with one of the other patrons. She then left with this patron and Agent R discussed with D'Ambola the fact that he had made a date with her to consort with him sexually that evening and asked him whether it was all right with him. D'Ambola replied, 'I don't care, do whatever you want.' At 9:00 p.m., Ricky returned and re-joined the agents, apologized for taking so long and, within the hearing of D'Ambola, concluded the final arrangements for their pre-arranged activity. It was decided that they should engage in a perverted sex act and each agent then gave her the agreed price of \$15 in five and ten-dollar bills, the serial numbers of which had been previously recorded. As the agents prepared to leave, D'Ambola asked them whether they were coming back and Agent R replied that they had too much money invested to stay, but they would be back. He stated further, 'Be sure to tell Vinnie that the price (to have intercourse) is not \$10, it is \$20.' D'Ambola laughed, and they then departed.

"When the three of them entered Agent S's car, two other ABC agents, accompanied by detectives from the Newark Police Department, approached the motor vehicle, identified themselves and Ricky surrendered the money theretofore given to her by the agents. They returned to the licensed premises and questioned D'Ambola who, at that time, made a general denial.

"On cross-examination, Agent R reiterated that Vinnie, the bartender, had originally pointed out Ricky to him on March 29th, and further stated that while they were bowling, Vinnie placed Agent S's hand on Ricky's thigh and said, 'Take a feel of this, it won't cost you anything.'

"It was stipulated that Agent S's direct testimony would substantially corroborate the testimony of Agent R.

"Upon cross-examination, Agent S reiterated that the bartender was part and parcel of the arrangements made with Ricky and that he 'motivated them'. He admitted, however, that he did not actually make any arrangements for the agents.

"ABC Inspector M testified that he sat at the bar and overheard much of the conversation on both March 29th and April 4th between the bartender, the other ABC agents and Ricky. He particularly corroborated the terms to motivation and the general set-up which included the prices charged by Ricky. He further corroborated the financial transactions that took place on April 4th. He further stated that he overheard a conversation at about 11:00 p.m. on April 4th, after the incident hereinabove referred to, in which D'Ambola was asked by Vinnie, 'How hard will they go on Ricky,' and he replied, 'She'll go to jail. This is her second time.'

"Agent Sa testified that he participated in the investigation on April 4, 1961 and arrived in the vicinity of these premises at about 8:00 p.m. He saw Ricky enter the premises and leave at about 9:00 p.m. with Agents R and S. The agents told him that they were going with her to engage in abnormal sexual relations, and she then surrendered the money heretofore given to her by these agents, which was checked against a list of serial numbers and found to have the same numbers as were on the list.

"On behalf of the corporate-licensee, Vincent Agrifolio testified that he is employed as a part-time bartender and was so employed on March 29, 1961. He denied that he introduced Ricky to the ABC agents or that he knew anything about this girl, other than that she was a frequent patron of this establishment. He admitted that he was the only bartender employed on that evening and had a general discussion concerning Ricky with Agents R and S. He said he was asked about this girl and that all he knew was that she had to meet her boyfriend. He stated the agent bought her drinks, but denied that he heard any other conversation or participated in any conversation relating to her alleged sexual activities.

"Richard D'Ambola, the president of the corporate-licensee, similarly denied that he participated in any arrangements with respect to Ricky, but noted that these two agents entered the premises, walked directly to Ricky, engaged in a conversation with her and thereafter left the premises with her. On cross-examination, he admitted that he knew this girl for about four or five months and had once put up bail for her in Elizabeth, in the sum of \$65, on a charge of 'disorderly conduct'. He denied that this charge was actually one of prostitution. He stated that he never tried to find out exactly what the charge was nor did he know that she had actually been fined \$100 in Elizabeth upon her conviction of the charge of prostitution.

"I have read and carefully considered the memoranda submitted by counsel for the defendant. Counsel has confined himself to comment on the facts and raised no issues of law therein, and states that the Division has failed to prove its case.

"The Division, of course, is required to establish its case by the preponderance of the believable evidence. Greenbrier v. Hock, 14 Super. 39 (App. Div. 1951). The testimony in this case presents a very sharp conflict and it is, therefore, necessary to weigh the testimony of the four ABC agents within their context, as against the testimony of the two witnesses produced by the defendant. Based upon credibility in the light of reasonableness and experience, I am satisfied that the ABC agents' testimony portrays a true picture of events which took place at the times in question. Agents R and S testified substantially the same in every detail and their testimony was wholly corroborated by the testimony of Agents Sa and M. The agents presented a forthright and believable account of the events that transpired on the dates in question, and their testimony remained unshaken under the energetic cross-examination by counsel for the defendant. This, in my view, was clearly contrasted to the testimony of defendant's witnesses who simply issued more or less general denials of the incidents alleged to have taken place on March 29th and April 4th. I was unimpressed, particularly, with the testimony of D'Ambola, the president and main stockholder of the corporate-defendant. He testified, in effect, that he did not know of the activities of Ricky in his tavern on this night or on any other night in question; that as far as he was concerned, she was just another patron and he did not notice any of her activities. It may be recalled that there was testimony in this case that on April 4th, while the agents were on the licensed premises, Ricky informed them that she had a date with another patron and would return to the premises in about half an hour. She then left the premises with this patron and did indeed return shortly thereafter. This testimony is significant in view of the complete denial on the part of D'Ambola. D'Ambola was asked the following questions:

'Q How long have you known Rose Marie Labraccio, that is, Ricky? A About four or five months.

'Q Have you ever befriended her in any way? A No.

'Q Didn't you one time put up bail when she was arrested in Elizabeth? A Yes.

'Q When was that? A Oh, I guess about I knew her a month, I guess, and she called and said that she was in on a disorderly conduct charge and if I would bring her \$65.

'Q That was a prostitution charge, wasn't it? A I said it was a disorderly conduct charge. I don't know what it was.'

"He testified further that he drove Ricky home, and she merely told him that she was in trouble. He never inquired of her or of the police of the exact nature of the charge and he denied further that he knew that she was subsequently fined \$100 on her conviction for prostitution.

"It seems incredible that this witness did not know of her activities in the light of his prior association with this woman. It would be most unusual for an individual to go to another county, post bail of \$65 (which is the usual fee for a bail bond in the sum of \$1,000), and not know the charges on which the bail has been posted. It is well known that, in the usual case of disorderly conduct, no such bail is ever required, and D'Ambola, being a man of business experience, would most likely ascertain why this high bail was being set on this woman. His testimony in this respect is further suspect in the light of Agent M's assertion that after the confrontation with Ricky on April 4th, D'Ambola reflected to Agrifolio that Ricky would probably 'go to jail' because this was her second offense (soliciting for prostitution). His knowledge of this fact emanated from his own previous experience as her benefactor in her earlier conflict in Elizabeth. Thus, his veracity herein is brought sharply in focus.

"In addition, this female patron, unescorted in this tavern, left the premises on at least one occasion, with a single patron, according to the undisputed testimony of the ABC agents. It is not an adequate argument, as advocated by defendant, that he did not see this woman leave the premises or observe her conduct on the premises. It is the duty of the agents, servants or employees of the corporate-defendant to use their eyes and their ears in pursuance of their relegated duties. Bilowith v. Passaic, Bulletin 527, Item 3. A licensee has the highest degree of responsibility to his fellow citizens and is under a duty, not only to regulate his own personal conduct in a manner consistent with the permit that he has received, but also to control the acts and conducts of patrons who visit these premises. I believe, on the basis of the testimony adduced herein, that the defendant, through its agents or employees, did allow, permit and suffer lewd and immoral activity in and upon the licensed premises, namely the making of overtures and arrangements for illicit sexual intercourse, in violation of Rule 5 of State Regulation No. 20.

"This is the threshold issue. I believe that there is some doubt as to whether the agents and employees actually participated in making the actual arrangements. There is no doubt, however, that in the words of Agent R, the overtures to Ricky were motivated, in part, by the defendant's agents and employees. Supporting evidence was also adduced with reference to an incriminating conversation that took place between the female, Ricky, and the agents outside the premises, which tended to prove and give meaning to the facts in issue. This was part of the res gestae and gave further emphasis and support to the charge herein. 32 C.J.S. Sec. 411 et seq.; State v. Kane, 77 N.J.L. 244; Hannaford v. Central R. R. Co. of N. J., 115 N.J.L. 573, 575; Re Schumacher, Bulletin 901, Item 5.

"It is my view that the acts of the defendant's agents and employees were clearly inculpatory, and inconsistent with the high measure of responsibility required of liquor licensees. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946). In this case, the agents and employees knew, or should have known, of Ricky's activities, and by their conduct, permitted and suffered the occurrence of this violation. The defendant, therefore, under these circumstances, is clearly inculpatory by the profligacy of the deliberate misconduct of his employees. Such conduct constitutes a grave threat to public health, welfare and morals and, unless eliminated, tends toward abuse and debasement. Kravis v. Hock, 135 N.J.L. 269 (Sup.Ct. 1947); In Re Schneider, 12 N. J. Super. 449, 456.

"After an examination of all of the evidence and documents in this case, I recommend a finding of guilt.

"The defendant has no prior adjudicated record. Were it clearly established that the employees had actually procured Ricky to engage in sexual relations with the agents, I would have unhesitatingly recommended that defendant's license be revoked. Re Merjack Corp., Bulletin 998, Item 1. However, in the instant case, concrete proof of such initiative and direct action does not appear. Under the circumstances, I recommend the suspension of its license for a period of sixty days. Re Cozy Circle, Inc., Bulletin 1413, Item 1, and Re A & B Bar, Inc., Bulletin 1416, Item 1.

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

Having carefully considered the record herein, including the transcript of the proceedings, the exhibits, the memorandum filed with the Hearer by defendant's attorney, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 31st day of October 1961,

ORDERED that Plenary Retail Consumption License C-927, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ritchie's Inc., for premises 274 Halsey Street, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m., Monday, November 13, 1961 and terminating at 2:00 a.m., Friday, January 12, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

2. SALE ON CREDIT AT RETAIL - HEREIN OF EXTERIOR DISPLAY OF CREDIT CARD SERVICE EMBLEM - PREVIOUS RULING MODIFIED.

October 25, 1961

S. E. Zubrow Company
Philadelphia 2, Pa.

Please refer to our letter of June 9, 1961 pertaining to the purchase of alcoholic beverages by patrons of retail establishments of American Express, Diners' Club or other credit cards.

In our letter we advised you of our then policy (as set forth in Bulletin 1298, Item 6) prohibiting retailers from advertising their participation in such a program "except solely by a dignified sign on the interior of the premises not visible from the exterior."

I now wish to advise you that, upon careful review, I have decided to relax our previous policy and will now permit retailers to place a small dignified sign, emblem or decalcomania, showing their membership in the program, in or upon their premises even though such sign, emblem or decalcomania is visible from the exterior of the premises.

Very truly yours,

William Howe Davis
Director

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT PERFORMANCE, INDECENT LANGUAGE AND CONDUCT) - PERMITTING FEMALES AT A PUBLIC BAR IN VIOLATION OF LOCAL REGULATION - HOSTESSES - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA - PREMISES CLOSED - EFFECTIVE DATES TO BE FIXED BY FURTHER ORDER.

In the Matter of Disciplinary)
Proceedings against)

Martine's Restaurant (A Corp.))
t/a Martine's Restaurant)
5401 Route 38)
Pennsauken, N. J.)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption)
License C-3, issued by the Township)
Committee of Pennsauken Township.)

Defendant-licensee, by W. Leslie Rogers, Secretary.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to the following charges:

- "1. On Saturday night September 9 and early Sunday morning, September 10, 1961, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises in that a female performed for the entertainment of your customers and patrons in a lewd,

indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.

- "2. On Saturday night September 9 and early Sunday morning September 10, 1961, you allowed, permitted and suffered females to sit or stand at a public bar on your licensed premises; in violation of Section 4A of an Ordinance adopted by the Township Committee of the Township of Pennsauken on April 27, 1936, as amended December 15, 1947.
- "3. On Saturday night September 9 and early Sunday morning September 10, 1961, you allowed, permitted and suffered a female employed on your licensed premises, viz., the above mentioned female entertainer, to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20."

Two ABC agents entered defendant's licensed premises at 9:00 p.m. on September 9, 1961, walked through a foyer to a service room where they took seats at a counter which was attended by a female employee. At about 9:30 p.m., the agents left the service room and entered a larger service room wherein approximately 200 patrons, both male and female, were seated at tables watching a show then in progress. A female entertainer and a three-piece band were on a small stage and the agents heard the said female refer to the establishment in an indecent manner. The agents requested seats in the "show room" but were informed by a host that no seats were available until the next performance. The agents returned to the smaller service room where they observed eleven patrons, among whom were three females, seated at the bar, all of whom were consuming alcoholic beverages. At 11:00 p.m., the agents entered the "show room", obtained seats at a table and soon thereafter the place was filled to capacity. At 11:10 p.m. the female whom the agents had seen performing previously that evening, took a seat at the piano, straddled an upright microphone and addressed the audience in a coarse and filthy manner. She then related extremely filthy stories and anecdotes which were so obscene and disgusting that a repetition of them herein would serve no useful purpose. Thereafter, the female entertainer and an unidentified male engaged in a sensual type of dance during which they simulated sexual intercourse and upon one occasion the female lifted her leg, placed her hand on her private part and made several obscene gestures. The agents observed the female entertainer accepting a number of drinks from and at the expense of male patrons.

At 12:10 a.m. on Sunday, September 10, 1961, when the "entertainment" ended, the agents identified themselves to John Uhland, the bartender, who admitted serving drinks of alcoholic beverages to females seated at the bar. Thereupon, the attention of Martin Lerner, vice-president of the corporate-licensee, was called to the women seated at the bar consuming alcoholic beverages. The agents requested that Lerner call in the female entertainer, but after an attempt to locate her, he advised the agents that she had left the premises. When questioned by the agents about the type of entertainment, Lerner said, "I think she's sensational. What can I say, fellows, after all, I'm a businessman."

Defendant has no prior adjudicated record. However, our records disclose that W. Leslie Rogers, secretary of defendant and holder of 98% of its capital stock, was the holder of a plenary retail consumption license which had been transferred to him for other premises by Cork 'n Bottle, Inc., while disciplinary proceedings against said Cork 'n Bottle, Inc., were pending, and that the penalty

of forty-five days imposed against said Cork 'n Bottle, Inc. was served by said W. Leslie Rogers as the transferee of said license. Re Bulletin 1287, Item 8. Inasmuch as he was not the holder of or had any interest in said license when the violation was committed, it will not be considered in fixing the penalty herein.

Because of the aggravating circumstances appearing in the instant case, I shall suspend defendant's license for a period of sixty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of sixty days. Recent inspections by agents of this Division disclose that no one is operating under the license at present and thus, no effective penalty can be imposed at this time. The effective dates for the suspension will be fixed by the entry of a further order herein after said licensed business resumes operation.

Accordingly, it is, on this 31st day of October 1961,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of Pennsauken Township to Martine's Restaurant (A Corp.), t/a Martine's Restaurant, for premises 5401 Route 38, Pennsauken, be and the same is hereby suspended for sixty (60) days, the time to be fixed by further order as aforesaid.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary
Proceedings against

Timothy Mondello
t/a Mondello's Store
Rt. #46
Mount Olive Township
PO Netcong, New Jersey

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Distribution
License D-2, issued by the Township
Committee of the Township of Mount
Olive.

Frank Metro, Esq., Attorney for Defendant-licensee.
David S. Piltzer, 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 June 17, 1961, 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., Anthony ---, age 18; in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein, the Division called as its witnesses Anthony ---, Patricia ----, Robert --- and an ABC agent hereinafter referred to as Agent V.

"Anthony testified that he was born on August 18, 1942, and, hence, was 18 years of age at the time of the alleged violation; that on Saturday, June 17, 1961, at about 7:00 p.m., he and two minor companions, Patricia and Robert, drove to the immediate vicinity of the defendant's licensed premises and that Robert parked his car in front of the same. Anthony further testified that he alone entered the licensed premises; that he walked to the rear of the premises, took two six-packs of Schaefer beer from a cooler and brought them to Mr. Mondello, who was behind the cash register (at the check-out counter); that Mr. Mondello, without making any inquiry of him about his age, placed the beer in a brown paper bag, handed him the package and, in payment thereof, accepted \$2.30, and that he carried the alcoholic beverages from the premises to his friends in the car.

"On cross-examination, Anthony testified that at the age of 16, he left school in the seventh grade; that ever since that time he has been employed as a trucker's helper by his father; that his first visit to the defendant's licensed premises was on a Friday or Saturday night in December 1960, at which time he, without being required to make any written representation of his age, purchased two pint bottles of Italian Swiss Colony wine from the licensee and that in payment thereof, he gave Mr. Mondello \$1.10. Anthony also testified that he had stated to the local police that on the night in question, he had purchased eight containers of beer at another licensed premises and that, in a signed statement which he had given to an investigator of defendant's attorney, he denied that on June 17, 1961 he had purchased beer at the defendant's licensed premises.

"Anthony further testified that he does not remember June 17th aforesaid as the date that he had purchased the beer at the defendant's licensed premises and that he recalls it was on a Saturday night because he was stabbed that very same night and, 'I was in the hospital to Sunday morning'.

"On redirect examination, Anthony testified that Patricia and Robert were with him when he was stabbed and that he had purchased the aforementioned two six-packs of beer earlier in the evening, prior to the stabbing incident.

"On recross-examination, Anthony testified that on the night he was stabbed he had purchased beer at the defendant's licensed premises and at a tavern; that he had between seven and eight dollars in his possession; that in his signed statement given to the local police he stated that he had purchased beer on the night in question at 'Mondello's' and another licensed premises.

"Patricia testified that on June 17, 1961, between 7:00 and 7:30 p.m. she, Anthony and Robert arrived in the immediate vicinity of the defendant's licensed premises; that Robert parked his car in front of the same; that she observed Anthony, emptyhanded, enter the licensed premises and about fifteen minutes later emerge therefrom with a brown paper bag; that Anthony carried the bag to the car and placed it on the floor under the dash board; that she looked into the bag and in it saw two six-packs of Schaefer beer; that she had consumed some of the beer and that the beer was cold.

"On cross-examination, Patricia testified that when Anthony brought the beer to the car, he said, 'Let's get out of here'; that 'he said it in a hurry in case the Mount Olive police came by because the Mount Olive police know he isn't old enough to get served and he didn't want to get caught'; that on the night in question, Anthony did not discuss with her or Robert the purpose of his visit to the

licensed premises; that she and Robert, however, knew it 'because other times he had'; and that she drank some of the beer 'right after we left Mondello's store'.

"Patricia further testified that about 8:30 on the night in question, she, Robert, Anthony and another minor drove to a tavern where Anthony obtained eight containers of beer.

"Robert testified that on June 17, 1961, at about 7:30 p.m., he drove Anthony and Patricia to the defendant's licensed premises; that he parked his car in front of the same; that he observed Anthony, emptyhanded, enter the licensed premises; that about ten or fifteen minutes later, he observed Anthony, in possession of a brown paper bag, emerge from the licensed premises; that Anthony carried this package into the car; that he had observed that the bag contained two six-packs of beer; that he had consumed some of the beer and that it was cold.

"On cross-examination, Robert testified that he is a member of the National Guard; that he and his parents have been patrons of the defendant for many years and that the defendant operates a superette which contains three departments (liquor, soda fountain and luncheonette, and grocery and delicatessen). Robert further testified that on the night in question, he drove Anthony to Mondello's; that he had assumed Anthony was going there to buy beer; that he did not contribute any money towards the purchase of the beer; that his car was parked about fifteen feet from the licensed premises; that Anthony, after he had left the licensed premises, approached the car in a normal gait; that Anthony placed the beer on the floor in front of the car and that he, Patricia and Anthony occupied the front seat. Robert further testified that later in the evening, he drove Anthony to a tavern to purchase beer; that he had drunk two of the cans of beer which Anthony obtained at defendant's licensed premises, and that he did not consume any of the beer Anthony had purchased at the tavern.

"Agent V testified that on June 30, 1961, he and Agent N interviewed Mr. Mondello at the licensed premises in the presence of Anthony and another minor; that he informed Mr. Mondello that on Saturday night, June 17, 1961, he is alleged to have sold Anthony, a minor, two six-packs of Schaefer beer; that Mr. Mondello replied that on the night in question he was busy; that he is busy every Saturday night; that he might have made the sale and that he is unable to recall what patrons had visited the premises on the night of June 17th aforesaid.

"On cross-examination, Agent V testified that the other minor was brought to the licensed premises because he was one of the minors apprehended on the night in question; that Anthony was stabbed shortly after midnight on June 18, 1961. Agent V further testified that Anthony had informed him that he had purchased the two six-packs of Schaefer at the defendant's licensed premises; that he had taken a written statement from Anthony and that the statement does not make any reference to a brown paper bag.

"At this point, it was stipulated by counsel that if Agent N were examined, his direct testimony would be the same as Agent V's.

"At the end of the Division's case, the attorney for the defendant moved to dismiss the charge on the ground that the beer in question was not proven to be an alcoholic beverage within the purview of the Statute. I find no merit to this contention. Based on the evidence adduced by the Division, I am satisfied that the beer in question was a beverage that had an alcoholic content of more than one-half of one percent by volume and, hence, constitutes an alcoholic beverage within the statutory definition at R.S. 33:1-1(b). See Holmes v. Cavicchia, 29 N.J. Super. 434, and R.S. 33:1-1. I recommend that the motion be dismissed.

"Timothy Mondello, the licensee, on his own behalf, testified that he operates a self-service superette in which he sells groceries, delicatessen, soft drinks and alcoholic beverages; that he has warm beer on open display in his store; that he has cold beer in a cooler in the rear of his store and in a refrigerated showcase with sliding doors along a wall and that the view of the liquor department is unobstructed.

"Mr. Mondello further testified that he knows Anthony only as a patron who had visited his premises on three or four occasions to purchase soda; that he does not remember seeing Anthony on the premises on the night in question; that he has no knowledge of ever selling Anthony any alcoholic beverages; that he did not sell any alcoholic beverages to Anthony; that he has known Robert for about ten years and that Robert and his family are patrons of his store. Mr. Mondello further testified that Agent V interviewed him as above testified; that he informed Agent V that, 'I never sold it to him (Anthony). Could be possible they stole it while I was busy'.

"On cross-examination, Mr. Mondello testified that on June 17, 1961, he had Schaefer beer in six-packs on his premises; that it had an alcoholic content of more than one-half of one per cent by volume; that he is the only one in attendance in his store; that on infrequent occasions, his son assists him; that except when answering the telephone, he is always behind the check-out counter at the cash register which is located near the only entrance to the premises and where the patrons pay him for their purchases before leaving the same and that behind the aforesaid counter he keeps a supply of bags in which he places any beer brought to him by the patrons.

"On redirect examination, Mr. Mondello testified that on occasions he leaves his post at the cash register to serve patrons who require service at either of the aforesaid departments; that bags are also available in the store for patrons and that he supplies bags for six-packs of beer when patrons request the same.

"Anthony, called as a witness by the defendant, reiterated his testimony that he paid the licensee for the beer at the check-out counter and that the licensee placed the beer in a bag.

"Agent V, recalled by the Division, denied that the licensee, when interviewed by him, made any mention that Anthony had stolen the alcoholic beverages or that he could have obtained the same by theft.

"This case presents a conflict between the testimony of the defendant and the witnesses for the Division. However, I find as a fact from the testimony of the Division's witnesses that on June 17, 1961, Mr. Mondello sold Anthony, a minor, 18 years of age, two six-packs of Schaefer beer, in violation of Rule 1 of State Regulation No. 20. I further find as a fact that Mr. Mondello placed the alcoholic beverages in a brown paper bag, handed the package to Anthony and, in payment thereof, accepted \$2.80.

"After reviewing the evidence, the exhibits and the brief submitted by defendant's attorney, I conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence, and I recommend that defendant be found guilty as charged. Defendant has no prior adjudicated record. It is further recommended, therefore, that an order be entered suspending the defendant's license for fifteen days, the minimum suspension for sale of alcoholic beverages to an 18-year-old minor. Re Club 75 Corporation, Bulletin 1395, Item 4."

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

Having carefully considered the record herein, including the brief of defendant's attorney, the exhibits, the Hearer's Report and exceptions and written argument thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein. Hence, I find the defendant guilty as charged.

Accordingly, it is, on this 31st day of October, 1961,

ORDERED that Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Mount Olive to Timothy Mondello, t/a Mondello's Store, for premises on Route #46, Mount Olive Township, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m., Monday, November 6, 1961, and terminating at 9:00 a.m., Tuesday, November 21, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED
LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)	
Proceedings against)	
Henry Miller)	CONCLUSIONS
t/a Carolina Grille)	
1221-1223 Atlantic Avenue and)	AND
3 & 5 N. S. Carolina Avenue)	
Atlantic City, N. J.)	ORDER
Holder of Plenary Retail Consumption)	
License C-230, issued by the Board)	
of Commissioners of the City of)	
Atlantic City.)	

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 alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On August 3, 1961, an ABC agent tested defendant's open bottles of alcoholic beverages and seized three bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of one quart bottle labeled "Imported Seagram's V.O. Canadian Whisky, 86.8 Proof" varied substantially in solids and acids and one quart bottle labeled "Schenley Reserve Blended Whiskey 86 Proof" varied substantially in solids from the contents of genuine bottles of the same brands.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days, the minimum penalty in cases involving two bottles. Re Keller, Bulletin 1415, Item 12. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 30th day of October 1961,

ORDERED that Plenary Retail Consumption License C-230, issued by the Board of Commissioners of the City of Atlantic City to Henry Miller, t/a Carolina Grillo, for premises 1221-1223 Atlantic Avenue and 3 & 5 N. S. Carolina Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days, commencing at 7:00 a.m., Monday, November 6, 1961 and terminating at 7:00 a.m., Thursday, November 16, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

6. 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)

Elmann, Inc.)
576 Jackson Avenue)
Jersey City, New Jersey,)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption)
License C-256, issued by the Municipal)
Board of Alcoholic Beverage Control of)
the City of Jersey City.)

ORDER

Defendant-licensee, by Elmer H. Nuss, President
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

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

On Wednesday, September 13, 1961, at 10:30 p.m., and again at 10:45 p.m., an ABC agent observed Melvin Young (the bartender) sell to two different patrons two 12-ounce bottles and a three-pack of beer, respectively, in original containers for consumption off the licensed premises. At 11 p.m., as the bartender was getting a six-pack of 12-ounce cans of beer for another patron, the said agent ordered and was served six 12-ounce cans of beer. The agent, after making payment, left the licensed premises with the six cans of beer, but returned immediately thereafter with his fellow-agent who had waited outside. Both agents identified themselves to Young who verbally admitted the violation.

Defendant has no previous adjudicated record. I shall suspend defendant's license for the minimum period of fifteen days. Re Zawoyski, Bulletin 1410, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 31st day of October 1961,

ORDERED that plenary retail consumption license C-256, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Elmann, Inc., for premises 576 Jackson Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, November 13, 1961, and terminating at 2 a.m. Thursday, November 23, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISQUALIFICATION REMOVAL PROCEEDINGS - CONVICTION OCCURRING AFTER ENTRY OF ORDER REMOVING DISQUALIFICATION BECAUSE OF A PRIOR CONVICTION - APPLICATION GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R.S. 33:1-31.2.)

CONCLUSIONS

AND

Case No. 1638

ORDER

BY THE DIRECTOR:

On December 29, 1943, the then Commissioner entered an order removing petitioner's statutory disqualification because of his conviction on May 27, 1938 of a crime (possession of an unregistered still) involving moral turpitude. Bulletin 600, Item 7. On March 7, 1946 applicant was convicted of bookmaking and on July 16, 1947 he was convicted on a charge of obtaining merchandise under false pretenses, both being crimes involving moral turpitude. On May 5, 1953 applicant filed an application to remove his disqualification. The petition was dismissed by the then Director on July 21, 1953 because of said convictions and the fact that the applicant actively participated (in February 1953) in the hindering of an investigation, in violation of R.S. 33:1-35. Bulletin 980, Item 4. On October 6, 1954, the applicant filed another application to remove his disqualification and on December 2, 1954, I dismissed the same because I was unable to find that he had been law-abiding during the preceding five years. Bulletin 1044, Item 6.

At the hearing held herein, applicant (43 years old) testified that all his life he has lived in the same area where he presently resides; that he is married and living with his wife and five children, whose ages range from one month to thirteen years; that for the past five years he has been self-employed selling storm windows, jalousies and storm doors, and that for two years prior thereto he was similarly engaged as a salesman for one company. Applicant further testified that he is asking for the removal of his disqualification to accept employment as a bartender; that his business has fallen off and that ever since his conviction on July 16, 1947 he has not been convicted of any crime or arrested.

The police department of the municipality wherein the applicant resides reports there are no complaints or investigations presently pending against the applicant.

The applicant produced three character witnesses (a member of the bar of the State of New Jersey, a retired salesman and a police officer) who testified that they have known the applicant for over ten years and that, in their opinion, he is now an honest, law-abiding citizen with a good reputation.

Only on a few occasions since the Division of Alcoholic Beverage Control was established has an application been made to remove disqualification because of a conviction occurring after the entry of a previous order removing disqualification. Under the circumstances, it is readily understandable why I should hesitate to grant relief in such a case unless I am convinced that the petitioner is entitled to another chance.

I am mindful of the fact that these are rehabilitation proceedings and shall be guided by the favorable testimony of the character witnesses and the fact that the applicant has not been convicted of any crime since July 16, 1947. I shall extend to petitioner another chance to prove his worthiness to be associated with the liquor industry.

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in this State. I conclude that such association will not be contrary to the public interest.

Accordingly, it is, on this 1st day of November 1961,

ORDERED that applicant's statutory disqualification because of the convictions described herein, be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary
Proceedings against

Joseph Conti & Meyer Knapp
t/a Conti's Bar
1725 Hudson Blvd.
Jersey City 5, N. J.,

CONCLUSIONS

AND

Holders of Plenary Retail Consumption
License C-516, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Jersey City; continued,
effective October 6, 1961, in the name of
Meyer Knapp, individually,
for the same premises.

ORDER

Archie Elkins, Esq., Attorney for Defendant-licensees
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

- "1. On September 20, 26 and 28, 1961, you allowed permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game' on all of said dates and on horse races on the said dates of September 26 and 28, 1961; in violation of Rule 7 of State Regulation No. 20.
- "2. On September 20, 26 and 28, 1961, you allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises and on the said date of September 28, 1961, you possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On the dates set forth in Charge 1 herein, Meyer Knapp (one of the licensees) accepted "numbers" bets from patrons and an ABC agent on the licensed premises, and on the latter two dates Arthur B. Whaley (a patron) accepted horse race bets at the premises from other patrons, Knapp and an ABC agent who had been introduced to Whaley by Knapp. On September 28 aforesaid, Whaley, after accepting payment of five dollars for a horse-race bet from one of two agents on the premises, left the premises. The agent followed Whaley into the street where, as prearranged he met the local police accompanied by other ABC agents. The

agents, together with Whaley and the police, returned to the licensed premises and identified themselves to Knapp.

The agents found \$23.65, including two one-dollar bills which had been marked by the agents, in a cigar box on the back-bar, a scratch sheet dated September 28, 1961, in Knapp's possession and a slip of paper evidencing seventeen "numbers" bets totaling \$3.35 which Knapp had thrown to the floor.

The agents also found in Whaley's possession a slip of paper bearing twenty-nine "numbers" bets for a total of \$9.50; a scratch sheet; \$207, including aforesaid five-dollar bill which had been marked by the agents, and a slip of paper used by the agent to make said bet.

Whaley, in a signed, written statement dated September 28, 1961, admitted accepting aforesaid bet of \$5 from the agent.

By way of mitigation the attorney for Knapp has sent me a letter which I have carefully read, together with the reports of the agent. However, I do not find any extenuating circumstances in this case which would impel me to impose less than the minimum penalty in cases of this kind.

Defendants, as such, have no prior adjudicated record. However, when Meyer Knapp held the license in partnership with Isadore Knapp for the same premises, it was suspended by the then Director for ten days, effective June 5, 1950, for possession of illicit liquor. Re: Knapp & Knapp, Bulletin 878, Item 5. Since the dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. Re Ralph & John's Tavern, Inc., Bulletin 1414, Item 3. I shall suspend defendants' license for the minimum period of twenty-five days on the charges herein. Re Elmer, Bulletin 1406, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of defendants' license for a period of twenty days.

Accordingly, it is, on this 6th day of November 1961,

ORDERED that plenary retail consumption license C-516, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Joseph Conti & Meyer Knapp, t/a Conti's Bar, and continued, effective October 6, 1961, in the name of Meyer Knapp, individually, for premises 1725 Hudson Blvd., Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday November 14, 1961, and terminating at 2 a.m. Monday, December 4, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

9. STATE LICENSES - NEW APPLICATIONS FILED.

Joseph A. Ringenback
t/a Premium Beer Distributors
303 Rhode Island Avenue
East Orange, New Jersey
Application filed December 27, 1961
for Limited Wholesale License.

Peter Kamper Jr.
t/a Turnpike Beverages
Rear 1329 Hamburg Turnpike
Wayne, New Jersey
Application filed December 27, 1961 for
person-to-person, place-to-place transfer
of State Beverage Distributor's License SBD-198
from Louis Kraemer, Receiver of Peter Piper Distri-
butors, Inc., 811 Georges Road, North Brunswick,
New Jersey.

William Howe Davis
William Howe Davis
Director