

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N.J.

BULLETIN 1115

JUNE 6, 1956.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

June 6, 1956.

BULLETIN 1115

1. APPELLATE DECISIONS - MacGEORGE AND KATSCH v. NEWARK.

HELEN MacGEORGE, ROY MacGEORGE)
and BRUNO C. KATSCH, trading as)
OWL CAFE,)

Appellants,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Leslie H. Cohen, Esq., Attorney for Appellants.
Vincent P. Torppey, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellants' plenary retail consumption license for ten days (to commence January 9, 1956) after finding them guilty of a charge alleging that they allowed, permitted and suffered a brawl, act of violence, disturbance and unnecessary noises in and upon their licensed premises, in violation of Rule 5 of State Regulations No. 20.

Upon the filing of this appeal I entered an order, on December 20, 1955, staying the order of suspension, pending determination of the appeal. R. S. 33:1-31.

This case was presented upon the transcript of the proceedings before respondent, in accordance with the provisions of Rule 8 of State Regulations No. 15. On May 1, 1956 the attorney for appellants appeared before me on oral argument. The attorney for respondent stated he would not be present.

The petition of appeal alleges that "The action of the respondent was erroneous in that it was unsupported by the evidence, arbitrary, capricious and abuse of discretion."

At the hearing below, respondent presented the following testimony:

Luke Cullen testified that he, his brother and two male companions arrived at appellants' licensed premises at 1:00 a.m. on September 10, 1955 and took seats at the bar; that Helen MacGeorge, one of the appellants, and John Terhune were tending bar; that a short time thereafter Larry Scalvino entered the premises and tapped him on the back; that he turned around and said "Hello, Larry" and then directed "Jack" Terhune to serve Larry a drink; that "Larry took the drink, and mumbled something and the next thing Larry got up and took a shot at me"; that Larry struck him on "The right-hand side of the forehead. I ducked the punch"; that he then knocked Larry down; that "My brother and Frank Delaney and Jack broke up the fight. And then Larry left the premises. A few minutes later, four or five minutes later, he came back in and I was standing behind Frank and Jimmy and he hit me twice on the back of the head * * *. I turned around to find out what was going on and when I did I got hit in the eye, over

here [indicating on self]. I am not sure whether it was a glass or stapling machine, but it looked like a piece of glass"; that Larry left the tavern after the first fight but no one asked him (Luke Cullen) to leave the premises.

Frank Gallanti testified that he was seated at the bar on the morning in question when the next thing he knew Luke Cullen and Larry Scalvino were in a fight; that the fight was stopped and Larry "vanished from the scene"; that later Luke Cullen and Larry were again engaged in a fight; and that "five or ten minutes" elapsed between the first and second fight. It was stipulated by the attorneys for the respective parties that if James Cullen were called as a witness, his testimony would be similar to that of Frank Gallanti.

Larry Scalvino testified that when he arrived in appellants' tavern, he saw Luke Cullen and that he tapped Luke after Luke had said "Hello"; that he ordered a drink for himself when Luke questioned him "Why did you pass me by"; that Luke then spilled the drink served to him (Larry) and after engaging in conversation Luke said "I am going to wipe up the bar with you"; that he questioned Luke "What did I ever do to you?" and then took "a swing at him, and missed"; that Luke struck him in the eye and "started to jump all over me"; that he "run out from the rear and ran home" and did not return to the appellants' premises.

Dominick Collucci testified that he was present on the early morning when Luke and Larry fought; that the place was noisy; that his attention was attracted to the fight when "At first they were swinging and everything"; that Larry left but returned "and his shirt was ripped"; that after the second fight between Luke and Larry all the patrons left and the appellants' place was closed.

For the appellants, a statement (marked as Exhibit R-2 in evidence with the consent of attorney for the appellants), dated September 11, 1955, given to the police by John Terhune, a bartender employed on the licensed premises on September 10, 1955 when the alleged brawl occurred, disclosed that Terhune served Larry a drink but when he returned to give him change he saw that the drink had been spilled on the bar; that he immediately served him another drink; that as he went to the men's room he heard Larry say "Now Willie, please don't bother me"; that he did not see what took place but while in the men's room heard a commotion and when he came out saw Larry pushing his way toward the door; and that Helen MacGeorge ordered him to turn out the lights and close up the place.

Helen MacGeorge, one of the licensees, testified that she was in the licensed premises on the early morning in question when "There was a skirmish, it seemed like. I am nervous. They were actually swinging and it seemed like everybody was congregating that side of the bar. And I shouted to them to stop it, and I went to the telephone booth." She further testified that "As far as I can remember, there was just one fight. The first fight, if there was one, I didn't see any. I seen them swinging. That was to me one fight"; that she saw Larry come into the premises and a "few minutes" thereafter the fight started; that she noticed Luke go down to Larry but didn't see them order any drinks and she did not see Larry's drink spilled on the bar; that when she observed a fight between Luke and Larry she turned out the light and told everyone to go home and "got upstairs as quick as I could".

Appeals to the Director from action of the local issuing authority are heard de novo and the burden of establishing that

the action of such issuing authority was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15; Neu v. Irvington, Bulletin 923, Item 3; Laurence Harbor Amusement Corporation v. Madison, Bulletin 955, Item 1.

I am satisfied after a careful examination of the entire record before me that appellants have failed to sustain the burden. I am also satisfied that Luke and Larry engaged in two separate fights on the licensed premises on the morning in question. After the first fight Larry left the premises but returned a short time thereafter and engaged in another fight with Luke. Helen MacGeorge, one of the licensees, and John Terhune, the bartender, knowing the bad feeling that existed between the two men, should have been prepared when Larry reappeared in the premises after the first brawl. Whatever the provocation, and irrespective of the cause, the licensee in charge in the instant case failed to take effective steps to prevent the second brawl from occurring on the licensed premises.

The action of respondent will be affirmed, the present appeal will be dismissed and the ten-day suspension originally imposed will be reinstated.

Accordingly, it is, on this 3rd day of May, 1956,

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

ORDERED that the ten-day suspension by respondent of appellants' Plenary Retail Consumption License C-428 for premises 366 Sixth Avenue, Newark, be and the same is hereby restored to commence at 2:00 a.m. May 14, 1956, and terminate at 2:00 a.m. May 24, 1956.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION FOR CLUB LICENSE - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - LICENSE IMPROVIDENTLY ISSUED - LICENSE CANCELLED.

In the Matter of Disciplinary Proceedings against
CAPE MAY COUNTY TUNA CLUB
1301 Beach Avenue
Cape May, N. J.,
Holder of Club License CB-224,
issued by the Director of the
Division of Alcoholic Beverage
Control.

CONCLUSIONS
AND ORDER

George M. James, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant, while not entering a formal plea, advised that it did not wish to contest either the disciplinary charges or the cancellation proceedings. The disciplinary charges read:

"1. In your application dated June 14, 1955, filed with the Director of the Division of Alcoholic Beverage Control, upon which you obtained your current club license, you falsely stated 'No' in answer to Question 29, which asks: 'Has any individual, ...other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Joseph F. O'Neill had such interest in that he was the real and beneficial owner of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. From in or about May 1954 to in or about November 1954 you knowingly aided and abetted Alfonso V. Gredone, and from in or about June 1955 to the present time you knowingly aided and abetted Joseph F. O'Neill, to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive club licenses; thereby yourself violating R. S. 33:1-52.

"3. In your aforesaid application, you falsely stated 'Yes' in answer to Question 19, which asks: 'Has the club been in active operation in the State of New Jersey for at least three (3) years immediately prior to this application?' whereas in truth and fact you had not been in active operation in this State for that period; said false statement being in violation of R. S. 33:1-25.

"4. In your aforesaid application, you falsely stated 'Yes' in answer to Question 20, which asks: 'Has the club been in exclusive continuous possession and use of club quarters for at least three (3) years immediately prior to this application?', whereas in truth and fact you had not been in exclusive possession and use of club quarters for that period; said false statement being in violation of R. S. 33:1-25."

The ground upon which the cancellation proceedings is based reads:

"Said license was improvidently issued in violation of R. S. 33:1-12(5) and Rule 2 of State Regulations No. 7 in that, at the time of issuance of such license and prior thereto, you were not a bona fide club."

The file in the case discloses that the Cape May County Tuna Club was organized in 1948 and obtained a club license for the above premises in that year and a renewal thereof in each successive year. Application for such license was made to the then Commissioner and, with the change of title, to the Director of the Division of Alcoholic Beverage Control and issued by him apparently because officials of the municipal government were members of the club. So far as appears, the licensed business was conducted by the club as such at least until 1952. In that year the club apparently obtained a lease for ten years for the premises from Ralph Tedesco, the owner. Some time between 1952 and May 1954, it ceased to function as a bona fide club.

On May 7, 1954, title to the premises in question was conveyed by Ralph Tedesco to Alphonso V. Gredone, who then became treasurer of the club. Gredone operated the licensed business as his own during the summer of 1954. From November 1954 to June 1, 1955, the premises were vacant. On June 1, 1955, a real estate agency's form of lease, naming the agency as agent

for Al Credone and the tenant as Joseph O'Neill and signed by A. V. Gredone, leased to O'Neill the club premises from June 1, 1955 to November 1, 1955 "with full equipment as now located on premises, including club license rights which are to be justified by the club officials and Al Credone and Jos. O'Neill -- all alcoholic Beverage Controls and regulations to be complied with". Whether or not the lease held by the club was terminated does not appear.

While all of the pertinent facts are not available, it appears likely the club, as such, for one reason or another, decided that it was impractical for it to continue in actual conduct of the licensed business and mistakenly assumed that it could permit an individual to conduct the licensed business, catering to club members, as his own, under color of its license.

Therefore, I shall formally cancel the license now held by the defendant, although the license has been actually surrendered for cancellation.

In view of the result herein, it is unnecessary to fix a penalty for the violation set forth in the disciplinary charges. Re Eight Aces, Bulletin 1072, Item 5.

Accordingly, it is, on this 25th day of April, 1956,

ORDERED that Club License CB-224, issued by the Director of the Division of Alcoholic Beverage Control to Cape May County Tuna Club, 1301 Beach Avenue, Cape May, be and the same is hereby cancelled and declared null and void, effective immediately.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - HOSTESSES - PRIOR RECORD - LICENSE SUSPENDED FOR BALANCE OF ITS TERM.

In the Matter of Disciplinary Proceedings against
M. L. C. CORPORATION
710-714 Paterson Plank Road
Union City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-49, issued by the Board of Commissioners of the City of Union City.

Thomas F. Carlin, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to charges alleging that (1) it sold alcoholic beverages to three minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20, and (2) it allowed, permitted and suffered a female employed on its licensed premises to accept beverages at the expense of, or as a gift from, customers and patrons, in violation of Rule 22 of State Regulations No. 20.

At the hearing herein John R. --- (age 20) and Raymond T. --- (age 19) testified that on December 30, 1955 they were each

served with and drank two bottles of beer in the defendant's tavern without being questioned as to their age. Josephine (age 20) testified that on that evening she was served with and drank a drink of Seagram 7 whiskey and 7-Up, and a drink of gin and grenadine or a similar liquor, and was not asked to sign any written representation of her age.

Two ABC agents who were present testified that they observed the above service to and consumption by the three minors of alcoholic beverages, identified themselves, obtained the details of the incident and brought the matter to the attention of Anna Theresa Klunck, secretary and major stockholder of the corporate-licensee, who was also present. The agents ascertained that Charles Engelbrecht was the bartender who served beer to the boys and James Blomquist the bartender who served the drinks to the girl.

The agents further testified that on December 21, 1955 they visited defendant's licensed premises in the course of their duty. Angelina Tramontano (called "Angel"), a female vocalist, entertained the patrons from time to time. At about midnight she approached the agents and asked them if they would like to accept gummed "stickers" to place on their car announcing a coming entertainment attraction at the establishment. During the course of the subsequent conversation, one of the agents told Charles Engelbrecht (one of the bartenders) to fill his glass and that of the other agent. This bartender brought two bottles of beer for the agents, walked to where "Angel" had been seated (some six or seven stools distant), returned with her empty glass, placed it in front of the agents, poured black-berry brandy and what appeared to be Coca Cola into the glass, and took \$1.75 from the agents' money on the bar in payment of the three drinks. "Angel" drank the brandy and took a seat between them. "Angel" remarked, "You know, I am not supposed to be drinking with men in here if you are strangers, but I seen you around so I guess it is all right. You have to be pretty careful, you know. Anybody could be an ABC man". She told the agents she had been employed in the premises for about four months, and just likes to be sociable and have a drink now and then. In all, four rounds of drinks were served to "angel" at the agents' expense in the intervals between her songs.

When the agents entered the defendant's licensed premises on December 30th, they observed "Angel" conversing with various persons. She soon came over to and conversed with the agents. Frank Colacino, Jr. (a bartender) placed a glass for "Angel" between two bottles of beer he was serving to the agents. "Angel" asked for a "screwdriver" and Frank poured a mixture of Vodka and orange juice into her glass. "Angel" drank this beverage and one of the agents paid for her drink. During the course of the evening, "Angel" was served with and drank three more drinks at the agents' expense, in the intervals between her songs and conversation with other patrons.

The defendant-licensee does not seriously dispute the accuracy of the above recited facts which establish the service to and consumption of alcoholic beverages by the three minors and the acceptance by the female employee of alcoholic beverages at the expense of the agents, as alleged in the charges. Its basis for contesting the charge relating to the minors is that it used its best efforts to supervise its patrons in order to prevent minors from obtaining alcoholic beverages on its premises, and as to Josephine, that it relied upon display by her of a birth certificate of a person over the age of twenty-one; as to

the charge relating to its female employee, that she accepted drinks in violation of the licensee's instructions to the contrary.

Both Josephine and James Blomquist, one of the bartenders, agree that on two previous occasions when Josephine was at the tavern, she displayed to him her sister's birth certificate which evidenced an age over twenty-one years; that on December 30th, when ordering her first drink, Blomquist again questioned her as to her age and she replied, "you remember me from a couple of weeks ago" and then he served her.

Charles Engelbrecht, the bartender who served John and Raymond, was not present at the hearing. According to the agents, he told them on December 30th that the place was so crowded that he did not know what was going on.

Frank Colacino, Jr. (the bartender who served "Angel" and the agents on December 30th) testified that, when "Angel" walked over to the agents, they all seemed friendly and, when the agents signaled for a drink without specifying for whom, he included "Angel" in the service and served her with Vodka and orange juice. When serving the last round of drinks he inquired of the agents whether he should serve her since she was talking to other persons. He asserts that he received instructions from Mrs. Klunck not to serve female employees and that he was told to be careful about minors.

Angelina Tramontano testified that she did not have anything to drink with the agents on December 21st; that she told them she would love to but that she was not allowed to drink with any strangers; that on December 30th, she waved to the agents, joined them and was repeatedly asked to have a drink; that she looked around (the boss was not watching) and had a drink; that she was told not to drink with anybody, and remained in the company of the agents during the evening whenever she could.

Anna Theresa Klunck testified that she had been operating the licensed premises for twenty years and currently instructed her bartenders (eight in number on week-ends) to question the age of anybody who is young looking. In addition, she arranged in October 1955 to employ two off-duty police officers to check the age of persons entering the premises but could not obtain more than one officer for the night of December 30th, and she helped to check patrons as they came in. She acknowledged that "Angel" has been in her employ as an entertainer for about eight or nine weeks and claimed that she had given specific instructions to her not to mix with male or female customers; and that she repeated these instructions whenever she observed "Angel" talking to anyone because "You always have to be on guard with that".

The evidence thus presented establishes the facts urged by defendant but does not present a defense to the charges. Fine distinctions, such as a comparative evaluation of the steps taken by a licensee to prevent sale to minors, short of obtaining signed representations as to age, cannot be considered as a complete defense to a sale of alcoholic beverages to a minor, although such measures and the presentation of a birth certificate may well be considered as mitigating circumstances in the case (Re Wedemeyer, Bulletin 1050, Item 8). The contention that the employee acted contrary to its instructions is likewise no defense to the charge. State Regulations No. 20, Rule 31; Mazza v. Cavicchia, 28 N. J. Super. 280, 284 (App. Div. 1953), reversed on another ground, 15 N. J. 498 (1954).

I have given careful consideration to the entire record and to the argument of counsel presented orally before me and find defendant guilty on both charges.

Defendant has a prior adjudicated record. Effective April 28, 1952, its license was suspended for thirty days for lewdness and immoral activity (entertainment) on the licensed premises (Re M. L. C. Corp., Bulletin 934, Item 7); effective May 13, 1954, its license was suspended for seventy-five days on charges of (a) lewdness and immoral activity (entertainment), (b) hostess activity, and (c) permitting a lottery (punch board) on the licensed premises (Re M. L. C. Corp., Bulletin 1017, Item 2).

The present violations are the third of a series committed within a period of four years and might be considered as evidence of a continuing practice of misconduct of the licensed business warranting revocation of the license. However, it is the licensee's first offense for sale to minors, with mitigating aspects. The present "hostess" violation appears to be less aggravated than the previous offense, although it is an objectionable practice even to that extent. It might be well to point out that if the licensee is sincere in its efforts to prevent such misconduct, instructions to the bartenders not to serve female employees at the expense of any patron or customer will probably be far more effective than repeated instructions to the female employee.

Under the circumstances presented, I shall suspend defendant's license for the balance of its term.

Accordingly, it is, on this 27th day of April, 1956,

ORDERED that Plenary Retail Consumption License C-49, issued by the Board of Commissioners of the City of Union City to M. L. C. Corporation, 710-714 Paterson Plank Road, Union City, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. May 1, 1956.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOSEPH T. & JOHN WEBER, JR.)
T/a WALNUT GROVE)
Route #46, at Great Meadows)
Liberty Township)
PO Great Meadows, N.J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Liberty.)

Defendant-licensees, by Joseph T. Weber.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charge:

"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., James ---, age 16, on December 24, 1955, February 13, 1956 and divers days prior to December 24, 1955 and Donald ---, age 16, and William ---, age 17, on December 24, 1955 and divers days prior thereto and allowed, permitted and suffered the consumption of alcoholic beverages by all such persons in and upon the licensed premises on the above stated respective dates and occasions; in violation of Rule 1 of State Regulations No. 20."

During the early morning hours of February 14, 1956, an officer of the New Jersey State Police questioned the three minors mentioned in the charge and another minor after the officer found two cans of beer in a car wherein the minors were seated. Thereafter ABC agents obtained sworn statements from the three minors.

In his statement James --- says that he was born on February 20, 1939; that on the evening of February 13, 1956, he, Donald --- and William --- drove to the vicinity of defendants' licensed premises; that he entered the premises alone at about 9:30 p.m.; that he purchased from Joseph T. Weber a glass of beer which he consumed, and six quarts of beer which he brought back to the car; that he and the other two minors had purchased and consumed beer in defendants' premises on previous occasions and, definitely, on the evening of December 24, 1955. In his statement Donald --- says that he was born on May 21, 1939, and corroborated the statement given by James ---. In his statement William --- says that he was born on April 14, 1938, and also corroborated said statement.

Defendants have a prior record. Effective February 12, 1951, the local issuing authority suspended their license for eight days for possession and sale of contraceptives and sale during prohibited hours. However, since said violations are dissimilar and beyond the five-year period, I shall not consider them in fixing penalty herein (Re Weinstein, Bulletin 1002, Item 13). Until recently the usual penalty for sale to a sixteen-year-old minor was a suspension for twenty days (Re Cramer, Bulletin 1066, Item 3). However, on January 16, 1956, I announced that the penalty in such cases would be increased by five days. The violation on February 13, 1956, involving sale to a sixteen-year-old minor, occurred after that announcement. Under all the circumstances of this case, including sale to the three minors on December 24, 1955, I shall suspend defendants' license for thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 3rd day of May, 1956,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Liberty to Joseph T. & John Weber, Jr., t/a Walnut Grove, for premises on Route #46, at Great Meadows, Liberty Township, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. May 14, 1956, and terminating at 3:00 a.m. June 13, 1956.

WILLIAM HOWE DAVIS
Director.

- 5. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION FOR LICENSE AS TO BENEFICIAL OWNER - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - FAILURE TO FILE NOTICE OF CHANGE IN FACTS SET FORTH IN APPLICATION IN VIOLATION OF R. S. 33:1-34 - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF A LOCAL ORDINANCE - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO FILE APPLICATION TO LIFT AFTER EXPIRATION OF 55 DAYS IF ILLEGAL SITUATION CORRECTED.

In the Matter of Disciplinary)
 Proceedings against)

ANNA LURVEY)
 162 Broad Avenue)
 Fairview, N. J.,)

CONCLUSIONS
 AND ORDER.

Holder of Plenary Retail Consump-)
 tion License C-3, issued by the)
 Mayor and Council of the Borough)
 of Fairview.)

-----)
 Harry D. Appel, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) she made a false statement in her current license application respecting the beneficial owner of the licensed business, in violation of R. S. 33:1-25; (2) since about July 1, 1955, she knowingly aided and abetted a non-licensee to exercise the rights and privileges of her license, in violation of R. S. 33:1-52; (3) she failed to file written notice of change in ownership of the licensed premises, in violation of R. S. 33:1-34; (4) she sold, served and delivered alcoholic beverages during prohibited hours, in violation of a local regulation; and (5) she failed to keep the entire licensed premises closed during prohibited hours, in violation of a local regulation.

The file herein discloses that ABC agents searched official records and obtained signed sworn statements and legal documents which clearly establish that, on July 1, 1955, the license was transferred from one Greco to Anna Lurvey but that Eva Tymczyen, sister of the licensee herein, is the beneficial owner of the licensed business and the recipient of the profits therefrom. It further appears that, by deed dated June 30, 1955, the premises known as 162 Broad Avenue were conveyed by Bergenvue Land and Mortgage Co. to 162 Broad Ave. Corp., of which Anna Lurvey is secretary and treasurer and Eva Tymczyen president and that the current application of the licensee fails to disclose the aforesaid facts. The file further discloses that ABC agents were in defendant's licensed premises on September 9, 1955 after 3:00 a.m. (the closing hour); that the agents and several patrons were served alcoholic drinks after said hour; and that at 3:25 a.m. the agents identified themselves to the bartender and obtained from him a signed sworn statement admitting the "after-hours" violations.

Defendant has no prior adjudicated record. The penalty ordinarily imposed for the violations set forth in Charges 1, 2 and 3 is a suspension of the license for a period of 45 days, Re Eva's Tavern, Inc., Bulletin 1037, Item 3, and a 15-day suspension for the violations set forth in Charges 4 and 5,

Re Dlugolencki, Bulletin 1068, Item 7. Five days are usually remitted for a confessional plea. However, it appears in the instant case that the illegal situations underlying Charges 1, 2 and 3 continue to exist. I shall, therefore, suspend defendant's license for the balance of its term. Leave is reserved to defendant or other qualified person to file a petition with me to have the suspension lifted upon proof of proper correction but no relief will be afforded petitioner prior to the expiration of at least 55 days from the effective date of the Order herein.

Accordingly, it is, on this 23rd day of April, 1956,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Fairview to Anna Lurvey, 162 Broad Avenue, Fairview, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. May 1, 1956, and it is further

ORDERED that in the event the illegal situation hereinabove referred to is corrected, leave will be given as aforesaid to make application to me to lift the suspension but no order to that effect will become effective prior to June 25, 1956.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD OF PREDECESSOR IN INTEREST NOT CONSIDERED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
JOHN FERNANDES, INC.
T/a SCANDIA HOUSE
438 North Avenue
Garwood, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Mayor and Council of the Borough of Garwood.

John Fernandes, Inc., Defendant-licensee, by John Fernandes, President.

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

BY THE DIRECTOR:

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

The file herein discloses that on February 4, 1956, ABC agents making an inspection of defendant's licensed premises tested and gauged fifteen open bottles of assorted brands of liquor. The contents of five bottles which appeared to be low in proof were seized and submitted to the Division chemist for analysis. The chemist's report shows that the contents of a 4/5 quart bottle labeled "Schenley Reserve Blended Whisky 86

Proof" was low in solids and acids, and that the contents of a 4/5 quart bottle labeled "Imported Seagram's V. O. Canadian Whisky A Blend 86.8 Proof" was 5.8 proof short and high in solids. The contents of both bottles were compared with samples of the genuine product.

Defendant has no prior adjudicated record. However, when John Fernandes, president of the corporate licensee herein, held the license individually, it was suspended for two days by the Director, effective October 2, 1950, for possession of a mis-labeled beer tap. Re Fernandes, Bulletin 886, Item 9. Since the prior dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. Re Spiévy, Bulletin 1054, Item 11. I shall suspend defendant's license for the minimum period of fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Constantine, Bulletin 1082, Item 9.

Accordingly, it is, on this 23rd day of April, 1956,

ORDERED that Plenary Retail Consumption License C-8, issued by the Mayor and Council of the Borough of Garwood to John Fernandes, Inc., t/a Scandia House, 438 North Avenue, Garwood, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. April 30, 1956, and terminating at 2:00 a.m. May 10, 1956.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against
JOHN FERNANDES, INC.
T/a SCANDIA HOUSE
438 North Avenue
Garwood, N. J.,
Holder of Plenary Retail Consumption License C-8, issued by the Mayor and Council of the Borough of Garwood.

ON PETITION
O R D E R

BY THE DIRECTOR:

An order having been entered herein on April 23, 1956, suspending defendant's license for a period of ten days commencing at 2:00 a.m. April 30, 1956, and terminating at 2:00 a.m. May 10, 1956, and

It appearing from a petition filed herein that, prior to the entry of said order, defendant had completed arrangements for a wedding reception to be held on its licensed premises on May 5, 1956, and

It appearing to my satisfaction that numerous innocent persons would be inconvenienced by suspension of defendant's license on May 5, 1956;

It is, on this 26th day of April, 1956,

ORDERED that the suspension herein shall commence at 2:00 a.m. April 30, 1956, and continue in effect until 2:00 a.m. May 5,

1956; that said suspension shall be lifted until 2:00 a.m. May 6, 1956, at which time it will be reinstated and continue in effect until 2:00 a.m. May 11, 1956.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - GAMBLING - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

CAESAR'S RESTAURANT INC.)
T/a CAESARS)
1254 New Market Avenue)
South Plainfield, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-8, issued by the)
Borough Council of the Borough of)
South Plainfield.)

Edward J. Santoro, Esq., Attorney for Defendant-licensee.
Dora P. Rothschild, appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it allowed, permitted and suffered gambling (card game for money) in and upon its licensed premises, in violation of Rule 7 of State Regulations No. 20.

On the evening of February 24, 1956, two ABC agents, accompanied by members of the South Plainfield Police Department, entered the second floor of the licensed premises where six men were playing cards. The sum of \$217.00 was on the table. After the agents identified themselves, the players admitted that they had been playing stud poker for 25¢ and 50¢. One of the players was Joseph Janin, Secretary-Treasurer of defendant corporation.

Defendant has no prior record. The minimum suspension for permitting card games for substantial sums of money is ten days (Re Woodlawn Bar & Grill, Inc., Bulletin 990, Item 4). However, this case is aggravated by the fact that one of the officers of the corporation participated in the game. Under the circumstances, I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 24th day of April, 1956,

ORDERED that Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of South Plainfield to Caesar's Restaurant Inc., t/a Caesars, for premises 1254 New Market Avenue, South Plainfield, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. May 1, 1956, and terminating at 2:00 a.m. May 11, 1956.

WILLIAM HOWE DAVIS
Director.

- 9. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE AS TO CRIMINAL RECORD OF LICENSEE - ILLEGAL SITUATION CORRECTED - CONVICTION EXPUNGED FROM RECORD BY COURT OF COMPETENT JURISDICTION - CRIME DID NOT INVOLVE MORAL TURPITUDE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 PAUL E. DAVIS
 T/a PAUL'S INN
 E/S Route #33 near U.T.R.R. crossing
 East Windsor Township
 PO Box #149, Hightstown, N. J.,
 Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of East Windsor.

CONCLUSIONS AND ORDER

 Sido L. Ridolfi, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"In your application dated May 18, 1955, filed with the East Windsor Township Committee, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 33, which asks: 'Have you or has any person mentioned in this application, ever been convicted of any crime?', whereas in truth and fact you had been convicted on or about June 1, 1934 in the Mercer County Court of the crime of possession of lottery slips; said false statement being in violation of R. S. 33:1-25."

The facts constituting the basis for the above charge are sufficiently set forth therein to obviate the necessity of further comment.

Prior to the institution of these proceedings, defendant's criminal conviction was, on March 9, 1956, ordered expunged from the record by a court of competent jurisdiction pursuant to N. J. S. A. 2A:164-28.

Although defendant is now eligible to hold a liquor license, a suspension must be imposed because of the false statement made in defendant's application for the 1955-56 license.

Defendant has no prior record. Considering the circumstances in this case, including the fact that the crime did not involve moral turpitude and the fact that the conviction has been expunged from the record, I shall suspend defendant's license for a period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 26th day of April, 1956,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of East Windsor to Paul E. Davis, t/a Paul's Inn, E/S Route #33 near U.T.R.R. crossing, East Windsor Township, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. May 7, 1956, and terminating at 2:00 a.m. May 12, 1956.

WILLIAM HOWE DAVIS
 Director.

10. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - HINDERING - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CLUB ELENA INCORPORATED)
 243 Market Street)
 Paterson 1, N. J.,)

CONCLUSIONS AND ORDER.

Holder of Plenary Retail Consumption License C-280, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)
 -----)

Club Elena Incorporated, Defendant-licensee, by Joseph Hauser, President.

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

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) it sold, served and delivered alcoholic beverages during prohibited hours, in violation of a local ordinance; and (2) it, by its president, hindered the Division's agents in their investigation of the licensed premises, in violation of R. S. 33:1-35.

The file herein discloses that between 3:00 a.m. (the local closing hour) and 3:25 a.m., Sunday, March 4, 1956, an ABC agent and several patrons purchased from and were served alcoholic drinks by Joseph Hauser, president of the corporate licensee herein. At 3:30 a.m. a second ABC agent, who had left the premises at 3:15 a.m. when he was refused service, re-entered and both agents identified themselves to Hauser who remarked "Yeah, what can I say. You've got me dead to rights." As the agents continued their investigation of the licensed premises Hauser, despite the agents' warning to desist, deliberately spilled the evidential drinks which had been served to and seized by the first agent. In alleged mitigation, defendant has advised me in writing that he became "jittery and nervous."

Defendant has no prior adjudicated record. I shall suspend its license for 15 days on Charge 1. Re First Ward Italian Democratic Club, Bulletin 1093, Item 8. I shall suspend its license for an additional 15 days on Charge 2. Re Von Schrag, Bulletin 975, Item 3; Re Grzegowski, Bulletin 983, Item 4; Re Malague, Bulletin 1002, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of 25 days.

Accordingly, it is, on this 26th day of April, 1956,

ORDERED that Plenary Retail Consumption License C-280, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Club Elena Incorporated, 243 Market Street, Paterson, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 a.m. May 4, 1956, and terminating at 3:00 a.m. May 29, 1956.

WILLIAM HOWE DAVIS
 Director.

11. DISQUALIFICATION - PRIOR APPLICATION DENIED - FIVE YEARS'
GOOD CONDUCT - APPLICATION TO LIFT GRANTED.

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

CONCLUSIONS
AND ORDER

Case No. 1271.
-----)

BY THE DIRECTOR:

The petitioner herein filed a previous application for removal of his disqualification but the same was dismissed because five years had not elapsed from the time of his last conviction of a crime. In the order that I entered in the matter, I advised that petitioner's status would be determined if he filed a similar application after December 8, 1955. Re Case No. 1228, Bulletin 1073, Item 6.

It appears from the records herein that in 1932 petitioner pleaded non vult to a charge of assault upon a female child under 16 years of age as a result of which he was sentenced by a County Court to a term of one year in the workhouse; that in 1950 he was charged with possession of number slips and bookmaking; that he pleaded guilty to the "numbers" charge and was fined \$100.00 by a municipal magistrate; and that on December 8, 1950, after he pleaded non vult to an indictment charging bookmaking, he was fined \$1,000.00 and placed on probation for five years which later was lifted after two years. In 1953, he requested this Division to determine his eligibility to engage in the alcoholic beverage industry in this State and was advised that his conviction in 1932 disqualified him since the crime involved the element of moral turpitude. In view of the determination of the conviction in 1932 that the crime of assault on a 16-year-old female child involved moral turpitude, it is unnecessary at this time to determine whether the crime of bookmaking to which petitioner pleaded non vult on December 8, 1950 involved that element.

The petitioner testified that he was honorably discharged from the military service after serving for thirty-two months. He is presently employed as a bottler for a soft drink manufacturing company.

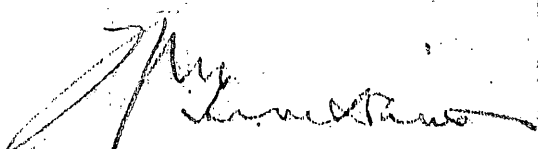
Three witnesses, a varnish maker and two paperhangers, testified that they have known petitioner eight or more years and that, in their opinion, he bears a good reputation in the community in which he lives for being a law-abiding person. The police department of the municipality where petitioner resides has advised that there are no investigations or complaints presently pending affecting the petitioner.

I am satisfied from the evidence presented herein that petitioner has been leading a law-abiding existence during the past five years and that his association with the alcoholic beverage industry will not be contrary to the public interest. I shall, therefore, lift his present disqualification.

Accordingly, it is, on this 24th day of April, 1956,

ORDERED that petitioner'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.

New Jersey State Library


William Howe Davis
Director