

BULLETIN 1094

JANUARY 19, 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.

BULLETIN 1094

JANUARY 19, 1956.

1. APPELLATE DECISIONS - ACCARDI, INC. v. PATERSON.

ACCARDI, INC.,)
Appellant,)
-vs-)
BOARD OF ALCOHOLIC BEVERAGE)
CONTROL FOR THE CITY OF)
PATERSON,)
Respondent.)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Saltzman, Rubenstein & Kosoff, Esqs., by Edward H. Saltzman,
Esq., Attorneys for Appellant.
James D. Ward, Esq., by Bruno L. Leopizzi, Esq., Attorney for
Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's plenary retail consumption license for a period of ten days effective August 29, 1955. The suspension was imposed after respondent found appellant guilty in disciplinary proceedings on a charge alleging that on Sunday, March 13, 1955, between the hours of 3:00 a.m. and 1:00 p.m., it did allow, permit and suffer the consumption of alcoholic beverages on its licensed premises, and failed on the same day to keep open to public view the entire interior of the licensed premises from the outside thereof. The licensed premises are located at 978 Main Street, Paterson.

A previous appeal from suspension of appellant's license on a charge theretofore filed, based upon the same facts as are here involved, was reversed on consent of the respondent and present counsel for appellant without prejudice. Accardi, Inc. v. Paterson, Bulletin 1073, Item 2. The instant charge was then preferred, upon which the present finding of guilt was based.

Upon the filing of the instant appeal an Order was entered on August 26, 1955, staying respondent's order of suspension until the entry of a further order herein. R.S. 33:1-31.

Appellant, in its petition, alleges, inter alia, that the action of respondent was erroneous in that its finding of guilt was contrary to the weight of the evidence.

At the hearing herein two police officers of the City of Paterson testified on behalf of respondent. The substance of their testimony is that, while on patrol duty in their car in the early morning of March 13, 1955, they observed two patrons emerge from appellant's licensed premises at 3:13 or 3:15 a.m. Since it was past the legal hour for a tavern to be open, the officers parked their car in order to investigate. They could not observe whether there was any activity in the premises because the blinds were drawn; hence they deemed it necessary to enter the tavern. After they parked the car at the curb and before entering, the officers checked with the police radio station that it was 3:17 a.m. One of the officers then entered the tavern through the unlocked door and observed nine patrons at the bar, a bartender behind the bar and Ben Accardi (president of the corporate licensee) in the premises. The officer

proceeded to obtain the names of the patrons. The first patron questioned had a glass of beer and money in front of him on the bar. This patron refused to give his name and finished drinking his beer. This patron refused to give his name and finished drinking his beer. This patron remarked to Accardi that he paid for the beer and could not see why he could not drink it, to which Accardi replied, "You might as well go ahead." The officer also observed other patrons finish drinking the alcoholic beverages which they had in front of them. The second officer and a police sergeant entered the tavern a few seconds after the first officer, and stationed themselves at the door. Neither officer was personally acquainted with Accardi, and one of the officers testified that he had never previously been on the licensed premises.

On appellant's behalf, one patron, who said that she was in the tavern at the time the officers were there, testified that, to her knowledge, no one drank any alcoholic beverages while the officers were there; that it was a little before 3:00 a.m. because the licensee kept his clock fifteen minutes ahead and it registered 3:11 a.m., and that the blinds were up. Another person testified that, to his knowledge, no one drank alcoholic beverages after the officers entered, but that he could not say when they entered; that it was about 3:00 or before 3:00 a.m.; that he couldn't say exactly because he wasn't interested at the time. The bartender testified that the officers entered a "couple minutes" to 3:00 a.m.; that the blinds were up and no one consumed any liquor while the officers were in the place. He said that he did not know exactly what time it was, but that it was before 3:00 a.m. Ben Accardi testified that the officers entered, according to his watch, at 3:10 a.m., but that he keeps his watch fifteen minutes ahead of time; that the blinds were up; that there were glasses on the bar, some with a little liquor, but no one drank any liquor after the officers entered. He claims that he had had a little difficulty with the first officer arising out of receiving a ticket from him for speeding.

At the conclusion of the hearing counsel for the appellant requested an opportunity to submit a brief, but thereafter advised that he desired to submit the matter on the testimony presented.

Appeals to the Director from the 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; Skripko v. Raritan Township, Bulletin 1081, Item 1.

It is apparent that the officers were performing their normal duties when they discovered that the tavern was still open at 3:13 a.m. Obviously they have no motive to distort the truth. The incident of the speeding-ticket is too trivial to have influenced the testimony of the first officer. On the other hand, the testimony of the bartender and Accardi is naturally influenced by their desire to avoid suspension of the license. The testimony of one of the patrons is vague and uncertain as to time, and the testimony of both patrons must be considered in the light of what actual opportunity they had to observe whether persons were consuming alcoholic beverages or whether the blinds were up -- matters in which they naturally had no personal interest at the time.

The official records of the Division disclose that the pertinent provision of Section II of the City ordinance, adopted May 26, 1948, reads:

"No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, or allow the consumption of any alcoholic beverages on the licensed premises on Sundays between 3 A.M. and 1 P.M. or on weekdays between 3 A.M. and 7 A.M. ***

"During the hours sales are prohibited, the entire licensed premises shall also be closed ***."

The official records of this Division also disclose that Paragraph (4) of the City resolution, adopted January 28, 1935, reads:

"During the hours within which alcoholic beverages are not permitted to be sold, served, or given away, the entire interior of the licensed premises shall be kept open to public view from the outside thereof. No screen, partition or other obstacle shall be permitted to interfere with a clear public view during the said hours."

After carefully considering the entire record before me, I am unable to find that respondent's finding of guilt was erroneous and should be reversed. The action of respondent will be affirmed. The appeal will be dismissed, and the ten-day suspension imposed will be reinstated.

Accordingly, it is, on this 27th day of December, 1955,

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

ORDERED that the ten-day suspension by respondent of appellant's Plenary Retail Consumption License C-4, for premises 978 Main Street, Paterson, be and the same is hereby restored and reimposed, to commence at 3:00 a.m. January 9, 1956, and to terminate at 3:00 a.m. January 19, 1956.

WILLIAM HOWE DAVIS
Director.

- 2. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 AND LOCAL REGULATIONS, AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATIONS - HINDERING INVESTIGATION - MITIGATING CIRCUMSTANCES - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ABRAHAM CHARNICK & ESTHER KRUMHOLZ)
270 Mulberry Street)
Newark 5, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-574, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

William K. Miller, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to charges alleging that (1) they sold during prohibited hours alcoholic beverages in their

original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38; (2) they sold, served and delivered alcoholic beverages on their licensed premises during prohibited hours, in violation of a local ordinance; (3) they failed to have their entire licensed premises closed during said hours, in violation of a local ordinance; and (4) they hindered and delayed an investigation by inspectors of the Division of Alcoholic Beverage Control, in violation of R. S. 33:1-35.

The file herein discloses that at 6:00 a.m. Thursday, October 27, 1955, two ABC agents who were in the vicinity of defendants' licensed premises observed several men enter therein through the front door. One of the agents followed and sought to purchase from the bartender an alcoholic beverage. Upon being refused, he left and joined the other agent. At 6:30 a.m., when another man entered the premises, the second agent followed and saw the bartender hand the patron a pint bottle of wine. This agent then purchased a pint bottle of wine to take out and departed. Returning immediately thereafter, he was admonished by the bartender to "Close that damn door. I don't want any 'company' to come in" and, referring to the first agent, who now appeared in the doorway, he continued, "I don't want that man here, I just chased him out." The agents, at that point, made known their identities to the bartender who identified himself as Abraham Charnick, one of the licensees herein. Charnick orally admitted the sales of alcoholic beverages during prohibited hours and for off-premises consumption but refused to give a signed statement to that effect. He pleaded with the agents to forget the incident, offering them a sum of money to do so.

As to penalty: When Morris Krumholz and Abraham Charnick held the license herein, it was suspended by this Division for ten days, effective February 24, 1947, for possession of illicit liquor (Re Krumholz and Charnick, Bulletin 730, Item 7 and Bulletin 749, Item 2) and, effective March 6, 1947, the license was suspended for fifteen days by the local issuing authority for sale of an alcoholic beverage in its original container for off-premises consumption during prohibited hours. The minimum suspension imposed for infractions as set forth in Charges 1, 2 and 3 is thirty days. Re Chiarella, Bulletin 989, Item 4. However, since the second prior violation of defendants' predecessors in interest is similar to that set forth in Charge 1 and having occurred within a ten-year period, an additional five days will be imposed on that charge. Cf. Re Stein, Bulletin 1067, Item 4. The other prior dissimilar violation, having occurred more than five years ago, will be disregarded. Re Spievy, Bulletin 1054, Item 11. Hence, I shall suspend defendants' license for thirty-five days on Charges 1, 2 and 3. Respecting Charge 4, I have been apprised by counsel for defendants, who appeared before me on oral argument, of the advanced years of the defendants (both being over 70), their physical condition, and other attendant circumstances, all of which I have considered in mitigation of the penalty to be imposed on that charge. Cf. Re Markowitz, Bulletin 1061, Item 7. Taking into account the mitigating circumstances in this case, I shall suspend defendants' license for an additional ten days on Charge 4, making a total suspension of forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 22nd day of December, 1955,

ORDERED that Plenary Retail Consumption License C-574, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Abraham Charnick & Esther Krumholz, 270 Mulberry Street, Newark, be and the same is hereby suspended for a period of forty (40) days, commencing at 2:00 a.m. January 5, 1956, and terminating at 2:00 a.m. February 14, 1956.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - LOTTERY - GAMBLING - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ELWENA CLARK)
 T/a AUSTIN'S ROSE GARDEN)
 138 North Maryland Avenue)
 Atlantic City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-199, issued by the Board of Commissioners of the City of Atlantic City.)

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

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On June 24, 27, 28 and July 1, 5 and 8, 1955, 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 you also possessed, had custody of and allowed, permitted and suffered tickets and participation rights in the aforementioned lottery in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20.

"2. On July 5, 1955, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20."

The file herein discloses that at 12:45 p.m. on June 24, 1955, an ABC agent visited defendant's licensed premises. A woman called Margaret was tending bar. The agent observed a man in the premises hand a large sum of paper money to a person known as Albert. As the agent stood at the bar he was approached by a man who in turn introduced him to a person referred to as "Preacher" and the three engaged in conversation about number-writing. As a result of the conversation "Preacher" asked the barmaid for a pencil and paper and, upon receiving them from her, he wrote a number on the paper, collected money from the agent, and handed the paper and money to the barmaid with directions to give them to Albert. Thereafter the latter was seen leaving the licensed premises. He returned in a short period of time, and the agent observed a woman called Marie hand him a slip of paper and a large sum of money. The agent left the premises at 2:15 p.m.

At about 12:45 p.m. on June 27, 1955, the agent again visited defendant's premises and met one of the men he had become acquainted with on the previous visit. The man told the agent his number had not come out and suggested that he try another number. When the agent indicated that this was agreeable to him, the man took a dollar bill from the money of the agent which was lying on the bar, walked to a sitting-room adjacent to the barroom, and handed it to Albert. Both the man and Albert went into a storeroom and, shortly thereafter, the man returned to the bar and placed seventy cents thereon. The agent left at 1:15 p.m.

On June 28, 1955, at about 12:45 p.m., the agent again called at defendant's premises and on this occasion gave Margaret, who was tending bar, the sum of thirty cents and asked her to place it on a certain number and then give it to Albert. She took the money, wrote the number on a pad on the back bar, and put the money in her apron pocket. The agent left the premises at 1:15 p. m.

At about 12:30 p.m. on July 1, 1955, the agent again entered defendant's premises and observed that Margaret was tending bar. He then gave her sixty cents to give to Albert and to have him place two numbers which she wrote inside a pad which was lying on the back bar. She placed the money in her apron pocket. The agent left at about 1:00 p. m.

The agent's next visit to defendant's premises was at about 11:30 p.m. on July 5, 1955. Albert was tending bar on this occasion. The agent engaged in conversation with Albert with reference to the numbers he had written for him on the agent's last visit, and was advised that "they had not come out as yet." The agent then asked Albert to take sundry numbers for the next three days, and handed him \$1.80. Albert wrote the numbers on a slip of paper and placed both the paper and the money in his shirt pocket. The licensee came into the premises and relieved Albert as bartender. She in turn was relieved by a girl called "Vi." A man came into the premises and Albert referred to him as "Boss." He was subsequently identified as Austin Clark (husband of the licensee). "Vi" handed Austin Clark a large sum of money and he then went into the storeroom which leads from the back of the bar. He obtained more money from this room and various other papers, and then he and the licensee left the premises. Before leaving, the licensee asked Albert if he had the scratch sheet. He pointed to his back pocket and said he had both of them. The agent at this time walked over to Albert who was seated at a table checking numbers which had been written on slips of paper and also money which he had in his possession. The agent asked Albert to take a bet on a horse scheduled to run at one of the well-known tracks and, upon the agent's giving him \$6.00, Albert handed a newspaper to the agent wherein scheduled horse-races were listed, and told him to make his selection. "Vi", who was tending bar, was taking bets in large quantities and she had a number of master tally sheets filled in. She kept the number slips which had been given to her by various patrons in a paper bag under the bar. The money was deposited by her in a large cigar box. During the time that the agent remained in the premises the telephone rang on divers occasions and some of the patrons answered it. They would call out to "Vi" various numbers and also names of those persons calling. The agent asked "Vi" to take another bet for him and handed her thirty cents across the bar. She jotted down the number given her by the agent on a master sheet. The agent left the premises on this occasion at 2:15 p.m., at which time "Vi" was still taking bets on a large scale.

At about 11:55 a.m. on Friday, July 8, 1955, the agent again entered defendant's premises. Another agent entered the premises at about 12:00 Noon. A woman, later identified as Constance Rawlins, was tending bar. Albert, who was seen on the prior occasions, was also in the premises. The agent who had made all the prior visits took a position at the bar in close proximity to the storeroom. As this agent sat down, Albert came over to him and said that the horse upon which he put a bet a few days prior was still running. The agent asked Albert if he had a scratch sheet on him, but was told that it was too early for the sheet. The agent then asked Constance,

who was tending bar, for a piece of paper and a pencil and, upon receiving same, wrote down several numbers. He took the papers with the numbers and handed them, along with a dollar bill (the serial number of which had been previously recorded), to Albert. The latter took the money and paper and immediately left the premises. He returned a few minutes later, and the agent observed him being handed money and slips by various people in the bar-room. The agent again asked Constance for a paper and pencil and, after receiving same, noted thereon various numbers. He then handed her the paper; together with a dollar bill (the serial number of which had been previously recorded), which she in turn handed to Albert. The agent then gave his fellow agent a signal to contact other agents who were assigned to the investigation. By the time that these agents, together with various local police officers; entered the premises, the agent had placed another bet with Constance and at this time again had given her a dollar bill (the serial number of which had previously been noted). When the officers entered the premises they seized the paper and the dollar bill from Constance and also a slip of paper and a dollar bill from Albert. A search of the premises brought forth large quantities of number slips found in the storeroom and on the grounds of the premises outside the building. The serial numbers found on the money seized from both Albert and Constance indicated that these were the bills which had been previously recorded by the agents on that day. Albert, who was subsequently identified as Albert Taylor, admitted that he had been accepting numbers and that he worked on a commission basis, and that he received the money due to the winners from the licensee to make payment therefor. The licensee refused to answer any questions concerning the matter in question.

Defendant has a prior adjudicated record. Effective October 20, 1952, her license was suspended for a period of five days by the local issuing authority for sales of alcoholic beverages to minors. It is apparent from the evidence presented in this case that gambling was taking place on a large scale. In attempted mitigation of penalty the attorney for the defendant-licensee claims that she had no knowledge that such illegal conditions were being permitted on the licensed premises. I am not so naive as to believe her statement. Regardless, a licensee is strictly responsible for any violations which occur on the licensed premises. Under the circumstances appearing in this case, and taking into consideration defendant's prior dissimilar record which occurred within the past five years, I shall suspend her license for forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 29th day of December, 1955,

ORDERED that Plenary Retail Consumption License C-199, issued by the Board of Commissioners of the City of Atlantic City to Elwena Clark, t/a Austin's Rose Garden, for premises 138 North Maryland Avenue, Atlantic City, be and the same is hereby suspended for thirty-five (35) days, commencing at 7:00 a.m. January 10, 1956, and terminating at 7:00 a.m. February 14, 1956.

WILLIAM HOWE DAVIS
Director.

- 4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT OTHER THAN LICENSED PREMISES - SALE DURING PROHIBITED HOURS; IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PRIOR RECORD OF CORPORATE LICENSEE WHEREIN PRINCIPAL STOCKHOLDER HEREIN HAS PROPRIETARY INTEREST - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

RALPH & JOHN'S TAVERN, INC.)
 384 Monmouth Street)
 Jersey City 2, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-123, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

 Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On Sunday, August 28, 1955, between 9:00 A.M. and 1:00 P.M. and on Sunday, September 4, 1955 between 9:00 A.M. and 10:50 A.M., you sold alcoholic beverages not pursuant to and within the terms of your plenary retail consumption license as defined by R.S. 33:1-12(1), contrary to R.S. 33:1-26 and R.S. 33:1-1(w), in that you accepted orders for and sold numerous bottles of various kinds of alcoholic beverages at places other than your licensed premises, viz., on the public streets in and about the vicinity of your licensed premises; in violation of R. S. 33:1-2.

"2. On the occasions aforesaid you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off your licensed premises; in violation of Rule 1 of State Regulations No. 38.

"3. On the occasions aforesaid, you conducted your licensed business in violation of Section 4 of Ordinance K-1299 regulating the sale and distribution of alcoholic beverages by all those holding plenary retail consumption licenses in the City of Jersey City, adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950, which prohibits any such activity between the hours of 2:00 A.M. and 1:00 P.M. on Sundays."

The file herein discloses that Ralph Faccone, president of the corporate-licensee, made a practice of selling alcoholic beverages in their original containers on Sunday on the street near the licensed premises. His method was to obtain alcoholic beverages in the licensed premises, place them in bags, or pockets on his person, and sell such beverages to persons who accosted him on the street, or to receive a request for alcoholic beverages on the street, enter the tavern, obtain the desired

alcoholic beverages and deliver them to such customers. ABC agents purchased pints of wine from Faccone on Sunday morning, August 28, 1955, and on Sunday morning, September 4, 1955. On each of these dates the agents observed Faccone make a considerable number of sales of alcoholic beverages on the street to other persons.

While the current application lists Ralph Faccone as the holder of fifty per cent. of the stock of the corporate-licensee, Faccone, in a signed statement, states that he is the sole person presently interested in the corporate-licensee, having purchased the interest of his "partner." His statement further states that on September 4, 1955, he sold about eighteen cans of beer and thirteen pints of wine in the manner above described.

The sales of alcoholic beverages at the times and place herein described involve the threefold violation set forth in the charges. It is an aggravated form of the sale of alcoholic beverages during prohibited hours, similar to that involved in Re Julewicz, Bulletin 1034, Item 8, and Re Ryan, decided on December 19, 1955, and not yet reported.

Defendant corporate-licensee has no prior adjudicated record. However, Ralph Faccone, who asserts that he is the only person presently interested in the corporate-licensee, was secretary-treasurer and holder of a substantial interest in Old Spot Clambroth Tavern, Inc., when the latter's license was suspended for twenty days, effective February 13, 1952, for various violations including sales of alcoholic beverages during prohibited hours in violation of State Regulations No. 38 and a local ordinance (Re Old Spot Clambroth Tavern, Inc., Bulletin 927, Item 3). It is to be noted that Ralph Faccone was the person who personally made the last mentioned sales during prohibited hours in a similar manner to those herein involved. He states that he is presently employed as a bartender in the Old Spot Clambroth Tavern, Inc. and has a proprietary interest therein. Our records disclose that he holds two of the six shares issued by said corporation. Cf. Re Meller, Bulletin 1026, Item 3. Under all the circumstances of this case, I shall suspend defendant's license for thirty-five days. Five days will be remitted for the plea herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 27th day of December, 1955,

ORDERED that Plenary Retail Consumption License C-123, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Ralph & John's Tavern, Inc., for premises 384 Monmouth Street, Jersey City, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. January 9, 1956, and terminating at 2:00 a.m. February 8, 1956.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - SALE TO INTOXICATED PERSONS - BRAWL - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 KITTY E. FULTON)
 T/a KITTY'S TAVERN)
 Sussex Turnpike)
 Randolph Township)
 PO RD 2, Dover, N. J.,)
)
 Holder of Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Randolph.)
 -----)

CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) she sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to and the consumption of alcoholic beverages by a minor, in violation of Rule 1 of State Regulations No. 20; (2) she sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to and the consumption of alcoholic beverages by a person actually or apparently intoxicated, in violation of Rule 1 of State Regulations No. 20, and (3) she allowed, permitted and suffered a brawl, act of violence and disturbance on her licensed premises, in violation of Rule 5 of State Regulations No. 20.

The file herein discloses that on Sunday, November 13, 1955, Ervin --- (20 years of age) was arrested by the Dover Police for being drunk, disorderly and creating a disturbance. On the following day ABC agents obtained from Ervin a statement wherein he says that, on the afternoon of November 13, 1955, he met Lennie ---; Nick --- and Charlie ---, and rode in Lennie's car to defendant's tavern, arriving there at about 5:00 p.m.; that he entered alone and sat at the bar until about 8:30 p.m., during which time he had about twenty glasses of beer which were served to him by a short, stout lady; that he had consumed a quart of beer elsewhere before entering defendant's premises and did not remember getting into a fight in defendant's premises because he was drunk. On the same day ABC agents obtained statements from Nick --- and Charlie ---. In Nick's statement he says that he entered defendant's premises about 9:00 p.m. November 13, at which time he saw Ervin staggering around the premises and observed two other men and a woman engaging in a fight which he broke up; that thereafter Mary, who was tending bar, sold a glass of beer to Ervin. In Charlie's statement he says that he entered defendant's premises at about 9:00 p.m. on November 13, and observed Ervin engaged in a fight with two other men and a woman. Charlie further says that he told the bartender that Ervin was drunk and only twenty years old; that she told him to mind his own business and thereafter served a glass of beer to Ervin. The ABC agents also obtained from Mary Lois Stannard a statement in which she admitted that she was tending bar; that a brawl had occurred on the licensed premises, and that she had served "about six glasses of beer" to Ervin who "wasn't staggering" but "talked funny or fuzzy" at the time he entered the premises. She further admitted that she had served one more beer to Ervin after the fight occurred.

Defendant has no further prior adjudicated record. I shall suspend defendant's license for ten days on Charge 1 (Re Feinberg, Bulletin 1082, Item 7); for an additional twenty days on Charge 2 (Re Deutsch, Bulletin 904, Item 5), and for an additional fifteen days on Charge 3 (Re Helfiker, Bulletin 1070, Item 10); making a total suspension of forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 28th day of December, 1955,

ORDERED that Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Randolph to Kitty E. Fulton, t/a Kitty's Tavern, for premises on Sussex Turnpike, Randolph Township, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. January 6, 1956, and terminating at 2:00 a.m. February 15, 1956.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against

JOHN W. GUSCIORA
T/a GUS'S TAVERN
615 VanHouten Avenue
Clifton, N. J.,

ON PETITION
O R D E R

Holder of Plenary Retail Consumption License C-80, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton.

Lawrence Diamond, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

An order having been entered herein on December 19, 1955, suspending defendant's license for a period of twenty days commencing at 3:00 a.m. January 4, 1956, and terminating at 3:00 a.m. January 24, 1956, and

It appearing from a verified petition filed herein that, prior to the entry of said order, arrangements had been made to conduct three affairs on the licensed premises (one scheduled to be held on January 6, 1956; another on January 7, 1956, and another on January 9, 1956), and

It appearing to my satisfaction that numerous innocent persons would be inconvenienced by suspension of the license for the period commencing January 4, 1956,

It is, on this 27th day of December, 1955,

ORDERED that the suspension of twenty days heretofore imposed in this proceeding, instead of commencing at 3:00 a. m. January 4, 1956, shall, in lieu thereof, commence at 3:00 a.m. January 11, 1956, and terminate at 3:00 a.m. January 31, 1956.

WILLIAM HOWE DAVIS
Director.

2. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1955 to DECEMBER 31, 1955 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19

CLASSIFICATION OF LICENSES

| County | Plenary Retail Consumption | | Plenary Retail Distribution | | Club | | Limited Retail Distribution | | Seasonal Retail Consumption | | Number Surrendered Revoked Expired | Number Licenses in Effect | Total Fees Paid |
|------------|----------------------------|----------------|-----------------------------|--------------|------------|--------------|-----------------------------|-------------|-----------------------------|-------------|------------------------------------|---------------------------|-----------------|
| | No. Issued | Fees Paid | No. Issued | Fees Paid | No. Issued | Fees Paid | No. Issued | Fees Paid | No. Issued | Fees Paid | | | |
| Atlantic | 489 | \$ 208,750.00 | 71 | \$ 25,575.00 | 19 | \$ 1,785.62 | | | | | | 579 | \$ 236,110.62 |
| Bergen | 815 | 305,762.98 | 298 | 84,594.90 | 97 | 9,273.37 | 53 | \$ 2,471.25 | 6 | \$ 1,645.21 | 5 | 1264 | 403,747.71 |
| Burlington | 185 | 87,290.00 | 37 | 10,050.00 | 41 | 5,942.19 | 1 | 50.00 | | | | 264 | 103,332.19 |
| Camden | 454 | 217,390.41 | 82 | 31,925.00 | 71 | 6,824.82 | | | 1 | 375.00 | 2 | 606 | 256,515.23 |
| Cape May | 133 | 73,650.00 | 11 | 4,300.00 | 18 | 2,150.00 | | | | | | 162 | 80,100.00 |
| Cumberland | 81 | 40,000.00 | 13 | 3,600.00 | 30 | 4,060.00 | | | | | | 124 | 47,660.00 |
| Essex | 1363 | 759,299.04 | 351 | 205,700.00 | 99 | 13,520.07 | 30 | 1,500.00 | 2 | 1,500.00 | 1 | 1844 | 981,519.11 |
| Gloucester | 108 | 34,400.00 | 13 | 2,750.00 | 19 | 1,728.22 | | | | | | 140 | 38,878.22 |
| Hudson | 1547 | 702,273.65 | 298 | 122,400.00 | 80 | 9,236.03 | 67 | 2,900.00 | | | | 1992 | 836,809.68 |
| Hunterdon | 79 | 26,300.00 | 8 | 2,600.00 | 7 | 800.00 | | | | | | 94 | 29,700.00 |
| Mercer | 425 | 257,904.38 | 51 | 21,000.00 | 53 | 7,474.52 | | | 1 | 97.50 | 1 | 529 | 286,476.40 |
| Middlesex | 633 | 311,255.00 | 73 | 22,895.00 | 89 | 8,001.03 | 3 | 150.00 | | | | 798 | 342,301.03 |
| Monmouth | 554 | 282,424.16 | 122 | 41,860.00 | 40 | 4,537.95 | 10 | 435.00 | 26 | 11,397.84 | 26 | 726 | 340,654.95 |
| Morris | 357 | 124,111.92 | 98 | 33,300.00 | 46 | 4,300.00 | 19 | 950.00 | 6 | 1,537.50 | 6 | 520 | 164,199.42 |
| Ocean | 195 | 105,184.15 | 49 | 19,630.00 | 23 | 2,361.59 | | | | | | 267 | 127,175.74 |
| Passaic | 875 | 358,380.00 | 167 | 51,370.00 | 38 | 4,675.00 | 10 | 475.00 | | | | 1090 | 414,900.00 |
| Salen | 51 | 19,700.00 | 8 | 1,550.00 | 17 | 1,473.36 | | | | | | 76 | 22,723.36 |
| Somerset | 184 | 80,700.00 | 40 | 12,145.00 | 25 | 2,875.00 | | | | | | 249 | 95,720.00 |
| Sussex | 168 | 45,855.00 | 19 | 3,805.00 | 8 | 585.00 | 1 | 50.00 | 1 | 225.00 | 1 | 196 | 50,520.00 |
| Union | 549 | 301,389.19 | 144 | 66,300.00 | 72 | 8,099.59 | 29 | 1,425.00 | | | | 794 | 377,213.78 |
| Warren | 149 | 43,455.00 | 19 | 4,374.22 | 29 | 2,980.00 | | | 2 | 289.48 | 2 | 197 | 51,098.70 |
| Total | 9394 | \$4,385,474.88 | 1972 | \$771,724.12 | 921 | \$102,683.36 | 223 | \$10,406.25 | 45 | \$17,067.53 | 44 | 12511 | \$5,287,356.14 |

William Howe Davis
Director

January 5, 1956.

9. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD -
 LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

819 CLUB, INC.
 T/a 819 CLUB
 819-821 East Jersey Street
 Elizabeth 4, N. J.,

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-
 tion License C-173, issued by the
 Municipal Board of Alcoholic
 Beverage Control of the City of
 Elizabeth.

 Joseph L. Kaplan, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on November 10, 1955, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to and the consumption of alcoholic beverages by a minor, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that two ABC agents entered defendant's licensed premises at about 10:00 p.m., November 10, 1955. About an hour later the agents observed the sale of three glasses of beer by Hyman Schnur, a bartender, to a young man who was subsequently found to be of full age. This young man handed a glass of beer to one of his companions who was subsequently found to be of full age, and a glass of beer to another companion who was subsequently identified as Jack --- (18 years of age). After the contents of these glasses had been consumed by the respective parties, Jack --- went to the bar and purchased from the same bartender three more glasses of beer, one of which he gave to each of his companions. While the minor was consuming the contents of his glass, the agents identified themselves and seized the contents of the glass.

In alleged mitigation, Hyman Schnur states that Jack --- looked like a person who, a week previously, had displayed to him a birth certificate indicating that the holder thereof was twenty-one years of age. However, Jack --- denied that he had been in defendant's premises on any prior date and also stated that the bartender had not asked him his age on the evening in question.

Defendant has a prior record. Effective July 24, 1955, the local issuing authority suspended its license for ten days for sale to minors. Since this is a second similar violation within a five-year period, the minimum ten-day penalty for selling to an eighteen-year-old minor will be doubled, resulting in a suspension of defendant's license for a period of twenty days. Re Home Liquor Store, Inc., Bulletin 1090, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 27th day of December, 1955,

ORDERED that Plenary Retail Consumption License C-173, issued by the Municipal Board of Alcoholic Beverage Control of

the City of Elizabeth to 819 Club, Inc., t/a 819 Club, for premises 819-821 East Jersey Street, Elizabeth, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. January 9, 1956, and terminating at 2:00 a.m. January 24, 1956.

WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

HORSE SHOE BAR, INC.)
t/a HORSE SHOE BAR, INC.)
328 Henderson Street)
Jersey City 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-474, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Jersey City.)

Archie Roth, Esq., Attorney for Defendant-licensee.
Dora P. Rothschild, appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On Sunday, August 14, 1955, you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., one pint bottle of Kinsey Silver Blended Whiskey, at retail, in its original container for consumption off the licensed premises; in violation of Rule 1 of State Regulations No. 38.

"2. On Sunday, August 14, 1955, you sold at retail one pint bottle of 'Kinsey Silver Blended Whiskey', an alcoholic beverage at less than the price thereof listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulations No. 30."

The file herein discloses that two ABC agents entered defendant's premises at about 6:35 p.m. on Sunday, August 14, 1955. Shortly thereafter one of the agents asked George Costa, who was then tending bar, what kind of liquor would be better to give as a gift, and the bartender suggested a gift of whiskey. The agent then purchased from the bartender a pint bottle of Kinsey Silver Blended Whiskey for \$2.45. The minimum consumer resale price then in effect for the item in question was \$2.48. The agents then left the premises with the bottle; but returned immediately and identified themselves to the bartender who admitted making the sale at the aforesaid price but stated that he got mixed up on the change.

Defendant has no prior adjudicated record. At the oral argument as to the penalty to be imposed, the attorney for

defendant stated that Julius Schwartz, majority stockholder of defendant corporation, was not on the licensed premises when the violation occurred; that his absence was due to the fact that he was exhausted because of his efforts on the previous day to clear the cellar which had been flooded as a result of "Hurricane Connie." It was further represented that the bartender claimed that he had no available pennies to make the correct change. It is well established that the absence of a licensee, or the majority stockholder of a corporate licensee, does not excuse a violation. Under the circumstances I shall impose the minimum penalty as to each charge, and shall suspend defendant's license for fifteen days on Charge 1 and for an additional ten days on Charge 2, making a total suspension of twenty-five days. Re Gambino, Bulletin 1060, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 29th day of December, 1955,

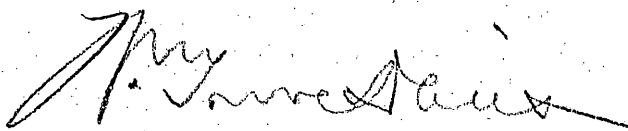
ORDERED that Plenary Retail Consumption License C-474, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Horse Shoe Bar, Inc., t/a Horse Shoe Bar, Inc., 328 Henderson Street, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. January 10, 1956, and terminating at 2:00 a.m. January 30, 1956.

WILLIAM HOWE DAVIS
Director.

11. STATE LICENSES - NEW APPLICATION FILED.

Maria Santa Paruta
t/a Paruta Wine Co.
51 Market St.
Paterson, N. J.

Application filed January 18, 1956 for person-to-person transfer of Plenary Winery License from Dominick M. Paruta, t/a Paruta Wine Co., 51 Market Street, Paterson, N. J.



William Howe Davis
Director.