

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

BULLETIN 1272

APRIL 22, 1959.

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

BULLETIN 1272

APRIL 22, 1959.

1. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING WHOLESALER AND ITS AGENT TO SELL TO PERSONS OTHER THAN WHOLESALERS OR RETAILERS - CONTRACEPTIVES - POSSESSING INDECENT MATTER ON PREMISES - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against

PETER P. HOULIS
t/a 75 CLUB
75 East Clifton Avenue
Clifton, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-98, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton.

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

BY THE DIRECTOR:

On the date fixed for hearing herein defendant pleaded non vult to the following charges:

"1. On numerous occasions during 1958 and prior thereto, you aided and abetted Ralph Pisacane and Jersey National Liquor Company to sell alcoholic beverages not pursuant to and within the terms of license, in that you aided and abetted them, without either of them holding any license or permit authorizing such action, to sell alcoholic beverages to numerous persons who were not licensed retailers or wholesalers, contrary to R. S. 33:1-2 and 50; thereby yourself violating R.S. 33:1-50.

"2. On November 20, 1958 you, not operating a bona fide pharmacy, possessed prophylactics against venereal disease and contraceptives or contraceptive devices in and upon your licensed premises; in violation of Rule 9 of State Regulation No. 20.

"3. On the last mentioned occasion you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter, viz., (a) several sheets of paper bearing a poem and (b) a rubberlike representation of a male person, containing obscene, indecent, filthy, lewd, lascivious or disgusting printing, writing, picture or other such representation; in violation of Rule 17 of State Regulation No. 20."

Charge 1 herein is based upon defendant's participation in the unlawful activity of Ralph Pisacane whose solicitor's permit was suspended by me for seventy-five days. See Re Pisacane, Bulletin 1262, Item 9. The investigation discloses facts which satisfy me that defendant knew Pisacane was "washing" through defendant's name numerous sales of his employer's products to his relatives and acquaintances. This is a serious violation and the only mitigating circumstances which I find in the case are a statement by defendant that he allowed the use of his name only as a favor to the solicitor, and a statement by the solicitor that defendant "knew I was

billing merchandise through his account. However, he did not realize I was doing it so many times."

On November 20, 1958, during the course of the investigation, ABC agents found a box of contraceptives in a kitchen drawer and the indecent items mentioned in Charge 3 in the rear of the bar.

Defendant has a prior record. Effective October 30, 1955, the local issuing authority suspended his license for five days for permitting gambling on the premises. Under all the circumstances of this case, including the prior dissimilar violation, I shall suspend defendant's license for forty days. No remission for the plea will be granted because the plea was not entered until the date fixed for hearing.

Accordingly, it is, on this 16th day of March, 1959,

ORDERED that Plenary Retail Consumption License C-98, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Peter P. Houllis, t/a 75 Club, for premises 75 East Clifton Avenue, Clifton, be and the same is hereby suspended for forty (40) days, commencing at 3:00 a.m. Wednesday, March 25, 1959, and terminating at 3:00 a.m. Monday, May 4, 1959.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALE TO WOMEN AT BAR IN VIOLATION OF LOCAL REGULATION - SALE IN VIOLATION OF STATE REGULATION NO. 38 - GAMBLING - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
TERESA ROMAN
990 Broadway
Bayonne, N. J.,
Holder of Plenary Retail Consumption License C-150, issued by the Board of Commissioners of the City of Bayonne.

CONCLUSIONS
AND ORDER

James F. McGovern, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On December 20, 1958, January 2 and 3, 1959, you served alcoholic and/or other beverages to females except when seated at tables and permitted females to stand and/or sit at a public bar, in and upon your licensed premises; in violation of Section 14 of an Ordinance passed by the Board of Commissioners of the City of Bayonne on August 3, 1943.

"2. On Saturday, January 3, 1959, at about 12:25 a.m. and again at about 12:30 a.m., 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, and allowed, permitted and suffered the removal of said alcoholic beverages from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

"3. On December 27, 1958 and January 2 and 3, 1959, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting on December 27, 1958 of a money bet on the outcome of a football game; the acting as a depository from December 27, 1958 to January 2, 1959 for the money so wagered; and the payment of the money so wagered and deposited to one of the bettors on January 2, 1959; in violation of Rule 7 of State Regulation No. 20."

On December 20, 1958, January 2 and 3, 1959, ABC agents who were in defendant's premises observed alcoholic beverages being served to females who were standing or seated at the bar, in violation of a local ordinance.

On December 27, 1958 the bartender, Jake Guagliardo, asked the agents to bet with him on the outcome of a football game to be played the following day. A five-dollar bet was made by one of the agents and defendant agreed to hold the stakes. On January 2, 1959 the agent who had placed the bet visited defendant's premises and defendant gave him the money which he had won.

At about 12:30 a.m. on January 3, 1959 one of the agents purchased a pint of whiskey for off-premises consumption. The agents left the premises with the whiskey but returned immediately thereafter, identified themselves to the defendant and the bartender who had made the sale. The bartender admitted the violation.

In the absence of a prior record, I shall suspend the license on Charge 1 for five days (Re Caridi's Bar, Incorporated, Bulletin 1185, Item 3), Charge 2 for fifteen days (Re Myrtle Tavern, Inc., Bulletin 1266, Item 5), and Charge 3 for fifteen days (Re Holinda and Whelan, Bulletin 1134, Item 11), making a total of 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 17th day of March, 1959,

ORDERED that Plenary Retail Consumption License C-150, issued by the Board of Commissioners of the City of Bayonne to Teresa Roman, for premises 990 Broadway, Bayonne, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Tuesday, March 24, 1959 and terminating at 2:00 a.m. Thursday, April 23, 1959.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE
SUSPENDED FOR 30 DAYS - PREMISES CLOSED, EFFECTIVE DATES
TO BE FIXED BY FURTHER ORDER.

In the Matter of Disciplinary)
Proceedings against)

GINO FOLCI)
t/a FOLCI'S)
584 Ocean Avenue)
Long Branch, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-50 (for the 1957-58)
and 1958-59 licensing years), issued)
by the Board of Commissioners of the)
City of Long Branch.)

-----)
Michael Breitkopf, 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 a charge alleging that on April 5, 6, 12, 13, 19, 20, 26 and 27, 1958, he sold, served and delivered alcoholic beverages to minors and permitted the consumption of such beverages by said minors in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

"It appears from the evidence adduced at the hearing herein that the defendant, Gino Folci, operates his licensed business in a 2 1/2 story frame building, the first floor of which is mainly a dining area that seats 300 people; that the entrance to the area is gained through a foyer in the front, to the right of which along the side wall there is a long straight bar, and that within the area and left of the foyer there is a stairway leading to a basement dance hall which has a separate entrance from an outside parking lot. It appears further that the licensed business is seasonal and that the premises, which remained closed during the winter months, were scheduled to be reopened on Memorial Day, May 30, 1958; that Gino Folci, at the request of a group of musicians who proffered the services of their dance orchestra for the admission they would charge teenagers in the community, consented to reopen his establishment on April 5, 1958. The violations charged herein are alleged to have occurred on and after that date.

"To substantiate the charges, the Division called as its witnesses three ABC agents and ten minors. Hereinafter, each agent will be referred to by the initial of his last name and the minors by their given names.

"Arnis --- testified that he is 16 years of age; that at about 5:30 p.m., April 6, 1958, he, Leslie --- and Thomas --- visited defendant's licensed premises and remained there until 11:20 p.m., during which time he consumed a bottle of beer which he purchased at the bar in the dining area.

"Anthony --- testified that on the dates alleged he was 18 years of age and that he visited defendant's licensed premises on April 6, 12, 19 and 26, 1958; that on April 6th

he was accompanied by Mario ---, Michael --- and Stephen --- and that someone bought him three bottles of beer, one of which he consumed in the dance hall, the other two at the bar in the dining area; that on April 12th he and a girlfriend attended a dance in the licensed premises where he met Michael --- and Stephen --- and that they were served and consumed bottled beer; that at about 8:30 p.m. April 19th he and a girlfriend attended a dance in the licensed premises and remained until midnight and that during their stay he consumed two bottles of beer; that on April 26th he, Michael --- and Stephen --- attended a dance in the licensed premises and that Michael --- ordered a round of bottled beer and that he ordered two rounds which the three consumed at the bar in the dining area.

"Michael --- testified that he is 19 years of age and that he visited defendant's licensed premises on April 6, 9, 12 and 26, 1958; that on April 6th he consumed at the bar in the dining area five or seven bottles of beer, some of which were purchased by him, some by others, and that he saw Stephen --- and Anthony --- drinking beer at the bar; that on April 12th, while in the licensed premises, he consumed five, six or seven bottles of beer at the bar in the dining area and some other bottles of beer in the dance hall.

"Stephen --- testified that he is 20 years of age and visited defendant's licensed premises on April 6, 12 and 26, 1958; that on April 6th he met Michael --- and Anthony --- and that he consumed three or four bottles of beer in the dining area; that on April 12th he, Joseph --- and Michael --- attended a dance in the licensed premises and that he consumed ten bottles of beer at the bar in the dining area and some more between dances in the dance hall.

"William --- testified that he is 17 years of age and that he visited defendant's licensed premises on April 5, 12 and 26, 1958; that on April 5th he, Robert ---, Nicholas --- and Tommy --- visited defendant's licensed premises; that they and others took seats at a table in the dance hall; that Tommy --- ordered whiskey and soda for him and the others at the table; that a waitress served them and that, thereafter, during his stay, he sipped beer and whiskey from glasses served to others; that on April 12th 'I think I went with Robert --- and Nicholas ---' and that in the dance hall he consumed one or two bottles of beer, which were brought to him from the bar in the dining area by 'other kids' whom he paid.

"Joseph --- testified that on the dates alleged he was 19 years of age; that he and Arthur --- visited the licensed premises on April 26th, of which date he is not sure; that he consumed at the bar in the dining area a bottle of beer which someone else had paid for and that he saw Michael --- drinking a bottle of beer.

"Arthur --- testified that on the dates alleged he was 18 years of age; that he visited the licensed premises on April 26th; that while there he consumed a bottle of beer at the bar in the dining area and that he saw Michael --- drinking a bottle of beer at the bar.

"Armand --- testified that he is 16 years of age and that he visited the licensed premises on April 5, 12 and 26, 1958; that on April 5th he went with Patsy --- and that while in the dance hall he ordered from a waitress rye and soda or Scotch and water 'It was either of the two, that's the only thing I drink'; that he went to the bar in the dining area at which he consumed ten whiskies and took some Scotch and water

downstairs and that he spent on that occasion \$20.00 or \$25.00 for liquor; that he and Patsy --- went to the licensed premises on April 12th where he met Robert --- and Lester --- and that he, Patsy --- and another fellow went to the bar in the dining area where he consumed six, seven or eight drinks; that on April 26th he, Patsy --- and another fellow went to the bar in the dining area, at which he purchased drinks which he consumed downstairs.

"Henry --- testified that he is 18 years of age and that he visited the licensed premises on April 12 and 26, 1958; that on April 26th he was accompanied by William --- and Arnis --- and that he sipped beer from glasses served to others and thereafter became ill.

"Nicholas --- testified that on the dates alleged he was 18 years of age and that he visited the licensed premises on April 6, 12 and 26, 1958; that on April 6th he went with William --- and Robert --- and that one of the boys went upstairs for drinks and that he consumed whiskey and soda, beer and screwdrivers; that on April 12th he consumed five or six whiskey and sodas and on April 26th he consumed three or four bottles of beer.

"All of the minors testified that they later learned that Aldo Folci, the licensee's nephew, was the bartender who served them and that he did not request any written proof of their ages.

"Agent T testified that on June 20, 1958 he and Agent H were directed to defendant's licensed premises by Nicholas ---, Armand --- and Arnis ---; that he, Agent H, Arnis --- and Armand --- entered the premises where they met Gino Folci, Mary Fitzgerald, a waitress, and Aldo Folci; that Armand --- and Arnis --- identified Aldo as the person who had served them; that Gino Folci stated that Aldo tended bar part time on the dates alleged in the charge; that Aldo said he remembered Armand --- but not Arnis ---; that on June 23rd he and Agent H were directed to the licensed premises by Robert --- and on June 25th William ---, Stephen ---, Michael --- and Henry --- directed him and Agent H to the licensed premises and pointed it out as the place where they had been served the alcoholic beverages.

"Agent N testified that at 9:00 p.m., April 19, 1958, he and Agent H arrived in the vicinity of defendant's licensed premises which was open for business; that he alone entered and saw twelve males drinking at the bar in the dining area; that Aldo Folci was tending bar; that Gino Folci, his wife and another elderly male were seated at a table; that there were four or five young men lounging in the foyer; that there were about twelve to fifteen cars parked in the parking area and that he saw no evidence of any sale of alcoholic beverages to minors.

"Agent H corroborated the testimony of Agent N respecting the licensed premises being open for business on April 19, 1958.

"Gino Folci testified that he was on the premises on the dates alleged; that on April 5th there was a dance downstairs; that Bob Nolan was tending bar in the dining area; that on April 6th his nephew Aldo and his wife had dinner with him and that Aldo would go behind the bar to serve customers; that after the dance on April 12th Aldo reported to him that empty bottles and cans were strewn on the lawn and that, thereafter,

he closed his premises on April 13th and reopened them on Memorial Day 1958. He further testified that he has been in the liquor business for forty years; that he supervised the activities of the teenaged dancers and found nothing untoward; that he never before has been charged with any violation and he denied that any of the minors attending the dances were served alcoholic beverages in and upon his premises.

"Aldo Folci testified that he was in the licensed premises between 9:00 and 9:30 p.m. April 5th; that on the following day, Easter Sunday, he and his wife had dinner with his uncle; that he went behind the bar several times and served the orchestra members and adult customers; that he never served alcoholic beverages to any of the minors; that on April 13th he reported to his uncle that he had found several empty large beer bottles, an empty Seagram's whiskey bottle and an empty Canadian Club bottle in the parking area and that his uncle said 'Don't worry, I'll close up and that is all'; that the following Sunday his uncle and aunt had dinner at his home and that on April 26th he was painting the home of a Mr. Ancona in Deal, at which place he had been working continuously for two weeks.

"Mary Fitzgerald testified that she worked for the licensee as a waitress in the dance hall on the nights of April 12th and 13th and that her job was to serve sandwiches and soft drinks to the children; that thereafter the place was closed; that 'I don't think I served more than two cokes all the time I was there'; that "There was a side door that they would take off every once and a while. I never realized what was going on. They'd go out two or three at a time and they'd stay out maybe five minutes and then they'd come back." and that she had not served any alcoholic beverages to the minors.

"Having carefully evaluated the evidence adduced herein, I find that the Division has established by a fair preponderance of the believable evidence that on the dates alleged in the charge other than April 9, 20 and 27, 1958 defendant, by his agent and employee, sold alcoholic beverages to and permitted the consumption of such beverages by the minors who testified herein excepting three, i.e., Arnis ---, whose uncorroborated testimony is that he was in the licensed premises for the first and only time on April 6th; Henry ---, who testified that Arnis --- was with him on April 26th and the 16-year-old Armand ---, whose account of the amount of hard liquor he consumed and the sum he spent for liquor in defendant's licensed premises on the night of April 5th is incredible. I recommend, therefore, that an order be entered adjudging defendant guilty of the violation charged insofar as it relates to William ---, age 17; Anthony ---, Nicholas --- and Arthur ---, ages 18; Michael --- and Joseph ---, ages 19, and Stephen ---, age 20. I recommend further that the penalty of twenty days usually imposed for an unaggravated sale of alcoholic beverages to a 17-year-old minor (Re Deptula, Bulletin 1248, Item 7) be increased by ten days because of the number of minors involved and the amount of alcoholic beverages sold to them, making a total suspension of thirty days. Cf. Re Landolfi, Bulletin 1165, Item 2."

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

After carefully considering the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Defendant's business is conducted on a seasonal basis and the premises are presently closed. Thus, no effective penalty can be imposed at the present time. The effective date for the suspension will be fixed by a further order which will be entered by me after the licensed premises shall have been opened for the 1959 season.

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

ORDERED that Plenary Retail Consumption License C-50, issued by the Board of Commissioners of the City of Long Branch to Gino Folci, t/a Folci's, for premises 584 Ocean Avenue, Long Branch, or any transfer thereof to any other person for the same or other premises, be and the same is hereby suspended for thirty (30) days, the effective date to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - CHASE v. WASHINGTON TOWNSHIP (BERGEN COUNTY).

LeROY CHASE, t/a HARMONY)
BAR & GRILL,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WASHINGTON)
(Bergen County),)
Respondent.)

Freeman & Kroner, Esqs., by Richard G. Kroner, Esq., Attorneys
for Appellant.

Lloyd L. Schroeder, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby, on October 28, 1958, it suspended appellant's license for five days (effective at midnight November 16, 1958) after finding him guilty of a charge alleging that he permitted the sale of alcoholic beverages to a minor and the consumption of alcoholic beverages by said minor in violation of Rule 1 of State Regulation No. 20. Appellant's premises are located at 270 Pascack Road, Township of Washington.

"Upon the filing of this appeal an order was entered on November 17, 1958, staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

"From the evidence herein it appears that on September 19, 1958, respondent served on appellant a notice containing two charges. In Charge 1 it was alleged that on January 26, 1958, appellant permitted the sale of alcoholic beverages to and consumption of alcoholic beverages by Judith ---. In Charge 2 it was alleged that on January 26, 1958, appellant permitted the sale of alcoholic beverages to and consumption of alcoholic beverages by Rose ---. After a hearing duly held,

respondent on October 28, 1958, adopted a resolution finding appellant not guilty as to Charge 1 and guilty as to Charge 2. The same resolution provides that appellant's license shall be suspended 'for a period of ten (10) days, allowing five (5) days to be deducted therefrom for the reasons that the said licensee has always operated and conducted the said licensed premises in a very proper and lawful manner and that the said licensee has never been convicted of a violation of the Alcoholic Beverage Law of the State of New Jersey, nor the rules and regulations of the Division of Alcoholic Beverage Control.'

"From the evidence herein I find that the following facts are undisputed. On the evening of January 26, 1958, Rose --- (mentioned in Charge 2), Judith --- (mentioned in Charge 1), Joseph --- and Margaret --- entered appellant's premises about 9:00 p.m. and sat at the bar. Warren --- was also in the premises. Shortly after 10:00 p.m. Rose, Judith and Joseph left the premises and drove away in one car. Warren then left, drove away in his car and deliberately collided with the first car at some place in the Borough of Hillsdale. During the course of an investigation conducted on the same evening by the Hillsdale Police Department, Rose --- gave to said police a statement written by her wherein she said that she had been at appellant's premises and 'drank coke.' During a subsequent investigation by the Police Department of the Township of Washington, Rose ---, on January 28, 1958, gave to said police a statement wherein she said that she had 'three or four glasses of beer' in appellant's premises on the evening of January 26.

"On behalf of respondent, Rose --- testified at the hearing herein that she was 19 years of age on January 26, 1958, and that, while she was in appellant's premises on that evening, she had four or five glasses of beer which were served by a bartender who, she thinks, is William Beneway, and which drinks were paid for by Joseph ---. Judith --- testified that on the evening in question she was talking to Warren and didn't notice what drinks were served to Rose ---. Joseph --- testified that he did not see Rose --- have any alcoholic beverages. Margaret --- testified that she saw glasses in front of Rose while they were seated at the bar but didn't notice what kind of beverage was in the glasses.

"On behalf of appellant, LeRoy Chase testified that he was in his premises on the evening in question; William Beneway testified that he was tending bar, and Kenneth Brunar, a part-time bartender, testified that he also was in the premises. All denied that any alcoholic beverages had been served to Rose and all said that she had been drinking Coca Cola. Two patrons also testified that Rose drank Coca Cola. Sergeant Scott of the Hillsdale Police Department testified that he witnessed the written statement given by Rose on the evening of January 26 and that he does not remember smelling 'any alcoholic beverages on her' at that time.

"After reviewing the evidence herein I find that the uncorroborated testimony of the minor Rose is weakened by the contradictory statements given by her to the Hillsdale Police Department and the Washington Police Department. Weighing her testimony against the testimony given on behalf of appellant, I conclude that the finding of guilt as to Charge 2 is not supported by a fair preponderance of the evidence. It is recommended, therefore, that an order be entered reversing

the action of respondent. Smallheer v. Clifton, Bulletin 1059, Item 1; Kurschner v. Newark, Bulletin 1081, Item 3; Royal Castle Inc. v. Newark, Bulletin 1093, Item 2."

Pursuant to Rule 14 of State Regulation No. 15, the attorney for respondent filed written exceptions to the Hearer's Report and written argument as to said exceptions. In brief, he raises no question as to the correctness of the Report insofar as it sets forth the evidence presented at the hearing, but contends that said evidence establishes the truth of Charge 2 by a preponderance of the believable evidence. I agree that a mere preponderance of the number of witnesses does not amount to a preponderance of the evidence. However, after carefully considering the uncorroborated testimony of Rose --- and the testimony given on behalf of appellant, I conclude that the finding of guilt as to said charge is not supported by a fair preponderance of the believable evidence. Hence I shall enter an order reversing the action of respondent.

Accordingly, it is, on this 30th day of March, 1959,

ORDERED that the action of respondent be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

- 5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATION (AS TO RESIDENCE AND PRIOR SUSPENSION) - FAILURE TO FILE NOTICE OF CHANGE IN APPLICATION - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
CLENDENNY TAVERN, INC.
60 Clendenny Avenue
Jersey City 4, N. J.,
Holder of Plenary Retail Consumption License C-335, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS
AND ORDER

Defendant-licensee, by Richard McHale, President.
William F. Wood, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to the following charges:

"1. In your application dated May 26, 1958 and filed on May 27, 1958 with the Jersey City Municipal Board of Alcoholic Beverage Control, upon which you obtained your current plenary retail consumption license, you falsely stated the residence of Catherine McHale (your landlord and your vice-president and 1% shareholder) in answer to Questions Nos. 8(a), 20 and 22 as 60 Clendenny Avenue, Jersey City and you falsely stated 'Yes' in answer to Question No. 27(a) (which asks: 'Are you and all persons mentioned in this application actual and bona fide residents of the State of New Jersey at the present time?')

and you falsely stated 'No' in answer to Question No. 27(c) (which asks whether you or any person mentioned in the application maintains a home elsewhere than in New Jersey), whereas in truth and fact Catherine McHale then resided and maintained a home at 675 - 140th Street in the City of New York, County of the Bronx and State of New York and, in addition, Richard McHale (mentioned in the application as your president and 98% shareholder), although nominally a resident of 60 Clendenny Avenue in Jersey City, also maintained a home at the New York address; said false statements being in violation of R. S. 33:1-25.

"2. In your aforesaid application you falsely stated 'No' in answer to Question No. 41, which asks: 'Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was....suspended...?' and, although you indicated in answer to Question No. 34 that your license had been suspended for 10 days in 1956 for 'selling canned beer on Sunday', you wholly evaded and suppressed the material facts that your license had also been suspended for 5 days effective June 11, 1945 for an 'hours' violation and for 30 days effective February 4, 1946 for 'front' and 'hours' violations; such evasion and suppression being in violation of R. S. 33:1-25.

"3. You failed to file with the Jersey City Municipal Board of Alcoholic Beverage Control, within 10 days after the occurrence thereof, written notice of a change in the facts originally set forth in answer to Question No. 41 of your aforesaid application, such change being that effective June 23, 1958 your license was suspended by the State Director of the Division of Alcoholic Beverage Control for 25 days for an 'hours' violation and for employing a bartender without the requisite identification card from the Jersey City Department of Public Safety; your failure to file such notice being in violation of R. S. 33:1-34.

"4. In your aforesaid application you failed to answer Question 21 and thereby evaded and suppressed material facts concerning the names and residences of the members of your Board of Directors, such evasion and suppression being in violation of R. S. 33:1-25."

All of these charges comprise a failure of the licensee to set forth accurately answers required in its application for the license. It appears from such application that Richard McHale is president of the corporate-licensee, holding 98 shares; Catherine McHale, his wife, is vice-president and holds one share, and Patrick Gannon is secretary and holds one share. The residence of the McHales is stated in the application as that of the licensed premises. Actually, Mr. and Mrs. McHale maintain a home in New York City. This was not revealed in the application. If this fact had been set forth in the application, the issuing authority could have investigated whether Richard McHale is actually a resident of New Jersey, as he claims, and which he is required to be as the holder of more than ten per cent of its stock.

In addition, while it is to be assumed that the local issuing authority has knowledge of the licensee's previous

record of suspensions, the licensee is required to reveal such record in its application by setting forth the full record at the time of the filing of the application, and is required to give notice to the municipality of any such suspension incurred after the issuance of the license. The licensee is also required to set forth in full detail the names and residences of its Board of Directors. In all of these respects, it failed to comply with the requirements.

The defendant-licensee has a sorry record. For completeness it is pointed out that, although not presently considered in fixing penalty because imposed over ten years ago, its license was suspended in 1945 for an "hours" violation and in 1946 for a "front" and an "hours" violation. However, in recent years its license was suspended for ten days, effective December 3, 1956 by the Director for an "hours" violation (Bulletin 1147, Item 6); for twenty-five days, effective June 23, 1958 by the Director for an "hours" violation (Bulletin 1235, Item 3), and it is presently serving a fifty-five-day suspension, effective January 20, 1959 and terminating March 16, 1959, by the Director for an "hours" violation (Bulletin 1261, Item 7).

Richard McHale urges, in alleged mitigation of the present violation, that he understood that the Division did not consider any violation over five years old and that he did not intentionally suppress this information in its present application, and, as to the latest suspension, he did not realize that the local authorities should be notified of suspensions after the filing of the application. While not entirely convincing, I am giving consideration to this explanation in determining the penalty to be imposed herein.

Although the Division did not (because of a lack of appropriate evidence) charge that Richard McHale is actually an out-of-state resident, I have serious doubts as to the bona fides or sufficiency of his residence in this State. The only residence facilities maintained by him here is one room in the licensed building reserved for his use; and that room appears to have been used by him very infrequently in recent years. Instead, allegedly because of a physical handicap, he has spent approximately all of his time with his family at his New York City home. In view of such handicap, I shall, despite the substantial previous record as above set forth, impose a relatively light penalty in this case. However, in passing, I strongly recommend that Richard McHale (to avoid further proceedings with respect to his residence) remove the existing doubts concerning the sufficiency thereof by either arranging for an unquestionable permanent place of abode in this State or by disposing of his interest in the licensed business. The licensee is hereby directed to correct its application before the effective date of the suspension presently imposed and advise this Division when this has been done. I shall suspend the defendant's license for a period of thirty days, effective March 16, 1959. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

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

ORDERED that Plenary Retail Consumption License C-335, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Clendenny Tavern, Inc., for premises 60 Clendenny Avenue, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, March 16, 1959, and terminating at 2:00 a.m. Friday, April 10, 1959.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - POSSESSING INDECENT MATTER ON PREMISES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against SALVATORE TENNARO & WILLIAM J. MACKIN 3510 New York Avenue Union City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-121, issued by the Board of Commissioners of the City of Union City.

Defendant-licensees, by William J. Mackin, Partner. Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

"1. On Sunday, February 8, 1959, at about 2:40 p.m., 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, and allowed, permitted and suffered the removal of such alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

"2. On Sunday, February 8, 1959, you allowed, permitted and suffered in and upon your licensed premises and had in your possession an obscene, indecent, filthy, lewd, lascivious and disgusting matter in form of an object made of wood; in violation of Rule 17 of State Regulation No. 20."

On Sunday, February 8, 1959, at about 2:40 p.m., an ABC agent purchased from Robert Gale who was tending bar, five seven-ounce bottles of Rheingold beer for off-premises consumption. The agent left the premises but returned immediately thereafter with another agent who had remained outside. The agents identified themselves to the bartender who admitted making the sale of the beer. During the course of an inspection of the defendants' premises an indecent wooden object was found in a drawer behind the bar. The defendants, who had come into the premises, contended that they had intended to discard the article but had inadvertently neglected to do so. Novelties of this type have no place on licensed premises. Re Mayo, Bulletin 1104, Item 9.

Defendants have no prior adjudicated record. I shall suspend defendants' license for fifteen days on Charge 1 (Re Smagular, Bulletin 1261, Item 8) and for ten days on Charge 2 (Re Iberia Tavern & Restaurant, Inc., Bulletin 1224, Item 5), making a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

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

ORDERED that Plenary Retail Consumption License C-121, issued by the Board of Commissioners of the City of Union City to Salvatore Tennaro & William J. Mackin, for premises 3510 New York Avenue, Union City, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Friday, March 13, 1959 and terminating at 3:00 a.m. Thursday, April 2, 1959.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - POSSESSING INDECENT MATTER ON PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against)

PLEASURE INN, INC.)
t/a Pleasure Inn)
666-668 S. Broad Street)
Trenton 10, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-200, issued by the Board of Commissioners of the City of Trenton.)

Victor H. Del Gaudio, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant entered a plea of not guilty to the following charge:

"On December 23, 1958 and prior thereto, you allowed, permitted and suffered in and upon your licensed premises and had in your possession obscene, indecent, filthy, lewd, lascivious and disgusting matter in form of statues, statuettes, printings, photographs, drawings, cartoons, sketches, recordings and representations; in violation of Rule 17 of State Regulation No. 20."

When the matter came on for hearing, defendant, by its attorney, withdrew the aforesaid plea and entered a plea of non vult.

On December 23, 1958, ABC agents while making a retail inspection of defendant's licensed premises, seized various indecent magazines, figurines and photographs located in a closet in the back bar.

In a signed statement, Michael Salay, President of the corporate-licensee, stated that the items had been left in the tavern by various patrons and that he had shown them "just for fun and for a few laughs among our well known patrons who didn't object to a little such humor."

The possession of such lascivious material is not conducive to good morals and will not be tolerated on licensed premises.

Defendant has a prior adjudicated record. Effective January 14, 1957 its license was suspended for fifty-five days by the local issuing authority for: (1) sales to minors; in violation of State Regulation and (2) allowing unaccompanied

minors to frequent and loiter in room used for sale of alcoholic beverages; in violation of a local ordinance.

I shall suspend defendant's license for a period of ten days, the minimum penalty for the violation charged herein, Re Folger, Bulletin 1145, Item 10, to which five days will be added for the dissimilar violation which occurred within a five-year period, making a total suspension of fifteen days. The usual remission of five days will not be granted since the confessional plea was not entered prior to the date scheduled for the hearing.

Accordingly, it is, on this 5th day of March, 1959,

ORDERED that Plenary Retail Consumption License C-200, issued by the Board of Commissioners of the City of Trenton to Pleasure Inn, Inc., t/a Pleasure Inn, for premises 666-668 S. Broad Street, Trenton, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Monday, March 16, 1959 and terminating at 2:00 a.m. Tuesday, March 31, 1959.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - POSSESSING INDECENT MATTER ON PREMISES - FAILURE TO HAVE TRUE COPY OF LICENSE APPLICATION ON PREMISES - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against
JOSEPH & HELEN KULINSKI
t/a THE OLIVER
301 Oliver Street
Newark 5, N. J.,
Holders of Plenary Retail Consumption License C-562, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
AND ORDER

William J. Gearty, Esq., by Thomas E. Durkin, Esq.,
Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The defendants, Joseph and Helen Kulinski, entered a technical plea of not guilty, in that they did not dispute the facts set forth in their statement given to an agent of this Division, but contend that these facts do not establish their guilt under the following charges:

'1. On August 22, 1958, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing an obscene, indecent, filthy, lewd, lascivious and disgusting representation in form of a wooden object, approximately 1 1/4" in diameter and 6" in length; in violation of Rule 17 of State Regulation No. 20.

'2. On August 22, 1958, you conducted your licensed business without having a photostatic or other true copy of your application for your current license on the licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20.'

"The aforesaid statement discloses that on August 22, 1958 an ABC agent, while in the course of a routine inspection of defendants' licensed premises, found the suggestive and indecent wooden article mentioned in Charge 1 in the third drawer of the back bar where it had been for a period of six months. The investigation also disclosed that a photostatic or other true copy of the licensees' application for their current license was not made available for inspection.

"As to the first charge, defendants contend that since the aforementioned indecent object was brought on the licensed premises about six months prior to its being found as aforesaid by the agent and remained there without the knowledge of the licensees, it does not constitute a violation. There is no merit to this contention. A licensee is under a duty to exercise close supervision of his licensed premises, and violations occurring therein cannot be excused because he had no personal knowledge of them. Re DiAngelo, Bulletin 1252, Item 1.

"As to the second charge, defendants' contention that the license application was on the premises while the agent was there, but was not produced for his inspection, is likewise without merit. Under Rule 16(b) of State Regulation No. 20, 'No retail licensee shall conduct the licensed premises unless...(b) a photostatic or other true copy of the application for the current license is kept on the licensed premises available for inspection'.

"I am satisfied that the facts hereinabove set forth amply prove the defendants guilty of the charges herein and recommend that the defendants be found guilty as charged.

"Defendants have no prior adjudicated record. Under all the circumstances of this case, it is recommended that an order be entered providing that defendants' license be suspended for a period of ten days on both charges."

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

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 24th day of February, 1959,

ORDERED that Plenary Retail Consumption License C-562, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joseph & Helen Kulinski, t/a The Oliver, for premises 301 Oliver Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, March 2, 1959, and terminating at 2:00 a.m. Thursday, March 12, 1959.

WILLIAM HOWE DAVIS
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Clarence Eugene Hough, t/a Hough's Beverages
25 Rucereto Avenue, Dumont, N. J.

Application filed April 17, 1959 for person-to-person transfer of State Beverage Distributor's License SBD-101 from Thomas W. Kavanagh, t/a Kavanagh's Beverages.

Joseph Pingitore, Inc.

241-263 Chelsea Avenue, Long Branch, N.J.

Application filed April 21, 1959 for State Beverage Distributor's License.