

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

BULLETIN 1353

September 27, 1960

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 11. STATE LICENSES - NEW APPLICATION FILED.

"Actually, the ordinance in effect is No. K-1112 adopted October 5, 1937, as last amended June 1, 1954.

"Section 4 of such ordinance provides inter alia that no consumption license may be transferred to other premises within 750 feet of premises similarly licensed except that the Board may, in its discretion, transfer a license to other premises within five hundred (500) feet of the licensed premises to be vacated, if the licensee shall be compelled to vacate 'for any reason' that in the opinion of the Board was not caused by action on the part of the licensee.

"Appellant Boscos' licensed premises are located at 553 Jersey Avenue within 750 feet of the proposed licensed premises at 577 Jersey Avenue. The premises known as 220 Newark Avenue are within 500 feet of 577 Jersey Avenue. Hence the transfer in question must be governed by the 500-foot exception in the ordinance.

"It appears herein that the respondent-licensee's lease for premises at 220 Newark Avenue expired April 30, 1960. She remained in possession of such premises for at least a month thereafter as a monthly tenant and served notice upon the landlord that she would vacate the premises on June 1, 1960. The landlord did not notify her to vacate or demand an exorbitant increase in rent for renewal of the lease. Cf. Tube Bar, Inc. v. Commuters Bar, Inc., 18 N.J. Super. 351 at p. 356. The licensee simply had decided that she would not continue to occupy the premises under any conditions because her business was being operated at a loss. This is evidenced by the statement of counsel for the licensee at the hearing on the application for transfer held on May 3, 1960, before the respondent Board: '...we are losing money and we have already given notice to the landlord at 220 Newark Avenue that we will vacate the premises regardless as to what decision is made here, because we can't continue this way. *** The actual request is because of hardship.' George Smith, speaking for the licensee, stated: 'We are going to move out anyway.' Counsel for the licensee thereafter stated: '... The lease has expired, and we have given him notice that no matter what the Board says we are going to vacate on June 1. We have to.'

"Since the comprehensive phrase 'for any reason' appears to be the standard by which the Board may formulate an opinion governing its action, it becomes necessary to determine from the facts in the instant case if reasonable cause existed for the Board's decision.

"It is perfectly clear that the respondent-licensee's inability to operate the licensed business profitably cannot form the basis of a finding that thereby the licensee was compelled to vacate for any reason not caused by any action on the part of the licensee. The entire design of the distance-between-premises ordinance would be set for naught if the licensee could transfer his license anywhere within 500 feet of his licensed premises merely on the basis that he could do better business at the new location. Under much similar circumstances in a case involving the representation that operation of the licensed business at the former premises was conducted at a loss with the prospect of much better business at the proposed new location, it was said in Cooperstein v. Elizabeth, Bulletin 1098, Item 1:

'*** It is a settled principle that, in a conflict between private interests and the interests of the community at large, the latter must prevail. Pasquale v. Tenafly, Bulletin 1012, Item 1; Weiss v. Newark, Bulletin 1079, Item 7. *** A local issuing authority has no jurisdiction to issue or transfer a license in violation of a

local ordinance. Moschera v. Plumsted, Bulletin 1075, Item 8; Higgins v. Elizabeth, Bulletin 1081, Item 5; cf. Jersey City Retail Liquor Dealers Assn. et al. v. Jersey City and Dal Roth, Inc., Bulletin 976, Item 4, aff'd. 28 N.J. Super. 246 (Super. Ct., App. Div. 1953).'

"Hence, for the reasons above stated I recommend that an order be entered reversing the action of respondent Board whereby it granted the transfer of the license in question.

"The 1959-60 licensing year is to expire shortly and respondent-licensee has filed, and there is presently pending, her application for renewal for the 1960-61 licensing year at the 220 Newark Avenue premises. With the reversal of the transfer, the respondent-licensee continues to have the status of a licensee at such premises until the expiration of such license on June 30, 1960."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney for respondent licensee, with which the attorney for respondent Board concurred, and written answering argument was filed with me by the attorney for appellants.

Having carefully considered the entire record, including the evidence, exhibits, Hearer's Report and exceptions and answering arguments pertaining thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein, and shall reverse the action of the respondent Municipal Board.

Accordingly, it is, on this 27th day of July 1960,

ORDERED that the action of the respondent Municipal Board, in granting the transfer in question, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - MELSTAN CORPORATION v. RANDOLPH.

MELSTAN CORPORATION, t/a THE SALEM,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS
v.)	AND ORDER
)	
TOWNSHIP COMMITTEE OF THE TOWNSHIP)	
OF RANDOLPH,)	
)	
Respondent.)	

Paul Colvin, Esq., Attorney for Appellant.
Young and Sears, Esqs., by Harry L. Sears, Esq., Attorneys
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent, on January 25, 1960, whereby it suspended appellant's license for ten days, commencing at 2:00 a.m., March 7, 1960. The suspension was imposed after respondent heard testimony in disciplinary proceedings as a result of which it found appellant guilty of a charge alleging that on October 17, 1959 it sold, served and delivered and allowed,

permitted and suffered the sale, service and delivery to and consumption of alcoholic beverages by a minor, in violation of Rule 1 of State Regulation No. 20. Appellant's licensed premises are located on South Salem Street, Randolph Township, Dover, New Jersey.

"Upon the filing of the appeal, an order was entered by the Director on February 16, 1960 staying respondent's order of suspension until entry of a further order herein. R.S. 33:1-31.

"In its petition of appeal, appellant alleges that the action of respondent was erroneous for the following reasons:

- 'A. A member of the committee, one Sol Messer is directly or indirectly connected with a liquor license issued by the respondent. Said committee-man heard the evidence but did not vote, nor was he present when the vote was cast. This objection is raised to preserve appellant's right to comply with the rules and regulations of the Alcoholic Beverage Control Board.
- B. The verdict is against the weight of the evidence. In particular, it was testified that the said minor was accompanied by an adult; that the adult did not buy any beverage for the minor directly or indirectly; that the said minor in the absence of the adult impulsively seized a bottle of beer belonging to the adult.
- C. That the finding of guilty is predicated upon an unreasonable interpretation of the rules of the Alcoholic Beverage Control Board.
- D. That a reading of the statutes and regulations governing the sale to minors does not support a conviction where it is established that the licensee made a bona fide sale to an adult, and that the adult neither participated, nor in any way, acceded to any request or demand of the minor for alcoholic beverage; and that the minor's action was such as could not be controlled.'

"The answer filed by respondent states that the matter was duly considered on the evidence presented to the Township Committee and that the determination as rendered was consistent with the weight of the evidence adduced.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"At the hearing herein, respondent presented an ABC agent, the minor in question, his adult companion and appellant's bartender as its witnesses.

"An ABC agent testified substantially as follows: On October 17, 1959, shortly after midnight, he and another agent entered appellant's licensed premises. They observed that about 70 to 80 persons were there and three men were tending bar and one waitress was on duty outside the bar. At about 1:00 a.m. the agents observed a male who appeared to be 18 or 19 years old, later identified as Robert ---, in the rear of the premises with his elbow on the framework of a booth where a couple was seated. At about 1:20 a.m. the agents observed an adult companion (21 years of age) come to where the minor was standing, engage in a short

conversation and then proceed to the bar where he purchased two twelve-ounce bottles of beer from a bartender, later identified as John McLean. The adult brought these two bottles of beer to the booth, retained one of the bottles and placed the other near Robert's elbow. Robert took this bottle in his hand, then placed it to his lips. One of the agents then accosted Robert, walked with him to another location in the licensed premises and there was joined by the other agent. Upon being asked his age, Robert at first said that he was 21, but shortly afterwards admitted that he was only 18 years of age. The bottle of beer which was taken from Robert was minus two or three ounces of beer.

"Robert's adult companion testified that he and Robert were at appellant's licensed premises at about 10:30 p.m. on October 16, 1959 and sat at the bar. While at the bar, he drank beer and Robert drank coca cola; that at about 12:00 a.m. or perhaps later, he and Robert went to the booth where two of their friends were seated; that other persons were also seated there; that Robert remained there in conversation with their friends while he danced from time to time; that he purchase two bottles of beer from McLean, walked to the vicinity of the booth and placed the beer on top of the table; that he poured a drink of beer into a glass, drank the beer and then went to the dance floor; that he purchased both bottles for his consumption; that when he came back from the dance floor the agents had already disclosed their identities to Robert; that he purchased two bottles of beer because the bar was crowded and it took some time to get waited on.

"Robert testified that he was 18 years of age at the time, his birthday being August 11, 1941; that he entered appellant's premises at 10:00 or 10:30 p.m. October 16, 1959; that he and his adult companion had no trouble finding seats at the bar; that he and his companion sat at the bar for about three hours and he drank coke throughout; that then as they were leaving the premises, they stopped at a booth to talk with some friends and he was there for about a half hour, during which period he informed his adult companion that he wanted to leave for home and it was at this time that the adult went to the bar and returned with the two bottles of beer, placed them in the booth on the table top, poured a glass, took a drink and went back to the dance floor; that during the adult's absence, he picked up one of the bottles with the intention of taking a drink, placed the bottle to his lips and was interrupted by the ABC agents before he had a chance to take a swallow of the beer; that he did not make any comment to the adult at the delay in leaving by reason of the adult's purchase of the two bottles of beer.

"John McLean, the bartender, testified that he recalled serving the adult and the minor with the aforesaid drinks and that he did not serve anything but coke to Robert because he appeared to be a minor; that the minor and his companion sat at the bar for a few hours; that thereafter, after they left the bar, he sold two bottles of beer to the adult without asking for whom they were intended and that it did not occur to him that the other beer might be for the young fellow who was too young to be served.

"Counsel for appellant did not present any witnesses on the licensee's behalf but, instead, moved for dismissal of the charge on the ground that there is considerable doubt that there was any sale, directly or indirectly, to Robert; that it was an impulsive act by him and, at most, he merely brought the bottle to his lips, but there is no definitive evidence that he took a drink therefrom.

"The basic design of the regulation referred to in the charge is to impose upon a licensee strict responsibility for any sale,

service or delivery to or consumption of alcoholic beverages by a minor which the licensee had a reasonable opportunity to prevent. Illustrative examples of the extent to which a licensee has been held accountable are where the licensee provides an extra glass so that a customer may give beer to a minor; or serves liquor at empty places at a table where it may be intended for minors; or serves two drinks to one person at the bar when the second person who is not at the bar may be a minor. Under these and comparable circumstances, a licensee's only safe and proper course is to take every reasonable precaution to prevent a minor from obtaining or consuming alcoholic beverages on the licensed premises. Re Rogoff, Bulletin 836, Item 2.

"It is crystal clear in the instant case that Robert had a bottle of beer in his hand intending to drink the beer, and, in fact, had swallowed two or three ounces thereof. Under the case cited above, the evidence herein would appear to be sufficient to establish an indirect sale to the minor and, in any event, is sufficient to sustain that portion of the charge which alleges that the licensee permitted consumption of an alcoholic beverage by the minor on its licensed premises. Re O'Byrne, Bulletin 1311, Item 8.

"The vital element to be considered is whether the bartender could have taken any means to prevent Robert from obtaining the bottle of beer. The bartender knew that both the adult and the minor had been together all evening. When delivering the two bottles of beer to the adult, the bartender did not ask any questions and, hence, could reasonably assume that someone other than the adult was to have the second bottle of beer. Nevertheless, the bartender did not insist upon such other person coming to the bar or arrange to have another employee follow the adult to make certain the beer would not be made available to the minor. Robert was not a stranger who had obtained the beer surreptitiously, but had been the adult's companion all evening. The particular circumstances may have influenced the respondent to suspend the license for a shorter period than that usually imposed in the case of an 18-year-old minor, but it seems clear to me that the licensee is guilty of the charge for the reasons above stated.

"I conclude that appellant has failed to sustain the burden resting upon him to establish that respondent's action was erroneous. Rule 6 of State Regulation No. 15. I therefore recommend that the motion be denied, that the licensee be found guilty of the charge, and that an order be entered affirming the action of respondent, vacating the order entered herein on February 16, 1960 and fixing the effective dates for the ten-day suspension imposed by respondent."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions that the motion to dismiss the proceedings should be denied; that the respondent's action in finding appellant guilty of the charge is not erroneous, and the appeal be dismissed, and hereby adopt his recommendations to that effect.

Accordingly, it is, on this 27th day of July, 1960,

ORDERED that the action of respondent Township Committee be and the same is hereby affirmed; and it is further

ORDERED that the ten-day suspension heretofore imposed by respondent be and the same is hereby restored and reinstated against the license held by appellant for premises on South

Salem Street, Randolph Township, Dover, to commence at 2:00 a.m., Monday, August 8, 1960, and terminate at 2:00 a.m., Thursday, August 18, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - MELSTAN CORPORATION v. RANDOLPH - SUSPENSION POSTPONED.

MELSTAN CORPORATION,)
t/a THE SALEM)

Appellant,)

ON APPEAL
ORDER

v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF RANDOLPH,)

Respondent.)

Paul Colvin, Esq., Attorney for Appellant-petitioner.
Young and Sears, Esqs., by Harry L. Sears, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

On July 27, 1960, I entered an order herein affirming the action of respondent and reinstating the ten-day suspension imposed by respondent to commence at 2 a.m. Monday, August 8, 1960, and to terminate at 2 a.m. Thursday, August 18, 1960.

Appellant has filed with me a verified petition requesting a postponement of said suspension. The petition sets forth that, prior to the receipt of a copy of the aforesaid order, appellant had entered into a contract with an Agency in New York to provide entertainment at its premises from August 9 to September 4 at a substantial cost, and states that a cancellation of said contract will work a great hardship upon petitioner. It appears to my satisfaction that appellant's premises are operated on a year-round basis. Sufficient reason appearing for the granting of appellant's request,

It is, on this 3rd day of August 1960,

ORDERED that the ten-day suspension, instead of commencing at 2 a.m. Monday, August 8, 1960, shall, in lieu thereof, commence at 2 a.m. Tuesday, September 6, 1960, and terminate at 2 a.m. Friday, September 16, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED -
 LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

GUIDO MATRAXIA AND CASPER MATRAXIA)
 338-342 Franklin Avenue)
 Belleville, N. J.)

CONCLUSIONS
 AND ORDER

 Holders of Plenary Retail Consumption)
 License C-40, issued by the Board of)
 Commissioners of the City of Belleville,)

Defendant-licensees, Pro se.

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

BY THE DIRECTOR:

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

On June 16, 1960, an ABC agent tested defendants' open stock of liquor and seized a number of bottles for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of five of said bottles varied substantially in solids and acids from the contents of genuine bottles of the labeled brands.

By way of mitigation defendants have submitted a statement which I have carefully read, together with the file in the case and the report of the agent. However, I do not find any extenuating circumstances in this case which would impel me to impose less than the minimum penalty in cases of this kind.

Defendants, as partners, have no prior adjudicated record. However, when the license was held by Leon Citarella and Guido Matraxia it was suspended by the local issuing authority for five days, effective June 24, 1951, for sale to minors. Since this dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. Re Grande & Schipani, Bulletin 1309, Item 7. I shall suspend defendants' license for twenty-five days (the minimum penalty imposed in "refill" cases involving five bottles). Re C. & D Tavern (A Corp.), Bulletin 1339, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 22nd day of July 1960,

ORDERED that Plenary Retail Consumption License C-40, issued by the Board of Commissioners of the City of Belleville to Guido Matraxia and Casper Matraxia, for premises 338-342 Franklin Avenue, Belleville, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Friday, July 29, 1960, and terminating at 2 a.m. Thursday, August 18, 1960.

WILLIAM HOWE DAVIS
 DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

GOLD CORPORATION
t/a KENDALL LANES
Lincoln Highway (also known as Hwy. #27)
South Brunswick Township
PO #3550, Franklin Park, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3 (for the 1959-60 and 1960-61 licensing years), issued by the Township Committee of South Brunswick Township.

Wilentz, Goldman, Spitzer & Sills, Esqs., by Warren W. Wilentz, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it directly or indirectly sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

On April 14, 1960 two ABC agents visited defendant's licensed premises and observed a waitress therein serve one glass of beer to each of two apparent minors. When the youths had consumed a portion of their drinks, the agents made their identities known to them and, having ascertained that they were Donald ---, age 17, and David ---, age 18, they seized for evidential purposes the remainder of the beer in front of each minor. The agents then identified themselves to the waitress, who admitted serving the alleged minors, stating that they had displayed Selective Service Identification Cards which showed one of them to be 21 and the other to be 22 years of age. The minors confirmed her statement and the agents took possession of the cards.

Defendant has no prior adjudicated record. The usual penalty imposed for the violation charged herein which involves the sale and service of alcoholic beverages to a 17-year-old minor is a twenty-day suspension of the license. Re Kelly's Half Way House (A Corp.), Bulletin 1147, Item 1. However, since the minors admitted that they presented spurious identification cards to the waitress, I shall consider this as a mitigating circumstance in fixing the penalty and suspend defendant's license for fifteen days. Cf. Re Hagen, Bulletin 1309, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 25th day of July, 1960,

ORDERED that Plenary Retail Consumption License C-3, for the 1960-61 licensing year, issued by the Township Committee of South Brunswick Township to Gold Corporation, t/a Kendall Lanes, for premises on Lincoln Highway (also known as Highway #27), South Brunswick Township, be and the same is hereby suspended

for ten (10) days, commencing at 2:00 a.m. Monday, August 1, 1960, and terminating at 2:00 a.m., Thursday, August 11, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - FRAUD IN APPLICATION (AS TO PRIOR SUSPENSION) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against

CLUB RAINBOW, INC.
t/a CLUB RAINBOW
Lands Avenue at Rainbow Lake
Pittsgrove Township
PO RFD #6, Bridgeton, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3 (for the 1959-60 and 1960-61 licensing years), issued by the Township Committee of Pittsgrove Township.

William Gallner, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On Saturday, April 9, 1960 you sold and allowed sales of alcoholic beverages between the hours of 12:01 A.M. and 1:03 A.M., in violation of Resolutions concerning alcoholic beverages passed by the Pittsgrove Township Committee on January 1, 1934 and April 18, 1934.
- "2. In your application dated June 23, 1959, filed with the Pittsgrove Township Committee, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 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 surrendered, suspended, revoked or cancelled?', whereas in truth and fact your 1958-59 license for these premises was suspended by the State Director of Alcoholic Beverage Control for 25 days, effective March 2, 1959, for sale of alcoholic beverages during prohibited hours; in violation of R.S. 33:1-25."

Two ABC agents arrived in the vicinity of defendant's premises on Friday, April 8, 1960 at about 11:55 p.m. One agent entered and ordered a bottle of beer from George Ramsey (a bartender) who told him that the sale of alcoholic beverages had just been discontinued at midnight. This agent immediately left, rejoined the other agent and both remained outside until 12:50 a.m. During this period they observed five patrons enter. At about 12:50 a.m. both agents approached the premises, looked through a window and observed the same bartender as he sold to various patrons ten

drinks, the latest sale being made at 1:03 a.m. The agents then knocked on the front door and were admitted by Joseph Tedesco (the manager). They identified themselves to the manager and the bartender.

Defendant has a prior record. Effective March 2, 1959, its license was suspended by the Director for twenty-five days after it pleaded non vult to two charges alleging that it sold alcoholic beverages during prohibited hours on December 14, 1958 and January 18, 1959. Bulletin 1269, Item 4. Hence, the present violation is a third similar violation within the past five years.

By way of mitigation as to Charge 2, the attorney for defendant has submitted an affidavit made by David A. Venturi, wherein he sets forth that he is an accountant; that he prepared defendant's application dated June 23, 1959; that he inadvertently failed to disclose the suspension referred to above and that there was no intention to make a false statement.

I shall suspend defendant's license for sixty days on Charge 1 (Re Woodlawn Bar & Grill, Inc., Bulletin 1060, Item 2; Re Hamps, Inc., Bulletin 1212, Item 2), and for an additional ten days on Charge 2 (Re Mitchell, Bulletin 1248, Item 3), making a total suspension of seventy days. Ten days will be remitted for the mitigating circumstances as to Charge 2 and the plea entered herein (Re Boysen's Sunset Tavern, Inc., Bulletin 1266, Item 1), leaving a net suspension of sixty days.

Accordingly, it is, on this 26th day of July 1960,

ORDERED that Plenary Retail Consumption License C-3 (for the 1960-61 licensing year), issued by the Township Committee of Pittsgrove Township to Club Rainbow, Inc., t/a Club Rainbow, for premises on Landis Avenue at Rainbow Lake, Pittsgrove Township, be and the same is hereby suspended for sixty (60) days, commencing at 8:00 a.m., Monday, August 1, 1960 and terminating at 8:00 a.m., Friday, September 30, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HENRY MISIUK & CHARLES PETKOS)
EXEC. OF ESTATE OF GEORGE PETKOS)
t/a PETKOS TAVERN)
2 Holsman Street)
Paterson 2, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-246 (for the 1959-60 licensing year), issued by the Board of Alcoholic Beverage Control for the City of Paterson, and which license has been renewed for the 1960-61 licensing year in the name of)

HENRY MISIUK, CO-EXECUTOR OF THE ESTATE OF GEORGE PETKOS,)

for the same address.)

-----)
J. Mortimer Rubenstein, Esq., Attorney for Defendants.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

On Sunday, June 5, 1960, at about 1:20 p.m., two ABC agents observed a patron leaving defendants' premises with something which appeared to be a bottle in his pocket. When stopped by the agents, the patron took from his pocket a three-fourth pint bottle of gin, which he said he had purchased in the tavern. All entered the premises, where George Misiuk (who was tending bar) admitted that he had made the sale to the patron.

Defendants have a prior record. Effective December 8, 1958, and again effective January 18, 1960, I suspended their license for ten days and twenty-five days, respectively, for violations similar to the violation herein. Bulletin 1258, Item 8; Bulletin 1323, Item 3. The attorney for defendants has advised me in writing that Charles Petkos, who has an interest in the Estate of George Petkos (his late brother), has agreed to sell his interest in the estate to Helen Petkos (widow of George Petkos). He requests leniency because a lengthy suspension will work a hardship on Helen Petkos. These facts do not in any way mitigate the violation which is the third of a similar character within the past five years. I shall suspend the license for a period of sixty days. Re Berger Company, Inc., Bulletin 1204, Item 1; Re Clendenny Tavern, Inc., Bulletin 1261, Item 7. Five days will be remitted for the plea, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 26th day of July 1960,

ORDERED that Plenary Retail Consumption License C-246, for the 1960-61 licensing year, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Henry Misiuk, Co-Executor of the

during which period he has been employed in this vicinity. On Friday, April 8, 1960, advised by his employer that work was getting slow, and, hence, concluding that he was on the verge of being laid off, he asked a truck driver whether he knew where Holloway could obtain work. He was not previously acquainted with this person, who happened to be at a place where Holloway went on his employer's business. This person, whom he only knew as 'Bill', asked him if he was familiar with Camden, New Jersey. Receiving an affirmative reply, 'Bill' told Holloway he might be able to get him a job delivering some packages. Accordingly, he gave 'Bill' his name and telephone number. On Sunday, April 10, 1960, he received a telephone call from 'Bill'. He then met 'Bill' who placed two cartons (he asserted that they were sealed) in the trunk of Holloway's car, as well as a plastic bag with eggs and milk and a jar of peaches. 'Bill' asked Holloway whether he knew where the 'Dew Drop Inn' was located in Camden, and instructed Holloway to drive there, where he would be contacted by some unnamed person who would recognize the license number on Holloway's car, and would pick up the packages, and that this person would pay Holloway \$50 for the job. Holloway was then in straitened financial circumstances.

"William Holloway's request for return of the Mercury coupe is addressed to the discretionary authority of the Director to return property subject to forfeiture to a person who has established to the satisfaction of the Director that he has acted in good faith, and has unwittingly violated the Alcoholic Beverage Law. R.S. 33:1-66(e).

"It is readily apparent that it is not credible for the owner of a motor vehicle to agree with a total stranger to engage in the transportation of two packages to be delivered in such surreptitious manner for which he was to be paid \$50, a sum which admittedly was far in excess of the value of such service. The circumstances, if believable, were sufficient to put Holloway on notice that it was an illegal enterprise. However, what appears more likely is that it is not a true account of transaction, but, instead, Holloway was transporting the illicit alcoholic beverages with full knowledge thereof and on his own behalf. I recommend that his application for return of the motor vehicle be denied.

"I further recommend that an order be entered forfeiting the alcohol and the Mercury coupe."

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is, on this 26th day of July, 1960,

DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the state in accordance with State Regulation No. 29 or retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 24 - 2 quart "Mason" jars of alcohol
- 1 - Mercury coupe, Serial No. 55ME24054M,
Engine No. E10881526, Pennsylvania
Registration 388-197.

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

In the Matter of Disciplinary)
Proceedings against)
Ralph DeLuccia)
t/a Ralph's)
182 Stevens Avenue)
Cedar Grove, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-6 (for the 1959-60 and)
1960-61 licensing years), issued by)
the Township Council of the Township)
of Cedar Grove.)

Robert W. Wolfe, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

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

On May 19, 1960 an ABC agent tested defendant's open bottles of alcoholic beverages and seized a number of bottles for further tests by the Division chemist, which tests disclosed that the contents of two bottles labeled "Cutty Sark Blended Scots Whisky 86 Proof", when compared with the tests of samples of the genuine product of the labeled brands, varied substantially in solids and color.

Defendant has a prior adjudicated record. On October 10, 1938 defendant received a reprimand and suspended sentence by the local issuing authority in disciplinary proceedings on charges of allowing a minor to sell alcoholic beverages and having a mislabeled beer tap. Since these prior dissimilar violations occurred more than five years ago, they will not be considered in fixing the penalty herein. Re The Glen Cocktail Bar, A Corporation, Bulletin 1332, Item 5. I shall suspend defendant's license for fifteen days, the minimum penalty in cases involving two bottles. Re Sefchick, Bulletin 1331, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 27th day of July 1960,

ORDERED that Plenary Retail Consumption License C-6 for the 1960-61 licensing year, issued by the Township Council of the Township of Cedar Grove to Ralph DeLuccia, t/a Ralph's, for premises 182 Stevens Avenue, Cedar Grove, be and the same is hereby suspended for ten (10) days, commencing at 2:30 a.m., Monday, August 8, 1960 and terminating at 2:30 a.m., Thursday, August 18, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against ONYX COCKTAIL LOUNGE, INC. t/a ONYX COCKTAIL LOUNGE 378 Centre Street Nutley, N. J.

CONCLUSIONS AND ORDER.

Holder of Plenary Retail Consumption License C-11 (for the 1959-60 and 1960-61 licensing years), issued by the Board of Commissioners of the Town of Nutley.

Robert C. Gruhin, Esq., Attorney for Defendant-licensee. William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

On May 26, 1960, an ABC agent tested defendant's open stock of liquor and seized a number of bottles for further tests by the Division chemist. Subsequent analysis by the chemist discloses that the contents of a quart bottle labeled "Seagram's Seven Crown American Blended Whiskey 86 Proof" varied substantially in solids from the contents of a genuine sample of the labeled brand.

Defendant has no prior adjudicated record. I shall suspend its license for ten days (the minimum penalty imposed in cases involving one bottle). Re Zicaro, Bulletin 1343, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

It appears that, while these proceedings were pending, the local issuing authority suspended defendant's license for ten days, effective at 2 a.m. August 1, 1960, after it found defendant guilty of a charge alleging that it kept its licensed premises open during prohibited hours on June 28, 1960.

Accordingly, it is, on this 27th day of July 1960,

ORDERED that Plenary Retail Consumption License C-11, for the 1960-61 licensing year, issued by the Board of Commissioners of the Town of Nutley to Onyx Cocktail Lounge, Inc., t/a Onyx Cocktail Lounge, for premises 378 Centre Street, Nutley, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Thursday, August 11, 1960, and terminating at 2 a.m. Tuesday, August 16, 1960.

WILLIAM HOWE DAVIS DIRECTOR

11. STATE LICENSES - NEW APPLICATION FILED.

L. Fatato, Inc., 314-320 Second Street, Brooklyn, New York Application filed September 22, 1960 for Limited Wholesale License.

William Howe Davis Director