

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

BULLETIN 1329

March 9, 1960.

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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.

March 9, 1960.

BULLETIN 1329

1. APPELLATE DECISIONS - LENDING v. PALISADES PARK AND MATTHEW WEINSTEIN.

Morris Lending,)
Appellant,) On Appeal
v.) CONCLUSIONS and ORDERS
Borough Council of the Borough)
of Palisades Park, and Matthew)
Weinstein,) Respondents.

Morris Lending, Appellant, Pro se.
Joseph F. Kearney, Esq., by James A Major, Esq., Attorney for
Respondent Borough Council
Crummy, Gibbons & O'Neill, Esqs., by John J. Gibbons, Esq.,
Attorneys for Respondent Matthew Weinstein.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Appellant appeals from the action of respondent Borough Council whereby, at a meeting held on June 9, 1959, it granted to respondent Matthew Weinstein a renewal of his plenary retail distribution license for premises at 252 Broad Avenue, Palisades Park (Bergen County).

"Appellant alleges that said action was erroneous because respondent Weinstein advertised his Notice of Intention to apply for such renewal in the 'Bergen Evening Record' instead of the 'Bergen Bulletin.' If respondent-licensee advertised improperly, the respondent issuing authority lacked jurisdiction to consider the application. Klein and Tucker v. Fair Lawn et al., Bulletin 1175, Item 3.

"From the evidence presented herein it appears that both of the above newspapers are legal newspapers within the provisions of R.S. 35:1-2.2 (Re Drake, Bulletin 515, Item 1) and that both are published and circulated in Bergen County. The difficulty in the case arises from the provision of R.S. 33:1-25 which requires that the Notice of Intention must be published in a newspaper 'published and circulated in the municipality in which the licensed premises are located; but if there shall be no such newspaper, then such notice shall be published in a newspaper *** published and circulated in the county in which the licensed premises are located.' Appellant contends that, although both papers are circulated in the Borough of Palisades Park, the 'Bergen Bulletin' (hereafter Bulletin) is published in that Borough and the 'Bergen Evening Record' (hereafter Record) is published elsewhere in Bergen County.

"At the hearing appellant testified that the Bulletin is entered as second class mail matter only in the Palisades Park Post Office; that it is published every Thursday and that it conducts three offices -- an office at 3050 Edwin Avenue, Fort Lee, where occasional writing is done; an office at 994 Ridgefield Avenue, Ridgefield Park,

where occasional writing is done, and an office at 225 Broad Avenue, Palisades Park, where most of the work of publication is done. Appellant further testified that the paper is printed in Clifton, N. J.; that it is distributed entirely by mail; that copies of the paper are mailed at the post office of the municipality in which a subscriber lives; that it has a circulation of 7,800 and that about 2,000 copies are mailed to subscribers in Palisades Park.

"At the hearing William E. Shipe, home delivery manager of the Record, testified that the Record is a daily newspaper, entered in the Hackensack Post Office; that it is printed in Hackensack and transported by trucks and station wagons to various municipalities, including Palisades Park; that the trucks deliver directly to newsstands and the station wagons to newspaper boys; that the Record has a daily circulation of 1,370 in Palisades Park.

"A weekly newspaper is nevertheless a newspaper within the meaning of the statute. Bulletin 11, Item 1. A newspaper may be considered as published in a municipality other than the municipality in which it is printed. Bayer v. Hoboken, 44 N.J.L. 131; aff'd. 45 N.J.L. 185. In Montesano v. Liberty Warehouse Co., 121 N.J.L. 124 (E. & A. 1938), the Court said:

'It appears, however, that within the meaning of such statutes as that upon which we are now passing, the place of publication of a newspaper is where the paper is first put into circulation, where it is first issued to be delivered or sent, by mail or otherwise, to its subscribers.'

"See also In re Bond Printing Co., Inc., 135 N.J.L. 478 (E. & A. 1947); Wildwood Independent Record Publishing Co. et al. v. Wildwood, 35 N.J. Super. 543 (Sup. Ct. 1955); Re Facts of Bayonne, Bulletin 35, Item 2.

"Considering the cases cited above, I find from the facts herein that the Bulletin is published in Palisades Park and that the Record is published in Hackensack. Incidentally, it would seem to follow that the Bulletin may not be considered as being published in Fort Lee or Ridgefield Park, where it maintains branch offices. Re Dear, Bulletin 67, Item 15; Montesano v. Liberty Warehouse Co., supra.

"The attorneys for respondent Weinstein allege that appellant is not a proper appellant and that the Record has been designated as its official newspaper by Palisades Park. However, neither of these contentions appears to be meritorious. Although the Bulletin is published by a corporation, appellant herein testified that he is the publisher of the paper. The interest of appellant was sufficient. Hudson Bergen Assn. v. Hoboken, 135 N.J.L. 502, at 510 (E. & A. 1947); Re Ritchie, Bulletin 183, Item 3. Whether or not a paper has been designated as an official newspaper, it must qualify under the provisions of R. S. 33:1-25 in order to be eligible to publish a Notice of Intention to apply for a liquor license. Cf. Manno v. Clifton, 14 N.J. Super. 100 (Sup. Ct. 1951).

"After considering the evidence and exhibits and the briefs filed herein, I conclude that the action of respondent issuing authority in granting renewal was a nullity and must be reversed. It is recommended that an order be entered reversing the action of respondent Borough Council and providing therein that leave be granted to respondent Matthew Weinstein to apply to the Director for a special permit authorizing him to continue his business pending reconsideration and re-determination by the Borough Council of his application for renewal previously filed after he has properly re-advertised his Notice of Intention to apply for said renewal. The Methodist Episcopal Church v. Verona et als., Bulletin 101, Item 5; Klein and Tucker v. Fairlawn et al., supra."

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

After carefully considering the evidence and exhibits and the briefs filed with the Hearer, I agree with the conclusions in the Hearer's Report and adopt them as my conclusions herein. I shall enter an order in accordance with the recommendation.

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

ORDERED that the action of respondent Borough Council, whereby it granted the application of respondent Matthew Weinstein for a renewal of his plenary retail distribution license for 252 Broad Avenue, Palisades Park, be and the same is hereby reversed effective February 1, 1960; and it is further

ORDERED that leave be granted to Matthew Weinstein to apply to me, on or before said date, for a special permit authorizing him to exercise, temporarily, the privileges granted by said renewal pending a prompt reconsideration and redetermination by the Borough Council of his application for renewal previously filed, after he has properly re-advertised his Notice of Intention to apply for said renewal.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - RUTH WEINSTEIN v. PALISADES PARK.

Ruth Weinstein,)	
)	
Appellant,)	On Appeal
)	
v.)	
)	O R D E R
Borough Council of the Borough)	
of Palisades Park,)	
)	
Respondent.)	

Thomas E. Durkin, Jr., Esq., Substituted Attorney for Appellant.
Joseph F. Kearney, Esq., by James A. Major, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent, on May 12, 1959, whereby it unanimously denied appellant's application for a person-to-person transfer to appellant of License D-8 (for the 1958-59 licensing year) which had been issued to Matthew Weinstein (her husband). The licensed premises are located at 252 Broad Avenue, Palisades Park.

After a hearing was held herein and a Hearer's Report recommending an affirmance of respondent's action was filed, the substituted attorney for appellant requested leave to withdraw this appeal and presented to me a consent to dismissal signed by the attorney for respondent. The request for leave to withdraw is based upon the fact that Matthew Weinstein applied for and obtained from respondent a renewal of License D-8 (for the 1959-60 licensing year), which action I have reversed on jurisdictional grounds (see Lending v. Palisades Park et al., decided herewith); and upon the further fact that appellant and Matthew Weinstein have applied to respondent for a transfer to them of the license for the current licensing year. Under the circumstances, I shall grant the request. This will permit respondent to reconsider and redetermine, after proper advertising, the application for renewal previously filed by Matthew Weinstein and the application for transfer of the license at the same time and upon the respective merits of said applications.

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

ORDERED that the within appeal be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR.

3. STATE REGULATIONS - REGULATION NO. 30 - RULE 6(c) CONSTRUED RE SIZE OF TYPE TO BE USED IN MANDATORY SIGN

STATE REGULATIONS - REGULATION NO. 21 - SIGNS REQUIRED BY STATE REGULATION NO. 30, RULE 6(c) MAY PERMISSIBLY BE FURNISHED BY MANUFACTURERS AND WHOLESALERS TO RETAILERS.

Esbeco Distilling Corporation
Stamford, Conn.

February 26, 1960

Gentlemen:

This acknowledges your letter of February 15, 1960 enclosing two signs bearing the legend set forth in Rule 6(c) of State Regulation No. 3

As stated in your letter, and as verified by our measurements, the lettering in the submitted signs does not conform with the requirement of Rule 6(c), which prescribes that the lettering shall be not smaller than three-quarters ($3/4$) of an inch in height and one-half ($1/2$) inch in width. You inquire whether the submitted signs may, nevertheless, be used by retailers in this state in view of the information given you by certain typesetters in Stamford, Connecticut that the "largest type they could come up with was $1/2$ " x $1/2$ ".

We are at a loss to understand the advice given to you by the typesetters which you contacted. We have been reliably informed that type is readily available for the use in the printing of signs containing lettering of the size which will comply with our regulation. For example, the lettering can be accomplished by using the Ludlow (machine type) 72 Pt. Tempo Heavy, in which case the lettering will be only slightly larger than the minimum $3/4$ " x $1/2$ " prescribed size, or by the use of the Wood type - 5 line. In any event, we cannot sanction the use of the submitted sign since the height of the letters (slightly less than $1/2$ ") is appreciably smaller than the $3/4$ " height prescribed by the regulation.

We realize, of course, that the letter "I" and punctuation marks cannot, in all practicality, conform with the minimum size requirement of the regulation and that such letter and punctuation marks must necessarily be exempted. In typography, type-size traditionally has been determined in accordance with the size of the em quad and also, traditionally, the size of other letters of the type font is proportionate to the em quad. Accordingly, if the type comes from a recognized font and the capital letter "M" complies with the minimum size requirements, it will be deemed that the size of the other letters likewise complies.

We are returning one of the sample signs to you and are retaining the other in our files.

In passing, it should be noted that the furnishing of these signs by manufacturers and wholesalers to retailers will not be deemed as constituting the furnishing of prohibited equipment under Rule 1 of State Regulation No. 21. It must be understood, however, that these signs may not bear any advertising on behalf of such manufacturer or wholesaler.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)
 Charles Oliveri & Emma Oliveri)
 t/a C-O Club)
 Highway 130, Georges Road)
 North Brunswick Township)
 PO RFD 4, New Brunswick, N. J.)
 Holders of Plenary Retail Consumption License C-6, issued by the Township Committee of North Brunswick Township.)

CONCLUSIONS
 AND
 ORDER

 Russell Fleming, 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:

"Defendants pleaded not guilty to the following charge:

'On September 8, 1959, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., John ---, age 19; in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein, Diane ---, 14 years of age, testified that on September 8, 1959, at about 2:00 p.m., she and three boys arrived at defendants' licensed premises in an automobile for the purpose of purchasing beer; that after the car was parked, she observed John ---, one of her companions, leave the car, enter the front door of the tavern emptyhanded and emerge therefrom in about five minutes carrying a paper bag containing two quart bottles of beer; that John entered the car with the beer and the group left the premises.

"Richard ---, 17 years of age, testified that he was one of the boys in the car which was driven to defendants' licensed premises to obtain beer; that he did not see John enter or emerge from the tavern but observed his return to the car with two quart bottles of beer.

"An ABC agent testified that on September 11, 1959, he, John and another agent entered defendants' licensed premises; that Emma Oliveri, one of the licensees, was present and was informed of their identity; that immediately upon entering, John said, in their presence, 'that is her' and the agent said, 'that the woman who served you on September 8th?', to which John replied, 'that is right'; that thereupon Mrs. Oliveri stated that she was the only person who tended bar on September 8th, and said, 'Don't recall him being in the premises on that day'. It was stipulated that the other agent who was present at the hearing, if called as a witness, would testify in substantial accord with the account given by his fellow agent.

"John --- was called as a witness on behalf of the Division and testified that he is 19 years of age, having been born on June 15, 1940, and that he knows defendants' licensed premises, was acquainted with Diane, Richard and the other boy in the group, was interviewed by the ABC agents and gave them a signed statement but, on the ground that his answers might tend to incriminate him, refused to deny or affirm that he was one of the group who visited the tavern on September 8, 1959

or that he purchased beer there on that day.

"Mrs. Oliveri testified that at 2:00 p.m. on September 8th, she was the only person in charge of the licensed premises; that she did not recall seeing John there on that day and that to her knowledge she did not serve beer to a person who looked like John; that when confronted by John and the agents on September 11th, she did not definitely say 'I did not sell it' but stated 'I do not recall'.

"The licensees' inability to recall whether she sold beer to John on September 8th does not have the effect of contradicting the evidence presented on behalf of the Division. Such evidence clearly establishes that on the date in question, John, 19 years of age, entered defendants' licensed premises emptyhanded and emerged therefrom with two quart bottles of beer and that Emma Oliveri was the only person in charge of the premises at the time. It is permissible to prove an unlawful sale of intoxicating liquor by witnesses other than the purchaser. 48 C.J.S. §349, page 501.

"Counsel, in his brief, mistakenly contends that guilt of the charge must be established beyond a reasonable doubt, as in criminal cases. The correct principle is that only a preponderance of the believable evidence is necessary to establish guilt. Benedetti v. Board of Commissioners of Trenton, 35 N.J. Super. 30, page 34 (Sup. Ct. App. Div. 1955). Counsel further urges that evidence must be presented of a manual delivery of such alcoholic beverages and payment therefor. Delivery, without payment, is a violation of the Rule in question and is included in the charge. Emma Oliveri was the only person in charge of the premises at the time. Finally, counsel contends that John might have stolen the beer. The evidence is that John entered for the purpose of purchasing beer.

"On the basis of the evidence presented and the inferences arising therefrom, including whatever legal effect may be given to the statement of John (made in the presence of Emma Oliveri and the agents when they confronted her), that he purchased the beer from her (see Kiernan v. Mauer, 13 N.J. Super. 18, Sup. Ct. App. Div. 1951), it is my opinion that a finding of guilt of the charge is warranted. Cf. Re Daniels, Bulletin 1204, Item 9, in which case the minor was not available as a witness, being deceased, and his companions did not see him actually enter or emerge from the licensed premises, nevertheless the licensee was found guilty on circumstantial evidence of sale of alcoholic beverages to a minor. Accordingly, I recommend a finding that defendants are guilty of the charge.

"Defendants have a prior adjudicated record. Effective September 24, 1956 their license was suspended by the local issuing authority for seven days for an 'hours' violation. Effective November 17, 1958 their license was suspended by the local issuing authority for fourteen days for a similar violation. In addition, when the license was held by C. O. Club, Inc., in which each of the present licensees had a 45% interest as stockholders, such license was suspended, effective October 26, 1950 by the Director because of an undisclosed owner of the corporate-stock. (Re C.O. Club, Inc., Bulletin 888, Item 4; Bulletin 899, Item 14.) The last mentioned dissimilar violation should not be considered in fixing penalty because it occurred more than five years ago. I recommend that the minimum penalty of fifteen days for sale to a 19-year-old minor (Re WorriLOW, Bulletin 1310, Item 8) be increased by an additional five days suspension because of the prior dissimilar violations within the past five years (Re Skrobiszski, Bulletin 1300, Item 5), making a total suspension of twenty days."

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

After carefully considering the evidence herein and the brief submitted to the Hearer by the attorney for defendant-licensees, I concur in the conclusions of the Hearer and adopt said conclusions as my conclusions herein.

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

ORDERED that plenary retail consumption license C-6, issued by the Township Committee of North Brunswick Township to Charles Oliveri & Emma Oliveri, t/a C-0 Club, for premises on Highway 130, Georges Road, North Brunswick Township, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Wednesday, February 3, 1960, and terminating at 2 a.m. Tuesday, February 23, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

Minnie Escovitch, Guardian of Michael Eskewicz t/a Up & Up Cafe 315 River Street Paterson 4, New Jersey

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-91, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Murner & Murner, Esqs., by James J. Murner, Jr., Esq. Attorneys for Defendant-licensee. Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On Saturday, April 25, 1959 between 3:20 A.M. and 3:40 A.M. while investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35.'

"At the hearing held herein, the Division called as its witnesses two ABC agents, hereinafter referred to as Agent M and Agent J.

"Agent M testified that on April 25, 1959, at about 3:20 a.m. (twenty minutes after the closing hour), he and Agent J, in response to a knock on the front door of the licensed premises, were admitted to the same after they identified themselves to Edith DePrima; that upon entering the licensed premises, he observed Minnie Escovitch, the licensee, behind the bar on which there were two partially consumed fresh drinks which appeared to be alcoholic beverages and three one-dollar

bills and some change; that he seized said drinks and removed them from the center of the bar to a far end of the same where Agent J was copying some information from the license application, and that in the interim a male staggered from the rest room to a stool at the bar from which he had removed the two drinks.

"Agent M further testified that when he attempted to question this male he was constantly interrupted by Mrs. Escovitch, who stated that this male was employed on the premises as porter and was not required to answer any questions; that he had also experienced the same difficulty with Mrs. Escovitch while questioning Edith DePrima and that while Agent J was occupied as aforesaid, Mrs. Escovitch seized both drinks and poured them down the drain despite Agent J's warning to her that they were being held as evidence in the case.

"The Division called Agent J as a witness and it was stipulated by counsel that his testimony would be the same as Agent M's.

"Mrs. Escovitch, testifying on her own behalf, denied the statements and actions attributed to her by the agents. She further testified that between 2:30 and 2:40 a.m. she had served a shot of liquor with a soda chaser to a patron and a glass of beer to his companion; that the two patrons had consumed their drinks and left the premises before 3:00 a.m.; that shortly after the agents had entered the premises, she removed two empty glasses from the bar and placed them on the wash stand from which they were taken by the agents, and that present in the premises at the time were Edith DePrima, her sister, and Warren Post, the porter.

"On cross-examination, Mrs. Escovitch stated that for the past five years Post had been employed on the licensed premises as a porter; that on the morning in question he was visiting the licensed premises as patron; that he had been there for about two hours, during which time he had not consumed any alcoholic beverages. With reference to the aforementioned three dollars, Mrs. Escovitch stated that it was a tip from a patron, who was accompanied by a female and whose total check amounted to one dollar. When examined about the two glasses, Mrs. Escovitch stated that at no time did the agents come in contact with the same and that she does not remember Agent J saying anything to her when she removed them from the bar as aforesaid.

"Edith DePrima, on behalf of the defendant, testified that she answered the questions propounded to her by Agent M; that she was not advised to do otherwise by Mrs. Escovitch; that Mrs. Escovitch did not counsel Post to ignore the agents' questions; that the aforesaid two glasses were empty; that they were standing in their original position at the end of the bar nearest the door when they were removed therefrom by Mrs. Escovitch and that she did not hear any conversation between Agent J and Mrs. Escovitch.

"This case presents a conflict between the testimony of the agents and the witnesses for the defendant. I have carefully reviewed all of the testimony in this case. I find that, notwithstanding the cross-examination of Agent M, his testimony in support of the charge remained unshaken and that the testimony of Mrs. Escovitch in denying the same was not consistent. On direct examination, Mrs. Escovitch stated that the agents seized the two glasses in question after she had removed them from the bar and placed them on the wash stand. On cross-examination, she stated that at no time did the agents come in contact with the glasses. As to the testimony of the agents, I am unable to find any inconsistencies or defects in the same and cannot conceive of any reason why they would deliberately give false testimony.

"I am of the opinion that the preponderance of the believable evidence establishes that defendant at least failed to facilitate the investigation and, hence, establishes the guilt of the defendant of the

charge. I recommend a finding to that effect.

"Defendant has no prior adjudicated record. However, when the license was in the name of Michael Eskewicz, it was suspended by the Director of this Division for twenty-five days, effective March 11, 1957, for an 'hours' violation and for employment of a female bartender, in violation of local ordinances. Bulletin 1162, Item 2. It is further recommended that an order be entered suspending the defendant's license for ten days on the charge herein (Cf. Re Callahan, Bulletin 1203, Item 9), to which should be added five days for the dissimilar violation within the past five years (Re Pisano, Bulletin 1293, Item 12), making a total suspension of fifteen days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the Division's attorney and written answering argument was filed by the defendant's attorney, pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of the testimony, the Hearer's Report and the exceptions and arguments filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

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

ORDERED that Plenary Retail Consumption License C-91, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Minnie Escovitch, Guardian of Michael Eskewicz, t/a Up & Up Cafe, for premises 315 River Street, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m., Tuesday, February 2, 1960, and terminating at 3:00 a.m., Wednesday, February 17, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
Danny's Hide-A-Way, Inc.
119 Route #10
East Hanover Township
PO Hanover, N. J.
Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of East Hanover Township.

CONCLUSIONS
AND
ORDER

Defendant-licensee, by Danny Williams, President.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On December 18, 1959 you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Robert ---, age 20, and you allowed, permitted and suffered the consumption of alcoholic

beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

On Friday, December 18, 1959 at about 10:35 p.m., two ABC agents who were in defendant's licensed premises, observed Dorothy Deighan (a waitress) serve a bottle of beer to Robert --- (age 20) without requiring him to make any written representation of his age. After observing Robert consume a portion of his beer, the agents identified themselves to Robert, the waitress and the manager of the licensed premises. In a signed sworn statement Dorothy Deighan admitted aforesaid violation.

By way of mitigation, defendant has submitted a statement which I have carefully read together with the file in the case and the reports of the agents. I, however, 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.

Defendant has no prior adjudicated record. I shall suspend defendant's license for ten days, the minimum penalty for sale of alcoholic beverages to a 20-year-old minor. Re Zebrowski, Bulletin 1308, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

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

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of East Hanover Township to Danny's Hide-A-Way, Inc., for premises 119 Route #10, East Hanover Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, February 1, 1960 and terminating at 2:00 a.m., Saturday, February 6, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT DANCE) - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against
Cyril T. and Lilyan Burke
t/a Cy Burke's
Ridge Road
Stanhope, New Jersey

Holders of Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Stanhope.

CONCLUSIONS
AND
ORDER

Mackerley and Friedman, Esqs., by Peter Friedman, Esq., Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On November 24, 1959, you allowed, permitted and suffered lewdness and immoral activity and foul,

filthy and obscene conduct in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered females to perform in a lewd, indecent and immoral manner and engage in acts of perverted sexual relations with each other, and you otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

On November 24, 1959 at about 11:30 p.m., a raiding party of State Police officers gained admission to the banquet hall of the defendants' licensed premises where they observed two nude females lying on the floor and engaging in acts of sexual perversion (the details of which are too disgusting to set forth herein). These revolting obscenities were witnessed by approximately 132 males and took place in the presence of Cyril T. Burke, co-licensee.

The investigation further discloses that Mr. Burke had permitted aforesaid exhibition with knowledge of its lewdness and in anticipation of later conducting a dice game for which he had purchased ten sets of dice and had hired a "cut" man to run the games. In addition, Mr. Burke contemplated making \$300 to \$400 as a result of this "show".

Defendants have no prior adjudicated record. Since it does not appear that there was a pattern of such misconduct and since it appears that the "smoker" was apparently conducted under the auspices of an outside organization, I shall under all the circumstances, including the plea, suspend the defendants' license for ninety days. Cf. Re The Deck, Inc., Bulletin 1069, Item 4 and cases therein cited.

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

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Stanhope to Cyril T. and Lilyan Burke, t/a Cy Burke's, for premises on Ridge Road, Stanhope, be and the same is hereby suspended for ninety (90) days, commencing at 2:00 a.m., Tuesday, February 9, 1960 and terminating at 2:00 a.m., Monday, May 9, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

8. ACTIVITY REPORT FOR FEBRUARY 1960

ARRESTS:		
Total number of persons arrested	-----	23
Licensees and employees	----- 9	
Bootleggers	----- 14	
SEIZURES:		
Motor vehicles - cars	-----	1
- trucks	-----	1
Stills - over 50 gallons	-----	1
Mash - gallons	-----	200.00
Distilled alcoholic beverages - gallons	-----	18.05
Wine - gallons	-----	5.37
RETAIL LICENSEES:		
Premises inspected	-----	655
Premises where alcoholic beverages were gauged	-----	450
Bottles gauged	-----	7,237
Premises where violations were found	-----	41
Violations found	-----	52
Unqualified employees	----- 17	Disposal permit necessary - 2
Application copy not available	----- 12	Prohibited signs - 1
Reg. #38 sign not posted	----- 4	Other violations - 14
Other mercantile business	----- 2	
STATE LICENSEES:		
Premises inspected	-----	6
License applications investigated	-----	8
COMPLAINTS:		
Complaints assigned for investigation	-----	333
Investigations completed	-----	375
Investigations pending	-----	161
LABORATORY:		
Analyses made	-----	250
Refills from licensed premises - bottles	-----	20
Bottles from unlicensed premises	-----	55
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	7
Persons fingerprinted for non-criminal purposes	-----	227
Identification contacts made with other enforcement agencies	-----	139
Motor vehicle identifications via N. J. State Police teletype	-----	1
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	11
Violations involved	-----	11
Sale during prohibited hours	----- 5	
Sale to minors	----- 5	
Allowing females at a bar (local reg.)	----- 1	
Cases instituted at Division	-----	16
Violations involved:	-----	25
Sale during prohibited hours	----- 4	Sale to minors - 2
Conducting business as a nuisance	----- 3	Sale outside scope of license - 2
Possessing liquor not truly labeled	----- 3	Permitting minors to loiter
Permitting lottery activity	-----	on premises (local reg.) - 1
(numbers, "50-50 club") on premises	----- 2	Permitting immoral activity
Unauthorized transportation	----- 2	on premises - 1
Delivery without bona fide invoice	----- 2	Unqualified employee - 1
		Aiding and abetting
		Unauthorized transportation - 1
		Sale below minimum resale price - 1
Cases brought by municipalities on own initiative and reported to Division	-----	20
Violations involved	-----	25
Sale to minors	----- 10	Employee without requisite
Sale during prohibited hours	----- 4	identification card
Employing female bartender (local reg.)	----- 2	(local reg.) - 1
Conducting business as a nuisance	----- 1	Permitting lottery activity
Hindering investigation	----- 1	on premises - 1
Permitting gambling (cards) on premises	----- 1	Failure to close premises
Permitting premises to be used in connection	-----	during prohibited hours - 1
with illegal activity	----- 1	Permitting brawl on premises - 1
		Unqualified employee - 1
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	43
Appeals	----- 4	Seizures - 4
Disciplinary proceedings	----- 26	Tax revocations - 2
Eligibility	----- 6	Applications for license - 1
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-----	1062
Licenses	----- 1	Social affair permits - 451
Solicitors' permits	----- 64	Transit insignia - 187
Employment "	----- 192	Transit certificates - 14
Disposal "	----- 67	Miscellaneous permits - 86

WILLIAM HOWE DAVIS
DIRECTOR

Dated: March 2, 1960

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Charles Facciponte t/a Little Charlie's 579-581 Central Avenue Newark 7, New Jersey)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-43, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

ORDER

Anthony A. Calandra, 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 charge:

"On September 4, 1959, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

Two quart bottles labeled 'Imperial Hiram Walker Blended Whiskey 86 Proof',

Two quart bottles labeled 'Schenley Reserve Blended Whiskey 86 Proof',

Two quart bottles labeled 'Calvert Reserve American Blended Whiskey 86 Proof' and

Two quart bottles labeled 'Seagram's Seven Crown American Blended Whiskey 86 Proof';

in violation of Rule 27 of State Regulation No. 20."

On September 4, 1959, an ABC agent tested defendant's open stock of liquors and detained a number of bottles for further analysis by the Division's chemist. The latter's analysis disclosed that the contents of the eight bottles mentioned in the charge varied substantially in acids and solids from the contents of genuine bottles of the labeled brands.

Defendant has no prior record. I shall suspend his license for thirty days, the minimum penalty imposed in "refill" cases involving eight bottles. Re Club Mayfair Inc., Bulletin 1300, Item 4. Five days will be remitted for the plea herein, leaving a net suspension of twenty-five days.

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

ORDERED that Plenary Retail Consumption License C-43, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Charles Facciponte, t/a Little Charlie's, for premises 579-581 Central Avenue, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, February 8, 1960, and terminating at 2:00 a.m., Friday, March 4, 1960.

WILLIAM HOWE DAVIS DIRECTOR

10. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAXPAID ALCOHOLIC BEVERAGES - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES RETURNED TO UNWITTING VIOLATOR UPON APPLICATION IN ADVANCE OF STATUTORY HEARING AFTER OBTAINING REQUISITE PERMITS FROM STATE OF DESTINATION.

In the Matter of the Seizure on December 19, 1959 of a quantity of taxpaid alcoholic beverages and a Chevrolet station wagon on the New Jersey Turnpike at 2 Mile Post, in the Township of Upper Penns Neck, County of Salem, and State of New Jersey.

No. 10,179

APPLICATION FOR RETURN OF SEIZED PROPERTY IN ADVANCE OF STATUTORY HEARING

CONCLUSIONS AND ORDER

Roland A. Crow, Esq., by Edwin Hoebich, Esq., Attorney for Louis Carucci and Ralph Carucci.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Application has been made pursuant to Rule 1 of State Regulation No. 28 for the return of property seized in the case in advance of statutory hearing.

It appears that on the above date and location a New Jersey State Trooper halted the Chevrolet station wagon during his routine patrol of traffic on the highway. The trooper ascertained that the motor vehicle was registered in the name of S. Carucci and Sons, Inc. of Sea Cliff, New York and that Louis Carucci and his brother, Ralph Carucci, were passengers therein. When the trooper discovered that 124 four-fifth quart bottles of various brands of alcoholic beverages and one one-tenth gallon bottle of liqueur, all taxpaid, were being transported in the car without a New Jersey license or permit authorizing the transportation of alcoholic beverages in this state, the trooper took possession of the alcoholic beverages and motor vehicle pending determination of the source and destination of such alcoholic beverages. Thereafter such property was turned over to ABC agents.

Louis Carucci told the trooper that he and his brother, Ralph, were partners with their father in the mason contracting business of S. Carucci and Sons, Inc. and that they drove the station wagon to Washington, D.C. to purchase alcoholic beverages for the holiday season for the construction company and with its funds for distribution by it during the holidays, a practice which it has followed from year to year, and he presented an invoice for the alcoholic beverages from the retail liquor dealer in Washington. This invoice does not bear a date and the name and address of the consignee and hence does not conform to the requirements of Rule 2 of State Regulation No. 18. In addition, neither Louis Carucci nor Ralph Carucci were in possession of a permit to import the alcoholic beverages into New York in accordance with the requirements of that state. Bulletin 1204, Item 8. Rule 2 of State Regulation No. 18 governing the transportation of alcoholic beverages through New Jersey for delivery to another state requires the transporter to establish that such alcoholic beverages may lawfully be delivered to their destination. Absent such proof, the transportation of such alcoholic beverages is unlawful and subjects the property to forfeiture and subjects the transporter to criminal prosecution.

There has now been presented a permit issued to Louis J. Carucci and another permit to Ralph F. Carucci by the New York State Liquor Authority authorizing the importation into that state of 24 9/10 gallons of alcoholic beverages described as four-fifth quarts

and as originating in Washington, D.C. and two receipts for New York State tax on such alcoholic beverages, issued by the Commodities Tax Bureau of New York State, Department of Taxation and Finance. Hence the transportation and delivery of the alcoholic beverages in question is now in full compliance with the law of that State and that of New Jersey insofar as seizure proceedings are concerned. No opinion is expressed as to whether these permits obtained after the event affect the criminal proceedings, which are within the sole jurisdiction of the Prosecutor of Salem County.

Accordingly, it is DETERMINED and ORDERED that if on or before the 25th day of January, 1960, Louis Carucci and Ralph Carucci pays the costs incurred in the seizure and storage of the Chevrolet station wagon and alcoholic beverages as listed in the aforesaid Schedule "A" such motor vehicle and alcoholic beverages will be returned to them.

Dated: January 13, 1960

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 124 - 4/5 quart bottles of various brands of alcoholic beverages (taxpaid)
- 1 - 1/10 gallon bottle of liqueur (taxpaid)
- 1 - Chevrolet station wagon, Serial No. VB-55T-074066, Engine No. 0082499 T55G, New York Registration 79264.

11. APPELLATE DECISIONS - LENDING v. PALISADES PARK AND MATTHEW WEINSTEIN (AMENDING ORDER).

MORRIS LENDING,)	
)	
Appellant,)	On Appeal
)	
v.)	
)	ORDER
BOROUGH COUNCIL OF THE BOROUGH OF PALISADES PARK, and MATTHEW WEINSTEIN,)	
)	
Respondents.)	

This matter having been opened to the Director by Crummy, Gibbons & O'Neill, attorneys for respondent Matthew Weinstein, and it having been represented that said respondent is on vacation in Puerto Rico and unavailable to apply for a special permit pursuant to leave granted in the Order of January 25, 1960 before February 1, 1960, the effective date of said Order, it is, on this 28th day of January, 1960,

ORDERED that the Conclusions and Order dated January 25, 1960 be and the same is hereby amended to provide that the action of the respondent Borough Council, whereby it granted the application of respondent Matthew Weinstein for renewal of his plenary retail distribution license for 252 Broad Avenue, Palisades Park, be and the same is hereby reversed effective February 8, 1960; and it is further

ORDERED that leave be granted to Matthew Weinstein to apply to me, on or before said date, for a special permit authorizing him to exercise, temporarily, the privileges granted by said renewal pending a prompt reconsideration and redetermination by the Borough Council of his application for renewal previously filed, after he has properly re-advertised his Notice of Intention to apply for said renewal.

WILLIAM HOWE DAVIS
DIRECTOR

12. DISCIPLINARY PROCEEDINGS - ORDER TEMPORARILY LIFTING SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)
Societa DiMutuo Soccorso DiSanta)
Croce Camerina In America)
57 Pink Street)
Hackensack, New Jersey,)
Holder of Club License CB-3, issued)
by the City Council of the City of)
Hackensack.)
-----)

On Petition
O R D E R

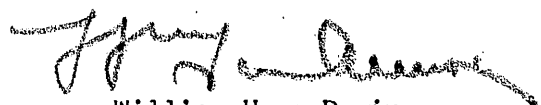
BY THE DIRECTOR:

An order having been entered on January 12, 1960 suspending defendant's license for thirty-five days commencing at 2 a.m. Thursday, January 21, 1960, and terminating at 2 a.m. Thursday, February 25, 1960; and

It appearing from the petition filed herein by Frank J. Leopardi, president of defendant club, that long prior to the imposition of the suspension the Women's Auxiliary of said club had completed arrangements and sold 250 tickets for a dinner-dance to be held at the licensed premises on January 30, 1960, and it appearing that numerous persons would be inconvenienced by the suspension of the license on said date;

It is, on this 29th day of January 1960,

ORDERED that the suspension now in effect shall be lifted from 2 a.m. Saturday, January 30, 1960, until 2 a.m. Sunday, January 31, 1960, at which time the suspension shall be reinstated and shall continue in effect until 2 a.m. Friday, February 26, 1960.


William Howe Davis
Director