

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

August 11, 1959.

BULLETIN 1290

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banks for payment or dishonor and, (3) by reason of the consequent postponement of the time of any dishonor, the benefit of a delay in the reporting of any default resulting from such dishonor, all such benefits being things of value within the meaning of Rule 3 of State Regulation No. 35, which prohibits a solicitor from furnishing directly or indirectly any such thing of value to retailers.

"It appears that the disciplinary proceedings preferred herein wherein the Division charged that the defendant caused the hindrance of an investigation being made by ABC agents for alleged violation of the Alcoholic Beverage Law were predicated on the ground that defendant refused to divulge, upon request of an agent, what disposition he made of certain cash and proceeds of third party checks obtained from his employer (Galsworthy, Inc.) in exchange for his personal checks in like amounts.

"Defendant conceded that he would go to the place of business of his employer and after obtaining substantial sums of cash and sundry third party checks from the employer, he would give his personal check to cover the total amount received and on the same day would visit the First National Bank of Butler, N. J., and cash the checks. Defendant claims that he refused to divulge the information in question upon advice of his attorney, who admits such to be a fact. If the transactions engaged in by defendant were strictly personal in nature, the stand taken by the defendant in accordance with his attorney's instructions would be justified. However, where, as here, the checks were received from customers of the employer in payment for merchandise delivered to them, it is essential that the information solicited be divulged.

"I am satisfied that the refusal by defendant to comply with the request of the agent and reveal what he did with the cash and proceeds of third party checks obtained from his employer in exchange for his personal check constituted a hindrance of the investigation and, therefore, recommend that he be adjudged guilty of the charge preferred herein.

"I have carefully scrutinized the transactions of the defendant for the purpose of ascertaining whether a recommendation to the Director that defendant's solicitor's permit be cancelled is warranted. Although the Division has produced evidence that some transactions in which defendant was implicated appear irregular, I am of the opinion that the proof is inadequate to sustain the cancellation of his solicitor's permit. Therefore, I recommend that the order to show cause why defendant's solicitor's permit should not be cancelled be discharged.

"Effective January 21, 1958, defendant's solicitor's permit was suspended for sixty days for (1) furnishing unlawful inducement (check-cashing service) to retailers, and (2) engaging in conduct prohibited to employer (furnishing aforementioned unlawful inducement and aiding and abetting unlicensed traffic in alcoholic beverages). Re Zimetbaum, Bulletin 1210, Item 2.

"Under the circumstances appearing herein and taking into consideration the defendant's dissimilar record occurring within the past five years, I recommend that defendant's solicitor's permit be suspended for twenty-five days."

Pursuant to Rule 6 of State Regulation No. 16, written exceptions to the recommended penalty in the Hearer's Report and written

argument in support thereof were filed with me by the attorney appearing for the Division, as were written exceptions to the recommended finding of guilt of defendant in the Hearer's Report and written argument in support thereof by the defendant's attorney. Thereafter, I heard oral argument in the matter.

I have carefully considered the entire record herein, including the transcript of testimony, the Hearer's Report, the exceptions taken thereto and the written and oral arguments of the attorneys for the respective parties herein, and I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 15th day of June, 1959,

ORDERED that Unlimited Solicitor's Permit No. 3274, for the 1959-60 licensing year, issued by the Director of the Division of Alcoholic Beverage Control to Mac Zimetbaum, 154 Old Indian Road, West Orange, be and the same is hereby suspended for twenty-five (25) days, commencing at 9:00 a.m., Monday, June 22, 1959, and terminating at 9:00 a.m., Friday, July 17, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

NOTE: By order dated June 19, 1959, the effective dates of the suspension were changed to commence at 9 a.m. Monday, June 29, 1959 and to terminate at 9 a.m. Friday, July 24, 1959.

2.

DISCIPLINARY PROCEEDINGS - UNLAWFUL ACTIVITIES OF SOLICITOR (SOLICITING ORDERS OTHER THAN ON BEHALF OF EMPLOYER - SELLING ALCOHOLIC BEVERAGES WITHOUT HOLDING LICENSE OR PERMIT FOR SUCH ACTION - TRANSPORTING ALCOHOLIC BEVERAGES NOT IN COURSE OF EMPLOYER'S BUSINESS - FURNISHING RETAIL LICENSEES WITH MONEY AND CREDIT FOR VARIOUS PURPOSES INCLUDING THE PAYMENT OF ALCOHOLIC BEVERAGE BILLS - FAILING TO FILE NOTICE OF CHANGE OF RESIDENCE) - PERMIT SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)

James E. Hough)
579 Valley Road)
West Orange, N. J.)

CONCLUSIONS

AND

Holder of Unlimited Solicitor's Permit No. 3330 for the 1958-59 licensing period and No. 3267 for the 1959-60 licensing period, issued by the Director of the Division of Alcoholic Beverage Control.)

ORDER

James E. Hough, Defendant-Solicitor, Pro se.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The following charges were preferred against defendant:

- "1. In or about August or September 1957 you, the holder of a solicitor's permit, offered for sale and solicited orders for the purchase or sale of alcoholic beverages otherwise than to the extent duly allowed and permitted by law and by the New Jersey license of your employer, in that you offered for sale and solicited orders for sale of several cases of Canadian Club Blended Canadian Whisky to Herman Rosner and Eddie Greenwald, t/a South End Liquors and Delicatessen, 310 Orange Road, Montclair, New Jersey, retail licensees, other than on behalf of Galsworthy, Inc., the wholesaler-vendor represented by you and designated in your permit, contrary to Rule 2 of State Regulation No. 14; in violation of Rule 5 of State Regulation No. 14.
- "2. In or about August or September 1957 you sold alcoholic beverages not pursuant to and within terms of a license in that, without holding any license or permit authorizing such action, you sold several cases of Canadian Club Blended Canadian Whisky to the aforesaid Herman Rosner and Eddie Greenwald, contrary to R. S. 33:1-2; in violation of R. S. 33:1-50.
- "3. In or about August or September 1957 you transported alcoholic beverages not pursuant to and within terms of a license or as otherwise expressly authorized under the Alcoholic Beverage Law, in that you transported several cases of Canadian Club Blended Canadian Whisky from the retail licensed premises of Paul Zuck, t/a Paul's Tavern, 39 LaSalle Avenue, Clifton, New Jersey, to the retail licensed premises

of the aforesaid Herman Rosner and Eddie Greenwald, and also transported several cases of various brands of alcoholic beverages from the latter premises to your home at 579 Valley Road, West Orange, New Jersey in a vehicle for which a transportation insignia had been issued to Galsworthy, Inc., such transportation not being authorized by that insignia or by any other license or permit or by any provision of the Alcoholic Beverage Law, contrary to R.S. 33:1-2; in violation of R.S. 33:1-50.

- "4. On numerous occasions during 1956 and 1957 you, the holder of a solicitor's permit and employed by Galsworthy, Inc., wholesaler of alcoholic beverages other than malt alcoholic beverages, furnished directly or indirectly to various retailers allowances of money and other prohibited things of value and inducements, viz., a check-cashing service, unlawful credit in connection with the purchase of alcoholic beverages and loans or advances of money for various purposes including the payment of alcoholic beverage bills; in violation of Rule 3 of State Regulation No. 35.
- "5. On numerous occasions during 1956 and 1957 you engaged in conduct which is prohibited to your employer by the Alcoholic Beverage Law and Regulations adopted thereunder, in that you furnished directly or indirectly to various retailers allowances of money and other prohibited things of value and inducements, viz., the aforesaid check-cashing service, unlawful credit in connection with the purchase of alcoholic beverages and loans or advances of money for various purposes including the payment of alcoholic beverage bills; in violation of Rule 12 of State Regulation No. 14.
- "6. You failed to file with the Director of the Division of Alcoholic Beverage Control, within ten days after the occurrence thereof, written notice of change in fact set forth in answer to Question 2 of your application dated April 30, 1957, upon which you obtained your current solicitor's permit, such change being that in or about July 1957 you changed your residence from 31 Laurel Avenue, Livingston (the address stated in the application) to 579 Valley Road, West Orange; your failure to file such notice being in violation of Rule 10 of State Regulation No. 14."

Defendant was also ordered to show cause why his Solicitor's Permit No. 3330 (issued to him by the Director) should not be cancelled and declared null and void for the following reason:

"On numerous occasions during 1956 and 1957 you engaged in conduct unbecoming a solicitor, which conduct included (1) unlawful sale and transportation of alcoholic beverages, (2) engaging in and conducting a check-cashing service for various retailers and thereby making possible the surreptitious payment of cash rebates and over-extension of credit in violation of State Regulations Nos. 34 and 39 and also making possible the purchase of alcoholic beverages from unlawful sources and (3) furnishing unlawful

credit in connection with the sale of alcoholic beverages and making loans and advances of money to retail licensees."

Defendant pleaded non vult to Charges 1, 2, 3 and 6 and entered a technical plea of not guilty to Charges 4 and 5 with the stipulation that the latter two charges may be disposed of on the basis of the facts disclosed in our investigation file. Defendant's position with respect to Charges 3 and 4 is that, while the facts are not disputed, such facts do not constitute a violation of any provisions of the Alcoholic Beverage Law or Division regulations.

Charges 1, 2 and 3 arose out of the same transactions. The file indicates that the defendant obtained from a retailer in Clifton several cases of Canadian Club whisky (a product not handled by his wholesaler employer, Galsworthy, Inc.), transported this liquor to Montclair and delivered it to the retailers named in the charges, allegedly in exchange for several cases of various brands of Scotch whisky. The defendant claims that he took the latter beverages to his home in West Orange. Although the vehicle used for the above transportation bore a transit insignia, that insignia was issued to, and it authorized transportation of alcoholic beverages only on behalf of, defendant's employer, Galsworthy, Inc.

Charges 4 and 5 also arose out of a single set of facts. It appears from the file that defendant made a practice of cashing checks for his retail customers. Numerous checks were found, many of them in amounts of several hundred dollars, which had been cashed by him for retailers. In addition, on four occasions, he advanced money to pay liquor bills of retailers. Cashing checks and advancing money for retailers constitute a prohibited thing of value and inducement. See Re Zimetbaum, Bulletin 1210, Item 2 and Re Jersey National Liquor Company, Bulletin 1262, Item 3. Hence, I find defendant guilty of Charges 4 and 5.

Finally, with respect to Charge 6, it appears that defendant failed to notify this Division, as he was required to do by Rule 10 of State Regulation No. 14, that in or about July 1957 he moved his residence from 31 Laurel Avenue, Livingston (the address stated in his application dated April 30, 1957 for his then current solicitor's permit) to 579 Valley Road, West Orange.

Under the circumstances appearing in this matter and taking into consideration the number and seriousness of the charges preferred herein, defendant's solicitor's permit will be suspended for a period of sixty days.

In view of the suspension imposed herein, the order to show cause why defendant's solicitor's permit should not be cancelled will be discharged.

Accordingly, it is, on this 15th day of June 1959,

ORDERED that Unlimited Solicitor's Permit No. 3267 for the 1959-60 licensing period, issued by the Director of the Division of Alcoholic Beverage Control to James E. Hough, 579 Valley Road, West Orange, be and the same is hereby suspended for sixty (60) days, commencing at 9:00 a.m., Monday, June 22, 1959, and terminating at 9:00 a.m., Friday, August 21, 1959.

WILLIAM HOWE DAVIS,
Director.

NOTE: By order dated June 18, 1959, the effective dates of the suspension were changed to commence at 9 a.m. Monday, June 29, 1959 and to terminate at 9 a.m. Friday, August 28, 1959.

- 3. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING THAT DEFENDANT, BY ITS SOLICITOR, FURNISHED MONEY AND OTHER INDUCEMENTS TO RETAILERS FOR VARIOUS PURPOSES INCLUDING THE PAYMENT OF ALCOHOLIC BEVERAGE BILLS - AFFORDED RETAILERS THE BENEFIT OF A SOLICITOR'S PERSONAL CREDIT TO DELAY THE REPORTING OF ANY DEFAULT - DISMISSED FOR LACK OF SUFFICIENT PROOF - FAILED TO FILE NOTICE OF LICENSEES' DEFAULT, DISMISSED WITH PROVISIO THAT SPECIAL PERMIT BE OBTAINED.

In the Matter of Disciplinary Proceedings against
 Galsworthy, Inc.
 t/a Wine Specialists Co.
 300 Frelinghuysen Avenue
 Newark 12, New Jersey
 Holder of Plenary Wholesale License W-1, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

 Shanley & Fisher, Esqs., By Harold H. Fisher, Esq.,
 Attorneys for Defendant.
 William F. Wood, 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 charges:

- '1. On numerous occasions during 1956 and 1957 you (through and with the cooperation of James E. Hough, one of your solicitors, or others) furnished directly or indirectly to various retailers allowances of money and other prohibited things of value and inducements, viz., (1) a check cashing service, (2) unlawful credit in connection with the purchase of alcoholic beverages and (3) loans or advances of money for various purposes including the payment of alcoholic beverage bills; in violation of Rule 11 of State Regulation No. 34.
- '2. On numerous occasions between about January 1954 and about May 1957 you (through and with the cooperation of Mac Zimetbaum, another of your solicitors, or others) furnished directly or indirectly to numerous retailers a prohibited thing of value, viz., unlawful credit, in that you permitted and assisted said Mac Zimetbaum to issue his personal checks in exchange for checks received by you from retailers, for amounts totaling several million dollars, and thereby (since the latter checks were endorsed by this solicitor and cashed by him in a bank other than your own regular depository) afforded the retailers (1) the benefit of solicitor's personal credit, thus making it less likely that the retailers would be placed on default pursuant to State Regulation No. 39 by reason of any dishonor of checks given in payment of alcoholic beverage bills, (2) the benefit of a longer interval between the time the checks were delivered by the retailers and the time such checks reached the makers' banks for payment or dishonor and (3), by reason of the consequent postponement of the time of any dishonor, the benefit of a delay in the reporting of any default resulting from such dishonor; in violation of Rule 11 of State Regulation No. 34.
- '3. You failed to file with the Director of the Division of Alcoholic Beverage Control, within three days after retail licensees became in default to you under Rules 1 and 2 of State Regulation No. 39, notices of such defaults, in that you failed to notify the Director that Harry Burns, t/a Burns' Tavern, 247 Piaget Avenue, Clifton, New Jersey, did not make payment within the terms specified in those Rules for alcoholic beverages delivered to him by you on February 4 and April 26, 1957 and you also failed to notify the Director that Patrick Caron, Inc., 236-238 Belleville Avenue, Belleville, New Jersey, did not make payment within such time for alcoholic beverages delivered to it by you on June 11 and July 2, 1957; in violation of Rule 5(b) of State Regulation No. 39.'

"On application of the attorney appearing for the Division, Charge 2 was permitted to be amended to cover a period of time between January 1954 and October 1957 in lieu of the time stated in the original charge.

"An examination of the evidence adduced herein discloses that over the period of time set forth in Charge 1 James E. Hough, a solicitor employed by defendant, cashed divers checks of retail liquor licensees and also third party checks received by retail licensees in the course of their respective businesses. The Division produced the checks in question which have been marked as exhibits in evidence herein.

"A further examination of the evidence discloses that during the period between January 1954 and October 1957 Mac Zimetbaum, a solicitor employed by defendant, did on practically a daily basis go to the defendant's premises and obtain in exchange for his personal checks substantial sums of cash and numerous third party checks which had been received by defendant in the normal course of business; that upon receipt of the checks from defendant, he would go to a bank located in another county where he had a personal account and would cash the respective checks received from defendant.

"According to defendant's customers' ledger, it appears that on February 4, 1957 and again on April 26, 1957 assorted bottles of alcoholic beverages were delivered by defendant to Harry Burns, t/a Burns' Tavern, 247 Piaget Avenue, Clifton, New Jersey, and payment for such merchandise was not received by defendant until March 8, 1957 and May 29, 1957, respectively. Also, assorted alcoholic beverages were delivered by defendant to Patrick Caron, Inc., 236-238 Belleville Avenue, Belleville, New Jersey, on June 11, 1957 and July 2, 1957, payments for said merchandise being received by defendant on July 12, 1957 and August 5, 1957, respectively. The payments for said merchandise were not received by the defendant within the time allowed by the State regulation in question but, despite that fact, no notices of default were filed by defendant with this Division.

"Frank H. Reitman, chairman of the Board of Directors of defendant corporation, testified that he did not become aware of the practice engaged in with Zimetbaum in accepting Zimetbaum's personal checks for cash and third party checks received by defendant until Alfred Gillen, the credit manager, notified him that a check of Zimetbaum's had 'bounced'; that he immediately ordered the practice to be discontinued; that he tried to find out from Zimetbaum what he did with the cash but was never able to do so. He further testified that since he had never received a notice from the Alcoholic Beverage Control Division prohibiting such practice regarding the acceptance of a solicitor's personal check in exchange for cash and other checks payable to defendant, he was of the opinion that the Division had no objection to it.

"Alfred Gillen, the credit manager, testified that he had authorized the transactions with Zimetbaum but discontinued such practice upon instructions of Frank H. Reitman.

"The record herein discloses that solicitors Hough and Zimetbaum engaged in the practice attributed to them. The question to be determined is whether the instant practices violated Rule 11 of State Regulation No. 34. Such regulation provides as follows:

'No manufacturer or wholesaler of alcoholic beverages, other than malt alcoholic beverages, shall furnish or offer to furnish, directly or indirectly, to any wholesaler or retailer, and no wholesaler or retailer shall accept or

offer to accept directly or indirectly from any manufacturer or wholesaler, any gift, rebate, or allowance of money or any thing of value (whether by sale, loan, gift or otherwise) or other discount or inducement, including free goods, deals, combination sales, and similar merchandising devices, except (1) permissible discounts as and if scheduled by the manufacturer or wholesaler in the manner aforesaid, (2) samples as permitted by Rule 13 hereof and State Regulation No. 21 and (3) depletion credits or rebates as provided by Rule 8 hereof; nor shall any such manufacturer or wholesaler sell or offer to sell to a wholesaler or retailer any particular brand or brands of alcoholic beverages tied in with or contingent upon the wholesaler's or retailer's purchase of some other beverage, alcoholic or otherwise, or any other merchandise or service.'

"If such regulation were violated, the contention by the chairman of the Board of Directors of the defendant corporation that he was unaware of transactions engaged in by employees of defendant corporation is unacceptable. Judge Donges, speaking for the Appellate Division of the Superior Court of New Jersey in the matter of Galsworthy, Inc. v. Hock, 3 N.J. Super. 127, stated that 'Our courts have held that the duty to obey the law, and rules and regulations is imposed upon the licensee and may not be evaded by a claim that any such act was not known to the licensee or authority in charge. Cedar Restaurant v. Hock, 135 N.J.L. 157 (Sup. Ct. 1947). In Kravis v. Hock, 135 N.J.L. 259 (Sup. Ct. 1947) it was said "The whole machinery of the Alcoholic Beverage Control statute is designed to control and keep within limits a traffic which, unless tightly restrained, tends toward abuse and debasement."

"I have carefully scrutinized the evidence presented on behalf of the Division to ascertain whether by reason of practice engaged in by Hough and Zimetbaum the violations alleged in Charges 1 and 2 were committed. Although the practice could result in the violations charged, I find in the present case that the necessary proof to adjudge defendant guilty of said charges is lacking. It has been stated by Frank H. Reitman, aforementioned, that the practices in question were ordered discontinued quite some time ago. I trust that in the future no such practices shall be engaged in either by the defendant or any other licensee.

"The evidence presented by the Division in connection with Charge 3 is amply sufficient to find guilt on behalf of the defendant that it failed to file with the Director notices within time that said licensees had defaulted in payment for alcoholic beverages received by them. I therefore recommend that Charges 1 and 2 preferred herein be dismissed and that defendant be found guilty on Charge 3. The Division has adopted a policy whereby manufacturers and wholesalers who violate only Rule 5(b) of State Regulation No. 39 may obtain a special permit where no aggravating circumstances appear and no other violation is involved. Re Hoffman Beverage Co., Bulletin 849, Item 3. In view of this policy, I recommend that the defendant be afforded opportunity to obtain such permit and I recommend that defendant be notified to make application for such permit within a specified period of time and, upon its doing so, that the proceeding herein shall be considered dismissed."

Pursuant to Rule 6 or State Regulation No. 16, written exceptions to the Hearer's Report and written argument in support thereof were filed with me by the attorney appearing for the Division. Written answering argument was filed with me by the attorney for the defendant. After considering the written arguments, I decided to hear oral argument by the respective attorneys and, pursuant thereto, the matter was argued orally before me on May 22, 1959.

The attorney for the defendant emphasized the fact that divers third party checks (offered in evidence) received from retail liquor licensees and given to Zimetbaum (employed by defendant as a solicitor) in exchange for his personal checks had not been received by defendant in payment for merchandise. The attorney appearing for the Division conceded at the hearing of the within charges that such was a fact. If the third party checks in question were given by retail licensees in payment for alcoholic beverages purchased from the defendant, I would have no hesitancy in finding defendant guilty of the charges relating thereto. It is apparent that the evil which would accompany such practice would be inimical to the best interest of the liquor industry in this State. It would present an opportunity to an unscrupulous wholesale licensee to manipulate customers' accounts so as to make it impossible if retail licensees' checks were dishonored to ascertain whether or not such licensees were in default because of non payment of liquor bills as provided in Rule 1 of State Regulation No. 39. Such a practice is definitely forbidden and will not be tolerated.

I have given serious consideration to the evidence presented herein and, although the practice engaged in by the defendant is suspicious in nature, I am constrained because of lack of sufficient proof to agree with the Hearer that Charges 1 and 2 should be dismissed. Insofar as Charge 3 is concerned, I find defendant guilty thereof and adopt the Hearer's recommendation that defendant be given an opportunity to obtain a special permit in accordance with our policy in such matters.

Accordingly, it is, on this 15th day of June, 1959,

ORDERED that Charges 1 and 2 herein be and the same are hereby dismissed; and it is further

ORDERED that Charge 3 herein be considered dismissed, provided defendant obtains a special permit as set forth above on or before June 30, 1959; with the right reserved to enter a further order herein if defendant fails to obtain such special permit within the specified time.

WILLIAM HOWE DAVIS,
Director.

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT RECORDED SONGS) - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Ollie's Bar, Inc.
t/a Ollie's Bar
135 Ocean Avenue
Jersey City 5, New Jersey

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-528, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Rosen & Kanov, Esqs., by Leon M. Rosen, Esq., Attorneys for
Defendant-licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On April 3, 4, 5 and 6, 1959, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language in and upon your licensed premises in that you allowed, permitted and suffered the playing of recordings of songs entitled: 'The Race Track', 'The Politician', 'The New Soap' and 'The Jackasses', the words of the songs and the manner and form of rendition thereof having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20."

The file discloses that ABC agents, while conducting an undercover investigation (and unidentified) at the defendant's licensed premises on Saturday night, April 4, and early Sunday morning, April 5, 1959, heard the four recordings described in the above charge being played on a juke box in the barroom. On April 6, during daytime hours, a routine inspection of the premises was made by another ABC agent. As he entered the agent identified himself to Orlando Bozzone (president-secretary and 99% shareholder of the corporate licensee) who was in charge of the premises. The four recordings in question were still in the juke box. Orlando Bozzone stated that the box had not, as yet, been "plugged in" for the day. At the agent's request, Bozzone connected the box and the agent inserted a coin and played the records. The records were then seized as evidence.

A signed and sworn statement was thereupon obtained from Orlando Bozzone in which he admits that the distributor had placed the records in the box on April 3 after a demonstration playing for him; that they had been played between ten and fifteen times up to April 6; that they had been put in for fun and that he did not deem them "too bad" since women did not frequent the barroom.

By way of mitigation the attorneys for the defendant submitted a letter (accompanied by an affidavit of the record distributor) setting forth that the record in question was installed, without knowledge of Orlando Bozzone, on April 3, 1959; that on that same date Orlando Bozzone, upon becoming aware of the kind of songs on the record, immediately notified the distributor to remove the record and disconnected the box, and that it was disconnected until the agent entered the tavern on April 6 to make the routine inspection. On the basis of the reports of the agents of their observation in the tavern on the night of April 4 and early morning of April 5, and in view of the admissions by Orlando Bozzone in his aforementioned signed and sworn statement given to the other agent on April 6, the matters offered with the plea cannot be considered as mitigating circumstances.

Defendant has a prior adjudicated record. Effective May 22, 1950, defendant's license was suspended by the local issuing authority for three days for selling alcoholic beverages while the polls were open on an Election Day and, effective March 3, 1958, its license was suspended by this Division for fifteen days because of an "hours" violation. Re Ollie's Bar, Inc., Bulletin

1218, Item 7. The first dissimilar violation, having occurred more than five years ago, will not be considered in fixing the penalty. Re Zache, Bulletin 1145, Item 9. I shall suspend defendant's license for fifteen days (Re Mello-D-Club, Inc. Bulletin 1213, Item 6), to which will be added five days because of the second dissimilar record which occurred within the past five years (Re 279-10, Inc., Bulletin 1267, Item 4), making a total suspension of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 23rd day of June, 1959,

ORDERED that any renewal for the 1959-60 licensing year or transfer of plenary retail consumption license C-528, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Ollie's Bar, Inc., t/a Ollie's Bar, for premises 135 Ocean Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, July 6, 1959, and terminating at 2 a.m. Tuesday, July 21, 1959.

WILLIAM HOWE DAVIS,
Director.

- 5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (OFFERING TO PROCURE FEMALES FOR MALE PATRONS FOR THE PURPOSE OF PROSTITUTION) - PRIOR RECORD - LICENSE SUSPENDED FOR 55 DAYS.

In the Matter of Disciplinary Proceedings against

Al & Betty Klipfel's Tavern, Inc.
t/a Al & Betty Klipfel's Tavern
457 Coit Street
Irvington, New Jersey

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-26, issued by the Board of Commissioners of the Town of Irvington.

Matthew Krafte, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter came on for hearing on Friday, May 15, 1959, at which time defendant, by its attorney, entered a plea of non vult to the following charge:

"On divers days between January 25 and March 31, 1959, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, in that you made offers to procure females for male patrons for the purpose of prostitution and for acts of perverted sexual relations, and 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."

The facts underlying the charge are hereinbelow succinctly set forth.

At 12:45 a.m. Sunday, January 25, 1959, ABC Agents M and R

visited defendant's licensed premises wherein they observed Al Klipfel (President of defendant corporation), hereinafter called Al, who was tending bar, and a female named Pat, who was caressing a male companion. They further observed Al come from behind the bar and put his arms around Pat in a suggestive embrace. When Pat and her companion were leaving, Al asked Pat if she would return that night and Pat said she would. When Pat and her companion departed, Agents M and R engaged Al in conversation respecting the possibility of having sexual relations with Pat and Al assured them that they could. When the agents inquired as to when Pat would be available and how much she charged, Al told them that she charges \$5; that she would be available the following night and that he would make all the arrangements with her. He cautioned them to keep it quiet because, "I got a good thing over here. Don't spoil it by talking about it. Don't tell anyone because I can get in trouble".

At 9:15 the same evening, Agent S entered the tavern, followed by Agents M and R whom Al greeted. Agent R inquired if Pat would be there because he and Agent M wanted to engage in sexual relations with her and Al stated that he expected her at any moment. When Pat failed to appear at 9:40 p.m., Al went into the phone booth and, upon his return, said, "I told you I'd get her. She's waiting for a lift from the bartender". Agent R wanted to know if the bartender would interfere with their progress and Al said, "Don't worry about him. I told you I would fix you up with Pat. That guy is just bringing her down". When Pat had not arrived at 10:00 p.m., Al put in another call and informed the agents that Pat would arrive in twenty minutes. When Pat failed to put in her appearance, Al phoned another woman named Barbara who he said would engage in sexual intercourse with them for \$5 each and, when he was informed by someone at the other end of the wire that Barbara was not at the place, he said to the agents, "I got to get me five or six girls so that one of them can get here every night. I got one in mind. She's beautiful. I'd like to have her working for me. I got to get someone steady because I don't like it, look like you boys waiting". Al again phoned Pat and reported to the agents she would arrive in fifteen minutes. When Pat failed to appear at 11:30 p.m., Agents R and M stated that they would have to go and Al said, "Tell me when you will be in again. I'll keep Pat in my room if I have to". The agents proposed a tentative date and departed.

At 9:15 p.m., Saturday, January 31, 1959, Agent R telephoned the licensed premises and was informed by Al that neither Pat nor Barbara had as yet arrived. At 10:00 p.m. Agent M put in another call and Al told him that neither of the women had arrived and he requested the agents to come over anyway and he would try to locate the women for them. At 10:25 p.m., Agents M and R entered defendant's tavern followed by Agent F. Al wrote a telephone number on a coaster saying, "Call this number and ask for Barbara and then I'll talk to her". Agent R did as requested, got Barbara and put Al on the phone. Al emerged from the booth and stated that the person at the other end recognized his voice and hung up on him. He suggested that one of the agents call Barbara and talk to her herself. At 11:30 p.m. Agent R again phoned Barbara, gave her a name suggested by Al and Barbara said she was busy then but would be available for Friday night. Agent R made a date to meet her at 9:30 p.m., Friday, February 6, 1959, and informed Al who said, "If she said that she would be here, she'll be here", and gave them a description of the woman and the price she would charge. Al further suggested that the agents follow a colored girl who was leaving the premises, stating that she got \$10 but is married to a truck driver and they might get in trouble. The agents declined and, shortly thereafter, left the premises.

At 9:40 p.m., Friday, February 6, 1959, Agent M and R entered defendant's tavern and Al asked, "Where were you guys Wednesday night, Barbara was here". When the agents told him that the date with Barbara was for tonight, Al stated that he had begun to suspect that M and R were ABC agents. He then told them that, "Barbara won't come tonight, she's in jail". When the agents inquired about Pat, Al said, "I threw her out for good. I found out that she is not 21 years old and I don't want any trouble so I won't let her come in. I just found out she's not old enough the other day". At 10:25 p.m. Agent F entered and sat at the bar a few stools away from the other agents. Al warned Agents M and R, "If you guys are ABC men and you double cross me, I'll have to stop you from breathing. I have to kill you", to which Agent M replied, "Al, I think you are just throwing the bull about Barbara and Pat. I think you are just giving us a line to keep us coming in here and spending money". Al declared, "No, no, don't think that way, Barbara was in here Wednesday. I told her all about you. That's why she came in". When the agents asked if Al had told Barbara they wanted to have sexual relations with her, he answered, "I don't want to know anything about it inside here, nothing, but if she takes you outside, what she does outside I don't know". At 10:45 p.m. Al left the agents and Bill, the bartender, told them that, "Al is a lot of bull ---- when he talks about girls. I'm the guy that brought Barbara in here. Al is just telling you he will fix you up with girls so that you guys will come in and spend some money". Al returned to the agents and gave Agent R ten cents, telling him to call the tavern where Barbara "hangs out". Agent R complied, calling the same phone number that had been previously given to him, and learned that Barbara had been killed on February 5, 1959 by a hit and run driver. Al refused to believe what Agent R was told and stated he would verify it the following morning and let the agents know.

At 9:20 p.m., Wednesday, February 18, 1959, Agents M and R entered defendant's tavern. Al was not present but the male they had seen with Pat on their first visit was there. Both agents conversed with him and were told that he had lived with Pat for about three weeks and had to get rid of her because the cops were looking for her. He further stated that he had arranged numerous dates for Pat with different men; that Pat received from \$5 to \$25 for her services; that Al had nothing to do with the girls because they wouldn't move unless he gave the word; that he expected to get a job as a bartender soon and that it would be worthwhile for the agents to see him after he became employed as such.

At 11:30 p.m., Monday, March 30, 1959, Agents M and G visited defendant's tavern and, when Al appeared, he informed them that Barbara had returned from Florida. At 2:00 a.m. the agents identified themselves and Al orally admitted what transpired but refused to give a signed, sworn statement saying, "No, it won't be necessary. I'll come up to your office and tell them the same thing I'm telling you now. It was all talk. You didn't get laid, did you?".

All of the conversations which Al had with the agents are not set forth herein since no useful purpose would be served thereby. Suffice to say they were filthy and degrading. While it is true that no girls were introduced to the agents for the purpose of having illicit sexual relations with them, nevertheless, from the statement of the self-confessed panderer, both Pat and Barbara were prostitutes, known as such to Al. The conversations between the agents and Al were, as Judge Goldman stated in The Matter of Disciplinary Proceedings Against Olympic, Inc., 49 N.J. Super. 299, "more than innocuous male chit chat" and a definite offer was made to procure a female with whom the agents could have sexual relations when Al gave the agents a coaster, upon which he had written the phone number of a tavern

where one of the prostitutes "hangs out". Judge Goldman referred to a similar situation in the above cited case and concluded that, "This would be sufficiently improper to constitute criminal illegality. See N.J.S. 2A:133-2(e). It clearly fell under the ban of Rule 5 and satisfied the charge".

In a letter submitted by defendant's attorney, he alludes to the methods employed by the agents as a "trap". Again, the remark of Judge Goldman in the above cited case is deemed appropriate. Therein he said:

"It is of no moment that the men to whom Morris talked were actually ABC agents looking for evidence of improper conduct on the licensed premises, nor that what he said may have been (at least in his own private mind) all smoke and no fire--an assumption we are not willing to make. We look at the scene, the talk and the actions with an objective eye: the setting was a licensed tavern, the agents patrons like others at the bar, and Morris' talk and gestures of a kind that could have but one meaning and purpose for those patrons. We regard what was said and what was done in the hard light of the public's continuing and legitimate concern with stringently regulating all activities on licensed premises. The liquor trade must, in the public interest, be conducted in a manner that is beyond all suspicion."


In conclusion, it is pertinent to add what was stated by Judge Jayne (referring to Rule 5) in The Matter of the Appeal of Sam Schneider, 12 N.J. Super. 449 (App. Div. 1951) at page 458:

"The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil."

Defendant has a prior adjudicated record. Effective October 14, 1956, its license was suspended for ten days by the local issuing authority for an "hours" violation. I shall suspend defendant's license for a period of fifty days for the violation charged herein (Cf. Re Pone, Bulletin 963, Item 2), to which will be added five days for the dissimilar violation which occurred within a five year period, making a total suspension of fifty-five days.

Accordingly, it is, on this 29th day of June, 1959,

ORDERED that any renewal for the 1959-60 licensing year transfer of plenary retail consumption license C-26, issued by the Board of Commissioners of the Town of Irvington to Al & Betty Klipfel's Tavern, Inc., t/a Al & Betty Klipfel's Tavern, for premises 457 Coit Street, Irvington, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, July 7, 1959, and terminating at 2:00 a.m., Monday, August 31, 1959.


William Howe Davis,
Director.