

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

BULLETIN 1175

July 9, 1957

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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.

July 9, 1957

BULLETIN 1175

1. COURT DECISIONS - LIPTAK v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - PETITION FOR CERTIFICATION TO SUPREME COURT DENIED.

SUPREME COURT OF NEW JERSEY

ANNA LIPTAK,)

Appellant-Petitioner,)

-vs-)

DIVISION OF ALCOHOLIC BEVERAGE)
CONTROL,)

Respondent-Respondent.)
-----)

ON PETITION FOR
CERTIFICATION

ORDER DENYING
PETITION

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

WITNESS the Honorable Arthur T. Vanderbilt, Chief Justice, at Trenton on the 6th day of May, 1957.

JOHN H. GILDEA
Clerk of the Supreme Court

F I L E D

May 6 1957

John H. Gildea
Clerk

2. STATE REGULATIONS - AMENDMENT OF RULE 3 OF STATE REGULATION NO. 6 - TRANSFERS OF MUNICIPAL LICENSES TO OTHER PERSONS, OR OTHER PERSONS AND OTHER PREMISES - NOTICE OF TRANSFER APPLICATION TO STATE DIRECTOR - ALSO CONCERNING CERTIFICATE OF DIVISION OF TAXATION, DEPARTMENT OF THE TREASURY - EFFECTIVE JULY 1, 1957.

TO ALL MUNICIPAL ISSUING AUTHORITIES:

Experience has shown that it would be helpful in our maintenance of proper records pertaining to municipal licenses if this Division were notified of person-to-person transfer applications at the time such applications are filed with the municipal issuing authorities. Your cooperation, therefore, is desired to the end that this office receive from you notifications of such pending transfers upon filing of the applications.

With respect to the certificate from the Division of Taxation, Department of the Treasury, to the effect that the transferring licensee is not delinquent in the filing of retail reports or the payment of alcoholic beverage taxes, it is the thought of that agency, in which I concur, that the transfer procedure may be simplified by the elimination of the present requirement that the tax certificate accompany the transfer application. Instead, the requisite tax certificate may be filed with the local issuing authority at any time prior to the effective date of the license transfer and endorsement of the license certificate for transfer.

Accordingly, effective July 1, 1957, Rule 3 of State Regulation No. 6 is hereby amended as follows:

"Rule 3. Application for transfer of license to other person, or other person and other premises, signed and sworn to by the person who seeks the transfer, and bearing the consent in writing to such transfer by the licensee, must be filed with the Director, or other issuing authority as the case may be, at or before the first insertion of the advertisement.

"Upon filing of the application for such transfer with any municipal issuing authority, such municipal issuing authority shall immediately execute a notice of the filing of the transfer application, in a form prescribed by the Director, and shall forthwith forward such notice to the State Director of the Division of Alcoholic Beverage Control, 1100 Raymond Blvd., Newark 2, N. J.

"Prior to the effective date of any such license transfer and the endorsement for transfer of the license certificate, there shall be filed with the issuing authority a certificate from the Division of Taxation, Department of the Treasury, Beverage Tax Bureau, certifying that the transferring licensee is not delinquent in the payment of any tax or in the filing of any report required by the provisions of the Alcoholic Beverage Tax Act."

Attached hereto is the prescribed form of the notice of application for transfer to be filed with this Division.

Each municipality should arrange to have a supply of these forms typewritten, printed or mimeographed in amounts sufficient to meet their anticipated needs. As indicated by the revised rule, such notice must be forwarded by you to this office immediately upon your receipt of any application for transfer of license to another person (or to another person at other premises).

WILLIAM HOWE DAVIS
Director.

Promulgated Monday, June 24, 1957.
Effective Monday, July 1, 1957.
Filed with the Secretary of State (N.J.) Monday, June 24, 1957.

NOTICE OF APPLICATION FOR TRANSFER

Division of Alcoholic Beverage Control
1100 Raymond Boulevard
Newark 2, New Jersey.

Pursuant to Rule 3 of State Regulation No. 6, you are hereby notified that the undersigned has today filed application with the municipal issuing authority for transfer of the following license:

Name of present licensee: _____

Type and number of license: _____

Street address of licensed premises: _____

Municipality: _____

Name of transfer applicant: _____

Residence address: _____

If applicant is a corporation, names and residences of all officers, directors and stockholders are:

(Municipal Clerk or Secretary)

Dated: _____ 19____.

3. APPELLATE DECISIONS - KLEIN AND TUCKER v. FAIR LAWN AND SCHWEDER.
 KLEIN AND TUCKER v. FAIR LAWN AND VAN DE WALLE AND SCOURIS.
 KLEIN AND TUCKER v. FAIR LAWN.

HENRY KLEIN and LEONARD TUCKER,)
 Appellants,)

-vs-)

MAYOR AND COUNCIL OF THE)
 BOROUGH OF FAIR LAWN and)
 HAROLD M. SCHWEDER,)
 Respondents.)

-----)
 HENRY KLEIN and LEONARD TUCKER,)
 Appellants,)

-vs-)

MAYOR AND COUNCIL OF THE)
 BOROUGH OF FAIR LAWN, and)
 THEODORE VAN De WALLE and DEAN)
 SCOURIS, trading as DORIE & DEAN,)
 Respondents.)

ON APPEAL

-----)
 HENRY KLEIN and LEONARD TUCKER,)
 trading as RADBURN PHARMACY,)
 Appellants,)

CONCLUSIONS
 AND
 ORDER

-vs-)

MAYOR AND COUNCIL OF THE BOROUGH)
 OF FAIR LAWN,)
 Respondent.)

-----)
 HENRY KLEIN and LEONARD TUCKER,)
 trading as RADBURN LIQUOR STORE,)
 Appellants,)

-vs-)

MAYOR AND COUNCIL OF THE BOROUGH)
 OF FAIR LAWN,)
 Respondent.)

-----)
 Peter Cammellieri, Esq., Attorney for Appellants.
 Arthur Minuskin, Esq., Attorney for Respondent Mayor and
 Council of the Borough of Fair Lawn.
 Morris Dobrin, Esq., Attorney for Respondent Harold M. Schweder.
 Thomas F. Dalton, Esq., Attorney for Respondents Theodore
 Van De Walle and Dean Scouris, t/a Dorie & Dean.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Appellants appeal from the action of respondent issuing authority whereby, on June 26, 1956, it purportedly denied appellants' applications for plenary retail distribution licenses and

granted applications filed by respondent Harold M. Schweder and respondents Theodore Van De Walle and Dean Scouris. Since the issues raised are common to all four cases they will be considered together herein.

"The petitions of appeal allege, in substance, that the issuing authority's action was erroneous in that it was arbitrary, capricious and unreasonable.

"The appeals were heard de novo, pursuant to Rule 6 of State Regulation No. 15.

"The evidence adduced at the hearing shows that the Borough of Fair Lawn had a population of 23,885 according to the 1950 Federal Census; that on December 27, 1955 an ordinance was adopted increasing the permissible number of plenary retail distribution licenses from five to seven, as provided by R. S. 33:1-12.14; that after the adoption of said ordinance about 24 applications, including those of the appellants and respondent licensees, were filed for the additional licenses; that appellants applied for licenses to be issued for premises 19-13 Fair Lawn Avenue and 24-02 Fair Lawn Avenue, both of which are situated in a section of the Borough known as Radburn Center in which three super markets, two drug stores and numerous other retail establishments are located; that respondent Schweder applied for a license to be issued for premises 11-14 Saddle River Road and respondents Van De Walle and Scouris applied for a license to be issued for premises 12-74 River Road, both premises being located, respectively, at the extreme eastern and western limits of the Borough.

"The testimony discloses that the applications filed after the adoption of the aforesaid ordinance were made available to members of respondent issuing authority two or three weeks prior to a regular meeting held on June 26, 1956, and that at said meeting a resolution was adopted by the issuing authority, by a vote of 3-to-2, granting the applications of respondent Schweder and respondents Van De Walle and Scouris. (On November 30, 1956, the license issued to Schweder was transferred by the Mayor and Council to 11-14A Saddle River Road).

"No challenge was made herein of the character of respondent licensees or of any zoning restrictions and it appears that the premises for which the licenses were issued are more than 1,000 feet distant from the premises of the nearest plenary retail distribution licensee in conformity with the provisions of the amended ordinance.

"Appellants admit the need and convenience of the additional retail distribution licenses in the Borough. However, they contend and offered evidence tending to prove that the premises for which they sought licenses are so located as to best serve the needs and convenience of the public. While the evidence discloses that appellants' premises are located in a large, newly-developed housing and shopping area in the center of the Borough, it likewise discloses that the eastern and western sections of the Borough have shared in the phenomenal growth of that municipality in recent years.

"Mayor Sogorka testified, in substance, that the reasons considered by the majority who voted to grant the applications of respondent licensees were 'the geographic convenience of those residents who lived in that area'; that each of the seven retail distribution licenses would thus be located

proportionately to the needs and convenience of the residents of the several sections of the Borough; and that the qualifications of respondent licensees 'are first class because of their community activity in the Town * * * I felt that in a business of this type repute and reliability and community responsibility had a lot to do with who should get a license'. The Mayor's testimony was corroborated by that of Councilman Matule.

"The question as to whether licensed premises shall be permitted in a particular section of the municipality is a matter confided to the sound discretion of the issuing authority. Carriell v. Newark et als., Bulletin 1043, Item 2. On appeal the burden of showing that the municipal issuing authority abused its discretion rests with the appellant. Rule 6 of State Regulation No. 15.

"Nowhere in the record does it appear that respondent issuing authority was improperly motivated or abused its discretion and I find that its action in granting the licenses to respondent licensees was neither unreasonable nor an abusive exercise of its discretionary authority. Matweishyn v. Hillside et als., Bulletin 783, Item 1. However, various other contentions were advanced by appellants at the hearing. They are: (1) the ordinance increasing the number of licenses is invalid, (2) the Notices of Intention were not advertised in the proper medium, (3) respondent licensees' filing fees did not accompany their applications, (4) the Notices of Intention were defective in that they did not conform to Rules and Regulations governing applications for buildings not yet constructed, and (5) the issuing authority awarded the licenses without a hearing thereon and without making the required investigations.

"As to (1): It has heretofore been established that the validity of an ordinance can be determined only by a civil court of competent jurisdiction and cannot be determined in these proceedings. Matthews et als. v. Orange et al., Bulletin 936, Item 9. As to (3): The evidence discloses that the fees were tendered to the Clerk by the several applicants and refused pending a determination as to whom the licenses would be issued. The prorated fees were paid by respondent licensees before the license certificates were issued. As to (4): The evidence discloses that the respondent licensees advertised for buildings in existence at the time their applications were filed. As to (5): The issuing authority is not obliged to hold a hearing unless written objections to the issuance of a license are lodged with the Clerk. Rule 8 of State Regulation No. 2. There is no evidence herein of any written objections having been filed and there is testimony that an investigation of the licensees and their premises was made by members of the issuing authority.

"Respecting (2): The record discloses that respondent licensees advertised their Notices of Intention in the Bergen Evening Record, a daily newspaper published in Hackensack and circulated throughout Bergen County, notwithstanding the fact as stipulated that there is a weekly newspaper published and circulated in the Borough of Fair Lawn, known as the Fair Lawn News. It appears that respondent licensees advertised contrary to the provisions of R. S. 33:1-25 and Rule 7 of State Regulation No. 6. Hence, respondent issuing authority lacked jurisdiction to consider the applications (cf. Re Soriano, Bulletin 323, Item 2). However, considering the admitted personal fitness of respondent licensees to hold

licenses, the fact that they have been operating their businesses for several months pursuant to the licenses issued, the absence of evidence tending to show improper motivation and abuse of sound discretion by the issuing authority and the unchanged status of appellants who are not entitled to the licenses as a matter of right, I conclude that such factors should preponderate in arriving at an equitable determination of an apparently complex situation.

"Under the circumstances herein I recommend that respondent licensees be permitted to re-advertise their Notices of Intention in the proper medium, that they file proof thereof with the issuing authority and that the issuing authority be authorized to accept the re-advertised Notices of Intention in lieu of those heretofore filed by respondent licensees. Cf. The Methodist Episcopal Church at Verona v. Verona et als., Bulletin 101, Item 5.

"I further recommend that the action of respondent issuing authority be affirmed but that no order affirming said action be entered until satisfactory proof of compliance with the suggested remedial procedure outlined above has been received and approved by the Director."

Exceptions to the Hearer's Report were duly filed and counsel for the respective parties appeared before me on oral argument, pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record herein, including the arguments of counsel, and, although (with the exception hereinafter set forth) I agree with and adopt the Hearer's findings of facts and the stated legal principles applicable thereto, I disapprove his recommendations.

Citing Matthews, et als. v. Orange, et al., supra, the Hearer's Report stated: "It has heretofore been established that the validity of an ordinance can be determined only by a civil court of competent jurisdiction and cannot be determined in these proceedings." The Conclusions and Order in the Matthews case had to do with a zoning ordinance. Here, however, we have a numerical limitation ordinance duly adopted pursuant to the authority granted in R. S. 33:1-40 and permitting new licenses not in excess of the number permitted by R. S. 33:1-12.14. Regarding the State Commissioner's (now Director's) jurisdiction on appeal from such an ordinance, see R. S. 33:1-41. The ordinance herein is valid on its face.

As indicated in the Report, the issuing authority lacked jurisdiction to consider the applications of respondents Schweder and Van De Walle and Scouris because their Notices of Intention were advertised contrary to the provisions of R. S. 33:1-25. Under the circumstances, the action of the issuing authority in granting their applications was a nullity and cannot be affirmed. Re Soriano, supra. However, since appellants do not question the personal fitness of respondent-licensees or the propriety of their business conduct or the suitability of their premises as such, I shall entertain applications for special permits authorizing said licensees to continue their businesses pending consideration and determination by the issuing authority of new applications for licenses if the same are filed with dispatch and in full compliance with the aforesaid statute. The Methodist Episcopal Church at Verona v. Verona, et als., supra.

Accordingly, it is, on this 15th day of May, 1957,

ORDERED that the action of respondent issuing authority, in granting the applications for plenary retail distribution licenses to Harold M. Schweder, for premises 11-14 Saddle River Road, and to respondents Theodore Van De Walle and Dean Scouris, for premises 12-74 River Road, Fair Lawn, be and the same is hereby reversed, and the licenses unlawfully issued to them are hereby cancelled, effective immediately, with leave afforded respondent-licensees herein to apply for special permits to exercise, temporarily, license privileges; and it is further

ORDERED that the action of respondent issuing authority in refusing to grant the plenary retail distribution license applications of appellants Henry Klein and Leonard Tucker be and the same is hereby affirmed, and that the appeals herein from said refusal to grant said applications be and the same are hereby dismissed.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

THOMAS GUADAGNO)
T/a SEA GOING TOMMY'S)
456 Glebe Street)
Orange, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-46, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.)

Salvatore A. Simeone, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant entered a plea of non vult, at the hearing, to the following charge:

"On April 3, 5 and 9, 1957, you engaged in and allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

On the dates above set forth one or more ABC agents visited defendant's licensed premises. A bartender called "Sam" was on duty on April 3rd and 5th and the licensee was on duty April 9th. On April 3rd two agents observed considerable horse race betting activity conducted by Sam over the telephone and in the barroom, but when one of the agents attempted to place a bet with Sam, he stated "-- -- they're all over East Orange." Asked who was all over, he said, "the cops, do you want my father-in-law to lose his license." On April 5th another

agent entered into a discussion with Sam and a patron concerning horse races, and the agent told Sam he desired to place a bet. When Sam answered a telephone call, he asked the agent the details of his bet, transmitted it over the telephone, and then accepted \$4.00 from the agent, the amount of his bet. On April 9th the last mentioned agent asked the licensee Sam's whereabouts, stating that he had money due him for a horse race bet. The licensee replied, "Sam is home and he told me a fellow may be in to collect. I have \$30.00 for one and about \$25.00 for another guy, I don't know if you are the fellow." The licensee, addressing the patrons present, asked, "Who wishes to bet on a horse with me," and accepted various horse race bets from them.

In the interim the licensee had a patron check with Sam at his home, and upon his return, paid the agent his winnings on the bet. The agent then placed a \$2.00 bet with the licensee, who transmitted such bet and others, over the telephone. Thereafter the agent placed bets of \$4.00 each with the licensee, who transmitted the bets and others, in the same manner. After the placing of the last bet, other agents and local police officers entered and disclosed their identity. The licensee admitted receiving a \$4.00 bet, the slip for which was in his possession, and paying \$30.00 to the agent and denied accepting other bets. Sam, who had appeared on the scene, before the entrance of the officers, stated that he had borrowed \$30.00 from the agent and asked the licensee to repay him when he came to the tavern.

These gambling activities are presented in detail in view of statement of counsel that the place is not a hangout for gamblers nor a gambling establishment but that it merely represented a single acceptance of a horse race bet out of friendship for and camaraderie with the agent.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty-five days, the normal penalty for an offense of this nature after January 16, 1956. Re Johnson & McMahon, Bulletin 1146, Item 4. There will be no remission for the plea because it was not entered until the date of hearing.

Accordingly, it is, on this 22nd day of May, 1957,

ORDERED that Plenary Retail Consumption License C-46, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Thomas Guadagno, t/a Sea Going Tommy's, 456 Glebe Street, Orange, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. June 3, 1957, and terminating at 2:00 a.m. June 28, 1957.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against
 GREAT ARROW INVESTMENT CORP.
 T/a MONTE CARLO
 Frederick Street and Route #46
 Little Ferry, N. J.,
 Holder of Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Little Ferry.

CONCLUSIONS AND ORDER

 Sidney Slauson, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for 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 Sunday, May 13, 1956, between 4:00 a.m. and 4:20 a.m., you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and permitted the consumption of alcoholic beverages upon your licensed premises; in violation of Section 1 of an Ordinance adopted by the Mayor and Council of the Borough of Little Ferry on January 29, 1945, which prohibits any such activity between the hours of 4:00 a.m. and 8:00 a.m. on Sundays.

'2. On Sunday, May 13, 1956, between 4:00 a.m. and 4:20 a.m., you failed to close your entire licensed premises and have them remain closed; in violation of Section 1 of the above mentioned Ordinance.'

"An ABC agent (Agent F) testified that at 1:30 a.m., Sunday, May 13, 1956, he, a fellow agent (Agent N) and two female companions entered defendant's licensed premises; that a man (subsequently identified as Dick Richards) ushered them into the dining room where they took seats at a table; that entertainment was in progress at the time which concluded at about 2:00 a.m.; that a waiter (subsequently identified as Richard Cordts) served them drinks and at 3:00 a.m. the agents ordered food from him; that at 3:45 a.m. Richards drew the curtains between the barroom and the dining room; that at 3:50 a.m. Cordts inquired if the agents wished to order any more to drink and he was told that they had sufficient for the time being; that Cordts then proceeded to the barroom but at about 4:00 a.m. returned to the agents' table with the bill, saying 'I am sorry to have to give you this now, but I think we might be leaving soon'; that thereafter Richards came to their table and presented a card to the agents, remarking 'I am sorry that you people didn't see the complete show, but here is a business card with my name on the back of it, and if you are around here at any time there will be no minimum charge for you people'; that Richards then went into the kitchen and that about 4:15 a.m. as he was walking from the kitchen toward the barroom, Agent N called to him and ordered a round of drinks; that he took the

order, proceeded to the barroom and at 4:20 a.m. Cordts approached their table with the drinks of alcoholic beverages which had been ordered from Richards and at the same time gave them a bill for \$4.50; that Agent N gave him a five-dollar bill and Cordts proceeded to the barroom but returned in a few minutes and handed Agent N fifty cents in change; that he (Agent F) then asked if Cordts knew what time it was and he replied 'I don't have a watch. I think it is about four-thirty'; that the agents then identified themselves and asked to see the manager; that the agents then followed Cordts into the barroom where there were two males tending bar (subsequently identified as James Rhoat and Anthony Garcia) and on the customers' side of the bar three couples and one male were seated and in front of them were shot glasses and four-ounce glasses partially filled with 'an amber colored liquid'; that as they entered the barroom the man who was seated alone on the patrons' side of the bar identified himself as Michael Geralle and asked 'What is the trouble?'; that he (Agent F) inquired if he were the manager and Geralle answered in the affirmative; that, when asked about the three couples at the bar, Geralle said that they were his party and he thereupon requested them to leave the premises; that when Agent F checked the license application it disclosed that Michael Geralle was president of defendant-corporation and held 998 shares or 98% of the capital stock; and that the agents thereupon questioned Richards and Cordts concerning the time when the last round of drinks was served to them and Richards said 'I think it was before four o'clock' and Cordts said 'I think it was about four-thirty.'

"Agent N's testimony, in substance, corroborated the testimony of Agent F as to the events occurring in defendant's licensed premises on the date in question, especially with reference to the time when the last round of drinks of alcoholic beverages was sold to the agents and their companions.

"James H. Rhoat, called as a witness on behalf of the defendant, testified that in February 1956 he acquired 49% of defendant's capital stock and is secretary and treasurer of said corporation, that on the same date Leonore Rhoat acquired 1% thereof, and six weeks thereafter John Yacopetta acquired 50% of the stock and was elected president of said corporate-licensee; that on the morning of May 13, 1956 he was acting as manager of the establishment and that at 3:30 a.m. while going from the kitchen to the barroom he observed 'one party sitting in the dining room'; that he closed the door at the entrance to the premises and ordered Richards to extinguish the lights; that he then announced 'Last call. Everybody out' and repeated the announcement at 3:35 a.m.; that no drinks were served after 3:45 a.m.; that 'at four o'clock there were six people at the bar', consisting of his sister (employed as hat check girl), the parking attendant, two show girls, Betty Roberts (the choreographer) and her husband who was there 'to pick her up'; that around 'four o'clock or a few minutes after four' Cordts came into the barroom and told him that the ABC agents were in the dining room talking to Geralle, at which time 'every one had already left and no one in the bar any more'; that he invited the agents 'to come in the kitchen and show me their identification'; that he made no inquiry as to what, if any, violation they alleged he may have committed as he 'didn't even want to talk to them'; and that 'Mr. Geralle was talking to them, but that was none of my business.'

"Richard E. Cordts testified that he was employed as a waiter by defendant and was on duty at the time in question;

that he waited on the table where the agents were seated and at approximately 3:25 a.m. one of the agents asked him for another round of drinks; that he made service thereof at 'about five minutes -- less than five minutes' thereafter; that one of the agents then 'pulled out his wallet and said "We are ABC men"' and the other agent did likewise; that one agent mentioned 'it is four-thirty'; and that he then brought the agents to Mr. Rhoat.

"The time element concerning the last sale of alcoholic beverages is the gravamen of the charges preferred herein. The testimony of the witnesses for the Division and for the defendant is in conflict. On the one hand there is the testimony of the agents that the last service of alcoholic beverages was made to them after 4:00 a.m., whereas the testimony of the waiter and manager, respectively, presented on behalf of the defendant, was that such service was made prior to the legal closing hour. A careful examination of the agents' testimony concerning the events which occurred at the time of the service of the last round of alcoholic beverages is clear and convincing. The agents testified that they identified themselves to Cordts, followed him into the barroom, and that upon entering they were immediately approached by one Michael Geralle who questioned them as to their mission. Although James Rhoat, who admitted at the hearing that he was a major stockholder and the manager in charge at the time in question, was behind the bar he contends that he only desired to see the agents' credentials, stating that what the agents were discussing with Geralle 'was none of my business.' Such an attitude on the part of the manager of the establishment was indicative of the fact that he delegated his responsibility to Geralle whom the license application found on the premises disclosed as the president and major stockholder of defendant corporate-licensee. Furthermore, Rhoat's testimony as to the time of the alleged 'hours' violation is uncertain in that he contradicted himself relative thereto on divers occasions. In so far as Cordts is concerned I am of the opinion that he remarked, when questioned by the agents at the time the last round of drinks was made, that it was 'about four-thirty.' I am satisfied that other than bona fide employees remained on the defendant's licensed premises during prohibited hours. It is admitted that the husband of the choreographer was in the premises and there is no contention that he was employed in any capacity by the defendant.

"I find after careful examination of the entire record in the instant case that the testimony of the agents is truthful while that of the defendant's witnesses is not worthy of belief. I, therefore, recommend that the defendant be adjudged guilty of the charges preferred herein.

"Defendant has a prior adjudicated record. Effective February 1, 1956, its license was suspended for forty days for sale of alcoholic beverages and for failure to keep the premises closed during prohibited hours, both in violation of a local ordinance. Re Great Arrow Investment Corp., Bulletin 1098, Item 9. It appears that prior to the violations now under consideration, the former stockholders of the defendant-corporation transferred their respective shares of stock to others and new officers were elected. Notices dated February 23, 1956 and April 13, 1956, respectively, were sent to the Clerk of the municipality wherein said licensed premises are located in accordance with R. S. 33:1-34. Although the former stockholders apparently divested themselves of their respective interests in the corporation, the law would still regard the corporation as the same entity that it had been, separate and distinct from the individuals who compose it.

"Under the circumstances appearing herein I recommend, however, that instead of doubling the fifteen-day penalty (Re Maloney and Menotti, Bulletin 1059, Item 3), defendant's license be suspended for a period of twenty days."

Written exceptions to the Hearer's Report pursuant to Rule 6 of State Regulation No. 16 together with written argument in substantiation thereof were filed with me by the attorney for defendant. Written exceptions and answering argument to that advanced by the defendant's attorney were filed by the attorney appearing for the Division.

Defendant's attorney contended among other things that the circumstances appearing in the instant case constituted entrapment on the part of the ABC agents. The difficulty with defendant's position in this regard is that the evidence introduced on its behalf fails to support the charge of entrapment. The testimony of the defendant's witnesses is to the effect that the sale and service of the drinks of alcoholic beverages to the agents and their companions were made during legal hours and, therefore, did not constitute a violation of the local ordinance. However, the agents' testimony discloses that the sale and service of the alcoholic beverages were made during prohibited hours, namely, at approximately 4:30 a.m. The disposition of the matter herein resolves itself to a question of veracity of the respective witnesses presented by the parties hereto. I believe that the testimony of the agents rather than that given by the defendant's witnesses is truthful as to the time and events that occurred on the defendant's licensed premises at the time in question. Thus the defense of entrapment to violate the law as contended by the defendant is without merit.

After careful consideration of the entire record in this case, including the transcript of testimony, the Hearer's Report and the exceptions and written arguments of the attorneys herein, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein and, as recommended by the Hearer, I find the defendant guilty of the charges preferred in the matter. Hence, I shall suspend defendant's license for twenty days.

Accordingly, it is, on this 21st day of May, 1957,

ORDERED that Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Little Ferry to Great Arrow Investment Corp., t/a Monte Carlo, Frederick Street and Route #46, Little Ferry, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. June 4, 1957, and terminating at 3:00 a.m. June 24, 1957.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
 DEW DROP INN, INC.)
 T/a NEW DEW DROP INN)
 90 Straight Street)
 Paterson 1, N. J.,)
 Holder of Plenary Retail Consumption License C-127, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

CONCLUSIONS AND ORDER

 Dew Drop Inn, Inc., Defendant-licensee, by Frank Vitrone, President.
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that on Sunday, March 24, 1957, it sold alcoholic beverages in original containers for off-premises consumption in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that on March 24, 1957 at about 1:05 p.m., an ABC agent entered defendant's licensed premises and observed ten patrons (male and female) seated at the bar behind which was Elijah Schaerin, the bartender. At about 2:10 p.m. the agent saw the bartender make a sale of a pint bottle of wine for off-premises consumption to a male patron. The agent thereupon asked the bartender for a pint bottle of Four Roses "to go". The bartender complied by handing the agent a pint bottle of the aforementioned brand of whiskey for which the agent paid him \$3.45. The agent placed the pint bottle in his trouser pocket and left the premises. Within a few minutes, the agent and another who joined him, re-entered the premises. The agents identified themselves to Schaerin who admitted aforesaid violations.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Eckstein, Bulletin 1160, Item 5.

Accordingly, it is, on this 20th day of May, 1957,

ORDERED that Plenary Retail Consumption License C-127, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Dew Drop Inn, Inc., t/a New Dew Drop Inn, 90 Straight Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing 3:00 a.m. May 27, 1957 and terminating 3:00 a.m. June 6, 1957.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - WARNING LETTER - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LUCIA SONSINI)
407-09 Washington Street)
Cape May City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the City of Cape May City.)
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Nathan C. Staller, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Sunday night, April 21 and early Monday morning, April 22, 1957, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Donald ---, age 18 and Kay ---, age 19 and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

Acting upon information received from an officer of the U. S. Coast Guard Training Station, Cape May City, ABC agents obtained signed, sworn statements from Donald ---, age 18, and Kay ---, age 19. From these statements it appears that they are Coast Guardsmen and that they entered defendant's licensed premises at about 11:50 p.m. on Sunday, April 21, 1957. Donald wore civilian clothes and Kay was in uniform. They were accompanied by an adult male and another Coast Guardsman who is a minor and who was in uniform. The last named minor was asked to leave the premises after one of defendant's employees checked his ID card and ascertained that he was under twenty-one years of age. Neither the licensee nor any of her employees questioned the other three members of the party as to their respective ages. Two rounds of beer were served to Donald and Kay and two mixed drinks served to the adult by a waitress. As the minors were consuming their second drinks shortly after midnight, members of the Shore Patrol entered and took Kay out of the premises after an inspection of his ID card disclosed that he was a minor.

Defendant has no prior adjudicated record. However, on October 9, 1956, a warning letter was sent to her concerning alleged sale to another minor, and on October 12, 1956, she replied that all necessary steps would be taken to see that no alcoholic beverages were sold to minors. In her favor it may be said that, on the evening in question, one of the party of four was denied service when it was ascertained that he was a minor. Under the circumstances I shall suspend defendant's license for fifteen days, which is the minimum suspension in cases involving sales to an eighteen-year-old minor (Re Krugel, Bulletin 1130, Item 11). Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 23rd day of May, 1957,

ORDERED that Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the City of Cape May City to Lucia Sonsini, for premises 407-09 Washington Street, Cape May City, be and the same is hereby suspended for ten (10) days, commencing at 7:00 a.m. June 3, 1957, and terminating at 7:00 a.m. June 13, 1957.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against)

IRVIN EDELSON)
T/a STEVE BRODY'S BAR)
1101-03-05-07-09 Ocean Avenue)
Asbury Park, N. J.,)

O R D E R

Holder of Plenary Retail Consumption License C-10, issued by the City Council of the City of Asbury Park.)

Harry Edelson, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

It appearing that, by an order dated February 5, 1957, the license held by the above named defendant was suspended for fifteen days and that the effective dates of said suspension were to be fixed by subsequent order (Bulletin 1160, Item 3); and

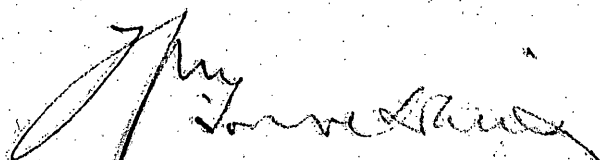
It further appearing to my satisfaction that defendant's premises have now been reopened for the 1957 season;

It is, on this 20th day of May, 1957,

ORDERED that the fifteen-day suspension heretofore imposed shall commence at 3:00 a.m. June 3, 1957, and terminate at 3:00 a.m. June 18, 1957.

9. STATE LICENSES - NEW APPLICATION FILED.

Peter Lusardi Inc.
Westerly Side of Chimney Rock Road
Bridgewater Township, New Jersey
Application filed July 1, 1957 for place to place transfer of State Beverage Distributor's License SBD-55 from 198 West Main Street, Somerville, New Jersey.


William Howe Davis
Director