

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

BULLETIN 1464

August 7, 1962

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

BULLETIN 1464

August 7, 1962

1. APPELLATE DECISIONS - CAMEL CLUB INC. v. NEWARK.

CAMEL CLUB INC.,	)	
Appellant,	)	
v.	)	ON APPEAL
	)	CONCLUSIONS
	)	AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC	)	
BEVERAGE CONTROL OF THE CITY	)	
OF NEWARK,	)	
Respondent.	)	

-----  
Irving & Barry R. Mandelbaum, Esqs., by Irving Mandelbaum,  
Esq., Attorneys for Appellant.  
Vincent P. Torppey, Esq., by James E. Abrams, Esq.,  
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on January 31, 1962, it suspended appellant's license for a period thirty-five days, effective February 19, 1962, after finding appellant guilty of a charge alleging sale of alcoholic beverages to two minors, 16 and 19 years of age, respectively, and permitting the consumption of alcoholic beverages by said minors in the licensed premises, in violation of Rule 1 of State Regulation No. 20. Appellant's premises are located at 746 Broadway, Newark.

"Upon the filing of the appeal, an order was entered by the Director on February 16, 1962, staying respondent's order of suspension until further order herein. R.S. 33:1-31.

"Appellant, in its petition of appeal, alleges, that the action of the respondent was erroneous and should be reversed for the following reasons:

- (a) The charges were without basis in fact or in law;
- (b) The respondent failed to make out a prima facie case as against the appellant and a judgment should have been entered dismissing the charges in said matter;
- (c) The proceedings should have been dismissed at the conclusion thereof, and judgment entered in favor of the appellant;
- (d) The respondent failed to establish its case by the substantial or greater weight of the evidence, and the charges herein should have been dismissed as against the appellant; and

- (e) Appellant was denied due process and its constitutional rights violated in the admission of evidence over the objection of said appellant at the hearing of said matter.'

"Respondent in its answer alleges that it acted within its sound discretion as its decision was based upon the factual testimony presented before the Board with reference to the charge in question.

"The hearing on appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript in the hearing below was submitted by respondent pursuant to Rule 8 of State Regulation No. 15.

"It appears from the transcript of the testimony taken before the respondent Board on January 24, 1962, that Michael --- (age 19 at the time of the alleged sale and consumption of alcoholic beverages on July 7, 1961) testified that at 8:00 p.m. on the evening in question, he purchased from and was served a couple of twelve-ounce bottles of Ballantine ale by Michael Seuss (president of the appellant corporate-licensee); that Richard ---, age 16, also was served a couple of twelve-ounce bottles of Ballantine ale by the said Michael Seuss; that both he and Richard remained in the appellant's licensed premises for about half an hour, during which time the only person tending bar was Michael Seuss. He further testified that at 1:45 the following morning, he and Richard were apprehended by two police officers who he informed that he obtained ale at appellant's premises; that thereafter, he and Richard accompanied the officers to the appellant's establishment where he identified Michael Seuss as the person who had served him the alcoholic beverages. Michael admitted that when he appeared in a local magistrate's court, he testified that on July 7, 1961 Michael Seuss had not sold him any alcoholic beverages. However, at the hearing before the respondent Board, Michael testified that Michael Seuss had served him the alcoholic beverages on July 7, 1961 and that his previous testimony in the magistrate's court was untrue.

"Richard ---, age 16, testified that at 8:00 p.m. on July 7, 1961, he accompanied Michael to appellant's licensed premises where he was served a bottle of beer by Michael Seuss.

"The testimony of both Michael and Richard was in agreement that at about 6:30 p.m. on the evening in question each consumed a quart of ale which had been purchased for them by a man at another licensed premises.

"Richard further testified that after he and Michael left appellant's licensed premises, they separated for a period of time and, before he rejoined Michael, he had consumed two pint bottles of wine.

"Police Officer Henry Martinez testified that at about 1:48 a.m. on July 8, 1961, he observed two youths 'staggering' down Broadway near Chester Avenue; that as a result of questioning them, he and the boys went to appellant's licensed premises where Michael identified Michael Seuss as the man who had served him alcoholic beverages on the previous evening, but that Michael Seuss denied the accusation.

"Michael Seuss testified before respondent Board that he came on duty at 10:00 o'clock on the evening of July 7, 1961 to relieve Charles Fortunato, who had been tending bar; that only

Ballantine seven-ounce bottles of ale (known as 'nips') were kept in stock, whereas for years they did not have twelve-ounce bottles of Ballantine ale; that on the early morning of July 8th, Officer Martinez asked him whether he had served alcoholic beverages to Michael and that he stated 'No'; that when summoned to the magistrate's court pursuant to a complaint, Michael denied that he (Michael Seuss) had made service of alcoholic beverages to him on the night in question.

"Charles Fortunato (employed by appellant-licensee as a bartender) testified that on July 7, 1961, he was on duty until 10:00 p.m. when he was relieved by Michael Seuss; that during the evening, he made no service of alcoholic beverages to the minors, denying that he had ever seen them before.

"Patrick J. Carroll (employed by P. Ballantine & Sons as a credit supervisor) testified that, in response to a subpoena served on the company, he searched the records, but found no records indicating the twelve-ounce bottles of Ballantine ale sold to the appellant during the year 1961; that the records disclosed sale of seven-ounce bottles of ale having been sold to the said establishment. When questioned by the Chairman of the respondent Board, the witness stated that the company products are also sold to distributors who, in turn, sell to retail licensees, and that the company would have no record of such sales.

"Raymond Seuss, son of Michael Seuss, testified that he is vice-president of the appellant corporate-licensee, and that for a period of three or four years, twelve-ounce bottles of Ballantine ale had not been purchased by the appellant.

"Albert Calo testified that he is now president of appellant corporate-licensee, and, although on July 31, 1961, he entered into an agreement to purchase the capital stock, he was not aware that anything might be pending against the licensee until the matter was closed on October 2, 1961. He further testified that on July 31, 1961, while examining the premises, he did not find twelve-ounce bottles of Ballantine ale in stock.

"Although Michael changed his testimony from that given in the magistrate's court, I am satisfied that he told the truth before the respondent Board that on July 7, 1961 he was sold and served alcoholic beverages by Michael Seuss. Moreover, Richard also identified Michael Seuss as the man who served him alcoholic beverages at the time in question. Furthermore, I believe Officer Martinez's testimony that Michael, in the presence of Michael Seuss, identified the latter as the person who had served him alcoholic beverages on the previous evening, despite the fact that Michael Seuss contends that at said time, the boy had denied such sale. The attorney for the appellant went to great length in attempting to discredit the minor's testimony by showing that appellant did not carry Ballantine ale in twelve-ounce bottles. However, conceding but not admitting this to be so, there is no denial that seven-ounce bottles of Ballantine ale were sold by appellant. It is quite understandable that the minors might have become confused regarding the size of said bottles of ale served to them.

"I have considered all of the evidence presented herein and find that appellant has failed to sustain the burden of establishing that the action of the respondent was erroneous. Rule 6 of State Regulation No. 15. It is recommended, therefore, that appellant be found guilty of the charge, and that an order be entered affirming the action of the respondent, vacating the

order dated February 16, 1962, and fixing the effective dates for the thirty-five day suspension heretofore imposed by respondent."

Pursuant to Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereto were filed with me by the attorney for the appellant.

Having carefully considered the entire record herein, including the exhibits, the Hearer's Report and exceptions and written argument thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 12th day of June 1962,

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

ORDERED that the thirty-five-day suspension heretofore imposed by respondent, and stayed during the pendency of this appeal, be restored against License C-770 held by Camel Club Inc., for premises 746 Broadway, Newark, to commence at 2 a.m. Monday, June 18, 1962, and to continue in effect until the expiration of said license at midnight June 30, 1962; and it is further

ORDERED that any renewal license be and the same is hereby suspended until 2 a.m. Monday, July 23, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

- 2. DISCIPLINARY PROCEEDINGS - NUISANCE (IMMORAL ACTIVITY, INDECENT LANGUAGE AND CONDUCT, SOLICITATION FOR PROSTITUTION) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ANTHONY KOBYLARZ )  
55 Lentz Avenue )  
Newark, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-379, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

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Carl J. Yagoda, Esq., Attorney for licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to the following charge:

"On Wednesday night, February 14, early morning hours of Saturday, March 10, Saturday night, March 10 and early morning hours of Sunday, March 11, 1962, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct in and upon your

licensed premises; allowed, permitted and suffered persons employed on your licensed premises and other persons thereon, to make offers, overtures and arrangements with male patrons to procure females to engage with them in acts of illicit sexual intercourse; 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."

Licensee claims in alleged mitigation that the alleged offers, overtures and arrangements were purely conversation, viz., a so-called "snow job", with no female actually present, produced or ever available for purposes of prostitution. However, the appearance of evil is as bad as the evil itself, so far as the public impact of the conduct of the licensed business is concerned.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Cf. Jerry's & Peggy's Bar & Grill, Inc., Bulletin 1315, Item 4.

Accordingly, it is, on this 12th day of June 1962,

ORDERED that Plenary Retail Consumption License C-379, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Anthony Kobylarz, for premises 55 Lentz Avenue, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m., Tuesday, June 19, 1962; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m., Monday, August 13, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

## 3. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1961 THROUGH JUNE 30, 1962

	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			Total
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	
<b>ARRESTS:</b>													
Total number of persons arrested	67			66			74			64			271
Licenses and employes	28			37			44			46			155
Bootleggers	38			29			30			28			125
ABC Agent impersonator	1			--			--			--			1
<b>SEIZURES:</b>													
Motor vehicles - cars	2			6			4			--			12
- trucks	--			1			--			2			3
Stills - over 50 gallons	2			--			1			1			4
- 50 gallons or under	2			3			1			1			7
Wash - gallons	2,595.00			1,630.00			3,700.00			1,050.00			8,975.00
Distilled alcoholic beverages - gallons	98.41			298.41			59.811			19.705			476.336
Wine - gallons	40.04			18.08			23.645			16.308			98.073
Brewed malt alcoholic beverages - gallons	219.52			46.30			35.276			143.505			444.601
<b>RETAIL LICENSEES:</b>													
Premises inspected	1,442			1,665			2,101			2,593			7,801
Premises where alcoholic beverages were gauged	1,561			1,869			1,745			1,696			6,871
Bottles gauged	26,283			30,254			28,283			27,825			112,645
Premises where violations were found	155			229			335			303			1,022
Violations found	199			254			389			401			1,243
Unqualified employees	68			58			102			128			356
Reg. #38 sign not posted	51			88			138			90			367
Application copy not available	31			53			73			64			221
Prohibited signs	8			12			10			29			59
Disposal permit necessary	7			4			10			12			33
Other mercantile business	11			8			6			16			41
Improper beer taps	2			4			2			1			9
Other violations	21			27			48			61			157
<b>STATE LICENSEES:</b>													
Premises inspected	107			76			92			59			334
License applications investigated	25			20			28			52			125
<b>COMPLAINTS:</b>													
Complaints assigned for investigation	1,158			1,193			1,337			1,242			4,930
Investigations completed	1,187			1,181			1,328			1,231			4,927
Investigations pending	(167)			(155)			(194)			179			179
<b>LABORATORY:</b>													
Analyses made	760			590			637			778			2,765
Refills from licensed premises - bottles	130			115			77			116			438
Bottles from unlicensed premises	160			77			90			132			459
<b>IDENTIFICATION:</b>													
Criminal fingerprint identifications made	25			32			18			21			96
Persons fingerprinted for non-criminal purposes	1,027			710			743			1,250			3,730
Ident. contacts made @/other enforcement agencies	715			568			594			860			2,737
NW identifications via NJ State Police teletype	---			13			11			9			33
<b>DISCIPLINARY PROCEEDINGS:</b>													
Cases transmitted to municipalities	42			30			49			53			174
Violations involved	46			33			53			57			189
Sale during prohibited hours	25			20			28			35			108
Sale to minors	13			8			18			15			54
Failure to close prem. during prohibited hrs.	3			--			4			1			8
Possessing chilled beer (DL licensees)	2			2			--			1			5
Sale to non-members by club	--			--			--			2			2
Service to women at the bar (local reg.)	1			1			--			--			2
Employing female bartender (local reg.)	1			1			--			--			2
Sale of alc. bevs. on credit (local reg.)	--			--			1			1			2
Permitting hostesses on premises	1			1			2			--			4
Failure to afford view into prem. during proh. hrs.	--			--			--			1			1
Licensee working while intoxicated	--			--			--			1			1
Cases instituted at Division	100*			78**			70			88***			336
Violations involved	150			101			113			130			474
Possessing liquor not truly labeled	15			30			7			29			81
Sale to minors	21			8			20			21			70
Sale during prohibited hours	16			11			21			16			64
Permitting lottery activity on premises	9			8			6			7			30
Beverage Tax Law non-compliance	17			3			5			--			25
Permitting immoral activity on premises	6			2			9			5			22
Conducting business as a nuisance	4			2			6			7			19
Hindering investigation	3			3			5			3			14
Permitting bookmaking on premises	3			4			3			3			13
Sale below filed price	3			5			3			2			13
Fraud and front	3			5			2			3			13
Permitting foul language on premises	1			3			3			5			12
Permitting hostess activity on premises	6			--			3			1			10
Possessing contraceptives on premises	3			--			2			--			6
Permitting gambling on premises	1			2			2			1			6
Failure to close prem. during prohibited hours	4			1			--			--			5
Sale to intoxicated persons	1			1			1			2			5

\*Includes one cancellation proceeding - license improvidently issued in violation of State Limitation Law.

\*\*Includes two cancellation proceedings - licenses improvidently issued (1) in violation of State Limitation Law, (2) to club not bona fide.

\*\*\*Includes one cancellation proceeding - license improvidently issued upon false application filed by other than licensee.

	1st Quarter <u>July Aug. Sept</u>			2nd Quarter <u>Oct. Nov. Dec.</u>			3rd Quarter <u>Jan. Feb. Mar.</u>			4th Quarter <u>Apr. May June</u>			Total
<b>DISCIPLINARY PROCEEDINGS (Continued)</b>													
<b>Cases instituted at Division (Continued)</b>													
Service to women at the bar (local reg.)	1			-			1			2			4
Unauthorized transportation	2			1			-			1			4
Application copy not on premises	1			2			-			-			4
Possessing indecent matter	-			-			3			1			4
Unqualified employees	2			1			-			-			3
Sale outside scope of license	1			-			1			1			3
Permitting brawl etc. on premises	1			-			1			1			3
Delivery without bona fide invoice	2			-			-			-			2
Substituting drink other than ordered	2			-			-			-			2
Solicitor-permittee engaging in conduct pro. to empl.	-			-			2			-			2
Fraud in application	-			-			-			1			2
Failure to afford view during prohibited hours	-			-			-			1			2
Combination sale	-			-			-			1			2
Sale at discount	-			-			-			1			2
Failure to file notice of change in application	-			-			-			1			2
Permitting prostitutes on premises	-			-			-			2			2
Single instance of other violations	3			6			8			8			25
<b>Cases brought by municipalities on own initiative and reported to Division</b>	<b>37</b>			<b>55</b>			<b>61</b>			<b>60</b>			<b>213</b>
<b>Violations involved</b>	<b>42</b>			<b>65</b>			<b>75</b>			<b>72</b>			<b>254</b>
Sale to minors	20			40			32			34			126
Permitting brawl etc. on premises	5			4			9			7			25
Sale during prohibited hours	2			5			10			6			23
Conducting business as a nuisance	3			6			5			-			14
Hindering investigation	2			-			6			1			9
Failure to close prem. during prohibited hours	4			1			3			-			8
Failure to afford view into prem. during prohibited hours	3			-			3			-			6
Permitting gambling on premises	-			2			1			1			4
Permitting lottery activity on premises	2			1			-			1			4
Permitting immoral activity on premises	-			1			2			-			3
Bartender without identification card (local reg.)	-			1			2			-			3
Permitting foul language on premises	-			1			1			-			2
Unqualified employees	1			-			-			1			2
Single instance of other violations	1			3			3			5			12
<b>HEARINGS HELD AT DIVISION:</b>													
<b>Total number of hearings held</b>	<b>131</b>			<b>137</b>			<b>124</b>			<b>131</b>			<b>523</b>
Appeals	20			18			21			19			77
Disciplinary proceedings	77			79			69			78			303
Eligibility	14			23			23			26			86
Seizures	7			12			4			6			29
Tax revocations	13			5			5			-			23
Applications for license	-			-			2			3			5
<b>STATE LICENSES AND PERMITS ISSUED:</b>													
<b>Total number issued</b>	<b>4,525</b>			<b>4,615</b>			<b>2,926</b>			<b>21,617</b>			<b>33,683</b>
Licenses	597			8			7			9			621
Solicitors' permits	143			152			168			2,775			3,238
Employment permits	980			719			472			3,252			5,423
Disposal permits	267			217			199			259			942
Social affair permits	1,329			1,166			934			1,276			4,705
Wine permits	2			902			3			3			910
Miscellaneous permits	512			568			407			717			2,004
Transit insignia	650			842			664			12,143			14,299
Transit certificates	45			41			69			1,183			1,338
<b>OFFICE OF AMUSEMENT GAMES CONTROL:</b>													
Licenses issued	10			90			248			293			641
Premises inspected	1,291			1			-			525			1,817
Premises where violations were found	19			-			-			16			35
Number of violations found	21			-			-			23			44
Enforcement files established	143			111			42			82			378
Disciplinary proceedings instituted	6			-			-			-			6
Violations involved	9			-			-			-			9
Redemption for prize money	4			-			-			-			4
Hindering investigation	2			-			-			-			2
Operating controlled game	1			-			-			-			1
Operating game not within certification	1			-			-			-			1
Charge in excess of 25¢ per entry	1			-			-			-			1
<b>Cases brought by municipalities on own initiative and reported to Division</b>	<b>-</b>			<b>1</b>			<b>-</b>			<b>-</b>			<b>1</b>
Violation involved: operating unlicensed game	-			1			-			-			1
Hearings held at Division	3			3			-			-			6

WILLIAM HOWE DAVIS  
 Director of Alcoholic Beverage Control  
 Commissioner of Amusement Games Control

4. ADVERTISING - JOINT ADVERTISEMENT OF ALCOHOLIC BEVERAGES AND OTHER MERCHANDISE - REFERENCE TO "SALE" PRICES - REQUIREMENT OF INCLUSION OF LEGEND "ALCOHOLIC BEVERAGES ARE NOT SALE PRICED" IN TYPE SIZE EQUAL TO LARGEST USED IN ALCOHOLIC BEVERAGE PORTION OF ADVERTISEMENT.

NOTICE TO ALL RETAIL LICENSEES:

June 13, 1962

This Division has recently found increasing instances in which retail licensees have engaged in misleading, grossly sensational and other improper advertising of alcoholic beverages. As the trade is aware, this Division has, since repeal, made and enforced many rulings and regulations pertaining to the advertising of alcoholic beverages and has, in the main, been successful in its efforts to halt misleading and other harmful advertising with a so-far resultant lack of adverse public criticism. Our objective in seeking to preserve the advertising privileges now afforded licensees is best exemplified by the current regulation contained in Rule 6(g) of State Regulation No. 21 which prohibits any licensee from making "any statement of, or reference to, price which is deceptive or misleading or tends to deceive or mislead or which stresses and features a pecuniary appeal in a blatant or gaudy manner."

More and more recurrently, however, my attention is being brought to advertisements in circulars, newspapers, shopping guides and similar media which, while jointly advertising alcoholic beverages with other mercantile items, contain sensational and blatant captions and statements purporting to offer merchandise at sale and discount prices, for example, "Low Discount Prices", "Two Day Sale", "Reduced Prices", "Decoration (or other holiday) Sale", etc. Such statements are replete throughout these advertisements and, whether so intended or not, create the distinct impression to the public that alcoholic beverages are included in the "sale" and are available at reduced prices or during limited periods of time at special prices. Not only does the entire format of these advertisements stress and feature a pecuniary appeal but it is misleading in creating the inference that alcoholic beverages are available at the advertiser's store at bargain prices not available elsewhere, whereas, in fact, the alcoholic beverages are generally available throughout the state at the same minimum consumer price or, if private or exclusive brands, may be advertised at only the filed minimum consumer price during the then prevailing quarter annual period.

Following admonishments to various licensees that joint advertisements of the above nature must specifically negate any implication of alleged "sales" of alcoholic beverages, persistent attempts have been made to perpetuate this objectionable type of advertising through feeble attempts to circumvent the regulations by including legends ostensibly to meet our requirements but in such small type or in the use of such language as to be insufficient in negating the repeated and bold statements elsewhere in the advertisements pertaining to sale, special or discount prices. I am, therefore, led to the conclusion that effective control can be accomplished only by insisting that licensees must either discontinue alcoholic beverage advertisements in conjunction with the advertising of other items or must clearly and affirmatively rebut any inference that alcoholic beverages are among sale items in a much more prominent manner than that heretofore attempted.

Accordingly, it is ruled that retail licensees, when

advertising their alcoholic beverage businesses in circulars, shopping guides, combination advertisements in newspapers or similar media purporting to offer other items at special sale or discount prices, must include a statement in any section devoted to advertising alcoholic beverages, clearly and affirmatively rebutting any inference of special sales so far as alcoholic beverages are concerned. Such statement shall be made in letters of the same size and prominence as the largest of any letters used in advertising the alcoholic beverage business and shall be expressed by the use of language stating that "Alcoholic Beverages Are Not Sale Priced" or such similar language as shall first meet with my approval before being put to use.

WILLIAM HOWE DAVIS  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED 15 DAYS.

In the Matter of Disciplinary Proceedings against  
  
AUNT KATE'S, INC.  
t/a AUNT KATE'S  
Highway #206  
Byram Township  
PO RD Stanhope, N. J.  
  
Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of Byram Township.

CONCLUSIONS  
AND ORDER

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Robert W. Wolfe, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charge:

'On Sunday, February 11, 1962, 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., Barbara ---, age 18, and Stanley ---, 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.'

"The evidence given at the hearings held herein on April 24, 1962 and May 9, 1962 establishes that the minors, Barbara ---, age 18, and Stanley ---, age 19, were in the licensed premises on the date in question. The sole issue is whether they were sold, served and delivered and allowed, permitted and suffered the consumption of such beverages by the licensee.

"Stanley ---, born June 9, 1942, testified that he had visited the above named premises on several occasions and, on the night in question, came to the tavern accompanied by two girls and a boy named Jimmy. He identified the minor, Barbara, as one of those who accompanied him. He stated that he then entered the premises alone, because he was looking for a friend, and, when he didn't return for some time, the members of his party went in look for him. He noticed that Barbara was seated at the bar drinking, but he couldn't tell what she was drinking. The following questions were asked of him:

'Q. Do you remember whether you had anything to drink?

A. No. I do not remember.

Q. Would you say you did or you did not, or you don't remember?

A. I don't remember.'

He left the tavern with the other members of his party, and thereafter was involved in an automobile accident. He admitted on cross-examination that he had been convicted of crime and, indeed, was presently serving time in the Morris County Jail for a criminal offense.

"Barbara ---- testified that she is 18 years of age, and, in the company of Stanley, her girlfriend Elizabeth ---, and a friend named Jimmy (whose last name she could not recall), she came to the licensed premises. She remained in the automobile with her two friends while Stanley decided to go into the tavern to look for a friend of his. After about twenty minutes, Jimmy left the car and went into the licensed premises, returning shortly thereafter. After waiting awhile, he again entered the tavern and, when he returned, it was agreed that the three of them would go into the tavern to wait for Stanley to rejoin them. They seated themselves at the bar and ordered drinks from the bartender, later identified as Joseph LeMin. Barbara ordered a Scotch and water, Elizabeth ordered a non-alcoholic drink and Jim ordered a drink; and these three drinks were paid for by Jim. The bartender did not ask her anything about her age, nor did she make any representation to him either orally or in writing with respect thereto. While she was drinking, she noticed that Stanley was talking to some girl at the bar, and he was drinking, but she did not identify the contents of the glass he was holding during this episode.

"On cross-examination; she stated that, after she had had her drink, her friend approached Stanley and requested that he leave and take them home. They left the premises shortly thereafter and, some time during the evening, were involved in an accident. She was in the hospital for two or three weeks and thereafter was requested by ABC agents to identify the bartender. Because of her nervous and physical condition, she asked with trepidation, 'What if I am not sure?' However, when the confrontation was made, she unhesitatingly pointed to LeMin as the man who served her on that evening.

"It was further developed that this witness had been treated by a psychiatrist for a short period for her 'nervous condition'. She denies that she was mentally affected by the several accidents in which she was involved. The last accident,

incidentally, resulted in a neck injury which caused her to wear a brace during these proceedings and she was in some pain. The witness insisted that the only real help that she had sought from a psychiatrist was occasioned by certain personal problems, which had their genesis in her home. She also suffered temporary blindness due to shock resulting from the accident, but this in no way affected her memory, nor, certainly, with respect to the incidents occurring on the date alleged herein.

"Elizabeth, age 18, born November 29, 1943, substantially corroborated the testimony of Barbara. She stated that on the night in question, they had been looking around for some time for her fiancée (whom she subsequently married), and when they arrived at the licensed premises, Stan entered and remained in there for a period of time. It was very cold in the car and they decided to go into the premises and have a drink. They seated themselves at the bar and, while she was served a lemon soda, Barbara ordered a Scotch and water which was paid for by Jim with the ten-dollar bill which he produced. The bartender, LeMin, accepted the money, made no inquiry with respect to her age, or to Barbara's age, nor did he require any representation, written or oral, regarding Barbara's age. She saw Barbara drink the Scotch and water and she observed that Stan was sitting on the opposite side of the bar talking to a waitress whom she identified as one Beverly Reed, an employee of the licensee. She stated that he had a glass of beer in his hand and was drinking. On cross-examination, she stated that the contents of the glass which Stanley was holding had an amber color with a 'head' on it and, from her observation, it was, very clearly, beer. She identified LeMin as the person who served them on that night. These questions were asked:

'Q. Did you observe that glass (referring to the glass held by Stan)?

A. Yes.

Q. What was in it?

A. Beer.

Q. Did you see what he did with the beer?

A. He drank it.

Q. Then you say after he drank it--

A. He got up and we left.'

"ABC Agent D testified that he, accompanied by Agent N and Stanley, visited the licensee's premises on February 13, 1962 and, at that time, Stanley identified LeMin as the bartender who served him on February 11, 1962. LeMin at that time admitted that he was on duty, that he remembered seeing Stanley, but did not know whether he served him any alcoholic beverages.

"This agent returned to the premises on February 27th with Barbara and, at that time, Barbara identified LeMin as the bartender who served her on the night in question. LeMin, after being identified, stated, 'I can't say if I sold her alcoholic beverages'. Nor was he even sure that she came into the premises on the date charged herein. LeMin refused to give a statement, but he did admit that he was tending bar on

the evening of February 11, 1962.

"Joseph LeMin, testifying on behalf of the licensee, admitted that he was bartender on February 11, 1962, but denied that he had served any alcoholic beverages to any minors and, more specifically, the minors involved in this action. He stated that Stanley came in, entered into a discussion with Beverly Reed, a waitress employed on the premises, and that this conversation took about forty minutes. At no time during the evening did he serve Stanley any drinks. In fact, he denied that Stanley even sat at the bar, rather that the conversation referred to took place while they were standing about four or five feet from the bar.

"On cross-examination, he admitted that the two females entered the premises, but they were unaccompanied by any male, and they did not seat themselves at the bar. Stanley left, after concluding his conversation with the waitress, in the company of these two girls. He vigorously denied that either of the girls had ordered lemon soda, insisting that Seven-Up is not lemon soda and 'there is a difference of night and day between lemon soda and Seven-Up'.

"On cross-examination, he was asked pointedly whether he served Stanley any drinks, to which he replied, 'I remember seeing Stanley in the place but I do not know whether I served him any alcoholic beverages'. He again denied that at the time of confrontation by the agents with Barbara, anything was mentioned about his having allegedly served or sold any alcoholic beverages to this minor. He stated that he had no idea why the interview took place at all. He was merely asked by the agent to state how old he thought Barbara was, and his reply was that she was about 23 or 25 years of age, but nothing else was asked of him, as he described it: 'He just asked me that one question and then they went away. He just stood there, and in a couple of minutes he left'.

"Andrew A. Vernicek, a vice-president of the corporate-licensee, testified that he was on duty that night and that he did not observe any drinks being served either to Stanley or to Barbara. He did observe the two females enter the side door and stand awhile, but he was in charge of the kitchen and made no constant observations of their activities. He testified further that there was only one other person in the bar, John Kramer, on this night. On cross-examination, he admitted that he saw these girls 'a few seconds, a few minutes', and did not hear any conversation between them and Stanley. He did see Stanley leave the premises alone.

"Beverly Reed, the waitress employed by the corporate-licensee, stated that Stanley came into the premises and started a conversation with her, informing her that he had two girls out in the car waiting for him, and that one of them accompanied him because they were looking for her boyfriend. She denied that Stanley had anything to drink or even that he sat at the bar during his entire stay in the premises. On cross-examination, she testified that neither one of the girls came over to Stanley to speak to him during the entire period of their conversation, which lasted somewhere between thirty and forty minutes.

"John Kramer testified that he has been a patron of the corporate-licensee for several years, and has dinner about five times a week therein. He testified substantially in the same vein as Miss Reed. He saw Stanley in the premises speaking to Miss

Reed, but at no time was he seated at the bar, nor did he consume any alcoholic beverages. He estimates that their conversation in this standing position took place about thirty minutes. He then saw the two females, including Barbara, enter the premises alone, unaccompanied by any male, and at no time were they served by LeMin. He did hear one of the girls address a remark to Stanley. On cross-examination, he reaffirmed that these two girls came in and remained in one spot until they finally left the premises.

"Thus, we have the affirmative testimony of the Division's witnesses with respect to the events which transpired on the date charged, sharply denied by the witnesses for the corporate-licensee. Having observed the demeanor of Barbara and Elizabeth, and having heard their testimony, I am considerably impressed with their forthrightness, candor and absence of rancor; these girls had never been to these premises before the night in question, and certainly had no manifest reason, nor any ulterior motive for inculping the licensee.

"This was particularly true of Barbara, who, under vigorous and searching cross-examination by able counsel for the licensee, testified essentially to the pertinent facts without wavering or equivocation. It was unfortunate that a determined effort was made to reflect upon her mental condition as having some possible effect upon her recollection of memory. It is abundantly clear that my analysis of her testimony indicates that she had substantial recall and testified in accurate detail to the events that transpired.

"Both she and Elizabeth testified that they were in the tavern on February 11th and were seated at the bar and consumed beverages. Elizabeth was frank to admit that she did not consume any alcoholic beverages, but that Barbara did order, and was served by LeMin, a Scotch and soda, which she consumed. Both of these witnesses testified that they were not required to make any representation orally or written, with respect to their ages.

"Stanley was less than forthright. He admitted that he was in the tavern, but that he just couldn't remember whether he had been served or consumed any alcoholic beverages. At no point, however, did he categorically deny that he might have consumed them. His general attitude and sudden loss of memory of an incident occurring just several months ago, is particularly emphasized when contrasted with his action on the date of confrontation with the bartender on February 11th. At that time, according to ABC Agent D, the bartender came to the window of the automobile in which Stanley was seated. Stanley then identified LeMin and stated that LeMin was the one who sold him alcoholic beverages on February 11th. I am convinced that his obvious hostility at this hearing manifested a deliberate intention to be uncooperative; his equivocation, together with his prior conviction of crime, seriously affects his credibility as a witness.

"However, the law is clear that proof of an unlawful sale of intoxicating liquor may be proved by witnesses other than the purchaser. 48 C.J.S., paragraph 349, at page 501. Thus, the testimony was affirmatively elicited from both Barbara and Elizabeth that Stanley was seated at the bar and was drinking beer from a glass which he was holding. The bar was clearly delineated, adequately lighted, and clearly described by Elizabeth, during her cross-examination. Barbara stated, 'Yes, I saw him drinking. I don't know what it was he was drinking, it could have been anything'.

"However, Elizabeth's testimony was much clearer on that point. Testimony relating to the identifications of liquor claimed

to have been bought by the prosecuting witnesses is admissible. Griffin v. State, 61 S.W. 2nd 509, 124 Tex. Cr. 233; Ewing v. State, 49 S.W. 2nd 450. I am convinced that, from the testimony of these two witnesses, which was not seriously contradicted by that of Stanley, that Stanley was in fact served with alcoholic beverages and was consuming the same on the night in question. Re Oliveri, Bulletin 1329, Item 4.

"The testimony of the licensee's witnesses was far less impressive. Licensee's witnesses state that these girls were unaccompanied by a male companion at the time of their visit to these premises, yet even Stanley, recalcitrant and hesitant on other important points, admits that he was accompanied to the said premises by a man whose first name is Jim. Beverly Reed and Kramer both testified that Stanley was in the tavern for a considerable length of time and had a conversation with Miss Reed for about forty minutes, but that at no time did he ever seat himself at the bar. This is contrary to the normal experience of mankind and seems highly unreasonable in the light of the totality of the picture herein presented. Does it seem logical that Stanley would carry on a conversation for forty minutes with an employee in a standing position four or five feet away from the bar without approaching the bar or at least making a request for some beverage? I do not think so.

"LeMin's credibility is further affected by his narrative of the confrontation with Barbara and Stanley. He stated that he knew of no reason why such confrontations were made by the ABC agents, who it is testified clearly identified themselves and certainly must have informed him and the manager of these premises of the reason for this activity. It is straining credulity to accept his version of this episode, particularly since he has been employed for many years as a bartender, and surely knew that these ABC agents were there on a specific assignment. Curiosity alone, if nothing else, would have prompted inquiry. I am sure it did--and that he understood, precisely, the nature of the business at hand. It would be also noted that, with respect to Stanley, LeMin does not deny that he served him an alcoholic beverage, but merely states that he does not recall whether he did or not.

"There was considerable evidence with respect to the incidents occurring before these minors came to these licensed premises, and what transpired after they left, including its tragic aftermath, as reflected in the testimony herein. Such evidence is relevant and material and established a realistic continuity and credence to what transpired in the premises. Cf. Re Oliveri, *supra*; Commonwealth v. Trimarchi, 2 Atl. 540, 133 Pa. Super. 307; 48 C.J.S. at page 508.

"After considering the evidence, the exhibits and the oral argument of counsel herein, I am persuaded and conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence. Freud & Pittala v. Davis, 64 N.J. Super. 242, 165 Atl. 2nd 850 (1960). I, therefore, recommend, that the licensee be found guilty as charged.

"Licensee has no prior adjudicated record. It is further recommended, therefore, that an order be entered suspending licensee's license for fifteen days, the minimum penalty for sale of alcoholic beverages to two minors, both of whom are 18 years of age or over. Re Holiday Cocktail Lounge, A Corp., Bulletin 1409, Item 4."



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

In the Matter of Disciplinary )  
Proceedings against )

MICHAEL MACKANIN )  
t/a BLUE HAVEN INN )  
190-196 Route #46 )  
Saddle Brook, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-8, issued by the Township )  
Committee of Saddle Brook Township. )

-----  
Richard J. Baker, Esq., Attorney for licensee.  
David S. Piltzer, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on  
March 19, 1962, he possessed alcoholic beverages in two bottles  
bearing labels which did not truly describe their contents,  
in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for  
fifteen days, with remission of five days for the plea entered,  
leaving a net suspension of ten days. Re Colucci, Bulletin  
1435, Item 8.

Accordingly, it is, on this 11th day of June, 1962,

ORDERED that Plenary Retail Consumption License C-8,  
issued by the Township Committee of Saddle Brook Township to  
Michael Mackanin, t/a Blue Haven Inn, for premises on Route #46,  
Saddle Brook, be and the same is hereby suspended for ten (10)  
days, commencing at 3:00 a.m., Monday, June 18, 1962, and  
terminating at 3:00 a.m., Thursday, June 28, 1962.

  
William Howe Davis  
Director