

STATE OF NEW JERSEY
 Department of Law and Public Safety
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL
 1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1631

August 25, 1965

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STATE OF NEW JERSEY
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August 25, 1965

1. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - COMBINATION SALE - DELIVERY WITHOUT REQUISITE INVOICE - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Vincent B. Sabbia and Nicholas Sabbia)
36-40 Dales Avenue)
Jersey City, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Distribution License D-78, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Louis R. Cerefice, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that (1) on February 24, 1965 they sold a case of pint bottles of whiskey at less than filed price, in violation of Rule 5 of State Regulation No. 30, (2) on December 14, 1964 they made a combination sale of various alcoholic beverages at a single aggregate price, in violation of Rule 19 of State Regulation No. 20, and (3) on the same date delivered such alcoholic beverages without requisite accompanying delivery slip, in violation of Rule 3 of State Regulation No. 17.

With respect to the second charge, reports of investigation disclose that the sale involved a large quantity of alcoholic beverages, viz., eighteen cases of assorted brands of whiskey at a total price of \$858.

Licensees have a previous record of suspension of license as follows: (1) by the Director for thirty days effective June 29, 1964, for sale below filed price and false statement in license application (Re Sabbia, Bulletin 1572, Item 8), (2) by the Director for fifteen days effective August 20, 1962, for sale below filed price (Re Sabbia, Bulletin 1476, Item 5), (3) by the Director for seventy-five days effective January 5, 1961, for purchase of a quantity of stolen beer (Re Sabbia, Bulletin 1373, Item 3), and (4) suspension of license of Vike-Inn, Inc. (of which Vincent B. Sabbia was president) for premises 418 Jackson Avenue, Jersey City, by the Director for twenty days effective November 5, 1958, for sale in violation of State Regulation No. 38 and failure to possess copy of license application on the licensed premises (Re Vike-Inn, Inc., Bulletin 1253, Item 5).

Under all of the circumstances and considering previous record of suspension of license, the license will be suspended for ninety days, with remission of five days for the plea entered, leaving a net suspension of eighty-five days.

Accordingly, it is, on this 28th day of June 1965,

ORDERED that Plenary Retail Distribution License No. D-78, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Vincent B. Sabbia and Nicholas Sabbia, for premises 36-40 Dales Avenue, Jersey City, be and the same is hereby suspended for eighty-five (85) days, commencing at 9 a.m. Monday, July 5, 1965, and terminating at 9 a.m. Tuesday, September 28, 1965.

Joseph P. Lordi
Director

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) *
LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)

Joseph F. Rubino and Florence L. Rubino, t/a Joe Herman's Bar)
1401 Broadway, Camden, N. J.)

Holder of Plenary Retail Consumption License C-53 for the year 1964-65, and C-194 for the year 1965-66, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
-----)

CONCLUSIONS
and
ORDER

Joseph T. Sherman, Esq., by Owen N. Eisenberg, Esq., Attorney for Licensees
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensees pleaded not guilty to the following charges:

"1. On November 20, 25 and December 1, 1964, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game' on said dates of November 25 and December 1, 1964, and on horse racing on said dates of November 20 and 25, 1964; in violation of Rule 7 of State Regulation No. 20.

"2. On November 25 and December 1, 1964, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises and on said dates and on December 15, 1964, you allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The Division offered the testimony of two New Jersey State Police officers in substantiation of the charges.

The testimony of Nicholas Roon, Jr., who had experience in investigating gambling, including numbers and horse bookmaking activities, may be summarized as follows: Pursuant to specific assignment he visited the licensed premises on several occasions; he entered the licensed premises on November 20, 1964, at 11:30 a.m., and sat at the bar; tending bar was one of the licensees (Joseph F. Rubino -- also known as "Mr. Joe Herman"); he noticed a male known as Nick in the tavern; at 12:15 p.m. a male entered the tavern, ordered beer, went to the rear of the bar near the hanging-type wall telephone attached to the back bar, handed a white slip of paper to Rubino and said, "I want \$2 to win on Day's Princess. Here is \$2 for yesterday." Rubino explained that he gave the money to Nick and told the male to give the money to Nick. Thereupon Nick went over to Rubino and took the money from him. The officer testified that, in his opinion, the transaction involving Rubino, the male and Nick constituted a horse race bet. The witness left the tavern shortly thereafter.

On November 25, 1964 the officer returned to the licensed premises at 11:30 a.m. and sat at the bar. Tending bar was Mr. Rubino. Nick was sitting at the bar, remaining all the time the officer was in the tavern, i.e., to 1:10 p.m. At 12:24 p.m. he observed a male seated two stools away from the officer ask Nick if "he was taking." Nick nodded "yes" and called Rubino over to him and asked for a pad and pencil. Nick was supplied the pad and pencil and the male, who was examining the racing section of the Philadelphia Daily News, said to Nick, "That is to win." The male then gave Nick two \$1 bills and the slip of paper he tore off the pad. The witness described this transaction as a horse bet.

At 12:26 p.m. the telephone rang; Nick went to the back bar and he was heard to say, "That is 231, 548 a buck on each." Nick then hung up the telephone and wrote something on a slip of paper which he ripped off a pad lying on the back bar. The officer described this transaction as a numbers bet.

At 12:45 p.m. he noted a second male seated at the bar reading the racing section of the newspaper and writing on a piece of paper say to Nick, "Kossart Kid.... I am sorry. I don't have the money on me now. Is it O.K. if I pay you tomorrow?" Nick responded, "Of course." At 12:55 p.m. the second male was overheard to say to Rubino, "I played Kossart Kid and Teddy Mate for the double." The officer testified that, in his opinion, this transaction was a horse race bet on horses running on Pimlico race track on that date.

Trooper Roon again entered the licensed premises on December 1, 1964, at 12:25 p.m. and sat at the bar. Rubino was behind the bar and Nick was seated at the bar. At 1:15 p.m. Rubino asked Nick to watch the bar for him while he went into the rear of the premises and Nick did actually perform all the duties of tending bar. A male called "Angie" was seated next to the trooper. He observed Nick withdraw a small white slip of paper from a pocket of a leather jacket hung on the wall and hand the paper to Angie. At 1:32 p.m. he observed Nick answer the telephone, write something on a slip of paper located on the back

bar, fold it and give it to Angie. At 1:35 he noted Nick go to a male who just entered the tavern, engage in a conversation with him and then saw the male hand Nick a dollar. Rubino returned to the barroom and sat at the customer's side of the bar to the right of Angie. While Angie and Rubino were conversing, Nick managed to get Angie's attention and said to Angie, "436" and handed Angie a one-dollar bill. The witness described this as a number bet.

The witness' testimony did not vary on cross examination.

Detective Michael Goch (who is connected with the criminal investigation section of the New Jersey State Police and who had an ample background in gambling investigations, including lotteries and bookmaking) testified that he entered the licensed premises on December 15, 1964, at approximately 12:30 p.m., in the company of another State Police Officer, identified himself to one of the licensees (Joseph Rubino) and proceeded to execute a search warrant.

Detective Goch conducted a search of a "Nick" who was in the tavern at the time. It was later ascertained that this "Nick" was actually Nicola Rubino (a half-brother of the licensee Joseph F. Rubino) who fitted the same general description given by Officer Roon on direct examination. There was found on Nick's person number slips which, in Detective Goch's opinion, were slips used in numbers betting.

Joseph F. Rubino (one of the licensees) denied that he ever engaged in, had knowledge of, or permitted anyone to engage in numbers betting or gambling of any kind, and denied that Nick ever indulged in such activities.

Thus a purely factual question is presented. Licensees argue that there is insufficient evidence to convict.

It is a firmly established principle of law that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N. J. Super. 501 (1956). This principle was restated in the case of Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1, where the court said:

"The truth of charges in a proceeding before an administrative agency need be established only by a preponderance of the believable evidence, not beyond a reasonable doubt. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962)"

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Further, it is pertinent to point out that in State v. Martinek, 12 N. J. Super. 320 (App.Div. 1951) where, among other things, betting slips were admitted as exhibits in evidence, Judge Eastwood said:

"Property found near scene of crime, and concerning which there is evidence showing or tending to show its ownership or possession by accused when crime was committed, may be exhibited to jury, as may any property sufficiently identified which throws light upon crime or connects accused with it, and is shown to have come from his possession or to have been found on his premises, or, there being sufficient evidence to implicate him, on premises of a co-conspirator."

Judge Eastwood further stated:

"The admission of betting slips, racing forms and other gambling paraphernalia found on premises in possession of accused is generally recognized as evidence from which jury might conclude the guilt or innocence of accused on indictment for bookmaking."

See also, 22A C.J.S. Criminal Law, sec. 710.

In State v. Fiorello, 36 N.J. 80,91, 92 (Sup. Ct. 1961), Justice Jacobs, speaking for the court, upheld the admission into evidence of tally or record sheets which the State's expert witness testified resembled tally sheets or records found during gambling investigations he had conducted in the past. Justice Jacobs also remarked that:

"The ingenuity of bookmakers and the sparcity of their recorded indicia have been frequently noted, and while courts must be alert to avoid the lessening of the procedural safeguards to which persons accused of bookmaking are fairly entitled, they must be equally alert to avoid the frustration of bookmaking prosecutions legitimately based on inferences which may reasonably be drawn from furtive conduct and scanty records."

A careful evaluation and consideration of the testimony adduced herein, and the legal principles applicable thereto, compel me to conclude that the Division has established the truth of the charges herein by a fair preponderance of the believable evidence, and I recommend that the licensees be found guilty of said charges.

Licensees have no prior adjudicated record of suspension of license. I further recommend that the license be suspended for sixty days. Re Kushpa, Bulletin 1608, Item 5.

Conclusions and Order.

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

I have carefully considered the record herein, including the transcript of the testimony, the argument of counsel at the hearing, and the Hearer's Report. I find no merit in the arguments raised at the hearing by the attorney for the licensees. Hence I concur in the findings of the Hearer and adopt his recommendations.

Accordingly, it is, on this 2nd day of July 1965,

ORDERED that Plenary Retail Consumption License C-194, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Joseph F. Rubino and Florence L. Rubino, t/a Joe Herman's Bar, for premises 1401 Broadway, Camden, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, July 12, 1965, and terminating at 2 a.m. Friday, September 10, 1965.

Joseph P. Lordi,
Director

3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATION - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 30 DAYS UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION - DEFERRED EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)

7921, Inc.)
t/a Red Hill Inn)
7921 River Road)
Pennsauken Township)
PO Delair, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-30, issued by the Township Committee of the Township of Pennsauken)
-----)

Daniel B. Toll, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges as follows:

"1. In your application dated August 1, 1964, filed with the Pennsauken Township Committee, upon which you obtained your current plenary retail consumption license, in answer to Question No. 22, you falsely listed Laurence A. Smith, Charles Smith, Barry Shapiro and Molly Smith as the holders of 97%, 1%, 1% and 1%, respectively of your issued and outstanding stock, and in answer to Question No. 24, you falsely stated that none of said stockholders had any beneficial interest, directly or indirectly, in the stock held by any of the other stockholders, whereas in truth and fact Barry Shapiro had such an interest in that he was the real and beneficial owner of 50% of your issued and outstanding stock; said false statements, misrepresentations and evasion and suppression of material facts being in violation of R.S. 33:1-25.

"2. In answer to Question No. 25 of your aforesaid application, you falsely stated that the individual signing said application, Laurence A. Smith, did not have any reason to believe or suspect that any holder, directly or

indirectly, by any device or subterfuge whatsoever, of more than 10% in beneficial interest of the capital stock of your corporation failed to qualify in any respect as an individual applicant for the license applied for, whereas in truth and fact Laurence A. Smith knew that Barry Shapiro, a beneficial owner of 50% of your capital stock, was disqualified to hold your plenary retail consumption license individually since he was not a resident of New Jersey at the time you submitted said application; in violation of R.S. 33:1-25.

"3. In your aforesaid application, you falsely stated 'No' in answer to Question No. 31, which asks: 'Have you agreed to pay (by way of rent, salary or otherwise) to any employee or other person, any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to permit Barry Shapiro to retain 50% of the profits and income derived from such licensed business; in violation of R.S. 33:1-25.

"4. From September 15, 1964 to date, you aided and abetted Barry Shapiro to exercise, contrary to R.S. 33:1-26, the rights and privileges of your plenary retail consumption license; in violation of R.S. 33:1-52."

The facts are sufficiently set forth in the quoted charges. As indicated in Charge 2, Barry Shapiro is a non-resident of New Jersey.

To date, there is no indication that correction of the unlawful situation has been accomplished. In addition, report of investigation discloses that the licensed premises has recently suffered severe fire damage, as a result of which the licensed business is not presently being conducted and thus no effective penalty can be imposed at this time. Hence, the effective dates for the suspension of license will be fixed by the entry of a further order herein after the operation of the licensed business has been resumed.

Absent prior record and considering the confessional plea entered, the license and any renewal thereof will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply for lifting of the suspension whenever the licensed business has been resumed and the unlawful situation has been corrected but in no event will such suspension be lifted sooner than thirty days after the commencement of the suspension. Re Linda's Cliff House, Bulletin 1615, Item 3.

Accordingly, it is, on this 1st day of July, 1965,

ORDERED that Plenary Retail Consumption License C-30, issued by the Township Committee of the Township of Pennsauken to 7921, Inc., t/a Red Hill Inn, for premises 7921 River Road, Pennsauken, and any renewal thereof, be and the same is hereby suspended for the balance of its term, the effective date of such suspension to be fixed by further order as aforesaid.

Joseph P. Lordi,
Director

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - INDECENT MATTER - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Scholnan, Inc.)
t/a Oasis)
400 Lambertson Street)
Trenton, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-175, issued by the City Council of the City of Trenton.)

Licensee, by Harry Holland, President, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on June 9, 1965, it (1) possessed alcoholic beverages in six bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20, and (2) possessed a number of indecent photographs on the licensed premises, in violation of Rule 17 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for twenty-five days (Re Stumble Inn, Inc., Bulletin 1565, Item 7) and on the second charge for fifteen days (Re Wally's Tavern, Inc., Bulletin 1568, Item 2) or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 6th day of July, 1965,

ORDERED that Plenary Retail Consumption License C-175, issued by the City Council of the City of Trenton to Scholnan, Inc., t/a Oasis, for premises 400 Lambertson Street, Trenton, be and the same is hereby suspended for thirty-five (35) days, commencing at 2 a.m. Tuesday, July 13, 1965, and terminating at 2:00 a.m. Tuesday, August 17, 1965.

Joseph P. Lordi,
Director

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Lou's Tavern, Inc.)
292 Barrow Street)
Jersey City, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-29, 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 Licensee
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 14, 1965, it sold six cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for similar violation (1) for ten days effective February 3, 1958 and (2) for fifteen days effective August 5, 1963. Re Lou's Tavern, Inc., Bulletin 1209, Item 4; Bulletin 1526, Item 7.

The prior record of suspensions of license for similar violation occurring, respectively, more than five but less than ten years ago and within the past five years considered, the license will be suspended for thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days. Re Doc's Spa, Inc., Bulletin 1548, Item 4.

Accordingly, it is, on this 28th day of June 1965,

ORDERED that Plenary Retail Consumption License C-29, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Lou's Tavern, Inc. for premises 292 Barrow Street, Jersey City, be and the same is hereby suspended for thirty (30) days, commencing at 2 a.m. Monday, July 5, 1965, and terminating at 2:00 a.m. Wednesday, August 4, 1965.

Joseph P. Lordi
Director

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 * FALSE STATEMENT IN APPLICATION FOR LICENSE - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Peter Scangarello)
t/a Oak Inn)
301 Oak Street)
Passaic, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-106, issued by the Board of Commissioners of the City of Passaic.)

Licensee, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that (1) on Sunday, June 6, 1965, he sold a pint bottle of wine for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) in his current application for license, failed fully to disclose his record of prior license suspensions, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the municipal issuing authority (1) for five days effective October 1, 1945 for permitting gambling on the licensed premises and (2) for ten days effective March 5, 1951 for sale during prohibited hours, and by the Director (3) for twenty days effective August 14, 1957 for sale to minors and (4) for twenty-five days effective November 28, 1958 for sale in violation of State Regulation No. 38 and municipal hours regulation (Re Scangarello, Bulletin 1188, Item 6; Bulletin 1255, Item 3), non-disclosure of the first, third and fourth suspensions being the subject of the second charge herein.

The prior record of suspensions of license for dissimilar violation in 1945 and 1957 occurring more than five years ago and the prior record of suspension for similar violation in 1951 occurring more than ten years ago disregarded but the prior record of suspension for similar violation in 1958 occurring more than five but less than ten years ago considered, the license will be suspended on the first charge for twenty days (Re Santanello, Bulletin 1549, Item 3) and on the second charge for ten days (Re Mianowski and Kislowski, Bulletin 1620, Item 3), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 2nd day of July 1965,

ORDERED that Plenary Retail Consumption License C-106, issued by the Board of Commissioners of the City of Passaic to Peter Scangarello, t/a Oak Inn, for premises 301 Oak Street, Passaic, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Monday, July 12, 1965, and terminating 3 a.m. Friday, August 6, 1965.

Joseph P. Lordi
Director

7. DISCIPLINARY PROCEEDINGS - UNLAWFUL TRANSPORTATION - POSSESSION OF ALCOHOLIC BEVERAGES BY SOLICITOR WITH INTENT TO SELL TO NON-LICENSEES - PERMIT SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Otto John Olive)
24 Hanover Road)
Florham Park, N.J.)

CONCLUSIONS AND ORDER

Holder of Solicitor's Permit #3751, issued by the Director of the Division of Alcoholic Beverage Control)
-----)

Gerald M. Freundlich, Esq., Attorney for Permittee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Permittee pleads non vult to charges as follows:

"1. On December 7, 1964, you engaged in conduct prohibited to your employer, Western Grape Products, by Rule 2 of State Regulation No. 17, in that you transported alcoholic beverages in a vehicle which did not have a transit insignia affixed thereto or an inscription painted thereon in accordance with Rule 12 of State Regulation No. 17; in violation of Rule 12 of State Regulation No. 14.

"2. On December 7, 1964, you possessed alcoholic beverages with intent to sell same otherwise than to the extent duly allowed and permitted by law and by the New Jersey license of your employer, Western Grape Products, in that you possessed alcoholic beverages obtained from your said employer with intent to sell same to persons not holding a retail or wholesale license, which conduct was contrary to and beyond the terms of the plenary winery and wine wholesale licenses of your said employer, as defined by R.S. 33:1-10 (2a) and R.S. 33:1-11 (2b); in violation of R.S. 33:1-2."

Reports of investigation disclose that on the date alleged, the permittee was found in possession of eleven 1-pint-8-ounce bottles of Gold Medal Raspberry Wine, ten 1-pint-9-ounce bottles of Fandango Rose Wine, and one 1-pint-8-ounce bottle of Gold Medal Strawberry Wine in his motor vehicle bearing no transit insignia. When questioned, permittee claimed that he had obtained the wine from the warehouse of his employer without his employer's permission and that he intended to use the wine as gifts to friends.

Under the circumstances, and considering the lack of prior record of the permittee, the permit will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days.

Accordingly, it is, on this 28th day of June, 1965,

ORDERED that Solicitor's Permit #3751, issued by the Director of the Division of Alcoholic Beverage Control to Otto John Olive, 24 Hanover Road, Florham Park, N. J., be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. Monday, July 5, 1965, and terminating at 9:00 a.m. Tuesday, July 20, 1965.

Joseph P. Lordi
Director

8. SPECIAL PERMITS - NON-PECUNIARY CULTURAL ORGANIZATION - MUNICIPAL CONSENT LACKING - PERMIT GRANTED.

In the Matter of an Application of)
New Jersey Cultural Center, Inc.)
128 Osborne Avenue)
Bay Head, N. J.)
for Special Permit.)
-----)

CONCLUSIONS

New Jersey Cultural Center, Inc. by Mrs. Jeanne Tyler, Trustee.
Borough of Bay Head, objector, by Harold C. Applegate, Sr., Councilman

BY THE DIRECTOR:

The New Jersey Cultural Center, Inc., has applied to this Division for a special permit to serve alcoholic beverage cocktails between the hours of 6:00 p.m. and 9:30 p.m. on July 9, 1965 in its premises at 128 Osborne Avenue, in the Borough of Bay Head.

The Director of this Division may, pursuant to R.S. 33:1-7⁴, issue special permits to authorize the sale of alcoholic beverages at an occasional function conducted by bona fide organizations. Although issuance of such permits lies exclusively within the discretion of the State Director, it has been the longstanding Divisional practice to require applications for such permits to bear certification, usually over the signatures of the municipal clerk and police chief, that there are no local objections to the grant of the permit applied for. The instant application did not bear such certification. To the contrary, the Borough Council has refused its approval and the applicant has filed a supplemental petition alleging, in essence, that the action of the Borough Council was unreasonable and requesting that the matter be scheduled for hearing. The request for hearing was granted and notice of the time and place thereof was given to the applicant and the municipal governing body.

At the outset, I would refer to the purpose of the long-standing Divisional policy of requiring, as an original step, a municipal certification of lack of objections, best expressed by the late Commissioner Burnett in Re Ramsey Democratic Club, Bulletin 71, Item 10:

"The reason why I insist upon obtaining the written approvals of the chief of police and the clerk of the municipality where the social affair is held, is to ascertain whether there are any local ordinances or resolutions prohibiting sales of alcoholic beverages or limiting the hours thereof, or whether the granting of a permit would in anywise violate the declared policy of a municipality, or whether the governing board has any sound objection to the character of the individual, group or organization which purposes to conduct the social affair or whether there is any other reason why the permit should be refused by me." (underscoring added)

Hence, where such municipal approval is withheld for good cause, this Division has denied the permit. Re Ramsey Democratic Club, supra; Re Atlantic City Elks Reunion Associates, Bulletin 260, Item 4. On the other hand, mere refusal of municipal consent will not prevent issuance of the permit if such refusal is without special cause. Re Ramsey Democratic Club, supra; Re Hillsborough Township Democratic Association, Bulletin 470, Item 11.

In the present case, the applicant is an organization incorporated for non-pecuniary purposes, devoted in principal part to the promotion of the cultural arts, including the conducting of classes in drama, dance and other arts and establishment of art scholarships. In furtherance of its functions, applicant has scheduled a painting exhibition on the date for which this permit is sought. As expressed, the applicant plans to hold this function with "an air of informality and desires to serve cocktails in addition to hors d'oeuvres and other food refreshments. No separate charge is planned for the cocktails, but a permit would nevertheless be required, since they are included within the required donation of \$5.00 imposed upon those attending the exhibition.

There is no objection to the character of the applicant organization -- admittedly bona fide and not conducted for private gain. Nor is the affair in question precluded by local regulation prohibiting sales of alcoholic beverages (the Borough issues retail licenses) and is not in violation of any hours regulations of the Borough -- the permit sought for the even more limited hours, viz., between 6:00 p.m. and 9:30 p.m.

The Councilman who testified at the hearing stated it to be the position of the Council that local sentiment was opposed to the issuance of this permit and he had received a number of telephone calls -- approximately 20 in number -- expressing satisfaction with the stand of the Council in refusing approval of this permit application. The applicant, in turn, has submitted a petition urging issuance of the permit signed by a number (approximately 40) of residents of Osborne Avenue in the immediate vicinity of the Cultural Center. The testifying councilman stated that no person whose name appeared thereon had been among those who indicated their sentiments against issuance of the permit coincided with those of the Council. The premises in question are not in a residentially zoned area and there is no anticipation that issuance of the permit would create any undue control problems or affect the traffic pattern.

There is no declared uniform policy of the municipality with respect to the grant or denial of consent to social affair permits, or the nature of premises (licensed or unlicensed) to which municipal subscription should be given. It was testified that "there has been discussion on that but I think the Council as a whole would rather not get so binding with it because you never know from one year to the next what the application might be."

During the past year, municipal consent was granted for two affairs at unlicensed places, viz., to the local fire company to dispense beer in the municipally owned parking lot at a "new fire house wet-down" and to the Metedeconk River Yacht Club for a "cocktail party" at the same premises for which the present permit is sought.

In connection with the latter affair, it was the testifying councilman's belief that applicant had given an assurance it would not itself seek any permits, whereas applicant contends it had merely assured Council it would not permit its premises to be used by outside organizations in dispensing alcoholic beverages. Be that as it may, I am still confronted -- and I do not doubt Council's sincerity or motives in reviewing the instant application -- with the lack of adoption of an expressed policy, uniformly applied to all, concerning grant or withholding of municipal consent.

For completeness, it may be stated that an apparent fear of Council that these permits could be extended to local merchants is unfounded. Permits to non-licensees to dispense alcoholic beverages are not granted indiscriminately and as emphasized above, are confined to bona fide groups and would not be issued to individuals or concerns operating for trade or private gain purposes.

In view of the foregoing, with a perhaps redundant reference again made to lack of a formalized uniform municipal policy, I see no adequate cause to deny a permit under the recited circumstances.

Accordingly, the permit is granted.

Joseph P. Lordi
Director

Dated: June 30, 1965

9. DISCIPLINARY PROCEEDINGS - SERVICE OF ALCOHOLIC BEVERAGES OTHER THAN ORDERED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Robert Treat Hotel Co.)
42-50 Park Place and 27-29)
Mulberry Street)
Newark, New Jersey,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-37, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
- - - - -)

Pitney, Hardin & Kipp, Esqs., by James C. Pitney, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 11, 1964 it served alcoholic beverages other than ordered, in violation of Rule 23 of State Regulation No. 20.

Reports of investigation disclose that, on the date alleged, orders for mixed drinks containing a "name" brand of whiskey were filled at the bar by using a cheaper "off" brand instead, the name-brand mixture being priced at \$1.10 and the other at 95¢, charge being made for the name-brand mixture.

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 Jervic, Inc., Bulletin 1603, Item 6.

Accordingly, it is, on this 28th day of June 1965,

ORDERED that Plenary Retail Consumption License C-37, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Robert Treat Hotel Co., for premises 42-50 Park Place and 27-29 Mulberry Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, July 5, 1965, and terminating at 2 a.m. Thursday, July 15, 1965.

Joseph P. Lordi,
Director

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

In the Matter of Disciplinary Proceedings against)

Willow Cafe & Restaurant, Inc.)
367 Bloomfield Avenue)
Montclair, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the Town of Montclair.)
-----)

Edward P. Dean, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 15, 1965, it permitted removal of a pint bottle of whiskey and twelve cans of beer from the licensed premises during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for fifteen days effective November 9, 1959, for possessing alcoholic beverages not truly labeled. Re Willow Cafe & Restaurant, Inc., Bulletin 1314, Item 9.

The prior record of dissimilar violation occurring more than five years ago disregarded, 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 Ruocco, Bulletin 1540, Item 8.

Accordingly, it is, on this 2d day of July 1965,

ORDERED that Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the Town of Montclair to Willow Cafe & Restaurant, Inc. for premises 367 Bloomfield Avenue, Montclair, be and the same is hereby suspended for ten (10) days, commencing at 1:30 a.m. Friday, July 9, 1965, and terminating at 1:30 a.m. Monday, July 19, 1965.

Joseph P. Lordi
Joseph P. Lordi
Director

New Jersey State Library