

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

September 25, 1963

BULLETIN 1529

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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.

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September 25, 1963.

1. APPELLATE DECISIONS - ZIEGENBALG, ET ALS. v. WOODBRIDGE,
LAVIN, ROSSI, PAPPAS AND CRANE.

WILLIAM ZIEGENBALG, et als.,)	
Appellants,)	
v.)	ON APPEAL
)	ORDER
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF WOODBRIDGE, AND)	
AUGUSTIN LAVIN, ANGELO ROSSI,)	
JOHN PAPPAS AND NEIL J. CRANE,)	
Respondents.)	

Wilentz, Goldman & Spitzer, Esqs., by Warren W. Wilentz, Esq.,
Attorneys for Appellants
Hutt & Berkow, Esqs., by Stewart M. Hutt, Esq., Attorneys for
Respondent Township Committee.
Jacobson and Winter, Esqs., by Roland A. Winter, Esq., Attorneys
for Respondents Lavin, Rossi, Pappas
and Crane.

BY THE ACTING DIRECTOR:

Appellants appeal from grant by respondent Township
Committee on December 29, 1961, of applications for new plenary
retail distribution licenses to individual respondents for
various premises in Woodbridge Township.

Prior to the hearing of the appeal (deferred by
reason of pending court action, now concluded), by letter of
August 26, 1963, the appellants' attorneys advised me that the
appeal was withdrawn. No reason appearing to the contrary, it
is, on this 28th day of August 1963,

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

EMERSON A. TSCHUPP
ACTING DIRECTOR

2. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - SALE TO MINOR - UNQUALIFIED EMPLOYEE - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against

EDWARD BERNARD KOBBLE t/a WARDELL HOTEL 11-15 Union Square Phillipsburg, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-23, issued by the Board of Commissioners of the Town of Phillipsburg

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

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"The licensee pleaded not guilty to the following charged:

- '1. On February 9, 10, 16, 17, March 2 and 3, 1963, 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 persons who appeared to be homosexuals, e.g., males impersonating females and females impersonating males, in and upon your licensed premises, allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; 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.
'2. On Saturday night, March 2 and early Sunday morning, March 3, 1963, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty one (21) years, viz., Lawrence ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
'3. On Saturday night, March 2 and early Sunday morning, March 3, 1963, and prior thereto, you allowed, permitted and suffered the employment in and upon your licensed premises as a bartender of a person, viz., James ---, who was not a bona fide resident of New Jersey, contrary to and in violation of Rule 4 of State Regulation No. 13.'

"At the hearing held herein, the Division called as its witness three ABC agents, hereafter referred to as Agents D, N, and F.

"The testimony of Agent D with reference to the first charge may be summarized as follows: In the company of Agent N, he visited the licensed premises on the dates set forth in the first charge. These premises consist of a four-story brick hotel building operated as the Wardell Hotel; the licensed premises are on the street level of the said building. On February 9, 1963, at 11:15 p.m., he entered the front entrance of these premises and proceeded to the rear cocktail lounge. This room contains a large oval bar and a bandstand in the rear of the room. At the time of this visit there were about 100 males and 10 female patrons who were served by 3 bartenders (hereinafter identified as Frank Weirsky, James Mannicci, and Francis Reilly).

"A large number of the males attracted his attention because they were congregated in the same general area of this room, and apparently were part of the same group. Further, they appeared to be homosexuals because they manifested the following characteristics: many of them had bleached blonde hair; some had plucked eyebrows with mascara or eyebrow pencil on their eyebrows; some had facial makeup or light substances on their faces; when they walked, they achieved a swishing of the hips and buttocks; they would take short quick steps on the balls of their feet.

"Further, these apparent homosexuals spoke in high-pitched voices 'tending to be high-tenor type, high voices'; used exaggerated arm motions as they spoke; and then stroked their hair in a female manner. Many of them frequently used common expressions of endearment to each other such as 'Honey', 'Dearie', and 'You bitch.' A number of them were in pairs and in cases where a person arrived unaccompanied, another one of this group would get off the stool at the bar which he was seated at and assist the newcomer to his seat in the manner of a male assisting a female, and purchase a drink for him.

"There were, on this evening, 10 females at the bar of which 5 or 6 of them attracted their attention because they appeared to be apparent lesbians, so characterized because: they wore men's pants, sport shirts, short cut hair; wore no makeup; two of them wore men's wrist watches; they had men's wallets which they carried in their left-rear hip pocket; and their gait was a distinctly heavy footed male gait.

"This witness returned to these premises on February 16, 1963 at about 12:45 a.m. in the company of Agents N and F and proceeded directly to the same room. At this time there were about 8 males and 2 female patrons in the premises. He engaged Frank Weirsky the bartender (hereafter Frank) in conversation.

"Frank told him that he had received an offer from one of the 'gay boys' to go to a Florida vacation for 2 weeks, but he didn't take him up on it. The bartender pointed to 2 females seated at the opposite part of the bar and stated that they were lesbians who kept constant company with each other in preference to male company because they didn't want to become pregnant. The witness observed that these apparent lesbians had short cut dark hair;

"One had no makeup at all, the other one had a very little bit of lipstick and light facial makeup; they both had slacks and sweaters, pull-over; one paid for the

drinks at the bar from a wallet she took out of her back pocket, men's type wallet, and she placed the money on the bar.'

"The bartender confided and emphasized that his employer does not permit the 'queers' to use the hotel rooms but added that they are good spenders, they cause no trouble, and they mind their own business.

"The agents left early that morning and returned that same night at about 10:10 p.m. On this visit they were joined by Agent V and it was noted that there were about 35 patrons in this room. At about 10:35 P.M. a three-piece band commenced playing and the patronage increased to about 73 males and 7 females. Of the 73 males, about 90% of them impressed this agent as being apparent homosexuals to whom were attributed the same characteristics as described hereinabove; and in addition, those who smoked held their cigarettes with a very dainty limp wrist, they would sip their drinks femininely, with fingers extended; comb their hair in a feminine manner; and many of them had the smell of perfume.

"This agent engaged in conversation with one of the apparent homosexuals whose name was Dennis. He told the agent that he was a druggist living in Pennsylvania and 'He said he was a lady.' As another male approached Dennis from the other side of the bar, the agent mentioned that fact to him and he replied 'Oh we've been married for years.'

These two apparent homosexuals then left and took their original positions at the bar. His observation of the female patrons satisfied him that by their dress, characteristics, and mannerisms they were females impersonating males, or apparent lesbians.

"One of the males particularly, whom he identified as Tom, wore lipstick and a light powder on his face; however, when he confronted him Tom insisted that the powder was a drug known as Acnomel which is used in treatment of acne.

"This agent returned to the premises on March 2, 1963 in the company of Agents N and V and again took a position in the same rear cocktail lounge at the bar. The music was playing and the patronage increased during the evening from 75 to approximately 125 at the height of activity. Of the 125 patrons, about 110 were males and 15 females.

"Of the 110 males, at least 90% of them impressed this witness as being apparent homosexuals assuming the same characteristics, demeanor, and mannerisms heretofore described and somewhat elaborated upon by the witness at this point of the testimony. Of the females, about 6 of them impressed the agent as being apparent lesbians because they too projected the male characteristics, mannerisms, and dress as previously described. One person who identified himself as Lawrence --- attracted the agents' attention because he appeared to be a minor. He had face powder on, had long hair, and was wearing a gold band around his wrist, a gold link chain band with a small female wrist watch implanted on it. He had all the characteristics of an apparent homosexual.

"The agents thereupon identified themselves to the licensee and they retired to a rear room. Upon questioning, he denied that he served any 'queers' or lesbians and stated,

'Show me a queer and I will throw him out. You got to prove that.'

"Apparently, word got around that there were ABC agents on the premises and the population of the licensed premises rapidly declined. The agents thereupon summoned 8 of these apparent homosexuals into the interrogation room for the purpose of confrontation; and they identified themselves. One of these males had bleached blonde hair and facial makeup. However, upon questioning, he denied that his hair was bleached and insisted that the bleached color was due to his use of a sunlamp. Another male insisted that the powder on his face was a medication for a skin condition but no such condition as described by him manifested itself. This patron also insisted that the exaggerated swishes of his hips and shoulders and his female gait was due to the fact that he had been an art student for 3 years. One of the bartenders, Reilly, was questioned and repeated that he was unqualified and therefore would not say whether or not there were any homosexuals on the premises at that time.

"On cross-examination, the agent defined a homosexual as 'someone who has perverted tendencies, who attempts to act opposite their sex, would like to, I believe. This is opposite their sex.' He explained that apparent homosexuals are people who act in a feminine manner and who have some or all of the characteristics as were hereinabove set forth. Further in this examination, he expanded upon this definition by stating that the homosexual is 'one who would engage in abnormal acts with people of the same sex', and would derive sexual pleasure from persons of the same sex.

"Agent N, under direct examination, substantially and in detail corroborated the testimony of the prior witness. He particularly emphasized that on the pertinent dates, the apparent homosexuals were congregated in an area in the rear portion of the bar. He also emphasized that the apparent lesbians attracted his attention particularly because they had short cropped hair, no makeup, male-type shirts, chino trousers, and their mannerisms and actions were like men, as hereinabove described.

"The witness related the conversation that took place with Frank, the bartender, as follows: He asked Frank whether 'Jerry' (a fictitious name) was there tonight. Frank replied 'No, they don't come in here on Friday, they only come here on Saturdays and Sundays.' He then repeated the story about the proposition made to him to accompany one of the apparent homosexuals on a trip to Florida. He also related that the two apparent lesbians who were then seated at the other end of the bar were keeping steady company with each other.

"He insisted also that the owner does not rent out the hotel rooms to these apparent homosexuals in the following language: 'No. That is one thing my boss definitely won't allow; they are good spenders and they mind their own business, but he don't allow them to go up in the rooms.' This witness' description of the events that transpired on the latter dates set forth in the charge corroborated the earlier testimony of Agent D. This witness continued: at the time of confrontation with the licensee, Kobbler used the following language when accused of serving 'queers' and minors, 'Show me a queer and

'I'll throw him right out. I'm in business 30 years.'
Whereupon the witness replied, 'look around your premises.
Look at the way they act.'

"Frank, the bartender, was then reminded of his earlier conversation and he stated that he vaguely remembered the conversation but doesn't remember anything pertaining to 'queers' or lesbians. Reilly took the position that he was not qualified to state whether a person is a 'queer' or a lesbian. Both the licensee and the other bartender denied the presence of apparent lesbians or homosexuals.

"The witness assured counsel for licensee that the lighting in the premises was adequate for purposes of clear observation and he had no difficulty in observing the manner of walk, facial expression, and other characteristics of the persons described. He had an unobstructed view from his position at the bar to observe the full range of these individuals as they proceeded to and from the bar and emphasized that his earlier description of their gait and characteristics was quite accurate.

"The witness corroborated Agent D to the effect that when the agents first started to question the licensee in the rear room there were 125 patrons in the bar; however, at the conclusion of the interrogation when they returned to the bar there were somewhere between 12 and 15 persons, the others having rapidly disappeared. He pointed out to Kobble the 8 patrons who were brought into the rear room as being apparent homosexuals. The licensee did not deny that these individuals appeared to be homosexuals. It was stipulated that if Agent F were to testify his testimony would be substantially corroborative of that of the other two agents with respect to the occurrences on February 16, the early morning of February 17, the evening of March 2 and the early morning of March 3. These were the dates on which this agent was present at these premises.

"Testifying in his own behalf, Edward B. Kobble, the licensee, categorically denied the first charge and stated that the first time that he became aware of any alleged homosexuals or lesbians on his premises was when it was called to his attention by the ABC agents. In fact, he pointed out that when one of the 8 alleged homosexuals was being questioned and referred to he became offended and wanted to 'punch one of the agents in the mouth.'

"Licensee operates a 55 room hotel and has a substantial investment therein. Upon cross-examination he vigorously denied witnessing any of the actions, mannerisms, or characteristics of the patrons which had been heretofore described by the agents. He was asked the following questions:

'Q Mr. Kobble, if you were to see on the street or in an unlicensed place or in a restaurant, persons of the kind that have been described by our agents as having been in your particular place, and doing the things which they say they saw these people do, and acting in the way they say they saw these people acting, and talking the way they say they heard some of these people talk in your place, would such persons appear to you to be homosexuals?

A No.

Q What would such persons appear to you to be?

A Funny.

Q What kind of Funny?

A Just plain nuts.

Q If you saw persons of that type in groups of anywhere from 10 up to 25 to 75 or up to 100 assembled in one place would that have any significance to you?

A No, sir.

Q Would you have any thought of them at all as to what they were or why they were there or what they were doing?

A No, I would not.

Q Would that be ridiculous to you?

A It would seem so. The way you said, described the way they acted, it would look ridiculous to me.

Q But it would mean nothing to you at all?

A Not a thing.'

"On further examination it developed that the licensee had read extensively about homosexuals and had actual contact with a person whom he was told had homosexual characteristics---it developed that that person was a heavyweight-lifting champion. But he insisted that he never met any person who possessed the characteristics described by the agents, and in any event, had never seen any such person in his tavern. He admitted that, in response to the accusations made by the agents that his place was full of homosexuals he said, 'Show me one and I'll throw him out.' He did not recall saying to the agents that they have to prove that his patrons were 'queers'. Finally, this witness stated that the only way that he could tell whether a person was a homosexual or 'queer' would be by his 'propositioning me.'

"George Stewart, Director of Public Safety of the town of Phillipsburg, called on behalf of the licensee, testified that to the best of his information that there were no complaints made by the local Township police against the licensee. He also stated that he visited these premises on a number of occasions and has never seen anything wrong. However, he admitted, on cross-examination, that he was not present at the tavern on the dates alleged in this charge.

"Robley W. Adams, Donald Kelly, A. Henry Anderson, and John Kenneth Miers testified that they were familiar with the operation of these premises and had not seen any homosexuals therein. However, it was developed on cross-examination that they too were not present on the dates charged herein.

"The exception was Miers who stated that he has been visiting this tavern for years and usually came there on weekends. Although he did not drink liquor, he insisted that he was there every Friday and Saturday night until the

closing hour and sat in the lounge drinking soft drinks, and engaged in conversation with other patrons.

"Charles Adams testified that he is a good friend of the licensee and certified to his good reputation. However, he too was not present on the dates alleged in the charge.

"Francis J. Reilly testified that he was employed as a bartender by the licensee on the dates in question, but denied seeing any homosexuals. He was asked the following questions:

'Q Do you know what a homosexual is?

A I know what they do; I couldn't tell if there was one standing in front of me.

Q Did any of the investigators of the ABC tell you that there were homosexuals in the place?

A Yes, sir.

Q What did you say?

A I said I didn't see any.'

"On cross-examination, this was pursued further by the following questions:

'Q Is there any way you would employ to determine whether a person is a homosexual or not?

A Unless they proposition me; I wouldn't guess on a person being one or not being one.

Q . . . if you were to see people of the type described by the agents, would they or would they not appear to you to be homosexuals?

A They would not.'

"James Mannicci, also employed as a bartender by the licensee on the dates herein alleged, testified to the same effect as Reilly and insisted that he doesn't know what a homosexual is or does, and would certainly not be able to recognize any such persons. Indeed, he asserted that he never saw any persons who even appeared to be homosexuals.

"The third bartender employed by the licensee on the dates alleged, Frank Weirsky, testified that he is a milkman and part-time bartender, and he denied that he ever told the agents that the place was 'full of queers'. On cross-examination he emphasized that he didn't know what a homosexual was, nor would he be able to recognize such person. He further repeated his denial of any conversation with the agents.

"He was pointedly asked whether persons possessing the characteristics and mannerisms attributed to the persons described by the agents on these premises on the dates in question would have any particular significance to him, he concluded that they would only be 'odd' people because 'I'm not capable of classifying them.' Finally, his mind was a

complete blank as to any conversation he was reported to have had with the agents on any of the dates set forth herein.

"I have particularized, in considerable detail, the testimony of the witnesses adduced herein in order to present a full and objective picture and to develop a perspective reflective of this charge. The testimony of the Division's agents is in sharp conflict with that produced by the licensee and the acceptance of one automatically invokes the rejection of the other.

"The guiding rule in these matters is that the findings 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. 34 C.J.S. Evidence, Sec. 1042. The inquiry is whether there is such evidence which, if accepted and given its fullest probative force, reasonably tends to sustain the judgment rendered. The accepted standard of persuasion governing the trier of facts is that the details are probably founded in truth. Riker vs. John Hancock Mutual Life Ins. Co., 129 N.J.L. 508, 511.

"My considered analysis and evaluation of the entire testimony, together with my observation of the witnesses as they testified lead me to the unmistakable conviction that the version as given by the agents is a credible, factual, believable, and true version. On the contrary, I was left unconvinced and unimpressed with the testimony of both the licensee and his witnesses.

"I was particularly unimpressed with that part of the licensee's testimony relating to his conception of apparent homosexuals and lesbians. Kobble engendered the feeling that he was trying to rationalize rather than honestly portray the conditions as they existed in his tavern on the dates in question. Taking the position that he could not determine for himself whether a person was 'possibly a homosexual or not', he sought to create the impression that a person acting in the manner described by the agents was 'maybe a little crazy, but not homosexual.' This is an unrealistic position, and a pat evasion of the clear responsibility of a licensee; and this same position was adopted by his employees as well.

"I cannot believe that where there were large congregations of apparent homosexuals and lesbians (numbering as high as 125) on a particular evening, in a relatively small area of one room on these premises, a circumstance repeated many times, that the licensee and his agents should have been totally unaware of its existence. In fact, it seems to me that such a large number of these individuals constituted practically a convention, and I am persuaded that these premises were apparently the meeting place for individuals who came to this tavern on weekends from areas throughout the state.

"I cannot conceive that, if the version given by the agents is to be believed, and I do believe it, that many of these patrons had bleached blonde hair, plucked eyebrows; their eyes were covered with mascara or eyebrow pencil; some had facial makeup or light substances on their faces, talked in high lispy tones, used limp wrist movements in holding their cigarettes on in consuming their beverages; swished and swayed when walking with exaggerated feminine movements; and possessed the other characteristics and mannerisms depicted. It is impossible to conceive that this abnormal

gathering should have escaped the attention and notice of the licensee and his three bartenders on duty.

"There is no question in my mind that these premises were used regularly on weekends for the congregation of apparent homosexuals and lesbians, as identified by Agent D and N. In this connection, I put little credence in Frank's testimony that he has no recollection of the conversation with the agent regarding the nature of the patronage in this establishment.

"The pattern of the licensee's testimony and his employees' is characterized by the further notion that an apparent homosexual can be recognized only if he committed overt actions in their presence. Our decisional law is to the contrary. Re Hoover, Bulletin 1521, Item 1.

"If this, in the conception of the licensee, is the sole basis upon which he considers himself required to act, then he has missed an important lesson in his responsibility as a licensee. If the description of the manner, conduct, and characteristics of these apparent homosexuals as given by the agents is credible, and if their version of the confrontation of the 8 patrons whom they pointed out to the licensee and questioned in his presence is true, then the licensee's expressed failure to recognize such individuals is both ingenuine and insincere. This is particularly reflected by his statement when shown the bleached blonde hair of one of the males that he probably got that hair through a sunlamp. The unmistakable evidence makes it crystal clear that Kobble should have been able to recognize these apparent homosexuals and lesbians even in the dark. As was stated in Re Simmons, Bulletin 1406, Item 2,

'I believe that, with exceptions infinitesimal and remote, it takes only common sense, with a reasonable amount of judgment based upon observation as to garb and conduct (abnormal for a woman), to distinguish a so-called lesbian from a normal woman.'

"This applies even more sharply, in my opinion, in a situation regarding apparent homosexuals. It should be noted, apropos this argument, that the law does not require that the Division prove that these persons were indeed homosexuals, and in fact, the charge uses the following language:

'...allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females and females impersonating males, in and upon your licensed premises, permitted and suffered such persons to frequent and congregate in and upon your licensed premises...' (emphasis supplied).

The testimony of licensee further reflects the mistaken notion that it becomes the duty of Division agents to specifically point out apparent homosexuals. While the agents did so in this case, it was entirely gratuitous and unnecessary. The description of these patrons compels the application of the reasoning, as set forth in Paddock Bar, Inc., vs. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App.Div. 1957):

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.'

"The licensee herein may not avoid his responsibility for the conduct of his premises merely by closing his eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent improper use of the premises. Re Ehrlich, Bulletin 1441, Item 5; Bilowith v. Passaic, Bulletin 527, Item 3.

"Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of apparent homosexuals and lesbians on licensed premises be staunchly prohibited. The situation disclosed by the record in this case constitutes a nuisance and as such is clearly violative of Rule 5 of State Regulation No. 20. Such situation is not only inimical to the public welfare, but has a pernicious influence upon innocent members of the public frequenting such premises who may be adversely exposed to these conditions. Re Kaczka & Trobiano, Bulletin 1063, Item 1.

"'Rigid enforcement' of these regulations is essential to the preservation of decency and the conservation of public morals. Re Polka Club, Inc., Bulletin 1045, Item 6.

"Considering all the facts adduced herein and the legal principles applicable thereto, and having carefully considered as well the well constructed and articulate brief of counsel for the licensee which was submitted in lieu of oral summation at the conclusion of this case, I conclude that the licensee is guilty of the first charge.

"The second charge involves the selling, serving and permitting the consumption of alcoholic beverages by the licensee, his agent or employee, to a minor on March 2, 1963, and the early morning of March 3, 1963.

"One of the essential elements required to be proved is the age of the minor alleged to have been served. At this hearing, the attorney for the Division stated that the alleged minor resides in Bethlehem, Pennsylvania and hence not amenable to subpoena. ABC agents spoke to his mother about his voluntarily appearing here, but elicited no measure of cooperation; therefore, no further attempt would be made to produce him.

"Under these circumstances I recommend that the motion for dismissal of this charge, made by the attorney for the licensee, be granted.

"The third charge alleges that the licensee permitted and suffered an employee (a bartender) on his licensed premises who was not a bona fide resident of New Jersey, contrary to and in violation of Rule 4 of State Regulation No. 13.

"In support of this allegation, Agent D testified that he engaged in a conversation with the subject bartender, James Mannicci, regarding Mannicci's residence. Mannicci told him that he presently resides in Easton, Pennsylvania; that prior to moving to Easton he lived at the Hotel Wardell wherein the licensed premises is located; and that when he moved out of New Jersey he didn't think he needed a permit.

"He further stated that he does not have such permit and the agents' inspection of this Division's records does not reflect the issuance of an employment permit to Mannicci. On cross-examination, it was developed that he had worked at these premises for the past 6 years. The agent could not recall whether he was told in fact that Mannicci had actually worked for 13 years. This testimony of Agent D was corroborated by Agent N.

"In defense of this charge Mannicci, testified to the following effect: he had been employed as a bartender by the licensee since 1950; he lived at the Wardell Hotel in these premises where he worked since 1946; he produced copy C or the employee's record of his income tax returns for the past few years in support of his contention that he has been a resident of the State of New Jersey. He also submitted a copy of employee's record which reflected certain social security information. The admission of these items was objected to by the Division attorney, on the grounds that they were self-serving and were not necessarily the actual income tax returns filed by this witness. They were admitted for their limited probative value.

"On cross-examination, this witness stated that he is separated from his wife who lives with their son in Phillipsburg, New Jersey; that he has lived in the Wardell Hotel since 1950; that he has never lived in Easton, Pennsylvania. He admitted that he has a 'lady friend' living in Easton, Pennsylvania and frequently visits her; for that reasons he obtained a driver's license and a registration for his car in Pennsylvania. However, he insisted that he is registered as a voter, and actually voted in Phillipsburg; that the agents must have received the wrong impression regarding his residence when they inspected his Pennsylvania motor vehicle license.

"My examination of the testimony on this charge and my evaluation of the record does not satisfy me that there is such probative force that has engendered a feeling of reasonable probability in these circumstances. Loew vs. Borough of Union Beach, 56 N.J. Super 93.

"A finding of guilt must be supported by a fair preponderance of the believable evidence this measure was lacking herein. The sharp conflict in the testimony on this charge leaves me in doubt. To be in doubt is to be resolved. Such doubt must be resolved in the licensee's favor. Re Keansburg Steamboat Company, Bulletin 1287, Item 2.

"I therefore recommend that the licensee be found not guilty on charge 3.

"Licensee has a prior adjudicated record. Effective May 11, 1940, the local issuing authority suspended the license for 12 days for an 'hours' violation; effective January 27,

1945, the local issuing authority again suspended the license for period of 30 days for an 'hours' violation; on January 7, 1947, the Director suspended the license for a period of 20 days for violation of Rule 1 of State Regulation No. 38. In view of the fact that these suspensions for three dissimilar violations were imposed more than 5 years prior to the dates charged herein, they will not be considered in the recommendation of a penalty.

"Under the facts and circumstances of this case, I recommend that an order be entered dismissing charges 2 and 3 and suspending the license for a period of sixty days on charge 1. Re Ashen, Bulletin 1495, Item 7."

Pursuant to Rule 6 of State Regulation No. 16, written exceptions to the Hearer's Report were filed with me by the attorney for the licensee.

With respect to the principal contention of the licensee that guilt of the violation alleged cannot be found absent proof of overt acts of indecency, see Carelis v. Division of Alcoholic Beverage Control, N.J. Super. (App. Div. 1961), not officially reported, reprinted in Bulletin 1430, Item 1.

Having carefully considered the record herein, including the transcript of the proceedings, exhibits, memoranda of counsel for the licensee submitted in summation, the Hearer's Report, exceptions and written argument with reference thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations. Hence I find the licensee guilty as to charge (1) and not guilty as to charges (2) and (3). I shall suspend the license for a period of sixty days.

Accordingly, it is, on this 29th day of August 1963,

ORDERED that Plenary Retail Consumption License C-23, issued by the Board of Commissioners of the Town of Phillipsburg to Edward Bernard Kobble, t/a Wardell Hotel, for premises 11-15 Union Square, Phillipsburg, be and the same is hereby suspended for sixty (60) days, commencing at 1 a.m. Monday, September 9, 1963, and terminating at 1 a.m. Friday, November 8, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLE USED IN CONNECTION WITH OPERATION OF STILL - CLAIM OF INNOCENT OWNER OF MOTOR VEHICLE RECOGNIZED.

In the Matter of the Seizure on)	
June 26, 1963 of a Chevrolet coupe)	CASE NO. 11078
in a garage at the rear of a)	ON HEARING
dwelling on East Atlantic Avenue, in)	CONCLUSIONS
the Township of Waterford, County)	AND ORDER
of Camden and State of New Jersey.)	

Paul D'Ulio, claimant, Pro se.

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

BY THE ACTING DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, of the Revised Statutes of New Jersey and State Regulation No. 28, to determine whether a Chevrolet coupe, described in an inventory hereinafter referred to, seized on June 26, 1963 in a garage at the rear of a dwelling on East Atlantic Avenue, Waterford Township, Camden County, New Jersey, constitutes unlawful property and should be forfeited.

It should be specifically noted that the other personal property including alcoholic beverages which were seized in this matter, will be the subject of another Order, after hearing thereon to be held at this Division at a later date.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered on behalf of the registered owner who sought its return.

The facts as they appear from the reports of ABC agents and other documents in the file, presented in evidence with the consent of the claimant herein, may be briefly summarized as follows: On June 26, 1963 local firemen were summoned to extinguish a fire at the aforesaid premises, in the course of which they found a still in operation. They thereupon summoned two state troopers who, upon arrival, observed a Chevrolet coupe being driven by Leo Pendergast, and which bore New Jersey registration plates registered in the name of the claimant herein. An examination of the trunk of this motor vehicle disclosed 55 lbs. of sugar.

Pendergast was taken into custody and questioned at police headquarters. He admitted that he set up the still and had it in operation, and that the sugar transported by the aforesaid motor vehicle had been purchased by him in several local stores for the purpose of making alcohol. He further stated that he borrowed the car but did not know who its owner was.

He was thereupon charged with violation of R.S. 33:2-10, possession of an unregistered still and R.S. 33:1-50, possession of untaxed alcohol and was held in bail for arraignment in the Windlow Township Municipal Court. The motor vehicle and its contents were surrendered to ABC agents.

The motor vehicle which was used for the transportation was intended to be used in the operation of a still constituted unlawful property and is subject to forfeiture. Seizure Case No. 10,157, Bulletin 1336, Item 6.

Paul D'Ulio, the claimant herein, seeks return of the said Chevrolet coupe and gives the following account in support of such claim: he is a new resident of this community and occasionally patronizes the gas station and garage owned by Pendergast. He brought this motor vehicle to this garage for repairs. His intention was to dispose of this car because he had another newer motor vehicle which he used for his regular business purposes. He brought the subject vehicle to Pendergast at the beginning of May and stopped by a number of times and was told that the repairs had not yet been completed. He did not consider that it was unusual for his car to be at the garage for six weeks, prior to the date of seizure because he had no immediate use for it. In fact, he had not renewed his registration because of his intention to dispose of the same.

He is married, earns a satisfactory income as a tile setter's helper and has never had any prior dealings with Pendergast. His testimony and his appearance on the stand reflects naivete, but also forthrightness.

I am authorized to return the motor vehicle to the claimant if he establishes to my satisfaction that he acted in good faith. R.S. 33:1-66(f). Under all the facts and circumstances I shall give the claimant the benefit of the doubt; thus, I am satisfied that Paul D'Ulio acted in good faith and did not know or have any reason to suspect that Pendergast would use the car for such transportation in violation of the law. I shall, therefore, grant his request for return to him of the motor vehicle. Seizure Case No. 10,584, Bulletin 1419, Item 2; Seizure Case No. 8638, Bulletin 1038, Item 3.

Accordingly, it is DETERMINED and ORDERED that if on or before the 10th day of September, 1963 Paul D'Ulio (a/k/a Paul Di Ulio) pays the costs of the seizure and storage of the Chevrolet coupe, said motor vehicle will be returned to him.

EMERSON A. TSCHUPP
ACTING DIRECTOR

Dated: August 28, 1963

SCHEDULE "A"

- 1 - Chevrolet coupe, Serial No. B-53B096456,
N.J. Registration GVF 211.

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOTE TAVERN & GRILL, INC.
844 Broadway
Bayonne, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-53, issued by the Municipal Council of the City of Bayonne.

Field & Field, Esqs., by Harold J. Field, Esq., Attorneys for Licensee.

David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

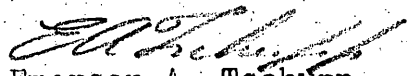
Licensee pleads non vult to charge alleging that on May 7, 1963, it possessed alcoholic beverages in ten bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for two days, effective January 11, 1960, for employing a waitress in violation of local regulation.

The license will be suspended for thirty-five days (Re Lev's Bar, Inc., Bulletin 1431, Item 3) to which will be added five days by reason of the previous record of suspension (cf. Re Brookside Tavern, Inc., Bulletin 1518, Item 6) making a total of forty days with remission of five days for plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 22d day of August, 1963,

ORDERED that Plenary Retail Consumption License C-53, issued by the Municipal Council of the City of Bayonne to Jote Tavern & Grill, Inc., for premises 844 Broadway, Bayonne, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Thursday, August 29, 1963, and terminating at 2 a.m. Thursday, October 3, 1963.


Emerson A. Tschupp,
Acting Director.