

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

December 13, 1966

BULLETIN 1704

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 120 DAYS, LESS 5 FOR PLEA.
2. APPELLATE DECISIONS - CARIBE HILTON LOUNGE, INC. v. IRVINGTON.
3. DISCIPLINARY PROCEEDINGS (Irvington) - SALE TO MINORS - UNQUALIFIED EMPLOYEE - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 20 DAYS - UNQUALIFIED EMPLOYEE CHARGE DISMISSED-PRIOR RECORD DISREGARDED WHEN APPEAL PENDING.
4. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING (NUMBERS AND HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Red Bank) - SALE TO A MINOR - CHARGE DISMISSED.
6. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1966 TO SEPTEMBER 30, 1966 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 62 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20).
7. ACTIVITY REPORT FOR OCTOBER 1966.
8. DISCIPLINARY PROCEEDINGS (Jersey City) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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

December 13, 1966

BULLETIN 1704

1. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION
NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 120 DAYS,
LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

CELTIC BAR, INCORPORATED
559 Jackson Avenue
Jersey City, N. J.

Holder of Plenary Retail Consumption
License C-332, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Jersey City.

CONCLUSIONS
AND ORDER

Jeremiah J. O'Callaghan, Esq., Attorney 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
September 8 and 16, 1966, it sold on each occasion a half-pint
bottle of liqueur for off-premises consumption during hours
prohibited by Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license in
each instance for similar violation as follows: (1) license then
held by Richard W. Sheehan and John E. Dunne (the latter being a
49% shareholder of the licensee-corporation) by the municipal issuing
authority for five days effective January 15, 1951; and by the
Director against the license of Celtic Bar, Incorporated (2) for ten
days effective May 18, 1959, (3) for thirty days effective August 1,
1960, (4) for fifty-five days effective September 5, 1961, and (5)
for sixty days effective September 21, 1964. Re Celtic Bar Incorporated,
Bulletin 1585, Item 6.

The prior record considered, the license will be suspended
for one hundred twenty days, with remission of five days for the plea
entered, leaving a net suspension of one hundred fifteen days. Cf.
Re Coleman, Bulletin 1696, Item 1.

Accordingly, it is, on this 11th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-332,
issued by the Municipal Board of Alcoholic Beverage Control of the
City of Jersey City to Celtic Bar, Incorporated for premises 559
Jackson Avenue, Jersey City, be and the same is hereby suspended for
one hundred fifteen (115) days, commencing at 2:00 a.m. Tuesday,
October 18, 1966, and terminating at 2:00 a.m. Friday, February 10,
1967.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - CARIBE HILTON LOUNGE, INC. v. IRVINGTON.

CARIBE HILTON LOUNGE, INC.,)
t/a CARIBE HILTON LOUNGE,)

Appellant,)

v.)

MUNICIPAL COUNCIL OF THE TOWN)
OF IRVINGTON,)

ON APPEAL
CONCLUSIONS
AND ORDER

Respondent.)

Vincent J. Agresti, Esq., Attorney for Appellant.
Samuel J. Zucker, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent whereby on May 17, 1966 it suspended appellant's plenary retail consumption license for a period of thirty days effective June 1, 1966 after finding appellant guilty in disciplinary proceedings of the charges hereinafter set forth.

Upon the filing of the appeal an order dated May 27, 1966 was entered by the Director staying respondent's order of suspension until further order herein.

The charges preferred by respondent against appellant are as follows:

- "(a) That on March 5, 1966, at about 2:35 a.m., you permitted your licensed premises to remain open in violation of Section 17 (a) of Ordinance No. 1659.
- (b) That on March 5, 1966, at about 2:35 a.m., you allowed, permitted and suffered the consumption of alcoholic beverages upon your licensed premises, in violation of Section 17 (a) of Ordinance No. 1659.
- (c) That on March 5, 1966, at about 2:35 a.m., you sold and served alcoholic beverages upon your licensed premises, in violation of Section 17 (a) of Ordinance No. 1659."

Appellant's petition of appeal contends that:

"The action of the respondent was erroneous in that no proof was adduced at the aforesaid hearing to sustain any of the aforesaid violations and further that all of the evidence proffered by the respondent was hearsay, circumstantial and without merit."

Respondent's answer denies appellant's allegations and asserts that the decision of the respondent was justified and based on the evidence adduced at the hearing, and that the penalty imposed

"was warranted by the violation and circumstances."

In accordance with Rule 8 of State Regulation No. 15, the instant appeal has been submitted for determination upon the transcript of the testimony taken before respondent Municipal Council.

It appears from the transcript of testimony of Officer Bellew that at 2:35 a.m. on March 5, 1966, accompanied by Officer Delorme in a radio car, he observed that the lights were on in appellant's licensed premises; that he stopped the car and both he and Officer Delorme got out and proceeded to the front of appellant's premises; that the curtains were open on the front window and, when he looked into the place, he observed Mr. Simoes (manager of the licensed premises) behind the bar and two men seated at the customers' side of the bar; that in front of one of the men there was "a Rheingold beer bottle and a glass of beer;" that he could not see how much liquid was in the bottle but the glass appeared to be half filled with an amber colored liquid, and that one of the men was drinking; that he (Bellew) was "I would say twelve to fifteen feet" distant from the bottle and glass on the bar; that Officer Delorme stood alongside of him and, after making the aforesaid observations, he (Bellew) "stepped to my left a few feet to the front door and knocked and asked entrance;" that "two or three" minutes thereafter Mr. Simoes opened the door and he (Bellew) and Officer Delorme entered; that, as he entered the premises, he saw the two men seated at the bar but the "beer and the bottle of beer was not on the bar;" that he spoke to Mr. Simoes and told him what he observed through the window and advised him that he saw a man "drinking beer from a bottle with the glass alongside of it;" that he also inquired why the two men were in the place, and Simoes indicated that one was a bartender and the other a friend; that Simoes denied that after 2 a.m. anyone drank in the establishment.

Officer Delorme corroborated the testimony of Officer Bellew in so far as their arrival at the appellant's licensed premises at 2:35 a.m. on March 5, 1966, and peering through the front window after observing a light in the establishment. He further testified that he "observed Mr. Simoes behind the bar counting money. The bartender sitting on the customer's side with another occupant." Officer Delorme further stated that in front of one man was "a bottle of Rheingold beer with a glass next to it", the glass being half full of what "looked like beer" and "Officer Bellew tapped on the door while I stood in the window and watched." Officer Delorme further said that, after Officer Bellew tapped on the door, "Mr. Simoes left the register, grabbed the bottle and the glass off the bar, dumped it into the sink, walked around the bar, came and opened the door." Officer Delorme also testified that, after entering, one of the men said he was "a friend of Mr. Simoes, and the other said he was the bartender." Mr. Simoes "denied everything, said nobody ever drank in his premises after 2:00 A.M."

Emanuel Simoes testified that he is the manager and that his wife Elpidia Simoes, who is president and secretary of appellant corporation, authorized him to appear in behalf of appellant. Mr. Simoes further said that on March 5, 1966, at "about 2:35", he saw a flashlight at the window and, when he heard a knock, he saw an officer; that he immediately opened the door and, when entering, the officer said "we saw you sell. Where is your license number;" that he invited the officer to go behind the bar to examine the license; that, pursuant thereto, one officer went inside the bar, then asked the bartender and the other man for his name and inquired if they drank and both answered "no". Mr. Simoes further stated that the man (who was not employed in the premises) was waiting to be driven to Newark after he (Simoes) had cleaned the place.

The ordinance claimed to be violated, as alleged by respondent and as set forth in the written charges, reads in pertinent part:

"[No person or persons, partnerships, firms, or corporation shall sell or serve any alcoholic beverages between the hours of 2:00 o'clock A.M. and 7:00 o'clock A.M. on weekdays and between 2:00 o'clock A.M. and 12 o'clock noon on Sundays; and no place or establishment licensed under an Act of the Legislature of the State of New Jersey, entitled 'An Act Concerning Alcoholic Beverages.' Revised Statutes 1937, Title 33, and any amendments thereof and supplements thereto shall be open during the above prohibited hours]....

In so far as charge (a) is concerned, the evidence adduced is undisputed; that a man not connected with appellant's establishment in any capacity whatsoever was in the licensed premises during prohibited hours. Without questioning the truth of the statement of Mr. Simoes that the man was waiting to be driven by him (Simoes) to Newark, his mere presence in the appellant's premises during prohibited hours is a violation of the closing-of-premises ordinance.

In Re Zenda, Bulletin 271, Item 5, it was ruled by the then Commissioner (now Director) that the proof of the charge of "keeping open", which is the same as "not being closed", requires only proof that the licensee continues to entertain the public.

This interpretation is a settled law of this State. In Richards v. Bayonne, 61 N.J.L. 496, it was said:

"To 'keep open,' as applied to places of business and to public houses, is a familiar expression, constantly in use. Its meaning in the present case is clear, viz., that the proprietors of public houses shall temporarily cease to entertain the public. It does not refer to the closing of shutters or to the barring of doors. These may be done in order that the place may 'keep open.' It is not met by the mere refusal to sell intoxicating liquors. It means more. As 'to keep open' is a standing invitation that gives to the public a right of excess and of entertainment, so 'not to keep open' means that this invitation is withdrawn and that all public entertainment has ceased...."

To "entertain", in the sense used, means to "receive;" "to treat" or "deal with." See Webster's New International Dictionary. Under the circumstances appearing in the within case, a violation of the section of the ordinance now in question is disclosed, for which the appellant is strictly accountable. Town House, Inc. v. Montclair, Bulletin 792, Item 3.

Charge (b) of the charges of which appellant was adjudged guilty for allowing, permitting and suffering the consumption of alcoholic beverages upon the licensed premises in violation of Section 17 (a) of the ordinance must be reversed. There is no provision in the said ordinance (above quoted) relating to consumption of alcoholic beverages during prohibited hours.

Charge (c), referring to the sale and service of alcoholic beverages during prohibited hours in violation of the said ordinance, must also be reversed. There has been no proof presented by respondent that the police officers observed either sale or service of alcoholic beverages to one of the men seated at the bar. Both officers testified that they saw a bottle of Rhein-

gold beer and a glass containing a quantity of liquid, what appeared to them to be beer, but at no time did either testify that they saw sale or service made.

I find, after careful consideration of the evidence adduced herein, that the proof presented by the respondent only sustained the guilt of appellant with reference to charge (a) which alleged that appellant's premises were permitted to remain open during prohibited hours at the time, in violation of the ordinance in question.

It is apparent that the respondent considered the guilt of appellant on the three charges when it imposed a thirty-day suspension of appellant's license. In view of the fact that only one of the three charges has been sustained by the evidence presented, and in the absence of a prior record, it is recommended that the penalty imposed by respondent be reduced to a suspension of appellant's license for fifteen days, the minimum suspension imposed by this Division for a failure to close during prohibited hours violation. Cf. Re Pecoraro and Marchitto, Bulletin 1656, Item 7.

It is further recommended, therefore, that an order be entered affirming respondent's action with reference to finding guilt of appellant on charge (a); dismissing charges (b) and (c), reducing the period of suspension from thirty days to fifteen days, and fixing the effective dates for said suspension.

Conclusions and Order

No written exceptions to the Hearer's report were filed pursuant to Rule 14, of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the proceedings before respondent and the transcript of the proceedings on appeal, the exhibits, the oral argument in summation by the attorneys for the respective parties, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 17th day of October, 1966,

ORDERED that the action of respondent with respect to charge (a) be and the same is hereby affirmed; that the action of respondent with respect to charges (b) and (c) be and the same is hereby reversed; that the suspension of thirty days heretofore imposed by respondent be and the same is hereby modified and reduced to fifteen days; and it is further

ORDERED that Plenary Retail Consumption License C-50, issued by the Municipal Council of the Town of Irvington to Caribe Hilton Lounge, Inc., t/a Caribe Hilton Lounge, for premises 395 Nye Avenue, Irvington, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Monday, October 24, 1966, and terminating at 2:00 a.m. Tuesday, November 8, 1966.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - UNQUALIFIED EMPLOYEE - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 20 DAYS - UNQUALIFIED EMPLOYEE CHARGE DISMISSED-PRIOR RECORD DISREGARDED WHEN APPEAL PENDING.

In the Matter of Disciplinary)
Proceedings against)

CARIBE HILTON LOUNGE, INC.)
t/a CARIBE HILTON LOUNGE)
395 Nye Avenue)
Irvington, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-50, issued by the)
Municipal Council of the Town of)
Irvington.)

-----)
Vincent J. Agresti, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On May 27, 1966, 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., Lidia---, age 19, Nancy ---, age 19, and Jose ---, age 20, 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.
- "2. On May 27, 1966, and prior thereto, you employed and allowed, permitted and suffered the employment in and upon your licensed premises of a person not a bona fide resident of the State of New Jersey; in violation of Rule 4 of State Regulation No. 13.
- "3. On May 27, 1966, you, through Elpidia Simoes, an officer, director and ninety-eight per cent (98%) shareholder of your corporation, failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35."

In behalf of the Division, ABC Agent D testified that, accompanied by Agent M, he entered the licensed premises (described as a neighborhood type bar) on May 27, 1966 at approximately 10:50 p.m. Two males were tending bar -- one referred to as "Manny" (later identified as Alfredo or Elpidia Simoes, an officer and majority stockholder of the licensee corporation), and the other known as Tony Backus. Upon entry the agents took a position at the

left front portion of the bar.

The agent observed two young females (identified as Lidia --- and Nancy ---) consuming a beverage. Inasmuch as Nancy denied under oath at the hearing held herein that the drink she consumed was an alcoholic beverage and the Division could not establish that the drink was an alcoholic beverage, and Lidia failed to appear at the hearing (although served with a subpoena), I shall, as to Charge 1, direct my attention to the testimony concerning the alleged sale to Jose ---.

Continuing, Agent D testified that at approximately 11:25 p.m. five males entered and positioned themselves near the agents. One of the males (identified as Jose ---) attracted attention due to his youthful appearance. Jose spoke with Manny and Manny took five bottles of beer from the cooler, opened them, gave them to Jose and received payment therefor from Jose. Jose then distributed the beer to his companions. He retained one bottle and the agent observed Jose consume a portion thereof. Noting that Lidia and Nancy were about to depart, the agents identified themselves to the females and to Jose and seized Jose's drink. The chemist's report, certifying that the drink seized by the agent was an alcoholic beverage, was admitted into evidence. At the request of the agents, and for the purpose of furthering the investigation, the trio accompanied the agents into the rear room adjoining the barroom. Manny entered the rear room and was informed of the violation after the agents identified themselves. At this point the agent testified as follows:

"...Immediately, he [Manny] became loud and abusive, stated that we had no right to take the patron's drink, demanded that we should give them back, that we should have come to him first and told him of the violation, that we were not authorized to do what we were doing. We told Mr. Simoes, Manny, to conduct himself in a more proper manner or to calm down. We wanted to proceed with our investigation in interrogating the minors further. He then jumped between Agent M---and myself, between the agent and the minors, preventing us from continuing our investigation with the minors, yelling and stating again that we had no right to do this. Who did we think we were, that we should give the drinks back, and that we could settle this between ourselves. Again, we informed him not to hinder our investigation, that if he continued, we would enter a charge against him, and that we would conduct this in the prescribed manner.

He again argued with us again stating we had no right to do this. We had no business in there. He was in charge of the premises. We should have come to him, and then he began to yell in Spanish to several people or patrons standing, and a crowd gathered at the small entrance way, and at this time we decided to call the local police for assistance to prevent any actions or aggressive movements on any part of any patron."

Manny turned to the alleged minors and told them not to say, sign or do anything. When the agents reiterated that they were going to press a charge of hindering, Manny responded that he didn't care, the agents had no business doing what they were doing.

Manny refused to permit the agent to interview a female dancer in connection with the particulars of Charge 2, and stood in front of Agent M in order to prevent him from questioning the female. In addition, he cautioned the female not to say or sign anything.

It was stipulated that Agent M's testimony would be similar to the testimony given by Agent D.

Jose --- testified that he was born on August 20, 1945. He was, therefore, twenty years of age on May 27, 1966. On the night of May 27, 1966 he entered the licensed premises with friends and asked for and received five beers from the bartender. He consumed part of his beer. The bartender did not question him as to his age prior to being served the beer.

The licensee presented no testimony at the hearing.

I am of the opinion that the Division has failed to establish Charge 1 so far as it relates to Lidia --- and Nancy ---, and I therefore recommend that Charge 1, so far as it refers to them, be dismissed.

I am also of the opinion that the evidence was insufficient to substantiate Charge 2 and I therefore recommend that Charge 2 be dismissed.

However, with respect to Jose, it is clear that he was twenty years of age on May 27, 1966 and that he was served and consumed an alcoholic beverage at the licensed premises on that date. No written representation of his age was given by him or required by the licensee's agents.

Turning my attention to Charge 3, it appears to me that the evidence is overwhelmingly clear that Manny's action in counseling the minors and the female employee not to say or sign anything, his jumping in between the agents and the minors and his loud haranguing constituted a failure to facilitate, hindrance and a delay in the investigation being conducted by the Division agents. See Re Triple Lake Ranch, Inc., Bulletin 1676, Item 3. The action was all the more reprehensible because it was committed by an officer and majority stockholder of the licensee corporation.

A licensee is responsible for the misconduct of his employees and is fully accountable for their activities on the licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20.

My evaluation and consideration of the testimony lead me to the conclusion that the Division has established the truth of Charge 1 (so far as Charge 1 refers to Jose ---, age 20), and Charge 3 herein by clear and convincing evidence, and I recommend that the licensee be found guilty of said charges.

Licensee has a record of suspension of license by the local issuing authority for thirty days commencing June 1, 1966 on a local "hours" violation. However, that suspension is the subject of a pending appeal to the Director.

The record of suspension disregarded because of the pending of the appeal therefrom (Re Alaburda, Bulletin 1488,

Item 8), it is further recommended that an order be entered suspending the license on the first charge for ten days (Re Tropical Gardens, Inc., Bulletin 1684, Item 3), and on the third charge for ten days (Re Triple Lake Ranch, Inc., supra), making a total suspension of twenty days.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 17th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-50, issued by the Municipal Council of the Town of Irvington to Caribe Hilton Lounge, Inc., t/a Caribe Hilton Lounge, for premises 395 Nye Avenue, Irvington, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, November 8, 1966, and terminating at 2:00 a.m. Monday, November 28, 1966.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

B. & W. BAR, INC.)
339 Communipaw Avenue)
Jersey City, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-519, issued by the Muni-)
cipal Board of Alcoholic Beverage)
Control of the City of Jersey City)

Klaessig and Winograd, Esqs., by Mayer L. Winograd, Esq., Attorneys)
for Licensee.)

Edward F. Ambrose, Esq., Appearing for Division of Alcoholic)
Beverage Control.)

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers dates between February 8 and April 27, 1965, it permitted acceptance of numbers and horse race bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

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, Re Lipnicki, Bulletin 1683, Item 3.

Accordingly, it is, on this 11th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-519, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to B. & W. Bar, Inc. for premises 339 Communipaw Avenue, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, October 18, 1966, and terminating at 2:00 a.m. Monday, December 12, 1966.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - CHARGE DISMISSED.

In the Matter of Disciplinary)
Proceedings against)

BILOW, INC.)
64 Monmouth Street)
Red Bank, New Jersey,)

Holder of Plenary Retail Consumption)
License C-12, issued by the Borough)
Council of the Borough of Red Bank.)

CONCLUSIONS
AND ORDER

Schapira, Steiner & Walder, Esqs., by Justin P. Walder, Esq.,
Attorneys for Licensee
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

Licensee pleaded not guilty to the following charge:

"On June 14, 1966, 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., Thomas W. ---, age 18; in violation of Rule 1 of State Regulation No. 20."

At the hearing held herein, Thomas --- testified that he is eighteen years of age, being born on February 26, 1948; that at about 7:30 p.m. on June 14, 1966 he purchased six bottles of Colt 45 malt liquor at the licensee's premises from its clerk Albert Pizzutiello (hereinafter clerk); that he carried the bottles in a bag from the premises to a parking lot adjoining the premises; that he was stopped by Agents O and B, and returned to the premises with them.

Thomas further testified that on his first visit (June 2, 1966) to the premises he displayed his driver's license to the clerk; that the license showed his year of birth as 1945; that, when originally issued, it read 1948; that he had altered the same; that the clerk had given him a printed form (approved by the Division); that he completed the same by setting forth therein that he was born on February 26, 1945; that he was twenty-one years of age, and that he had signed the instrument in the presence

of the clerk.

On cross examination Thomas reiterated his direct testimony with respect to his identification to the clerk and the execution of the printed form, and further testified that he is six-feet-one-inch tall and weighs one hundred eighty pounds and that he has been judged by people to be over twenty-one years of age.

On redirect examination he was asked:

"Q Have people also told you you look under twenty-one?

A No occasion for it."

Agent O testified that between 7:00 and 7:35 p.m. on the night in question he and Agent B were parked in the vicinity of the licensed premises; that he observed Thomas empty-handed enter the licensed premises and thereafter emerge therefrom with a brown paper bag; that Thomas appeared to be eighteen or nineteen years old; that he and his partner stopped Thomas and identified themselves to him; that, upon inspection, he learned the bag contained six quart bottles of Colt 45 malt liquor, following which he, in possession of the bag, Agent B and the minor entered the licensed premises.

Agent O further testified that Thomas identified the clerk as the person who sold him the malt liquor; that he and Agent B identified themselves to the clerk; that he displayed the contents of the bag to the clerk; that the clerk admitted making the sale to Thomas; that, upon being questioned, the clerk stated that Thomas appeared to be twenty-two years old and that he had requested him to sign the printed form because "I was in doubt about his age."

Agent O continued to testify that Ludwig Bilow, 3rd, an officer of the corporate licensee, entered the premises about 8 p.m.; that Mr. Bilow stated that Thomas did not appear to be twenty-one years old; that about 9:30 p.m. Ludwig Bilow, Sr. arrived at the premises; that Mr. Bilow stated that he judged Thomas to be nineteen years old.

On cross examination Agent O testified that Thomas appeared to be eighteen or nineteen, or possibly in his early twenties.

Agent B substantially corroborated the testimony of Agent O and did not materially vary the same on cross examination.

Robert D. Scott testified that for the past thirteen years he has been a member of the local Police Department; that he has been a detective sergeant (assistant juvenile officer and human relations officer) for five years; that on the night in question, in response to a call from Mr. Bilow, he arrived at the licensed premises at about 8:18 p.m.; that he joined the agents, Mr. Bilow, 3rd, and Thomas in the rear of the premises; that, based on his experience as a law-enforcement officer as aforesaid, he judged Thomas to be twenty-three or twenty-four years old; that he was present when Ludwig Bilow, Sr. arrived at the premises; that he did not hear either of the Bilows say anything to indicate that Thomas was under twenty-one.

Albert Pizzutiello testified that for two months prior to June 14, 1966 he was employed as a clerk at the licensed premises; that previous thereto he was employed by Mr. Bilow in the same capacity in a licensed premises located in another municipi-

pality; that between 7:30 and 8 p.m. on June 2, 1966, Thomas visited the licensed premises; that the premises were well lighted; that Thomas asked for four quarts of Colt 45; that Thomas appeared to be twenty-two years of age; that Thomas stated he was twenty-one years old; that Thomas identified himself by displaying his driver's license; that the same showed him to be over twenty-one; that, upon his request, Thomas completed the printed form as aforesaid and signed the same in his presence, and that he witnessed his signature following which he sold Thomas the malt liquor.

Mr. Pizzutiello further testified that on June 14 aforesaid he sold Thomas six bottles of beer; that he had recognized Thomas as the patron who had signed the form at the licensed premises on June 2 aforesaid, and denied that he had obtained Thomas' signature to the same because he was in doubt about his age.

On cross examination Mr. Pizzutiello testified that the product he sold Thomas on June 2 aforesaid was beer; that at the time he had thoroughly examined the driver's license; that he did not observe any erasure or change of birth thereon; that he now recognizes that the numeral "45" bears evidence of an erasure; that he had questioned him about his age because he wanted further proof of the same as a precautionary measure.

Robert A. Deptula testified that he is a chemical engineer; that he is self-employed in the business of distributing industrial chemicals; that on June 14, 1966 he was in the licensed premises; that the first time he observed Thomas was at the check-out counter making a purchase of beer; that he followed Thomas in making a purchase of wine; that he next saw Thomas when he returned to the premises with the agents walking toward the checkout counter, and that he judged Thomas to be twenty-three or twenty-four years of age.

On cross examination Mr. Deptula testified that he is not a frequent visitor of the premises; that he knows the Bilows only as a patron, and that he has had no social relations with them.

Ludwig C. Bilow, 3rd, secretary-treasurer of the corporate licensee, denied the statement attributed to him by Agent O and further testified that he believed Thomas to be about twenty-two or twenty-three years old.

On cross examination Mr. Bilow testified that the agents had informed him of the alleged violation; that he invited them into the office and that he had no conversation with them about Thomas' age or his appearance.

Ludwig Bilow, Sr., president of the corporate licensee, denied the statement attributed to him by Agent O and further testified that he has been associated with the liquor industry for thirty years; that, based on his aforesaid experience, in his opinion Thomas appeared to be twenty-one or twenty-two years old.

On cross examination Mr. Bilow, Sr. testified that he did not engage in any conversation with the agents.

From my observations of Mr. Pizzutiello, while under examination, I am satisfied that he neither detected nor intentionally overlooked the alteration on Thomas' driver's license.

The only issue to be decided in this case is whether the licensee fully complied with R.S. 33:1-77.

From the evidence in the record I find that the minor Thomas falsely represented in writing that he was over twenty-one years of age, that his appearance was such that an ordinary prudent person would believe him to be twenty-one years of age or over, and that the sales of alcoholic beverages to Thomas by the licensee on June 2 and June 14, 1966, were made in good faith and in reliance upon the aforesaid written representation and Thomas' appearance. Thus the procedure and defense prescribed by the statute appear to have been followed and established by the licensee. I therefore recommend that the charge herein be dismissed. See Caruso v. Jersey City, Bulletin 694, Item 1; Re Sudzina & Pingicer, Bulletin 1138, Item 5; Re Onufrak, Bulletin 1231, Item 4.

Conclusions and Order

No exceptions to the Hearer's Report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 13th day of October 1966,

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

JOSEPH P. LORDI
DIRECTOR

6. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1966 to SEPTEMBER 30, 1966 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 62 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20)

BULLETIN 1704

CLASSIFICATION OF LICENSES

County--	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Licenses Surrendered		Number in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	Expired	Revoked		
Atlantic	484	\$ 207,110.00	74	\$ 27,775.00	30	\$ 2,695.00							588	\$ 237,580.00
Bergen	817	355,722.00	300	92,754.00	155	14,187.50	48	\$ 2,269.50	5	\$ 1,398.75			1325	466,331.75
Burlington	196	91,389.00	43	14,290.00	52	7,200.00	1	50.00					292	112,929.00
Camden	458	226,650.00	85	36,585.00	82	8,110.00			1	450.00			626	271,795.00
Cape May	138	78,050.00	13	4,700.00	18	2,220.00							169	84,970.00
Cumberland	80	40,995.89	15	4,200.00	32	4,250.00							127	49,445.89
Essex	1276	730,181.37	346	210,600.00	94	12,775.00	24	1,200.00	1	750.00		1	1741	955,506.37
Gloucester	109	39,710.00	15	3,870.00	23	2,120.00							147	45,700.00
Hudson	1445	654,256.58	296	121,400.00	78	9,300.00	60	2,550.00					1879	787,506.58
Hunterdon	78	29,120.00	14	8,280.00	14	1,500.00							106	38,900.00
Mercer	421	263,880.00	50	22,562.00	61	9,150.00							532	295,592.00
Middlesex	635	322,665.00	85	30,555.00	127	10,825.00	4	200.00					851	364,245.00
Monmouth	543	288,635.00	123	44,130.00	63	6,879.74	10	492.00	20	10,882.63			759	351,019.37
Morris	357	1,479.27	104	43,149.58	71	6,682.50	14	700.00	4	1,500.00			550	199,959.00
Ocean	193	109,477.73	50	22,147.00	43	4,997.16							286	136,621.89
Passaic	833	347,309.00	170	52,800.00	50	5,875.00	6	300.00					1059	406,284.00
Salem	51	20,160.00	8	1,640.00	19	1,625.00							78	23,425.00
Somerset	190	89,535.00	41	12,875.00	37	4,425.00							268	106,835.00
Sussex	165	47,165.00	21	4,310.00	13	740.00	1	50.00	1	225.00			201	52,490.00
Union	538	305,256.00	144	85,792.00	89	9,497.00	27	1,336.00					798	401,881.00
Warren	147	44,610.00	21	5,300.00	30	3,180.00			2	338.40			200	53,428.40
Totals	9154	\$4,439,804.57	2018	849,714.58	1181	128,233.90	195	9,147.50	34	15,544.78		1	12582	\$5,442,445.3

PAGE 14

Essex Co. - 1 "C" revoked

Joseph P. Lordi
Director

November 4, 1966.

7.

ACTIVITY REPORT FOR OCTOBER 1966

ARRESTS:

Total number of persons arrested - - - - -		20
Licensees and employees - - - - -	10	
Bootleggers - - - - -	10	

SEIZURES:

Motor vehicles - cars - - - - -		1
Stillis - 50 gallons or under - - - - -		1
Alcohol - gallons - - - - -		10.50
Mash - gallons - - - - -		250
Distilled alcoholic beverages - gallons - - - - -		4.01
Wine - gallons - - - - -		9.62
Brewed malt alcoholic beverages - gallons - - - - -		26.27

RETAIL LICENSEES:

Premises inspected - - - - -		836
Premises where alcoholic beverages were gauged - - - - -		694
Bottles gauged - - - - -		11,903
Premises where violations were found - - - - -		71
Violations found - - - - -		113
Unqualified employees - - - - -	61	Prohibited signs - - - - - 4
Application copy not available - - - - -	15	Disposal permit necessary - - - - - 3
Other mercantile business - - - - -	13	Other violations - - - - - 13
Reg. #38 sign not posted - - - - -	4	

STATE LICENSEES:

Premises inspected - - - - -		26
License applications investigated - - - - -		21

COMPLAINTS:

Complaints assigned for investigation - - - - -		385
Investigations completed - - - - -		329
Investigations pending - - - - -		255

LABORATORY:

Analyses made - - - - -		117
Refills from licensed premises - bottles - - - - -		51
Bottles from unlicensed premises - - - - -		2

IDENTIFICATION:

Criminal fingerprint identifications made - - - - -		8
Persons fingerprinted for non-criminal purposes - - - - -		406
Identification contacts made with other enforcement agencies - - - - -		302

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -		7
Violations involved - - - - -		9
Sale to minors - - - - -	5	Failure to close premises during prohibited hours - - - - - 2
Sale during prohibited hours - - - - -	2	
Cases instituted at Division - - - - -		21
Violations involved - - - - -		25
Sale to minors - - - - -	5	Substituting alc. bev. other than ordered - - - - - 1
Possessing liquor not truly labeled - - - - -	5	Mislabeling beer taps - - - - - 1
Sale during prohibited hours - - - - -	3	Permitting gambling on premises - - - - - 1
Beverage Tax Law non-compliance - - - - -	3	Permitting immoral acty. on prem. - - - - - 1
Conducting business as a nuisance - - - - -	2	Permitting hostess acty. on prem. - - - - - 1
Fraud in application - - - - -	2	
Cases brought by municipalities on own initiative and reported to Division - - - - -		24
Violations involved - - - - -		31
Sale to minors - - - - -	10	Conducting business as a nuisance. - - - - - 1
Sale during prohibited hours - - - - -	4	Sale to intoxicated person - - - - - 1
Permitting brawl, etc. on premises - - - - -	4	Permitting persons of ill repute on premises - - - - - 1
Failure to close prem. during prohibited hours - - - - -	3	Permitting bookmaking on premises - - - - - 1
Hindering investigation - - - - -	2	Sale on Election Day - - - - - 1
Permitting lottery acty. on prem. - - - - -	2	Unqualified employee - - - - - 1

HEARINGS HELD AT DIVISION:

Total number of hearings held - - - - -		56
Appeals - - - - -	9	Seizures - - - - - 3
Disciplinary proceedings - - - - -	31	Tax revocations - - - - - 2
Eligibility - - - - -	10	Applications for license - - - - - 1

STATE LICENSES AND PERMITS ISSUED:

Total number issued - - - - -		2,081
Licenses - - - - -	9	Social affair permits - - - - - 547
Solicitors' permits - - - - -	38	Miscellaneous permits - - - - - 184
Employment permits - - - - -	391	Transit insignia - - - - - 262
Disposal permits - - - - -	69	Transit certificates - - - - - 47
Wine permits - - - - -	534	

OFFICE OF AMUSEMENT GAMES CONTROL:

Licenses issued - - - - -	0
---------------------------	---

JOSEPH P. LORDI
Director of Alcoholic Beverage Control
Commissioner of Amusement Games Control

Dated: November 7, 1966

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

In the Matter of Disciplinary
 Proceedings against

NICHOLAS HAWRYLAK
 t/a MAJESTIC TAVERN BAR & GRILL
 285-287 Grove Street &
 33 Mercer Street
 Jersey City, New Jersey

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption
 License C-496, issued by the Municipal
 Board of Alcoholic Beverage Control
 of the City of Jersey City

 Licensee, Pro se.

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

BY THE DIRECTOR:

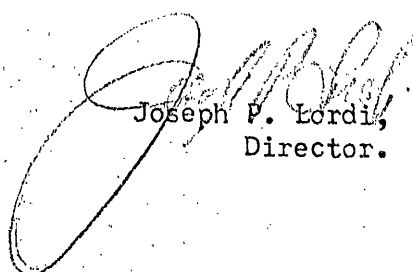
Licensee pleads non vult to a charge alleging that on
 June 30, 1966, he possessed alcoholic beverages in two bottles
 bearing labels which did not truly describe their contents, in
 violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of li-
 cense by the Director for ten days effective April 13, 1953,
 for sale during prohibited hours. Re Hawrylak, Bulletin 968,
 Item 4.

The prior record of suspension of license for dis-
 similar 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 Pfeiffer and Howard, Bulletin 1694, Item 6.

Accordingly, it is, on this 18th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-496,
 issued by the Municipal Board of Alcoholic Beverage Control of
 the City of Jersey City to Nicholas Hawrylak, t/a Majestic
 Tavern Bar & Grill, for premises 285-287 Grove Street and 33
 Mercer Street, Jersey City, be and the same is hereby sus-
 pended for ten (10) days, commencing at 2:00 a.m. Tuesday,
 October 25, 1966, and terminating at 2:00 a.m. Friday, November 4,
 1966.


 Joseph P. Lordi,
 Director.