

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

BULLETIN 1356

October 17, 1960

TABLE OF CONTENTS

- ITEM
1. APPELLATE DECISIONS - BERNSTEIN v. PATERSON.
 2. DISCIPLINARY PROCEEDINGS (Newark) - LEWDNESS AND IMMORAL ACTIVITY (INDECENT LANGUAGE AND CONDUCT) - CONDUCTING BUSINESS AS A NUISANCE (HOMOSEXUALS) - LICENSE SUSPENDED FOR 40 DAYS.
 3. DISQUALIFICATION REMOVAL PROCEEDINGS - PRIOR APPLICATION DENIED - FIVE YEARS GOOD CONDUCT - PRESENT APPLICATION GRANTED.
 4. DISCIPLINARY PROCEEDINGS (Perth Amboy) - LEWDNESS AND IMMORAL ACTIVITY (INDECENT LANGUAGE AND CONDUCT) - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.
 5. DISCIPLINARY PROCEEDINGS (Newark) - SALE TO INTOXICATED PERSON - PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS.
 6. DISCIPLINARY PROCEEDINGS (Peapack-Gladstone) - PERMITTING CONSUMPTION OF ALCOHOLIC BEVERAGES BY MINORS - DISCUSSION RE CATERER'S PERMIT - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
 7. DISCIPLINARY PROCEEDINGS (Newark) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - CONTRACEPTIVES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
 8. STATE LICENSES - NEW APPLICATION FILED.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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BULLETIN 1356

October 17, 1960

1. APPELLATE DECISIONS - BERNSTEIN v. PATERSON.

Leo Bernstein, t/a Kenya Club,)

Appellant,)

v.)

Board of Alcoholic Beverage Control)
for the City of Paterson,)

Respondent.)

On Appeal

CONCLUSIONS and ORDERS

Irving I. Lieberman, Esq., Attorney for Appellant.
William J. Rosenberg, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on March 23, 1960 it, by resolution, found appellant guilty of allowing, permitting or suffering a brawl, act of violence or disturbance in and upon his licensed premises on March 1, 1959, in violation of Rule 5 of State Regulation No. 20, and suspended his license for ten days, effective April 4, 1960. The premises are located at 7 Bridge Street, Paterson.

"Upon the filing of the appeal, the Director entered an order on March 29, 1960 staying respondent's order of suspension until further order herein. R.S. 33:1-31.

"In his petition of appeal, appellant alleges that respondent's action was erroneous in that (1) too much time was permitted to elapse between the time of the alleged offense and the charge made, to the detriment and prejudice of the appellant, and (2) the charge was not borne out by the facts presented, thereby making the decision of the respondent Board erroneous.

"Respondent, in its answer, as amended, denies appellant's allegations and contends that it acted within its sound discretion after hearing all the evidence.

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

"Respondent called as its witnesses two Paterson police officers and a patron of appellant's tavern (hereinafter DeBerry).

"The first officer testified in substance that on Sunday afternoon, March 1, 1959, he responded to a call to go to the Kenya Club and that, when he arrived in the vicinity of the licensed premises, he met a woman (hereinafter Arlene) who took him into the tavern; that in the presence of the bartender (hereinafter Littlejohn), she stated that she had gone to the tavern with DeBerry; that a man approached her and asked her for a dance; that she consented and, while dancing, was

pulled by him into a lavatory where he tore her clothing and attempted to rape her; that she screamed and when DeBerry tried to intervene the man punched him in the jaw and stabbed him in the right side and that she fled from the premises and called the police. The officer further testified that he questioned Littlejohn and showed him the blood on the floor on the steps leading to the back room and on the floor of the back room and that Littlejohn said he knew nothing of the incident.

"The other officer, a detective, testified that on Sunday, afternoon, March 1, 1959, he went to appellant's premises wherein he observed that 'there was blood on the floor of the tavern, in the rear room leading to a storeroom and there were numerous spots of blood around the upper portion, a platform, a room that is elevated above the street floor of the tavern'; that he spoke to Littlejohn who said, 'There had been a scuffle and that he had led two men outside, but that he had heard nothing of any screaming or knew nothing about an incident that occurred in the rear room between Albert --- (hereinafter "Bunny") and Arlene.'

"DeBerry testified that on Sunday afternoon, March 1, 1959, he went to the Kenya Club with Arlene where they became friendly with 'Bunny', who danced with Arlene; that the three of them left the premises and, when they returned, they went directly to the back room; that 'Bunny' placed a drink in front of him and told him to drink it; that 'like a fool I drank it and passed out'; that when he awoke, Arlene wasn't there; that he went out front looking for her, then tried to get out the back door which was locked; that he heard something on the left 'some kind of a struggle'; that he tried to open the door and someone pulled back against it; that Arlene 'reached a hand out to me and as I pulled her out this boy "Bunny" fisted in my face' and knocked him down; that 'my mouth was bleeding badly' and that the bartender came over and said, 'Fellows, you get out of here' and that the fight ended up out on the street.

"Leo Bernstein and Littlejohn were called as witnesses for appellant. Bernstein testified that he was not present when the alleged incident occurred and described the premises which he said consisted of a back room to the rear of which going up four steps and through a small archway is a room with two tables and to the rear of that room is a storeroom in which is located 'a little private bathroom that is used only by the employees and myself'.

"Littlejohn testified, in substance, that he served DeBerry and Arlene two bottles of beer; that 'Bunny' came in and entered into conversation with the two; that the trio then went into the back room; that Arlene then came downstairs and put money in the juke box; that he didn't serve them any more drinks; that the trio left the premises; that they later returned and went upstairs; that Arlene came downstairs and put money in the juke box and returned to the back room; that about fifteen minutes thereafter, Arlene left and the police came, followed by Arlene, and asked if he knew anything about a cutting and, 'I told him I didn't know anything about it'; that 'just before one officer came in, one of the fellows came from the back room and told me something about a scuffle so I opened the gate, ran upstairs and a young man (DeBerry) and Mr. K--- ("Bunny") was scuffling. I grabbed Mr. K--- and pulled him off him. I told him to get out. I told Bunny to follow', that 'as soon as Bunny went to open his mouth, I told him I'd rather have him out of the place and he shrugged his shoulders'. He testified further he didn't notice if either man was bleeding; that he didn't call the police; that he saw the blood when the officers showed it to him but none of it was in the front of the tavern; that a lavatory in the storeroom was for employees only and that neither 'Bunny' nor Arlene was an employee.

"Respecting appellant's contention that he was prejudiced because of the lapsed time between the alleged violation and the action of respondent Board, during which period he claims he could have called 'Bunny' 'for the purpose of cleaning up a great portion of whatever took place on that particular afternoon', it appears from the record that on the late afternoon of March 1, 1959, when the police sought to apprehend 'Bunny', he leaped through a third-story window and that nine months later he died as a result of the injuries he sustained. Under the circumstances, it would appear that 'Bunny' would have been unavailable as a witness for either party. In any event, the Alcoholic Beverage Law does not contain any limitation within which disciplinary proceedings may be brought. Re Kinney Club Inc., Bulletin 502, Item 7. I cannot, therefore, find that appellant was in any wise prejudiced.

"Respecting appellant's allegation that respondent's action was against the weight of the evidence, I find that the testimony of DeBerry presents a true picture of what occurred in and upon the licensed premises on the date alleged. That he was atrociously assaulted was evidenced by the blood which the police found on the floor of the barroom, on the steps leading to the back room and on the floor of the back room. I find further that appellant, by his agent Littlejohn, permitted two males to proceed uninterrupted into the back room where their actions could not be seen and that he suffered them to remain there for about fifteen minutes without serving them or inquiring as to why they were there. Littlejohn's testimony that he didn't serve the trio; that he didn't hear any noise in the back room and didn't know of the fracas until an unidentified male reported it to him and that he sat at the bar viewing television and did not see Arlene leave the premises evidences the fact that appellant failed in his duty to properly supervise his licensed premises.

"In view of the aforesaid, I conclude that respondent has established the guilt of appellant by the necessary preponderance of the believable evidence and I recommend that an order be entered affirming respondent's action, vacating the order entered on March 29, 1960 and fixing the effective date of the ten-day suspension heretofore imposed by respondent."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the evidence and the oral arguments made at the close of the hearing, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on the 24th day of August 1960,

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

ORDERED that the ten-day suspension heretofore imposed by respondent, and stayed pending entry of a further order herein, be and the same is hereby reinstated against the license now held by appellant for 7 Bridge Street, Paterson, to commence at 3 a.m. Tuesday, September 6, 1960, and to terminate at 3 a.m. Friday, September 16, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT LANGUAGE AND CONDUCT) - CONDUCTING BUSINESS AS A NUISANCE (HOMOSEXUALS) - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against)

Solomon Rubinroit)
t/a Hy and Sols Bar)
153 Mulberry St.)
Newark 2, New Jersey,)

CONCLUSIONS

and

Holder of Plenary Retail Consumption License C-139 (for the 1959-60 and 1960-61 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark)

ORDER

Bracken & Walsh, Esqs., by Joseph F. Walsh, Esq., Attorneys for defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

'1. On Friday night, January 22 and early Saturday morning, January 23, 1960, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises, viz., in that you allowed, permitted and suffered male persons on your licensed premises to engage and participate in foul, filthy and obscene language and conduct and to solicit and make overtures for and arrangements with other male persons on your licensed premises for acts of perverted sexual relations; in violation of Rule 5 of State Regulation No. 20.

'2. On Friday night, January 8, early Saturday morning, January 9, Friday night, January 22 and early Saturday morning, January 23, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that you allowed, permitted and suffered persons, males impersonating females, who appeared to be homosexuals 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.'

"Three ABC agents (hereinafter identified as Agents M, J and D) participated in the investigation made in this case.

"At the hearing herein Agents M and J testified that they entered defendant's premises on January 8, 1960, at about 11 p.m.; that the licensee and Abe Kay were tending bar; that, when they entered, there were twelve male and five female patrons in the barroom and that, later, three male patrons entered and attracted their attention by their effeminate mannerisms. Agent M testified that shortly after

midnight one of these three male patrons came to the place at the bar where the agent was seated, introduced himself as Bill, asked the agent if he could talk to him sexually and said that he wanted to go out with the agent that night; that, during the conversation between the agent and Bill, the licensee said to Bill 'Drink your beer and keep quiet and don't bother anyone.' Agent J testified that he had no conversation with any of these three males; that he saw the other agent and Bill seated together at the bar but was not near enough to hear their conversation.

"At the hearing herein Agents M and J testified that they again visited defendant's premises on the evening of January 22, 1960, and that they had in their possession two five-dollar bills, the numbers of which had been previously recorded.

"Agent M testified that he entered about 10 p.m. and saw fifteen male patrons and seven female patrons in the premises; that four of the male patrons, including one referred to herein as Buzz, wore male attire but talked in high-pitched tones, waved their hands and walked with a swinging, feminine-type gait. Agent M further testified that he took a seat at the bar near Agent J; that these four male patrons were in a group around Agent J; that he heard Agent J say to Abe Kay who was tending bar in front of the group, 'Abe, Buzz is going to take me out' and that Abe laughed; that, later, he heard Buzz say to one of the other four patrons, 'Oh! you bitches are all alike' and that this patron said to Buzz, 'You may have him tonight, but I will get him some other night.' Agent M testified that he left the premises at 12:45 a.m. and joined Agent D who had remained outside.

"Agent J testified that he entered about 9:45 p.m. and sat at the bar; that Agent M entered about 10 p.m. and sat near him; that Buzz (whom he had previously seen on the premises) came over and started to talk to him; that during the conversation Buzz asked him if he was looking for some girls or some other fun; that, about thirty minutes later, three other male patrons joined them and that Buzz said to one of them, 'As soon as I walk away you try to steal my man;' that Abe Kay, who sometimes sat on a stool, was tending bar directly opposite the group and that the licensee, who was generally tending bar at the other end of the bar, served drinks twice to members of the group. Agent J further testified that at about 11:30 p.m. Buzz offered to take him out and said he usually charged ten dollars but would charge him only five dollars; that at about 1 a.m. he gave Buzz one of the marked five-dollar bills, told Kay that he had given the money to Buzz and that Kay did not answer.

"When Agent J and Buzz left the premises at about 1:15 a.m. they were stopped by Agents M and D and the marked five-dollar bill dropped from a sweater worn by Buzz. All returned at once to the premises and the agents identified themselves to the licensee and Kay, both of whom denied any knowledge of what had occurred on the premises.

"On behalf of defendant, testimony was given by defendant, Abe Kay and three other witnesses. Defendant denied that on January 8 he told any patron to keep quiet and denied that he had knowledge that any homosexuals were ever on the premises. He stated that he has no way of identifying any person as a homosexual; that he heard none of the conversation testified to by the agents, and that Abe Kay is an old man and hard of hearing. He admitted that he knew Buzz for the past three years but denied that he knew he was a pervert. Abe Kay testified that he is sixty-five years of age and works for defendant on week-ends. He denied he had any conversation with Agent J or that he heard any conversation between the agent and the four patrons. One witness testified he employed Buzz in 1956 and that he was then a good worker and never acted like a woman. The other two witnesses (one of whom was a police officer) testified that they were in defendant's

premises on the evening of January 22, 1960, between 10:30 p.m. and 1 a.m., and saw no patrons with effeminate mannerisms or any improper conduct on the premises.

"In the brief submitted by defendant's attorney it is contended, in effect, that there is no legal evidence that the seven patrons described by the agents were in actuality homosexuals; that defendant and his bartender had no knowledge that said patrons were homosexuals and that the evidence does not support the charges.

"The testimony of the agents as to the mannerisms, conversation and actions of the seven patrons is certainly not hearsay or evidence dehors the record. It is legal evidence and, in my opinion, is sufficient to support a finding, which I hereby make, that these patrons were homosexuals. Paddock Bar, Inc. v. Div. of A.B.C., 46 N.J. Super. 405.

"The evidence is sufficient to establish that the licensee, or his bartender, or both, knew or should have known that these patrons were homosexuals. There is testimony that defendant's premises consist of a single room, about twenty feet wide and forty feet long. The seven patrons were at or near the bar at all times. I find as a fact that on January 8 the licensee told one of these patrons to keep quiet and not to bother anyone. I also find as a fact that the agents told the truth when they testified that on January 22 the bartender was directly opposite the group of four patrons and Agent J at the bar and that the licensee twice served drinks to this group and the agent. As was said in Bilowith v. Passaic, Bulletin 527, Item 3:

'Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Fortunately, most licensees do.'

The testimony of the police officer (who was off duty) and the testimony of the other patron does not establish that the agents who were watching these four homosexuals on January 22 testified falsely.

"Finally, I conclude that the evidence is sufficient to support the charges. Defendant's attorney quotes the following language from the decision in Paddock Bar, Inc. v. Div. of A.B.C., supra:

'Moreover it is not to be supposed that a licensee is to be disciplined by a temporary or permanent forfeiture of his business privilege merely upon proof of a sale or occasional sales to one who happened to be an adult vagabond, ex-convict, sexual deviate or prostitute.'

"This principle was recognized by the Division as early as 1941. Re Silver, Bulletin 441, Item 12. However, the facts in this case disclose that on January 8 three homosexuals were on the premises for at least one hour and twenty minutes, and that on January 22 four homosexuals were on the premises for at least four hours. This is sufficient to establish that these undesirables were permitted to congregate on the premises and, hence, is sufficient to support the nuisance charge. Paddock Bar, Inc. v. Div. of A.B.C., supra.

"After considering the evidence and brief, I recommend that defendant be found guilty as charged. Defendant has conducted his business for many years and has no prior record. Hence, it is further recommended that an order be entered suspending his license for the minimum period of sixty days. Re Rutgers Cocktail Bar, Bulletin 1133, Item 2; Re Clover Leaf Inn, Inc., Bulletin 1159, Item 1; Re Doornbos, Bulletin 1168, Item 3; Re Savoy Club, Inc., Bulletin 1289, Item 7."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for defendant pursuant to Rule 6 of State Regulation No. 16. The principal arguments advanced are (a) that the determination is made to rest upon hearsay evidence not made within the presence of defendant or his agent; (b) there is no proof that the persons on the premises were homosexuals; (c) even if said persons were homosexuals, they were not present in relatively large numbers so as to make defendant responsible under the holding in the Paddock case, and (d) the suggested penalty is too harsh because the case is less aggravated than the cases cited in the final paragraph of the Hearer's Report.

After carefully considering the entire record herein, I find no merit as to arguments (a), (b) or (c). The testimony of the agents as to the mannerisms, conversation and actions of the seven patrons is not hearsay evidence. Such evidence was sufficient to establish that these patrons were homosexuals. Paddock Bar, Inc. v. Div. of A.B.C., supra. I am satisfied from all the facts of the case that the bartender or the licensee, or both, knew that these patrons were homosexuals. Moreover, I am satisfied that, aside from the number of homosexuals present, defendant allowed, permitted and suffered lewdness, immoral activity, obscene language and conduct by homosexuals on both evenings in question, and I conclude that this is sufficient to establish that the place of business was conducted in such manner as to become a nuisance. Hence I find defendant guilty as charged.

In considering argument (d), I have reviewed the cases referred to in the final paragraph of the Hearer's Report. In each of these cases I find that the number of perverts constituted a very large percentage of the patrons present whereas, in the present case, the number of homosexuals constituted a relatively small percentage of the patronage. In the present case I find also that the bartender, because of his physical condition, frequently sat on a stool behind the bar and may not have been in a position to observe some conduct which took place below the level of the bar. Under the circumstances, I shall not accept the recommendation to impose the same penalty imposed in the cited cases, but shall suspend defendant's license for forty days.

Accordingly, it is, on this 25th day of August 1960,

ORDERED that plenary retail consumption license C-139, issued for the 1960-61 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Solomon Rubinroit, t/a Hy and Sols Bar, for premises 153 Mulberry Street, Newark, be and the same is hereby suspended for forty (40) days, commencing at 2 a.m. Wednesday, September 7, 1960, and terminating at 2 a.m. Monday, October 17, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISQUALIFICATION REMOVAL PROCEEDINGS - PRIOR APPLICATION DENIED - FIVE YEARS GOOD CONDUCT - PRESENT APPLICATION GRANTED.

| | |
|-----------------------------------|-------------|
| In the Matter of an Application) | |
| to Remove Disqualification be-) | |
| cause of a Conviction, Pursuant) | CONCLUSIONS |
| to R. S. 33:1-31.2.) | |
| Case No. 1564) | AND |
| -----) | ORDER |

BY THE DIRECTOR:

On May 23, 1956 I denied applicant's request to remove his disqualification from engaging in the alcoholic beverage industry in this State because he had been twice convicted (October 3, 1941 and November 30, 1949) of crimes involving moral turpitude and during the previous five years (November 16, 1952) he had been adjudged a disorderly person for committing an assault and battery on his wife. Under the circumstances, I was not then satisfied that applicant had sufficiently rehabilitated himself so that his association with the alcoholic beverage industry would not be detrimental to the public interest. Case No. 1277, Bulletin 1124, Item 7.

At the hearing held herein, applicant testified that he is married and living with his wife; that he has lived all his life in the same area where he presently resides and that for the past eight years he has been regularly employed. The applicant further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that he has not run afoul of the law in the past five years.

The State Police assigned to the municipality wherein applicant resides reports there are no complaints or investigations presently pending against the applicant.

The applicant produced three character witnesses (a business man, a business woman and a police sergeant) who testified they have known applicant for eight years and that, in their opinion, he is now an honest, law-abiding citizen with a good reputation.

From the evidence I now conclude that applicant has conducted himself in a law-abiding manner during the past five years and that association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 18th day of August 1960,

ORDERED that applicant's statutory disqualification because of his convictions on October 3, 1941 and November 30, 1949 be and the same is hereby removed, in accordance with provisions of R.S. 33:1-31.2.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT LANGUAGE AND CONDUCT) - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Stephen & Helen Toth t/a Casablanca Tavern 890 Amboy Avenue Perth Amboy, N. J., Holders of Plenary Retail Consumption License C-69, issued by the Board of Commissioners of the City of Perth Amboy.

CONCLUSIONS

and

ORDER

Clausen, Klein, Kovacs & Anderson, Esqs., by Oliver R. Kovacs, Esq., Attorneys for Defendant-licensees. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On July 23, 1960, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

On July 23, 1960, two ABC agents at the licensed premises of defendants observed a female patron who acted in a lewd and indecent manner.

Described in general terms, since no purpose will be served by setting forth every specific indecency, the female patron, over a considerable period of time, engaged in teasing and baiting the men present concerning her desirability as a participant in sexual intercourse, displaying her physical charms by lifting her dress and exposing her legs and undergarment, urging and permitting the licensee in the main, and other men, to caress her legs and other parts of her body, kissing some of the men, performing little "bumps and grinds" movements, meanwhile keeping up a running chatter describing her passionate nature. However, she spurned, in vulgar language, any intention of being available for the pleasure of any of the men. Summed up, it was a lewd and obscene exhibition.

When the agents revealed their identity, the licensee expressed regret that the incident took place and admitted that the conduct of the woman was "way out of order."

Defendants have no prior adjudicated record. Various officials of the community vouched for their good character. Their counsel urge in mitigation that the licensees recently entered the liquor business and have discovered that they are not emotionally or temperamentally suited to the operation of such a business; that, as to the above described incident, it got out of hand before Stephen Toth realized its proportions. However, any person with common sense will acknowledge that indecent and disgusting conduct of the above nature, especially in licensed liquor premises, is highly reprehensible and will not be tolerated.

Immoral activities of the above nature will not be countenanced upon licensed premises irrespective of the length of time that the

licensees have held the license. I might well impose a much more severe penalty (Re Prospero, Bulletin 1077, Item 2) but, giving consideration to the background of the licensees, I shall, under all the circumstances, suspend defendants' license for a period of forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 22nd day of August 1960,

ORDERED that plenary retail consumption license C-69, issued by the Board of Commissioners of the City of Perth Amboy to Stephen & Helen Toth, t/a Casablanca Tavern, for premises 890 Amboy Avenue, Perth Amboy, be and the same is hereby suspended for a period of forty (40) days, commencing at 2 a.m. Wednesday, August 31, 1960, and terminating at 2 a.m. Monday, October 10, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against
Jack Dobbs and Emanuel Sussman
t/a Joe's Bar
111 Washington Street
Newark 2, New Jersey
Holders of Plenary Retail Consumption License C-897 (for the 1959-60 and 1960-61 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
AND
ORDER

Joseph A. D'Alessio, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charge:

'On December 4, 1959, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"The basis for the charge rests upon the testimony of two ABC agents that when they were at the defendants' licensed premises on December 4, 1959, they observed a man who appeared to be intoxicated served with and consume alcoholic beverages and observed two other men (Leo --- and Bobby ---) who were served with and drank alcoholic beverages while apparently intoxicated. The agents testified that the first-mentioned man left the premises before they could question him and that they questioned the two other men in the presence of the licensees after they disclosed their identity.

"According to the agents' testimony, three bartenders were on duty. One of the agents called the attention of George Gunning, one of the bartenders, to the condition of the first-mentioned man who was standing at the bar with the remark: 'That man's head is bad. He is drunk.' This person's eyes were blurred, his face a little flushed, his speech slurred and he stumbled and held on to a wall when walking. While in that condition, he drank beer served to him by Gunning. When the last glass of beer was served to him, he drank the entire contents at one time and staggered as he left the premises, dragging his jacket because he was unable to put it on due to his lack of coordination.

"As to Bobby ---, the agents testified as follows: He swayed on the stool, was bleary-eyed and incoherent of speech and appeared to be on the verge of intoxication. Bobby was served with and drank at least three glasses of beer. The agents left the premises and returned in about twenty minutes and observed that Bobby was seated in the same place as before. At this time Bobby's eyes were red, his face was flushed, he was still incoherent in speech and he held on to the bar when he left his bar stool. He was drinking beer and asked the agents to buy a drink of beer for him. Thereupon one of the agents told Gunning that he would buy Bobby a drink but that the man is drunk; that he has had enough to drink. Gunning smiled and walked away. The agent repeated this remark when Emanuel Sussman, one of the licensees, was nearby. Thereafter, Bobby was served with a glass of beer while in the company of two other men. At this time Bobby appeared to be intoxicated.

"As to Leo ---, the agents testified as follows: he was seated at the bar with his head apparently resting thereon mumbling, bobbing, weaving and apparently in danger of falling off the stool upon which he was seated. Leo ordered a drink of whiskey from Charles Lorenzo, one of the bartenders, at the same time telling the bartender: 'I am getting drunk. I'm going home and raise hell.' One of the agents then said to Lorenzo: 'This man is drunk. He is bobbing and weaving and about to fall off the stool.' Lorenzo replied: 'He is all right. He ain't going to fall off.' Lorenzo then served Leo with a drink of whiskey.

"After Leo drank part of his whiskey and Bobby drank part of his beer, the agents disclosed their identity to Leo, Bobby and the two licensees who were present and stated to such licensees that Leo and Bobby are intoxicated. Leo and Bobby were asked to walk a straight line which they attempted to do in the presence of both licensees, but were unable to because both staggered. At this juncture, both licensees agreed with the agents' conclusions that Leo and Bobby appeared to be intoxicated. Sussman added that he had observed Bobby and that it was the last drink Bobby would receive.

"Leo was uncooperative and staggered out of the premises. At the request of the agents, the licensees and Bobby accompanied them to a rear room. An agent held Bobby by the arm to steady him. On the way, Patrick Carroll, special officer employed by the licensees, volunteered to take care of Bobby and assist him to leave. At the insistence of the agents, Carroll instead, helped Bobby to walk to the rear room.

"Confronted by Bobby at the hearing, one of the agents stated that he was more steady in his walk and did not stagger, although his eyes were still a little red.

"At the conclusion of the above testimony by the ABC agents, counsel for the licensees moved for the dismissal of the charge on the ground that there was no proof that these men were intoxicated or appeared to be intoxicated; that the amount of alcoholic beverages they are alleged to have consumed would not result in intoxication. I

recommend that such motion be denied for the reason that the evidence prima facie establishes that the three men were apparently intoxicated.

"Bobby, on behalf of the licensees, testified that he is 56 years of age, was formerly a professional boxer, and is 'punch drunk' and unsteady on his feet; that although he was in the tavern from about 8:00 p.m. until 10:40 p.m., he was sober throughout that time; that when standing, he had his hand on the bar but did not stagger and has no recollection of being incoherent in speech; that when accused in the rear room of being intoxicated, he made no response.

"Leo testified that he is 41 years of age, has artificial legs and deformed hands, a condition which he has had since birth, and hence, cannot walk in a straight line; that he had three drinks of whiskey on the evening in question and that he had his head on the palms of his hands because his eyes were bothering him and that he was not drunk. He denies that he told Lorenzo that he was drunk as testified to by the agents. He asserts that the agents questioned him in the men's rest room (both agents deny that such is the fact).

"Emanuel Sussman testified that the agents revealed their identity to him when they proclaimed that Leo and Bobby were drunk; that Bobby did not appear to be drunk but he considered him to be in his usual condition, and that he did not consider Leo to be intoxicated but crippled; that the agent did not ask Sussman the direct question whether Leo was drunk but merely made a statement to that effect; that the agent did not ask his opinion as to whether Bobby was drunk but the way he spoke they (the agents) must assume that the men were not drunk; that an agent asked: 'They're not going to be served any more, are they?', to which he replied: 'No, that is the end of it. I'm not going to let them sit here and drink after you accuse them of being drunk.'

"Jack Dobbs, the other licensee, testified that the agents never asked him whether he thought Leo and Bobby were intoxicated; that he told the agents: 'They're not drunk. He is a punch drunk fighter. That's the way he is normally,' and that he did not state that in his opinion these men were drunk or appeared to be, and he did not consider them to be in that condition.

"Patrick Carroll testified that although he accompanied Bobby to the rear room, he was not aware that Bobby and Leo were accused of being intoxicated until after the agents left the premises, when about 2:00 a.m., the licensees informed him of that fact, and that in his opinion neither Bobby nor Leo appeared to be intoxicated.

"The account of the agents as to what transpired on the evening in question is direct, logical and in conformity with the existing circumstances. On the other hand, the licensees seek to grasp at straws in asserting that Bobby's appearance is due to his being a 'punch drunk' person, and that Leo's actions are due to his being a cripple. There are other aspects than their walk which indicate that the two men were in an intoxicated condition. The agents' direct testimony that the two licensees agreed that such was the case is more believable than Sussman's version of their conversation with an indirect denial of the particular language attributed to him, or the denial by Dobbs that he was asked any such question.

"I am of the opinion that the preponderance of the evidence establishes that the licensees are guilty of the charge preferred herein and I recommend a finding to that effect.

"When the license for the premises was held by Emanuel Sussman and Hyman Sussman, their license was suspended effective

November 30, 1954 for one hundred eighty days for immoral activities (Re Sussman, Bulletin 1041, Item 2). Effective June 24, 1957, their license was suspended for thirty-five days for selling to intoxicated persons and for permitting obscene language and conduct (Re Sussman, Bulletin 1177, Item 1). Effective August 1, 1958 their license was suspended for thirty-five days for a violation similar to the one presently involved. (Re Sussman, Bulletin 1241, Item 5).

"Hence, aside from the suspension imposed in 1954 for a dissimilar violation, this is the third similar violation within a little over three years. Under the circumstances, I recommend that the defendants' license be suspended for sixty days. Re Starvaggi, Bulletin 1263, Item 7."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorney for defendant-licensees, pursuant to Rule 6 of State Regulation No. 16.

After carefully considering the entire record in this case, including the transcript of the testimony, the Hearer's Report, the exceptions and written argument filed herein, I concur in the Hearer's findings and adopt his recommendation and, hence, find the defendant-licensees guilty of the charge preferred herein.

Accordingly, it is, on the 22nd day of August 1960,

ORDERED that Plenary Retail Consumption License C-897 for the 1960-61 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Jack Dobbs and Emanuel Sussman, t/a Joe's Bar, for premises 111 Washington Street, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m., Monday, August 29, 1960 and terminating at 2:00 a.m., Friday, October 28, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - PERMITTING CONSUMPTION OF ALCOHOLIC BEVERAGES BY MINORS - DISCUSSION RE CATERER'S PERMIT - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Essex Fox Hounds)
Holland Road, Rt. #206)
Peapack-Gladstone)
PO Peapack, New Jersey)

CONCLUSIONS

and

ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Peapack-Gladstone.)

Wilentz, Goldman, Spitzer & Sills, Esqs., by David T. Wilentz, Esq., Attorneys for Defendant-licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- (1) permitting the consumption of alcoholic beverages by two minors,
- (2) sale of alcoholic beverages off the licensed premises, and
- (3) sale of alcoholic beverages after hours.

This case is unique and of novel impression. Although the holder of a plenary retail consumption license, the licensee is a private club devoted to hunting and other country sports. It has held a license since January 22, 1934, and has no previous adjudicated record. The license is confined to the clubhouse on the premises.

It appears from the statements made to ABC agents by the steward of the club that, some time in February or March of this year, arrangements were made with the club by the mothers of two debutantes for a party in their honor on the evening of June 17, 1960; that the ladies ordered a number of cases of alcoholic beverages from the steward, and a buffet supper, and that the steward was to furnish waiters and bartenders for the occasion. A marquee with a bar, tables, chairs and a band was set up on defendant's grounds. Among the guests were an eighteen-year and a nineteen-year old minor who consumed alcoholic beverages there and, according to these minors, they consumed their last drinks at about 4 a.m.

If the social affair had been held at a private home, the licensee could have sold alcoholic beverages by the bottle or case, as here, for off-premises consumption. Counsel for the licensee reports that the grounds were rented from the corporate owner of the property -- not the licensee. However, the employees of the licensee served as waiters off licensed premises. The licensee is not permitted to furnish and serve alcoholic beverages even in a private home at a social affair without obtaining a caterer's permit issued by this Division. If it had done so, the licensee's personnel undoubtedly would have realized that they were required to observe the same rules and regulation as if they were serving alcoholic beverages in licensed premises. It is obvious that the licensee acted in good faith and was unaware of the requirements of the Alcoholic Beverage Law and regulations.

Under the special circumstances in this case, I shall suspend the license for ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 22nd day of August 1960,

ORDERED that plenary retail consumption license C-3, issued by the Mayor and Council of the Borough of Peapack-Gladstone to Essex Fox Hounds, for premises on Holland Road, Rt. #206, Peapack-Gladstone, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, August 29, 1960, and terminating at 2 a.m. Saturday, September 3, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - CONTRACEPTIVES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Sidney Rosenkrantz
t/a Chicken Nest Tavern
205 Vanderpool Street
Newark 5, N. J.,

CONCLUSIONS

and

Holder of Plenary Retail Consumption License C-609, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

ORDER

Fred J. Kalisky, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that (1) he sold during prohibited hours an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) possessed contraceptive devices in his licensed premises, in violation of Rule 9 of State Regulation No. 20.

On Thursday, July 14, 1960, between 10:20 and 10:55 p.m., an ABC agent, while in defendant's licensed premises, observed the bartender make several sales of alcoholic beverages for off-premises consumption. At about 10:55 p.m. the bartender made a similar sale of a pint bottle of wine to the agent. The agent left the premises with the alcoholic beverage and immediately re-entered the same with another agent. The two agents identified themselves to the bartender who verbally admitted the aforesaid sale to the agent.

During the course of the inspection of the premises one of the agents found eleven contraceptive devices in a drawer of the back bar. At about 11:25 p.m. the licensee arrived at the premises and stated he was the owner of the contraceptives.

By way of mitigation the attorney for defendant has submitted a letter setting forth therein, among other things, that for the past eight years the licensee has operated a tavern with an unblemished record, and that he was unaware that possession of contraceptive devices on the licensed premises constituted a violation of the regulation. However, ignorance of the law or the regulation does not afford any excuse for the violation. Licensees and their employees must know the rules and scrupulously adhere to them. Cf. Re Krynicki, Bulletin 1238, Item 5.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of fifteen days on Charge 1 (Re Janulis, Bulletin 1346, Item 10), and for the minimum period of ten days on Charge 2 (cf. Re Alexis & Alexopoulos, Bulletin 1328, Item 8), making a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is on this 23rd day of August 1960,

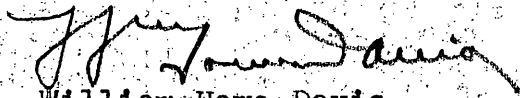
ORDERED that plenary retail consumption license C-609, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Sidney Rosenkrantz, t/a Chicken Nest Tavern, for premises 205 Vanderpool Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, August 30, 1960, and terminating at 2 a.m. Monday, September 19, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Rosa Wine Co.
830 Raymond Boulevard
Newark, New Jersey

Application filed October 10, 1960 for
Plenary Winery License.


William Howe Davis
Director