

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

BULLETIN 1292

August 13, 1959

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1. APPELLATE DECISIONS - WETTERLING v. LAKEWOOD

ALBERT WETTERLING, )  
t/a East Fourth Street Bar, )  
Appellant, ) ON APPEAL  
v. ) CONCLUSIONS  
TOWNSHIP COMMITTEE OF THE ) AND ORDER  
TOWNSHIP OF LAKEWOOD, )  
Respondent. )

-----  
Morton C. Steinberg, Esq., Attorney for Appellant.  
Julius Cohn, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has submitted the following Report herein:

"This is an appeal from the action of respondent whereby on November 26, 1958 it suspended appellant's license for a period of thirty days after finding him guilty on a charge alleging that he permitted the sale, service and delivery of an alcoholic beverage to a person actually or apparently intoxicated and did allow, permit and suffer the consumption of such beverage by said person in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20. Appellant's premises are located at 143 E. Fourth Street, Lakewood.

"Upon the filing of the appeal an order was entered by the Director on December 1, 1958 staying respondent's order of suspension until entry of a further order herein. R.S. 33:1-31.

"In his petition of appeal, appellant in substance, alleges that respondent's action was erroneous in that it was against the weight of the evidence and an abuse of its discretion; that the penalty was excessive; that the complaint was lodged by the Lakewood Police Department, the Commissioner of which, is a member of the local issuing authority and participated in the disciplinary proceedings against appellant, and that the alleged intoxicated person was apprehended by the police outside the licensed premises, then released and followed by the police into appellant's tavern. Respondent in its answer denies appellant's allegations.

"The hearing on appeal was held de novo pursuant to Rule 6 of State Regulation No. 15.

"Succinctly stated, the testimony adduced in support of the charge tends to show the following: At about 7:00 p.m., Wednesday, October 29, 1958, Harold Lane, a deputy sheriff of Ocean County, observed an apparently intoxicated male traversing Main Street in the vicinity of Madison Avenue in Lakewood and after notifying the local police by radio of the man's activities, went about his personal business. At about 9:30 p.m. the same evening, Lane was seated with two local police officers, Reese

and Friedman, in a patrol car which was parked on East Fourth Street about 60 feet from and facing appellant's licensed premises. Shortly before 10:00 p.m. the trio observed a man staggering along the street in the direction of appellant's tavern and Lane identified him to the officers as the man whom he had observed at 7:00 p.m. Friedman and Lane got out of the car and Friedman engaged the man in conversation, then permitted him to continue on his way. Lane departed for home. It appears that the man disappeared from the officers' view and that one of them inquired of a foot patrolman named Smoke, who was nearby, as to where the man went. The patrolman indicated that he had seen a man enter appellant's premises and Reese and Smoke proceeded to the front window thereof through which they peered and observed the barmaid place a bottle of ale and a glass on the bar in front of the apparent suspect, later identified as John McNeill. When McNeill was seen to sip some of the ale, Officers Reese and Smoke entered the premises where Reese informed the barmaid and the licensee's wife of the alleged violation and seized the bottle of ale and the glass that had been served to McNeill. McNeill was taken to police headquarters and then taken to a doctor's office to be examined as to his sobriety. Later he was returned to the police station, booked as a disorderly person and lodged in a cell where he remained for 48 hours. No charges were preferred against McNeill and he was released.

"Respondent submitted a true copy of the minutes of the special meeting of November 24, 1958 at which the charge against appellant was heard. The minutes which contain abstracts of testimony adduced before respondent were received in evidence.

"The principal witness for appellant was John McNeill who, in substance, testified that he was not in the vicinity of Main Street and Madison Avenue on the date alleged; that from 4:30 p.m. to a few minutes before 10:00 p.m. on that date, he was at home watching television and that because his landlady, Gloria Mitchell, wanted to view a western program, he went to appellant's tavern (located about 90 feet from and on the same side of the street as his residence) to view the Wednesday night fights, and that therein he was served a bottle of ale by the barmaid. As he poured the ale in a glass, a police officer tapped him on the shoulder and said: 'Come outside'; that he asked: 'What is this all about?' and was told: 'You will find out'; that Reese and Friedman took him to Dr. Szold who 'looked at my eyes and that was all'; that they then took him to the station house where he asked them to 'put the cards on the table and tell me what it's all about'; that Friedman said: 'Look, we ain't got nothing against you. What we got is against the East Side Bar'; that he then asked to be released and when Friedman wrote out a statement and asked him to sign it, he refused, saying: 'I don't see any reason why I should sign something against the East Side Bar because I don't think it is correct procedure where you are going by through me. I don't do things like that. The fellow didn't do anything to me and I have no reason to do anything to him. If you have anything against him, why take it out on me?' and that Friedman said: 'It could be anybody. It just happens to be you.' McNeill further testified that he was not under the influence of liquor and he denied that it was he who was stopped by the police between 9:30 and 10:00 p.m.

"The licensee's wife, the barmaid, and an off-duty bartender who were in the licensed premises at the time alleged, testified that McNeill was not under the influence of intoxicating liquor and the testimony of Gloria Mitchell, who is McNeill's

landlady, corroborates that of McNeill with respect to the hours during which he and she were watching television and as to the time at which, and the reason why, he went to appellant's premises. She also testified that during those hours McNeill had nothing to drink in her house and that he was sober.

"Prefacing the findings and conclusions in this case, it is deemed pertinent to state that while the rules governing the admission of evidence in disciplinary proceedings are not as strictly adhered to as they are in criminal proceedings, nevertheless, a finding of guilt in the former proceedings must be based upon legal evidence. Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1934). Since it has been established that '\* \* \* neither legal principle nor sound public policy will justify the admission of evidence given on a former trial, except in case of death or insanity of the witness, or where it appears at the time of trial that by reason of physical malady of a permanent character, he is unable to be examined, and that, by exercise of due diligence, his deposition could not have been taken,' Perry v. Mitchell, 34 N.J.L. 337; New York, Lake Erie & Western Railway Co. v. Haring, 47 N.J.L. 137; Cino v. Driscoll, supra, it is obvious that the testimony of Dr. Szold and Officer Friedman, reported in the minutes of respondent's meeting of November 24, 1958, cannot be considered in determining the question in issue on appeal. Neither witness was produced to testify at the hearing herein. Evaluating the testimony adduced herein, there is grave doubt that McNeill is the same person whom Lane and the police officers had observed staggering along East Fourth Street, for Lane testified that the intoxicated man was wearing a top coat and Smoke testified that the man whom he placed under arrest in the tavern was wearing a jacket. Furthermore, Reese testified that the man whom Friedman stopped disappeared from view, and Smoke testified that when Reese 'asked me if I had seen a man staggering up the street, I said: "Yes, I seen one man go inside the bar", because I did see a man go into the bar prior to that.' It should be noted that Lane and the officers observed an unidentified man and it is reasonable to infer that the officers, seeing McNeill at the bar, mistook him for the intoxicated person whom they had previously observed and who had apparently eluded them. In view of McNeill's denial that he was stopped by Friedman and considering his testimony generally, which is credible and convincing, as is the testimony of all of appellant's witnesses, I conclude that respondent has failed to establish the guilt of appellant by a fair preponderance of the believable evidence. Having so concluded, it is unnecessary to consider the other points raised by appellant in his petition of appeal. I recommend that an order be entered reversing respondent's action and dismissing the charge."

Pursuant to Rule 14 of State Regulation No. 15, oral argument respecting the issue on appeal was heard by me on June 9, 1959.

Having carefully considered the record herein, including the transcript of the testimony, the minutes of respondent's meeting of November 24, 1958, the Hearer's Report and the oral argument before me, I am not in accord with the Hearer's findings and recommendation. The testimony of Dr. Szold reported in the aforesaid minutes should have been considered by the Hearer. The minutes were admitted in evidence in this appeal and thus are part of the record in these proceedings and it appears therefrom that John McNeill was examined by Dr. Szold who found him to be under the influence of intoxicating liquor and so testified at

the hearing below and was cross-examined by defendant's counsel. In my judgment, the medical findings of Dr. Szold fortify the testimony adduced before the Hearer which, of itself, would justify a finding of defendant's guilt.

There is no merit to appellant's ground of appeal which alleges that respondent's action was erroneous because the complaint was made by the Lakewood Police Department and that the Police Commissioner participated in the proceedings below. The Police Commissioner, who is one of the members of respondent Township Committee, the local issuing authority charged with the duty of hearing disciplinary proceedings against its licensees, is not disqualified from participating and voting in such proceedings merely because the police department, which he heads, is the complainant in the proceeding. Indeed he would not have been disqualified if he, as Police Commissioner, had made the complaint. Mackler v. Bd. of Education of City of Camden, 16 N.J. 362 (Sup. Ct. 1954); Gross v. N. J. State Board of Optometrists, 11 N.J. Misc. 485 (Sup. Ct. 1933). There is nothing in the record to indicate that he had any "personal" interest in these proceedings.

I find appellant guilty as charged and shall, therefore, affirm respondent's action and re-instate the thirty-day penalty which, in my opinion, is not unreasonable.

Accordingly, it is, on this 6th day of July 1959,

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

ORDERED that the thirty-day suspension by respondent of appellant's 1958-59 plenary retail consumption license C-12 for premises 143 E. 4th Street, Lakewood, be and the same is hereby restored and reimposed against appellant's 1959-60 plenary retail consumption license C-12 for the same premises, to commence at 2:00 a.m., Monday, July 13, 1959 and terminating at 2:00 a.m., Wednesday, August 12, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

2. APPELLATE DECISIONS - WARSHAW v. LONG BRANCH

CHARLES WARSHAW, t/a LIBERTY BAR, )  
 Appellant, )  
 v. ) ORDER OF DISCONTINUANCE  
 BOARD OF COMMISSIONERS OF THE CITY )  
 OF LONG BRANCH, )  
 Respondent.

-----  
 Solomon Tepper, Esq., Attorney for Appellant.  
 Julius J. Golden, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The attorneys for the respective parties hereto having stipulated to discontinue the within appeal (because the appellant's application for transfer of his liquor license has been granted by the respondent) and no reason appearing to the contrary,

It is, on this 7th day of July 1959,

ORDERED that the within appeal be and the same is hereby discontinued.

WILLIAM HOWE DAVIS  
 DIRECTOR

3. STATE REGULATION NO. 23 - POSSIBLE AMENDMENT CONCERNING HALF-PINTS - PUBLIC HEARING - OPENING STATEMENT.

In the notice of this public hearing, I pointed out that (1) certain types of alcoholic beverages may be packaged in half-pints under the regulation as it has stood for many, many years; (2) within recent years a problem has arisen because of the introduction into our market of new types of alcoholic beverages packaged in half-pints; (3) opinions differ widely with respect to the proper disposition of the problem. For example, some favor the reduction of the standard of fill for distilled spirits to a half-pint while others prefer the elimination of the half-pint as a permissible size for all alcoholic beverages except wines, champagnes and malt alcoholic beverages; and (4) the purpose of this hearing is to afford the industry and the public opportunity to express their views on the advisability of amending State Regulation No. 23 so as to change the minimum standard of fill for all alcoholic beverages except wines, champagnes and malt alcoholic beverages, particularly with respect to the half-pint as a permissible standard of fill.

I want to make it clear that no change is contemplated in the regulation with respect to so-called "nips" which are permitted to be sold to and by plenary retail transit licensees only, i.e., railroad trains, airplanes and boats, while in transit. R.S. 33:1-12(4). Consequently, the sale of "nips" is not a proper subject of discussion at this hearing.

All persons wishing to be heard may orally address this hearing for not longer than ten minutes, but will be afforded the further privilege of submitting to me a written extension of remarks not later than August 18, 1959.

So that all topics may be fully covered, every effort should be made to avoid repetition. If someone has previously expressed your view, you may best indicate that fact by so informing me in writing. Your cooperation in helping to make this an orderly proceeding will be greatly appreciated.

WILLIAM HOWE DAVIS  
DIRECTOR

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- 4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - CONDUCTING BUSINESS IN VIOLATION OF LOCAL REGULATION - EMPLOYING BARTENDER WITHOUT IDENTIFICATION CARD REQUIRED BY LOCAL REGULATION - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against

TUBE BAR, INC.  
12 Tube Concourse  
Jersey City, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-184 for the 1958-59 and 1959-60 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

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O'Mara, Schumann, Davis & Lynch, Esqs., by Edward J. O'Mara, Esq., Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the 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 Sunday, September 28, 1958, at about 1:35 P.M., 2:05 P.M. and 2:47 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
- '2. On Sunday, September 28, 1958, you conducted your licensed business without having a photo-static or other true copy of your application for your current license on the licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20.
- '3. On Sunday, September 28, 1958, you engaged and employed on your licensed premises in connection with your licensed business as bartenders two persons known as John ~~Bowe~~ and John Winters for whom you did not have on file on your premises for exhibition at the time demanded identification cards issued by the Department of Public Safety of the City of Jersey City in conformity with Sections 13

and 14 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950; in violation of Section 15 of said Ordinance.

4. On Sunday, September 28, 1958, you through your agents, servants and employees, 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 made 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.'

"Two ABC agents (hereinafter referred to as Agent S and Agent H) were called as witnesses for the Division. Agent S testified that at approximately 1:15 p.m. on Sunday, September 28, 1958, he and Agent H entered defendant's licensed premises; that he observed a man (subsequently identified as Mortimer Lee, the manager of the establishment) and two bartenders (subsequently identified as John Bowe and John Winters) on the premises at the time; that at 1:35 p.m., Bowe went to a cooler, obtained three six-packs containing cans of Ballantine beer therefrom, put them in a paper bag and placed the package in front of a patron who was seated at the bar; that the patron gave him a sum of money which Bowe rang up on the cash register; that shortly thereafter, the patron left the premises with the beer; that at 2:05 p.m., Winters obtained a quart bottle of Seagram's whiskey and, after placing the bottle in a bag, he put it in front of a patron seated at the bar; that the patron gave Winters a sum of money and Winters then rang up an amount on the cash register; that at 2:10 p.m., the man picked up the bag containing the bottle of whiskey from a counter where he had previously placed it and left the premises; that at 2:20 p.m., Agent H asked Winters for 'a pint of Four Roses to go'; that Winters asked Lee to come over and then said, 'He (meaning Agent H) wants a pint of Four Roses to go', to which Lee replied, 'No. We don't sell on Sundays'; that at 2:47 p.m. Bowe took a six-pack of Schaefer beer from a cooler, put it in a paper bag and placed the bag in front of a man (subsequently identified as William Stout), then picked up a bag containing a loaf of bread which Stout had on the bar and placed this bag in the bag containing the beer; that Stout left the premises with the beer and bread, followed by Agent H and himself (Agent S); that when outside the premises, he and Agent H identified themselves to Stout and the three then returned to defendant's premises; that he (Agent S) and Agent H identified themselves to Lee, Bowe and Winters; that Stout pointed to Bowe and said he obtained the beer from him, although he had not paid for it, to which Bowe said, 'He didn't get it here'; that he (Agent S) then asked the bartenders for their names and, in response thereto, the bartenders stated that they would not give their names unless told to do so by the proper authorities; that he (Agent S) told the bartenders that, 'We are the proper authorities', but they still refused to divulge their names; that he (Agent S) and Agent H asked Lee to obtain the bartenders' names but he stated, 'What can I do if they don't want to give their names? I can't make them'; that he (Agent S) then telephoned to the local police for assistance and when two police officers arrived, the agents informed them that they desired to obtain the names of the bartenders and the officers accompanied the agents to the bartenders who, when requested by the police officers, divulged their names to the agents; that the agents asked Lee and the bartenders for the copy of the license application and the permits

issued by the local issuing authority to the bartenders, and the three employees of defendant stated that the documents were in a locked drawer for which no one had the key; that although fifty-five minutes elapsed from the time of request for the application and permits and the agents' departure from the premises, the documents were not made available for inspection.

"Agent H corroborated, in substance, the testimony of Agent S.

"John Bowe testified that although he had been on duty on the afternoon of September 28, 1958, he did not sell three six-packs of beer to a patron at 1:35 p.m. or a six-pack of Schaefer beer to Stout; that insofar as Stout was concerned, he had not seen him until after 'three o'clock' when he was brought into the premises by the agents; that Agent H called him and, after showing his credentials, accused him (Bowe) of holding a package for Stout which he (Bowe) denied; that he was not asked for his name until Officer Felmlly suggested that he tell it to the agents.

"John Winters testified that he was tending bar on September 28, 1958 but that no person other than one of the agents asked for a bottle of whiskey; that he told the agent that, 'We don't sell stuff on Sunday' and, when asked by the agent who was in charge there, pointed out Lee, the manager; that when Lee came over he (Winters) told him of the agents' request and Lee said, 'No, we don't sell nothing on Sundays. We don't sell a thing'; that the agent again asked whether there was a chance of getting a bottle and, when he (Winters) again said, 'No, absolutely no', the agents left the premises; that about '10, 12, 13 minutes' later they brought Stout back and one agent came over to him (Winters) and asked for his name and address; that he (Winters) asked who they were and when told, 'We are ABC agents', he said to them, 'I don't know about that. I never seen you fellows in my life. I don't give my name out to strangers'; that they asked for his (Winters) 'I.D. card' and he told the agent that it was locked in a drawer and that the owner, who was the only one who had a key, was not around; that the next thing he knew the police officers were there and, when Officer Felmlly told him to give his name and said he had seen their credentials, he gave his name and address to them.

"Mortimer Lee, manager of the defendant's establishment, testified that he recalled the bartender calling him over when one of the agents wanted a pint of Four Roses whiskey to take out and that he said, 'What is the use of calling me? You know we don't sell on Sundays'; that he remembered the agents bringing Stout into the premises and that Stout said he did not obtain the beer in defendant's premises; that the agents stated that they were ABC agents but he (Lee) did not believe them; that between 20 and 25 minutes thereafter, the police arrived; that prior to the arrival of the police, he did not observe or hear the agents ask Bowe or Winters for their names; that he told the agents his name as manager and also the name of Louis Deutsch as the owner and, when the agents asked him for the names of the bartenders, he (Lee) said, 'Ask them' and then said, 'If they won't give it to you I can't give it to you either'; that when the agents threatened to call the police, he said, 'Go ahead, it is all right with me'; that when the agents asked about the license application and work permits, he told them that everything was in the drawer and that he couldn't produce them.

"William Stout testified that on Sunday morning, September 28, 1958, he sought employment at the Hotel Wales on 92nd Street and Madison Avenue, New York; that 'around half-past one, a quarter to two', after leaving the hotel, he stopped at a delicatessen store on 89th Street and Third Avenue where he

purchased a six-pack of beer; that he rode the subway and then the Hudson Tubes, arriving in Jersey City in 'half an hour'; that he stopped at a supermarket across from defendant's premises, purchased 'a loaf of bread and quarter-pound of butter' and proceeded across the street to purchase something 'in the fruit store' when the two agents asked him what the bag contained and then took him into the Tube Bar; that he denied purchasing the beer there; that he did not believe he was asked or did he tell the agents where he purchased the beer. During cross-examination by the attorney appearing for the Division, Stout testified that it was 4½ years since he had purchased anything at the delicatessen in New York where he obtained the beer on the day in question.

"Harold J. Felmly testified that he is a police officer and he and Officer Timothy McCarthy were directed to go to the defendant's premises, arriving there about 3:05 p.m.; that the two agents approached him, identified themselves and stated the bartenders had refused to divulge their names and that Lee was uncooperative; that Lee claimed he was not aware the men were agents; that he suggested since Lee saw the agents show their credentials to him (Felmly) he cooperate with the agents and Lee assured him he would; that he (Felmly) then told Winters to give his name to one of the agents; that he also spoke to Bowe who claimed he was not asked by the agents to give his name.

"Timothy J. McCarthy, the other police officer, by stipulation corroborated the testimony of his fellow-officer, except that in cross-examination he had no recollection as to what Bowe said when asked by McCarthy whether Bowe had refused to state his name to the agents.

"Agent S testified on redirect examination that when they entered he and Agent H showed their credentials to Lee and, when the bartenders were called over, showed them their credentials.

"The testimony of the agents and of the bartenders and manager of defendant's premises, respectively, is very conflicting. On the one hand, there is the agents' account of what occurred on the defendant's licensed premises and their testimony that they followed Stout outside the establishment, returned with him to the premises and, after identifying themselves, confronted the manager and the bartenders with the alleged violation; that Stout pointed to Bowe as the man who gave him the beer. At the hearing Stout claims that he purchased the beer in New York City and tells an unbelievable story that on a Sunday morning he was in search of employment at a hotel before purchasing beer at a delicatessen store; that this is the first time in years that he had been to the hotel at which he claimed he had been employed many years ago. I would have to be naive indeed to accept such an account as given by Stout of his activities on the day in question. The agents told a straightforward story of observing the two prior sales by Winters and Bowe of alcoholic beverages in original containers for off-premises consumption. The mere fact that one of the agents was refused a pint of whiskey by the manager does not, in any manner, alter the situation regarding the other sales of bottled goods during the afternoon pursuant to the agents' testimony.

"The agents testified that they showed their credentials to Lee, Bowe and Winters but, despite that fact, the bartenders refused to divulge their names and addresses and, when they appealed to Lee, he refused to give the names of the bartenders although, as manager, he was in charge of the establishment. It was necessary for the agents to summon the police in order

that they might obtain the necessary information.

"There is no dispute that the copy of the license application and the identification cards issued locally to the bartenders were not made available to the agents. It was subsequently ascertained that the bartenders had, previous to the day in question, been issued identification cards by the Department of Public Safety of Jersey City.

"Defendant has no prior adjudicated record. I recommend that defendant be found guilty of all the charges preferred herein. I further recommend that its license be suspended on Charge 1 for fifteen days (Re Bunce, Bulletin 1273, Item 4) and on Charges 2, 3 and 4 (which shall be considered as one violation for the purpose of penalty) for ten days (Re Lorenzo, Bulletin 1132, Item 4), making a total suspension of twenty-five days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorneys for the defendant, pursuant to Rule 6 of State Regulation No. 16.

I have carefully examined the evidence herein, the memorandum filed by the defendant's attorney, the Hearer's Report and the exceptions and written argument, and am satisfied that the Hearer's recommendation should not be disturbed. I adopt the Hearer's conclusions as my conclusions herein. Hence, I find the defendant guilty as charged, and shall suspend its license for twenty-five days.

Accordingly, it is, on this 7th day of July, 1959,

ORDERED that Plenary Retail Consumption License C-184 for the 1959-60 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Tube Bar, Inc., for premises 12 Tube Concourse, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, July 20, 1959, and terminating at 2:00 a.m., Friday, August 14, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

5.

ACTIVITY REPORT FOR JULY 1959

<b>ARRESTS:</b>		
Total number of persons arrested	-----	43
Licensees and employees	----- 19	
Bootleggers	----- 24	
<b>SEIZURES:</b>		
Motor vehicles - cars	-----	4
- trucks	-----	1
Distilled alcoholic beverages - gallons	-----	35.61
Wine - gallons	-----	7.95
Brewed malt alcoholic beverages - gallons	-----	106.39
<b>RETAIL LICENSEES:</b>		
Premises inspected	-----	563
Premises where alcoholic beverages were gauged	-----	412
Bottles gauged	-----	7,500
Premises where violations were found	-----	64
Violations found	-----	105
Unqualified employees	----- 75	
Application copy not available	----- 19	Improper beer taps ----- 1
Reg. #38 sign not posted	----- 5	Disposal permit necessary ----- 1
Prohibited signs	----- 1	Other violations ----- 3
<b>STATE LICENSEES:</b>		
Premises inspected	-----	15
License applications investigated	-----	11
<b>COMPLAINTS:</b>		
Complaints assigned for investigation	-----	512
Investigations completed	-----	467
Investigations pending	-----	194
<b>LABORATORY:</b>		
Analyses made	-----	400
Refills from licensed premises - bottles	-----	90
Bottles from unlicensed premises	-----	60
<b>IDENTIFICATION:</b>		
Criminal fingerprint identifications made	-----	30
Persons fingerprinted for non-criminal purposes	-----	408
Identification contacts made with other enforcement agencies	-----	328
Motor vehicle identifications via N. J. State Police teletype	-----	4
<b>DISCIPLINARY PROCEEDINGS:</b>		
Cases transmitted to municipalities	-----	10
Violations involved	-----	12
Sale during prohibited hours	----- 6	
Sale to minors	----- 4	
Failure to close premises during prohibited hours	----- 2	
Cases instituted at Division	-----	39
Violations involved	-----	48
Sale to minors	----- 12	Failure to file tax reports ----- 1
Possessing liquor not truly labeled	----- 8	Retailer to retailer sales ----- 1
Sale during prohibited hours	----- 7	Sale below minimum resale price ----- 1
Permitting lottery activity (wagering, drawing, numbers) on premises	----- 4	Permitting bookmaking on premises ----- 1
Conducting business as a nuisance	----- 3	Sale on credit to retailer in default ----- 1
Permitting immoral activity on prem.	----- 2	Hindering investigation ----- 1
Mislabeling beer taps	----- 1	Solr-permittee engaging in conduct prohibited to employer ----- 1
Possessing contraceptives on premises	----- 1	Aiding and abetting unauthorized sale ----- 1
Purchase from improper source	----- 1	Possessing indecent matter ----- 1
Cases brought by municipalities on own initiative and reported to Division	-----	16
Violations involved	-----	18
Sale to minors	----- 11	Permitting prostitutes on premises ----- 1
Permitting brawls on premises	----- 2	Permitting bookmaking on premises ----- 1
Hindering investigation	----- 1	Failure to close premises during prohibited hours ----- 1
Sale to intoxicated persons	----- 1	
<b>HEARINGS HELD AT DIVISION:</b>		
Total number of hearings held	-----	48
Appeals	----- 7	
Disciplinary proceedings	----- 32	
Eligibility	----- 3	
Seizures	----- 6	
<b>STATE LICENSES AND PERMITS ISSUED:</b>		
Total number issued	-----	2,293
Licenses	----- 601	Social affair permits ----- 397
Employment permits	----- 405	Miscellaneous " ----- 251
Solicitors'	----- 101	Transit insignia ----- 397
Disposal "	----- 103	Transit certificates ----- 38

Dated: August 4, 1959

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION (FAILURE TO DISCLOSE CONVICTION NOT INVOLVING MORAL TURPITUDE) - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

BOYSEN'S SUNSET TAVERN, INC. )  
Sunset Avenue, Madison Township )  
PO Old Bridge, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2 (for the 1958-59 and 1959-60 licensing years), issued by the Township Committee of the Township of Madison. )

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Benjamin Kleinberg, Esq., Attorney for Defendant-licensee  
Davis S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The following charge was preferred against the defendant:

"In your application dated May 23, 1958, filed with the Madison Township Committee, upon which you obtained your current plenary retail consumption license, in answer to Question 33 you evaded and suppressed the material fact that your president and treasurer, Melvin Boysen, Sr., had been convicted on February 21, 1930 in the Middlesex County Court of Quarter Sessions of the crimes of breaking and entering and larceny; said evasion and suppression of fact being in violation of R.S. 33:1-25."

Defendant entered a "technical" plea of not guilty to the charge herein solely for the purpose of questioning whether the convictions of Melvin Boysen, president and treasurer of defendant corporate-licensee, involved the element of moral turpitude. If so, defendant is disqualified from being connected in any way with the alcoholic beverage industry in New Jersey. R.S. 33:1-25.

It appears from a baptismal certificate submitted by defendant's attorney that Boysen was 17 years of age when, on January 25, 1930, he was charged with the crimes of breaking and entering and larceny. On February 21, 1930 he pleaded guilty to said charges and, as a result thereof, was placed on probation for three years and fined \$100.

On October 19, 1956 Boysen pleaded non vult to a violation of the Workmen's Compensation Act, as a result of which he was placed on probation for one year and ordered to settle a judgment of \$4,106.04. (This conviction was set up by defendant in the license application in question.) It appears from information received at this Division that Boysen had failed to provide compensation insurance for an employee who was injured while working for him. The statute with reference thereto makes an employer who fails to provide protection for the benefit of his employees guilty of a misdemeanor. R.S. 34:15-79. However, I am satisfied that said crime to which Boysen pleaded non vult does not involve the element of moral turpitude.

The question therefore remains as to whether the crimes of which Boysen was convicted while 17 years of age involve moral turpitude. Generally, the crimes of breaking and entering and larceny per se involve moral turpitude when committed by an adult. Re Case No. 1232, Bulletin 1077, Item 10. However, where the age of the offender is under 18 years when the crime was committed, the crime may or may not involve moral turpitude, depending upon the surrounding circumstances and seriousness of the particular offense. See Re Case No. 36, Bulletin 149, Item 1; Re Case No. 146, Bulletin 167, Item 4. Cf. Case No. 72, Bulletin 375, Item 6 and Case No. 619, Bulletin 943, Item 10, which imposed the additional requirement that the individual have no other criminal record, but which I feel should no longer be followed as precedent.

In the instant case, the file discloses that Boysen was convicted of stealing various items of merchandise from several commercial buildings during a one month period while he was 17½ years of age. He was not committed to jail. There is no indication that any aggravating circumstances were involved. In view of these considerations, I find that the crime in question did not involve moral turpitude.

While it appears that Boysen is not thus disqualified by statute from being associated with the alcoholic beverage industry in this State, the failure to disclose the 1930 convictions is a serious violation because the suppression of said fact deprived the local issuing authority of pertinent information to guide it in determining whether Boysen is a fit person to have an interest in a liquor license in this State.

Defendant has a prior adjudicated record. Effective November 28, 1955, its license was suspended by the Director for 45 days for (a) allowing immoral activities on the licensed premises; (b) allowing hostess activity on the licensed premises; (c) sale to an intoxicated person and (d) sale to minors. See Bulletin 1090, Item 1. Effective September 3, 1957 its license was suspended by the local issuing authority for 30 days for (a) permitting a brawl on the licensed premises and (b) and (c) "hours" violations. Effective February 10, 1959 its license was suspended by the Director for 55 days for (a) sales to intoxicated persons; (b) employment of a 15 year old minor on the licensed premises and (c) failure to disclose a prior record in its application pursuant to which it received its current liquor license. See Bulletin 1266, Item 1.

The instant charge refers to the failure to disclose Boysen's criminal record in full, whereas the previous charge for fraud in the same application was based upon the suppression of the fact that its license had been suspended on another occasion than that divulged therein. When suspension was imposed in the prior case, the defendant's past record was taken into consideration. Under the circumstances, I shall consider the present charge as supplemental in nature and, by reason thereof, shall impose only the minimum penalty for a failure to disclose a criminal record wherein the crime committed did not involve the element of moral turpitude. I shall suspend defendant's license for a period of fifteen days. Re 279-10 Inc., Bulletin 1132, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 8th day of July, 1959,

ORDERED that plenary retail consumption license C-2

(for the 1959-60 licensing year), issued by the Township Committee of the Township of Madison to Boysen's Sunset Tavern, Inc., t/a Boysen's Sunset Tavern, Inc., for premises on Sunset Avenue, Madison Township, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, July 20, 1959, and terminating at 2 a.m. Thursday, July 30, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

FRED & FLORENCE KRONENWETT )  
t/a NEW BARREL TAVERN )  
13 - 16th Avenue )  
Newark 3, N. J. )

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Consumption License C-203 (for the 1958-59 and 1959-60 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

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Lesnik & Amoscato, Esqs., by Russell H. Hulsizer, Esq., Attorneys for Defendant-licensees  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they sold alcoholic beverages to three minors and permitted the consumption of such beverages by said minors in defendants' licensed premises, in violation of Rule 1 of State Regulation No. 20.

Acting upon information received from the Irvington Police Department, ABC agents obtained signed, sworn statements from Robert H--- (age 20), Robert N--- (age 19) and Henry--- (age 17). From these statements it appears that they entered defendants' premises between 8:30 p.m. and 9 p.m. on Saturday, May 23, 1959; that they remained there for one or two hours and that Fred Kronenwett (one of the licensees) was acting as bartender. In his statement Robert H--- says that he consumed twelve drinks and that most of them were "screwdrivers" or whiskey and soda which were served by the bartender, who did not question him as to his age. In his statement Robert N--- says that he consumed about four "screwdrivers" and four drinks of whiskey and soda which were served by the bartender, who did not question him as to his age. In his statement Henry--- says that he ordered a beer but that the bartender refused to serve him until after he displayed a false identification card indicating that the holder thereof was over 21 years of age and that, thereafter, he consumed about three glasses of beer and two "screwdrivers" which were served by the bartender.

In a statement obtained from Fred Kronenwett, he admits that he served some alcoholic beverages to each of the three minors on the evening in question but states that he served five drinks to Robert H---, five drinks to Robert N--- and four drinks to Henry---. He further states that he did not question Robert H--- as to his age because he appeared to be over the age of 21 and that both Robert N--- and Henry--- displayed false identification

cards before he served them.

Defendants have no prior adjudicated record. As mitigating circumstances, the attorney for defendants states that defendants have a clear record during the seventeen years they have conducted licensed premises and that two of the minors displayed false identification cards. As to the latter claim, I find that only the 17-year-old minor was questioned and displayed such a card. The minimum penalty for an unaggravated sale of alcoholic beverages to three minors, one of whom is only seventeen years of age, is twenty-five days. Re Shady Hollow Farms, Inc., Bulletin 1204, Item 3. However, considering the large number of drinks sold to and consumed by the minors, the case is deemed aggravated and accordingly five days will be added (cf. Great Cove Park, A New Jersey Corp., Bulletin 1130, Item 3) and I shall suspend defendants' license for thirty days. Five days will be remitted for the plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 8th day of July, 1959,

ORDERED that plenary retail consumption license C-203 (for the 1959-60 licensing year), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Fred & Florence Kronenwett, t/a New Barrel Tavern, for premises 13 - 16th Avenue, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, July 20, 1959, and terminating at 2 a.m. Friday, August 14, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE BY RETAILER TO RETAILER - UNLAWFUL TRANSPORTATION - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MICHAEL A. BARONE AND FRANK A. COLICCHIO,  
t/a THE SAVOY  
1041-43 E. Grand Street  
Elizabeth 4, N. J.

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Consumption License C-38 (for the 1958-59 and 1959-60 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.

Ronald F. Esposito, Esq., Attorney for Defendant-licensees  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

- "1. On April 16, 1959, you, holders as partners of a New Jersey Plenary retail consumption license without authority of special permit first obtained from the Division of Alcoholic Beverage Control, sold a case of Four Roses Blended Whiskey, an alcoholic beverage, to Alfonso Colicchio, t/a Zeeny's Tavern, holder of a plenary retail consumption license for premises 621 Second

Avenue, Elizabeth, New Jersey; in violation of Rule 15 of State Regulation No. 20.

"2. On April 16, 1959, you transported alcoholic beverages, viz., the aforementioned case of Four Roses Blended Whiskey, in a vehicle having no transit insignia affixed thereto or inscription painted thereon, as provided by Rule 12 of State Regulation No. 17; in violation of Rule 2 of State Regulation No. 17."

On April 16, 1959, defendants sold a case of Four Roses Blended Whiskey to another retail licensee without obtaining a special permit from the Division of Alcoholic Beverage Control. Furthermore, the vehicle in which defendants transported the said case of whiskey had no transit insignia affixed thereto or inscription painted thereon as provided by Rule 12 of State Regulation No. 17.

Defendants have a prior adjudicated record. Effective September 28, 1958, their license was suspended for five days by the local issuing authority for conducting their business in such a manner so as to constitute a nuisance. The minimum penalty for the violation committed herein is twenty days (Re DeFilippis, Bulletin 1203, Item 11). In view of defendants' dissimilar record occurring within the past five years, I shall suspend their license for 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 9th day of July, 1959,

ORDERED that plenary retail consumption license C-38 issued for the 1959-60 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Michael A. Barone and Frank A. Colicchio, t/a The Savoy, for premises 1041-43 E. Grand Street, Elizabeth, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, July 21, 1959, and terminating at 2 a.m. Monday, August 10, 1959.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Joseph H. Reinfield, Inc.  
591-629 Rahway Avenue  
Union, New Jersey

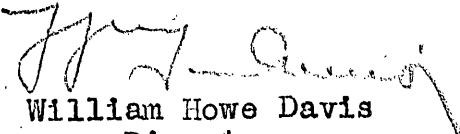
Application filed August 12, 1959 for place-to-place transfer of Plenary Wholesale License W-11 from 461-67 Frelinghuysen Avenue, Newark, New Jersey

Majestic Wine & Spirits, Inc.  
1423 Ferry Avenue  
Camden, New Jersey

Application filed August 12, 1959 for Additional Salesroom license on Plenary Wholesale License W-110, at 591-629 Rahway Avenue, Union, New Jersey

Baxter Warehouse Corporation  
591-629 Rahway Avenue  
Union, New Jersey

Application filed August 12, 1959 for Plenary Wholesale License

  
William Howe Davis  
Director