

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

July 5, 1960

BULLETIN 1343

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1. COURT DECISIONS - ZELKO v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWNSHIP OF HILLSIDE, SUNSET LANES INC. AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED (Case Nos. 1 and 2).

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-204-59

STEVEN ZELKO and JOHN ZELKO, Jr.,)
trading as ELMER'S TAVERN,)

Appellants,)

vs.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE TOWNSHIP)
OF HILLSIDE, and SUNSET LANES,)
INC. and DIVISION OF ALCOHOLIC)
BEVERAGE CONTROL,)

Respondents.)

[No. 2645--Case No. 1]
-----)

STEVEN ZELKO and JOHN ZELKO, Jr.,)
trading as ELMER'S TAVERN,)

Appellants,)

vs.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE TOWNSHIP)
OF HILLSIDE, and SUNSET LANES,)
INC. and DIVISION OF ALCOHOLIC)
BEVERAGE CONTROL,)

Respondents.)

[No. 2680--Case No. 2]
-----)

Argued June 1, 1960 -- Decided June 13, 1960

Before Judges Price, Gaulkin and Sullivan.

Mr. Arthur E. Dienst argued the cause for appellants.

Mr. Robert Diamond argued the cause for respondent,
Municipal Board of Alcoholic Beverage Control of
the Township of Hillside.

Mr. Samuel A. Larner argued the cause for respondent,
Sunset Lanes, Inc. (Messrs. Budd, Larner & Kent, attorneys).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the
cause for respondent, Division of Alcoholic Beverage Control
(Mr. David D. Furman, Attorney General, Attorney).

SULLIVAN, J.A.D.

This is an appeal from a determination by the Director of the Division of Alcoholic Beverage Control, Department of Law and Public Safety, State of New Jersey (hereinafter called the Director), who, subject to a condition hereinafter noted, affirmed rulings by the Municipal Board of Alcoholic Beverage Control of the Township of Hillside (hereinafter called the Municipal Board).

On February 9, 1959, after lengthy hearings at which appellants, the owners of a tavern some 600 feet away from the premises in question appeared as the sole objectors, the Municipal Board approved the application of Sunset Lanes, Inc., for the transfer of a plenary retail consumption license to certain premises then under construction on Route 22, Hillside, New Jersey. The approval was subject to actual completion of the building and the issuance of a certificate of occupancy therefor. On May 11, 1959, when it appeared that said building would not be completed by June 30, 1959 (the expiration date of the license), the Municipal Board provided that the transfer would be effective as of June 30, 1959, for the sole purpose of permitting a renewal of said license. Accordingly, on June 1, 1959, and over the objection of appellants, the application of the licensee for a renewal of said license was granted.

Appellants appealed the Municipal Board's rulings to the Director, who after further hearing approved the transfer of the license and also approved its renewal subject to the condition that the license should not be actually issued unless and until the building was completed and a certificate of occupancy issued therefor.

The application of Sunset Lanes, Inc., showed that it proposed to erect a building in which bowling alleys, restaurant and cocktail lounge were to be housed. The premises were zoned for these uses so that no variance was required. However, it was necessary to have municipal approval of a subdivision of the property which was duly obtained and a building permit issued. In due course, and despite numerous legal maneuvers by appellants, the building has been completed, a certificate of occupancy issued, and the premises are in use.

The Director, in affirming the Municipal Board, held that the matter of a transfer was in the sound discretion of the issuing authority and that appellants had failed to sustain the burden of proof that the local board had abused its discretion. As to the renewal of said license the Director held that the procedure adopted by the Board on May 11, 1959, and June 1, 1959, was proper under the circumstance of the case.

Appellants' argument on this appeal presents three main points:

1. No need for another license in the neighborhood was proven.
2. The transfer is against the best interests of the community because:
 - (a) it would aggravate a dangerous traffic hazard;
 - (b) the representation of the licensee by the local magistrate as its registered agent raised a serious question of untoward impropriety, if not corruption.
3. The applicants did not meet the ordinance regulations and statutory requirements for the transfers sought in that:

- (a) the plans of the proposed building did not accompany the application;
- (b) the plans accompanying the application were not drawn to scale;
- (c) there is no full view of the interior of the licensed premises;
- (d) the applicant did not show any right to occupy the premises;
- (e) there was insufficient provision for off-street parking.

All of these matters were heard at length before the Municipal Board as well as the Director and were resolved adversely to appellants.

We have reviewed the entire record and come to the conclusion that none of the objections presented by appellants has any merit. In the main, the application for the transfer was a matter for decision by the Municipal Board based on all the relevant factors and considerations. Lubliner v. Board of Alcoholic Beverage Control, 59 N.J. Super 419 (App. Div.), certification granted, N.J. (April 8, 1960). Such decision was reviewed by the Director, whose expertness and broad experience in this general field must be recognized. Cf. Fanwood v. Rocco, 59 N.J. Super. 306,319 (App. Div.), certification granted, N.J. (April 8, 1960). Appellants have failed to show that the Director's rulings constitute reversible error.

Affirmed.

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (RENTING ROOMS FOR ILLICIT SEXUAL INTERCOURSE) - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against
 PARKWAY HOTEL INC.
 7 Albany Street
 New Brunswick, N. J.
 Holder of Plenary Retail Consumption License C-46, issued by the Board of Commissioners of the City of New Brunswick.

CONCLUSIONS AND ORDER

 John A. McKenna, Esq., Attorney for Defendant-licensee.
 David S. Piltzer, 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 charge:

'On July 31 and August 5, 1959, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.'

"At the hearing herein an ABC agent testified that he and a fellow agent visited defendant's premises at about 11:00 p.m. on July 31, 1959; that Thomas Kennedy and Ferdinand Lakat were tending bar; that one of the agents asked Kennedy whether a person had to be married to rent a room there; that this agent said they had a couple of 'broads' to whom they were not married and they would like to stay with them for some time and that Kennedy replied that it is all right as long as they register as man and wife; that Kennedy was asked whether they would be required to have any luggage to take to the room and he said that it was not necessary; that Kennedy was asked whether there was any other than the front entrance as they did not want to be seen with the girls coming in and that Kennedy replied the rear door from the parking lot could be used; that Kennedy told the agents he did not know the room rent for one night and that he would have to ask the boss. Kennedy walked to the rear of the bar where Lakat was stationed, spoke with him, returned and told the agents it would be \$3 a night; that the agents left at about 12:10 a.m. after informing Kennedy that they would return the following week.

"The same agents returned to defendant's licensed premises at about 10:40 p.m. on August 5, 1959. The substance of the testimony of one of the agents is as follows: That only Kennedy was acting as bartender; that the agent asked him whether there was a room available and he replied that he did not know, that there might be a couple of vacancies, but it would be better to wait for the boss to come in who knew more about such matters.

"At about 11:15 p.m., Lakat entered the premises and went behind the bar. At the suggestion of the agents, Kennedy asked Lakat whether there was a room available. They were then informed by Kennedy that there was a double room available. At about 11:30 p.m. Lakat approached the agents and asked them what they wanted. One of the agents asked, 'Will you have a room tonight? We have a couple of broads, they're not our wives though, they're somebody else's wives. Is that okay?' Lakat laughed and said, 'I have one room with two beds. Is that okay?' When the agents informed him that that was satisfactory, he obtained the hotel register at the end of the bar and motioned to the agents to join him there. He then presented the register to them and said, 'Here, I don't care what name you put down, as long as you register as man and wife.' Thereupon, one of the agents signed the register 'Mr. and Mrs. Gerald Clark' and the other signed the register 'Mr. and Mrs. Daniel Salvatore'. The agents inquired of Lakat whether they needed any baggage to take upstairs and he answered in the negative. One of the agents handed Lakat a five-dollar bill and a one-dollar bill (the serial numbers of which had been previously recorded) in payment of the rent for the room. Lakat then gave the agents a key to Room Number 16 and they returned to the bar.

"At about 11:55 p.m., the agents informed Kennedy that they were going upstairs and that when the girls came in they would ask for Dan and Jerry and Kennedy was to instruct them to go to Room 16. The agents then proceeded to such room.

"At about 12:10 a.m., by prearrangement, other ABC agents and local police officers entered the premises and accompanied Lakat to Room Number 16. The agents in the room, when asked to account for their presence there, stated that they were waiting for their girls; that they were going to get 'laid'; that the girls were not their wives and that they had so informed Lakat; and that while the agents were being so questioned, Lakat was motioning and gesturing that the agents should keep quiet.

"Thereafter, Lakat verbally admitted that he had informed the agents that they did not need any luggage and did not need to sign their proper names on the register as long as they registered as

man and wife. Kennedy likewise verbally admitted that he told the agents on their previous visit that no baggage was required to rent a room and that all they had to do was to register as man and wife and that the agents told him that they intended to arrange to rent a room for use by the agents with women not their wives.

"It was stipulated on the record that three other agents who participated in the investigation and who were present at the hearing would testify to like effect. Additionally, one of the agents testified that Lakat admitted to him and another agent that he knew the agents rented the room for immoral purposes with females other than their wives.

"Thomas Kennedy testified generally as follows on the licensee's behalf: He was engaged occasionally by the licensee as a bartender. He denied that he told the agents at any time that they or either of them could come in and rent a room for immoral purposes. He did not recall the conversation and remarks attributed to him by the agents on their previous visit; that in fact there was no such conversation. However, he had no clear recollection of the conversations with the agents on either July 31st or August 5th. He denied that when the agents were there on August 5th they told him that when the girls come in to send them to Room 16. This statement is modified by his further statement that when confronted by the agents on August 5th, after they revealed their identities, he told them that he could not remember his conversation with them on the previous visit.

"Ferdinand F. Lakat, stockholder and president of the corporate-licensee, testified that he is 38 years of age, a graduate of a state university, had been a state employee for three years and has been the owner of the hotel for the past two years without any charge of previous misconduct in the operation of the licensed business; that there are 14 rooms in the hotel, 11 of which were rented to more or less permanent residents, including those referred to him by the New Brunswick Welfare Board. Those used for transients are such as are vacant at the moment. His version of the rental of the rooms to the agents is that Kennedy told him that the agents desired to rent a room; that he told them that the only room he had open was a double and the agents said they would take it; that he did not watch them register, 'I don't watch anybody register, just as long as they register and I see the name.' Asked if he saw the names that the agents registered, he said, 'No, I didn't see the names they put down', and that he did not ask the agents the purpose for which they rented the room. He claims that he never heard of the type of misconduct whereby hotels rent rooms for immoral purposes. He denies that he motioned to the agents to keep quiet when they were being questioned by the other agents and officers and claims that he did not hear the agents say that they were awaiting the arrival of women, not their wives, although he heard them say that they were there for sexual intercourse and that he was shaken by the incident and does not remember exactly what occurred. Asked if the agent asked him whether it is 'okay if we take in somebody elses' wives to the room with us', he answered that he didn't recollect them saying wives to him. He acknowledges that when the agents asked him what names to put down that he said, 'I don't care what name you put down.'

"At the conclusion of the presentation of evidence, counsel for the licensee requested a continuance in order to present the evidence of a local police official who it was claimed would testify that the hotel had a record of being a law-abiding and cleanly conducted hotel. He was advised that such evidence was only relevant as to penalty if the licensee was found guilty and that the Director would call for such testimony if he deemed it a pertinent factor in the case. In my opinion, no purpose would be served by presenting

such evidence, since it would not warrant the imposition of less than the minimum penalty for a violation of this nature.

"It is readily observable that the clear and specific account that the agents gave establishes that the licensee is guilty of the misconduct charged and that such clear and positive evidence is not overcome by the inconclusive character of the denials of Kennedy and Lakat. It may be questionable whether the evidence presented establishes that on July 31st actual arrangements were made to rent a room for immoral purposes but that is not an important fact. Since it is established that such violations did actually occur on August 5th, the July 31st instance may be considered as background. In any event the penalty usually imposed in a case of this character is not generally governed by the fact that the rental of rooms for immoral purposes occurred on more than one date. I recommend that the defendant-licensee be found guilty of the charge.

"Defendant has no prior adjudicated record. I further recommend suspension of the defendant's license for a period of one hundred eighty days. Re Faessler, Bulletin 1304, Item 3."

A written exception to the Hearer's Report was filed with me by the attorney for the defendant, urging that the proposed penalty is too severe, pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of the testimony, the Hearer's Report and the exception concerning the recommended penalty filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 9th day of May 1960,

ORDERED that Plenary Retail Consumption License C-46, issued by the Board of Commissioners of the City of New Brunswick to Parkway Hotel Inc., for premises 7 Albany Street, New Brunswick, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m., Monday, May 16, 1960; and it is further

ORDERED that any renewal for the 1960-61 licensing year or transfer of said license shall be and remain under suspension until 2:00 a.m., Saturday, November 12, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - STOCK OF ALCOHOLIC BEVERAGES STORED IN GASOLINE SERVICE STATION - PART TAXPAID AND PART ILLICIT - ORDERED FORFEITED.

In the Matter of the Seizure)	Case No. 9833
on November 7, 1958 of a)	
quantity of alcoholic beverages)	ON HEARING
at a service station operated)	CONCLUSIONS
by Edward Pagor located at)	AND ORDER
422-24 Monroe Street, in the City)	
of Passaic, County of Passaic and)	
State of New Jersey.)	

Edward Pagor, Pro Se.
Dora Rothschild, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether a quantity of taxpaid alcoholic beverages, as well as other alcoholic beverages alleged to be illicit, described in a schedule attached hereto, seized on November 7, 1958, at a service station operated by Edward Pagor, located at 422-24 Monroe Street, Passaic, New Jersey constitute unlawful property and should be forfeited.

"At a hearing held on May 8, 1959, counsel for Edward Pagor appeared and participated in such hearing, and requested an adjournment thereof until the termination of the then pending criminal proceedings against Edward Pagor resulting from such seizure. Advised that it was not the practice of this Division in such proceedings to adjourn a hearing on that account, he stipulated that the hearing should proceed with the presentation of evidence in behalf of the Division, with cross examination by counsel, and the case carried thereafter for a reasonable time to afford him an opportunity to present Pagor's defense.

"The evidence presented on behalf of the Division established that the seizure included a twenty-five gallon barrel approximately half full of alcohol and 11 bottles of alcohol, and that none of these containers had affixed thereto any stamp indicating the payment of tax on alcoholic beverages. The chemist's analysis of a sample of the contents of the barrel disclosed it is alcohol, water, cherry flavor, fit for beverage purposes, with an alcoholic content of 45.2 percent by volume.

"An agent testified that at the time of the seizure Edward Pagor was questioned as to the source and intended use of the seized alcoholic beverages, and that Pagor stated that the alcoholic beverages in the barrel represented his purchase of a five gallon tin of alcohol about two years previous to the seizure to which he added cherries and intended to use the liquor for his personal use; that he had purchased the taxpaid alcoholic beverages from a liquor salesman, part for personal use and part for gifts to patrons of his service station, and had made many similar purchases for such use. Edward Pagor did not hold a license to sell alcoholic beverages, and the premises were not licensed for that purpose.

"Thereafter, Edward Pagor corresponded directly with the Division, resulting in scheduling the adjourned hearing for February 18, 1960, with notice thereof to counsel for Pagor. At such adjourned hearing Edward Pagor appeared pro se, and sought

return of the taxpaid alcoholic beverages. Pagor admitted that the facts above set forth are substantially correct.

"Asked to present his reasons for seeking return of such alcoholic beverages. Pagor stated that he purchased the alcoholic beverages legitimately from a liquor salesman and did not know he was violating a law. He admits that he paid less than the permissive retail prices, such purchases ostensibly billed to a retail licensee and that he had a considerable stock of such alcoholic beverages in his service station. In explanation, he stated that he had good trade, and for a period of two years or so when they (his customers) came in he gave them a drink, without charge, and that part of the seized alcoholic beverages was purchased for a relative who was getting married. Pagor did not give any satisfactory explanation why this part of the alcoholic beverages was not stored at his residence

"It is my opinion, based upon the evidence presented, that Pagor was actually selling alcoholic beverages. See Seizure Case No. 8553, Bulletin 1033, Item 7. In any event, even on his own admission, he was serving alcoholic beverages as an important adjunct of his gas business, which constitutes a sale of alcoholic beverages. Cf. Re Amato, Bulletin 726, Item 8, also Seizure Case No. 8709, Bulletin 1046, Item 8. Moreover, aside from the taxpaid alcoholic beverages, the case is aggravated by his purchase and possession of illicit alcoholic beverages.

"The illicit alcoholic beverages, and the taxpaid alcoholic beverages by reason of their unlawful use, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(i & y), R.S. 33:1-2, R.S. 33:1-66.

"Edward Pagor's unlawful alcoholic beverage activities are not such as can be concluded to have been engaged in by him in good faith, and unwitting violation of the law, and hence I recommend that his application for the return of the alcoholic beverages be denied, and that an order be entered forfeiting such alcoholic beverages."

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is on this 16th day of May, 1960,

DETERMINED and ORDERED that the seized alcoholic beverages described in Schedule "A" attached hereto, constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and shall be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 2 - cases of whiskey
- 23 - bottles of various alcoholic beverages
- 1 - barrel with alcoholic beverages

4. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - PERMITTING PERSON APPARENTLY INTOXICATED TO WORK ON PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against)

DAVID FREUD & PATRICK PITTALA t/a AIRSHIP COCKTAIL LOUNGE 223 Paterson Street Paterson 1, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-291, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Newton M. Roemer, Esq., Attorney for Defendant-licensees
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charges:

- '1. On Friday night, December 18 and early Saturday morning December 19, 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.
- '2. On Friday night December 18 and early Saturday morning December 19, 1959, you allowed, permitted and suffered a person actually or apparently intoxicated to work in and upon your licensed premises; in violation of Rule 24 of State Regulation No. 20.'

"At the hearing herein two ABC agents (hereinafter identified as Agent S and Agent J) testified on behalf of the Division.

"Agent S testified that on Friday, December 18, 1959, both agents entered defendants' premises at about 9:15 p.m. and left the premises at about 9:55 p.m. to cover another assignment; that both returned to defendants' premises at about 11:30 p.m. and remained on the premises until about 1:10 a.m. on the following morning.

"Agent S testified that when they entered at 9:15 p.m. he observed a patron (hereinafter identified as Mrs. C) in the premises and that she was then drinking. During this visit he also observed two males on the stage -- one playing a piano and the other (hereinafter identified as Alverjous) playing a drum. Agent S testified that when they re-entered at 11:30 p.m. Mrs. C. was in the premises and that she then appeared to be intoxicated. In describing her appearance and actions he said that her hair and clothing were disheveled, her eyes red, her speech slurred and incoherent; that she slumped down from time to time, and while going to and returning from the ladies room she staggered and used the booths for support. Agent S testified that Olaf Peterson (a bartender) served drinks of

whiskey and water to Mrs. C at 11:55 p.m., 12:10 a.m. and 12:15 a.m. and that Mrs. C consumed the first two drinks and was consuming the third when the agents identified themselves at 12:20 a.m. Agent S further testified that when they re-entered at 11:30 p.m. Alverjous and the pianist were on the stage playing their respective instruments and that Alverjous then appeared to be intoxicated. In describing his appearance he said that the drummer's eyes seemed to be bloodshot, his shirt open and his tie disarranged. Agent S testified that the same bartender served drinks of whiskey to the drummer at 12:01 a.m., 12:07 a.m. and 12:10 a.m., all of which were consumed; that the musicians discontinued playing at 12:15 a.m., at which time the drummer jumped down from the stage and fell against the bar. Agent S also testified that, after the agents identified themselves, Mrs. C refused to give her name and address but eventually produced a check book giving the required information and that Alverjous staggered to a rear room where he sat in a chair and fell asleep.

"Agent J substantially corroborated the testimony given by Agent S.

"It appears that a subpoena to appear at the hearing scheduled to be held herein had been served by the attorney for defendants on Mrs. C but that she died four days before said hearing.

"On behalf of the defendants, Officers Strangeway and Stavistano, of the Paterson Police Department, testified that they entered defendants' premises at about 1 a.m. December 19, 1959, in response to a radio call from Headquarters that a man with a gun was on the premises. Officer Strangeway testified that Agent S had a gun in his holster but the agent identified himself and 'that ended the call that we were sent there for.' He also testified that Mrs. C was 'indignant;' told him that she had been accused of being drunk and wanted to know 'what we were going to do.' He said that, while she apparently had been drinking, she didn't appear to be drunk. He also testified that he went to the rear room and saw Alverjous asleep in a chair but did not speak to him. Officer Stavistano testified that Mrs. C spoke to him and that her speech was quite clear. When questioned as to her appearance he said that 'there was nothing conspicuous that would attract my attention.' He expressed the opinion that she was not intoxicated.

"Olaf Peterson testified that he was tending bar on the evening of December 18, 1959; that Mrs. C had patronized the premises about four months and that she was a respectable woman and a moderate drinker. He admitted that he had served several drinks to her but denied that she was actually or apparently intoxicated. He further testified that the pianist and Alverjous entered about 9 p.m.; that he then served two drinks of gin to Alverjous who was sober; that, after playing a few numbers on the stage, Alverjous left the premises, returned about 11 p.m., went directly to the rear room and fell asleep in a chair.

"Alverjous testified that he is regularly employed in a hospital and at a soft-drink stand in New York; that on December 18, 1959, he had worked at these places from 6 a.m. to 8:30 p.m. and then, at his request, was permitted by the pianist to go with him to defendants' premises where he intended to accompany the pianist on a drum he brought along with him. He said that they arrived at the premises shortly after 9 p.m.; that he had two drinks of gin at the bar and accompanied the pianist on the stage during two numbers; that he then left and visited several taverns where he had drinks with friends; that he returned about 11 p.m., went to the rear room, fell asleep in a chair and awoke about 1:30 a.m. He admitted that he had accompanied the pianist in defendants' premises

on two or three previous occasions. The pianist, who was regularly employed on week-ends in defendants' premises, substantially corroborated his testimony.

"David Freud testified that Alverjous was not employed on the premises. He further testified that he was in the premises on December 18, 1959; that Mrs. C was not, in his opinion, actually or apparently intoxicated, and that no drinks were served to Alverjous while he was apparently intoxicated.

"After considering the evidence and the oral argument of defendants' attorney, I conclude that, as the agents testified, Alverjous was on the stage between 11:30 p.m. and 12:15 a.m.; that he was then apparently intoxicated and that three drinks were served to him by the bartender during that period of time. Although Alverjous was not on defendants' payroll, he was, nevertheless, working in and upon the premises on the evening in question. Kravis v. Hock, 137 N.J.L. 252, 255 (Sup.Ct. 1948); In Re Gutman, 21 N.J. Super. 579 (App.Div. 1952). The testimony of the police officers concerning Mrs. C is not too convincing because they did not observe her until at least forty minutes after the agents identified themselves. However, I admitted into evidence an affidavit executed by Mrs. C on January 8, 1960, wherein she denies that she was actually or apparently intoxicated on the evening in question and states that at that time she was suffering from an injury to her right ankle which caused her to walk with a slight limp. If true, this might tend to explain why she supported herself on the booths while walking. The affidavit, perhaps not strictly evidential, was admitted to develop, as fully as possible, the facts of the case. Under all the circumstances, I conclude that the Division has not established by a fair preponderance of the evidence that Mrs. C was apparently intoxicated when the drinks were served to her. It is recommended, therefore, that defendants be found guilty of so much of Charge 1 as refers to Alverjous, and found guilty of Charge 2.

"Defendants have a prior record. Effective October 30, 1958, their license was suspended by the Director for twenty days after they pleaded guilty to charges of selling alcoholic beverages to intoxicated persons and employing a non-resident without requisite employment permit. Bulletin 1142, Item 9. Effective September 14, 1959, their license was suspended by the local issuing authority for five days after they were found guilty on a charge of hindering an investigation. The minimum suspension for sale to a person actually or apparently intoxicated is fifteen days. Re Zipse, Bulletin 1307, Item 8. Charges 1 and 2 herein are closely related and arose from the same facts. Since it appears that defendants committed within five years last past a violation similar to the violations herein, the minimum penalty should be doubled (Re Club Rainbow, Inc., Bulletin 1269, Item 4) and the license suspended on both charges for thirty days, to which five days should be added because of the dissimilar violation in 1959 (Re Keszler, Bulletin 1328, Item 10), thus making a total suspension of thirty-five days. It is recommended, therefore, that an order be entered suspending defendants' license for thirty-five days on both charges herein."

Written exceptions to the Hearer's Report and written argument thereto were filed by the attorney for defendants, pursuant to Rule 6 of State Regulation No. 16.

I have carefully considered the evidence and exhibits presented at the hearing held herein and the summation by the attorneys at said hearing. In his exceptions and written argument defendants' attorney contends that the Division failed to prove by a preponderance of the believable evidence that defendants permitted the sale and service of alcoholic beverages to the drummer while he

in and upon their licensed premises. Re Alexis and Alexopoulos, Bulletin 1328, Item 8. I shall suspend defendants' license for fifteen days for the violation charged herein (Re Smith, Bulletin 1330, Item 12), to which five days will be added because of the prior dissimilar violation which occurred within a five-year period, making a total suspension of twenty days. Five days will be remitted for the plea herein, leaving a net suspension of fifteen days.

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

ORDERED that Plenary Retail Consumption License C-182, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Alexis, Louis Alexis and George Alexopoulos, t/a Belmont Bar, for premises 169 Monticello Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Tuesday, May 31, 1960, and terminating at 2:00 a.m., Wednesday, June 15, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

LAS VILLAS CLUB, INC.
2517 Bergenline Avenue
Union City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-69, issued by the Board of Commissioners of the City of Union City.)

Louis P. Church, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents therein; in violation of Rule 27 of State Regulation No. 20.

On March 17, 1960, an ABC agent tested defendant's open stock of liquor and seized a number of bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of two of the seized bottles were high in solids and acids when compared with samples of the genuine product of the same named brands.

Defendant has no prior adjudicated record. I shall suspend its license for fifteen days, the minimum penalty imposed in "refill" cases involving two bottles. Re Broad Street Bar, Inc., Bulletin 1246, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

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

ORDERED that Plenary Retail Consumption License C-69, issued by the Board of Commissioners of the City of Union City to Las Villas

Club, Inc., for premises 2517 Bergenline Avenue, Union City, and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., Tuesday, May 31, 1960, and terminating at 3:00 a.m., Friday, June 10, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

7. SEIZURE - FORFEITURE PROCEEDINGS - SMALL ILLICIT STILL FOUND ON FARM AND QUANTITY OF ALCOHOL AND OTHER PERSONAL PROPERTY ORDERED FORFEITED - TENANT HOUSE ORDERED PADLOCKED - FARMHOUSE USED BY FAMILY NOT PADLOCKED.

In the Matter of the Seizure)	Case No. 10,239
on March 9, 1960 of a still,)	
appurtenant equipment, a quantity)	ON HEARING
of alcohol, miscellaneous personal)	CONCLUSIONS
property at premises occupied by)	AND ORDER
Ludwig Altvater, located on the)	
Sergeantville Rd., Delaware Township,)	
in the County of Hunterdon and State)	
of New Jersey.)	

Ludwig Altvater, Pro Se.

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

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapters 1 and 2, Revised Statutes of New Jersey, to determine whether a still and appurtenant equipment, described in a schedule attached hereto, seized on March 9, 1960, at premises owned and occupied by Ludwig Altvater, located on Sergeantville Road, Delaware Township, New Jersey, constitute unlawful property and should be forfeited, and further to determine whether the premises should be padlocked.

When the matter came on for hearing pursuant to R.S. 33:1-66 and R.S. 33:2-5, an appearance was entered by Ludwig Altvater, who sought to avoid padlocking of his dwelling. He did not oppose forfeiture of the seized property, nor oppose padlocking of the other building where still parts were found.

Reports of ABC agents and other documents presented in evidence with consent of Ludwig Altvater disclose the following statement of facts:

The premises in question consist of a farm, on which there is a farmhouse, tenant house and outbuildings. A small still was seized in the tenant house, and another small still in the basement of the farmhouse. Altvater is about 28 years of age, and resides on the farm with his wife and two infant children.

He has previously had a law-abiding background, and apparently resorted to the illicit still venture because of straitened financial circumstances. He has been arrested, and awaits the outcome of the criminal proceedings. Under the circumstances, padlocking will be limited to the tenant house.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 and R.S. 33:2-5, and that it be retained for the use of hospitals and state, county,

and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control; and it is further

ORDERED that the tenant house occupied by Ludwig Altvater, located on the Sergeantville Rd., Delaware Township, in the County of Hunterdon and State of New Jersey, being one of the buildings in which a still was seized, shall not be used or occupied for any purpose whatsoever, for a period of six months, commencing the first day of July, 1960.

Dated: May 18, 1960

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 1 - 50 gal. barrel of raisin wine
- 1 - 50 gal. barrel of mash
- 1 - 10 gal. keg of apple cider
- 5 - 1 gal. glass jugs of apple cider
- 4 - 1 gallon glass jugs of mash
- 3 $\frac{1}{2}$ - gallons of alleged alcohol
- 4 - empty wooden barrels
- 1 - wine press
- 2 - copper cookers
- 2 - coolers
- miscellaneous personal property

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ANGELO AND FRANK ZICARO
t/a AL'S BAR & GRILL
544 Bloomfield Avenue
Newark 7, N. J.

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-520, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Defendant-licensees, by Angelo Zicaro
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they possessed on their licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On April 5, 1960, an ABC agent tested defendants' open stock of liquor and seized a number of bottles for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of one 4/5 quart bottle labeled "Cutty Sark Blended Scots Whisky, 86 Proof" varied substantially in solids and color from the contents of a genuine sample of the labeled brand.

Defendants have no prior adjudicated record. I shall suspend their license for ten days, the minimum penalty imposed in cases involving one bottle. Re Campbell's Cafe, Inc., Bulletin 1334,

Item 10. Five days will be remitted for the plea herein, leaving a net suspension of five days.

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

ORDERED that Plenary Retail Consumption License C-520, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Angelo and Frank Zicaro, t/a Al's Bar & Grill, for premises 544 Bloomfield Avenue, Newark, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, June 6, 1960, and terminating at 2 a.m. Saturday, June 11, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - AMENDED ORDER FIXING EFFECTIVE DATES FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against)

JERRY SHEEHAN, INC.)
t/a "JERRY SHEEHAN'S BEACH PALACE")
Pineview Avenue)
Keansburg, N. J.)

AMENDED ORDER

Holder of Plenary Retail Consumption License C-18, issued by the Borough Council of the Borough of Keansburg.)

BY THE DIRECTOR:

On May 12, 1960, during my absence, an order was entered fixing dates for the forty-five-day suspension to commence at 2 a.m. Tuesday, May 17, 1960, and to terminate at the expiration of the license at midnight June 30, 1960.

Having reviewed the file, upon my return, I am not satisfied that the premises have sufficiently reopened for business for the 1960 season and, hence, the aforesaid order will be vacated.

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

ORDERED that the order herein dated May 12, 1960, be and the same is hereby vacated; and it is further

ORDERED that the forty-five-day suspension heretofore imposed shall commence at 2 a.m. Tuesday, May 31, 1960, and terminate at the expiration of the license at midnight June 30, 1960; and it is further

ORDERED that any renewal for the 1960-61 licensing year or transfer of said license shall be and remain under suspension until 2 a.m. Friday, July 15, 1960.


William Howe Davis
Director