

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

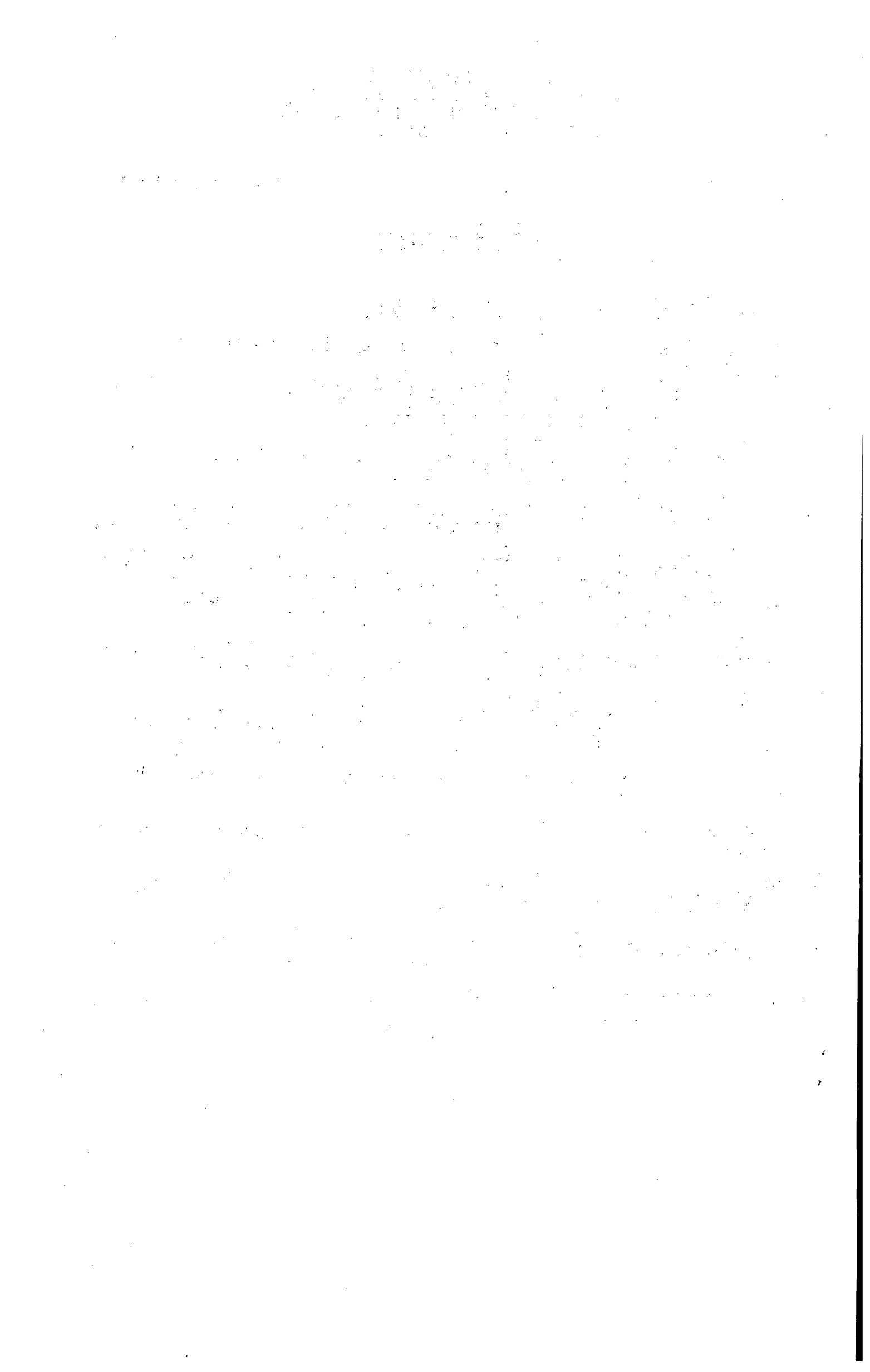
BULLETIN 985

SEPTEMBER 28, 1953

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 985

SEPTEMBER 28, 1953

1. APPELLATE DECISIONS - PLASKY v. CAMDEN.

DAVID PLASKY, t/a DAVE'S GRILL,)

Appellant,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY OF)
CAMDEN,)

Respondent.)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Saul Teitelman, Esq., Attorney for Appellant.

John J. Crean, Esq., by Louis L. Goldman, Esq., Attorney for
Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action suspending appellant's plenary retail consumption license for a period of fifteen days, to commence at 2:00 a.m., June 1, 1953, after appellant had been found guilty in disciplinary proceedings of a charge alleging that he allowed, permitted and suffered in and upon his licensed premises a lottery, in violation of Rule 6 of State Regulations No. 20. Appellant's premises are located at 2360-62 Broadway, Camden.

Upon the filing of this appeal an order was entered by me on May 21, 1953, whereby respondent's order of suspension was stayed until the entry of a further order herein.

Appellant contends that the action of respondent was erroneous in that:

"(a) It was arbitrary;

(b) It was without legal justification;

(c) It was against the weight of the evidence."

Respondent, in its answer, denied the aforementioned allegations and alleged that its finding of guilt was supported by the evidence adduced at the trial.

On this appeal the matter was heard de novo under Rule 6 of State Regulations No. 15.

At the hearing herein, Philip Large, a county detective, testified that at 11:30 a.m., on January 22, 1953, he was in the immediate vicinity of appellant's licensed premises when he observed a man, subsequently identified as Theodore Borman, "in the act of writing numbers in a book in the rear of Dave Plasky's grill, in the yard"; that two detectives who had accompanied him went to the front door of appellant's premises and that after he took Theodore Borman in custody he and another detective proceeded into the licensed premises by way of a side door; that when he entered the said premises he observed between 100 and 150 persons present; that he observed the appellant in the middle of the bar "between these two whiskey stands at the cash register" and that appellant "was moving all around"; that he went behind the bar and searched for evidence of gambling but found none; that he also searched appellant's office

adjoining the rear room but found nothing pertaining to gambling. He also testified that Detective Miller confiscated from Dominic Mariano \$448.62 in cash and a book of numbers relating to the operation of a lottery.

Christian Miller, employed as a special investigator in the Prosecutor's Office, testified that on January 22, 1953 he entered appellant's licensed premises through the front door and immediately proceeded to the telephone booth, located fifteen feet from the bar, where he observed "a man standing with his back into the telephone booth with a book in his hands writing in what was later identified as a numbers book. That man was Dominic Mariano. I searched him standing back in the corner and I confiscated some slips of paper upon which were written various names pertaining to horse racing and amounts in money that had been played on the various horses." He further testified that there were "quite a few people standing around" and that the appellant was behind the bar. When interrogated with reference to the area where the telephone booth was located, Investigator Miller testified, "Well, after you go through a little archway it wasn't much larger than the telephone booth itself; there was a small entrance where you go into the men's room, I believe. It's a small space, I would say approximately four by four or something like that, five by five. What the exact size was I don't know." He further testified that Dominic Mariano was wearing a gray suit at the time.

James Schaub, a county detective, testified that at 11:30 a.m., on January 22, 1953 he entered the appellant's licensed premises by the side door and then through "a small dining room which is directly behind the bar." He then proceeded into the barroom where "Detective McLoughlin handed me a pad and several slips of paper with horse plays and number bets on them. Then I put Newton Jacquillard -- I placed him under arrest." He further testified that Theodore Borman, whom he had apprehended outside the premises, "had ... dress pants on with a white shirt and jacket" and Newton Jacquillard had on working clothes. He testified he did not observe the appellant at the time he entered.

Detective McLoughlin was not called to testify by the respondent.

Appellant testified that at 11:30 a. m., on January 22, 1953, he observed Detective Large enter his establishment "From the doorway from the rear room or back room, so-called, behind the bar"; that it was lunch hour for the employees of a nearby shipyard and that about 125 of them were in the licensed premises; that he was busy at the time; that he did not see any other detective, nor did he see Newton Jacquillard or Dominic Mariano in the premises; that he did not know Newton Jacquillard or Dominic Mariano were numbers writers or took bets on horses; that at the particular part of the bar that he attends his back is to the telephone booth; that anyone who uses the telephone booth must pass through the barroom; that the three men in question were dressed as the detective described; that he knew both Jacquillard and Mariano by sight and that the latter "stops around different times of the day"; that he knows Borman as he lives near appellant's tavern but he was unaware that Borman wrote numbers.

The appellant, although admitting that the three men aforementioned frequented his licensed premises prior to January 22, 1953, claimed that he was unaware that any of these men were at any time engaged in gambling activities. Considering the evidence of the open and extensive gambling activity of Mariano and Jacquillard on the licensed premises, I conclude that, at least as to these persons, appellant was aware of the fact that they were engaged in gambling activities. However, even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents,

such as are hereinabove related, on his licensed premises. A licensee's responsibility for an infraction of the law may not be evaded by a plea that he was so busy that he failed to observe what occurred on the licensed premises. Re Pawlukovich v. Newark, Bulletin 697, Item 9. 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. Bilowith v. Passaic, Bulletin 527, Item 3. See also One-Thirty-Five Mulberry St. Corp., Bulletin 892, Item 2. The detectives had no difficulty in discovering the unlawful activities. Most certainly, the appellant "suffered" the gambling to take place in and upon his licensed premises, especially with reference to Mariano and Jacquillard. As the Supreme Court (1947) said in Essex Holding Corp. v. Hock, 136 N. J. L. 28, at p. 31, "Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140."

The action of respondent will be affirmed, the present appeal will be dismissed, and the fifteen-day suspension originally imposed will be reinstated.

The suspension to be reimposed herein will operate against the renewed license C-99 issued to appellant for the 1953-54 licensing year. State Regulations No. 16.

Accordingly, it is, on this 10th day of September, 1953,

ORDERED that the action of respondent in finding appellant guilty as to the charge preferred in disciplinary proceedings be and the same is hereby affirmed; and it is further

ORDERED that the fifteen-day suspension by respondent of appellant's plenary retail consumption license for premises 2360-62 Broadway, Camden (which suspension was held in abeyance by my Order dated May 21, 1953) be and the same is hereby restored to commence at 2:00 a.m., September 21, 1953, and to terminate at 2:00 a. m., October 6, 1953.

DOMINIC A. CAVICCHIA
Director.

2. APPELLATE DECISIONS - SAMUELIAN v. OCEAN TOWNSHIP (OCEAN COUNTY).

SAMUEL SAMUELIAN,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF OCEAN (OCEAN COUNTY),)
)
 Respondent.)
 - - - - -)

ON APPEAL
CONCLUSIONS AND ORDER

Francis Tanner, Esq., Attorney for Appellant.
No appearance on behalf of Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it denied appellant's application for a plenary retail consumption license for premises known as the Bay View Hotel at North Harbor Road and Bay Avenue, Ocean Township, Ocean County.

Respondent filed an answer herein wherein it alleged that the application was denied "on the ground that there is no present need of an additional license in Ocean Township at this time."

No one at all appeared on behalf of respondent at the hearing held herein, and appellant was permitted to proceed ex parte in accordance with the provisions of Rule 10 of State Regulations No. 15.

At the hearing appellant testified that he purchased the premises in question on January 25, 1952. He admitted that the building was then in a dilapidated condition, but testified that since January 1952 he has spent approximately \$30,000.00 for repairs to the building. Respondent heretofore recognized the fact that the Bay View Hotel contained fifty sleeping rooms in issuing previous plenary retail consumption licenses for the premises in question as a hotel containing at least fifty sleeping rooms; and it appears, from uncontroverted testimony, that the hotel now contains fifty or more sleeping rooms.

At the outset I am confronted by the question as to whether the issuance of this new license would violate any local ordinance restricting the number of plenary retail consumption licenses which may be issued or if the issuance of the license would violate the provisions of P. L. 1947, ch. 94, commonly referred to as the State Limitation Law. The local ordinance now in effect was adopted on January 23, 1947, and provides that not more than five plenary retail consumption licenses shall be outstanding at any time in the Township. The records of this Division indicate that at the present time there are outstanding in the Township three such licenses. Section 8 of P. L. 1947, ch. 94, provides:

"Nothing in this act shall prevent the issuance in a municipality of a new license to a person who operates a hotel containing fifty sleeping rooms or who may hereafter construct or establish a hotel containing fifty sleeping rooms."

Under the facts of this case, the issuance of a license to appellant would not violate the provisions of the local ordinance or the provisions of the State Limitation Law.

It is well established, however, that no one is entitled to a liquor license as a matter of right. An applicant is not entitled to a license merely because there is a vacancy in the quota fixed by a local ordinance. Dorio v. East Amwell et al., Bulletin 965, Item 3. The "hotel" exception in Section 8 of the State Limitation Law does not mean that the operator of a fifty-room hotel is automatically

entitled to a license. Szczesna v. Wildwood, Bulletin 852, Item 1. Hence, the burden is upon appellant to establish that there is need for an additional license in the Township.

The population of Ocean Township, according to the 1950 Federal census, is 520, and it can scarcely be contended that an additional license is necessary to take care of the permanent population of the Township. However, appellant testified that the premises in question have been operated as a hotel for sixty or seventy years; that it is located on a plot of ground containing sixteen acres, with a beach on Barnegat Bay. Appellant testified, further, that he intends to rely chiefly upon transient trade, and that there is no licensed hotel within some twenty-three miles from his property. He testified, also, that a number of new homes are being erected in the section of the Township in which he is located. The evidence shows that other individuals held a plenary retail consumption license for the premises in question from May 1947 until September 1950, and that the three existing plenary retail consumption licenses are issued for premises on U. S. Highway 9. One of these licenses had been issued for the hotel premises now owned by appellant, but upon an application filed by Helmuth and Worda Linnert, who then held the license, it was transferred by respondent in September, 1950 to one of the three premises located on U. S. Highway 9 heretofore mentioned.

Two of the three licensed premises are located about two miles from the premises sought to be licensed by appellant. Appellant testified that he believed the third licensed place is about three-quarters of a mile from his hotel but his Attorney stated, at the Hearing, that the distance is greater -- about two miles. In view of the distance of the three existing licensed premises from appellant's hotel premises, the question of numerous licenses in the vicinity (which was considered in Haba Realty Corp. v. Long Branch, Bulletin 984, Item 1) is not present in this case. (A transfer to non-hotel premises of a license originally issued pursuant to the Limitation Law's hotel exception would plainly appear to contravene the general purpose and spirit of that Law, but no appeal was taken from the 1950 place-to-place transfer hereinabove mentioned and the merits of that transfer are not in issue for determination herein. Cf. Haba Realty Corporation v. Long Branch, *supra*.)

It appears that on May 10, 1951, respondent denied a similar application filed by another individual for the same premises. That application was denied because the building was "badly in need of repairs." There is no evidence in this case that respondent considered the question as to whether the premises are now suitable to be used as licensed premises. However, the premises have been inspected and found to comply with the provisions of P.L. 1948, c. 340, and a certificate of approval and registration has been issued for the year 1953, for the Bay View Hotel, by the State Supervisor of Hotel Fire Safety.

After reviewing the evidence, and with no person appearing on behalf of respondent, I conclude that appellant has sustained the burden of proof in establishing that respondent's action was erroneous and should be reversed (Rule 6, State Regulations No. 15).

Accordingly, it is, on this 11th day of September, 1953,

ORDERED that the action of respondent Township Committee, in denying appellant's application for a plenary retail consumption license for premises known as the Bay View Hotel at North Harbor Road and Bay Avenue, Ocean Township, be and the same is hereby reversed, and respondent is directed to issue forthwith the license for which application was made by appellant.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - HOSTESSES - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ELIZABETH C. D'AUGUSTINE and) ANTHONY R. D'AUGUSTINE) T/a "THE HOLIDAY") Rte U.S. #9 (formerly St. Highway #35) and Oakland Avenue) Woodbridge Township) PO Avenel (present PO Woodbridge), N.J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-37, issued by the Township Committee of the Township of Woodbridge.)

Defendant-licensees, Pro Se. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

- "1. On August 18, 1953, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that female entertainers performed in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulations No. 20.
"2. On August 13 and 18, 1953, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20."

The file herein discloses that two ABC agents visited defendants' premises on the evening of Thursday, August 13, 1953, and observed two female employees drinking at the bar at the expense of male patrons. One of the bartenders told the agents that, on the following Tuesday, they would have a "couple of hot dancers in the show."

The agents returned to the licensed premises on the evening of Tuesday, August 18, 1953. At about 10:45 p.m. the first show began. During the course of this show a female entertainer performed a strip tease dance which was lewd and indecent. At about 12:50 a.m. August 19 the second show began. During the course of this show another female entertainer performed a modified strip tease dance which was also lewd and indecent.

During their visit on the evening of August 18, the ABC agents observed one of the aforesaid dancers and a female, who was employed as a vocalist, drinking at the bar at the expense of male patrons.

In an attempt to mitigate the violation defendants allege that at the time of the performance they were busy and "did not notice anything out of order." They allege also that the dancers were brought in by the master of ceremonies "with the understanding that they were going to do a dance that is permitted by law." Whether or not defendants witnessed the entertainment, as I believe they did, they are fully responsible for the conduct of the entertainers on the licensed premises. Re Seidler's Beach, Incorporated, Bulletin 959, Item 5, and cases therein cited. Nor can the licensees

be relieved of responsibility merely because the acts were booked through another person. Re Neu, Bulletin 957, Item 3.

Defendants have no prior record. I shall suspend defendants' license for thirty days because of the violation set forth in charge 1. Re Philal Corporation, Bulletin 964, Item 9. I shall suspend defendants' license for an additional period of twenty days because of the violations set forth in charge 2. Re Goldberg, Bulletin 962, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of forty-five days.

Accordingly, it is, on this 10th day of September, 1953,

ORDERED that Plenary Retail Consumption License C-37, issued by the Township Committee of the Township of Woodbridge to Elizabeth C. D'Augustine and Anthony R. D'Augustine, t/a "The Holiday", for premises on Rte U. S. #9 (formerly St. Highway #35) and Oakland Avenue, Woodbridge Township, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. September 21, 1953, and terminating at 2:00 a.m. November 5, 1953.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against

ANIELLO GELARDO
42-44 Market Street
Paterson 1, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-169 for the 1952-53 and 1953-54 licensing years, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Charles J. Alfano, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"On Monday night, May 11, and early Tuesday morning, May 12, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Ronald --- and John ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

At the hearing held herein John ---, 16 years of age, testified that he and his brother Ronald entered defendant's premises at about 10:45 p.m. May 11, 1953, and remained on the premises until approximately 12:30 a.m. May 12, 1953. He testified that during this period of time he purchased ten glasses of beer and four drinks of whiskey for himself and ten glasses of beer and four drinks of whiskey for his brother, all of which were served to them by an "old

man" whom the witness later identified as Genaro Rosetti. Ronald ---, 15 years of age, corroborated the testimony of his brother as to the events which occurred on the evening of May 11 and the early morning of May 12, and he also at a later time identified Genaro Rosetti as the man who had served the drinks. A vigorous cross-examination by defendant's attorney failed to weaken the testimony given by either of the aforesaid witnesses.

At the hearing defendant testified that he left his licensed premises on the evening of May 11 between 8:00 p.m. and 9:00 p.m. and that he returned to the premises at approximately midnight. He denies that he saw either of the boys on the premises on the evening in question. He admits, however, that, when he left his premises in the evening of May 11, he asked Genaro Rosetti to "watch my place" during his absence. Defendant alleged that he was unable to produce Rosetti at the hearing because of the latter's illness, but it was stipulated between the attorney for the defendant and the attorney representing the Division that, if this man had been called as a witness, he would testify that he could not recall seeing either of the boys on the licensed premises on the evening in question.

After considering the testimony I conclude that the two boys are telling the truth. The licensee is responsible for the violation committed by the person whom he placed in charge of the premises even if, as defendant alleges, he paid no compensation to this person for his services. Re Gutman, Bulletin 936, Item 4; In re Gutman, 21 N.J. Super. 579 (App. Div. 1952). Hence I find defendant guilty as charged.

Defendant has a prior record. Effective October 1, 1945, his license was suspended by the local issuing authority for a period of fifty days for employing an unqualified person and selling to minors. The instant case is aggravated by the fact that both minors are 16 years of age or younger. Under the circumstances, including the licensee's prior record, I shall suspend defendant's license for a period of thirty-five days. Cf. Re Italiano, Bulletin 970, Item 2.

Although this proceeding was instituted during the 1952-53 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1953-54. State Regulations No. 16.

Accordingly, it is, on this 10th day of September, 1953,

ORDERED that Plenary Retail Consumption License C-169, issued for the 1953-54 licensing year by the Board of Alcoholic Beverage Control for the City of Paterson to Aniello Gelardo, for premises 42-44 Market Street, Paterson, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. September 21, 1953, and terminating at 3:00 a.m. October 26, 1953.

DOMINIC A. CAVICCHIA
Director.

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

In the Matter of Disciplinary Proceedings against)

GEORGE BIDDULPH)
T/a OZZIE'S BAR & GRILL)
Route #130)
Hamilton Township (Mercer County))
PO Yardville, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-50, issued by the Township Committee of Hamilton Township (Mercer County).)

-----)
Philip M. Chamberlin, Esq., Attorney for Defendant-licensee.)
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.)

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Sunday, August 2, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Ernest M. ---, John ---, Richard O. ---, Earl F. --- and George W. ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

The file herein discloses that each of the minors mentioned in the charge (except John ---) gave a written statement to an ABC agent and two detectives who are members of the Hamilton Township Police. In his statement Ernest M. ---, 17 years of age, said that he entered defendant's premises on the afternoon of Sunday, August 2, 1953, and consumed the contents of one glass of beer which had been set up on the bar. He further stated that defendant was then tending bar, and that he saw George W. --- "drinking a beer." In his statement Richard O. ---, 18 years of age, said that he entered defendant's premises on Sunday, August 2, 1953, between 7:30 p.m. and 8:00 p.m. and drank five or six glasses of beer which were served by defendant. He stated that each of the other four minors mentioned in the charge were in defendant's premises between the time he entered and 9:30 p.m. when he left the premises. In his statement Earl F. ---, 19 years of age, said that he was in defendant's premises on Sunday, August 2, 1953; that he drank the contents of one glass of beer which had been handed to him by a stranger, and that he saw Ernest M. --- and George W. --- drinking beer. He stated that defendant was acting as bartender. In his statement George W. ---, 18 years of age, said that he entered defendant's premises on Sunday, August 2, 1953, between 8:30 p.m. and 9:00 p.m.; that, while he was on the premises, he consumed the contents of eight or ten glasses of beer which had been purchased by a soldier; that defendant sold and served these drinks; that he saw Earl F. --- drinking beer and that, while he was in the premises, John --- entered and consumed the contents of one glass of beer which someone took from the bar and handed to John. It also appears from the file herein that John --- was 17 years of age.

In mitigation defendant alleges that the premises were "quite crowded;" that a soldier was buying all the beers and "told everyone to help themselves." These facts, even if true, are scarcely any

excuse for permitting the five minors to consume alcoholic beverages on the licensed premises.

Defendant has no prior record. In view of the fact that five minors were involved, and the further fact that two of the minors were only 17 years of age, I shall suspend defendant's license for a period of thirty days. Cf. Re Papa, Bulletin 928, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 10th day of September, 1953,

ORDERED that Plenary Retail Consumption License No. C-50, issued by the Township Committee of Hamilton Township (Mercer County) to George Biddulph, t/a Ozzie's Bar & Grill, for premises on Route #130, Hamilton Township (Mercer County), be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. September 21, 1953, and terminating at 2:00 a.m. October 16, 1953.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILING TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JAMES HAGGERTY)
T/a H & H CLUB)
228 Monticello Avenue)
Jersey City 4, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-285, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

James Haggerty, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to charges alleging that on Friday, August 7, 1953, he (1) conducted his licensed business between 2:00 a.m. and 2:20 a.m. and (2) suffered and permitted persons other than himself and his actual employees and agents in and upon his licensed premises during prohibited hours, both in violation of a local ordinance; and (3) allowed, permitted and suffered gambling, viz., the playing of a card game for stakes of money, in and upon his licensed premises, in violation of Rule 7 of State Regulations No. 20.

The file discloses that on Thursday, August 6, 1953, at 11:00 p.m., two ABC agents visited defendant's licensed premises. They remained there for approximately one hour, during which time they observed four male patrons seated at a table playing cards. The winner of each game was paid by the losers thereof. Although the bartender did not receive "a cut or a percentage" of the money paid,

he served drinks to the players from time to time. The agents returned to the vicinity of defendant's licensed premises on Friday, August 7, 1953, at 1:00 a.m. About fifteen minutes later one of the agents entered the premises, and the other remained outside. The card game for money stakes was still in progress and continued till 2:20 a.m., when the agent who had remained outside entered accompanied by a local police officer. The agent who had entered the premises earlier had a glass of beer served to him by the bartender at 2:14 a.m. The four participants in the card game stated that they were engaged in "a friendly game of rummy" but refused to give written statements to the agents. The bartender made and signed a statement wherein he acknowledged that he served the beer, but that he had no recollection of the time when the last service was made. He also stated that the card game was in progress for two hours, but that he did not know the money stakes that the men played for.

Defendant alleges in attempted mitigation of penalty that "I was home sick and to make matters worse, my regular night bartender was on vacation and we had a substitute working for him who was not as strict with the patrons as he should have been." Granting this to be true, the licensee is responsible for the violations committed by his employee, even though done without his knowledge or contrary to his instructions. Re Mayers, Bulletin 731, Item 9. Rule 31 of State Regulations No. 20.

Defendant has no prior adjudicated record. I shall suspend his license on charges 1 and 2 for fifteen days (Re Fedorcik, Bulletin 954, Item 5), and on charge 3 for ten days (Re Capt. Stephen T. Schoonmaker Post, 1429, V.F.W., Bulletin 903, Item 7), making a total 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 11th day of September, 1953,

ORDERED that Plenary Retail Consumption License C-285, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to James Haggerty, t/a H & H Club, for premises 228 Monticello Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. September 18, 1953, and terminating at 2:00 a.m. October 8, 1953.

DOMINIC A. CAVICCHIA
Director.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ARROW INN, INC.
29 Avenel Blvd.
Long Branch, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-26, issued by the Board of Commissioners of the City of Long Branch.

Evans, Sexton and Stein, Esqs., Attorneys for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On July 28, 1953, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz.,
One 4/5 quart bottle labeled 'Canadian Club Blended Canadian Whisky 90.4 Proof';
in violation of Rule 27 of State Regulations No. 20."

The file herein discloses that on July 28, 1953, an ABC agent examined thirty-one opened bottles of alcoholic beverages on defendant's licensed premises and seized a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky 90.4 Proof" when his field tests indicated a variance between the contents of the bottle and the description on the label. Subsequent analysis by the Division chemist disclosed that the contents of the seized bottle were not genuine as labeled.

In mitigation defendant alleges that none of the officers or directors of defendant corporation was present when the violation occurred and that the bartender who was present has been discharged. Nevertheless, a licensee is responsible for any "refills" found in his stock of liquor. Re Ostrowski, Bulletin 952, Item 7; Re St. Regis, Inc., Bulletin 969, Item 6.

Defendant has a prior record. Effective March 19, 1951, the local issuing authority suspended its license for a period of five days for sale of an alcoholic beverage to a minor. The minimum penalty imposed for a violation of the kind herein charged is a suspension for fifteen days. Re Rudolph, Bulletin 680, Item 1. In view of defendant's record of a prior dissimilar violation within the past five years, I shall suspend defendant's license for twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days. Re St. Regis, Inc., supra.

Accordingly, it is, on this 4th day of September, 1953,

ORDERED that Plenary Retail Consumption License C-26, issued by the Board of Commissioners of the City of Long Branch to Arrow Inn, Inc., for premises 29 Avenel Blvd., Long Branch, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. September 14, 1953, and terminating at 3:00 a.m. September 29, 1953.

DOMINIC A. CAVICCHIA
Director.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against JACOB BUDENSTEIN T/a BUDDY WINE & LIQUOR STORE 2526 Atlantic Avenue Atlantic City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-18, issued by the Board of Commissioners of the City of Atlantic City.

Jacob Budenstein, Defendant-licensee, Pro Se. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"On Saturday, July 11, 1953, you sold at retail six quart bottles of Schenley Reserve Blended Whiskey, an alcoholic beverage, at less than the price thereof listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulations No. 30."

The file herein discloses that, at 9:45 p.m., on July 11, 1953, two ABC agents entered defendant's licensed premises. After some discussion with the defendant, the agents purchased six quart bottles of Schenley Reserve Blended Whiskey for a total price of \$33.00. The minimum price for said brand of whiskey, as listed in the "Complete List of New Jersey Minimum Consumer Resale Prices of Alcoholic Beverages", effective July 1, 1953, was \$5.55 for each quart bottle, or \$33.30 for the six bottles.

Defendant has no prior adjudicated record. I shall suspend the license for the minimum period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Passero, Bulletin 968, Item 11.

Accordingly, it is, on this 3rd day of September, 1953,

ORDERED that Plenary Retail Distribution License D-18, issued by the Board of Commissioners of the City of Atlantic City to Jacob Budenstein, t/a Buddy Wine & Liquor Store, 2526 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. September 14, 1953, and terminating at 9:00 a.m. September 19, 1953.

DOMINIC A. CAVICCHIA Director.

9. MORAL TURPITUDE - COMMERCIALIZED GAMBLING HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

DISQUALIFICATION - FIVE YEARS' GOOD CONDUCT - APPLICATION TO LIFT GRANTED.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, Pursuant to R. S.)
33:1-31.2.)
Case No. 1084.)
- - - - -)

CONCLUSIONS
AND ORDER

BY THE DIRECTOR:

In September 1936 petitioner pleaded guilty in a county court to an indictment alleging that he maintained a disorderly house (gambling establishment), in violation of R. S. 2:135-3 (now N.J.S. 2A:112-3), as a result of which he was fined \$50.00. In February 1937 petitioner again pleaded guilty in a county court to a similar indictment, as a result of which he was fined \$100.00. Since the crimes of which he was convicted involved moral turpitude, the petitioner was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State.

At the hearing herein petitioner testified that, since 1937, he has not been convicted of any crime and that, during the sixteen years last past, he has not had any difficulty with the law. This is confirmed by the fingerprint returns; and the Chief of Police of the municipality in which petitioner resides has advised that no complaint or investigation involving petitioner is presently pending. Petitioner further testified that, during the five years last past, he has been engaged as a salesman of window shades and similar articles and, more recently, was acting as a salesman-broker of automobiles. He admitted that he had failed to disclose his convictions, as aforesaid, when he filed an application for a solicitor's permit with this Division in 1947. He explained that he did not believe that the convictions, which he referred to as "disorderly" charges, were serious or important enough to report. (Petitioner's application for permit was denied March 6, 1947, by reason of his failure to disclose the conviction.) Petitioner further testified that he has never been engaged in the alcoholic beverage industry in New Jersey and that he seeks removal of his disqualification because he has an opportunity to be employed as a salesman by a State Beverage Distributor of beer.

Petitioner produced as witnesses three persons (a police officer, a home appliance dealer and a barber), all of whom have known petitioner for approximately twenty years. Each testified that petitioner bears a good reputation in the community and has been law-abiding for at least five years last past.

I find that petitioner has been law-abiding for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 4th day of September, 1953,

ORDERED that petitioner's statutory disqualification because of the convictions of crime referred to herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

DOMINIC A. CAVICCHIA
Director.

10. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HIGHLANDER HOTEL, INC.)
3 Navesink Avenue)
Highlands, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-26, issued by the Borough Council of the Borough of Highlands.)

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William E. Beaty, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Saturday, August 15, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of an alcoholic beverage, directly or indirectly, at your licensed premises to Airman 3/c Robert J. ---, U. S. Air Force, a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

The file herein discloses that two ABC agents entered defendant's premises on Saturday, August 15, 1953, about 9:30 p.m. At about 11:45 p.m. Airman 3/c Robert J. --- entered the barroom and took a seat at the bar near the stools on which the agents were seated. The soldier ordered a glass of beer from Stanley Poskosky, the bartender. After the bartender placed a glass of beer in front of the soldier and accepted payment from him, the soldier took a sip from the glass and then carried the glass of beer to the front porch of the licensed premises. The agents followed the soldier to the porch and seized the remaining contents of the glass. At no time did the agents hear the bartender questioning the soldier as to his age prior to the service of the glass of beer.

Subsequent investigation disclosed that the soldier alleges he was born on November 11, 1933, although his United States Identification Card indicates that he was born on November 11, 1932. In either event, he is a minor and the period of suspension imposed in cases of this kind is the same whether it appears that the minor is 19 or 20 years of age.

In mitigation, Arthur Adams, President and General Manager of defendant corporation, alleges that the premises were crowded; that the soldier "left the Air Force base with the intent to get a glass of beer at the Highlander Hotel Inc., and I am sure he would have obtained it regardless of our vigilance." This, of course, does not excuse the violation, although I am satisfied that no aggravating circumstances appear in this case.

Defendant has no prior record. I shall suspend defendant's license for the minimum period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Kopf, Bulletin 981, Item 6.

Accordingly, it is, on this 18th day of September, 1953,

ORDERED that Plenary Retail Consumption License C-26, issued by the Borough Council of the Borough of Highlands to Highlander Hotel, Inc., for premises 3 Navesink Avenue, Highlands, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. September 28, 1953, and terminating at 3:00 a.m. October 3, 1953.

11. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL BOYLE)
T/a VILLAGE BARN)
700 State Highway)
Spring Lake Heights)
PO Spring Lake, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Spring Lake Heights.)

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Michael Boyle, Defendant-licensee; Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages at his licensed premises to four minors, in violation of Rule 1 of State Regulations No. 20.

The file in this case discloses that two ABC agents entered defendant's licensed premises on the evening of August 26, 1953, and remained there until about 1:00 a.m. on the following morning. While the agents were on the premises, the wife of the licensee served a glass of beer to Suzanne ---, aged 19, and a glass of beer to her adult male companion, both of whom were then seated at a table. The wife of the licensee also served a glass of beer to Lucille ---, aged 20, a glass of beer to Barbara ---, aged 20, and a "Tom Collins" to their adult male companion, all of whom were then seated at a table. Later in the evening a bartender served another glass of beer to Suzanne ---, who was then seated at the bar, and a glass of beer to Philip ---, aged 20, who was also seated at the bar. After Philip --- left the bar and joined a party of five adults at a table, the wife of the licensee served a glass of beer to each of the persons at the table. The agents observed that each of the minors consumed the beer.

Defendant has no prior adjudicated record. Because of the number of minors involved, I shall suspend defendant's license for a period of fifteen days. Re Hep's Tavern, Inc., Bulletin 962, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 14th day of September, 1953,

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Spring Lake Heights to Michael Boyle, t/a Village Barn, for premises 700 State Highway, Spring Lake Heights, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. September 21, 1953, and terminating at 3:00 a.m. October 1, 1953.

DOMINIC A. CAVICCHIA
Director.

12. STATE LICENSES - NEW APPLICATION FILED.

Phillips Distributing Company, Inc.
915 - 18th Ave., Wall Township, West Belmar, N. J.
Application filed September 18, 1953 for transfer of State Beverage Distributor's License SBD-58 from Gabriel Phillips.