

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

BULLETIN 1218

APRIL 22, 1958.

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

BULLETIN 1218

APRIL 22, 1958

1. APPELLATE DECISIONS - GROSS v. NEWARK.

HARRY GROSS, t/a HARRY'S BAR, )

Appellant, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC )

BEVERAGE CONTROL OF THE CITY )

OF NEWARK, )

Respondent. )

-----  
Joseph J. Breitner, Esq., Attorney for Appellant.

Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq.,  
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action on October 29, 1957, whereby it suspended appellant's License C-155 for ten days effective November 11, 1957, after finding appellant guilty of the following charge:

'In that you did on or about 10:00 p.m. on February 1, 1957, allow, permit and suffer in and upon the licensed premises, a brawl, act of violence, disturbance and unnecessary noises, and allow, permit and suffer the licensed place of business to be conducted in such manner as to become a nuisance; in violation of Rule 5 of State Regulation #20.'

"Appellant's premises are located at 275 Broad Street, Newark.

"Upon the filing of the appeal an order was entered on November 7, 1957, staying respondent's order of suspension until entry of a further order herein. R. S. 33:1-31.

"At the hearing herein respondent's case was presented upon the transcript of the proceedings held before the respondent. Rule 8 of State Regulation No. 15. No additional evidence was presented, but both attorneys orally argued the case at said hearing.

"Appellant alleges, in effect, that the finding of guilt was not supported by the evidence and was the object of bias and prejudice against appellant.

"From the evidence presented at the hearing below it appears that, shortly before 10:00 p.m. on February 1, 1957, Juan --- and three companions entered defendant's premises and went to the rear end of the bar. They purchased bottled beer from Edward Kalkowski (the bartender). Harry Gross (appellant) was seated on the customer's side of the bar. Robert --- and a companion were at the front end of the bar near the entrance. Robert testified that Juan came to the front end of the bar

and 'must have thought we were talking about him' whereupon Robert told Juan that it was none of his business what he and his companion were talking about. The bartender testified that he saw them talking down there; that he went down there, thought it was an argument and went back and told one of Juan's friends to get him away from there. Robert further testified that Juan 'said something bad;' that they grabbed each other and rolled to the floor; that he cut Juan across the neck and stabbed him in the arm with a penknife; that Harry Gross and others separated them and that he (the witness) went right out of the premises and did not go back. Admittedly no one called the police. Shortly after he was cut, Juan and one of his companions left the premises but, when they decided to return to call the police or a taxi, they found the door locked. After twenty minutes they got a taxi and went to the hospital where eleven stitches were required for Juan's neck injury and one stitch for his arm injury.

"There appears to have been no loud talk or lengthy argument before the cutting occurred and the two men involved were strangers to each other. The attorney for appellant argues that the event was spontaneous and occurred without warning and that neither the licensee nor his bartender could do anything to stop it. It is true that the struggle lasted only a few seconds but the bartender knew that there was an argument between these patrons and walked the length of the bar and back again without attempting to stop the argument before the struggle began. The licensee was in the premises and made no attempt to stop the argument before the struggle began. His failure to summon the police when he saw that Juan was bleeding from the neck and his action in locking the door for more than ten minutes after Juan and his companion left the premises indicate that he attempted to cover up the violation which he permitted on his premises. This case is clearly distinguished on its facts from Kandell v. Newark, Bulletin 1091, Item 3, and Schaeffer and Wyatt v. Newark, Bulletin 1140, Item 1, in which there was a sudden flare-up after the bartender, in one case, and the licensee, in the other case, attempted to stop the argument. On the facts herein, the evidence is sufficient to sustain the finding of guilt. Pribila v. Linden, Bulletin 1045, Item 4; Boyd Casino, Inc. v. Newark, Bulletin 1047, Item 1.

"The contention that the finding of guilt was the result of bias and prejudice is based solely upon the claim that the numbers of respondent Board were influenced by the fact that a prior case against appellant, involving a similar charge, was reversed on appeal. Gross v. Newark, Bulletin 1188, Item 1. This contention is without merit because there is no evidence that respondent's decision was based upon anything other than the evidence presented below.

"It is recommended, therefore, that an order be entered affirming the action of respondent and reimposing the ten-day suspension of the license."

Written exceptions to the Hearer's Report and written argument pursuant thereto were filed with me by the attorney for appellant, in accordance with Rule 14 of State Regulation No. 15.

After carefully considering the entire record, including the transcript of testimony, the exceptions and written argument, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein.

Accordingly, it is, on this 4th day of March, 1958,

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

ORDERED that the ten-day suspension imposed by respondent, and which was stayed during the pendency of these proceedings, be restored against the license held by appellant for premises 275 Broad Street, Newark, to commence at 2:00 a.m. March 11, 1958, and to terminate at 2:00 a.m. March 21, 1958.

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - FEMALE IMPERSONATORS - CONDUCTING BUSINESS IN A MANNER OFFENSIVE TO COMMON DECENCY AND PUBLIC MORALS - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

CONNIE GANNITTI  
30 Westminster Place  
Saddle Brook Township  
PO Rochelle Park, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-10, issued by the  
Township Committee of Saddle Brook  
Township.

-----)  
John M. Contant, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to that part of the charge herein which states:

"On December 14, 20 and 21, 1957, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered male and female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises;..."

and a technical plea of not guilty to that part of the charge which states:

"...and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

The file herein discloses that at 9:25 p.m. on Saturday, December 14, 1957, three ABC agents entered defendant's licensed premises and remained therein until 10:50 p.m. During the time that the agents were in the said premises, the agents reported that they observed several female patrons who had short mannish haircuts, wore no make-up, were attired in male-type shirts, slacks and low, oxford-type shoes. The agents further reported that at the height of activity during the evening, they observed

fifteen male patrons who acted in an effeminate manner, speaking in high-pitched voices similar to that of a female and when they walked, they swayed their hips. At one time the agents heard two of the male patrons discussing a person named "Bill" and referred to "her" as a party girl; another male patron at the end of the bar was heard to say when referring to "Bill" that "She's known as the prima donna of Fifth Avenue". The agents stated that shortly after they entered, a woman went behind the bar and checked the register; that this female wore tan slacks, a mannish white shirt and cuff links; laced, brown suede oxford-type shoes; that she had a short, mannish-type haircut, wore no make-up and spoke with a deep, raspy voice. Her mannerisms appeared to the agents to be masculine in character.

The file further discloses that the same agents returned to the defendant's licensed premises at 9:50 p.m. on Friday, December 20th, and remained there until 1:25 a.m. on Saturday, December 21, 1957. The agents reported that they observed that 90% of the males and females present had the characteristics of those who were seen on the previous visit and appeared to be homosexuals and Lesbians, respectively. One of the agents asked Anne, who later was identified as the manager of the defendant's licensed premises, if she cared to have a drink; that she accepted his offer and came over to the bar; that "Anne was attired in a mannish, white dress shirt, open at the neck and with long sleeves and cuff links, a dark sleeveless sweater, tweed, cuffed slacks, laced oxford shoes. She wore no make-up and her hair was cut even shorter than on the previous visit and was combed back in a masculine manner"; that he and Anne engaged in conversation with reference to the patrons and exchanged stories relative to other liquor establishments where homosexuals and Lesbians had gathered; that Anne remarked, "As long as the 'Kids' behave themselves who can say or prove anything. They don't even want the kids hanging out or using the place as a meeting place. We've been running here ten years and none of the kids have ever gotten caught or into trouble yet." A short time thereafter the agents left their seats at the bar and walked towards the front of the premises. At about 12:35 a.m. the agents called to Anne and identified themselves; that Anne slapped her forehead and, after an exclamation which is unnecessary to repeat, said, "What's wrong? I didn't tell you anything"; that when the defendant-licensee was summoned by Anne and the agents attempted to inform her of the violation, she became very abusive.

The attorney for the defendant entered a technical plea of not guilty to that part of the charge wherein defendant was charged with conducting her place of business in a manner offensive to common decency and public morals. He contended, in substance, that no overt acts of lewdness and immoral activities had occurred at any time on the licensed premises and thus the defendant should be found not guilty of the part of the charge which is questioned. I cannot accede to his contention as it was succinctly stated by Judge Jayne when speaking for the Appellate Division of the Superior Court of New Jersey in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N. J. Super. 405, that, "Assuredly, it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud", and stated further, "The Director resolved that the acquiescence of the licensee in the customary assemblage in relatively large

numbers of such individuals at the tavern offended the intent and purpose of Rule 5 of the State Regulations No. 20. See Re Roselle, Bulletin 279, Item 8." I, therefore, find the defendant guilty of that part of the charge to which a technical not guilty plea had been entered.

Defendant has a prior adjudicated record. Effective September 19, 1949 her license was suspended for twenty days for (1) hostess activity and (2) employing unqualified persons, by the local issuing authority. Inasmuch as the past violations are dissimilar to the violation now under consideration and happened more than five years ago, I shall not take them into consideration when fixing the present penalty. I shall suspend defendant's license for a period of sixty days. Re Rutgers Cocktail Bar, Inc., Bulletin 1133, Item 2; Re The Paddock Bar, Inc., Bulletin 1159, Item 2. Inasmuch as the technical plea of not guilty to part of the charge was submitted when the non vult plea to the rest of the charge was entered, and there was no hearing in the matter, I shall allow five days' remission for the plea entered herein, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 3rd day of March, 1958,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of Saddle Brook Township to Connie Gannitti, for premises 30 Westminster Place, Saddle Brook Township, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a.m. March 11, 1958, and terminating at 3:00 a.m. May 5, 1958.

WILLIAM HOWE DAVIS

Director.

3. *Limited Wholesale* ~~STATE BEVERAGE DISTRIBUTOR'S~~ LICENSE - OBJECTIONS TO TRANSFER - EFFECT OF R. S. 33:1-11.2 TO .5 - LEAVE GIVEN TO MAKE BONA FIDE SALE OF STOCK OF PROPOSED TRANSFEREE WITHIN 60 DAYS AND THEREAFTER AMEND APPLICATION AND READVERTISE.

In the Matter of Objections to the )  
Transfer of License WL-39 from )

THE OLD READING BREWERY, INC. )  
Ninth and Laurel Streets )  
Reading, Pennsylvania )

CONCLUSIONS

to )

CLINTON DISTRIBUTING COMPANY )  
245 East Washington Avenue )  
Washington, N. J. )

Paul M. Salsburg, Esq., Attorney for Applicant.  
Steelman, Lafferty & Rowe, Esqs., by James L.R. Lafferty, Esq.,  
Attorney for New Jersey Brewers' Association, Objector.  
Leo J. Berg, Esq., Attorney for State Beverage Distributors'  
Association, Objector.  
William P. Reiss, Esq., Attorney for Anheuser-Busch, Inc.,  
Objector.  
Francis W. Brennan, Esq., Attorney for P. Ballantine & Sons,  
Objector.  
Alvin E. Heutchy, Secretary, appearing for F. & M. Schaefer  
Brewing Co., Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:



"Written objections to the granting of this application having been filed, a hearing was duly held thereon.

"The objections allege that there is no need or necessity for the transfer of the license and that the granting of the application would result in a circumvention or evasion of the provisions of R. S. 33:1-11.2 to .5.

"The Old Reading Brewery, Inc., a corporation of the State of Delaware, has held a limited wholesale license in New Jersey since May 1952. Under that license it has been selling and distributing its malt alcoholic beverages throughout this State from its brewery in Pennsylvania to licensed New Jersey retailers and wholesalers. The evidence indicates that the wholesalers to whom it now sells its products are four State Beverage Distributors located, respectively, in Vineland, Woodbury, Metuchen and Alpha.

"Clinton Distributing Company, a corporation of the State of New Jersey, was incorporated on September 20, 1957. It now owns the property located at 245 East Washington Avenue, Washington, N. J. It was testified that, if the transfer is granted, Clinton Distributing Company will handle the sale and distribution of Old Reading beer in New Jersey; that it will maintain a warehouse; that it has leased two trucks, and that it will employ two salesmen and two drivers.

"Harry Fischman is Secretary and Treasurer, and Leo Fischman is President of The Old Reading Brewery, Inc., and both hold a substantial interest in said brewery. Harry Fischman is President and Director and Leo Fischman is Secretary-Treasurer and Director of Clinton Distributing Company, and each owns forty-five shares of its stock. The remaining ten shares of the stock of Clinton Distributing Company are owned by Edward J. Goens, who is a Vice President and Director and who, it has been testified, will manage the affairs of said corporation.

"The objection that there is no need or necessity for the transfer is not meritorious. If the application for transfer is granted, the transferee will carry on substantially the same activities now engaged in by the transferor. The same situation was considered in Conclusions entered by the Director on March 22, 1955, wherein it was held that the objections were not of sufficient weight to deny the transfer and the Director decided to grant the application. Re R. S. Wood, Inc., Bulletin 1059, Item 11. The attorney for applicant herein argues that the present application is governed by the decision in the cited case, but this argument completely disregards the effect of the legislation, hereinafter considered, which became effective subsequent to the time Conclusions were entered in the cited case.

"R. S. 33:1-11.2 to .5 became effective July 1, 1956, and provide:

"33:1-11.2. For the purposes of this act, the following phrases shall be deemed to have the meanings herein given to them:

(a) Foreign person -- a person resident in or incorporated under the laws of any State other than the State of New Jersey.



(b) Resident person -- a person resident in or incorporated under the laws of the State of New Jersey.

'33:1-11.3. No foreign person holding a Class B license in this State shall sell or distribute alcoholic beverages directly to any retail licensee within this State unless a resident person is permitted to sell and distribute alcoholic beverages directly to all persons licensed to sell the same at retail in the State or nation in which such foreign person is resident or incorporated on the same terms and conditions as such foreign person enjoys such privilege in such State or nation.

'33:1-11.4. The provisions of this act shall not apply to any foreign person holding a Class B license who also holds a Class A license.

'33:1-11.5. If, in the opinion of the director, privileges conferred by any Class B license, whether held by a resident person or a foreign person, are being used to circumvent or evade the provisions of this act, the director may revoke such Class B license, or suspend the same until such time as the holder thereof satisfies the director that such license, or the privileges conferred thereby, will not be used to circumvent or evade the provisions of this act.'

"It is clear that The Old Reading Brewery, Inc. is a foreign person holding a Class B license in this State, and that Clinton Distributing Company is a resident person. It is not clear that the laws of the State of Delaware prohibit a resident person, as defined above, from selling or distributing alcoholic beverages directly to retail licensees in that State. However, it does sufficiently appear from a letter written by the Attorney for the Delaware Alcoholic Beverage Control Commission, dated July 22, 1957, that a resident person, as defined above, is not permitted to sell and distribute alcoholic beverages directly to retail licensees in Delaware. It follows that R. S. 33:1-11.3 should be construed to prohibit The Old Reading Brewery, Inc. from selling and distributing directly to retailers in New Jersey.

"In Re McNair, Bulletin 368, Item 14, Commissioner Burnett, after remarking that 'A corporation is a strange creature!', ruled that the corporate veil should be pierced if the corporate form is utilized for the purpose of evading a statute. From the evidence herein I conclude that, so long as Harry Fischman and Leo Fischman have an interest in Clinton Distributing Company, a transfer of the license to that corporation would permit The Old Reading Brewery, Inc. to evade the effect of R. S. 33:1-11.3. It would be a futile act to transfer the license and immediately institute proceedings to revoke or suspend the license in accordance with R.S. 33:1-11.5.

"In my opinion, however, the facts and circumstances of this case do not warrant an outright denial of the application. Harry Fischman testified that the present distributors handle a very small area; that none of them is equipped to handle the whole State, and that he has been unable to obtain other distributors over a period of time. Residents of New Jersey should be able to obtain Old Reading beer if they desire it, and the brewery should be permitted to sell through a distributor willing to give proper State-wide service. It is recommended,

therefore, that applicant be advised that Harry Fischman and Leo Fischman will be given an opportunity to sell their shares of stock in Clinton Distributing Company to bona fide purchasers not connected with The Old Reading Brewery, Inc., and that, if said sale is made, the pending application will be reconsidered after the applicant has amended its application and properly readvertised. It is further recommended that applicant be advised that, if said sale is not made within sixty (60) days from the date of the Director's Conclusions in this case, the pending application will be denied."

No exceptions to the Hearer's Report were filed with me by the attorneys for the interested parties in this matter.

After carefully considering the entire record, I concur in the Hearer's findings and adopt the conclusions set forth in the Hearer's Report as my Conclusions herein.

WILLIAM HOWE DAVIS  
Director.

Dated: March 4, 1958.

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF  
STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary  
Proceedings against

PALACE BAR, INC.  
t/a PALACE BAR  
1100 Springwood Avenue  
Asbury Park, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-44, issued by the  
City Council of the City of Asbury  
Park.

Philip Newman, Esq., Attorney 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 charge:

"On Sunday, August 11, 1957 at about 1:35 a.m., you allowed, permitted and suffered the removal of alcoholic beverages, viz., two 12-ounce cans of Krueger beer, in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

"At the hearing herein, the Division called as its witnesses two ABC agents hereinafter referred to as Agent F and Agent M.

"Agent F testified that on Sunday, August 11, 1957 at about 1:15 a.m., Agent M and he drove to the vicinity of defendant's licensed premises located on the south side of Springwood Avenue; that they parked their car on the south side of the street facing easterly in the direction of and

about 100 to 125 feet westerly from the premises; that the visibility of the area was good; that shortly thereafter he observed a colored male (identified as Dottie Wright) approaching from the opposite side of the street and passing empty-handed in front of their automobile at a distance of about 15 feet; that he watched Wright continue walking on the southerly side of the street in the direction of the licensed premises and enter the same at about 1:25 a.m., and that he had a clear and unobstructed view of Wright's itinerary. He further testified that ten minutes later (1:35 a.m.) he saw Wright emerge from the licensed premises with a brown paper bag under his arm; that Wright retraced his steps crossing to the northerly side of the street about 15 or 20 feet in front of their automobile; that when Wright reached the northerly curb, Agent M and he stopped him, identified themselves, found that the bag contained two 12-ounce cans of Krueger's beer (cold); that the bag was folded very nice and clean and crisp-looking; that he asked Wright where he obtained the beer to which Wright replied, 'from his cousin in the village'; that he thereupon said, 'All right, let us go back'; that Wright led the way to the licensed premises and they followed him from a distance of about three or four feet and that no mention of the licensed premises was made by him to Wright.

"Agent F further testified that after entering the licensed premises, Agent M and he identified themselves to Frank Indelicato, an officer of the corporate-licensee; that before he had a chance to question Indelicato, Wright walked toward Indelicato who was standing behind the bar and said, 'I told him I got it from my cousin in the village'; that Indelicato denied he sold the beer to Wright; that he inspected the refrigerator and found it freshly filled with 12-ounce cans of Krueger's beer; that the few cans of beer he touched in the refrigerator were warm; that he found no cold beer on the premises.

"Agent M was called for cross-examination following a stipulation between counsel that if Agent M was called by the Division, his answers to the questions propounded to Agent F would be the same as Agent F's. The testimony given by Agent M on cross-examination further corroborated the statements of Agent F.

"The defendant called four witnesses, Dottie Wright, Albert Clark, Benjamin J. Smith and Frank Indelicato, secretary and treasurer of the corporate-licensee.

"Wright testified he left his home, 1115 Springwood Avenue, on Saturday, August 10, 1957 at about 7:30 p.m.; that he went to the home of his cousin, Benny Smith, who lives in the village; that he walked in an easterly direction on Springwood Avenue, passed the licensed premises, turned right at the corner (Springwood and Sylvan Avenues), and continued for about two blocks to the village (residence of Smith); that on his way he stopped at the licensed premises where he bought three cans of Krueger's beer from Frank (Indelicato); carried the beer in a bag to his cousin's home where he remained until about 1:00 a.m. the following morning; that he found his cousin and his cousin's wife at home; that his cousin placed the beer in the icebox; that he had consumed one of the cans of beer; that he left his cousin's home with the bag containing the two cans of beer at about 1:00 a.m.; that on his way home he walked into the vestibule leading into the licensed premises to say hello to Clark (porter); then continued walking westerly

up Springwood Avenue when he was stopped by Agents F and M at the entrance to his home; the agents asked him what he had in the bag and he replied, 'I got a couple of cans of beer'; that he was then asked where he got the beer and answered, 'I got it at my cousin's', to which the agents countered, 'No, you didn't get it at your cousin's, you got it at the Palace Bar'. (At this point I asked the witness two questions: (1) 'Did you get it at the Palace Bar or your cousin's?' The witness replied, 'I got it earlier in the afternoon to take around my cousin's.' (2) 'You didn't tell the agents?' The witness replied, 'I just told them I got the beer at my cousin's early in the evening.') Upon further questioning by defendant's attorney, Wright testified, 'I got the beer during the morning - during the day - in the morning around 10 o'clock during the day, something like that'; that from 10 o'clock in the morning until 7 o'clock he had the beer at his cousin's house; that his cousin placed it in the icebox; that he remained at his cousin's house until he left that night; that he did not buy the beer at 1:00 a.m. (August 11, 1957); that at the time the agents stopped him, the beer was cool and the bag was moist; that he had just left his cousin; that Clark did not sell him the beer; that Frank did not sell him the beer that night, it was in the afternoon.

"On cross-examination Wright testified he visits the licensed premises about two or three times a day for a drink of beer; that he left his home on Saturday, August 10, 1957 about 7:00 a.m.; that he went to the licensed premises that morning about 10:30 or 11 o'clock; that George Barteel was tending bar; that he bought the beer for his own use; that the bartender took three cans of beer from the icebox and placed them in a bag; that the bartender kept some loose cans of beer in the icebox during the day; that at about 10:45 a.m., he brought the beer to his cousin's where he intended to stay and watch television; that the beer was cold; that about 6:30 p.m. he drank one of the cans of beer; that about 1:30 a.m., when he prepared to leave, his cousin handed him the bag which was moist and that he carried it under his arm.

"Clark testified that he acts as a porter on the licensed premises; that on August 10, 1957, he was on the licensed premises from 11:30 p.m. to sometime past 1:30 a.m. the following morning; that on August 11, 1957 at about 1:30 a.m., he saw Wright pass the licensed premises; that he did not see Indelicato sell any beer to Wright, and that on August 10, 1957 at about 11:30 p.m., a woman who had been cut ran into the licensed premises for first aid.

"Smith testified that Wright came to his home between 11:30 a.m. and 12 noon on August 10, 1957 and left the following morning at 1:00 a.m. with a bag containing two cans of beer.

"On cross-examination Smith stated that on August 10, 1957 he went to work at about 7:00 a.m. and returned home at about 6:30 p.m.; that he did not come home for lunch; that he came home at about 2:00 p.m. and remained for about one hour; that Wright was at his home and had arrived there in the morning; that he was not at home when Wright arrived; that he learned from his wife that Wright arrived in the morning with a bag containing three cans of beer; that at about 2:00 or 2:30 p.m. he saw the bag on top of the refrigerator; that it contained two cans of beer; that Wright informed him he had

consumed the contents of one of the cans; that he again returned home about 7:00 p.m. and that the bag and two cans of beer were still in the refrigerator because he had placed it there, and that he did not leave his house that night.

"Indelicato testified that he is an officer of the corporate-licensee; that he was acting as bartender on Saturday night, August 10 and early Sunday morning, August 11, 1957 when Agent F and Agent M entered the licensed premises with Wright; that he denied to the agents that he sold Wright the two cans of beer; that Wright, in his presence, stated to the agents, 'I told you I didn't buy it here'; that he had no cold beer on the premises; that he told the agents that Wright might have entered the premises between 11:30 p.m. and 12 midnight (August 10, 1957) when a crowd of 25 or 30 people had gathered in front of the licensed premises to witness the removal by an ambulance of an injured woman; that Wright could have then entered the premises without his knowledge 'because ...I could have been in the office at the time'; that it was after 1:00 a.m. when the agents and Wright entered the premises; that they entered the premises about ten or fifteen minutes after the ambulance departed; that he knew when he came to the hearing herein that it was after 1:00 a.m. when the ambulance arrived; that he thought it was around 11:30 p.m. to 12 midnight and that it might have been between 12 midnight and 12:30 a.m. (August 11, 1957).

"It is quite apparent that the testimony of Wright is replete with inconsistent statements and that it is in sharp conflict with some of the essential testimony of Smith and Indelicato. I am not at all favorably influenced by their testimony.

"I have carefully considered all the testimony adduced herein and find that, notwithstanding the exhaustive cross-examination of the agents, their testimony remained unshaken and that they gave an accurate and truthful account of what transpired in the case. The agents testified that Wright was empty-handed when they saw him enter defendant's premises and that he had the bag, containing the cans of beer, when he left the premises. Under the circumstances, I conclude that the Division has sustained the burden of proof of defendant's guilt by a fair preponderance of the believable evidence and it is recommended that an order be entered finding defendant guilty as charged.

"Defendant has no prior adjudicated record. It is further recommended that the order provide that defendant's license be suspended for a period of fifteen days. Re DePaola, Bulletin 1199, Item 6."

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

After carefully considering the facts and circumstances appearing herein, I concur in the Hearer's findings and conclusions and adopt his recommendation. I shall suspend defendant's license for a period of fifteen days.

Accordingly, it is, on this 18th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-44, issued by the City Council of the City of Asbury Park to Palace Bar, Inc., t/a Palace Bar, for premises 1100 Springwood Avenue, Asbury Park, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. March 3, 1958, and terminating at 2:00 a.m. March 18, 1958.

WILLIAM HOWE DAVIS  
Director.

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

In the Matter of Disciplinary Proceedings against

MARLBOROUGH HOTEL CORP.  
t/a MARLBOROUGH HOTEL  
323 Lexington Avenue  
Lakewood, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Lakewood.

-----)  
Mark Addison, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that on January 24, 1958 ABC agents, acting upon information transmitted to this Division by the Lakewood Police Department, obtained a signed, sworn statement from George ---, age 19, wherein he states that at about 11:30 p.m., Thursday, January 23, 1958, he and his adult brother entered defendant's licensed premises wherein his brother ordered two glasses of beer, one glass of which was placed in front of him by the bartender, who required no written proof of his age. George later directed the agents to the licensed premises and pointed it out as the place wherein the sale was made and identified therein Philip H. Nowicki, treasurer of the corporate licensee herein, as the person who had served him. Nowicki volunteered a signed, sworn statement admitting the sale and service to George without requiring written proof of his age.

In alleged mitigation defendant, by its attorney, states that at some time prior to the alleged violation George was asked to produce evidence of his age and that he exhibited to Nowicki a Navy I.D. card purporting to be his but which, in fact, was that of his brother who is over 21 years of age and that, believing that George's age had been established, Nowicki thereafter proceeded to serve him. The minor's signed statement confirms the fact that prior to the date alleged herein he exhibited his brother's I.D. card to Nowicki.

One of the essential requisites necessary to establish a defense to a charge alleging a sale of alcoholic beverages to a minor is a written representation as to his age, signed by the minor as provided by law. See R. S. 33:1-77. The exhibit of a driver's license, draft card, birth certificate, etc., is not a compliance with the statute. See Re Roey, Bulletin 747, Item 3.

Defendant has no prior adjudicated record. The minimum suspension imposed for an unaggravated sale of alcoholic beverages to a 19-year-old minor is fifteen days. Re Eisenberg.



Bulletin 1157, Item 7. In view of the particular circumstances herein, which are similar in most respects to those in cases hereinafter cited, I shall suspend defendant's license for ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Wedemeyer, Bulletin 1050, Item 8; Re Giordano, Bulletin 1087, Item 2; Re M.L.C. Corporation, Bulletin 1115, Item 3; Re Angelotta, Bulletin 1163, Item 12.

Accordingly, it is, on this 24th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Lakewood to Marlborough Hotel Corp., t/a Marlborough Hotel, for premises 323 Lexington Avenue, Lakewood, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. March 3, 1958, and terminating at 2:00 a.m. March 8, 1958.

WILLIAM HOWE DAVIS  
Director.

6. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATIONS -  
LICENSE FOR PREMISES AT WHICH NO PRIOR VIOLATION HAD BEEN  
COMMITTED SUSPENDED FOR 5 DAYS - LICENSE FOR PREMISES AT WHICH  
PRIOR VIOLATION HAD BEEN COMMITTED SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

Case No. 1 )

HONEY DEW FOOD STORES, INC. )  
t/a HONEY DEW FOOD STORES )  
1045 River Road )  
New Milford, N. J., )

Holder of Limited Retail Distribu- )  
tion License DL-3, issued by the )  
Mayor and Council of the Borough of )  
New Milford. )

CONCLUSIONS  
AND  
ORDER

-----  
Case No. 2 )

HONEY DEW FOOD STORES, INC. )  
8728 Hudson Boulevard )  
North Bergen, N. J., )

Holder of Limited Retail Distribu- )  
tion License DL-13, issued by the )  
Board of Alcoholic Beverage Control )  
of the Township of North Bergen. )

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Albert Sampson Gross, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

Case No. 1

"In your application dated May 20, 1957, filed with the New Milford Mayor and Council, upon which you obtained your current Limited Retail Distribution License and wherein you listed your stockholders in answer to Question 22 as John Behrens (85 shares or 85%), Samuel



Oxenberg (5 shares or 5%), A. Adelman (5 shares or 5%), and M. Adelman (5 shares or 5%), you falsely stated 'No' in answer to Question 24, which asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any other stockholder of the applicant corporation?', whereas in truth and fact A. Adelman had such an interest in that he was the real and beneficial owner of all of your stock; said false statement being in violation of R. S. 33:1-25."

Case No. 2

"In your application dated May 20, 1957, filed with the North Bergen Board of Alcoholic Beverage Control, upon which you obtained your current Limited Retail Distribution License and wherein you listed your stockholders in answer to Question 22 as John Behrens (85 shares or 85%), Samuel Oxenberg (5 shares or 5%), A. Adelman (5 shares or 5%) and M. Adelman (5 shares or 5%), you falsely stated 'No' in answer to Question 24, which asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any other stockholder of the applicant corporation?', whereas in truth and fact A. Adelman had such an interest in that he was the real and beneficial owner of all of your stock; said false statement being in violation of R. S. 33:1-25."

Both cases have been consolidated since they involve the same question of law and fact.

The files herein disclose that the defendant corporate licensee acquired by transfer the New Milford premises on February 23, 1953 and the North Bergen premises on July 30, 1956; that the license applications for those years and the succeeding renewal years up to and including the current license year listed the shareholders and their respective shares of stock as hereinabove set forth in the charges, notwithstanding the fact that the beneficial owner of all of the shares of stock was A. Adelman.

In alleged mitigation of the penalty to be imposed herein, defendant, by its attorney, states that "through sheer inattention" Abraham Adelman neglected to bring about a transfer of the shares of stock so as to indicate the true legal and beneficial ownership therein. No deliberate intent to violate the Alcoholic Beverage Law is discernible. When the investigation was instituted a full and frank disclosure of the entire arrangement was made to the ABC agents. All parties named herein appear to be fully qualified and to have been fully qualified on May 20, 1957, to hold a liquor license. The unlawful situation was corrected on January 2, 1958, by redistributing the corporate stock as follows:

John Behrens, Hawthorne, N. J.	- 1 share
Abraham Adelman, Teaneck, N. J.	-50 shares
Mina Adelman, Teaneck, N. J.	-49 shares

Defendant has a prior adjudicated record. Effective November 1, 1957 its license for the New Milford premises was suspended for twenty days by the local issuing authority for sale of alcoholic beverages to a minor. Considering all the facts and circumstances herein, I shall suspend each of the licenses held by defendant for a period of five days. Cf. Re Bayou Holding Co., Inc., Bulletin 563, Item 5; Re Fair Wine &

Liquor Stores, Inc., Bulletin 611, Item 6; and Re Elmwood House (Corp.), Bulletin 877, Item 3. Because of the prior dissimilar violation which occurred within a five-year period, five days will be added to the suspension imposed in Case No. 1, leaving a net suspension of ten days against the New Milford license and a suspension of five days against the North Bergen license.

Accordingly, it is, on this 3rd day of March, 1958,

ORDERED that Limited Retail Distribution License DL-3, issued by the Mayor and Council of the Borough of New Milford to Honey Dew Food Stores, Inc., t/a Honey Dew Food Stores, for premises 1045 River Road, New Milford, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. March 10, 1958, and terminating at 9:00 a.m. March 20, 1958, and it is further

ORDERED that Limited Retail Distribution License DL-13, issued by the Board of Alcoholic Beverage Control of the Township of North Bergen to Honey Dew Food Stores, Inc., for premises 8728 Hudson Boulevard, North Bergen, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. March 24, 1958, and terminating at 9:00 a.m. March 29, 1958.

WILLIAM HOWE DAVIS  
Director.

7. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - PERMITTING PERSONS OTHER THAN EMPLOYEES AND AGENTS ON LICENSED PREMISES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

OLLIE'S BAR, INC.

t/a OLLIE'S BAR

135 Ocean Avenue

Jersey City 5, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-528, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Defendant-licensee, by Orlando Bozzone, President.  
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On Sunday, January 26, 1958, between the hours of 2:00 a.m. and 2:27 a.m., you conducted your licensed business; in violation of Section 4 of an Ordinance adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950.

"2. On Sunday, January 26, 1958, between the hours of 2:00 a.m. and 2:27 a.m., you suffered and permitted persons other than your employees and agents in and upon your licensed premises; in violation of Section 4 of the above mentioned Ordinance."

The file discloses that two ABC agents were in defendant's licensed premises at 2:00 a.m. on Sunday, January 26, 1958. At that time eight other patrons were in the premises and John Bozzone was tending bar. Between 2:00 a.m. and 2:27 a.m., when the agents identified themselves, several drinks were served by the bartender to the agents and to the eight other patrons.

Defendant has a prior record. Effective May 22, 1950, its license was suspended by the local issuing authority for three days for selling alcoholic beverages while the polls were open on an Election Day. The minimum suspension for a violation similar to the violation herein is fifteen days (Re Romeo, Bulletin 1146, Item 11). In view of the previous "hours" violation which occurred more than five years ago and less than ten years ago, I shall suspend defendant's license for twenty days (Re Gorcica, Bulletin 1189, Item 9). Five days will be remitted for the plea herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-528, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Ollie's Bar, Inc., t/a Ollie's Bar, for premises 135 Ocean Avenue, Jersey City, be and the same is hereby suspended for fifteen days, commencing at 2:00 a.m. March 3, 1958, and terminating at 2:00 a.m. March 18, 1958.

WILLIAM HOWE DAVIS  
Director.

#### 8. STATE LICENSES - NEW APPLICATIONS FILED.

A. Louis Schlesinger, t/a South Jersey Distributors  
313-15-17 North Tennessee Ave., Atlantic City, N. J.

Application filed April 10, 1958 for additional warehouse at 121 N. Walnut Ave. (rear), North Wildwood, N. J. on Limited Wholesale License WL-1.

Suffern Distributors, Inc.

27-33 Franklin Turnpike, Mahwah, N. J.

Application filed April 11, 1958 for additional warehouse at 100 Franklin Turnpike, Mahwah, N. J. on Limited Wholesale License WL-41.

Lyndale Beverage Co., t/a Lyndale Beverage Co.

650 Valley Brook Ave., Lyndhurst, N. J.

Application filed April 14, 1958 for person-to-person, place-to-place transfer of State Beverage Distributor's License SED-111 from Saxon Distributing Company, 608 Adams St., Hoboken, N.J.

National Distillers Products Company Division of National Distillers and Chemical Corporation

Madison Avenue at Route 22, Union, N.J.

Application filed April 16, 1958 for place-to-place transfer of Plenary Wholesale License W-16 from 455 Valley St., Maplewood, N.J.

Hennis Freight Lines, Inc.

10-24 Water St., Jersey City, N.J.

Application filed April 21, 1958 for place-to-place transfer of Transportation License T-204 from 2020-2028 - 47th St., North Bergen, N.J.

New Jersey State Library

William Howe Davis  
Director.