

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

BULLETIN 1158

MARCH 27, 1957.

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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.

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MARCH 27, 1957.

1. APPELLATE DECISIONS - DEPARTMENT OF MISSIONS OF THE EPISCOPAL
DIOCESE OF NEWARK v. DENVILLE TOWNSHIP AND DENVILLE POST NO.
2519, INC., VETERANS OF FOREIGN WARS.

DEPARTMENT OF MISSIONS OF)
THE EPISCOPAL DIOCESE OF)
NEWARK,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF DENVILLE and)
DENVILLE POST NO. 2519, INC.,)
VETERANS OF FOREIGN WARS OF THE)
UNITED STATES,)

Respondents.)

Draesel & Dorfman, Esqs., by Samuel Rochlin, Esq., Attorney
for Appellants.

Mills & Mills, Esqs., by Elden Mills, Esq., Attorneys for
Respondent Township Committee.

Paul Bangiola, Esq., Attorney for Respondent-licensee.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"This is an appeal from the unanimous action of the members of the respondent Township Committee in approving an application for a club license to be issued to respondent Denville Post No. 2519, Inc., Veterans of Foreign Wars of the United States, for premises to be constructed in accordance with plans and specifications at 81-83 Main Street, Denville.

Appellant sets forth in its petition of appeal filed in the instant matter various grounds which it contends warrant reversal of respondent Township Committee's action, to wit:

'a. The land on which the Veterans of Foreign Wars planned to construct a building immediately adjoins the property owned by the appellant on two sides.

'b. The respondent, the Veterans of Foreign Wars, has no building erected on the premises for which application for a club license has been made.

'c. Surveys made in the years 1954 and 1955 proved that there was a desire and a need for an Episcopal Mission in the Township.

'd. In order to fulfill such need, appellant purchased its property from the owner, Anna G. Hall, on June 12, 1956, and closed title on the same on August 4, 1956, said deed having been recorded in the Morris County Clerk's Office on August 9, 1956, as Instrument No. 31201.

'e. Appellant is in the process of having plans and specifications drawn at the present time to immediately build a church, a parish hall and vicarage on said property.

'f. Due to the topographical condition of the appellant's land, it will be necessary to complete the church, and to build the parish hall and vicarage in the front of the property directly next to the land of the respondent, Veterans of Foreign Wars.

'g. In the meantime the land owned by the appellant has been used for religious services and will continue to be used for such purposes.

'h. Appellant has organized and will continue to organize youth fellowship in the Township of Denville and will use the building presently on the premises and those buildings which are to be erected for such purposes, and it is, therefore, felt that the serving of liquor on the property adjoining the appellant's will be detrimental to the youth activities of the church.

'i. That it has been and will continue to be the appellant's policy to use the buildings on the church property each and every day to conduct its various church activities.

'j. That in the event such a club license is granted it will have a detrimental effect upon the youth of the appellant church and the parishioners of the Township.

'k. By reason of the location of the property of respondent, Veterans of Foreign Wars, no parking area is available, so that a hazard to the members of the church and the residents in the area will be created by the issuance of such license.

'l. That the appellant has been advised and verily believes that Anna G. Hall, who conveyed the property to the respondent, Veterans of Foreign Wars, expressly understood that the building to be erected would be used exclusively for Veterans of Foreign Wars activities of a social and business nature and would not include the dispensing of liquor.

'm. A suit is presently pending in which said Anna G. Hall, the predecessor in title of the respondent, Veterans of Foreign Wars, is seeking to set aside her conveyance to it of the property involved in said license application.'

"It appears from the record in the matter now under consideration that the respondent veterans' organization (hereinafter referred to as respondent organization) acquired the vacant land whereon the proposed licensed premises are to be constructed from Anna Gertrude Hall by deed dated March 11, 1952, which said deed was duly recorded in the Clerk's Office of Morris County on April 2, 1952. It further appears that appellant acquired the vacant land on which it proposes to construct a church and other auxiliary buildings from said Anna Gertrude Hall by deed dated August 1, 1956, which said deed was duly recorded in the Clerk's Office of Morris County on August 9, 1956. On July 17, 1956 the respondent organization made application to the respondent Township Committee for a club license and in its notice of intention published on July 19, 26 and August 2, 1956, respectively, in the Denville Herald sets forth, among other necessary data, that 'Plans and specifications for premises to be constructed may be examined in the office of the municipal clerk.' Under date of July 23, 1956 a written objection to the issuance of the club license to the respondent organization was entered on behalf of the appellant,

a hearing was scheduled, and on September 5, 1956 the application for the club license was approved with the provision that the license be issued when the premises had been completed in accordance with the plans and specifications filed with the application.

"The uncontradicted testimony given by the witness produced on behalf of respondent organization discloses that, subsequent to the acquisition of the land by the said respondent, trees were cut down, a sign was erected indicating that a building was to be constructed, a flagpole placed on the site, hundreds of loads of dirt were dumped on the land in preparation for the use intended, test borings were made and footings installed, and then a foundation was built to support the building to be constructed which would constitute the licensed premises.

"There is no denial that the appellant's representatives were aware that the respondent organization held title to the land as the deed conveying the property to the appellant expressly excepted the parcel of land owned by the respondent organization. Furthermore, at the time the application for the license in question was made to respondent Township Committee, the appellant had not obtained title to the land which adjoins on two sides the land of the respondent organization.

"Appellant has indicated that at some future date it intends to construct a church on the land which it acquired, in accordance with plans and specifications presented at the instant hearing (it was agreed by the appellant that these were prepared subsequent to the hearing before the respondent Township Committee). It is apparent that no fraud was practiced on appellant herein as it was aware that the respondent organization owned the adjacent land and an inspection thereof would have disclosed that it was in the process of erecting a clubhouse. Although there was no duty on the part of the appellant, nevertheless, it had an opportunity to make necessary inquiries of the respondent organization, which had been in possession of the tract of land for several years, regarding its proposed use of the premises.

"The attorney for the appellant contends that under Rule 5 of State Regulation No. 7 it is imperative that the respondent organization must be 'in possession of suitable premises' before obtaining a club license. Judge Eastwood, speaking for the Superior Court of New Jersey, on page 318 in the case of Passarella v. Board of Commissioners (1 N. J. Super. 313), said 'While the applicable law makes no specific reference to the issuance or transfer of liquor licenses to vacant lands subject to the erection and construction of a proper building within which to conduct a liquor business, the Commissioner, under authority delegated to him by the Legislature and expressly found in R. S. 33:1-23 and R. S. 33:1-39, has consistently ruled that the municipal issuing authority may grant an application for liquor license pursuant to R. S. 33:1-32 upon 'the express condition (imposed in the authorizing resolution, pursuant to Revised Statutes, 33:1-32) that the premises as described in the plans and specifications prepared and submitted by the applicant and found acceptable by the issuing authority shall first be completed. (Re Harris, Bulletin 183, Item 11; Re Salter, Bulletin 184, Item 8; Re Murphy, Bulletin 389, Item 11.)' Under the authority of this rule, the municipal body may not actually issue the license until the premises are completed in accordance with the filed plans and specifications.'

When at the hearing herein the Passarella case, aforementioned, was called to the attention of the appellant's attorney,

he then contended that there is a distinction between a club license and a plenary consumption or distribution license. True, the Court was considering a case relative to a transfer of a plenary retail consumption license, but in its language it is apparent that it also included other types of retail liquor licenses. I find that the contention in question is without merit.

"Another contention advanced by appellant is that the grant of the club license to respondent organization is in violation of R. S. 33:1-76, N. J. S. A., which provides among other things that 'no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church***.'

"The word 'church' may designate either a religious congregation or an edifice of worship, according to the context. See The Trustees, etc. v. Fisher et al., 18 N. J. L. 254, 257 (Sup. Ct. 1841); Newark Athletic Club v. Bd. of Adjustment, Newark, 7 N. J. Misc. 55, 59 (Sup. Ct. 1929). As used in the Alcoholic Beverage Control Act, it means a 'recognized edifice devoted permanently to the worship of God.' Bulletin 5, Item 3. That an edifice is what is meant appears from the fact that the yardstick in the statute is a distance of 200 feet, to be measured between 'the nearest entrance of said church' and 'the nearest entrance of the premises sought to be licensed.' Cf. Manning v. Trenton, Bulletin 247, Item 1. There is no edifice or church presently in being and, therefore, the section under discussion has no application in the matter herein. The fact that appellant held religious services on one occasion on the grounds is insufficient to invoke the protection of the 'distance between church and licensed premises' statute in its favor.

"The object of a club license is not to supply the needs of the neighborhood. The holder of such a license cannot lawfully sell alcoholic beverages to the general public but must confine such sales to bona fide members and their bona fide guests. The allegation that the proposed licensed premises would create a moral hazard for the young folks in the community or those who may attend appellant's church, if and when constructed, is mere conjecture. If the premises are conducted in a law-abiding manner persons under twenty-one years of age would have nothing to fear and if not so conducted, the municipal officials should and would take the necessary steps to correct the condition.

"I have examined the reason advanced by appellant for reversal of the action of the respondent Township Committee that there are inadequate parking facilities but the evidence submitted in support thereof does not bear out that contention.

"After careful consideration of the entire record in the instant case I find that the members of the respondent Township Committee were not improperly motivated when, after consideration of the matter, the club license was granted to the respondent organization. There is also no indication that its action was arbitrary or unreasonable. I, therefore, recommend that the action of the respondent Township Committee be affirmed."

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

I have carefully examined and considered the entire record presented in the matter in question, together with the

Hearer's Report submitted herein and the written exceptions filed by the appellant. I agree with the statement of facts and conclusions of law set forth in the Hearer's Report and adopt them as my conclusions herein. Hence, I shall affirm respondent Township Committee's action.

Accordingly, it is, on this 28th day of January, 1957,

ORDERED that the action of respondent Township Committee be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - SEIDEL v. HIGHTSTOWN.

IRVING SEIDEL, trading as)	
REX BAR,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS AND ORDER
)	
COMMON COUNCIL OF THE BOROUGH)	
OF HIGHTSTOWN,)	
)	
Respondent.)	

Sidney Simandl, Esq., Attorney for Appellant.
Turp and Coates, Esqs., by Henry G. P. Coates, Esq., Attorneys
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"This is an appeal from respondent's action whereby it suspended appellant's license for thirty days effective at Midnight October 13, 1956, after finding appellant guilty of a charge alleging that he violated Rule 5 of State Regulation No. 20:

'*** in that on or about September 15, 1956, you allowed, permitted or suffered in or upon your licensed premises at 128 Mercer Street, Hightstown, New Jersey, a brawl, act of violence and disturbance involving two patrons, James Henry Thomas and Willie Walter James.'

"Appellant's premises are located at 128 Mercer Street, Hightstown.

"Upon the filing of the appeal an order was entered on October 11, 1956, staying respondent's order of suspension until the 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 below in accordance with the provisions of Rule 8 of State Regulation No. 15. Some additional evidence, concerned chiefly with the layout of the licensed premises, was presented by appellant who was not present when the alleged violation occurred.

"There is no doubt that a disturbance occurred on appellant's premises on the date mentioned in the charge. The only issue is whether the evidence is sufficient to warrant a finding that appellant's agents or employees allowed, permitted or suffered the violation to occur.

"At the hearing below eight witnesses were called by respondent. James Henry Thomas testified that he resides in Florida but came to New Jersey to work on a farm near Hightstown; that on September 15, 1956, he, Willie Walter James (who works on the same farm) and another man entered appellant's premises but did not go to the bar to get a drink because most of the stools at the bar were occupied; that, instead, they walked directly to a shuffleboard; that he and Willie entered into an argument as to the correct addition of a series of figures on a piece of paper; that, as a result, they made a \$10.00 bet as to the correct answer; that Willie lost the bet, paid the money to him and then 'jumped and grabbed me.' The witness further said that they tussled around the shuffleboard and that, when he couldn't get loose, he took out his knife and stuck Willie twice; that some fellow then grabbed his arm and told him to give him the knife; that he gave the knife to this man and walked out the door. On cross-examination James said that he and Willie were not talking loudly; that the tussle happened all of a sudden and that it lasted two or three minutes. Orlando Fountain testified that, as he entered the licensed premises, James had 'his knife up;' that he obtained the knife from James and gave it to a patron at the bar, who in turn handed it to someone behind the bar. Theodore Norcross testified that he is employed as a laborer but was acting as bartender that day in the absence of appellant who was observing a Jewish holy day. Norcross further testified that he observed the three men in the corner and thought at first that they were fooling; that, when he saw the knife, he went around the bar and helped Willie off the floor and then returned behind the bar and telephoned for the ambulance. Jessie Chew testified that she was also tending bar; that this was the first time she ever worked there and that, after the man was cut, she 'didn't go down and look at him or nothing.' The testimony of the four other witnesses (Wright and Ely who arrived with the ambulance and took Willie to the hospital; Police Officer Disbrough who arrived after the ambulance and who, after some delay, obtained the knife from Norcross; and William Baker, a farmer who employed James and Willie) is not helpful on the issue involved because they arrived after the disturbance terminated or were not present when it occurred.

"At the hearing below, Charles Thompson, who was called as a witness by defendant (appellant herein), testified that he is employed as a foreman and was seated at the bar near the door when the three men mentioned above entered; that the three men did not go to the bar or have anything to drink; that they started an argument near the shuffleboard but that there was no loud language or profanity; that one man grabbed another man as though he was choking him, and the third man in the group attempted to stop him; that he saw a knife, and that one of the men fell to the floor. He estimated that three or four minutes elapsed between the time the men entered and the time the cutting occurred.

"After considering the evidence and the briefs submitted, I doubt that Norcross ever left his position behind the bar but believe that he promptly telephoned for the ambulance. The weight of the evidence indicates, however, that the disturbance was a sudden 'flare-up' without prior warning and

that the bartenders had no opportunity to stop the disturbance or prevent the cutting. The present case differs from Re Plikaytis, Bulletin 754, Item 1 (where numerous drinks were served to the patrons involved); Pribila v. Linden, Bulletin 1045, Item 4 (where troublesome patron was permitted to return), and Moskowitz v. Newark, Bulletin 1061, Item 1 and Samuel Fessler v. Orange, Bulletin 1114, Item 6 (in both of which there were general brawls involving many patrons). I find that this case involves a sudden assault by one patron on another, and there is nothing in the testimony to indicate that the licensee or his agents had any reason to anticipate the trouble which occurred. Under similar circumstances, a finding of guilt has been reversed on appeal. Zicherman v. Newark, Bulletin 613, Item 5; Engel v. Belleville, Bulletin 694, Item 5; Ferdinand v. Newark, Bulletin 1084, Item 3; Kandell v. Newark, Bulletin 1091, Item 3; Black v. Camden, Bulletin 1135, Item 3; Schaeffer & Wyatt v. Newark, Bulletin 1140, Item 1. I conclude that the action of respondent in finding appellant guilty of the charge should be reversed, and recommend that an order be entered accordingly."

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

Having carefully considered the evidence herein, I agree with the conclusions and the recommendation of the Hearer and adopt his conclusions as my conclusions in this case.

Accordingly, it is, on this 29th day of January, 1957,

ORDERED that the action of respondent herein be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - PO AMBO DEMOCRATIC CLUB, INC. v. PERTH AMBOY.

PO AMBO DEMOCRATIC CLUB, INC.,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE)	
CITY OF PERTH AMBOY,)	
Respondent.)	

Israel H. Saltman, Esq., Attorney for Appellant.
Francis M. Seaman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"This is an appeal from the action of respondent whereby, on July 18, 1956, it denied appellant's application for a club license for premises located at 208 New Brunswick Avenue, Perth Amboy.

"In its petition of appeal appellant alleges, in effect, that respondent's refusal to issue the license was an abuse of its discretion.

"Respondent, in its answer, denies appellant's allegation and asserts that its action was based upon a consideration of the number and nature of the objections to the issuance of the license, the bona fides of appellant, and appellant's failure to comply with State Regulations.

"It appears that on March 7, 1956 a similar application was denied and that no appeal was taken therefrom.

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

"The record discloses that on July 19, 1923 appellant was incorporated as an association not for pecuniary profit; that on August 4, 1955 William Smith and Eva Williams leased the premises for which a license is sought; that said premises consist of the first floor of a two-story building which has a public lunchroom in front, an adjoining room fitted as a barroom in the center, and a small adjoining 'meeting room' in the rear, each room being separated by three-quarter-high partitions; that numerous objections were filed against the granting of appellant's prior application; that on June 20, 1956 appellant, by Eva Williams as president, filed the application under consideration herein; that in said application appellant failed to answer Question 20 which specifically inquires if appellant has been in exclusive possession and use of the club quarters for at least three (3) years prior to the application; that on July 5, 1956 a public hearing was held respecting said application; and that on July 18, 1956 respondent, after having heard argument pro and con, unanimously denied appellant's application 'by reason of the fact there is no need for an additional license in this area.'

"Appellant called Eva Williams and Alfred Jackson as its principal witnesses.

"Eva Williams testified in substance that she is the president of appellant club and held other offices in 1953 and 1954; that on August 4, 1955 she and William Smith, treasurer of the club, leased the premises in question because the lessor 'wouldn't rent under the club, it would be all right for the club to have it but someone would have to be responsible for the place for the rent'; and that as the result of the lease she set up a luncheonette which she operates on the premises.

"Alfred Jackson testified that he is the founder and a member of appellant club since 1923; that for the past year meetings of the club have been held at the aforesaid leased premises; that prior thereto meetings were held in a room of a building owned by him; that another organization also used said room; and that 'they are not no club quarters.'

"Respondent called as witnesses Mary Williams and Nina Carey, listed in the application filed on June 20, 1956 as financial secretary and trustee. Both denied that they ever held such offices. Other witnesses called by respondent were the City Clerk, a police sergeant, a detective, an objector, and the Mayor of the City.

"The sergeant testified that he made an inspection of the area in which the premises in question are located; that the premises are in a heavily trafficked business zone and 450 feet from a public grammar school.

"The detective testified that he made an investigation of the officers of the club listed in the applications and that he found that William Smith, treasurer, never lived at the address given.

"The objector testified that appellant club 'in 1945 went completely out of business.'

"The Mayor testified as follows:

'The reasons for the commissioners taking the action which they did in denying -- I made some notes here -- the bona fide status of the club was seriously doubted. It came to the attention of the commissioners that several of the officers of the club did not attend meetings and had not been bona fide officers. We had letters, one that I remember, a letter of objections stating that it was not a bona fide club. We had other objectors in the persons of business people in the area. It's a mixed residential and business neighborhood and the business people and residents of the area objected to the granting of the license in this particular area.

'The commissioners also noted that in conjunction with the club there was a public luncheonette and they felt the club quarters were not in exclusive possession of the club.

'Another reason is the proximity of the grammar school in the neighborhood of the proposed club and that children pass the premises and might even patronize the luncheonette.

'* * * * The application was denied because we felt it would be in the best interests of the public welfare.'

"Respondent's reason for denying appellant's application as indicated by the minutes of July 18, 1956, i.e., that 'there is no need for an additional license in this area' carries little weight so far as a club license is concerned. The object of a club license is not to supply the needs of the neighborhood. The holder of such a license cannot lawfully sell alcoholic beverages to the general public but must confine such sales to bona fide members and their bona fide guests. Irish American Association of Kearny, N. J. v. Kearny, Bulletin 293, Item 11; Re Branch 13, American Federation of Hosiery Workers, Bulletin 523, Item 5; Re Indian Lake Community Club, Inc., Bulletin 845, Item 8; Ocean County Tavern Association v. Beach Haven et al., Bulletin 954, Item 2. However, the reasons advanced by respondent in its answer on appeal and those testified to by the Mayor as being additional factors considered by the issuing authority before denying appellant's application are meritorious.

"State Regulation No. 7 provides, inter alia, as follows:

'Rule 2. Club licenses shall be issued only to bona fide clubs.

'Rule 3. Except as provided in Rule 5, no license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three (3) years continuously immediately prior to the submission of its application for a license.

'Rule 4. Except as provided herein or in Rule 5, no license shall be issued to any club unless it shall have been in exclusive possession and use of a clubhouse or club quarters for at least three (3) years continuously immediately prior to the submission of its application for a license. A bona fide club which has been in active operation in this State for the period of time required as aforesaid, but which has been deprived of continuous possession and use of its clubhouse or club quarters by reason of foreclosure, dispossession or other removal for a cause other than the violation of the laws of the State or of municipal ordinance, shall not be prevented thereby from obtaining a club license upon presenting to the satisfaction of the issuing authority proof of said facts and proof that possession of suitable premises has been obtained.

'Rule 6. No club license shall be issued to any corporation, association or organization unless all officers and members of the governing body qualify as individual applicants in all respects except as to residence or age.'

"The primary responsibility of determining whether appellant is qualified to hold a license and whether premises are suitable for a license rests with the local issuing authority (R. S. 33:1-24).

"The mere fact that a vacancy exists in the quota fixed by ordinance (as alluded to by appellant) does not mean that an application for a license of this particular class must be granted (Samuelian v. Ocean, Bulletin 985, Item 2) and it is well settled that no one is entitled to an alcoholic beverage license as a matter of right. Paul v. Gloucester, 50 N.J.L. 585 (E. & A. 1888); Meehan v. Excise Commissioners, 73 N.J.L. 382 (Sup. Ct. 1906), affirmed 75 N.J.L. 557 (E. & A. 1908); Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935).

"Considering all the facts and circumstances appearing herein I find that because of the failure to answer Question 20 and the false statements as to the treasurer's address and as to the persons allegedly occupying the offices of financial secretary and trustee, appellant's application lacked essential prerequisites for the granting thereof; that there is grave doubt that appellant association is a bona fide club; that appellant is not in exclusive possession and use of a clubhouse or club quarters in conformity with the provisions of State Regulation No. 7; that the premises are unsuitable for a club license; and that respondent exercised sound discretion. I conclude that appellant has not sustained the burden of proof in establishing that respondent's action was erroneous (Rule 6 of State Regulation No. 15). I, therefore, recommend that the action of respondent in denying appellant's application be affirmed."

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

Having carefully considered the evidence herein, I agree with the conclusions and the recommendation of the Hearer and adopt his conclusions as my conclusions herein.

Accordingly, it is, on this 30th day of January, 1957,

ORDERED that the action of respondent herein be and the same is hereby affirmed.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BAMBOO GARDEN CORPORATION)
3408 Bergenline Avenue)
Union City, N. J.,)

CONCLUSIONS AND ORDER

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

J. James Young, Jr., Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

The file herein discloses that on November 7, 1956, an ABC agent, while testing and gauging the licensee's open bottles of alcoholic beverages, seized a number of such bottles because their contents appeared to be low in proof and submitted such bottles to the Division's chemist for analysis. The chemist's report shows that, when compared with samples of the genuine product of the labeled brand, the contents of two bottles labeled "Seagram's Seven Crown Blended Whisky 86.8 Proof" are short in proof 8.8 and 12.8 and the solids and acids are low.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of fifteen days (the minimum period where two bottles are involved). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days (Re Valdan Corp., Bulletin 884, Item 9).

Accordingly, it is, on this 23rd day of January, 1957,

ORDERED that Plenary Retail Consumption License C-26, issued by the Board of Commissioners of the City of Union City to Bamboo Garden Corporation, for premises 3408 Bergenline Avenue, Union City, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. January 29, 1957, and terminating at 3:00 a.m. February 8, 1957.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - PIN BALL MACHINE - LICENSE
SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

THE MANHATTAN, INC.)
T/a KNICKERBOCKER CAFE)
305 - 6th Street)
Lakewood, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-23, issued by the)
Township Committee of the Township)
of Lakewood.)

-----)
Julius Cohn, 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 allowed, permitted and suffered in and upon its licensed premises a bagatelle or pin ball machine, in violation of Rule 7 of State Regulation No. 20.

The file herein discloses that on December 4, 1956, an ABC agent, while making a routine inspection of defendant's licensed premises, observed in the lobby-hallway therein a pin ball machine which he operated in the presence of the secretary of the defendant corporate-licensee herein, and found it to be in working order.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of ten days and remit five days for the plea entered herein, leaving a net suspension of five days. Re Burstein, Bulletin 1082, Item 8.

Accordingly, it is, on this 29th day of January, 1957,

ORDERED that Plenary Retail Consumption License C-23, issued by the Township Committee of the Township of Lakewood to The Manhattan, Inc., t/a Knickerbocker Cafe, 305 - 6th Street, Lakewood, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. February 4, 1957, and terminating at 2:00 a.m. February 9, 1957.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALES TO MINORS, DISMISSED.

In the Matter of Disciplinary Proceedings against)

JOHN BROVERO)
T/a FOREST CAFE)
26 East Forest Avenue)
Englewood, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Common Council of the City of Englewood.)

George S. Grabow, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"Defendant pleaded not guilty to a charge alleging that on August 8, 1956, he sold, served and delivered, and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to two minors, and allowed, permitted and suffered said minors to consume such beverages in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

"The matter came to the attention of the Englewood police authorities as a consequence of a fight between two minors while drunk, which resulted in one minor being taken to an Englewood hospital. Both minors claim to be unacquainted with the section of Englewood where defendant's premises are located and claim that they never previously were at defendant's licensed premises. The minors had considerable difficulty in directing ABC agents when they tried to locate the premises. The minors testified that the agents drove around Englewood from place to place observing eight or nine taverns until they recognized defendant's premises. An ABC agent testified that such was not the fact but that he and the minors drove directly to the defendant's premises.

"In specific detail, the minors are George --- (age 19) and John --- (age 20). They testified that on August 8, at about 10:00 p.m., they entered the defendant's tavern and remained there until about midnight or 1:00 a.m., during which period they were each served five or six beers and fifteen or sixteen drinks of Vodka. Both minors testified that they were drunk when they left in a car driven by one John Miles. There can be no doubt from what follows that both minors obtained alcoholic beverages that night in sufficient quantity to render them intoxicated. They cannot identify the person or persons who served them with the alcoholic beverages, so that the primary issue is whether they obtained such beverages in defendant's licensed premises.

"The testimony of the minors concerning the circumstances under which they went to the tavern on the night of August 8 and the circumstances under which they identified defendant's licensed premises on the next day appears to be too vague, uncertain and inconsistent to establish that they were in defendant's tavern on the night in question and obtained

drinks of alcoholic beverages there. However, what is lacking to establish that the minors were actually present in such tavern is supplied by the clear and positive evidence of John Miles. He testified that he resides in Bergenfield and entered defendant's licensed premises on August 8, between 11:15 and 11:30 p.m.; that he observed George and John at the bar; that he knew them well enough to say 'hello' to them but never 'hung around with them;' that he observed a number of drinks of alcoholic beverages on the bar but cannot say that any such drinks were served to George or John and he did not see them consume any such drinks; that, although he did not join the minors, he observed that they were drunk when he first observed them and that when they were leaving they looked 'farther gone;' that he remained in the tavern until closing time and was joined by the two minors as he walked out; that all three entered his car; that he intended to drive them to a doctor; that, while en route, the altercation and fight developed.

"While the evidence of Miles places the minors in defendant's premises, it must further appear by a preponderance of the evidence that they were served with and consumed alcoholic beverages there. On that score there is presented the minors' questionable recollection. Miles did not see them served or drink alcoholic beverages, greeted them perfunctorily, and did not observe their activities during the hour or so that he was there. The licensee and his bartenders each testified that they did not serve any drinks to the minors. The licensee testified that he has conducted his business for twenty-three years and has no prior record.

"Because of the lack of sufficient evidence that alcoholic beverages were sold to or consumed by the minors on defendant's premises, I conclude that the Division has not sustained the burden of proof in establishing defendant's guilt. I recommend, therefore, that the charge should be dismissed. Re Hyett, Bulletin 1142, Item 6."

Pursuant to Rule 6 of State Regulation No. 16, the prosecuting attorney filed written exceptions to the Hearer's Report, the attorney for defendant filed answering argument, and I notified both attorneys that I desired oral argument in the case. The oral argument was heard on January 11, 1957.

After careful examination of all the evidence, the briefs filed herein and the oral argument, I have decided to adopt the conclusions of the Hearer as my conclusions in the case. The licensee and his bartenders denied that they served the minors in question. The testimony of John Miles, who was called as a witness by the Division, is not too helpful because, while he testified that the minors were in the premises and left with him, he admitted that he did not see either of them consume any alcoholic beverages. Each minor testified that he was served five or six beers and fifteen or sixteen drinks of Vodka and yet neither minor could identify the person or persons who served them. Considering the unblemished record of the licensee during the past twenty-three years and the positive testimony of defendant's witnesses against the testimony presented by the witnesses for the Division, I conclude that the Division has failed to establish the guilt of defendant by a fair preponderance of the evidence. Re Borstelmann, Bulletin 1127, Item 3; Re Moore, Bulletin 1136, Item 6; Re Hyett, Bulletin 1142, Item 6. Hence I shall dismiss the charge.

Accordingly, it is, on this 24th day of January, 1957,

ORDERED that the charge herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

ACTIVITY REPORT FOR FEBRUARY 1957

ARRESTS:		
Total number of persons arrested - - - - -		28
Licensees and employees - - - - -	10	
Bootleggers - - - - -	18	
SEIZURES:		
Motor vehicles - cars - - - - -		2
Stills - 50 gallons or under - - - - -		1
Mash - gallons - - - - -		850.00
Distilled alcoholic beverages - gallons - - - - -		58.15
Wine - gallons - - - - -		.75
Brewed malt alcoholic beverages - gallons - - - - -		4.65
RETAIL LICENSEES:		
Premises inspected - - - - -		466
Premises where alcoholic beverages were gauged - - - - -		479
Bottles gauged - - - - -		7,937
Premises where violations were found - - - - -		27
Violations found - - - - -		48
Type of violations found:		
Unqualified employees - - - - -	24	Reg. #38 sign not posted - - - - - 1
Application copy not available - - - - -	14	Disposal permit necessary - - - - - 1
Prohibited signs - - - - -	2	Other violations - - - - - 5
STATE LICENSEES:		
Premises inspected - - - - -		38
License applications investigated - - - - -		4
COMPLAINTS:		
Complaints assigned for investigation - - - - -		313
Investigations completed - - - - -		286
Investigations pending - - - - -		159
LABORATORY:		
Analyses made - - - - -		135
Refills from licensed premises - bottles - - - - -		16
Bottles from unlicensed premises - - - - -		20
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made - - - - -		9
Persons fingerprinted for non-criminal purposes - - - - -		194
Identification contacts made with other enforcement agencies - - - - -		140
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		10
Violations involved - - - - -		10
Sale to minors - - - - -	6	
Sale during prohibited hours - - - - -	4	
Cases instituted at Division - - - - -		29
Violations involved - - - - -		39
Sale to minors - - - - -	12	Permitting gambling (wagering) - - - - - 1
Sale during prohibited hours - - - - -	4	Failure to close premises during prohibited hours - - - - - 1
Sale below minimum resale price - - - - -	4	Licensee working while intoxicated - - - - - 1
Possessing illicit liquor - - - - -	3	Permitting consumption on distribution licensed premises - - - - - 1
Sale to intoxicated persons - - - - -	2	Purchase from improper source - - - - - 1
Permitting immoral activity on premises - - - - -	2	Employing person without identification card (local reg.) - - - - - 1
Conducting business as a nuisance - - - - -	2	Unqualified employees - - - - - 1
Possessing indecent matter - - - - -	1	
Permitting hostesses on premises - - - - -	1	
Permitting slot machines on premises - - - - -	1	
Cases brought by municipalities on own initiative and reported to Division - - - - -		19
Violations involved - - - - -		27
Sale to minors - - - - -	8	Permitting brawls on premises - - - - - 2
Sale during prohibited hours - - - - -	4	Failure to display license certificate - - - - - 1
Failure to close premises during prohibited hours - - - - -	3	Permitting bookmaking on premises - - - - - 1
Failure to afford view into premises during prohibited hours - - - - -	3	Conducting business as a nuisance - - - - - 1
Hindering investigation - - - - -	2	Permitting gambling (wagering) on premises - - - - - 1
		Unqualified employees - - - - - 1
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		36
Appeals - - - - -	2	Seizures - - - - - 1
Disciplinary proceedings - - - - -	22	Applications for license - - - - - 3
Eligibility - - - - -	8	
STATE LICENSES AND PERMITS ISSUED:		
Total number issued - - - - -		845
Licenses - - - - -	3	Wine permits - - - - - 2
Employment permits - - - - -	136	Miscellaneous permits - - - - - 90
Solicitors' " - - - - -	68	Transit insignia - - - - - 124
Disposal " - - - - -	82	Transit certificates - - - - - 32
Social affair " - - - - -	308	

WILLIAM HOWE DAVIS
DIRECTOR

Dated: March 6, 1957

8. DISCIPLINARY PROCEEDINGS - SALE 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 ALEXANDER JENTIS t/a SUBURBAN DELICATESSEN 404 Irvington Avenue South Orange, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-3, issued by the Board of Trustees of the Village of South Orange.

Arthur Slavitt, 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 he sold an alcoholic beverage at a price below the established minimum therefor, in violation of Rule 5 of State Regulation No. 30.

The file herein discloses that on December 19, 1956, two ABC agents entered defendant's premises and purchased from the licensee's wife a case of Seagram's Seven Crown quarts for \$60.30. At that time the minimum consumer price, less permissible 5% discount, was \$63.27. The agents left the premises with the case but returned immediately and identified themselves to the licensee and his wife.

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 Bregman, Bulletin 1128, Item 12).

Accordingly, it is, on this 13th day of February, 1957,

ORDERED that Plenary Retail Distribution License D-3, issued by the Board of Trustees of the Village of South Orange to Alexander Jentis, t/a Suburban Delicatessen, for premises 404 Irvington Avenue, South Orange, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. February 25, 1957, and terminating at 9:00 a.m. March 2, 1957.

WILLIAM HOWE DAVIS Director.

9. STATE LICENSES - NEW APPLICATION FILED.

National Transportation Company Hackensack Avenue South Kearny, N. J.

Application filed March 21, 1957 for place-to-place transfer of Transportation License T-109 from Michigan Avenue, Kenilworth, N.J.

New Jersey State Library

William Howe Davis Director.