

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

June 4, 1963.

BULLETIN 1515

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Atlantic City) - NUISANCE (APPARENT HOMOSEXUALS) - PRIOR SIMILAR RECORD OF LICENSEE AND PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 240 DAYS.
2. DISCIPLINARY PROCEEDINGS (Atlantic City) - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - HOSTESS ACTIVITY - UNQUALIFIED EMPLOYEES - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 150 DAYS.
3. APPELLATE DECISIONS - ABRAMOVITZ AND WEXLER v. NEWARK.
4. APPELLATE DECISIONS - TINY'S BAR & GRILL, INC. v. PATERSON.
5. DISCIPLINARY PROCEEDINGS (Paterson) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - ALCOHOLIC BEVERAGES NOT TRULY LABELED - ALLEGED MITIGATION - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Brooklawn) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

STATE OF NEW JERSEY
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BULLETIN 1515

1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -
PRIOR SIMILAR RECORD OF LICENSEE AND PREDECESSOR IN INTEREST -
LICENSE SUSPENDED FOR 240 DAYS.

In the Matter of Disciplinary Proceedings against

ELCOR, INC.
t/a ENTERTAINER'S CLUB
169 S. Westminster Avenue
Atlantic City, N. J.

)
)
) CONCLUSIONS
) AND ORDER
)

Holder of Plenary Retail Consumption License C-28, issued by the Board of Commissioners of the City of Atlantic City.

Albert J. Perrella, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge as follows:

"On August 18, 25 and 26, 1962, 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 persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Reports of investigation disclose that on August 18 there were approximately sixty patrons present and on August 25-26 approximately ninety, and on each occasion approximately 95% were apparent male homosexuals. In addition, one of the bartenders (a 12% stockholder of the corporation) also appeared to be a homosexual. Also present on both occasions in an apparent managerial capacity was Louise G. Mack who, according to the application for license, is the holder of 75% of the corporate stock stated to be held as collateral.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days, effective September 10, 1962, for similar violation. In addition, its predecessor in interest, Louise G. Mack, from whom the license was transferred, has a record of three suspensions of license for similar violation, viz., (1) by the Director for one hundred ninety days, effective November 14, 1955 (Re Mack, Bulletin 1088, Item 2), and by the municipal issuing authority for (2) ten days,

effective June 24, 1960, and (3) sixty days, effective September 5, 1961.

The current minimum suspension for a first offense of permitting the simple congregation of a relatively large number of apparent homosexuals, with no evidence of overt acts or immoral activity, the situation here, is sixty days. Re Ashen, Bulletin 1495, Item 7. However, considering the prior record of the licensee and its predecessor in interest, to whom it is linked by the continued stockholding of Louise G. Mack (cf. Re Pastrana's Bar, Inc., Bulletin 1505, Item 5) and its apparent employment of her (cf. Re Taccetta, Bulletin 1485, Item 2), of four prior similar violations and the repetitive nature thereof (this being the fourth similar within five years), as well as the plea entered, under all of the circumstances the license will be suspended for two hundred forty days, with admonition to the licensee that future similar violation may well result in outright revocation of the license.

Accordingly, it is, on this 1st day of May, 1963,

ORDERED that Plenary Retail Consumption License C-28, issued by the Board of Commissioners of the City of Atlantic City to Elcor, Inc., t/a Entertainer's Club, for premises 169 S. Westminster Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1963, commencing at 7:00 a.m. Wednesday, May 8, 1963; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7:00 a.m. Friday, January 3, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - HOSTESS ACTIVITY - UNQUALIFIED EMPLOYEES - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 150 DAYS.

In the Matter of Disciplinary Proceedings against

1643 ATLANTIC AVENUE CORPORATION t/a PADDOCK INTERNATIONAL 1643 Atlantic Avenue Atlantic City, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-98, issued by the Board of Commissioners of the City of Atlantic City.

Murner & Murner, Esqs., by James J. Murner, Jr., Esq., Attorneys for Licensee. Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges as follows:

- "1. On Saturday night, November 10 and early Sunday morning, November 11, 1962, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises, viz., in that you allowed, permitted and suffered female persons to perform for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.
"2. On Saturday night, November 10 and early Sunday morning, November 11, 1962, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.
"3. On Saturday night, November 10 and early Sunday morning, November 11, 1962, and prior thereto, you allowed, permitted and suffered the employment in and upon your licensed premises of persons not bona fide residents of the State of New Jersey, contrary to and in violation of Rule 4 of State Regulation No. 13."

Reports of investigation disclose that on the dates indicated, the licensee provided for the entertainment of its patrons a floor show principally consisting of strip tease routines accompanied by bumps and grinds by three female entertainers, non-residents of New Jersey, employed without requisite employment permits who, after their performances, sat at the bar and were served alcoholic beverages at the expense of male patrons. Present during the performance was Edward Kravis, manager of the licensed business, who had employed the entertainers and who, during the course of the conclusion of the investigation, stated to the agents, in effect, that "this violation would probably mean the end of his

license" albeit he was not listed in the application for license as a stockholder or having any proprietary interest in the licensed business.

Although the licensee has no previous record, the license of its predecessor in interest, Paddock International (A Corp.), of which Edward Kravis was then an officer, was suspended by the Director for sixty-five days, effective April 23, 1962, for similar entertainment and hostess violations (Re Paddock International, Bulletin 1429, Item 2; Bulletin 1452, Item 4) and previously for forty-five days, effective November 28, 1960, again for similar violations, Edward Kravis then being president and a major stockholder of the corporate licensee (Re Paddock International, Bulletin 1372, Item 2).

In addition, the license of Edward Kravis, predecessor in interest of Paddock International (A Corp.), was suspended by the municipal issuing authority for ten days, effective December 11, 1939, for permitting indecent entertainment; again for ninety days, effective August 27, 1943, on a similar charge; and again for thirty days, effective November 25, 1943, for permitting disturbances and unnecessary noise.

The minimum suspension for a first offense involving strip tease entertainment and hostess activity is fifty days. Re Paddock International, Bulletin 1429, Item 2. Disregarding the prior record of Edward Kravis, individually, because occurring more than ten years ago but considering the record of the licensee's predecessor in interest, to whom it is linked by its employment of Edward Kravis as its manager (cf. Re Taccetta, Bulletin 1485, Item 2), of two prior violations similar to those the subject of the first and second charges, and the repetitive nature of the violations (third similar within five years), as well as the plea entered, under all of the circumstances the license will be suspended for one hundred fifty days, with admonition to the licensee that future similar violation may well result in outright revocation of the license.

Accordingly, it is, on this 30th day of April, 1963,

ORDERED that Plenary Retail Consumption License C-98, issued by the Board of Commissioners of the City of Atlantic City, to 1643 Atlantic Avenue, Corporation, t/a Paddock International, for premises 1643 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1963, commencing at 7:00 a.m. Tuesday, May 7, 1963; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7:00 a.m. Friday, October 4, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. APPELLATE DECISIONS - ABRAMOVITZ AND WEXLER v. NEWARK.

PHILIP ABRAMOVITZ AND JACK WEXLER,)	
t/a PHILIP'S LIQUOR STORE,)	
)	
Appellants,)	ON APPEAL
)	CONCLUSIONS
vs.)	AND ORDER
)	
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE)	
CONTROL OF THE CITY OF NEWARK,)	
)	
Respondent.)	

 Brass & Brass, Esqs., by Leonard Brass, Esq., Attorneys for
 Appellants.

Norman N. Schiff, Esq., Corporation Counsel, by Paul E. Parker, Esq.,
 Assistant Corporation Counsel, Attorney for Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent, whereby it suspended appellants' license for ten days, effective January 14, 1963, after appellants were adjudged guilty of a charge alleging that on June 4, 1962, they sold and delivered an alcoholic beverage at their licensed premises to Ronald ---, age 20, in violation of Rule 1 of State Regulation No. 20. The licensed premises are located at 217 Hawthorne Avenue, Newark, New Jersey.

"Upon the filing of the appeal an order was entered on January 16, 1963 staying respondent's order of suspension until further order of the Director. R.S. 33:1-31.

"Appellants, in their petition of appeal, allege substantially that the respondent's action was erroneous for the following reasons:

- a - The decision was 'contrary to the weight of the evidence, unreasonable, illegal, and without basis in law or fact.'
- b - The decision was contrary to the usual practices and policy of respondent.
- c - The appellant, Philip Abramovitz, 'acted reasonable (sic) and his action was not contrary to the law or to the regulation' of this Division.
- d - Respondent failed to 'consider the intent and purpose of R.S. 33:1-31 and Rule 1 of State Regulation No. 20' ...

"Respondent, in its answer, denies the allegations hereinabove set forth and states that its decision was based upon the factual testimony before it, upon which, in its sound discretion, it concluded that the penalty imposed substantiated such action.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. Stenographic transcript of the hearing below, was submitted pursuant to notice prescribed by Rule 8 of State Regulation No. 15, which was supplemented at this hearing by

testimony of witnesses on behalf of the appellants and respondent.

"A full opportunity was granted to counsel to present such testimony under oath and cross examine witnesses. Sidoroff et als v. Jersey City and Niebanck, Bulletin 1310, Item 1.

"It appears from the transcript of the testimony taken below and from the testimony before this Division that on June 4, 1962, Ronald ---, age 20, purchased a bottle of alcoholic beverages from Abramovitz, one of the licensees, and paid therefor. He was asked to produce identification with respect to his age and produced a draft card on which his age was altered. The minor explained that, at some time prior to entering the store, he removed the draft card from its plastic case, retyped the date of birth and replaced it in the said case. The card also contained his photograph. He was not requested to sign any statement in corroboration of his age.

"In the hearing below the minor offered conflicting testimony with respect to his age. When the matter came on for hearing before me, the minor failed to appear and this case was adjourned in order to secure his appearance. When he finally did appear, he testified that he was born on December 24, 1941 and identified a birth certificate which was produced in evidence, corroborating said date of birth.

"The transcript of the hearing below contains the testimony of the appellant, Philip Abramovitz, who presented the following picture: When the minor came into the store on the date in question, this witness asked him for his identification and the minor produced the draft card with his picture on it. The witness who suffers from a detached retina and glaucoma in his right eye, which has caused a total blindness in that eye, insisted that he could not detect any alteration on the card, and for that reason, assumed that it was bona fide and made the sale.

"On cross examination, he admitted that the reason he asked for identification was that 'He was a young man, looked young, and I usually ask them for identification.' He admitted that he did not require the minor to sign any written statement in his presence. Commissioner Reuther at the hearing before the respondent, asked this witness the following question:

'Q We are referring to this young man. Why did you ask him to identify himself, to prove his age?

THE WITNESS: (No answer.)

Q Was there a doubt in your mind that he was 21?

THE WITNESS: Well, there was some doubt in my mind.'

"Irving Segal, a clerk employed by the appellants, testified that he was present at the time of the sale and his examination of the card satisfied him that it '...appeared to be normal...' He was examined by Commissioner Reuther: 'There must have been a doubt in this case because he was asked for the identification.

THE WITNESS: When a young man comes in there is always doubt.'

and

'COMMISSIONER REUTHER: This is a serious thing.

You mean to tell me that you didn't look at it (the draft card) very closely?

THE WITNESS: I didn't. I stood nearby. I had a quick look at it.'

"Appellants do not seriously argue that the sale was made by a minor in violation of the State Regulation. Counsel instead argues that it was unfair to penalize the appellants:

- a - Because of the obvious fraud imposed upon them;
- b - Because the minor was twenty and a half years of age and only six months under the legal age;
- c - Because the respondent treated this as an unusual situation and did not act as they usually do in cases of this kind.

"It is unfortunate that the appellants were victimized by this minor who so nearly arrived at the legal age. However, this Division is, as was, indeed, the respondent, bound by the imperative legislative provisions and could act in no other manner than to determine that this was a statutory violation. Any change would have to come through the Legislature, and not by the fiat of either the respondent or this Division.

"The appellants could have protected themselves against this circumstance if they had complied strictly and followed the imperatives of the statute, especially since their testimony indicates that they were suspicious of the minor's age. In R.S. 33:1-77 the statute contains the following proviso:

'...that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she ~~was~~ twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over.' (Emphasis ours)

Such fraud, as practiced by the minor in this case, was specifically anticipated by this Division in a special note (page 77 of the Rules and Regulations) which, in explanation of Rule 1 states in part:

'...(c) that the sale was made in reliance upon such written representation and appearance and in the reasonable belief that the minor was of age. Hence it is not a defense that mere verbal inquiry may have been made as to the age of the minor or that the minor had verbally misrepresented his age or that the minor had displayed some document (such as a driver's license, birth certificate, military identification card, selective service registration certificate, or

any other similar document) which represented his age as over 21. The representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at or prior to the time of sale or service. Such a writing must be signed by the minor in the presence of the licensee or his employee and one in which the minor gives his name, address, age, date of birth and, by signing the writing, makes a statement that he is making the representation as to his age to induce the licensee to make the sale. After the writing has been signed, the licensee should require that the person signing the representation adequately identify himself as that person and thus affirmatively avoid the acceptance of these representations from persons using fictitious names, addresses and ages....' (Emphasis added)

"In Re Wedemeyer, Bulletin 1050, Item 8, the Director said:

'Experience in cases similar to this indicates that for some reasons licensees or their agents are reluctant to "embarrass" a minor by requiring him to reduce to writing his name, age and address. If licensees are willing to use their own methods of determining the age of a minor, rather than follow the statute, they do so at their peril and must accept the consequences of their own neglect.'

"Thus the argument of counsel for such circumference of the Rule and Statute is a rationalization which must be rejected. The prevention of sales of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson-Bergen County RLS Ass'n. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); In Re Schneider, 12 N.J. Super. 449, 456 (App. Div. 1951); Mazza v. Cavicchia, 15 N.J. 498, 505 (1954); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 384; Guill v. Mayor and Council of the City of Hoboken, 21 N.J. 574, 584 (1956).

"I have observed the appearance of the minor on the stand during the hearing held in this Division, and I must frankly conclude that his appearance would have generated in my mind serious doubt as to his statutory maturity.

"One further comment. Appellants produced Robert Brown, secretary of the respondent, who testified that in borderline cases such as this, the respondent frequently does not make formal charges. It is unarguable that this Division cannot be bound by the actions of the respondent with regard to other allegedly comparable cases.

"Counsel further argues that while the appellant may be technically guilty of a violation under the facts and circumstances of this case, the ten days imposed by the respondent was unduly excessive and harsh.

"It generally has been held by the Division that a suspension imposed in a local disciplinary proceeding, rests, in the first instance, within the sound discretion of the municipal issuing authority; and the power of the Director to reduce or modify it will be sparingly exercised, and only with the greatest caution. Melstan Corporation v. Randolph, Bulletin 1496,

Item 1; Harrison Wine and Liquor v. Harrison, Bulletin 1296, Item 2. I cannot say, under all of the circumstances, that the penalty imposed herein was so severe as to form a basis for reversal or even modification on this appeal. The plea for modification should be made, if at all, to respondent, which may grant relief in the event that the members thereof determine that such action is advisable. Russo vs. Lincoln Park, Bulletin 1177, Item 7.

"I therefore recommend that an Order be entered affirming respondent's action and dismissing the appeal, fixing the effective dates for the suspension imposed by respondent, and stayed pending the entry of the Order herein."

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

After carefully considering the evidence in the case, the oral argument of counsel at the conclusion of the hearing and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 22d day of April, 1963,

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

ORDERED that the ten-day suspension heretofore imposed by respondent and stayed during the pendency of these proceedings be and the same is hereby reinstated and reimposed against Plenary Retail Distribution License D-32, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Philip Abramovitz and Jack Wexler, t/a Philip's Liquor Store, for premises 217 Hawthorne Avenue, Newark, and transferred during the pendency of this appeal to Jack and Anna Wexler, t/a Philip's Liquor Store, for premises 811 Bergen Street and 217 Hawthorne Avenue, Newark, to commence at 9:00 a.m. Monday, April 29, 1963, and to terminate at 9:00 a.m. Thursday, May 9, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

4. APPELLATE DECISIONS - TINY'S BAR & GRILL, INC. v. PATERSON.

TINY'S BAR & GRILL, INC.,)	
Appellant,)	ON APPEAL
v.)	CONCLUSIONS
)	AND ORDER
BOARD OF ALCOHOLIC BEVERAGE)	
CONTROL FOR THE CITY OF PATERSON,)	
Respondent.)	

 Robert I. Goodman, Esq., Attorney for Appellant.
 Theodore D. Rosenberg, Esq., by William J. Rosenberg, Esq.,
 Attorney for Respondent.

The Hearer has filed the following Report herein:

This is an appeal from the action of respondent which, by resolution dated November 14, 1962, ordered suspension of appellant's plenary retail consumption license C-313 for a period of thirty days effective November 26, 1962, after finding it guilty on a charge alleging that on August 12, 1961, it allowed, permitted and suffered in or upon its licensed premises a brawl, act of violence or disturbance, in violation of Rule 5 of State Regulation No. 20.

"Appellant's premises is located at 185 Paterson Street, Paterson.

"When the appeal was filed, the Director, pursuant to R.S. 33:1-31, entered an order on November 26, 1962, staying respondent's order of suspension until further order herein.

"Appellant in its petition of appeal alleges in substance that respondent's action was erroneous in that (1) it found appellant guilty of the incident alleged in the charge 'despite the fact that there was an acquittal in the Passaic County Court;' (2) it was against the weight of the evidence, and (3) the penalty imposed was excessive.

"Respondent in its answer denies appellant's allegations (2) and (3) and contends that its determination was based upon the factual evidence adduced before it. It further contends that the action in the Passaic County Court was a criminal proceeding involving appellant's secretary, while the proceeding before respondent Board was a disciplinary action against the corporate licensee.

"When the matter came on for hearing the attorneys for the parties hereto agreed to present the appeal upon the transcript of the testimony elicited before respondent, with additional testimony to be offered by appellant pursuant to Rules 6 and 8 of State Regulation No. 15.

"The transcript was marked R-1 in evidence and it appears therefrom that respondent Board produced John Whitt, Warren Sparks and Detective Sergeant William Neeson, Jr., to substantiate the charge, and that the licensee produced as its witnesses Albert J. Nassaney, Walter Conklin, Joseph Richards and James Wehling.

"Mr. Whitt testified substantially as follows: On the night of August 12, 1961, he and a female companion were seated at a crowded bar in the licensed premises. At approximately 10 p.m. a friend, Warren Sparks, entered the tavern, waved to him and proceeded to a spot about ten feet away where he stopped to converse with some patrons. A few minutes later he heard a scuffle and saw Mr. Nassaney, known as Tiny (secretary and treasurer of the corporate licensee) come from behind the bar and attempt to put Sparks outside. Sparks 'landed up against the bar, the partition that comes through in the building. So then everyone started to crowd around and there was a lot of excitement. I couldn't see what he was doing to Sparks or if Sparks was doing anything to him at that time. So *** I went around to the other side because they have two doors, and I went outside.' When he got outside he saw Sparks getting up off the street and 'when Mr. Nassaney struck him with his fist *** it landed on the right-hand side of his jaw.' Sparks staggered about ten feet into the roadway 'So I didn't want to get involved in any argument or fight or scuffle. So I turned and went back into the White Birch Bar.' Whitt further testified that Nassaney returned to the tavern; that Sparks didn't, and that Sparks, to his knowledge, was not intoxicated.

"Warren Sparks testified substantially as follows: At 4 p.m. Saturday, August 12, 1961, when he finished his work in Rutherford, he proceeded to Mr. Hemmett's home in Paterson where he had supper. He then went home and later on 'made a date to meet a friend of mine down at Tiny's White Birch Bar around ten o'clock.' When he arrived at Tiny's it was quite crowded and he proceeded to the bar where Mr. and Mrs. Hemmett were seated and engaged them in conversation. Nassaney approached and asked him what he was going to have. He ordered a bottle of beer which Nassaney put on the bar and, as he turned around to talk to Mr. Hemmett, he heard the bottle fall over. When he went to pick the bottle up, Nassaney grabbed him and said 'You're shut off' and he said 'I haven't even had a drink yet.' Nassaney again said 'You're shut off. Just get out. Get the hell out and shut up.' Tiny then came from behind the bar and grabbed him by the back of the neck and 'threw me toward the door and I hit the side of the partition *** he came over and he started hitting me all over the body and head *** The next thing I remember, he grabbed me and I was heading for the street and sidewalk and I went down and then as I was getting up that's when he hit me again.' He was struck on the right side of the jaw and 'I landed on my back in the middle of the street.' When he got up his girl friend came over and he said 'Come on. I want to go home.' Sparks further testified that on the date alleged he hadn't consumed any alcoholic beverages, and that prior to August 12, 1961, he had been in the licensed premises once or twice and didn't have any trouble with Nassaney.

"On cross examination Sparks testified that, after he was told to leave the premises, Nassaney travelled about thirty-five feet before the scuffle ensued; that he had no harsh words with Nassaney; that he didn't call the police because 'I was too shook up to go to the police station;' What, when he entered the barroom, Nassaney and a man named Tracy were tending bar; that, before going to Tiny's that night, he went to the Cha-Cha Club 'to pay him what I owed him ***' and 'I didn't drink anything.'

"Detective Sergeant William Neeson, Jr., testified that the incident alleged to have occurred in Tiny's tavern on August 12, 1961, was brought to the attention of the Police Department on October 11 and 12, 1961. He further testified that phone

calls to the Police Department requesting information are not recorded.

"The Board rested its case and thereafter denied the licensee's motion to dismiss the charge.

"Albert J. Nassaney testified substantially as follows: At approximately 10 p.m. on the date alleged, he entered the licensed premises and went behind the bar and checked the cash registers. As he was serving a patron he heard someone yell an insulting name, adding, 'give me a beer.' Turning around he saw Sparks standing about four feet from the bar and told him 'You, out. You know why. *** Now, get out or I'm going to call the police' and Sparks replied in foul language indicating his disrespect of both him and the police. With this, he came from behind the bar, went to the phone booth and dialed police headquarters. As he was dialing, Sparks' girl friend put her head in the phone booth and said 'Tiny, don't call the police. I'll get him out' and he hung up the receiver and returned behind the bar. Sparks, however, continued to make vulgar comments about the band and he told him 'Now, you better get out of here because when the cops come I'm preferring charges. Get out of here.' He again went to the phone, called the police and asked if the policeman on the beat was going to ring the box soon and, when told that the officer should be there any moment, he went out to meet him and saw Sparks on the outside being pulled by his girl friend and heard Sparks call her filthy names and referring to him in gutter-type language. Suddenly Sparks broke loose from the girl and jumped on his back and, when he made a quick turn, Sparks landed between two cars. He pulled Sparks out of danger and put him on his feet and then told his musician who had come outside 'come on get inside. Let's start the music.' Shortly after he returned to the tavern, he saw Sparks therein and said 'Boy, you never learn *** Get out of here. The cops are coming; they're going to lock you up,' and Sparks replied 'I'm looking for somebody' and left the premises. Nassaney testified that he didn't punch Sparks when he was inside or outside the premises.

"On cross examination Nassaney testified that on the date alleged he weighed 340 pounds; that he didn't serve Sparks any beer; that he didn't use force to get him out; that, about two months prior to the incident alleged, he had trouble with him and ordered him to stay out of the premises.

"Walter Conklin testified in substance that he is a musician employed by the licensee and, on the date alleged, he started work at 9:20 p.m.; that Sparks heckled the musicians and referred to their renditions in vulgar terms; that Sparks 'acted loud, like he was intoxicated;' that at about 10 p.m. he saw Sparks' girl friend 'shaking him and saying, "Come on, get out!"; that he went outside the premises and saw Sparks break loose from his girl friend and he 'lunged on Mr. Nassaney. He was saying, "I want to fight you", You're a yellow bastard. You don't want to fight;' that Mr. Nassaney turned around quickly and Mr. Sparks fell off his back and landed in the road; that Nassaney 'pulled him out of the road and stood him up on his feet' and that he (Conklin) and Nassaney returned to the tavern and that shortly thereafter he saw Sparks re-enter the premises, walk around the bar and depart.

"Joseph Richards testified in substance that he was employed as a bartender by the licensee and, on the date in

question, he started his work at 10 p.m.; that Nassaney gave him the '86' sign on Sparks; 'It means don't serve him;' that Sparks was inebriated and using profanity; that Nassaney went to the phone booth and was followed by Sparks' girl friend; that Nassaney came back behind the bar and, when Sparks continued to use profanity, Nassaney again went to the phone booth and thereafter went outside the premises; that Sparks and his girl friend left, and he heard them arguing but he didn't go outside.

"Mr. Wehling testified, in substance, that he is known by the name of 'Tracy'; that he is a machine operator, and that he worked as a part-time night bartender for the licensee; that he didn't work for the licensee in August of 1961 and that, on the date alleged, 'I wasn't near the place as far as I remember.'

"At the hearing on appeal a certified copy of respondent's resolution and order was marked Exhibit R-2 in evidence, and appellant produced Mr. Nassaney and Erna Allen.

"Mr. Nassaney testified that Sparks was in front of the bar about three or four feet from the door; that John Whitt was seated about five feet away from Sparks; that he stated at the hearing below that he had called the police 'but later I found out I didn't call the police.'

"Erna Allen testified that she was in the licensed premises between 10:30 and 11 p.m. August 12, 1961, and saw Sparks walk around the bar and heard tiny say to him 'Don't you ever learn? I thought I told you not to come in no more;' that Sparks said he wanted to talk to someone and that he turned around and left the premises.

"As to appellant's allegation (1): It has heretofore been held that the acquittal of a licensee or, as in this case, its agent and employee on criminal charges is immaterial to a determination in these proceedings. Disciplinary proceedings against a licensee are civil in nature. Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948); In Re Schneider, 12 N.J. Super. 449 (Sup.Ct. 1951), and the two proceedings (criminal and disciplinary) are different in kind, involve different issues, quantum of proof and types of penalty. See Re DuPree, Bulletin 108, Item 8; Re Messina and Ruisi, Bulletin 392, Item 12; Re Rosenthal and Geller, Bulletin 843, Item 4; Re 17 Club, Inc., Bulletin 949, Item 2; Re The Sports Center Corp., Bulletin 1131, Item 5.

"As to allegation (2): Having carefully examined the entire record herein, I find that the relevant evidence adequately supports the conclusion reached by respondent Board. 'The choice of accepting or rejecting the testimony of witnesses rests *** with the administrative agency ***.' Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (App.Div. 1956).

"As to allegation (3): The suspension imposed in a local disciplinary proceeding rests, in the first instance, within the sound discretion of the local issuing authority, and the power of the Director to reduce or modify it will be sparingly exercised and only with the greatest caution. I find no basis for modification of the suspension imposed in this case. Fronczak v. Gloucester City, Bulletin 1383, Item 2, and cases cited therein.

"In view of the aforesaid, I conclude that respondent Board established the truth of the charge preferred against the

licensee by a fair preponderance of the believable evidence and that the penalty imposed is not excessive. I recommend, therefore, that an order be entered affirming the action of respondent and dismissing the appeal."

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

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the memoranda submitted to the Hearer by the attorneys for the parties hereto, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 30th day of April 1963,

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

ORDERED that the thirty-day suspension heretofore imposed by the respondent and stayed during the pendency of this appeal be restored and reinstated against License C-313, held by Tiny's Bar & Grill, Inc., for premises 185 Paterson Street, Paterson, to commence at 3 a.m. Tuesday, May 7, 1963, and to terminate at 3 a.m. Thursday, June 6, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - ALCOHOLIC BEVERAGES NOT TRULY LABELED - ALLEGED MITIGATION - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LEONA CORPORATION)
t/a LEN GLAZER'S BAR & RESTAURANT)
444 Broadway)
Paterson 4, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-44, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Joseph G. Sproviere, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that on January 19, 1963, (1) at 1:00 a.m. it sold six cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) it possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

With respect to the second charge, reports of investigation disclose that on the date indicated Rose Glazer, president and 50%

stockholder of the licensee-corporation, was consuming what appeared to be gin and water highballs at the expense of a male patron, the "gin" being poured each time from a bottle labeled Boord's gin kept separate on the back bar from the other open stock. When the agents seized the Boord's bottle and inquired as to its contents, Rose Glazer and the bartender Irving Katz, vice-president, treasurer and 48% stockholder of the licensee-corporation, both admitted that the contents were "water". Report of chemical analysis discloses that the contents of the bottle technically comprised an alcoholic beverage containing 4.3% of alcohol by volume (or 8.6 proof), 76.4 proof lower than the labeled proof of 85 of the Boord's gin; in short, water diluted with a modicum of gin. Significantly, the male patron was charged 50¢ for each drink of Boord's "gin" served (retail price \$4.29 per quart) while the investigators, who were drinking Field's gin (retail price \$4.59 per quart) were charged 35¢ per drink.

In alleged mitigation, the licensee claims that the practice was engaged in because "Mrs. Glazer has been seriously ill and under a doctor's care. In order to avoid embarrassment or long explanations when a dear friend would ask her to have a drink, she would resort to the bottle which was seized." To recite the claim is to repudiate it.

The licensee has a previous record of suspension of license by the Director for ten days, effective July 18, 1960, for sale of alcoholic beverages in violation of Rule 1 of State Regulation No. 38. Re Leona Corporation, Bulletin 1351, Item 8.

The prior similar violation considered, the license will be suspended on the first charge for thirty days (Re McHenry, Bulletin 1492, Item 3) and on the second charge, considering the circumstances basically indicating hostess activity aggravated by utilizing a "hostess bottle" and thus defrauding the male patron, for thirty days (cf. Re Frankie's Nomad Club, Inc., Bulletin 1481, Item 4), or a total of sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 30th day of April, 1963,

ORDERED that Plenary Retail Consumption License C-44, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Leona Corporation, t/a Len Glazer's Bar & Restaurant, for premises 444 Broadway, Paterson, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a.m. Tuesday, May 7, 1963, and terminating at midnight Sunday, June 30, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

WAYNE'S LOG CABIN, INC.)
304 Crescent Blvd.)
Brooklawn)
PO Gloucester City, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Brooklawn.)

Joseph M. Nardi, Jr., Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.


BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 3, 1963, it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Guadagno, Bulletin 1501, Item 9.

Accordingly, it is, on this 29th day of April, 1963,

ORDERED that Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Brooklawn to Wayne's Log Cabin, Inc. for premises 304 Crescent Blvd., Brooklawn, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, May 6, 1963, and terminating at 2:00 a.m. Saturday, May 11, 1963.


Emerson A. Tschupp
Acting Director