

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

BULLETIN 1263

FEBRUARY 9, 1959

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - STORKY'S, INC. V. TRENTON.
2. DISCIPLINARY PROCEEDINGS (Trenton) - NUISANCE (FEMALE IMPERSONATORS) - GAMBLING - SALES TO INTOXICATED PERSONS - SALE TO MINOR - LICENSE SUSPENDED FOR 110 DAYS.
3. DISCIPLINARY PROCEEDINGS (Hanover Township) - SUSPENSION REIMPOSED AFTER TERMINATION OF PROCEEDINGS TO REVIEW.
4. DISCIPLINARY PROCEEDINGS (Eatontown) - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS.
5. DISCIPLINARY PROCEEDINGS (Eatontown) - SALES TO MINORS - LICENSE SUSPENDED FOR 20 DAYS.
6. DISCIPLINARY PROCEEDINGS (Hackensack) - POSSESSING ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Sea Bright) - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA. (CAPTION - SEE CORRECT BULLETIN 1265-7)

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
530 SOUTH EAST ASIAN AVENUE
CHICAGO, ILLINOIS 60607

TO: DR. J. H. HARRIS

FROM: DR. J. H. HARRIS

RE: [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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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 1263

FEBRUARY 9, 1959

1. APPELLATE DECISIONS - STORKY'S, INC. V. TRENTON

STORKYS, INC., t/a STORKYS,)

Appellant,)

v.)

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE)
CITY OF TRENTON,)

Respondent.

David A. Friedman, Esq., Attorney for Appellant.

Louis Josephson, Esq., by John A. Brieger, 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 June 19, 1958 it denied, by resolution, appellant's application for renewal of its 1957-58 license for the following stated reasons:

'1. That on May 9, 10, 23 and 24, 1958, the licensee allowed, permitted and suffered its licensed place of business to be conducted in such manner as to become a nuisance in that it allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon its licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon its licensed premises; and allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon its licensed premises; and otherwise conducted its place of business in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulation No. 20.

'2. That on May 17, 23 and 24, 1958, it allowed, permitted and suffered gambling in and upon its licensed premises, viz., the playing on a device or apparatus designated as a "bowling" machine for stakes of money, in violation of Rule 7 of State Regulation No. 20.

'3. That on May 9 and 10, 1958, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such persons in and upon its licensed

premises, in violation of Rule 1 of State Regulation No. 20.

'4. That on May 24, 1958, and on divers days prior thereto, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

'5. That the licensee is unfit to operate said licensed premises for the reason that said licensed premises were conducted improperly and in violation of the law and the rules and regulations relating to the conduct of the licensed premises, and it would be contrary to the best interests of the public health, public safety, public welfare and public morals to approve the application for the renewal of said license.

'6. That it is to the best interests of the surrounding community and the city in general that said application be denied.'

"Upon the filing of the appeal an order was entered by the Director on June 27, 1958 extending the term of appellant's license until further order herein.

"Appellant, in its petition of appeal, alleged, in substance, that the respondent's action was based solely on the disciplinary charges then pending, instituted by the Director, without any knowledge of the nature of the evidence upon which such charges were based and, hence, prejudged the charges; that appellant was not offered an opportunity to hear such evidence and present its defense thereto before the local issuing authority and, hence, such action was an abuse of its discretion.

"Respondent contends that its action was predicated upon a consideration of all the facts and surrounding circumstances relating to the conduct in and operation of appellant's licensed business and was a reasonable exercise of its discretionary authority.

"The violations alleged in the disciplinary charges above referred to are identical with those set forth in paragraphs 1 to 4 inclusive of the reasons asserted by respondent in denying appellant's application for renewal. On September 5, 1958 the disciplinary case was heard at the office of this Division and, thereafter, on the same day, the appeal was heard. In lieu of presenting testimony on the appeal, it was stipulated that the evidence adduced at the disciplinary hearing, together with the written stipulation filed by counsel for the respective parties and an affidavit received subsequent to the hearing, should be considered as the evidence adduced at the hearing on appeal and that the Director's determination with respect to the disciplinary charges, together with his consideration of the stipulation and affidavit, should be the basis of his conclusions and order herein.

"Contemporaneous with this report, the hearer has recommended in his report that the defendant be adjudged guilty of all

charges preferred against it in the disciplinary proceedings on the basis of the evidence presented and has recommended that its license be suspended for a period of one hundred ten days.

"Since I have considered that the violations set forth in the disciplinary proceedings have been established, there remains for consideration the issue whether the respondent was premature in considering such violations as the reason for its action and whether or not such action was an abuse of respondent's discretionary authority.

"The substance of the stipulation hereinabove referred to is that the corporate license, while under the ownership of the Storcella family, has no previous adjudicated record or been the subject of any formal complaint, and that the issuing authority has previously exhibited no policy evidenced by resolution that one violation of the type herein involved would result in a refusal to renew the license. The affidavit above referred to sets forth a statistical analysis of the action of the local issuing authority when considering renewal of licenses contemporaneous with appellant's, whereby it appears that such authority renewed a great number of licenses with records of violation or criminal convictions for violating the Alcoholic Beverage Law. It is well established that a local issuing authority may refuse to renew a license on the basis of a violation committed during the previous licensing year. The contention, stressed in appellant's brief that the local issuing authority prematurely considered the then unestablished charges and, hence, it was an improper basis for its failure to renew the license is not here a controlling factor. Such action did not deny to appellant the 'simple consideration of fairness' since it appears that the licensee has to date continued to operate the licensed business under the Director's order extending the license and the licensee has now, in fact, been adjudged guilty of all of the charges preferred against it.

"The further contention that the refusal to renew appellant's license was inequitable and unjust, resting in substance on alleged disparate treatment accorded to the licensees of Trenton, is a subject which has been previously advanced in other localities, considered and rejected. In Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N. J. Super. 172, at page 175, Judge Eastwood, speaking for the Appellate Division, stated 'Assuming, but not conceding, that other licenses were granted under somewhat similar circumstances, it does not follow that the governing body should further perpetuate earlier unwise action.' The Biscamp case was cited in Nordco, Inc. v. State, 43 N. J. Super. 277 at page 288 and Judge Clapp, speaking for the Appellate Division on the subject of alleged disparate treatment among licensees in Newark, added 'Indeed, it may be that the Newark board in the exercise of its discretion might properly have refused to renew other licenses. However, as an appellate court, we are concerned merely with the question whether the refusal to renew Nordco's license was the result of intentional discrimination or other arbitrary action.' In the instant case, like the Nordco case, the appellant has not established intentional discrimination or other arbitrary action.

"I therefore recommend that respondent's action in denying appellant's application for renewal of its license be affirmed and the appeal dismissed; and that the order extending the term of appellant's license be vacated effective immediately."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by appellant's

attorney and written answering argument was filed by respondent's attorney, pursuant to Rule 14 of State Regulation No. 15. The appellant's attorney's request for oral argument thereon was denied by me.

After carefully considering the entire record herein, including the transcript of the proceedings, the memoranda filed with the Hearer by the respective attorneys prior to the Hearer's recommendations in the matter, the Hearer's Report, the written exceptions thereto and the arguments advanced by the attorneys for the respective parties herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 12th day of January, 1959,

ORDERED that the action of respondent Board of Commissioners 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 my order dated June 27, 1958 extending the term of appellant's license be and the same is hereby vacated, effective at 2:00 a.m., Monday, January 19, 1959, at which time appellant must cease all activity under said license.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - NUISANCE (FEMALE IMPERSONATORS) -
GAMBLING - SALES TO INTOXICATED PERSONS - SALE TO MINOR -
LICENSE SUSPENDED FOR 110 DAYS.

In the Matter of Disciplinary
Proceedings against

STORKYS, INC.
t/a STORKYS, INC.
151 E. Front Street
Trenton 9, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-195, for the 1957-58
licensing year, issued by the Board of
Commissioners of the City of Trenton,
and extended for the 1958-59 licensing
year.

David A. Friedman, 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:

"The following charges were preferred against defendant:

"1. On May 9, 10, 23 and 24, 1958, 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 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 allowed, permitted and

suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises; 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.

'2. On May 17, 23 and 24, 1958, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing on a device or apparatus designated as a "bowling" machine for stakes of money; in violation of Rule 7 of State Regulation No. 20.

'3. On May 9, and 10, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

'4. On May 24, 1958 and on divers days prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Kenneth ---, age 18, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"Defendant has pleaded non vult to Charge 4 and not guilty to the other charges.

"At the hearing herein it was established that on May 9, 1958, at about 11:15 p.m., three ABC agents entered the defendant's licensed premises. Anthony Storcella was tending bar. According to the agents, a male referred to as 'Dino' or 'Dina' was present. He was dressed in tight slacks, with long hair in back, fluffed on his forehead, and tweezed eyebrows. He spoke with a high pitched voice, walked with exaggerated 'swishing' and 'swaying' of his hips, fluttered his eyelids when conversing with two males and displayed other effeminate mannerisms. At one time Dino displayed to those present including the agents a photograph which appeared to be a female with long dark hair wearing a strapless evening gown. Dino identified this picture as a photograph of himself. The agents concluded from what they observed that Dino was an apparent homosexual.

"The agents observed Dino dance on a number of occasions to the music of a juke box. Some of these dances are described as of a 'bumps and grinds' nature. On one of these occasions a female seated nearby began shaking her breasts. At her invitation Dino danced over to her and for a moment shook her breasts with his hand. Then Dino and the female danced together a 'fish' dance which is described as one simulating sexual intercourse. The bartender observed the dance and addressed the couple with the words 'go, go, go'.

"During their observation of Dino's conduct they observed a male with his arm around Dino whispering in his ear. This man's elbow kept slipping off the bar, his eyes appeared to be glassy,

his speech was slurred and incoherent and he staggered when he walked. The agents observed the service of alcoholic beverages by the bartender to this man while he was in such condition. This man left the bar, placed his arms around the neck and waist of the agents, placed his hand indecently on two of the agents, and later suggested to the three agents that they go home with him for a good time of an unspecified nature. He claimed to be employed as a therapist in a hospital and displayed an identification card with his name and photograph. The agents concluded that he was intoxicated. They observed three other persons there who had the appearance of intoxication and who were served with alcoholic beverages. The agents' description of what they observed is the basis for the violations charged as occurring on May 9 and 10, 1958.

"These ABC agents were again in the premises on May 17, 1958. Anthony Storcella was tending bar. They did not see Dino there and, in response to their inquiry as to his whereabouts, the bartender told them that he was there the previous evening and might come there later; that he usually stops in every night. They observed two persons playing a shuffleboard game for money stakes in which Anthony participated by betting with the respective players on the outcome of the game. This is the basis for the violation charged as occurring on May 17, 1958.

"The last of these visits by ABC agents to the premises was late in the evening of May 23 extending to the early morning hours of May 24, 1958. On this occasion Dino entered with another man and was joined by a third. These two men did not remain long in the premises and, from what they could observe, the agents suspected that they may have been homosexuals. One of the agents testified that during the course of the evening Dino made improper advances to him in the men's room. The agents and other persons played shuffleboard games with bets on the outcome thereof with Anthony Storcella, who was tending bar. During their visit the agents observed the sale of alcoholic beverages to Kenneth ---, a minor, 18 years of age. The agents ultimately disclosed their identity on this occasion to Anthony Storcella and to Richard Storcella, one of the corporate stockholders who arrived on the scene, and apprized them of the activities on the licensed premises which they had witnessed that night. The agents were then informed that the minor had previously displayed an identification card which represented him to be over 21 years of age.

"There does not appear to be any dispute that at least Dino was an apparent homosexual. Peter Storcella, another stockholder of the corporate licensee, testified 'Well, he (Dino) is a little more than out of the way'; 'a little delicate, effeminate'. Asked whether he did not consider Dino a homosexual he replied 'Well, maybe at times I did, but he never bothered anyone, he just kept his own place'.

"Robert Storcella testified that Dino 'appeared to be a little effeminate'. A patron who testified on the licensee's behalf said that 'He (Dino) had a little strange movement by the way he walked and all', although the witness claimed that he could not recognize a homosexual from a normal person unless such person made improper advances.

"Another patron testified that he thought 'He (Dino) might have been effeminate'. Obviously, Dino frequented the premises and, hence, the violation does not involve a single or occasional appearance of Dino at such premises.

"Anthony Storcella admitted that he placed bets with the

agents on May 23, 1958 on the outcome of a shuffleboard game but claimed that he did not place such bets on May 17, 1958 with the other two persons. The sale to the minor is admitted albeit attempted to be mitigated by the display by the minor of an identification card. The Storcellas profess to have no knowledge of the presence of the intoxicated person and his conduct on May 9, 1958.

"In effect then, there is no defense presented to the charge of permitting at least one homosexual to frequent the premises; or to the charge of permitting gambling; or to the charge of permitting the sale of alcoholic beverages to a minor, and the licensee's employees assume a negative position with respect to the sale to an intoxicated person and indecent conduct by him by professing lack of knowledge thereof. The only positive attitude is Anthony's assertion, as well as one of the other witnesses, that Dino did not perform an indecent dance on May 9, 1958.

"In my opinion, the preponderance of the believable evidence establishes the guilt of the defendant licensee of all the charges preferred against it and I recommend a finding to that effect. Since defendant has no prior adjudicated record, I recommend that its license be suspended for a period of sixty days on Charge 1 (Re Rutgers, Bulletin 1133, Item 2); thirty-five days on Charges 2 and 3 (Re Amster & Robins, Bulletin 1237, Item 2) and fifteen days on Charge 4 (Re Krygier, Bulletin 1234, Item 8), making a total suspension of one hundred ten days. I further recommend that no effective date be fixed for the commencement of the suspension because, in a contemporaneous report on the licensee's appeal for failure of the local issuing authority to renew its license, I recommended affirmance of such action and dismissal of the appeal and an order terminating extension of the license by the Director under which the licensee has been and is now operating, thus effectively terminating the conduct of the licensed business."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney for the defendant, pursuant to Rule 6 of State Regulation No. 16. Application by such attorney for oral argument thereon was denied.

Having carefully considered the entire record, including the transcript of the testimony, the memorandum filed with the Hearer by the attorney for defendant prior to the Hearer's recommendation in the matter, the Hearer's Report, and the exceptions and written argument submitted by such attorney, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 12th day of January, 1959,

ORDERED that Plenary Retail Consumption License C-195, for the 1957-58 licensing year, issued by the Board of Commissioners of the City of Trenton, and extended for the 1958-59 licensing year to Storkys, Inc., t/a Storkys, Inc., for premises 151 E. Front Street, Trenton, be and the same is hereby suspended for one hundred ten (110) days. No effective date will now be fixed for the commencement of the suspension since, by my contemporaneous order dismissing the defendant licensee's appeal from the denial of renewal of such license, I have vacated my order extending the term of such license, thus effectively terminating any operation of the licensed business after 2:00 a.m., Monday, January 19, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SUSPENSION REIMPOSED AFTER TERMINATION OF PROCEEDINGS TO REVIEW.

In the Matter of Disciplinary Proceedings against)

JOSEPH SORANNO)

t/a "RACEWAY TAVERN")

38 Horsehill Road)

Hanover Township)

PO Cedar Knolls, New Jersey)

ORDER

Holder of Plenary Retail Consumption License C-5, for the 1957-58 and 1958-59 licensing years, issued by the Township Committee of the Township of Hanover.)

BY THE DIRECTOR:

On July 21, 1958, the defendant's license was suspended for a period of twenty-five days. See Bulletin 1240, Item 7. Upon appeal to the Superior Court, Appellate Division, an order was entered by the Court staying the suspension pending the outcome of the appeal. By decision dated December 24, 1958, the suspension was affirmed and, thus, the penalty may now be reimposed.

Accordingly, it is, on this 12th day of January, 1959,

ORDERED that the suspension of twenty-five (25) days, heretofore imposed upon plenary retail consumption license C-5, issued by the Township Committee of the Township of Hanover to Joseph Soranno, t/a "Raceway Tavern", for premises 38 Horsehill Road, Hanover Township, be and the same is hereby reimposed, commencing at 2 a.m. Monday, January 19, 1959, and terminating at 2 a.m. Friday, February 13, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against)

RUDOLPH AND EVELYN SCHELTZ)

t/a SHORE ROAD INN)

Route No. 35)

Eatontown, New Jersey)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Eatontown.)

George S. Skokos, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to a charge alleging that they sold, served and delivered alcoholic beverages to minors and

permitted the consumption of such alcoholic beverages by said minors in and upon their licensed premises, in violation of Rule 1 of State Regulation No. 20.

"At the hearing held herein, Harrel J. ---, 20 years of age, testified that shortly before 9:00 p.m. on May 21, 1958, he and Ray A. --- visited defendants' licensed premises; that he and Ray ordered and were served a drink of whiskey and 7 Up and a drink containing gin, respectively; that they carried their drinks to a room to the left of the bar and while there played a game of pool on a Fascination pool table located therein; that two girls and a youth entered the room and he and Ray danced on one or two occasions with one of the girls; that he re-entered the barroom, purchased another drink of whiskey and 7 Up from the same bartender and returned to the side room with the drink; that he did not recall Ray being served another drink; that he did not remember for certain being questioned by the bartender about his age but in any event did not make any representation in writing with reference thereto; that at approximately 9:30 p.m., he left defendants' premises and went across the street, to another licensed premises known as the Moulin Rouge; that he mentioned to the police officers and ABC agents only that he had been in the Moulin Rouge. During cross-examination when Harrel was asked why he failed to inform the police and ABC agents that he had been in defendants' establishment, he stated: 'Well, there wasn't any particular reason why not to, and there wasn't any reason why to. The question asked was where we had drank. We stated one place. We didn't go into detail and say that there was two places. This whole affair is something that since it happened you can't change it, but that doesn't mean you have to like it. I don't like to get people in trouble. That was the reason it was omitted. I didn't see any need of involving any more people than it had to be. I don't believe I would have said any bar at all if it hadn't Private W. --- (referred to herein as Ray) had already mentioned one bar'; that the first time he mentioned that he had visited defendants' licensed premises on the evening of May 21, 1958, was at a hearing held at the offices of this Division on July 3, 1958 involving the Moulin Rouge.

"Ray A. ---, 18 years of age, corroborated the testimony of Harrel relative to the visit to defendants' licensed premises on the early evening of May 21, 1958. Further, he testified that Rudolph Scheltz (hereafter referred to as Scheltz) inquired about his age; that when he ordered the drink of gin and 7 Up and in response thereto he showed Scheltz an old Illinois Air National Guard identification card showing his date of birth as August 7, 1934, which was a typographical error, that Scheltz then served him the drink; that he did not represent in writing anything concerning his age; that after service he and Harrel went into a room on the left of the barroom and played a game of Fascination pool and thereafter both danced on occasion with one of two girls who had entered the premises with a male; and that thereafter Harrel obtained another drink of whiskey and 7 Up from the bar; and that at 9:15 p.m. he and Harrel left the premises.

"An ABC agent testified that on Saturday, July 12, 1958, he and another agent met Ray and Harrel at Fort Monmouth and were directed by them to defendants' licensed premises; that they entered the establishment and Ray identified Scheltz as the person who served him on the date in question; that Scheltz stated he remembered Ray and another person coming into the premises on May 21, 1958 between 10:00 and 10:30 p.m., and when he refused to serve them they left the premises.

"Scheltz testified that at approximately 10:00 p.m.,

May 21, 1958, Ray came into the licensed premises and that he (Scheltz) 'waved him right out'; that later in the evening a police officer and Ray entered the premises and when he (Scheltz) was questioned he told the officer about seeing Ray earlier in the evening and that he had 'chased him out'; that when he was questioned by the officer about car keys, he (Scheltz) laughed. During cross-examination, Scheltz testified that when Ray came into the premises 'he acted screwy to me. He came in waving his hand, "Give me a couple of drinks"'; that Scheltz said, 'I think you had enough. Get out!'; that when asked by the attorney appearing for the Division, 'Did he appear intoxicated?', Scheltz answered, 'I wouldn't know. To me, I thought he had a little too much to drink. I don't know whether he had a drink or not, but he looked like he had something.'

"Marvin Fowler, a police officer, testified that at 1:30 a.m. on May 22, 1958, while he and Officer DeVito were in a police car, a radio call came in concerning the theft of a car; that pursuant thereto the two minors in question were apprehended in an unlicensed car which had been taken from a car lot; that Ray pointed out defendants' licensed premises as the place where he had obtained the keys for the car; that when they went into defendants' premises, Scheltz who was behind the bar, stated that Ray had been in the premises earlier in the evening and when he endeavored to get a drink he (Scheltz) chased him from the premises; that neither Ray nor Harrel mentioned that they had been drinking at the defendants' licensed premises.

"John E. Smith testified that on the early morning of May 22, 1958, he was present when Officer Fowler and Ray came into defendants' premises; that the officer spoke to Scheltz and after the officer left he (Smith) asked if Ray had been drinking in the premises and Scheltz said, 'No. I wouldn't let him in the door.'

"Captain Harry Leo of the municipal police department testified that when he searched Ray and Harrel he found, among other things, the I.D. Card issued to them by the army which truly represented their respective ages; that he interrogated the minors where they had obtained alcoholic beverages and the minors stated at the Moulin Rouge.

"There is no dispute that Harrel and Ray did not inform the local police officers or the ABC agents that on May 21, 1958 they had been served and consumed alcoholic beverages in defendants' licensed premises. However, both minors accurately described the layout of defendants' premises, that they played pool in an adjacent room and danced therein with a girl whom they had met in the establishment. Ray identified Scheltz as the person who served him the drink. Scheltz admitted working in the premises on the night in question. Furthermore, Scheltz testified seeing Ray in the premises and that he requested him to leave. John E. Smith, a patron quoted Scheltz as saying that he would not let Ray in the door. After careful examination of all the testimony I am satisfied that both Ray and Harrel were in the defendants' licensed premises on the morning of May 21, 1958 and while there, Scheltz served alcoholic beverages to them. I, therefore, recommend that the defendants be found guilty of the charge preferred herein.

"Defendants have no prior adjudicated record. The minimum penalty imposed for an unaggravated sale of alcoholic beverages to an 18 and a 20 year-old minor is fifteen days. Re Monterey Enterprises, Inc., Bulletin 1188, Item 8. I recommend that defendants' license be suspended for a period of fifteen days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney

representing the defendants, pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 12th day of January, 1959,

ORDERED that Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Eatontown to Rudolph and Evelyn Scheltz, t/a Shore Road Inn, for premises on Route No. 35, Eatontown, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Monday, January 19, 1959, and terminating at 2:00 a.m., Tuesday, February 3, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary
Proceedings against

MARTIN J. & PASQUALE VACCARO
t/a MOULIN ROUGE
Route #35
Eatontown, New Jersey

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption
License C-3 (for the 1957-58 and
1958-59 licensing years), issued by
the Borough Council of the Borough of
Eatontown.

Joseph F. Mattice, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to a charge alleging that they sold, served and delivered alcoholic beverages to minors and permitted the consumption of such alcoholic beverages by said minors in and upon their licensed premises, in violation of Rule 1 of State Regulation No. 20.

"At the hearing held herein, Harrel J. ---, 20 years of age, testified that at approximately 9:00 p.m. on May 21, 1958, he and Ray A. --- visited defendants' licensed premises, at which time a small band was playing; that they took seats at the bar and without being questioned as to their respective ages, were served alcoholic beverages by the bartender (subsequently identified as Jay Andrew Cotta) who wore a red jacket and black bow tie; that during the three hours he and his companion spent in the premises he consumed drinks of alcoholic beverages consisting of several mixed drinks containing whiskey, one bottle of beer and a drink of Gold Leaf Cognac; that after leaving defendants' premises he and his companion were apprehended by local police officers and ultimately charged with being disorderly persons. During cross-examination, Harrel testified that on the day in question prior to

visiting defendants' licensed premises, he and Ray consumed alcoholic beverages in a licensed premises known to him as the Shore Road Inn which is located across the highway at a short distance from defendants' premises. Harrel admitted that he had not divulged that fact to either the local police or the ABC agents during their respective investigations in the matter.

"Ray A. ---. 18 years of age, testified that he and Harrel visited the licensed premises across the highway prior to going to defendants' premises and that he consumed a drink of gin and 7 Up therein. He also testified that the bartender in defendants' licensed premises (identified as Jay Andrew Cotta) wore a bright red jacket and a black bow tie and that Cotta did not question him as to his age before serving him various drinks of alcoholic beverages during the course of the evening; that these drinks included three bottles of beer, two mixed drinks containing gin, two drinks of whiskey and a drink of cognac. Ray's testimony corroborated in substance the events that occurred after leaving defendants' licensed premises and also the fact that he did not reveal to the police or the ABC agents that on the evening in question he had had a drink containing gin in the licensed premises across the highway prior to entering defendants' establishment.

"Martin J. Vaccaro, one of the defendant-licensees, testified that between 9:30 and 10:00 p.m. on the evening of May 21, 1958, two minors approached the bar and when he questioned them concerning their ages, they admitted that they were minors but asked that they be permitted to remain on the premises to listen to the orchestra; that he refused their request and at his direction they left the premises; that neither of them had anything to drink while in the defendants' establishment; that at the time Cotta was tending bar he wore a red jacket but he has never seen him wear a bow tie; that he does carry Gold Leaf Cognac in stock. The witness further testified that when ABC agents and the two minors came into the premises on June 12, 1958, it was the first time he had any knowledge concerning the charge that on May 21, 1958 the two minors were allegedly served alcoholic beverages on the licensed premises; that he may have made a positive statement to the ABC agents that he did not see the two minors in the premises on the night in question; that after thinking about the matter he remembered one of the minors being in the premises because he 'has a marked resemblance to the boy my daughter keeps company with and it stuck in my mind.'

"Jay Andrew Cotta testified that he was on duty as bartender on the night in question and did not remember seeing either of the minors in the premises on the date in question; that he wore a black straight tie and red jacket; that the premises are not brightly lighted and attract, in the main, transient trade; that the band playing at the time consisted of three pieces and one vocalist; that although he would not say that the minors were not in the establishment on the evening of May 21st, he was positive that he did not serve them.

"Lawrence DeVito, a member of the municipal police force, testified that he apprehended the minors while they were driving in an automobile which they had appropriated from an automobile agency and after he had taken them to headquarters noticed the smell of liquor on their breath; that Captain Leo interrogated the minors and during the investigation the youths had stated after the captain had mentioned some names of taverns, that they had been at the defendants' premises.

"Captain Harry Leo of the municipal police force testified that in questioning Ray, the latter had told him that he and his companion had been drinking at several places; that

after he (Captain Leo) mentioned several liquor establishments, the minor told him that they were served alcoholic beverages at the Moulin Rouge.

"Edward Sagurton testified that he was in the defendants' establishment on the night of May 21st and saw Martin Vaccaro talking to 'two young kids' but he could not remember whether or not they were the minors in question.

"Although Harrel and Ray withheld from the police and ABC agents during the investigations conducted in this matter that they had been to another liquor establishment prior to visiting the defendants' licensed premises, it is apparent that they were in defendants' licensed premises on the evening in question and while there ordered and were served drinks containing alcoholic beverages. The description given of the bartender's attire, although there is some dispute as to the type of tie worn by him, and furthermore, the fact that a small band was playing at the time, has been conceded by the witnesses produced by the defendants herein. Martin J. Vaccaro, one of the licensees, when confronted on June 12, 1958 with the fact that the minors were allegedly served alcoholic beverages in the defendants' establishment on May 21, 1958, denied to the ABC inspector that he had seen the minors; however, at the hearing he testified that he had remembered the minors being there and after refusing drinks to them directed that they leave the premises.

"I am satisfied after consideration of all of the testimony, that the minors were in the defendants' establishment as charged on the night of May 21st and early morning of May 22, 1958, and that while there were served alcoholic beverages. I, therefore, recommend that the defendants be found guilty of the charge preferred herein.

"Defendants have no prior adjudicated record. The minimum penalty imposed for an unaggravated sale of alcoholic beverages to an 18 and a 20-year-old minor is fifteen days. Re Monterey Enterprises, Inc., Bulletin 1188, Item 8. However, considering the amount and type of alcoholic beverages served, I recommend that defendants' license be suspended for a period of twenty days. Re Harkins, Bulletin 1239, Item 3."

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

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

Accordingly, it is, on this 12th day of January 1959,

ORDERED that Plenary Retail Consumption License C-3, for the 1958-59 licensing year, issued by the Borough Council of the Borough of Eatontown to Martin J. & Pasquale Vaccaro, t/a Moulin Rouge, for premises on Route #35, Eatontown, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Tuesday, January 20, 1959, and terminating at 2:00 a.m., Monday, February 9, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - POSSESSING ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

BERTHA GROWER
t/a SUSQUEHANNA TAVERN
12 Mercer Street
Hackensack, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-46, issued by the City Council
of the City of Hackensack.

Theodore D. Rosenberg, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that she possessed on her 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.

On October 25, 1958, an ABC agent seized on defendant's licensed premises a number of bottles of the licensee's open stock of alcoholic beverages, one of which he observed being refilled by defendant's husband. These bottles were submitted to the Division's chemist for analysis. The chemist's report discloses that the contents of four of these bottles listed in the charge differ in various respects in proof, solids, acids and color from the contents of genuine bottles of the respective brands.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty days, the minimum suspension in a "refill" case involving four bottles. Re Choy Ching Fat, Bulletin 1123, Item 10. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 13th day of January, 1959,

ORDERED that plenary retail consumption license C-46, issued by the City Council of the City of Hackensack to Bertha Grower, t/a Susquehanna Tavern, for premises 12 Mercer Street, Hackensack, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Tuesday, January 20, 1959, and terminating at 2 a.m. Wednesday, February 4, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF REGULATION NO. 38 -
PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of (Disciplinary)
Proceedings against)

SALVATORE STARVAGGI)
t/a SAL'S TAVERN)
200 Monticello Avenue)
Jersey City 4, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-383, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Jersey City.)

Salvatore Starvaggi, Defendant-licensee, Pro se.
Dora P. Rothschild, Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on Sunday, November 9, 1958, he sold during prohibited hours an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

At about 3:10 p.m. on the above mentioned day and date an ABC agent at the licensed premises purchased from the licensee's bartender a pint bottle of Hunter's Blended Whiskey for off-premises consumption. The agent left the premises with the bottle of whiskey, joined a fellow-agent who had been stationed outside, and both entered the premises and identified themselves to the bartender who verbally admitted the violation.

Defendant has a prior adjudicated record. Effective July 21, 1947, his license was suspended by the local issuing authority for ten days; effective February 3, 1954, his license was suspended by the Director for fifteen days (Bulletin 1002, Item 4), and effective June 1, 1957, his license was suspended by the Director for thirty days (Bulletin 1174, Item 2). These suspensions were for violations similar to the instant violation so that, aside from the suspension imposed in 1947, this is the third similar violation within five years. Under such circumstances I shall suspend the defendant's license for sixty days (Re Wood-lawn Bar & Grill, Inc., Bulletin 1060, Item 2). Five days will be remitted for the plea entered herein, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 14th day of January 1959,

ORDERED that plenary retail consumption license C-383, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Salvatore Starvaggi, t/a Sal's Tavern, for premises 200 Monticello Avenue, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a.m. Tuesday, January 27, 1959, and terminating at 2 a.m. Monday, March 23, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD -
 LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

Auto. Susp. #161

In the Matter of a Petition by

MILDRED MIKULAS AND MARTIN MIKULAS

t/a Swedish Hop

10 East Ocean Avenue

Sea Bright, New Jersey

To Lift the Statutory Automatic
 Suspension of License C-3, issued
 by the Mayor and Council of the
 Borough of Sea Bright.

(CAPTION - SEE CORRECT
 BULLETIN 1265-7)

ON PETITION
 ORDER

Henneberry and Giordano, Esqs., by John C. Giordano, Jr., Esq.,
 Attorneys for Petitioners.

BY THE DIRECTOR:

It appears from a verified petition filed herein that on January 9, 1959, petitioners were fined \$100 after one of the petitioners (Martin Mikulas) pleaded non vult in the Monmouth County Court to an indictment alleging that he sold alcoholic beverages to minors, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension for the balance of the term of the license they now hold. The petition requests the lifting of the automatic suspension. The license was not immediately picked up because of the pendency of these proceedings.

By order dated January 21, 1958, I suspended petitioners' license for twenty-five days after they pleaded non vult in disciplinary proceedings to a charge of selling alcoholic beverages to the same minors. This suspension was effective from 2 a.m. January 27, 1958, to 2 a.m. February 21, 1958 (see Bulletin 1210, Item 9). Under the circumstances, I shall grant the relief requested.

Accordingly, it is, on this 20th day of January, 1959,

ORDERED that the statutory automatic suspension of said License C-3 be and the same is hereby lifted and said license is restored to full force and operation, effective immediately.



William Howe Davis
 Director