

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

June 29, 1960.

BULLETIN 1342

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1. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE
(FEMALE IMPERSONATORS) - PRIOR RECORD OF PREDECESSOR IN INTEREST -
LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary)
Proceedings against)

VIOLA S. HAJE)
t/a THE PADDOCK INN)
24 S. Warren Street)
Trenton 8, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-177, issued by the Board of)
Commissioners of the City of Trenton)

Stark and Stark, Esqs., by Sidney S. Stark, Esq., Attorneys for
Defendant-licensee.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On October 10, 16 and 17, 1959, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that you allowed, permitted and suffered thereon, males impersonating females, who appeared to be homosexuals; 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.'

"An ABC agent testified that on the early morning of October 10 and on the evening of October 16, 1959, he and a fellow agent visited defendant's licensed premises, and on each occasion observed the defendant and Walter Bozek tending bar. On the second visit the agents remained on the premises until the early morning of October 17. On October 10th there were thirty-eight males and one female patron in the premises when the agents entered and the number remained constant until closing time. The agent testified that 95 per cent of the males acted in an effeminate manner; that many of them wore tight chino pants, bulky knit sweaters with the sleeves rolled to their elbows and loafer shoes or low cut white sneakers. The males in question when walking swished their hips from side to side and walked 'on the balls of their feet'. Moreover, the agent observed that they permitted the wrist to remain limp when holding their glasses and that their cigarettes were held in a very dainty fashion. The males were in groups of 'from two to four' and they spoke in lispy, high-pitched voices, placed their hands on one another's arms or stroked each other's faces at the same time looking into each other's eyes in an endearing manner. At times they were

heard referring to one another as adorable, honey, doll or sweetie. On one occasion the agents testified that he overheard a conversation wherein one male patron remarked that he was in a blue mood and that whenever he came into defendant's premises he got depressed. Another remarked, 'Every time I come here I get an uncontrollable urge', while a third male was heard to say, 'Well, anyway, whenever we come here we lose our sex'.

"The agent aforementioned testified that he and the agent who had accompanied him on the previous visit entered defendant's premises at 10:10 p.m. on Friday, October 16, 1959. Fourteen males and one female were present but the patronage increased during the evening until about forty-five males and three females were in the premises. He testified that his observation of the patrons at the height of the evening showed that about the same percentage of males as on the prior visit behaved in an effeminate manner and that their actions, voices and expressions of endearment were similar to the description given by him on the occasion of his former visit. The agent testified that, during the evening, a person called Danny, seated at the bar immediately to his right, introduced himself and for about two hours engaged with him and his fellow-agent in conversation. Danny used effeminate expressions, fluttered his eyes and held his hands in a 'limp wrist fashion'. Danny discussed the establishment and some of the male patrons and their unnatural proclivities. The agent testified that, at times, both defendant and Bozek came over to wash glasses in the sink immediately in front of the agents. At one time Bozek came over and warned Danny to watch his language. Danny introduced the agent to defendant and, when the agent described the place as a 'nice gay spot', the defendant became flustered and stammered. She said, 'Gay? There's nothing gay in here'. When the agent said, 'It looks to us to be gay', the defendant immediately replied, 'They are not bothering anybody. They are their own kind. Some people go one place and other people go to another place. They are not bothering anybody and I don't see anything wrong'. The agent testified that, thereafter, he and his fellow-agent identified themselves to the defendant and to Bozek but both denied that there were any homosexuals in the place. When asked by the agent what in her opinion is a fag or a queer, defendant said, 'Someone who wears makeup, has long hair and wears dresses. I don't see anyone like that in here'. According to the agent, defendant admitted overhearing conversations while tending bar but denied any wrong doing on the part of anyone.

"It was stipulated by the attorneys for the parties hereto that if the other agent who had also been at defendant's premises at the times in question were called as a witness, his direct testimony would be substantially similar to that of his fellow-agent. Both agents were subjected to extensive cross-examination by the defendant's attorney without any material change in the testimony elicited on direct examination.

"Richard L. Chorba and Bernard DeAngelis, police officers employed by the municipality wherein the defendant's licensed premises are located, testified that they are familiar with the particular location because each had been assigned to that area for a considerable time. Moreover, the officers testified that when on night duty, they checked defendant's premises and had never seen anything unusual about the patrons.

"William Zupan testified that prior to his retirement on January 1, 1960, he was a member of the police department and for a period of fourteen months held the position of Alcoholic Beverage Inspector. He testified that in an official capacity he visited defendant's premises, especially during the late hours, and never found anything wrong. He testified that he observed male patrons

in the premises wearing sport clothing, others in business suits, while 'some of the fellows had Ivy League clothing on'. When asked for an explanation what he meant by 'Ivy League clothing', he said, 'Chinos. They are tight fitting clothing' and some wore bulky sweaters. Zupan further testified that he had never received a complaint about defendant's premises from his superior officers or from any city official and he never had any reason to believe that homosexuals gathered thereon.

"The defendant's witnesses aforementioned testified that they were not present on the dates mentioned in the charges preferred herein.

"George Charok testified that he is a daily patron of defendant's establishment and recalled that he visited defendant's premises about 12:20 a.m. on October 17, 1959 and remained there until closing time. He testified that there was nothing unusual about the male patrons and, although he saw some males dressed in tight chino pants, they did not swish their hips while walking, walk on the 'balls of their feet', hold their glasses in a dainty fashion with their fingers extended, hold in a dainty manner cigarettes, or speak in high-pitched voices. Furthermore, Charok testified that no one appeared to him to be a homosexual and although he knew Danny, the latter never made any immoral proposition to him. On cross-examination he was asked:

Q. But on most times -- or particularly with respect to the night you are talking about, you just went in there, bought your drinks, minded your own business, didn't bother with anybody, didn't look around or anything, you had your drinks and you went home. Is that right?

A. That's right.

"Frank Neneza, a bartender employed in another licensed premises, testified that occasionally he visits defendant's establishment late at night and had never seen anybody who appeared to him to be the least bit suspicious.

"William Southwick testified that on Saturday evenings he tends bar in defendant's premises and occasionally visits the premises on other nights. He stated that he has seen males dressed in chino pants and wearing bulky sweaters but has never observed any patron exhibiting effeminate characteristics or heard the use of endearing terms when talking to one another. Neither he nor Neneza were in defendant's premises at the times in question.

"Walter Bozek's testimony discloses that he tended bar on October 10th, 16th and early morning of October 17th 1959, and remembered seeing the agents on the 16th and 17th. On the latter dates the male patrons were dressed in business suits, some in working clothes and three or four had on chino trousers, but none of the patrons spoke with high-pitched voices or behaved in an effeminate manner. He knew that the defendant had been warned about permitting homosexuals on the licensed premises and, since the warning, he had put out 30 persons who appeared to be 'queers, fags and everything'. He claimed that no one answering the description given by the agents was in the premises. He testified that Danny came into the premises over a period of five or six months on the average of twice a week, but his appearance or speech was in no way effeminate. He stated that on one occasion he tapped Danny on the shoulder and requested that he stop swearing as a female was standing alongside of him.

"Defendant testified that on October 10th, she served the

agents and recalled that most of the customers in the premises were well dressed and that some rolled up the sleeves of their bulky knit sweaters when using the bowling machine. The defendant described many of her patrons as students who had been in service but now attended a local college and dressed as college boys. She testified that she never observed patrons swish their hips when walking, nor had she ever heard them lisp, speak in high-pitched voices or use terms affectionate toward one another. Defendant testified that she knew Danny but did not believe anything to be wrong with him, nor had he ever been offensive to her.

"Charok, with the exception of Bozek and herself, was the only witness produced by appellant who was in the licensed premises at the times in question. Charok testified that he did not recall seeing the agents and never saw anything unusual about the patrons. He did emphasize the fact that when in defendant's premises he ordinarily minded his own business, had his drinks and went home.

"It is clear from the evidence that none of the male patrons wore feminine attire. However, I am satisfied from the testimony of the agents that at the times in question, a large percentage of the male patrons by their walk, speech, actions and other mannerisms were homosexuals.

"In The Paddock Bar, Inc., Bulletin 1159, Item 2, wherein defendant was adjudged guilty of a charge similar to that herein, the following was stated:

'The congregating of so large a percentage of male patrons possessing the same general features, characteristics and mannerisms is more than a mere coincidence. Proper liquor control dictates that the congregating of homosexuals on licensed premises must be staunchly prohibited. To permit such persons to gather and congregate in large numbers as in the instant case is in itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, by being exposed to these conditions, may well be adversely affected. Cf. Re Kaczka and Trobiano, Bulletin 1063, Item 1.'

"On affirmation on appeal from the determination of the Director in the aforementioned case, Judge Jayne, speaking for the Appellate Division of the Superior Court of New Jersey, (49 N.J. Super. 299) remarked:

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird....'

"It is apparent from the testimony of the agents that the male persons in question were what are commonly termed 'female impersonators'. Female garb is not necessary for such a finding. Re Kaczka and Trobiano, supra.

"After careful examination of all the evidence in this case, I recommend that defendant be found guilty of allowing, permitting and suffering her licensed premises to be conducted in such a manner as to become a nuisance, pursuant to the charge preferred herein.

"Defendant has no prior adjudicated record. However, when

the license was held in the name of The Paddock, Inc., of which defendant was the secretary-treasurer and a shareholder thereof, effective February 2, 1959 the license was suspended by the local issuing authority for five days for sale of alcoholic beverages to a minor. I recommend that on the present charge defendant's license be suspended for sixty days. Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2; Re Clover Leaf Inn, Inc., Bulletin 1159, Item 1; Re The Paddock Bar, Inc., supra (sub. nom. Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra). Because of the prior dissimilar violation within the past five years, I recommend that defendant's license be suspended for an additional five days, making a total suspension of sixty-five days."

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

After carefully considering the entire record in this case, including the transcript of testimony, the Hearer's Report, the written exceptions and the written argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 5th day of May 1960,

ORDERED that Plenary Retail Consumption License C-177, issued by the Board of Commissioners of the City of Trenton to Viola S. Haje, t/a The Paddock Inn, for premises 24 S. Warren Street, Trenton, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m., Monday, May 16, 1960; and it is further

ORDERED that any renewal for the 1960-61 licensing year or transfer of said license shall be and remain under suspension until 2:00 a.m., Wednesday, July 20, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - PLENARY WHOLESALE LICENSEE - SALE FOR OTHER THAN CASH TO RETAILER ON DEFAULT LIST - CHARGE ALLEGING HINDRANCE OF INVESTIGATION DISMISSED - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

F. & A. DISTRIBUTING COMPANY)
235-241 W. First Street)
Bayonne, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Wholesale License W-54, issued by the Director of the Division of Alcoholic Beverage Control.)

Green and Yanoff, Esqs., by H. Kermit Green, Esq., Attorneys for Defendant-licensee.

David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

- '1. On or about January 8, 1959 and on divers occasions prior thereto extending to on or about August 5, 1958, you sold alcoholic beverages except for payment in cash on delivery to retail licensees Sea Bay Inn Inc., t/a Murphy's Sea Bay Inn, Highway #35, Deauville Dr., Deauville Beach, Brick Township, New Jersey and Di Wilbow, Inc., t/a Sea Girt Bottle Shop, 555 Washington Blvd., Sea Girt, New Jersey, each of which, on the dates of sale and delivery, was listed on the Default List published by the Division of Alcoholic Beverage Control; in violation of Rule 4(a) of State Regulation No. 39.
- '2. During the period of February 19, 1959 to March 2, 1959, you failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, examination and inspection being conducted by an Inspector and an Investigator of this Division; in violation of R.S. 33:1-35.'

"It was stipulated by the attorneys for the parties herein that from August 5, 1958 to January 8, 1959, inclusive, retail liquor licensees Sea Bay Inn Inc. and Di Wilbow, Inc., respectively, were on the Default List published by the Division of Alcoholic Beverage Control.

"Richard Bowman, president of Di Wilbow, Inc., testified that during the time Di Wilbow, Inc. was on the Default List, Robert Bossett, solicitor employed by defendant, accepted orders for alcoholic beverages and delivered the merchandise without receiving immediate payment therefor. Some time thereafter, Bossett would call at the licensed premises and receive either cash or check in payment for the alcoholic beverages previously delivered. Bowman identified a check dated December 29, 1958 in the amount of \$2045 signed by him, payable to cash and endorsed by Robert H. Bossett. Bowman testified that the proceeds of said check represented payment

for various alcoholic beverages delivered prior thereto, the invoices for which showed delivery dates as December 22, 23, 24 and 26, 1958, respectively. He further testified that a check dated August 18, 1958 in the amount of \$684.58 payable to cash and endorsed by Robert H. Bossett, represented payment for alcoholic beverages shown on the invoices to have been delivered on August 14, 1958. Bowman further testified that a check dated September 2, 1958 in the amount of \$851.83 payable to cash, endorsed by Robert H. Bossett, represented payment for alcoholic beverages shown on the invoices to have been delivered on August 28 and 30, 1958. All of the aforesaid checks were checks of Di Wilbow, Inc. and were signed by Bowman as president. Bowman testified that the alcoholic beverages shown on invoices to have been delivered to Di Wilbow, Inc. by defendant on December 17, 1958 were received on or prior to December 15, 1958. The reason given by him for remembering this particular shipment was that a certain brand of Vermouth included in the said shipment was specially ordered for one of his customers. Bowman was examined at length by the attorneys for the respective parties herein regarding that particular purchase and, at times, became confused with reference to the date of delivery of the merchandise in question.

"Harold Murphy, president of Sea Bay Inn Inc., testified that Bossett delivered alcoholic beverages to him at various times without receiving immediate payment therefor. Murphy said that two or three days after delivery, Bossett would call at his place of business and pick up a check in payment for the alcoholic beverages. Murphy identified his personal check dated January 3, 1958 (1959) in the amount of \$450 and also a personal check dated January 26, 1959 in the amount of \$385 given to Bossett for alcoholic beverages received on various dates which he could not recall. The delivery dates on the invoices of defendant indicated that the merchandise for which the checks were received in payment were December 17, 23 and 24, 1958 and January 21, and 23, 1959. Murphy further testified that all transactions he had with defendant were with Bossett. In the upper right hand corner of each invoice the delivery date is stamped under the printed words 'Delivery Date' and in the lower right hand corner of the invoices there is printed 'Delivery Date Listed Above'. I shall accept the delivery date shown on the invoices with reference to alcoholic beverages delivered to the two retailers in question as the date upon which the actual delivery had been made.

"Robert Bossett, employed by defendant as a solicitor, testified that although he was aware that Di Wilbow, Inc. and Sea Bay Inn Inc. were on the Default List, he did, nonetheless, make delivery of alcoholic beverages to them without receiving immediate payment therefor. Bossett further testified that he never informed his employer about such deliveries and, when questioned by Peter Mirell (credit manager) he falsely stated that the money was in the mail, so as to provide additional time for payment by the licensees for the merchandise already delivered to them. Furthermore, Bossett testified that when it was apparent that the said licensees did not have funds on hand to pay for the merchandise, he would meet the driver of the truck containing the shipment of alcoholic beverages destined for Di Wilbow, Inc. and Sea Bay Inn Inc. and he would make delivery without receiving payment therefor. According to Bossett's testimony, he would also 'scribble' something on the receipt to make it appear as if it were signed by the retail licensee to whom the merchandise had been delivered.

"Peter Mirell testified that he was not aware that credit was extended to either Di Wilbow, Inc. or Sea Bay Inn Inc. while on the Default List. He further testified that on occasions he communicated with Bossett regarding the money allegedly received from the said retailers and Bossett always stated that the money was either in the mail or he would call at the home office to turn over the money collected.

"There appears to be no dispute that Bossett was delivering alcoholic beverages to the retail licensees in question while they were on the Default List. However, defendant contends that Bossett had no authority to make such deliveries.

"Agent H testified that on February 19, 1959 he called at defendant's licensed premises to inspect the company records and spoke to Peter Mirell and Maurice Altschuler (secretary and treasurer of the defendant corporate licensee). Agent H testified that he requested to be permitted to examine the route sheets and, shortly thereafter, went downstairs to the warehouse and asked Louis Spitzer, the warehouse manager, to obtain the sheets for him. The latter removed a cardboard box marked 'route sheets 1957-1958' from the top of the dispatching cage and, after a cursory examination, Agent H then took 17 route sheets indicating deliveries to the shore area during the months of November and December 1958. Agent H then proceeded upstairs and spoke to Altschuler about a delivery of alcoholic beverages shown on a route sheet to have been made on December 5, 1958, whereas the invoices for the same shipment showed delivery to have been made December 17, 1958. Altschuler insisted that the agents had no right to examine the route sheets because such records were not required by the Division of Alcoholic Beverage Control. Altschuler maintained that the delivery date on the route sheet in question was incorrect. Agent H testified that when leaving defendant's premises with the 17 route sheets, Altschuler repeatedly exclaimed that the Division had no right to the sheets.

"On March 2, 1959 Agents H and T again visited defendant's premises and went directly to the warehouse to examine the route sheets which they had not examined on their previous visit. Spitzer advised the agents that all route sheets with the exception of route sheets for deliveries made during the past two weeks, had been destroyed. The agents then went upstairs to question Altschuler about the destruction of the route sheets and he stated that it was he who had them destroyed. Agent H testified that he reminded Altschuler of the February 19, 1959 visit when he requested no records be disturbed and, in response thereto, Altschuler stated that inasmuch as the route sheets were not a requirement of the Division, it made no difference to anyone if they were destroyed.

"It was stipulated that the testimony of Agent T, who had accompanied Agent H during the visits to defendant's premises on February 19 and March 2, 1959 (with the exception as to what occurred in the warehouse concerning the route sheets on the first visit) would be similar to the testimony given by Agent H.

"Altschuler testified that on February 19, 1958, at the request of Agent H, he went to the warehouse to inquire about the route sheets for the agents' inspection. The warehouse manager was busy when he arrived and, about ten or fifteen minutes thereafter, Agent H entered the warehouse and he (Altschuler) then stepped aside. Altschuler further testified that Agent H came upstairs with route sheets and when he left he took them with him. Altschuler testified that he had no recollection of the agents remarking that all the records should be available at a future date. However, he did recall saying to Agent H 'I don't think you have a right to take these route sheets because we don't have to keep...according to ABC regulations, we don't have to keep them'. He also remembered Agent H stating that the Division had the privilege to examine any records and nothing more was said about it.

"Altschuler further testified that on the next visit, the only thing he heard Agent H say was 'It's too bad the route sheets were missing'.

"Myron Feldman, Assistant vice-president of defendant corporate-licensee, testified that upon the direction of the insurance carrier, he ordered the reports which were stored on the top of the shop foreman's shack to be removed because they constituted a fire hazard.

"Ben Hockstein, an insurance broker, testified that he made inspections of defendant's premises at various times because the insurance company hesitated to insure defendant's building for the reason that the building did not have a complete sprinkler system. He further testified that on September 23, 1959, he sent a letter to defendant wherein, among other things, he directed that the space above the shipping clerk's office be kept clear of cartons.

"The evidence presented by the Division with reference to Charge 1 is conclusive that on numerous occasions Bossett, while in the employ of the defendant, delivered alcoholic beverages to Di Wilbow, Inc. and Sea Bay Inn Inc. without receiving immediate payment therefor while the retail liquor licensees were on the Default List. Furthermore, in the memorandum filed by defendant's attorneys they did not deny that Bossett made deliveries of alcoholic beverages to the two licensees in question while they were on the Default List without receiving immediate payment therefor. The attorneys further assert that they are aware that the defendant is 'technically' responsible for the acts of its employees.

"According to the facts presented in the instant case, such responsibility of the defendant is more than technical. The admission by Bossett, together with the documentary evidence presented, discloses a continuous violation of Rule 4(a) of State Regulation No. 39. Mirell (credit manager) and Altschuler (secretary and treasurer) of defendant corporate-licensee, claim to have had no knowledge of the transactions engaged in by Bossett with both Di Wilbow, Inc. and Sea Bay Inn Inc. while they were on the Default List as alleged in Charge 1. It is difficult to believe that such improper tactics on the part of the solicitor employed by defendant took place over such a long period of time without anyone in authority having knowledge thereof. All licensees are responsible for the acts of their agents, servants and employees, regardless of whether or not they participated therein, or even if the act of the agent, servant or employee is contrary to specific instructions. Rule 33 of State Regulation No. 20. See also Beckenstein v. Liquor Control Commission, 140 Conn. 185; 99 A. 2nd 119 (Sup. Ct. of Errors 1953), wherein Wholesale licensees were held to a similar standard of responsibility. To hold otherwise would place a premium upon the lack of supervision and control by the licensee and would result in the inability of this Division to place proper responsibility on the licensee for the observance of the Alcoholic Beverage Law and Regulations and to deter future violations thereof. Cf. Re Garden State Liquor Wholesalers, Inc., Bulletin 1262, Item 1.

"The regulations so flagrantly violated by defendant were promulgated as part of a program designed to eliminate various practices which tend to disrupt an orderly market. Disregard for and violation of these regulations by one wholesaler could easily lead to similar violations by others seeking to compete on equal terms and, ultimately, must result in a disorderly market to the great detriment of all. Re Garden State Liquor Wholesalers, Inc. supra.

"I shall now discuss the testimony given by the witnesses with reference to Charge 2 based on failing to facilitate and hindering the investigation being conducted by ABC agents at defendant's licensed premises. It appears from the testimony of Agent H that after examining certain route sheets on February 19,

1959 he called to the attention of Altschuler that there was a discrepancy in the dates shown on the route sheets and the dates shown on the invoices for a particular shipment of alcoholic beverages made to Di Wilbow, Inc. Altschuler stated that the date on the route sheet was incorrect and, furthermore, that the agents had no right to examine the sheets because they were not required by the Division. Agent H took 17 of the route sheets with him when leaving the premises, at which time he testified that he instructed both Mirell and Altschuler not to disturb any records because he and his fellow agent expected to return at a future date. However, when the agents returned on March 2, 1959, the route sheets, with the exception of a quantity of very recent date, were destroyed. Agent H testified that when he spoke to Altschuler about the missing route sheets, Altschuler stated that since they were not records required by the Division, he had ordered them destroyed. Altschuler denied that Agent H ever discussed with him a discrepancy in delivery dates between the invoices and the route sheets and that he was never requested by the agents to leave the records undisturbed because the agents intended to return to the premises to re-examine them. Furthermore, Altschuler testified that on the second visit (March 2, 1959) Agent H merely expressed regret that the route sheets were missing.

"The parties are in agreement that on February 19, 1959 when the agents first visited defendant's premises, route sheets were made available to them and the agents selected 17 of the sheets to take with them on their departure. On March 2, 1959 the agents were advised that, with the exception of 17 route sheets aforementioned, the sheets for the years 1957 and 1958 had been destroyed. These records, although not a requirement of the Division, nevertheless, are to be made available to representatives of the Division during the course of an investigation.

"I am not impressed with the reasons given by Altschuler or Feldman which resulted in the destruction of the route sheets. If the cartons containing the route sheets constituted a fire hazard when stored on top of the foreman's shack in the warehouse, it was only necessary to remove them elsewhere, rather than to destroy them.

"On the other hand, whether or not the sheets which had been destroyed had any evidential value to the Division is conjectural. Their destruction during a current investigation can properly be characterized as suspicious. The agents had access to the route sheets on the February 19th visit and selected 17 sheets to take with them. At that time, the agents could have, had they so desired, seized more of these records if they felt that they were pertinent to the issue at hand. I am not suggesting that the actions on the part of the officers involved be condoned and any such practice in the future on the part of any liquor licensee will meet with stern measure. After serious consideration of all the facts pertinent to Charge 2, I believe the defendant should be given the benefit of the doubt and, hence, I recommend dismissal of said charge.

"Defendant has a prior adjudicated record. Effective March 13, 1951 its license was suspended for twenty days by the then Director for violations dissimilar to those now under consideration. Re F & A Distributing Company, Bulletin 900, Item 8. In view of the fact that more than five years have elapsed since the prior suspension, it will not be taken into consideration when fixing the penalty herein. I recommend, based on the evidence adduced herein, which appears to be aggravated, that defendant be found guilty of Charge 1 and that its license be suspended for a period of twenty-five days."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by both the Division representative and the defendant licensee. The Division representative excepted to

the recommended dismissal of Charge 2 on the basis that the grounds for dismissal were erroneous. The defendant licensee excepted to the recommended imposition of a twenty-five (25) day suspension of its license, contending that it should be allowed to obtain a special permit in lieu of the suspension, in accordance with alleged established Division policy.

Considering the Division's exceptions first, it appears that the Hearer, in finding that the destruction of the licensee's records during a current Division investigation did not constitute a hindering violation, relied upon the fact that the records were available to the Division agents during the earlier part of their investigation and that it was conjectural as to whether the records had any evidential value with respect to the Division's investigation. It is clear that a licensee may not destroy records merely because they have already been examined by Division agents, if in doing so he intends to prevent their re-examination. Likewise, where a licensee willfully burns the business records during the course of a Division investigation of which he is aware, a permissible inference may be drawn that the records destroyed were material to the investigation. See Re Zuman, Bulletin 847, Item 1, and Re Majestic Wine & Spirits, Inc., Bulletin 600, Item 1. As stated by the Hearer, the destruction of the records was effected under suspicious circumstances. However, after carefully considering the entire record herein, I am unable to find that the allegation of willfulness, rather than inadvertence, on the part of the defendant is supported by a fair preponderance of the believable evidence. I, therefore, affirm the Hearer's recommended dismissal of Charge 2.

With respect to the exceptions filed by the defendant, I cannot agree with its contention that it is established Division policy merely to warn or issue a special permit, in lieu of license suspension action, for the violations which are the subject of Charge 1 herein. The cases cited by the licensee in its written argument, in which suspension action was not employed, deal with situations different from the one involved in this case. Those in which the solicitor and licensees were merely warned as to their future conduct were based on the fact that the evidence in the hands of the Division was deemed insufficient to warrant the institution of disciplinary proceedings, while the case in which the licensee was allowed to obtain a special permit involved only an inadvertent violation consistently handled by permit action. No case has been brought to my attention in which disciplinary proceedings were brought against a solicitor, but not against his employer, where the employer was involved in the solicitor's prohibited actions to the extent present herein. The defendant's assertion of discriminatory treatment is just not true.

In the instant case, I am convinced from the evidence herein that the prohibited conduct with respect to the credit violations was not limited to Bossett and defendant's driver, but also involved office personnel as well. Whether defendant's office personnel intentionally collaborated with Bossett to commit the violations in question or merely shut their eyes to what was going on is not determinative. The record herein shows that, at the least, defendant's credit manager received such information that reasonably should have put him on notice that the Division's credit regulation probably was being violated. Yet, no steps were taken by defendant to ascertain whether such violations were being committed. Under the circumstances herein present, it would be completely unreasonable to permit the defendant to insulate itself from the prohibited practices of its employees, extending over a period of six months, by merely claiming that no one in authority had direct knowledge thereof.

After carefully considering the entire record, I concur in the Hearer's findings and conclusions with regard to Charge 1 and

them to the Division's chemist. The agent further stated that the licensee verbally admitted that on Saturday nights he refills some bottles with the same brand of whiskey and that he might have refilled some bottles with a different brand; that he reduced the licensee's admission of the alleged violation to writing (S-5 in evidence) and that the licensee read and signed the same.

"The Division's chemist testified that his analysis disclosed that the contents of four of these bottles, listed in the charge, varied substantially in solids from the contents of genuine bottles of the three different brands involved and that three of the bottles were also low in proof.

"Abram A. Lydecker, testifying on his own behalf, denied that he ever refilled or in any manner tampered with his open stock of alcoholic beverages. He further testified that for the past thirteen years he has owned and operated the licensed premises; that during said period the Division has tested his open stock twice a year; that prior to October 13th aforesaid, he was never charged with any violation of the liquor laws; that immediately after affixing his signature to aforesaid statement, he repeatedly protested to the agent that he was upset, excited and beside himself when he signed the statement; that the contents of the statement were not true; that all of his employees (seven males and some females) have free access to his open stock of alcoholic beverages; that to his knowledge none of them ever refilled any of the bottles; that he questioned his employees and they denied tampering with any of the bottles.

"I have carefully considered all the testimony adduced herein, together with the brief filed by counsel on behalf of the licensee, and find that the defendant has not presented any evidence that the contents of the bottles were other than those testified to by the Division's chemist. The licensee is responsible when alcoholic beverages not truly labeled are found on his licensed premises, irrespective of whether or not he is aware of their presence. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup. Ct. 1947); Re Krivant, Bulletin 1291 Item 3. I therefore recommend a finding that the licensee is guilty of the charge.

"Defendant has no prior adjudicated record. It is further recommended that an order be entered providing that defendant's license be suspended for a period of twenty days, the minimum suspension imposed in cases involving four bottles. Re Sussman, Bulletin 1328, Item 7."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorneys for the defendant, 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 5th day of May 1960,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Butler to Abram A. Lydecker, t/a "Northwood Inn", for premises on Route 23, Butler, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Thursday, May 12, 1960, and terminating at 3:00 a.m., Wednesday, June 1, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

NOTE: By order dated May 10, 1960, the effective dates of the twenty-day suspension were postponed to commence at 3 a.m., Tuesday, June 28, 1960 and to continue in effect until midnight June 30, 1960. The order also provided that any renewal of the license shall remain under suspension until 3 a.m., Monday, July 18, 1960.

4.

ACTIVITY REPORT FOR MAY 1960

ARRESTS:

Total number of persons arrested	-----	26
Licensees and employees	----- 9	
Bootleggers	----- -17	

SEIZURES:

Motor vehicles - trucks	-----	1
Stillis - over 50 gallons	-----	1
Mash - gallons	-----	360.00
Distilled alcoholic beverages - gallons	-----	12.86
Wine - gallons	-----	5.07
Brewed malt alcoholic beverages - gallons	-----	17.05

RETAIL LICENSEES:

Premises inspected	-----	496
Premises where alcoholic beverages were gauged	-----	602
Bottles gauged	-----	10,488
Premises where violations were found	-----	28
Violations found	-----	56
Unqualified employees	----- -29	Reg. #38 sign not posted - 2
Application copy not available	----- 8	Other mercantile business - 1
Prohibited signs	----- 3	Other violations - -13

STATE LICENSEES:

Premises inspected	-----	24
License applications investigated	-----	24

COMPLAINTS:

Complaints assigned for investigation	-----	386
Investigations completed	-----	402
Investigations pending	-----	174

LABORATORY:

Analyses made	-----	280
Refills from licensed premises - bottles	-----	35
Bottles from unlicensed premises	-----	70

IDENTIFICATION:

Criminal fingerprint identifications made	-----	11
Persons fingerprinted for non-criminal purposes	-----	278
Identification contacts made with other enforcement agencies	-----	242
Motor vehicle identifications via N. J. State Police teletype	-----	5

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	-----	16
Violations involved	-----	17
Sale during prohibited hours	----- 9	Service to women at bar (local reg.) 1
Sale to minors	----- 5	Possessing chilled beer (DL licensee) 1
Failure to afford view into premises during prohibited hours	-----	1
Cases instituted at division	-----	29
Violations involved	-----	45
Sale during prohibited hours	----- -10	Purchase from improper source - 2
Possessing liquor not truly labeled	----- 7	Fraud in application - - 1
Sale to minors	----- 6	Permitting bookmaking on premises - 1
Unqualified employees	----- 3	Possessing contraceptives on prem. - 1
Hindering investigation	----- 3	Sale outside scope of license - 1
Conducting business as a nuisance	----- 3	Unauthorized transportation - - 1
Sale below filed price	----- 2	Permitting immoral activity - - 1
Retailer to retailer sales	----- 2	Possessing indecent matter - - 1
Cases brought by municipalities on own initiative and reported to Division	-----	19
Violations involved	-----	20
Sale to minors	----- -10	Permitting brawl on premises - - 2
Sale during prohibited hours	----- 6	Permitting gambling (wagering) - - 1
Failure to afford view into premises during prohibited hours	-----	1

HEARINGS HELD AT DIVISION:

Total number of hearings held	-----	25
Disciplinary proceedings	----- -17	
Eligibility	----- 5	
Seizures	----- 1	
Tax revocations	----- 2	

STATE LICENSES AND PERMITS ISSUED:

Total number issued	-----	14,417
Licensees	----- 4	Social affair permits - 427
Solicitors' permits	----- 17	Miscellaneous " - 404
Employment "	----- 291	Transit insignia - - 11,828
Disposal "	----- 99	Transit certificates - - 1,347

Dated: June 3, 1960

WILLIAM HOWE DAVIS, DIRECTOR

DISCIPLINARY PROCEEDINGS - HOSTESSES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FRED TAMBURRO)
537 Grand Street)
Hoboken, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-215, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.)

Frank A. Musto, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On March 18, 19, 26, 30 and April 1, 1960 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."

On the dates above set forth, ABC agents at the premises observed a practice by "Nickey", the hat check girl, and by Ellen, a female entertainer, of accepting drinks of alcoholic beverages from various male patrons. Specifically, they observed that on March 18-19 "Nickey" accepted drinks from three patrons, and Ellen from one patron; on March 26 "Nickey" accepted three drinks from one person, and Ellen, a drink from each of two persons; on March 30 "Nickey" accepted drinks from two patrons, and on April 1 "Nickey" and Ellen each accepted a drink from a male patron and two drinks purchased for them by one of the agents. After the last service of alcoholic beverages to "Nickey" and Ellen on April 1, the agents revealed their identity to the licensee, who was present.

The licensee thereupon stated that he did not know that it was a violation for female employees to accept drinks; that he instructed the girls never to solicit drinks, but believed that such employees could accept drinks if offered to them. The rule clearly and specifically prohibits a licensee from permitting any female employee to accept any food or beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of twenty days. Re Moniello & Onnen, Bulletin 1248, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 17th day of May 1960,

ORDERED that Plenary Retail Consumption License C-215, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Fred Tamburro for premises 537 Grand Street, Hoboken, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Tuesday, May 31, 1960 and terminating at 2:00 a.m., Wednesday, June 15, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against
 THE ALOHA, INC.
 t/a THE ALOHA
 104 - 4th Avenue
 Belmar, N. J.
 Holder of Seasonal Retail Consumption License CS-6, issued by the Board of Commissioners of the Borough of Belmar.

ORDER

DUPLY

BY THE DIRECTOR:

By order dated September 30, 1959, I suspended defendant's license for twenty-five days. Because it appeared that the premises were then closed, the order provided that the effective dates for said suspension would be fixed by subsequent order after the licensed premises reopened for business. Bulletin 1307, Item 2.

It now appearing that defendant has obtained Seasonal Retail Consumption License CS-6 for the 1960 summer season, and that defendant's business is now being conducted under said license,

It is, on this 5th day of May 1960,

ORDERED that the twenty-five-day suspension heretofore imposed shall commence at 2 a.m. Monday, May 9, 1960, and terminate at 2 a.m. Friday, June 3, 1960.

William Howe Davis
 William Howe Davis
 Director