

BULLETIN 1088

NOVEMBER 22, 1955.

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1088

NOVEMBER 22, 1955.

1. APPELLATE DECISIONS - NEIDEN BAR AND GRILL, INC. AND GRANT LUNCH CORP. v. NEWARK, GOLD AND ISSIE'S TAVERN, INC.

NEIDEN BAR AND GRILL, INC., and )  
GRANT LUNCH CORPORATION, )

Appellants, )

-vs- )

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY OF )  
NEWARK, IRVING GOLD and ISSIE'S )  
TAVERN, INC., )

Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----)  
Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq.,  
Attorneys for Appellants.

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

Milton M. and Adrian M. Unger, Esqs., by Sidney S. Jaffe, Esq.,  
Attorneys for Respondent Issie's Tavern, Inc.

Harry Levin, Esq., Attorney for Respondent Irving Gold.

BY THE DIRECTOR:

Appellants, who hold plenary retail consumption licenses in the City of Newark, appeal from the action of respondent Board whereby it granted a person-to-person transfer of plenary retail consumption license C-688 from respondent Irving Gold to respondent Issie's Tavern, Inc. The licensed premises in question are located at 308-310-312 Market Street, Newark.

Transcript of the proceedings before respondent Board was submitted in evidence at the hearing on appeal, and additional testimony was presented pursuant to Rule 8 of State Regulations No. 15.

Appellants contend that respondent Board's action should be reversed because Issie Chernichaw, principal stockholder of the corporate transferee, is not a fit person to hold a license or to be a substantial stockholder in a corporate licensee and because the aforesaid transfer is not in the public interest.

The record discloses that Mr. Chernichaw was examined at great length by appellants' attorney who sought to show by his testimony and that of one of the appellants that alleged "cut-rate" business practices indulged in by Mr. Chernichaw when he was a principal shareholder of a prior corporate licensee would be continued under the transferred license to the detriment of the public and to appellants who are competitor-licensees. No testimony was introduced to indicate that Mr. Chernichaw does not meet the statutory qualifications (R. S. 33:1-25) nor was his personal reputation impugned. On the contrary, it appears that Mr. Chernichaw has been identified with liquor licenses for about twenty years, during which time no disciplinary proceedings were instituted against him or the corporate licensees in which he was a principal shareholder. The grounds upon which appellants predicate their objections to the transfer of the license in question are speculative. The evidence fails to establish that Mr. Chernichaw is unfit to hold a license or to be a stockholder in a corporate licensee.

Proper liquor control dictates that an issuing authority should be free, within the confines of sound discretion, to determine the fitness of a person to hold a license and where, as here, the record substantially supports applicant's fitness, it cannot be said that the issuing authority has abused that discretion. Cf. Burgard and Condon v. Totowa, Bulletin 900, Item 5.

The burden of establishing that respondent's action was erroneous and should be reversed rests with appellants (Rule 6 of State Regulations No. 15). Having carefully considered all the facts and circumstances of the case, including oral arguments before me of counsel for the respective parties herein, I find that appellants have failed to sustain that burden. The action of respondent Board will be affirmed.

Accordingly, it is, on this 24th day of October, 1955,

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

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (FEMALE IMPERSONATORS, INDECENT FIGURINE) - ALLOWING PREMISES TO BE CONDUCTED AS A NUISANCE - LICENSE SUSPENDED FOR 190 DAYS.

In the Matter of Disciplinary Proceedings against

LOUISE G. MACK  
T/a ENTERTAINER'S CLUB  
169 Westminster Avenue  
Atlantic City, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Board of Commissioners of the City of Atlantic City.

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McAllister & Hunter, Esqs., Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The following charges were preferred against defendant:

"1. On June 3, 18, 21, 22, 24, 25, 29 and 30, 1955 you allowed, permitted and suffered female impersonators in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On all the occasions aforesaid, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance in that you permitted persons who appeared to be homosexuals to congregate on your licensed premises and to engage and participate in foul, filthy and obscene language and conduct and to mingle with, solicit and make overtures for and arrangements with patrons for acts of perverted sexual relations and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20.

"3. On June 30, 1955 and prior thereto you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing an obscene, indecent, filthy, lewd, lascivious and disgusting representation, viz., a certain rubber figure known as 'Bubbling Boy'; in violation of Rule 17 of State Regulations No. 20."

Defendant pleaded not guilty to said charges and on September 13, 1955 a hearing was held thereon. In view of the fact that the matter was not completed on said date, it was continued to October 27, 1955.

A letter dated October 24, 1955 from defendant's attorneys, and received at this Division on October 25, 1955, represented that defendant requested permission to withdraw her plea of not guilty heretofore entered and that in place thereof a plea of non vult be entered to said charges. I shall allow such change of plea to be entered herein.

The file herein discloses that several ABC agents visited defendant's licensed premises on the various dates set forth in the charges preferred herein. All of the visits were in the evening, sometimes extending into the early morning of the following day, with the exception of one visit made on June 18, 1955 when the agents entered defendant's premises at 12:01 a.m. It would serve no useful purpose to recite in detail all of the sordid facts and circumstances contained in the agents' reports. I shall, however, mention the significant events and conduct occurring on the visits in question.

The agents visited the defendant's licensed premises for the first time on June 3rd and during their stay observed that practically all of the male patrons, who numbered 50 at one time, although dressed generally in male attire, departed themselves in a feminine manner by swaying their hips while walking and speaking in high-pitched voices. The defendant discussed "gay boys" with the agents and related how a well-known actress was arrested at one time with a number of such "boys." The agents and the male bartender engaged in conversation about "gay boys" and the bartender told them he could obtain some for them in a house which catered to such males and that "straights" (normal males) were not welcome in defendant's licensed premises.

The agents again visited the defendant's premises on June 18th and during that evening about 80 male patrons with feminine characteristics and speaking in high-pitched voices patronized the establishment. Several of these males wore tight-fitting dungarees and swayed their hips as they walked. Some of the male patrons, during the playing of the juke box, shook the lower parts of their bodies in time with the music. Loud comments from observers were heard, such as, "Isn't she just the sexiest thing" and "I wouldn't mind being married to someone who could move like that." One male sat on the lap of his male companion and began to kiss him and when the defendant saw this she remarked "I don't think that's necessary. I told them before not to be kissing like that in public." Many pairs of males walked about the premises holding hands and on occasion were heard to make such remarks to one another as "silly girl" and refer to others as "she" or "doll."

The agents again entered defendant's premises on June 21st and during the evening observed conduct similar to that observed on their prior visits and, in addition thereto, heard two males discussing the different ways to engage in homosexual love-making.

On the June 24th visit by the agents, they observed at the height of activity that there were about 60 male patrons in

the premises similar to those seen on previous occasions. Some time after the agents arrived, a male called Johnny engaged one of the agents in conversation and asked the agent whether he was "going steady" with his fellow agent, and, thereafter, when the agent signified his intention of leaving the premises with the other agent, Johnny said he was disappointed that he was not going with him.

When the agents returned to defendant's premises on June 29th, there were approximately 50 males in the place. A short time after they entered, a male called Danny, wearing tight-fitting slacks and female ballerina slippers, and walking in a feminine manner, approached one of the agents and said the latter "looked just like a doll." He requested that the agent buy a drink for him and while awaiting the service thereof, the male became unduly familiar with the agent. Danny took a pair of false eyelashes from a plastic box and, after putting them on, asked the agent if they did not make his look "sexy." He then took these off and handed them to the defendant. Another male called "Phil," who acted in a very affectionate manner toward Danny, told Danny that he was going to bed with him that night, reminding him that "after all we are going steady." Another male called "Herb" came over to one of the agents and maneuvered his body between the agent's legs and put his arm around him and at one time kissed the agent on the neck. Herb then invited the agent to go to his home with him, saying that he had a comfortable bed and that on the following day both could meet friends on the beach. While Herb went to the men's room, the agent told his fellow agent about the invitation extended by Herb and, in response to their inquiry of the bartender and the defendant concerning Herb, both indicated Herb was all right.

When at 3:00 a.m. on June 30th, the agents made known their identity to the licensee and her employees, all refused to give any statements in the matter.

During a search of the premises a rubber figurine, which could be manipulated to emulate a call of nature, was found on the back bar.

The offenses above enumerated are major violations of the Rules and Regulations of the Division of Alcoholic Beverage Control upon which the charges herein are brought. As was said in Re Kaczka et al., Bulletin 1063, Item 1:

" \* \* \* \* it is clear that homosexuals may well have a harmful effect on some members of the public. Furthermore, where they congregate and conduct themselves in the manner hereinbefore related, they are a threat to the safety and morals of the public.. \* \* \* \*"

It appears from the evidence in the instant case that the defendant not only knew that her establishment was patronized by homosexuals, but that she encouraged and catered to them to the exclusion of other patrons. Considering the number and type of violations which took place on her licensed premises during the course of the investigation in question with reference to Charges (1) and (2), a 180-day suspension of the defendant's license is warranted. Re Bader, Bulletin 1073, Item 4. An additional 10-day suspension of defendant's license on Charge (3) will be imposed because of the violation set forth therein. Re Jackson, Bulletin 1023, Item 2. This makes a total suspension of defendant's license for a period of 190 days.

Accordingly, it is, on this 2nd day of November, 1955,

ORDERED that Plenary Retail Consumption License C-14, issued by the Board of Commissioners of the City of Atlantic City to Louise G. Mack, t/a Entertainer's Club, 169 Westminster Avenue, Atlantic City, be and the same is hereby suspended for a period of one hundred ninety (190) days, commencing at 7:00 a.m. November 14, 1955, and terminating at 7:00 a.m. May 22, 1956.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (PERMITTING MAKING ARRANGEMENTS ON LICENSED PREMISES TO RENT ROOMS FOR ILLICIT SEXUAL INTERCOURSE) - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary Proceedings against  
TARQUINIO ROSSINI  
19 Union Square  
Phillipsburg, N. J.,  
Holder of Plenary Retail Consumption License C-19 for the 1954-55 and 1955-56 licensing years, issued by the Board of Commissioners of the Town of Phillipsburg.

CONCLUSIONS  
AND ORDER

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Joseph V. De Masi, Esq. and Sidney Simandl, Esq., Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to the following charge:

"On June 4 and 8, 1955, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for the renting and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that on the night of June 4, 1955, three ABC agents visited defendant's licensed premises wherein they observed a sign reading "Rooms for Rent." At about 11:20 p.m. they engaged the bartender named Paul in conversation respecting the type of rooms available and the rental therefor and told him, in the vernacular, that they proposed to have meretricious relations with some married women from a nearby city. Meanwhile, one of the agents pretended to phone the women and thereafter told Paul and the other agents that the "girls" would call back within ten minutes. In response to the agents' inquiries, Paul assured them that luggage was not essential; that they could sign "whatever you want" in the register; and, to assuage their seeming concern for the womens' anonymity, told them the "girls" could be brought, unobserved, through the lobby to the rooms. After fifteen minutes had elapsed and the phone call was not received, the agents departed after instructing Paul what to do in the event the "girls" should later phone.

On the night of June 8, 1955, the aforesaid agents again visited defendant's licensed premises and after greeting Paul, asked him if any rooms were available. When informed that they

could be accommodated with "three singles," they told Paul they would have to call the "broads" to let them know they had rooms. Paul replied, "Ok, wait to see if you get the 'girls' first." Paul then conferred with the licensee who approached the agents and inquired "You want rooms?" "Yes, three rooms, how much" asked one of the agents, and when told the rooms would be \$3.00 a day, the agent said "\$3.00 for two of us, me and the 'girl'" and the licensee said "Yes." The agents handed the licensee nine marked one-dollar bills, signed the register, using fictitious names with "Mr. and Mrs." prefixed, and were assigned to separate rooms after informing the licensee "We told your bartender that the 'girls' are coming in the lobby entrance because they have to be careful not to be seen and then they'll come upstairs."

At about 10:40 p.m., a fourth ABC agent, accompanied by local police officers, interviewed the aforesaid agents in their respective rooms in the presence of the licensee and, after hearing the story of the events as related hereinabove and having made known the identity of the three agents, they seized the marked money in the possession of the licensee, together with the loose-leaf register, for evidential purposes.

The agents then obtained a signed sworn statement from the defendant wherein he deposed that he rented the rooms after he was told by one of the agents that the "girls" hereinabove referred to were the agents' wives. However, the bartender in a signed sworn statement having admitted his participation in the violation, the licensee must be held fully accountable for his agent's acts. See Kravis v. Hock, 137 N.J.L. 252.

There appear to be mitigating circumstances in this case which warrant a reduction of the penalty ordinarily imposed for similar infractions. Under the circumstances, I shall suspend defendant's license for one hundred and twenty days.

Accordingly, it is, on this 24th day of October, 1955,

ORDERED that Plenary Retail Consumption License C-19, issued by the Board of Commissioners of the Town of Phillipsburg to Tarquinio Rossini, 19 Union Square, Phillipsburg, be and the same is hereby suspended for one hundred and twenty (120) days, commencing at 1:00 a.m. October 31, 1955, and terminating at 1:00 a.m. February 28, 1956.

WILLIAM HOWE DAVIS  
Director.

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

In the Matter of Disciplinary Proceedings against )

ANNA K. DIEHL )  
1478 South 9th Street )  
Camden, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-165, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )

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Anna K. Diehl, Pro se.

Dora P. Rothschild, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On August 6, 1955, you allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20."

The file herein discloses that on Saturday, August 6, 1955, ABC agents visited defendant's licensed premises wherein they observed a male, later identified as Jacob Nix, accepting money from patrons and making notations on a piece of paper. At about 1:00 p.m. Nix called out to the customers, "What are you going to play today? Better come and see me and get in today before it's too late." One of the agents then handed the bartender a marked dollar bill and told him to play number "703" for fifty cents. The bartender passed the bill to Nix and upon returning the change remarked "703! Did you dream that number?" to which the agent replied "No, it was given to me. It's supposed to be a hot one." In the meantime, a second agent had phoned the local police and when a detective arrived the agents and he identified themselves, seized the marked bill and other evidential material and obtained a signed sworn statement from the bartender verifying the above facts. The licensee refused to give a statement.

Defendant has no prior adjudicated record. I shall suspend her license for the minimum period of twenty days. Re Beskin & Schwartz, Bulletin 1080, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 31st day of October, 1955,

ORDERED that Plenary Retail Consumption License C-165, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Anna K. Diehl, 1478 South 9th Street, Camden, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 7:00 a.m. November 7, 1955, and terminating at 7:00 a.m. November 22, 1955.

WILLIAM HOWE DAVIS  
Director.

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

AUGUSTUS W. POTTS  
T/a GUS POTTS' LIQUOR STORE  
Corner of Bay & Engleside Avenues  
Beach Haven, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Beach Haven.

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Francis Tanner, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered alcoholic beverages to a minor upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that at 8:15 p.m., on Saturday, June 25, 1955, a minor, 18 years of age, purchased a case (24 - 12 ounce cans) of beer from the defendant who did not question him as to his age. Sometime thereafter a police officer observed several minors consuming beer from cans and brought them to police headquarters for questioning. It was then ascertained that the case of beer had been purchased at defendant's licensed premises. The police seized 16 unopened cans of beer which had been purchased by the minor from defendant and turned the cans over to an agent of this Division.

In attempted mitigation of penalty to be imposed for the violation committed by defendant, the minor who purchased the case of beer in question was produced. He appeared quite large for his age, being, according to his own statement, 6 feet, 1 or 2 inches in height, and weighing 215 pounds.

Defendant has no prior adjudicated record. Under the circumstances appearing in this case, I shall impose a minimum penalty of 10 days' suspension of defendant's license. Re Baccichi, Bulletin 998, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of five (5) days.

Accordingly, it is, on this 21st day of October, 1955,

ORDERED that Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Beach Haven to Augustus W. Potts, t/a Gus Potts' Liquor Store, Corner of Bay & Engleside Avenues, Beach Haven, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. October 31, 1955, and terminating at 9:00 a.m. November 5, 1955.

WILLIAM HOWE DAVIS  
Director.

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 BROOKSIDE TAVERN, INC. )  
 E/S of Bridge St. & Noteboom Ave. )  
 Pemberton Township )  
 PO Browns Mills, N. J., )  
 Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Pemberton. )  
 -----)

CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Defendant-licensee.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on September 30, 1955, it sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on Friday evening, September 30, 1955, ABC agents entered defendant's licensed premises wherein they observed two apparent minors consuming beer at the bar. At about 10:50 p.m., when the bartender, later identified as the president of the defendant corporate-licensee, had served each youth a glass of beer, the agents identified themselves and obtained signed sworn statements from Morris --- (age 18) and Lyman --- (age 20), in which they stated that each had purchased and consumed three glasses of beer served to them on the particular occasion by the aforesaid bartender who made no inquiry as to their ages. Lyman --- stated that on previous weekends he had been served alcoholic beverages in the same premises by the same bartender after he had produced an altered "draft card" indicating his age to be 21. The bartender admitted the sale and service to the minor and stated that he had relied on the identification presented by Lyman --- and a forged birth certificate presented by Morris --- on previous visits to the licensed premises. It is clear that neither minor ever represented in writing that he was 21 years of age or over as required by R. S. 33:1-77.

Defendant has no prior adjudicated record. I shall suspend its license for a period of ten days, less five days for the plea entered herein, leaving a net suspension of five days. Re Antanaitis, Bulletin 1066, Item 2.

Accordingly, it is, on this 25th day of October, 1955,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Pemberton to Brookside Tavern, Inc., E/S of Bridge St. & Noteboom Ave., Pemberton Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. October 31, 1955 and terminating at 2:00 a.m. November 5, 1955.

WILLIAM HOWE DAVIS  
 Director.

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

In the Matter of Disciplinary Proceedings against )

SATURNINO PACIFICO )  
T/a PACIFICO'S TAVERN )  
202 Ridge Road )  
Lyndhurst, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Constump- )  
tion License C-2, issued by the )  
Board of Commissioners of the )  
Township of Lyndhurst. )

-----)  
Carmino F. Savino, Jr., Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On September 17, 1955, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz.,

One quart bottle labeled 'Imperial Hiram Walker's Blended Whiskey 86 Proof';

in violation of Rule 27 of State Regulations No. 20."

The file herein discloses that on September 17, 1955, an ABC agent, while making a routine inspection of defendant's licensed premises, observed the licensee remove something from the back bar and carry it into the kitchen. The agent followed and found under a table a partially filled quart bottle labeled "Imperial Hiram Walker's Blended Whiskey". When questioned, the licensee said he removed the liquor from the bar to put a "shot" in his coffee. The agent tested the liquor and finding it to be off in color, seized it for analysis by the Division's chemist. He then gauged 11 other bottles of open stock the contents of which were apparently genuine as labeled. The chemist's report shows the seized liquor to be "too high in solids and too low in acids" when compared with samples of the genuine product of the labeled brand.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Clark, Bulletin 1080, Item 12.

Accordingly, it is, on this 31st day of October, 1955,

ORDERED that Plenary Retail Consumption License C-2, issued by the Board of Commissioners of the Township of Lyndhurst to Saturnino Pacifico, t/a Pacifico's Tavern, 202 Ridge Road, Lyndhurst, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. November 7, 1955, and terminating at 2:00 a.m. November 17, 1955.

WILLIAM HOWE DAVIS  
Director.

8. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 124 - 16th AVENUE CORPORATION  
 124 - 16th Avenue  
 Paterson 1, N. J.,  
 Holder of Plenary Retail Consumption License C-133, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS AND ORDER

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 124 - 16th Avenue Corporation, Defendant-licensee, by Austin V. Baines, Pres.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold during prohibited hours an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that at 10:50 p.m., Saturday, September 17, 1955, ABC agents who were in defendant's licensed premises observed a bartender therein sell a pint bottle of wine to a patron for off-premises consumption. The purchaser handed the bottle of wine to another person who put it in his pocket and hurriedly left the premises. The agents followed, seized the wine and obtained a signed sworn statement verifying the above facts.

Defendant has no prior adjudicated record. I shall suspend its license for a period of fifteen days. Re Imbornone, Bulletin 1080, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 31st day of October, 1955,

ORDERED that Plenary Retail Consumption License C-133, issued by the Board of Alcoholic Beverage Control for the City of Paterson to 124 - 16th Avenue Corporation, 124 - 16th Avenue, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. November 7, 1955, and terminating at 3:00 a.m. November 17, 1955.

WILLIAM HOWE DAVIS  
Director.

9. AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS -  
 LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY FOR  
 20 DAYS, LESS 5 FOR PLEA - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by )

THERESA THALER )

To Lift the Automatic Suspension of )  
 Plenary Retail Consumption License )  
 C-5, issued by the Borough Council )  
 of the Borough of Totowa, to )

ON PETITION  
 O R D E R

THERESA THALER )  
 T/a BARNYARD TAVERN )  
 Totowa Road )  
 Totowa, N. J. )

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 Harry Smith, Esq., Attorney for Petitioner.

It appears from a petition filed herein that on November 4, 1955, petitioner was convicted in the Passaic County Court on a charge of selling alcoholic beverages to minors, in violation of R. S. 33:1-77, as a result of which she was fined the sum of \$250.00. Said conviction resulted in the automatic suspension for the balance of its term of the license held by petitioner. R. S. 33:1-31.1. Petitioner's license certificate was picked up by ABC agents on November 4, 1955.

It further appears from the petition and from the records of this Division that, in disciplinary proceedings instituted by the Borough Council of the Borough of Totowa, petitioner pleaded non vult to a charge of selling alcoholic beverages to five minors, three of whom were each seventeen years of age, one of whom was eighteen years of age and one of whom was nineteen years of age, and that, as a result thereof, the Borough Council suspended her license for a period of twenty days (less five days for the plea) effective July 1, 1954. The conviction in the criminal proceedings and the charge in the disciplinary proceedings were based upon the same facts. The suspension imposed by the Borough Council was somewhat less than would have ordinarily been imposed by the Director in a case involving five minors, but it has been represented that there were mitigating circumstances in the case and hence, under all the circumstances, it appears that the suspension imposed by the Borough Council was adequate. Hence, the petitioner's request for the lifting of the automatic suspension of her license will be granted.

Accordingly, it is, on this 4th day of November, 1955,

ORDERED that the automatic suspension of License C-5, held by Theresa Thaler, t/a Barnyard Tavern, for premises on Totowa Road, Totowa, be and the same is hereby lifted and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS  
 Director.

By: Edward J. Dorton  
 Deputy Director.

10. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - STOCK OF ALCOHOLIC BEVERAGES AND FURNISHINGS AND EQUIPMENT ORDERED FORFEITED - VARIOUS ITEMS RETURNED TO INNOCENT CLAIMANTS.

In the Matter of the Seizure on ) Case No. 8871  
 April 26, 1955, of a quantity of )  
 alcoholic beverages, fixtures, )  
 furniture, and equipment, and three )  
 dollars in cash, at Ramos' Restaurant, ) ON HEARING  
 located at 76 Hope Avenue, in the City ) CONCLUSIONS AND ORDER  
 of Passaic, County of Passaic and )  
 State of New Jersey. )  
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George Ramos, Pro se.  
 Bernard R. Glenn, Esq., Attorney for General Refrigerators Corporation.  
 New Jersey Carbonator Service Company, by Richard Rosenberg, President.  
 Lester Music Service, Inc., by Edward P. Sudol, President.  
 Michael Frichione, t/a T. & M. Cigarette Service and Bercose Amusements.  
 I. Edward Amada, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, \$3.00 in cash and various fixtures, furniture and equipment, described in a schedule attached hereto, seized on April 26, 1955 at Ramos' Restaurant, 76 Hope Avenue, Passaic, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66 George Ramos appeared and sought return of various items of the seized property. Appearances were also entered on behalf of the other above named claimants who sought return of other items of the seized property. Forfeiture of the seized alcoholic beverages was not opposed by any person.

The Hearer's Report setting forth the facts presented at the hearing in the case and his recommendations thereon was mailed to George Ramos. No objection or exception to such report was filed by him within the time limited therefor.

I have given careful consideration to the complete record in the case, have reviewed the Hearer's Report and make the following findings as established by the evidence presented:

On April 26, 1955, ABC agents seized 23 bottles of beer, \$3.00 in cash, and the fixtures, furniture and equipment of the Ramos' Restaurant, located at 76 Hope Avenue, Passaic, New Jersey, because of unlawful sales of alcoholic beverages therein on April 22, 23 and 26, 1955.

When an ABC agent entered the restaurant on April 22nd, he ordered food and observed the service of beer to other patrons by Mrs. Julia Ramos. She served the agent three bottles of beer, for which he paid her. On April 23rd, the agent purchased five bottles of beer from Mrs. Ramos, and he observed purchases of beer by other patrons. On April 26th, the agent purchased four bottles of beer from Mrs. Ramos. He paid Mrs. Ramos three dollar bills identified by serial number for the beer and food. Another

ABC agent entered the restaurant and also purchased beer from Mrs. Ramos. Thereafter another ABC agent entered, and all of the agents identified themselves and seized the aforesaid property, and recovered the three marked bills which were in a jar in a cabinet.

Neither Julia Ramos nor George Ramos hold any license authorizing either of them to sell alcoholic beverages, and the premises were not licensed for that purpose.

The seized beer was intended for unlawful sale and, hence, is illicit. R. S. 33:1-1(1). Such illicit beer and all personal property seized therewith in the restaurant constitutes unlawful property and is subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-66, R.S. 33:1-2.

George Ramos (also known as George Ramos Desardin) testified that he is the owner of the restaurant, but is employed elsewhere, and his wife conducts the business. He is responsible for her misconduct in selling beer there without a license. He cannot recover any of the seized property. His request for return of such seized property is, therefore, denied.

General Refrigerators Corporation seeks recovery of a beverage cooler which it sold to George Ramos (Desardin) under a conditional sales contract, upon which there is a present balance due of \$445.45.

New Jersey Carbonator Service Company seeks recovery of a coffee tricolator and a cream dispenser sold to Jorge Ramos under a conditional sales contract upon which there is a present balance due of \$50.00.

Lester Music Service, Inc. seeks return of a Seaburg Music Machine. T. & M. Cigarette Service seeks return of a cigarette vending machine. Bercose Amusements seek return of a shuffle alley amusement machine. The three machines last mentioned were placed in the restaurant on loan on a profit-sharing basis.

The items which the above named claimants seek to recover have been identified as part of the seized property. The establishment was to all outward appearances a commercial restaurant. It does not appear that George Ramos or Julia Ramos or the restaurant had a reputation or record for unlawful alcoholic beverage activity. All of the claimants appear to have acted in good faith and apparently did not have any reason to suspect that alcoholic beverages were being sold in the restaurant without a license. There is obviously no advantage to the State to retain the used restaurant equipment covered by the conditional sales contract conditioned upon payment of the unpaid balance.

I shall therefore recognize the respective claims of the claimants upon payment by each of their share of the cost of seizure and storage as allocated by me. R. S. 33:1-66(f).

Accordingly, it is DETERMINED and ORDERED that if on or before the 7th day of November 1955 the General Refrigerators Corporation pays the costs of the seizure and the storage of the beverage cooler, New Jersey Carbonator Service Company pays the cost relating to the coffee tricolator and cream dispenser, Lester Music Service, Inc. pays the cost relating to the music machine, T. & M. Cigarette Service pays the cost relating to the cigarette vending machine and Bercose Amusements pay the cost relating to the shuffle alley machine, as listed and described in Schedule "A" attached hereto, these specific items will be returned to the respective claimants; and it is further

DETERMINED and ORDERED that the balance of the seized property described in Schedule "A" aforesaid constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS

Director.

Dated: October 25, 1955.

SCHEDULE "A"

- 23 - bottles of beer
- 180 - bottles of soda
- 1 - Coldspot Refrigerator
- 1 - Frigidaire Refrigerator
- 1 - coffee dispenser
- 1 - cream dispenser
- 1 - radio
- 1 - G.R.C. cooler with currency therein
- 1 - Seeburg music box with currency therein
- 1 - Upright cigarette machine with currency therein
- 2 - tables
- 7 - chairs
- \$3.00 in cash
- 1 - Shuffle-Cade machine with currency therein

11. MANUFACTURERS AND WHOLESALERS - REFUND OF COST OR ACCEPTANCE OF REVERSE CHARGE FOR TELEPHONE ORDERS FROM RETAILERS PERMITTED - RULING IN BULLETIN 1084, ITEM 9 ABROGATED.

November 21, 1955

TO ALL WHOLESALE LICENSEES PRIVILEGED TO SELL TO RETAILERS:

On September 30, 1955, by letter directed to a wholesaler (reprinted in Bulletin 1084, Item 9), I ruled that the practice of permitting retail customers to reverse telephone charges and the further practice of refunding ten cents to local retail customers who telephone orders were prohibited by Rule 8 of State Regulations No. 34, and ordered the wholesaler to discontinue both practices not later than November 1, 1955.

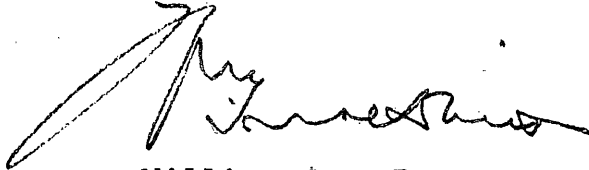
Subsequent investigation discloses that the practice of permitting retailers to reverse telephone charges when placing orders with wholesalers has existed for a great many years and is engaged in uniformly throughout the industry. The practice is accomplished by various types of service furnished by the telephone company. There seems to be no evidence that any wholesaler has discriminated between retailers by permitting some to reverse telephone charges while denying that privilege to others.

Upon considering the matter further, I have concluded that, under these circumstances, the practice of permitting retail customers to reverse telephone charges when placing orders with wholesalers should not be prohibited by Rule 8 of State Regulations No. 34.

With respect to the practice of refunding ten cents to local retail customers, there seems to be no evidence that any wholesaler has discriminated between retailers by making refunds to some but not to others. I have been unable to find an

altogether sound and reasonable distinction between this practice and the practice of permitting retail customers to reverse telephone charges. Certainly, regulations aimed at prohibiting discrimination between retailers should not be interpreted so as, in effect, to discriminate against some retailers while favoring others.

Accordingly, my ruling of September 30, 1955 with respect to both of these practices is hereby set aside. So long as there is no discrimination between retailers or other abuses, both practices will be permitted.



William Howe Davis  
Director.