

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

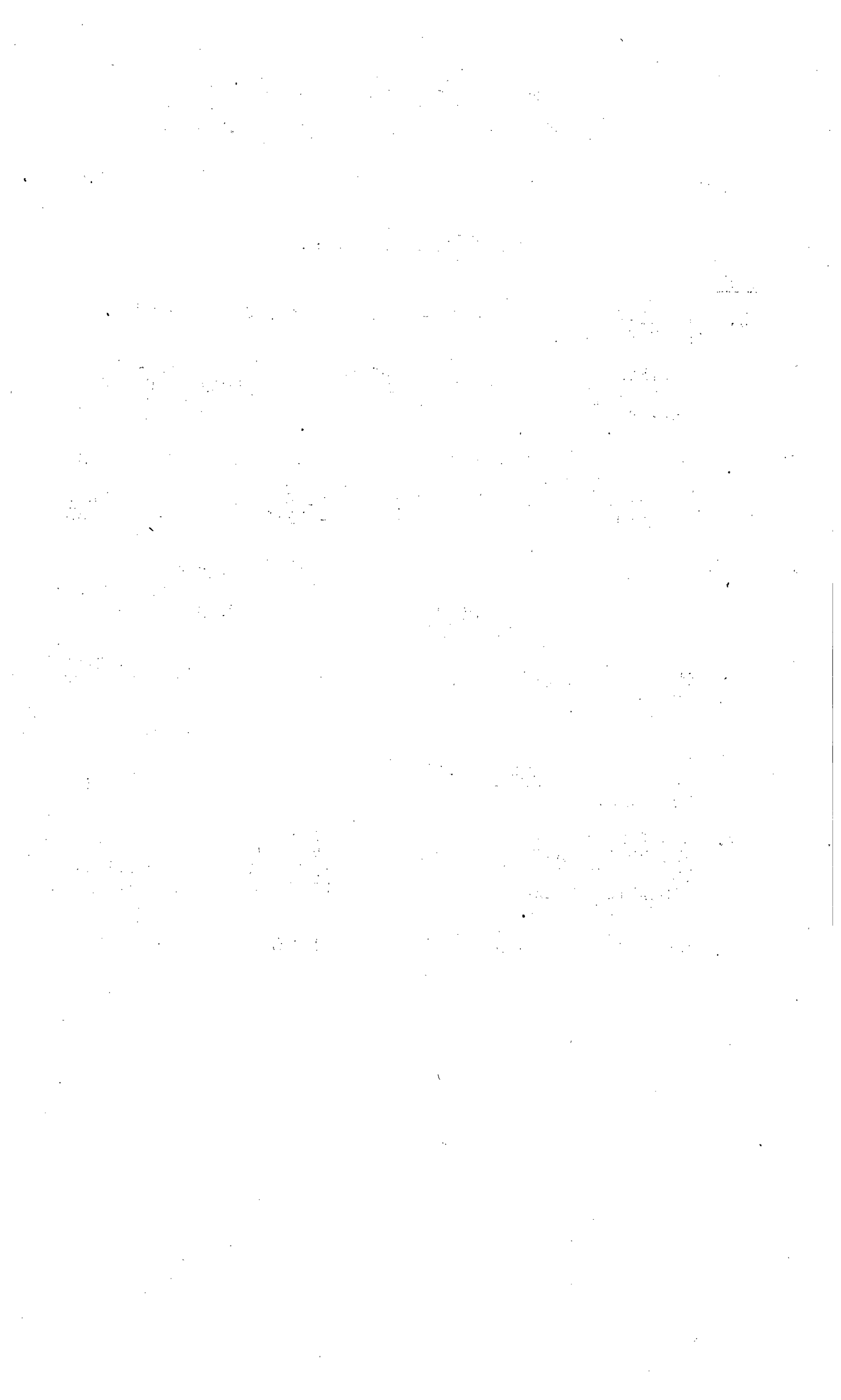
BULLETIN 967

MAY 4, 1953.

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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 967

MAY 4, 1953.

APPELLATE DECISIONS - 218-220 MARKET ST. CORPORATION v. NEWARK AND HAWTHORNE.

218-220 MARKET ST. CORPORATION,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY OF)
NEWARK, and HAWTHORNE (a corp.),)
Respondents.)

-----)
John J. Clancy, Esq., by Joseph A. Hayden, Esq. and Daniel G. Kasen,
Esq., Attorney for Appellant.
Charles Handler, Esq., by George B. Astley, Esq., Attorney for
Respondent Municipal Board.
William Harris, Esq., Attorney for Respondent Hawthorne.

BY THE DIRECTOR:

This is an appeal from the action of respondent Municipal Board whereby it transferred a plenary retail consumption license held by respondent Hawthorne from premises known as 189 and the rear portion of 191 Market Street to premises known as 191 Market Street, Newark.

Appellant, the holder of a plenary retail consumption license for premises at 218-220 Market Street, Newark, alleges in substance that there was no valid basis in the evidence before respondent Board to approve the application for transfer, and that the action of respondent Board in approving application for the transfer constitutes a clear and manifest abuse of discretion.

Respondent Hawthorne obtained a renewal for the 1951-52 licensing year of a plenary retail consumption license it held for premises consisting of the first floor and basement in the building known as 189-191 Market Street. At that time Hawthorne was the holder of a lease covering said premises. This lease had been entered into between Hawthorne and Philip J. Bowers who then owned the building, and the lease was to continue in effect until 1957 or 1958. On November 27, 1951, respondent Municipal Board granted Hawthorne's written request to delete from its licensed premises a portion of 191 Market Street measuring 71 ft. 2 in. in depth by 17 ft. in width. Apparently Hawthorne continued to operate its licensed business at 189 Market Street for a period of about three months, at which time it ceased to operate and has not operated since. On April 1, 1952, Philip J. Bowers sold the building in question to Sawyer Realty Company. A day or two prior to the closing of the title Hawthorne had assigned its lease to Market Amusement Company and, at the time of closing of title, the new owner of the building had knowledge of said assignment. Thereafter one Issie Chernichaw, with the consent of Hawthorne, applied to respondent Municipal Board for a transfer of the license in question from Hawthorne to Chernichaw and from 189-191 Market Street to 216 Market Street. On May 6, 1952, the Municipal Board denied said application for the stated reason that "*** by granting the place-to-place request to move, it places the new premises next door to a presently existing

outlet, as well as next door to an existing bank." No appeal was taken from that decision. The net result was that on June 30, 1952, Hawthorne was the holder of a plenary retail consumption license covering premises at 189 Market Street and the rear portion of 191 Market Street, although it was not operating under its license at that time and could not so operate because of its assignment of the lease to Market Amusement Company.

The record herein further discloses that on July 30, 1952, Hawthorne filed with the Municipal Board an application for a renewal of its license for the present licensing year. In said application the premises to be licensed are described as "189 (in ink) 191 Market Street, Newark, New Jersey, deleting front portion of 191 Market Street (in type)." On September 9, 1952, said renewal was granted without objection. It appears from a transcript of stenotype notes taken at a regular meeting of the Municipal Board held on September 9, 1952, that Mr. Harris, attorney for Hawthorne, made the following statement at that time:

"In connection with the application for renewal of the license for the Hawthorne at 189 and the rear of 191, I have in my possession a lease covering the premises 189 and 191 and I have a letter. The letter is to the effect that we can have immediate delivery of the said premises. The lease constitutes the legal right of possession and the letter constitutes the actual right of possession."

The lease (a copy of which has been introduced into evidence herein) purports to have been entered into on July 28, 1952, between Market Amusement Co., Inc., landlord, and Hawthorne, a corporation of the State of New Jersey, tenant, and leases store premises in the building known as 189-191 Market Street, Newark, New Jersey, for the term of three years and four days commencing July 28, 1952, and terminating July 31, 1955, to be used as "a restaurant, bar and grill." The letter referred to reads as follows:

"September 8, 1952.

"Hawthorne
2 Park Avenue
New York, N. Y.

Gentlemen:

We refer to lease executed on the 28th day of July, 1952 between Market Amusement Co. Inc. as Landlord, and Hawthorne as tenant.

Under the terms of said lease you were entitled to possession of premises commencing July 28, 1952.

You may consider this letter as a delivery of possession of the leased premises by us as of this moment and an acknowledgment by us that you are now in possession thereof.

Very truly yours,
MARKET AMUSEMENT CO. INC.
By (sd) D. Simon, Pres."

On September 16, 1952, Hawthorne filed with respondent Board an application to transfer its license from "189 - rear undeleted portion 191 Market Street" to "191 Market Street." A written objection having been filed, a hearing was held thereon on October 7, 1952. No evidence was presented at said hearing, but the transcript discloses that there were lengthy arguments by attorneys representing the respective parties concerning the right of possession of the licensed premises and particularly concerning the right of possession at the time the license was renewed. At the close of the hearing the Municipal Board granted the application to transfer the license to 191 Market Street. On November 5, 1952, this appeal was filed.

The fact that Hawthorne vacated its licensed premises did not void its license which had been renewed for the 1951-52 licensing year. Re Boettiger, Bulletin 98, Item 11. As indicated above, Hawthorne was the holder of a license on June 30, 1952, for 189 Market Street and the rear portion of 191 Market Street. The application for renewal for the present licensing year disclosed that the license was of the same class and type as the expired license; that it covered the same licensed premises; that it was applied for by the holder of the expired license, and that the application for renewal was filed not later than thirty days after the commencement of the new license term. Hence it was an application for renewal within the provisions of R. S. 33:1-96.

The sole remaining question in the case concerns the right of possession of the licensed premises. While a local issuing authority is not the proper forum to try technical title or the definitive right of possession to real and personal property, it should be satisfied that the applicant for the license is in possession and control of the licensed premises under color of right. Rittenger v. Bordentown and Bensei, Bulletin 547, Item 10. Cf. Passarella v. Atlantic City et al., 1 N. J. Super. 313. At the time the license was renewed the evidence presented to the Municipal Board indicated that Hawthorne held a lease covering the stores at 189 and 191 Market Street. Even if the store known as 189 Market Street is occupied by the operator of amusement devices and the operator of a stand at which orange juice is sold, nevertheless the Municipal Board was justified in renewing the license in view of the fact that Hawthorne was the holder of a lease covering said premises and also covering the store (now vacant) at 191 Market Street. The same factual situation existed when the license was transferred.

At the close of appellant's case the attorney for Hawthorne moved to dismiss the appeal, and the Hearer announced that the case would be submitted to the Director on the motion to dismiss. Thereupon the attorney for appellant requested an opportunity to call Mr. Simon of the Market Amusement Company to find out the circumstances surrounding the execution of the lease dated July 28, 1952. The Hearer declined to hold the case open for that purpose. It appears that, at the hearing held before the Municipal Board on October 7, 1952, the attorney who then represented the appellant requested a week's adjournment to produce Mr. Simon of the Market Amusement Company to put him under oath to determine the facts that existed at the time this application was made. That request was denied. No attempt was made by appellant to obtain the testimony of Mr. Simon between October 7, 1952, and March 12, 1953 (the date of the hearing herein) or to produce Mr. Simon at the hearing herein. Under these circumstances I conclude that the request for an adjournment was properly denied.

After considering carefully all the evidence in the case, I have decided to grant the motion to dismiss the appeal on the ground that the evidence produced by appellant has failed to establish that the action of respondent was erroneous and should be reversed.

Accordingly, it is, on this 9th day of April, 1953,

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

DOMINIC A. CAVICCHIA
Director.

2. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - FALSE ANSWER IN APPLICATION AS TO EXCLUSIVE CONTINUOUS POSSESSION OF CLUB QUARTERS - APPLICATION FOR RELIEF UNDER RULE 5 OF STATE REGULATIONS NO. 7 DENIED - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against THE ARCANUM CLUB Cedar Bridge Road P. O. Box 355 Lakewood, N. J.,

CONCLUSIONS AND ORDER

Holder of Club License CB-2, issued by the Township Committee of the Township of Lakewood.

Edward M. Rothstein, Esq., Attorney for Defendant-licensee. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"In your application dated July 30, 1952, filed with the Lakewood Township Committee, upon which you obtained your current club license, you falsely stated 'Yes' in answer to Question 20, which asks: 'Has the club been in exclusive continuous possession and use of club quarters for at least three (3) years immediately prior to this application?', whereas in truth and fact you had not been in exclusive continuous possession and use of club quarters for that period of time; said false statement being in violation of R. S. 33:1-25."

At the hearing held herein, an ABC agent testified that he had obtained a number of signed and sworn statements from officers, trustees and members of the club, including Mary Collins in whose home the club claims to have quarters, and fifteen of such statements were introduced in evidence over the objection of defendant's attorney. Since defendant is not an individual but rather a club, consisting of members, officers and trustees, these statements must be viewed as amounting to "admissions" by adverse parties and were properly admitted as such.

On behalf of defendant, two of its officers, one of its trustees and the aforementioned Mary Collins testified.

There is no substantial dispute with respect to the background facts, which are as follows: For some time prior to 1948 there existed a club known as Lakewood Labor Club, Inc., which was incorporated under the laws relating to corporations not for pecuniary profit. Said corporation obtained from the Township Committee a club liquor license for premises on Cedar Bridge Road (which license was issued for the same premises as are involved here) and on June 1, 1948, said license was revoked by the then State Commissioner (Re Lakewood Labor Club, Inc., Bulletin 806, Item 5) because, although the license was nominally issued in the name of the club, Mary Collins was the sole beneficial owner of that license. It is now claimed by defendant's officers, trustees and members that, while the membership declined after the license was revoked, nevertheless a group of approximately twenty to twenty-five members "stuck together" and that, although regular dues were not charged, meetings were held and various other functions were also held at the same

premises for which the aforementioned club license had formerly been issued. These premises at all times mentioned herein were and now are owned by Mary Collins who resides there (as she has done for a number of years) and consist of a dining room 12' x 20', a smaller room (approximately 12' x 12') designated "meeting room", a barroom 10' x 14', a kitchen 10' x 10', a bedroom (Mary Collins') and a front porch and rear porch, both enclosed. Mary Collins has access to the kitchen from her bedroom either through the barroom or by way of the rear enclosed porch.

On June 25, 1952, application for a club license was filed with the Township Committee on behalf of Lakewood Labor Club. This application was signed by Edward G. Clark, President and witnessed by Oscar Wood, Secretary. Defendant's attorney stated for the record herein (and the attorney representing the Division did not dispute it) that objection to the issuance of the club license was made by persons who had formerly been members of Lakewood Labor Club, Inc., and who had apparently formed a new organization using the name Lakewood Labor Club; that the Township Committee declined to issue the license under those circumstances; that, at the suggestion of the municipal attorney, the group which had applied for the license held a meeting at which the club's name was changed to The Arcanum Club and that a new application for a club license was filed on July 30, 1952, in the name of The Arcanum Club. This latter application, which was also signed by Edward G. Clark, President, and Oscar Wood, Secretary, was granted and the license was issued effective August 15, 1952.

Defendant's witnesses testified that The Arcanum Club is actually a continuation of the organization formerly known as Lakewood Labor Club, Inc. The Division took no position with reference to this claim and merely maintained that defendant had not had exclusive continuous possession and use of club quarters for at least three (3) years prior to filing the application on July 30, 1952, as required by Rule 4 of State Regulations No. 7.

Almost without exception, the statements of defendant's officers, trustees and members admitted that the club had not had exclusive possession of the premises at Mary Collins' home for the three years preceding July 30, 1952. It was admitted that, prior to the issuance of the club license, effective August 15, 1952, the club had no lease to the premises or any part thereof and it was further admitted that Mary Collins could have evicted the club at any time. The officers, trustees and members, in their statements, variously explained their admissions that the club did not have exclusive possession and control of premises. For example the President (Clark) said "... Mary Collins permitted us to hold our meetings on her premises whenever we called a meeting which was usually once a month ...". The Vice President (William Lyles) said "It was just used as a meeting place to hold meetings once a month with the permission of Mary Collins. When we lost the liquor license in 1948 we did not have full control of the premises, we just used it as a meeting place." The Secretary (Wood) said, "... we were just permitted to hold meetings on her premises without charge ...". Several others gave much the same explanation. Mary Collins said that the club met once a month in the "meeting room" and that between meetings "The rooms would be idle space", but when asked "Do you use the entire place as living quarters when the club is not holding meetings?", she said "Yes, it is my home. I can use the entire place, but I live mostly in the kitchen, bedroom and barroom which is right off the kitchen".

In their testimony defendant's witnesses attempted to show that the club had used the premises more frequently than the statements would tend to indicate. Even so, such testimony falls far

short of establishing exclusive continuous possession of any part of Mary Collins' home for the requisite three-year period. This conclusion is inescapable from all of the evidence, including the fact that defendant pays no rent to Mary Collins and the fact that the key to the house remained in the possession of Mary Collins, the owner.

Defendant's attorney contends that, while "... the club never had the right to exclusive and continuous possession and control because of the fact that Mary Collins could at any time withdraw her permission for the club to use said premises" it did, in fact, have exclusive possession and use of at least a part of the premises, namely, the "meeting room". However, his contention is considerably weakened by his assertion that "... the club had the right to use the premises to the exclusion of all other persons excepting Mary Collins, the owner, who was also a member of the club." It is further weakened by his admission that "... during meal hours she (Mary Collins) would on occasions serve meals to persons other than members of the club."

There may even be some doubt that defendant is truly a successor to or continuation of the former organization, Lakewood Labor Club, Inc. The latter was an incorporated organization, but defendant is referred to by its own counsel as an unincorporated body, and thus there may be some question as to whether there was merely a change of name in July 1952, or the creation of a new organization. Be that as it may, it is unnecessary for me to decide that question since I find that (even assuming that it is the same organization), while defendant may have enjoyed certain privileges at Mary Collins' home it did not have exclusive continuous possession and use of club quarters there or anywhere else for at least three (3) years prior to filing its application for a club license on July 30, 1952.

I find defendant guilty as charged.

At the hearing held herein, defendant's attorney (without prejudice on the merits of this proceeding) sought to have the Director consider a motion to grant a "waiver" under Rule 5 of State Regulations No. 7, if the ultimate decision on this proceeding should be adverse to defendant. His request was then denied principally because no application had been filed setting forth "in writing" any "special cause" for the issuance of the license, as required by said Rule. Since then, however, written request for such waiver (the Director's written approval of the issuance of the license) has been filed alleging that (1) defendant has substantially complied with the Regulations, in that it has been a bona fide club for more than three years, has had possession of club quarters for that period of time and presently has a lease for such premises and (2) because of the peculiar circumstances and conditions in the vicinity of the licensed premises, there is a need for a club license at that location.

After carefully considering all of the facts and circumstances and the evidence adduced at the hearing herein, I find that defendant has not shown such "special cause" for the issuance of the club license as would warrant or justify my written approval of such issuance and, consequently, defendant's request is hereby denied.

Under the circumstances, I have no alternative other than to revoke the license. Cf. Re American Bridge Association, North Jersey Unit, Bulletin 902, Item 3; Re Club of Joy, Bulletin 816, Item 8; Re Cloud Combers Club, Bulletin 806, Item 2; Re Twelve Aces Social Club, Bulletin 780, Item 1.

Accordingly, it is, on this 13th day of April, 1953,

ORDERED that Club License CB-2, issued by the Township Committee of the Township of Lakewood to The Arcanum Club, Cedar Bridge Road, P. O. Box 355, Lakewood, be and the same is hereby revoked, effective immediately.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - FALSE ANSWERS IN APPLICATION AS TO PAYING PERCENTAGE OF PROFITS TO INDIVIDUAL, EXISTENCE OF CONDITIONAL BILL OF SALE AND RESIDENCE OF TRUSTEE - FRONT FOR INDIVIDUAL - PRIOR RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

BOHEMIAN CLUB)
2nd floor N/E corner Boulevard)
and Wood Streets)
Vineland, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-7, issued by the City Council of the City of Vineland.)
-----)

Bohemian Club, Defendant-licensee, by Edward Dignan, President. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. In your application dated May 26, 1952, filed with the Board of Commissioners of the Borough of Vineland, upon which you obtained your current club license for premises at 510 Landis Avenue, Vineland, and in your application dated October 2, 1952, filed with the City Council of the City of Vineland, upon which said license was transferred to 2nd floor N/E corner Boulevard and Wood Streets, Vineland, you falsely stated 'No' in answer to Question 29, which asks: 'Has any individual, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Ralph D. Childrey, Jr. had such an interest in that he was the real and beneficial owner of the licensed business and was permitted to retain all the profits therefrom; said false statements being in violation of R. S. 33:1-25.

"2. In your aforesaid applications you falsely stated 'No' in answer to Question 30, which asks: 'Have you agreed to pay any employee, or other person, any portion or percentage of the profits or income (by way of rent, salary or otherwise) derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to permit Ralph D. Childrey, Jr. to retain all the profits from the licensed business; said false statements being in violation of R. S. 33:1-25.

"3. Between February 4, 1948 and November 7, 1950 you knowingly aided and abetted John W. George; between November 7, 1950 and October 2, 1951 you knowingly aided and abetted Walter G. Barber, Oliver Hamilton, Jr., Herbert Jackson and

Alfred Meline; from on or about October 2, 1951 to in or about December 1951 you knowingly aided and abetted Lewis Logan and Ralph D. Childrey, Jr.; and from in or about December 1951 until the present time you knowingly aided and abetted Ralph D. Childrey, Jr. individually, to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive club licenses; thereby yourself violating R. S. 33:1-52.

"4. In your aforesaid applications you falsely stated 'No' in answer to Question 31, which asks: 'Does any individual, partnership, corporation or association hold any chattel mortgage or conditional bill of sale on any furniture, fixtures, goods or equipment used or to be used in connection with the conduct of the alcoholic beverage business to be operated under the license herein applied for?', whereas in truth and fact American Phonograph Company held a conditional bill of sale dated January 10, 1952 for a coin operated phonograph used in connection with such business; said false statements being in violation of R. S. 33:1-25.

"5. In your aforesaid applications you, in answer to Question 15, falsely stated the address of Grant C. Rulison, Jr. (listed therein as one of your trustees) as Landis Avenue and Evelyn Street, Vineland, whereas in truth and fact he resided at Spring and Myrtle Roads, Vineland; said false statements being in violation of R. S. 33:1-25."

When service of the above charges was made, defendant was also served with an order to show cause why its club license should not be cancelled as having been improvidently issued in violation of Rule 2 of State Regulations No. 7.

As to charges (1), (2) and (3): The file herein discloses that, shortly after February 4, 1948, when defendant reopened after a thirty-day suspension of its license for "farming out" said license to one John W. George (Re Bohemian Club, Bulletin 789, Item 5), the said John W. George again took over defendant's bar business. He continued to exercise the privileges of the license in the same manner as he had previously (which resulted in the license suspension aforementioned) until November 7, 1950, when he "sold out" (including all equipment in club rooms) to Walter G. Barber and Oliver Hamilton, Jr. who then formed a partnership with Herbert Jackson "to carry on and operate a business, under the name of 'The Bohemians', being the business heretofore conducted by John W. George, at 510 Landis Avenue, in Vineland, Cumberland County, New Jersey." Jackson was soon replaced by Alfred Meline who, together with Barber and Hamilton conducted the licensed business until October 2, 1951, when they "assigned" their right, title and interest to Ralph D. Childrey and Lewis Logan. Logan withdrew from the business several months later and threatened to sue Childrey for moneys due under their agreement but his claim was settled. Childrey continued to conduct the licensed business, paying all bills, including those for rent and utilities and collecting all receipts including dues. Childrey deposited all funds in his own checking account and from it paid for various items, including the license, federal revenue stamps and the cost of a new bar. No funds were paid over to the club nor was any accounting ever submitted to it. Childrey admitted that there were two locks on the clubroom door, one to which all members had a duplicate key and one to which he had the only key.

Various officers, trustees and members of the club who were interrogated admitted that the club had not conducted its bar business and had not received any of the proceeds therefrom but had in

fact permitted Childrey to retain all of the profits. They also gave conflicting statements with respect to the club's meetings, which appear to have been held irregularly, and most of these men had only a vague idea of the method of conducting the bar business.

On October 28, 1952 the license was transferred from 510 Landis Avenue, Vineland to 2nd floor N/E corner Boulevard and Wood Streets, Vineland.

The license application, filed with the Borough of Vineland on May 26, 1952, and the application for transfer, filed with the City of Vineland on October 2, 1952, contained negative answers to Questions 29 and 30. In view of the foregoing these answers were obviously false and constituted violation of R. S. 33:1-25. The "farming out" of the license on the successive occasions, as hereinabove indicated, was in violation of R. S. 33:1-52.

As to charge (4): The file discloses that, on January 10, 1952, Childrey executed to American Phonograph Company a conditional sales contract for the purchase of a coin-operated phonograph. Payments upon such contract were made from Childrey's personal account.

As to charge (5): Grant C. Rulison, Jr., listed as a trustee, admitted that, at the time both aforementioned applications were filed, his correct address was Spring and Myrtle Roads, Vineland and not Landis Avenue and Evelyn Street, Vineland as stated in said applications.

Defendant has a prior record. Its license was suspended by the local issuing authority for twenty days, effective March 26, 1946, for (1) sale of alcoholic beverages to nonmembers and (2) sale of alcoholic beverages for off-premises consumption; by the State Commissioner (now Director) for thirty days, effective January 5, 1948, for "farming out" the license (Re Bohemian Club, supra); and again by the local issuing authority for forty-five days, effective April 23, 1949, for (1) sale of alcoholic beverages to nonmembers and (2) permitting gambling on the licensed premises.

In view of defendant's record of prior violations and the persistent "farming out" of its club license, which is designed to meet the special needs of bona fide clubs, the only proper penalty is revocation of the license. No action will be taken on the order to show cause, aforementioned. Re Budd Lake Wacky Club, Bulletin 779, Item 5.

Accordingly, it is, on this 23rd day of April, 1953,

ORDERED that Club License CB-7, issued by the City Council of the City of Vineland to Bohemian Club, 2nd floor N/E corner Boulevard and Wood Streets, Vineland, be and the same is hereby revoked, effective immediately.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - PERMITTING OBSCENE LANGUAGE - SALE TO INTOXICATED PERSON - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

RALPH KAPLUS & HARRY SELIGMAN
105 Washington Street
Newark 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-517, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Ralph Kaplus & Harry Seligman, Defendant-licensees, by Harry Seligman, Partner.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

"1. On March 3 and 6, 1953, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"2. On March 3, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20.

"3. On Friday, March 6, 1953, at about 11:00 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off the licensed premises, viz., three twelve-ounce cans of beer; in violation of Rule 1 of State Regulations No. 38 which prohibits any such sale or delivery before 9:00 A.M. or after 10:00 P.M. on any weekday."

The file herein discloses that three ABC agents entered defendants' premises on March 3, 1953, at about 8:00 p.m. At that time Ralph Kaplus (one of the licensees) was tending bar, but he was relieved at about 9:00 p.m. by Harry Seligman (the other licensee) and a bartender. While the agents were on the licensed premises, foul and filthy language was used by a female patron and her husband. The agents also observed beer being served to an unidentified male patron who was so intoxicated that he fell backwards off the stool upon which he was seated.

The same ABC agents entered defendants' premises on March 6, 1953, at about 7:30 p.m. At that time licensee Ralph Kaplus and a bartender were tending bar. At about 8:30 p.m. Kaplus was relieved by another bartender. During this visit the same female patron used foul and filthy language. At about 11:00 p.m. Jack Seligman, one of the bartenders, sold to another female patron three cans of

Schaefer's beer, which she carried from the licensed premises. The agents followed the patron and seized the beer after she had left the premises. When the agents returned to the licensed premises, Jack Seligman admitted this violation.

Defendants have no prior adjudicated record. I shall suspend their license for thirty days because of the violations set forth in charges 1 and 2 (Re Mansbach, Bulletin 939, Item 2), and for an additional period of fifteen days because of the violation set forth in charge 3 (Re Ruby, Bulletin 957, Item 6). Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 22nd day of April, 1953,

ORDERED that Plenary Retail Consumption License C-517, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ralph Kaplus & Harry Seligman, for premises 105 Washington Street, Newark, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. April 29, 1953, and terminating at 2:00 a.m. June 8, 1953.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - SALE TO MINORS - UNDER CIRCUMSTANCES, INCLUDING PLEA, LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

DONATO DIVIRGILIO
T/a CLUB TICO TICO
327 Passaic Street
Passaic, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-15, issued by the Board of Commissioners of the City of Passaic.

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

BY THE DIRECTOR:

On February 6, 1953, defendant pleaded non vult to a charge (preferred on January 30, 1953) alleging that (1) he possessed upon his licensed premises an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, in violation of Rule 27 of State Regulations No. 20.

Defendant pleaded not guilty to a supplemental charge (preferred on February 20, 1953) alleging that (2) he sold, served and delivered alcoholic beverages to three minors at his licensed premises and permitted the consumption of such beverages by said minors upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

As to charge (1), during the course of a routine inspection on January 17, 1953, an ABC agent observed the bartender (defendant's son) endeavoring to hide something under the bar. Upon investigation the agent found on the floor under the bar a 4/5 quart bottle labeled "Imported Seagram's V. O. Canadian Whisky". When questioned, the bartender admitted in a signed, sworn statement that he had

attempted to hide it because he had added some "Seagram's 7 Crown" whiskey when they were short of "Seagram's V. O." Subsequent analysis by the Division's chemist revealed that the contents of the bottle were not genuine as labeled.

As to charge (2) the three minors, William J. --- and Charles ---, both 17 years of age, and Angelo ---, 18 years of age, testified at the hearing and their testimony may be summarized as follows: At approximately 1:00 a.m., Sunday, February 15, 1953, after attending a Valentine Day party where they consumed only soft drinks, the three minors drove to defendant's licensed premises. William and Angelo wore regulation Navy enlisted men's uniforms while Charles wore civilian clothes. Upon entering the barroom, where the bar is on the right with booths on the left, they proceeded to the far end of the bar where Eugene (Gene) DiVirgilio (defendant's son) was tending bar. Another bartender was stationed at the front end of the bar and there were only a few patrons in the barroom. William ordered three beers from Gene, who uncapped three bottles of Schaefer's beer and placed one bottle and glass in front of each of the minors. Each minor poured his beer from the bottle into his glass and consumed it. William paid Gene \$1.05 for the round of drinks. During the course of the next hour and a quarter to hour and a half each minor consumed three or four additional bottles of beer, all of which were ordered and paid for by William and were served by Gene. At no time was any of the minors questioned as to his age.

An ABC agent testified that, on February 18, 1953, two of the minors had directed him and other officers to defendant's licensed premises which they identified from the outside and from the inside as the place where they drank beer on the early morning of February 15, 1953. The minors also identified Gene as the person who had served them. The agent described the premises in much the same way as the minors had done in their testimony. He further testified that Gene had denied serving the minors on the morning in question but had asserted that Angelo had walked into the barroom looking for one "Mario" but had left when the other bartender had informed him that "Mario" was not present.

It was stipulated that the testimony of another ABC agent would be substantially the same as that of the first agent, as hereinabove set forth.

On behalf of defendant, Gene and the other bartender testified that business was slow after 1:00 a.m., on February 15, 1953; that there were only four patrons in the barroom between 1:15 a.m. to 2:30 a.m. and that no one entered after 1:00 a.m. except Angelo who entered wearing a Navy blue uniform but without hat or coat, asked for "Mario" and left when he did not find him. Gene testified that "Mario" is the brother of Charles, one of the three minors.

Gene further testified that, because of his father's serious illness, he (Gene) takes care of the licensed premises; that he, the other bartender and the cook (an elderly female) were working at the premises on the morning in question; that he did not serve any of the boys and saw only Angelo who spoke to the other bartender and then left the premises.

The other bartender also testified that, between 1:15 a.m. and 2:30 a.m., on February 15, 1953, he served only two male patrons at the front end of the bar while Gene served only one male and one female patron at the rear end of the bar; that Angelo asked him for "Mario" and that he told Gene of this incident on the following night.

Angelo testified on rebuttal that he did not enter defendant's premises alone on the morning in question; that he was not looking for anyone named "Mario"; that he had met Charles that same night and did not know Charles' brother "Mario"; that he is in the United States Navy and, on that morning, wore full regulation enlisted men's Navy blue uniform, including jacket and blue hat.

From all of the evidence I am convinced that the minors were upon defendant's licensed premises in the early morning hours of February 15, 1953 and that they consumed beer sold, served and delivered by Gene as related in their testimony. Furthermore, no reason appears why the minors should falsify their testimony.

The mere fact that a violation is committed in defendant's absence by his employee, agent or servant is neither a defense nor an excuse. Rule 31 of State Regulations No. 20; Re Brogowski, Bulletin 962, Item 3.

I find defendant guilty as to charge (2).

Defendant has no previous adjudicated record. The minimum penalty for the offense covered by charge (1) is fifteen days. Re Dellerson, Bulletin 962, Item 6. The minimum penalty for sale of alcoholic beverages to three minors is fifteen days. Re Harbor Inn, Inc., Bulletin 949, Item 9; Re Camarda, Bulletin 946, Item 3. However, where any of the three minors is only 17 years of age the minimum penalty is twenty days. Re Primiceri, Bulletin 948, Item 5. While defendant has committed two dissimilar violations within a very short period of time, no locus poenitentiae intervened between them (see Re Drayman Family Corporation, Bulletin 946, Item 2), and thus each violation will be considered independently. Under all of the circumstances, including defendant's non vult plea to charge (1), I shall suspend his license for thirty days.

Accordingly, it is, on this 13th day of April, 1953,

ORDERED that Plenary Retail Consumption License C-15, issued by the Board of Commissioners of the City of Passaic to Donato DiVirgilio, t/a Club Tico Tico, 327 Passaic Street, Passaic, be and the same is hereby suspended for a period of thirty (30) days, commencing at 3:00 a.m. April 20, 1953, and terminating at 3:00 a.m. May 20, 1953.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - FAILURE TO HAVE PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

VICTOR DANKIW
T/a NORTH AMBOY TAVERN
744 State Street
Perth Amboy, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-42, issued by the Board of Commissioners of the City of Perth Amboy.

Edward J. Patten, 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 charges alleging that on Sunday, March 1, 1953 (1) he failed to have his entire licensed premises closed, in violation of a local ordinance, and (2) on that day he hindered and failed to facilitate an investigation of his licensed premises, in violation of R. S. 33:1-35.

The file herein discloses that about 10:15 a.m. on Sunday, March 1, 1953, two ABC agents observed a man enter a rear door of defendant's licensed premises. Fifteen minutes thereafter the two ABC agents attempted to enter the licensed premises, one by use of the rear door and the other by way of the front door. Both doors were found to be locked. One of the ABC agents peered through a window and observed a man sitting at the bar with a shot glass in front of him and another man, subsequently identified as the defendant, pouring a drink from a bottle into the glass. The agent then tried a side door leading to defendant's licensed premises but found that door also locked. He knocked several times without response from the interior. While standing there a man came over to him and stated that he knew he was an ABC agent. This man, subsequently identified as Thomas Mahoney, a part-time bartender, then hurried down the street to a confectionery store a distance away. The agent knocked on the door, and when the defendant came to the door the agent told him that he was from the Division of Alcoholic Beverage Control and that he wished to make an inspection of the licensed premises. At this time the telephone rang, and after the defendant answered it he returned and told the ABC agent that he would not open the door. Thomas Mahoney, the part-time bartender, came back to the licensed premises and told the agents that they were wasting their time. The agent who had attempted to gain admittance through the front door then went to the window, told the defendant, who had come over to the window, that he was an ABC agent, and further identified himself by holding his credential folder against the window. The defendant, however, ignored his request and still refused to permit the agents to enter the premises. One of the agents then called the local police. Upon the arrival of an officer in uniform, the door to the licensed premises was opened by the defendant and the two ABC agents and the police officer entered. Defendant refused to give a written statement.

Defendant, in mitigation of penalty, alleges that first he hesitated to open the door for fear that the two men were not ABC agents but intended to commit a robbery, and that then he "wondered if they were A.B.C. men whether it was a trick and if he left them

in they might say, 'Don't you know you are not supposed to let anybody in?'" Of course, if defendant had any doubt about the identity of the ABC agents, the telephone was at his disposal to call the police for protection. I am not impressed with defendant's explanation.

Defendant has no prior adjudicated record. Under the circumstances of this case, I shall suspend defendant's license for twenty-five days. Re Sadofski, Bulletin 909, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 2nd day of April, 1953,

ORDERED that Plenary Retail Consumption License C-42, issued by the Board of Commissioners of the City of Perth Amboy to Victor Dankiw, t/a North Amboy Tavern, 744 State Street, Perth Amboy, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. April 9, 1953, and terminating at 2:00 a.m. April 29, 1953.

DOMINIC A. CAVICCHIA
Director.

- 7. DISCIPLINARY PROCEEDINGS - ALLOWING CONSUMPTION OF ALCOHOLIC BEVERAGES, FAILING TO HAVE PREMISES CLOSED AND FAILING TO HAVE PREMISES OPEN TO PUBLIC VIEW DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOSEPH VECCHIONE & FRIEDA VECCHIONE
725 Madison Avenue
Paterson 1, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-357, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

Albert O. Scafuro, Esq., Attorney for Defendant-licensees.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to charges alleging that they (1) allowed alcoholic beverages to be consumed on their licensed premises on Thursday, February 12, 1953 between the hours of 3:00 a.m. and 7:00 a.m.; (2) failed to have their licensed premises closed during said hours; and (3) failed during said hours to keep the interior of their licensed premises open to public view from the outside thereof; all in violation of an existing local ordinance.

The file herein discloses that at 3:30 a.m., on Thursday, February 12, 1953, two ABC agents arrived in the vicinity of defendants' licensed premises. The shades on all windows were tightly drawn. At 3:35 a.m., they observed a man come out of the front door of the licensed premises, walk to the side of the building, return to the front door and re-enter the said premises. The agents attempted to enter the front door but found it to be locked. In response to a knock by one of the agents, a man peered through the

curtain on the door, and when one of the agents told him they desired a drink, he replied that the place was closed. The same agent again knocked on the door and, when the man came over to the door, the agent held his credential folder to the glass and stated they were ABC agents. The man on the inside, subsequently identified as the bartender, opened the door and permitted the agents to enter. When the agents entered, they observed a man standing at the bar drinking beer from a glass. There were two other men and one woman in the premises. The woman was subsequently identified as the wife of the bartender, and the three men were patrons.

Defendants have no prior adjudicated record. Therefore, I shall suspend the license for the minimum period of fifteen days on charges (1) and (2) and five additional days on charge (3). Re Schmidt, Bulletin 881, Item 13. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 2nd day of April, 1953,

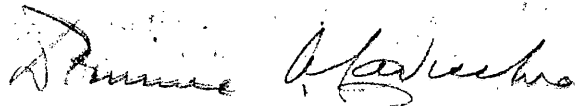
ORDERED that Plenary Retail Consumption License C-357, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Joseph Vecchione & Frieda Vecchione, 725 Madison Avenue, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. April 8, 1953, and terminating at 3:00 a.m. April 23, 1953.

DOMINIC A. CAVICCHIA
Director.

8. STATE LICENSES - NEW APPLICATION FILED.

Jack Poust & Company, Inc.
207 - 4th Avenue
New York 3, New York.

Application filed April 23, 1953 for Wine Wholesale License.



Dominic A. Cavicchia
Director.