

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

BULLETIN 898

FEBRUARY 26, 1951.

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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 898

FEBRUARY 26, 1951.

1. APPELLATE DECISIONS - RICHARDSON v. MONTGOMERY TOWNSHIP.

BURLIE RICHARDSON and VIOLA  
RICHARDSON, partners, t/a HIGHWAY  
COCKTAIL LOBBY,

Appellants,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP  
OF MONTGOMERY,

Respondent.

ON APPEAL  
CONCLUSIONS AND ORDER

Myron L. Levy, Esq., Attorney for Appellants.  
A. Dix Skillman, Esq., Attorney for Respondent.  
Sidney Simandl, Esq., Attorney for Objector.

BY THE DIRECTOR:

On September 14, 1950, respondent denied an application by appellants for a plenary retail consumption license for premises to be erected at Bolmer's Corner, State Highway 31, Township of Montgomery. The application was denied by a resolution unanimously adopted, which reads:

"RESOLVED that the application of Burlie and Viola Richardson for a Plenary Retail Consumption license for premises to be constructed on the southeast side of the Bolmer's Corner intersection on Route 31 be denied for reasons presented by the objectors at the hearing thereon and because it will not best serve the interest of the people of the Township of Montgomery."

The money deposited with the application, less the ten per cent. investigation fee as provided in R. S. 33:1-25, was returned to appellants. On September 15 appellants returned the check for the ninety per cent. aforesaid, and advised the Clerk of the Township that, because of an error by appellants in their prior advertising, they desired to readvertise and have the application reconsidered. (The error was in failing to include a statement to the effect that "plans and specifications of building to be constructed may be examined at the office of the Municipal Clerk", State Regulations No. 2.) The Clerk accepted the check but, on September 20, she wrote the following letter:

"Dear Mr. Richardson: The Attorney for the Township of Montgomery advises me that your recent application which was denied cannot be used for reapplying. You must completely fill out a new application and advertise again."

Appellant Viola Richardson testified that she received this letter on September 28, 1950. Appellants did not file any new application. The check which had been left with the Clerk on September 15, 1950 was mailed to appellants by letter dated October 11, advising appellants that the municipal ordinance had meanwhile been amended to limit the plenary retail consumption licenses to one. One license was then, and is now, outstanding in the municipality.

By the denial of September 14, respondent Township Committee clearly exhausted its jurisdiction (Savoy Delicatessen and Restaurant, Inc. v. Asbury Park, Bulletin 626, Item 8, and cases cited), any

alleged conversations with the Township Clerk to the contrary notwithstanding. The time to appeal from the denial expired on October 14, 1950. The appeal herein was not filed until November 9, 1950. I shall not, however, decide this appeal solely on the basis of its untimely filing.

Some seventy or eighty people attended the hearing held by respondent on September 14, 1950. Apparently all, except the appellants and one other person, were there to oppose any additional license. Many of the persons attending expressed the conviction that the existing license and those nearby but in adjacent municipalities are sufficient to take very adequate care of the needs of the township and its population. In addition, several petitions and letters objecting to the issuance of the license were received and considered by the Township Committee.

The existing tavern is approximately two miles from the proposed site. Two other taverns are within three-quarters of a mile thereof in an adjacent borough.

The population of the township as of the 1940 census was 3,360. It is variously estimated that the new (1950) census will, when officially released, show a population of approximately 3,600 to 4,000. Testimony indicates that the township's total population includes the patients and personnel at the State Epileptic Village at Skillman (some 1,900). The State Limitation Law specifically permits a municipality to pass a more restrictive numerical limitation than that provided by the statute (P.L. 1947, c. 94, §9).

The area of the township is approximately thirty-two square miles. It is a sparsely-settled farming and rural residential community.

Each member of the Township Committee, when called as a witness, clearly stated that his reason for denying the additional license on September 14 was, in effect, that the existing licensed tavern in the township and the taverns in the adjacent municipalities were enough to take care of the needs of "our people".

The weight to be given to petitions and letters of objection is primarily for the local issuing authority. Under the circumstances herein, I do not feel that the decision of the members of the Township Committee, whereby appellants' application was denied, was an abuse of the discretion entrusted to them by the State Legislature.

Apparently the question of suitability of the proposed premises was never considered by the respondent. This is understandable because of the conclusion that no public need or convenience would be served by a new license. However, it is noted in passing that the proposed premises, if built to the plans submitted, would extend out of the area zoned for business and into an area zoned for residential purposes. Night clubs and other businesses requiring an alcoholic beverage license are specifically prohibited in a residential zone. This violation of the zoning ordinance is fatal. Nasso v. Bridgewater, Bulletin 744, Item 10; William Talbot, St. John Baptist School for Girls et al. v. Keppler et al., Bulletin 117, Item 1, and cases cited.

It is also clear that the change in the township ordinance, reducing the number of plenary retail consumption licenses permitted from two to one, is not unreasonable either generally or as applied to appellants. The liquor ordinance of the Township of Montgomery was passed in 1937. It provided, among other things, for a limitation of not more than two plenary retail consumption licenses. Section 3, Ordinance No. 41, Township of Montgomery, adopted December 21, 1937. The amendment adopted on October 9, 1950 provides that Section 3 of said ordinance be amended to read as follows:

"The only license to be issued in the said Township of Montgomery pursuant to the provisions of this Ordinance and the fee for such license, which shall be paid in advance, are as follows:

PLENARY RETAIL CONSUMPTION LICENSE, for which the fee shall be \$500.00 per annum.

The fee for the said license shall be pro rated according to the date of issuance of the license and shall be based upon the annual fee herein provided."

The Township Committee has interpreted this ordinance as limiting the issuance of liquor licenses to one plenary retail consumption license. While the section's limitation may be inartistic-ally worded, I find no fault or unreasonableness in the Committee's interpretation. And, clearly, a second plenary retail consumption license cannot lawfully be issued in the face of an ordinance prohibiting such issuance. DeShields v. Township of Cinnaminson, Bulletin 798, Item 8, and cases cited.

There is no testimony to the effect that the respondent had any motive, in amending its ordinance, other than the furtherance of the public interest. No evidence appears that any member of the Township Committee in any way sought to discriminate against the appellants or either of them.

It appears that Burlie Richardson re-entered the Armed Services on September 28, 1950. It is strongly contended by appellants' attorney that the provisions of the Soldiers and Sailors Civil Relief Act of 1940 were violated by the respondent Township Committee in failing to grant a postponement of a further hearing which was never formally scheduled but which Burlie Richardson believed was to be held on October 12, 1950, after he had readvertised the Notice of Application. I am of the opinion that this Act, above referred to, was not intended to apply to proceedings of the kind now before me. In any event, the appellants both were present at the hearing herein and were given every opportunity to present their case. Clearly, this Act, even if appropriate in licensing cases, could not do more than guarantee appellant Burlie Richardson a full and fair hearing. He has had that.

The action of the respondent must be affirmed.

Accordingly, it is, on this 30th day of January, 1951,

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

ERWIN B. HOCK  
Director.

## 2. APPELLATE DECISIONS - YACK AND SALAMAK v. ELIZABETH.

ANNA YACK and BAZYLI SALAMAK, )  
 Appellants, )

-vs-

MUNICIPAL BOARD OF ALCOHOLIC )  
 BEVERAGE CONTROL OF THE CITY OF )  
 ELIZABETH, )

ON APPEAL  
 O R D E R

Respondent. )

Harry B. Kotler, Esq., Attorney for Appellants.  
 Raymond A. Leahy, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from denial of appellants' application for a transfer of their plenary retail consumption license No. C-257 from 351-353 East Jersey Street to 756 Brunswick Avenue, Elizabeth.

It has been stipulated and agreed in writing between the parties that the Petition of Appeal filed herein be withdrawn. No cause appearing to the contrary,

It is, on this 1st day of February, 1951,

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

ERWIN B. HOCK  
 Director.

## 3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (PROSTITUTION) - ALLOWING, PERMITTING AND SUFFERING FILTHY AND OBSCENE LANGUAGE AND CONDUCT - CONTRACEPTIVES - LICENSE REVOKED.

In the Matter of Disciplinary )  
 Proceedings against )

ROBERT L. PATON )  
 49-51-53 West Broadway )  
 Paterson 1, N. J., )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consump- )  
 tion License C-356, issued by the )  
 Board of Alcoholic Beverage Control )  
 of the City of Paterson. )

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to charges alleging:

"1. On July 26, 1950, August 1, 1950 and September 6, 7 and 8, 1950, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, viz., procuring females for purpose of prostitution, solicitation for prostitution and the maintenance of a place for the making of assignations for illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

"2. On July 22 and 26, 1950, August 1, 1950 and September 6, 7 and 8, 1950, you allowed, permitted and suffered foul, filthy and obscene language and conduct in and upon your licensed premises, viz., conversations and conduct about, relating to and concerning sexual intercourse and other sexual acts all of a lewd, suggestive, lascivious, indecent and immoral kind and nature; in violation of Rule 5 of State Regulations No. 20.

"3. On Wednesday night, September 6, 1950 and early Thursday morning, September 7, 1950, you possessed and allowed, permitted and suffered the distribution of contraceptives or contraceptive devices in and upon your licensed premises; in violation of Rule 9 of State Regulations No. 20."

Four agents of the State Division of Alcoholic Beverage Control conducted an investigation involving six separate visits to the licensed premises between July 26 and September 8, 1950. They testified that, during that time, they observed at least four females who appeared to frequent the premises regularly and that, from time to time, females were seen to leave the licensed premises with male patrons but returned later unattended. The bartender Brumale introduced the agents to several of these females and conversation between the agents and this bartender elicited the information from him that at least four of these females would "lay". Some of the agents testified that Brumale quoted the price charged by these various females for engaging in sexual intercourse and vouched that several of them were "clean" and that he had "had" one of them himself recently.

One of the agents testified that, on the night of September 6, 1950, after discussing with Brumale the possibility of having sexual intercourse with Marie ---, one of the aforementioned females, he asked Brumale for some "rubbers" (contraceptive devices) and, in consequence thereof, Brumale called to the licensee and both went into a small room where they were seen by the agent rummaging through a desk drawer. The agent further testified that he saw the licensee hand something to Brumale who then returned to the barroom and handed to the agent a package containing two rubber contraceptive devices. However, instead of accepting cash in payment therefor, Brumale poured himself a drink of whiskey for which he charged the agent 40¢. Brumale did not deny handing the contraceptives to the agent but claimed merely that he had obtained them from a patron allegedly named "Sharkey". It is significant that "Sharkey" was not produced at the hearing to confirm or deny this claim.

All of the foregoing creates a strong suspicion that arrangements were made at the licensed premises for females to take male patrons out for immoral purposes by or with the knowledge of the bartender, or licensee, or both. However, no evidence of a specific instance of such arrangement was uncovered until the night of September 7th and early morning of September 8, 1950. On that occasion, the agents testified, one of them made an arrangement with the aforementioned Marie to take her to a hotel next door to the licensed premises ostensibly for sexual intercourse. In the course of making these arrangements the agent, Marie, and the bartender Brumale engaged in a scene in the barroom during which Marie passionately kissed and caressed the agent and placed his hand upon her breast and private parts. In either real or feigned jealousy, Brumale, in filthy and obscene language, observed that Marie appeared to be aroused sexually and asked her why she did not show off her --- (indicating her breasts) whereupon, according to the agents, she bared her breasts (although the bartender claims she bared only her brassiere). The agents testified that, at this time, the licensee was only six to eight feet away.

After the arrangements were complete, the agent asked Brumale whether he had any "rubbers", whereupon Brumale called out in a loud voice asking whether anyone had any "rubbers". In his testimony Brumale admits this incident and that he obtained some "rubbers" from a patron and handed them to the agent. He denies, however, that he accepted payment of any kind for them. Brumale further admitted that, before leaving the licensed premises with Marie, the agent told him that he (the agent) was taking Marie out for the purpose of engaging in sexual intercourse with her to which Brumale replied, "I don't care what you do."

The agent and Marie left the licensed premises for something to eat during which time the agent handed her two marked five dollar bills, the price agreed on for having sexual intercourse. They returned to the licensed premises shortly thereafter where Marie, before finally leaving with the agent to go to the hotel, walked over to the licensee who was then tending bar, and handed him the two marked five dollar bills. The agent testified that she told the licensee, "Hold these until I come back. I don't want to have it on me" and that, when the licensee asked when she was coming back, she replied, "I will be down in a little while", adding that she was going out with the agent. Marie and the licensee claimed that she merely gave him the money for safekeeping. Marie testified that she was feeling her drinks and that she was afraid that she would spend the money too freely. In any event, the licensee put the two five dollar bills in his shirt pocket but later, when he was asked to produce them, he had only one of the five dollar bills in his trouser pocket and attempted to explain the disappearance of the other by saying that he "might have made change of them".

The testimony discloses that, after handing the money to the licensee, Marie and the aforementioned agent then left the licensed premises together and, shortly thereafter, were apprehended by the police and other agents in a nearby hotel room where Marie was nude, except for her brassiere, while the agent was fully clothed.

Neither Marie nor Brumale denied the essential elements of the testimony given by the Division agents. On the contrary, they admit them but, with the licensee, seek to claim that it all happened without any knowledge on the part of the licensee.

As to actual knowledge, the licensee's claim to ignorance must be weighed against the facts as they appear in the record. In addition to the events which took place on September 6 and 7, 1950, including the conversation and circumstances accompanying the handing over of the money by Marie to the licensee, the colloquy between the agent, Brumale and Marie and the incident when Brumale asked in a loud voice for "rubbers", all as hereinabove recited, one further fact deserves notice. Brumale claimed that when he conversed with the agent concerning the females he was only "kidding" and that he did it to "encourage" him "to spend money". It is not without significance that the licensee admitted on the witness stand that when Brumale came to work for him over a year ago his business was "in a poor condition....it was not quite as good", but that thereafter "it seemed to get better". He also admitted that Brumale "had a good following" and that several of the females started coming into the licensed premises shortly after Brumale started to work for him. The licensee further admitted that he knew that "at times, he (Brumale) would use some language, and I would tell him about it".

In connection with the question of the licensee's knowledge, it is important to note that the barroom where these incidents occurred is relatively small, capable of holding, by the licensee's own testimony, approximately thirty people. The bar, which was described as square, is really U-shaped, since it has three sides used as a bar,

the fourth side being the back bar and wall. The licensee himself testified that the three sections measure 16 feet, 16 feet, and 12 feet, respectively, for an over-all length of 44 feet. Thus it is apparent that the barroom in which these activities all took place is so small that it is inconceivable, if not impossible, for all of them to have escaped the attention of the licensee who testified that he was personally present upon the licensed premises during all of the time covered by the investigation.

From a review of the entire record I am convinced that the various conversations and incidents described in the testimony could not have occurred without the knowledge of the licensee and I must, therefore, discount his claim to ignorance.

However, even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as are hereinabove related, on his licensed premises. He cannot hide behind his employees. Not only is it no defense that the violations may have been committed in his absence or by his agent, servant or employee, or that he did not participate in the violations, or that they were committed contrary to his instructions (Rule 31 of State Regulations No. 20; Stein v. Passaic, Bulletin 451, Item 5) but, in addition, "licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises". Bilowith v. Passaic, Bulletin 527, Item 3. See also Re One-thirty-five Mulberry St. Corp., Bulletin 892, Item 2. Most certainly, this licensee "suffered" these lewd and immoral acts to take place in and upon the licensed premises. As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28, at p. 31, "Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his knowledge. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140."

Consequently, I find the defendant guilty of so much of charge (1) as relates to September 7 and September 8, 1950. The balance of that charge is dismissed.

As to charge (2), no useful purpose would be served by repeating all of the reprehensible and revolting language engaged in by the licensee, the bartender and other persons upon the licensed premises. Suffice to say that much of it consisted of filthy and obscene slang used to refer to or describe females and their private parts. I find the licensee guilty as to charge (2).

As to charge (3), it was admitted that, on September 6 and September 7, 1950, Brumale handed rubber contraceptive devices to an agent of this Division upon the licensed premises. Although Brumale denied that he received cash for them on either occasion, but on one occasion took a drink instead, their mere possession or distribution on licensed premises is prohibited by the regulation and I, therefore, find the licensee guilty as to charge (3).

The situation disclosed by the testimony in this case constitutes a grave threat to public health, welfare and morals and cannot be tolerated upon licensed premises. Licensees must learn and remember that their liquor license is not a license to engage in activities detrimental to the public welfare. The conduct of the licensed premises in this case is far below the barest minimum standard to which the public is entitled. It is obvious that the only proper penalty in this case is revocation. See Re Filippone, Bulletin 875,



Item 6; Re Baldino and Panasiuk, Bulletin 871, Item 10; Re Pecorino, Bulletin 889, Item 4.

Accordingly, it is, on this 1st day of February, 1951,

ORDERED that Plenary Retail Consumption License C-356, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Robert L. Paton, for premises 49-51-53 West Broadway, Paterson, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK  
Director.

4. DISCIPLINARY PROCEEDINGS - BOOKMAKING AND GAMBLING - LICENSEE WORKING ON LICENSED PREMISES WHILE ACTUALLY OR APPARENTLY INTOXICATED - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary  
Proceedings against

JOSEPH & FREDERICK DILIONE  
T/a OCEAN VIEW HOTEL  
1 East Church Street  
Sea Bright, N. J.,

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Consump- )  
tion License C-7, issued by the )  
Mayor and Council of the Borough )  
of Sea Bright. )

----- )  
Joseph F. Mattice, Esq., by Ascenzio R. Albarelli, Esq., Attorney )  
for Defendant-licensees. )  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic )  
Beverage Control. )

BY THE DIRECTOR:

Defendants pleaded not guilty, without offering any testimony in defense, to the following charge:

"1. On December 14 and 15, 1950, you, Joseph Dilione, engaged in and you, Frederick Dilione, allowed, permitted and suffered bookmaking and gambling in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20."

Defendants pleaded non vult to the following charges:

"2. On December 15, 1950, you, Joseph Dilione, worked in and upon your licensed premises while actually or apparently intoxicated, and you, Frederick Dilione, allowed, permitted and suffered Joseph Dilione so to do; in violation of Rule 24 of State Regulations No. 20.

"3. On December 15, 1950, while investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety were conducting an investigation at your licensed premises, you, through Joseph Dilione, hindered and failed to facilitate such investigation; in violation of R. S. 33:1-35."

The following facts appear from the testimony of an ABC agent taken at a hearing held upon Charge 1, and from the file herein in so far as the file refers to Charges 2 and 3: On December 14, 1950, two ABC agents were present in defendants' premises shortly after 2:00 p.m. At that time Joseph Dilione was tending bar; the radio was turned on, and horse-race results were being broadcast. As Joseph was looking over a scratch sheet, a patron entered and spoke to him. The agent observed that the patron handed money to Joseph, which he placed in his pocket with a slip of paper. Thereafter the agents placed with Joseph a \$3.00 bet on a horse which was running at Tropical Park, and Joseph, after noting the bet on a card, put the money and the card in the pocket of a coat which was hanging on the wall. Frederick Dilione came on duty about 3:00 p.m., after the bet had been placed. He picked up a scratch sheet from the bar and threw the sheet away.

On December 15, 1950, at about 2:00 p.m., the same ABC agents returned to defendants' premises. Results of horse-races were again being received over the radio. One of the agents told Joseph Dilione that he "had something pretty good today", and the agents gave Joseph six one-dollar bills with slips showing the names of two horses running at Tropical Park. The money was found in Joseph's possession and the slips, with other similar slips, were found in the coat mentioned above after the two agents, and two other agents who entered later, had identified themselves. In the opinion of the ABC agent, Joseph Dilione was intoxicated while he was working on the licensed premises on December 15, 1950.

It appears from the file herein that, after the agents identified themselves, Joseph Dilione became unruly, jostled agents when they attempted to seek evidence behind the bar, and used vile and filthy language in talking to them. Later, Frederick Dilione, who was not present when Joseph took the bets and hindered the investigation, entered the licensed premises and, having been told what had happened, said that his brother was ruining the business.

Since it clearly appears that the violations were committed by Joseph Dilione, one of the partners, defendants are guilty as charged. This is true irrespective of the question as to whether or not Frederick Dilione personally participated in any of the violations.

Defendants have no prior adjudicated record. Under all the circumstances, I shall suspend defendants' license for forty-five days.

Accordingly, it is, on this 1st day of February, 1951,

ORDERED that Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of Sea Bright to Joseph & Frederick Dilione, t/a Ocean View Hotel, for premises 1 East Church Street, Sea Bright, be and the same is hereby suspended for forty-five (45) days, commencing at 3:00 a.m. February 6, 1951, and terminating at 3:00 a.m. March 23, 1951.

ERWIN B. HOCK  
Director.

5. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN A VEHICLE HAVING NO TRANSPORTATION INSIGNIA - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICE OR MANIFEST - AIDING AND ABETTING THE ILLEGAL TRANSPORTATION OF ALCOHOLIC BEVERAGES - STORAGE OF ALCOHOLIC BEVERAGES ON UNLICENSED PREMISES - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ANTON'S WINES & LIQUORS, INC.  
252 Broad Avenue  
Palisades Park, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribution License D-8, issued by the Borough Council of the Borough of Palisades Park.

-----)  
Samuel Moskowitz, 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 which may be summarized as follows:

1. On or about September 16, 1950, you transported alcoholic beverages in a vehicle having no transportation insignia, which vehicle was owned and operated by Robert Grace who had been employed or hired by you to effect such transportation; in violation of Rule 2 of State Regulations No. 17;
2. On or about September 16, 1950, you transported alcoholic beverages in a vehicle, the driver of which did not have in his possession any bona fide invoice or manifest or similar document; in violation of Rule 3 of State Regulations No. 17;
3. On or about September 16, 1950, you knowingly aided and abetted the transportation, by Russell Cooley and William J. Johnson, of alcoholic beverages without requisite license or permit, contrary to R. S. 33:1-2; in violation of R. S. 33:1-52;
4. On or about October 10, 1950, you knowingly aided and abetted the transportation, by Arthur Jones and Joseph Jones, of alcoholic beverages without requisite license or permit, contrary to R.S. 33:1-2; in violation of R. S. 33:1-52;
5. On or about October 24, 1950, you knowingly aided and abetted the transportation, by Ernest Smith, of alcoholic beverages without requisite license or permit, contrary to R. S. 33:1-2; in violation of R. S. 33:1-52;
6. On or about October 24, 1950, and prior thereto, you stored alcoholic beverages not at your licensed premises or a licensed public warehouse or other premises pursuant to special permit; in violation of Rule 25 of State Regulations No. 20.

R. S. 33:1-2 provides, among other things, that it shall be unlawful to transport alcoholic beverages in this state except pursuant to and within the terms of a license or as otherwise expressly authorized under this chapter; but "alcoholic beverages intended in good faith to be used solely for personal consumption may be transported in any vehicle from a point within this State to the extent of, not exceeding one-half barrel, or two cases containing not in excess of twenty-four quarts in all, of beer, ale or porter, and five gallons of wine and twelve quarts of other alcoholic beverages within any consecutive period of twenty-four hours."

As to Charges 1 and 2: On September 16, 1950, an ABC agent and a member of the local Police Department stopped one Robert Grace as he was about to drive away from defendant's licensed premises in a Buick sedan owned by him. Their investigation disclosed that the car contained fourteen cases of bottled whiskey, an amount far in excess of the twelve quarts of whiskey which the driver of the car was permitted to transport for personal consumption in an unlicensed vehicle under the provisions of R. S. 33:1-2. The Buick sedan was not licensed to transport alcoholic beverages in New Jersey. On being further questioned, Grace told a number of conflicting stories, but I am accepting as true his version of this transaction as set forth in a signed and sworn statement obtained during the course of the investigation. In this statement Grace says that he met Mathew Weinstein, an officer of defendant corporation, in the City of New York, and that Weinstein requested him to call at the licensed premises and haul some whiskey back to New York with the understanding that Grace would be paid for his services. Support for the belief that this is the true explanation is found in the fact that, at the time of the seizure, Grace had in his possession three delivery slips with pencil notations respectively as follows: "Coots-113W 135 St-1C PT Hunter"; "Charlie 1c Seags & Feathers-Imperial"; and "Rupp-8PT Seag-2 4/5 Seagra." I conclude that, at the time of the seizure, Robert Grace was acting as agent of defendant corporation and, hence, that defendant is guilty as to Charge 1. It also clearly appears that the three delivery slips were not bona fide invoices or manifests within the meaning of Rule 3 of State Regulations No. 17 and, hence, defendant is also guilty as to Charge 2.

As to Charge 3: On September 16, 1950, a local police officer, after observing a Cadillac car while it was parked in front of defendant's premises, stopped the car for investigation after it had been driven away from defendant's premises and was still within the Borough of Palisades Park. Investigation disclosed that the car was being driven by one William Johnson, and that Russell Cooley (the owner of the car) was a passenger therein. Five cases of whiskey, containing far in excess of twelve quarts of whiskey, were found in the car which was not licensed to transport alcoholic beverages in New Jersey. Russell Cooley (the owner of the car) admitted in a statement given to an ABC agent that he had purchased the whiskey at defendant's premises under an arrangement whereby he was to return within two days and pay the sum of \$202.00 for the whiskey which he was buying for a friend in New York. The transportation was clearly in violation of the provisions of R. S. 33:1-2 and, under the circumstances, defendant is guilty of knowingly aiding and abetting the unlawful transportation, in violation of the provisions of R. S. 33:1-52. Hence, defendant is guilty as to Charge 3.

As to Charge 4: On October 10, 1950, local police officers stopped one Joseph Jones while he was driving, in the Borough of Palisades Park, an Oldsmobile sedan owned by him. Arthur Jones was a passenger in the car. Investigation disclosed that the car contained forty-eight pint bottles of whiskey (an amount in excess of twelve quarts of whiskey), and that the car was not licensed to transport alcoholic beverages in New Jersey. Joseph Jones stated that, at the request of Arthur Jones, he had driven him to defendant's premises so that Arthur Jones might purchase some alcoholic beverages. Arthur Jones stated that he purchased the forty-eight pint bottles of whiskey at defendant's premises for the sum of \$120.00, and that he intended to use the whiskey at a party. It is immaterial whether the alcoholic beverages were intended for personal consumption, because the amount being transported was in excess of the amount which is permitted to be transported for personal consumption. The transportation is in violation of the provisions of R. S. 33:1-2 and, under the circumstances, defendant is guilty of knowingly aiding and abetting the unlawful transportation, in violation of R.S. 33:1-52. Hence, defendant is guilty as to Charge 4.

As to Charges 5 and 6: On October 24, 1950, an ABC agent observed a man carrying two cases of beer from defendant's licensed premises and another man carrying a paper bag (later found to contain six pint bottles of gin) from defendant's premises. The men, and a woman who accompanied them, entered an Oldsmobile car owned by one Ira H. Subin. The agent followed the car to the home of Mathew Weinstein at 900 Edgewater Avenue, Ridgefield, N. J. Later the agent and a local police officer stopped the car as it was leaving the Weinstein home. The driver of the car was Ernest Smith, who resides in New York City. In the car were found three cases of whiskey, in addition to the alcoholic beverages which had been placed in the car at defendant's licensed premises. The car was not licensed to transport alcoholic beverages in New Jersey. The car and liquor were seized. Subsequent investigation disclosed that an employee of defendant corporation had assisted Ernest Smith in removing the three cases of whiskey from the garage attached to Mathew Weinstein's home and placing the same in the seized car. Mathew Weinstein, an officer of defendant corporation, admitted to the ABC agent that he had arranged for Ernest Smith to pick up the whiskey at his home "so that the Palisade Park police would not be able to stop them". The transportation was in violation of the provisions of R. S. 33:1-2 and, under the circumstances, defendant is guilty of aiding and abetting the unlawful transportation, in violation of R. S. 33:1-52. The storage of the alcoholic beverages in the garage of Mathew Weinstein's home was in violation of Rule 25 of State Regulations No. 20. Hence, defendant is guilty as to Charges 5 and 6.

The multiplicity and similarity of pattern of these violations (always involving New York purchasers) induces strong suspicion that defendant was regularly engaged either in volume sales below Fair Trade price or was the source of supply for New York speakeasy operators or bootleggers. It taxes credulity to believe that New Yorkers would come to New Jersey to purchase their requirements of alcoholic beverages (in pints, usually!) unless there was some advantage to be gained either by way of price differential (which is substantially non-existent under Fair Trade price listings in both states) or because of the fact that normally the purchases in New Jersey would not come to the attention of the New York authorities who might suspect ultimate illicit distribution of the merchandise. However, suspicion is not an acceptable substitute for proof, nor do the facts herein warrant the drawing of any inescapable inference of collateral wrongdoing by the licensee.

Defendant has no prior adjudicated record. Under all the circumstances, I shall suspend defendant's license for forty days, with a remission of five days for the plea entered herein, making a net suspension of thirty-five days.

Accordingly, it is, on this 6th day of February, 1951,

ORDERED that Plenary Retail Distribution License D-8, issued by the Borough Council of the Borough of Palisades Park to Anton's Wines & Liquors, Inc., for premises 252 Broad Avenue, Palisades Park, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 9:00 a.m. February 13, 1951, and terminating at 9:00 a.m. March 20, 1951.

ERWIN B. HOCK  
Director.

6. DISCIPLINARY PROCEEDINGS - BOOKMAKING AND GAMBLING - SALE OF LOTTERY TICKETS ON LICENSED PREMISES - SALE OF ALCOHOLIC BEVERAGES TO A PERSON ACTUALLY OR APPARENTLY INTOXICATED - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against  
  
JOSEPH ITALIANO  
T/a PARK TAVERN  
250 Park Avenue  
East Rutherford, N. J.,  
  
Holder of Plenary Retail Consump-  
tion License C-4, issued by the  
Borough Council of the Borough of  
East Rutherford.  
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Leo J. Berg, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

CONCLUSIONS  
AND ORDER

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that he (1) allowed, permitted and suffered bookmaking and gambling on his licensed premises, in violation of Rule 7 of State Regulations No. 20; (2) allowed, permitted and suffered the sale of "lottery" tickets on his licensed premises, in violation of Rule 6 of State Regulations No. 20; and (3) sold and permitted the sale, service and delivery of alcoholic beverages to a person actually or apparently intoxicated and permitted the consumption thereof by such person in his licensed premises, in violation of Rule 1 of State Regulations No. 20.

On January 5, 1951, an officer of the State Police and an ABC agent entered defendant's licensed bar and discovered the bartender employed by defendant apparently engaged in checking information on horse racing results. Upon making a permitted search of the bartender, they found racing slips and "numbers" slips upon his person. While seizing this material, together with the various published information being used by the bartender in his checking activities, they observed one Charles Henry Greene enter the premises. Greene ran away when he observed what was happening. He was quickly caught and a search of his person disclosed "numbers" paraphernalia in his possession. Greene told the officers that he works part time for the defendant and "picks up" the bets taken by the bartender. Both Greene and the bartender allege that their "betting" activities have been going on for some time. Both deny that the defendant had any knowledge of these illegal activities.

During the officers' visit to defendant's licensed premises, a person apparently under the influence of intoxicants entered the licensed premises and was served a glass of beer, part of which he consumed -- part he spilled over himself. The balance of the alcoholic beverage was seized.

Defendant has a prior adjudicated record. In 1941 his license was suspended by the local issuing authority for three days after a plea of guilty to a charge of "sales to minors". His prior record will not be considered in fixing the penalty because of the time which has elapsed since the prior violation was committed.  
Re deSimone, Bulletin 761, Item 13.

Under all of the circumstances, I shall suspend the license for forty days. Remitting five days for the plea will leave a net suspension of thirty-five days.

Accordingly, it is, on this 13th day of February, 1951,

ORDERED that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of East Rutherford to Joseph Italiano, t/a Park Tavern, for premises 250 Park Avenue, East Rutherford, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 2:00 a.m. February 19, 1951, and terminating at 2:00 a.m. March 26, 1951.

ERWIN B. HOCK  
Director.

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

In the Matter of Disciplinary  
Proceedings against

DAVID HOLLANDER  
Raritan Rd. & Central Ave.  
Clark Township  
P.O. RFD 2, Rahway, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-3, issued by the  
Board of Commissioners of the  
Township of Clark.

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 he sold, served and delivered, and allowed, permitted and suffered the service and delivery of an alcoholic beverage on his licensed premises to minors, in violation of Rule 1 of State Regulations No. 20.

On December 15, 1950, two youths, respectively 19 and 20 years of age, were sold and served drinks of alcoholic beverages by a bartender employed by defendant in the licensed premises.

Defendant has a prior record. During the period when he held a license as a partner in a tavern, the license was suspended by the local issuing authorities on the three following occasions: In 1940, for 10 days on charges of possession of slot machines, open after hours, failing to facilitate and hindering and delaying an investigation; in 1944 for 25 days on charge of sales to minors; in 1946 for 30 days on charge of sales to minors. Subsequently, the partnership was dissolved and early in 1950 defendant secured a liquor license for other premises. Carefully considering all the record, I shall, under all the circumstances, suspend defendant's license for 30 days. Five days will be remitted because of the plea, leaving a net suspension of 25 days.

Accordingly, it is, on this 1st day of February, 1951,

ORDERED that Plenary Retail Consumption License C-3, issued by the Board of Commissioners of the Township of Clark to David Hollander, for premises Raritan Rd. & Central Ave., Clark Township, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 a.m. February 8, 1951, and terminating at 3:00 a.m. March 5, 1951.

ERWIN B. HOCK  
Director.

8. DISCIPLINARY PROCEEDINGS - LOTTERY ON LICENSED PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

IRISH AMERICAN ASSOCIATION, INC.)  
95 Kearny Avenue )  
Kearny, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Club License CB-276,  
issued by the Director of the  
Division of Alcoholic Beverage  
Control. )  
- - - - - )

Defendant-licensee, by Patrick McAteer, President.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On divers days between October 1, 1949 and November 30, 1950, you allowed, permitted and suffered a lottery known as 'Irish Fifty-Fifty Booster Club' to be conducted, and possessed, had custody of and allowed, permitted and suffered tickets and participation rights therein in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20."

On December 2, 1950, an ABC agent found in the dance-hall of defendant's premises a barrel containing stubs and a number of discarded tickets which indicated that a drawing had been recently held at defendant's licensed premises. During the course of the investigation the agent obtained from the president of defendant club a signed statement in which he admitted that, for the past thirteen months, a drawing had been held monthly on the licensed premises by the "Fifty-Fifty Booster Club", composed of members of the Irish American Association, Inc. Those who participated purchased tickets at the price of \$1.00 each, and numerous prizes were awarded in accordance with stubs drawn from a barrel. The net proceeds were turned over to defendant club and were used to pay off various loans made to the club.

Defendant has a prior record. Effective July 12, 1948, the local issuing authority suspended its license for a period of five days on a charge of selling alcoholic beverages to non-members. The minimum period of suspension for conducting a lottery on licensed premises is twenty days. Cf. Governor Bar & Grill, Inc., Bulletin 755, Item 2. In view of the prior record, I shall suspend defendant's license for a period of twenty-five days, less five days for the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 13th day of February, 1951,

ORDERED that Club License CB-276, issued by the Director of the Division of Alcoholic Beverage Control to Irish American Association, Inc., for premises 95 Kearny Avenue, Kearny, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. February 20, 1951, and terminating at 2:00 a.m. March 12, 1951.

ERWIN B. HOCK  
Director.



9. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE TO NON-MEMBERS -  
 LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
 Proceedings against

JOYCE KILMER POST #25, THE  
 AMERICAN LEGION  
 17 Codwise Avenue  
 New Brunswick, N. J.,

CONCLUSIONS  
 AND ORDER

Holder of Club License CB-70, issued  
 by the Director of the Division of  
 Alcoholic Beverage Control.

Joyce Kilmer Post #25, The American Legion, Defendant-licensee, by  
 Michael Puskas, Commander.  
 Vincent T. Flanagan, Esq., appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold,  
 served and delivered alcoholic beverages to persons not bona fide  
 members or bona fide guests of such members, in violation of Rule 8  
 of State Regulations No. 7.

On January 9, 1951, two agents of the State Division of Alco-  
 holic Beverage Control, neither of whom was a member, the guest of a  
 member, or a member of any other Post of the American Legion, entered  
 the defendant's premises and were sold and served beer by the bar-  
 tender then employed therein.

Defendant has no prior adjudicated record. I shall suspend the  
 license for the minimum period of fifteen days. Re Ridgefield Park  
Post #40, American Legion, Bulletin 897, Item 6. Remitting five days  
 because of the plea will leave a net suspension of ten days.

Accordingly, it is, on this 30th day of January, 1951,

ORDERED that Club License CB-70, issued by the Director of the  
 Division of Alcoholic Beverage Control to Joyce Kilmer Post #25, The  
 American Legion, for premises 17 Codwise Avenue, New Brunswick, be  
 and the same is hereby suspended for a period of ten (10) days, com-  
 mencing at 2:00 a.m. February 5, 1951, and terminating at 2:00 a.m.  
 February 15, 1951.

ERWIN B. HOCK  
 Director.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Charles B. Kane

Main & Cedar Sts. (In Rear), Tuckerton, N. J.

Application filed February 14, 1951 for Transportation License.

Quality Warehouse Corp.

Rear of 1702 Federal St., Camden, N. J.

Application filed February 14, 1951 for Public Warehouse License.

Quality Trucking Co.

Rear of 1700-1702 Federal St., Camden, N. J.

Application filed February 14, 1951 for Transportation License.

Jay-El Beverages, Inc.

1702 Federal St., Camden, N. J.

Application filed February 14, 1951 for State Beverage  
 Distributor's License.

*Erwin B. Hock*  
 Director.