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

BULLETIN 958 MARCH 3, 1953.

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BULLETIN 958 MARCH 3, 1953.

1. APPELLATE DECISIONS - THE EBONY CORPORATION AND SYLVIA COHEN v. TRENTON.

THE EBONY CORPORATION and SYLVIA COHEN, t/a EBONY CAFE,

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF TRENTON,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Saul C. Schutzman, Esq., Attorney for Appellants.
Louis Josephson, Esq., by John A. Brieger, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action suspending the plenary retail consumption license of The Ebony Corporation, appellant, for a period of ninety days and imposing certain conditions upon the license if transferred to another person prior to June 30, 1952.

Upon the filing of the appeal an order was entered herein, on May 8, 1952, staying respondent's action pending the hearing of the appeal and the entry of a further order herein.

The Ebony Corporation, appellant, was incorporated in November of 1951. Shortly after its organization, appellant-corporation filed with respondent an application for transfer to it of Plenary Retail Consumption License C-130 held by Albert Eardley for premises at 225 North Clinton Avenue and 265 Kossuth Street, Trenton. The transfer was granted on November 15, 1951.

On April 14, 1952 respondent instituted disciplinary proceedings against The Ebony Corporation charging:

> "In your application, filed with the Board of Commissioners of the City of Trenton, and upon which you obtained your current plenary retail consumption license for the period 1951-1952, you knowingly misstated a material fact, under oath, in said application in answer to question 27(c), viz., 'If your answer to question 27(a) is 'Yes,' answer the following question, namely: Have you been a bona fide resident of Mercer County for three years prior to filing this application, as required by municipal ordinance?' Your answer was 'Yes.' whereas, in truth and fact Wilmer Gross, President and holder and owner of 50% of stock issued and outstanding, and Selma Gross, Secretary and Treasurer and holder and owner of 49% of stock issued and outstanding of the licensee corporation, were not bona fide residents of Mercer County for three years prior to filing the application as required by ordinance #41, as amended and supplemented, such false statement being in violation of R. S. 33:1-25, which section reads as follows:
>
> > 'All applications shall be duly sworn to by each of the applicants ... and except in cases of applications by corporations which shall be duly sworn to by the president or vice-president.

All statements in said applications required to be made by law or by rules and regulations shall be deemed material, and any person who shall knowingly misstate any material fact, under oath, in said application shall be guilty of a misdemeanor. Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for suspension or revocation of the license.'"

A scheduled hearing on the charge was adjourned until May 5, 1952, at which time The Ebony Corporation (represented by an attorney other than the attorney herein) pleaded non vult. On May 8, 1952, pursuant to a motion adopted on May 5, 1952, respondent unanimously adopted the resolution from which this appeal was taken. The resolution (No. A1046) reads:

"Whereas, the Board of Commissioners of the City of Trenton on May 5th, 1952, heard the charge against The Ebony Corporation, a corporation of the State of New Jersey, holder of License C-130 for premises #225 North Clinton Avenue and #265 Kossuth Street, Trenton, New Jersey, for a violation of the Statutes of New Jersey, R. S. 33:1-25, and said licensee having pleaded non-vult to said charge, it is therefore

"RESOLVED, by the Board of Commissioners of the City of Trenton that said License C-130, issued to The Ebony Corporation be and the same is hereby suspended for the balance of its term, effective Monday, May 12, 1952 at 2:00 A. M.; and be it further

"RESOLVED, that any renewal of said license issued to any transferee shall remain under suspension until Sunday, August 10, 1952, 5:00 P. M.; and be it further

"RESOLVED, that said licensee be and hereby is granted the privilege to transfer said license during the period and in the manner provided by law and the rules and regulations made in pursuance thereto; such transfer being hereby made subject to the following terms, provisions and conditions which shall be endorsed on said license and be binding upon all subsequent transferees and assignees, to wit:

"1. That Herbert Gross, Wilmer Gross, Selma Gross and Frederick J. Gallo are not to be permitted to be on or about the licensed premises at any time.

"2. No 'jam sessions' are to be permitted on the licensed premises.

"3. That the place is to close at twelve midnight every night; and be it further

"RESOLVED, that all the members and beneficial owners of the stock of said licensee corporation be and the same is hereby declared forever ineligible to hold, either directly or indirectly, any license or interest therein for the sale of intoxicating beverages within the City of Trenton...."

By Resolution No. A1049, adopted May 8, 1952, respondent granted Sylvia Cohen's application for transfer of appellant-corporation's license to her, subject to the serving of the ninety-day suspension theretofore imposed upon appellant-corporation, and subject to the same three special conditions as those set forth in Resolution No. A1046 concerning appellant-corporation.

After the institution of this appeal Sylvia Cohen was admitted, on her motion, as a party appellant herein.

The Division's records show that by Resolution No. A1194, adopted June 26, 1952, respondent granted Sylvia Cohen's application for 1952-1953 renewal of License C-130, subject to the same three special conditions as those imposed in Resolution No. A1049, and "subject to any and all conditions occurring or that may attach thereto as a result of any proceedings now pending in connection with said license or licensed premises, and subject to any and all penalties heretofore imposed by the Board of Commissioners of the City of Trenton and temporarily stayed pending the determination of an appeal to the State Department (Division) of Alcoholic Beverage Control...."

The Petition of Appeal alleges: (1) that the "sentence" imposed against The Ebony Corporation by respondent "is oppressive, unreasonable, capricious, unlawful, being in the form of special legislation, discriminatory, and in violation of its own ordinance..."; (2) that the residence ordinance "is wholly unreasonable, without any reasonable relationship to sound liquor control and is in conflict with the statutory regulations dealing with the right of corporate licensees"; and (3) that the three special conditions (Re: designated persons not to be permitted upon the licensed premises; prohibition of "jam sessions" thereon; and midnight closing) "were imposed without any prior notice of any hearing regarding such conditions and was without due process of law, and is without foundation or basis in law or fact ... is illegal and discriminatory against the license, The Ebony Corporation, and was imposed without any authority by statute".

Despite the non vult plea entered at the Hearing below the Attorney for appellant, The Ebony Corporation, offered to produce evidence at the Hearing herein to show that Wilmer and Selma Gross had in fact been bona fide residents of the County of Mercer for three years prior to the filing of appellant-corporation's application for license transfer in November of 1951. Respondent objected to the introduction of testimony or evidence in such matter in view of the non vult plea below -- the argument being that "The man admitted it" in the plea and, therefore, that no question as to guilt may be raised in this appeal. The Hearer permitted introduction of testimony on the point of Mercer County residence subject to the submission of briefs on the legal question as to the effect, herein, of the plea below. I approve the Hearer's ruling in the matter under the particular circumstances. I have read the briefs subsequently submitted. It is settled that in a criminal proceeding a plea of non vult has the same effect as a guilty plea. State v. Griffith, 14 N. J. Super. 77, 84, citing State v. Alderman, 81 N. J. L. 549 (E. and A. 1911) and Kravis v. Hock, 136 N. J. L. 161 (E. and A. 1947). The penalty herein appealed from was imposed not in a criminal proceeding but in disciplinary proceedings authorized by R. S. 33:1-31. The non vult plea was entered by appellant-corporation with competent counsel of its own choice. Fully mindful of the de novo provision, Rule 6 of State Regulations No. 15, I nevertheless believe it extremely doubtful that appellants have a legal right in this appeal to question or attack respondent's finding of guilt in the face of the plea. I have, however, gone into the testimony adduced and consideration of the merits leads to the same result.

The "residence" ordinance herein question was finally adopted by the Board of Commissioners on June 7, 1945. It reads:

"No license shall be issued or transferred to any natural person or to any corporation unless such natural person or all the beneficial holders of the capital stock of such corporation, directly or indirectly, shall have been residents of the County of Mercer for at least three years continuously immediately preceding his or its application for such license; provided, however, that the provisions of this section shall not apply in the case of the renewal of any license presently outstanding...."

The ordinance was not effected in the usual manner pursuant to R. S. 40:49-2. It was adopted by the Trenton voters at a "Walsh Act" Referendum, pursuant to R. S. Title 40, Chapter 74, at the general election held on November 6, 1945. The votes were: "Yes" - 13,947; "No" - 5,391.

Appellant-corporation's application for transfer of the Eardley license was filed in November of 1951. During the City's routine investigation of the application Wilmer Gross represented that prior to moving into a Trenton apartment on December 28, 1949 he had been in the home improvement business in Philadelphia, Pennsylvania, in Wilmington, Delaware, and in Trenton; that he and his wife, Selma Gross, had lived with Mrs. Gross' parents at their Philadelphia home and at an apartment, rented from month to month, in Wilmington; and that they had also resided at the home of Frank Devin, at 212 Buckingham Avenue, Trenton, starting sometime in April or May of 1948. In connection with the application for transfer, and at the request of Wilmer Gross, Frank Devin made a written statement to the effect that Wilmer and Selma Gross had lived or stayed at his home for a certain period of time, but Mr. Devin later made a written retraction thereof. He testified: "I signed this letter (the retraction) because when I came back to Trenton from New York one day, my wife told me that the City of Trenton was over and asked her if Mr. Gross lived there."

Frank Devin testified, further, that in January, February, March or April of 1948 ("I don't recall the exact time") Wilmer Gross and his wife "stopped in my office. They told me who they were. I heard my parents mention Grosses and he introduced himself to me. He told me he was going to go into business in Trenton. He would like to get a place of business to operate from, a house to live in or apartment and asked me if I'd look around for him and see if I could find one. In the meantime I suggested -- I don't know the exact words I used -- whether he could live at my home or stay over in Trenton or my house is yours when you're in Trenton, you can sleep at my home or stay at my home. That's what I implied, he could sleep there." In April or May of 1948, he (Wilmer Gross) "was over one night and said, 'Is it all right to sleep over?'. I said, 'Yes, I won't be home.' I gave him a key to go in and when he left he gave me the key. He returned the key to me." Frank Devin further testified that from the time of the first such visit (in April or May or 1948) to the time of the last such visit (in August, September, October or November of 1949) Wilmer Gross stayed overnight at his home "approximately seven or eight times, slept there ... He returned the key at any time after he had slept there" and "didn't come there and stay like I go home from work and hang my hat up and stay." Frank Devin testified, further, that Selma Gross stayed overnight with her husband at the Devin home "on two or three occasions."

Wilmer Gross testified to the same effect as Frank Devin with respect to their first meeting and the number of occasions on which he and Mrs. Gross stayed overnight at Devin's home in Trenton. "After the first time that I went to see him I told him I'd like to take advantage of the offer he made and if he didn't mind. He didn't mind at all since his wife was out of town. It would cause him no inconvenience, which I agreed to."

Mrs. Frank Devin testified that to her knowledge neither Wilmer nor Selma Gross had ever stayed at her home on Buckingham Avenue: "They have never stayed there to my knowledge that I saw them but when this difficulty came up -- if that's what you would call it -- when I asked my husband to sign the retraction he advised me that on different occasions when I was out of town they stayed there. Now, I can only go by what my husband tells me."

It appears that Wilmer Gross began conducting business transactions in Trenton in 1947 and that he and his wife, from April or May of 1948, had the desire and intention to establish residence in Trenton. It is altogether clear from the testimony, however, that from April or May of 1948 until December of 1949 Wilmer and Selma Gross were residents of Philadelphia or Wilmington. Originally residents of the State of Pennsylvania, they did not take up residence animo manendi in New Jersey and become bona fide residents of Mercer County until they obtained their apartment in Trenton and established their home there on December 28, 1949. Hence, I find The Ebony Corporation guilty as charged in the disciplinary proceedings.

As hereinabove noted the legal efficacy and applicability of the City's residence ordinance are questioned. In this connection it is to be pointed out that an ordinance concerning local residence in qualification for license is not among those requiring the State Director's approval under R. S. 33:1-40, nor is such an ordinance subject to review by the Director on an appeal pursuant to R. S. 33:1-41. There is doubt as to administrative authority to declare an ordinance invalid (see Phillipsburg v. Burnett, 125 N.J.L. 157) and certainly the doubt is substantial where, as here, the ordinance was adopted by referendum vote. In any event, I do not find the ordinance to be in derogation of R. S. 33:1-25. I find the ordinance to be reasonable in its application in the case before me.

The ordinance's exception relates only to the renewal of licenses outstanding when the ordinance became effective in 1945. Obviously the measure's exception does not extend to transfers of such licenses and the instant case is one concerning transfer.

The penalty imposed by respondent is a heavy one, but I do not find that it is manifestly excessive so as to call for or warrant a reduction thereof in the appeal. Cf. Laurence Harbor Amusement Corporation v. Madison, Bulletin 955, Item 1, and cases cited therein; Triano v. Bloomfield, Bulletin 677, Item 10. There is not the slightest evidence herein of any improper motivation on the part of respondent and it would seem likely that in imposing the penalty the Board was particularly mindful of the fact that the violated ordinance was adopted by the voters. Any request for lessening of the penalty should be addressed, if at all, to respondent Board. Cf. Triano v. Bloomfield, supra.

As to the Special Conditions: In disciplinary proceedings a municipal issuing authority has jurisdiction to suspend or revoke a license. (R. S. 33:1-31.) In such proceedings it has no jurisdiction to impose a special condition. Thus, the three special conditions purportedly imposed against The Ebony Corporation by respondent's resolution of May 8, 1952 must be disapproved.

Special conditions are authorized, by R. S. 33:1-32, to be imposed "to the issuance of any license." I believe that the intendment and effect of the section is to authorize special conditions not only upon original issuance or renewal of license but transfers as well. And no hearing need be afforded the licensee or transferee against whom special conditions are imposed. There is no provision in our State Alcoholic Beverage Law requiring that a hearing be held with respect to special conditions.

As hereinabove noted the original three conditions were again imposed by respondent's resolution of May 8, 1952 granting transfer to Sylvia Cohen, and again by the resolution of June 26, 1952 granting Sylvia Cohen's application for 1952-1953 renewal. The respondent had jurisdiction to impose the special conditions upon the Sylvia Cohen license subject, of course, to the State Director's approval (R. S. 33:1-32). The conditions, to repeat, are: (1) that Wilmer and Selma Gross and Herbert Gross (bartender) and Frederick J. Gallo (bartender and manager) are not to be permitted to be on or about the licensed premises at any time; (2) no "jam sessions" are to be permitted on the licensed premises; and (3) the place is to close at midnight every night.

As to Special Condition (1): Considering the nature and operation of the licensed establishment it seems obvious that the Grosses and Gallo would not be present there merely as patrons. Apparently, respondent (because of its experience concerning the violation of the "residence" ordinance, and because of official reports to it as to laxity in the operation of the place) sought to guard against a "front" situation in which the Grosses might continue, undisclosed, their interest in the licensed business. Under the circumstances I find the special condition to be reasonable and it is approved.

As to Special Condition (2): In Webster's New International Dictionary (Second Edition, Unabridged) "jam session" is defined as follows: "Swing Music. A meeting of musicians for playing without scores in the impromptu swing-music style for their own entertainment."

Tying in with this definition is the pertinent testimony of Mrs. Edith H. Moore, Alcoholic Beverage Inspector for the City of Trenton. On cross-examination she was asked: "... just what is a jam session?" Her reply was, in part: "A jam session, as I understand it, is the getting together of musicians from all parts of the State, perhaps there will be a very excellent drummer who is engaged in a certain tavern in a municipality who says there is going to be a jam session at so and so in Trenton, Princeton, and they will have a car ready. He will take maybe a half hour or hour and come down and play one or two numbers. They visit back and forth between the taverns that way and they call them jam sessions."

Called as a witness on behalf of appellants, Frank Barelkowski, a Trenton policeman whose beat included the premises of The Ebony Corporation, was asked: " ... would you say that the operation of the tavern, namely, The Ebony Corporation, in so far as limited noises or disturbances or operation of their place properly with jam sessions and until the hour of two o'clock, the closing hour, is good, bad or indifferent?" He answered: "I'd say it was good." But Mrs. Edith H. Moore, Alcoholic Beverage Inspector for the City of Trenton since December 6, 1933, testified that there had been numerous complaints, from persons residing in the neighborhood, with respect to the jam sessions at The Ebony Corporation on Monday and Thursday nights. At the Hearing herein Mrs. Moore was asked: "Did you have the opportunity to observe the effects of these jam sessions on patrons?" She replied: "Yes. I spoke to Mr. Gross and Mr. Gallo about it. We have found jam sessions in Trenton are terrifically hard ... I personally told Mr. Gross. I rode down on the bus with lots of ... patrons from South Trenton to his saloon on the nights of the jam sessions. Now, the other two saloons in his area close at half past eleven and one o'clock and, consequently, he gets the influx of all those taverns that close before midnight or before the closing hour of two. It's a terrific problem." She testified, further, that when there are jam sessions "your crowds are tremendous, particularly at this place ... Most of the fights that -- complaints that I receive were following jam sessions. That is, complaints from neighbors."

I am convinced, from the testimony and attendant circumstances, that respondent was amply justified in imposing this special condition. I find the condition to be reasonable, and it is approved.

(It is to be borne in mind by all concerned that the term "jam sessions" in the condition imposed by the respondent and here approved was obviously used, and hence must be construed, in the limited sense of the applicable definition above recited. Thus the condition does not prohibit the playing of music by a conventional orchestral group.)

As to Special Condition (3): Trenton's ordinance fixes the closing hour at 2:00 A.M., and respondent has no jurisdiction to fix an earlier closing hour by special condition. Cesar v. Trenton, Bulletin 951, Item 2. This special condition is disapproved and held to be of no legal force or effect.

As hereinabove set forth respondent's resolution of May 8, 1952 (suspending the license of The Ebony Corporation) provides that: "All the members and beneficial owners of the stock of said licensee corporation be and the same is hereby declared forever ineligible to hold, either directly or indirectly, any license or interest therein for the sale of intoxicating beverages within the City of Trenton..." The declaration of permanent disqualification is without legal authorization or effect. If and when any of the indicated persons is a party to an application for license in the City of Trenton, respondent may, in its discretion and subject to appeal to the State Director, grant or deny such application. Cf. Cesar v. Trenton, Case No. 2, decided February 2, 1953, not yet published in Bulletin.*

The suspension and the approved special conditions will apply to the license held by Sylvia Cohen for the present license year. (State Regulations No. 16.)

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

ORDERED that the order entered herein on May 8, 1952, staying respondent's action suspending the license and imposing the special condition, be and the same is hereby vacated, effective February 17, 1953, at 2:00 A.M.; and it is further

ORDERED that respondent's action imposing the ninety-day suspension be and the same is hereby affirmed, and that the appeal therefrom be and the same is hereby dismissed, and it is further

ORDERED that Plenary Retail Consumption License C-130 issued by the Board of Commissioners of the City of Trenton to Sylvia Cohen, t/a Ebony Cafe, for premises at 225 North Clinton Avenue and 265 Kossuth Street, Trenton, be and the same is hereby suspended for a period of ninety (90) days, effective at 2:00 a.m. February 17, 1953, and terminating at 2:00 a.m. May 18, 1953, and it is further

ORDERED that, effective immediately, said license is subject to the following special conditions:

1. That Herbert Gross, Wilmer Gross, Selma Gross and Frederick J. Gallo are not to be permitted to be on or about the licensed premises at any time.

2. No "jam sessions" are to be permitted on the licensed premises.

DOMINIC A. CAVICCHIA
Director.

*Now published as Item 1, Bulletin 957.

2. APPELLATE DECISIONS - SANTORE v. WEST NEW YORK.

KATHERINE SANTORE and FRANK SANTORE, trading as HAPPY LANDING,

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE TOWN OF WEST NEW YORK,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Maurice J. Frager, Esq., Attorney for Appellants.
Hirschberg, Nashel, Zorn & Cronson, Esqs., by Samuel L. Hirschberg, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's order of December 1, 1952, effective at 6:00 p.m. of that same day, revoking appellants' plenary retail consumption license for premises 6217 Hudson Avenue, West New York, after appellants were found guilty of the following charges:

"1. On or about June 2nd, 1952, you, the licensees, made application to the Board of Commissioners of the Town of West New York, New Jersey, for Plenary Retail Consumption License relating to premises No. 6217 Hudson Avenue, West New York, New Jersey.

"In the said application you, the licensees, made the following answer to the following question:

Q: Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?

A: No.

"That the said answer was untruthful in that Daniel Santore, the husband of Katherine Santore, was directly and indirectly interested in the license applied for and in the business to be conducted under said license, that based upon the answer to the question aforesaid, the issuing authority approved of said application and issued license No. C-52; that you knowingly misstated a material fact under oath in said application, that the said answer to the said question was a false and misleading statement and that the said license was, therefore, obtained through fraud and misrepresentation in violation of R. S. 33:1-25, Section 25.

"2. On or about November 5th, 1952, and prior thereto, you the licensees, knowingly employed and had connected in a business capacity with you, Daniel Santore, who was convicted of a crime involving moral turpitude in violation of Rule 1, State Regulations No. 13.

"3. On or about November 5th, 1952, and prior thereto, you, the licensees, allowed, permitted and suffered in and upon the licensed premises gangsters, racketeers, and other persons of ill repute in violation of Rule 4 of State Regulations No. 20.

"4. That you, the licensees, permitted and suffered the licensed place of business to be conducted in such manner as to become a nuisance in violation of Rule 5 of State Regulations No. 20."

In Paragraph 5 of their petition of appeal, appellants contend that respondent's action in finding them guilty and in revoking their license as hereinabove recited was erroneous in fact and law because:

"A. The evidence failed to sustain any finding of guilt.

B. The find of guilt was contrary to the evidence.

C. Respondent abused its discretion in making the aforesaid findings and in imposing the aforesaid revocation.

D. Respondent admitted evidence which was illegal and incompetent."

Respondent by its answer denied the allegations of said Paragraph 5 of appellants' petition of appeal.

When the appeal was filed, I entered an order denying a stay of respondent's order of revocation pending determination of the appeal. See R. S. 33:1-31.

On this appeal the matter was heard de novo under Rule 6 of State Regulations No. 15 solely upon evidence adduced herein. No part of the record below was introduced in evidence on this appeal.

Some of the evidence herein relates to both charges 1 and 2 and may be summarized as follows: Appellants admitted that in October 1950 Daniel Santore, husband of Katherine Santore and brother of Frank Santore, was convicted in a federal court of the crime of receiving stolen goods in interstate commerce and that such fact was known to them. Since that crime involves moral turpitude (Re Case No. 620, Bulletin 880, Item 10; Re Case No. 744, Bulletin 839, Item 4), Daniel Santore was by his conviction thereof rendered ineligible to hold a license or to be employed by or connected in any business capacity whatsoever with a licensee in New Jersey. R. S. 33:1-25, 26. (His similar disqualification resulting from convictions of grand larceny in 1937 and robbery in 1929 was removed on January 23, 1945, pursuant to his petition filed under R. S. 33:1-31.2.)

The license application filed by Katherine Santore and Frank Santore, and upon which their current license was issued, was introduced in evidence. It sets forth, in effect, that they alone are the applicants and that no other person has any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license. Both appellants maintained this same position in their testimony on this appeal and each claimed to have paid one-half ($3,750.00) of the $7,500.00 purchase price when the license was transferred to them in 1948. Katherine Santore testified that she had approximately $2,000.00 at home and borrowed the balance from two sources, her father (now 74) and a finance company. On cross-examination she testified that the $2,000.00 which she had at home represented moneys which she had saved from her own earnings and those of her husband, Daniel Santore, over a period of years and she estimated that approximately $600.00 of the $2,000.00 consisted of moneys which she had saved out of her husband's earnings. Frank Santore testified that he had $900.00 saved and had borrowed $2,800.00 from his mother (now 67) to make up his share of the purchase price. Both appellants denied receiving any money directly

from Daniel Santore toward their shares of the purchase price. No documentary evidence was produced in support of this testimony, nor were any of appellants' books or records produced at the hearing despite the fact that Frank Santore testified that an accountant takes care of their books. Several years ago appellants abandoned their checking account and now deal entirely in cash. They give as their reason for discontinuing the checking account the bank's service charges which, they claim, amounted to $3.00 or $4.00 per month. Respondent, however, in its memorandum, adverts to the fact that all appellants' business was "transacted in cash" as an indication that this was "a family enterprise".

Respondent produced numerous witnesses who testified that Daniel Santore had been seen in appellants' licensed premises frequently over a considerable period of time. A policeman and one Edward K---, a patron, testified that on several occasions Daniel Santore had been behind the bar of appellants' tavern serving drinks to them and other customers. A number of the policemen who participated in the arrest of Daniel Santore in said licensed premises in the early morning hours of November 5, 1952, testified that, when they entered, Daniel Santore was alone behind the bar. Captain Gleitsman who was in charge of that police detail testified that Daniel Santore handed him the keys when the police decided to close and lock the licensed premises upon making the arrest. The appellants denied that Daniel Santore ever tended bar at their licensed premises and further denied that he performed any services there or exercised any supervision over the licensed business, explaining that Katherine Santore spends a great deal of time in the tavern and runs the business with the help of the day bartender, her father, and the night bartender, one Edward Heiser who works as a truck driver during the day. Frank Santore testified that he formerly tended bar at the licensed premises but quit because he could not earn enough money at it and that he has been otherwise employed for the past several years and visits the tavern for short periods several times a week. He testified that he now draws $10.00 per week whereas his partner Katherine Santore draws $35.00 to $40.00 per week because she devotes more time to the business. The bartenders both denied that Daniel Santore ever tends bar there or that he ever gives orders. However, at one point in his cross-examination Heiser testified that he received $30.00 per week as night bartender and, when he was asked "Who would give you the $30.00?", he answered "Either Dan -- either Frank or Kitty."

Daniel Santore also denied having tended bar at appellants' licensed premises or performing any services there, claiming that he worked as a carpenter and obtained work through the Union hiring hall. He testified that he worked at various locations during the year 1952 but failed to supply any other evidence to substantiate this claim. He and Heiser endeavor to explain his (Daniel's) presence behind the bar when the police entered the licensed premises on November 5, 1952, by claiming that Heiser was on duty that night but left his station behind the bar to fix a loose wire on the television set and that he asked Daniel, who they claim was upon the licensed premises as a patron, to go behind the bar to obtain a screw driver from a cabinet located behind the bar and that, at that precise moment, the police walked in. Heiser claims that he was "chased out" by the police, leaving Daniel in the tavern. However, Captain Gleitsman testified that no one was permitted to leave the tavern after the arrest until separately and individually identified; that there were only three couples and one lone male on the premises besides Daniel Santore and the police; and that Heiser was not among them. I do not believe the attempted explanation given by Heiser and Daniel Santore.

In the written statement which Daniel Santore gave to the police on the morning of his arrest he referred to appellants' licensed premises as "my tavern" and, at another place, stated, "I work at the Happy Landing Tavern located 6217 Hudson Avenue, West New York, N. J." Appellants contend that this statement was "exacted by physical force and certainly was not voluntary." In support of that contention, Daniel Santore testified that he was not taken directly to police headquarters when he was arrested in the early morning hours of November 5, 1952, but, instead, was taken to 60th Street and River Road where he was beaten and kicked and then taken to headquarters where the statement was taken. He further testified that while the statement was being taken he started to feel pain and requested a doctor but was told he would not receive medical treatment until after he signed a statement. He also testified that the detectives took two statements because the first statement was unsatisfactory to them for the reason that it did not link him with the money which had been stolen in the then recent payroll holdup at the John Kiss & Sons plant.

The detectives admitted that Daniel Santore had a smear of blood on the side of his face when he was brought to police headquarters, but denied that he was beaten or refused medical attention during the taking of the statement. They testified that Daniel Santore was informed of his rights and privileges and that he voluntarily answered the questions put to him. They further testified that two statements were taken because Daniel Santore refused to sign the first statement for the reason that it contained a statement which was untrue, namely, that he had handed over to one John K---, in appellants' licensed premises, part of the loot from the John Kiss & Sons holdup, whereas, he said, that incident had occurred outside of the tavern. It was admitted that after the second statement was signed Daniel Santore was treated by a physician for a small cut over one eye, his ribs were taped and his hand, which was swollen, was immersed in cold water, but the detectives testified that Daniel Santore made no request for medical treatment until after the statement was obtained and that the doctor was then called.

While it appears that Daniel Santore had a slight cut or, as Captain Gleitsman characterized it, a "scratch" above one eye which the doctor covered with an adhesive bandage approximately 1/2 inch long and a swollen hand or wrist and complained of soreness in his ribs, he apparently was in possession of all of his faculties and was not badly hurt. Incidentally, I must attach some significance to the fact that the physician was not produced as a witness. The Hearer who presided at the hearing on this appeal compared a genuine signature produced by Daniel Santore with his signature on the police statement and found that except for the fact that it showed "some possible unsteadiness" it compared favorably with the genuine sample. Whatever happened to Daniel Santore, by his own admission, took place some time before the statement was taken, and it is not even claimed that he was beaten or threatened by the detectives who took the statement. The only evidence to negative the recital in the statement itself that it was voluntarily given is Daniel's claim that he made the statement to obtain medical treatment. This was denied by the detectives who testified that no request was made for such treatment until after Daniel had signed the statement. Considering all of the credible evidence, and in view of the fact that Daniel Santore must, of necessity, be viewed as an interested party in so far as this very damaging statement is concerned, I find that the statement was a voluntary statement and was properly received in evidence for the purpose of corroborating other competent evidence (which it does).

Under the rules relating to appeals, the burden of establishing that the action of respondent was erroneous and should be reversed rests with the appellants. Rule 6 of State Regulations No. 15. On the record before me I find that appellants have failed to carry such burden. With particular reference to charge 2, see Re William Street Bar and Grill, Inc., Bulletin 466, Item 8; Re Gutman, Bulletin 936, Item 4; Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948).

The balance of the evidence relates to charges 3 and 4.

Respondent produced as a witness the bookkeeper of John Kiss & Sons Textile Mills, 5701 Park Avenue, West New York, who testified that at "... a little before 11 o'clock in the morning" of October 23, 1952, after she had finished making up the payroll, a man walked in, pointed a gun at her, and told her it was "a stickup", after which he placed the money in a brown paper bag.

Respondent also produced as witnesses three young men who admittedly have frequented appellants' licensed premises for periods ranging from several months to a year. One, Edward D---, is a parolee and, at the time of the hearing, one, John K---, was awaiting trial for alleged conspiracy in the John Kiss & Sons holdup, while the other, Edward K---, had confessed to three robberies and was awaiting sentence. Edward K---, whose testimony was substantially uncontradicted, testified that he had discussed the sale of a revolver with Daniel Santore in appellants' licensed premises and that ultimately he sold such revolver to Daniel Santore in the barroom of the licensed premises. He further testified that Daniel Santore asked him if he had ever thought of robbing his uncle's payroll; that, when he said that he had, Daniel Santore told him "... if it was worth while he did have people that could do it"; that he had seen Daniel Santore and John K--- in appellants' licensed premises on the morning of the John Kiss & Sons payroll holdup; that one "Mickey" and two other men (strangers) were also there; that these persons conferred in low tones in the rear room of the tavern; that, when he (Edward) went to the rear room, Daniel asked him to "go up front"; that these men left the premises and returned some time later that same morning; that one of the strangers had a brown paper bag under his arm and that all of the aforementioned men went into the back room. Edward K--- also testified that he and John K--- had discussed and planned several payroll holdups (including one at John Kiss & Sons, but that he had "backed out" at the last minute); that one of the places involved is in an alley in the rear of appellants' tavern and that some of these conversations had taken place while he and John K--- were seated together at the bar in appellants' tavern. John K---, who declined to answer most of the questions put to him on the ground that his answers might tend to incriminate him, confirmed these conversations. However, both Edward K--- and John K--- testified that none of these conversations had taken place while the licensees were on the licensed premises, that they always talked in normal conversational tones and that, so far as they knew, their conversations were not overheard by anyone connected with the licensed premises. The appellants and their bartenders denied any knowledge of the conversations between Edward K--- and John K---. Thus, while such conversations were admissible to show the character of the premises and the matters and things which occurred there, in the absence of any proof from which it may be inferred that the appellants or their employees were in a position to overhear them, I shall disregard them. I shall also disregard the claim of Edward K--- that, on the day of one of the robberies in which he was involved, he visited appellants' licensed premises to establish an alibi, since such fact does not appear to have been communicated to anyone. On the other

hand, I have hereinabove affirmed respondent's finding of guilt as to charge 2 with respect to the employment of Daniel Santore by appellants and therefore I shall consider his acts and conversations on the licensed premises. Rule 31 of State Regulations No. 20; Re Schumacher, Bulletin 901, Item 5.

Daniel Santore testified that he was not on the licensed premises on the day of the John Kiss & Sons payroll robbery but admitted that he knew a man named "Mickey"; that "Mickey" and John K--- were talking together in the licensed premises shortly before the John Kiss & Sons payroll holdup; and that, when John K--- walked away Mickey said to him (Daniel) "How's this Johnnie?", to which he (Daniel) replied, "Why he's all right." No attempt was made by appellants to explain the meaning of this conversation. It is urged by respondent that the "permissible inference" is that Daniel Santore assured "Mickey" that John K--- "was all right to work with in executing the proposed John Kiss payroll robbery."

Detective Kenny testified that Daniel Santore had told him certain things all of which are contained in the statement which Daniel Santore gave to the police on the morning of his arrest, as follows: that, approximately a week before the John Kiss & Sons payroll robbery he introduced John K--- to "Mickey" because John K--- had "a job" in mind that he wanted to talk over with "Mickey"; that "Mickey" introduced John K--- to two men known only as "Tommy" and "Willie"; that a week later John K--- and "Tommy" and "Willie" were in "my tavern" at 9:00 a.m.; that they left together and "Tommy" returned at approximately 11:30 a.m., and handed him (Daniel) a brown paper bag which "Tommy" said contained $1760.00 and that John K--- would call for; that he (Daniel) agreed to hand it over to John K--- as requested by "Tommy"; that John K--- walked in at approximately 2:00 p.m. that same day and asked if "Tommy" had left a paper bag for him; that he (Daniel) answered "Yes" and gave John K--- the paper bag containing $1760.00 but had no suspicion with respect to the money until he read of the holdup in the newspaper the following morning.

In his testimony Daniel Santore denied any knowledge of the John Kiss & Sons payroll robbery and denied the contents of his written statement except for the incident involving "Mickey" and John K--- as hereinabove recited. He did not deny the conversations with Edward K---, nor did he deny the purchase of the revolver from him in the barroom. He admitted on cross-examination, that he had known that Edward K--- was involved in one of the three robberies to which the latter has confessed.

The appellants denied all of the charges.

I am satisfied that, despite the unenviable criminal record of Daniel Santore and the admitted criminal activities of Edward K--- and the possible criminal tendencies of John K---, "Mickey", "Tommy" and "Willie", the evidence falls short of establishing that the licensees permitted upon the licensed premises "gangsters, racketeers, and other persons of ill repute" as alleged in charge 3. (A criminal is not necessarily a gangster or racketeer since these are specific types of criminals. Whether a person is of ill repute depends upon his reputation and not upon his criminality, and, more importantly in these disciplinary proceedings, upon affirmative proof of such reputation.) Cf. Re Silver, Bulletin 441, Item 12; and Re Gedney, Bulletin 60, Item 5. So much of the respondent's order as affects charge 3 is reversed.

However, the activities of Daniel Santore and others upon the licensed premises as disclosed by the record in this case amply justify respondent's finding of guilt with respect to charge 4. The meaning of the word "nuisance" as used in Rule 5 of State Regulations No. 20, is the dictionary meaning. As Commissioner Driscoll said in Re Alpine Village Tavern Inc. v. Newark, Bulletin 629, Item 3:

"The State regulations prescribe rules of conduct which licensees are duty bound to observe. The word 'nuisance' as it is used in Rule 5 of State Regulations No. 20 is not to be restricted by technical definitions applicable in criminal cases. One readily apparent reason for this distinction is that the licensee is engaged in the exercise of a privilege, not a property right. Accordingly, in defining the word 'nuisance', I am not unmindful of its everyday usage. The word 'nuisance' has been defined as 'an offensive, annoying, unpleasant or obnoxious thing, practice or person; a cause or source of annoyance.' Webster's New International Dictionary."

This doctrine was reaffirmed by Director Hock in Re Cosfair Corporation, Bulletin 875, Item 9. (Indeed, the facts hereinabove set forth may be said to come within the criminal definition of "nuisance". See State v. Berman, 120 N.J.L. 381 (Sup. Ct. 1938); State v. Williams, 30 N.J.L. 102 (Sup. Ct. 1862).)

On the entire record before me, I find that appellants have failed to carry the burden of establishing that respondent's findings of guilt on charges 1, 2 and 4 were erroneous and I further find respondent's determination of guilt on those three charges to be well taken.

The only questions remaining are (1) whether or not respondent abused its discretion in revoking appellants' license and (2) whether I should modify the penalty in view of the fact that I am sustaining respondent's determination as to charges 1, 2 and 4 but not as to charge 3. The penalty to be imposed in disciplinary proceedings instituted by a local issuing authority rests within its sound discretion, in the first instance, and the power of the Director to reduce it on appeal should be exercised only where such penalty is manifestly unreasonable and clearly excessive. Dzieman v. Paterson, Bulletin 233, Item 10; Schmidt v. Morristown, Bulletin 457, Item 7; Holzberg v. Orange, Bulletin 872, Item 11; Laurence Harbor Amusement Corporation v. Madison, Bulletin 955, Item 1; Ebony Corporation et al. v. Trenton, decided February 9, 1953, not yet published in the bulletin.*

Respondent contends that for the purpose of maintaining public order, safety, morals and welfare for the people of their municipality, their action in revoking appellants' license should be sustained.

Considering all of the evidence in this case the conclusion is inescapable that, even though appellants have no prior adjudicated record, the revocation of their license is not only justified but that any other penalty would be unwarranted. Hence, respondent's action in revoking appellants' license is affirmed and the appeal herein will be dismissed. Cf. O'Hanlon v. Newark, Bulletin 519, Item 5; Van Den Kooy v. Hoboken, Bulletin 618, Item 11; Levy v. Newark, Bulletin 628, Item 6.

Accordingly, it is, on this 10th day of February, 1953,

ORDERED that the revocation of appellants' plenary retail consumption license for premises 6217 Hudson Avenue, West New York, by the respondent, be and the same is hereby affirmed, and the petition of appeal herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

*Now published as Item 1, Bulletin 958.

3. APPELLATE DECISIONS - KAYE v. DOVER TOWNSHIP (OCEAN COUNTY) AND BEACON RESTAURANT.

JULIUS KAYE,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DOVER (Ocean County), and BEACON RESTAURANT, a corporation,

Respondents.

ON APPEAL
O R D E R

Albert Kushinsky, Esq., Attorney for Appellant.
Percy Camp, Esq., Attorney for Respondent Township Committee.
Joseph F. Mattice, Esq., Attorney for Respondent Beacon Restaurant.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee whereby it denied the transfer of a plenary retail consumption license from respondent Beacon Restaurant to appellant herein, and from premises known as 27 Main Street to premises known as 11 Washington Street, Toms River, Dover Township.

The attorneys for the respective parties herein have filed a written consent to the entry of an order dismissing the appeal without costs as to either party as against the other. No reason appearing to the contrary,

It is, on this 10th day of February, 1953,

ORDERED that the appeal herein be and the same is hereby dismissed without costs.

DOMINIC A. CAVICCHIA
Director.

4. STATE LICENSES - NEW APPLICATIONS FILED.

Joseph A. Fredo
15 Lake Street, Belleville, N. J.
Application filed February 25, 1953 for State Beverage Distributor's License.

Eastern Motor Dispatch, Inc.
Ball Avenue & Route 29, Union, N. J.
Application filed February 26, 1953 for additional warehouse at 915 Pennsylvania Avenue, Trenton, N. J.

Star Fleet, Inc.
44 Third Avenue, Atlantic Highlands, N. J.
Application filed February 27, 1953 for Plenary Retail Transit License.

DOMINIC A. CAVICCHIA
Director.

5. APPELLATE DECISIONS - PAULSBORO BOTTLING CO. v. PAULSBORO AND ALAMPI.

PAULSBORO BOTTLING CO., INC.,)

Appellant,)

-vs-) ON APPEAL
ORDER OF DISCONTINUANCE

MAYOR AND COUNCIL OF THE BOROUGH)
OF PAULSBORO, and FRED ALAMPI,)
trading as D & J LIQUOR STORE,)

Respondents.)

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Leo J. Berg, Esq., Attorney for Appellant.
William B. Kramer, Esq., Attorney for Respondent Mayor and Council of the Borough of Paulsboro.
David Novack, Esq., Attorney for Respondent Fred Alampi, trading as D & J Liquor Store.

BY THE DIRECTOR:

This is an appeal from the action of respondent Mayor and Council in granting a transfer of Plenary Retail Distribution License D-1 issued to Daniel Linderman, trading as D & J Liquor Store, for premises 1307 Delaware Street, Paulsboro, to respondent Fred Alampi.

It having been stipulated by and between counsel for the respective parties that the appeal in this matter be dismissed and no reason appearing to the contrary,

It is, on this 20th day of February, 1953,

ORDERED that the within appeal be and the same is hereby discontinued.

Dominic A. Cavicchia
Director.

New Jersey State Library