

Mr. Ernest M. Tapner, DP  
26 Rose Avenue,  
Madison,  
Morris County, NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1027

AUGUST 17, 1954.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - REDFIELD v. LONG BRANCH AND CONTE.
2. DISCIPLINARY PROCEEDINGS (Trenton) - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - NUISANCE - NO LOCUS POENITENTIAE INTERVENED - LICENSE SUSPENDED FOR 90 DAYS.
3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL AND MOTOR VEHICLE ORDERED FORFEITED.
4. AUTOMATIC SUSPENSION (Rockaway Township) - LICENSE SUSPENDED BY STATE DIRECTOR - SUSPENSION LIFTED.
5. DISCIPLINARY PROCEEDINGS (Atlantic City) - CONVICTION OF CRIME INVOLVING MORAL TURPITUDE AFTER PERMIT GRANTED - PERMIT REVOKED.
6. ACTIVITY REPORT FOR JULY 1954.
7. DISCIPLINARY PROCEEDINGS (Morristown) - MISLABELED BEER TAP - PRIOR RECORD - LICENSE SUSPENDED FOR 5 DAYS.
8. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 1027

AUGUST 17, 1954.

1. APPELLATE DECISIONS - REDFIELD v. LONG BRANCH AND CONTE.

THERESE REDFIELD, )  
Appellant, )

-vs-

BOARD OF COMMISSIONERS OF THE )  
CITY OF LONG BRANCH, and LOUIS )  
CONTE, t/a ELBERON LIQUOR STORE, )  
Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----)  
Arthur J. Breitkopf, Esq., Attorney for Appellant.  
Edward F. Juska, Esq., Attorney for Respondent Board of Commissioners.  
Alton V. Evans, Esq., Attorney for Respondent Louis Conte, t/a  
Elberon Liquor Store.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board of Commissioners, on November 24, 1953, whereby it granted a new plenary retail distribution license to respondent Louis Conte (for the 1953-54 licensing period) for premises 171 Lincoln Avenue, in the Elberon section of Long Branch.

The issuance of this license was made possible by the amendment, on June 2, 1953, of the local numerical limitation ordinance, increasing the quota for plenary retail distribution licenses from five to seven, as permitted by the 1950 federal census and the State Limitation Law (P. L. 1947, c. 94). The Board had previously, on July 21, 1953, granted one of the two permissible new licenses to Peter J. Pingitore.

For a considerable period of time prior to the enactment of the amendatory ordinance increasing the quota, appellant had made inquiries of the Mayor and the Board with respect to the possibility of obtaining such a license and, on July 21, 1953 (the day upon which the Pingitore license was granted), filed her application with the municipal Clerk. Prior thereto (on April 23, 1953) Nicholas Penta had filed an application for such a license; on April 24, 1953, John Joseph Pallone had filed one and, on May 11, 1953, John Gilbert Riddle had also filed one. Subsequently, applications were also filed by Angelo Vasiliades (on October 7, 1953) and by respondent Conte (on October 24, 1953).

Vasiliades withdrew his application by letter presented to respondent Board at its said meeting of November 24, 1953. At this same meeting respondent Board approved the Conte application by a 4 to 1 vote (Commissioner Kiernan voting in the negative) and, by a 4 to 0 vote (Kiernan not voting), the remaining applications (including appellant's) were denied because no further licenses were available, the quota having been filled by the granting of the licenses to Pingitore and Conte.

Appellant did not appeal the denial of her application. Her appeal merely challenges the granting of the license to Conte.

In her petition of appeal, appellant alleges that the issuance of the license was erroneous for the following reasons:

- "1. There are now five licenses in one family.
- "2. My application, which has been given no consideration, was made three years prior to Louis Conte's application, which was made approximately three weeks prior to issuance of license.
- "3. There were no objections to my application; but many to that of Louis Conte.
- "4. Detrimental to the character of a residential neighborhood.
- "5. Two licenses were to be issued under the present census -- one was given immediately to Public Safety Commissioner Bonforte's brother-in-law, Mr. Pingitore; and the other held up for months and then given to a brand new applicant, namely Louis Conte.
- "6. The foregoing objections would appear to me to warrant an investigation of all circumstances and parties."

In their answers, respondents generally denied these allegations and respondent Board asserts that the license was granted only after hearing and investigation of the application.

This appeal was heard de novo, pursuant to Rule 6 of State Regulations No. 15.

At the hearing on this appeal, appellant, the City Clerk, a member of the Elberon Property Owners' Association, and Commissioners Brown and Bonforte appeared and testified.

It appears from all of the evidence that Conte's premises at 171 Lincoln Avenue are located near the Elberon Railroad Station. It was stipulated that the Elberon section of Long Branch is the best residential section of the City, but that 171 Lincoln Avenue and a few neighboring stores are zoned for business. The premises for which Penta sought a license (1193 Lincoln Place) are around the corner from Conte's premises and are opposite the railroad near the Elberon station and also in a business zone. Next door to the Conte premises is a fire house and across the street, on a triangular plot, is the Elberon Library. Across South Lincoln Avenue from the library is the Temple Beth Miriam, a place of worship, which includes among its activities a religious school for several hundred children one day a week. However, it is not claimed that the licensed premises are within the prohibited distance (200) feet of the Temple.

From the testimony of the City Clerk it appears that there are no plenary retail distribution licenses in the Elberon section which is now built up, the number of year-round residents having increased considerably in recent years. There were 700 voters in that section in 1953. The nearest licensee in Long Branch is a seasonal retail consumption licensee (Colony Surf Club) several hundred yards away. The next nearest licensee (also a seasonal retail consumption licensee) is approximately a mile away.

From all of the testimony it appears that the Pingitore license was granted on July 21, 1953, at a meeting at which no other applications were considered. It also appears that Pingitore is a brother-in-law of Commissioner Bonforte, one of the members of respondent Board, but that Bonforte did not participate in the deliberations which resulted in the granting of that license. At the meeting on November 24, 1953, at which the Conte license was granted and the remaining applications were denied, the Clerk presented the various applications, one at a time, commencing with

that filed by appellant who spoke in behalf thereof. When she sought to speak further she was informed that, as the applications were called, objections would be heard and that she could speak later. There were no objections to appellant's application but, as the other applications were presented, various objections were raised (except as to one) and, in the case of Penta, a petition was received signed by 150 persons favoring the grant of a license. Objections to the Conte application were raised by letter and by personal appearance on behalf of the Elberon Library, an attorney representing two nearby residents, and an attorney representing the Elberon Property Owners' Association. The Board recessed and, upon its return, granted the license to Conte and denied the remainder of the applications as hereinabove related. The meeting adjourned before appellant could gain the floor to speak.

Appellant and a representative of the Elberon Property Owners' Association testified that, at the meeting, Commissioner Kiernan had expressed the view that the other commissioners had already decided how they were going to vote and that the matter was "all cut and dreied." The City Clerk testified that Commissioner Kiernan had said that no more licenses were necessary and that his negative vote was consistent with his general views on the subject.

Two members of respondent Board appeared at the hearing on this appeal. Commissioner Brown testified that he knew of no "deal or arrangements" in connection with the issuance of the license to Conte; that each application was considered "as the case went along" and that they were also considered at the recess preceding the final vote; that the Elberon section is almost completely built up with dwellings; and that it was believed that a license was needed in that section. On cross-examination he conceded that there had been objections against the issuance of the Conte license and that Commissioner Kiernan had stated his opposition to the issuance of further licenses. However, he testified that there had also been objections to the issuance of a license to Penta and that, since one of the objectors (the nearest resident) had withdrawn his objection to the Penta license, he had "a free choice to decide" on either one of the two (Penta or Conte).

Commissioner Bonforte, on direct examination for respondent Board, testified that he did not participate in the granting of the license to Pingitore, his brother-in-law, and further testified that there are no other liquor licenses issued to members of his immediate family. Commissioner Bonforte, also called as a witness for appellant, testified that the Conte and Penta applications had been considered with the other applications (including appellant's application); that he knew both Conte and Penta; that there is no "purely package store" license in Elberon; that he thought that there was need for such a license in that area; that Conte conducts a grocery store and that, for that reason and because Conte is a much younger man than Penta (who is a barber by trade), he believed that Conte "could serve the public better." He admitted that Conte's father-in-law also holds a liquor license.

It has long been held that the question of whether or not a license should be permitted in a particular area or in a particular location is a matter within the sound discretion of the issuing authority and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but rather to determine whether reasonable cause exists for its opinion and, if so, to affirm, irrespective of his personal views. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5; Baker et al. v. Newark et als., Bulletin 1018, Item 1.

The burden of establishing that respondent Board's action was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15.

Appellant, by her petition of appeal and the allegations contained therein, as hereinabove set forth, seeks to question respondent Board's action in this and other licensing matters and, in effect, impugns respondent Board's motives. Indeed, appellant contends that an investigation of "all the circumstances and parties" is warranted. Among other things, appellant contends that her application, made prior to Conte's application, was given no consideration, while Conte's application, filed approximately three weeks prior to November 24, 1953, was granted.

Appellant did not appeal from the denial of her application. Hence, the question of the propriety of respondent Board's action in that regard is not directly raised by this appeal. However, in this connection it may be noted that several other applications were filed before the Conte application and also prior to the filing of appellant's application. This fact, standing alone, is not controlling since priority in filing carries with it no right to priority of issuance. The doctrine of "first come first served" has no application to the issuance of liquor licenses. The determination as to which application or applications, if any, shall be granted is a matter within the sound discretion of the local issuing authority in the first instance. Nor is the fact that several members of one family hold licenses necessarily indicative of bias or preference; neither is the fact that a license has been granted to a relative of a member of the issuing authority, so long as there is no proof of irregularities in the granting of such license.

Counsel for appellant further points to the fact that when the Pingitore license was considered no other applications were heard at the same time although there were other applications then pending, and further points out that, when the Conte application was granted, a number of other applications (including appellant's application) were heard at the same time. In addition, as already indicated, appellant, although informed that she would be heard later at the meeting of November 24, 1953, was not afforded an opportunity to do more than speak in favor of her own application. With respect to this last matter, although it would appear that appellant should have been permitted to have had her "full say" her rights have been fully protected by this hearing which, under the rules, was heard de novo. Ashton v. Hopewell et al., Bulletin 782, Item 11; Eana, Inc. v. Pleasantville, Bulletin 1024, Item 2.

While these various matters adverted to by appellant raise some question as to the propriety of respondent Board's actions and procedures, I cannot find from the evidence that improper motivation has been established. Improper motivation on the part of public officials may not be presumed. Such motivation may be established only by direct proof or by proof of circumstances from which it may reasonably and cogently be inferred. There is no such proof here.

After considering, most carefully, all of the evidence and all of the facts and circumstances in this case, I find that appellant has failed to sustain the burden of establishing that respondent Board's action was erroneous and should be reversed.

Accordingly, it is, on this 5th day of August, 1954,

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

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - NUISANCE - NO LOCUS POENITENTIAE INTERVENED - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against

JET CLUB, INC.  
35 Pennington Avenue  
Trenton 8, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-210 for the 1953-54 and 1954-55 licensing years, issued by the Board of Commissioners of the City of Trenton.

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

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On Thursday night February 4 and early Friday morning February 5, 1954, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that you allowed, permitted and suffered male and female patrons to dance and otherwise make gestures and movements with their bodies having lewd, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulations No. 20.

"3. On Monday night February 1, Wednesday night February 3, Thursday night February 4 and early Friday morning February 5, 1954, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, in that you permitted unescorted females frequenting your licensed premises to make overtures to male patrons for illicit sexual intercourse, to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them, and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

Defendant pleaded guilty to the following charge:

"2. At various times on Wednesday, February 3, 1954, between 10:35 P.M. and 10:45 P.M., and on Friday, February 5, 1954 at about 12:20 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off the licensed premises; in violation of Rule 1 of State Regulations No. 38 which prohibits any such sale or delivery before 9:00 A.M. or after 10:00 P.M. on any weekday."

At the hearing herein, two ABC agents testified in support of the charges. In the following recitation of and comment on their testimony their names will not be used but, instead, they will be referred to by the initial letter of their last names and each will be designated "investigator." The same procedure will be followed in the case of a military police investigator who also testified. From their testimony the following appears:

At approximately 10:25 p.m., on February 1, 1954, Investigator "P" and military police Investigator "J" entered defendant's barroom.

Among the fifteen patrons were some females including one "Marie" and One "Tonia." Marie, although uninvited, joined Investigator "P" at the bar and asked him to buy her a drink, which he did, meanwhile telling the bartender (Ford) that he did not know the girl. Marie stayed with him for approximately five minutes and asked for and received another drink of whiskey at his expense. Tonia, who was also unknown to Investigator "P", then introduced herself to him and asked him to buy her a drink. When he acceded the bartender poured a drink of whiskey and soda without asking her what she wanted. Shortly thereafter Tonia had another drink at the expense of Investigator "P". During the fifteen minutes she was with him they discussed, in vulgar terms, the possibility of engaging in sexual intercourse and she agreed to meet him the following night for that purpose. The bartender (Ford) was behind the bar and was standing immediately in front of them when Tonia agreed to meet the investigator the following night. In addition, the investigator told Ford of his conversation with Tonia and was advised by Ford that the girl was "all right" and that he "wouldn't have to worry." Investigator "J" overheard the conversation between Investigator "P" and Tonia but did not hear the conversation with the bartender.

Investigator "P" returned to defendant's licensed premises at approximately 8:30 p.m., on February 3, 1954. Investigator "C" entered a few minutes later. The barroom was crowded and at times during the evening there were as many as 100 patrons there at one time. Among the female patrons were Tonia and one "Frances." The latter, although a stranger to Investigator "C", introduced herself to him and asked him to buy her a drink. Leonard Cohen, a stockholder and an officer of defendant corporation, who was tending bar, served her a drink of whiskey. She then asked for and was served a bottle of beer and, after that, a sandwich, all at the expense of Investigator "C". When Frances then asked Investigator "C" for money for the juke box and for a telephone call he remonstrated with her, telling her that he was willing to spend money but did not want to throw it away. There then followed a conversation in which, in vulgar slang terms, they discussed her availability and desirability for sexual intercourse. During this conversation Frances tried to convince the investigator that she was "tender" and invited him to feel her limb in proof thereof. Meanwhile, Cohen had been standing opposite them behind the bar and, after Frances had taken a dollar and some change from Investigator "C" and had proceeded to the telephone booth, the investigator complained to Cohen that Frances was "chiseling" and was "rushing things." Cohen merely smiled, shrugged his shoulders and walked away. During the time she was with him Frances had two drinks of whiskey, one bottle of beer, a sandwich, all at the expense of Investigator "C", and took approximately three dollars from him for cigarettes, the juke box and telephone. During the evening Tonia talked with Investigator "P" at the bar, and the investigators saw numerous other females going around the barroom drinking and dancing, first with one man, then with another.

At 10:15 p.m., on February 4, 1954, Investigators "C" and "P" and military police Investigator "J" returned to defendant's barroom. There were approximately 100 patrons present, including some females. There were two bartenders (Cohen and Wilson), Ford was acting as a waiter, and there was a three-piece orchestra on a raised platform toward the rear of the premises. During the two hours they were there the investigators saw females going from man to man, staying with each for a short time, dancing and drinking whiskey paid for by the men at the request of the women. One female, known as "Virginia," introduced herself to Investigator "P" and asked him to buy her a drink which was served by Cohen. A man, known as "Kilroy," joined them and put his arm around Virginia but was chased by Cohen. Virginia had two drinks and, later, Tonia had two drinks, all at the expense of Investigator "P".

A short time before midnight the investigators observed a female and Kilroy between the bar and the raised platform toward the rear of the barroom. Kilroy announced that he was the "dancing man"

of the place and told the patrons to make room for him. As the patrons made room the aforementioned female danced alone, moving her body in a "circular fashion," doing "bumps and grinds," a well known technique employed by burlesque performers. Kilroy began to move his body toward the female and she moved her body toward him, each thrusting the pelvic area forward until, finally, they joined each other. It is unnecessary to describe the exact details of the exhibition. Suffice it to say that, at times, their actions simulated sexual intercourse. However, at no time did the participants expose themselves. The patrons cheered wildly until, appearing to be exhausted, the dancers stopped for a drink. Then a soldier told Kilroy to "move over" and let a "real man take over." He then performed with the female in a manner suggesting both intercourse and other sexual activity, amid the shouts and excited cheers of the patrons. During these performances Cohen and the other bartender went to the end of the bar near where the dance was going on, watching and smiling.

At approximately 12:20 a.m., on February 5, 1954, the investigators identified themselves and took statements from Cohen and the bartender, Wilson. In his statement, in answer to a question asking why he permitted the indecent dance, Cohen admitted that he should have stopped it. He admitted that Investigator "C" had bought drinks for Frances and that other males buy drinks for females at the bar but stated that, as far as he knows, there is no "hustling" for drinks. In his statement, Wilson admitted that he had witnessed an indecent dance performed by the soldier and the female, that the orchestra had furnished the music therefor, and that neither he nor Cohen had intervened.

On cross-examination the investigators testified that, except as hereinabove stated, they saw no other immoral or indecent incidents upon the licensed premises and Investigator "P" further testified that bartender Wilson had told him that, although the females would drink with male patrons, he did not believe they would "do any other business." He also testified that he did not take any female out of the premises.

On behalf of defendant, Cohen, Sidney Sagotsky (who is associated with Cohen in the business), Wilson, Ford, several male patrons, and two Trenton ABC investigators testified.

Cohen admitted being on duty as testified by the investigators and that he had seen Investigators "P" and "C" on the premises. He also admitted that there had been a three-piece orchestra there on February 4, 1954, but denied that anyone danced in an indecent manner or that the patrons made room for such a dance. He testified that no dancing is permitted on the licensed premises. He admitted that Frances had a drink and a sandwich, for which Investigator "C" paid and that several of the females had been served drinks at the expense of the investigators but denied that females solicit men for drinks or for immoral purposes upon the licensed premises. He denied that he knew some of the females mentioned by the investigators and, in general, denied the incidents which form the basis of charges (1) and (3). He sought to explain his written statement with respect to the indecent dance by claiming that he saw only the movement of the legs of the performers and that he did not think it indecent. He admitted, however, that the dance described by the investigators, if performed, would be considered by him to be indecent.

Wilson testified that he was on duty on several of the occasions as testified by the investigators; that he saw both Investigators "C" and "P" on the licensed premises; and that he had the conversation with Investigator "P" in which he expressed doubt that the females would go out with men. He denied that anyone danced as

testified by the investigators or that he had seen any such dance. He sought to explain his written statement with respect to the dance by claiming that Investigator "C" had imitated an alleged dance to him and that he had agreed that such a dance would be considered indecent. He also generally denied the allegations contained in charges (1) and (3).

Sagotsky denied that women solicit men for drinks or for immoral purposes and testified that it would be impossible for the dance to have occurred as testified by the investigators.

Ford generally denied the allegations contained in charges (1) and (3) and specifically denied participating in the conversation attributed to him by Investigator "P" or hearing a conversation between the investigators and Tonia. He further testified that, on the night of February 4, 1954, he was employed to keep order and to prevent dancing and that no dancing took place.

The two patrons testified that the premises are conducted in an orderly manner and that they have never been solicited for drinks or immoral purposes by any women there. They also denied that the dance described by the investigators took place.

The Trenton investigators testified that they have not had any complaints against defendant for the kind of conduct recited in charges (1) and (3) and it was stipulated that other officers would similarly testify. It was admitted, however, that they were not upon defendant's licensed premises on the dates named in the charges.

As to charge (1), a careful review of all of the evidence convinces me that the dance or exhibition described by the investigators did, in fact, take place and that the persons in charge of defendant's premises at the time, including one of its officers and stockholders, allowed, permitted and suffered it to occur. I am also convinced that such performance was clearly within the proscription contained in Rule 5 of State Regulations No. 20 and cannot be tolerated upon licensed premises. I find defendant guilty on charge (1).

Defendant has pleaded guilty to charge (2).

As to charge (3), the evidence abundantly establishes that unescorted females were permitted to frequent defendant's barroom and there to solicit men for drinks. The evidence also shows that unescorted females carried on conversations with male patrons with a view to engaging in illicit sexual intercourse for a price and that some of these occurrences were known to some of defendant's officers and employees. However, the evidence does not reveal any activity at all in furtherance of such conversations.

Licensed premises cannot and will not be allowed to become havens for female "bar flies" who prey upon male patrons. Solicitation for drinks is all too frequently coupled with solicitation for immoral activities of various kinds. Both invite trouble. To permit such activities upon licensed premises is to permit the licensed place of business to be conducted in such a way as to become a nuisance, in violation of Rule 5 of State Regulations No. 20. It is well settled that the meaning of the word "nuisance", as used in that Rule, is the dictionary meaning, namely, "an offensive, annoying, unpleasant or obnoxious thing, practice or person; a cause or source of annoyance." (Webster's New International Dictionary.) Re Volino & Maheltz, Bulletin 978, Item 3; Santore v. West New York, Bulletin 958, Item 2; Alpine Village Tavern, Inc. v. Newark, Bulletin 629, Item 3.

At his request, counsel for defendant appeared before me in oral argument with respect to the penalty to be imposed in this case.

Defendant has no prior adjudicated record. However, its license was suspended by the local issuing authority for ten days, effective

April 26, 1954, for sale of alcoholic beverages to a minor. Because no locus poenitentiae intervened, the present violation will not be considered in the same manner in which a subsequent dissimilar violation within the five-year period is ordinarily considered. In other words, to be considered a subsequent violation it must appear that there is an adjudication of guilt followed by punishment, and then, still unregenerate, a subsequent violation and adjudication. Re Capestro and Friedlander, Bulletin 1000, Item 9. Nevertheless, the number and seriousness of the violations in the instant case warrant a stern penalty. I shall suspend defendant's license for a period of ninety days. Cf. Re Volino & Maheltz, supra; Re Pone, Bulletin 963, Item 2; Re Washington Cafe (A corp.), Bulletin 896, Item 2; Re Raimondi & Capelli, Bulletin 884, Item 8.

Accordingly, it is, on this 3rd day of August, 1954,

ORDERED that Plenary Retail Consumption License C-210, issued for the 1954-55 licensing period by the Board of Commissioners of the City of Trenton to the Jet Club, Inc., 35 Pennington Avenue, Trenton, be and the same is hereby suspended for a period of ninety (90) days, commencing at 2:00 a.m. August 10, 1954, and terminating at 2:00 a.m. November 8, 1954.

WILLIAM HOWE DAVIS  
Director.

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL AND MOTOR VEHICLE ORDERED FORFEITED.

In the Matter of the Seizure on )  
February 12, 1954, of 10 - two )  
quart jars of alcohol, a suitcase, )  
a burlap bag and an Oldsmobile )  
sedan, at a parking lot located at )  
170 Halliday Street, in the City of )  
Jersey City, County of Hudson and )  
State of New Jersey. )

Case No. 8525

ON HEARING  
CONCLUSIONS AND ORDER

-----)  
Emanuel M. Sultan, Esq., Attorney for Willie Mendes and Annie Mendes.  
Harry Castelbaum, Esq., appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 10 - two-quart jars of alcohol, a suitcase, a burlap bag and an Oldsmobile sedan, registered in New York in the name of William Mendes, described in a schedule attached hereto, seized on February 12, 1954 at a parking lot located at 170 Halliday Street, Jersey City, New Jersey constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S.33:1-66, William Mendes appeared and claimed that the alcohol was in the car without his knowledge or consent, and Annie Mendes, his wife, appeared and sought return of the car on claim that she was the actual owner thereof. No one opposed forfeiture of the alcohol or other personal property seized.

A Jersey City police officer testified that he had the parking lot in question under surveillance on February 12, 1954 on information that a man driving a dark colored car with New York license plates would come to 171 Halliday Street shortly after dark to sell alcohol. At about 7:45 p.m. the black Oldsmobile sedan, driven by William Mendes,

arrived on the parking lot. The officer observed Mendes leave the car, enter a dwelling at 171 Halliday Street, emerge therefrom after a few minutes, and proceed to the rear of the car. Mendes opened the trunk, whereupon he was accosted by the officer, who found the 10 two-quart jars of alcohol in the trunk compartment.

The alcohol and motor vehicle were turned over to the Division of Alcoholic Beverage Control. None of the jars bore any labels, or stamps indicating the payment of tax on alcoholic beverages. The contents of one of the jars was analyzed by the Division chemist, who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 45.8 per cent.

The alcohol in the jars is illicit because of the absence of labels or tax stamps on such jars. R. S. 33:1-88, R.S. 33:1-1(1). Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property, and are subject to forfeiture, irrespective of the guilt or innocence of the owner of the car. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66. See Seizure Case No. 7495, Bulletin 870, Item 4.

I am authorized, in the exercise of my discretion, to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith, and unknowingly violated the Alcoholic Beverage Law, or had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use. R.S. 33:1-66(e) and (f).

Possession, transportation, and sale of bootleg alcoholic beverages, such as those in the instant case, is a major violation of the Alcoholic Beverage Law. Mendes, in seeking to escape responsibility for the presence of such bootleg alcohol in his car, must establish by clear and convincing evidence, his claim that he met two strangers in a tavern, who, he surmises, must have placed the alcohol in his car, and rode with him to the parking lot.

It should be noted at the outset that Mendes, according to police officers, gave no such explanation when he was apprehended. They say that he told them that he possessed and owned the alcohol, that he was endeavoring to sell it when caught, and that he had sold alcohol in Jersey City for a period of about four months. The officers prepared a written statement to such effect but Mendes refused to sign it.

At the hearing, questioned concerning the accuracy of this story which was reduced to writing by the statement, Mendes admitted that the statements attributed to him were correct, but claimed that at the time he was under the influence of liquor, and the officers had used force in extracting such explanation of the transaction; and that in actual fact it is not what transpired. The officers deny that they used any force when questioning Mendes. It further appears in the statement, that Mendes gave the officers the first name of a man from whom he obtained the alcohol, and gave specific details of the street location and the motor vehicle used, in describing the manner in which he obtained the alcohol. On this score Mendes claims that he concocted the details on the spur of the moment while being "hit on the head".

Despite Mendes' denial thereof, the account given by Mendes when first questioned by the officers has the ring of truth, in contrast to his explanation offered at the hearing. He now says that he was at a tavern, met "Pete" and another stranger accidentally, who told him that they were going to a party at 170 (?) Halliday Street, but their car broke down; that they wanted Mendes to join them, and asked to place some "stuff" in the car; that he did not see anything placed in the car; but the two men entered his car, and were with him when he arrived at the parking lot; that all three left the car, whereupon Pete and the other man left him and Mendes was wandering

around "shouting" for Pete when the officer apprehended him. Mendes testified at one point that he went to 171 Halliday Street, looking for "Pete" and at another point testified he did not go there.

Aside from the officer's positive testimony that Mendes was the only person in the car when it arrived at the parking lot, and entered the dwelling, and that Mendes' conduct, as observed by the officer, closely followed the pattern of their previous information as to what was to be anticipated, Mendes' present account of his actions when at the parking lot and previous thereto is neither convincing nor believable.

Mendes' brother-in-law testified that Mendes was in the tavern, although at a different hour than Mendes states, and that Mendes talked with some other persons. This witness did not see anyone place the alcohol in Mendes' car, nor observe who was in the car when it was driven from the tavern. Even if the actual facts are as stated by this witness, and are not prompted by the natural desire to help out a relative in trouble, it does not alter the conviction that Mendes' present account of his actions at the parking lot is not to be accepted.

I am therefore satisfied that William Mendes was directly and personally involved in the possession, transportation, and intended sale of the bootleg alcohol. There can be no justification for return to a bootlegger of the motor vehicle used in his nefarious activities. If the motor vehicle is owned by William Mendes, he cannot have it returned.

However, the contention is advanced that it is actually his wife's car, although formal title is in the husband's name. We have had occasion to consider whether a car registered in the name of an innocent person is actually owned by a person who used it to transport illicit alcoholic beverages. The converse question is now presented. In proceedings addressed to the discretionary power of the Director, the actual ownership of a motor vehicle subject to forfeiture is always of primary importance.

Their financial background as testified to by Mrs. Mendes is that she is employed and for the past three years has earned barely sufficient to support the household; that her husband contributed practically nothing because he worked only occasionally. On the other hand Mendes testified that he is a union longshoreman, mechanic, and construction worker, and has been so employed from time to time, as well as undertaking odd jobs, and has thus made enough to exist on. Whatever the amount of their joint incomes for the past three years, it was insufficient to enable them to purchase the car. Hence the funds with which the motor vehicle was purchased must have been accumulated in prior years. Mr. Mendes operated a gas station until about five years ago.

Mrs. Mendes says that the Oldsmobile sedan was purchased in April, 1953 for about \$3300.00. About \$500.00 of the purchase price was realized from the sale of a motor vehicle registered in her husband's name. It is claimed that the balance of about \$2800.00, representing practically all of their resources, was withdrawn from a bank. Asked how it came about that practically all their financial resources were utilized to purchase the car, Mrs. Mendes answered that her husband thought it was a good idea. Asked to explain why title of the car was registered in her husband's name she answered, "because I do not know anything about cars."

After the hearing, at an oral argument before me by counsel for Mr. and Mrs. Mendes, I suggested that counsel submit the bank pass-book, if it were available, to establish ownership of the bank account

referred to. Thereafter such passbook was submitted. Aside from the fact that the account appears to be in the name of William Mendes, in trust for Annie Mendes, the account was closed on September 26, 1952 by the withdrawal of \$4,077.52, many months prior to the purchase of the 1953 Oldsmobile in question in April 1953 or thereabouts. Moreover, the passbook evidences a \$1300.00 deposit on February 28, 1952 at a period during which Mrs. Mendes testified her earnings were barely sufficient to run the household. Consequently the passbook does not evidence or support the claim that the money on deposit was solely owned by Mrs. Mendes, nor conclusively establish that it was the source of the \$2800.00 with which the Oldsmobile sedan was purchased.

The motor vehicle was usually parked in the street and used by Mr. Mendes. Mrs. Mendes used a bus to go to and from her place of employment.

The uncorroborated testimony of Mr. and Mrs. Mendes, even if accepted at face value, does not firmly establish that Mrs. Mendes is the owner of the motor vehicle. On the contrary the more logical inference from the evidence is that Mr. Mendes is the owner thereof both of record and in fact.

Other considerations are that so far as appears Mr. Mendes had the outright possession and control of the motor vehicle, without any substantial supervision by Mrs. Mendes; and that she is presumed to know, by reason of their relationship, of her husband's practice, as described in his original story, of selling bootleg alcoholic beverages. See Seizure Case No. 8318, Bulletin 982, Item 3. For the reasons above outlined, I am compelled to deny Annie Mendes' request for return of the Oldsmobile sedan.

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

WILLIAM HOWE DAVIS  
Director.

Dated: July 15, 1954.

SCHEDULE "A"

- 10 - two-quart jars of alcohol
- 1 - suitcase
- 1 - burlap bag
- 1 - Oldsmobile sedan, Engine No. R379921,  
1954 New York Registration KN84-87

4. AUTOMATIC SUSPENSION - LICENSE SUSPENDED BY STATE DIRECTOR -  
SUSPENSION LIFTED.

In the Matter of a Petition by )  
 ADAM F. CHLODNICKI )  
 Rockaway Green Pond Rd. )  
 Rockaway Township )  
 P. O. Rockaway, N. J., ) ON PETITION  
 O R D E R

To Lift the Automatic Suspension of )  
 Plenary Retail Consumption License )  
 C-6, issued by the Township Com- )  
 mittee of the Township of Rockaway. )  
 ----- )  
 Young and Sears, Esqs., Attorneys for Petitioner.

It appears from a verified petition filed herein and independent investigation that on July 16, 1954, petitioner was fined the sum of \$200.00 and placed on probation for one year by a Judge of the County Court of Morris County after he pleaded non vult to a charge alleging that he sold alcoholic beverages to minors, in violation of R. S. 33:1-77.

As a result of his conviction in the criminal proceedings petitioner's license has been suspended for the balance of its term. R. S. 33:1-31.1. His license was picked up by ABC agents on July 22, 1954. The petition herein prays that the automatic suspension of the license may be lifted.

The records of the Division of Alcoholic Beverage Control disclose that by order dated May 25, 1953, the then Director suspended petitioner's license for a period of fifteen days after he had been found guilty in disciplinary proceedings of a charge alleging that he sold alcoholic beverages to minors. Said suspension was effective from 3:00 a.m. June 1, 1953, to 3:00 a.m. June 16, 1953. See Bulletin 973, Item 7.

The charge in the criminal proceedings and the charge in the disciplinary proceedings were based upon the same facts and concern the sale of alcoholic beverages to two minors, one of whom was 17 years of age and the other of whom was 19 years of age.

The suspension heretofore imposed by the Director is adequate under the circumstances of the case. Hence the relief sought herein will be granted.

Accordingly, it is, on this 28th day of July, 1954,

ORDERED that the automatic suspension of License C-6, now held by Adam F. Chlodnicki for premises on Rockaway Green Pond Rd., Rockaway Township, be and the same is hereby lifted, and said license is hereby restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS  
 Director.

By: Edward J. Dorton  
 Deputy Director.

5. DISCIPLINARY PROCEEDINGS - CONVICTION OF CRIME INVOLVING MORAL TURPITUDE AFTER PERMIT GRANTED - PERMIT REVOKED.

In the Matter of Disciplinary Proceedings against )

CHARLES JAMES AUGUST )  
426 Madison Avenue )  
Atlantic City, N. J., )

CONCLUSIONS AND ORDER

Holder of Solicitor's Permit No. 2369 for the 1953-54 licensing year, issued by the Director of the Division of Alcoholic Beverage Control. )  
-----)

Elias G. Naame, Esq., Attorney for Defendant-permittee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that, after he made application for his current solicitor's permit, he was convicted of a crime involving moral turpitude, which conviction, had it occurred prior to the making of the application for said permit, would have prevented the issuance thereof as contrary to R. S. 33:1-25.

The file herein discloses that on or about March 23, 1954, defendant was convicted of the crimes of larceny and receiving (N.J.S. 2A:119-2 and N.J.S. 2A:139-1), and as a result thereof was committed by a Judge of the Atlantic County Court, Law Division, to the County Jail for a period of 364 days and fined \$100.00. The fine was suspended. The crimes of larceny and receiving are crimes which involve the element of moral turpitude. Re Case No. 563, Bulletin 655, Item 10.

By virtue of the aforesaid conviction defendant became ineligible to hold a liquor license or permit under the Alcoholic Beverage Law. R. S. 33:1-25, 26.

Under the circumstances, the solicitor's permit issued to defendant will be revoked.

Accordingly, it is, on this 19th day of July, 1954,

ORDERED that Solicitor's Permit No. 2369, issued for the 1953-54 licensing year by the Director of the Division of Alcoholic Beverage Control to Charles James August, 426 Madison Avenue, Atlantic City, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS  
Director.

6.

ACTIVITY REPORT FOR JULY 1954

ARRESTS:

Total number of persons arrested	22
Licensees and employees	4
Bootleggers	18

SEIZURES:

Motor vehicles - cars	4
- trucks	1
Stills - over 50 gallons	4
Mash - gallons	812.00
Distilled alcoholic beverages - gallons	200.71
Wine - gallons	86.85
Brewed malt alcoholic beverages - gallons	42.64

RETAIL LICENSEES:

Premises inspected	1,117
Premises where alcoholic beverages were gauged	481
Bottles gauged	9,292
Premises where violations were found	67
Violations found	81
Type of violations found:	
Unqualified employees	28
Disposal permit necessary	12
Other mercantile business	10
Gas sign not posted	6
Prohibited signs	2
Improper beer taps	1
Other violations	22

STATE LICENSEES:

Premises inspected	4
License applications investigated	19

COMPLAINTS:

Complaints assigned for investigation	443
Investigations completed	351
Investigations pending	198

LABORATORY:

Analyses made	110
Refills from licensed premises - bottles	1
Bottles from unlicensed premises	14

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	19
Persons fingerprinted for non-criminal purposes	311
Identification contacts made with other enforcement agencies	324
Motor vehicle identifications via N. J. State Police teletype	3

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	11
Violations involved:	
Sale during prohibited hours	7
Sale to minors	4
Permitting brawl on premises	1
Possessing chilled beer (DL licensee)	1
Possessing contraceptives on premises	1
Cases instituted at Division	19
Violations involved:	
Sale to minors	7
Sale during prohibited hours	5
Mislabeling beer taps	2
Permitting immoral activity on premises	2
Permitting hostesses on premises	2
Permitting gambling (cards) on premises	1
Cases brought by municipalities on own initiative and reported to Division	2
Violations involved:	
Sale to minors	2
Sale during prohibited hours	1
Unqualified employee	1
Permitting known criminal on prem.	1
Hindering investigation	1
Possessing illicit liquor	1
Unauthorized transportation	1
Permitting females at the bar	1

HEARINGS HELD AT DIVISION:

Total number of hearings held	30
Disciplinary proceedings	12
Appeals	5
Eligibility	8
Seizures	4
Applications for license	1

PERMITS ISSUED:

Total number of permits issued	3,702
Employment	316
Solicitors	2,827
Disposal of alcoholic beverages	33
Social affairs	330
Miscellaneous	196

WILLIAM HOWE DAVIS  
Director.

Dated: August 3, 1954.

7. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - PRIOR RECORD - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against )

FRANK DIRUGGIERO )  
 T/a THREE STAR BAR & GRILL )  
 89 Speedwell Avenue )  
 Morristown, N. J., )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption License C-22, issued by the Board of Aldermen of the Town of Morristown. )

-----  
 Frank DiRuggiero, Defendant-licensee, Pro Se.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that he allowed, permitted and suffered a mislabeled beer tap on his licensed premises, in violation of Rule 26 of State Regulations No. 20.

The file herein discloses that on June 25, 1954, during the course of a retail inspection, an ABC agent found a half-barrel of Rheingold beer connected to a tap which bore the brand name of "Krueger."

Defendant has a prior record. His license was suspended by the State Director for five days, effective January 14, 1952, for sale of alcoholic beverages to minors (Re DiRuggiero, Bulletin 923, Item 8).

Under all the circumstances, including consideration of the plea entered herein, I shall suspend defendant's license for five days. Re Riddle & Francia, Bulletin 903, Item 13.

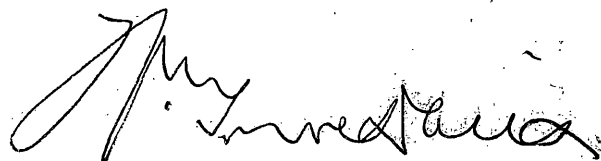
Accordingly, it is, on this 5th day of August 1954,

ORDERED that Plenary Retail Consumption License C-22, issued by the Board of Aldermen of the Town of Morristown to Frank DiRuggiero, t/a Three Star Bar & Grill, for premises 89 Speedwell Avenue, Morristown, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. August 16, 1954, and terminating at 2:00 a.m. August 21, 1954.

WILLIAM HOWE DAVIS  
 Director.

8. STATE LICENSES - NEW APPLICATION FILED.

Eazor Express, Inc.  
 1725 Willow Avenue, Weehawken, N. J.  
 Application filed August 11, 1954 for Transportation License.



New Jersey State Library

William Howe Davis  
 Director.