

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1542

DECEMBER 27, 1963

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Newark) - FALSE STATEMENTS IN APPLICATION FOR LICENSE - FRONT - CRIMINALLY DISQUALIFIED EMPLOYEE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 95 DAYS UPON PROOF OF CORRECTION.
2. DISCIPLINARY PROCEEDINGS (Burlington) - FALSE STATEMENT IN APPLICATION FOR LICENSE - FAILURE TO KEEP BOOKS OF ACCOUNT - NO PENALTY IMPOSED IN VIEW OF CANCELLATION OF LICENSE.

CANCELLATION PROCEEDINGS - CLUB NOT BONA FIDE - LICENSE CANCELLED.
3. DISCIPLINARY PROCEEDINGS (Cliffside Park) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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1. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATION FOR LICENSE - FRONT - CRIMINALLY DISQUALIFIED EMPLOYEE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 95 DAYS UPON PROOF OF CORRECTION.

In the Matter of Disciplinary Proceedings against)

Joe D's Blue Moon, Inc.)
t/a Chez Charles)
165 First Ave.)
Newark 7, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-521, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark)
-----)

Thomas E. Durkin, Jr., Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to charges dated April 25, 1963, as follows:

- '1. In your application filed with the Newark Municipal Board of Alcoholic Beverage Control on May 21, 1962, upon which you obtained your current plenary retail consumption license, in answer to Question 22 you listed Joseph Covello, Sr., Mildred Benaquista and Albert Benaquista as the holders of 98%, 1% and 1%, respectively, of your issued and outstanding stock, and, in answer to Question 23, you stated that no one other than said stockholders had any beneficial interest, directly or indirectly, in the stock held by said stockholders, whereas in truth and fact said listed stockholders did not have any beneficial interest in said stock and Joseph Covello, Jr. had such an interest in that he was the real and beneficial owner of all of said stock; said false statements, misrepresentations and evasion and suppression of material facts being in violation of R.S. 33:1-25.
- '2. From on or about September 17, 1957 to on or about October 1, 1958, you knowingly aided and abetted Charles Covello, and from on or about October 1, 1958 to date you knowingly aided and abetted Joseph Covello, Jr. to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; in violation of R.S. 33:1-52.
- '3. In your aforesaid license application, you falsely stated "No" in answer to Question 31, which asks: "Have you agreed to pay (by way of rent, salary or otherwise) to any employee, or other person, any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?", whereas in truth

and fact you had agreed to permit Joseph Covello, Jr. to retain all the profits and income derived from your licensed business; in violation of R.S. 33:1-25.

- '4. From on or about February 28, 1958 to date, you employed and had connected with you in a business capacity Joseph Covello, Jr., a person who had been convicted in Essex County Court on or about September 21, 1949, of a crime involving moral turpitude, viz., bookmaking in violation of N.J.S. 2A:112-3; in violation of Rule 1 of State Regulation No. 13.
- '5. In your aforesaid application, you falsely stated "No" in answer to Question 32, which asks: "Does any individual, partnership, corporation or association hold any chattel mortgage or conditional bill of sale on any furniture, fixtures, goods or equipment used or to be used in connection with the conduct of the alcoholic beverage business to be operated under the license applied for?", whereas in truth and fact Charles C. Deubel, Jr., Trustee under the Last Will and Testament of Maurice Froehlich, deceased, held a chattel mortgage, securing a loan of \$22,000.00, on all the chattels and fixtures in your licensed premises; in violation of R.S. 33:1-25.'

"As to Charges 1, 2 and 3

"The Division's case was based primarily upon the testimony of two ABC agents, and the picture reflected therefrom is as follows: ABC agents were assigned to an investigation of the licensee which took place between January 4, 1963, to the end of March 1963. The premises conducted by the licensee consists of an expensively furnished tavern-night club. Agent H visited these premises on three occasions during this period and questioned Joseph Covello, Jr. who represented himself as the manager thereof.

"As a result of this investigation, it was established that the corporate structure of the licensee at present is as follows: Joseph Covello, Sr., the president and treasurer, holding 98% of the stock; Mildred Benaquista, the vice president, holding 1% of the stock; and Albert Benaquista, the secretary, holding 1% of the stock. Mildred is the daughter of Joseph Covello, Sr. and Albert is her husband.

"The investigation further disclosed that from May 1958 to June 1962, the corporate structure was as follows: Dorothy Veltri (daughter of Covello, Sr.) was president and held 98% of the stock; Charles Afflitto and William Caliguiri each held 1% of the stock. In 1960 Caliguiri left the corporation and Mildred Benaquista took over his 1%.

"Prior to May 1958, the corporate structure was as follows: Joseph DiModica was president and treasurer of the corporation and held 49% of the stock; Thomas Zollo held 50% of the stock, and Delores DiModica held 1% of the stock. It further appears that Gloria Covello, daughter of Covello, Sr., bought out Thomas Zollo in September 1957 and remained as Joseph DiModica's partner until May 1958, when all the stock was transferred to her and then retransferred to Dorothy Veltri. No notification of the transfer was ever given to the Newark Board of Alcoholic Beverage Control. At the same time in 1957, Gloria Covello is recorded as the purchaser of the building in which the tavern is located and is still the record owner at this time. Questioning of the Covellos elicited

their claim that Gloria purchased Zollo's interest in 1957, and this purchase was preliminary to buying out DiModica in 1958.

"In a statement obtained by the agents and presented in evidence, Gloria Covello Elias stated that she paid Zollo \$6,000 for his stock, the money being her own. The purchase agreement reflects a price of \$9,000 for the stock acquired. Thomas Zollo, upon being questioned, denied selling his stock to Gloria. He informed the agents that he had sold out to Charles Covello, the eldest and now deceased son of Joseph Covello, Sr.

"The agents then questioned Dorothy Veltri, the senior Covello's daughter, and obtained a statement from her which was submitted in evidence. In the statement she relates that Joseph Covello, Sr. gave her \$13,000 in May 1958, which she in turn turned over to Gloria Covello for the stock of the corporation. This transaction resulted in Gloria being the owner, free and clear, of the building at 165 First Avenue, Newark (where the licensed premises are located), and Dorothy Covello becoming the sole stockholder of the licensee corporation with a represented investment of \$13,000.

"Joseph Covello, Sr. was thereafter questioned by the ABC agents and a statement obtained from him with reference to the application filed by the corporate licensee of which he is president. He informed the agents on March 11, 1963, that he is presently employed as a maintenance man at the City Hospital; has been so employed for the past fifteen years; that for forty years prior thereto, he was engaged in the fruit and vegetable business. In the fruit and vegetable business, he averaged from \$60 to \$80 per week, and his salary at present at the City Hospital is \$4,100 a year; that he has no other source of income; that he has been the owner of the stock of this corporation for about six months and employs his son Joseph Jr. as a manager.

"During this time he has never drawn any money from the business; all profits of the business plus a \$200 a week salary are given to his son. He further explained that about four years prior to that date, when his daughter purchased the business for between \$12,000 and \$13,000, he gave her the money because he thought it was a good investment. The money was obtained from his savings and from the sale of his home. His explanation for taking the stock back in his own name from his daughter was that his daughter's husband was a police officer and she did not want to be associated with the licensed business. The retransfer of the stock from his daughter to him was made without any financial consideration.

"The original transaction whereby he purchased the stock was made in cash, and no receipts were available nor produced, nor did he have any checks to prove the exact amount received in the sale of his home. He told the agents that his money was kept at his home and, therefore, there are no bank records or other records reflecting that transaction. Nor did he receive a receipt or any security from his daughters or anyone else. Mr. Covello also informed the agents that he does not supervise this business and leaves the entire supervision and management in the hands of his son. His only function is to sign checks.

"In the course of their investigation, the agents obtained a statement from Mildred Benaquista, submitted in evidence, which supports the version given by her father, Covello, Sr., who was the sole owner of the licensed business, that she has never received any

income or profits from this business.

"Gloria Covello Elias, in an unsigned statement given to the agents on March 11, 1963, informed them that she had purchased the building for \$6,000 of her own money, in cash which she had at home, and that none of the money was given to her by her father for said purchase. She admitted that the mortgage payments for this building, in the sum of \$330 per month, are presently paid by check of the corporate licensee which, she explains, is made in lieu of rent for the premises due from the licensee.

"Joseph Covello, Jr. was then questioned by the agents and gave them a voluntary statement which, however, he refused to sign; the statement was admitted into evidence. In this statement he supported the version of the transaction as given by his father, to the effect that the licensed premises were purchased by Dorothy Veltri with money given to her as a gift by her father, in the sum of twelve or thirteen thousand dollars. He further stated that he receives a salary of \$200 a week and a bonus from business profits, which, however, never total more than \$13,000 per year. He denied that he has any interest in the license other than serving as the manager of the licensed business. In the statement he was then asked:

- Q. The records of Joe D's Blue Moon Inc. indicate that on Oct. 1960 you received a salary of 800.00 from which the tax was withheld and also indicated a payment of \$2,500.00 from which no tax was withheld. Can you explain what this payment of \$2,500 was for?
- A. No I don't recall. If I received any money like this I would have put it on my tax return.
- Q. On the same ledger it lists a loan for \$2612.19; do you recall the loan?
- A. I don't recall the circumstances of that loan. It might have had something to do with the purchase of my house.
* * * * *
- Q. On the record for Nov. 1960 to Oct. 1961 there is a listing for a cash payment to Mastrangelo; could you tell me what it is for. The amount was 425.00?
- A. No. I don't know the person and I don't know what it was for.
- Q. On the records for Nov. 1958 to Oct. 1959 there is listed for Mar. 1959 an item for \$2,000 under the heading of exchange and the name S. Veltri. Could you tell what that was for?
- A. I don't know what this was for.
- Q. I show you check #540 made to Alba Furniture Mfg. Co. for \$100.00; could you tell me what this is for?
- A. I assume that I gave the Joe D's Blue Moon Inc. cash and had them write me out a check so I could have a receipt. This was for the furniture for my wife.
* * * * *
- Q. I show a check #609 dated April 17 for taxes for J. Covello and Rocchina; what is it for?
- A. It is probably for my taxes. The date on it shows April 17, 1961 and it is probably for back taxes.
* * * * *
- Q. Do you have any other employments?
- A. No.
- Q. Do you have any other income from any other sources?
- A. No.

"Agent H further testified that he picked up numerous checks from a Mr. Allen Nimensky, the accountant for the corporate licensee, which were introduced into evidence. A number of these checks were used by Covello, Jr. for the payment of personal debts for himself and his wife. These checks were offered for the purpose of supporting the Division's allegation that, in addition to the \$200 salary paid to Covello, Jr., he withdrew various sums of money, in addition to the bonuses paid to him, representing profits from the corporate licensee.

"Agent T corroborated the testimony of Agent H with respect to the purchase of the real property in which the licensed premises are located by Gloria Covello.

"Agent H was recalled and testified that he examined the records and a ledger given to him by the accountant; further, that Covello, Jr. was listed on the payroll records as receiving a salary of \$800 per month. There was also a listing of \$2,500 reflected on the ledger as being a bonus given to Covello, Jr. for the fiscal year ending October 1960.

"The information obtained from the records, supported and confirmed by Mr. Allen Nimensky, the licensee's accountant, to Division's agents was that Covello, Jr. had received a loan of \$2,612.19, of which apparently \$1,000 had been repaid. The agent stated that, when he thereafter questioned Covello, Jr. as to these loans, he was unable to recall the particulars of each of those items. He did admit, however, that the two listings of \$50 were payments made to his personal gardener at his home. He also admitted that a check for \$100, made payable to the Alba Furniture Mfg. Co. was for a dining room set for his wife at his home at 20 Cottage Street in Belleville. There was also a payment of \$1,000 by check to an attorney which he explained as an initial down payment on his home and there was a payment of a joint income tax of his wife and himself to the Internal Revenue Bureau.

"On cross examination Agent H was carefully examined about the \$2,500 which Covello, Jr. received from the business. He explained that his information, which he received from the licensee's accountant, was that this was a payment of a bonus and, since all salaries were paid in cash, he assumed that the \$2,500 was also paid in cash. Mr. Nimensky, however, could not recall in what manner that money was paid, but he did definitely advise this agent that it represented a bonus from the business.

"The defense to these charges is supported by the testimony of Covello, Sr., Covello, Jr. and Mr. Samuel Bozzo who acted as attorney for these individuals and for the corporate licensee. The defense constituted essentially a complete denial of these charges. Covello, Sr.'s testimony was, in fact, a retraction, on direct examination, of the answers given to the agents at the time of the preparation of his statement (introduced in the Division's case). He added the further specific information that he had sold his home on 17 Beaumont Place, Newark, for which he received a net consideration of \$9,000. This house was owned by him, although he never lived there; his son Charles lived there until it was sold. In 1958 he gave this money to his two daughters, to be used for the purchase of a tavern. He insisted that he gave nothing to Joseph Jr. He explained the reconveyance of the stock to him in the following manner:

'A. Well, I didn't want my daughter, because her husband was a cop; she didn't want to bother with it, so I took it over again.

- Q. Now, was there any money given by you to your daughter at the time that you got your shares of stock?
- A. No money.
- Q. And why not? Tell the Judge again.
- A. Well, I didn't need no money. It was my place.'

He further stated that he has been living on the second floor of the building wherein the licensed premises are located for the past four years.

"On cross examination he explained that he sold his home in 1955, and in 1958 gave the money to his daughters. The money, in cash, was kept in the home and not at any bank. He was unable to recall whether he received a check or cash at the time of the closing. He also repeated the facts concerning his present employment; verified the fact that he has not had a bank account for twenty-five or thirty years, and maintained that the money given to his daughter was a gift for which he received no security or any evidence of that transaction. He explained that the reason he gave the money to his daughter was that he thought the purchase of a tavern was 'a good deal.' His daughter Dorothy agreed with him, and he then gave her \$13,000 without obtaining any receipt or any security therefor. He was asked the following questions:

- 'Q. Do you know whether she received any profits from that investment?
- A. Profits? I don't know. I didn't want no profits anyhow.
- Q. Have you received any profits?
- A. No.
- * * * * *
- The Hearer: Well, suppose there were profits made, who do you want to keep the profits?
- The Witness: Well, I wanted my son to keep all the profits.
- The Hearer: All right
- Q. That's Joseph Jr?
- A. That's right.'

"He was questioned closely for the reason why he gave the large sum of money to his daughters instead of giving it to his son Joseph, and his answer was that it was his money and he gave it to his daughter Dorothy. He was then asked the following questions:

- 'Q. In 1958, did you think he (Joseph Jr.) was eligible to hold a license?
- A. No.
- Q. You thought he could not hold a license?
- A. No.
- Q. Did you think he could work for a licensee?
- A. No.
- Q. You thought he could not?
- A. Could not work.'

He thereafter repeated that whatever profits there were he gave to his son. He was then questioned about facts relating to the chattel mortgage, and could not recall any of the circumstances or, indeed, that there was a chattel mortgage covering these premises. He admitted that, when he was questioned by Agent H in March 1963, he told him that there was no chattel mortgage on the premises and, further, acknowledged that he first found out that there was a chattel mortgage for which these premises were secured about three or four months prior to this hearing.

"He was then further interrogated with respect to the salary and income received by Joseph Jr. as manager of these premises:

- 'Q. Did you know if he was receiving money more than the \$200 a week?
 A. No. Two hundred a week he was getting.
 Q. "No," you did not know, or, "No," he was not receiving more?
 A. He was receiving two hundred a week.
 Q. And you say he didn't receive anything more than two hundred a week before you got the shares of stock?
 A. Well, I don't know. Maybe he got a bonus. I don't remember.
 Q. It might have been received in bonuses?
 A. Well, every year maybe he got a bonus.
 Q. And do you know that the bonuses were equal to the profits above and beyond his salary?
 A. Well, I don't know.'

"Joseph Covello, Jr. testified on behalf of the corporate licensee, and essentially reiterated the information contained in the statement as reflected therein and in the testimony of the Division's agents. He categorically denied that he had contributed any money for the purchase of the stock of the corporation, or that the same was held for his benefit. He stated that he has been working in this place as the manager since 1958; that he assumed that it was quite all right for him to be so employed upon the advice of his attorney, Mr. Bozza, and of Mr. Brown, the secretary of the Newark Alcoholic Beverage Control Board.

"He also emphasized that he had neither attended any closings of title for this business nor engaged in any negotiations relating thereto. On cross examination he was examined about the employment of his deceased brother Charles, and particularly about those records which reflect Charles' employment for the corporation in 1958. He insisted that the employment records do not refresh his recollection as to whether Charles was employed during the years 1957 and 1958; however, he admitted that the employment record truly and accurately reflects the information regarding the salary for the other employees of the corporation.

"He was questioned in detail about the specific items projected by the Division's investigation, and he repeated substantially the same answers as he gave to the agents, as set forth in the unsigned statement. He was then cross-examined closely with respect to the income that he derives from the licensee. He asserted that, if the licensee showed a net profit of more than \$13,000, his family would get it. However, that has never happened. He also admitted that the licensee pays all the expenses of the real estate, the insurance, gas and electric and maintenance costs of the building.

"Mr. Samuel Bozza testified at length with respect to the stock transfers and negotiations which culminated in the purchase of the stock of the corporation by the present holders. He testified that he thought that Dorothy Veltri had gotten this money from her father, and that he 'never heard of Joseph Covello, Jr. giving any money to any member of the family.' He was asked the following questions:

- 'Q. And at that time, May 1958, you knew that the \$13,000 came from Mr. Covello, Sr.?
 A. Well, Dorothy Veltri gave it to me, or she produced it at the closing. Conversation, in

the course of conversation, I ascertained that she got it from her father. Now, I don't know that specifically.'

He was asked further:

'Q. And did you prepare any written document to secure his investment of \$13,000?

A. No, it didn't come up. It just came up in general conversation. To me, Dorothy Veltri was the main individual who was supplying the money. But it all came through Gloria Covello. Gloria Covello had the contract with Joseph DiModica to buy out the other fifty per cent. Then, concomitant and simultaneously therewith, Dorothy Veltri was to take over the ownership of the tavern at that time.'

'Mr. Bozza was also questioned concerning the mortgage payments. It was his understanding that these payments were to be made in lieu of rent, although Dorothy was actually primarily obligated on the mortgage.'

'There was some further examination of Mr. Bozza with reference to the original transfer of Joe D's Blue Moon's original stocks which were allegedly issued to Mrs. Veltri. Mr. Bozza was asked whether stocks shown to him were the actually printed shares of stock which were part of the corporate record, and he sought to explain that they were not issued because there were some 'legal angles' involved and 'there was going to be a different corporation formed, and we discontinued the Blue Moon and continued on with Joe D's Blue Moon.'

'Q. But why were not the shares of stock of Joe D's Blue Moon, Inc. issued to Miss Veltri?

A. They didn't have any stock book. They just had the original three shares. Joe D's Blue Moon didn't have the original stock book, so I used these to correspond with Joe D's Blue Moon.

Q. You mean they didn't turn over to you the original stock book; is that what you mean?

A. No. They had none. They had no stock book in the original transaction. Joe D's Blue Moon never had a stock book.'

And further:

'Q. Are these three shares of stock the shares of stock --

A. Those 100 shares were issued in lieu of the original 100 shares.

Q. Upon which Covello today traces his interest in the corporation?

A. Yes.

Q. Today, does the corporation have the blank shares of stock with the printed name "Joe D's Blue Moon, Inc."?

A. No. They never did have.'

'I have carefully examined and evaluated the testimony and exhibits with respect to these charges and have observed the demeanor of the witnesses as they testified before me. It might be well to restate the governing principles involved in cases of this kind. We are dealing here with purely disciplinary measures and their alleged

infractions, and such measures are civil in nature and not criminal. Kravis v. Hock, 135 N.J.L. 259 (Sup. Ct. 1947). Thus the Division need establish its case only by a fair preponderance of the credible evidence. Freud and Pittala v. Davis, 64 N.J. Super. 242; Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373.

"In other words, the findings must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 C.J.S. Evidence, sec. 1042. By a preponderance of the evidence is meant evidence which is of greater weight or more convincing than that which is offered in opposition. 32 C.J.S. Evidence, sec. 1021, at p. 1051, and cases cited therein. Cf. Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501.

"This additional fundamental principle should also be stated: Testimony, to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J. Super. 1. The accepted standard of persuasion relating to the testimony governing the trier of the facts is that the determination must be founded in truth. Riker v. John Hancock Mutual Life Insurance Co., 129 N.J.L. 508. No testimony need be believed but, rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899).

"Using these principles as a guide, I find the testimony of the agents and the supporting exhibits convincing and credible. I am particularly unimpressed with the testimony of Covello, Sr. I find that he has displayed a total lack of candor and forthrightness, with apparent disregard for the truth. Consequently, much of what he says is not only contradictory and incredulous but does violence to ordinary human experience.

"With respect to his inconsistent statements, it need only be necessary to point out one or two glaring examples. He had first testified that he invested his entire life savings in the sum of \$13,000 in the tavern because he thought it was a good investment (although he had no valid experience in this type of business); and he was not interested in receiving any profits. All the profits were to go to his son Joseph Jr. Then, in later cross examination, he completely reversed himself and denied that he had ever testified that his son was to receive the profits. He was then questioned by the Division's counsel as follows:

- 'Q. Now, when your daughter, Dorothy, said she wanted to get rid of the stock, she gave it to you.
Right?
- A. That's right.
- Q. Now, when you received that stock, you had no intention to receive the profits of the tavern, did you?
- A. Well, yes.
- Q. Weren't you content to let your son, Joe, receive the profits while you held the stock?
- A. No.
- Q. You were going to receive the profits?
- A. That's right.
- Q. Well, didn't you say before that you were content to let Joe receive whatever profits came from the tavern?
- A. No, I didn't say that.
- Q. You didn't say that earlier today?
- A. I do not think I did. I don't remember. I don't think.
- Q. I think the record will show that you did, Mr. Covello.'

And later:

"Q. At that time you were content to let Joe receive the profits of the tavern?

A. If it was thirteen thousand, I wanted him to make; after that, I'd take the profits.'

And further:

"Q. Did you have any agreement with your son, Joseph, as to the profits of the tavern?

A. I didn't have no agreement with him.

Q. Did you ever discuss with him what would happen to the profits of the tavern?

A. No. I never discussed anything with him.'

"The testimony shows, and Covello, Sr. admits, that he lived above the tavern since 1958. Yet he testified that his son Joseph Jr. was only employed as a manager for this tavern during the past year and he could not recall in what occupation Joseph was engaged prior to the past year. He suggests that he might have been working in some fruit business in Newark but certainly did not participate in the management of the tavern. This, of course, is directly contradictory to the admission of Covello, Jr. that he was actually engaged as a manager for this establishment for the past four years. Surely, his father, who lived in the same building and was at or on the premises day and night, knew that his son was so engaged and had managed this business since 1958. Therefore, I can only conclude that this was a deliberate and wilful misrepresentation of the facts.

"It also seems incomprehensible that the senior Covello would give his entire life savings to his daughter without any security, without any thought of reimbursement or compensation or return, to enable her to make an investment in a tavern business. This man, who apparently did not even trust the banks of the community to safe-keep his money, openheartedly divested himself of his entire savings.

"It is equally incomprehensible, if that were the fact, that no effort was made by his attorney to establish that fact in writing or, if he intended to make an investment for himself, that some form of written security would not have been executed. Nothing was presented to evidence this most unusual transaction. I am of the conviction that no such money was ever given by Joseph Covello, Sr. to his daughter, and do not believe his version with respect thereto.

"One further significant fact should be commented upon. This witness testified that he can read a little but is unfamiliar with statements reflecting the financial structure of this business. When he was asked to read certain items, he excused himself on the ground that he did not have his glasses with him. It is my distinct impression that this witness cannot read or write and can just barely sign his name. The mere recital of the testimony of Covello, Sr. with its conflicts, contradictions and ambiguities, disposes of the contention that he was the real owner of or was in control of this corporate licensee.

"Joseph Covello, Jr's testimony is similarly unconvincing. He was the one who was friendly with the prior owners of this business. It was he who was interested in becoming associated with the tavern business, and he initiated the negotiations leading to the purchase of the business. He knew, as he admitted, that he was not

legally qualified to participate or become affiliated with the alcoholic beverage industry, and I am satisfied and find as a fact that he used his sister and his father as 'fronts' for him in the purchase and operation of this business.

"It is very clear from the uncontraverted testimony produced on both sides that Covello, Jr. received, in addition to his salary, all of the profits from the business. Not only did he admittedly get a bonus, but check after check produced by the Division was acknowledged by this witness as reflecting payments for personal obligations--whether it be a payment for dining-room furniture that his wife purchased for their home; whether it be to pay the regular monthly maintenance charge for their gardener, or whether it be for the payment of the joint tax returns for him and his wife (who concededly was no employee of the licensee). All of these items were paid for by the licensee for his sole and exclusive use and benefit.

"He seeks to create the absurd impression that his father was in control and he was answerable to him. It is clear as crystal that he had to account to nobody. Indeed, even the accounting records manifest an absence of confidence between him and the accountant with respect to certain substantial expenditures. The explanation in the accounting statement, that some of these items are 'loans', appears to me to be flimsy and quite transparent.

"The testimony of licensee's accountant, Mr. Allen Nimensky, would have been valuable in clarifying some of these items; but he was never produced as a witness by the licensee. Nimensky's testimony would, indeed, have been indispensable in supporting the defense, particularly in support of defense of Charge #3. There has been nothing before me to suggest that Nimensky was not or could not be made available during the course of this hearing, which took place on July 15, August 5 and August 7, 1963.

"The rule of law appears to be that where a party has a witness or witnesses available and where they possess peculiar knowledge concerning the facts essential to a party's case, the failure to call said witness or witnesses gives rise to an inference that, if called, the testimony elicited therefrom would be unfavorable to said party, i.e., he could not contradict the testimony of Division's witnesses. Jacoby v. Jacoby, 6 N.J. Misc. 86; Re Cork 'N Bottle, Bulletin 1232, Item 3.

"I must in all candor say that the testimony of Mr. Bozza was not helpful or illuminating in getting at the core of the issues here involved. He testified that, in so far as he was told, the \$13,000 used in this transaction came from Covello, Sr.; that much of his information is based upon hearsay rather than direct knowledge; and that, so far as he knows, Covello Jr. is the manager and, therefore, merely an employee of this corporation. Whether these individuals confided in their attorney is a matter which I do not desire to pass upon. However, his testimony was not persuasive with respect to the ad hoc charges now being discussed.

"I find as a fact that the licensee falsely denied in its application filed with the Newark Municipal Board of Alcoholic Beverage Control on May 21, 1962, that no one had a beneficial interest in the stock issued to Joseph Covello, Sr., Mildred Benaquista and Albert Benaquista. Joseph Covello, Jr. had such an interest and was the real and beneficial owner of the stock. Therefore, such false statement and misrepresentation was made in violation of R.S. 33:1-25. Re Brass Rail Tavern, Inc., Bulletin 1072, Item 3; Re Countryside Tavern, Inc., Bulletin 1335, Item 2.

"I also conclude that the licensee aided and abetted Joseph Covello, Jr. to exercise the rights and privileges of the successive retail consumption licenses, in violation of R.S. 33:1-52 and R.S. 33:1-26. Re Nassaney, Bulletin 1324, Item 2; Re Palmowski, Bulletin 1311, Item 4. However, I find that there is insufficient evidence to sustain a similar allegation with respect to Charles Covello.

"I further determine that the licensee answered falsely Question 31 because I find that it did agree to pay the profits and income derived from this business to Joseph Covello, Jr., and permitted him to retain all of those profits and the income, and falsely stated otherwise in the license application, in violation of R.S. 33:1-25. Cf. Re Jacobsen, Bulletin 1239, Item 2; Re 339 Plane Street, Inc., Bulletin 1220, Item 3.

"As to Charge 4

"Joseph Covello, Jr., admittedly employed as manager of the licensed business, was convicted in the Essex County Court on September 21, 1949, of the crime of bookmaking, in violation of N.J.S.A. 2A-112-3, and was sentenced to a term of one to five years in the New Jersey State Prison. That such conviction involves the element of moral turpitude, see Re Case No. 667, Bulletin 1093, Item 7. Subsequently, pursuant to R.S. 33:1-31.2, by order of the Director dated April 3, 1963, the statutory disqualification was removed. Re Case No. 1739. However, by reason of this conviction, Joseph Covello, Jr. was precluded from engaging in the alcoholic beverage industry in this State from the date of his conviction until April 3, 1963, the date of removal of the disqualification.

"The explanation given by Covello, Jr. for his employment by the licensee was that he had consulted Mr. Robert Brown, the secretary of the Newark Municipal Board of Alcoholic Beverage Control, and was informed that, although he could not be employed as a bartender on licensed premises, he could work as manager. It was on the basis, therefore, of such advice that he continued his employment as a manager at these premises.

"Covello, Jr. also stated that he was advised to this effect by his attorney, Mr. Bozza. Mr. Bozza, in his testimony, admitted that he was under that impression at the time Covello, Jr. first consulted him. However, he states that he knows now that such employment would be contrary to the Alcoholic Beverage Law and the rules and regulations of this Division.

"I seriously question the truth of the statement that he received such advice from the secretary of the Newark Board. It is entirely inconceivable to me that Mr. Brown, a person of long experience and considerable knowledge of the Alcoholic Beverage Law, would have so advised him if he had been made aware of all the facts concerning Covello, Jr.'s criminal record. I don't believe that Covello, Jr. consulted Mr. Brown or, if he did consult with him, was frank and forthright with respect to all of the facts relating to his record. Significantly, Mr. Brown was not produced as a witness.

"In any event, there is no evidence that any such assurance was given to him by this Division, nor is there any written substantiation of any such opinion. Surely, the licensee does not suggest that such violation can be excused on the basis of any alleged opinion given by an official of a local issuing authority, or his attorney. Licensees cannot thus insulate themselves from their prohibited actions, especially where the reliance is based

upon the illogical proposition that a criminally disqualified person is qualified to manage a tavern but not qualified to act as a bartender under the supervision of such a manager.

"The explanation given by the licensee's agent must be rejected, and I recommend that the licensee be found guilty of this charge, for the period from February 28, 1958 to April 3, 1963. Re Verga & Rappise, Bulletin 1145, Item 3; Re Countryside Tavern, Inc., supra; Re Lu-Anne, Inc., Bulletin 1526, Item 15. I further recommend that, in view of the testimony and findings herein, the Director consider reopening the disqualification removal proceeding of Joseph Covello, Jr. (Case No. 1739) to consider whether the order removing his disqualification should be vacated.

"As to Charge 5

"This charge alleges that the licensee falsely stated 'No' in answer to Question 32 which makes inquiry with respect to any chattel mortgage on the furniture, fixtures, goods or equipment used in connection with the conduct of this business; whereas, in truth, a chattel mortgage securing a loan of \$22,000 on all the chattels and fixtures in the licensed premises was actually placed and is recorded.

"This charge has been substantially admitted by the licensee. Mr. Bozza, who represented the licensee at that time, stated that he personally prepared the application which was executed by the agents of the corporation and that the omission of the facts relating to the above mortgage was his own responsibility. He explained this in the following language.

'I'm sorry, but I think through inadvertence and probably my secretary, probably omitted to insert the answer to 32. She probably wasn't copying from the '61 application, so that is why there had been a failure to set forth the 32 question concerning the chattel mortgage. That is purely through an oversight and through inadvertence of my office, and I must accept the responsibility for that. It is my fault.'

"It is incomprehensible that such an important omission should be made in this application, where admittedly it was included in prior applications. Common working experience and practice would suggest that, when these applications are prepared, much of the information is obtained from prior applications. It is logical to assume that the application for the prior year was available to the person preparing this application. Such an important omission of this indispensable information would also seem to suggest that it was done accidentally--on purpose. The proffered explanation would seek to make it appear that the Division is chasing the wrong chicken. It is significant to note that no such inadvertence is claimed by Covello, Sr. when he signed and swore to the truth of the facts contained therein. He was asked by the Division attorney, on cross examination, the following:

- 'Q. Did you sign the application for the tavern liquor license in May, 1962?
A. Yes.
Q. And did you read the questions and answers in the application before you signed it?
A. Yes. I had my glasses.'

"Furthermore, in this charge there is no need to establish that this omission and violation was either wilful or unintentional--

only that the answer was not true. Such explanations as given by the licensee's witness may be offered only in mitigation of the penalty, but not in exoneration of the charge. I therefore recommend that the licensee be found guilty on this charge.

"In conclusion, I am satisfied that the charges herein have been proved by a fair preponderance of the credible proofs and indeed by the overwhelmingly substantial evidence, and I recommend that the licensee be found guilty of all charges as above indicated.

"The licensee has a prior adjudicated record. Effective June 23, 1958, the license was suspended by this Division for forty days for (1) permitting bookmaking on the licensed premises and (2) failure to file notice of change in the license application. Re Joe D's Blue Moon, Inc., Bulletin 1234, Item 1.

"The prior record of dissimilar violation within the past five years considered (Re Robert-Alan Hotel, Inc., Bulletin 1532, Item 4) and because it appears that the unlawful situation continues to exist, it is further recommended that an order be entered suspending the license for the balance of its term, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation and requesting lifting of the suspension after the expiration of ninety-five days from its commencement. Re Sylvestri, Bulletin 1513, Item 2; Re 339 Plane Street, Inc., Bulletin 1220, Item 3."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, arguments of counsel and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 14th day of November 1963,

ORDERED that Plenary Retail Consumption License C-521, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joe D's Blue Moon, Inc., t/a Chez Charles, for premises 165 First Avenue, Newark, be and the same is hereby suspended for the balance of its term, effective 2 a.m. Thursday, November 21, 1963, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation for lifting of the suspension of the license on or after 2 a.m. Monday, February 24, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

2. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION FOR LICENSE - FAILURE TO KEEP BOOKS OF ACCOUNT - NO PENALTY IMPOSED IN VIEW OF CANCELLATION OF LICENSE.

CANCELLATION PROCEEDINGS - CLUB NOT BONA FIDE - LICENSE CANCELLED.

In the Matter of Disciplinary Proceedings against)

Spartan Athletic Club)
117 Delaware Avenue)
Burlington, N. J.)

CONCLUSIONS
AND ORDER

Holder of Club License CB-9, issued by the Common Council of the City of Burlington)

Licensee, by James Phillips, President, Pro se.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that (1) in its application for current license, it falsely claimed a membership totaling ninety-nine (when, in fact, it comprised only nine bona fide members), in violation of R.S. 33:1-25, and (2) since January 2, 1956, it failed to keep true books of account indicating receipts and expenditures, in violation of Rule 12 of State Regulation No. 7.

In addition, licensee does not contest an order to show cause why its license should not be cancelled because improvidently issued in violation of R.S. 33:1-12(5) and Rule 2 of State Regulation No. 7, in that the club was not bona fide within the requirement of the law and the regulation.

Licensee has a previous record of suspension of license by the municipal issuing authority for four days effective February 18, 1952, twenty-nine days effective May 21, 1956, and fifty-five days effective February 11, 1957, all for sale to non-members.

It is apparent from the reports of investigation that if the club ever was bona fide and eligible to hold a club license, it has for several years past ceased to be such bona fide club.

Under the circumstances and in view of the non vult plea to the charges and the lack of contest of the order to show cause, the license will be cancelled. In view of such disposition, it is not deemed necessary to impose any penalty of suspension or revocation of the license on the basis of the charges. Cf. Re Brigantine Golf Club, Inc., Bulletin 1520, Item 2.

Accordingly, it is, on this 21st day of November 1963,

ORDERED that Club License CB-9, issued by the Common Council of the City of Burlington to Spartan Athletic Club for premises 117 Delaware Avenue, Burlington, be and the same is hereby cancelled and declared null and void, effective immediately.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Cliffside Inn, Inc.
 t/a Arsi's Restaurant
 354 Lawton Avenue
 Cliffside Park, N. J.
 Holder of Plenary Retail Consumption License C-16, issued by the Mayor and Council of the Borough of Cliffside Park

CONCLUSIONS
AND ORDER

 Joseph C. Woodcock, Jr., Esq., Attorney for Licensee.
 David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

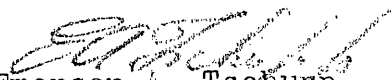
BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 14, 1963, it possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Littman's Tavern, Inc., Bulletin 1535, Item 9.

Accordingly, it is, on this 25th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-16, issued by the Mayor and Council of the Borough of Cliffside Park to Cliffside Inn, Inc., t/a Arsi's Restaurant, for premises 354 Lawton Avenue, Cliffside Park, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Monday, December 2, 1963, and terminating at 3:00 a.m. Thursday, December 12, 1963.


 Emerson A. Tschupp
 Acting Director