

STATE OF NEW JERSEY
 Department of Law and Public Safety
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL
 1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1630

August 20, 1965

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I. APPELLATE DECISIONS - PASTRANA'S BAR INC. V. BUENA.

Pastrana's Bar, Inc.,)
Appellant,)
v.)
Borough Council of the Borough) On Appeal
of Buena,) CONCLUSIONS
Respondent.) and
ORDER
-----)
Robert J. Halpin, Esq., Attorney for Appellant.
Lewis P. Scott, Esq., Attorney for Respondent.

BY THE DIRECTOR

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of the respondent Borough Council (hereinafter respondent) whereby the six members thereof voted to deny the application for renewal for the 1964-65 licensing term of appellant's plenary retail consumption license for premises located at west side Harding Highway north of North Boulevard, Buena.

Upon the filing of the appeal, the Director entered an order dated June 29, 1964, extending the term of appellant's license until further order herein. Rule 12 of State Regulation No. 15.

Appellant's petition of appeal alleges that the action of respondent was erroneous because:

"No formal notice was served upon Appellant prior to hearing setting forth specific charges; testimony of objectors at hearing failed to show a violation of any New Jersey statute or Alcoholic Beverage Control rule or regulation; the motion to deny renewal of license by the Borough council failed to set forth any reason for denying the license; the action of the Borough council to deny renewal of license was capricious, arbitrary, without cause, abuse of their discretion and discriminatory."

The answer filed by respondent denied appellant's allegations contained in the petition of appeal.

The appeal herein was heard de novo in accordance with Rule 6 of State Regulation No. 15.

Felix Pastrana (president and treasurer of appellant corporation) testified that appellant operates a tavern and restaurant and has been the holder of a liquor license for "about three and a half years." Pastrana stated that he has never seen or permitted immoral activities on the licensed premises although "Once in a while, the people try to talk a little loud, I go and tell them to keep quiet. If he don't keep quiet, I throw them out." However, on a

few occasions, when a problem had arisen, he had summoned the police and that, during the past three months, a police officer has visited the establishment twice nightly on Saturdays and Sundays. Pastrana further testified that he has never received any complaint from neighbors or local police for the manner in which the licensed premises have been operated. Pastrana testified that he never was advised of the reasons for denying appellant's application for renewal for the current license year and it is his opinion that the renewal of the license was denied by respondent because he is a Puerto Rican and most of his patrons are Puerto Ricans who work during the summer on nearby farms.

During cross examination Pastrana testified that at the hearing before respondent, appellant was represented by an attorney (not the attorney appearing for appellant in the instant hearing) who told him the reason for denying renewal of appellant's license was "Because they told me they don't want the bar over there, don't want the place over there." Pastrana further testified that on March 19, 1964, he had "a little trouble" when he was chased through his back yard by a man who shot at him. Also that about three weeks before the instant hearing, he put a man out of the licensed premises after the man "threw a bottle inside to the counter and he broke a few--three--bottle of whiskey" and, although innocent, he was arrested and is awaiting trial on a charge of being involved in a stabbing.

Victor Ruiz testified that for about two years he has been employed by appellant as a bartender and has never observed anything immoral occurring in the licensed premises. Ruiz further testified that he has never seen any brawls or fights on the licensed premises or heard any unnecessary noises and, if someone should cause a disturbance, he (Ruiz) would speak to him and also to Pastrana, who would evict him from the premises. Ruiz described the traffic on the highway as heavy and at times horns are blown and the brakes on cars screech when stopping at the traffic light.

On cross examination by respondent's attorney, Ruiz denied that he had taken a revolver from Pastrana at Lucy's luncheonette when Pastrana and Police Officer Santaga were allegedly involved in an altercation.

Walter Smith (secretary of the appellant corporation) testified that he visits appellant's licensed premises "three or four times a week", has never observed any immoral activities and, although he saw no fights, he saw "arguments, and Mr. Pastrana went and broke it up and told them to go outside. He didn't want no fights or nothing inside there." Smith further said that during the summer-time the traffic is very heavy on Harding Highway "till maybe two or three o'clock in the morning, maybe later sometimes" and cars travel "maybe 50 or 60 miles an hour, and then they hit the light, and they squeal their brakes and everything else.

On cross examination by respondent's attorney, Smith testified that he intended to purchase the license and spoke to Michael Cugino who lived across the street from the licensed premises, who told him "that ever since the Puerto Ricans been coming around there, they had a lot of trouble, and this, that and the other thing" and he wanted "to get rid of them, because it's residential." However, Smith contended that the area has "mostly all businesses around there. Very few houses."

Lucy Palverento (hereinafter Lucy) testified that she lives across the street from appellant's premises on a corner of Harding Highway and Arbor Avenue, and during the past year she has operated a luncheonette. On March 19 Police Officer Santaga was in her luncheonette when Pastrana and four Puerto Rican men (among whom was Victor Ruiz) entered, sat at the end of the counter and ordered and were served coffee. As she turned her back to make out a slip, Pastrana pushed her to a door leading to her living quarters and inquired as to the name of the police officer, stating that "he was going to kill him." She told Pastrana not to start trouble in her establishment and, when both re-entered the luncheonette, she advised Officer Santaga to be careful. Thereafter, as Pastrana and the officer walked outside, Pastrana "pulled a gun out of his shirt" and "put it into Mr. Santaga's stomach"; that she ran outside and pushed the gun away when Ruiz came out, took the gun from Pastrana and then crossed the street to the licensed premises. State troopers, a local police officer and the Chief of Police arrived and took Pastrana away.

Lucy further testified that on a Sunday afternoon "three or four months ago", she observed a girl employed by appellant wearing "a red dress with a real, real low-cut back" seated on the steps of the licensed premises become involved in a fight with two men. One of the men "undid her dress and pulled the whole thing down." Thereafter "They undone the bra, and they had the bra in their hands, and handed it to her. He had his hand in the back of her pants" as the girl entered the licensed premises.

Lucy further testified that within three or four months, on a Saturday or Sunday afternoon, she saw a man and woman come out of appellant's licensed premises, walk across the street and enter a car parked on the street "between my house and Mr. Cugino's house." Subsequent thereto, she observed the man and woman having sexual relations on the front seat, after which the woman left the car and re-entered appellant's premises just prior to the arrival of a State trooper. The latter took the man from the car "across the street to the bar." Lucy testified that at 4:30 a.m. on the Saturday prior to the first hearing herein held on October 6, 1964, there was a fist fight, screaming and profanity outside appellant's premises and she observed an employee of appellant there at the time. Also on two separate occasions she saw Pastrana urinating outside the licensed premises. On another occasion she observed a girl employed by appellant come out of the premises with a man, enter a parked car at the laundromat and engage in sexual intercourse. Moreover, on Christmas Eve (1963) as she was standing at the window of her sun parlor, awaiting the return of her husband and children from church, "there was a big riot in front of Mr. Pastrana's bar. He was in the middle of the street with a gun in his hand, and a club." She saw Victor Ruiz and another man take the gun and the club from Pastrana and then "they start beating on this man so bad; they had him from the middle of the block all the way to the corner, and they were just tearing him apart." Lucy said she telephoned to the State Police headquarters but, when a trooper arrived, the incident had ended.

Angelo Palverento (hereinafter Angelo) testified that on "St. Joseph's Day" (March 19, 1964) he saw Officer Santaga, Pastrana, Victor Ruiz, Juan Rivera and others outside the luncheonette where Pastrana was holding a gun at Officer Santaga's stomach and "calling him very bad words." Angelo admonished Pastrana by saying "Get rid of that gun right now, Felix" and Pastrana then handed it to Ruiz.

In answer to a question asked by the attorney for appellant, Angelo admitted that in 1950 he was convicted of bootlegging.

Linda Locicero testified that on a Sunday night in June 1964, a couple of weeks prior to the hearing before respondent for renewal of appellant's license, while seated on the steps of Lucy's luncheonette, she observed Pastrana come out of the bar with a man. After some conversation, Pastrana re-entered the tavern but, when the fellow who had accompanied Pastrana from the licensed premises attempted to re-enter the tavern, he was prevented from doing so by a man who was seated on the tavern steps. A male came out of the premises, a fight ensued, people "flocked out of the bar" and "they were ripping their ties off, running out in the street, throwing their ties in the car, starting a fist fight right in the middle of the street, with all the heavy traffic. Cars were veering all over the place. Two fellows managed to get the one fellow - - pushed him into a car and took off, and headed towards Atlantic City."

Michael Cugino, who resides across the street from appellant's premises, described a fight which took place on the Sunday morning before the October hearing on the highway in front of appellant's premises wherein about forty people were involved. He stated that fights and brawls occur on practically every weekend "in the wee hours of the morning after it's closed up" as well as "on Sunday afternoons, right in broad daylight, there has been many a fight out on the front there."

Juan Rivera testified that he was working for Lucy on the occasion when Pastrana and four other men, among whom was Ruiz, entered the luncheonette. He saw Officer Santaga and Pastrana go outside where Pastrana pushed a gun in the officer's stomach. Pastrana handed the gun to Ruiz who carried it across the street to appellant's premises. He also saw an incident in a car parked across the street from appellant's tavern where a woman and a man were engaging in sexual intercourse and was present on one occasion, after appellant's premises closed, when all men were present, Pastrana permitted a girl to dance in the nude. On Christmas Eve (1963) he was present in appellant's premises when "Tony Colon" called Pastrana a name, and Pastrana "threw him out the steps" and fired three shots at Colon.

An extensive cross examination of Juan Rivera by appellant's attorney failed to change in any material way the direct testimony of the witness.

Cosmo Giovinazzi, Jr. (a member of respondent Council), when asked why he voted to deny renewal of appellant's license, testified that although he had no personal knowledge of the manner in which appellant's premises was conducted, after listening to the testimony of objectors, he was of the opinion that appellant's premises was a detriment to the municipality. Furthermore, he was aware that appellant's license had been suspended on two occasions for violations of the Alcoholic Beverage Law.

Appellant produced Antonio Colon as a witness who denied that he was in appellant's licensed premises on Christmas Eve 1963. He further testified that he never had any trouble with Pastrana, and that the latter had never threatened him with a gun or shot at him. Furthermore, Colon testified that in October Lucy requested him to come to the instant hearing to testify that on Christmas Eve 1963 Pastrana shot at him but he told her "I can't come because that was not right" as "I don't was shot at." Moreover, Colon stated

that he visits appellant's premises a couple of times each week but has never seen any fights outside or immoral acts committed inside appellant's premises.

Lucy, recalled in rebuttal, testified that some time after arriving home from the first hearing (October 6, 1964), she spoke to Antonio Colon, who admitted that on Christmas Eve 1963 Pastrana shot at him. Thereafter, on election night (November 3, 1964) she again spoke to Colon and mentioned to him that she had seen him with Pastrana and asked Colon if he would still come to Newark to testify, to which he replied, "Don't worry, he don't buy me."

I have recited somewhat in detail the testimony of the witnesses called by and on behalf of the respective parties to this appeal. However, before evaluating the weight and substance of such testimony, I shall endeavor to clarify some of the allegations relied on by appellant in its petition of appeal to reverse the action of respondent.

A liquor license is a temporary permit or privilege to conduct a business otherwise illegal. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954). Whether it is to be renewed rests in the sound discretion of the local issuing authority and, upon review, its determination should not be disturbed unless the evidence indicates an abuse of that discretion. 279 Club v. Mun. Bd. of Alcoh. Bev. Cont. of Newark et al., 73 N.J. Super. 15, 21 (App. Div. 1962).

As was more fully stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (Sup. Ct. 1946):

"The primary question presented is the right of a holder of a plenary retail consumption license to a renewal of that license for a subsequent term.

The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail,*** and no person is entitled as a matter of law to a liquor license. *** No licensee has vested right to the renewal of a license. Whether the original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. *** The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

R.S. 33:1-31, which by its terms requires formal charges to be served upon a licensee, applies only to proceedings to revoke or suspend a license and not to applications for renewal of license. See also Utrecht v. Hopatcong, Bulletin 1154, Item 7.

In so far as the failure of respondent to accompany the denial of the renewal of the license in question with formal reasons for its action, the court has held that, although desirable, the statute (R.S. 33:1-24) is silent with reference thereto. Fanwood

v. Rocco, 33 N.J. 404, 416.

A careful examination of the testimony discloses that Pastrana's conduct before the action of respondent in refusing to renew appellant's license for the current licensing term, as well as his nefarious conduct since the denial thereof, amply shows that he is entirely unfit to be associated with the alcoholic beverage industry in this State. I believe that the witnesses produced by respondent have truthfully related the various activities - - immoral and otherwise - - which are attributable to the operation of appellant's licensed premises. The witnesses produced by appellant, especially Antonio Colon, have failed to impress me with the truthfulness of their testimony. There has been no evidence presented herein to indicate any improper motivation on the part of respondent and, thus, the accusation that because of his nationality he was discriminated against carries no weight whatsoever.

Perhaps it is understandable that local issuing authorities at times withhold institution of disciplinary charges in hopes that, where warranted, licensees will make efforts to improve the conditions in the operation of the licensed business. This would appear the natural thing for a liquor licensee to do in order to protect his investment. Unfortunately, in some cases, the holder of a license, or the officer of a corporate licensee, is temperamentally unsuited to be engaged in the liquor industry. It was to be expected that Pastrana, president and major stockholder of the appellant, with a past record of violations of the Alcoholic Beverage Law, would use every means at his command to operate the business in a lawful manner. This he has not only failed to do, but in many of the incidents was an active participant.

In stressing the paramount public interest that must be considered on an application to renew, I have not lost sight of the fact that the licensee is entitled to fair play. Renewal of a license should not be denied arbitrarily or without a sufficient reason. However, it is well established that the fitness of the applicant and his conduct under a previous license may be considered by an issuing authority in reaching a decision on an application to renew. Caldwell Wine & Liquor Co. v. Caldwell, Bulletin 737, Item 3; Zicherman v. Driscoll, supra. There is sufficient in the record to justify respondent's action whereby it denied renewal of appellant's license.

Under the circumstances herein, and based on the evidence adduced, it is recommended that the action of respondent be affirmed and that the appeal herein be dismissed.

Conclusions and Order

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument thereto were filed by the attorney for appellant herein. Thereafter, on June 9, 1965, oral argument was presented before me in this matter.

Appellant's attorney contended that Officer Santaga, whose life was allegedly threatened by Felix Pastrana, should have been produced as a witness by respondent and that the failure to do so impaired the veracity of the gun incident as testified to by Lucy Palverento. Both Angelo Palverento and Juan Rivera corroborated the testimony of Lucy that Pastrana held a gun at Officer Santaga's stomach.

In State v. Clawans, 38 N.J. 162, it was stated that, in order to draw an inference for not producing a witness who was available to both parties that his testimony would be unfavorable, it must appear that the testimony be superior to that already utilized in respect to the fact to be proved. Under the circumstances in the instant case, the testimony of the officer could not be considered superior to that of the three witnesses aforementioned, but merely cumulative.

With respect to the testimony of the witnesses herein, it is the function of the person hearing the matter to determine the weight which should be given thereto. I am satisfied that the witnesses testifying on behalf of respondent gave truthful accounts of the incidents occurring, many of which Felix Pastrana not only participated in but was the person who provoked the occurrences.

In Abad v. Newark, Bulletin 619, Item 8, it was stated by former Commissioner Driscoll that:

"The ultimate question presented by the record on this appeal, therefore, is one of fact. Notwithstanding the 'de novo' character of the appeal, the Commissioner, in his determination of the issues, should affirm where there is competent evidence in the record 'from which the conclusion of the administrative tribunal (the local issuing authority) could be deduced.' Cf. Vajtau v. Commissioner of Immigration, 273 U.S. 103, 106. Under the Rules Governing Appeals (Rule 6 of State Regulation No. 15), the burden of proving reversible error rests with the appellant."

There is no doubt from the evidence presented herein that the manner in which appellant's licensed premises was permitted to be conducted constituted a trouble spot which was detrimental to the community. The ignorance claimed by the persons responsible for and in charge of the licensed premises, with reference to the type of patrons to which the establishment catered, strains credulity.

I have examined all the other arguments advanced by appellant and find that they lack merit.

Appellant's license was suspended for twenty days effective March 14, 1963, for "refills" (Bulletin 1505, Item 5), and again for twenty-five days effective May 11, 1964, for sales of alcoholic beverages to minors (Bulletin 1565, Item 6).

After careful consideration of the entire record herein, including the transcript of the testimony, the arguments pro and con of the attorneys for the respective parties, the exceptions and argument filed by the attorney for appellant, and the oral argument held before me, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 24th day of June 1965,

ORDERED that the action of respondent Borough Council of the Borough of Buena in denying appellant's application for renewal of its license for the 1964-65 licensing year be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order entered on June 29, 1964, extending the term of appellant's license pending determination of the appeal herein, be and the same is hereby vacated.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -
LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
Charmac, Inc.
7-9 N. Straight Street
Paterson, New Jersey
Holder of Plenary Retail Consumption License C-47, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS
and
ORDER

Licensee, by Joseph Borrelli, President, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 8 and 14-15, 1965, it conducted the licensed place of business as a nuisance, viz., permitting apparent male and female homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates in question the licensed premises was patronized by large numbers of apparent male and female homosexuals, i.e., on May 8 by four female and thirteen male homosexuals out of a total patronage of twenty-three, and on May 14-15 by eight female and sixty male homosexuals out of a total patronage of seventy.

Absent prior record, on the basis of the facts appearing (simple congregation of a relatively large number of apparent homosexuals), the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re K & K Corp., Bulletin 1588, Item 3.

Accordingly, it is, on this 17th day of June 1965,

ORDERED that Plenary Retail Consumption License C-47, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Charmac, Inc., for premises 7-9 N. Straight Street, Paterson, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1965, commencing at 3 a.m. Thursday, June 24, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Wednesday, August 18, 1965.

JOSEPH P. LORDI
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Bertha Sauter & Bertha J. Sauter
 153 Bergen Boulevard
 Fairview, New Jersey
 Holders of Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Fairview

 Frank P. Lucianna, Esq., Attorney for Licensees.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

CONCLUSIONS

and

ORDER

BY THE DIRECTOR:

Licensees plead non vult to a charge as follows:

"On Thursday night February 25, 1965, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises, viz., such activity and conduct by male and female persons and such language by a male person, in their performances on your licensed premises for the entertainment of customers and patrons thereon; in violation of Rule 5 of State Regulation No. 20."

Reports of investigation disclose that the alleged conduct and language consisted of the performance by two females of a strip tease to complete nudity, further aggravated by their indecent acts involving male patrons, and the telling of suggestive and indecent stories by a male master of ceremonies, all as part of entertainment furnished at a dinner conducted by an industrial organization at the licensed premises on the date alleged.

Absent prior record and considering all of the circumstances, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Cf. Re Talvacchia, Bulletin 1594, Item 1; Re Kinahan, Bulletin 1462, Item 2; Re 500 Cafe, Inc., Bulletin 1584, Item 2.

Accordingly, it is, on this 22d day of June, 1965,

ORDERED that Plenary Retail Consumption License C-5 issued by the Mayor and Council of the Borough of Fairview to Bertha Sauter and Bertha J. Sauter for premises 153 Bergen Boulevard, Fairview, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1965, commencing at 3:00 a.m. Tuesday, June 29, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Monday, August 23, 1965.

JOSEPH P. LORDI
 DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Adolph Smarsch)
t/a Starlight Lounge)
1350 West Blancke Street)
Linden, New Jersey)

CONCLUSIONS

and

Holder of Plenary Retail Consumption License C-55, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden.)

ORDER

-----)
Green and Lasky, Esqs., by H. Kermit Green, Esq., Attorneys for Licensee
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 12, 1965, he possessed alcoholic beverages in six bottles bearing labels which did not describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee, then trading as Penn Brook Inn, has a previous record of suspension of license then held for premises 33-35 West Grand Street, Elizabeth, by the municipal issuing authority for ten days effective March 27, 1950, for permitting a brawl on the licensed premises. In addition, then trading as Palmer's Lodge, his license for the present premises was suspended by the municipal issuing authority for five days effective March 3, 1963, for employment of an unqualified person.

The prior record of suspension of license for dissimilar violation in 1950 disregarded because occurring more than five years ago, but the prior record of suspension for dissimilar violation occurring in 1963 within the past five years considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Kauertz, Bulletin 1510, Item 4.

Accordingly, it is, on this 14th day of June 1965,

ORDERED that Plenary Retail Consumption License C-55, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden to Adolph Smarsch, t/a Starlight Lounge, for premises 1350 West Blancke Street, Linden, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1965, commencing * at 2 a.m. Monday, June 21, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Friday, July 16, 1965.

JOSEPH P. LORDI
DIRECTOR

*By order dated June 18, 1965, effective dates of suspension were changed to commence 2 a.m. Monday, June 28, 1965 and terminate 2 a.m. Friday, July 23, 1965.

5. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING BALANCE OF SUSPENSION AFTER WITHDRAWAL OF APPEAL TO APPELLATE DIVISION.

In the Matter of Disciplinary Proceedings against)

Thomas Giaquinto t/a Silver Slipper 235 Buffalo Avenue Paterson, New Jersey)

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-173, issued by the Board of Alcoholic Beverage Control for the City of Paterson)

Joseph M. Harrison, Esq., Attorney for Licensee. David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On January 28, 1965, I entered Conclusions and Order herein suspending the license for twenty-five days commencing February 8, 1965, for permitting person of ill repute on the licensed premises and unqualified employees. Re Giaquinto, Bulletin 1605, Item 3.

After effectuation of the order of suspension but before its expiration, upon appeal filed, the Appellate Division of the Superior Court stayed the balance of the suspension effective 3:00 a.m. February 13, 1965 (after five days had been served).

On June 11, 1965, the appeal was withdrawn and dismissed by agreement, pursuant to R.R. 1:8-6. The twenty-day balance of the suspension may now be reimposed.

While the appeal was pending, I entered Conclusions and Order in Re Giaquinto, Bulletin 1626, Item 3 on May 27, 1965, suspending the license and any renewal thereof for one hundred twenty days commencing at 3:00 a.m. Thursday, June 3, 1965, and terminating at 3:00 a.m. Friday, October 1, 1965, for sale to minors, unqualified and disqualified employees, permitting person of ill repute on the licensed premises, and hindering investigation.

Accordingly, it is, on this 22d day of June, 1965,

ORDERED that the twenty-day balance of the twenty-five day suspension heretofore imposed, and stayed during the pendency of proceedings on appeal, be reinstated against any renewal of Plenary Retail Consumption License C-173 that may be granted by the Board of Alcoholic Beverage Control for the City of Paterson to Thomas Giaquinto, t/a Silver Slipper, for premises 235 Buffalo Avenue, Paterson, commencing at 3:00 a.m. Friday, October 1, 1965, and terminating at 3:00 a.m. Thursday, October 21, 1965.

JOSEPH P. LORDI DIRECTOR

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

In the Matter of Disciplinary Proceedings against
 Ukrainian National Home, Inc.
 90-96 Fleet Street
 Jersey City, New Jersey
 Holder of Plenary Retail Consumption License C-426, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS
 and
 ORDER

 Brass & Brass, Esqs., by Leonard Brass, Esq., Attorneys for Licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 14, 1965, it sold mixed drinks of alcoholic beverages to three minors, ages 16, 19 and 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Cf. Re Alex L. Saldarini Post 453 VFW, Bulletin 1403, Item 9; Re Begley and Buckley, Bulletin 1411, Item 2.

Accordingly, it is, on this 25th day of June, 1965,

ORDERED that Plenary Retail Consumption License C-426, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Ukrainian National Home, Inc. for premises 90-96 Fleet Street, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Friday, July 2, 1965, and terminating at 2:00 a.m. Tuesday, July 27, 1965.

JOSEPH P. LORDI
DIRECTOR

7. MORAL TURPITUDE - ILLICIT ALCOHOLIC BEVERAGE ACTIVITY - CONVICTION HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

Re: Eligibility No. 741

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of his conviction of a crime.

Applicant's criminal record discloses that on May 7, 1965, he was convicted in the Union County Court on a two count indictment charging him with unlawful sale and possession of alcoholic beverages and was sentenced on the first count to serve one to two years in New Jersey State Prison (suspended) and fined \$150.00 and was fined \$100.00 on the second count.

Reports of Division agents disclose that applicant between December 23, 1963 and January 15, 1964, while employed as a truck driver by a brewery licensee, sold and delivered 45 cases of various brands of beer at \$3.50 per case to an operator of an unlicensed food market; that on January 18, 1964, 42 cartons of various brands and sizes of beer were seized in applicant's garage and that applicant intended to sell the same to the aforesaid non-licensee.

At the hearing held herein, applicant (41 years old) substantially verified the aforesaid reports and further testified that he had been employed as a truck driver by a brewery licensee for 18 years; that on or about December 18, 1963, he arranged to sell and deliver beer at \$3.50 per case to a Mr. X, a non-licensee, at his food market; that between December 23, 1963 and January 10, 1964, he made about five to ten such deliveries for a total of about 45 cases; that he was paid for same in cash; that he knew Mr. X was not the holder of a liquor license; that he had also stored 42 cases of various brands and sizes of beer in his garage; that he had purchased the same at various times from other truck drivers at \$2.00 per case; and that he intended to sell this beer to Mr. X.

Applicant further testified that part of the beer which he had sold to Mr. X came from an excess amount placed on his truck at the brewery; that previous to his dealings with Mr. X, he had returned such excess to his employer and that he had made a profit of about \$300.00 in his transactions with Mr. X.

In the absence of aggravating circumstances, a simple violation of the Alcoholic Beverage Law does not involve moral turpitude. Re Case No. 366, Bulletin 445, Item 10. However, in this case, it appears that the applicant was involved in illicit alcoholic beverage activities (bootlegging) on a fairly large commercial scale. See Case No. 467, Bulletin 695, Item 1.

Based on the reports of the agents and the testimony of the applicant, I find that the circumstances surrounding the above described convictions were of such aggravating circumstances as to warrant the conclusion that the applicant's convictions involve the element of moral turpitude.

Under the circumstances, I recommend that applicant be advised that (1) in the opinion of the Director he has been convicted of a crime involving moral turpitude; (2) the Alcoholic

Beverage Law of this State (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3) R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him in any business capacity whatsoever a person so disqualified.

Dated: June 25, 1965

I. Edward Amada
Attorney

Approved:

Joseph P. Lordi
Director

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)
Anasarca Corporation)
t/a Carolier Lanes)
U. S. Highway #1)
North Brunswick Township)
PO RFD 4, New Brunswick, N.J.)

CONCLUSIONS

and

Holder of Plenary Retail Consump-)
tion License C-17, issued by the)
Township Committee of the Township)
of North Brunswick)

ORDER

Schreiber, Lancaster & Demos, Esqs., by Sidney M. Schreiber, Esq.,
Attorneys for Licensee.
Morton B. Zemel, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 13, 1965, it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Galicia Bar, Inc., Bulletin 1617, Item 9.

Accordingly, it is, on this 21st day of June, 1965,

ORDERED that Plenary Retail Consumption License C-17, issued by the Township Committee of the Township of North Brunswick to Anasarca Corporation, t/a Carolier Lanes, for premises on U. S. Highway #1, North Brunswick Township, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1965, commencing at 2:00 a.m. Monday, June 28, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Saturday, July 3, 1965.

JOSEPH P. LORDI
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 Frank Sachse and Emma Sachse)
 1238 Broad Street)
 Newark 2, New Jersey)
)
 Holders of Plenary Retail Consumption License C-824, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

CONCLUSIONS

and

ORDER

 Licensees, by Frank Sachse, Pro se.
 David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead guilty to a charge alleging that on May 17, 1965, they possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Angioletti, Bulletin 1619, Item 4.

Accordingly, it is, on this 28th day of June, 1965,

ORDERED that Plenary Retail Consumption License C-824, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Frank Sachse and Emma Sachse for premises 1238 Broad Street, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, July 5, 1965, and terminating at 2:00 a.m. Saturday, July 10, 1965.

JOSEPH P. LORDI
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Joseph T. Robinson)
t/a Nite Cap Bar)
225 Palisade Avenue)
Cliffside Park, New Jersey)

CONCLUSIONS

and

Holder of Plenary Retail Consumption License C-22, issued by the Mayor and Council of the Borough of Cliffside Park.)

ORDER

-----)
Licensee, Pro se.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

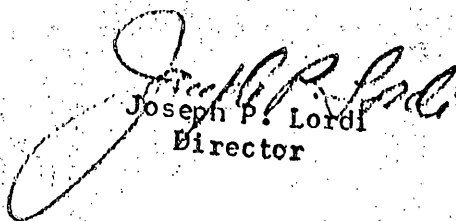
Licensee pleads guilty to a charge alleging that on June 5, 1965, he sold drinks of beer to four minors, one aged 17 and three age 18, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Cf. Re Club "16" Corporation, Bulletin 1472, Item 10; Re Pallankier, Inc., Bulletin 1600, Item 6.

Accordingly, it is, on this 21st day of June, 1965,

ORDERED that Plenary Retail Consumption License C-22, issued by the Mayor and Council of the Borough of Cliffside Park to Joseph T. Robinson, t/a Nite Cap Bar, for premises 225 Palisade Avenue, Cliffside Park, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1965, commencing at 3:00 a.m. Friday, June 25, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Thursday, July 15, 1965.


Joseph P. Lordi
Director