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

BULLETIN 980 August 5, 1953.

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ITEM

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

BULLETIN 980 AUGUST 5, 1953.

1. APPELLATE DECISIONS - dePINHO ET AL. v. NEWARK.

DAVID JOSE dePINHO, SIDINA IGREJAS and ARTHUR NEVAS,
Appellants,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Martin Gelber, Esq., Attorney for Appellants.
Charles Handler, Esq., by Roger M. Yancey, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby, by a 2 - 1 vote, it suspended appellants' plenary retail consumption license for a period of thirty days after it had adjudged appellants guilty in disciplinary proceedings on the charge hereinafter set forth.

Upon the filing of the appeal, an order dated February 25, 1953 was entered by me, staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

The charge preferred by respondent against appellants is as follows:

"In that you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon the licensed premises on November 15, 1952; in violation of Rule 1 of State Regulations No. 20."

In accordance with Rule 8 of State Regulations No. 15, the instant appeal was submitted by stipulation upon the transcript of testimony taken before the respondent Board.

At the hearing below Linda P. ---, her alleged companion Evelyn ---, and several police officers testified on behalf of the prosecution.

Linda testified that she was 16 years of age; that on the evening of November 15, 1952, she and a girl friend did some shopping and were driven by a male friend to appellants' licensed premises, which they entered about 7:00 p.m.; that when they entered there were two bartenders on duty, one being identified by her as Fernando Igrejas, and the other as Arthur Nevas; that while there she consumed three or four drinks of "Seagram No. 7, with lemon soda". Linda further testified that, upon leaving the premises with her companion, she missed her wallet; that she returned to appellants' premises to look for the wallet and, when unable to find it, left the premises; that she and her companion were a block away from the tavern when she noticed in a bag she was carrying a quart bottle labeled "Seagram No. 7 Whiskey" instead of the fifth of that brand of whiskey which a man

had obtained for her and her companion at a licensed premises prior to their visit to appellants' tavern. She further testified, "Well, when we got back to the bar, when we noticed it was a different bottle, my girl friend, she stood in the front, and I went to the back of the bar. I asked him whether he knew anything about it". At this point, the Chairman of the respondent Board inquired, "Who is he?", and the witness said, "The bartender, the one in the middle [indicating to man sitting in the audience]". (This man is not identified in the record by name but presumably it was Fernando Igrejas.) The witness then continued, "And he was the one. He is the one. So, I asked, the one in the middle over there, if he knew anything what happened to the bottle and he said no. Then, he turned around and started talking Spanish and laughing and then I got mad and flung the bottle".

There were introduced in evidence three sworn statements which Linda had given to the police relative to the occurrence at the tavern of appellants on the evening of November 15, 1952. In the first statement, made on November 15, 1952, she said: "We went back to the Iberia Tavern and told the bartender Arthur Nevas of the change in the bottles and the theft or loss of my wallet. He claimed he knew nothing about either. We argued back and forth and then I threw the bottle at the window, but neither the bottle or the window broke. I don't know what happened to the bottle of water after I threw it. Then I threw a glass which I picked up from the bar and threw it at the window and both broke".

In her statement given the following day, namely November 16, 1952, Linda's version of what transpired when she returned to appellants' licensed premises to inquire about the bottle of whiskey in question is as follows: "We went back to the Iberia and I asked Fernando Igrejas what had happened to my bottle of Seagram's. He said that he didn't know. I got mad and threw the bottle of water at the front window which did not break. I then picked up a glass from the bar and threw that which did break the window".

In her statement of November 17, 1952, Linda said: "We went back to the Iberia and I asked Fernando what he had done with our fifth of Seagram's. He said that he did not know anything about it. I asked him what he was going to do about it. He said nothing. I got mad and threw the bottle at the front window which didn't break. I picked up a beer glass from the bar and threw that, breaking the window".

In said last statement, dated November 17, 1952, Linda said, "About a little after 8:00 p.m., we left the tavern and walked down Ferry St. (going east). Evelyn thought that the bag seemed a little heavier and noticed that the paper bag was dirty. She opened the bag and saw that the top of the bottle had been opened and that the sign on the bottle read Full Quart. She took a taste of it and asked me to also take a taste. We both agreed that there was water in the bottle".

At the hearing below, however, Linda testified as follows:

"Q. Where was the bottle in the bag, was the bottle in the bag all this time?

A. It was right on the bar.

Q. In front of you?

A. Yes, on the side of me.

Q. On the side of you or on the side of the other girl?

A. On the side, right in the middle of both of us.

Q. Was it out of your sight at any time?

A. Only when we got up to play the juke box.

Q. You picked it up and walked out with it?

A. That is right.

Q. How far did you walk away from the tavern before you looked into the bag, before you looked at the bottle?

A. A block.

Q. What made you take the bottle out of the bag when you walked away?

A. It was heavier.

Q. Who was carrying it?

A. I think I was at the time.

. . . . . .

Q. You noticed it was heavier?

A. Yes. That is right.

Q. You took out the bottle?

A. Yes, from the bag.

. . . . . .

Q. After noticing this bottle was different, and, by the way, was it a Seagram bottle?

A. It was the same kind of bottle, Seagram's No. 7."

Linda testified that she had "lied" about her age and about the name of her girl companion in the sworn statements made by her to the police on November 15 and 16, 1952. (In these two statements she gave her age as 18 and her companion's name as "Zelda".) She testified that on November 17, 1952 she corrected the information by giving her true age (16) and naming Evelyn as her female companion. She explained in her testimony that she had not previously named Evelyn "because she told me she was in trouble" and that she (Linda) wanted to "protect" her.

Linda gave different reasons for her visit to appellants' licensed premises. In her statement dated November 16, 1952, she said that she went to meet "Roger" (a soccer player). In her statement dated November 17, 1952, she said that she had some pictures which she wanted to give to the soccer players. In her testimony at the hearing below she said that she wanted to return some pictures but added "There was lots of reasons we went there for". Later in her testimony she admitted that she went there looking for a particular "fellow".

Furthermore, in her statement dated November 16, 1952, Linda stated that after she had missed her wallet she returned to the licensed premises, left the premises and later discovered the alleged substitution of bottles and thereafter returned again to the licensed premises to complain. However, in her statement dated November 15, 1952, she indicated no intervening visit to the licensed premises between her discovery that her wallet was missing and the discovery of the substitution of bottles.

Samuel Kerr, a police officer testified that he and Officer Edward Riezewski were summoned to appellants' tavern at about 9:10

p.m., on November 15, 1952. When they entered they were met by Arthur Nevas, one of the owners, who stated that a girl, then seated at the bar, had thrown a bottle through the window and that he wished to press a complaint. The girl told him she was 18 years of age and "that she had come in with another girl earlier and that the bartender, Mr. Igrejas, just did something to a bottle of whiskey that she had placed on the bar, that she says was supposed to have been water or something, and she threw it through a window". This officer claimed that he could not find the bottle and the bartender remarked that he "**** didn't see any bottle". When the officer was asked by one of the members of the respondent Board whether the bartender was referring to the bottle that was thrown or the one Linda accused him of switching, the officer said he did not know.

It was stipulated by the parties hereto, after Officer Riezewski was sworn as a witness for respondent, that if he were to testify his testimony would be substantially similar to that of Officer Kerr.

Evelyn, the girl whom Linda testified accompanied her to appellants' premises and who was produced as a witness by the respondent, testified that, although she was a friend of Linda's, she never visited the appellants' licensed premises with her. She further testified that she never heard of appellants' tavern. She specifically denied that on November 15, 1952 she went shopping with Linda or that she visited appellants' licensed premises. Although Evelyn was examined at great length by each member of respondent Board and reminded by two of them that she was testifying under oath, she steadfastly adhered to the story that she was not with Linda at appellants' licensed premises at the time in question. "I wasn't there", she testified, "I don't know why she lied. She has lied about me before". Asked on cross-examination to tell of the incident, she explained: "One time I had to come down to the Board of Education. She played hookey with cab drivers of the Brown and White Taxicab and she name me and it was proven that I was in school at the time".

On behalf of appellants Arthur Nevas, one of appellant-licensees, testified that on November 15, 1952, he left the tavern at about 7:00 p.m. in order to take the chef, one Henry Camano, to his home in Harrison; that when they arrived in Harrison they stopped in a tavern in order to obtain a few drinks and, while there, watched a television show that was in progress; that about 8:30 p.m. he and the chef left this tavern and proceeded to the chef's home; that thereafter he returned to the licensed premises, arriving there around 9:00 p.m.; that when he arrived there he saw Linda and also observed that the window was broken; that upon inquiry of the bartender he was told that Linda had thrown a bottle and a glass at the window. This witness also testified that he had never seen Evelyn in the tavern, and that he had seen Linda in the tavern twice before when she had come in looking for "the soccer player", but that he had never served any alcoholic beverages to her at any time.

Henry Camano testified that he was employed as cook at appellants' licensed premises and corroborated the fact that a few minutes after 7:00 o'clock on November 15, 1952 he left the licensed premises and was driven home by Arthur Nevas, one of appellant-licensees; also that they stopped off at a tavern where they had a few drinks and viewed television, leaving said place around 8:30 p.m.

Fernando Igrejas testified that he is employed as a bartender at appellants' licensed premises and that on the evening of November 15, 1952 at about 7:15 p.m., Linda came alone into the licensed premises; that she asked whether he had seen "Roger" (the "soccer player" whose real name is Manuel Maributo and who is a member of a soccer club being operated in the cellar of the licensed premises)

and he told her he had not; that he did not serve her any drink of any description at the time; that about ten minutes later she again came in and looked around; that again between "8:30 and 9:00 o'clock" she re-entered the licensed premises with a paper bag in her hand, which she placed on the bar, saying "Where is my bottle of Seagram's No. 7?", and when he did not answer her, she remarked, "You want the window smashed?". He testified that "she picked up the bottle and then she picked up a glass and throws it". Thereafter he called the police. He also testified that Arthur Nevas, one of appellant-licensees, had left the place a "little after 7 o'clock" to take the cook home and was not in the tavern at any time that Linda was in the licensed premises until the window was broken. He testified further that he had never seen Evelyn until after the night in question.

The appellants produced several witnesses who testified that they were in the licensed premises at the time the window was broken by Linda; that they had seen Linda there; that she was the only female present; that she was not served any drinks during the time she was in the tavern; that the third time she entered she spoke in a loud voice and appeared to be arguing with the bartender and that she first threw a bottle and thereafter threw a glass at the window.

Upon completion of the hearing below, the Board, through its Chairman, explained its finding of guilt, as follows:

> "The reason for the Board's conclusion ... is the fact that while there was one substantial witness against the licensee and numerous witnesses testifying for and in favor of the licensee, ... the Board believes the story of the minor implicitly. [Underscoring added.]
>
> "Certain contradictions in the testimony of the licensee and his witnesses, together with one incident which we think is very important, has caused us to arrive at the conclusion that we have. There has been testimony adduced by both sides that this girl walked in with a bag and a bottle of whiskey and threw the bottle at the window. The bottle did not break the window, nor did the bottle break. Yet significantly, the officer who came there in response to a call by the licensee found no bottle. He asked about it and was told there was no such bottle, even though the licensee and the bartender himself testified that there was. To us it looks like the incident was covered up at the time but uncovered unwittingly here.
>
> "We feel that the case is proved, and it is a serious case. This girl is 16 years old. Without commenting on the testimony of the other witnesses, we feel that there is entirely too much of this going on and somebody has to stop it and this is the proper agency to stop it".

. . . . . .

Mr. Braff, one of the three members of respondent Board, announced his dissent as follows:

> "Let the record show that when the Chairman mentioned that the Board felt that the evidence adduced tended to show certain facts, he meant the two Commissioners who voted to find the licensee guilty. As far as myself was concerned, in my mind the evidence weighed more favorably in favor of the licensee than it did in favor of the City of Newark and accordingly I voted not guilty".

I entirely agree that this matter, involving as it does a 16-year-old girl, "is a serious case". I agree also with the Board's altogether commendable pronouncement that sales to minors must be

stopped. However, in disciplinary proceedings the prosecution has the burden of establishing the licensee's guilt by a preponderance of the believable evidence.

Here the appellants, charged with sale, service and delivery of alcoholic beverages to a minor and permitting such minor to consume such beverages in and upon the licensed premises, have emphatically denied the charge and such denial is supported by the testimony of a number of patrons who testified that they were upon the licensed premises during the hours when the alleged violation is said to have occurred.

However, even if all of the testimony adduced on behalf of appellants were to be disregarded, would there then be proof sufficient to support a finding of guilt? I think not. The only evidence in support of the charge is that of Linda, but her story is flatly contradicted by Evelyn, the girl whom Linda identified as her companion. Evelyn, produced by the prosecution as its own witness, not only failed to corroborate Linda's testimony but emphatically denied that she had been in Linda's company in the licensed premises or elsewhere on the night in question. Evelyn's testimony remained unshaken when she was examined in great detail by the members of the Board.

Furthermore, the record reveals many inconsistencies and discrepancies (hereinabove enumerated) in Linda's story as contained in her sworn testimony given at the hearing below and her three sworn statements. In fact Linda admitted on the witness stand that she had "lied" concerning her age and her girl friend's name in her sworn statements. These discrepancies may not lightly be brushed aside.

The majority of respondent Board, through its Chairman, stated that the "Board believes the story of the minor [Linda] implicitly". [Underscoring added.] Yet it is clear from the record before me, which is of course the same record which was before the Board, that Linda's credibility was so seriously impaired by her own inconsistent statements under oath and the testimony of another of the prosecution's own witnesses (Evelyn), that not only could her (Linda's) testimony not be believed implicitly but, on the contrary, her evidence could not adequately support a finding of guilt. After carefully reviewing the entire record I conclude that the finding of guilt must be reversed. See Sarzynski v. Passaic, Bulletin 864, Item 9; Rogers, Inc. v. Hoboken, Bulletin 925, Item 2; Klein v. New Brunswick, Bulletin 932, Item 3.

Accordingly, it is, on this 21st day of July, 1953,

ORDERED that the respondent's action in finding appellants guilty of the charge herein and suspending their license for a period of thirty days, which suspension was stayed during the pendency of these proceedings, be and the same is hereby reversed.

DOMINIC A. CAVICCHIA
Director.

2. DISCIPLINARY PROCEEDINGS - ACT OCCURRING AFTER FILING OF APPLICATION (REVOCATION OF ANOTHER LICENSE HELD BY LICENSEE) - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO APPLY FOR LIFTING OF SUSPENSION UPON TRANSFER TO ANOTHER.

In the Matter of Disciplinary Proceedings against

MORRIS TULIPANO
T/a OLD CORNER TAVERN
142 Garden Street
Hoboken, N. J.,

Holder of Plenary Retail Consumption License C-198, issued by the Board of Commissioners of the City of Hoboken.

CONCLUSIONS AND ORDER

Anthony P. Bianco, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On July 7, 1953, Plenary Retail Consumption License C-199 heretofore issued to you by the Board of Commissioners of the City of Hoboken for premises 124 River Street, Hoboken, N.J., was revoked by the Director of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey, such revocation being an act or happening occurring after the time of your making application for your current Plenary Retail Consumption License C-198 for premises 142 Garden Street, Hoboken, N. J., which, if it had occurred before said time, would have prevented the issuance of the license, since such issuance would have been contrary to R. S. 33:1-31."

At the hearing, there was introduced in evidence my original Order dated July 7, 1953, which revoked Plenary Retail Consumption License C-199 issued for the 1953-54 licensing year by the Board of Commissioners of the City of Hoboken to Morris Tulipano, for premises 124 River Street, Hoboken, effective immediately. No other evidence was introduced on behalf of the prosecution. Defendant introduced no evidence but, instead, made a motion for a dismissal of the charge.

The applicable statute provision is R.S. 33:1-31 which provides, in part, as follows:

"Any license...may be suspended or revoked...for any of the following causes:

. . . . . .

"i. Any other act or happening, occurring after the time of making of an application for a license which if it had occurred before said time would have prevented the issuance of the license;...."

The same section further provides:

"A revocation shall render the licensee ineligible to hold or receive any other license, of any kind or class under this chapter, for a period of two years from the effective date thereof and a second revocation shall render the licensee ineligible to hold or receive any such license at any time thereafter...."

Defendant contends that, since he committed no new or additional offense other than the offenses committed at his premises at 124 River Street, Hoboken (which resulted in the revocation of his license at that place), a revocation of defendant's license for premises 142 Garden Street, Hoboken, would constitute a "second revocation for the same one offense and will subject the licensee to such penalty as is imposed on a licensee suffering two revocations." The licensee further contends that "for one offense a licensee holding two licenses may be forever barred from holding or receiving any license, whereas a licensee holding one license may be barred for only two years for the same offense." Defendant argues that the statutory provisions hereinabove set forth are unconstitutional for the following reasons:

"1. It denies the equal protection of the law, in violation of the Fourteenth Amendment of the Federal Constitution and Article One, Paragraphs First and Fifth of the State Constitution.

"2. It creates an arbitrary, artificial, discriminatory and unreasonable classification of classes for imposition of penalties, in violation of the Fourteenth Amendment of the Federal Constitution and Article One, Paragraphs First and Fifth of the state constitution.

"3. It is an arbitrary and unreasonable exercise of the police power, in violation of the Fourteenth Amendment of the Federal Constitution and Article One, Paragraphs First and Fifth of the state constitution.

"4. It denies due process, in violation of the Fourteenth Amendment of the Federal Constitution and Article One, Paragraphs First and Fifth of the state constitution.

"5. It imposes a double penalty for one offense, in violation of the Eighth and Fourteenth Amendments of the Federal Constitution and Article One, Paragraphs First, Fifth and Twelfth of the state constitution."

It is clear that R. S. 33:1-31 renders a licensee who has suffered a revocation of a license issued under the Alcoholic Beverage Law (R.S. 33:1-1, et seq.) ineligible to hold or receive any other license, of any kind or class, under such law for a period of two years from the effective date of the revocation. Undoubtedly, the primary purpose of this legislation is to remove from the industry persons who have been guilty of conduct serious enough to warrant revocation. It is obvious that the Legislature was guarding against the possibility of the re-entry of such persons into the alcoholic beverage industry, in the same or another municipality or in the same or a different branch of the industry.

Thus, under the statutory provisions hereinabove set forth, the revocation of defendant's license C-199 for premises 124 River Street, Hoboken, rendered him ineligible to hold or receive any other license of any kind or class for two years. Such revocation (and the licensee's resulting ineligibility) was therefore an "act or happening" occurring after the filing of the application for the current license (C-198) for premises 142 Garden Street, Hoboken, which would have prevented the issuance of the license in the first instance. Therefore, clearly, the institution of the instant proceedings looking to the suspension or revocation of such license (C-198) was not only authorized by the statute but necessary to prevent the exercise of the privileges of a license by one who had become ineligible to exercise such privileges.

In view of the foregoing, I find defendant guilty as charged.

I have given much thought to the question of the proper penalty to be imposed in this case. R.S. 33:1-31 authorizes either suspension or revocation of the license. It is true that defendant has not been charged in the instant proceedings with any new or further acts of misconduct as a licensee and that the basis of the instant proceedings is the revocation of defendant's other license (C-199) for premises 124 River Street, Hoboken, for offenses committed there. With respect to those offenses, defendant has paid the full price, i.e., his license for those premises was revoked. In view of the result hereinafter to be reached, it is unnecessary to consider the question whether or not a "second revocation" in all instances and necessarily renders a licensee ineligible to hold any license of any class under the Alcoholic Beverage Law at any time. In any event and under the peculiar circumstances of this case, it is my belief that a revocation herein would inflict most severe punishment on this defendant unnecessary to the proper protection of the public interest.

With respect to this second license, the public will be adequately protected if defendant, a person ineligible to hold or receive a license for two years, is removed from active participation in the alcoholic beverage industry in New Jersey for at least that statutory period (two years). This can be accomplished by suspension of the license in question for the balance of its term.

I shall, therefore, suspend the license for the balance of its term.

In view of the foregoing disposition of this matter, it is unnecessary to pass on defendant's other contentions. However, with respect to the contention that the portions of the statute above referred to are unconstitutional (which contention I deem to be without merit), it may be noted that the power to make a determination with respect to constitutionality rests with the courts, and administrative agencies must accept legislative enactments as constitutional until the courts have decided otherwise. Schwartz v. Essex County Board of Taxation, 129 N.J.L. 129 (Sup. Ct., 1942).

Accordingly, it is, on this 27th day of July, 1953,

ORDERED that Plenary Retail Consumption License C-198, issued for the 1953-54 licensing period by the Board of Commissioners of the City of Hoboken to Morris Tulipano, t/a Old Corner Tavern, 142 Garden Street, Hoboken, be and the same is hereby suspended for the balance of its term, effective immediately; and it is further

ORDERED that leave is hereby granted to make application, before June 30, 1954, for the lifting of such suspension upon the transfer of such license to a duly qualified person.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT DANCE) - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against

CHARLES E. MITCHELL
T/a PARADISE CAFE
Green Street & Linden Avenue
Burlington, N. J.,

Holder of Plenary Retail Consumption License C-15 (for the 1952-53 and 1953-54 licensing years), issued by the Common Council of the City of Burlington.

CONCLUSIONS AND ORDER

Frank M. Lario, 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 5, 1953 and early Friday morning, February 6, 1953, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that a female entertainer performed in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulations No. 20.

"2. On the occasion aforesaid while an inspector and an investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety were conducting an investigation of the conduct of your licensed business, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation; in violation of R. S. 33:1-35."

As to charge 1: An ABC agent testified that he and another ABC agent entered defendant's premises on Thursday, February 5, 1953, at approximately 10:50 p. m.; that they sat at the bar and observed a dance which was then being performed by a female entertainer on a stage located in the rear of the barroom. He testified that during this performance the female entertainer wore a cloth patch with shiny jewels on each of her breasts, and panties also covered with "jeweled glass or whatever it may be;" that, while a "so-called spot" was focused upon the dancer, she performed "bumps and grinds" while a four-piece orchestra played music to the rhythm of her body; that thereafter the entertainer got down on the floor backwards, resting on her heels and hands, and continued to perform the same type of "bumps and grinds", after which she rolled over, resting on her hands and toes, with her body in a downward position, and continued to perform the same type of "bumps and grinds." This agent testified that "Every movement she made with the body to the music would impress that particular thump of her body with the down beat of the music."

This ABC agent further testified that, after the conclusion of this performance, the agents remained upon the premises and, at approximately 11:40 p.m., the same female entertainer, who then wore a dark dress, returned to the stage and sang a few unobjectionable songs; that she left the stage and returned a moment or two later

wearing the same breast coverings she had worn during the first performance and also wearing a black skirt covering the part of her body from her hips down to her ankles; that, when the music started to play in the same manner as it did during her first appearance, she removed the skirt and, while wearing the breast coverings and panties, performed the same dance which the agents had observed earlier in the evening.

The other agent substantially corroborated the evidence set forth above.

As to charge 2: After the conclusion of the second performance, the agents identified themselves to Morris Bodek, manager of defendant's licensed premises. The agents, Bodek and the female entertainer went to a small room off the barroom, where one of the agents asked Bodek whether or not he thought a show like that should be permitted. According to the testimony of this agent, Bodek stated, "Well, I admit it was dirty, but we have to do something because of keen competition here, you have to do it." This agent further testified that he asked Bodek for the names of the employees; that Bodek replied that it was none of his (the agent's) business and that "they will be produced when needed -- not now." This agent also testified that Bodek advised the female entertainer not to answer any questions. This agent testified that defendant-licensee entered the small room shortly thereafter but was pushed out by Mr. Bodek who said to him, "Get out of here; I'll handle this my way. I know how to handle these things"; that the licensee later returned to the small room, at which time the agent requested him to tell Bodek to cooperate and stop interfering with the investigation; that Bodek again pushed the licensee out, telling him that he was going to take care of things himself; that eventually the licensee produced a copy of his license application and presented it to the agents, but that no other records were produced.

The defendant-licensee, in his own behalf, testified that the female entertainer who performed at his premises on February 5 had been sent to his premises on that evening by a theatrical agent as a substitute for another girl who was supposed to be a "blues singer" and tap dancer. He further testified that he did not enter his licensed premises until approximately midnight on February 5 and that he answered all questions asked by the agents. He denied that he had been pushed out of the small room by Bodek and stated that he had left the room voluntarily. He admitted that he kept records, but denied that the agents had asked him to produce his records.

Defendant's manager denied that the dance performed by the female entertainer was indecent and described it as "routine dancing." He admitted that he told the female entertainer not to sign any statement, but said that he did so because he wished to see the statement before it was submitted for her signature. He denied that he admitted to the agent that the dance was indecent; that he chased the licensee out of the small room, or stated that he would handle the situation. He also denied that the agents had asked for any records.

I believe the testimony of the agents as to the type of dance performed by the female entertainer and as to the events which occurred in the small room. It has already been ruled that performances and exhibitions such as those described herein are immoral and lewd and have no place on licensed premises. Re DiAngelo, Bulletin 753, Item 4; Neu v. Irvington, Bulletin 923, Item 3; Re MLC Corp., Bulletin 934, Item 7; Re Cliquot Club, Bulletin 943, Item 2. Hence I find defendant guilty as to charge 1.

The evidence also satisfies me that defendant-licensee and the manager who was in charge of his licensed premises failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation. Hence I find defendant guilty as to charge 2.

Defendant has no prior adjudicated record. Under the circumstances I shall suspend defendant's license for thirty days because of the violation set forth in charge 1 (Re Cliquot Club, supra) and for an additional period of fifteen days because of the violation set forth in charge 2 (Re Verrilli, Bulletin 969, Item 3), thus making a total suspension of forty-five days.

Although this proceeding was instituted during the 1952-53 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1953-54. State Regulations No. 16.

Accordingly, it is, on this 21st day of July, 1953,

ORDERED that Plenary Retail Consumption License C-15 for the 1953-54 licensing year, issued by the Common Council of the City of Burlington to Charles E. Mitchell, t/a Paradise Cafe, for premises at Green Street & Linden Avenue, Burlington, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. July 28, 1953, and terminating at 2:00 a.m. September 11, 1953.

DOMINIC A. CAVICCHIA
Director.

4. DISQUALIFICATION - TWO CONVICTIONS OF DISQUALIFYING CRIMES AFTER PRIOR ORDER REMOVING DISQUALIFICATION - HINDERING ABC INVESTIGATION - APPLICATION TO LIFT DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.	CONCLUSIONS AND ORDER
Case No. 1065.	

BY THE DIRECTOR:

In May 1938 petitioner pleaded guilty in a Federal Court to the crime of operating an unregistered still and was sentenced to pay a fine of $50.00 and placed on probation for five years. On December 29, 1943, the statutory disqualification resulting from the above conviction was removed by order of the Commissioner of Alcoholic Beverage Control. Re Case No. 307, Bulletin 600, Item 7.

Fingerprint records disclose that petitioner was arrested by County Detectives and members of New Jersey State Police on October 20, 1945, as the result of a raid on premises allegedly operated as a pool room. Our investigation discloses that prior to his arrest petitioner, while in an upstairs room in said premises, accepted a bet on a horse race from a County Detective and a State Trooper and that on the walls of said room "rundown sheets" were located. Petitioner was indicted for bookmaking in violation of R. S. 2:135-3. On January 16, 1946, petitioner pleaded non vult to said charge and was fined $1,000.00.

Fingerprint records also disclose that on July 16, 1947, petitioner pleaded not guilty in a Court of Quarter Sessions to an indictment charging him with obtaining merchandise under false pretenses. He was tried without a jury, found guilty and sentenced to serve six months in a County Jail. However, the sentence was suspended and petitioner was placed on probation for five years and fined $200.00.

In my opinion the crimes of which petitioner was convicted on January 16, 1946, and July 16, 1947, involved moral turpitude.

Despite evidence of petitioner's good conduct during the past five years which was presented at the hearing herein, I am reluctant to grant relief in any case in which petitioner has been convicted of any crime subsequent to the time he obtains an order removing his statutory disqualification because of a previous conviction. Cf. Re Case No. 856, Bulletin 882, Item 15; Re Case No. 1005, Bulletin 949, Item 7.

In this case it appears not only that petitioner has been convicted of two crimes involving moral turpitude since December 29, 1943, but also that he actively participated recently in the hindering of an investigation in violation of R. S. 33:1-35. See Re Mitchell, decided herewith. Under the circumstances of this case his petition for further relief will be denied. Re Case No. 673, Bulletin 803, Item 5; Re Case No. 724, Bulletin 841, Item 4; Re Case No. 733, Bulletin 842, Item 1.

Accordingly, it is, on this 21st day of July, 1953,

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

DOMINIC A. CAVICCHIA
Director.

5. STATE LICENSES - NEW APPLICATIONS FILED.

Bartolomeo Pio Inc.
S. W. Corner Winston Road & Moreland Avenue
Philadelphia 18, Pennsylvania.
Application filed July 29, 1953 for Wine Wholesale License.

Max Silverman
T/a Maxwell Wine Co.
52 City Alley
New Brunswick, N. J.
Application filed July 29, 1953 for Plenary Winery License.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - UNLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
GEORGE PALCHIK T/a GEORGE'S TAVERN 400 Smith Street Perth Amboy, N. J.,	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-46 for the 1952-53 and 1953-54 licensing years, issued by the Board of Commissioners of the City of Perth Amboy.	)

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

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he allowed an unlabeled beer tap on his licensed premises in violation of Rule 26 of State Regulations No. 20.

The file herein discloses that on May 26, 1953, during the course of a routine inspection of defendant's licensed premises, an ABC agent found a barrel of Rubsam & Horrmann Crown beer connected to a tap which bore no name of the brand of beer to be dispensed therefrom.

Defendant has no prior adjudicated record. I shall suspend defendant's license for three days, the minimum suspension imposed for a violation of this character. One day will be remitted for the plea entered herein, leaving a net suspension of two days. Re Proniewski, Bulletin 966, Item 6.

Although this proceeding was instituted during the 1952-53 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1953-54. State Regulations No. 16.

Accordingly, it is, on this 24th day of July, 1953,

ORDERED that Plenary Retail Consumption License C-46, issued by the Board of Commissioners of the City of Perth Amboy to George Palchik, t/a George's Tavern, 400 Smith Street, Perth Amboy, be and the same is hereby suspended for two (2) days, commencing at 2:00 a.m. August 3, 1953, and terminating at 2:00 a.m. August 5, 1953.

DOMINIC A. CAVICCHIA
Director.

7. DISQUALIFICATION - BREAKING, ENTRY AND LARCENY - NO TURPITUDE INVOLVED BECAUSE OF APPLICANT'S AGE - ORDER LIFTING DISQUALIFICATION NOT REQUIRED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 1068.

CONCLUSIONS

BY THE DIRECTOR:

An examination of petitioner's criminal record discloses that he was arrested on April 19, 1935, on a charge of larceny of an automobile and held to await the action of the Grand Jury. On April 26, 1935, petitioner was tried and found not guilty. The record further discloses that on June 3, 1935, petitioner was arrested on a charge of breaking, entry and larceny and that on June 21, 1935, he was placed on probation for one year by a Judge of a Court of Common Pleas. It appears that petitioner broke into a shop and stole a quantity of copper valued at $60.00.

At the hearing held herein petitioner testified that he was never convicted of any crime with the exception of his conviction for breaking, entry and larceny hereinabove set forth. At the hearing petitioner further testified that he was born on July 30, 1918, and hence it appears that he was only sixteen years of age in June 1935.

Petitioner is a married man with one child, has been steadily employed for many years, and was honorably discharged from the United States Army after serving four years as a military policeman.

Ordinarily the crime of which petitioner was convicted in 1935 involves moral turpitude. However, I conclude that the element of moral turpitude was not involved in petitioner's case since he was only sixteen years old at the time. See Re Case No. 36, Bulletin 149, Item 1; Re Case No. 192, Bulletin 215, Item 3. It appearing that petitioner has never been convicted of a crime involving moral turpitude, no order removing disqualification because of said conviction is required. Re Case No. 68, Bulletin 364, Item 3; Re Case No. 131, Bulletin 451, Item 7; Re Case No. 324, Bulletin 773, Item 12.

DOMINIC A. CAVICCHIA
Director.

Dated: July 23, 1953.

8. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against WALTER SLOMIENSKI 62 Wallington Avenue Wallington, N. J., Holder of Plenary Retail Consumption License C-25 for the 1952-53 and 1953-54 licensing years, issued by the Mayor and Council of the Borough of Wallington.	CONCLUSIONS AND ORDER

Walter Slomienski, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that he (1) sold, served and delivered alcoholic beverages and permitted the consumption thereof on his licensed premises during prohibited hours, in violation of a local ordinance and (2) failed to have his licensed premises closed during said prohibited hours, in violation of a local ordinance.

An ordinance of the Borough of Wallington prohibits the sale of alcoholic beverages on Sundays between the hours of 3:00 a.m. and 1:00 p.m. and requires that licensed premises shall be closed between said hours.

The file herein discloses that at 11:30 a.m., on Sunday, June 21, 1953, two ABC agents observed a man enter the side door of defendant's licensed premises. About five minutes thereafter one of the agents entered the barroom by use of the side door and when he approached the bar he observed a man and a woman at the bar drinking whiskey. He also observed the woman drink the contents of a partly filled glass of beer. The agent ordered a glass of beer but the bartender said "one o'clock." The agent was then asked by the bartender where he came from and when he said he lived in Passaic, the bartender served the agent a glass of draft beer and a bottle of beer. About 11:43 a.m., the other agent entered defendant's premises through the side door and when he reached the bar he observed his fellow agent with a bottle of beer in front of him. He then ordered a glass of beer from the bartender but was refused service. At this time the agents identified themselves to the bartender. The latter, the father of the defendant-licensee, verbally admitted that he had served alcoholic beverages to an agent and to the man and woman.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of fifteen days. Re Spagnuolo, Bulletin 969, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Although this proceeding was instituted during the 1952-53 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1953-54. State Regulations No. 16.

Accordingly, it is, on this 7th day of July, 1953,

ORDERED that Plenary Retail Consumption License C-25, issued for the 1953-54 licensing year by the Mayor and Council of the Borough of Wallington to Walter Slomienski, 62 Wallington Avenue, Wallington, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. July 13, 1953, and terminating at 3:00 a.m. July 23, 1953.

Dominic A. Cavicchia