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

BULLETIN 1096 FEBRUARY 1, 1956.

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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 1096 FEBRUARY 1, 1956.

1. COURT DECISIONS - BUTLER OAK TAVERN v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR'S ORDER AFFIRMED BY SUPREME COURT.

SUPREME COURT OF NEW JERSEY
No. A56 September Term 1955

BUTLER OAK TAVERN, a corporation, )
Appellant, )
-vs- )
DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY, and WILLIAM HOWE DAVIS, Director of said Division, )
Respondents. )

Argued December 5, 1955. Decided January 9, 1956.

On appeal from Superior Court, Appellate Division.

Mr. Abraham I. Mayer argued the cause for the Appellant. Messrs. Mayer and Mayer, Attorneys.

Mr. Samuel B. Helfand, Deputy Attorney General argued the cause for the Respondents, Mr. Grover C. Richman, Jr., Attorney General of New Jersey, Attorney.

The opinion of the court was delivered by

BURLING, J.

The appellant's retail liquor license was revoked by the Director of the Division of Alcoholic Beverage Control and the Superior Court, Appellate Division affirmed the administrative action. Appellant has sought to invoke this court's jurisdiction by alleging State action violative of constitutional due process and equal protection. 1947 Constitution, Art. VI, sec. 5, par. 1 (a); R. R. 1:2-1(a).

The facts are not in dispute. Butler Oak Tavern, Inc., is a corporate body and prior to March 14, 1955, was engaged in the retail sale of intoxicating beverages pursuant to a plenary retail consumption license issued by the governing body of the Borough of Butler, Morris County, New Jersey. Joseph Dilzer and his wife own forty-eight of the fifty shares of corporate stock. On December 18, 1954, Dilzer, the dominant figure in this litigation, sold 24 bottles of intoxicating liquors at a price less than that published as a minimum resale price by the Division of Alcoholic Beverage Control. See R. S. 33:1-23.1. 12 of the bottles were purchased by a customer; the other dozen by representatives of the Division who subsequently revealed their identity. Charges were prepared and dispatched to Butler Oak Tavern and a hearing scheduled. In apparent disregard of the events of December 18th, a similar violation took place three days later. The appellant pleaded not guilty to the three charges

but later changed the plea to non vult, and, pursuant to counsel's request, the Director granted oral argument upon the question of penalty. Based upon the three charges alone the Director questioned whether Dilzer was a "fit person to be entrusted with the privilege of a liquor license," but all doubt was apparently removed upon a perusal of prior records of violations involving Dilzer:

October, 1940 - curfew infraction - 5 days suspension

September, 1943 - refilling bottles - 20 days suspension

February, 1947 - minimum price violation - 20 days suspension (5 days off for confessory plea)

July, 1949 - Minimum price violation - 25 days suspension (5 days off for confessory plea)

Accordingly the license was revoked effective March 14, 1955, and the determination of the Director was affirmed on appeal to the Superior Court, Appellate Division. Butler Oak Tavern v. Div. of Alcoholic Bev. Control, 36 N. J. Super. 512 (App. Div. 1955).

There are two dominant questions involved which require our determination: (1) Did the Director violate the principle of exclusiveness of the record? (2) Was appellant deprived of equal protection of the law by the imposition of a penalty allegedly greater in degree than that imposed against others under similar circumstances? Several subsidiary questions are disposed of within these two categories.

Question One.

Appellant alleges the Director committed error in considering prior violations of Dilzer, its alter ego, upon the quantum of penalty to be imposed. It is argued that elemental rules of fair play require the prerequisite of alleging previous violations in the charges. Cf. N.J.S. 2A:85-13. The argument overlooks the fact that appellant's license application admits the prior violations. State v. Rowe, 116 N.J.L. 48 (Sup. Ct. 1935), aff'd 122 N.J.L. 466 (E. & A. 1939). Proceedings taken pursuant to R. S. 33:1-31 to revoke or suspend an alcoholic beverage license are civil and disciplinary in nature, The Panda v. Driscoll, 135 N.J.L. 164, 165 (E. & A. 1947), In re. Schneider, 12 N. J. Super. 449, 454 (App. Div. 1951) and the provisions of N.J.S. 2A:85-13 concerning the criminal law are inapplicable. Appellant has shown no prejudice arising from a course of practice of general applicability which the Director has adopted in concluding the degree of penalty to be imposed. Cf. White v. Parole Board of the State of New Jersey, 17 N. J. Super. 580 (App. Div. 1952).

In the course of stating his conclusions the Director made brief mention of the circumstances surrounding the violation of December 18th from which one might infer that Dilzer had hindered the agents of the Division in their investigation. See R. S. 33:1-35, as am. L. 1943, c. 37, which enjoins such conduct. The source of the intimation does not appear but it was probably based upon a report submitted by the agent conducting the investigation. Appellant, assuming that the matter was an aggravating factor in the severity of the penalty, urges that it was incumbent upon the Division to make a separate specification in the charges to which it otherwise entered a plea of non vult. Mazza v. Cavicchia, 15 N. J. 498 (1954) is said to require this result.

The Mazza case concerned the preliminary determination of the guilt or innocence of the licensee based upon matters dehors the record unknown to the alleged offender. This case is restricted to a consideration of the penalty to be imposed as pleas of non vult had been entered to the charges concerning illegal sales. The complete recital of the Director's conclusions negatives any finding that the alleged imputation of interference with departmental agents entered into the penalty determination. The following appears in the Director's conclusions:

> "The mere recital of the aforesaid violations (the three present illegal sales) . . . raise (a) serious question as to whether Joseph Dilzer . . . is a fit person to be entrusted with the privileges of a liquor license . . . This becomes starkly clear when the previous record is considered." (Explanation supplied.)

Question Two.

The real substance of this appeal lies upon a charge of disparate treatment accorded the appellant, who characterizes the license revocation as harsh in its incidence and completely arbitrary and unjustified when placed into a context with disciplinary measures taken against other licensees for similar or more aggravated offenses. It is conceded by the appellant that it is within the power of the Director to effect a revocation of its license, R. S. 33:1-31, but the constitutional principle of equal protection is said to prohibit a divergence from a uniform pattern of action established by prior administrative determinations. Appellant has endeavored to substantiate this claim by incorporating into its argument and appendix a resume of all decisions of the Director for 1954 and 1955 concerning minimum price violations and miscellaneous violations where the licensee has been guilty of prior offenses.

Several general observations may be deduced from the decisions encompassing the two year span:

(1) A sale of a relatively minor quantity of liquor below minimum price has usually evoked a ten day period of suspension, less five days for a confessory plea.

(2) Prior dissimilar violations are disregarded if occurring more than five years ago; prior similar violations are disregarded if occurring more than ten years ago.

(3) Similar price violations occurring within ten years of a present offense has warranted an additional suspension period of 5-10 days.

(4) Violations reflecting extreme moral turpitude and involving a prior record have caused varying periods of suspension to be imposed and revocation in two instances.

(5) In several instances the Director has given advance warning that certain abuses would be dealt with more severely in the future.

In view of the several patterns thus adverted to appellant's penalty would appear to be an exception to the generally accorded treatment. Two of Dilzer's previous dissimilar violations (curfew violation and refilling bottles) occurred more than 5 years ago, and ordinarily would not be considered; the other two prior similar offenses, one in 1947 and one in 1949, were price violations which in other cases have been subject to rather

brief additional periods of suspension. For example, in Bulletin 1067, dated June 13, 1955, Item 4, the licensee pleaded non vult to a charge of price violation. Prior similar offenses in 1941 and 1943 were not considered in fixing the penalty under the ten year-similar offense practice. A further price violation in 1947 was considered, but even this did not call forth the usual practice of doubling the penalty for the offense charged because it occurred more than five years previously. A fifteen-day suspension was imposed, with five days remitted for the plea of non vult, a penalty different in kind from outright revocation. The divergent treatment is appellant's basic grievance.

The court below was satisfied that the cases cited by appellant "neither reach nor parallel the situation existing in the instant case" for they do not disclose "the aggravated circumstances present herein, nor the brazen recurrence of the identical violation after being caught 'red-handed', nor the same previous record in kind or degree". We are in accord with the thought that the subsequent violation of December 21st exhibited an utter disregard for the controls exercised over vendees of alcoholic beverages and properly brought into question the fitness of the appellant to continue its licensed operation. If nothing else were involved in this case there would be no basis for charging the Director with an abuse of discretion or constitutional infraction. The Director has the statutory authority to suspend or revoke liquor licenses for a first offense, R. S. 33:1-31, and his action in this regard works no deprivation of any inherent right to engage in the occupation thus curtailed. Crowley v. Christensen, 137 U. S. 86, 34 L. ed. 620 (1890); Meehan v. Excise Commissioners, 73 N.J.L. 382 (Sup. Ct. 1906), aff'd 75 N.J.L. 557 (E. & A. 1908). A license to sell intoxicating beverages is not a contract nor does it embody any property right. It is a temporary permit or privilege. Mazza v. Cavicchia, supra, at p. 505.

Appellant's argument takes a different course. Relief is sought from administrative action alleged to be divorced from all patterns of uniformity designed to afford equal and impartial treatment of licensees similarly situated. It has sought to show an intentional discrimination in the administrative process. We are of the opinion that appellant has raised a constitutional issue which entitled it to an appeal of right to invoke this court's jurisdiction, 1947 Constitution, Art. VI, sec. 5, par. 1(a); R. R. 1:2-1(a); see Camden County v. Pennsauken Sewerage Authority, 15 N. J. 456 (1954). The Legislature has enjoined the Director to insure the "fair, impartial, stringent, and comprehensive administration" of the Alcoholic Beverage Control Law, R. S. 33:1-23, and so far as equal treatment is concerned, the Federal and State Constitutions would permit nothing less, Duff v. Trenton Beverage Co., 4 N. J. 595 (1950).

Without discussing to any greater extent the many disciplinary cases which appellant has cited, for purposes of argument, it may be conceded that appellant has been accorded a more severe penalty than is usually meted out to licensees with records of prior price violations and even of offenses more grievous in nature. Under such postulate, was appellant denied its right to equal protection under the 14th amendment of the Federal Constitution or Art. I, par. 5 of the State Constitution? We think not. The Director is not inalterably bound by any doctrine of stare decisis in the imposition of penalties. The liquor control laws and regulations must be administered in the light of changing conditions. Prior measures of enforcement may have failed their mark. Recurrent instances of particular violations must be dealt with accordingly. The penalty imposed upon appellant may reflect

an administrative attitude that more stringent enforcement is necessary in the area of price control, especially where the instant violations are aggravated by prior similar offenses. If the brief of the respondents provides an indicia, the observation is appropriate. They have quoted the following statement from Re. C. I. Tarlowe, Inc., Bulletin 436, Item 1 which is said to be equally applicable here.

> "I see here in this business a continuity of deliberate and flagrant disregard of this [Division's price regulations] by persons who, by past and present behavior, show what amounts almost to an avowed purpose to defeat those regulations."
>
> "Sound control dictates outright revocation as the only proper penalty in this case to instill throughout the trade a wholesome respect for these regulations."

The argument of appellant was similarly advocated by a radio broadcasting station in Federal Communications Commission v. WOKO, Inc., 329 U. S. 223, 91 L. ed. 204 (1946). WOKO had been denied a license renewal by the Federal Communications Commission for misrepresentations made to the Commission concerning licensee's capital stock ownership. The United States Supreme Court, speaking through the late Justice Robert H. Jackson, addressed itself to the licensee's contention in the following words:

> "Respondent complains that the present case constitutes a departure from the course which the Commission has taken in dealing with misstatements and applications in other cases. Much is made in argument of the fact that deceptions of this character have not been uncommon and it is claimed that they have not been dealt with so severely as in this case. Cf. Re. Navarro Broadcasting Asso. FCC 198. But the very fact that temporizing and compromising with deception seemed not to discourage it, may have led the Commission to the drastic measures here taken to preserve the integrity of its own system of reports. The mild measures to others and the apparently unannounced change of policy are considerations appropriate for the Commission in determining whether its action in this case is too drastic, but we cannot say that the Commission is bound by anything that appears before us to deal with all cases at all times as it has dealt with some that seem comparable." 329 U.S. at 227-228, 91 L. ed. at 208.

Cf. Courier Post Publication Co. v. Federal Communications Commission, 104 F. 2d 213 (C.C.A.-D.C. 1939). Although the Director might have chosen to advise licensees that a more rigid enforcement policy was imminent he was not required to do so. Cf. Shawnut Ass'n v. Securities and Exchange Commission, et al., 146 F. 2d 791, 796 (C.C.A.-1-1945). Administrative agencies should not, however, allow their rule-making powers to lie idle when the exercise thereof may suffice to preclude burdens ofttimes arising from the retroactive effect of judicial and quasi-judicial determinations. See Davis, Administrative Law, p. 560, 561 (1951).

We are not free to assay the justification for the change in enforcement policy. In re. Plainfield-Union Water Co., 14 N.J. 296, 308 (1954); Hickey v. Division of Alcoholic Beverage Control, 31 N. J. Super. 114 (App. Div. 1954). The prerogative here is with the agency and not the courts. In reaching this conclusion we are mindful of the field of governmental control presented in this controversy.

The sale and distribution of intoxicating beverages has long been subject to legislative control in this state and our courts have always accorded a liberal interpretation to statutory enactments and administrative rules designed for its effective regulation. The cases are legion which recognize this attitude. X-L Liquors v. Taylor, 17 N. J. 444, 449 (1955); Mazza v. Cavicchia, 15 N. J. 498, 505 (1954); Paul v. Gloucester County, 50 N.J.L. 585, 595 (E. & A. 1888); Eskridge v. Division of Alcoholic Beverage Control, 30 N. J. Super. 472, 474-475 (App. Div. 1954); In re. Schneider, 12 N. J. Super. 449, 455-456 (App. Div. 1951) are but a few.

Supervision over prices, as one phase of control, was initiated as early as 1738 by the Governor, Council and Assembly of the Province of New Jersey who were concerned lest the "true and original Design of Taverns, Inns and Ordinaries . . . for the entertaining and refreshing Mankind in a reasonable Manner" give way to the "Encouragement of Gaming, Tippling, Drunkenness, and other Vices so much of late practiced at such places." Judges of the Courts of General Quarter Sessions were empowered "to ascertain the rates and prices of the several liquors, meat, and entertainment for man." See Allinson 102, 105 (An Act for regulating Taverns, Ordinaries, Innkeepers and Retailers of strong Liquors - passed March 15, 1739), Acts of the General Assembly of the Province of New Jersey. Comparable legislation was enacted in 1768 (Allinson 302), 1797 (Paterson's Laws of New Jersey 235, 237-238) and in 1846 (Nixon's Digest 362, An Act concerning Inns and Taverns). The price control feature of the 1846 enactment (exercised by the judges of the Inferior Courts of Common Pleas) was repealed by P. L. 1864, c. 148, p. 236. (For historical aspects of liquor control see Byse, Alcoholic Beverage Control Before Repeal, 7 Law and Contemporary Problems 544 (1940).)

In 1938 the Legislature enacted the present statute which seeks to impose a pattern of uniformity in the retail sales price of alcoholic beverages, L. 1938, c. 208. R. S. 33:1-23.1 vests discretion in the "commissioner" (now the Director of the Division of Alcoholic Beverage Control, R.S. 52:17B-16, 17) to prohibit the sale of alcoholic beverages in violation of any fair trade contract entered pursuant to R.S. 56:4-1 to 6 by rule or regulation. See Gaine v. Burnett, 122 N.J.L. 39 (Sup. Ct. 1939), aff'd per curiam 123 N.J.L. 317 (E. & A. 1939). Sales between distillers and wholesalers and retailers are likewise subject to control. R.S. 33:1-89, R.S. 33:1-93.1. The wisdom of price superintendence is not for us to decide. The Legislature has expressed the basis for the legislation in unmistakable terms via the preamble to L. 1938, c. 208:

> "Whereas, alcoholic beverage licensees have been unduly stimulating the sale of alcoholic beverages by indiscriminate price cutting, resulting in price wars, and by excessive advertising of bargain values and cut prices; these practices are deemed detrimental to the proper operation of the liquor industry and contrary to the interests of temperance; the sale of alcoholic beverages is unusually susceptible to abuse, with resulting danger to the general public and should be strictly supervised and regulated to prevent undue stimulation of public demand for alcoholic beverages; therefore,"

The court below, through Judge Mariano, stated:

> "The flagrant disregard of the delicate balance of the price structure relating to alcoholic beverages requires stringent enforcement of the salutary regulations designed to insure stability in the sale of alcoholic beverages at retail. While isolated sales below minimum prices leave their limited mark upon the pricing system, and warrant license suspensions, the practice, as here, of the indiscriminate sale of alcoholic beverages at "cut rate" prices, if persisted in long enough, can only lead to the disruption of an orderly market and the evils that result therefrom."

See Duff v. Trenton, 4 N. J. 595, 608 (1950).

The statute as a whole is intended to be remedial of abuses inherent in liquor traffic, R.S. 33:1-73 and the discretion of the Director is sufficiently broad to accomplish the purpose intended. Grant Lunch Corporation v. Driscoll, 129 N.J.L. 408 (Sup. Ct. 1943), aff'd 130 N.J.L. 554 (E. & A. 1943), cert. denied 320 U.S. 801 (1944); Benedetti v. Board of Commissioners of Trenton, 35 N. J. Super. 30 (App. Div. 1955), Mitchell v. Cavicchia, 29 N. J. Super. 11 (App. Div. 1953). Rule 5 of Regulation 30 of the Division of Alcoholic Beverage Control was promulgated pursuant to R.S. 33:1-23.1 and R.S. 33:1-39. The appellant has thrice violated it in the present case. The Director had the authority to suspend or revoke its license, R.S. 33:1-31. The latter course was taken. Whether the administrative determination rests upon appellant's flagrant disregard in the subsequent violation of December 21st or in view of the prior record of violations coupled with a desire to bring about a more respectful adherence to the law and regulations, it is unassailable. Nor does appellant's corporate shell render it immune to attribution of Dilzer's former conduct. The philosophy of R.S. 33:1-25 and R.S. 33:1-31.1 is to the contrary.

The judgment is affirmed.

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2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT SONGS - OBSCENE PICTURES) - ALLOWING CONTRACEPTIVE DEVICES ON LICENSED PREMISES - HOSTESSES - SALES TO MINORS - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>PLEASANT HOUR COCKTAIL LOUNGE, INC.<br>535 Ridge Road<br>Lyndhurst, N. J.,<br><br>Holder of Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the Township of Lyndhurst. | CONCLUSIONS AND ORDER |

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

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging in substance that it permitted on its licensed premises (1) lewd entertainment, (2) obscene and indecent pictures, (3) contraceptive devices, (4) hostess activity, and (5) the service to and consumption by two minors of alcoholic beverages; all in violation of State Regulations No. 20.

The file herein discloses that on Friday night, September 16, 1955, ABC agents visited defendant's licensed premises wherein they observed a four-piece male band (all minor permittees) entertaining some fifty patrons. At intervals an adult female vocalist rendered popular selections, after which and during the agents' stay she consumed six glasses of brandy served by the bartender at the expense of various male customers. At about 10:45 p.m. the vocalist sang an apparently innocuous number accompanied by the band, the members of which, in unison, punctuated her rendition with indecent and suggestive lyrics. At about 11:15 p.m. two members of the band (ages 18 and 19) were each served with and consumed a glass of beer at the bar. At 12:30 a.m. Saturday, September 17, 1955, the agents made known their identities and interviewed Antonio J. Souto (president and treasurer of defendant corporate-licensee) and the entertainers, all of whom refused to give signed statements. The agents then searched the premises and seized a number of contraceptive devices, an envelope containing sixteen photographs of nude women, and a deck of playing-cards embellished with pornographic pictures, which they found in a cabinet behind the bar. In fixing a penalty as to Charge 2 I shall double the minimum ten-day penalty imposed in cases of this kind.

Defendant has no prior adjudicated record. I shall suspend its license for fifteen days on Charge 1 (Re Berger, Bulletin 1023, Item 4); twenty days on Charge 2; ten days on Charge 3 (Re Meller, Bulletin 1026, Item 3); twenty days on Charge 4 (Re Young, Jr., Bulletin 1040, Item 3); and ten days on Charge 5 (Re Lachowicz, Bulletin 1084, Item 5), making a total suspension of seventy-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of seventy days.

Accordingly, it is, on this 4th day of January, 1956,

ORDERED that Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the Township of Lyndhurst to Pleasant Hour Cocktail Lounge, Inc., for premises 535 Ridge Road, Lyndhurst, be and the same is hereby suspended for seventy (70) days, commencing at 2:00 a.m. January 11, 1956, and terminating at 2:00 a.m. March 21, 1956.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PETER De LORENZO
T/a LEXINGTON TAP ROOM
549 West Side Avenue
Jersey City 4, N. J.,

Holder of Plenary Retail Consumption License C-363, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

Joseph M. Lepis, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On September 29, October 1, 4, 5, 8 and 10, 1955, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on baseball games on October 1, 1955; the making and accepting of horse race bets on October 4, 8 and 10, 1955; and the making and accepting of bets in a lottery commonly known as the 'numbers game' on September 29, October 1, 4, 5, 8 and 10, 1955; in violation of Rule 7 of State Regulations No. 20.

"2. On September 29, October 1, 4, 5, 8 and 10, 1955, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20.

"3. On October 10, 1955 you possessed, had custody of and allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20."

The file herein discloses that on the dates enumerated in the above charges ABC agents visited defendant's licensed premises wherein they observed patrons placing bets on "numbers" and horse races with either or both of two males called "Willy" and "Sal." The agents also placed bets with the pair, whose unique method of recording the "numbers" bets was to write them on a cigarette lighter and, after 'phoning them to an undisclosed person, to erase the evidence. Horse race bets were noted on slips of paper supplied with knowledge of their purpose by the bartenders, one of whom also placed a "numbers" bet with "Willy." On one visit the licensee was heard to proclaim his willingness to wager $20.00 on the World Series Baseball Game to be played that day and, when he laughed off one agent's offer to take $2.00 of it, a patron placed $3.00 on the bar to accommodate the agent. The agent "covered" the $3.00 bet and the bartender placed behind the bar the $6.00, which he later paid to the agent who had won the bet. On another occasion, when "Willy" was accepting a bet from an agent in the kitchen of the premises, the licensee entered and asked "Did you win anything." On the

last visit the agents placed bets on "numbers" and horse races with "Willy" and "Sal" to the extent of $12.00, which they paid with marked money. Shortly thereafter, as prearranged, two other ABC agents and three local police officers entered the premises and, after they and the "betting" agents identified themselves, they, in the presence of the licensee, seized from behind the bar a cigarette lighter with eleven "numbers" written thereon, a carton containing "numbers" slips and money, and took from the persons of "Willy" and "Sal" all of the aforesaid marked money.

Defendant has a prior adjudicated record. Effective April 25, 1955, his license was suspended by me for ten days for an "hours" violation (Re DeLorenzo, Bulletin 1060, Item 7). Under the circumstances appearing in this case, I would ordinarily suspend defendant's license for forty days (Re Gallipoli, Bulletin 1076, Item 10). However, since the prior dissimilar violation occurred within a five-year period, an additional five days will be added (Re Cadillac Bar Corp., Bulletin 1072, Item 8). Usually five days are remitted when a confessive plea is entered prior to the date set for formal hearing. In the instant case a plea of non vult was entered at the time of hearing, with an acceptable explanation by defendant's counsel of the untimely plea. I shall suspend defendant's license for a period of forty-five days, and remit five days for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 9th day of January, 1956,

ORDERED that Plenary Retail Consumption License C-363, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Peter DeLorenzo, t/a Lexington Tap Room, for premises 549 West Side Avenue, Jersey City, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. January 16, 1956, and terminating at 2:00 a.m. February 25, 1956.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - HOSTESSES - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>THE FRENCH QUARTER, INC.<br>517 Paterson Plank Road<br>Union City, N. J.,<br><br>Holder of Plenary Retail Consumption License C-168, issued by the Board of Commissioners of the City of Union City. | CONCLUSIONS AND ORDER |

Leo J. Berg, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Wednesday night, November 23, and early Thursday morning, November 24, 1955, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20."

The file herein discloses that two ABC agents entered defendant's licensed premises at about 9:30 p.m. November 23, 1955, and took seats at the bar. At that time five females, who were employed as entertainers on the premises, and eight other men were seated at the bar. Joseph Sinisi, president of defendant corporation, and a man known as "Buddy" were tending bar. The agents observed all of the female entertainers drinking at the expense of other male patrons. At about 9:40 p.m. Josephine Taliercio, who is employed as a singer on defendant's premises, entered and took a seat at the bar next to one of the agents, and Joseph Sinisi introduced both of the agents to her. While they were thus seated at the bar, an unidentified male patron on the opposite side of the bar invited Josephine to drink with him, and subsequently Joseph Sinisi served three drinks to her which were paid for by the other male patron. At 10:30 p.m. the floor show in which Josephine participated was presented and, after she performed her number, she returned to the bar. One of the agents then asked Joseph Sinisi if he could buy a drink for Josephine, and Sinisi, after answering "Why not", served her a drink which was paid for by the agent. Later Josephine called Lillian Fellen, another female entertainer, and, after Lillian had taken a seat next to one of the agents, Joseph Sinisi served drinks to both entertainers and both agents and took the price of the drinks from the agents' money on the bar. Lillian left her place at the bar for a short time, but returned and obtained another drink at the agents' expense. Josephine performed in the second floor show and then returned to the bar, after which Sinisi again served drinks to the two female entertainers and the two agents. The agents then identified themselves.

Defendant-licensee has no prior adjudicated record. However, it appears that on April 9, 1955, it obtained a transfer of the license formerly held by J.P.J. Corp. for the same premises. This transfer became effective at the expiration of a sixty-day suspension of the license then held by J.P.J. Corp. after it had pleaded non vult to charges alleging, in substance, that it had permitted a lewd dance and permitted females employed on the premises to accept beverages at the expense of or as a gift from customers and patrons. The penalty imposed in that case was severe because it was a second similar violation within a period of about two months, the same license having been suspended in a previous case for a period of thirty-five days (see Bulletin 1047, Item 6, and Bulletin 1052, Item 4). It appears that Joseph Sinisi, president of The French Quarter, Inc., and holder of ninety-eight per cent. of the stock, was employed as a bartender by J.P.J. Corp. at the time the previous violations occurred. I am not impressed by the argument made by defendant's attorney that "the female employee involved in the proceeding herein did not solicit the beverages referred to but accepted an invitation to have a drink" because the facts of the case indicate a general practice of permitting female entertainers to drink at the expense of patrons. I consider this an aggravated "hostess" violation and I feel that the case warrants a severe penalty in view of the fact that Joseph Sinisi was employed by the corporation which was twice penalized for similar violations. Under all the circumstances I shall suspend defendant's license for a period of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 4th day of January, 1956,

ORDERED that Plenary Retail Consumption License C-168, issued by the Board of Commissioners of the City of Union City to The French Quarter, Inc., for premises 517 Paterson Plank

Road, Union City, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. January 11, 1956, and terminating at 3:00 a.m. February 15, 1956.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING THAT LICENSEE PERMITTED LEWDNESS AND IMMORAL ACTIVITIES ON LICENSED PREMISES, DISMISSED - LICENSEE FOUND GUILTY OF PERMITTING LOTTERY AND INDECENT PICTURES ON LICENSED PREMISES - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against

JOSEPH DEAVER
T/a DEAVER'S HOTEL
Lakeshore Drive
Upper Greenwood Lake
West Milford Township
PO Hewitt, N. J.,

Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of West Milford.

CONCLUSIONS AND ORDER

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Sidney Simandl, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Six charges were served upon defendant, to four of which he pleaded not guilty, to two of which he pleaded non vult.

The charges to which defendant pleaded not guilty are as follows:

"1. On June 11, 1955, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for the renting and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

"2. On June 8, 10 and 11, 1955, and prior thereto, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matters, viz., signs, placards, so-called business cards and other similar items containing pictures, cartoons, drawings, sketches and representations having obscene, indecent, filthy, lewd, lascivious and disgusting import and meaning; in violation of Rule 17 of State Regulations No. 20.

"4. On June 11, 1955, you possessed, had custody of and allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as a '50-50 club', in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20.

"6. On the occasions aforesaid, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you made offers to procure, permitted the making of offers to procure

and procured females for male patrons for the purpose of illicit sexual intercourse and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

As to Charge 1: Four ABC agents (hereinafter referred to as "C", "A", "H" and "V") actively participated in this investigation. At the hearing, agent "C" testified that he and agent "A" visited defendant's licensed premises on the afternoon of June 8, 1955, and that, during this visit, he had a conversation with Katherine Deaver (licensee's wife) who, according to the agent, "took care of the business, tending bar and doing almost the management of it." Agent "C" testified that, during this conversation, Katherine Deaver "told us that she charges $5.00 for a single room and $7.00 for a double room, if you come in with your wife, but if it was someone else than your own wife she would charge $10.00" He further testified that Katherine Deaver promised to have a "nice girl" who would go to bed with him if he returned on Friday evening. The agents left the premises shortly, about 5:30 p.m.

The evidence further shows that, on the evening of June 10, 1955, the four agents above referred to entered defendant's premises and remained there until an early morning hour on June 11, 1955. Agent "C" testified that the woman to whom Katherine Deaver referred as a "nice girl" came downstairs and entered the barroom at about 11:00 p.m. After Katherine Deaver had introduced the agents to this woman, one of the agents asked this woman to go upstairs with him, and she replied, "I am not going upstairs in the room with you or anyone else." At the hearing this woman appeared and testified. I am impressed by her testimony and have no reason to doubt that she is a respectable business woman who is regularly employed elsewhere and who is accustomed to spend week-ends at defendant's hotel. The evidence further shows that thereafter agent "H" had a conversation at the bar with William Deaver (son of the licensee) concerning renting of a room for himself "and a married broad" and another room for Agent "V". When William Deaver said "I'll see what I can do", Agent "A" obtained marked money from Agent "C". There is a very serious conflict in the evidence as to the exact conversation between Agent "H" and Katherine Deaver shortly thereafter. According to the agent, she approached him and said, "You want a room for you and your girl friend?"..."Are you married", to which the agent replied, "Yes, but she isn't." On the other hand, Katherine Deaver testified that the agent told her he wanted a double room for himself and wife, and a single room for the other agent, and that, when she asked, "Are you married", he replied, "Yes, she will be here later." Eventually the agents agreed with Katherine Deaver to rent a double room for $7.00 and a single room for $5.00. The agents were then escorted to their respective rooms and each was in the room alone when police and other ABC agents entered the rooms. The marked money referred to above was found in Katherine Deaver's possession. At the hearing Katherine Deaver denied most of the testimony given by the agents as to the conversations between them and her, denied that any rooms in the premises had ever been rented for immoral purposes, and further testified that, at the time the room was rented, she thought that the wife of "H" was in one of the bungalows visiting and that she would come in later.

This is a very serious charge which, if proved, would demand a most severe penalty. I believe that on June 8 Katherine Deaver had a conversation with one of the agents concerning the

possibility of obtaining girls for immoral purposes. However, I must find guilt or innocence from the record before me and such weight as I give to the oral argument of counsel concerning the events which occurred on the evening of June 10 and the early morning of June 11. The price charged for the room and the other facts of the case must be taken into consideration in trying to resolve the conflict in the testimony as to the conversation between Katherine Deaver and the agent at the time the rooms were rented. After considering all the evidence in this case, I conclude that the guilt of defendant has not been proven by a fair preponderance of credible evidence and, hence, I find defendant not guilty as to Charge 1. Cf. Re Washington Cafe, Bulletin 841, Item 6; Re Peraino, Bulletin 927, Item 7; Re DeLuccia, Bulletin 1032, Item 5.

As to Charge 2: Investigator "C" testified that, during the course of the investigation, several pictures and placards which had been hanging over the bar were seized. They were introduced into evidence at the hearing. The pictures and placards are indecent and have no place on licensed premises. I find defendant guilty as to Charge 2.

As to Charge 4: The same agent testified that, during the course of the investigation, he found a number of tickets for a lottery commonly known as a "50-50 club" on top of the back bar near the cash register. I find defendant guilty as to Charge 4.

As to Charge 6: Under the circumstances hereinabove set forth, I shall dismiss Charge 6.

The non vult plea as to Charge 3 admits that on June 10, 1955, during the course of the investigation, William Deaver conducted a pool on a fight which was then being televised.

The non vult plea as to Charge 5 admits that on June 10, 1955, at about 11:40 p.m., the bartender sold six cans of beer to a patron for off-premises consumption, and at about 11:45 p.m. sold a pint of whiskey to the agents for off-premises consumption.

Defendant has no prior record. I shall suspend defendant's license for ten days because of the finding of guilt as to Charge 2 (Re Sisco, Bulletin 1067, Item 5); for an additional fifteen days because of the plea as to Charge 3 and the finding of guilt as to Charge 4 (Re Rybicki, Bulletin 1087, Item 12), and for an additional fifteen days because of the plea as to Charge 5 (Re Imbornone, Bulletin 1080, Item 3), making a total suspension of forty days. Since it was necessary to conduct a complete hearing as to the more important issues in this case, no remission will be granted because of the pleas entered as to Charges 3 and 5.

A recent inspection by agents of this Division discloses that defendant's business is being conducted on an extremely limited basis at this time. Thus, under the circumstances, no effective penalty can be presently imposed. The period for the suspension will be fixed by further order to be entered at a subsequent date (Re DeFreitas, Bulletin 1051, Item 5).

Accordingly, it is, on this 5th day of January, 1956,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of West Milford

to Joseph Deaver, t/a Deaver's Hotel, for premises on Lakeshore Drive, Upper Greenwood Lake, West Milford Township, be and the same is hereby suspended for forty (40) days, the time to be fixed by subsequent order, as aforesaid.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against

JOSEPH DOBIAS & JOHN DOBIAS
T/a NOLAN'S GROVE
97 Fairview Avenue
Paramus, PO Paramus, N. J.,

Holders of Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Paramus.

CONCLUSIONS AND ORDER

Herbert F. Myers, Jr., Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that on December 10, 1955, they sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to eight minors, and allowed, permitted and suffered the consumption of such beverages by said minors in and upon their licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that four ABC agents entered defendants' premises at approximately 10:00 p.m. on Saturday, December 10, 1955. They took seats at a table in the rear room and at various times walked about the premises checking both the barroom and rear room. After observing a number of persons who appeared to be minors consuming alcoholic beverages in the rear room, they identified themselves and seized an alcoholic beverage drink from each of eight patrons who admitted that he or she was under the age of twenty-one years. The minors identified themselves as follows: Suzanne --- (age 18), Gladys --- (age 20), Carl --- (age 18), John --- (age 19), Charles --- (age 19), Donald --- (age 19), William --- (age 20) and James --- (age 20). The drinks had been served to the minors by Joseph Frank Dobias, Jr. In alleged mitigation it has been represented that the violation may have been due, in some measure at least, to the fact that the premises are "lit in the usual soft or dim fashion of bars and taverns". The investigators report that the light from a juke box appeared to provide the main illumination in the rear room. The licensees would be well advised to correct this lighting condition in order to avoid future violations.

Defendants have a prior adjudicated record. Effective June 25, 1951, their license was suspended by the local issuing authority for ten days for sale to minors. Since this is a second similar violation within a five-year period, I would

ordinarily double the minimum period of suspension and suspend defendants' license for a period of twenty days. However, because of the large number of minors involved, I shall suspend defendants' license for thirty days (cf. Re Arces, Bulletin 1083, Item 9). Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 9th day of January, 1956,

ORDERED that Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Paramus to Joseph Dobias & John Dobias, t/a Nolan's Grove, for premises 97 Fairview Avenue, Paramus, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. January 16, 1956, and terminating at 3:00 a.m. February 10, 1956.

William Howe Davis
Director.