

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

BULLETIN 1437

March 12, 1962

ITEM

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9. STATE LICENSES - NEW APPLICATION FILED.

"On cross-examination, Billy testified that on the date alleged he and Thomas were wearing civilian clothes; that when they returned to the Brookside Tavern the second time, he ordered and was served 'a hamburger, potato salad and dill pickle'; that when they returned to the other tavern the second time, they were arrested by the local police for creating a disturbance and held at the police station to await the arrival of the military police; that at the hearing below, he refused to identify appellant's bartender, although he knew him; that on the date alleged, he had on his person an ID card on which his true age was indicated, and that he never had an ID card indicating that he was 23 years of age.

"Thomas testified that he was born December 17, 1940 and he corroborated the testimony of Billy as to what occurred on the evening of March 23, 1961 and the following morning. Respecting the drinks served him by Ewalt (whom he did not know), he testified that on their first visit to the Brookside Tavern, he consumed 'six or seven beers and a few 7 and 7's', and that on his second visit he consumed a few bottles of beer.

"On cross-examination, he testified that he was 'feeling high' when he visited the other tavern the first time; that the second time he and Billy visited the other tavern 'we caused a little disturbance there, we got loud, used profane language' and that the proprietor called the 'cops' who took them to the police station where he gave them a statement.

"Police Chief Arnold testified that he was on duty on the date alleged; that at about 1:50 a.m., March 25, 1961, in response to a radio call, he went to the other tavern and talked to the proprietor, who initiated a complaint against Billy and Thomas; that he arrested both youths, who were in a state of intoxication, and detained them at police headquarters until the Air Force Police arrived; that both youths had on their persons ID cards indicating that they were minors and that the following afternoon each boy gave a signed statement in his own handwriting; that as a result of his investigation, he wrote a letter to Commissioner Dwayne requesting that a formal charge be lodged against the Brookside Tavern, and that a hearing on such charge was held on June 19, 1961.

"On cross-examination, he testified that the minors did not conduct him to the Brookside Tavern for the purpose of identifying it as the place where they had obtained alcoholic beverages, saying 'Oh, yes, they identified it, but they didn't lead me to the place. It's common knowledge where the place is located, the name of the place and so forth'.

"Clarence Kinsley testified that he, the other four committee-men and the clerk attended the Township meeting on June 19, 1961; that the two minors, Chief Arnold and appellant's bartender Ewalt testified under oath; that the owners of the Brookside Tavern were represented by an attorney who cross-examined the minors; that upon completion of the testimony, the Committee found appellant guilty of the charge and voted unanimously to suspend its license for a period of fifteen days.

"Witnesses appearing on behalf of appellant were Mrs. Nesenger Everett Ewalt and George Nesenger.

"Mrs. Nesenger testified that she is secretary-treasurer and controlling stockholder of the corporate-licensee; that on the date alleged, she tended bar on the licensed premises from 10:00 a.m. to 6:00 p.m.; that thereafter, she worked in the kitchen preparing food (hamburgers and potato salad); that about every half hour she entered the bar to keep an eye on the activities therein; that at 1:30 a.m., she went behind the bar and remained there until closing time; that at no time was either minor on the premises and that the first time she ever saw them was when she attended the Township meeting on June 19, 1961.

"Everett Ewalt testified that he is an army sergeant and is employed by appellant as a night bartender; that he knew Billy and had served him alcoholic beverages about three months prior to the date alleged in the charge, after having been shown an ID card indicating that the holder was 23 years of age; that he didn't know Thomas and that neither of the young men was in appellant's premises on the date alleged.

"George Mesenger testified that he and his wife reside above the tavern; that on the date alleged, he was in the barroom from 10:00 p.m. till closing time, during which time he cleaned glasses and ash trays and served food; that a long time ago, Billy was in the tavern and that the first time he saw the other boy was when he appeared before the Township Committee and that neither boy was in the Brookside Tavern on March 24, 1961.

"Considering the testimony elicited herein and the exhibits received in evidence, I find that appellant's allegations (b) and (c) hereinabove set forth are without merit. I find further that the testimony of respondent's witnesses is more credible than that of appellant's witnesses and that, notwithstanding the exhaustive cross-examination to which the minors were subjected, their testimony remained unshaken. I conclude, therefore, that the truth of the charge has been established by a fair preponderance of the believable evidence, and that appellant's allegation (a) is likewise without merit. In view of the aforesaid, I recommend that an order be entered affirming respondent's action and fixing effective dates for the fifteen-day suspension heretofore imposed by respondent."

Written exceptions to the Hearer's Report and written argument on behalf of appellant were filed with me pursuant to Rule 14 of State Regulation No. 15. Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's Report and the written exceptions and argument with respect thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 29th day of January, 1962,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the fifteen-day suspension heretofore imposed by respondent and stayed during the pendency of this appeal be and the same is hereby reimposed against License C-12 held by Brookside Tavern, Inc., for premises on Noteboom Avenue, Browns Mills, Pemberton Township, to commence at 2:00 a.m., Monday, February 5, 1962, and to terminate at 2:00 a.m., Tuesday, February 20, 1962

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - SNUG TAVERN, INC. v. ORANGE

Case No. 1)		7
Snug Tavern Inc., trading as)		
Snug Tavern,)		
)		
Appellant)		
)		
v.)	On Appeal	7
)		
Municipal Board of Alcoholic)		
Beverage Control of the City)	O R D E R	7
of Orange,)		
)		
Respondent.)		

Milton Malkin, Esq., Attorney for Jacob Nover, Transferee of
license formerly held by Appellant
John R. Murray, Esq., Attorney for Respondent.

BY THE DIRECTOR:

On November 3, 1961, I entered an amended order in the above case (Bulletin 1425, Item 2) providing as follows:

"ORDERED that the effective dates for the fifteen-day suspension in Case No. 1 be fixed by a subsequent order to be entered herein after proof has been submitted to me that operation under the license in question has been resumed."

It appears from the records of this Division that, effective December 4, 1961, respondent Municipal Board transferred License C-24 from Jack L. Cohen, Assignee for the Benefit of Creditors of Snug Tavern, Inc., to Jacob Nover, subject to the penalty previously imposed. Recent investigation discloses that operation under the license has been resumed by the transferee.

Accordingly, it is, on this 22nd day of January 1962,

ORDERED that the fifteen-day penalty heretofore imposed herein be and the same is hereby reimposed upon License C-24, now held by Jacob Nover for premises at 133 South Street, Orange, commencing at 2 a.m. Monday, January 29, 1962, and terminating at 2 a.m. Tuesday, February 13, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (LEWDNESS AND IMMORAL ACTIVITY, FOUL LANGUAGE, APPARENT HOMOSEXUALS, SOLICIATION FOR PROSTITUTION, HOSTESS ACTIVITY) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 155 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
Harlem Cafe Inc.
t/a King Bar & Liquor Store
1201-1203 Baltic Avenue
Atlantic City, New Jersey
Holder of Plenary Retail Consumption License C-176, issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS
AND
ORDER

Isaac C. Ginsburg, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On September 7, 15, 16, 22 and 23, 1961, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; allowed, permitted and suffered persons who appeared to homosexuals, e.g., males impersonating females and females impersonating males in and upon your licensed premises and to frequent and congregate thereon; allowed, permitted and suffered females on your licensed premises to solicit male patrons for and to make overtures to and arrangements with them for illicit sexual intercourse; allowed, permitted and suffered unescorted females frequenting your licensed premises to solicit male patrons and customers to purchase numerous drinks of alcoholic beverages for consumption by them and others; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

On September 7, 1961, ABC agents visited defendant's licensed premises and observed among the thirty patrons present five males who were attired in either tight-fitting chino-type pants or dungarees, and some of whom wore pull-over sweaters with the sleeves pushed to the elbow while others had on brightly colored shirts. They also observed that some of these males had long hair, "fluffy" on the top and combed back on the sides, and that several of them walked about on their toes, swishing their hips from side to side and with their wrists limp. Seven female patrons were attired in male-type clothes consisting of dress or sport shirts opened at the collar or "boat neck" polo shirts, trousers with zippered fly fronts, oxford laced shoes or loafers and sneakers. Their hair was short, none wore any "make-up" and they walked with a heavy gait.

On September 15, 1961, agents again visited defendant's licensed premises and observed, among the forty patrons in the place, ten females

five of whom were attired in a similar manner as described by the agents on the aforementioned prior visit, and who departed themselves in a masculine fashion. Moreover, the agents overheard a conversation between an apparent lesbian and a male patron in which the apparent lesbian used filthy and indecent language, the repetition of which would serve no useful purpose. The agents also reported observing three apparent lesbians at various times dancing with other females. The agents left the premises at 12:05 a.m. on September 16th.

On September 22, 1961, at 10:45 p.m., two agents entered the premises in question and, among the thirty-five patrons in the premises, observed ten females, four of whom appeared to be lesbians. Their attire was identical to that worn by females as described on the previous visits. One of these females, dressed as a man, was seen dancing with a female who was later identified as the manager of the establishment and, at times during the dance, they embraced and kissed each other.

On September 23, 1961, at 12:10 a.m., two more agents entered. While two of the agents who came in later were seated at the bar, a female called Butch asked one of the agents for money to play the juke box and then requested him to buy her a drink. When the agent agreed, Butch called to Phyllis Grant (hereafter Phyllis), the barmaid, for service. Phyllis served drinks to the two agents, to Butch and to three other females sitting at the bar and, without asking the agent's permission, took his money lying on the bar in front of him and used it as payment for the six drinks. Butch introduced a female called Gloria, who asked them to buy a drink for her and then called Phyllis and ordered drinks for several females in the area. Phyllis poured "double shots" for all and again took the payment for the drinks from the agent's money. The agent and Gloria discussed having sexual relations and she informed him that it would cost him \$15 for sexual intercourse and \$3 for the room. The fellow-agent called to Phyllis and asked if Gloria was all right as she wanted \$15 from him for sexual intercourse and Phyllis said, "I don't know her too well, but all the girls in here are all right". A short time later, the agent and Gloria left in the agent's car to go to the place where she was staying and, upon entering the bedroom, he gave her two ten-dollar bills, the serial numbers of which had been previously recorded. Gloria went upstairs, but returned to the bedroom and was undressing when there was a knock on the door and, upon opening it, another ABC agent and a police officer entered. The "marked" \$10 bills were received by the police officer from a woman living on the upper floor in the house. In a written statement given to the agents, Gloria admitted that she had invited the agent to her room to engage in sexual relations.

Although the evidence does not indicate that any of the officers or employees actually procured the female to engage in illicit sexual intercourse with the agent, there is no doubt that they were aware of what was occurring on the licensed premises.

Defendant has a prior adjudicated record. Effective March 10, 1951, and October 7, 1952, its license was suspended for five and fifteen days, respectively, by the local issuing authority for an "hours" violation. On January 4, 1959 and June 24, 1960, its license was suspended for twenty days and ten days, respectively, by the local issuing authority for sale of alcoholic beverages to a minor and conducting the place of business as a nuisance. I have read the attorney's letter in mitigation of penalty and his request for leniency. However, for permitting such conduct on the part of patrons as indicated in this case and, furthermore, for allowing the type of persons as described by the agents to congregate on the licensed premises, a severe penalty is warranted.

Under the circumstances appearing herein and considering the defendant's past record, I shall suspend defendant's license for one hundred fifty-five days. Five days will be remitted for the plea entered

herein, leaving a net suspension of one hundred fifty days. Cf. Re Stewart, Bulletin 1366, Item 6, and Re A & B Bar, Inc., Bulletin 1416, Item 1.

Accordingly, it is, on this 22nd day of January, 1962,

ORDERED that Plenary Retail Consumption License C-176, issued by the Board of Commissioners of the City of Atlantic City to Harlem Cafe Inc., t/a King Bar & Liquor Store, for premises 1201-1203 Baltic Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, expiring at midnight, June 30, 1962, effective at 7:00 a.m., Thursday, February 1, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FAILURE TO DISCLOSE PRIOR SUSPENSION IN LICENSE APPLICATION - LICENSE SUSPENDED 40 DAYS, LESS 5 FOR PLEA - EFFECTIVE DATE DEFERRED.

In the Matter of Disciplinary Proceedings against

Tony Mart, Inc.
t/a Tony Mart
939 Bay Avenue
Somers Point, N. J.

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-9, issued by the Common Council of the City of Somers Point.

ORDER

Robert H. Davisson, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The following charges were preferred by the Division against the defendant-licensee:

- '1. On Friday night June 30 and early Saturday morning July 1, 1961, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Gail ---, age 18, Marlene ---, age 18 and Lillian --, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- '2. In your application filed with the Common Council of the City of Somers Point and upon which you obtained your current plenary retail consumption license, you falsely stated "No" in answer to Question No. 41 which asks: "Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled?", whereas in truth and fact

the plenary retail consumption license held by you for these same premises effective July 1, 1959 for the 1959-60 period was suspended by the Director of the Division of Alcoholic Beverage Control for five days beginning May 2, 1960 for sales of alcoholic beverages to a minor in violation of State Regulation; said false answer being in violation of R.S. 33:1-25.'

"When the matter came on for hearing, defendant entered a plea of not guilty to Charge 1 and changed its plea previously entered of not guilty to non vult to Charge 2.

"The facts underlying the violation alleged in Charge 2 are sufficiently set forth therein and thus obviate the necessity for further elucidation.

"To substantiate Charge 1, the Division called as its witnesses Gail ---, Marlene --- and Lillian --- and two ABC agents referred to herein as Agent S and Agent R.

"Marlene --- testified that she was born of September 19, 1942 and, hence, was 18 years of age at the time of the alleged violation; that on June 30, 1961, at about midnight, she entered the licensed premise with her girlfriend, Gail, and upon being questioned at the door, displayed a spurious driver's license which apparently reflected her age as 21 years. She then went to the bar and, using her ticket and the ticket purchased at the door by her friend, purchased two bottles of beer, one of which she gave to Gail. While consuming part of its contents, she was approached by ABC agents who confiscated the said alcoholic beverage. She was thereafter taken to Police Headquarters where, upon further examination, she admitted her true age, and stated that the driver license in her possession was, indeed, a false license which was obtained from some unnamed person on the beach in this community.

"She further testified, under cross-examination, that she was not required to make any written representation as to her age, nor was her companion requested to make such representation.

"Gail --- testified that she was born on July 8, 1942 and, thus, was 18 years of age at the time of the alleged occurrence. She testified substantially to the same effect as Marlene. She admitted that the driver license which she produced at the entrance to the premises was similarly spurious, and obtained by her in the same manner. She did not purchase the beer and, in fact, did not face the bartender when her friend purchased the bottle of beer for her. When she had consumed part of its contents, she, too, was approached by the ABC agent who confiscated the bottle and questioned her with reference to her age. At first, she stated that she was 21 years of age but, upon further questioning at Police Headquarters, admitted her true age.

"Lillian --- testified that she was born on March 14, 1941 and, thus, was 20 years of age at the time of the alleged occurrence. She stated that at about 11:00 p.m. on June 30, 1961, she, in the company of two minor companions, entered the licensed premises herein. The licensee's agent examined the cards of her friends who preceded her, and then stated to her, 'You could go, too'. She asserted that he did not examine the card that she displayed, although, admittedly, that card, upon examination, would have reflected the falsification in that it showed her age to be 21 years. She then proceeded to the bar and ordered a Seven and Seven, which is a mixed drink consisting of whiskey and Seven-Up. She paid for this with a ticket which she had previously purchased and, after she had consumed this drink, ordered another similar drink. At no time did the bartender, or anyone else, request that she make any written representation as to her age. While she was consuming this latter drink, she was then apprehended

by the ABC agents, who confiscated the drink and, upon further questioning, summoned local police officers, who took her to Police Headquarters for further questioning.

"Agent S testified that, in the company of Agent R, he visited the licensed premises on the evening of June 30 and the early morning of July 1, 1961, and observed that there were approximately 400 to 500 people therein around midnight of June 30th. He observed the three minors on the premises and, in his opinion, they appeared to be under the age of 21. He saw the bartender, later identified as Charles Bastian, serve two bottles of beer to Marlene and take payment therefor without inquiring as to their ages; simultaneously, the same bartender served Lillian an alcoholic beverage and obtained payment therefor without making inquiry as to her age. He, together with Agents R and C, then seized these drinks and escorted the three minors to a little room in the rear of the premises where they were questioned. Bastian was brought into the room and admitted serving Lillian her drink, but had no recollection of having served the other two minors.

"Anthony Marotta, who identified himself as the president of the corporate-licensee, engaged in a conversation with the agent and was asked the following question: 'If you were behind the bar and you were tending bar and these patrons approached you, would you serve them?'; and Marotta replied, 'I would be in doubt'.

"The testimony of Agent R was in substantial corroboration of that theretofore testified to by Agent S. He identified the three sample bottles containing the beverages which were seized on that night, and they were admitted into evidence, together with the chemical analysis made by the Division's chemist, which certified that these were alcoholic beverages.

"Peter C. Toscano, testifying on behalf of the defendant, stated that he had been a manager at these licensed premises for ten years; that it is his responsibility to see that patrons are properly checked with respect to their ages; that there are approximately 34 persons employed, of whom 18 are bartenders; and that on an ordinary week they serve approximately 6,000 persons and considerably more than that during holiday weeks. He further testified that they have several uniformed officers at the door and other floor men whose duty it becomes to spot check patrons where there is a doubt as to the true age. These premises are known as a musical bar. They book top bands and attract many thousands of vacationers, who come primarily to dance and to witness floor shows which are given three times nightly. Toscano testified that Bastian, the implicated bartender, is no longer available because he moved to Pennsylvania, and his present whereabouts are unknown.

"Michael Colao, a local police officer, testified that he was called by the ABC agents and, upon questioning the girls, ascertained from them that they had been 'checked' at the door. Gail and Marlene produced the spurious driver's licenses and Lillian produced an Esso card from her place of employment which similarly contained the age falsification. He then described their general physical appearance which, in his opinion, made it difficult to ascertain what their exact ages were. He then took these girls to Police Headquarters where they were booked, arraigned, pleaded guilty and were fined by the local magistrate.

"Upon cross-examination, he admitted that he did not see any of these girls enter the premises. In a brief filed on behalf of the licensee, it is admitted that sales of alcoholic beverages were made and the said beverages were consumed by these minors. Counsel states that he is mindful of the terms of the statute R.S. 33:1-77 and of Rule 1 of State Regulation No. 20. In R.S. 33:1-77, the statute contains the following proviso:

'... that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over.' (Emphasis ours)

"However, counsel ably argues that, notwithstanding the specific for a complete defense as outlined in the said statute, in the instant case 'exceptional circumstances' require a different application of the rule. It is asserted that forged driver's licenses produced by two of the girls and the spurious identification card produced by the third were such flagrant violations as to be tantamount to a false representation of their age in writing and, thus, that the defendant has established the first element of the defense delineated in the above cited Statute.

"This contingency was expressly anticipated by this Division in a special note (page 77 of the Rules and Regulations) which, in explanation of Rule 1, states, in part:

'... (c) that the sale was made in reliance upon such written representation and appearance and in the reasonable belief that the minor was of age. Hence it is not a defense that mere verbal inquiry may have been made as to the age of the minor or that the minor had verbally misrepresented his age or that the minor had displayed some document (such as a driver's license, birth certificate, military identification card, selective service registration certificate, or any other similar document) which represented his age as over 21. The representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at or prior to the time of sale or service. Such a writing must be signed by the minor in the presence of the licensee or his employee and one in which the minor gives his name, address, age, date of birth and, by signing the writing, makes a statement that he is making the representation as to his age to induce the licensee to make the sale. After the writing has been signed, the licensee should require that the person signing the representation adequately identify himself as that person and thus affirmatively avoid the acceptance of these representations from persons using fictitious names, addresses and ages....'

"I can conceive of no valid distinction from the facts in this case and those presented in Sportsmens 300 v. Board of Commissioners of Nutley, 42 N. J. Super. 488 (App. Div. 1956). In this case a driver's license was also presented and the court there held that a 'false representation in writing by the minor' was not intended to embrace such writing as a driver's license. The court quoted from the decision in Re Wedemeyer, Bulletin 1050, Item 8:

'Experience in cases similar to this indicates that for some reason licensees or their agents are reluctant to "embarrass" a minor by requiring him to reduce to writing his name, age and address. If licensees are willing to use their own methods of determining the age of a minor, rather than follow the statute, they do so at their peril and must accept the consequences of their own neglect.'

"Thus, the argument of counsel for such circumference of the Rule and Statute is a rationalization which must be rejected. The prevention of sales of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson-Bergen County RLS Ass'n. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); In Re Schneider, 12 N.J. Super. 449, 456 (App. Div. 1951); Mazza v. Cavicchia, 15 N.J. 498, 505 (1954); Butler Oak Tavern V. Division of Alcoholic Beverage Control, 20 N.J. 373, 384 (1956); Guill v. Mayor and Council of the City of Hoboken, 21 N.J. 574, 584 (1956).

"Counsel further argues that the appearance of these minors was such that a reasonably prudent person would believe them to be 21 years of age or over, in compliance with the statutory imperative of R.S. 33:1-77. In support of this contention, defendant produced a local police officer and the manager of the licensed premises, who both testified that, in their opinion, these minors had mature appearances and appeared to be at least 21 years of age.

"As I have noted in the summary of the facts hereinabove, Agent S testified that Marotta, the president of the corporate-licensee, when asked whether he would serve these minors if he were behind the bar stated, 'I would be in doubt'. Both agents testified that it was very apparent to them that these girls were under 21 years of age, and it was this strong suspicion that caused them to take the affirmative action which led to their apprehension.

"I have observed the appearance of these three minors during the hearing held in this Division. I, too, was impressed with the fact that these girls looked quite youthful and their appearance would generate in my mind serious doubt as to their statutory maturity. This was particularly true with respect to Gail, who is 4'11" tall, weighed 104 pounds, according to the testimony, and appeared to be no more than 16 years of age. I therefore reject defendant's contention that the appearance of these minors was such that an ordinary prudent person would believe them to be 21 years of age or over, and that such sale was made in good faith, relying upon such appearance.

"Counsel further contends that the large volume of business and the large capital investment, coupled with its efforts at adequate policing, require a 'different application of the rule'. This leads to the observation that the responsibility of the defendant is much greater than that of a smaller enterprise, because of the large number of persons serviced and the greater likelihood of violations.

"In Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408, 29 Atl. 2nd 888, aff'd 130 N.J.L. 554, 33 Atl. 900, cert. den. 64 Sup. Ct. 431, 320 U.S. 801, the court, commenting upon a similar situation in which this argument was raised, stated:

'Although the sale was not accomplished in purposeful violation of the regulations it was such an act as would have been avoided had the prosecutor's clerks performed their duty; and in any event it was a flat violation of lawful regulations duly promulgated and fully grounded in the

statute. Prosecutor does a large business. But it operates under a unit license and the fact that it does a large business, from which it presumably makes commensurate profits, is not a reason why, when it violates the law, it should not be punished by an interruption of the license by grace of which that business is done.'

"Under the circumstances, I conclude that the Division has sustained the burden of proof of defendant's guilt by a fair preponderance of the credible evidence, and it is recommended, therefore, that defendant be found guilty of Charge 1.

"Defendant has a prior adjudicated record. Effective May 2, 1960, its license was suspended by this Division for five days for sale to a minor. The minimum penalty for service of alcoholic beverages to three minors, all of whom were 18 years of age or over, is twenty days (Re White Top Inn Inc., Bulletin 1312, Item 10), to which should be added ten days for a similar violation which occurred within the past five years (Re E. F. Jenkins, Inc., Bulletin 1337, Item 6) and an additional ten days on Charge 2 (Re Kenney, Bulletin 1351, Item 3). In view of the mitigating circumstances because of the spurious identifications offered by the minors herein, I further recommend that five days be deducted from the penalty, making a total suspension of thirty-five days. Re LoPresti, Bulletin 1415, Item 8."

Pursuant to the provisions of Rule 6 of State Regulation No. 16, the attorney for defendant filed exceptions to the Hearer's Report and written argument thereto. The attorney contends, as he contended in his brief submitted to the Hearer, that the spurious driver's licenses shown to the person at the door by the three minors when they entered the premises constituted a representation in writing that each was 21 years of age or over. This contention was expressly rejected by the Court in Sportsmens 300 v. Board of Commissioners of Nutley, *supra*, where the Court said:

"The agency has not, however, considered that 'a false representation by the minor' was intended to embrace such writings as a driver's license, a draft card, or a social security card."

The attorney further contends that the holding in said case "may well be appropriate in the usual case where a minor has been served intoxicating liquors" but should not apply to defendant because of defendant's large patronage and the unique location of its premises. However, in construing the rules and regulations, the same interpretation thereof should be applied to licensees who conduct a small business and those who conduct a large business. Grant Lunch Corp. v. Driscoll, *supra*. Moreover, the evidence is sufficient to lead me to conclude that the appearance of the minors was such that an ordinary prudent person would not believe that any of the minors was 21 years of age or over. Hence, I find that defendant has not established a defense under the provisions of R.S. 33:1-77.

Having carefully considered the evidence, exhibits, Hearer's Report and the exceptions and written argument thereto, I concur in the findings of the Hearer and adopt them as my conclusions herein. Hence, I find defendant guilty as to Charge 1. I shall suspend defendant's license for forty days on both charges and remit five days for the plea.

Investigation discloses that defendant's business is now being conducted on a limited basis. Thus, no effective penalty can be imposed at the present time. The effective dates for the suspension will be fixed by a further order which will be entered by me after the licensed premises shall have reopened for the 1962 season.

Accordingly, it is, on this 24th day of January 1962,

ORDERED that plenary retail consumption license C-9, issued by the Common Council of the City of Somers Point to Tony Mart, Inc., t/a Tony Mart, for premises 939 Bay Avenue, Somers Point, or any transfer of said license, be and the same is hereby suspended for thirty-five (35) days, the effective dates to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
DIRECTOR

DISCIPLINARY PROCEEDINGS - PERMITTING GAMBLING (NUMBERS) ON
LICENSED PREMISES - LICENSE SUSPENDED 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against)

John H. Wilson)
t/a Kurilla's Bar)
139 Genessee Street)
Trenton 10, N. J.)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption
License C-201, issued by the Board)
of Commissioners of the City of)
Trenton.)

ORDER

Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On November 18, December 1 and 2, 1961, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.
- "2. On November 18, December 1 and 2, 1961, 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 Regulation No. 20."

On the dates set forth in Charge 1 herein, Dominic De Feo, a bartender, accepted "numbers" bets from ABC agents on the licensed premises. On November 18, 1961, the agents observed other persons place similar bets with De Feo. On December 2, 1961, as prearranged, two local detectives accompanied by a third ABC agent, came into the licensed premises and found \$39.95 including three one-dollar bills (which had been marked by the agents) in De Feo's trouser pocket and \$241 in his wallet.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty-five days (the minimum suspension for gambling as herein, when an employee of the licensee is involved).
Re Cameo Club, Inc., Bulletin 1428, Item 4. Five days will be remitted

for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 23rd day of January 1962,

ORDERED that Plenary Retail Consumption License C-201, issued by the Board of Commissioners of the City of Trenton to John H. Wilson, t/a Kurilla's Bar, for premises 139 Genessee Street, Trenton, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Tuesday, January 30, 1962 and terminating at 2:00 a.m., Monday, February 19, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Norma Crecco
t/a "Valley Liquors"
19 Valley Street
South Orange, N. J.

)
)
) CONCLUSIONS

)
) AND

Holder of Plenary Retail Consumption License C-6, issued by the Board of Trustees of the Village of South Orange.

)
) ORDER

Defendant-licensee, Pro se.

David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that she possesses on her licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On December 6, 1961, an ABC agent tested defendant's open stock of liquors and seized four bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of three of the seized bottles, when compared with the contents of genuine bottles of the same brands, varied substantially in acids and solids.

Defendant has no prior adjudicated record. I shall suspend her license for twenty days, the minimum penalty imposed in "refill" cases involving three bottles. Re Mistell, Inc., Bulletin 1425, Item 3. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 25th day of January 1962,

Ordered that Plenary Retail Consumption License C-6, issued by the Board of Trustees of the Village of South Orange to Norma Crecco, t/a "Valley Liquors", for premises 19 Valley Street, South Orange, be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m., Monday, February 5, 1962 and terminating at 7:00 a.m., Tuesday February 20, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

Chateau Pinewald, Inc.)
856 Route #9)
Berkeley Twp., N. J.)
PO Bayville)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Berkeley.)

ORDER

Venino and Venino, Esqs., by Thomas M. Venino, Esq., Attorneys for Defendant- licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold, served and delivered and permitted the sale, service and delivery of alcoholic beverages to a minor and permitted the consumption of such beverages by said minor in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

While ABC agents were in defendant's premises on the evening of Devenber 9, 1961, they observed two young men enter and take seats at the bar. Thomas Fredericks (who is president of defendant corporation and who was tending bar) sold and served to each of the young men a bottle of beer without questioning them as to their respective ages. After the drinks had been consumed, the agents identified themselves and ascertained that one of the young men was of age, but that Jack ---, the other young man, was twenty years of age.

Defendant has no prior adjudicated record. I shall suspend defendant's license for ten days, the minimum penalty in cases involving sale to a 20-year-old minor. Re Passner, Bulletin 1379, Item 8. Five days will be remitted for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 29th day of January 1962,

ORDERED THAT plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Berkeley to Chateau Pinewald, Inc, for premises 856 Route #9, Berkeley Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, February 5, 1962 and terminating at 2:00 a.m., Saturday, February 10, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

8. SALE ON CREDIT AT RETAIL - NEWSPAPER AND OTHER ADVERTISEMENT OF MEMBERSHIP IN CREDIT PROGRAM EXCEPT DISPLAY OF EMBLEM ON EXTERIOR OF LICENSED PREMISES PROHIBITED.

Somerset Liquor Mart (A Corp.)
710 Somerset Street
New Brunswick, N. J.

January 31, 1962

Our attention has been directed to your advertisement in the December 14, 1961 issue of the DAILY HOME NEWS dominated by the following legend: "MEMBER of the Diners' CLUB World-Wide Credit Card".

Your attention is directed to the fact that Re Zubrow, Bulletin 1426, Item 2 (copy enclosed) is the only modification of my previous ruling in Re Moskowitz, Bulletin 1298, Item 6 (copy enclosed) which had limited the advertising of sales on credit to dignified interior signs not visible from the exterior or by menu or table tent or card in restaurants. You will note that Re Zubrow, supra, permitted retailers to place a small dignified sign, emblem or decalcomania, showing their membership in a credit program, in or upon their premises even though visible from the exterior. However, advertisement of sale of alcoholic beverages on credit or membership in a credit program in periodicals, publications, circulars, handbills, direct mailing pieces, or by any other means or medium is prohibited.

WILLIAM HOWE DAVIS
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Clicquot Club Dist.
Route No. 27 and Churchill Avenue
Franklin Township
PO Somerset, New Jersey
Application filed March 7, 1962 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-30 from Rushton H. Ridgway, Receiver for Landis Beverage Co., North Delsea Drive and Dutch Mill Road, Franklin Township, PO Malaga, New Jersey


William Howe Davis
Director