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

BULLETIN 995 DECEMBER 22, 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 995 DECEMBER 22, 1953.

1. COURT DECISIONS - MITCHELL v. CAVICCHIA - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-697-52

CHARLES E. MITCHELL,
Defendant-Appellant,
-vs-
DOMINIC A. CAVICCHIA, Director of the Division of Alcoholic Beverage Control,
Plaintiff-Respondent.

Argued November 30, 1953. Decided December 14, 1953.

Before Judges Clapp, Goldmann and Ewart.

Mr. Samuel B. Helfand argued the cause for the Director.

Mr. Frank M. Lario argued the cause for the Defendant-Appellant.

CLAPP, S.J.A.D.

Two charges were preferred against the defendant in the Division of Alcoholic Beverage Control. The first was that, in violation of a regulation of the Division, the defendant allowed or suffered lewd entertainment to be put on in a cafe he owns and operates in Burlington, New Jersey; and the second charge was that, in violation of N.J.S.A. 33:1-35, he hindered and delayed an investigation made by the Division as to the conduct of the cafe's business. The Director found against the defendant on both charges, and the defendant appeals.

The first point on the appeal is that the findings of the Director as to both matters are against the weight of the evidence. Appellant, in flagrant violation of R. R. 1:7-1 (f), has printed about ten per cent of the transcript of the testimony. That rule makes it mandatory upon the appellant to print those portions of the record which he reasonably assumes will be relied upon by respondent in meeting the issues he raises. Feddock v. New Jersey Realty Company, --- N. J. Super. --- (App. Div. 1953); Grove v. Grove, 21 N. J. Super. 447, 455 (App. Div. 1952). The rule has point particularly on the issue now raised. We cannot pass upon the weight of the evidence unless there is placed before us the evidence pro and con.

However, even though we are not bound to do so, State v. Marchione, 5 N. J. 340, 341 (1950), we have taken the trouble to examine the transcript of the testimony filed with the clerk of the court. We conclude -- whatever test is to be applied in reviewing administrative findings, New Jersey State Bd. of Optometrists v. Nemitz, 21 N. J. Super. 18 (App. Div. 1952) -- that there is ample evidence to sustain the findings here.

Appellant assails the testimony of one of the two investigators for the Division who appeared as witnesses, on the ground that he had

been drinking, and on certain other grounds. But the testimony of the other investigator, which, except for 21 lines, is not printed in the appendix, sufficiently corroborates him on both charges before us. It is said that the entertainment, which was the subject of the first charge, was not lewd. State v. Brenner, 132 N.J.L. 607 (E. & A. 1945); State v. Baldino, 11 N. J. Super. 158 (App. Div. 1951). There is no need to detail the evidence here either with respect to the matter of lewdness or with respect to the charge that the defendant hindered and delayed an investigation. The arguments are without any merit.

Appellant urges next that there should be a reversal because the Director failed to promulgate rules under that provision of N.J.S.A. 33:1-35, which forbids any hindering or delaying of an investigation conducted by the Division. The notion is that the statute is inoperative unless there are rules specifying what sorts of acts are to constitute the hindrance or delay prohibited thereby. No authorities are cited.

The statute does not require rules in all cases. On the contrary N.J.S.A. 33:1-39, though it permits rules with respect to "investigations", gives the Commissioner authority only to make such general rules and regulations "as may be necessary". Besides a license may be suspended although no rule has been violated; N.J.S.A. 33:1-31 authorizes the Director to suspend a license because of the violation of any provision of N.J.S.A. 33:1.

It has been held that there is no rigid principle requiring an administrative agency to lay down rules and standards spelling out every wide grant of authority it receives. Securities and Exchange Com. v. Chanery Corp., 332 U. S. 194 (1946); cf. Davis, Administrativ Law p. 556 (1951). On the other hand a court might strongly deprecate this view and even perhaps strike down, except in unusual circumstances, any attempt at pricking out such standards, point by point, in ad hoc administrative determinations; a court might feel that an agency, like a legislature and unlike a court, should, so far as reasonably possible, make law prospectively and not retroactively. See Report of United States Attorney General's Committee on "Administrative Procedure in Government Agencies", Senate Document No 8, 77th Congress, 1st Session p. 29, 225. But we do not get to those problems here. We are not dealing with a broad grant of administrative power, given in general terms. We are dealing with the legislative command appearing in N. J. S. A. 33:1-35, which is sufficiently precise so as not to require -- so far as the present situation goes - regulations to lay out its terms. Rules are designed to close up the interstices in the law, but they are not called for here. Neither the licensee looking about in order to determine how to govern his own conduct, nor a court passing upon the arbitrariness of the Division's actions, requires any specificity as to what acts constitute a hindrance or delay of an investigation.

The final point is that the penalties meted out by the Director namely, 30 days on the first charge and an additional 15 days on the second charge, were unduly harsh. It is settled law -- and indeed conceded by the defendant -- that it is within the sound discretion of the Director to determine how long a defendant's license is to be suspended because of any violation. In re Larsen, 17 N. J. Super. 564, 573 (App. Div. 1952), supra. The contention that the penalties here are so harsh as to constitute an abuse of discretion is without any merit. Traymore of Atlantic City, Inc. v. Hock, 9 N. J. Super. 47 (App. Div. 1950).

Affirmed.

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2. APPELLATE DECISIONS - EMPIRE LIQUOR CO. v. NEWARK AND RAJAH LIQUORS.
ARROW SALES CO. ET AL. v. NEWARK AND RAJAH LIQUORS.
ROBINSON ET AL. v. NEWARK AND RAJAH LIQUORS.

EMPIRE LIQUOR CO., Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and RAJAH LIQUORS (a corporation), Respondents.	
ARROW SALES CO. and CAPITAL AUDIT CORP., Appellants, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and RAJAH LIQUORS (a corporation), Respondents.	ON APPEAL CONCLUSIONS AND ORDER
PRESTON ROBINSON, DANIEL BENDER and WESTON AND COMPANY, Appellants, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and RAJAH LIQUORS (a corporation), Respondents.	

Louis B. Englander, Esq., by Charles W. Chadwick, Esq., Attorney for Appellants Empire Liquor Co., Arrow Sales Co. and Capital Audit Corp.
Daniel G. Gallop, Esq., Attorney for Appellants Preston Robinson, Daniel Bender and Weston and Company.
Horace S. Bellfatto, Esq., by George B. Astley, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control.
Mayer and Mayer, Esqs., by Abraham I. Mayer, Esq., Attorneys for Respondent Rajah Liquors (a corporation).

BY THE DIRECTOR:

These consolidated appeals are from the action of respondent-Board whereby it granted respondent-licensee's application for 1953-1954 renewal of its plenary retail consumption license for premises 274 Fifteenth Avenue, Newark.

The Petitions of Appeal include, as contended grounds for reversal: (1) There has, for some time, been no operation under the license; (2) Respondent-licensee lacks possession and control of certain other premises as to which it had applied for transfer of license; (3) There is an abundance of licensed establishments in the vicinity of 274 Fifteenth Avenue, "substantially the reason that applicant and its predecessors were unable to successfully exercise its privileges under the said license"; (4) "Taverns are generally

bad for retail businesses";(5) Respondent-licensee "does not now, and did not at the time of the granting of the renewal from which this appeal is taken, have possession or control of the premises for which the license was issued."

As to Ground (1): Mere non-user does not affect the legal status of a license. Protracted non-user might, in a given case, cause a municipal issuing authority to determine against granting renewal (Re Tarantola, Bulletin 570, Item 5), but such a situation is not present in the instant appeal. I find Ground (1) to be without merit.

Ground (2) has no bearing whatsoever and I find it to be of no merit.

On the record before me Ground (3) is without probative force and I find no merit in it.

Ground (4) is clearly without merit herein and I so find.

As to Ground (5): Appellants called as a witness a Public Service Company employee who testified that no electricity is being supplied to the renewal premises: "No juice is being used." But, of course, that was not evidential on the question of right to possession of the premises.

James Leffler, called by appellants, testified that he and a partner are the lessees of the premises 274 Fifteenth Avenue, Newark, and that the premises were sublet to respondet-licensee who has been paying rent for the premises. Milton Margulies, son of the owner of the premises and agent of the owner for the collection of rent, also called as a witness by the appellants, testified that rent was collected from the lessees although he was given to understand from the lessees that the premises had been sublet to respondent-licensee.

Abraham I. Mayer, testifying on behalf of respondent-licensee, stated that on June 24, 1953, as attorney for respondent-licensee and acting on its behalf, he sublet the premises 274 Fifteenth Avenue, Newark, from the lessees and paid the rent for the months of June and July 1953. He produced a cancelled check, dated June 24, 1953, in the amount of $200.00, payable to Stevan Mrvichin, one of the lessees, whereon it was noted "June & July rent 274 - 15 Ave Newark," and also a paper which reads as follows:

"6/24/53

Received rent for months of June & July 1953 for 274 - 15th Avenue, Newark, N. J.

Steven Mrvichin and
James Leffler by
Wm Osterweil, their attorney"

The check and receipt above mentioned were marked in evidence as Exhibits D-1 and D-2, respectively.

A local issuing authority is not the proper forum to try technical title or the definitive right of possession to real and personal property, but it should be satisfied, before granting a license or transfer, that the applicant has possession and control of the premises under color of right. See Rittenger v. Bordentown and Bensel, Bulletin 547, Item 10; 218-220 Market St. Corporation v. Newark and Hawthorne, Bulletin 967, Item 1. The record herein discloses that at the time respondent-licensee applied to respondent-Board for a renewal of its license at 274 Fifteenth Avenue, Newark, and, also, on and after July 1, 1953, it was a sublessee of said premises. It cannot be said, therefore, that respondent-Board acted improperly or in abuse of the discretion given it by the Alcoholic Beverage Law in granting the renewal.

There is no evidence that any member of respondent-Board was improperly motivated.

I conclude that appellants have failed to sustain the burden of establishing that the action of respondent-Board was erroneous and should be reversed. (Rule 6, State Regulations No. 15.) Thus, such action will be affirmed.

Accordingly, it is, on this 8th day of December, 1953,

ORDERED that the action of respondent-Board be and the same is hereby affirmed and that the appeals herein be and the same are hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (RENTING ROOMS FOR IMMORAL PURPOSES) - PRIOR RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against SEIDLER'S BEACH, INC. T/a SEIDLER'S BEACH, INC. Seidler's Beach Madison Township P. O. Cliffwood, N. J., Holder of Plenary Retail Consumption License C-1 for the 1952-53 and 1953-54 licensing years, issued by the Township Committee of the Township of Madison.	CONCLUSIONS AND ORDER

Strong & Strong, Esqs., by Stephen VR. Strong, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On June 4, 1953, the following charge was preferred against defendant:

"On May 27 and 29, 1953, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20."

Defendant pleaded not guilty to said charge, and a hearing was held thereon on June 23, 1953.

At said hearing Jacob C. Forbes, President of Seidler's Beach, Inc., testified that he has employed Elizabeth Allen as room clerk and cook since May 2, 1952; that he has employed Russell Hicks as dishwasher and porter since mid-summer 1952, and that he was not present when ABC agents visited defendant's premises on May 27 and 29, 1953.

Three ABC agents visited defendant's licensed premises on the afternoon of Wednesday, May 27, 1953. Russell Hicks, as he admits, was then acting as bartender and sold drinks to the agents. During a conversation with Hicks the agents asked Hicks if they could arrange to hire two rooms on the following Friday. They made it

abundantly clear to him that the proposed use of the rooms was for the purpose of illicit sexual intercourse with two girls to be brought in. As Hicks admits, they told him that "we won's be here but an hour" and "we got to be mighty careful." Hicks admits that the agents told him the women had to be out at five o'clock but that they (the agents) would stay for the show. Hicks also admits that he showed the agents all the entrances to the hotel after the agents asked if there was any way they could go upstairs without being seen. Elizabeth Allen was not at the licensed premises during the time the agents were there on May 27th.

The three ABC agents returned to the licensed premises on the afternoon of Friday, May 29th. At that time Tony Forbes and Elizabeth Allen were tending bar. The agents observed Hicks in the pavilion cleaning off the tables. Hicks entered the barroom, had a drink with the agents and told them: "When you are ready I'll be outside." Shortly thereafter the agents went to the pavilion and gave Hicks six one-dollar bills (the numbers of which they had previously noted) as rental for two rooms and Hicks told them that he would give the money to Elizabeth Allen. Testifying on behalf of defendant, Elizabeth Allen admitted that the agents had no luggage. More specifically:

Jacob C. Forbes, when queried on direct examination as to the capacity in which Russell Hicks was employed, answered: "Porter and general dishwasher, any work he --". Then, Q. "General handyman?" A. "General handyman, yes." Q. "Did he have any authority to rent rooms?" A. "No, sir, he didn't."

Russell Hicks, a brother-in-law of Jacob C. Forbes, testified that he was employed as "porter and all around. I guess all-around man... I do painting, porter work, wash dishes, cleaning, yard, and everything all around." Further, on direct examination, he testified as follows: Q. "When was the first time you knew that those men were going to bring in somebody who were not their wives?" A. "That was Wednesday. They asked about rooms but I told them I didn't have control over the rooms; the lady that rents the rooms was out; they would have to see her." But he then testified, on direct examination, that when the agents spoke with him about the rooms on Friday, May 29th, he said: "Yes, it will be three dollars. That is what you want? Two rooms? I will take the three dollars. Both of them gave me three dollars... I gave it to Liz." And, on cross examination, Russell Hicks testified that when Jacob C. Forbes was away Elizabeth Allen was in charge of the establishment. Then: Q. "When she is gone you are in charge?" A. "Well, I am in charge."

Elizabeth Allen, when asked on direct examination as to the capacity in which she was employed, answered: "Maid, hotel clerk, and do general work." She testified further, as to May 29th, as follows: Q. "Will you tell the Deputy Director how you first became aware of the presence of these men (the A.B.C. agents) in the premises?" A. "Well, Russell came to me and said there was two men applied for a room for the day. So I said, 'if they don't mind signing the register,' I said 'o.k.' He went out where they were, and he came back with the money in his hand." She testified that Russell Hicks gave her the six dollars; that she told the two agents to come upstairs and sign the register and that she assigned a bedroom on the second floor to each of the agents after they signed the registration cards; and that the agents requested her to "tell Russell to bring us up drinks". She testified further, on direct examination, that she thought the females to be brought to the premises by the agents were "their wives": "I was going to watch downstairs to find out what it was all about. I was under the impression it was their wives... I was going to find out from the girls what it was all about. Then I was going to give them their money back, but the girls never showed up."

After the agents were taken to the two bedrooms Russell Hicks had drinks prepared and took them up to the agents who paid him with two marked one-dollar bills. Shortly thereafter the third A. B. C. agent and two members of the Madison Township police department found the two agents in the bedroom rented to them.

Rule 31 of State Regulations No. 20 provides:

> "In disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings."

Both Russell Hicks and Elizabeth Allen were "employees" of defendant within the meaning and operation of the statute and regulations. Clearly, their services and acts herein related were utilized in furtherance of the licensed business.

Neither in fact nor in law is there any merit in the apparent attempt to escape responsibility and liability on the ground that Russell Hicks acted beyond the scope of his authorized employment. That is true even assuming, which I am not, the presence of quite convincing evidence that Hicks' acts were beyond such scope. "The responsibility of the licensee is not dependent upon the doctrine of respondeat superior, nor upon his personal knowledge or intent or participation. Indeed, he is not relieved even if the violations were contrary to his express instructions. In re 17 Club, Inc., 26 N. J. Super. 43, 52 (App. Div. 1953); Greenbrier, Inc. v. Hock, 14 N. J. Super. 39, 43 (App. Div. 1951), cert. den. 7 N. J. 581 (1951); In re Gutman, 21 N. J. Super. 579 (App. Div. 1952); In re Schneider, 12 N. J. Super. 449 (App. Div. 1951); Essex Holding Corp. v. Hock, 136 N. J. L. 28 (S. C. 1947); Grant Lunch Corp. v. Driscoll, 129 N. J. L. 408 (S. C. 1943), affd. 130 N. J. L. 554 (E. & A. 1943), cert. den. 320 U. S. 801, 88 L. Ed. 484, 64 S. Ct. 431 (1944)." (Mazza v. Cavicchia, Super. Ct. Decided November 13, 1953, not yet officially reported -- Bulletin 992, Item 1, affirming Re Joseph Mazza, Bulletin 972, Item 1.)

Rule 31 of State Regulations No. 20 "contains no prohibition and is merely declaratory of certain applicable court decisions". (Greenbrier, Inc. v. Hock, supra.) "Manifestly, the Rule and its upholding are essential to proper and effective enforcement in protection of the public welfare. Without it the State would be rendered impotent and licensees would enjoy an immunity through the simple expediency of making sure that individual licensees (and members of licensee corporations) absent themselves from the licensed premises." (Re Belair Inn, Inc., Bulletin 981, Item 1).

It is immaterial that no illicit sexual intercourse actually occurred in the rooms after they were rented to the agents. The offense charged (allowing, permitting and suffering lewdness and immoral activities in and upon the licensed premises) was complete when the rooms were rented with knowledge, on the part of defendant's employee or employees, that they were (ostensibly) to be used for the purpose of illicit sexual intercourse. As said for the Court (by Judge Jayne, in In re Schneider, supra): "We are therefore confronted with the question whether the mere renting of bedrooms in the licensed premises by a licensee with the belief and intent that they will be occupied for the purposes of illicit sexual intercourse is an immoral activity within the signification of Rule 5. We answer the question in the affirmative... The object manifestly

inherent in the rule ... is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil."

I find defendant guilty as charged.

Defendant has a prior record. On February 19, 1953, I suspended its license for twenty-five days, effective February 26, 1953, after it had pleaded non vult to a charge alleging that it had permitted lewdness and immoral activity upon its licensed premises in that a female entertainer performed in a lewd, indecent and immoral manner and a male entertainer told indecent stories. (Re Seidler's Beach, Incorporated, Bulletin 959, Item 5.) Most careful consideration of the seriously offensive nature of the conduct charged and found herein, coupled with the similar nature of the conduct shown in the prior recent record, leads to the conclusion that the only appropriate and justifiable penalty is revocation. The license will, therefore, be revoked.

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 December, 1953,

ORDERED that Plenary Retail Consumption License C-1, issued for the 1953-54 licensing year by the Township Committee of the Township of Madison to Seidler's Beach, Inc., t/a Seidler's Beach, Inc., for premises at Seidler's Beach, Madison Township, be and the same is hereby revoked, effective immediately.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - SALES TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ITALIAN-AMERICAN PLEASURE CLUB, INC. Second Street, New Village Franklin Township (Warren County) P.O. Stewartsville, R.D., N. J., Holder of Club License CB-282, issued by the Division of Alcoholic Beverage Control.)	CONCLUSIONS AND ORDER

Charles F. Paulis, Jr., Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On October 10, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to persons not bona fide members of your club or bona fide guests of such members; in violation of Rule 8 of State Regulations No. 7."

The file herein discloses that, at approximately 9:00 p.m. on Friday, October 9, 1953, an ABC agent entered defendant's licensed premises while another agent remained outside. During the twenty-minutes he was in the barroom the first agent was sold and served two glasses of beer by the bartender, for which the agent paid ten cents each.

The same agents returned to the licensed premises on Saturday, October 10, 1953. The first agent entered defendant's barroom at approximately 8:45 p.m., and was sold and served a glass of beer by another bartender who took ten cents in payment therefor. The bartender served the agent a second drink of beer "on the house" and asked the agent whether he was not "a stranger" around there. The agent replied in the affirmative. At approximately 9:00 p.m., the second agent entered the barroom and sat next to the first agent. The man who had been tending bar on the previous night then came from the kitchen and began tending bar. The second agent ordered a glass of beer for himself and one for the first agent and, pursuant to such order, the last named bartender served each of the agents a glass of beer and collected twenty cents therefor. Approximately twenty minutes later said bartender repeated the order at the request of the first agent and again collected twenty cents therefor. At no time did either bartender ask either agent anything with respect to membership.

The agents identified themselves to both bartenders and the one who had been on duty on both nights identified himself as secretary of defendant. Each gave a signed, sworn statement admitting the sale, service and delivery of beer to the agents as hereinabove described but denied that defendant makes a practice of serving non-members. Defendant's secretary first claimed that he thought that the first agent had greeted some of the patrons when he entered defendant's barroom on October 9 but later, when asked whether the agent had sat near or conversed with these patrons, he answered "not to my knowledge." The other bartender said that he thought that the first agent's face looked familiar to him but admitted that he had asked said agent "you're a stranger around here aren't you?" Neither of the agents was a member or a guest of a member of defendant.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Burlington Lodge #965, Loyal Order of Moose, Bulletin 983, Item 8.

Accordingly, it is, on this 30th day of November, 1953,

ORDERED that Club License CB-282, issued by the Director of the Division of Alcoholic Beverage Control to Italian-American Pleasure Club, Inc., for premises on Second Street, New Village, Franklin Township (Warren County), be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. December 7, 1953, and terminating at 2:00 a.m. December 17, 1953.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - ILLEGAL SITUATION CORRECTED - PRIOR SUSPENSION FOR BALANCE OF TERM LIFTED.

In the Matter of Disciplinary Proceedings against

HOMESTEAD INN, A Corporation
T/a HOMESTEAD INN
118-120 Center Ave.
Atlantic Highlands 4, N. J.,

Holder of Plenary Retail Consumption License C-10 for the 1952-53 and 1953-54 licensing years, issued by the Borough Council of the Borough of Atlantic Highlands.

ON PETITION
O R D E R

Homestead Inn, A Corporation, by Lawrence Borges, President.

BY THE DIRECTOR:

On October 15, 1953, I suspended defendant's license for the balance of its term, effective at 2:00 a.m., October 21, 1953, after I found it guilty of charges alleging that (1) it allowed, permitted and suffered gambling in and upon the licensed premises; (2) it allowed, permitted and suffered a device and apparatus designed for the purpose of gambling in and upon the licensed premises and (3) that Hy Kramer, its vice-president, director and holder of 650 shares of its stock was convicted in the Monmouth County Court Law Division (Criminal) of a crime involving moral turpitude, which conviction, if it had previously occurred, would have prevented the issuance of the license referred to in this proceeding. Re Homestead Inn, Bulletin 989, Item 3. In said order it was provided that leave was given to apply for the lifting of said suspension upon the transfer of such license to a duly qualified person or upon proof that said Hy Kramer is no longer an officer, director or stockholder of the corporation or connected with it in any business capacity, but in no event would such an order be entered prior to the expiration of forty (40) days from the effective date thereof.

Lawrence Borges, defendant's president, has applied for an order lifting said suspension and has submitted affidavits and other documentary evidence from which it appears that the resignation of said Hy Kramer as vice-president, treasurer and director of defendant corporation was tendered and accepted November 27, 1953; that, on that date, said Hy Kramer assigned and transferred his stock to Harold Borges; that Harold Borges was duly elected vice-president and treasurer of defendant corporation to succeed said Hy Kramer and that said Hy Kramer no longer is an officer or stockholder of, and no longer has any interest in said corporation, financially or otherwise.

It appearing that the unlawful situation has been has been corrected and that the minimum period of forty (40) days from October 21, 1953 has expired,

It is, on this 1st day of December, 1953,

ORDERED that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-10 be restored to full force and operation, effective immediately.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - ILLEGAL SITUATION CORRECTED - PRIOR SUSPENSION FOR BALANCE OF TERM LIFTED - LICENSE RESTORED TO FULL FORCE AND OPERATION UPON EXPIRATION OF ADDITIONAL 20-DAY PENALTY IMPOSED BY LOCAL ISSUING AUTHORITY.

In the Matter of Disciplinary Proceedings against THE GLASS BAR, INC. T/a THE GLASS BAR 151 First Street Hoboken, N. J., Holder of Plenary Retail Consumption License C-191, issued by the Board of Commissioners of the City of Hoboken.	))))))	ON PETITION O R D E R

Albert J. Shea, Esq., Attorney for Petitioner, Ferdinando Pisani.

On September 8, 1953, the Director suspended defendant's license for the balance of its term, effective at 2:00 a.m. September 14, 1953, after defendant pleaded guilty to charges alleging, among other things, that Ferdinando Pisani was the undisclosed owner of all of the stock of defendant corporation. Re The Glass Bar, Inc., Bulletin 984, Item 4. In said order it was provided that leave was given to apply for the lifting of said suspension, if the illegal situation was corrected, but in no event prior to thirty-five days from the effective date of said suspension.

Subsequently, in another disciplinary proceeding, the Board of Commissioners of the City of Hoboken suspended defendant's license for twenty days, to become effective if and when the aforesaid suspension was lifted.

Ferdinando Pisani has filed a petition wherein he sets forth that by resolution dated November 30, 1953, the Board of Commissioners of the City of Hoboken transferred the license to him and Michael Cutillo. The transfer is subject to the aforesaid suspensions. Rule 5 of State Regulations No. 16. A certified copy of said resolution is attached to the petition.

It appearing that the unlawful situation has been corrected and that more than thirty-five days have expired from the effective date of the suspension imposed by the Director,

It is, on this 2nd day of December, 1953,

ORDERED that the suspension heretofore imposed by the Director shall be lifted, effective immediately, and that plenary retail consumption license C-191 shall be restored to full force and operation at 2:00 a.m. December 22, 1953, namely, upon termination of the twenty-day suspension imposed by the Board of Commissioners of the City of Hoboken.

DOMINIC A. CAVICCHIA
Director.

By: Edward J. Dorton
Deputy Director.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against SAMUEL JACOBS T/a NEW CASINO BALLROOM 56-58 Harrison Avenue Harrison, N. J., Holder of Plenary Retail Consumption License C-43, issued by the Town Council of the Town of Harrison.	)	CONCLUSIONS AND ORDER

Joseph F. McCarthy, 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 a charge alleging that he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at his licensed premises to a minor, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that two ABC agents visited defendant's licensed premises on the evening of October 17, 1953. At 11:00 p.m. a soldier took a seat at the bar next to one of the agents. The soldier ordered a drink of whiskey and soda from a female bartender who served the drink to him and accepted payment therefor. The agent engaged the soldier in conversation, during the course of which the soldier told the agent he was 19 years of age. Both agents then identified themselves to the soldier and also to the female bartender who had made the sale of the alcoholic beverages to the minor. During the course of the investigation it developed that the minor was 17 years of age.

Defendant has no prior adjudicated record. Since it appears that the minor mentioned in the charge was 17 years of age, I shall suspend defendant's license for a period of fifteen days. Re Cedar Bar of Bergen County, Inc., Bulletin 942, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

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

ORDERED that Plenary Retail Consumption License C-43, issued by the Town Council of the Town of Harrison to Samuel Jacobs, t/a New Casino Ballroom, 56-58 Harrison Avenue, Harrison, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. December 14, 1953, and terminating at 2:00 a.m. December 24, 1953.

DOMINIC A. CAVICCHIA
Director.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SCHWAEBISCHE ALB (A Corp.)
T/a SCHWAEBISCHE ALB
Springdale-Washington Valley Rd.
Warren Township
P.O. R.D. 1, Bound Brook, N. J.,

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Warren.

CONCLUSIONS AND ORDER

Schwaebische Alb, Defendant-licensee, by Frederick Kraemer, President.
David S. Piltzer, 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 alcoholic beverages to minors and permitted the consumption of such beverages by said minors on the licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that, at approximately 8:30 p.m. on Saturday, November 7, 1953, two ABC agents entered defendant's licensed premises to investigate a specific complaint that defendant was selling alcoholic beverages to minors. The agents entered the dining room at approximately 10:00 p.m. There were a large number of patrons in the dining room, including a group of young males and females. Two of the males, who appeared to be minors, were drinking beer which was served to the table in pitchers by a waitress.

The agents identified themselves to the aforementioned group and learned that the two males who appeared to be minors were, in fact, 19 years of age. The minors orally and in signed, sworn statements admitted drinking beer which had been brought to their table in pitchers by the waitress and both denied that they had been questioned as to their ages. The waitress also made a signed, sworn statement admitting that she had served the pitchers of beer to the table where the minors were seated but claimed that she had "asked the table in general" with respect to their ages but had not questioned the minors individually. She admitted that she had not obtained written representation as to their ages.

The minors and the waitress stated that no payment had been made for the beer up to the time the agents identified themselves and explained that payment was to be made at the end of the evening. However, payment is not necessary to complete the offense charged. Delivery alone is sufficient. Re Pike Inn, Bulletin 987, Item 7. So also is the service of beer in pitchers and the consumption thereof by minors under the circumstances here present. Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947).

Defendant has no prior adjudicated record. I shall therefore suspend its license for ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Perry, Bulletin 957, Item 7.

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

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Warren to Schwaebische Alb (A Corp.), t/a Schwaebische Alb, for premises on Springdale-Washington Valley Rd., Warren Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. December 14, 1953, and terminating at 2:00 a.m. December 19, 1953.

DOMINIC A. CAVICCHIA
Director.

9. DISQUALIFICATION - PRIOR APPLICATION DENIED - FIVE YEARS' GOOD CONDUCT - APPLICATION TO LIFT GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2. Case No. 1103.	CONCLUSIONS AND ORDER

BY THE DIRECTOR:

Petitioner renews his application for relief, pursuant to the terms of an Order dated July 9, 1952 denying a prior petition with leave to file a new petition after July 9, 1953. Case No. 983, Bulletin 940, Item 12.

Petitioner testified that since June 11, 1952, the date of the hearing in the prior proceeding, he has been engaged in the advertising business; furthermore, that his record has been clear during that time.

At the hearing herein, three witnesses (an employee of an insurance company and two businessmen) testified that they have known petitioner seven or more years and that he bears a reputation for being a law-abiding person in the community in which he lives.

The police department of the municipality wherein petitioner resides has advised that no complaint or investigation is presently pending involving the petitioner.

From the evidence, I conclude that petitioner has conducted himself in a law-abiding manner during the five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

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

ORDERED that petitioner's statutory disqualification because of his convictions of crimes be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

DOMINIC A. CAVICCHIA
Director.

10. AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITIES - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)

GEORGE E. COMPTON)
T/a 4 ACRES
State Highway Route 25, on the east)
side between Windsor and Robbinsville
Washington Township (Mercer County)) ON PETITION
P. O. Robbinsville, N. J.,) O R D E R

To Lift the Automatic Suspension of)
Plenary Retail Consumption License C-4,)
issued by the Township Committee of
Washington Township.)

Philip M. Chamberlin, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from a verified petition filed herein that on September 25, 1953, petitioner George E. Compton pleaded non vult in the Mercer County Court to an indictment alleging that he sold alcoholic beverages to minors, in violation of R. S. 33:1-77. The petition, after reciting the action taken by the local issuing authority in disciplinary proceedings, as hereinafter set forth, prays that the automatic suspension of the license may be lifted. The verified petition, which was filed on September 28, 1953, was prematurely filed because at that time sentence had not been imposed in the criminal proceedings. However, the attorney for petitioner has verbally advised that on December 4, 1953, the Judge of the Mercer County Court sentenced the petitioner herein to pay a fine of $50.00 and costs in the criminal proceedings. As a result of said conviction the license now held by petitioner has been suspended for the balance of its term in accordance with the provisions of R. S. 33:1-31.1. Under these circumstances I shall now consider the petition for relief.

The records of the Division of Alcoholic Beverage Control disclose that, as a result of disciplinary proceedings instituted against petitioner, the Washington Township Committee, on April 13, 1953, suspended the license which the petitioner then held for a period of twenty days, effective April 20, 1953, after petitioner had pleaded guilty to charges alleging that he sold and permitted the sale of alcoholic beverages to minors, in violation of Rule 1 of State Regulations No. 20.

The charge in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. The case concerns the sale of alcoholic beverages to four minors, one of whom was 16 years of age, two of whom were 17 years of age, and one of whom was 18 years of age.

A review of the facts indicates that the suspension heretofore imposed by the local issuing authority was adequate under the circumstances of the case. Hence the relief sought herein will be granted.

Accordingly, it is, on this 4th day of December, 1953,

ORDERED that the automatic suspension of License C-4, now held by George E. Compton, t/a 4 Acres, for premises on State Highway Route 25, on the east side between Windsor and Robbinsville, Washington Township (Mercer County), be and the same is hereby lifted and said license is hereby restored to full force and operation, effective immediately.

DOMINIC A. CAVICCHIA
Director.

11. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against

SCHWAEBISCHE ALB (A Corp.)
T/a SCHWAEBISCHE ALB
Springdale-Washington Valley Rd.
Warren Township
P.O. R.D. 1, Bound Brook, N. J.,

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Warren.

ON PETITION
O R D E R

Schwaebische Alb (A Corp.), Defendant-licensee, by Frederick Kraemer, President.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

An Order having been entered herein on the 7th day of December, 1953, suspending defendant's license for a period of five days, commencing at 2:00 a.m. December 14, 1953, and terminating at 2:00 a.m. December 19, 1953; and

It appearing from a verified petition filed herein for the postponement of the effective date of said suspension that, prior to the time petitioner received the notice of the entry of said Order, it had arranged to permit the holding of a Christmas party for the employees of a bank to be held in defendant's licensed premises on Tuesday, December 15, 1953, to be attended by 40 guests, and had also arranged to permit the holding of a Christmas party for the employees of an industrial organization on defendant's licensed premises on Friday, December 18, 1953, to be attended by 75 guests; and

It sufficiently appearing that many members of the general public will suffer hardship because of the suspension of defendant's license in accordance with the terms of the original Order, and no reason appearing to the contrary;

It is, on this 10th day of December, 1953,

ORDERED that the suspension of five days imposed in this proceeding, instead of commencing at 2:00 a.m. December 14, 1953, shall, in lieu thereof, commence at 2:00 a.m. January 4, 1954, and terminate at 2:00 a.m. January 9, 1954.

Dominic A. Cavicchia
Director.