

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

BULLETIN 1182

AUGUST 29, 1957.

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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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AUGUST 29, 1957.

1. APPELLATE DECISIONS - THE GREAT ATLANTIC AND PACIFIC TEA
CO. v. WEST NEW YORK AND RITE-WAY FOODS, INC.

THE GREAT ATLANTIC AND PACIFIC)
TEA COMPANY,)

Appellant,)

-vs-)

BOARD OF COMMISSIONERS OF THE)
TOWN OF WEST NEW YORK and)
RITE-WAY FOODS, INC.,)

Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

George P. Moser, Esq., Attorney for Appellant.
Samuel L. Hirschberg, Esq., by Anthony J. Armore, Esq.,
Attorney for Respondent-Municipality.
Samuel Moskowitz, Esq., Attorney for Hudson-Bergen Retail
Liquor Stores Assn, Objector.
Alexander A. Abramson, Esq., Attorney for West New York
Tavernkeepers Assn, Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board whereby on December 5, 1956 it denied appellant's application for transfer of a limited retail distribution license from Rite-Way Foods, Inc. to appellant and from premises 6315 Broadway to premises 6209 Bergenline Avenue, West New York.

"Appellant in its petition of appeal alleges, in substance, that the action of respondent Board was erroneous in that it was arbitrary and capricious and not based upon competent relevant evidence.

"Respondent Board in its answer contends that its action was predicated upon the consideration of the evidence before it which failed to disclose the need for an additional limited retail distribution license in the neighborhood to which the license is sought to be transferred.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 and a transcript of the proceedings below was received in evidence. Rule 8 of State Regulation No. 15.

"Briefly stated, the facts are: The population of the Town of West New York as of the 1950 Federal Census was 37,764. The number and type of licenses issued and outstanding in the municipality are 79 plenary retail consumption licenses, 12 limited retail distribution licenses, and 15 plenary retail distribution licenses. The distance between appellant's premises and those of Rite-Way Foods, Inc. (holder of the license sought to be transferred) is approximately 2100 feet. Bergenline Avenue is the main business street transversing the Town of West New York from 49th Street to 67th Street. There are six plenary retail consumption licenses, three plenary retail distribution licenses and one limited retail distribution license on said avenue in said Town. Respondent Board's

action in denying appellant's application for transfer was by a unanimous vote.

"The testimony adduced on behalf of appellant shows that in January 1956, appellant's super market at 6209 Bergenline Avenue was destroyed by fire; that thereafter a number of communications were received from merchants in the area urging the re-establishment of said market at the same location; that a modern 10,000 square foot store was built and opened for business in August 1956; that the patronage, for the most part, comes from the northern part of the Town; and that the only comparable license to that sought to be transferred is a limited distribution license held by the Imperial Food Center at 6415-17 Bergenline Avenue, West New York.

"The Mayor of the Town testified that he and the four other Commissioners 'considered every possible viewpoint and phase' of the situation before voting unanimously to deny appellant's application.

"It has long been established that the number of licenses which should be permitted in any particular area and the determination as to whether or not a license will be transferred to a particular location are matters within the sound discretion of the issuing authority and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but rather to determine if proper cause exists for its opinion and, if so, to affirm irrespective of his personal views. The Grand Union Company v. West Orange, Bulletin 1155, Item 3, and cases cited therein.

"An examination of the record herein discloses no improper motivation on the part of the members of respondent Board in denying appellant's application for transfer of the license in question. Considering the fact that appellant is seeking the transfer of a license from one section of the Town to a business street in another section, on which street ten licensed premises now exist within eleven blocks, it cannot be adjudged that the members of respondent Board acted in an arbitrary or unreasonable manner in arriving at their determination. Market Liquor Store Corp. v. Newark, Bulletin 1005, Item 2; The Grand Union Company v. West Orange, *supra*.

"After reviewing the evidence and the memoranda submitted by Counsel for the respective parties, I conclude that appellant has not sustained the burden of proof imposed upon it by Rule 6 of State Regulation No. 15, and I recommend that the action of respondent Board in denying appellant's application for transfer be affirmed."

Exceptions to the Hearer's Report were duly filed pursuant to Rule 14 of State Regulation No. 15. Having carefully considered the facts and circumstances herein, I concur in and adopt the findings and recommended conclusions of the Hearer.

Accordingly, it is, on this 1st day of July, 1957,

ORDERED that the action of respondent Board of Commissioners of the Town of West New York be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - NEW JERSEY TAVERN OWNERS, INC. v.
 BELLEVILLE and BARBONE-MOSCO POST #7, ITALIAN AMERICAN WORLD
 WAR VETERANS OF THE U. S., INC.

NEW JERSEY TAVERN OWNERS, INC.,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE)	
TOWN OF BELLEVILLE, and BARBONE-)	
MOSCO POST #7, ITALIAN AMERICAN)	
WORLD WAR VETERANS OF THE UNITED)	
STATES, INC.,)	
Respondents.)	

George B. Astley, Esq., Attorney for Appellant.
 Lawrence E. Keenan, Esq., Attorney for Respondent Board of
 Commissioners.
 Leonard D. Ronco, Esq., Attorney for Respondent Barbone-Mosco
 Post #7, Italian American World War Veterans of the
 United States, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board of Commissioners in granting a club license on December 27, 1956, for the 1956-57 licensing year, to respondent Post for premises 25 Harrison Street, Belleville.

"Appellant, representing an association of tavern licensees, in its petition of appeal alleges that the issuance of the license was erroneous for reasons which may be summarized as (1) failure of the club to establish that it had been organized and in continuous operation for at least three years, or had a waiver of that provision of the law evidenced by a certificate from the Director; (2) failure to establish that it had and maintained continuous and exclusive suitable club premises for that period; (3) that by the terms of the resolution of the Board, premises 25 Harrison Street were licensed and since 25 Harrison Street is a private residence having two other tenants in addition to the club quarters in the basement, said premises do not constitute suitable premises for the license; (4) that various officers or members of the club could not qualify as individual retail licensees and hence the club is not eligible to hold a license; (5) that an officer of the club, as an individual, is receiving, directly or indirectly, a profit from the granting of the license; and (6) that there is no official opinion of record by the Board that it determined whether it would be for the best interests of the neighborhood to establish an additional alcoholic beverage outlet at the premises.

"The answer of respondents set forth that it was not necessary for the Post to obtain a certificate from the Director and that it was the intention of the Post to limit the licensed premises to the basement. The other allegations of the petition are denied.

"The charter, dated December 16, 1953, issued to the Post by the national headquarters of the veterans' organization

was presented in evidence at the appeal hearing. The minutes of the Post presented in evidence disclose that an organization meeting thereof was held on January 8, 1953 at which steps were instituted to obtain the charter and that Commander Raimo offered the use of his basement (the present club quarters) for meetings of the club. According to these minutes, regular meetings of the club were held thereafter at which various social affairs to raise funds for the Post were proposed and then held. The record of the latest meeting is dated January 8, 1957.

"Commander Raimo and Vice Commander Potenzzone testified that delivery of the formal charter was delayed because of routine procedure at national headquarters although an official thereof had sanctioned the operation of the Post in February 1953 and the minutes of the meeting held on February 16, 1953 contain a reference to such effect. Both these witnesses testified that all meetings of the Post were held in the basement of 25 Harrison Street, Belleville.

"The application for the license presented in evidence describes the building containing the premises to be licensed as used for 'Two Families plus basement for organization' and describes what will constitute the licensed premises as 'Complete area of basement.' From the inception of this Division it has been uniformly ruled that the description in the application of the specific premises where alcoholic beverages are to be sold will, in general, determine what constitutes the licensed premises. Re City of Millville, Bulletin 35, Item 15; Re Cohen, Bulletin 295, Item 3; Lackowitz v. Waterford, Bulletin 426, Item 8; Elks Club, Vineland Lodge #1422, Bulletin 532, Item 12. This general rule is applicable to the instant case.

"The sufficiency of other liquor outlets to supply the needs of the neighborhood is not a factor to be considered in determining the advisability of granting a club license. Lakewood Estonian Association v. Township of Jackson, Bulletin 1001, Item 1.

"The issuing authority has the discretionary authority to decide whether specific premises are suitable for the location of a club license (Nuova Vita Lodge #1642 Sons of Italy v. North Plainfield, Bulletin 355, Item 8; Washington Lodge No. 512 Loyal Order of Moose v. Borough of Washington, Bulletin 460, Item 2) and I am of the opinion that the determination of the respondent Board that the premises in question are suitable is not unreasonable or an arbitrary abuse of discretion.

"It appears that some members, officers, trustees or members of the governing board of the club are, as stated in the application for license, 'Employed in the breweries and liquor houses as driver, salesman and warehouseman.' The contention that this renders the club ineligible to hold a club license because these individuals are ineligible to hold a retail liquor license has been rejected in Re Patten, Bulletin 1085, Item 9.

"The appellant did not present any evidence to substantiate its allegation that an officer of the club derived an individual benefit from the operation of the club and apparently abandoned that contention.

"It may be pertinent to develop the procedure followed by the respondent Board in processing the application. It was

referred to the Clerk of the Licensing Bureau of the Department of Revenue and Finance of the municipality in accordance with its practice in such cases. A list of 77 members of the club was submitted with the application. The Clerk of the Bureau requested the local Department of Health and the police and fire authorities to check those details of the application which came under their respective jurisdictions.

"The Record and Identification Officer of the Police Department certified in writing that the names 'on the attached liquor license for the Barbone-Mosco Post #7 have been checked by the Police Department and found OK.' The Health Officer of the municipality certified in writing that his Department had inspected and approved the clubroom premises of the Post. The Chief of the Fire Department certified in writing that his personnel had inspected the premises of the Post at the Harrison Avenue address and it meets with their approval, but recommended that two fire extinguishers and a new oil burner tank should be installed.

"The License Clerk requested and received the lease agreement for the club premises, the term of which was for a period of two years commencing July 1, 1956, and which lease contained a recital that it was a renewal of a previous lease for the premises to the club for the period March 1, 1953 to June 30, 1956. The aforementioned charter was also presented for examination to the Clerk although he did not retain the charter.

"After completion of these various checks the Clerk presented the application and the other above mentioned documents to the Board of Commissioners for their action thereon.

"The respondent Board, therefore, had evidence when granting the application, which evidence was again presented on appeal, that the club was a bona fide fraternal organization, not operated for private gain, actually in active operation as a club (according to the application since March 1953) continuously for at least three years and in exclusive possession and use of the club quarters in question during that period and otherwise fully complied with the provisions of R. S. 33:1-12, 25 and State Regulation No. 7 concerning the requirements which render an organization eligible for a club license. I do not consider that the other grounds presented by appellant have any merit.

"I, therefore, recommend that the action of the respondent Board in granting the club license be affirmed and the appeal be dismissed.

"One important aspect on the condition of the club quarters requires comment. Although advised ex parte by the club after the appeal hearing that the recommendation of the Fire Chief, previously not complied with, had since been effected, nevertheless, the respondent Board should immediately make an independent check to make certain that such is the actual fact."

Exceptions to the Hearer's Report were filed by the attorney for appellant within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered the entire record, including the Exceptions, I concur in the findings of the Hearer and adopt his recommendation.

Accordingly, it is, on this 1st day of July, 1957,

ORDERED that the action of the respondent Board of Commissioners of the Town of Belleville be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION
(RE POSSESSION OF PREMISES AND RESIDENCE) - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)

MAICOLM M. TEARE)
t/a FISHERMAN'S COVE)
South End Swartswood Lake)
Stillwater Township)
P. O. RD 2, Newton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-3 for the 1956-57)
licensing period, issued by the)
Township Committee of Stillwater)
Township.)

Dolan and Dolan, Esqs., by Lewis P. Dolan, Jr., Esq.,
Attorneys for Defendant-licensee.
William F. Wood, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. In your application dated June 16, 1956, filed with the Stillwater Township Committee, upon which you obtained your current plenary retail consumption license, you falsely stated in answer to Question 6(b) that the licensed premises would be used for the purpose of a hotel and restaurant and you also falsely stated in answer to Question 9(a) that you would conduct a hotel business on the premises, whereas in truth and fact you did not conduct any business thereon and the premises were being used exclusively by other persons for a private school; said false statements being in violation of R. S. 33:1-25.

"2. In your aforesaid application, you falsely stated in answer to Question 8(a) that the premises were rented by you from Dolores Teare, whereas in truth and fact you had not rented the premises from her or anyone else and had no right to possession thereof; said false statement being in violation of R. S. 33:1-25.

"3. In your aforesaid application, you falsely stated 'No' in answer to Question 27(c), which asks whether you maintain a home elsewhere than in New Jersey, whereas in truth and fact you maintain a home at 130 E. 35th Street, New York City; said false statement being in violation of R. S. 33:1-25."

The file herein discloses that defendant leased the premises to which the license in question had been issued for the 1956-57 licensing period to Nicholas C. DeVita, John W. Dorney and Edward G. Whittaker for a three-year term, beginning November 15, 1955 for use as a private school. The said school has been since the date aforementioned actively operating in the said premises. It is apparent that when the renewal of the defendant's license was granted, defendant had no right to possession of the premises in question or any other premises.

It was also ascertained during the investigation in this matter that defendant spends the summer months in New Jersey and during the remaining months of the year since 1955 has maintained an apartment in New York City.

Defendant stated that he has held the license in question for five years but has never sold any alcoholic beverages thereunder; that if the school decides to renew its lease for the premises now occupied by it at the expiration of its present lease on November 15, 1958, he may sell the license.

Under the circumstances appearing herein, I have no alternative other than to find defendant guilty of the charges preferred herein and consequently must revoke his license.

Accordingly, it is, on this 8th day of July, 1957,

ORDERED that 1956-57 Plenary Retail Consumption License C-3, issued by the Township Committee of Stillwater Township to Malcolm M. Teare, t/a Fisherman's Cove, South End Swartswood Lake, Stillwater Township, or any renewal thereof, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY
(SOLICITATION FOR PROSTITUTION) - PRIOR RECORD - LICENSE
SUSPENDED FOR 185 DAYS.

In the Matter of Disciplinary)
Proceedings against)

CLUB ELENA INCORPORATED)
243 Market Street)
Paterson 1, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-280, issued by the)
Board of Alcoholic Beverage Control)
for the City of Paterson.)

John G. Dluhy, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On October 5, 10 and 11, 1956, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.'

"Three of the Division's agents participated in the investigation leading to the proceedings herein. In the testimony and comments hereinafter set forth the full names of each agent will not be used but, instead, just the first and last letter of the surname 'Pa', 'Pl' and 'Pr'.

"Agent 'Pa' testified that he and Agents 'Pl' and 'Pr', respectively, visited the defendant's licensed premises on October 5, 1956; that he entered the premises at 10:50 p.m. and the other agents came in about ten minutes later; that there were two bartenders on duty, one of whom was called 'Jim' and the other 'Joe'; that he subsequently ascertained that 'Joe' was Joseph Hauser, president of the defendant corporate-licensee and 'Jim' was Joseph Massani; that a three-piece band was playing and there were approximately thirty patrons in the establishment; that one of the female patrons was speaking to a boy and that a short time thereafter she directed the boy to go home; that the woman then entered into conversation with him (Agent 'Pa') during which she told him her name was Marcella and also told him where she was employed; that while engaged in conversation he asked Marcella if she knew where he might spend the night and she replied that he could spend the night with her at her apartment; that he inquired whether there was heat in the apartment to which she answered 'that heat wouldn't be necessary as we would both go together and cuddle up real close'; that he left the premises at 12:10 a.m. and told Marcella he would return at '1, 1:30' to take her home and spend the night with her but that he did not return to defendant's licensed premises again that morning.

"Agent 'Pa' further testified that on October 10, 1956 he and the two agents who had accompanied him on the prior occasion again visited defendant's premises and that on this occasion he entered the premises at 9:50 p.m. and the two other agents came into the establishment about 10:00 p.m.; that when he entered Massani was tending bar and that Hauser came into the premises at approximately 10:30 p.m.; that Massani left 'a short time later'; that at 11:15 p.m. Marcella came into the tavern and took the seat next to him at the bar and informed him that she 'had a new job'; that Hauser came over where they were seated and suggested that the agents and Marcella play partners on the Fascination pool table; that they accepted his suggestion and the four played a game of pool; that Marcella and Agent 'Pr' then played another game and while so doing he, Agent 'Pl' and Hauser engaged in conversation; that he asked Hauser if he knew where he could take Marcella to spend the night and Hauser said 'Well, I know she has her own apartment, you could probably go there'; that he inquired about the couple living with her in the apartment and Hauser told him not to worry as they would not give him any trouble; that he asked Hauser whether Marcella were clean to which he replied 'Well, as far as I know, she is. She is a working girl and not like some of the other tramps that come in here'; that he then inquired of Hauser whether she would engage in unnatural sexual activities and Hauser said 'I really don't know'; that Agent 'Pl' asked Hauser if any younger girls came into the place as he thought Marcella was kind of old to which Hauser replied 'Well, we have younger girls coming in. They usually come in weekends. But don't let her age fool you'; that 'I have a couple of divorcees come in the tavern, and I fixed them up with a couple of friends of mine, and they said it was the best lay they ever had'; that after Marcella finished the game with Agent 'Pr' she rejoined him at the bar and that as Hauser

stood behind the bar in front of them, he inquired of her as to the cost 'to sleep with her for the night'; that Marcella said 'Well, for you it is nothing' and a few minutes later she said 'My room rent is \$11.50 a week'; that he asked Marcella if 'her bed squeaked' and Hauser said 'I can always give you a can of oil'; that he (Agent 'Pa') asked Marcella whether the couple with whom she shared the apartment might awaken as he did not want any trouble and she told him not to worry as they were both good friends of hers and related that a few days previous the girl left for work and that the fellow was with her in the same room and they were both in bed; that she then said to Hauser, 'He didn't even try to get fresh' and Hauser asked by the use of a slang expression if he didn't try to get intimate with her; that thereafter he handed Marcella a ten-dollar bill and two one-dollar bills (the serial numbers of which had been previously recorded) at which time Agents 'Pl' and 'Pr' left the premises; that at 1:30 a.m. he and Marcella pursuant to arrangements made by them left the defendant's premises to go to another licensed premises for a drink and thereafter to proceed to her apartment where he was to spend the night; that as they walked down the street they were intercepted by municipal detectives and Agents 'Pl' and 'Pr' and brought to police headquarters; that one of the detectives instructed Marcella to empty her purse among the contents of which were the bills given to her by Agent 'Pa'.

"The testimony of Agent 'Pl' disclosed that he accompanied Agents 'Pa' and 'Pr' to the defendant's licensed premises on the dates in question. His testimony, in substance, corroborated that given by Agent 'Pa'.

"Joseph Hauser testified that he and Joseph Massani acted as bartenders on October 5, 1956; that he tended bar from 'around five in the afternoon' and remained on the premises until '3:30, a quarter to 4'; that although he recalled seeing the three agents on October 10, 1956 he did not remember seeing them on October 5, 1956; that shortly after midnight on October 10, 1956 he entered the premises at which time there were six people among whom were the three agents; that Marcella came into the premises about a half-hour later and that Agent 'Pa' 'put out his hand and just stopped her', and she sat down alongside of him to his left; that he observed Agent 'Pa' and Marcella looking at pictures but he didn't hear any of their conversation; that on one occasion Marcella and the three agents played a game of pool and when they came back to the bar Agent 'Pl' asked him whether Marcella would engage in an unnatural sexual act and he told the agent 'If you want to get a smack in the puss ask her yourself'; that Agent 'Pa' inquired whether Marcella stayed with anybody and he told the agent 'All I know is she shares an apartment with another couple, and she lives there with her son'; that Agent 'Pa' came out with a 'crack' saying 'What do you do when a bed squeaks?' and that he said 'What do you generally do? Get a can of oil'. Hauser denied the various other statements attributed to him by the agents concerning Marcella.

"Marcella testified that at 9:00 p.m. on October 5, 1956 she visited defendant's licensed premises and that Agent 'Pa' who sat next to her at the bar engaged her in conversation during which time he told her that 'he had just left his wife and had no place to stay' and shortly thereafter he left the premises; that at 11:15, 11:30 on October 10, 1956 she again visited defendant's licensed premises and that Agent 'Pa' who

was seated with Agents 'Pl' and 'Pr' stopped her and asked her to have a drink; that about a half-hour before she and Agent 'Pa' left the defendant's premises she told him that her rent in the amount of \$11.50 was due and that he handed her \$12.00 but she pushed it away but when she opened her pocketbook which was on her lap to obtain a cigarette, Agent 'Pa' placed the money in it; that although the said agent gave her the money under the belief that he and she would engage in sexual intercourse, she had no intention of going through with it; that she recalled the incident about the squeaky bed and Hauser's statement about the use of a can of oil but did not recall a story which the agents testified that she related about being in bed in her apartment at the time the man who also lives there was in a bed and the indecent remark that the agents testified Hauser directed to her at the time. Marcella testified under cross-examination by the attorney appearing for the Division that the first time she mentioned that Agent 'Pa' placed the money in her pocketbook was when she told Hauser 'a couple of days later'.

"Defendant produced Norman Duncan as a witness and he testified that he was in defendant's premises on October 10, 1956 and that he observed the three agents and Marcella in the premises at the time; that he did not hear any conversation between Marcella and Agent 'Pa' nor did he hear any conversation between Hauser and the agents; that he did recall hearing a remark 'about springs squeaking' and Hauser saying 'get a can of oil'; that Hauser bears a good reputation and he has never seen him 'conduct himself other than a businessman'.

"It was stipulated by the attorneys herein that the testimony of two other men called as witnesses for the defendant and who were present in the licensed premises on October 10, 1956 would be substantially similar to that given by Norman Duncan.

"Defendant's attorney, in a memorandum filed in this case on behalf of the defendant and with reference to October 10, 1956 attempts to discredit the testimony of the agents by stating that 'testimony on behalf of the licensee is quite clear that Hauser did not arrive on the premises until midnight or thereabouts'. However, an examination of the testimony of Marcella (defendant's witness) discloses that she entered the defendant's premises at 11:15 p.m. on the night in question (which is corroborated by the testimony of Agents 'Pa' and 'Pl') and alleged that Agent 'Pa' who was seated at the bar put out his hand in a friendly fashion to stop her and that she then sat next to him at the bar. Hauser testified that he remembered that on October 10, 1956 he entered the premises 'about 5 or 10 minutes after 12' (which would be October 11, 1956) and that Marcella came into the premises 'about a half-hour later' and that he observed Agent 'Pa' put out his hand to stop her and that thereafter she sat 'right alongside him'. It is quite apparent that the testimony of Hauser and that of Marcella is not in agreement as to the time Hauser arrived at the defendant's premises. If Hauser's claim that he had come into the premises after midnight were to be accepted, he surely could not have seen Agent 'Pa' stop Marcella whose testimony is in accord with Agents 'Pa' and 'Pl' that she entered defendant's premises at 11:15 p.m. It is obvious that Hauser's testimony in this instance is false. Further, I am convinced that Hauser's denial that he ever discussed Marcella with Agents 'Pa' and 'Pl' while she was playing a game of pool with Agent 'Pr' is

also false. I am also satisfied that the testimony of Hauser in answer to Agent 'Pa's' question if Marcella engages in acts of perversion 'If you want to get a smack in the puss, ask her yourself' was untrue.

"The contention of defendant's attorney that the agents were guilty of entrapment is without merit. It is obvious that Hauser was a willing and cooperative party to the conversation with the agents insofar as Marcella was concerned. His exclamation about the squeaky bed and the reluctance of the man who was in bed to make improper advances to Marcella who was also in bed in the same apartment as testified by the agents needs no further comment.

"I recommend that from all of the evidence adduced herein that the defendant be adjudged guilty of the charge preferred in this case with the exception that I am not fully convinced from the evidence that he actually procured Marcella to enter into the negotiation to engage in illicit relations with the agents. I am convinced, however, that he was aware that Marcella frequented the defendant's premises to become acquainted with male patrons to engage in illicit sexual intercourse. Where it is established by the evidence that the defendant or its agents permitted solicitation for immoral purposes and the making of arrangements for illicit sexual intercourse on the licensed premises, the license is usually revoked. Re Merjack Corporation, Bulletin 998, Item 1, and cases cited therein. However, some mitigating circumstances appear in the instant case which could warrant a somewhat lesser penalty.

"Defendant has a dissimilar prior adjudicated record. Effective May 4, 1956 its license was suspended for twenty-five days for an 'hours' violation and hindering an investigation. Re Club Elena Incorporated, Bulletin 1115, Item 10.

"The minimum suspension for a violation as that now under consideration is one hundred eighty days, Re Kurtz, Bulletin 1085, Item 1; Re 204 Mulberry Street Corp., Bulletin 1095, Item 3. Under the circumstances appearing in the instant case and taking into consideration the dissimilar past record of defendant, I recommend that its license be suspended for one hundred eighty-five days."

Written exceptions to the Hearer's Report pursuant to Rule 6 of State Regulation No. 16 were filed by the attorney for defendant.

I have carefully considered the entire record in this case, including the transcript of the testimony, the Hearer's Report and the exceptions thereto. I concur in the findings and conclusions of the Hearer and adopt his recommendations. I shall suspend defendant's license for one hundred eighty-five days.

Accordingly, it is, on this 2nd day of July, 1957,

ORDERED that Plenary Retail Consumption License C-280, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Club Elena Incorporated for premises 243 Market Street, Paterson, be and the same is hereby suspended for a period of one hundred eighty-five (185) days, commencing at 3:00 a.m. July 9, 1957, and terminating at 3:00 a.m. January 10, 1958.

WILLIAM HOWE DAVIS
Director.

ACTIVITY REPORT FOR JULY 1957

ARRESTS:	
Total number of persons arrested - - - - -	22
Licenseses and employees - - - - -	8
Bootleggers - - - - -	14
SEIZURES:	
Motor vehicles - cars - - - - -	2
Stillis - over 50 gallons - - - - -	3
Mash - gallons - - - - -	265.00
Distilled alcoholic beverages - gallons - - - - -	130.51
Brewed malt alcoholic beverages - gallons - - - - -	13.90
RETAIL LICENSEES:	
Premises inspected - - - - -	556
Premises where alcoholic beverages were gauged - - - - -	448
Bottles gauged - - - - -	6,976
Premises where violations were found - - - - -	61
Violations found - - - - -	100
TYPE OF VIOLATION FOUND:	
Unqualified employees - - - - -	52
Reg. #38 sign not posted - - - - -	14
Prohibited signs - - - - -	11
Application copy not available - - - - -	7
Disposal permit necessary - - - - -	2
Other mercantile business - - - - -	1
Other violations - - - - -	13
STATE LICENSEES:	
Premises inspected - - - - -	31
License applications investigated - - - - -	9
COMPLAINTS:	
Complaints assigned for investigation - - - - -	506
Investigations completed - - - - -	413
Investigations pending - - - - -	184
LABORATORY:	
Analyses made - - - - -	159
Bottles from unlicensed premises - - - - -	42
IDENTIFICATION BUREAU:	
Criminal fingerprint identifications made - - - - -	73
Persons fingerprinted for non-criminal purposes - - - - -	363
Identification contacts made with other enforcement agencies - - - - -	284
Motor vehicle identifications via N. J. State Police teletype - - - - -	5
DISCIPLINARY PROCEEDINGS:	
Cases transmitted to municipalities - - - - -	5
Violations involved - - - - -	6
Sale to minors - - - - -	4
Sale during prohibited hours - - - - -	1
Permitting hostesses on premises - - - - -	1
Cases instituted at Division - - - - -	29
Violations involved - - - - -	37
Sale during prohibited hours - - - - -	15
Sale to minors - - - - -	11
Sale below minimum resale price - - - - -	3
Hindering investigation - - - - -	1
Possessing illicit liquor - - - - -	1
Delivery without bona fide invoice - - - - -	1
Cases brought by municipalities on own initiative and reported to Division - - - - -	10
Violations involved - - - - -	12
Sale during prohibited hours - - - - -	2
Sale to minors - - - - -	2
Conducting business as a nuisance - - - - -	2
Permitting brawl on premises - - - - -	2
Permitting bookmaking on premises - - - - -	1
Permitting lottery activity (numbers) - - - - -	1
Permitting gambling (cards) on prem. - - - - -	1
Fraud in application - - - - -	1
Permitting immoral activity on prem.-- - - - - -	1
HEARINGS HELD AT DIVISION:	
Total number of hearings held - - - - -	48
Appeals - - - - -	7
Disciplinary proceedings - - - - -	33
Eligibility - - - - -	4
STATE LICENSES AND PERMITS ISSUED:	
Total number issued - - - - -	2,668
Licenses - - - - -	943
Employment permits - - - - -	366
Solicitors' " - - - - -	87
Disposal " - - - - -	64
Social affair permits - - - - -	513
Miscellaneous " - - - - -	259
Transit insignia - - - - -	408
Transit certificates - - - - -	28

WILLIAM HOWE DAVIS
DIRECTOR

Dated: August 6, 1957

6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - LIEN CLAIM AGAINST MOTOR VEHICLE RECOGNIZED AND TO BE SATISFIED FROM PROCEEDS OF SALE OF MOTOR VEHICLE.

In the Matter of the Seizure)	Case No. 9418
on February 14, 1957 of a)	
quantity of alcohol and a)	
Chevrolet sedan on U. S. Route)	ON HEARING
No. 1, in the Township of)	CONCLUSIONS AND ORDER
Plainsboro, County of Middlesex)	
and State of New Jersey.)	

 Bertram C. Bland, Esq., Attorney for the University National Bank of Chapel Hill.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 84 two-quart jars of alcohol and a Chevrolet sedan, described in a schedule attached hereto, seized on February 14, 1957 on U. S. Route No. 1, Plainsboro, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of University National Bank of Chapel Hill, which sought recognition of its alleged lien on the Chevrolet sedan. No one opposed forfeiture of the alcohol.

Reports of ABC agents and other documents in the file presented in evidence with the consent of counsel for the bank disclose the following facts:

A New Jersey State trooper halted the Chevrolet sedan on the above date and location during his routine patrol of traffic on the highway. He ascertained that the driver of the car was William Odell Chapman, its registered owner. When the trooper discovered in the trunk of the car the above mentioned jars of alcohol without any tax stamp indicating the payment of tax on alcoholic beverages on any of the jars he took into custody the alcohol and the car and arrested Chapman.

Thereafter the alcohol and motor vehicle were turned over to ABC agents. The contents of one of the jars was analyzed by the Division's chemist who reports that it is alcohol and water fit for beverage purposes with an alcoholic content of 51.3%.

The alcohol is illicit because of the absence of a tax stamp on any of the jars and is actually bootleg alcohol. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

William Odell Chapman appeared at the hearing and testified on behalf of the bank. It appears that he is a resident of North Carolina and was engaged in the printing

business which he had operated for about two years; that prior thereto he was "a route distributor" for two daily papers located in Durham, North Carolina; that previous thereto he was a printing salesman for a printing concern located in Chicago and was a graduate of a college located in Greensboro, North Carolina from which institution he received a degree of Bachelor of Science and Education; that he is married and active in religious activities of his race; that he is well known to one of the officers of the bank from whom he obtained business loans on a number of occasions; that he has never been arrested or convicted of any crime. Counsel for the bank represents that the apparent reason for Chapman's misadventure with bootleg alcohol is that he was hard pressed economically and tried to make some extra money.

The bank presented in evidence a chattel mortgage dated October 31, 1956 signed by William Odell Chapman evidencing the loan by the bank to him of \$849.25 on the security of the Chevrolet sedan in question. The present balance due thereon is \$566.13.

The vice president of the bank states under oath that he has known Chapman for several years, was also well known to the discount committee of the bank; that Chapman had a reputation in the community of being a law-abiding citizen and neither he nor the other bank personnel had any reason to suspect that Chapman would engage in illegal liquor activities. The judge of the Chapel Hill Recorder's Court in a letter concerning other aspects of the case declares that Chapman was never involved in any criminal action in his court during the past six years and that Chapman had the reputation of being a good and substantial citizen.

I am satisfied that the bank acted in good faith and did not know or have any reason to suspect that Chapman would transport illicit alcoholic beverages in the motor vehicle. I shall therefore recognize the lien of the bank to the extent of \$566.13. R. S. 33:1-66(f). There is a strong likelihood that the proceeds of sale of such motor vehicle may exceed the lien claim.

Accordingly, it is DETERMINED and ORDERED that the Chevrolet sedan, described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it shall be offered for sale at public sale, pursuant to terms to be announced hereafter, and sold by the Director of the Division of Alcoholic Beverage Control if a bid satisfactory to him is obtained, otherwise the motor vehicle will be returned to the University National Bank of Chapel Hill upon payment of the costs of its seizure, storage, and sale; and it is further

ORDERED that if the Chevrolet sedan is sold, out of the proceeds of said sale there shall be first deducted the costs of seizure, storage and sale as have been or may be incurred; second, out of the balance, if any, there shall be paid to the University National Bank of Chapel Hill its lien claim, recognized to the extent of \$566.13; and third, the balance, if any, of the proceeds of such sale, after the payments aforesaid, shall be retained for the use of the State of New Jersey; and it is further

DETERMINED and ORDERED that the 84 two-quart jars of alcohol listed in the aforesaid Schedule "A" constitute unlawful property, and the same be and are hereby forfeited in accordance with the provisions of R. S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: June 24, 1957.

SCHEDULE "A"

84 - two-quart jars of alcohol
1 - Chevrolet sedan, Engine A-55B074459,
North Carolina Registration HZ3614.

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

In the Matter of Disciplinary)
Proceedings against)

ASSUNTA EMILY BERTI)

T/a B & M INN)

Harding Highway)

Buena Vista Township)

PO Buena, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-6 (for the 1956-57)
and 1957-58 licensing years) issued)
by the Township Committee of the)
Township of Buena Vista.)
-----)

Cahill and Wilinski, Esqs., by William T. Cahill, Esq.,
Attorneys for Defendant-licensee.

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

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On Sunday, May 12, 1957, 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., Frank ---, age 17, and Alfred E. ---, age 17, 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."

The file herein discloses that on Sunday, May 12, 1957, at about 9:45 p.m., three ABC agents entered the defendant's licensed premises and took seats at the bar which was being tended by two bartenders and two barmaids. At about 10:45 p.m. the agents observed Doris J. Porter, one of the barmaids, serve two rounds of beer to four young men, two of whom appeared to be minors. After the service of the second round, the agents identified themselves to the apparent minors

and learned that they were Frank --- (age 17) and Alfred E. --- (age 17). Shortly thereafter Doris J. Porter gave a sworn written statement in which she admitted serving each of the aforesaid minors with two glasses of beer and that she made no inquiry of either one as to his age.

Defendant has a prior adjudicated record. Effective May 23, 1949, her license (then held in the name of Asunta E. Mazzoli) was suspended by the local issuing authority for five days for sale to minors. The minimum suspension for a sale to a 17-year-old minor is twenty days. Re Mordell, Bulletin 1160, Item 4. However, considering the prior similar violation which occurred within a ten-year period, I shall suspend defendant's license for twenty-five days. Re Amster, Bulletin 1142, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 8th day of July, 1957,

ORDERED that Plenary Retail Consumption License C-6 (for the 1957-58 licensing year) issued by the Township Committee of the Township of Buena Vista to Assunta Emily Berti, t/a B & M Inn, Harding Highway, Buena Vista Township, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. July 16, 1957 and terminating at 3:00 a.m. August 5, 1957.

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Regina Wine Co., Inc.

830 Raymond Boulevard, Newark, N. J.

Application filed August 15, 1957 for Plenary Winery License.

Dave's Market Inc.

184 Essex St., Millburn, N.J.

Application filed August 23, 1957 for Transportation License.

Italian Swiss Colony

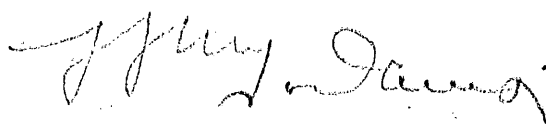
Building 173, Marsh and Export Streets, Port Newark, N.J.

Application filed August 23, 1957 for place-to-place transfer of Plenary Wholesale License W-13 from 1 Broad Avenue, Fairview, N. J.

Italian Swiss Colony

Building 173, Marsh and Export Streets, Port Newark, N.J.

Application filed August 23, 1957 for place-to-place transfer of Plenary Winery License V-14 from 1 Broad Avenue, Fairview, N.J.



William Howe Davis
Director.