

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

BULLETIN 1439

March 22, 1962

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

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March 22, 1962

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (SOLICITATION FOR PROSTITUTION, INDECENT ENTERTAINMENT, SALE OF INDECENT PHONOGRAPH RECORDS) - POSSESSION OF CONTRACEPTIVES - COPY OF LICENSE APPLICATION NOT ON LICENSED PREMISES - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

Motel Trails, Inc.)
t/a The Dunes)
Southwest corner of State Highway)
#33 and West Bangs Avenue)
Neptune, New Jersey)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-19, issued by the Township Committee of Neptune Township.)

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

BY THE DIRECTOR:

The license of this corporation was issued by the Township Committee of Neptune Township effective December 14, 1960, as a new license pursuant to the exception in Section 8 of the State Limitation Law (Chapter 94 of the laws of 1947) and in the Township's validating ordinance No. 560, adopted February 7, 1961, making an exception from the Township's numerical limitation ordinance in favor of persons operating a hotel containing at least fifty (50) sleeping rooms.

By Notice dated September 5, 1961, the Division preferred charges in disciplinary proceedings against the licensee as follows:

- "1. On July 26 and August 2, 1961, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of overtures and arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.
- "2. On July 13, 1961 and on the night of August 20 and early morning of August 21, 1961, you sold, distributed and possessed and allowed, permitted and suffered the sale and distribution and possession for the purpose of sale or distribution prophylactics against venereal disease and contraceptives and contraceptive devices in and upon the licensed premises; in violation of Rule 9 of State Regulation No. 20.
- "3. On the night of August 20 and early morning of August 21, 1961, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises in that a female performed for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.

- "4. On the night of August 20 and early morning of August 21, 1961, you allowed, permitted and suffered in and upon your licensed premises, lewdness and immoral activity, i.e., the sale and distribution of phonograph records containing obscene, indecent, filthy, lewd, lascivious and disgusting words and phrases and having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20.
- "5. On the night of August 20 and early morning of August 21, 1961, you conducted the licensed business at your licensed premises without having a photostatic or other true copy of the application for the current license on the licensed premises available for inspection; in violation of Rule 16 of State Regulation No. 20."

Such charges were duly and regularly served on the licensee and thereafter a firm of attorneys entered a plea of not guilty on the licensee's behalf. While the matter was pending hearing, a fire occurred at the licensed premises and thereafter a statutory receiver was appointed for the corporation by order of the Superior Court of New Jersey, Chancery Division. Application by the receiver to the Township Committee of Neptune Township for extension of the license in his name, as receiver, (R. S. 33: 1-26) was denied by the Township and the receiver then filed an appeal from the denial to this Division. On application of the attorneys for the licensee and the attorney for the receiver, the hearing in the disciplinary case was adjourned from time to time and finally was set down for January 18, 1962. Several days prior to that date, an attorney for the firm which had entered its appearance for the licensee verbally advised the Division that no appearance was to be made on the licensee's behalf at the hearing and the attorney for the receiver also verbally advised that the receiver for the corporation was abandoning his appeal from the Township's action in denying his application for extension of the license in his name as receiver. In the absence of any such extension, the license and all privileges and rights thereunder remained with and in the name of the corporation. Re Ewing, Bulletin 312, Item 13. Accordingly, the matter came on hearing against the corporate-licensee on January 18, 1962, as scheduled. No one appeared for or in behalf of the licensee. The prosecuting attorney for the Division thereupon proceeded with proof in support of the charges through sworn testimony of witnesses.

The testimony reveals that Division agents, acting on a specific complaint that prostitution was occurring at the licensed premises, made several undercover checks at the premises during the past summer months and that on July 26 and August 2, 1961, a woman called "Rose", ostensibly employed in the cocktail lounge of the premises as a waitress, with the knowledge, consent and approval of a bartender known as "Joe", made arrangements with two of the agents in the lounge to engage, for money, in acts of illicit sexual intercourse with them, in a motel unit, which was part of the licensed premises and operated in conjunction with and immediately adjacent to the lounge. The act of prostitution, however, was not consummated apparently because on the latter date, the head waiter may have become suspicious of the official status of the agents and may have also warned "Rose" who then, without notice to the agents, left the premises and was not again seen by the agents. However, in similar vein of the activity occurring at these premises, the testimony also shows that an attendant in the men's room, on the dates stated in Charge 2, sold packages of rubber contraceptives to the agents.

The testimony also shows that the agents, on an additional specific complaint that a female vocalist at these premises was performing for the entertainment of the customers and patrons in a lewd and indecent manner, made another undercover check at the premises on the night and morning of August 20 and 21, 1961, as stated in Charges 3 and 4, during which time they witnessed a performance by a female who opened her act by straddling an upright microphone while taking her place at a piano and addressing the audience of some three hundred male and female persons with a sordid, coarse and filthy sexual remark, after which she continued for a period of approximately an hour to "entertain" with songs, anecdotes, stories and side remarks, all or most of which was highly questionable with extremely obscene, filthy, vulgar and disgusting references to sex and sexual behavior. No purpose would be served in detailing and setting forth the performance herein, except to state that with only slight digressions the performance was geared to a pornographic level. During an intermission, an associate of the performer offered recordings by this performer for sale to the customers and patrons. Several persons, including an agent of this Division, purchased the records. The one purchased by the agent was played at the hearing. The material therein was of the same kind and type of pornographic material in the "live" show at these premises that night.

Shortly after start of the second performance which commenced at 1:00 A.M., the agents identified themselves to the manager, to the performer in question and others employed on the licensed premises. Apparently none of them cared to discuss the performance or the other alleged violations or to make any comment with respect thereto. The bartender "Joe", who was on duty on the nights of July 26 and August 2, 1961, was also on duty on this night. He informed the agents that "Rose" was no longer connected with the business and when the agents commenced to question him further with respect to her, he excused himself assertedly for a few minutes on a pretext he had to wait on some bar patrons but actually secretly left the premises and was not again seen by the agents. The manager when questioned purported to claim he did not have any personnel records then available as to "Joe's" name or address. The manager also stated there was no copy of the application for the current license on the premises (Charge 5).

I find the licensee guilty on all charges.

The privilege of selling alcoholic beverages at retail to the public, one granted to the few and denied to the many (Paul v. Gloucester, 50 N.J.L. 585), must be exercised in the public interest. The violations herein committed are of such a nature so as to disclose the existence of a most deplorable condition. It is apparent that this licensee has not only shown a callous disregard for the alcoholic beverage law and regulations but has wantonly demonstrated a shocking lack of appreciation for and understanding of fundamental decencies and proprieties in the operation of the licensed business to the extent to warrant loss of the license privilege, albeit, this is the first occasion of record involving any disciplinary proceedings against the corporation.

Accordingly, and in view of all the facts and circumstances in the case, it is obvious that the only proper penalty is outright revocation of the license.

Accordingly, it is on this 30th day of January 1962,

ORDERED that Plenary Retail Consumption License C-19, issued by the Township Committee of Neptune Township to Motel Trails, Inc., t/a The Dunes, for premises on Southwest corner of State Highway #33 and West Bangs Avenue, Neptune, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - GIORDANO, RECEIVER OF MOTEL TRAILS, INC. v. NEPTUNE.

John C. Giordano, Jr., Receiver of Motel Trails, Inc., t/a The Dunes,

Appellant,

v.

Township Committee of the Township of Neptune,

Respondent.

ON APPEAL

ORDER

Jack L. Cohen, Esq., Attorney for Appellant. Stout and O'Hagan, Esqs., by Richard W. Stout, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee whereby it denied an extension to John G. Giordano, Receiver of Motel Trails, Inc., trading as Dunes Motel, of plenary retail consumption license C-19 issued to Motel Trails, Inc. aforesaid, for premises located at the southwest corner of State Highway #33 and West Bangs Avenue, Neptune Township, Monmouth County.

Prior to date of hearing (January 18, 1962), the attorney for appellant advised by telephone that appellant did not propose to go forward with its petition of appeal. To date, no stipulation of discontinuance has been received. On the date fixed for hearing, no one appeared. I shall dismiss the appeal for failure to prosecute. Rule 10 of State Regulation No. 15.

Accordingly, it is, on this 30th day of January 1962,

ORDERED that the within appeal be and the same is hereby dismissed.

WILLIAM HOWE DAVIS DIRECTOR

3. DISCIPLINARY PROCEEDINGS - PERMITTING NUMBERS SLIPS ON LICENSED PREMISES - LARGE SCALE COMMERCIALIZED GAMBLING - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)

Junction Liquors, Inc.)
489 Communipaw Avenue)
Jersey City, N. J.)

CONCLUSIONS

AND

Holder of Plenary Retail Distribution License D-41, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

ORDER

Warren, Chasan, Leyner & Holland, by Raymond Chasan, Esqs.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On December 12, 1961, you possessed, had custody of and allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On November 17, December 7, December 8 and December 11, 1961, two members of the N. J. State Police observed George Marose, in possession of a large brown paper bag, enter the defendant's licensed premises at about 5:35 p.m. and about 5:36 p.m. emerge therefrom empty-handed.

On Tuesday, December 12, 1961 at about 5:36 p.m., Marose, followed shortly by the two officers, entered the licensed premises, walked to the rear counter and handed a large brown paper bag to Frances Auriemma (president of the defendant corporate-licensee). The officers identified themselves to Mrs. Auriemma and Marose and found the bag behind the counter where Mrs. Auriemma had placed the same. The bag contained 1281 slips of paper upon which were transcribed 13,053 "number" bets for a total of \$4,375.66. Upon questioning by the officers, Mrs. Auriemma stated that each night at about 5:30, for the past two weeks, Marose dropped a bag at the licensed premises and that about 6:00 p.m., Joe Smith, who resided above the licensed premises, picked up the same. The officers searched "Joe Smith's" apartment which disclosed little signs of occupancy and in a wall wardrobe of its living room found two electric adding machines and a brown paper bag containing two adding machine tapes and two adding machine ribbons. The officers also found in a dresser drawer in the bedroom, two large brown paper bags containing "numbers" slips and other evidence indicating recent gambling activities.

By way of mitigation, the attorney for the licensee has submitted a statement setting forth therein that Mrs. Auriemma was forced to take over the management of the licensed business from her husband because he had suffered a stroke and was bedridden; that in November 1961, she rented the apartment above the licensed premises to Joe Smith, upon whose request and as a courtesy to him, she permitted the bags to be brought to and removed from the licensed premises as aforesaid; that the bags were stapled and that she had no knowledge of their contents.

Defendant has no prior adjudicated record. Mrs. Auriemma admits that for a period of two weeks there were daily "drops" at the licensed premises; that she and her husband own the building; that "Joe Smith" rented one of the two apartments above the licensed premises for \$12 a week and that the Auriemma family lived in the other apartment. I am of the opinion that Mrs. Auriemma knew or should have known of the aforesaid illicit activities. Under all the circumstances in this case and in view of the large scale commercialized gambling involved, I shall suspend the defendant's license for sixty days. Cf. Re Rubbinaccio, Sr., Bulletin 1322, Item 4, wherein I suspended the defendant's license for one hundred and twenty days because of the open and notorious large scale gambling activities in the licensed premises involving the licensee, the bartender and two patrons.

Accordingly, it is, on this 31st day of January 1962,

ORDERED that Plenary Retail Distribution License D-41, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Junction Liquors, Inc., for premises 489 Communipaw Avenue, Jersey City, be and the same is hereby suspended for sixty (60) days, commencing at 9:00 a.m., Monday, February 12, 1962 and terminating at 9:00 a.m., Friday, April 13, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FAILURE TO DISCLOSE COMPLETE RECORD OF PRIOR SUSPENSIONS IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Philip Mastellone)
519-525 Paterson Plank Road)
Union City, New Jersey)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Board of Commissioners of the City of Union City.)

Albert Burstein, Esq., Attorney for Defendant-licensee.
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 September 23, 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., Theresa ---, age 16, Joanne ---, age 17, Frances ---, age 18, Stephen ---, age 18, and Frank ---, age 18, 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 Board of Commissioners of the City of Union City, dated May 29,

1961, and upon which you obtained your current plenary retail consumption license you, while stating 'Yes' in answer to Question No. 34, which asks: 'Have you or has any person mentioned in this application ever been convicted of any violation of the Alcoholic Beverage Law (R.S. Title 33) as amended and supplemented? If so, state details as to each conviction, giving date and nature thereof and the court in which sentence was imposed', and revealing therein two certain suspensions of licenses, you nevertheless failed to disclose the details of any such convictions of the Alcoholic Beverage Law and you also 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 plenary retail consumption licenses held by you had been suspended in addition to the occasions set forth by you in your aforesaid answer to Question No. 34, by the Board of Commissioners of the City of Union City for fifteen days for gambling, effective August 23, 1953, and by the Director of the Division of Alcoholic Beverage Control for forty-five days, effective October 5, 1959, for conducting the licensed place of business as a nuisance; said false answers and statements and/or evasions and suppressions being in violation of R.S. 33:1-25."

On Saturday, September 23, 1961, at about 9:40 p.m., an ABC agent at defendant's licensed premises observed Edward E. Gwinnett, a bartender, serve a bottle of beer to Frank ---, age 18, and a bottle of beer to Stephen ---, age 18, without requiring them to make any written representation of their ages. At 9:45 p.m., aforesaid agent was joined by a second agent. At about 10:03 p.m. the two agents observed the bartender similarly serve a mixed drink to Theresa ---, age 16, a bottle of beer to Joanne ---, age 17, and a bottle of beer to Frances ---, age 18, following which the bartender served a second bottle of beer to Frank and Stephen. After observing the latter two minors consume a portion of their beer, a third agent was summoned to the premises to assist in the investigation. At 10:25 p.m. the three agents identified themselves to the minors and seized their drinks. Upon questioning, the minors admitted their ages and that they had consumed alcoholic beverages in the licensed premises. The basis of the second charge preferred herein is sufficiently set forth in the same to obviate the necessity of further repetition. (See also Bulletin 1306, Item 3.)

By way of mitigation as to Charge 1, the attorney for the defendant sent me a letter setting forth therein that the minors were mature in appearance and that the bartender had requested proof of their ages before serving them. However, the bartender failed to obtain written representations of the minors that they were of legal age, as required by R.S. 33:1-77.

With respect to Charge 2, the attorney has submitted an affidavit of one Arthur Parentini, who states that he had prepared the application in question and those in previous years for the licensee; that in preparing the application for 1961 he was guided by the 1960 application; that he inadvertently answered "No" to question No. 41; that his failure to fully answer question No. 34 was not for the purpose of evasion, but rather inadvertence on his part or that of the licensee.

Defendant has a prior adjudicated record. Effective March 23, 1952 his license was suspended for five days by the local issuing authority for an "hours" violation; effective August 23, 1953 his license was suspended for fifteen days by the local issuing authority for gambling (horse race bets) and effective October 5, 1959 his license was suspended by the Director for forty-five days for conducting his licensed premises as a nuisance. Re Mastellone, Bulletin 1306, Item 3. Since two of the dissimilar violations occurred more than five years ago, they will not be considered in fixing the penalty herein. Re Conti and Knapp, Bulletin 1426, Item 8. The minimum penalty for the sale or service of alcoholic beverages to a 16-year-old minor is twenty-five days. Re Begley and Buckley, Bulletin 1411, Item 2. I shall suspend defendant's license for twenty-five days on Charge 1, to which will be added ten days for the number of minors involved (Re Federico, Bulletin 1146, Item 3); five days on Charge 2 (Cf. Re Club Rainbow Inc., Bulletin 1353, Item 6) and for an additional five days for the prior dissimilar violation which occurred within the past five years (Re Ott's Incorporated, Bulletin 1411, Item 3), making a total suspension of forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

The defendant's license is now under suspension by the local issuing authority until 3:00 a.m., February 2 next, for an offense which occurred subsequent to the offenses referred to herein.

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

ORDERED that Plenary Retail Consumption License C-11, issued by the Board of Commissioners of the City of Union City to Philip Mastellone, for premises 519-525 Paterson Plank Road, Union City, be and the same is hereby suspended for forty (40) days, commencing at 3:00 a.m. Friday, February 2, 1962, and terminating at 3:00 a.m., Wednesday, March 14, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE
SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary
Proceedings against

K. & O. Tavern, Inc.
t/a "K & O Tavern"
Route 206-Tuttles Corner
Sandyston Township
PO Rd 1, Branchville, N. J.

Holder of Plenary Retail Consumption
License C-1, issued by the Township
Committee of Sandyston Township.

CONCLUSIONS

AND

ORDER

McGovern and Roseman, Esqs., By William J. McGovern, Esq.,
Attorneys 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:

"Defendant pleaded not guilty to the following charge:

'On June 28, 1961, you sold, served and delivered
and allowed, permitted and suffered the sale, service
and delivery of alcoholic beverages, directly or in-
directly, to persons under the age of twenty-one (21)
years, viz., Craig ---, age 18, and Sidney ---, age
19, and allowed, permitted and suffered the consump-
tion of alcoholic beverages by such persons in and
upon your licensed premises; in violation of Rule 1
of State Regulation No. 20.'

"At the hearing held herein, the Division called as its
witnesses Craig ---; Sidney ---; Menoth G. Battista, the Division's
chemist, and three ABC agents, hereinafter referred to as Agent V,
Agent N and Agent F.

"Agent V testified that on Wednesday, June 28, 1961 at
about 10:50 p.m., he and Agent N entered defendant's licensed premises;
that they took seats at the bar behind which stood Willis Oliver and
Ruth Oliver (officers of the defendant-corporate licensee); that
at about 11:00 p.m. he observed a group of four males and four
females enter the premises and take seats in the barroom at a table
about four or five feet from him and Agent N, and that six in the group
appeared to be minors. Agent V further testified that he observed
Mrs. Oliver approach the table, ask the group, 'Are you all 21?';
that one in the group answered, 'Yes'; that he heard Craig order a
scotch and seven-up and Gene Koehler (an adult) order a pitcher of
beer and a glass of ginger ale; that Mrs. Oliver walked to the bar and
repeated Koehler's order to Mr. Oliver; that Mr. Oliver placed a
pitcher of beer on a tray; that Mrs. Oliver filled a 'shot' glass
with whiskey from a bottle on the back bar, poured seven-up into a
drinking glass and returned to the table with the full order on the
tray. Agent V further testified that Mrs. Oliver asked Craig, 'Do
you get the scotch?'; that Craig answered in the affirmative, following
which she served the same to him, placed the pitcher of beer in the
center of the table, the glass of ginger ale in front of Miss Miller
and a drinking glass in front of each of the others, and accepted
\$1.95 from Koehler in payment of the beverages.

"Agent V further testified that he observed Koehler pour the beer into each empty drinking glass; that after observing the eight partons consume a portion of their drinks, he and Agent N approached the table; that he ascertained that two members of the party, Craig and Sidney, were minors; that he seized their drinks, poured them into empty sample bottles, initialed the bottles and later brought them to the Morristown office of the Division, where they were stored under lock and key.

"Agent V further testified that he and Agent N identified themselves to Mr. and Mrs. Oliver; that Mrs. Oliver stated to him that she had served Craig the scotch and seven-up and the pitcher of beer to the others at the table and that the price of the scotch was 60 cents.

"On cross-examination, Agent V testified that he had questioned Craig and Sidney; that Craig stated he was 18½ years of age and Sidney said she was 19 years of age.

"Agent N corroborated the pertinent parts of Agent V's testimony on direct examination.

"On cross-examination, Agent N testified that he questioned Koehler in the presence of Mr. and Mrs. Oliver; that Koehler stated he had given the entire order for the beverages to Mrs. Oliver.

"Agent F testified that he is an inspector of the Division; that in the latter part of June 1961, he was in charge of the Morristown office of the Division; that Agents V and N were members of his squad; that on June 30 aforesaid, Agent V delivered the two sealed sample bottles in question to him at the Morristown office; that the bottles were stored in the office under lock and key until July 6, 1961, when he delivered them to Mr. Battista, the Division's chemist.

"On cross-examination, Agent F testified that between June 30 and July 6, 1961, the control room containing the two sample bottles remained locked.

"Menoth G. Battista, the Division's chemist, after qualifying as an expert, testified that on July 6, 1961, Agent F delivered the sample bottles in question to him; that on July 10, 1961, he prepared a written report of his chemical analysis made from a sample of the contents of one of the bottles; that he found the same to contain 3.8 per cent of alcohol by volume, 7.6 proof, color amber and that it is a malt alcoholic beverage fit for beverage purposes.

"On cross-examination, Mr. Battista testified that on July 7, 1961 he made his aforesaid analysis; that he obtained his results by distilling the alcohol from the sample and that he placed the bottle containing the remainder of the contents in the vault where it has remained up to the time of the hearing herein.

"Craig testified that he was born on February 3, 1943 and, hence, was 18 years of age at the time of the alleged violation; that at about 11:00 p.m. on the night of June 28, 1961, he and seven companions entered the defendant's licensed premises; that the group took seats at a table in the barroom; that Mrs. Oliver came to the table and 'asked us if we were 21'; that some of the group answered by nodding their heads and 'a couple of fellows said yes'; that the order for the drinks was placed by Koehler; that he ordered a scotch and seven-up; that Mrs. Oliver returned to the table with the drinks and placed them on the table; that his drink was passed to him and that, with the exception of a very small portion thereof, he had consumed his entire drink, following which Agents V and N came to the table, ascertained his age, seized his glass and poured the

remaining contents into a bottle. Craig further testified that at no time while in the premises had he been required to make any written representation of his age, and that the drink served to him by Mrs. Oliver tasted like the scotch and seven-up he had consumed prior to the night in question.

"On cross-examination, Craig testified that he heard Koehler give his (Craig's) order and those of his companions to Mrs. Oliver; that he had paid 60 cents to Koehler for his drink; that while on the licensed premises on June 28 aforesaid, he had consumed two drinks of scotch and seven-up, the first of which was served to him at the bar by Mr. Oliver, and the second at the table by Mrs. Oliver; that both drinks tasted like the scotch and seven-up he had consumed on prior occasions and that he had carried his first drink to the table. On further cross-examination, Craig testified that when Agents V and N came to the table and identified themselves, there were two glasses in front of him; that both glasses contained slight traces of his drinks; that he informed Agent V that he was 18½ years of age and that at the request of Agent V, he wrote his name on a label affixed to the seized sample bottle (identified by Craig at the hearing).

"Sidney testified that she was born on January 19, 1942 and, hence, was 19 years of age at the time of the alleged violation; that on June 28, 1961 at about 11:00 p.m., she and a group of friends entered the defendant's licensed premises and took seats at a table in the barroom; that Mrs. Oliver (whom she identified at the hearing) came to the table and asked, 'Are you 21?'; that two of her companions answered, 'Yes!'; that some of them nodded their heads; that she made no comment; that Koehler ordered a pitcher of beer; that within a few minutes, Mrs. Oliver returned with a pitcher of beer and a number of empty glasses; that Mrs. Oliver placed the pitcher on the table and put a glass in front of her and the others at the table; that Koehler poured the beer into the glasses; that she consumed a portion of her drink and that one of the agents seized her glass and poured the remaining contents thereof into a bottle.

"On cross-examination, Sidney reiterated her direct testimony and further testified that she informed Agent V that she was 19 years of age; that she did not request Koehler to order any drink for her; that she had no intention of drinking any alcoholic beverage when she entered the licensed premises and that she observed a drink in front of Craig.

"Willis C. Oliver, on behalf of defendant, testified that he is president of defendant-corporate licensee; that on the night in question he was tending bar; that at the time and date in question, among others in the premises, were Marion Crowley, Fred Crowley, her husband, Russell Utter and the two agents; that the two agents, followed shortly by the aforesaid group, entered the premises at about 11:00 p.m.; that he was busy behind the bar; that he remembered seeing Craig and Sidney at the table from a glance he had taken of them; that to the best of his knowledge, he did not serve any drinks to Craig; that he had gone upstairs for a few minutes and was relieved by Mrs. Oliver.

"Mr. Oliver further testified that he did not observe either Craig or Sidney consuming any alcoholic beverages; that he did not observe them being served any alcoholic beverages and that he was upstairs when the agents had made their identities known to the group at the table.

"On cross-examination, Mr. Oliver testified that at the request of Mrs. Oliver, he filled a pitcher of beer and placed the same on a tray together with some glasses, for service at the table; that Mrs. Oliver prepared the rest of the order and that on the night

in question, he and Mrs. Oliver were the only employees at the bar.

"Ruth Oliver, on behalf of the defendant, testified that she is secretary-treasurer of the defendant-corporate licensee; that she recognized Craig and Sidney as two of the group of eight who were sitting at the table on the night of June 28 aforesaid; that she came to the table; that Koehler asked for a pitcher of beer; that she inquired of the group, 'Are you all over 21?'; that each answered, 'Yes'; that she then asked, 'Are you sure?' and that all answered, 'Yes', following which she accepted Koehler's order for a pitcher of beer, a glass of ginger ale and scotch and seven-up.

"Mrs. Oliver further testified that she returned to the table with the aforesaid beverages; that she placed the beer and five drinking glasses in the center of the table; that Craig was not at the table; that she placed the ginger ale on the table in front of Craig's seat and the scotch and seven-up alongside of the ginger ale in front of a female; that she next observed the group when they ordered a second pitcher of beer and that she did not serve Craig a drink at the bar.

"On cross-examination, Mrs. Oliver, after denying that she had informed Agents V and N that Craig ordered the scotch and seven-up and that she had served the same to him, testified that there were seven in the group when she took the order from Koehler; that Craig was standing at the juke box when she had served the first order of drinks and that after she had left the table, Craig joined the party.

"On further cross-examination, Mrs. Oliver testified that she did not ask any of the group to produce any proof of age; that at no time did she count the number of patrons that were seated at the table in question, and that Craig was sitting at the table when she served the second pitcher of beer.

"Henry Fulkrod, president of the Sussex County Taverns Association, on behalf of the defendant, testified that for the past 1½ years he has frequently visited the defendant's licensed premises; that he has observed the licensed premises 'to be well-run, a well-run establishment'; that he had never observed any minors being served alcoholic beverages on the premises and that he was not in the licensed premises on the night in question.

"Russell H. Utter testified that at about 11:00 p.m. on the night in question, he observed the aforesaid eight patrons enter the licensed premises; that during their visit to the same, he was sitting at the bar and that at no time did he observe any of the group served an alcoholic beverage at the bar.

"Fred J. Crowley was called as a witness by the defendant and corroborated the testimony of Mr. Utter.

"Marion G. Crowley, on behalf of the defendant, testified that on June 28, 1961 at 11:00 p.m., she observed the aforementioned group enter the licensed premises; that she was sitting at the bar with her back to the aforementioned table and that she heard one of the agents say, 'You can either go to the magistrate's court and answer these questions or you can cooperate and answer them here.'

"The defense interposed by the defendant is that Mr. Koehler, an adult, placed the orders for the alcoholic beverages with Mrs. Oliver; that Mrs. Oliver did not serve either minor personally with an alcoholic beverage drink; that Mrs. Oliver, in her first service, placed the pitcher of beer and five empty glasses in the center of the table; that she placed the mixed drink in front of an adult female

and the non-alcoholic beverage drink on the table in front of an empty chair later occupied by the minor Craig.

"Notwithstanding that the alcoholic beverages may have been sold or served to an adult who in turn served such beverage to a minor or permitted the minor to consume such beverage, the licensee is fully responsible. The eventual delivery of the drink to the minor may be viewed as an actual delivery from the licensee to the minor via the instrumentality of the adult and, as such, it may be deemed a 'sale' to the minor within the broad statutory definition of 'sale' appearing in R. S. 33:1-1(w). See also Re Gahr, Bulletin 377, Item 7; Re Fredericks, Bulletin 565, Item 4; Re Morgenstern and Oliner, Bulletin 292, Item 9. Even if such indirect delivery to the minor be not viewed as a 'sale' to the minor, a violation of Rule 1 of State Regulation No. 20 results when the minor consumes the alcoholic beverage, since that Rule provides that no licensee shall 'allow, permit or suffer' the service or delivery of alcoholic beverages directly or indirectly to any minor on the licensed premises or the consumption of such beverages by a minor on such premises. See Essex Holding Corp. v. Hock, 136 N.J.L. 28, wherein it was held that the word 'suffer' imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority.

"Under the circumstances, and from the testimony of the agents and the minors, I find as a fact that on June 28, 1961, the two minors were served and consumed alcoholic beverages in defendant's licensed premises.

"After reviewing the evidence, the exhibits and arguments of defendant's attorney in the course of hearing, I conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence and I recommend that defendant be found guilty as charged. Defendant has no prior adjudicated record. It is further recommended, therefore, that an order be entered suspending defendant's license for fifteen days, the minimum penalty for the sale of alcoholic beverages to an 18-and 19-year-old minor. Re The Holiday Cocktail Lounge, A Corp., Bulletin 1409, Item 4."

No written exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the proceedings and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations. Hence, I find the defendant guilty as charged.

Accordingly, it is, on this 30th day of January, 1962,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of Sandyston Township to K. & O. Tavern, Inc., t/a "K & O Tavern", for premises on Route 206-Tuttles Corner, Sandyston Township, be and the same is hereby suspended for fifteen (15) days, commencing at 1:30 a.m., Monday, February 5, 1962, and terminating at 1:30 a.m., Tuesday, February 20, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - DISSIMILAR VIOLATION WITHIN FIVE YEARS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Joseph F. Bazilus
145 Sterling Avenue
Jersey City, N. J.

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-295, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

William J. Murray, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his 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 28, 1961, an ABC agent tested defendant's open stock of liquors and seized five bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of four of the seized bottles, when compared with the contents of genuine bottles of the same brands, varied substantially in acids and solids.

Defendant has a prior adjudicated record. Effective July 16, 1956, his license was suspended by the local issuing authority for fifteen days for sale of alcoholic beverages to minors. Since this dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. Effective January 11, 1960, his license was again suspended for fifteen days for an "hours" violation. Bulletin 1322, Item 5. The minimum penalty in "refill" cases involving four bottles is twenty days. Re Harper's Bar, Inc., Bulletin 1414, Item 4. Thus, I shall suspend defendant's license for twenty days for the within violation, plus five days for the dissimilar violation occurring within the past five years, making a total suspension of twenty-five days. Five days will be remitted for the plea herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 31st day of January 1962,

ORDERED that Plenary Retail Consumption License C-295, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Joseph F. Bazilus, for premises 145 Sterling Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Tuesday, February 6, 1962 and terminating at 2:00 a.m., Monday, February 26, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

Albion, Inc.)
t/a Rainbow Room)
105-107 Second Avenue)
Asbury Park, New Jersey)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-33, issued by the City Council of the City of Asbury Park.)

ORDER

Samuel Voltaggio, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On September 1, 1961, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

Three 4/5 quart bottles labeled 'Cutty Sark Blended Scots Whisky, 86 Proof';

in violation of Rule 27 of State Regulation No. 20."

On September 1, 1961, an ABC agent tested defendant's open bottles of alcoholic beverages and seized a number of bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of the bottles mentioned in the charge, when compared with the contents of a genuine bottle of the same brand, varied substantially in solids, acids and color.

Defendant has no prior adjudicated record. By way of mitigation, defendant's attorney has submitted an affidavit of Michael Tarantino (the manager and treasurer of defendant corporate-licensee), in which Mr. Tarantino states that at the time of the alleged violation, the defendant employed four experienced bartenders; that each bartender denied any tampering with any of the bottles; that he had never attempted to refill or mix one brand of whiskey with another, and that he is unable to account for the variation in proof and color which the agent found in the three bottles of Cutty Sark whisky. Nevertheless, a licensee is responsible for any "refills" found upon the licensed premises. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156. I shall suspend defendant's license for twenty days, the minimum penalty imposed in "refill" cases involving three bottles. Re Giordano, Bulletin 1423, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 8th day of February, 1962,

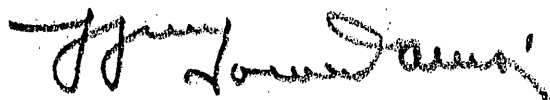
ORDERED that Plenary Retail Consumption License C-33, issued by the City Council of the City of Asbury Park to Albion, Inc., t/a Rainbow Room, for premises 105-107 Second Avenue, Asbury Park, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m., Tuesday, February 13, 1962, and terminating at 3:00 a.m., Wednesday, February 28, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Vito Racanelli
t/a Racanelli Beverage Co.
442 - 5th Street
Newark, New Jersey

Application filed March 20, 1962 for person-to-person transfer of State Beverage Distributor's License SBD-100 from Anthony Caruso, t/a Caruso Beverage Co.



William Howe Davis
Director