

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

BULLETIN 1247

NOVEMBER 12, 1958.

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THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5800 S. UNIVERSITY AVENUE
CHICAGO, ILLINOIS 60637

RECEIVED

NOV 15 1964

TO THE DIRECTOR OF THE UNIVERSITY OF CHICAGO
FROM THE DEPARTMENT OF CHEMISTRY
RE: [Illegible]

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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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NOVEMBER 12, 1958.

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(RENTING ROOMS FOR ILLICIT SEXUAL INTERCOURSE) -
CONTRACEPTIVES - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED
FOR 120 DAYS.

In the Matter of Disciplinary)
Proceedings against)

PARADISE INN, INC.)
t/a PARADISE INN, INC.)
619 Hamburg Turnpike)
Pompton Lakes, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-2, issued by the)
Borough Council of the Borough)
of Pompton Lakes.)

Milton Schamach, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to the following charges:

"1. On July 26 and August 1, 1958, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.

"2. On August 1, 1958, you distributed and possessed and allowed, permitted and suffered the distribution of and possessed for the purpose of distribution prophylactics against venereal disease and contraceptives and contraceptive devices, in and upon your licensed premises; in violation of Rule 9 of State Regulation No. 20."

The file herein discloses that the licensed premises consist of a three-story frame building containing a dining area on the first floor, a number of bedrooms on the second floor and an enclosed back porch with an entrance therefrom into the building behind which is a parking area. On Saturday, July 26, 1958, at about 12:01 a.m., two ABC agents entered the defendant's licensed premises and were met by Guido Gronda and Albina Gronda, his wife. Mrs. Gronda is the president and the holder of 33 1/3 per cent of the stock of the corporation. The agents engaged Mrs. Gronda in a conversation respecting the availability of two rooms in the near future and the rental therefor and told her, in effect, that they proposed to have meretricious relations with two married women on their next visit to the premises. The price of each room was fixed at \$5.00. The agents informed Mrs. Gronda that, because of their marital status, the two women (described by the agents) would arrive unescorted; that they would ask for "Tony" and "Eddie" and that they (the agents) would follow shortly thereafter. At about 1:30 a.m., the agents left Mrs. Gronda and assured her of their early return to the premises.

On Friday, August 1, 1958, at about 10:55 p.m., the two agents (each carrying a "marked" \$5.00 bill) returned to the licensed premises, met Mr. and Mrs. Gronda in the dining room and immediately informed Mrs. Gronda that the "girls" would arrive in about twenty minutes. In a short conversation that followed, the agents repeated to Mrs. Gronda their intended illicit use of the rooms and Mrs. Gronda again stated the rental price would be \$5.00 per room. At about 11:20 p.m., upon the request of one of the agents, Mrs. Gronda agreed to permit the agents to wait in their rooms for the "girls" and upon arrival of the girls to direct them upstairs to the agents. At about 11:25 p.m. each agent signed the hotel register (using fictitious names) and gave Mrs. Gronda a \$5.00 "marked" bill. Mrs. Gronda thereupon led the way upstairs, showed the agents their respective rooms and supplied them with contraceptives found in a bureau in one of the aforesaid rooms.

At about 11:35 p.m. two other ABC agents, accompanied by a State trooper and two county officers, entered the premises and identified themselves to Mr. and Mrs. Gronda. One of these agents and two of the officers interviewed the aforesaid agents in their respective rooms in the presence of Mrs. Gronda and, after having made known the identities of the two agents, came downstairs, seized the hotel register and the "marked" money found in the possession of Mr. Gronda, who stated he had taken the money from the cash register. The agents made a search of the licensed premises and on the first floor of the same found and seized a box containing twelve prophylactics. Upon questioning by the police and the agents, Mrs. Gronda orally admitted renting the two rooms to the agents for illicit purposes as hereinabove set forth.

By way of mitigation of penalty, the attorney for the defendant has submitted a doctor's certificate and two of his own statements wherein he sets forth, amongst other things, that Mrs. Gronda is 75 years old, crippled and under a doctor's care for high blood pressure and arthritis (supported by the doctor's certificate); that ever since 1925 she has owned and operated the premises as a hotel and restaurant; that it is a small business dependent mainly upon a luncheon and food business; that the sale of alcoholic beverages is incidental to her business; that she has always borne a good reputation; that she has conducted the business for over thirty years without any record of any violation; that she and her husband (69 years of age and ailing) are contemplating selling the premises and retiring from business.

The premises have been licensed in the name of defendant corporation since July 1939 and defendant has no prior adjudicated record. The established penalty for the violations charged herein is a suspension of the license for one hundred eighty days. Cf. Re Sabatini, Bulletin 1197, Item 1. However, considering Mrs. Gronda's age, her physical handicap, her illness, her good reputation, her clear record and the plea entered herein, I shall suspend the defendant's license for one hundred twenty days. Cf. Re Rossini, Bulletin 1088, Item 3.

Accordingly, it is, on this 9th day of October, 1958,

ORDERED that Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Pompton Lakes to Paradise Inn, Inc., t/a Paradise Inn, Inc., for premises 619 Hamburg Turnpike, Pompton Lakes, be and the same is hereby suspended for one hundred twenty (120) days, commencing at 3:00 a.m. October 20, 1958, and terminating at 3:00 a.m. February 17, 1959.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - UNQUALIFIED EMPLOYEE - PRIOR RECORD - PRIOR WARNING AS TO UNQUALIFIED EMPLOYEE - LICENSE SUSPENDED FOR 75 DAYS.

In the Matter of Disciplinary Proceedings against FLORENCE TABATNECK t/a THREE O'CLOCK CLUB 176 Paterson Street Paterson 1, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-135 (for the 1957-58 and 1958-59 licensing years), issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Samuel L. Biber, 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 charges:

'1. On Friday night, March 7, and early Saturday morning, March 8, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated, and allowed, permitted and suffered the consumption of such beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

'2. On January 31, February 1, 2, 28, March 1 and 8, 1958, you employed and had connected with you in a business capacity, Peter Tabatneck, a person who had been convicted of crime involving moral turpitude, viz., on or about April 6, 1937 and again on or about January 3, 1939 of the crime of operating an illicit still; in violation of Rule 1 of State Regulation No. 13.'

"Four of the Division's agents participated in the investigation leading to the proceedings herein. In the testimony and comment hereinafter set forth, the full names of the agents will not be used but, instead, just the initial letter of the last name: R, S, F and M.

"Agent R testified that at about 9:15 p.m. on January 31, 1958, he visited defendant's licensed premises; that a bartender called Don (subsequently identified as Donald Martin) was tending bar at the time; that at 10:40 p.m. Peter Tabatneck (hereinafter referred to as Pete), husband of the defendant-licensee, entered the premises and proceeded to a rear room; that a short time thereafter he returned to the barroom and picked up papers from the floor and threw them in 'a basket of some sort;' that, as he stood in the barroom, the bartender aforementioned tapped an empty bottle of Seagram's Seven whiskey on the bar to attract his attention, at which time Pete came over and took the bottle from the bartender, entered the rear room and, a few seconds later, returned to the bar with a full bottle of Seagram's Seven Crown whiskey which he placed on the bar; that thereafter the bartender requested Pete to get some change from the back

room and Pete entered the rear room and returned with a cigar box containing change and he also had a handful of dollar-bills which he gave to the bartender; that thereafter, at about 11:15 p.m., Pete left the premises. Agent R further testified that at 11:20 p.m. on February 1, 1958, he again visited the defendant's licensed premises; that Don was again tending bar, and he observed Pete standing near the rear of the premises alongside of a pool-table; that he observed Pete pick up a few empty glasses from tables and bring them to the bar; that Pete approached a man at the bar who appeared to be sleeping and suggested that he go to a table because other customers wanted to use the stools; that a short time thereafter Pete went to the table where this man was seated and escorted him from the premises with the suggestion that he go to a diner. Agent R further testified that at about 10:50 p.m. on February 28, 1958, he and Agent S entered defendant's premises; that about 11:35 p.m. he observed Pete enter the premises by way of the front door and, after speaking to a few patrons, walked to the rear of the premises; that the bartender again tapped an empty bottle of Seagram's Seven whiskey on the bar as he had done on the occasion of January 31, at which time Pete took the bottle, went to a rear room and, shortly thereafter, returned with a full bottle of Seagram's Seven Crown whiskey and two bottles of soda; that thereafter Pete went into the rear room and came out with a plunger in his hand, proceeded to the men's room and, after returning therefrom, he left the premises. The next visit of Agents R and S, according to the testimony of Agent R, was on the night of March 7, 1958. Agent R testified that, when they entered, there was a party in progress for a female patron and he observed Pete obtain two portions of food and later remove glasses and plates from the pool-table; that during the evening he (Agent R) observed a man (hereinafter referred to as Stanley) at the bar whose head was lowered as if he were about to sleep; that the man swayed and at times staggered while attempting to brace himself against the wall; that he observed the bartender serve him a glass of beer; that at one time Stanley left the stool and, while proceeding toward the juke box, slipped and nearly fell to the floor; that about midnight Stanley left the premises but, within approximately ten minutes thereafter, returned and walked to the bar and sat upon a stool; that, while walking toward the bar, he observed Stanley sway from side to side and he appeared to stagger; that it was Agent R's opinion that he was apparently intoxicated; that, despite his condition, the bartender served him a glass of beer; that Agent S remarked to the bartender, 'He has really got a package on. He is really loaded', to which the bartender replied, 'He is always like that.' After Agent S left the premises Agent R identified himself to the bartender and seized Stanley's glass containing beer which had been served to him; that Agent S returned with Agents M and F who interrogated the bartender concerning the condition of the man in question; that the bartender stated that he had served Stanley four or five drinks that evening and that, insofar as Stanley was concerned, he appeared the same whether drunk or sober; that, while in the presence of the bartender and Pete, Stanley told Agent M that 'he had too much to drink.'

"During cross-examination the attorney for the defendant had a man, who gave his name as Edward Surak, arise in the hearing-room and Agent R was questioned whether or not that was the man who obtained Seagram's whiskey from the rear room, who went to the men's room with a plunger and also the person who had picked up scraps of paper from the floor. Agent R stated that, although he had described Pete as having straight black hair similar to that of Edward Surak, he had no doubt

that Pete was the person who did the chores on the occasions in question. At the hearing, when asked by the attorney appearing for this Division to identify Pete and to compare his appearance then with his appearance at the times hereinbefore mentioned, he (Agent R) said that on the former occasions his hair was dark, his hair was - and he was heavier' and its texture appeared to be 'straight dark hair, appeared to be black.'

"Agent S testified that he visited defendant's licensed premises on the evening of February 28 until the early morning of March 1 and also returned again on the evening of March 7 and remained on the premises until the morning of March 8. He stated that on the first occasion he entered the tavern at about 10:50 p.m.; that at about 11:35 p.m. Pete entered the licensed premises, spoke to several of the patrons and mingled with them; that the bartender tapped a bottle on the bar and Pete reached over his (Agent S's) right shoulder, took the bottle and went to the rear room and in a few minutes returned with a full bottle and handed it to the bartender; that he also saw Pete take a plunger and go to the men's room. On the March 7 visit Agent S testified that at 11:15 p.m. he and Agent R entered the premises together and a birthday party was in progress; that he saw Pete near a pool-table containing food and he was in the act of filling up two plates; that he also observed Stanley sway back and forth and, when he got up from the stool at one time, he put his hand against the wall; that Stanley approached the juke box and, while in the act of doing so, stumbled but righted himself; that thereafter the bartender served Stanley a glass of beer; that around midnight Stanley left the premises and about fifteen minutes later returned and took a seat to his (Agent S's) right; that thereafter the bartender then served him a glass of beer at which time Agent S said, 'Boy, Don, he has got a package on. He is really loaded', to which remark the bartender stated, 'Yes, he is always like that;' that thereafter he (Agent S) left the tavern but returned with Agents F and M who identified themselves to the bartender; that within a short time thereafter Pete came into the premises and, when questioned by the attorney appearing for the Division concerning Pete's appearance on the nights of February 28 and March 7, compared with his appearance at the hearing, Agent S stated, 'When I saw Mr. Tabatneck on the first visit and second visit he appeared to be much different than he is today, darker hair and wasn't as curly as it is today, and he was considerably heavier around the waist;' that he did not remember seeing Surak on the premises that evening.

"Agent F testified that at 12:30 a.m. on March 8 he entered the premises in company of Agent M; that he observed a male patron 'whose hair was partly disheveled in front of his face, was resting his chin on his chest, and had his hands droop to the sides and he looked at me with his eyes half closed. I asked for his name. He didn't answer. He dropped his head down. Then I asked him if he was driving a car. He looked at me and he says, "I don't have a car", and again dropped his head down. A few minutes later Mr. Tabatneck joined us. Then we proceeded to the rear of the premises and continued questioning Mr. [Stanley];' that, when walking to the rear of the premises, he (Agent F) held the left arm of Mr. (Stanley) because he felt he had to assist him. Agent F, when interrogated by the attorney appearing for the Division as to whether or not Mr. Tabatneck's appearance at the hearing was the same as on the morning of March 8, testified that at the hearing Pete's hair was much lighter and wavier than on the occasions that he had seen him in the past.

"Agent M testified that he visited the defendant's licensed premises in the company of Agent F and, when he first saw Stanley, he was seated in a chair near the wall with his chin touching his chest and both of his hands were drooped over the sides of the chair and he was staring at the floor; that in his opinion he appeared to be drunk; that Agent F held the arm of Stanley and escorted him to a rear room for questioning; that Stanley, when attempting to identify himself, produced a wallet from his pants-pocket and experienced difficulty in picking out cards therefrom; that Agent F inquired of Pete and the bartender whether in their opinion Stanley was drunk and both remarked that he always looked in the manner whether he was drunk or sober. Agent M further testified that there was a difference in Pete's appearance from the time he saw him on March 8 and on the date of the hearing as 'his physical appearance might be changed a little. As far as his hair, it appeared to be darker the last time I saw it and straighter and a little longer in length.'

"Donald H. Martin testified that he was on duty as bartender at the times in question and that Edward Surak was employed on both Fridays and Saturdays to assist him in the licensed premises; that Pete is not employed at the licensed premises, and that on the occasions prior to March 7 and 8, when he needed assistance, such assistance was given to him by Surak; that Stanley had three or four six-ounce glasses of beer on the evening in question and his condition was 'perfectly normal;' that at the time Stanley was on the licensed premises he observed him slip on one occasion but attributed this to the fact that the floor had been recently waxed; that Stanley's appearance on the evening of March 7 was no different from his appearance on the date of the hearing herein; that, after the agents identified themselves, he (Donald H. Martin) was the one who called Pete to the premises.

"Stanley --- testified that he recalled being in defendant's premises on March 7 and 8 and that he drank about three or four glasses of beer on that occasion; that he was not under the influence of liquor nor did he stagger or have any difficulty in walking; that he did leave the premises in order to go to his home to obtain some money, and on the way back to the premises he stopped off at a restaurant and had a cup of coffee; that he remembers being questioned by the agents in the barroom but did not recall any questioning in any other place during the evening; that he also remembered slipping on the polished floor but could not recall being assisted by Agent F when walking to another section of the establishment.

"Edward J. Surak testified that he is employed on Friday and Saturday nights in defendant's licensed premises and that he was the person who obtained the plunger to use in the men's room on the occasion testified to by the agents; that he assists the bartender whenever he is needed.

"Pete testified that he did not remember picking paper off the floor on January 31 unless it was dropped by him; that he visits the premises occasionally as a patron but denied he performed any services while there; that on the night of the party (namely, March 7 and 8), while going to obtain some food for himself, another person asked him to bring some to him; that on one occasion he moved some dirty plates from the pool-table as he and a friend wished to engage in a game of pool; that he was sent for that evening and interrogated by Agent F; that he remembers Stanley being interrogated and that his (Stanley's) answers given to the agent were responsive to his questions.

"I have set forth in detail the various testimony given by the respective witnesses in the instant case. I am satisfied that the evidence is sufficient that Stanley was apparently intoxicated on the evening in question and, hence, the evidence is sufficient to establish defendant's guilt as to Charge 1.

"Furthermore, insofar as Peter Tabatneck is concerned, there is no doubt that it was he, rather than Surak, who did various odd jobs on defendant's licensed premises at the time referred to by the agents herein. On one occasion he picked up paper from the floor; another, carried a plunger to the men's room, made change, and on two occasions obtained a bottle of liquor at the request of the bartender. Furthermore, on the evening of March 7 and early morning of March 8, when a birthday party was in progress, he was seen taking some food both for himself and a friend from one of the tables. He admits that he did this on that evening. I am of the opinion that the evidence is also sufficient to find defendant guilty of Charge 2. Re Kravis, Bulletin 801, Item 2. Therefore, under the circumstances, I recommend that defendant be found guilty of Charge 1 and Charge 2. The defendant has a prior adjudicated record. Effective March 5, 1956, her license was suspended for thirty-five days for conducting the licensed premises as a nuisance and also employing Peter Tabatneck (a man with a criminal record). At that time the Director warned defendant that in the future, if she persisted to defy the Rules and Regulations prescribed by this Division, drastic action would be taken. Re Tabatneck, Bulletin 1103, Item 5. In view of the finding herein and the similar record occurring within five years, I recommend that defendant's license be suspended for seventy-five days."

Written exception to the Hearer's Report with respect to the recommended length of the suspension of defendant's license was filed by the attorney for the defendant.

Under the circumstances appearing in the instant case, especially in view of the fact that the defendant permitted her husband to work on the licensed premises after she had knowledge that he was disqualified by statute from working thereon because of his criminal record, a severe penalty is warranted.

Having carefully considered the entire record, including the transcript of the testimony, the Hearer's Report and the exception aforementioned, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 7th day of October, 1958,

ORDERED that Plenary Retail Consumption License C-135, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Florence Tabatneck, t/a Three O'Clock Club, for premises 176 Paterson Street, Paterson, be and the same is hereby suspended for seventy-five (75) days, commencing at 3:00 a.m. October 15, 1958, and terminating at 3:00 a.m. December 29, 1958.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - NUISANCE - FAILURE TO HAVE TRUE COPY OF APPLICATION FOR LICENSE ON PREMISES - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary Proceedings against)

ISABEL SHELL)
t/a SHELL'S BAR & RESTAURANT)
24 East Front Street)
Trenton 9, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-267 for the 1957-58 licensing year, issued by the Board of Commissioners of the City of Trenton and extended for the 1958-59 licensing year.)

William Reich, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to the following charges:

'1. On May 10, 17, 18, 23 and 24, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

'2. On May 24, 1958, you conducted your licensed business without having a photostatic or other true copy of your application for your current license on the licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20.'

"At the hearing herein the Division called as its principal witness one of three ABC agents who, on the dates alleged in the charge, participated in the investigation of defendant's licensed premises. It was stipulated that if the other agents were produced their testimony would corroborate that of the agent who testified.

"Succinctly stated, the Division sought to establish that on each of three visits to defendant's tavern the agents observed therein two females and about eighteen male patrons whose mannerisms, conduct and language categorized them as homosexuals.

"Specifically, the evidence shows that on the agents' first visit an effeminate male patron engaged them in conversation respecting the identity of a singer whose recorded voice was emanating from a juke box. There being a difference of opinion, the patron said: 'Oh, there is no point in arguing.

I will go ask Geraldine. She should know', and turning to a male nearby he asked: 'Geraldine, could you tell these boys who is singing the song in the juke box?' 'Geraldine' scrutinized the agents cap-a-pie, flickered his eyelids and replied coyly: 'Why that is Julie Andrews, of course, silly.' The agents noted that 'Geraldine' had 'very wavy long hair fluffed on the forehead, combed very thick in the back, tweezed eyebrows, he spoke in high-pitched tones, lispy voice, he swished and swayed as he walked about, held his cigarette very daintily, limp wrists, (held) his glass with his pinky out' and 'he appeared to be a fag'. The agents further noted that the majority of the males present were of the same type as 'Geraldine' and that a female seated at the bar was man-nishly attired, wore no make-up and had a masculine hair cut.

"On their second visit the agents overheard 'Geraldine' say to another effeminate male: 'Oh, I have had him', to which the other stated: 'I almost had him but I missed out and am broken-hearted over the fact.' 'Geraldine' then asked for and received paper and pencil from the bartender, wrote down the telephone number of the person whom they were discussing, and handed the paper to his companion saying: 'Oh, now you will have to doll up for him. He will want you to do that', and the other said: 'Oh, that is fine. I love to doll up.' 'Geraldine' then turned his attentions to the agents and tried persistently to have one of them leave the premises with him saying: 'I'll show you sex like you have never seen.' When the agent refused the invitation, 'Geraldine' walked away and was heard to sing a suggestive parody to a popular number being played on the juke box. A female called Elsa, who had kissed every male in the establishment including the agents, one of whom she endeavored to 'soul' kiss, joined in the double-entendre parody and concluded with salacious comments informative of her perverted tendencies. 'Geraldine' then exhibited to the other patrons and the agents a small replica of the male genitals, which he then placed on his coat lapel proclaiming: 'This is my badge.' The agents observed that the majority of the male patrons on this occasion appeared to be homosexuals.

"On their third visit the agents observed two effeminate males affectionately brushing each other's cheeks and then leave the premises together. Shortly thereafter 'Geraldine' and Elsa arrived. 'Geraldine' greeted the agents and put his arms around the waist of the agent whom he had previously solicited, rubbed his thighs, brushed his forehead and whispered: 'It was love at first sight between you and me.' Receiving no encouragement 'Geraldine' moved to another male seated at the bar. About this time one of the agents invited the licensee to have a drink which she accepted and in reply to the agent's comment that 'There aren't too many gay spots around, are there? It is nice when the kids can get together and come into their own place like this where the straights don't come in and gape at them', she said: 'Yes, it is nice.' After noting that the majority of the patrons present appeared to be homosexuals, the agents identified themselves to the licensee and 'informed her of the fact that these homosexuals were congregating on the premises.' The licensee stated: 'I knew that they came in here, but I can't distinguish them from anyone else.' Just then the agents observed 'Geraldine' embracing and kissing the male whom he had joined at the bar and called the scene to the attention of the licensee who said: 'Oh, I see what you mean. You can't have any of that kind of stuff going on here. I won't allow it any more.' The agents then asked to be shown a copy of her current license application and were informed that her accountant had taken it with him earlier that day.

"The witnesses who testified on behalf of the defendant were a police captain, a sales manager, three patrolmen, a housewife, an accountant, the licensee's bartender and the licensee herself. It appears that none of the witnesses, other than the licensee, her bartender and the police captain, was present on the licensed premises on the dates alleged and that the captain arrived on the early morning of May 24th after the agents had completed their investigation and departed.

"The captain testified, in substance, that he has been night captain of the police department since March 1, 1958, during which time he made regular inspections of taverns throughout the city including defendant's which he visited two or three times a week; that on numerous occasions he observed Jerry, the male referred to as 'Geraldine', seated at the bar in defendant's licensed premises and 'not bothering anyone'; that defendant's other patrons were persons whom he had known for many years and were 'strictly male and female' although 'Jerry is on the effeminate side'; that when he entered defendant's premises on May 24th, the patrons 'were the usual group that came in there and Jerry was with another man'; that 'when I walked in Jerry and the other man walked out and went down Union Alley, that is adjacent to Warren Street in the rear of the Casa Lido Bar'; that he has known the licensee for many years; that she conducts a decent tavern and that 'there have been no complaints whatsoever against her since she has taken over the establishment'.

"The sales manager testified that he has been visiting defendant's tavern two or three times a week for a period of three years and that from his observation the only patron who appeared to be effeminate was Jerry.

"Two patrolmen testified that during their tour of duty when assigned to the post on which defendant's tavern is located, they visited the tavern nightly and that the only eccentric person whom they observed was Jerry who, in their opinion, was 'on the effeminate side'. The other patrolman testified that on his visits to defendant's tavern during his tour of duty he observed Jerry and three or four other males who were on the effeminate side.

"The housewife testified that about four months prior to the charge preferred herein, she had visited defendant's tavern once a week 'for years' and didn't notice any unusual conduct on the part of the patrons. 'They were all friendly'.

"The accountant testified that he takes care of records and financial matters for defendant and some twenty other licensees and that, as is his custom, he took home the copy of defendant's license application in order to prepare her renewal application.

"The bartender testified that he has been employed on defendant's licensed premises since March 15, 1958; that his tour of duty is from 6:00 p.m. to 2:00 a.m.; that he was on duty on the dates alleged and that from his observations the conduct of the patrons would be 'respectable not only in that bar but any bar which is proper'. He further testified that he has known Jerry from childhood and that 'he always had those characteristics' and that none of the other patrons answered the descriptions testified to by the agents.

"The licensee testified that she was in the licensed premises on the dates alleged; that she never noticed anything

abnormal about her patrons; that Jerry acted a little like a sissy' but was a gentleman and that Elsa 'was always a very nice person'. She testified further that when the agents made their identities known they told her she was serving 'queers' and that she said: 'If this is what I am doing I certainly would like to find out and get rid of it. But what was I supposed to look for?' She also testified that one of the agents had told her that 'Jerry had kissed a man, but by the time I turned around I didn't see anything'.

"Having carefully considered the facts and circumstances herein with respect to Charge 1, I find that the Division has established by more than a fair preponderance of the evidence that defendant's patrons not only appeared to be sex deviates but that one of them actually solicited an agent for purposes of sex perversion. While it may be true that the licensee had no knowledge of her patrons' lewd proclivities, notwithstanding her association with the tavern business for more than twenty years, nevertheless, it was incumbent upon her as it is with all liquor licensees, to conduct the licensed business in a manner which will not be inimical to the public welfare.

"As was pointed out in Re Schneider, 12 N. J. Super. 449 (App. Div. 1951):

'The object manifestly inherent in the rule with which we are here concerned (likewise Rule 5) 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.'

"It is deemed pertinent to restate herein the language of Judge Jayne in Paddock Bar, Inc. v. Division of ABC, 46 N.J. Super. 405 (App. Div. 1957), wherein he said:

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.'

"I conclude from all the evidence that defendant conducted her business in a manner offensive to common decency and public morals and that she did not have, as required by regulation, a copy of her current license application on her licensed premises. I recommend, therefore, that she be adjudged guilty on both charges. I further recommend that her license be suspended for sixty days on Charge 1, Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2, and for an additional five days on Charge 2, Re Laffman, Bulletin 1237, Item 6, making a total suspension of sixty-five days."

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

Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendations. However, since it appears that the part of the report which deals with licensees' responsibilities should be more fully treated, I am reiterating the principles enunciated in Re T-Bar & Grill, Inc., Bulletin 1237, Item 1, wherein it is stated that:

"*** even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as are hereinabove related, on his licensed premises. He cannot hide behind his employees. Not only is it no defense that the violations may have been committed in his absence or by his agent, servant or employee, or that he did not participate in the violations, or that they were committed contrary to his instructions (Rule 33 of State Regulation No. 20; Stein v. Passaic, Bulletin 451, Item 5) but, in addition, 'licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises.' Bilowith v. Passaic, Bulletin 527, Item 3. See also Re One-thirty-five Mulberry St. Corp., Bulletin 892, Item 2. Most certainly, this licensee 'suffered' these lewd and immoral acts to take place in and upon the licensed premises. As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N. J. L. 28, at p. 31, 'Although the word "suffer" may require a different interpretation in the case of a trespasser, it 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 knowledge. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140.'

Accordingly, it is, on this 18th day of September, 1958,

ORDERED that Plenary Retail Consumption License C-267, for the 1957-58 licensing year, issued by the Board of Commissioners of the City of Trenton to Isabel Shell, t/a Shell's Bar & Restaurant, for premises 24 East Front Street, Trenton, which license has been extended by my order dated June 27, 1958, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m. September 27, 1958, and terminating at 2:00 a.m. December 1, 1958.

WILLIAM HOWE DAVIS
Director.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1958 TO SEPTEMBER 30, 1958 AS REPORTED TO THE DIRECTOR
OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club No. Issued	Limited Retail Distribution		Seasonal Retail Consumption		Number Surren- dered Expired	Number Licen- ses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid		No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	487	\$ 208,460.00	72	\$ 25,875.00	24	\$ 2,295.00					583	\$ 236,630.00
Bergen	811	307,822.50	301	87,988.00	110	10,420.00	53	\$ 2,496.50	5	\$1,381.63	1280	410,108.63
Burlington	186	81,268.63	40	12,225.00	44	6,200.00	1	50.00			271	99,743.63
Camden	453	224,457.53	82	33,925.00	73	7,311.24			1	375.00	609	266,068.77
Cape May	135	76,800.00	11	4,000.00	16	1,950.00					162	82,750.00
Cumberland	80	40,875.00	14	3,700.00	30	4,060.00					124	48,635.00
Essex	1347	759,610.00	350	209,760.00	101	13,875.00	28	1,400.00	1	750.00	1827	985,395.00
Gloucester	108	38,595.00	15	3,920.00	22	1,950.00					145	44,465.00
Hudson	1538	697,871.43	298	122,400.00	81	9,550.00	63	2,700.00			1980	832,521.43
Hunterdon	79	28,000.00	9	3,360.00	10	1,100.00					98	32,460.00
Mercer	422	259,850.00	51	21,400.00	54	7,700.00			1	391.63	528	289,341.63
Middlesex	632	312,605.00	75	24,395.00	96	8,630.00	4	200.00			807	345,830.00
Monmouth	548	286,642.95	122	43,620.00	43	4,800.00	10	435.00	24	11,201.52	747	346,699.47
Morris	355	131,828.01	97	32,750.00	52	4,773.60	19	950.00	5	1,312.50	528	171,614.11
Ocean	185	107,225.64	47	19,680.00	24	2,575.00					256	129,480.64
Passaic	869	357,105.36	167	51,330.00	41	5,025.00	9	425.00			1086	413,885.36
Salem	51	19,300.00	8	1,550.00	20	1,675.00					79	22,525.00
Somerset	187	85,700.00	41	12,595.00	27	3,150.00					255	101,445.00
Sussex	165	45,805.00	21	4,185.00	9	545.00	1	50.00	1	225.00	197	50,810.00
Union	549	306,117.26	144	66,860.00	77	9,075.00	28	1,375.00			798	383,427.26
Warren	148	44,070.00	20	5,060.00	28	3,100.00			2	318.84	198	52,548.84
Total	9335	\$4,420,009.31	1985	\$ 790,578.00	982	\$109,759.84	216	\$10,081.50	40	\$15,956.12	12558	\$5,346,384.77

William Howe Davis
Director

October 28, 1958.

5. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING SALES TO MINORS AND FAILURE TO HAVE TRUE COPY OF APPLICATION FOR LICENSE ON PREMISES DISMISSED.

In the Matter of Disciplinary Proceedings against JAMES R. CLARK t/a KEARNY YACHT CLUB 427 Passaic Avenue Kearny, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-11 (for the 1957-58 and 1958-59 licensing years), issued by the Town Council of the Town of Kearny.

Simandl and Leff, Esqs., by Robert H. Simandl, Esq., Attorneys 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 charges:

'1. On April 11, 1958, 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., Elena ---, age 18, and Marie ---, age 19, 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. On April 11 and 12, 1958, you conducted your licensed business without having a photostatic or other true copy of your application for your current license on the licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20.'

"As to Charge 1: At the hearing held herein an ABC agent testified that he and another agent were seated at a table in the dining room of defendant's licensed premises on the evening of April 11, 1958; that shortly after 11:00 p.m. two couples came from the dance floor and took seats at an adjoining table on which there were a large number of empty glasses and an empty pitcher; that shortly thereafter, in response to an order received from one of the group at the adjoining table, Mrs. Phillips (a waitress) brought a pitcher of beer to the table, placed it in the center of the table and received payment therefor; that one of the young men in the group then filled four glasses with beer; and that each of the four patrons at the adjoining table was drinking the beer when the agents went to the table and identified themselves. Subsequent investigation made by the agents disclosed that the two young men in the party were of full age but that Elena was actually eighteen years of age and Marie actually nineteen years of age, although each stated to the agents that she was twenty-two years of age. A second ABC agent substantially corroborated the testimony of the first ABC agent.

"The issue as to the sale of alcoholic beverages to the two minors and the consumption of alcoholic beverages by them is somewhat confused by the testimony of Mrs. Clark (wife of defendant) and the testimony of Mrs. Phillips, which testimony would tend to indicate that only soft drinks were served to and consumed by the two young ladies. However, both Elena and Marie subsequently testified and their testimony not only corroborates the single incident to which the agents testified but also establishes that, earlier on the same evening, each consumed a 'rye and coke' served to them at the same table by Mrs. Phillips. Thus it is clearly established that alcoholic beverages were served to and consumed by each of the two minors in question and the only issue as to Charge 1 is whether or not defendant has established a defense under the provisions of R. S. 33:1-77.

"Mrs. Clark testified that it was part of her duties to check the age of female patrons; that she did not question Elena or Marie on the evening of April 11 because she had previously questioned them; that, when these young ladies visited the licensed premises in September or October 1957, each stated that she was twenty-two years of age; that Elena exhibited a birth certificate and Marie exhibited an identification card which indicated the truth of the statements made by them; that each of the young ladies then signed a card similar to the blank 'representation and statement' introduced into evidence, wherein each represented that she was twenty-two years of age. Mrs. Clark further testified that both young ladies were in the premises on October 5, 1957, to celebrate the alleged twenty-second birthday of Marie and that the 'representation and statement' signed by the young ladies has been mislaid or destroyed. In the absence of the production of the written representations I would hesitate to accept the above testimony as sufficient to establish a defense were it not for the fact that Elena and Marie fully corroborated said testimony. Both of these young ladies were reluctant witnesses, but I observed their demeanor on the stand and I am satisfied that they told the truth. Elena testified that she had visited the premises more than five times prior to April 11 and that 'last year', 'after the summer', she had signed a slip representing her age at more than twenty-one, after she exhibited the birth certificate of her older sister. Marie testified that she visited the premises 'after the summer' last year and signed a slip indicating that she was born October 5, 1935, after she exhibited an identification card which indicated that she was born on that day. She also testified that on October 5, 1957, she had a birthday party on the premises and that it was supposed to be her twenty-second birthday party and was so announced from the bandstand. One of the ABC agents testified that on the evening of April 11 Marie exhibited to him an identification card issued by her employer, on which card her date of birth was given as October 5, 1935. As a result of observing both young ladies, I conclude that their appearance was such that an ordinary prudent person might well believe that each was twenty-one years of age or over and that the sales on April 11 were made in good faith pursuant to subsection (c) of R. S. 33:1-77.

"After considering all the evidence and the briefs submitted by attorney for defendant and the attorney appearing for the Division, I conclude that defendant has met all the requirements of R. S. 33:1-77 and has established a defense under said section. Caruso v. Jersey City, Bulletin 694, Item 1; Re Sudzina & Pingicer, Bulletin 1138, Item 5; Re Rigoletti, Bulletin 1157, Item 11; Re Savarese, Bulletin 1201, Item 12; Re Onufrak, Bulletin 1231, Item 4.

"As to Charge 2: After the four agents identified themselves, they went to Police Headquarters with the licensee and

two members of the Kearny Police Department. About 12:10 a.m. two of the agents returned to the licensed premises and, at their request, Mrs. Clark searched the premises for a copy of the license application. Admittedly, repairs were being made to the premises. As to what occurred at this time, Mrs. Clark testified, 'I started taking everything apart. I got into the drawers and took all the records and reports out and had them strewn all over. *** I was very nervous and upset and had all the papers in the place all over, on top of the bar and on the floor.' When Mrs. Clark was unable to locate the copy, the agents returned to Police Headquarters. At the suggestion of the licensee they accompanied him to the licensed premises and, when the licensee was unable to locate the copy, the three of them returned to Police Headquarters and all remained there until about 2:00 a.m. Mrs. Clark testified that, about 2:15 a.m., she finally found the copy and telephoned to Police Headquarters. This is verified by the testimony of Police Sergeant Byron who testified that, at 2:15 a.m., he received a 'phone call at Headquarters from a person who identified herself as Mrs. Clark and who said that she had found the license and wished to speak to her husband. Sergeant Byron advised the caller that Mr. Clark had left. The licensee testified that, when he arrived at the licensed premises about 2:30 a.m., his wife told him that, at about 2:15 a.m., she had found the copy under the cash register. In the brief filed by the attorney appearing for the Division, some point is made of the fact that Mrs. Clark told the Police Sergeant that she had found the 'license' and not the copy thereof. However, I am satisfied that, whatever word she used, she was referring to the copy of the application which was the only paper in which any of the parties to the search was then interested and the only paper which all were trying to find. Under all the circumstances, I am satisfied that a copy of the application was on the licensed premises and that the fact that it was not readily available for inspection was due solely to the fact that new cabinets were being placed behind the bar and that other repairs were being made. After considering all the testimony and the briefs submitted by the attorney for defendant and the attorney appearing for the Division, I recommend that an order be entered dismissing both charges."

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

After carefully considering all the facts and circumstances of the case, I concur in the Hearer's conclusions and adopt the same as my conclusions herein.

Accordingly, it is, on this 18th day of September, 1958,

ORDERED that the charges herein be and the same are hereby dismissed.

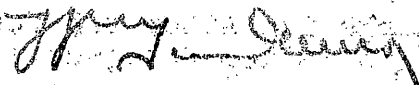
WILLIAM HOWE DAVIS
Director.

6. STATE LICENSES - NEW APPLICATION FILED.

Nicholas Merlo and Anthony J. Merlo, t/a J. & K. Distributors
109 - 12th Street, Hammonton, N. J.

Application filed November 3, 1958 for person-to-person,
place-to-place transfer of State Beverage Distributor's
License SBD-43 from Lincoln Mazzoli, t/a Richland Beverage
Company, Harding Highway and Flower St., Buena Borough, N.J.

New Jersey State Library


William Howe Davis
Director.