Director

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd., Newark, N.J. 07102

BULLETIN 1878 October 9, 1969

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1878 October 9, 1969

1. APPELLATE DECISIONS - HARRINGTON & BURNS INC. v. WOOD-RIDGE.

HARRINGTON & BURNS INC.,
Appellant,
v.
Mayor and Council of the Borough of Wood-Ridge,
Respondent.

ON APPEAL
CONCLUSIONS
AND ORDER

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Appellant
Malhiot & Genton, Esqs., by George D. Malhiot, Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, holder of a plenary retail consumption license for premises 178 Hackensack Street, Wood-Ridge, was found guilty by respondent (hereinafter Council) of the following charge:

"On or about November 16, 1968, at approximately 1:45 A.M., you, your agents or employees engaged in or allowed, permitted or suffered in or upon the licensed premises, a brawl and an act of violence in violation of Rule 5 of State Regulation #20."

Its license was suspended for fourteen days effective January 16, 1969.

An order dated January 15, 1969, stayed the effect of the suspension imposed by the Council pending the appeal herein and until the further order of the Director.

In its petition of appeal, appellant alleges that the action of the Council was erroneous, unreasonable, contrary to the weight of the evidence, and without legal basis.

In its answer, the Council denies the substantive allegations of the petition and states that the evidence disclosed that a bartender employed by appellant struck a patron of the establishment, causing severe bodily injury, and thus appellant allowed, permitted and suffered the act of violence.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded

counsel to present testimony under oath and cross-examine witnesses.

Donald A. Kueller testified that he visited the licensed premises, accompanied by a friend, on November 16, 1968, arriving there at about 1:15 a. m. After ordering a drink, he danced with several patrons. He was quite familiar with this tavern since he had patronized it on a number of previous occasions. When his friend suggested that it was late and they should go home, he walked over to a female patron seated at the bar, identified as Connie Schwarz, to thank her for dancing with him and had his arm on the back of her chair. One of the bartenders on duty, identified as Benjamin Elicona, motioned to him and said, "Come here." As Kueller leaned over the bar, the bartender "grabbed my arm and he pulled me in tight so that my chest was tight up against the bar, and he hit me." He was struck twice on the nose and fell to the floor unconscious.

His next conscious awareness was of persons applying cold compresses to his face and nose. The police arrived shortly thereafter and assisted him from the tavern and took him to police headquarters. From there he was taken to the South Bergen Hospital in Hasbrouck Heights and the following day x-rays were taken of his nose at the Englewood Hospital. As a result of the blows, Kueller's nose was fractured in four places and his cheek bone was shattered.

On cross examination, the witness denied making any improper embrace of Connie Schwarz. He also emphatically denied that he made threatening gestures to the bartender or struck or attempted to strike him. He insisted that the bartender struck him without provocation.

Assad Daibes gave the following account: He accompanied Kueller to the tavern on the date alleged and seated himself at the bar. After a half hour, he observed the incident where the bartender allegedly struck Kueller. He recalled that immediately before this punching incident, he informed Kueller that he would like to leave. Kueller said to him, "Okay. I go to the girls, thanking them, and I come back." He saw Kueller return to Miss Schwarz's side and the next thing he saw was the bartender striking Kueller. Kueller, immediately upon being struck, fell to the floor and lay there.

On cross examination, Daibes stated that he saw the bartender strike Kueller only once. His attention was aroused when he heard a woman scream, apparently after the blow was struck. After Kueller fell, Daibes rushed over and asked for help for his friend.

Constance L. Schwarz, testifying on behalf of appellant, stated that she was seated at the bar at the time of the alleged occurrence and recalled the incident. Kueller came in about 11:30 or 12:00 P. M. and sat at the bar to her right. On two occasions he danced with her girl friend and also danced with her. When he returned to the bar, he stood on her left side and put his right hand on her breast. "I looked at the bartender, and he seen that, and he told him to get his hands off of me

three times, and he wouldn't. So Don swung at him, and Bennie swung back. That's all I know, because I was pushed out of the way, and I had left."

On cross examination, this witness was not certain whether she testified before the Council at the earlier hearing that Kueller swung or whether he made a "gesture." Her answer was "If you gesture, you are going to swing." She asserted that Kueller's right hand was around her breast and his left hand was leaning on the bar. Finally, this witness admitted that she has frequented these premises since July 1968 and is there usually on at least two or three nights a week.

Benjamin L. Elicona, the bartender involved in this charge, was employed by appellant on November 16, 1968, and is presently employed at these premises. During the course of Kueller's stay at the premises on the date alleged, he observed him moving all over the barroom and characterized him as a "stool hopper." Kueller danced with several patrons and then returned to the bar. The last time he returned to the bar, Elicona noticed that Kueller had his hand around the chest of Connie Schwarz and he told him "to cut it out" and "get your hands off that girl." "Absolutely nothing" happened after he told him that, "like I didn't say a word" and "I asked him again." When Kueller didn't do anything, "I figured I'm going to have to move the guy somehow." Elicona leaned forward, Kueller took a swing at him and hit him with his right hand, at which he swung back and hit Kueller once. At this time the other bartender came to him and told him to work the other side of the bar.

On cross examination, Elicona was not certain whether he testified that Kueller had struck him prior to his striking Kueller, or whether he had used the word "gesture" in indicating the motion made by Kueller. He was then asked:

"Q You never testified before the Mayor and Council that he swung at you, did you?

A If he asked me the question, I believe he swung at me."

When he was asked why he did not speak to the corporate licensee's president who was on the bandstand at the time, he answered:

"...for one, he is on the bandstand playing and, for another, I try to handle this myself the best way I can. I don't mean by hitting somebody. I tried to talk to the guy, you know, to get him to stop.

THE HEARER: But your punch was of sufficient force to render that man unconscious, wasn't it?

THE WITNESS: Who said he was unconscious besides him?

THE HEARER: You don't know whether his nose was broken as a result of your punch?

THE WITNESS: He got a bloody nose, but I don't know anything about a broken nose."

The witness also admitted that he noticed some blood on the bar from Kueller's nose.

Mary M. Muzzicato testified that she has known Don Kueller through her contact with him at the licensed premises and that he has a "hand problem." He had requested that she testify for him in these proceedings.

Mack K. Sullivan, president of the corporate licensee, testified that he was on the premises on the date in question, leading the band. When this matter was first brought to his attention by the commotion, he immediately left the stage, noted that Kueller was bleeding, told the hatcheck girl to take care of him, and called the police. When he returned, he noted that Kueller had a towel on his face; and the police arrived shortly thereafter.

On cross examination, he admitted that Kueller was assisted by the police from the premises. He also stated that after this incident, the bartender was separated from his employ although he has since been re-employed at these premises.

I have had the opportunity to observe the demeanor of the witnesses as they testified before me. From my careful examination and evaluation of their testimony, I am persuaded that the testimony of respondent's witnesses was reasonable, forthright and credible, and essentially portrayed what happened. On the other hand, I find unrealistic and not consonant with human experience the version given by the bartender Elicona as to what took place.

The rule is clear that evidence to be believed must not only proceed from the mouths of credible witnesses but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

I believe that the bartender did tell Kueller to leave Miss Schwarz alone. It is difficult to know from the testimony whether or not Kueller heard Elicona make this statement. However, the bartender, whom I observed to be rather short-tempered with a low boiling point, decided to take matters in his own hands instead of properly going to the licensee's president who was in the near vicinity. The logical thing for him to do was to have the corporate officer or the manager speak to Kueller. Instead, the bartender pulled Kueller over the bar and struck him severe blows which caused substantial bodily injury. I do not believe that Kueller made any threatening gestures or struck the bartender.

Since I conclude that the bartender, an employee of appellant-licensee, improperly and without lawful provocation committed the act of violence on the licensed premises,

the principle set forth in Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947) is applicable. The court therein said that the word "suffer" imposes disciplinary responsibility on a licensee, regardless of knowledge, where there is a "failure to prevent prohibited conduct by those occupying the premises with his authority."

Since the bartender was an employee, obviously appellant is responsible for his acts and is fully accountable for his activities during his employ on the licensed premises. In re Olympic, Inc., 49 N.J.Super. 299; In re Schneider, 12 N.J.Super. 449; Rule 33 of State Regulation No. 20. The licensee is not relieved even if the employee violates his express instructions. Greenbrier, Inc. v. Hock, 14 N.J.Super. 39; F. & A. Distrib. Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34.

It is inconceivable that this bartender should have been re-employed, as he apparently is, by the licensee in view of his apparent callousness in the light of this incident. He admitted that although he struck Kueller with such force that blood ran from Kueller's nose on to the bar, he simply turned his back and served other customers. I am persuaded that a bartender who insists upon using his own measures with patrons, by swift retribution and physical force, in matters where he considers patrons to have over-stepped bounds of conduct, has no place in the alcoholic beverage industry. It would be a sad commentary if, every time a bartender was displeased with a patron's words or gestures, he simply hauled off and busted the patron's nose.

It was quite apparent in this matter that the Council chose to believe the testimony of its witnesses rather than those of appellant. In order to meet the burden required under Rule 6 of State Regulation No. 15, appellant must show manifest error and that the action of the Council was clearly against the logic and effect of the presented facts. That burden was not met here. Hudson Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L. 502 (1947). I therefore conclude that the Council has established the truth of the charge by a fair preponderance of the credible evidence, and that it acted reasonable thereon in reaching the determination that appellant was guilty of the said charge. Whitley v. Kenilworth, Bulletin 1376, Item 5.

It is recommended that an order be entered affirming the Council's action, dismissing the appeal, and fixing the effective dates for the suspension imposed by the Council.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

After carefully considering the entire record, including the transcript of testimony, the exhibit and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 12th day of August, 1969,

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

ORDERED that Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of Wood-Ridge to Harrington & Burns Inc. for premises 178 Hackensack Street, Wood-Ridge, be and the same is hereby suspended for fourteen (14) days, commencing at 2:00 a.m. Friday, August 15, 1969, and terminating at 2:00 a.m. Friday August 29, 1969.

JOSEPH M. KEEGAN
DIRECTOR

2. APPELLATE DECISIONS - FERRARO v. PATERSON.

THOMAS FERRARO, t/a T.F.'s Lounge,

Appellant,

v.

Board of Alcoholic Beverage Control for the City of Paterson,

Respondent.

ON APPEAL
CONCLUSIONS
AND ORDER

Emil Weisser, Esq., Attorney for Appellant
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) whereby it revoked appellant's plenary retail consumption license for premises 596-598 - 21st Avenue, Paterson, effective May 5, 1969, after finding appellant guilty of the following charge:

"During the late evening hours of January 10, 1969, and the early morning hours of January 11, 1969, you allowed, permitted and suffered in and upon your licensed premises unlawful possession of and unlawful activity pertaining to narcotic drugs, as defined by R.S. 24:18-2, in violation of Rule 4 of State Regulation No. 20."

Upon the filing of the appeal an order was entered by the Director on April 18, 1969, staying the Board's order

of revocation until the entry of a further order herein.

Appellant in his petition of appeal alleges that the action of the Board was erroneous because (a) there was no adequate proof that appellant "allowed, permitted and suffered" the possession of narcotics and narcotic drug activity on his licensed premises and (b) there was no proof that any of the alleged activity or enterprise resulted in a conviction in a criminal prosecution, as required by Rule 4 of State Regulation No. 20.

The answer of the Board admits the jurisdictional facts and that, while there was no criminal conviction, denies the alleged inadequate proof that appellant allowed, permitted and suffered the unlawful possession of and unlawful activity pertaining to narcotic drugs on the licensed premises.

When the matter came on for hearing on this de novo appeal, the attorneys for the parties agreed to present the appeal upon the transcript of the testimony elicited before the Board, with additional testimony offered by appellant pursuant to Rules 6 and 8 of State Regulation No. 15. The transcript (R-1 in evidence) reflects the following:

William J. Perry (a local police officer) testified that he entered the licensed premises at about 10:30 a.m. on January 10, at which time these premises were "under surveillance" by the police. He took a place at a table in the back and remained in the tavern for approximately two hours. During this time he observed a male standing at the door and making what he termed "three transactions." He defined these transactions as handing three different males small manila envelopes, in return for which this person received money. Perry did not know, nor did he ascertain, what the envelopes contained. He also noted that approximately seventy-five patrons were in the premises at that time. When he left he informed other police officers of his observations and thereupon "a raid was conducted." Re-entering the premises with the other police officers, he observed a "rolled cigarette on the floor, "not commercially manufactured, but he did not observe its contents. A suspect standing nearby was searched by Detective Smilek but nothing was found on that person. Another person was taken by Detective Smilek to the rear room where the officer found "another rolled cigarette." This witness was not present at that time.

Detective Milton Smilek testified that he is a member of the local narcotics squad and has been trained to detect marihuana. Together with other police officers he arranged with Officer Perry to investigate the activities at this tavern. At about 1:30 a.m. on January 11 he entered the premises, went to the center of the tavern and observed two males. On the floor he noted a hand-rolled cigarette, examined it and suspected that it contained marihuana. He searched the two males in the immediate vicinity, confiscated an envelope from one of them and a hand-rolled cigarette from the other. The cigarette in his opinion consisted of green vegetation which he suspected to be marihuana. Both cigarettes were sent to the State Police

laboratory. Although no laboratory report was submitted at the hearing below, the report was produced at this plenary de novo hearing and supported the fact that one cigarette contained marihuana.

Police Officer Edward Hannah was in the raiding party on the morning in question and identified Robert Bente as the person standing at the door who was allegedly engaged in the aforementioned activities. He asked Bente for identification and, in searching his wallet, found one hand-rolled cigarette which appeared to him to contain marihuana tobacco.

Sergeant Albert Sanforosa testified that, when he entered the tavern on the morning of January 11, he saw Detective Hannah confiscate a hand-rolled cigarette and noted that Bente was standing at the door of the tavern. After marihuana was found on Bente, he was placed under arrest and, shortly thereafter, the other persons were arrested and taken to police headquarters. Three of the individuals were subsequently charged with unlawful possession of narcotics and, after trial in the municipal court, the complaints were dismissed.

At the Division hearing Thomas Ferraro (the licensee) testified that he has held the license at these premises for the past two years and has never had any convictions for violation of the Alcoholic Beverage Law. He was present at the licensed premises on January 10-11 "walking around the tables and the bar." He denied observing any transactions or exchange of cigarettes or money, or anything else that might give him any suspicion that such illegal activity was taking place on the premises. As far as he was concerned, there was "no reason for me to be suspicious of anything because there was nothing going on."

Miss Joan Licata (a waitress employed on the premises on the dates in question) stated that she was present during the entire evening, had an opportunity to observe the various tables and the patrons, and saw no unusual behavior or activity which would have aroused any suspicion that illegal activity was taking place on the premises.

Robert F. Bente (heretofore identified as the person who was handing out envelopes and receiving money) vigorously denied that he was engaged in such activity. He stated that he was searched both in the tavern and at police headquarters and the only thing he had on his person was eighty-five cents. He was subsequently tried and acquitted in the municipal court.

In order to meet the burden required by Rule 6 of State Regulation No. 15 appellant must show manifest error and that the action of the Board was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L. 502 (1947). We are dealing here with a purely disciplinary measure and its alleged infraction. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (1948). Thus these cases require

proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956). Furthermore, the general rule is that the finding in these cases must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. The charge must be established by affirmatively satisfactory evidence. See Re Silidker, Bulletin 405, Item 5.

Counsel for appellant argues that, in order to establish appellant's guilt under Rule 4 of State Regulation No. 20, it must be shown that the activity or enterprise allowed, permitted or suffered on the premises resulted in a conviction in a criminal prosecution, or prosecution in any court, for violation of any federal or state law or municipal ordinance. However, the licensee was specifically charged under Rule 4 of State Regulation No. 20 which states in pertinent part:

> "... nor shall any licensee allow, permit or suffer in or upon the licensed premises any unlawful possession of or any unlawful activity pertaining to narcotic drugs as defined by R.S. 24:18-2 or barbiturate, amphetamine, barbital, hypnotic or somnifacient drugs, tranquilizers or any prescription legend drug, in any form, which is not a narcotic drug within the meaning of R.S. 24:18-2...."

I have canvassed the entire record and have fully considered the testimony presented both before the Board and at this de novo hearing. It is my considered opinion that there was insufficient substantial evidence to establish guilt on the said charge. The premises were obviously very crowded, containing between seventy-five and eighty patrons. There was no testimony to establish just what was contained in the alleged envelopes involved in the "transactions" nor were any of these envelopes or their contents produced at the hearings herein. The evidence also indicates that at the very most there were three cigarettes containing marihuana. According to the laboratory report of the State Bureau of Identification only one cigarette was examined for narcotic content and established that it was a hand-rolled cigarette containing marihuana.

The axis of this charge is that the licensee allowed, permitted and suffered illegal narcotics activity to be conducted at the licensed premises. But there is not the slightest scintilla of evidence to suggest that any of the alleged "transactions" took place within the hearing or in the presence of appellant, his agents, servants or employees. Nor is there any evidence to show or impute knowledge to the licensee or the bartender then on duty.

Appellant has categorically denied any knowledge of such activity during his presence at the licensed premises and his testimony was buttressed by the testimony of the waitress who waited on the tables during the entire evening. Furthermore, Bente (the alleged suspect) denied that he possessed any marihuana and in fact was subsequently acquitted of that charge in the municipal court. In Re Kass, Bulletin 239, Item 1, Commissioner Burnett stated:

> "Unless the offense [in this case the presence of prostitutes] can be tied in and brought home to the licensees by their knowledge, or by acquiescence, which implies knowledge, I cannot, in fairness, hold them responsible. Such a thing might happen in the best regulated club....."

See Re Doyle, Bulletin 469, Item 2, and cases cited therein.

In Conner v. Fogg, 75 N.J.L. 245 (Sup.Ct. 1907), the court, in considering the terms "allowed, permitted or suffered", stated at p. 247:

> "To permit is defined as meaning to authorize or to give leave (McHenry v. Winston, 49 S.W.Rep.4), but the term 'permit' has been often used synonymously with 'suffer,' so that it may be said that one who suffers the doing of a thing which he might have prevented permits it" (emphasis added).

This Division is not unmindful of the serious problems presented by narcotics traffic and will not hesitate to act firmly where such activity takes place in liquor licensed premises. However, while the licensee has the responsibility to exercise full control of the acts and conduct of patrons in his establishment, the circumstances in this case are insufficient to show that the situation was brought to his attention or that he might have reasonably become aware of its existence. Cf. Hardy v. Newark, Bulletin 1578, Item 2; Schujas v. Bridgeton, Bulletin 1809, Item 2.

Finally, I am impressed with the fact that there was no adequate affirmative proof that these premises were generally known as or used for large-scale or commercialized narcotics activity. Further, the fact that the licensee has no prior violations or infractions of the law must be taken into consideration.

I conclude that, in the absence of substantial evidence to support this charge, appellant has met the burden imposed upon him by Rule 6 of State Regulation No. 15.

It is accordingly recommended that the action of the Board be reversed and the charge preferred against appellant be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

After careful consideration of the entire record, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 12th day of August, 1969,

ORDERED that the action of respondent Board of

Alcoholic Beverage Control for the City of Paterson in adjudging appellant guilty of the charge preferred herein be and the same is hereby reversed and the said charge be and the same is hereby dismissed.

JOSEPH M. KEEGAN
DIRECTOR

3. APPELLATE DECISIONS - EMPIRE LIQUOR CO. v. NEWARK.

EMPIRE LIQUOR CO., t/a Franklin Liquor,
Appellant,
v.
Municipal Board of Alcoholic Beverage Control of the City of Newark,
Respondent.

ON APPEAL
SUPPLEMENTAL
ORDER

Robert C. Gruhin, Esq., and Hart, Mandis, Rathe & Woodcock, Esqs., by Joseph C. Woodcock, Jr., Esq., Attorneys for Appellant
Philip E. Gordon, Esq., by Charles J. Farley, Esq., Attorney for Respondent

BY THE DIRECTOR:

On April 9, 1969, I entered Conclusions and Order herein affirming suspension by respondent of appellant's license for twenty days for sale to a minor and reimposing the suspension effective 2:00 a.m. Wednesday, April 16, 1969 and terminating at 2:00 a.m. Tuesday, May 6, 1969. Empire Liquor Co. v. Newark, Bulletin 1860, Item 1.

After effectuation of the order of suspension but before its expiration, upon appeal filed, by order dated April 17, 1969 the Appellate Division of the Superior Court stayed the suspension. The license certificate was thereupon returned to the licensee at 10:30 a.m. Friday, April 18, 1969 to permit resumption of the licensed business.

On August 4, 1969, the appeal was dismissed on the court's own motion, after notice dated July 28, 1969 from the appellant consenting to the dismissal. The balance of the suspension may now be reimposed.

Accordingly, it is, on this 15th day of August, 1969,

ORDERED that the balance of the twenty-day suspension, interrupted at 10:30 a.m. Friday, April 18, 1969, be reinstated against Plenary Retail Distribution License D-102, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Empire Liquor Co., t/a Franklin Liquor, for premises 353 Park Avenue and 162 No. 11th Street, Newark,

commencing at 10:30 a.m. Friday, August 22, 1969, and terminating at 9:00 a.m. Tuesday, September 9, 1969.

JOSEPH M. KEEGAN
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - SUM DEPOSITED ON STIPULATION ORDERED RETURNED TO INNOCENT OWNER OF SEIZED MOTOR VEHICLE - "STOLEN" ALCOHOLIC BEVERAGES ORDERED RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on February 3, 1969 of a quantity of alcoholic beverages and a Chevrolet automobile in the parking lot of Keansburg Police Department, Church Road, in the Borough of Keansburg, County of Monmouth and State of New Jersey.	Case No. 12,163 ON HEARING CONCLUSIONS AND ORDER

Matthew G. Cusack, Jr., claimant, Pro Se.
Col. Claude Hugh Toye, claimant, Pro Se.
Harry Gross, Esq., appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of R.S. 33:1-66 and State Regulation No. 28 and further, pursuant to a stipulation signed by Matthew G. Cusack, Jr. dated March 12, 1969 to determine whether 16 containers of alcoholic beverages and a 1965 Chevrolet automobile, as set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized in a parking lot of the Keansburg Police Department, Church Road, Borough of Keansburg, Monmouth County, New Jersey constitute unlawful property and should be forfeited; and, further, to determine whether the sum of $900.00, deposited by Matthew G. Cusack, Jr. with the Director, under protest, representing the retail value of the said motor vehicle which was returned to the said Matthew G. Cusack, Jr. should be forfeited or returned to him.

At the said hearing Matthew G. Cusack, Jr. appeared and sought the return of the money deposited by him, under protest, under the aforementioned stipulation.

Colonel Claude Hugh Toye, appeared pro se and sought the return of the seized alcoholic beverages.

The Division's case was presented through the introduction of its file in evidence with the consent of the claimants and established the following facts: On

February 3, 1969 local police officers investigated an alleged fire of the premises of the Wagon Wheel Tavern in Keansburg. The subject motor vehicle was found at or near the premises and an investigation was made to ascertain the owner of the said car.

In the motor vehicle police officers found 16 bottles of untaxed alcoholic beverages but were unable to find the registration in the vehicle.

In the course of their investigation the police arrested Louis A. Saches who was in possession of the said car and he admitted that he borrowed the said motor vehicle wherein the said alcoholic beverages were found. The said alcoholic beverages did not have any tax stamps affixed to them. Saches was charged with possession and transportation of alcoholic beverages without a license in violation of R.S. 33:1-2 and R.S. 33:1-50; he was held for arraignment in the Keansburg Municipal Court.

On April 11, 1969 the Division chemist analyzed one of the bottles of alcoholic beverages which was seized. His report, certified by the Director, discloses that the contents of this bottle consists of Famous Grouse Brand Finest Scotch Whiskey and is an alcoholic beverage, fit for beverage purposes, with alcohol by volume of 43.2%.

The Division records do not indicate that Saches had ever been issued a license or permit authorizing the transportation of alcoholic beverages. The file, which was admitted into evidence contained the affidavit of mailing, affidavit of publication, inventory, chemist's report and the aforementioned stipulation.

The seized alcoholic beverages are illicit because they did not contain valid tax stamps and the motor vehicle in which the said alcoholic beverages were transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-50; R.S. 33:1-66; Seizure Case No. 12,081, Bulletin 1856, Item 2; Seizure Case No. 11,164, Bulletin 1565, Item 5.

Matthew G. Cusack, Jr., testifying in support of his claim for the return of the deposit posted under protest with the Director, under the aforesaid stipulation, gave the following account: He is the owner of the said motor vehicle and produced supporting documents. He resides in New York City and is a high school teacher employed in that city.

Saches, who is a friend of his aunt, requested and was granted permission to borrow the vehicle for the purpose of transporting a television set and other items to his home. This claimant had loaned the car to Saches on prior occasions and asserts that he did not know or have any reason to believe that he was going to drive this motor vehicle to New Jersey or transport any alcoholic beverages.

Claude Hugh Toye, testifying in support of his claim for the return of the alcoholic beverages gave the following account: He is a member of the Great Britain delegation to the United Nations, and resides at 1155 Park Avenue. Some time between the first and third of February,

1969 a burglary occurred at his premises and the alcoholic beverages set forth in Schedule "A" were taken from his apartment. I am satisfied from his testimony that he sufficiently identified the alcoholic beverages which he states that he purchased from the prior occupant of the said apartment. He does not know nor has he ever seen Saches before the date of this hearing.

Saches, testifying on behalf of these claimants, corroborated the testimony of Cusack to the effect that he borrowed Cusack's motor vehicle and never informed Cusack that he intended to use the same for unlawful liquor activity. He stated that he is employed as a doorman at 1155 Park Avenue; that he received the liquor from a "Puerto Rican I worked with", who sold him the stolen portable television set for $48.00 and received the alcoholic beverages gratuitously. He then drove the motor vehicle toward his mother's home in Keansburg. He finally admitted that he did not have any permit authorizing the transportation of the said alcoholic beverages.

I am satisfied from the evidence presented that the claimant, Cusack, acted in good faith and did not know or have any reason to believe that Saches was or would be involved in the unlawful transportation and possession of alcoholic beverages for which his motor vehicle would be used. I therefore recommend that his claim be recognized; and that the money deposited by him, under protest, with the Director pursuant to the stipulation herein executed, be returned to him. Seizure Case No. 11,765, Bulletin 1715, Item 7; Seizure Case No. 10,975, Bulletin 1507, Item 3.

I am also satisfied that Colonel Toye is the owner of the seized alcoholic beverages; that said alcoholic beverages were stolen from his apartment; and that he was an innocent victim thereof.

Accordingly, it is further recommended that his claim be recognized and that an Order be entered directing the return of the said alcoholic beverages. R.S. 33:1-66 (e) and State Regulation No. 28.

Conclusions and Order

No exceptions were taken to the Hearer's Report pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is on this 14th day of August, 1969

DETERMINED and ORDERED that the sum of $900.00, representing the appraised retail value of the motor vehicle, more particularly described in Schedule "A" herein, which was returned to the claimant, Matthew G. Cusack, Jr., paid under protest pursuant to a stipulation signed by him, shall be returned to him; and it is further

DETERMINED and ORDERED that the alcoholic beverages

set forth in Schedule "A" herein be and the same shall be returned to the claimant, Colonel Claude Hugh Toye.

JOSEPH M. KEEGAN,
DIRECTOR

SCHEDULE "A"

16 - containers of alcoholic beverages
1 - 1965 Chevrolet automobile, Serial No. 138375B176133, New York Registration 8V-5771.

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT LANGUAGE AND CONDUCT) - INTOXICATED EMPLOYEE - LICENSE SUSPENDED FOR 95 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

VERONA INN, INC.
141 Bloomfield Avenue
Verona, New Jersey

Holder of Plenary Retail Consumption License C-1 issued by the Borough Council of the Borough of Verona

CONCLUSIONS AND ORDER

George T. Rawding, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on April 23, 1969, it (1) permitted lewdness and immoral activity (foul, filthy, indecent and obscene language and conduct) on the licensed premises, in violation of Rule 5 of State Regulation No. 20, and (2) permitted a bartender to work while intoxicated, in violation of Rule 24 of State Regulation No. 20.

Reports of investigation disclose that an officer of the corporate licensee, tending bar in the licensed premises, was actually or apparently intoxicated and, in full view and hearing of the patrons, conducted himself in an immoral and obscene manner. While accepting orders from patrons, he made indecent gestures on several occasions by placing his hand on his genital area and grabbing himself through his pants. He accompanied said performance by lewd and obscene remarks.

Licensee has a previous record of suspension of license by the Director for fifteen days effective April 16, 1958, for permitting acceptance of horse race bets on the

licensed premises. Re Verona Inn, Inc., Bulletin 1224, Item 2.

The prior record of suspension for dissimilar violation more than five years ago disregarded, the license will be suspended on the first charge for seventy-five days (Re Camden Oasis Motel, Inc., Bulletin 1793, Item 4) and on the second charge for twenty days (Re Bozzone, Bulletin 1732, Item 2), or a total of ninety-five days, with remission of five days for the plea entered, leaving a net suspension of ninety days.

Accordingly, it is, on this 12th day of August, 1969,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Verona to Verona Inn, Inc. for premises 141 Bloomfield Avenue, Verona, be and the same is hereby suspended for ninety (90) days, commencing at 2:00 a.m. Tuesday, August 19, 1969, and terminating at 2:00 a.m. Monday, November 17, 1969.

Joseph M. Keegan
Director