

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

BULLETIN 1557

April 29, 1964

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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.

BULLETIN 1557

April 29, 1964

1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -
PRIOR RECORD OF PRINCIPAL STOCKHOLDER - LICENSE SUSPENDED FOR
180 DAYS.

In the Matter of Disciplinary)
Proceedings against)

CLUB TEQUILA, INC.)
t/a Club Tequila)
49 Pennington Street)
Newark 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-292, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
-----)

Irving J. Zwillman, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On May 8, 10 and 11, 1963, 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 persons who appeared to be homosexuals, e.g., females impersonating males, 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 licensed 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 10 and 11, 1963, 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., Susan ---, age 18, and Josephine ---, 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."

Five ABC agents participated in an investigation of the licensed premises, which resulted in the preferment of the charges. The primary testimony was given by Agent S. The direct testimony of the other four agents, essentially corroborating his version of what occurred on the dates alleged herein, was stipulated by counsel with leave, of course, for cross-examination of those agents by counsel for the licensee.

At the outset of this hearing, the attorney for the Division represented that, with respect to Charge 2, which

alleges the sale, service and delivery of alcoholic beverages to minors and their consumption of same, the Division was unable to effect service of subpoenas upon the said minors. One of the minors had moved from the address given to the agents and her present whereabouts is unknown; the other minor resides outside the state and has failed to respond to a request to testify herein. Neither of the alleged minors was present at the time of the hearing. Under the circumstances, the Division was in a position "where it was not possible to establish their ages." Upon motion duly made by the Division's attorney, I therefore recommend that a nolle prosequi be entered with respect to the second charge.

Therefore, consideration of the testimony will be limited to the allegations of the first charge.

Agent S testified that he visited the licensed premises on the evenings of May 8 and 10, continuing into the early morning of May 11, 1963. At about 8:40 p.m. on the evening of May 8, he entered the premises and remained there until 9:45 p.m. After he departed, Agent B entered the premises. He returned to the tavern on Friday, May 10, at about 11:30 p.m. in the company of Agent B and seated himself at the bar. He noted that Agent O and Agent C were already seated nearby. Tending bar at this time were Anthony Faliveno, president of the corporate licensee, Jerry Faliveno and Frank Fernandez, all of whom were personally identified at this hearing.

Of the fifty-two patrons who were then present and being entertained by a musical trio called "The Frenchmen", thirty-two were women. Twenty-six of these women patrons particularly attracted the attention of the agents because of their dress, actions, gait and mannerisms. They appeared to be more masculine than feminine and, in the opinion of the agents, were apparent lesbians.

They were more particularly described as follows: "They all possessed close cropped hair, no makeup as females use, no earrings. Their shirts were men shirts buttoned from right to left. Their pants were men's pants with flies in them. They had on wristwatches -- men's large wristwatches and signet rings. Their shoes were loafers and western type boots. Some wore denim jackets and some had men shirts on with the sleeves rolled up."

The agents further noted that these apparent Lesbians drank mostly beer by grabbing the bottle and drinking directly therefrom. They also held their cigarettes in a fashion used by males, "their gait was a heavy walk like that of a male and their speech was also heavy, not squeaky like a usual woman's but heavy like a male."

Agent S also observed their actions and mannerisms while they played at the pool table, and remarked that they played the game and held the sticks in much the same way as a male would characteristically hold the same. He also sighted them on the dance floor "dancing close to each other and petting each other on the back of the neck as they were dancing...They danced close together with the arms around each other's neck and patting the necks." Female danced with female. It was therefore the conclusion of these agents that they were females impersonating males, i.e., female homosexuals commonly called lesbians.

Agent S then engaged Frank Fernandez, the bartender, in a conversation and asked him whether there were any "straights"

in the place; and he answered "No. If you find two, save one for me."

At about 12:45 a.m. on May 11, he identified himself to Anthony Faliveno, the president, who was then also bartending, and they went to Newark Police Headquarters. He questioned Faliveno about the so-called lesbians and Faliveno refused to give a statement until he conferred with his attorney.

On cross-examination this agent stated that he made notes of the activities as testified to and admitted that, on his visit of May 8, he did not observe any of the activities or any of the persons as alleged in this charge. He also was questioned closely about the dress of these apparent lesbians, as hereinabove described, and drew a clear distinction between their dress and the dress of normal females.

Agent B testified that on his visit to these premises on May 8, 1963, which commenced after Agent S had departed the premises, he noted two females who, in his opinion, appeared to be females impersonating males because of the following characteristics: they drank beer directly from the bottle; they wore men's white shirts; one wore a man's type dungaree and one wore a man's pair of black slacks; their hair was closely cropped and swept back; they wore no makeup; they played pool and walked in a manner hereinabove described and, in his opinion, appeared to be females acting like males, "in other words, homosexuals which are commonly known as lesbians."

On cross-examination the agent emphasized that the particular manner in which these persons smoked their cigarettes on the dates herein alleged was that of a male and not of a female. It was this, together with all the other characteristics, mannerisms and conduct, which produced in his mind the judgment that those patrons were apparent lesbians.

Agent O testified that he visited the premises on May 10, 1963 at about 10:40 p.m. but remained on the outside thereof at a point of observation. At 12:35 a.m. of May 11, by prearrangement, he was joined by Agent S. Thereupon, in the company of local police officers, they entered the tavern and identified themselves to Faliveno. There were about fifty patrons therein, of whom twenty-five to thirty were females. Of the females, twenty attracted his attention because they appeared to be lesbians and had the dress, gait, mannerisms and conduct heretofore described by the other agents.

Anthony Faliveno, testifying on behalf of the corporate licensee, stated that he was its president and major stockholder and denied that there were any women playing pool at the table on May 8, as described by the agents. In fact, there were only "three or four people all night hanging around when I was there to closing." He had just purchased this business and insisted that May 10 was actually the first occasion on which there was substantial business.

He categorically denied that there were any lesbians or apparent lesbians in or on his premises on the night of May 10 or early morning of May 11. He was asked whether there was anything irregular about the conduct of the female patrons or whether they danced with each other and his answer was:

"Well, they danced and I went out there to break it up because I got signs up there 'No Dancing.' The first thing I did was put signs up there 'No Dancing' ...

Q In other words, you didn't permit any dancing?

A No."

He further asserted that the place was too busy and too crowded, and he didn't see anything wrong.

He was asked on cross-examination the following question:

"Q Do you know what a homosexual is?

A No, I don't think so. I don't know."

He further admitted that, although he has been in the liquor business for twenty-six or twenty-seven years, he doesn't know what a homosexual is, what they do, and in fact the word "homosexual" doesn't mean anything to him.

He further admitted that he saw these couples dancing and he frequently went to "break it up"; also, he did note that "some were dancing the twist by themselves." He explained that when two women were dancing together, they were usually dancing the twist. This witness further admitted that while some of the female patrons had close cropped hair, he did not observe their particular dress, gait, mannerisms or other characteristics as described by the Division witnesses. He was then asked the following question:

"Q If you were to see in any place, whether your tavern or otherwise, a group of women, twenty-six of whom were dressed in the manner that the agents testified to were dressed and who conducted and deported themselves in the manner that the agents say that these people did, would you have a thought that they appeared to be homosexuals?

A No, I wouldn't have no thought."

And further:

"Q And isn't it true that the Club 32, Inc., when it was located at 47 Pennington Street, when you were connected with it, was twice suspended on homosexual charges involving lesbians?

A That's right."

The witness insisted that notwithstanding his experience with the tavern next door, he still could not tell what a Lesbian is. "It's absolutely hard to believe but I don't know what they are and I never did."

Frank Fernandez, the bartender, also denied that there were apparent lesbians in these premises and sought to explain that many women working in nearby factories dressed as were the patrons on these dates. When pressed, on cross-examination, as to whether the appearance, conduct, behavior and mannerisms of the female patrons, as described by the agents, aroused any suspicion in his mind that they might be possible homosexuals, this witness stated that it did not, because he did not pay any attention to them.

Agent S, recalled in rebuttal, insisted that at no time during his presence on May 10 and 11 at the premises did Faliveno ever stop or attempt to discourage any of the dancing of the female patrons.

A careful analysis and evaluation of all of the testimony presented, together with my observation of the witnesses, lead me to the unmistakable conviction that the narrative presented by the Division witnesses of what transpired on the dates in question is a credible, factual and true version. On the contrary, I was singularly unimpressed with the credibility of the witnesses for the licensee.

I consider most remarkable the testimony of Faliveno in view of the recent history of his association with licensed premises the license of which was twice suspended for the very type of activity with which the licensee is being charged herein.

As recently as May 8, 1963, Faliveno was the manager of the 32 Club, Inc., the license of which was suspended upon finding of guilt of permitting homosexual activities involving females impersonating males and males impersonating females. At the trial on that charge before this Division (Re 32 Club, Inc., Bulletin 1444, Item 3, and Bulletin 1471, Item 2), Faliveno took the stand and testified in much the same manner as he testified in this case, particularly in the latter case which was heard by me. At that time, he also testified that he does not know what an apparent lesbian is nor could he recognize one. Now he similarly denies knowing what a homosexual is, and more particularly what an apparent lesbian is, how she dresses, how she conducts herself, or any of her mannerisms or characteristics.

If the agents' testimony is to be believed, and I am convinced that their testimony represents the true situation, then it requires only ordinary frankness to state that his professed inability to recognize apparent lesbians was insincere, ingenuine and, indeed, dishonest. As the Director observed in Re Simmons, Bulletin 1406, Item 2:

"I believe that, with exceptions infinitesimal and remote, it takes only common sense, with a reasonable amount of judgment based upon observation as to garb and conduct (abnormal for a woman), to distinguish a so-called lesbian from a normal woman."

The licensee cannot avoid his responsibility by merely closing his eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent improper use of the premises. Re Ehrlich, Bulletin 1441, Item 5; Bilowith v. Passaic, Bulletin 527, Item 3.

And finally, Judge Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J. Super. 43, 52, said:

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

And, as was pointed out in Re Polka Club Inc., Bulletin 1045, Item 6:

"Rigid enforcement of the regulations...is essential to the preservation of decency and the protection of the public morals."

One further observation: in view of Faliveno's repeated protestations of inability to recognize the unlawful situations

presented in this and in the prior cases in which he was involved, and in further view of his apparent lack of understanding of the significance of the evils sought to be suppressed, it would seem to be the better part of wisdom that he get out of the tavern business at the earliest possible moment.

A consideration of all of the facts adduced herein, and the legal principles applicable thereto, satisfies me that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the believable evidence. I therefore recommend that the licensee be found guilty on Charge 1. Re Carelis, Bulletin 1393, Item 2; affd. Carelis v. Division of Alcoholic Beverage Control, App. Div. 1961, not officially reported, reprinted in Bulletin 1430, Item 1.

Licensee-corporation has no prior adjudicated record. However, Anthony Faliveno, its president and 80% stockholder, was actively involved, as manager of the licensed business, in violations which resulted in suspension of license of 32 Club, Inc. for premises 47 Pennington Street, Newark (next door to the instant licensed premises) by the Director for one hundred ten days effective July 23, 1962, for permitting apparent homosexuals on the licensed premises, failure to possess copy of license application, and hindering investigation. Re 32 Club, Inc., Bulletin 1471, Item 2. Likewise, he was also actively involved, as manager, in violations which resulted in previous suspension of license of 32 Club, Inc. by the Director for forty-five days effective March 5, 1962, for permitting apparent homosexuals and hostess activity on the licensed premises. Re 32 Club, Inc., Bulletin 1444, Item 3. Further, he was secretary-treasurer and 50% stockholder of 17 Club, Inc., whose license for premises 17 William Street, Newark, was revoked by the Director, effective November 24, 1952, for permitting solicitation for prostitution and conducting a fight pool on the licensed premises. Re 17 Club, Inc., Bulletin 949, Item 2; affd. In re 17 Club, Inc., 26 N. J. Super. 43 (App. Div. 1952), reprinted in Bulletin 970, Item 1.

The established minimum penalty for an unaggravated first offense as alleged in Charge 1 is suspension of license for sixty days. See, for example, Re Cappuccio, Bulletin 1543, Item 3. However, in view of the involvement of Anthony Faliveno, the licensee's principal stockholder, in the previous similar violations of 32 Club, Inc., of which he was manager, and his involvement in the violations of 17 Club, Inc., in which he was a 50% stockholder, it is recommended that the license be suspended for one hundred eighty days. Cf. Re Tooley's Bar, Inc., Bulletin 1533, Item 10; 1643 Atlantic Avenue Corporation v. Division of Alcoholic Beverage Control, 81 N. J. Super. 147 (App. Div. 1962), reprinted in Bulletin 1545, Item 1. In addition, it is recommended that both the licensee and Anthony Faliveno be warned that any future similar violation committed by the licensee or any licensee with whom Faliveno is connected in either an ownership or employment capacity may result in outright revocation of the license.

Conclusions and Order

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

Having carefully considered the transcript of the proceedings, the exhibits and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 5th day of March, 1964,

ORDERED that Plenary Retail Consumption License C-292, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Club Tequila, Inc., t/a Club Tequila, for premises 49 Pennington Street, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1964, commencing at 2:00 a.m. Thursday, March 12, 1964; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Tuesday, September 8, 1964.

EMERSON A. TSCHUPP
Acting Director.

2. APPELLATE DECISIONS - SOUTH JERSEY RETAIL LIQUOR STORES
ASSOCIATION v. LAUREL SPRINGS AND STERLING LIQUOR, INC.

SOUTH JERSEY RETAIL LIQUOR)	
STORES ASSOCIATION,)	
)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
MAYOR AND COUNCIL OF THE)	
BOROUGH OF LAUREL SPRINGS, and)	
STERLING LIQUOR, INC.,)	
)	
Respondents.)	

Richman, Berry & Ferren, Esqs., by Edwin T. Ferren, III, Esq.,
Attorneys for Appellant.
A. Donald Bigley, Esq., Attorney for Respondent Mayor and Council.
Evoy & Feinberg, Esqs., by Robert C. Beck, Esq., Attorneys for
Respondent Sterling Liquor, Inc.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent Mayor and Council which, by unanimous vote of the Council, granted a plenary retail distribution license to Sterling Liquor, Inc. for premises to be constructed at 211 White Horse Pike, Laurel Springs.

Appellant contends in its petition of appeal that the action of respondent was erroneous for the following reasons:

- "a. The granting of said license is socially undesirable.
- b. The granting of this license is a violation of the Alcoholic Beverage Control Laws of the State of New Jersey and the regulations promulgated by the Director of the Division of Alcoholic Beverage Control.
- c. The granting of said license to Sterling Liquor, Inc. was arbitrary and unreasonable.
- d. The respondent, Municipal Board of Alcoholic Beverage Control of Laurel Springs was guilty of abuse or discretion and a mistake of law and fact in granting the license.

- e. There is no public need or necessity for the issuance of said license to the premises in question as this area is amply served by the present existing outlets.
- f. Certain principal stockholders of Sterling Liquor, Inc. are unqualified to own stock in a corporation that holds a Plenary Retail Distribution License in that the husband of Esther C. Slasor is a salesman of Alcoholic Beverages."

The respondents moved to dismiss the petition of appeal on the ground that, since appellant has no members operating liquor establishments in Laurel Springs, it cannot be considered an aggrieved person within the meaning of the statute (R. S. 33:1-1(r)) which provides that the word "person" means:

"Any natural person or association of natural persons, association, trust company, partnership, corporation, organization, or the manager, agent, servant, officer, or employee of any of them."

Chief Justice Case, speaking for the Court of Errors and Appeals, 135 N.J.L. 502, in the matter of Hudson Bergen County Retail Liquor Stores Association v. Driscoll et als., held that the Hudson Bergen Retail Liquor Stores Association and the licensee who made up its membership were sufficiently interested in the subject matter to constitute them "aggrieved" persons within the meaning of the law. The court in no way whatsoever limited the membership of the liquor dealers Association to those who had establishments in the municipality wherein the liquor license was issued.

At the outset I shall discuss the contention advanced by appellant that the license in question could and should not have been issued to respondent corporate licensee because Esther Slasor, president and holder of ninety-eight per cent. of its capital stock, is the wife of Gaylord Slasor, employed as a solicitor for a beer distributor in this state.

Esther Slasor testified that she purchased the property whereon the licensed premises is to be constructed and that her husband has no interest in the license or the business to be conducted thereunder.

Appellant called Gaylord Slasor as a witness in an endeavor to prove that he had a proprietary interest in the said licensed business. The testimony of Mr. Slasor disclosed that he accompanied his wife to the meeting when the various applicants for the license were interviewed, but there is no evidence that he spoke to any members of the respondent Council for the purpose of influencing the members to give favorable consideration to the respondent corporate licensee of which his wife is president and major stockholder. Mr. Slasor admitted that he spoke to a Mr. Giacobbe who operates a delicatessen store next door to the proposed premises concerning the possibility of placing a driveway behind Giacobbe's store both for use by his customers and also prospective customers of the respondent licensee. Also he testified that he engaged in conversation with other persons regarding the wife's intention to operate a package goods store.

Edward Kurtzman, president of appellant Association, testified that in April 1963 Mr. Slasor spoke to him, during which conversation he mentioned that his sons were interested in obtaining a liquor license in Laurel Springs. Kurtzman

further testified that he made no formal objection before respondent issuing authority to the issuance of the license in question.

John W. Hahn, Mayor at the time the application for the liquor license to respondent licensee was approved, testified that there were five applicants for said license. All applicants appeared at a meeting of the respondent Mayor and Council for the purpose of being interviewed with reference to the kind of building which they proposed to erect or use as a licensed premises and also the manner and type of operation of the business. The members of the respondent Council interrogated the applicants and then continued the matter to a meeting on October 15, 1963. At the latter meeting the members of the Council voted unanimously to issue the plenary retail distribution license to respondent Sterling Liquor, Inc.

Appellant's main challenge to the issuance of the license in question to respondent corporate licensee is that the husband of the president and largest stockholder thereof is employed as a solicitor for a beer distributor in this state. Hence appellant claims that, because this being so, such relationship is in violation of R.S. 33:1-43 which provides:

"It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages except as provided in this chapter, and such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said brewery, winery, distillery, rectifying and blending plant or wholesaler...."

The aforesaid provision has been construed by this Division to mean that, because one spouse has an interest in a wholesale liquor license, it does not per se prohibit or disqualify the other spouse from having an interest in a retail liquor license. As was stated by Commissioner Burnett in Re Rosenberg, Bulletin 125, Item 1:

"As used in the statute, interest, generally speaking, is something by virtue of which there is derived an advantage or profit or which involves some proprietary right or share. However, the mere relationship of husband and wife does not necessarily, as a matter of law, make them interested, in that sense, in each other's business activities. Married women have the capacity to bind themselves by contract in the same manner and to the same extent as though they were unmarried and such contracts are legal, and may be endorsed at law by or against a married woman in her own name. They may acquire property. Wages and earnings gained in any employment or occupation carried on separately from the husband, and all investments, are their sole and separate property as though they were single women. They may sue and be sued in their own names, separately, and any property belonging to them is liable to satisfy their debts in the same manner as if they were unmarried."

Commissioner Burnett also added:

"I am not in favor of husbands and wives being, respectively, in the wholesale and the retail liquor business or vice versa. The opportunities are great for subterfuge and evasion. From the control standpoint, I don't like it at all. I must, however, permit it because it is technically legal but each such situation will be scrutinized with the utmost care to the end that constant compliance is made both with the letter and the spirit of Section 40" (of the Alcoholic Beverage Law, now R. S. 33:1-43).

See also Bambo v. Belleville and Aquino, Bulletin 353, Item 6; Re Shahadi, Bulletin 603, Item 3, and Hudson Bergen County Retail Liquor Stores Association v. West New York and Innocenti, Bulletin 861, Item 8.

It is apparent from a reading of the aforementioned that the determination as to whether the two business relationships are separate from one another is of paramount importance.

Appellant called and examined various witnesses, including the Slasors, in an attempt to elicit certain information to show that the wife was merely acting as a front for the husband. However, the testimony given by them was insufficient and inconclusive with reference thereto. It appears that Mr. Slasor mentioned to Mr. Giacobbe that his wife intended to go in the retail liquor business. He also spoke to Mr. Kurtzman with reference thereto. Mr. Kurtzman testified that Mr. Slasor mentioned that his sons were interested in obtaining a package goods license rather than the wife. Be that as it may, it does not have any significance with reference to the matter now under consideration.

I am satisfied from the evidence adduced herein that Mr. Slasor has no financial or other interest in the respondent corporate licensee. Furthermore, there is absolutely no evidence that any member of the respondent Council was improperly motivated. It appears that in all respects proper consideration was given by the members of the respondent Council to all applicants and they were satisfied that the establishment to be erected and operated by the respondent Sterling Liquor Inc., when compared with the type of premises and proposed operation by the other applicants, would be of greater benefit to the municipality.

Insofar as the other reasons set forth in the petition of appeal are concerned, the record is barren of adequate proof to warrant serious consideration.

I recommend, after careful examination of the evidence adduced in the instant case and also of the memorandum filed by the attorneys for the appellant, that the action of the respondent Mayor and Council, in approving the application and the issuance of the license be affirmed and that the appeal herein be dismissed.

Conclusions and Order

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for appellant.

With respect to any curtesy interest of Gaylord Slasor in the real property on which the licensed premises is located,

since such interest is inchoate and defeasible in several ways, such interest is deemed too remote to constitute a disqualifying interest in the license or licensed business in violation of the alcoholic beverage law or regulations.

After carefully considering the evidence presented herein, the memoranda filed by the respective attorneys, the Hearer's Report, the exceptions thereto and written argument filed in behalf of appellant, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 3rd day of March, 1964,

ORDERED that the action of respondent Mayor and Council of the Borough of Laurel Springs be affirmed, and that the appeal herein be and the same is hereby dismissed.

EMERSON A. TSCHUPP
Acting Director.

3. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -
LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

ROSE MARY, INC.)
t/a Monroe Tavern)
321 - 61st Street)
West New York, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-19, issued by the)
Board of Commissioners of the)
Town of West New York.)

Krivit & Krivit, Esqs., by Maurice M. Krivit, Esq., Attorneys
for Licensee.

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

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 7 and December 13-14, 1963, it conducted the licensed place of business as a nuisance, viz., permitting the congregation of apparent male homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates mentioned, the licensed premises was patronized by large numbers of apparent male homosexuals, viz., on December 7 thirty-four out of a total patronage of thirty-six and on December 13-14 forty-eight out of a total patronage of fifty-three.

Absent prior record and on the basis of the facts appearing (simple congregation of a relatively large number of apparent homosexuals), the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Cherkas, Bulletin 1536, Item 3.

Accordingly, it is, on this 4th day of March, 1964,

ORDERED that Plenary Retail Consumption License C-19, issued by the Board of Commissioners of the Town of West New York to Rose Mary, Inc., t/a Monroe Tavern, for premises 321 - 61st Street, West New York, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a.m. Wednesday, March 11, 1964, and terminating at 3:00 a.m. Tuesday, May 5, 1964.

EMERSON A. TSCHUPP
Acting Director.

4. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - LICENSE
SUSPENDED FOR 15 DAYS - NO REMISSION FOR PLEA ENTERED AT
HEARING.

In the Matter of Disciplinary)
Proceedings against)

ANTHONY MOSER & ESTELLE MOSER)
1515 Summit Avenue)
Union City, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-177, issued by the)
Board of Commissioners of the City)
of Union City.)
-----)

Joseph Mocco, Esq., Attorney for Licensees.

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

BY THE ACTING DIRECTOR:

At the hearing herein, licensees pleaded non vult to a charge alleging that on February 7-8, 1964, they permitted gambling, viz., the playing of a pool game for money stakes, on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days (Re Riverside Cocktail Lounge, Inc., Bulletin 1550, Item 15) without remission for the plea entered at the hearing (Re 315 Halsey, Inc., Bulletin 1495, Item 5).

Accordingly, it is, on this 3rd day of March, 1964,

ORDERED that Plenary Retail Consumption License C-177, issued by the Board of Commissioners of the City of Union City to Anthony Moser and Estelle Moser for premises 1515 Summit Avenue, Union City, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Tuesday, March 10, 1964, and terminating at 3:00 a.m. Wednesday, March 25, 1964.

EMERSON A. TSCHUPP
Acting Director.

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION WITHOUT
LICENSE - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)	Case #11,156
November 9, 1963 of a quantity)	
of alcoholic beverages, in the)	
northbound lane, 36 Milepost,)	CONCLUSIONS
New Jersey Turnpike, in the Town-)	AND ORDER
ship of Mount Laurel, County of)	
Burlington and State of New Jersey.)	

Belton McGirt, Pro se.

I. Edward Amada, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey and State Regulation No. 28, to determine whether a quantity of alcoholic beverages, more particularly described in an inventory herein-after referred to, attached hereto, made part hereof, and marked "Schedule A", seized on November 9, 1963 on the New Jersey Turnpike, Milepost 36, in Mount Laurel Township, constitutes unlawful property and should be forfeited.

When this matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of the alleged owner of the said alcoholic beverages who sought its return. It should be noted that a hearing on an application for the return of the motor vehicle in which the said alcoholic beverages were located and found, was held in this Division in advance of the statutory hearing, pursuant to Rule 1 of State Regulation No. 28, on the claim of Mrs. Ruth Brewer, the owner of the said motor vehicle. This hearing was held on the allegation of the said owner that irreparable injury would result if she were required to await the outcome of a statutory hearing.

As a result of that hearing, the Director determined that the said Mrs. Ruth Brewer, the owner of the motor vehicle, was entitled to the return of the said vehicle because there was no proof offered to show that she had knowledge of the unlawful use to which her motor vehicle was put, or of such acts as would have led a person of reasonable prudence to discover such use. Accordingly, an Order was entered on December 6, 1963, directing the return of the said motor vehicle to her upon payment of the costs of its seizure and storage. (Bulletin 1545, Item 5.)

At the preliminary hearing Belton McGirt, the claimant herein, testified on behalf of Ruth Brewer who was represented by an attorney. It was announced prior to the taking of testimony at that time that whatever testimony would be taken on that day shall become part of the record of the statutory hearing, and could be considered as fully incorporated therein if and when such statutory hearing became necessary.

McGirt was sworn at this hearing and stated that he had no additional testimony to offer with respect to his claim.

The facts, as they appear from the reports of ABC agents and other documents in the file, presented in evidence with the consent of the claimant therein, reflect the following:

On November 9, 1963 at about 11:25 p.m. a New Jersey State trooper, during the course of his routine patrol of traffic on said highway, stopped the said motor vehicle on the New Jersey Turnpike, Milepost 36 in Mount Laurel Township. The car was being driven at an unlawful rate of speed by Belton McGirt, claimant herein, who was accompanied by one Louis Harris.

In the trunk of the car the trooper found a quantity of taxpaid alcoholic beverages, in an amount in excess of that allowed by law, being transported from a point without the state, without a permit or license. Neither McGirt nor Harris had such special permit or license issued by the Division of Alcoholic Beverage Control. The car and alcoholic beverages were seized by the trooper, and were thereafter turned over to agents of this Division.

It further appears that Belton McGirt purchased the alcoholic beverages from a retail licensee in Baltimore, Maryland but had no invoices reflecting such purchases.

The claimant and Harris were charged with the illegal possession and transportation of alcoholic beverages in violation of R.S. 33:1-50, arraigned in the Mount Laurel Township Municipal Court and released in bail for action by the Burlington County Grand Jury.

At the prior hearing Belton McGirt testified that he lived in Washington, D. C. and is a friend of Mrs. Brewer and Louis Harris. On Saturday evening Harris invited him to take a trip to Newark to visit some friends during the Armistice Day weekend. In driving through Maryland they purchased the taxpaid alcoholic beverages because they were not sure that they would be able to purchase any liquor in New Jersey during the holidays. He insisted that the liquor was purchased for his own personal use, and to help them celebrate at a party.

R.S. 33:1-2 provides that alcoholic beverages intended in good faith to be used solely for personal consumption may be transported in any vehicle from any point outside the State in limited amounts within any consecutive period of 24 hours. It is clear that the alcoholic beverages in question were transported to the State in a quantity in excess of the permissible amounts without a special permit.

Moreover, it is clearly unbelievable and indeed, incredible, that the large stock of alcoholic beverages transported herein would be used for personal consumption. Particular reference is made to the fact that, of the 26 bottles seized, 18 were half-pint bottles of whiskey. If this claimant desired whiskey for personal consumption it is logical to assume that he would have purchased whiskey in larger bottles at considerably less cost to himself. It should also be borne in mind that one-half pints of whiskey cannot be legally sold or distributed in this state.

Claimant further asserts that he made these purchases because he wanted to entertain friends at a party. Assuming, arguendo, that this was his real purpose, it is also most improbable that purchases of one-half pint bottles would be made for that purpose. The only logical inference to be drawn is that this large quantity was being transported for the purpose of illegal resale.

One further observation: Louis Harris, who accompanied this claimant at the time of said seizure, was present at the

hearing but failed or refused to testify. His testimony would have been an important corroboration of the true nature and purpose of the claimant's visit. His failure to testify reflects adversely upon the legitimacy, validity and good faith of the said claimant.

From the evidence herein adduced, I am satisfied that the alcoholic beverages were transported in New Jersey in violation of R.S. 33:1-2 and, thus, are illicit. R.S. 33:1-1(1), cf. Seizure Case No. 10,726, Bulletin 1440, Item 6. I therefore recommend that the claim of Belton McGirt for said alcoholic beverages be rejected, and that an order be entered forfeiting the same. Cf. Seizure Case No. 9500, Bulletin 1200, Item 6.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by 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 the same as my conclusions herein.

Accordingly, it is DETERMINED and ORDERED that the alcoholic beverages listed in the aforesaid Schedule "A" constitute unlawful property, and the same be and are hereby forfeited in accordance with the provisions of R.S. 33:1-66, and shall be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

EMERSON A. TSCHUPP
Acting Director.

Dated: March 3, 1964.

SCHEDULE "A"

26 - bottles of alcoholic beverages
56 - cans of beer

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - VIOLATION BY PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

JOSEPH E. CHANCE)
t/a Southwood Bar)
859 Mantua Avenue)
West Deptford Township)
PO Woodbury, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-4, issued by the)
Township Committee of the Township)
of West Deptford.)
-----)

White and Simpson, Esqs., by John L. White, Esq., Attorneys
for Licensee.

David S. Piltzer, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on
December 30, 1963, his predecessor in interest, Marie E. Chance,

from whom the license was transferred on January 3, 1964, possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Licensee's predecessor in interest, Marie E. (Causton) Chance has a previous record of suspension of license by the Director for fifteen days, effective September 13, 1956, for sale to minors. Re Causton, Bulletin 1134, Item 10.

The prior record of dissimilar violation occurring more than five years ago disregarded, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Pal, Bulletin 1546, Item 11.

Accordingly, it is, on this 3rd day of March, 1964,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of West Deptford to Joseph E. Chance, t/a Southwood Bar, for premises 859 Mantua Avenue, West Deptford, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, March 9, 1964, and terminating at 2:00 a.m. Saturday, March 14, 1964.

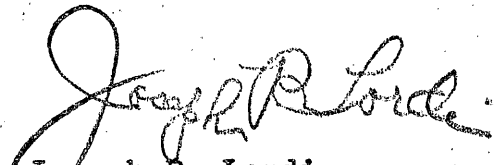
EMERSON A. TSCHUPP
Acting Director.

7. STATE LICENSES - NEW APPLICATION FILED.

Ernest Del Guercio and Anthony Francese
t/a D & F Beverage Company

113-119 Franklin Street, Belleville, New Jersey

Application filed April 29, 1964 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-137 from Watchung Spring Water Co., Inc., t/a Soda Town, 4700 South Clinton Avenue, Borough of South Plainfield, N. J.


Joseph P. Lordi
Director