

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 999

JANUARY 25, 1954.

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

LLETIN 999

JANUARY 25, 1954

APPELLATE DECISIONS - JERSEY CITY RETAIL LIQUOR DEALERS' ASSN. ET AL.  
v. JERSEY CITY AND DAL ROTH, INC.

JERSEY CITY RETAIL LIQUOR DEALERS'  
ASSN.; TUBE BAR, INC.; FINBAR, INC.;  
GRAY'S EATING PLACES OF NEW JERSEY;  
JOURNAL SQUARE BAKERY, INC.; ACE SHIRT  
SHOP, INC., all corporations of New  
Jersey; JOHN DeDOUSIS; THEODORE G. ANTOS,  
doing business as THEODORE THE FLORIST;  
MANGOR DRINK STORES, doing business as  
Gormans; and TERMINAL CAFE,

Appellants,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE  
CONTROL OF THE CITY OF JERSEY CITY, and  
DAL ROTH, INC., a New Jersey corporation,

Respondents.

ON APPEAL

ORDER OF DISCONTINUANCE

-----  
Sidney Simandl, Esq., Attorney for Appellant Jersey City Retail Liquor  
Dealers' Assn., a corporation of New Jersey.  
Halpern & Halpern, Esqs., by Michael Halpern, Esq., Attorneys for Tube Bar,  
Inc.; Finbar, Inc.; Gray's Eating Places of New Jersey; Journal Square  
Bakery, Inc.; Ace Shirt Shop, Inc., all corporations of New Jersey; John  
DeDousis; Theodore G. Antos, doing business as Theodore The Florist;  
Mangor Drink Stores, doing business as Gormans; and Terminal Cafe.  
Charles Hershenstein, Esq., of counsel, for Appellants.  
John B. Graf, Esq., by Jacob J. Levey, Esq., Attorney for Respondent  
Municipal Board of Alcoholic Beverage Control.  
Wall & Whipple, Esqs., Attorneys for Respondent Dal Roth, Inc.

BY THE DIRECTOR:

This is an appeal from the action of respondent Municipal Board of  
Alcoholic Beverage Control whereby it renewed for the current fiscal year  
a plenary retail consumption license held by Dal Roth, Inc. for premises  
9-B Journal Square Station Building, Jersey City.

After the entry of Conclusions and Order, dated June 19, 1953, by  
the Director in Jersey City Retail Liquor Dealers' Assn. et als. v. Jersey  
City et al. (Bulletin 976, Item 4), wherein the action of the respondent  
Board in granting the transfer was reversed, respondent Dal Roth, Inc.  
appealed to the Appellate Division of the Superior Court. While said  
appeal was pending, respondent Board renewed for the current licensing  
period the license held by respondent Dal Roth, Inc., and thereupon  
appellants filed this appeal. On November 6, 1953, the action of the  
Director was affirmed by the Appellate Division of the Superior Court.  
28 N. J. Super. 246.

At the hearing in the within matter on December 7, 1953, the attor-  
neys for appellants advised that they did not desire to proceed with the  
hearing scheduled to be held herein and moved to withdraw the appeal.  
Respondents then consented to said withdrawal. A written stipulation  
wherein all parties consented to the withdrawal of the within appeal was  
subsequently filed with me.

Accordingly, it is, on this 7th day of January, 1954,

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

DOMINIC A. CAVICCHIA  
Director

2. APPELLATE DECISIONS - GRIPPO v. HOBOKEN.

THERESA GRIPPO, trading as )  
 UMBRIAGO'S, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 BOARD OF ALCOHOLIC BEVERAGE )  
 CONTROL OF THE CITY OF HOBOKEN, )  
 )  
 Respondent. )  
 ----- )

ON APPLICATION

CONCLUSIONS AND ORDER

Harold Krieger, Esq., by Benjamin H. Chodash, Esq., Attorney for )  
 Appellant. )  
 Joseph B. McFeely, Esq., by William Gottlieb, Esq., Attorney for )  
 Respondent. )

BY THE DIRECTOR:

This is an appeal from respondent's 25-day suspension of appellant's plenary retail consumption license issued for premises at 121 Hudson Street, Hoboken. The suspension was imposed effective at 6:00 a.m. January 4, 1954.

Upon the filing of the appeal on December 30, 1953, I entered an order denying a stay of respondent's order of suspension and ordering a hearing to be held on January 5, 1954, to determine whether the appeal should stay respondent's order of suspension pending determination of the appeal. R. S. 33:1-31. Hearing of the appeal proper was scheduled to be held at the same time.

From the transcript of the hearing held on January 5, 1954, the following appear: A charge, dated October 29, 1953, was duly served by respondent upon Theresa Grippo, trading as Umbriago's. In said charge it was alleged:

"(1) That on October 8th and 9th, 1953, between the hours of 11:00 P.M. and 1:00 A.M. respectively, the barmaid, one Antoinette Scudiero Pesce, employed by you, did sell and serve alcoholic beverages to three minors in and upon the licensed premises, to wit: Robert W. Joyce, age 19, Anthony Lavallo, age 16, and John McGuinn, age 18 years, which was contrary to Rule 1 of State Regulations No. 20, promulgated by the Director of the Department of Alcoholic Beverage Control, which provides as follows:-

"RULE 1. No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years, or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises."

Hearing on said charge was scheduled to be heard by respondent Board on November 13, 1953. However, the hearing was not held because Theresa Grippo, by letter dated November 5, 1953, entered a plea of non vult to said charge. When the plea was entered, the Chairman of respondent Board explained to the licensee that the plea was equivalent to a plea of guilty and she admitted the sale, admitted the consumption of the alcoholic beverages by these minors, and requested that suspension be withheld until after the Christmas

holidays. Apparently in compliance with her request, respondent Board took no further action in the disciplinary proceedings until December 11, 1953, at which time it entered a resolution and order, reciting the facts, and suspending the license for a period of twenty-five days, commencing Monday, January 4, 1954, at 6:00 a.m. and ending on Friday, January 29, 1954, at 6:00 a.m. As noted, the appeal herein was filed on December 30, 1953.

At the hearing the Attorney for Appellant argued that this appeal must be heard "de novo" in accordance with the provisions of Rule 6 of State Regulations No. 15. However, as I said in The Ebony Corporation v. Trenton, Bulletin 958, Item 1:

"It is settled that in a criminal proceeding a plea of non vult has the same effect as a guilty plea. State v. Griffith, 14 N. J. Super. 77, 84, citing State v. Alderman, 81 N. J. L. 549 (E. and A. 1911) and Kravis v. Hock, 136 N. J. L. 161 (E. and A. 1947). The penalty herein appealed from was imposed not in a criminal proceeding but in disciplinary proceedings authorized by R. S. 33:1-31. The non vult plea was entered by appellant-corporation with competent counsel of its own choice. Fully mindful of the de novo provision, Rule 6 of State Regulations No. 15, I nevertheless believe it extremely doubtful that appellants have a legal right in this appeal to question or attack respondent's finding of guilt in the face of the plea...."

Here appellant, after entering and settling upon the plea with eyes wide open and fully aware of its meaning and effect, wishes to play the hand over. The rules of fair play do not call for the granting of her wish. (Cf. In Re Club 17, Inc., 26 N. J. Super. 43 (Bulletin 970, Item 1) affirming 17 Club, Inc., Bulletin 949, Item 2). Nevertheless, as in The Ebony Corporation v. Trenton, supra, testimony going to the merits was permitted at the hearing herein. Antoinette Scudiero Pesce, called as a witness on behalf of appellant, testified that she was tending bar in appellant's premises on the evening of October 8th and the early hours of October 9th, 1953; that the place was crowded; that an adult woman named Joanne was at the bar "with friends" and "she was getting a few drinks"; that, after Joanne had made other drink purchases, she ordered and paid for a whiskey highball and three beers, and that she (the witness) "put them on the bar near her"; but that she did not see Joanne hand the drinks to the three minor boys and did not see the boys in the tavern.

Appellant's Attorney argued that since Joanne "ordered and received and paid for the drinks" the charge "did sell and serve" alcoholic beverages to the minors could not stand; and, furthermore, "we (sic) didn't know whether she was buying it for herself or those sitting next to her, who were her friends at the bar."

I find the argument to be without merit. The service of the beer, although not a sale to the minors in the ordinary sense, nevertheless constituted a sale as well as service of the beer to the minors for the purpose of the Alcoholic Beverage Law (R.S. 33:1-1(w)). (See Re: Morganstern and Oliner, Bulletin 292, Item 9, cited in Re: Gahr, Bulletin 377, Item 7, in which the late Commissioner Burnett stated: "It is immaterial whether the service and delivery were effected directly by the bartender ... or indirectly by means of the minor's companion.") Licensees are "under the full responsibility of seeing to it that no minor is sold or served or allowed to consume any alcoholic beverages on the licensed premises." (Re: Hamilton Township Licensed Beverage Association, Bulletin 787, Item 8.)

I am convinced that the charge was adequate to support respondent's action, based thereon, suspending the license; and I find the licensee guilty as charged.

The Attorney for appellant argued, also, that the penalty is excessive. The power of the Director to reduce a penalty on appeal should be exercised only in those cases where the penalty imposed is manifestly unreasonable and clearly excessive. (See The Ebony Corporation v. Trenton, supra, citing Laurence Harbor Amusement Corporation v. Madison, Bulletin 955, Item 1; Triano v. Bloomfield, Bulletin 677, Item 10.) There is herein no evidence or indication whatsoever of any improper motivation on the part of respondent Board. My finding that respondent's 25-day suspension should not be reduced as arbitrary or unreasonable rests upon the instant case alone (with three minors involved -- one of them only 16 years of age) and without thought to the suspension imposed on June 21, 1950 when the license was held by appellant's husband, Ralph Grippo, for the same premises. (Re: Grippo, Bulletin 881, Item 3.)

The application for stay is denied and respondent's action will be affirmed.

Accordingly, it is, on this 11th day of January, 1954,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA  
Director.

3. STATE REGULATIONS - RULE 7b OF REGULATIONS NO. 34 PROMULGATED - AMENDED PRICE AND DISCOUNT LISTING FOR FEBRUARY 1954 MAY BE MADE EFFECTIVE ALSO FOR MARCH 1954.

January 13, 1954.

TO ALL MANUFACTURERS AND WHOLESALERS PRIVILEGED TO SELL ALCOHOLIC BEVERAGES OTHER THAN MALT ALCOHOLIC BEVERAGES:

A temporarily existing situation with respect to the wholesale pricing of alcoholic beverages other than malt alcoholic beverages (unforeseeable when applicable State Regulations No. 34 were first promulgated and later revised) threatens to create a condition which could seriously impair the effective enforcement of Regulations No. 34, and related regulations, to the detriment of the public.

On the basis of information received and experience gained in the administration and enforcement of State Regulations No. 34, it has been determined to be both desirable and necessary, in order to guard against such serious impairment, that those regulations be amended and supplemented by the inclusion of a new rule, to be operative only for the months of February and March, 1954.

Accordingly, pursuant to R. S. 33:1-93 and R. S. 33:1-39, State Regulations No. 34 are amended to include new Rule 7b, as follows:

"7b. Notwithstanding any provision of Rule 7a hereof to the contrary, any manufacturer or wholesaler may carry over into and during the month of March, 1954, the amended price and discount listing of any item to be reduced for the month of February, 1954, pursuant to Rule 7a by including in said listing, in lieu of the statement required by said rule, a statement that the amended prices and discounts therein are to be effective for both the months of February and March, 1954.

"Upon compliance with the provisions of Rule 7a and of this Rule 7b, the listings in the Wholesale Price List effective January 1, 1954, shall be deemed amended in accordance with such amended price and discount listing for the months of February and March, 1954."

DOMINIC A. CAVICCHIA  
Director.

Promulgated Wednesday, January 13, 1954.

Effective Wednesday, January 13, 1954.

Filed with the Secretary of State (N.J.) Wednesday, January 13, 1954.

DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against RUTH WEINSTEIN and MELVIN LEVENTHAL 252 Broad Avenue Palisades Park, N. J., holders of Plenary Retail Distribution License D-8, issued by the Borough Council of the Borough of Palisades Park.

CONCLUSIONS AND ORDER

Carl J. Yagoda, Esq., Attorney for Defendant-licensees. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge of selling a 26-ounce bottle of Piper Heidsieck Non Vintage Extra Dry Champagne at less than the price thereof listed in the then currently effective minimum resale price list, in violation of Rule 5 of State Regulations No. 30.

On November 20, 1953, an ABC agent entered defendants' premises and purchased from Melvin Leventhal, one of the defendants, a 26-ounce bottle of Piper Heidsieck Non Vintage Extra Dry Champagne for \$5.65. The price of said item, as set forth in the list of New Jersey Minimum Consumer Resale Prices effective October 1, 1953, was \$5.98. After making the purchase, the ABC agent left the licensed premises and returned immediately with another ABC agent who had remained outside. The agents identified themselves to Mr Leventhal who admitted the sale and stated that he had made a mistake in checking the price list.

It appears from the file that the item in question had been advertised in a local shoppers' paper at \$5.65, and that the same price appeared on the tag attached to the bottle on the shelf in the licensed premises. In alleged mitigation defendants contend that the violation was not deliberate. This, of course, cannot be accepted as an excuse. Re Montclair Food Company, Bulletin 847, Item 10.

As to prior record: Effective January 17, 1949, the Director of Alcoholic Beverage Control suspended a license then held by Matthew Weinstein and Ruth Weinstein for premises in another municipality for a period of five days after they had pleaded non vult to a charge similar to the charge herein. See Re Weinstein, Bulletin 829, Item 4. Effective February 13, 1951, the Director suspended a license then held by Anton's Wines and Liquors, Inc., for 252 Broad Avenue, Palisades Park, for a period of thirty-five days after the defendant in said proceedings pleaded non vult to charges of a dissimilar nature from the charge in this proceeding. Re Anton's Wines and Liquors, Inc., Bulletin 898, Item 5. Ruth Weinstein was the holder of fifty per cent. of the stock of said corporation. The prior record of defendants' predecessor in interest must be considered in arriving at the proper penalty to be imposed in this case. Re New Glass Bar, Inc., Bulletin 922, Item 4. In the absence of a prior record the minimum period of suspension for the violation set forth herein would be ten days. Re Markowitz, Bulletin 792, Item 9. However, in view of the fact (a) that the violation set forth herein is a second similar violation within five years and (b) that within five years there was a prior violation dissimilar in nature to the violation set forth herein (Re Goldberg, Bulletin 952, Item 5), I shall suspend the license for twenty-five days. Five days will be remitted for the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 29th day of December, 1953,

ORDERED that Plenary Retail Distribution License D-8, issued by the Borough Council of the Borough of Palisades Park to Ruth Weinstein and Melvin Leventhal, for premises 252 Broad Avenue, Palisades Park, be and the same is hereby suspended for twenty (20) days, commencing at 9:00 a.m. January 5, 1954, and terminating at 9:00 a.m. January 25, 1954.

DOMINIC A. CAVICCHIA  
Director.

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

In the Matter of Disciplinary Proceedings against )

RAYMOND BELL and HARRY BELL )  
T/a BELL'S TAVERN )  
Route #206 (formerly #31) )  
Stanhope, N. J., )

CONCLUSIONS  
AND ORDER

-----  
Holders of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Stanhope. )

Francis J. Schindelar, Esq., Attorney for Defendant-licensees.  
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendants pleaded not guilty to the following charge:

"On August 5, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Laurence Edward ---, a person under the age of twenty-one (21) years; in violation of Rule 1 of State Regulations No. 20."

At the hearing herein Laurence ---, seventeen years of age, testified that on Wednesday, August 5, 1953, he and four companions went by automobile to defendants' licensed premises; that three of his companions remained in the car while he and Harold ---, entered the defendants' licensed premises between 7:30 p.m. and 8:00 p.m.; that they went to the bar where he ordered two cases of beer from the bartender, who obtained the said cases and delivered them to him upon payment of the sum of eight dollars; that the cases were placed in the trunk of the car, after which they drove to the home of a girl where they had a party.

Raymond Eugene --- and Frank ---, two of the youths who, Laurence claimed, were with him at the time in question testified about the trip to defendants' licensed premises; that they remained in the car while Laurence and Harold went into defendants' licensed premises; that Laurence and Harold came out of defendants' premises carrying a cardboard box which they put in the trunk of the car and that subsequent thereto the cardboard box was found to contain cans of beer.

An ABC agent testified that on September 4, 1953, he and another agent were directed by Laurence, Homer --- and Harold to defendants' licensed premises which they claimed was the place where Laurence purchased two cases of beer on August 5, 1953; that later on September 4,

1953 the agents picked up Raymond Eugene who also directed them to defendants' licensed premises as the place where on August 5, 1953 Laurence and Harold entered and came out carrying a cardboard box containing cans of beer; that on September 10, 1953 Frank directed them to defendants' licensed premises as the place where two cases of beer were obtained by Laurence and Harold; that neither Laurence nor Harold identified the bartender who was alleged to have made the sale and delivery of the beer to them.

It was stipulated that the other ABC agent, "if called to testify, would testify in substance identical to what" the first ABC agent had testified.

Harry Bell, one of the defendant-licensees, testified that he was tending bar on the evening in question and that he did not see Laurence or Harold; that he and his father, Raymond Bell, are the only men who operate the tavern although his wife helps out at times; that when two ABC agents, accompanied by Laurence and Harold visited the licensed premises, he was uncertain whether he did tend bar on August 5, 1953; and that after checking with his wife he was sure that he tended bar on the night of August 5, 1953 because his father, Raymond Bell, went to a lodge meeting.

Raymond Bell, the other defendant-licensee, testified that he did not tend bar on August 5, 1953 because he was at a lodge meeting that night and that Harry Bell was tending bar.

Eleanor Bell, wife of Harry Bell, testified that she was in the defendants' licensed premises on August 5, 1953 from six o'clock in the evening until it closed and that she saw neither Laurence nor Harold in the premises that evening. She further testified that Harry Bell was tending bar and that she couldn't remember whether the place was busy on the night in question, but that she checked the receipts for that night and found them to be small.

I have carefully read the entire record and I believe the testimony of the three youths who testified on behalf of the Division. The licensees, at the time they spoke to the two ABC agents, were uncertain as to which one of them tended bar on the evening in question. Later, after talking the matter over with Harry Bell's wife, both agreed that Harry Bell was on duty on the night of August 5, 1953 and that Raymond Bell was at a lodge meeting. Eleanor Bell testified that she was at the licensed premises the evening of August 5, 1953 but saw neither Laurence nor Harold. She couldn't remember whether the place was busy at the time. The testimony adduced by the defendants appears uncertain. The testimony of Laurence, however, is unshaken concerning the purchase of the cases of beer in defendants' premises. His failure to identify the specific person or persons who served him is not fatal in disciplinary proceedings. See Re La Corte, Bulletin 469, Item 1; Re Cohen, Bulletin 495, Item 6; Re Dante, Bulletin 771, Item 9. The other two witnesses for the Division testified that they remained in the car and saw Laurence and Harold come out of defendants' premises with a cardboard box which they subsequently learned contained cans of beer. I conclude that the minor, Laurence, purchased alcoholic beverages in defendants' premises at the time mentioned in the charge.

From all the evidence I find defendants guilty as charged.

Defendants have no prior adjudicated record. Where, as here, the minor to whom alcoholic beverages were sold is only seventeen years of age, the penalty is fifteen days. Re Warhol, Bulletin 914, Item 9. Therefore, I shall suspend defendants' license for a period of fifteen days.

Accordingly, it is, on this 30th day of December, 1953,

ORDERED that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Stanhope to Raymond Bell and Harry Bell, t/a Bell's Tavern, Route #206 (formerly #31), Stanhope, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. January 6, 1954, and terminating at 2:00 a.m. January 21, 1954.

DOMINIC A. CAVICCHIA  
Director.

6. DISCIPLINARY PROCEEDINGS - HOLDER OF SOLICITOR'S PERMIT EMPLOYED BY A RETAILER OF ALCOHOLIC BEVERAGES - PERMIT SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against )

MARTIN ALBERT DONOHUE )  
104 Delacove Homes )  
Beverly, N. J., )

CONCLUSIONS  
AND ORDER

Formerly holder of Solicitor's Permit No. 2350, and now holder of Solicitor's Permit No. 3170, issued by the Director of the Division of Alcoholic Beverage Control. )  
----- )

Leo J. Berg, Esq., Attorney for Defendant-permittee.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"From July 7, 1953 to September 2, 1953, you, the holder of a solicitor's permit, were employed by and connected in a business capacity with a retail licensee, in that you were employed as a bartender at the retail licensed premises of Edmund Suez, t/a Club Avalon, s/e corner Spruce and New Jersey Avenues, North Wildwood, N. J.; in violation of Rule 7 of State Regulations No. 14."

The file herein discloses that defendant, while employed as a solicitor for a wholesale licensee, was also employed steadily from July 7, 1953, to September 2, 1953, as a bartender by a retail licensee. In alleged mitigation defendant states that he accepted this additional employment to take care of his family because he had not been doing too well as a salesman, and further stated that, when he entered into this arrangement, he was not aware of the fact that he was doing anything illegal. However, Rule 7 of State Regulations No. 14 clearly provides that no holder of a solicitor's permit shall be employed by or connected in any business capacity with any retail licensee

Subsequent to the institution of the present proceedings defendant surrendered Solicitor's Permit No. 2350 and Solicitor's Permit No. 3170 was issued to him "subject to the outcome of disciplinary proceedings against the permittee presently pending before the Director of the Division of Alcoholic Beverage Control."

In view of the plea of non vult entered herein and the absence of a prior record or aggravating circumstances, a minimum five-day suspension of the permit which defendant now holds will be imposed. Re Fine, Bulletin 851, Item 8.

Accordingly, it is, on this 31st day of December, 1953,

ORDERED that Solicitor's Permit No. 3170, issued to Martin Albert Donohue by the Director of the Division of Alcoholic Beverage Control, be and the same is hereby suspended for a period of five days, commencing at 9:00 a.m. January 11, 1954, and terminating at 9:00 a.m. January 16, 1954.

DOMINIC A. CAVICCHIA  
Director.

DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD OF PREDECESSOR IN INTEREST NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOHN BANCO and FLORA FRANCESCHINI )  
T/a RIVERSIDE CAFE )  
207-209 W. Main Street )  
Penns Grove, N. J., )

CONCLUSIONS  
AND ORDER

holders of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Penns Grove. )

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Louis F. Di Nicola, Esq., Attorney for Defendant-licensees.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold, served and delivered alcoholic beverages to a minor in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that during the course of an investigation, Pfc. Rodney L. ---, 17 years of age, gave a statement to an ABC agent wherein he said that he entered defendants' licensed premises on the night of December 15, 1953, and purchased from Flora Franceschini, one of the defendant-licensees, twelve cans of beer. Flora Franceschini admitted that she sold the cans of beer in question to the minor but refused to make a written statement.

Defendants as partners, have no prior adjudicated record. However, effective July 22, 1946 when the license was in the individual name of John Banco, for the same premises, it was suspended five days for sale of alcoholic beverages on an Election Day. Re Banco, Bulletin 720, Item 11. Because said violation is dissimilar to the one now under consideration and occurred more than five years ago, I shall not take it into consideration in fixing the present penalty, Re Burday & Budowsky, Bulletin 970, Item 10. I shall suspend defendants' license for fifteen days -- the minimum period for a violation of this kind where the minor in question is seventeen years of age. Re Jacobs, Bulletin 995, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 5th day of January, 1954,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Penns Grove to John Banco and Flora Franceschini, t/a Riverside Cafe, 207-209 W. Main Street, Penns Grove, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., January 12, 1954, and terminating at 2:00 a.m. January 22, 1954.

DOMINIC A. CAVICCHIA  
Director.

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

RAE BOCKSTEIN )  
T/a RAE'S BAR & GRILL )  
Monmouth Jct. Hwy. #26 )  
South Brunswick Township )  
P.O. Monmouth Junction RD, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of South Brunswick. )  
----- )

Rae Bockstein, Defendant-licensee, Pro Se.  
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non-vult to a charge alleging that she sold, served and delivered alcoholic beverages to minors and permitted the consumption of such beverages by said minors on the licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that, at approximately 9:00 p.m., on Saturday, December 5, 1953, two ABC agents entered defendant's licensed premises and sat at the bar. At approximately 9:45 p.m., three males and two females entered and sat in a booth. All appeared to the agents to be minors. A waitress took their order, relayed it to the licensee who filled it and the waitress then returned to the booth and served the drinks. The males had beer while the two females had "orange blossoms" (gin and orange juice). After all of the minors had started to consume their drinks the agents identified themselves and, upon learning that all were minors, seized the drinks as evidence. One of the minors was 20 years of age, two were 19 and two were 18.

The waitress orally admitted taking the orders and serving the drinks as above related and also admitted that she did not question the minors as to their ages. Both she and the licensee refused to give a written statement.

The licensee has no prior adjudicated record. In view of the fact that five minors were involved, I shall suspend defendant's license for a period of twenty days. Cf. Re Biddulph, Bulletin 985, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 5th day of January, 1954,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of South Brunswick to Rae Bockstein, t/a Rae's Bar & Grill, Monmouth Jct. Hwy. #26, South Brunswick Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. January 12, 1954, and terminating at 2:00 a.m. January 27, 1954.

DOMINIC A. CAVICCHIA  
Director.

DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against MACE, INC., a corporation 5 Colt Street Paterson 1, N. J., Holder of Plenary Retail Consumption License C-34, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS AND ORDER

Defendant-licensee, by Charles Fatigati, President. David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that on Sunday, November 15, 1953, it (1) sold, served and delivered and allowed, permitted and suffered the sale, service, delivery and consumption of alcoholic beverages on its licensed premises during prohibited hours, and (2) failed to have its entire licensed premises closed during such hours, both in violation of a local ordinance.

An ordinance of the City of Paterson prohibits the sale, service, delivery and consumption of alcoholic beverages on Sundays between the hours of 3:00 a.m. and 1:00 p.m. and requires that licensed premises (with certain exceptions not material herein) shall be closed between said hours.

The file herein discloses that the licensed premises are located on the ground floor of a bank and office building. On Sunday, November 15, 1953, shortly after 11:00 a.m., two ABC agents arrived in the vicinity of the licensed premises. A check made by them disclosed that the front door of the licensed premises was locked. One of the agents entered the foyer of the office building and heard voices on the licensed premises through another locked door which separated the foyer from the licensed premises. After this agent reported to his fellow agent, both agents waited in the foyer. Shortly thereafter Charles Fatigati, President of defendant corporation, entered the foyer and started to remove keys from his pocket. When the agents spoke to Mr. Fatigati, he told them that the place was closed for business but the agents were admitted to the licensed premises after they identified themselves. When the agents entered the licensed premises at 11:40 a.m. they observed two male patrons seated at the bar. Each patron had a highball which John DeGraw, a porter who was behind the bar, verbally admitted he had served to the patrons.

Defendant has no prior record. I shall suspend defendant's license for a period of fifteen days. Re Feola, Bulletin 988, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 5th day of January, 1954,

ORDERED that Plenary Retail Consumption License C-34, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Mace, Inc., a corporation, for premises 5 Colt Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. January 11, 1954, and terminating at 3:00 a.m. January 21, 1954.

DOMINIC A. CAVICCHIA Director.

10. DISQUALIFICATION - CONVICTION AS DISORDERLY PERSON AND CONVICTIONS FOR VIOLATING MUNICIPAL ORDINANCE WITHIN PAST FIVE YEARS - EMPLOYMENT ON LICENSED PREMISES - APPLICATION TO LIFT DENIED.

MORAL TURPITUDE - TRANSPORTATION OF NARCOTICS.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, Pursuant )  
to R. S. 33:1-31.2. )  
Case No. 1111. )  
-----)

CONCLUSIONS  
AND ORDER

BY THE DIRECTOR:

In September 1948, petitioner pleaded guilty in a county court to the crime of unlawful transportation of narcotics, as a result of which he was placed on probation for three years and required to pay \$1.00 a week. The crime of which petitioner was convicted involved moral turpitude (cf. Re Case No. 300, Bulletin 353, Item 13) and petitioner was thereby rendered ineligible to hold a liquor license or be employed by or connected in a business capacity with the holder of such a license. R. S. 33:1-25 and 26.

At the hearing herein, petitioner admitted that, in December 1948, in a bastardy proceeding, he was required to pay \$5.00 a week for the support of a child. He further admitted that, in December 1950, again in April 1951 and again in September 1952, he was convicted in a Municipal Court of gambling (dice game) in violation of a municipal ordinance. In each case a fine was imposed. He further admitted that on February 16, 1953 he was adjudged a disorderly person in a Municipal Court and fined for failing to register as one having been convicted of a narcotics violation, as required by Chapter 230 of the Laws of 1952.

Petitioner also admitted that he and his wife had been conducting a food concession at a New Jersey liquor-licensed premises since April 1953. He testified that, although the licensee inquired with respect to his criminal record within a month after the concession had begun and, although the licensee told him that he would have to obtain permission from this Division to work on licensed premises, he did not file this petition until December 4, 1953. He further testified that he spent very little time at the licensed premises because he had a job doing construction work and that his wife and another woman conducted the food concession.

To afford petitioner the relief requested it is necessary that I find that he has been conducting himself in a law-abiding manner for five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest. See R.S. 33:1-31.2. Although his convictions for violation of a municipal ordinance and his conviction as a disorderly person do not constitute conviction of a "crime" (Case 1009, Bulletin 950, Item 8) such convictions are pertinent circumstances to be considered in determining whether or not petitioner has successfully rehabilitated himself and has been living in a law-abiding manner during the above requisite period. Moreover, petitioner has been recently connected in a business capacity with a licensee and apparently has persisted in this connection, at least to some extent, despite the fact that the licensee admonished that he should inquire into his eligibility. Under all the circumstances I cannot find that petitioner has been law-abiding for five years last past. Cf. Case No. 1095, Bulletin 991, Item 6.

The petition will be dismissed.

Accordingly, it is, on this 30th day of December, 1953,

ORDERED that the petition herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA  
Director

11. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1953 TO DECEMBER 31, 1953 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 Fees	Limited Retail Distribution		Seasonal Retail Consumption		Number Surren- dered Revoked 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	489	\$ 208,750.00	71	\$ 25,775.00	17	\$ 1,600.00					577	\$ 236,125.00	
Bergen	816	303,366.16	298	84,537.00	87	8,069.53	56	\$ 2,605.00	6	\$ 1,605.74	5	1258	400,183.43
Burlington	186	74,355.00	35	9,150.00	38	5,486.85	1	25.00			1	259	89,016.85
Camden	456	218,247.37	82	31,925.00	69	6,650.41			1	375.00	2	606	257,197.78
Cape May	133	73,550.00	11	4,000.00	18	2,100.00						162	79,650.00
Cumberland	81	40,000.00	13	3,600.00	29	3,910.00						123	47,510.00
Essex	1375	765,266.17	351	205,700.00	105	14,440.00	30	1,500.00	1	750.00	2	1860	987,656.17
Gloucester	108	34,400.00	13	2,750.00	16	1,500.00						137	38,650.00
Hudson	1553	674,355.60	298	117,746.71	76	9,024.18	67	2,900.00				1994	804,026.49
Hunterdon	79	25,250.00	6	1,862.50	6	700.00						91	27,812.50
Mercer	426	258,650.00	51	10,200.00	53	7,500.00			1	92.50	2	529	276,442.50
Middlesex	634	304,205.00	74	22,670.00	82	7,315.24	4	200.00			1	793	334,390.24
Monmouth	554	279,897.55	119	41,181.05	33	3,983.70	11	460.00	29	12,413.38	30	716	337,935.68
Morris	364	123,215.00	98	30,550.00	49	4,552.81	21	1,050.00	6	1,417.86	7	531	160,785.67
Ocean	193	105,236.31	46	19,065.00	17	1,849.32						256	126,150.63
Passaic	876	358,580.00	167	51,370.00	38	4,542.61	11	525.00				1092	415,017.61
Salem	50	19,000.00	8	1,447.40	17	1,466.30			1	262.50	1	75	22,176.20
Somerset	187	77,488.50	38	10,395.00	24	2,547.95					1	248	90,431.45
Sussex	170	45,155.00	20	3,755.00	9	535.00	1	50.00	1	225.00	1	200	49,720.00
Union	556	292,583.56	145	59,500.00	72	8,106.10	33	1,600.00			1	805	361,789.66
Warren	148	42,555.00	17	4,157.50	30	3,130.00			2	304.11	2	195	50,146.61
Total	9434	\$4,324,106.22	1961	\$741,337.16	885	\$99,010.00	235	\$10,915.00	48	\$17,446.09	56	12507	\$5,192,814.47

DOMINIC A. CAVICCHIA  
Director

January 13, 1954.

12. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION FOR LICENSE AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE EXPIRED ORDER TO BE ENTERED SUSPENDING FURTHER LICENSE FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against )

C. & D., INC., )

Holder of Seasonal Retail Consumption License CS-3, issued by the Mayor and Council of the Borough of Fort Lee for premises: )

Stand No. 2, West Side of Pool Palisade Amusement Park Fort Lee, N. J., )

and holder of Seasonal Retail Consumption License CS-1, issued by the Mayor and Council of the Borough of Cliffside Park for premises: )

Palisade Amusement Park Cliffside Park, N. J. )

-----) Bernard S. White, Esq., Attorney for Defendant-licensee. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

CONCLUSIONS

AND

ORDER

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. In their application dated April 1, 1952, filed with the Mayor and Council of Fort Lee, and in their application dated April 18, 1952, filed with the Mayor and Council of Cliffside Park, upon which they obtained their respective 1952 Seasonal Retail Consumption Licenses, your predecessors in interest, Alexander W. Creamer and Henry W. Dyer, falsely stated 'No' in answer to Question 30, which asks: 'Has any individual,.....other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?'; whereas in truth and fact Nellie Borrell had such an interest in that she was co-owner with them of the said business; such false statement being in violation of R. S. 33:1-25.

"2. In their aforesaid applications, your predecessors in interest, Alexander W. Creamer and Henry W. Dyer, falsely stated 'No' in answer to Question 31, which asks: 'Have you agreed to pay any employee, or other person, any portion or percentage of the profits or income (by way of rent, salary or otherwise) derived from the business to be conducted under the license applied for?', whereas in truth and fact they had agreed to pay Nellie Borrell 37 1/2% of the profits from the licensed business; such false statement being in violation of R. S. 33:1-25.

"3. From on or about June 10, 1935 to on or about June 11, 1952 your predecessors in interest, Alexander W. Creamer and Henry W. Dyer, knowingly aided and abetted Nellie Borrell, and from the last mentioned date to on or about November 1, 1952 they knowingly aided and abetted the Estate of Nellie Borrell, to exercise, contrary to R.S. 33:1-26, the rights and privileges of their successive Seasonal Retail Consumption Licenses issued by the Mayor and Council of Cliffside Park; thereby themselves violating R.S. 33:1-52.

"4. From on or about May 1, 1946 to on or about June 11, 1952 your predecessors in interest, Alexander W. Creamer and Henry W. Dyer, knowingly aided and abetted Nellie Borrell, and from the last mentioned date to on or about November 1, 1952 they knowingly aided and abetted the Estate of Nellie Borrell, to exercise, contrary to R. S. 33:1-26, the rights and privileges of their successive Seasonal Retail Consumption Licenses issued by the Mayor and Council of Fort Lee; thereby themselves violating R. S. 33:1-52."

The file herein discloses that Alexander W. Creamer and Henry W. Dyer, as partners, held successive seasonal retail consumption licenses from 1946 to 1952, inclusive, for premises located in Fort Lee, and successive seasonal retail consumption licenses from 1935 to 1952, inclusive, for premises located in Cliffside Park (both premises are located in Palisade Amusement Park). However, during the times aforementioned and until her death on June 11, 1952, one Nellie Borrell held an undisclosed interest in the said licenses and in the business conducted thereunder.

In the application dated April 1, 1952 filed with the Mayor and Council of Fort Lee and in the application dated April 18, 1952 filed with the Mayor and Council of Cliffside Park upon which Alexander W. Creamer and Henry W. Dyer obtained their respective 1952 seasonal retail consumption licenses, they denied that any person other than themselves had any interest, directly or indirectly, in the license or the business to be conducted thereunder, whereas, in fact, Nellie Borrell was a co-owner with them in the said licensed business. Furthermore, they denied in the two applications aforementioned that they agreed to pay any other person a portion or percentage of the profits or income to be derived from the business to be conducted under the licenses in question, whereas, in fact, they had agreed to pay Nellie Borrell and actually did pay said Nellie Borrell and her estate, respectively, 37 1/2% of the profits realized from the said licensed business.

There is nothing in the record to indicate that Nellie Borrell, now deceased, was ineligible to hold a liquor license in this State.

Alexander W. Creamer, one of the partners heretofore mentioned, died on February 4, 1953. The respective licenses in question for the 1953 summer season were duly transferred by the local issuing authorities on the applications of Henry W. Dyer, the surviving partner, to C. & D., Inc., the present defendant-licensee.

Defendant's attorney, although admitting the law was not complied with, contends in attempted mitigation of penalty that the violation is "technical in nature", as it was generally known in the amusement park and in the communities affected by the licenses that the late Nellie Borrell had an interest in the licensed business. Moreover, he further contends herein that the stockholders and officers of the present corporate-defendant, "except in the case of Henry W. Dyer (President and Treasurer), have never been party to even technical violations and it would be unjust for them to be penalized for an act to which they were not party or even cognizant." The rulings of this Division and the rules and regulations promulgated by the Director thereof are to the contrary. Re Villa Roma Hoboken (A Corp.), Bulletin 955, Item 2; Re Crawford, Bulletin 934, Item 8; Re Cummins, Sr., Bulletin 911, Item 6; Rule 2 of State Regulations No. 16.

All questions required to be answered by the statute or rules and regulations are material and a false answer to any question in the license application and any suppression of a material fact in securing a license is cause for suspension or revocation of the license. R. S. 33:1-25; Re Pike Inn, Bulletin 987, Item 7.

While the illegal operation of the licensed business no longer continues, it does not change the fact that the law was violated and that proper punishment must be imposed.

Defendant has no prior adjudicated record. Under the circumstances, I shall suspend defendant's licenses for a period of twenty days. Re Russo, Bulletin 741, Item 4.

Defendant held two seasonal retail consumption licenses which expired November 1, 1953. If issued for next summer's term, they will become effective May 1, 1954. Thus, no effective penalty can be imposed at the present time. Re Stratford Inn, A Corp., Bulletin 886, Item 8.

Accordingly, it is, on this 6th day of January, 1954,

ORDERED that any further license issued to said C. & D., Inc., or any license issued to any other person for the same premises, be and the same is hereby suspended for a period of twenty (20) days. Further order fixing the period of suspension will be entered should any license or licenses be issued to this defendant or to any other person for the premises in question.

DOMINIC A. CAVICCHIA  
Director.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Standard Brewing Company of Scranton  
Penn Ave. and Walnut St.  
Scranton, Pa.

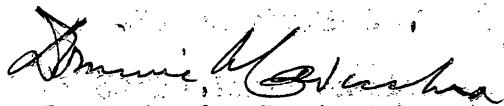
Application filed January 8, 1954 for Transportation License

Pabst Brewing Company  
221 N. LaSalle Street  
Chicago, Illinois.

Application filed January 13, 1954 for transfer of Limited Wholesale License WL-19 from Pabst Sales Company.

William DeAscentiis  
T/a Brewer's Distributors  
Rear Building 3928 Marlton Pike  
Pennsauken Township  
P. O. Camden, N. J.

Application filed January 19, 1954 for transfer of State Beverage Distributor's License SBD-39 from Bertram F. Kloidt and Nicholas R. Krauszer, t/a K & K Beverages.

  
Dominic A. Cavicchia  
Director.