

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

BULLETIN 977

JULY 13, 1953.

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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.

BULLETIN 977

JULY 13, 1953.

1. APPELLATE DECISIONS - PADALINO v. CLIFTON.

JOHN J. PADALINO,)
Appellant,)
-vs-) ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC) CONCLUSIONS AND ORDER
BEVERAGE CONTROL OF THE CITY)
OF CLIFTON,)
Respondent.)

Martin Klughaupt, Esq., Attorney for Appellant.
John G. Dluhy, Esq., by Mervyn R. Montgomery, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellant's plenary retail consumption license for a period of fifteen days after it had adjudicated appellant guilty in disciplinary proceedings of the charges hereinafter set forth. The licensed premises are located at 621 River Road, Clifton.

Upon the filing of the appeal an order, dated March 10, 1953, was entered by me staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

The charges preferred by respondent against appellant are as follows:

- "1. On Monday, December 1, 1952, between 3:00 A.M. and 1:00 P.M.; you kept open the licensed premises at #621 River Road, Clifton, New Jersey, which premises do not constitute a bona fide restaurant or hotel, during the prohibited hours, in violation of Section 3 of Ordinance #2150, adopted December 19, 1939, by the Municipal Council of the City of Clifton.
- "2. On Tuesday, December 2, 1952, between 3:00 A.M. and 1:00 P.M., you kept open the licensed premises, above mentioned, which premises do not constitute a bona fide restaurant or hotel, during the prohibited hours, in violation of Section 3 of Ordinance #2150, adopted December 19, 1939, by the Municipal Council of the City of Clifton."

The pertinent sections of Ordinance No. 2150, entitled "An Ordinance Concerning Alcoholic Beverages", approved by the Municipal Council of the City of Clifton on December 19, 1939, provide as follows:

"Section 1: No licensee shall sell, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, or allow the consumption of any alcoholic beverage on licensed premises, on week days between the hours of 3 A. M. and 7 A. M. or on Sundays between the hours of 3 A. M. and 1 P.M., excepting New Year's day, each year as hereinafter provided.

"Section 3: During these hours, sales of alcoholic beverages are prohibited. All licensed premises excepting bona fide restaurants and hotels shall also be closed."

It should be noted that in the aforesaid charges, where reference is made to Section 3 of Ordinance No. 2150, the prohibited hours therein mentioned should read "between 3 A.M. and 7 A.M."

The testimony discloses that four persons were in appellant's premises at 5:28 a.m. on December 1, 1952, and twenty-five persons at 3:35 a.m. on December 2, 1952. The appellant admits that the licensed premises were open on December 1 and December 2, 1952, between the hours of 3:00 a.m. and 7:00 a.m. He contends, however, that his establishment is a bona fide restaurant and by virtue thereof comes within the exception provided in Section 3 of the aforesaid Ordinance. In support of his contention he cites Section 1(A) of Ordinance No. 2749 of the City of Clifton, approved on December 16, 1952, entitled:

"An Ordinance Defining Restaurant, Itinerant Restaurant, Employee, Utensils, Board of Health and Other Terms, Requiring Licenses for the Operation of Such Establishments, Prohibiting the Sale of Adulterated, Unwholesome or Misbranded Food or Drink, Regulating the Inspection of Such Establishments, the Enforcement of This Ordinance, and Fixing of Penalties for Violation Thereof"

which Section reads as follows:

"Section 1. Definitions. The following definitions shall apply in the interpretation and the enforcement of this Ordinance: (A) The term 'Restaurant' shall mean and include any restaurant, coffee shop, cafeteria, short order cafe, luncheonette, drive-ins, tavern, sandwich stand, soda fountain, drugstore and soda fountain serving food, in plant feeding establishments, private and semi-private clubs, food vending vehicles, pushcart vendor, caterers, as well as kitchens or other places in which food or drink is prepared or stored for sale or public consumption."

It is apparent, however, that Ordinance No. 2749 is merely a health measure to compel any establishment, whether restaurant or otherwise, which prepares or serves food and drink for human consumption and any person employed therein to meet proper standards of cleanliness. Therefore, neither the said ordinance nor any provision contained therein is applicable in the case sub judice.

The ordinance pertaining to the sale of alcoholic beverages does not define the word "restaurant". However, since this is a proceeding under "An Ordinance Concerning Alcoholic Beverages", it is necessary to refer to the Alcoholic Beverage Law, pursuant to which Section 3 of the ordinance was adopted. Cf. Manno v. Clifton (1951), 14 N. J. Super. 100.

R. S. 33:1-1(t) defines "restaurant" as follows:

"An establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment, is conducted." (underscoring ours)

This definition of the word "restaurant" is controlling.

Appellant testified that he holds a current municipal license to operate a restaurant for the licensed premises pursuant to the provisions of Ordinance No. 2749; furthermore, that he has a completely equipped kitchen, consisting of a gas range, cutting and

slicing machine, freezer, refrigerator, dishes, etc. He further testified that during the daytime his sister-in-law takes charge of the cooking and the serving of food, and in the evening he acts as bartender, as well as preparing and serving such food as may be ordered by customers. Appellant admitted that his income from the sale of alcoholic beverages is larger than that received from the sale of food and asserted that he was not able to state "how much more."

Police Officer William Ramoth testified that appellant's bar is approximately 15 feet in length, and that the barroom contains approximately seven tables. There is further testimony, however, that there are as many as twelve tables with a seating capacity for 48 persons. It is not to be doubted that meals have been and are apparently being served on the licensed premises, and that to some extent appellant has been carrying on a restaurant business. That, however, is not the test to be applied. The questions to be determined are (1) is appellant's establishment "principally used for the purpose of providing meals to the public", and (2) is appellant's establishment used for any other business "except such as is incidental" to the service of meals to the public. If appellant's principal business is that of serving meals, and if no other business except that incidental to the service of meals is conducted on the premises, then the licensee is conducting a "restaurant" within the meaning of R. S. 33:1-1(t); if not, the licensee is conducting a taproom or barroom. This is so, irrespective of the number of meals he may be serving. See Asbury Park Licensed Beverage Association v. Asbury Park et al., Bulletin 628, Item 3.

After taking into consideration the character of appellant's establishment, including the size and prominence of the bar, and also the admission by the appellant and by one of his part-time bartenders that the receipts are greater from the sale of alcoholic beverages than those from the sale of food, I have reached the conclusion that appellant's establishment is not a bona fide restaurant as defined in the Alcoholic Beverage Law. The appellant's establishment does not meet the requirement of the definition in the Alcoholic Beverage Law that "no other business, except such as is incidental to such [restaurant] establishment" is conducted on the licensed premises. It appears from the testimony that the appellant's liquor business is the dominant business.

The action of respondent will be affirmed, the present appeal will be dismissed, and the fifteen-day suspension originally imposed will be reinstated.

Accordingly, it is, on this 26th day of June, 1953,

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

ORDERED that the fifteen-day suspension by respondent of appellant's plenary retail consumption license C-82 for the premises 621 River Road, Clifton, which suspension was held in abeyance pending disposition of this appeal, be and the same is hereby restored to become effective against any renewal of said license at 3 a.m. July 6, 1953; and it is further

ORDERED that any license issued to John J. Padalino in renewal of the license now held by him for said premises shall be under suspension from 3 a.m. July 6, 1953, until 3 a.m. July 21, 1953.

DOMINIC A. CAVICCHIA
Director.

2.

ACTIVITY REPORT FOR JUNE 1953

ARRESTS:

Total number of persons arrested	-----	23
Licensees and employees	-----	4
Bootleggers	-----	19

SEIZURES:

Motor vehicles - cars	-----	5
Stills - over 50 gallons	-----	1
- 50 gallons or under	-----	1
Alcohol - gallons	-----	17.25
Mash - gallons	-----	2,300.00
Distilled alcoholic beverages - gallons	-----	156.00
Wine - gallons	-----	35.69
Brewed malt alcoholic beverages - gallons	-----	28.24

RETAIL LICENSEES:

Premises inspected	-----	1,136
Premises where alcoholic beverages were gauged	-----	906
Bottles gauged	-----	16,247
Premises where violations were found	-----	87
Violations found	-----	117
Type of violations found:		
Unqualified employees	-----	36
Reg. #38 sign not posted	-----	13
Disposal permit necessary	-----	10
Prohibited signs	-----	5
Improper beer taps	-----	2
Gambling devices	-----	1
Other violations	-----	50

STATE LICENSEES:

Premises inspected	-----	2
License applications investigated	-----	29

COMPLAINTS:

Complaints assigned for investigation	-----	375
Investigations completed	-----	365
Investigations pending	-----	125

LABORATORY:

Analyses made	-----	120
Bottles from unlicensed premises	-----	32

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	-----	23
Persons fingerprinted for non-criminal purposes	-----	436
Identification contacts made with other enforcement agencies	-----	301
Motor vehicle identifications via N. J. State Police teletype	-----	2

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	-----	11
Violations involved:		
Sale to minors	-----	4
Sale during prohibited hours	-----	3
Permitting slot machines on premises	-----	1
Permitting brawl on premises	-----	1
Sale to non-members by club	-----	1
Cases instituted at Division	-----	17
Violations involved:		
Sale to minors	-----	8
Sale during prohibited hours	-----	5
Permitting immoral activity on premises	-----	3
Mislabeling beer taps	-----	2
Permitting foul language on premises	-----	1
Sale to intoxicated persons	-----	1
Permitting lottery (fight pool)	-----	1
Possessing contraceptives on premises	-----	1
Sale below minimum resale price	-----	1
Cases brought by municipalities on own initiative and reported to Division	-----	9
Violations involved:		
Sale to minors	-----	5
Conducting business as a nuisance	-----	2
Sale during prohibited hours	-----	1
Permitting gambling on premises	-----	1
Permitting brawl on premises	-----	1
Permitting foul language on premises	-----	1
Unauthorized transportation	-----	1

HEARINGS HELD AT DIVISION:

Total number of hearings held	-----	30
Appeals	-----	2
Disciplinary proceedings	-----	15
Eligibility	-----	3
Seizures	-----	4
Tax revocation	-----	4
Applications for license	-----	2

PERMITS ISSUED:

Total number of permits issued	-----	1,326
Employment	-----	434
Solicitors	-----	38
Disposal of alcoholic beverages	-----	185
Social affairs	-----	433
Miscellaneous	-----	236

DOMINIC A. CAVICCHIA
Director.

Dated: July 1, 1953.

- 3. DISCIPLINARY PROCEEDINGS -- LEWDNESS AND IMMORAL ACTIVITIES (FURNISHING ROOMS FOR IMMORAL PURPOSES) - PERMITTING OBSCENE LANGUAGE - SALE OF ALCOHOLIC BEVERAGES TO INTOXICATED PERSONS - SALE TO MINORS - PURCHASE OF ALCOHOLIC BEVERAGES BY RETAILER FROM OTHER THAN LICENSED MANUFACTURER OR WHOLESALER - UNLAWFUL TRANSPORTATION OF TAX-PAID LIQUOR - MISLABELED BEER TAP - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

ANNA A. PISANO)
 T/a DEW DROP INN)
 422 Ringwood Avenue)
 Pompton Lakes, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Pompton Lakes.)

 Glickenhau and Glickenhau, Esqs., by Jacob S. Glickenhau, Esq., Attorneys for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

- "1. On October 14, 1952, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for the purpose of illicit sexual intercourse and the providing and furnishing of rooms therein for that purpose; in violation of Rule 5 of State Regulations No. 20.
- "2. On October 14, 1952, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.
- "3. On October 11 and 14, 1952, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated 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 Regulations No. 20.
- "4. On Friday night, October 10 and early Saturday morning, October 11 and again on Saturday night, October 11 and early Sunday morning, October 12, 1952, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly to Suzianna --- and Shirley ---, persons under the age of twenty-one (21) years, 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 Regulations No. 20."

Defendant pleaded non vult to the following charges:

"5. On October 13, 1952, without authority of a special permit so to do, you obtained alcoholic beverages from a person who was not the holder of any New Jersey manufacturer's or wholesaler's license in that on such date you obtained a half barrel of beer from ---, a retail liquor licensee; in violation of Rule 15 of State Regulations No. 20.

"6. On October 13, 1952, you transported the above mentioned alcoholic beverages from the licensed premises of ---, as aforesaid, to your licensed premises at 422 Ringwood Avenue, Pompton Lakes, N. J., in a vehicle which did not have a transit insignia affixed thereto; in violation of Rule 2 of State Regulations No. 17.

"7. On October 14, 1952, you allowed, permitted and suffered a tap on your licensed premises to be connected with a barrel of malt alcoholic beverage which tap did not bear a marker which truly indicated the name or brand of the manufacturer of such malt alcoholic beverage, in that a tap first bearing a marker labeled 'Piel's' and later bearing no marker was connected to a barrel of Krueger beer; in violation of Rule 26 of State Regulations No. 20."

From the evidence taken at a hearing concerning charges 1 to 4, it appears that three ABC agents (hereinafter respectively designated as first agent, second agent and third agent) visited defendant's licensed premises on the evenings of October 10, 1952, October 11, 1952 and October 14, 1952.

The testimony given as to Charge 1 may be summarized as follows:

The first agent testified that on October 10 he had a conversation with Anthony Pisano, who is the husband of defendant and who was one of the bartenders then on duty, during the course of which he asked Anthony if two young girls then present were "all right" and Anthony replied "Yes, they are O.K."; that Anthony told the first agent he had some rooms upstairs and, when the agent asked him if he could take a woman up "for a lay," Anthony replied that the agent could use his room "free of charge" and that another couple could use "free of charge" another room occupied by Edward McLean, who was also employed as a bartender on defendant's premises. The testimony indicates that the first agent asked the young girls for a dance but they refused. The first agent further testified that, later in the evening, two women, Julia and Gloria, were introduced to them by a third woman; that, when Julia and Gloria were leaving, Anthony said to them, "Take care of these boys. They are good friends of mine" and pushed Julia and Gloria into the arms of two of the agents; that the first agent then told Gloria, in the presence of Anthony, that he was "coming up tomorrow night" and told her "I'll buy you a few drinks and go upstairs and have fun."

The first agent testified that, when he and the other agents returned on the evening of October 11, he asked Anthony if "Julia and Gloria was around"; that Anthony replied, "No, they haven't been around yet, but stick around they will be here later"; that the witness then asked Anthony, "Is it all right to use the rooms?" to which Anthony replied, "Yes, you know I only do it for my friends; I won't charge you anything for it." The first agent further testified that Gloria and Julia came in later but left after a short time; that he then told Anthony that "if we didn't make any headway with the girls here we would be back early in the week and bring our own girls up and take them upstairs and lay them"; and that Anthony said "All right. You can use the rooms, but remember I am not charging you for them."

The first agent testified that, when he and the other agents returned on the evening of October 14, he told Anthony that "we had two waitresses employed in a nearby diner and we are going to get the waitresses and bring them back to the place and take them upstairs for a lay" and that "the waitresses were married women and were out on the cheat, and we didn't want to bring them in the barroom"; that Anthony replied that it wasn't necessary to take them in the barroom; that they could be taken right upstairs through the front door leading to the upstairs part of the building. Admittedly, the second agent, after pretending to telephone to the waitresses, left the barroom and was later admitted alone by Anthony through another entrance which led to the dining-room from which access could be had to the rooms upstairs without going through the barroom. Apparently the second agent again left the building shortly thereafter to summon the local police who, by pre-arrangement, were waiting outside. The first agent testified that, after the second agent left the barroom, he requested Anthony to make up four drinks and said "that we would have the drinks upstairs in the room" when the second agent returned with the girls; that Anthony then took him to a little room near the kitchen on the first floor and suggested that they have the drinks downstairs "because you may make a little too much noise; a couple sleeping upstairs." Anthony then took the first agent and the third agent to a bedroom on the second floor and the third agent remained in that room after Anthony and the first agent returned to the barroom. When the second agent returned with the local police, the third agent was found alone in the bedroom. An adjoining bedroom was found to be occupied by an old man and two other rooms were occupied by a married couple and their child.

The second agent and the third agent substantially and specifically corroborated this testimony given by the first agent.

On behalf of defendant, Anthony denied any conversation with the agents concerning illicit sexual intercourse on either October 10 or October 11. He testified that, when they returned on October 14, the first agent spoke to him about "a private drinking party", but admitted that the agent spoke to him about "two ladies coming up -- didn't want to be seen coming in the bar." He further testified that he tried to arrange "a place in back" but that the agents said it "ain't too private" and wanted a room upstairs; that he showed them the room and planned to set up tables and chairs therein before the police arrived and found the third agent in the room.

My thorough examination of all the testimony herein leaves me completely unimpressed by the attempted explanation of Anthony in conflict with the testimony of the three agents. I am convinced that the testimony of the Division's agents gives a true picture of the events which took place at the times in question. Furthermore, while no rent was asked for or received, there is nothing in Rule 5 of State Regulations No. 20 or in Charge 1 concerning rent. Under the Rule and under Charge 1 the charging of a rental for a room or rooms is not a necessary concomitant to the violation. It is immaterial that a charge for the rooms is generally made in cases of this kind. (See Re Sam Schneider, Bulletin 892, Item 3.) In affirming the Director's order of suspension in the Schneider case the Superior Court's Opinion contained the following significant statements: "So far as the appellant ... could act, he made the accommodations available and conferred his permission to utilize them in an immoral pursuit ... The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the

actual consummation of the apprehended evil." (In re Schneider, 12 N. J. Super. 449, 458). The offense and the apprehended evil are not removed or avoided through the device of not charging for the rooms. I find defendant guilty as to Charge 1.

As to Charge 2: The language used was vulgar and coarse but, under all the circumstances, I do not feel justified in deciding that it was sufficiently so to support a clear finding of guilt. The Charge is dismissed.

As to Charge 3: The three ABC agents testified that on the evening of October 11 Anthony Pisano served two glasses of beer to Edward McLean, which he consumed. They testified that McLean was then actually or apparently intoxicated. The agents also testified that on the evening of October 14 Anthony Pisano served three or four glasses of beer to Edward McLean and a patron named Bert, and that both McLean and Bert were then actually or apparently intoxicated. This testimony was not denied. Neither McLean nor Bert appeared at the hearing herein. I find defendant guilty as to Charge 3.

As to Charge 4: The first agent testified that on the evening of October 10 Anthony Pisano, Edward McLean and William Gormley were acting as bartenders; that the attention of the agents was attracted to three women and a man at the bar because two of the women appeared to be minors. Subsequent investigation disclosed that the two who appeared to be minors were Suzianna ---, age 18, and her sister Shirley ---, age 16. The first agent testified that he saw each of the three bartenders serve a glass of liquid drawn from a tap labeled "Piel's" to each of the minors, and that the minors consumed the drinks. On cross-examination this witness said the liquid "was the color of beer, it had a frothy head." The second agent corroborated this testimony as to service and consumption, and described the liquid as an "amber colored liquid with foam on it." The third agent testified that the bartenders served to the minors amber colored fluid drawn from a beer tap labeled "Piel's."

The first agent testified that, on their second visit to the premises (October 11), Anthony Pisano was acting as bartender; that he saw Anthony serve two glasses of beer to Shirley at the bar; that three or four rounds of beer were consumed by Suzianna and Shirley and that the beer was served in glasses and drawn from a tap labeled "Piel's." The second agent testified that he saw Anthony serve beer to the minors at the bar, and that later he saw Eddie W--- bring glasses drawn from the same tap to a table where the minors consumed the contents of the glass. The third agent testified that he saw both minors consuming beer at the bar; that later Eddie W--- twice ordered four beers from Anthony; that, after Eddie carried drinks to a table, the minors consumed some of the drinks.

The sworn testimony of Suzianna and Shirley strongly corroborated the testimony of the agents as to the service and consumption on both evenings. Despite vigorous cross-examination, each of the minors insisted that they drank beer on both evenings. Their credibility is brought into question by the fact that on December 30, 1952, they, at the request of a person acting on behalf of defendant, signed and swore to statements wherein they said that they drank only non-alcoholic beverages in defendant's premises. Despite the evidence given by Eddie W--- and Bette P---, who were the other members of the party of four at the bar, the evidence given by Anthony Pisano and William Gormley, bartenders, and the evidence given by three other patrons, I am firmly convinced, from the overwhelming preponderance of believable evidence, that the drinks served to the minors and consumed by them were alcoholic beverages (beer) and not "soft drinks". I am particularly impressed by the last statement made by the 16-year-old minor on the stand. When asked by the Hearer whether the information in her written statement obtained by

defendant's representative was given by her "or did somebody else give that information?", she replied: "My father told me to stick up for the truth. That is what I am doing." I find defendant guilty as to Charge 4.

As to Charges 5 and 6: The file herein discloses that on October 13, 1952, Edward McLean, a bartender in defendant's premises, purchased a half-barrel of Krueger's beer from a retail licensee in Ringwood Borough and brought the half-barrel to defendant's premises on an unlicensed truck.

As to Charge 7: The file discloses that, after the ABC agents identified themselves on October 14, 1952, they discovered that the aforesaid half-barrel of Krueger's beer was connected to a tap in defendant's premises bearing the name "Piel's."

It is doubtful that defendant-licensee had much, if anything, to do with the operation of the establishment but she is the licensee of record and a licensee cannot be excused because of non-participation in offenses or lack of personal knowledge thereof. (Rule 31, State Regulations No. 20.) See Stein v. Passaic, Bulletin 451, Item 5; Essex Holding Corp. v. Hock, 136 N. J. L. 28; Re Paton, Bulletin 898, Item 3.

The multiple violations committed denote a general disregard of alcoholic beverage regulations which are essential to a proper protection of the public. In the light of the multiple violations together with the very serious nature of the violations under Charges 1 and 4, the only appropriate and justifiable penalty in this case is revocation.

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

ORDERED that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Pompton Lakes to Anna A. Pisano for premises at 422 Ringwood Avenue, Pompton Lakes, be and the same is hereby revoked, effective immediately.

DOMINIC A. CAVICCHIA
Director.

4. LICENSED PREMISES - MAINTENANCE OF ANY SO-CALLED EMPLOYMENT AGENCY AT TAVERNS DISAPPROVED.

June 29, 1953

Gentlemen:

Your trade association, consisting of owners of bakery establishments, wishes to know whether a Newark tavernkeeper may permit use of part of his tavern premises as an employment office for securing employment for workers at the above bakery establishments.

For self-evident reasons, a tavern or similar drinking establishment is scarcely a proper place for maintenance of an employment office, whether it is being run gratuitously or otherwise. Job-seeking is one thing; bar-sitting is another. Let's not encourage any confusion between the two.

I herewith disapprove of any tavernkeeper permitting any part of his premises to be used for maintenance of any type of employment office, whether operated wholly gratuitously or not.

Very truly yours,
DOMINIC A. CAVICCHIA
Director.

5. CANCELLATION PROCEEDINGS - ORDER TO SHOW CAUSE DISCHARGED WHERE IT APPEARED THAT LICENSEE HAD DISCLOSED CONVICTION IN ALL APPLICATIONS FILED WITH LOCAL ISSUING AUTHORITY.

DISQUALIFICATION - APPLICATION TO LIFT GRANTED.

In the Matter of Cancellation)
Proceedings against)
SALVATORE INFANTOLINO)
6 - 19th Avenue)
Newark 3, N. J.,)

Holder of Plenary Retail Consump-)
tion License C-895, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

CONCLUSIONS
AND
ORDER

-----)
In the Matter of a Petition to)
Remove Disqualification because)
of a Conviction, Pursuant to)
R. S. 33:1-31.2.)

Case No. 1064.)
-----)

Salvatore Infantolino, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

A notice was served upon Salvatore Infantolino requiring him to show cause why his license should not be suspended, revoked or cancelled and declared null and void for the following reason:

"Said license was improvidently issued in violation of R. S. 33:1-25 in that you were disqualified from obtaining such license by reason of the fact that you had been convicted of a crime involving moral turpitude, viz., the crime of maintaining a building for the purposes of prostitution, lewdness and assignation, in the Essex County Court of Special Sessions (now Essex County Court) on or about October 7, 1929."

After said notice had been served upon him, Salvatore Infantolino filed an application to remove his disqualification pursuant to R.S. 33:1-31.2. Both matters were heard at the same time and will be decided together.

At the hearing held upon the order to show cause the licensee admitted that in 1929 he had been convicted on a charge of maintaining a building for purposes of prostitution, lewdness and assignation; that, as a result thereof, he was confined to the Essex County Penitentiary for a period of seventy-seven days and released from the Penitentiary on November 1, 1929. Investigation indicates that he was originally sentenced to serve six months in the Penitentiary as a result of said conviction but that the sentence was later reduced to three months. Ordinarily the crime of which he was convicted would involve moral turpitude. The evidence further indicates that in 1943 Salvatore Infantolino filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark an application for a plenary retail consumption license in which he revealed said conviction. Referring to said application he testified as follows:

"When I first applied I went to them and they looked it up. They said, 'Well, you have been clear for about fifteen years; no reason why you shouldn't be allowed to have a license.' They said, 'Go ahead.' I went ahead. That was the last I heard of it until now."

The attorney for the Division of Alcoholic Beverage Control stated that investigation disclosed that the licensee had set forth the said conviction in each application he filed with the Municipal Board for a renewal of his license to and including the application filed by him for a renewal for the present licensing year. Testifying as to the facts concerning his conviction in 1929 the licensee said that at that time he was conducting a restaurant in the City of Newark; that a waitress employed by him left his premises with four or five men and that later "She received a sentence of six months or nine months", apparently on a charge of prostitution. He denied at the hearing that he had any knowledge that she was a prostitute. Nevertheless the question of the guilt or innocence of a person convicted of a crime may not be redetermined in collateral proceedings and, because of the nature of the charge, I find that, in fact, the licensee was convicted in 1929 of a crime involving moral turpitude. In deciding, however, whether his license should be cancelled in this proceeding I shall take into consideration the fact that he revealed the conviction in his applications and that, so far as appears, he made no attempt to mislead the members of the local issuing authority. While the action of the local issuing authority in granting him a license may have been irregular, I do not believe that the licensee should be penalized merely because the local issuing authority did not follow the proper procedure. Re Case No. 981, Bulletin 939, Item 9. I shall, therefore, consider his application to remove his disqualification.

From the evidence given herein it appears that the applicant for relief under the provisions of R. S. 33:1-31.2 has never been convicted at any other time of a crime involving moral turpitude. However, in 1919, when he was sixteen years of age, he was arrested in Buffalo, New York, on a charge of possessing a "billy" and fined \$25.00. In 1925 he was arrested in Newark, New Jersey, on a charge of being drunk and sentenced to serve ten days in the Essex County Jail. In 1928 he was arrested in Newark, New Jersey, as a disorderly person and fined \$5.00. In 1931 and again in 1933, while conducting a speakeasy in the City of Newark, he was arrested for violations of the National Prohibition Act. As a result of his arrest in 1931 he was sentenced to serve thirty days and to pay a fine of \$250.00, and in 1933 he was sentenced to serve fifteen days and to pay a fine of \$150.00. He has not been convicted of any crime since 1933. His record as a licensee during the past ten years has been clear except for the fact that, shortly after he obtained his license, he was fined \$25.00 for a violation of the "tavern closing ordinance" of the City of Newark and, as a result of the same violation, his license was suspended by the local issuing authority for a period of ten days. Three character witnesses (a group leader employed by a manufacturing company, a foreman employed by a factory, and a cab driver) testified that they have known the applicant for more than ten years; that he bears a good reputation in the City of Newark, and that he has conducted his licensed premises in a proper manner.

Before I may remove applicant's disqualification I must be satisfied that applicant has conducted himself in a law-abiding manner during the past five years at least and that his association with the alcoholic beverage industry will not be contrary to the public interest. R.S. 33:1-31.2. I have already indicated that applicant has not been convicted of any crime since 1933 and that, except for his violation of the "tavern closing ordinance" of the City of Newark shortly after he obtained his license (in 1943), his record as a licensee has been clear for the past ten years. I would have no hesitancy in granting him the relief sought were it not for the fact that he has been a licensee since 1943 despite his statutory disqualification. However, weighing in applicant's favor are, first, his aforesaid good record as a licensee and, second, his consistent annual disclosure of his disqualifying conviction to the local issuing authority and the absence (so far as appears) of any attempt on his part to mislead the members of said authority.

Under the circumstances of this case I find that applicant has conducted himself in a law-abiding manner during the past five years and that his association with the alcoholic beverage industry will not be contrary to the public interest. Accordingly I shall grant the relief requested in the application to remove disqualification. Cf. Re Case No. 534, Bulletin 713, Item 9; Re Case No. 811, Bulletin 862, Item 5; Re Case No. 840, Bulletin 876, Item 4. Since, therefore, licensee (applicant) is now qualified to hold a license, I shall discharge the order to show cause.

Accordingly, it is, on this 5th day of June, 1953,

ORDERED that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2; and it is further

ORDERED that the order to show cause in the cancellation proceedings be and the same is hereby discharged.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT SONG) - SALE TO MINORS - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
MICHAEL SICKLE & MARY SICKLE)
T/a SICKLE'S BAR & GRILL)
North side Valley Road)
Passaic Township)
P.O. Stirling, N. J.,)

CONCLUSIONS
AND ORDER

-----)
Holders of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Passaic.)

Abe P. Friedman, Esq., Attorney for Defendants.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charges:

"1. On May 22, 1953, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that a male entertainer sang songs having lewd, indecent, filthy, disgusting and suggestive import and meanings; in violation of Rule 5 of State Regulations No. 20.

"2. On May 23, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to Susan J. ---, Mary L. ---, Donald James ---, Angelo L. --- and Thomas P. ---, persons under the age of twenty-one (21) years, 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 Regulations No. 20."

The file herein discloses that on Friday, May 22, 1953, at about 10:00 p.m., three ABC agents entered defendants' premises and observed sixty or seventy male and female patrons seated at the tables and bars. While the agents were present a male entertainer went to the bandstand and sang two songs which were unquestionably

indecent and disgusting. Entertainment of this type will not be permitted on licensed premises. The agents left the premises without disclosing their identity.

On the evening of Saturday, May 23, 1953, the same agents returned to defendants' premises at about 9:00 p.m. Shortly thereafter three couples, all of whom appeared to be very young, entered the premises and took seats at a table. Mary Sickle, one of the defendants herein, approached the table and took an order for three beers, two ryes and ginger ale and one rye and coke. Mary Sickle brought these drinks from the bar to the table and served each person at the table with one of the drinks. After she had accepted payment and after the persons at the table had consumed part of their drink, the agents identified themselves and questioned the members of the group as to their respective ages. It was ascertained that one of the females was of full age, and that each of the three male patrons was 18 years of age and two of the female patrons were 17 years of age.

Defendants have no prior record. I shall suspend their license for a period of fifteen days because of the violation set forth in charge 1 (Re Drayman, Bulletin 946, Item 2; Re Vernicek, Bulletin 959, Item 1) and for an additional period of twenty days because of the violation set forth in charge 2 (cf. Re Buddy & Steve's Tavern, Inc., Bulletin 964, Item 6). Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 23rd day of June, 1953,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Passaic to Michael Sickle & Mary Sickle, t/a Sickle's Bar & Grill, for premises on North side Valley Road, Passaic Township, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 29, 1953; and it is further

ORDERED that, if any license be issued to these licensees or to any other person for the premises in question for the 1953-54 licensing year, such license shall be under suspension until 2:00 a.m. July 29, 1953.

DOMINIC A. CAVICCHIA
Director.

7. ADVERTISING - RULE 1 OF STATE REGULATIONS NO. 21 - ALCOHOLIC BEVERAGE MANUFACTURER OR WHOLESALER MAY NOT PAY OR CONTRIBUTE TO PAYMENT OF NEWSPAPER ADVERTISEMENT OF RETAIL LICENSEE.

June 29, 1953

Dear Sir:

In your letter of June 24th, received today, you ask whether it is permissible, under the regulations of this Division, "for a wholesale beer distributor to pay or contribute to the payment of the cost of an advertisement in a newspaper announcing the opening of a new tavern".

The answer is, No. Under Rule 1 of our State Regulations No. 21, copy enclosed, which has been in effect in such form since July 1, 1950, no alcoholic beverage manufacturer or wholesaler may furnish, directly or indirectly, to any retail licensee in New Jersey any advertising or similar material other than as indicated in said Rule. Paying all or part of the cost of a newspaper advertisement of a retail licensee's establishment or business does not come within the items specified or contemplated in the above Rule.

Very truly yours,
DOMINIC A. CAVICCHIA
Director.

8. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ANNA BARTOSZAK)
156 Steuben Street)
Jersey City 2, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-49, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
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Anna Bartoszak, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that during prohibited hours on June 4, 1953, she sold and delivered alcoholic beverages in an original container for consumption off her licensed premises, in violation of Rule 1 of State Regulations No. 38.

On Thursday, June 4, 1953, at about 10:25 p.m., Benjamin Bartoszak, who is the husband of defendant-licensee and who was then tending bar at defendant's licensed premises, sold a pint of Gordon's Distilled London Dry Gin in its original container to an ABC agent for off-premises consumption. Rule 1 of State Regulations No. 38 prohibits such sales of alcoholic beverages after 10:00 p.m. on weekdays.

Defendant has no prior adjudicated record. Therefore, in the absence of aggravating circumstances, I shall impose the minimum suspension of fifteen days for a violation of this type. Five days will be remitted because of the plea entered herein, leaving a net suspension of ten days. Re Ruby, Exec'x, Bulletin 957, Item 6.

Accordingly, it is, on this 23rd day of June, 1953,

ORDERED that Plenary Retail Consumption License C-49, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Anna Bartoszak, 156 Steuben Street, Jersey City, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 29, 1953; and it is further

ORDERED that, if any license be issued to this licensee or to any other person for the premises in question for the 1953-54 licensing year, such license shall be under suspension until 2:00 a.m. July 9, 1953.

DOMINIC A. CAVICCHIA
Director.

9. MORAL TURPITUDE - RECEIVING STOLEN GOODS.

DISQUALIFICATION - FALSE STATEMENT IN APPLICATION FOR SOLICITOR'S PERMIT - APPLICATION TO LIFT DENIED WITH LEAVE TO REAPPLY AFTER AUGUST 14, 1953.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction, Pursuant)
to R. S. 33:1-31.2.)
Case No. 1066.)
-----)

CONCLUSIONS
AND ORDER

BY THE DIRECTOR:

On September 1, 1944, petitioner pleaded guilty to the crime of receiving property stolen from the United States Government and as a result thereof received a sentence of one year and one day and was fined \$400.00. The operation of the sentence was suspended and petitioner was placed on probation for two years.

The crime of receiving stolen goods is a crime which ordinarily involves moral turpitude. Re Case No. 620, Bulletin 880, Item 10. Nothing appears in the instant case to free petitioner's conviction of that element. His plea of guilty to the charge of receiving stolen goods is an admission by him that he committed the crime in question.

At the hearing, petitioner produced three witnesses, a clerk, a clergyman, and a glass blower, all now retired, who testified that they have known petitioner thirty or more years and that he bears a good reputation for being a law-abiding person in the community in which he resides.

The Chief of Police of the municipality wherein petitioner lives has advised this Division that no complaint or investigation involving petitioner is presently pending in his department.

Petitioner testified that during the past several years he was employed in the milk business, confectionery business, as an electrician, and as a solicitor for a liquor company.

I would have no hesitancy in granting relief to petitioner were it not for the fact that he deliberately falsified his application filed with this Division for a solicitor's permit by claiming under oath that he was never convicted of a crime. When asked at the hearing why he failed to divulge his criminal conviction, he answered, "Well, I don't know. I wanted the job. I have a wife and two kids. I done wrong by doing that, but I can't say why. I wanted this job and I thought I would be tickled to get a job and I could dress and go around like a human being. It meant a lot to me to get the job. I wanted that kind of a job."

The reason given by petitioner for falsifying his application for a solicitor's permit does not excuse him. If applicants falsify their applications they must be prepared to pay the penalty.

I shall deny any relief to petitioner at this time. Petitioner may renew his application for relief after August 14, 1953. Re Case No. 785, Bulletin 858, Item 8.

Accordingly, it is, on this 25th day of June, 1953,

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

DOMINIC A. CAVICCHIA
Director.

10. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against NORECE CORPORATION T/a THE STOCKTON HOTEL 1st Ave., Trenton Blvd. to Neptune Place Sea Girt, N. J.,

ORDER

Holder of Seasonal Retail Consumption License CS-2 (for the summer season from May 1, 1952 until November 1, 1952) issued by the Borough Council of the Borough of Sea Girt and now holder of Seasonal Retail Consumption License CS-2 (for the summer season from May 1, 1953 until November 1, 1953) issued by said Borough Council to defendant t/a Hotel Stockton, for the same premises.

BY THE DIRECTOR:

It appearing that by Order dated September 10, 1952, the license then held by the above named defendant was suspended for a period of ten days and that a further order was to be entered herein fixing the period of said suspension (Re Norece Corporation, Bulletin 945, Item 4); and

It further appearing that the Borough Council of the Borough of Sea Girt has issued to defendant t/a Hotel Stockton, seasonal retail consumption license CS-2 for the summer season from May 1, 1953, until November 1, 1953, in renewal of its license held for the previous licensing year, and that defendant's premises have now been reopened for business;

It is, on this 29th day of June, 1953,

ORDERED that Seasonal Retail Consumption License CS-2, for the summer season from May 1, 1953, until November 1, 1953, issued by the Borough Council of the Borough of Sea Girt to Norece Corporation, t/a Hotel Stockton, for premises at 1st Ave., Trenton Blvd. to Neptune Place, Sea Girt; be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. July 6, 1953, and terminating at 2:00 a.m. July 16, 1953.

Dominic A. Cavicchia Director.