

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

BULLETIN 1241

September 16, 1958

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

BULLETIN 1241

September 16, 1958

1. APPELLATE DECISIONS - WARSHAW v. LONG BRANCH

CHARLES WARSHAW,)
t/a LIBERTY BAR,)
Appellant,)
-vs-) ON APPEAL
BOARD OF COMMISSIONERS OF) CONCLUSIONS AND ORDER
THE CITY OF LONG BRANCH,)
Respondent.)

Solomon Tepper, Esq., Attorney for Appellant.
Julius J. Golden, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent on May 6, 1958, whereby it denied an application for renewal of appellant's plenary retail consumption license for the 1957-58 licensing period. Appellant's premises are located at 14 Liberty Street, Long Branch.

"During June 1957 a hearing was held by respondent on objections to the renewal of appellant's license for the 1957-58 licensing term. However, no action was taken by the respondent in the matter until May 6, 1958, when two members of the respondent Board voted to deny and two members thereof voted to approve the application. The Mayor abstained from voting in the matter because he has an interest in a liquor license in this State.

"During the period from July 1, 1957 to May 7, 1958 inclusive, when the respondent failed to take formal action on appellant's renewal application, appellant obtained ad interim permits from this Division which gave him the privilege of operating his licensed premises. R. S. 33:1-74. Upon the filing of the appeal, the license for the 1956-57 period was extended pursuant to the provisions of R. S. 33:1-22.

"At the hearing held herein, Commissioners Brown and Woolley of respondent Board testified that they voted against the renewal of the license in question because of complaints received by them concerning the conditions existing outside of appellant's premises. The complaints were that men congregated in front of appellant's establishment and at times used filthy language so that women hesitated to pass the said premises. Both commissioners were in agreement that although they opposed the renewal of appellant's license at its present location, they would vote in favor of a place-to-place transfer of said license. Commissioner Woolley further testified that since the matter of renewal of the license came up, he observed that the loitering in front of appellant's premises was not so prevalent as in the past.

"Sgt. George B. Moran of the local police department produced the records of said department which disclosed that

during 1956 and the first six months of 1957, numerous telephone calls were received because of incidents arising both inside and outside appellant's licensed premises. The witness testified that he had no personal knowledge concerning the method of operation of appellant's establishment because he had never been in the place. It appears from the testimony of Sgt. Moran that three telephone calls were received since June 1957; one call on July 23rd reporting a fight outside the place of business, but when the police arrived there was no one around; another on October 12th reporting domestic trouble, but there was no record indicating the disposition thereof; and a call was received on February 26, 1958 from appellant wherein he reported a breaking and entering of his licensed premises. An examination of the calls listed by Sgt. Moran discloses that on practically all cases where police were notified of disturbances, upon their arrival everything had become quiet. Apparently only one arrest was made for disturbance at or near appellant's premises during the time in question.

"Rev. Cornelius P. Williams who resides a block and a half away from appellant's premises and who is the pastor of a church located three blocks away, appeared before respondent and also at the instant hearing as an objector to the renewal of appellant's license. The witness testified that for many years past he has consistently opposed the renewal of appellant's license as well as that of his predecessor because of men loitering in the immediate area of the premises and the lack of respect shown by them to women who pass by; that at times he has heard men whistling at ladies and furthermore, has heard comments among children of his congregation about intoxicated persons loitering in the vicinity of appellant's premises.

"Rubin Weiss testified that he operates a place of business at 22 Liberty Street and that he objected to the renewal of appellant's license because various customers complained of the conditions existing in and near appellant's premises; that he has seen men loitering in the vicinity thereof and at times heard men use profane language.

"Geneva Price, testifying on behalf of appellant, stated that she is the proprietress of a diner immediately next door to appellant's tavern and that she has noticed people standing in front of both her diner and appellant's establishment; that during certain hours in the morning the area in front of both premises has become a meeting place for men seeking employment; that she has never observed any trouble in or near appellant's licensed premises.

"Edward Cooper testified that he has been a patron of appellant's tavern for many years and that he has never witnessed any disturbances in or outside of the premises.

"Appellant testified that he has endeavored to obtain other premises but has not met with success. He further testified that on one occasion he made an application for a place-to-place transfer of his license but he was requested by the respondent to withdraw the application.

"In Monesson v. Lakewood, Bulletin 657, Item 1, where renewal was denied based upon the same type of evidence as presented herein, the Commissioner used the following language which, in substance, is peculiarly apt with respect to the facts herein:

'As I have heretofore pointed out on many occasions, the grant of a renewal license, like that of an original license, is subject to the exercise of a reasonable discretion by the local issuing authority. Where, however, as in this case, a license has been renewed year after year, a refusal to renew thereafter must be founded upon valid and substantial grounds, supported by the weight of the evidence. Cf. Vasto v. Highlands, Bulletin 622, Item 4; Wright v. Gloucester, Bulletin 622, Item 5.'

"On September 9, 1957 appellant pleaded non vult to charges alleging that on Friday night, June 7 and early Saturday morning, June 8, 1957, he sold alcoholic beverages to persons apparently intoxicated and also permitted filthy language in and upon his licensed premises. As a result of such plea, effective December 12, 1957, the ad interim permit then held by him was suspended for twenty-five days. Re Warshaw, Bulletin 1202, Item 7. This appears to be the only time that appellant has been guilty of a violation of the Alcoholic Beverage Law. Appellant has been operating since July 1, 1957 either by ad interim permit or extension of his prior license and during that time the police authorities have only been summoned on a few occasions. There were no complaints received by this Division with reference to the manner in which the premises have been conducted. I am also mindful of the fact that two of the members of respondent Board voted in favor of the renewal of appellant's license for the 1957-58 licensing year.

"After consideration of all of the evidence in this appeal, I recommend that an order be entered reversing the action of respondent in denying the renewal of appellant's license for the 1957-58 period. Respondent has taken no action to date upon appellant's application to renew his license for the 1958-59 licensing year and appellant is now operating upon an ad interim permit from this Division. The effect of the order recommended will be to make appellant the holder of a license as of June 30, 1958 and respondent should consider the pending application for renewal upon its merits."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15.

The two Commissioners who voted against the renewal of the license in question testified that they were of the opinion that the troublesome conditions existing outside the licensed premises resulted from its present location. I have carefully examined all the evidence presented herein and concur in their sentiments.

It is my well considered opinion that if the respondent approves appellant's application for renewal of his license for the 1958-59 licensing year, it do so upon the express condition that within four months of the date thereof appellant apply for a place-to-place transfer of his license to a more suitable location.

Accordingly, it is, on this 28th day of July, 1958,

ORDERED that the action of respondent in denying the renewal of appellant's plenary retail consumption license for the 1957-58 licensing year is hereby reversed; and it is further

ORDERED that in the event the respondent grant the renewal of appellant's plenary retail consumption license for

the 1958-59 licensing year for premises 14 Liberty Street, Long Branch, said renewal license shall contain the express condition that appellant make application for a place-to-place transfer of his license within four months from the date of the renewal thereof.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - ROSS v. EAST ORANGE.

ABRAHAM A. ROSS, trading as)
CITY HALL LIQUOR STORE,)
)
Appellant,)
)
-vs-)
)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF EAST ORANGE,)
)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Emanuel N. Silberner, Esq., Attorney for Appellant.
Donald Karrakis, Esq., by Joseph A. Tedeschi, Esq.,
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it suspended appellant's license for a period of ten days effective June 16, 1958, after finding him guilty of permitting an act of violence upon his licensed premises in violation of Rule 5 of State Regulation No. 20. Appellant's licensed premises are located at 361 Main Street, East Orange.

"Upon the filing of the appeal an order was entered on June 4, 1958, staying respondent's order of suspension until entry of a further order herein. R. S. 33:1-31.

"In his petition of appeal appellant alleges that the action of respondent was erroneous because respondent's decision was contrary to the weight of the evidence and because appellant was not guilty of permitting an act of violence in accordance with the true meaning of Rule 5 of Regulation No. 20.

"In accordance with the provisions of Rule 8 of State Regulation No. 15, the appeal was presented upon the stenographic transcript of the proceedings before respondent and upon testimony given by appellant who did not testify at the hearing below.

"From the testimony presented herein it appears that some time in September 1957 a young lady purchased various items in appellant's place of business and gave to appellant a payroll check which was subsequently returned to appellant marked 'Account closed.' After reporting this matter to Newark and East Orange police, appellant was advised by the police that the patron apparently was a member of a gang which had broken into factories in Newark and stolen checks and check-writing machines. On Thanksgiving Eve 1957 a male patron gave to appellant another check which was returned with the same notation. Appellant reported this to the East Orange police. He was advised by a Police Lieutenant that, if this happened again,

he should try to hold the man until the police arrived. On Christmas Eve 1957 another male patron entered appellant's premises and presented to appellant, in payment for merchandise, a check which appeared to be a check issued by a lumber company. Appellant testified that he recognized it as a check of the same type as the second check he had received and that, when he asked the patron for identification, the patron produced a driver's license which contained alterations. Appellant further testified that at this time he reached under the counter and took a revolver which he had been licensed to purchase, and said to the patron, 'This is a stolen check. You stay right here. I am calling the police.' However, the patron started for the door and kept going after appellant shouted 'Stop or I'll shoot.' Thereupon appellant fired one shot and the bullet, after striking the patron, broke a window in a store on the opposite side of the street. Subsequently the patron was taken to the hospital after the police arrived. It also appears that the check presented on Christmas Eve was also a stolen check and that, as a result of the arrest of this patron, the 'king pin' of the gang which had stolen the checks and check-writing machines was arrested and sent to jail and many other members of the gang were arrested.

"There is no doubt that an act of violence occurred upon the licensed premises. It is my opinion, however, that this was not an act of violence within the meaning of the term as used in Rule 5 of State Regulation No. 20. This rule, as originally promulgated, was substantially similar to the present rule except that it did not contain the words "act of violence" which words were added in the revision effective July 1, 1950, and continued in subsequent revisions. Apparently the cited words were added to cover a situation where a licensee or his agent uses needless violence as in Re Hilfiker, Bulletin 1070, Item 10, and in Re Rosewood Inn, Inc., Bulletin 1138, Item 4, even if the act of violence may not technically constitute a brawl or disturbance. In this case there is no allegation that a brawl occurred on the premises, and the single act of violence was not directed towards a patron or a person legitimately upon the premises but towards a criminal who entered to perpetrate a fraud. Without attempting to draw a fine line of distinction as to the amount of force which may have been justified in attempting to detain the criminal, I believe that the rule in question was never intended to apply under the circumstances of this case. The members of respondent Board are to be commended for their careful consideration of the case but, in fairness to appellant, I recommend that an order be entered reversing the action of respondent Board."

Written exceptions to the Hearer's Report and written argument thereon were filed with me by the attorney for respondent, and written answering argument was filed with me by the attorney for appellant, pursuant to Rule 14 of State Regulation No. 15.

The written argument filed by respondent's attorney cites many cases which hold that no person is justified in shooting at a criminal to prevent his escape except where the criminal has committed a common law felony and there was no other way of taking him. The written argument filed by appellant's attorney alleges that the cited cases are not in point under the unusual circumstances of this case. I believe the issue to be considered herein is correctly set forth in the following statement made by the attorney for respondent in his summation before the Hearer:

"This I say is probably a situation where there was no right to use the gun under the law, but I do not think

licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"The evidence adduced by the Division at the hearing herein shows that on the dates alleged in the charge, four ABC agents visited defendant's licensed premises wherein two females known as 'Mickey' and 'Bimpy' were tending bar. It appears from the agents' testimony that both barmaids wore masculine attire, deported themselves like males and, by their own admission, were 'gays', a term defined by one of them as a girl who goes with a 'straight' girl. It appears further that Mickey told the agents that 'most of the people we get are "gays". Things have been dead over here but I have been sending out cards to the kids and since then we have been getting a lot of action.' The evidence further shows that when the agents ascertained from Mickey that a female patron on the premises and a waitress employee were the 'straights' with whom the barmaids lived, they identified themselves to Louis Salsberg, manager of the licensed premises, who stated that he knew the barmaids were 'gays' and that having observed them work in a resort tavern, he employed them because of their efficiency.

"On behalf of defendant, Louis Salsberg testified that he did not know the barmaids were 'gays' and that having had difficulty in employing proper help, he hired them because they were neat and efficient. Both Salsberg and his divorced wife, who owns 98% of the licensee's corporate stock, sought, by their testimony, to show that the dress, mannerisms and deportment of the barmaids were no different from those of other modern girls, more especially girls employed as barmaids.

"Reviewing the evidence herein, I find that defendant, by its agents, knew the character of the barmaids and employed them to promote a patronage inimical to the public welfare. While there is no proof that any licentious practices were permitted on the licensed premises, nevertheless, as was pointed out in Re Schneider, 12 N. J. Super. 449 (App. Div. 1951):

'The object manifestly inherent in the rule with which we are here concerned (likewise Rule 5) is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil.'

Cf. Paddock Bar, Inc. v. Division of ABC, 46 N. J. Super. 405 (App. Div. 1957).

"Although the believable testimony supports the charge herein, it is deemed pertinent to restate the language of Judge Jayne in Paddock Bar, Inc. v. Division of ABC, supra, wherein he said:

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

"Under the facts and circumstances appearing in the instant case, I recommend that defendant be adjudged guilty of allowing, permitting and suffering its licensed business to be conducted in such manner as to become a nuisance, and since defendant has no prior adjudicated record, I further recommend that its license be suspended for a period of sixty days. Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2."

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

Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 28th day of July, 1958,

ORDERED that Plenary Retail Consumption License C-12 for the 1958-59 licensing year issued by the Township Committee of Waterford Township to Speedway Inn Inc., t/a Speedway Inn, for premises Old White Horse Pike, Waterford Township, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. August 4, 1958 and terminating at 2:00 a.m. October 3, 1958.

WILLIAM HOWE DAVIS
Director.

- 4. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - LEWDNESS AND IMMORAL ACTIVITIES (OBSCENE LANGUAGE) - FAILURE TO KEEP COPY OF APPLICATION ON PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

HELEN GENTILE
201 Hudson Street
Hoboken, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-87 for the 1957-58 licensing period and C-84 for the 1958-59 licensing period, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

Helen Gentile, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

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

"2. On Saturday night, June 7, and early Sunday morning, June 8, 1958, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20.

"3. On June 8, 1958, you conducted your licensed business without having a photostatic or other true copy of your application for your current license on your licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20."

The file herein discloses that at 11:00 p.m. on Saturday, June 7, 1958, ABC agents visited defendant's licensed premises; that at 11:30 p.m. they noticed a female enter the premises and take a seat at the bar; that she walked unsteady and her eyes appeared glassy and, when ordering Scotch whisky and water from the bartender, her speech was "thick"; that she consumed the drink served to her by the bartender and left the premises; that at 11:50 p.m. she returned and handed the bartender a "roll of quarters"; that she then ordered a drink of vodka and orange juice from the bartender which she drank in one gulp; that on several occasions as she walked to the front of the premises, she appeared very unsteady on her feet; that while seated at the bar she placed her head on her arms and her eyes were half-closed; that despite her condition she was served several more drinks of vodka and orange juice by the bartender which respective drinks she consumed in one gulp; that at times while talking to the bartender she used filthy language; that one of the agents called the bartender to the section of the bar where he and his fellow agents sat and remarked "Hey Joe, Dot's sure got a load on", to which the bartender replied "I know"; that at 1:10 a.m. on Sunday, June 8, 1958 the bartender served the female another drink of vodka and orange juice and, after she had consumed part thereof, he poured another shot of vodka in her glass; that one of the agents seized the drink and he and his fellow agents identified themselves to the bartender. The agents called attention to the female's condition and, when questioned, the bartender stated that she did not appear drunk. He, however, admitted that, because of her condition, she had used indecent language as otherwise she would not have done so.

Although a thorough inspection of the defendant's licensed premises was made, the copy of the license application could not be found. The bartender, when questioned concerning this, stated that the bookkeeper employed by defendant must have it in his possession.

Defendant has a prior adjudicated record. Effective March 25, 1957 defendant's license was suspended for ten days by the local issuing authority for permitting hostess activity on the premises and for employing a female bartender. The minimum suspension for the violation set forth in Charge (1) is fifteen days (Re Madeira, Bulletin 1199, Item 2), Charge (2) ten days (Re Caridi's Bar, Inc., Bulletin 1185, Item 3) and for Charge (3) ten days (Re Kalasarines & Vlismas, Bulletin 1211, Item 3). In view of defendant's prior dissimilar record occurring within the past five years, I shall add an additional five days, making a total suspension of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 5th day of August, 1958,

ORDERED that Plenary Retail Consumption License C-84 for the 1958-59 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Helen Gentile, for premises 201 Hudson Street, Hoboken, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. August 12, 1958, and terminating at 2:00 a.m. September 16, 1958.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS -
PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against)

EMANUEL SUSSMAN & HYMAN SUSSMAN)
t/a JOE'S BAR)
111 Washington Street)
Newark 2, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-897, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Charles Handler, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charge (as amended):

'On Friday, February 14, 1958, 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 such beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"From the evidence herein it appears that, while two ABC agents were in defendants' premises on the evening of February 14, 1958, an alcoholic beverage was served to and consumed by each of two patrons identified herein as Mary --- and Rose ---. Hence the only issue in the case is whether either of these patrons was actually or apparently intoxicated at the time the drinks were served and consumed.

"At the hearing an ABC agent testified that he and another agent entered the premises on the evening in question at about 8:30 p.m. and stood at the bar; that about five minutes later Mary --- staggered to the bar and grabbed hold of the agent's arm to keep herself from falling; that her clothing was disheveled, her hair mussed up, her eyes glassy, her face flushed, and that she had a heavy odor of alcohol on her breath; that Mary then staggered to a table and rested her head on her arm; that about 9:15 p.m. she again staggered to the bar and handed fifteen cents to Emanuel Sussman who

served her a glass of beer which she partly consumed. This agent further testified that about 9:20 p.m. Rose staggered in the door and pushed her way between two male patrons to the bar; that her clothing and hair were disheveled, and that she appeared intoxicated; that Rose ordered a highball from Charles Lorenzo (a bartender); that, after obtaining this drink, Rose took this drink from the bar and walked to a cigarette machine on which she steadied herself while consuming the drink; that Rose then returned to the bar and purchased from Lorenzo another highball which she was consuming when the agents identified themselves.

"This agent further testified that, during the course of their subsequent investigation, it was difficult to obtain any information from Mary and that Rose was reluctant to give any information; that Emanuel Sussman admitted he had served Mary and said he didn't think she appeared to be intoxicated but that he also said 'I can't check that all;' that Lorenzo admitted he had served Rose but said he didn't think she was intoxicated. The agent also admitted that Mary walked with a limp.

"It was stipulated that, if the other ABC agent were called to testify, his evidence on direct and cross-examination would be substantially the same as that given by the agent who testified.

"On behalf of defendants, Emanuel Sussman testified that he has known Mary --- since he and his partner took over the licensed business five years ago; that Mary has something wrong with her leg and that her speech is not articulate and that, in his opinion, she must have had a stroke. He denied that Mary was a heavy drinker and testified that he had served her only one beer on the evening in question. A medical doctor, who responded to a telephone call from Emanuel Sussman, testified that he arrived at the premises at 10:15 p.m. and examined Mary. He testified that she walked in a satisfactory manner and talked sensibly and that she had a little defect in one leg. He expressed the opinion that she was then not intoxicated. Nicholas Stanzione, a special officer in defendants' premises, testified that, in his opinion, Mary was not intoxicated when served.

"Charles Lorenzo denied that he had served any drinks to Rose. Alexander Pieretti (another bartender) testified that he had served one drink of whiskey and soda to Rose and that Rose walked straight to her table and was seated at the table when she consumed the drink. He testified that, in his opinion, Rose was not intoxicated. Rose --- testified that on the evening in question she left her home about 9:00 p.m. and walked directly to defendants' premises where she purchased from Pieretti one whiskey and soda which she partly consumed. She said that she was dressed neatly and denied that she had consumed any liquor on the day in question prior to entering defendants' premises. Her mother corroborated Rose's testimony. From the evidence and from observing Rose on the stand, I am satisfied that she is suffering from a nervous condition resulting from the tragic death of her husband a short time ago.

"After reviewing all the evidence, I conclude that Mary was actually or apparently intoxicated when served. The doctor's testimony is not convincing because he did not examine her until an hour after she was served. I conclude, however, that the Division has not sustained the burden of

proof in establishing that Rose was actually or apparently intoxicated when served. I recommend, therefore, that defendants be found guilty as charged only so far as the patron Mary is concerned.

"Defendants have a prior record. Effective November 30, 1954, their license was suspended for one hundred eighty days for immoral activities (Bulletin 1041, Item 2) and, effective June 24, 1957, their license was suspended for thirty-five days for selling to intoxicated persons and for permitting obscene language and conduct (Bulletin 1177, Item 1). The minimum suspension for sale to an intoxicated person is fifteen days. Re Carbone and Benedetto, Bulletin 1236, Item 8. Because of the similar violation within the past five years, the penalty herein should be doubled (Re Sada, Bulletin 1217, Item 4) and five days added because of the dissimilar violation within five years, thus making a total penalty of thirty-five days. I recommend, therefore, that an order be entered suspending defendants' license for thirty-five days."

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

Having carefully considered the testimony herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 28th day of July, 1958,

ORDERED that Plenary Retail Consumption License C-897 (for the 1958-59 licensing year), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Emanuel Sussman & Hyman Sussman, t/a Joe's Bar, for premises 111 Washington Street, Newark, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a. m. August 1, 1958, and terminating at 2:00 a.m. September 5, 1958.

WILLIAM HOWE DAVIS
Director.

6.

ACTIVITY REPORT FOR AUGUST 1958

ARRESTS:		
Total number of persons arrested	-----	34
Licensees and employees	11	
Bootleggers	23	
SEIZURES:		
Motor vehicles - cars	-----	2
Stills - over 50 gallons	-----	1
- 50 gallons or under	-----	1
Mash - gallons	-----	625.00
Distilled alcoholic beverages - gallons	-----	20.09
Wine - gallons	-----	20.42
Brewed malt alcoholic beverages - gallons	-----	34.34
RETAIL LICENSEES:		
Premises inspected	-----	666
Premises where alcoholic beverages were gauged	-----	303
Bottles gauged	-----	5,218
Premises where violations were found	-----	95
Violations found	-----	127
Unqualified employees	44	
Application copy not available	25	Other mercantile business - 9
Reg. #38 sign not posted	17	Disposal permit necessary - 6
Prohibited signs	13	Other violations - 13
STATE LICENSEES:		
Premises inspected	-----	31
License applications investigated	-----	12
COMPLAINTS:		
Complaints assigned for investigation	-----	413
Investigations completed	-----	421
Investigations pending	-----	202
LABORATORY:		
Analyses made	-----	181
Refills from licensed premises - bottles	-----	3
Bottles from unlicensed premises	-----	61
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	26
Persons fingerprinted for non-criminal purposes	-----	254
Identification contacts made with other enforcement agencies	-----	156
Motor vehicle identifications via N. J. State Police teletype	-----	1
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	12
Violations involved	-----	12
Sale during prohibited hours	8	
Service to women at a bar (local reg.)	1	
Permitting brawl on premises	1	
Sale to minors	1	
Sale to non-members	1	
Cases instituted at Division	-----	23
Violations involved	-----	31
Sale to minors	11	Sale during license suspension - 1
Sale during prohibited hours	7	Permitting immoral activity on premises - 1
Permitting lottery activity (numbers)	3	Possessing contraceptives on premises - 1
Hindering investigation	2	Sale to intoxicated persons - 1
Sale below minimum resale price	2	Possessing liquor not truly labeled - 1
Permitting bookmaking on premises	1	
Cases brought by municipalities on own initiative and reported to Division	-----	13
Violations involved	-----	14
Sale to minors	6	
Permitting brawl on premises	5	
Permitting hostesses on premises	1	
Permitting bookmaking on premises	1	
Sale during prohibited hours	1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	29
Appeals	5	
Disciplinary proceedings	17	Seizures - 1
Eligibility	3	Tax revocations - 3
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-----	1,217
Licenses	6	Social affair permits - 434
Employment permits	247	Miscellaneous " - 105
Solicitors' "	65	Transit insignia - 223
Disposal "	107	Transit certificates - 30

Dated: September 4, 1958

WILLIAM HOWE DAVIS
DIRECTOR

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1957 to JUNE 30, 1958 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 -

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	487	\$ 208,100.00	72	\$ 27,383.22	25	\$ 2,350.00						584	237,833.22
Bergen	811	307,231.28	300	87,527.00	108	10,072.15	53	2,496.25	9	2,465.59	4	1,277	409,592.27
Burlington	184	78,291.37	41	12,045.12	43	6,033.36	1	50.00				269	96,419.85
Camden	453	221,538.51	82	33,525.00	75	7,233.77			2	750.00	1	611	263,047.28
Cape May	135	76,800.00	11	4,000.00	16	1,950.00						162	82,750.00
Gumberland	80	40,875.00	14	3,950.00	31	4,105.20						125	48,930.20
Essex	1,352	758,646.99	335	209,150.00	101	13,686.78	29	1,450.00	3	2,250.00	3	1,817	985,183.77
Gloucester	93	33,585.00	14	3,600.00	18	1,750.00						125	38,935.00
Hudson	1,541	699,096.33	308	125,900.00	84	9,742.21	63	2,700.00			3	1,993	837,438.54
Hunterdon	79	27,400.00	9	3,173.43	10	1,050.96						98	31,624.39
Mercer	425	261,800.00	51	21,400.00	55	7,800.00			2	554.13	1	532	291,554.13
Middlesex	628	307,605.00	75	24,349.39	95	8,440.36	4	200.00			1	801	340,594.75
Monmouth	550	287,820.48	122	42,341.37	43	4,631.78	10	435.00	50	22,901.10	27	748	358,129.73
Morris	356	131,624.18	100	33,765.00	53	4,783.25	19	950.00	10	2,625.00	8	530	173,747.43
Ocean	196	106,245.59	47	19,680.00	26	2,800.00					1	268	128,725.59
Passaic	872	357,579.65	167	51,400.00	41	4,904.32	9	425.00				1,089	414,308.97
Salem	51	19,300.00	8	1,550.00	18	1,511.10						77	22,361.10
Somerset	187	84,364.38	41	12,595.00	26	2,949.45						254	99,908.83
Sussex	166	45,624.86	20	4,005.00	8	457.12	1	50.00	2	450.00	1	196	50,586.98
Union	549	300,300.00	144	67,800.00	75	8,536.65	29	1,425.00				797	378,061.65
Warren	148	46,330.00	19	4,860.00	27	3,046.71			4	642.69	1	197	54,879.40
Totals	9,343	4,400,158.62	1,980	793,799.53	978	107,835.17	218	10,181.25	82	32,638.51	51	12,550	5,344,613.08

William Howe Davis
Director

September 3, 1958

8. PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION -
DISAPPROVAL OF SALE OF MONEY ORDERS ON LICENSED PREMISES
REAFFIRMED.

NOTICE TO ALL RETAIL LICENSEES:

On March 28, 1958, in ruling on the permissibility of the operation of a money order service by a plenary retail consumption licensee conducting a straight package store under the "broad package privilege", I disapproved such operation or service on any retail liquor licensed premises. Re Practices, Bulletin 1223, Item 11. Thereafter, a request was made on behalf of a group of plenary retail distribution licensees for an opportunity to conduct a survey and to submit the results thereof to me with the view to a possible modification of the ruling. Such opportunity was afforded and further action against plenary retail distribution licensees then engaging in the practice was withheld pending completion of the survey and a study of its results.

After examining, most carefully, the results of the survey, I find that nothing contained therein warrants or justifies any change in my previous ruling disapproving the operation of a money order service on any retail liquor licensed premises. This practice is the rendering of a service in the same general category with the preparation of income tax returns and the conduct of Christmas Club savings accounts, both of which have been disapproved on retail liquor licensed premises. See Bulletin 1052, Item 16 and Bulletin 1215, Item 4, respectively.

In order to dispel any confusion which may exist with respect to this matter, it is pointed out that the "sale" (more correctly, issuance) of money orders by liquor licensees is not a mercantile business prohibited to all plenary and seasonal retail consumption licensees (R. S. 33:1-12(1)) and one which may be prohibited by municipal ordinance to plenary retail distribution licensees pursuant to R. S. 33:1-12(3)a, since, from the inception of this agency in 1933, "mercantile business" has been construed (as first set forth in Bulletin 47, Item 6) to be "the buying and selling of goods or merchandise or the dealing in the purchase and sale of commodities" as distinguished from the rendering of a service. Instead, my ruling of March 28, 1958, aforementioned, prohibiting the issuance of money orders on retail liquor licensed premises, stems from the power conferred by R. S. 33:1-39 to prohibit by rule or regulation or special ruling, inter alia, "practices unduly designed to increase consumption of alcoholic beverages". Consequently, any argument directed to relating the issuance of money orders (by miscalling it "sale") to the sale of groceries, drugs or any other mercantile item where such sales are not prohibited either by statute or municipal ordinance, is without relevancy and merely confuses the issue by misunderstanding it.

Accordingly, my disapproval of the aforementioned practice is reaffirmed, effective immediately.

WILLIAM HOWE DAVIS
Director.

Dated: August 26, 1958.

9. STATE LICENSES - NEW APPLICATION FILED.

Ruth Orris
t/a John Lawrence Co. Ltd.
5 Brookside Road
West Orange, New Jersey

1241

Application filed September 12, 1958 for
Warehouse Receipts License.

1241

1241



William Howe Davis
Director