

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

BULLETIN 1544

JANUARY 15, 1964

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1. COURT DECISIONS - LAURINO v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR REVERSED IN PART AND AFFIRMED IN PART.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-832-62

ALFRED P. LAURINO,)
)
Appellant,)
)
vs.)
)
STATE OF NEW JERSEY,)
DIVISION OF ALCOHOLIC)
BEVERAGE CONTROL,)
)
Respondent.)

Argued October 28, 1963 -- Decided November 21, 1963.

Before Judges Goldman, Kilkenny and Collester.

Mr. Edward J. Keefe argued the cause for appellant.

Mr. Avrom J. Gold argued the cause for respondent
(Mr. Arthur J. Sills, Attorney General of New Jersey,
attorney).

The opinion of the court was delivered by
KILKENNY, J.A.D.

Alfred P. Laurino (hereinafter "licensee"), the holder of a plenary retail consumption license, appeals from an order of the Acting State Director of Alcoholic Beverage Control, adjudging him guilty of (1) selling alcoholic beverages to persons under 21 years of age and (2) employing persons under 21 years of age in or upon the licensed premises without obtaining a permit from the Director. This determination resulted in a suspension of the license for a period of 30 days. (Re Laurino, Bulletin 1520, Item 3.)

The licensee admits the truth of the charges but contends that he established a complete defense under the special facts herein and within the ambit of R.S. 33:1-77.

The facts are not disputed. In November of 1962 two girls, one 20 years of age and the other 16 years of age at the time, applied to the licensee for employment. Both girls orally represented themselves to be over 21 years of age. The 16-year-old girl showed the licensee what purported to be a genuine baptismal certificate, impressed with the church seal, which recited that she was born on August 8, 1941 and baptized on September 12, 1941 at the Church of Christ the King, Yonkers, New York. Thus, this certificate indicated on its face that this girl was then 21 years old. The 20-year-old girl claimed to have been born on October 17, 1940. If this were true, she would then have been 22 years old. She, too, exhibited a birth or baptismal certificate.

On November 27, 1962 the licensee took the 16-year-old girl to the Union City Bureau of Liquor Control at the local police headquarters. She then and there presented a photograph of herself, signed a form in which she stated she was 21 years old, and was fingerprinted, as required by the local ordinance. She received an identification card issued by the Commissioner of Public Safety, showing her age as 21 and certifying compliance with the provisions of the ordinance. The ordinance required this certificate to be on file on the licensed premises.

The licensee followed the same procedure with reference to the 20-year-old girl on December 7, 1962. She represented that she was 22 years old and her identification card, issued by the local bureau of liquor control, so indicates.

Aside from the oral representations as to their age made by the girls to the licensee, the showing of the baptismal certificate, and their signatures on the fingerprint cards, executed for the local board of liquor control at police headquarters, neither girl signed any other writing certifying or attesting to the licensee that she was 21 years of age, or older.

On January 6, 1963 two agents of the State Division of Alcoholic Beverage Control went to the licensee's premises and there found the two girls in the licensee's employ. The fact of that employment and that the girls had been served alcoholic beverages is admitted. The licensee was charged with serving intoxicating beverages to minors and employing minors without a permit on licensed premises, in violation of Division of Alcoholic Beverage Control Rule 1, Regulation 20, and Rule 3, Regulation 13, respectively.

At the Division hearing, aside from the facts recited above, it was stipulated that if the agents were to testify as to their impression of the girls' apparent ages, they would say the 16-year-old girl appeared to be 18 or 19, and the 20-year-old girl about 19 or 20.

The licensee testified that the girls appeared to him to be over 21. He stated further that he had been in the tavern business as bartender and proprietor for about five or six years. The licensee's bartender, similarly experienced in the tavern business, testified that both girls appeared to him to be over 21. On cross-examination the bartender testified that he knew the girls had police cards and, therefore, did not question them. He admitted that if they did not have police cards he "might have" asked them about their age because they were "of that age."

I.

We consider first the charge of selling alcoholic beverages to minors.

The sale of alcoholic beverages to a minor is a misdemeanor as well as a violation of the rules and regulations of the Division of Alcoholic Beverage Control. R.S. 33:1-77 provides:

"Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor; provided, however, that the establishment of all of the

following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over."

The defense provided in the above criminal statute has been held to be available in proceedings before the Division. Sportsman 300 v. Bd. of Com'rs of Town of Nutley, 42 N.J. Super. 488 (App. Div. 1956).

It has been held that all of the factual elements enumerated in R.S. 33:1-77 must be present to constitute a defense to the violation. Sportsman 300 v. Bd. of Com'rs of Town of Nutley, supra. That is: (1) the minor must represent in writing that he or she is over 21, and (2) an ordinary prudent person would believe the minor appeared to be over 21, and (3) the sale was made in good faith relying on the written representation and appearance of the minor and in the reasonable belief the minor was actually 21 or over.

In finding the licensee guilty of selling alcoholic beverages to minors, the Director found that the licensee's defense was lacking in only one of the necessary elements, namely, the appearance of the minors. In his words:

"I find that, notwithstanding the minor's representations and writings (the pertinence of which is questionable), their appearances were such that an ordinary prudent person would not believe them to be of age. Hence one of the requirements necessary to establish the defense provided by R.S. 33:1-77 is lacking."

There was no finding that the minors had not falsely represented in writing that they were 21 years of age or over, or that the sale of liquor to them was not made in good faith in reliance upon their written representations and in the reasonable belief of the licensee that they were actually 21 years of age or over.

However, on this appeal taken by the licensee, the Director challenges the sufficiency of the false representations as to age made in writing by the girls when they applied to the Liquor Control Board of Union City for police identification cards required by the local ordinance for employment in licensed premises. He maintains that R.S. 33:1-77 and A.B.C. rules and regulations contemplate a written form such as that promulgated by the Division and to be executed by the customer at the time of and as an inducement for the sale of liquor to him. R.S. 33:1-77 contains no such limitation. We discern no greater efficacy in a false representation in writing as to age made to the licensee on a recommended A.B.C. form at the time of the sale, upon which he honestly relies in making the sale, than in a similar written false representation made only a few weeks anterior to sale on a form prescribed by the local liquor control board, upon which both the local board and the licensee relied in good faith, and which also influenced the sale.

Accordingly, we conclude on the facts in this case that the false representation by these girls on the fingerprint cards signed by them in compliance with the local ordinance, and their filing of the police identification cards, with their purported ages thereon, with the licensee and upon which he relied in giving them employment in the licensed premises, was a sufficient false representation in writing to satisfy that aspect of R.S. 33:1-77.

We turn our attention now to the question of whether there was substantial evidence to support the Director's finding that "an ordinary prudent person would not believe them to be of age." It is our policy not to interfere with the administrative finding of fact if there is substantial evidence to support it. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956).

Needless to say, determining the age of a person by his appearance is most often very speculative. As the court said in State v. Koettgen, 89 N.J.L. 678, 683 (E. & A. 1916):

"It is a matter of common knowledge, derived from observation and experience, that there is nothing more uncertain and highly speculative than that of attempting to fix the age of a person by his or her appearance."

The Division's proof consisted solely of the stipulation, noted above, that if the agents were to testify as to their impressions of the girls' apparent age, they would say the 16-year-old girl looked about 18 or 19 and the 20-year-old one looked about 19 or 20. It is obvious therefrom that the opinions of the agents based merely upon appearances were far from accurate. They misjudged the age of the 16-year-old by two to three years, thus indicating that she was much more mature in appearance even in the critical eyes of the agents than would be expected of a girl of 16. The agents also underestimated the age of the older girl who was actually 20 years and 3 months old at a time when the agents placed her age as low as 19 years. In the absence of testimony by the agents as to the reasons for their judgment, we are uninformed as to the factors in the appearances of the girls which influenced their opinions.

On the other hand, the licensee and his bartender testified under oath that both girls appeared to them to be over 21 years of age. That they erred in judgment is not enough to infer guilt. R.S. 33:1-77 refers to the "ordinary prudent person." Their misjudgment may have reasonably been induced by their knowledge of other factors. They were aware of the police identification cards and the fingerprint cards, indicating the girls were over 21. We have also noted above that before the girls were employed or served liquor, they had orally represented to the licensee that they were 21 years of age, and older, and the licensee had seen what was represented to be the younger girl's baptismal certificate, evidencing her baptism in August 1941. Since one must be born before he can be baptized, this certificate may have had some subconscious effect upon the licensee's judgment, as it would have had upon any "ordinary prudent person."

Appearances can be deceiving to the most prudent person, especially when conditioned by prior or contemporaneous information. The phrase, "that makes me see him in a new light," is illustrative of this rule of human behavior. The certificates

of the municipal authorities would have an almost inexorable tendency to make the appearances coincide with the representations. Nor need we elaborate upon the female ability to deceive the unwitting male by false appearances. Only the most naive would be unaware of the countless female aides which flood the marketplace, which permit one to appear older or younger, shorter or taller, or variable in numerous other ways. We find no lack of prudence in the licensee's judgment based on the girls' appearances. The local authorities are primarily responsible for the enforcement of laws relating to alcoholic beverages. R.S. 33:1-24; Beneditti v. Bd. of Comm'rs of Trenton, 35 N.J. Super. 30 (App. Div. 1955). We deem it significant that they were apparently satisfied that the girls were 21 or over. If these girls could, by their appearances, deceive experienced police officials in their false representations as to age, it would be unreasonable to hold that the licensee did not act as an ordinary prudent person in being equally misled by those same appearances. Even were the appearances of their being 21 or over doubtful, the ordinary prudent person would believe them to be of that age upon learning that the local authorities had issued certificates which indicated such an age.

We conclude that the licensee's defense to the charge of selling alcoholic beverages to minors was meritorious and that he should not have been found guilty of that charge.

II.

The proviso in R.S. 33:1-77, applicable as a defense to selling alcoholic beverages to a minor, is not a defense to the charge of employing a minor to work in licensed premises without a permit from the Director, in violation of Rule 3, Regulation 13. Accordingly, the licensee did technically violate that rule. However, there was no evidence of any conscious hiring of these minors as such, or of any intentional violation of the rule and regulation. The obtaining of the permits from the Director to employ minors is a simple requirement with which the licensee could have easily complied. Assured by the certificates issued by the municipal authorities, showing on their face that these girls were 21 and 22 years old, there was no apparent need to seek permits from the Director. Therefore, under the mitigating circumstances herein, a suspension penalty was unwarranted.

For the reasons above stated, the Director's determination is reversed, insofar as the charge of selling alcoholic beverages to minors is concerned; is affirmed as to his finding the licensee guilty of the charge of employing minors without a permit from the Director; and the order of suspension is vacated. No costs.

2. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATION - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 25 DAYS UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against

LIDO BAR & GRILL, INC.
60B-60C Branford Place
Newark 2, N. J.

)
)
) CONCLUSIONS
) AND ORDER
)

Holder of Plenary Retail Consumption License C-872, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Samuel Raffaello, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charges:

- '1. In your application dated July 31, 1962, filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark, upon which you obtained your current plenary retail consumption license, in answer to Question No. 22, you falsely listed David Contino, Jacquelyn Contino and Mildred Brienza as the holders of 30%, 20% and 50%, respectively, of your issued and outstanding stock, and you failed to answer Question No. 23 therein, which asks: "Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?", whereas in truth and fact Ralph Brienza and Michael A. Contino had such an interest in that they were the real and beneficial owners of all of your said stock; said false statements, misrepresentations, evasions and suppression of material facts being in violation of R.S. 33:1-25.
- '2. In your aforesaid license application, you falsely stated "No" in answer to Question No. 31, which asks: "Have you agreed to pay (by way of rent, salary or otherwise) to any employee, or other person, any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?", whereas in truth and fact you had agreed to permit Ralph Brienza and Michael A. Contino to retain all the profits and income derived from your licensed business; in violation of R.S. 33:1-25.
- '3. From on or about October 17, 1962 to date, you knowingly aided and abetted Ralph Brienza and

Michael A. Contino to exercise, contrary to R.S. 33:1-26, the rights and privileges of your current plenary retail consumption license; in violation of R.S. 33:1-52.'

"To substantiate the charges the Division's attorney called as its witnesses Agents H and T.

"Agent H testified that his investigation of the licensee's business commenced in the Fall of 1962 and continued to the early part of 1963; that in his visits to the licensed premises he always found Michael Contino in charge of the same; that on October 25, 1962, in the presence of her daughter and son, he took a signed statement (S-2 in evidence) from Mildred Brienza, vice president and fifty per cent. stockholder of the licensee according to a certified copy of licensee's renewal application (S-1 in evidence) dated July 31, 1962, and filed on August 1, 1962; that on November 13, 1962, he took an unsigned statement (S-3 in evidence) from Jacquelyn Contino, secretary and treasurer of the corporate licensee and holder of twenty per cent. of its stock; that on November 16, 1962, he took an unsigned statement (S-4 in evidence) from David Contino (husband of Jacquelyn Contino), president of the corporate licensee and holder of thirty per cent. of its stock; that on January 13, 1963, he took a signed statement (S-5 in evidence) from Michael Contino; that on January 13, 1963, he took an unsigned statement (S-6 in evidence) from Ralph Brienza (husband of Mildred Brienza); following which the Division's attorney placed in evidence a certified copy of a conviction of William Brienza (identified in these proceedings as Ralph W. Brienza) for making, drawing, and uttering and delivering a check with intent to defraud, in violation of R.S. 2A:111-15 (S-7 in evidence), a composition book (S-8 in evidence) containing the daily receipts and disbursements of the licensee supplied by Michael Contino, also known as Al Contino, four sheets of paper (S-9 in evidence) given to the agents by Michael Contino, Agent H's compilation (S-10 in evidence) of the figures obtained from the composition book and the four sheets of paper, four checks of White Poodle, Inc., a licensee (S-11 in evidence) signed by David J. Contino, president -- one dated July 31, 1962, in the sum of \$50 to the order of Board of Alcoholic Beverage Control of Newark; two dated July 18, 1962, and July 31, 1962, respectively, each in the sum of \$62.31 to the order of National State Bank of Newark, and the fourth dated July 25, 1962, in the sum of \$1000 to the order of A. Desimone (Augustine Desimone).

"The aforesaid compilation (S-10) discloses that between December 22, 1962, and January 29, 1963, the licensee's business showed a gross profit of \$3,019; that \$2,278 and \$943 were charged as withdrawals by Ralph Brienza and Michael Contino, respectively, for said period.

"Agent H further testified that all of the aforesaid statements (signed and unsigned) were taken in question-and-answer form; that each individual read his or her statement; that each stated to him that the answers to the questions were true and correct. With reference to the four checks, Agent H testified that Michael Contino identified the check dated July 31, 1962, as a deposit on the license fee for the renewal application of the Lido's license; checks dated July 18 and 31, 1962, as payments of personal obligations (automobile loan) of Ralph Brienza, and the check dated July 25, 1962, as a repayment of loan made to him by Augustine Desimone. At this point the Division's attorney placed in evidence a certified copy of a license

application of White Poodle, Inc. (S-12 in evidence), dated June 15, 1962, and filed with the local issuing authority, which application listed David Contino, president; Jacquelyn Contino, secretary and treasurer, and Mildred Brienza, stockholder, who are the same three stockholders and officers of the Lido Bar & Grill, Inc.

"Agent H further testified that, during the course of his investigation of the Lido, he had also visited the licensed premises of White Poodle, Inc. on December 26, 1962; that prior thereto another ABC agent, whom he had succeeded in the investigation, had obtained thirty-five multicolored sheets of paper from White Poodle, Inc. (S-13 in evidence); that Michael Contino identified these sheets of paper as the daily receipts and disbursements of White Poodle from July 22, 1962, to September 8, 1962; that at the bottom of the sheet dated July 22, 1962, was a notation 'Total Red short for Friday, Saturday and Sunday \$30.00, plus Al gave Red Monday a.m. \$15.00 on Monday Sheet cash;' that similar memoranda appear on the other sheets; that Michael Contino identified these notations as monies taken from the register by Ralph Brienza for his personal use; that some of the withdrawals were applied to Ralph Brienza's salary and the excess represented profits of the business; that the latter was to be charged to Ralph Brienza in the event of a sale of the business; that some of the sheets (S-13a and S-13b) indicated that Michael Contino had also taken money from the register; that he prepared a summary of the thirty-five sheets (S-14 in evidence) and that it showed that Ralph Brienza had withdrawn a total of \$833 from White Poodle, Inc. between July 22 and September 8, 1962. (It may be noted in passing that White Poodle, Inc. has suffered a license suspension after plea of non vult to charges alleging that its stockholders were 'fronts' for Brienza and Contino. Re White Poodle, Inc., Bulletin 1530, Item 4.)

"Mrs. Brienza in her statement states that she is a forty per cent. stockholder of White Poodle, Inc.; that she does not know how much money she invested in White Poodle; that the transaction was handled by her husband; that none of the monies which she had invested in White Poodle came from any that she had in her possession or from her personal bank account, nor did she borrow any for the same; that she had purchased her interest in White Poodle with monies contributed by her son and her husband; that her husband informed her he would like to purchase an interest in a tavern and asked her if she would like to be a stockholder; that she was not familiar with the operations of White Poodle, Inc.; that she has not received any of its profits; that her husband takes care of her interest in White Poodle, Inc.; that he is employed as a night bartender by White Poodle; that she does not hold any stock in any other tavern, and that she does not know whether her husband has any interest in any other tavern.

"Ralph Brienza in his statement dated January 31, 1963, states that for the past three months he has been working at the Lido taking care of his wife's interest; that for a period of eight months prior thereto he performed in the same manner at White Poodle; that neither premises showed a profit; that he does not know Augustine Desimone aforementioned; that the afore-said two checks of White Poodle, payable to the National State Bank, represented payments on his automobile and were charged against his salary; that his wife invested \$1,000 in White Poodle, (some from me and some from my son; that he did not invest any money in either White Poodle or Lido Bar; and that the investment in Lido Bar represented \$4500.00 from the selling of the

White Poodle. We borrowed some way from the White Poodle. Natale (listed in amended application as president of White Poodle, Inc. in S-12 in notice of change of officers dated November 29, 1962) gave us \$2000. The rest I don't know.'

"Michael Contino in his statement dated January 31, 1963, states that prior to 1960 he was in the trucking business with Ralph Brienza and two others; that thereafter he managed White Poodle, following which he became the day manager of Lido Bar; that he and Ralph Brienza (night manager) each received a salary of \$75 a week from White Poodle; that he kept the records of White Poodle; that at no time did he invest any money in White Poodle; that to the best of his recollection the check of \$1,000 given by White Poodle to Augustine Desimone, his brother-in-law, repaid a loan made to him by Augustine Desimone to install an air conditioning unit in the White Poodle premises; that he and Ralph Brienza authorized this payment; that the check of \$50 bearing notation re Lido Bar and Grill was a deposit for the licensing fee for the Lido Bar; that the records of White Poodle charging itself with a payment to one Charles Affilitto, a bondsman, represented a fee for a bail bond for Ralph Brienza when he was arrested; that Ralph Brienza had taken approximately \$1,300 from the cash register of White Poodle and about \$1,500 from the cash register of Lido, none of which was repaid by him; that Ralph Brienza was privileged to withdraw said monies because he is the night manager and his wife was part-owner of the premises; that he had invested about \$500 in the Lido Bar; that his private records would show his investment in the Lido and that Ralph Brienza did not invest any money in Lido Bar.

"David Contino in his statement states that he holds forty and thirty per cent. of the stock in White Poodle and Lido Bar, respectively; that he invested \$1,000 in White Poodle; that this sum included the payment for twenty per cent. of its stock held by Jacquelyn Contino, his wife; that the \$1,000 constituted \$400 in cash which he had in his possession, a \$350 loan from his mother, and a \$250 loan from an aunt; that he is presently employed as a projectionist; that he intends to go in business for himself; that the proceeds of a note secured by a chattel mortgage on the assets of White Poodle were used to purchase the Lido; that the note was signed by him, his wife, Michael Contino, his father, and Ralph Brienza; that the shares of stock in Lido are divided equally between the Contino and Brienza families; that the profits of White Poodle and Lido Bar are shared exclusively by him, his wife and Mrs. Brienza; that Mrs. Brienza intended to purchase Club Juanita, a licensed premises, which was being managed by her husband; that the profits withdrawn from White Poodle by Ralph Brienza were invested in this club; that 'the money that went to the Juanita was not considered profit but eventually (if and when the place was sold) some of it would be considered profit.'

"Jacquelyn Contino in her statement sets forth that she, her husband and Mildred Brienza are the stockholders of White Poodle; that she and her husband invested \$1,000 in the White Poodle; that the \$1,000 comprised \$500 withdrawn from a joint bank account in the names of her husband and herself, a loan of about \$200 from her mother-in-law and the balance was monies which she had in her possession in her home; that she believes she has an interest in the Lido because 'I signed papers for something so it must have been the Lido Bar & Grill;' that she does not know the number of shares of stock she holds in the Lido; that she does not understand how she could have paid for any of its

stock 'if I didn't know I had any. I don't know anything about the Lido;' that she does not know the source of the money invested in the Lido.

"At the conclusion of the Division's case counsel for the licensee moved for a dismissal of the charges on the ground that the Division failed to prove a prima facie case. I recommend that the motion be denied.

"Jacquelyn Contino denied that Michael Contino had any beneficial or financial interest in White Poodle and further testified that Michael Contino was managing the premises for her husband David Contino; that the \$1,000 invested by her and her husband in White Poodle was supplied by her husband; that in April 1962 she appeared before the local Board in connection with the transfer of the license to White Poodle and that, in so far as she knew, her only connection with White Poodle was as 'the third person to form the corporation.'

"On cross examination Mrs. Contino stated that the statement (S-3) which she gave to Agent H contained truthful answers to the questions; that she told Agent H that the \$1,000 invested in White Poodle consisted of monies she had accumulated and had in her possession and a loan made by her husband from his mother; that she does not remember either amount; that in April 1962 her husband suggested to her that she become one of its stockholders; that she had no knowledge of its operation; that she does not know from whom the business was purchased, and that Michael Contino accounted to her husband for its receipts.

"With respect to Lido Bar, Mrs. Contino testified that it was purchased with the proceeds of a chattel mortgage made by White Poodle and that she signed the mortgage as an officer of the corporation.

"On recross examination Mrs. Contino testified that she was a dummy stockholder in White Poodle and Lido Bar, and that she did not feel she was legally entitled to any of their profits.

"David Contino testified that he had invested \$1,000 in White Poodle; that the money was his and his wife's; that Michael Contino was only an employee of White Poodle; that the Lido was purchased with \$1,000 he had borrowed from his uncle August Desimone, and \$5,000 the proceeds of a chattel mortgage made by White Poodle; that he and his wife pledged their personal credit to obtain the mortgage; that the operation of the Lido showed no profits; that thereafter it fell \$1,500 in arrears with its rent; that he and Mrs. Brienza each contributed \$750 towards the payment of the same, and that he had borrowed his \$750 from his aunt.

"On cross examination David Contino testified that he had no knowledge of any criminal record of either Michael Contino or Ralph Brienza; that prior to the purchase of White Poodle, Michael Contino and Ralph Brienza had been partners in the trucking business for ten years; that he did not withdraw any funds from his bank account to purchase White Poodle; that Michael Contino and Ralph Brienza co-managed the White Poodle and the Lido; that he did not know the weekly receipts and expenses of the Lido; that Michael Contino and Ralph Brienza as co-managers of the Lido were to receive salaries ranging between \$75 and \$100 a week depending upon the volume of its business; that Michael Contino and Ralph Brienza determined what their exact weekly salary would be and that he did not know these amounts.

"On further cross examination David Contino testified that his father did not contribute any money toward the purchase price of the Lido; that he heard that his father had made a loan of \$500 to the Lido to meet its expenses; that this was done because he did not care to make any further pledges of his credit and that he had not seen any written records pertaining to the transaction.

"On further cross examination David Contino testified that he borrowed a total of \$1,000 from his aunt, \$250 of which was used to purchase White Poodle and \$750 as aforesaid; that the \$1,000 was given to him in cash and that he gave no security for the same.

"Mildred Brienza denied that she was a 'front for her husband in either White Poodle or Lido Bar, and further testified that she paid \$1,000 for her forty shares of stock in White Poodle; that Ralph Brienza (her husband) did not invest any of his personal funds in White Poodle; that the Lido Bar was purchased with a loan of \$6,500; that she holds fifty shares of its stock; that in May or June 1963 she placed a \$2,500 mortgage on her home; that she put this money into the Lido Bar; that she made the aforesaid investments because 'My husband was a truck driver, and he was over the road, gone maybe a month or two months at a time, I wanted him near home;' that she borrowed \$750 from her father-in-law to pay her share of the arrears in rent owed by the Lido Bar.

"On cross examination Mrs. Brienza testified that she has been married for twenty-three years; that she has not earned any money during said period; that her home was purchased with her husband's money (then qualified her answer by stating, 'My in-laws helped us and some from my husband'); that \$600 of the thousand dollars she invested in White Poodle came from her son and the balance of \$400 was money which she had accumulated and had in her home; that all negotiations for the purchase of White Poodle were transacted by her husband; that she knew that she was listed as a stockholder of Lido Bar;

'Q How much money was invested in the Lido Bar?

A You would have to ask my husband.

Q You don't know?

A No.

Q Did you put any money into the Lido Bar?

A I said you would have to ask my husband.

Q In other words, you don't know?

A That is right.'

"On further cross examination Mrs. Brienza testified that she and David Contino had discussed the salaries to be paid to Michael Contino and her husband; that each was to receive between \$75 and \$100 as managers of White Poodle, and the same amount as managers of the Lido Bar, and that she invested in both licensed premises to give employment to her husband.

"Ralph Brienza testified that, at the time of the purchase of White Poodle, he and Michael Contino were destitute; that the purchase price of White Poodle was \$8,800, \$1,000 of which was paid by his wife and \$1,000 by David Contino; that the balance of the purchase price was to be paid weekly; that he drew a salary

for his services as its bartender; that White Poodle showed no profits; that he informed his wife that the Lido Bar was for sale; that a deposit of \$1,000 was paid on its purchase price; that the balance was paid with the proceeds of a chattel mortgage on White Poodle; that his wife is the sole owner of fifty shares of the stock of the Lido Bar; that he had no agreement with his wife or with Michael Contino or David Contino or Jacquelyn Contino to share in the profits of the Lido Bar.

"On cross examination Mr. Brienza testified that \$600 of the thousand dollars invested in White Poodle by his wife was obtained by her from their son, and the remaining \$400 came from monies she had in her personal possession; that the \$1,000 deposit on the purchase of the Lido was paid by White Poodle (then qualified his statement, 'I had thought so'); that the aforesaid deposit on the Lido was made with money borrowed by Michael Contino and David Contino from an uncle.

"On further cross examination Mr. Brienza testified that he was entitled to draw a salary of \$75 a week from the Lido; that he had drawn weekly sums ranging between \$40 and \$110 from its cash register, depending upon his personal needs; that he was free to withdraw, within reason, any amount he saw fit; that he had accounted for his withdrawals; that he was not required to obtain anyone's permission before making these withdrawals because 'I was entitled to that money as a salary;' that between October 27, 1962, and January 29, 1963, he had taken \$2,278 from its cash register; that any money which he owed the Lido in excess of his salary for said period was repaid to the Lido by his wife with part of the proceeds of the aforementioned \$2,500 mortgage, the balance of the proceeds being put into the business; that he does not know whether the records of the Lido would reflect this repayment since they are kept by Michael Contino.

"Michael Contino denied that he was the true owner of the stock held by David Contino and Jacquelyn Contino in White Poodle and Lido Bar; denied that he had any agreement with them or Mildred Brienza to share in the profits of either licensed premises; denied that he received any of the profits from either of the businesses; denied that he invested \$500 in the Lido Bar, and further testified that he was the day manager of White Poodle; that between April and October 1962 he had withdrawn about \$1,000 from White Poodle; that at various times when the Lido was in need of money he would personally borrow sums of \$100 or \$200 for its use; that he would subsequently reimburse himself for these advancements from its receipts, and that the \$500 mentioned by him in his statement as an investment in the Lido Bar represented aforesaid transactions.

"On cross examination Michael Contino testified that the statement he gave to Agent H was true; that the \$500 referred to in his statement represented a single loan of \$500 he personally made for the benefit of the Lido; that the \$1,000 invested by his son and daughter-in-law in White Poodle came from his former wife and an aunt; that at the times White Poodle and Lido Bar were acquired he was under indictment for the sale of counterfeit drugs (dismissed December 3, 1962); that on June 10, 1929, he was convicted for conspiracy to rob; that on January 31, 1934, he was convicted of assault and battery; that he did not know his criminal record disqualified him from engaging in the alcoholic beverage industry in this State; that he was present when his son and daughter-in-law appeared before the local Board in connection with their license application for White Poodle; that he heard the Board ask them whether they had a criminal record; that he knew a person with a

criminal record was not permitted to become a licensee; that he believed his disqualification to be employed on licensed premises had been automatically lifted because more than five years had elapsed since his last conviction.

"On further cross examination Michael Contino testified that Exhibit S-9 was prepared by him; that it reflects the records of the Lido Bar between October 27, 1962, and January 29, 1963; that it shows that the profits of the Lido Bar were taken from its cash register by Ralph Brienza in various sums; that on the days following these withdrawals Ralph Brienza would inform him of the amounts he had taken; that he did not submit any written accounting of the Lido's profits to David Contino and Jacquelyn Contino and that he did, however, discuss the affairs of the Lido Bar with them.

"On redirect examination Michael Contino testified that the Lido Bar from its inception showed no profits; that in June or July 1963 Lido Bar owed about \$1,500 in back rent, and that neither he nor Ralph Brienza paid any part of the same.

"On re-cross examination Michael Contino testified that between October 27, 1962, and January 29, 1963, Ralph Brienza was able to withdraw approximately \$1,300 in excess of his salary from Lido Bar because it was not paying its creditors; that Ralph Brienza withdrew about \$1,000 in excess of his salary from White Poodle and that this was made possible because it was not paying its creditors.

"I have carefully examined all the evidence and find as a fact that the capital structure of the Lido Bar is based primarily upon the funds obtained from the chattel mortgage given by White Poodle and that such funds were an investment by, rather than a loan from White Poodle.

"I further find as a fact that Michael Contino and Ralph Brienza, having been partners in the trucking business for over ten years, continued in the same capacity, first in their operation of White Poodle, Inc. and later in their operation of Lido Bar & Grill, Inc., and that Ralph Brienza and Michael Contino were the undisclosed owners of all of the stock of both corporations. The motive for such deception appears to be their criminal records which, although apparently not mandatorily disqualifying, could well have jeopardized their attempt to acquire these licensed businesses if set forth in the required license applications. I find no documentary proof that they were employees of either of the licensees; there is nothing in the records of either licensee to show that Michael Contino and Ralph Brienza were to receive any salaries. The funds of White Poodle were used to pay personal obligations of Michael Contino and Ralph Brienza. Ralph Brienza withdrew large amounts of money from both licensees in excess of his alleged salary without any apparent authority from the officers of either corporate licensee. Michael Contino in his statement states that the aforesaid excessive withdrawals were not repaid by Ralph Brienza. Ralph Brienza testified that the monies he overdrew from the Lido were repaid by Mrs. Brienza. The records of Lido do not show the same. Michael Contino in his statement admits he invested \$500 in Lido Bar. I am not impressed with his testimony denying that the \$500 did not represent an investment.

"David Contino in his statement states that the \$1,000 he invested in White Poodle represented \$400 in cash he had in his possession, \$350 which he borrowed from his mother, and a loan

of \$250 from his aunt. This conflicts with Mrs. Contino's statement in which she states that the aforesaid \$1,000 comprised \$500 withdrawn from a joint bank account in the names of her husband and herself, a loan of \$200 from her mother-in-law and the balance was monies which she had in her personal possession. With reference to her interest in Lido Bar, Mrs. Contino states that she knows nothing about the same. In fact, at the hearing Mrs. Contino testified that she was a dummy stockholder in White Poodle and Lido Bar, and that she did not feel that she was legally entitled to any of their profits.

"David Contino testified that the \$1,000 he invested in the Lido Bar represented a loan from his uncle. Ralph Brienza testified that the loan was made by David Contino and Michael Contino.

"Mrs. Brienza in her statement states that she had purchased an interest in White Poodle with monies contributed by her son and her husband; that she does not know how much money she invested in the same; that she did not use any of her personal funds to make this investment and that she does not hold any stock in any other tavern.

"Mr. Brienza in his statement admits that he had contributed part of the \$1,000 invested by his wife in White Poodle.

"I am not impressed with Mrs. Brienza's testimony denying that her husband had not invested any of his personal funds in purchasing White Poodle, and that \$400 of her investment in White Poodle were monies which she had accumulated and had in her home and that she had invested \$1,000 in White Poodle.

"It is significant to note that none of the individuals from whom David Contino, Michael Contino and Mildred Brienza state that they had borrowed the aforesaid various sums of money was called as a witness by the licensee.

"In view of the aforesaid, I conclude that the Division has established the charges by a preponderance of the believable evidence, and I recommend that the licensee be found guilty thereof.

"The licensee has no prior adjudicated record. Because it appears that the unlawful situation continues to exist, I further recommend that an order be entered suspending the license in question for the balance of its term, with leave given to the licensee or any bona fide transferee of the license to apply to the Director to lift the suspension no sooner than twenty-five days from the date of its commencement upon filing a verified petition showing that the unlawful situation has been corrected. Re Carlton, Bulletin 1535, Item 5; Re White Poodle, Inc., supra."

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

Having carefully considered the record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings and conclusion of the Hearer and adopt his recommendations.

Accordingly, it is, on this 18th day of November 1963,

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

COSTANTINO'S BAR, INC.)
67 Terhune Ave.)
Jersey City 5, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-114, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Licensee, by Jack Costantino, President, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.


BY THE ACTING DIRECTOR:

Licensee pleads guilty to a charge alleging that on November 16, 1963, at 12:35 a.m., it sold six cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Falciani, Bulletin 1533, Item 7.

Accordingly, it is, on this 2d day of December, 1963,

ORDERED that Plenary Retail Consumption License C-114, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Costantino's Bar, Inc. for premises 67 Terhune Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, December 9, 1963, and terminating at 2:00 a.m. Thursday, December 19, 1963.


Emerson A. Tschupp,
Acting Director.