

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

BULLETIN 1454

JUNE 26, 1962

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - JAKUBOWSKI AND KIRAR v. PATERSON.
2. APPELLATE DECISIONS - OYSTER BAY, INC. v. JERSEY CITY AND WEITZ, RECEIVER.
3. DISCIPLINARY PROCEEDINGS (Newark) - GAMBLING (NUMBERS) - INDECENT LANGUAGE AND CONDUCT - LICENSE SUSPENDED FOR 45 DAYS.
4. DISCIPLINARY PROCEEDINGS (Carteret) - VIOLATION OF STATE REGULATION NO. 38 AND MUNICIPAL HOURS ORDINANCE - FAILURE TO CLOSE LICENSED PREMISES - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 45 DAYS.
5. DISCIPLINARY PROCEEDINGS (Galloway Twp.) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS.
6. STATE LICENSES - NEW APPLICATION FILED.

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JUNE 26, 1962

1. APPELLATE DECISIONS - JAKUBOWSKI AND KIRAR v. PATERSON.

Peter Jakubowski and Anton Kirar,)
a partnership, t/a New Eden,)
 Appellants,) On Appeal
 v.)
Board of Alcoholic Beverage) CONCLUSIONS and ORDER
Control for the City of Paterson,)
 Respondent.)

Henry W. Warren, Esq., Attorney for Appellants
Theodore D. Rosenberg, Esq., by William J. Rosenberg, Esq.,
 Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board of Alcoholic Beverage Control (hereinafter respondent) whereby it denied appellant's application for a person-to-person transfer of plenary retail consumption license from Carmela Gelardo, t/a New Eden Hall, for premises located at 42-44 Market Street in the City of Paterson.

"The petition of appeal herein alleges that the action of the respondent was erroneous in that the same was 'arbitrary, unjust, unconstitutional, prejudicial and contrary to the rules, orders, regulations and laws of this Department and of the State of New Jersey'.

"The answer herein denies the allegations of the appellants' petition of appeal and sets forth the following defenses for its action herein:

- (1) One of the applicants of the appellant partnership could neither read nor write English, thereby creating possible lack of communication between him and members of the Paterson Police Department and other investigative officers.
- (2) The action of respondent was fair and just, and based upon sound judicial discretion upon the evidence presented.
- (3) Respondent's action was a valid exercise of its inherent police powers.

"The appeal before this Division was heard de novo, with full opportunity to present testimony under oath and cross-examine witnesses. Rule 6 of State Regulation No. 15. Shapiro v. Long Branch, Bulletin 901, Item 2.

"The factual thesis developed by the evidence presented at this hearing is as follows: The appellant is a partnership consisting of Peter Jakubowski and Anton Kirar, both of whom are residents of the City of Paterson, and neither of them have been convicted of any crime. They are nationals of Yugoslavia, and are not citizens of the United States. Kirar can neither read nor write English and testified at the hearing before this Division with the assistance of Jakubowski who acted as his interpreter.

"Jakubowski testified that on January 24, 1962, an application was filed with respondent for a person-to-person transfer of the plenary retail consumption license held by Carmela Gelardo covering premises at 42-44 Market Street, Paterson, a consent to transfer having been filed and full statutory compliance having been made prior to the hearing.

"At the hearing Mr. Henry W. Warren, attorney for the appellants, admitted that Kirar, one of the members of the partnership, could neither read nor write English. This was admitted also at this hearing by Kirar. The respondent then voted to deny said application for the express reason that where a person was unable to read or write English 'there most certainly would be a lack of communication between the ownership and patrons'.

"A copy of the minutes of this meeting, admitted into evidence at this hearing, indicates that the application was denied because the appellants were not citizens of the United States, but were, in fact, nationals of Yugoslavia; that one of the partners could not read or write English and, therefore, there might be a lack of communication between one of the appellants and prospective customers or patrons.

(1)

"Counsel for the appellant advocates that the action of the respondent in denying this application for the reason that the appellants were not citizens of this country was ill-founded and contrary to the laws of the State of New Jersey. It is well settled in this State that the issuing authority is vested with a sound discretion in the granting or refusing to grant licenses for the sale of intoxicating beverages and that the court should not interfere with the actions of the constituted authorities unless there has been a clear abuse of discretion. Price v. Excise Board of the Town of Millburn, 29 N.J.S. 103, 107; Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935); Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Township of Teaneck, 5 N.J.S. 172 (App. Div. 1949). And the burden of proving an abuse of discretion rests upon appellant. Bumball v. Burnett, supra. Where one of the reasons assigned, namely, that the applicant is not a citizen of the United States but is, in fact, a foreign national, that reason, in itself, may be discriminatory and illegal.

"Counsel for respondent refers to R.S. 33:1-25, as amended, for his authority for the position taken by the respondent that no retail license should be issued to a natural person unless he is a citizen of the United States. The statute, as amended on August 23, 1960, reads as follows:

'No retail license shall be issued to a natural person unless he is a citizen of the United States and a resident of the State of New Jersey at the time of submission of the application. No license of any class shall be issued to any individual who is an alien; to any person under the age of 21 years;

to any person who has been convicted of a crime involving moral turpitude [or to any person who has been twice convicted in a court of criminal jurisdiction of violation of this chapter]. Cessation of United States citizenship or New Jersey residence shall be cause for the suspension or revocation of the license.'

"The only change from the earlier statute was in the deletion in the bracketed section. It is the position of the respondent that since this statute was amended in 1960, it therefore supersedes any prior directive of this Division.

"However, as Commissioner Burnett pointed out in Bulletin 693, Item 8:

'... treaties between the United States and foreign countries take priority over state law and hence, nationals of countries having reciprocal trade treaties with the United States are not subject to this prohibition. See Re McGuigan, Bulletin 228, Item 2...

'We are advised by the Department of State that, as of November 9, 1945, treaties relating to the rights of aliens to engage in trade or commercial activities were in force between the United States of America and the following countries (listing countries, one of which is Yugoslavia).'

"Thus, an alien from Yugoslavia would stand upon the same footing as a United States citizen, and can either be employed by a licensee or, indeed, be a licensee, provided he is not otherwise disqualified. Bulletin 228, Item 2.

"In Asakura v. Seattle, 265 U.S. 332, the Supreme Court held that a local ordinance which forbade the issuance of a pawnbroker's license to an alien violated a treaty provision which was then in force between the United States and Japan, and that such ordinance was therefore void.

"In an opinion rendered by the Attorney General of the United States on October 9, 1933, he held that Section 84 of the New York Alcoholic Beverage Law, which denies license to any person who is not a citizen of the United States, could not be applied to citizens of friendly nations having treaties with the United States granting reciprocal rights to their respective citizens. This opinion has been accepted and followed by the New York State Liquor Authority and has been consistently accepted and followed by this Division. Bulletin 24, Item 5.

"Mr. Justice Butler, discussing the treaty making powers in Asakura v. Seattle, supra, stated:

'The treaty was made to strengthen friendly relations between the two nations. As to the things covered by it, the provision quoted establishes the rule of equality between Japanese subjects while in this country and native citizens. Treaties for the protection of citizens of one country residing in the territory of another are numerous, and make for good understanding between nations... The rule of equality established by it cannot be rendered

nugatory in any part of the United States by municipal ordinances or state laws. It stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States. It operates of itself, without the aid of any legislation, State or national; and it will be applied and given authoritative effect by the courts.'

"Therefore, it is abundantly clear that since this country does have a reciprocal treaty with Yugoslavia, its nationals must be considered on the same footing, with respect to their right to hold liquor licenses, as United States citizens. It is also equally clear that R.S. 33:1-25, as amended, does not supersede the said treaty or its effect. On December 10, 1957, this Division promulgated a revised list of all countries with which the United States has reciprocal trade treaties. Included in this list is Yugoslavia. Therefore, nationals of Yugoslavia are not required to obtain employment permits and are eligible to hold alcoholic beverage licenses and to be stockholders in corporations holding retail licenses notwithstanding their lack of United States citizenship, assuming they are qualified in all other respects under R.S. 33:1-25. Bulletin 1201, Item 13. Thus, the action of the respondent in denying the application of appellants on the ground that appellants are nationals of Yugoslavia is invalid and requires reversal.

(2)

"The second reason assigned by the respondent for denying the said application was that one of the applicants could not read or write English, and 'there might be a lack of communication between him and members of the Paterson Police Department or other investigative officers'. It therefore urges that such action was fair and just, based upon sound judicial discretion and a valid exercise of its inherent police powers.

"Counsel for the appellant convincingly argues that the evidence in this case shows that both partners intend to work together at all times so that there would be adequate communication. It is also pointed out that Kirar has been in the tavern business in Yugoslavia for six years and has been working in a tavern in this country for a period of three months; that he is a person of good moral character and has met all the legal requirements for such issuance.

"It is well settled that no person has a vested right to have a license for the sale of intoxicating liquors issued to him and the qualifications prescribed by statute must be taken as a strict limitation of the right to grant such licenses. An applicant must satisfy the issuing authority of his fitness. 48 C.J.S. Intoxicating Liquors, Section 135-B, page 243.

"As Justice Field stated in Crowley v. Christensen, 137 U.S. 86, 92:

"There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it

on, and to issue licenses for that purpose. It is a matter of legislative will only. As in many other cases, the officers may not always exercise the power conferred upon them with wisdom or justice to the parties affected. But that is a matter which does not affect the authority of the State, or one which can be brought under the cognizance of the courts of the United States.'

"The sale of intoxicating beverages is in a class by itself. Paul v. Gloucester, 50 N.J.L. 585, 595. No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. Ibid, 596. See also Meehan v. Jersey City, 73 N.J.L. 382, 387; Bumball v. Burnett, *supra*. However, where the applicant is probably qualified and has met all legal requirements, the issuing authority may not deny the application without just cause. Jamison v. Liberty, Bulletin 626, Item 3.

"The partners have clearly met all legal qualifications. Nowhere is this denied in the answer of the respondent or in respondent Counsel's oral argument. Each partner has met these qualifications on his own. R.S. 33:1-25. It is undenied that Kirar is a person of good moral character, has never been convicted of crime, nor was he engaged in any questionable activity. Cf. Kravis v. Hock, 136 N.J.L. 161, 54 Atl. 2nd 778. It has not been shown that he is personally unfit, is insolvent or irresponsible.

"The only point left with respect to his alleged disqualification is that he might be unable to communicate with enforcement officers and patrons of this establishment. The testimony, however, is to the contrary. The fact is that Jakubowski, who does effectively communicate in English, has stated that he intends to be present at all times during the operation of this license, so that difficulty would be obviated. I have observed Kirar while he testified as a witness and have been persuaded that his demeanor and personality are assets as a licensee. It is true that he does not speak English well and did, in fact, use his partner as an interpreter. However, he did understand many of the questions propounded to him and, indeed, answered a number of them without assistance by the interpreter. It was also testified that he has been attending school classes in English and will probably be able to speak basic English within three to six months.

"I have examined the law on this subject and have been unable to find a single case in our state and federal jurisdictions wherein a person was denied a license by reason of his failure to read or write English. Nor is there any statutory injunction against such license. The fact is that a licensee, if need be, can always employ a manager or bartender who can communicate in this way. In fact, in many neighborhoods, inability to speak English is no real liability because foreign languages of one kind or another predominate in those neighborhoods. It might very well be that in this particular tavern, English may be rarely spoken. In any event, one of the partners will be available, and certainly adequate assistance can be obtained either through employment of others or by other means.

"To carry this argument one step further, it would be necessary, in the event of corporate licensees, to examine each of the stockholders, officers and directors to determine whether they can read or write English. This would be a test ad absurdum. If it does not apply to corporations or club licenses, why should there be such discrimination against a partnership?

"It is well established that liquor licenses may be granted only to persons of good moral character or good reputation, and an applicant must satisfy the licensing authority as to his fitness. Thus, under various statutory prohibitions, a license may be refused to a person who is not likely to carry on in conformity of law the business for which the permit was issued, who has been previously convicted of a crime, who is frequently under the influence of intoxicating liquors or who does not keep an orderly, law-abiding house or premises. 48 C.J.S. Sec. 135 Intoxicating Liquors, page 243, and cases cited therein.

"Therefore, it seems clear that the usual reason cited for denying such license on the ground that the applicant is unqualified is based upon the conviction of the issuing authority that such action was necessary and proper to accomplish the objects of and compliance with the provisions of the Alcoholic Beverage Law. Cf. Cielukowski v. Jersey City, Bulletin 716, Item 6.

"It is not clear that such would be the case herein. It is fundamental that the issuing authority is vested with sound discretion in the granting or refusal to grant licenses, and such authority should not be interfered with unless there has been a clear abuse of discretion. Zicherman v. Driscoll, *supra*.

"However, where it appears that such discretion has been abused or exercised in an arbitrary and unreasonable manner, or is based upon reasons which are arbitrary or illusory, or where it has been refused to a properly qualified person without any reason which is valid and sufficient in law, such action will require reversal.

"The issuing authority is to be commended for its zealouslyness in screening applicants and seeking to license persons best qualified to engage in this sensitive industry. On the other hand, I believe that the applicants have come to this industry with the right attitude with the honest desire to carry out their statutory obligations in an effective, lawful and constructive manner. It is my view that, in principle, absent taint of character, these applicants should be indulgently treated.

"I am persuaded that there is nothing in the record suggesting that the public interest would not be best served by the transfer of this license. I have, therefore, reached the same conclusion as regards this second point, namely, that the action of the respondent was arbitrary, unreasonable, an abuse of discretion and invalid. Maliken v. Neptune City, Bulletin 915, Item 2; Shapley v. Delaware Township, Bulletin 294, Item 7.

"While it is true that the issuing authority's discretionary powers are very broad and that, on appeal, the burden of proof is on the appellant, the presumption in favor of the validity of the issuing authority's action is not conclusive. Ways and Witteborn v. Egg Harbor Township, Bulletin 951, Item 3; Palmer v. Atlantic City, Bulletin 1017, Item 1.

"I therefore recommend that the action of the respondent be reversed and that it be ordered to grant a transfer of the license to appellants as aforesaid."

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

Having carefully considered the evidence, exhibits and oral argument presented at the hearing, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 1st day of May 1962,

ORDERED that the action of the respondent be and the same is hereby reversed, and respondent is directed to grant the transfer of the license in accordance with appellants' application.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - OYSTER BAY, INC. v. JERSEY CITY AND WEITZ, RECEIVER.

#2910)
Oyster Bay, Inc.,)
)
Appellant,)
)
v.)
)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Jersey City, and Emanuel Weitz,)
Esq., Rec'r of Ung N. R. Yee)
and William Woo, t/a New China)
Clipper,)
)
Respondents.)

On Appeal
O R D E R

James F. McGovern, Jr., Esq., Attorney for appellant.
Meyer Pesin, Esq., by Joseph S. E. Verga, Esq., Attorney for
appellant Municipal Board of Alcoholic Beverage Control
of the City of Jersey City.
Emanuel Weitz, Esq., Receiver of Ung N. R. Yee and William Woo.

BY THE DIRECTOR:

Appellant appeals from grant by respondent Municipal Board on March 27, 1962 of application for place-to-place transfer of plenary retail consumption license extended to Emanuel Weitz, Receiver of Ung N. R. Yee and William Woo, t/a New China Clipper, from premises 46-49 Journal Square to premises 161-163 Newkirk Street, Jersey City.

Prior to the hearing on appeal, by letter of April 27, 1962, appellant advised me that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 1st day of May, 1962,

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

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - INDECENT LANGUAGE AND CONDUCT - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against)

Raymond D. Chambers and Julia Chambers) t/a The Little Pub) 22 Plane St. & 13-15 Lackawanna Ave.) Newark 2, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-680, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark)

Troast, Mattson & Madden, Esqs., by Edward G. Madden, Jr., Esq., Attorneys for Licensees Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report:

"The following charges were preferred against licensees:

- 1. On December 16 and 18, 1961, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse races and in a lottery, commonly known as the 'numbers game', on both of said dates and on the outcome of football games on December 16, 1961; in violation of Rule 7 of State Regulation No. 20.
2. On December 16 and 18, 1961, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20.
3. On December 8, 1961, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20.'

"Prior to the hearing licensees entered pleas of non vult to Charges 1 and 2 and a plea of not guilty to Charge 3. To substantiate Charge 3 the Division called as its witnesses the two ABC agents who participated in the investigation of the licensed premises.

"Succinctly stated, their testimony shows that at about 9:05 p.m. Friday, December 8, 1961, they entered licensees' tavern and took seats at an oblong bar at which five males were seated. The patronage therein increased to fourteen males and three females. One of the females engaged in a heated argument with her male companion and on five or six occasions she, in a loud voice, indulged in unprintable language. Thereafter she moved over to where the agents were seated, took a seat alongside of them and asked

them to buy her a drink. One of the agents complied and, at her request, the bartender (later identified as Edward J. Ralph) served her a 'shot' of whiskey. The female then stated, 'I'm here for business business' and, exposing her breasts and vagina, she asked the agents if they wanted to take her out and have sexual relations with her. Standing behind the agents at that time was the female's companion who remarked, 'I have the key, fellows. If you want it it's here for the asking.' The agents declined both invitations saying, 'Not right now.' The female then said she would meet them the following night and asked for some money 'on account.' The agents gave her three dollars. When the bartender served another round of drinks, one of the agents told him what the female proposed and asked him if he had seen her pull up her blouse and lift her skirt. The bartender just laughed, asked the female to pull down her skirt and said to the agents, 'You'll be sorry.'

"On cross-examination the agents testified that everyone in the barroom could hear the vulgar expression used by the female and they admitted that 'Eddie' could not have heard the conversation they had with the female or see the money they passed to her.

"Raymond D. Chambers (co-licensee) and Edward J. Ralph (the bartender) appeared as witnesses for licensees.

"Mr. Ralph testified in substance that he worked as a bartender in licensees' tavern since December 8, 1961, when the licensees took over the license; that he had worked for their predecessors for about three and one-half years; that, when the licensees herein took over the license, they got rid of a number of undesirables who had previously frequented the place; that he was tending bar on the date alleged; that he saw the agents in the tavern; that the juke box and television were in operation intermittently; that one of the agents called him over and told him about the female's skirt; that he leaned over the bar and, seeing that her skirt was above her knees, he told her about it; that the female, known as 'Milly,' had frequented the tavern a few times accompanied by her husband; that he did not see the female lift her blouse or skirt and did not hear her use any indecent expressions or hear any conversation she had with the agents or see any money passed to her; that the agents came into the tavern the next morning and one of them told him that the other agent had a date with the female and that she didn't show up and that he said, 'You don't know how lucky you are' and walked away.

"Raymond D. Chambers testified that he and his wife purchased the licensed premises on September 14, 1961; that both had been in the tavern business previously; that no prior charges had been preferred against them; that, when they purchased the premises, 'We had to clean it up because it was a little rough' and that they 'eliminated quite a few customers' and that he was not in the premises when the alleged violation occurred.

"The testimony of the bartender respecting the agents' visit to the licensed premises on December 9, 1961, and what they told him and how he responded was not contradicted.

"Respecting Charges 1 and 2, the reports of the ABC agents show that on December 16, 1961, they placed horse race bets and a bet on a football game with a bookie known as Anthony Ruccatano, and also placed a horse race bet with the co-licensee Raymond D. Chambers; that on December 18, 1961, they placed horse race bets and numbers bets with the aforesaid bookie in the presence of said co-licensee; that they, on that occasion, paid the bets with marked money which was latter found on the bookie by the local police who had participated in the investigation and that, when the bookie was

placed under arrest, he gave a signed statement admitting his gambling activities.

"With respect to Charge 3, I find that the evidence is sufficient to establish that the female in question was permitted to engage in lewd and immoral activity and use foul, filthy and obscene language.

"Absent prior record, it is recommended that the license be suspended on Charges 1 and 2 for twenty-five days (Re Wilson, Bulletin 1437, Item 5), and for twenty days on Charge 3 (cf. Re Toth, Bulletin 1356, Item 4; Re Cozy Circle, Inc., Bulletin 1413, Item 1). I recommend, therefore, that the license be suspended for a period of forty-five days."

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 transcript of the testimony and the Hearer's Report, I concur in the findings and conclusion of the Hearer and adopt his recommendation.

Accordingly, it is, on this 30th day of April, 1962,

ORDERED that Plenary Retail Consumption License C-680, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Raymond D. Chambers and Julia Chambers, t/a The Little Pub, for premises 22 Plane Street and 13-15 Lackawanna Avenue, Newark, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 A. M. Monday, May 7, 1962, and terminating at 2:00 A. M. Thursday, June 21, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - VIOLATION OF STATE REGULATION NO. 38 AND MUNICIPAL HOURS ORDINANCE - FAILURE TO CLOSE LICENSED PREMISES - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against)

John Page and Dorothy M. Page)
t/a Jack Page's)
535 Roosevelt Avenue)
Carteret, N. J.,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-26, issued by the Borough Council of the Borough of Carteret.)

Garretson & Levine, Esqs., by Robert P. Levine, Esq., Attorneys for Licensees
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein.

"Licensees pleaded guilty to the first charge (except as to the precise time of the second sale), and not guilty to the remaining charges herein set forth:

1. On Saturday, August 19, 1961, at about 1:15 A.M., and again at 3:05 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
2. On Saturday, August 19, 1961 at about 3:05 A.M., you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages on your licensed premises; in violation of Section 13A of an Ordinance adopted by the Borough Council of the Borough of Carteret on September 20, 1937, as amended and supplemented February 19, 1953.
3. On Saturday, August 19, 1961 between 3:00 A.M. and 3:05 A.M. you failed to have your entire licensed premises closed and permitted and suffered persons to congregate, assemble and be in and upon your licensed premises; in violation of Section 13B of an Ordinance adopted by the Borough Council of the Borough of Carteret on September 20, 1937, as amended and supplemented December 17, 1941.
4. On Saturday, August 19, 1961 between 3:07 A.M. and 3:15 A.M., you failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R. S. 33:1-35.'

"Agents O, T and C were called by the Division to substantiate the contested charges.

"Agent O testified that on Friday night August 18, 1961, he and Agents T and C arrived in the immediate vicinity of the licensed premises; that they parked their car in a lot in back of the premises; that at about 12:50 the next morning he alone entered the licensed premises by its rear door; that at about 1:15 a.m. he returned to the car, displayed the first of his aforesaid purchases to Agents T and C; that about 2:50 a.m. he returned to the licensed premises; that Agents T and C remained in the car; that he observed Mr. Page, the barmaid and a group of patrons in the premises; that at 3 a.m. all of the patrons, with the exception of three male patrons seated at the bar, left the premises; that he observed one of the latter in possession of a can of Schaefer beer and a glass; that 'I couldn't observe what the other two had;' that at 3:02 a.m. (by his watch) he asked Mr. Page for a bottle of whiskey; that between 3:04 and 3:05 a.m. (by his watch) the barmaid, at the request of Mr. Page, sold him a pint bottle of Seagram's whiskey for off-premises consumption; that at 3:05 a.m. he departed the premises by its rear door, leaving the three male patrons seated at the bar.

"Agent O further testified he informed Agents T and C of his aforesaid second purchase following which he and Agent T walked to the rear entrance of the premises; that this entrance had a screen door in back of which was a solid wooden door; that the screen was latched and the solid door was open; that at 3:07 a.m. (by his watch) he looked through the screen; that he observed the same male patron seated at the bar with a can of Schaefer beer and a glass in front of him; that Agent T knocked on the screen door in response to which Mrs. Dugan approached the same; that he and Agent T announced that they were ABC agents, displayed their credentials to her and asked to be admitted; that Mrs. Dugan made no reply and walked away; that he then heard Mrs. Dugan yell to Mr. Page that ABC agents were at the door; that Mr. Page 'hollered' back 'Don't open the door' and that in the interim he observed the barmaid hurriedly removing glasses from the bar, following which Mr. Page came to the door with a large dog.

"Agent O further testified that he and Agent T identified themselves to Mr. Page; that at intervals of about one or two minutes, they twice asked him to open the door; that Mr. Page replied that he was advised by his attorney to permit no one to enter the premises after 3 a.m.; that thereafter Agent C, in their presence, identified himself to Mr. Page, made similar requests of him, with the same results, following which Mr. Page shut the solid door, and that at about 3:15 a.m. Agent T called the local police from a public telephone booth located alongside the outside of the licensed premises.

"Agent O further testified that he, Agent T, Agent C and two local police officers who had responded to their telephone call, entered the licensed premises through the front door which was opened by Mr. Page; that, except for Mr. Page, he observed no one in the premises; that Agent C asked Mr. Page why he refused to open the door for them and that Mr. Page reiterated it was upon advice of his attorney.

"On cross-examination Agent O repeated the pertinent parts of his direct testimony and further testified that it was approximately 3:15 a.m. (by his watch) when Mr. Page closed the solid door following which Agent T called the police.

"Agent T substantially corroborated the testimony of Agent O and further testified that at 3:05 a.m. (by his watch) he observed Agent O emerging from the rear of the licensed premises; that when he first looked through the screen door, he observed the aforesaid three male patrons seated at the bar; that one had a can of Schaefer beer and a glass; that the other two had glasses containing liquids in front of them and that, shortly thereafter, he observed the three male patrons leaving the premises by the front door.

"On cross-examination Agent T reiterated the relevant parts of his testimony on direct examination.

"Except for the conversations between Agents O and T and Mrs. Dugan and Mr. Page (subsequent to 3:05 a.m.), Agent C substantially corroborated the testimony of Agents O and T with respect to the events which took place after 2:50 a.m. and further testified that at 3:05 a.m. (by his watch) he observed Agent O leaving the licensed premises through its rear door, and that he did not know the exact time he had approached the same with his partners and that it was 'probably 3:09 a.m.'

"On cross-examination Agent C testified that at 3:15 a.m. (by his watch) he instructed Agent T to call the police.

"John Page, on behalf of the licensees, denied that the barmaid sold alcoholic beverages to Agent O at 3:05 a.m.; that the premises were open or visited by any patrons after 3 a.m. on August 19 aforesaid; and further testified that the barmaid sold the second bottle of whiskey to Agent O at 2:58 a.m.; that Agent O left the premises by the rear door 'somewhere about 2:59 a.m., in that vicinity;' that he latched the screen door on the heels of Agent O, proceeded immediately to front door, closed the same as the last patron was leaving, and returned to the rear entrance to respond to the agents.

"Mr. Page further testified that he recognized Agent O as one of the three men who had announced themselves as ABC agents and displayed their credentials (cards and badges); that, because of the darkness, he was unable to distinguish the writings thereon; that he refused to admit them on advice of his attorney, as testified by the agents; that he stated to them that, unless they were accompanied by a police officer, he would not open the door; that he was reluctant to admit them because he had \$800 or \$900 on an open safe and that, between 3:05 and 3:07 a.m., he closed the solid wooden door.

"Mr. Page further testified that, shortly thereafter, he answered a knock on the front door, observed the police officers and admitted them and the three agents to the premises; that Agent C informed him that he had sold alcoholic beverages 'after hours' and that, at the request of Agent C, he initialed the aforesaid bottles of whiskey.

"On cross-examination Mr. Page testified that the second sale of alcoholic beverages to Agent O was made at 3:08 a.m. by his clock on the wall; that the clock was set ahead ten minutes, and that at the time of the said sale he looked at the clock because Agent O persisted in purchasing the alcoholic beverages.

"Charles O. Macwinski (one of the aforesaid two local police officers) on behalf of the licensees testified that on Saturday, August 19, 1961, subsequent to 3 a.m., he and his partner were in a prowler car in the vicinity of the licensed premises; that they received a radio call to go to the licensed premises; that they arrived at the scene within three or four minutes after the call; that he did not know the exact time he had received the call or entered the premises, and that he remained therein for about thirty minutes.

"On cross-examination Officer Macwinski testified he left the premises at about 3:35 or 3:40 a.m.; that, in reporting the incident, he failed to fix the time the radio call was received by him, the time of his arrival at and the departure from the licensed premises.

"Lieutenant Roy Goderstad, on behalf of the licensees, testified that for the past twenty-four years he has been a member of the local Police Department; that on the morning in question he was on desk duty; that his complaint report indicates that he received the call from Agent T at 3:07 a.m.; that his log (Exhibit D-1) shows that at 3:09 a.m. he dispatched the call to the radio car, and that the log was made in his handwriting.

"On cross-examination Lieutenant Goderstad reiterated his direct testimony and further testified that, immediately after dispatching the call, he made his entry in the log and that he obtained the time (3:09 a.m.) set forth therein from a wall clock in front of him; that he had also prepared a complaint report (Exhibit D-2) which shows that he received Agent T's call at 3:07 a.m.; that, in accordance with their standard procedure, he made notes of Agent T's telephone request for assistance and the time thereof; that he later prepared his complaint report from his notes; that he destroyed the notes and that he had neglected to put into his record the time the officers called back to tell him that the car was back in 'service'.

"The ordinance referred to in the second and third charges herein prohibits the sale of alcoholic beverages on Saturdays between 3 a.m. to 6 a.m., and provides that the licensed premises must be closed between said hours.

"This case presents a conflict between the witnesses of the licensees and the witnesses for the Division. However, I find as a fact from the testimony of the Division's witnesses that at about 3:05 a.m. on August 19, 1961, the licensees' barmaid sold Agent O a pint of whiskey and that, between 3:05 and 3:07 a.m., the licensed premises were open and visited by other patrons, both in violation of the local ordinance, and that between 3:07 and 3:15 a.m. the licensees adamantly refused to admit the agents into the licensed premises, in violation of R.S. 33:1-35.

"It is significant to note that neither the barmaid nor the other police officer was called as a witness by the licensees.

"After reviewing the evidence, the exhibits and oral arguments of both attorneys, I conclude that the Division has established the truth of Charges 2, 3 and 4 by a fair preponderance of the believable evidence, and I recommend that the licensees be found guilty of said charges. The licensees have a prior adjudicated record. Effective April 8, 1961, their license was suspended by the local issuing authority for five days for an 'hours' violation (Rule 1 of State Regulation No. 38). It is further recommended that an order be entered suspending the license for thirty-five days on Charges 1, 2 and 3. Cf. Re Corris & Riccardi, Bulletin 1407, Item 8; Re Varakis, Bulletin 1219, Item 4; and for an additional ten days on Charge 4 (Re The Barracuda, Bulletin 1255, Item 6), making a total suspension of forty-five days, without any remission for the licensees' guilty plea to Charge 1 (Re Konner's Grill, Inc., Bulletin 1359, Item 7)."

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

Having carefully considered the record herein, including the transcript of the proceedings, the argument of the attorneys appearing for the respective parties, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations. Hence I find the defendant guilty as charged.

Accordingly, it is, on this 1st day of May, 1962,

ORDERED that Plenary Retail Consumption License C-26, issued by the Borough Council of the Borough of Carteret to John Page and Dorothy M. Page, t/a Jack Page's, for premises 535 Roosevelt Avenue, Carteret, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 A. M. Tuesday, May 8, 1962, and terminating at 2:00 A. M. Friday, June 22, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against)

Harry C. Davis)
t/a Pomona Inn)
2018 White Horse Pike)
Galloway Township)
PO Pomona, New Jersey)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Township Committee of Galloway Township.)

Frank J. Ferry, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein.

"Licensee pleaded not guilty to a charge alleging that he possessed on his licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents; in violation of Rule 27 of State Regulation No. 20.

"To support the charge, the Division produced as its witnesses ABC Agents M and S and the Division's chemist.

"Agent M testified in substance that on August 25, 1961, he visited the licensed premises wherein he gauged and tested licensee's open stock of assorted brands of liquor; that the contents of two quart bottles labeled 'Schenley Reserve Blended Whiskey, 86 Proof' appeared to him to be different in color from the contents of a sealed bottle of the same brand which was opened on the premises for comparison; that he seized the two bottles, sealed them with wax in the presence of the licensee, gave a receipt for the questionable bottles, obtained from the licensee a sealed bottle of the same brand, locked the three bottles in the trunk of his car and on August 28 turned them over to Agent S, the custodian of the ABC office in Atlantic City.

"Agent S testified that on August 28, 1961 he received from Agent M the three bottles of whiskey taken from the licensed premises; that he put them in a warehouse control room in Atlantic City to which he alone had a key and that on September 7, 1961 he brought the bottles to the Newark office where he submitted them to the Division's chemist.

"The chemist testified that he holds a B.S. and Master Technician's degrees in chemistry; that on September 7, 1961 Agent S turned over to him the three bottles in question (marked S-1, 2 and 3 in evidence); that he analyzed the contents of the two questionable bottles and found that they were high in solids, off in color and not genuine Schenley Reserve Blended Whiskey.

"Harry C. Davis, appearing on his own behalf, testified in substance that he, with the assistance of his wife, has been operating the licensed business for about eight years, catering to the highest type of clientele; that during the horse racing season he employs as high as eight women as waitresses and kitchen help; that he tends bar most of the time and on occasion his wife and a Mrs. Kile work behind the bar; that Schenley is a slow-moving whiskey; that other than Canadian Whisky and VO, he charges forty cents per 'shot' for all brands of whiskey including Schenley; that he never substituted one whiskey for another; that when asked by the agent if he could give any reason why the content of the two bottles of Schenley should be off in color, he told him that the only answer he could give was that they were in a window where the sun beat down on them and that 'What's in those bottles is what I bought'.

"I have carefully considered the evidence adduced herein and the memorandum submitted by defendant's attorney, and I find that the agents performed their duties in the customary and accepted manner; that the questionable bottles were in fact those possessed by the licensee upon his premises; that the contents of said bottles were not the genuine product of the named brand and I conclude that the Division has sustained the burden imposed upon it of establishing the truth of the charge by a fair preponderance of the believable evidence. Since the defendant has no prior adjudicated record, I recommend that his license be suspended for a period of fifteen days, the minimum penalty imposed in 'refill' cases involving two bottles. Re Perry's Bar and Grill, Bulletin 1409, Item 8."

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

Having carefully examined the record herein, including the transcript of the testimony, the brief submitted by the licensee's attorney, the Hearer's Report and the written exceptions and argument with respect thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 7th day of May, 1962,

ORDERED that Plenary Retail Consumption License C-14, issued by the Township Committee of Galloway Township to Harry C. Davis, t/a Pomona Inn, for premises 2018 White Horse Pike, Galloway Township, be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 A.M. Monday, May 14, 1962, and terminating at 7:00 A. M. Tuesday, May 29, 1962.

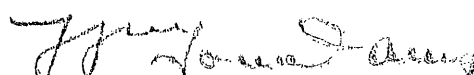
WILLIAM HOWE DAVIS
DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Mystic Bottling Co., Inc.

72-74-76 Leheigh Ave., Paterson, N. J.

Application filed June 25, 1962 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-76 from Martin and Alice Kuiken, 18-26 Walray Ave. North Haledon, N. J.


William Howe Davis
Director