

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

BULLETIN 919

OCTOBER 25, 1951.

TABLE OF CONTENTS

ITEM

1. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1951 THROUGH SEPTEMBER 30, 1951.
2. APPELLATE DECISIONS - MICHAEL A. KELLY POST #2433, VETERANS OF FOREIGN WARS OF THE U. S. v. TOWNSHIP OF UNION.
3. DISCIPLINARY PROCEEDINGS (Winslow Township) - LEWDNESS AND IMMORAL ACTIVITIES (RENTING ROOMS FOR IMMORAL PURPOSES) - SALE OF ALCOHOLIC BEVERAGES IN OTHER THAN ORIGINAL CONTAINERS FOR CONSUMPTION OFF THE LICENSED PREMISES - LICENSE SUSPENDED FOR 180 DAYS.
4. DISCIPLINARY PROCEEDINGS (Monroe Township) - CHARGE ALLEGING SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 DISMISSED BECAUSE OF LACK OF PROOF - LICENSED PREMISES OPEN DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS.
5. DISCIPLINARY PROCEEDINGS (Lakewood) - ORDER LIFTING SUSPENSION PREVIOUSLY IMPOSED EFFECTIVE 45 DAYS AFTER REOPENING OF BUSINESS.
6. DISCIPLINARY PROCEEDINGS (Franklin Township, Somerset County) - SALE TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Liberty Township) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Branchville, Maryland) - TRANSPORTATION OF ALCOHOLIC BEVERAGES BY HOLDER OF SPECIAL PERMIT DURING PERIOD WHEN PERMIT WAS UNDER SUSPENSION - PERMIT SUSPENDED FOR 15 DAYS.
9. DISCIPLINARY PROCEEDINGS (Dover Township) - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT SONGS, STORIES AND ACTIONS) - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA, THE EFFECTIVE DATES OF SUSPENSION TO BE FIXED UPON REOPENING OF BUSINESS.
10. APPELLATE DECISIONS - LUCIANO v. EAST RUTHERFORD AND LUCIANO.
11. STATE LICENSES - NEW APPLICATIONS FILED.
12. DISCIPLINARY PROCEEDINGS (Voorhees Township) - LEWDNESS AND IMMORAL ACTIVITIES (RENTING ROOMS FOR IMMORAL PURPOSES) - LICENSE SUSPENDED FOR 180 DAYS.

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 DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
 1060 Broad Street Newark 2, N. J.

BULLETIN 919

OCTOBER 25, 1951.

1. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1951 THROUGH SEPTEMBER 30, 1951

	JULY	AUG.	SEPT.	TOTAL
<b>ARRESTS:</b>				
Total number of persons arrested	23	20	28	71
Licensees and employees	10	4	5	19
Bootleggers	13	16	23	52
<b>SEIZURES:</b>				
Motor vehicles - boats	1	0	0	1
- cars	0	1	2	3
- trucks	1	0	1	2
Stills - over 50 gallons	2	0	1	3
- 50 gallons or under	1	3	2	6
Alcohol - gallons	4.00	.42	120.00	124.42
Mash - gallons	350.00	375.00	18,803.64	19,528.64
Distilled alcoholic beverages - gallons	9.36	1.56	9.28	20.20
Wine - gallons	10.64	7.91	157.81	176.36
Brewed malt alcoholic beverages - gallons	70.71	13.53	111.70	195.94
<b>RETAIL LICENSEES:</b>				
Premises inspected	588	999	486	2,073
Premises where alcoholic beverages were gauged	709	775	770	2,254
Bottles gauged	12,206	13,575	12,862	38,643
Premises where violations were found	174	275	303	752
Violations found	184	292	310	786
Type of violations found:				
Unqualified employees	19	43	10	72
Reg #38 sign not posted	3	13	0	21
Other mercantile business	2	8	0	10
Gambling devices	5	1	0	6
Disposal permit necessary	2	4	0	6
Improper beer taps	2	0	1	3
Prohibited signs	0	2	0	2
Probable fronts	0	0	2	2
Other violations	151	216	297	664
<b>STATE LICENSEES:</b>				
Premises inspected	3	48	41	93
License applications investigated	19	13	18	50
<b>COMPLAINTS:</b>				
Complaints assigned for investigation	617	433	363	1,413
Investigations completed	580	344	383	1,307
Investigations pending	(154)	(211)	178	178
<b>LABORATORY:</b>				
Analyses made	100	149	105	354
Refills (from licensed premises) bottles	3	4	4	11
Bottles from unlicensed premises	2	25	20	47
<b>IDENTIFICATION BUREAU:</b>				
Criminal fingerprint identifications made	14	22	19	55
Persons fingerprinted for non-criminal purposes	382	284	183	849
Identification contacts made with other enforcement agencies	290	203	113	606
Motor vehicle identifications via N.J.State Police Teletype	20	3	7	30
<b>DISCIPLINARY PROCEEDINGS:</b>				
Cases transmitted to municipalities	6	20	11	37
Violations involved:				
Sale during prohibited hours	1	11	4	16
Sale to minors	3	6	3	12
Permitting bookmaking on premises	1	2	1	4
Permitting gambling (cards) on premises	1	0	0	1
Failure to afford view into premises during prohibited hours	0	2	0	2
Sale to non-members by club	0	1	0	1
Possessing chilled beer (DL licensee)	0	0	3	3
Permitting lottery activity	0	0	1	1
Cases instituted at Division	15	13	9	37
Violations involved:				
Sale to minors	5	5	1	11
Permitting immoral activity on premises	4	3	1	8
Possessing illicit liquor	1	0	2	3
Mislabeling beer taps	2	0	0	2
Permitting hostesses on premises	1	0	1	2
Permitting prostitutes on premises	1	0	0	1
Permitting bookmaking on premises	1	0	0	1
Transporting without invoice	1	0	0	1
Employing unqualified persons	1	0	1	2
Storage off licensed premises	1	0	0	1
Unauthorized transportation	1	0	1	2
Aiding & abetting unauthorized transportation	1	0	0	1
Sale beyond scope of license	1	1	0	2
Sale beyond scope of permit	1	0	0	1
Sale during prohibited hours	0	3	1	4
Permitting pinball machine on premises	0	1	0	1
Sale below minimum resale price	0	1	0	1
Fraud and front	0	0	1	1
Failure to afford view into premises during prohibited hours	0	0	1	1
Hindering investigation	0	0	1	1
Failure to report retailer in default	0	0	1	1

	JULY	AUG.	SEPT.	TOTAL
DISCIPLINARY PROCEEDINGS (Cont'd)				
Cases brought by municipalities on own initiative and reported to Division				
Violations involved:	4	8	7	19
Sale to minors	2	2	7	11
Permitting brawls on premises	1	4	0	5
Sale during prohibited hours	1	0	0	1
Permitting bookmaking on premises	0	2	0	2
Employing unqualified persons	0	1	0	1
Sale to intoxicated persons	0	1	0	1
CANCELLATION PROCEEDINGS INSTITUTED AT DIVISION				
Violation involved:				
License issued in excess of statutory limitation	0	1	0	1
HEARINGS HELD AT DIVISION:				
Total number of hearings held	49	29	26	104
Appeals	7	2	6	15
Disciplinary proceedings	16	14	10	40
Eligibility	10	8	6	24
Seizures	2	3	2	7
Tax revocation	0	1	0	1
Applications for license	14	1	1	16
Miscellaneous	0	0	1	1
PERMITS ISSUED:				
Total number of permits issued	5,338	1,026	968	7,332
Employment	1,683	267	159	2,109
Solicitors	2,748	89	102	2,939
Disposal of alcoholic beverages	68	122	103	293
Social affairs	333	411	342	1,086
Special wine	91	24	95	210
Miscellaneous	415	113	167	695

Dated: October 10, 1951.

ERWIN B. HOCK  
Director.

2. APPELLATE DECISIONS - MICHAEL A. KELLY POST #2433, VETERANS OF FOREIGN WARS OF THE U. S. v. TOWNSHIP OF UNION.

MICHAEL A. KELLY POST #2433, VETERANS)  
OF FOREIGN WARS OF THE U. S.,

Appellant, )

-vs- )

TOWNSHIP COMMITTEE OF THE TOWNSHIP )  
OF UNION, )

Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

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Michael A. Kelly Post #2433, Veterans of Foreign Wars of the U.S.,  
by John F. Lewis, Commander.  
Gustave G. Kein, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the respondent in denying appellants application for a club license for premises 2008 High Street, Union.

Among divers reasons respondent assigns, in support of its unanimous action, that the club premises are located in a neighborhood zoned for residential purposes. The parties agree that the zoning ordinance, by action of the proper authorities, was modified to permit a variance in favor of the erection of the building to be used for club purposes.

At the time the variance in favor of the erection of the building was granted there was nothing to indicate that the club intended to make application for a club liquor license. The issuance of a license for the sale of liquor would constitute an unlawful extension of the variance as hereinbefore set forth. Cf. Speake v. Closter (unreported, decided by Supreme Court April 4, 1934); Vogel v. Bridgewater, 121 N.J.L. 236; Green v. Newark, 131 N.J.L. 336;

An issuing authority may not be required to issue a liquor license for premises where it appears that the issuance of such license would violate a local zoning ordinance. Nasso v. Bridgewater, Bulletin 744, Item 10; William Talbot, St. John Baptist School for Girls et al. v. Keppler et al., Bulletin 117, Item 1, and cases cited.

Moreover, it has been consistently held, on appeal and upon original application to the State Director of the Division of Alcoholic Beverage Control, that club licenses are reasonably denied where the premises are located in a residential district, irrespective of local zoning regulations. Re Cranford American Legion, Bulletin 83, Item 3; Re Passaic Elks, Bulletin 95, Item 4; Re Cranford Veterans, Bulletin 126, Item 11; Re Manasquan River Yacht Club, Bulletin 190, Item 11; Re Nuova Vita Lodge v. North Plainfield, Bulletin 355, Item 8; Re Second Ward Democratic Club v. Bridgeton, Bulletin 465, Item 2.

Since this issue is dispositive of the entire appeal, it is unnecessary to consider any of the other reasons assigned by respondent in support of its action.

The action of respondent Township Committee is affirmed.

Accordingly, it is, on this 5th day of October, 1951,

ORDERED that the petition of appeal be and the same is hereby dismissed.

ERWIN B. HOCK  
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (RENTING ROOMS FOR IMMORAL PURPOSES) - SALE OF ALCOHOLIC BEVERAGES IN OTHER THAN ORIGINAL CONTAINERS FOR CONSUMPTION OFF THE LICENSED PREMISES - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against  
AMBROSE McCARTY  
T/a MACK'S BAR  
Williamstown Rd.  
Winslow Township  
P.O. Sicklerville, N. J.,  
Holder of Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Winslow.)

CONCLUSIONS AND ORDER

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William T. Cahill, Esq., Attorney for Defendant-licensee.  
Vincent T. Flanagan, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges following:

"1. On August 23, 1951, and on divers days prior thereto, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

"2. On August 23, 1951, you sold alcoholic beverages not pursuant to and within the terms of your license as defined by R. S. 33:1-12(1) in that you sold alcoholic beverages in other than their original containers for consumption off the licensed premises; in violation of R. S. 33:1-2."

On August 15, 1951, ABC agents visited the licensed premises, consisting of a "one-story cinder block building" with "service" permitted on the adjacent lawn. Six "tourist cabins", operated as such by the defendant, are on adjacent premises, about 75-100 feet distant from the building described in the license application.

The agents talked with defendant, inquiring of him as to the rental of two of the cabins for the purpose of entertaining two "girl friends", specifically advising the defendant that said "girl friends" were not the wives of the investigators. After being assured by the defendant that he would "fix them up", the investigators left with a remark that they would return next week.

On August 23, the agents returned to the licensed premises. They advised defendant of their desires in terms that left nothing to his imagination. Defendant rented two of his cabins to the agents for their ostensible immoral and illegal purpose after they had signed the register "Mr. and Mrs. ---", as instructed by defendant. After securing assurance from the defendant that he would show the "girls" to the cabins, the agents purchased from defendant in the barroom four drinks of alcoholic beverages in glasses (one each for the agents and one each for the "girl friends") and carried the glasses to the cabins.

Shortly thereafter other agents of this Division with an officer of the State Police entered the barroom and there found defendant, who took them to the rented cabins where they found the two agents -- alone. The register, which had been signed by the agents, was found in the barroom.

The renting of rooms for the ostensible purpose of their use for unlawful sexual intercourse is a violation of the Regulations (Rule 5 of State Regulations No. 20, supra). Cf. Re Schneider, Bulletin 892, Item 3; Re Hartman, Bulletin 904, Item 2; Re Molinaro, Bulletin 910, Item 1; cf. Re Schneider, 12 N. J. Super. 449. The mere fact that no unlawful sexual intercourse took place, or in fact was contemplated, does not exculpate the defendant from his unlawful action. Re Schneider, supra.

Considering all the circumstances herein, including the plea, I shall suspend the license for 180 days. Re Hartman, supra.

Accordingly, it is, on this 16th day of October, 1951,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Winslow to Ambrose McCarty, t/a Mack's Bar, Williamstown Rd., Winslow Township, be and the same is hereby suspended for a period of one hundred eighty (180) days, commencing at 2:00 a.m. November 1, 1951, and terminating at 2:00 a.m. April 29, 1952.

ERWIN B. HOCK  
Director.

4. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 DISMISSED BECAUSE OF LACK OF PROOF - LICENSED PREMISES OPEN DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against )

FRANK S. KOZLOWSKI & HELEN M. KOZLOWSKI T/a GAY SPOT Dayton Road, Monroe Township P.O. Jamesburg, N. J., )

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Consumption License C-12, issued by the Monroe Township Committee. )

David M. Kaplan, Esq., Attorney for Defendant-licensees.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded not guilty to the following charges:

- "1. On Sunday, August 26, 1951, at about 12:00 noon, you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a quart bottle of Ballantine beer, at retail in its original container for consumption off the licensed premises; in violation of Rule 1 of State Regulations No. 38, which prohibits any such sale or delivery on Sunday.
- "2. On the occasion aforesaid, you permitted the sale of an alcoholic beverage and you had your place of business open; in violation of Section 15 (formerly numbered 16) of an Ordinance concerning alcoholic beverages adopted by the Monroe Township Committee on February 20, 1937 as amended December 21, 1945, which prohibits any such activity between the hours of 3:00 A.M. and 1:00 P.M. on Sunday."

Section 15 of the ordinance referred to in Charge 2 provides as follows:

"No license shall permit the sale of alcoholic beverages, nor shall any licensee have his or her place of business open \*\*\* between the hours of 3 a.m. and 1 p.m. on Sunday. \*\*\* Any licensee conducting a hotel or club shall have the privilege of remaining open during the aforesaid prohibited hours for the purpose of carrying on their usual activities excepting the sale of alcoholic beverages."

Defendants do not conduct a hotel or club.

On Sunday, August 26, 1951, at about 12 o'clock Noon, two ABC agents observed a man (later ascertained to be Tom Frank) as he was leaving the licensed premises through a rear door. Investigation disclosed that Tom Frank was carrying a brown paper bag which contained a quart bottle of Ballantine beer. The bottle was cold. Entering through the rear door the agents found themselves in a hallway which had two other doors -- one leading to defendants' living quarters and the other to the barroom. The entire building constitutes the licensed premises. After they had entered through the door leading to the barroom, they observed Frank Kozlowski behind the bar, and a man, later identified as Mr. Hardesty, seated at the bar. There is no proof that any alcoholic beverages were sold or served to

Mr. Hardesty or consumed by him on the licensed premises. A check of the cash register made by the agents disclosed that no sales had been rung up, although there was some money in the drawer of the cash register.

On behalf of defendants, Frank Kozlowski testified that he had not sold the bottle of beer to Tom Frank, and denied that he had seen him before he entered with the agents. Frank Kozlowski also testified that Mr. Hardesty was a foreman for the Brewster Construction Company and that he had entered through the rear door, shortly before the agents arrived, for the purpose of arranging for lunches to be served to men working for the Brewster Company on the New Jersey Turnpike. The witness said that he advised Mr. Hardesty that nothing could be served before 1:00 p.m.

Tom Frank could not be produced at the hearing. He is a migrant worker and had returned to his home in Georgia before a subpoena could be served upon him.

The record indicates that the ice box in which bottled beer was kept was located near the rear entrance and that paper bags, apparently for use when beer is sold for off-premises consumption, lay on a table near the ice box. Neither the ice box nor the table could be seen from the barroom. Thus, even though there is some circumstantial evidence to support Charge 1, it was possible for Tom Frank to have taken both the bottle and the paper bag and to have left the premises without the knowledge of the defendants. Under all of the attendant circumstances, fairness dictates that Charge 1 be dismissed.

As to Charge 2: It is clear, under the precedents established, that the licensed premises were not closed as required by the local regulations even if the front door to the barroom was locked. The licensee says that he and his bartender were cleaning the barroom when Hardesty entered through the rear door. However, as was pointed out in Town House v. Montclair, Bulletin 792, Item 3, in construing a similar ordinance, it was held that the ordinance "means that all members of the public must be excluded" and that "closed or locked doors is not enough -- patrons must be off the premises".

Under the facts of this case I find defendants not guilty as to so much of Charge 2 as alleges they "permitted the sale of alcoholic beverages", and find them guilty as to so much of Charge 2 as alleges that "you had your place of business open; in violation of Section 15" of the ordinance set forth therein. Cf. Town House v. Montclair, supra.

Defendants have no prior record. Under the circumstances, I shall suspend defendants' license, because of the finding of guilt as to a portion of Charge 2, for a period of fifteen days. Cf. Jackson, Bulletin 835, Item 5.

Accordingly, it is, on this 8th day of October, 1951,

ORDERED that Plenary Retail Consumption License C-12, issued by the Monroe Township Committee to Frank S. Kozlowski & Helen M. Kozlowski, t/a Gay Spot, for premises on Dayton Road, Monroe Township, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. October 15, 1951, and terminating at 3:00 a.m. October 30, 1951.

ERWIN B. HOCK  
Director.

5. DISCIPLINARY PROCEEDINGS - ORDER LIFTING SUSPENSION PREVIOUSLY IMPOSED EFFECTIVE 45 DAYS AFTER REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against )

THE WILLOWS HOTEL OPERATING CO. )  
T/a THE WILLOWS - FOREST BAR )  
W/S Forest Ave. bet. 7th and 8th Sts. )  
Lakewood, N. J., )

O R D E R

Holder of Plenary Retail Consumption License C-27, issued by the Township Committee of the Township of Lakewood. )

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Alvin H. Gelb, Esq., Attorney for Defendant-licensee.

BY THE DIRECTOR:

This matter being opened to me by Alvin H. Gelb, Esq., attorney for defendant, and it appearing that:

By Order dated June 11, 1951, the license then held by defendant was suspended for the balance of its term and any license issued to defendant for the 1951-52 licensing period was suspended for the balance of its term with leave to apply for an order lifting said suspension forty-five days after business was resumed in the autumn of 1951 (Re Willows Hotel, Bulletin 910, Item 3); and it further appearing to my satisfaction that:

On September 28, 1951, defendant resumed its hotel business with the intention of continuing the same until the end of the Passover Holiday of 1952, and that Jacob Cohen, a non-citizen, is not, in fact, disqualified from holding the stock of defendant corporation, which operates a bona fide hotel,

It is, on this 8th day of October, 1951,

ORDERED that Plenary Retail Consumption License C-27, for the 1951-52 licensing year, issued by the Township Committee of the Township of Lakewood to The Willows Hotel Operating Co., t/a The Willows-Forest Bar, for premises on W/S Forest Ave. bet. 7th and 8th Streets, Lakewood, be restored to full force and effect at 7:00 a.m. November 12, 1951. Until then the suspension of said license shall continue in full force and effect.

ERWIN B. HOCK  
Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ELVIGO GEORGE LOMBARDI  
T/a DIAMOND BAR  
Franklin Boulevard off Hamilton St.  
Franklin Township (Somerset County)  
RFD #16, Box 180C, New Brunswick, N.J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Franklin (Somerset County).

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Elvigo George Lombardi, Defendant-licensee, Pro Se.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that on the night of September 15-16, 1951, he sold to and permitted the service of alcoholic beverages on his licensed premises to three minors and permitted the consumption thereof on his licensed premises by said minors.

On the night of Saturday, September 15, 1951, and early morning of Sunday, September 16, 1951, defendant and a bartender employed by him each served at least one bottle of beer to each of three minor soldiers, aged, respectively, 19 -- 19 -- 20 years.

Defendant has a prior adjudicated record. Effective February 2, 1948, defendant's license was suspended by the local issuing authority, after a conviction for possession of contraceptives, for a period of 20 days. Considering the record, I shall suspend the license in the instant case for fifteen days. Five days will be remitted because of the plea. This will leave a net suspension of ten days.

Accordingly, it is, on this 9th day of October, 1951,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Franklin (Somerset County) to Elvigo George Lombardi, t/a Diamond Bar, Franklin Boulevard off Hamilton Street, Franklin Township (Somerset County), be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. October 16, 1951, and terminating at 2:00 a.m. October 26, 1951.

ERWIN B. HOCK  
Director.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5. FOR PLEA.

In the Matter of Disciplinary Proceedings against )

STANLEY PIASECKI )  
T/a TOWNSBURY INN )  
Route #6 at Townsbury )  
Liberty Township )  
P.O. Oxford, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of Liberty Township. )

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Stanley Piasecki, Defendant-licensee, Pro Se.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in a bottle bearing a label which did not describe its contents, in violation of Rule 27 of State Regulations No. 20.

On August 23, 1951, an ABC agent examined twenty-six bottles of alcoholic beverages on defendant's licensed premises and seized a bottle of Imperial Hiram Walker's Blended Whiskey 86 Proof when his field tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a Division chemist disclosed that the contents of the seized bottle were not genuine as labeled.

Defendant has no previous adjudicated record. Under the circumstances, I shall suspend defendant's license for the minimum period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days. Re Meehan, Bulletin 857, Item 7.

Accordingly, it is, on this 16th day of October, 1951,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of Liberty Township to Stanley Piasecki, t/a Townsbury Inn, Route #6 at Townsbury, Liberty Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. October 22, 1951, and terminating at 3:00 a.m. November 1, 1951.

ERWIN B. HOCK  
Director.

8. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES BY HOLDER OF SPECIAL PERMIT DURING PERIOD WHEN PERMIT WAS UNDER SUSPENSION - PERMIT SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

LELAND E. CARTER & HAROLD T. CARTER  
T/a CARTER TRUCKING CO.  
5408 Branchville Road  
Branchville, Maryland,

CONCLUSIONS  
AND ORDER

Holders of Special Permit TO No. 2468,  
issued by the Director of the Division  
of Alcoholic Beverage Control.

-----  
Leland E. Carter & Harold T. Carter, Defendant-licensees, by  
Leland E. Carter (Partner).  
Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charge:

"On numerous occasions between May 28, 1951 and July 9, 1951 you transported various quantities of alcoholic beverages within the State of New Jersey, not pursuant to and within the terms of a license or as otherwise expressly authorized under the Alcoholic Beverage Law, in that you transported beer while your special permit TO-2239 for the year 1950-51 was suspended from May 25, 1951 to June 30, 1951 and prior to the granting on August 8, 1951 of your special permit TO-2468 for the year 1951-52, contrary to R. S. 33:1-50; in violation of R. S. 33:1-2."

The facts constituting the basis of the charge filed in this case are sufficiently set forth therein to obviate the necessity of further repetition.

Undoubtedly a permittee who wilfully violates the law or regulations during the period when his permit is under suspension, or at a time when he holds no permit because of failure to renew, is deserving of a most severe penalty. However, after careful examination of the records herein I am convinced that the violations committed in the instant case were inadvertent rather than wilful or deliberate. But, such inadvertence is not to be condoned, and any repetition hereafter may call for revocation of permit.

Under all of the circumstances, and in view of the plea, I shall suspend defendants' permit for a period of fifteen days.

Accordingly, it is, on this 17th day of October, 1951,

ORDERED that Special Permit TO No. 2468, issued by the Director of the Division of Alcoholic Beverage Control to Leland E. Carter & Harold T. Carter, t/a Carter Trucking Co., 5408 Branchville Road, Branchville, Maryland, be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m. October 29, 1951, and terminating at 7:00 a.m. November 13, 1951.

ERWIN B. HOCK  
Director.

- 9. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT SONGS, STORIES AND ACTIONS) - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA, THE EFFECTIVE DATES OF SUSPENSION TO BE FIXED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against SURF COLONY CORP. T/a SURF CLUB Ocean Avenue between 6th & 7th Aves. Ortley Beach, Dover (Twp.) P.O. Box 225, Seaside Heights, N.J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Dover.

Robert J. Novins, Esq., Attorney for Defendant-licensee.  
 Vincent T. Flanagan, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge that:

"On Thursday night, August 16, 1951, on Friday night, August 17, 1951 and on early Saturday morning, August 18, 1951, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that male entertainers performed in a lewd, indecent and immoral manner and recited stories having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulations No. 20."

On Thursday, August 16, 1951, and on Friday, August 17, 1951, ABC agents, observing portions of the "show" being offered on the defendant's licensed premises, heard a male singer sing, with interpolations, a song called "Love in Lavallette". The interpolations were lewd, indecent and broadly suggestive. A second male singer sang a song called "Tea Pot" with certain changes in the lyrics and with accompanying gestures and actions, certainly indecent and filthy. The master of ceremonies (the first singer) also recited several stories -- lewd, indecent and suggestive. Entertainment of the type in question will not be permitted on licensed premises.

Defendant has a prior adjudicated record. Effective October 24, 1944, its license was suspended by the then State Commissioner for ten days after a plea of non vult to a charge alleging the possession of mislabeled whiskey. Re Surf Colony Corp., Bulletin 638, Item 1. This prior record, for a different type of violation occurring more than five years ago, will not be considered in fixing the penalty herein. Under all the circumstances, I shall suspend defendant's license for fifteen days. Remitting five days because of the plea will leave a net suspension of ten days. Re S.E.W. Inc., Bulletin 891, Item 5.

Defendant's premises are customarily closed shortly after Labor Day and remain closed until some time in the following Spring. The premises are now closed for the season and, thus, no effective penalty can be imposed at the present time. The effective dates for the suspension will be fixed by further order which will be entered by me herein after the licensed premises shall have been opened for business in the Spring of 1952. Re Solomon, Bulletin 586, Item 2.

Accordingly, it is, on this 15th day of October, 1951,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Dover to Surf Colony Corp., t/a Surf Club, for premises on Ocean Avenue between 6th and 7th Avenues, Ortley Beach, Dover (Twp.), be and the same is hereby suspended for a period of ten (10) days; the time to be fixed by subsequent order as aforesaid.

ERWIN B. HOCK  
Director.

10. APPELLATE DECISIONS - LUCIANO v. EAST RUTHERFORD AND LUCIANO.

ROSE LUCIANO, )  
Appellant, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

MAYOR AND COUNCIL OF THE BOROUGH )  
OF EAST RUTHERFORD, and CONSTANCE )  
LUCIANO, )  
Respondents. )

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Alexander White, Esq., Attorney for Appellant.  
Raymond Flanagan, Esq., Attorney for Respondent Mayor and Council  
of the Borough of East Rutherford.  
Joseph Melillo, Esq., by Cyril W. O'Gorman, Esq., Attorney for  
Respondent Constance Luciano.

BY THE DIRECTOR:

Joseph D. Luciano, for many years prior to his death, held a plenary retail consumption license for premises located at 227 Park Avenue, Borough of East Rutherford. He died testate on December 28, 1950 and named his wife, Constance Luciano, one of the respondents herein, as executrix of his estate, and also as trustee for the purpose, among other things, of conducting the licensed business and paying half of the net income to his mother, Rose Luciano, the appellant herein.

After the license had been extended to Constance Luciano, as executrix (see R. S. 33:1-26), the respondent Council, on June 4 and 27, 1951, respectively, granted a transfer and then a renewal of the license to Constance Luciano, "individually and as trustee under the last will and testament of Joseph D. Luciano, deceased". The appellant contends that, under the provisions of the will, Constance Luciano has no present legal interest, in her individual capacity, to the license and business conducted thereunder and objects to the inclusion of Constance Luciano, in such individual capacity, in the license as issued by the respondent Council. Hence this appeal.

In support of her contention, the appellant points to no provisions of the Alcoholic Beverage Law (R. S. 33:1-1 et seq.), or to any local or State regulation adopted pursuant thereto. Her argument is rested solely upon her interpretation of the provisions of the will of Joseph D. Luciano, the former licensee.

It is at once apparent that the subject matter of the instant proceeding relates to a purely private controversy between the decedent's mother and widow concerning the proper construction of the decedent's will. The appeal raises no public issue within the province of the municipality or the State Director. Where, as here, the application before the issuing authority is a proper one, the applicant is not disqualified from holding a liquor license, the premises are not unsuitable, and no question of the public welfare is involved, there remains nothing for adjudication either by the local issuing authority or by the State Director.

The question whether Constance Luciano should or should not hold the license in her name individually, as contrasted with her representative capacity under the will, poses no problem that has any relation to the proper administration of the liquor laws and raises no issue which is cognizable on appeal to the State Director. There is nothing in the alcoholic beverage legislation which requires that an applicant for a liquor license have legal title to the business sought to be licensed in order to qualify as a licensee. The applicant's interest in the licensed business must, of course, emanate from some colorable right to possession of the licensed premises, but there is no requirement respecting the quantum of such interest. Cf. Rittenger v. Bordentown and Bensel, Bulletin 547, Item 10.

The issue raised by the appellant should be determined by a civil court of competent jurisdiction and not by the license issuing authorities. Cf. Brown v. Morris Canal and Banking Co., 27 N.J.L. 648 (E. & A. 1858); Barneget Beach Association v. Busby, 44 N.J.L. 627 (Sup. Ct. 1882); see, also, Reading & South. St. Ry. Co. v. Pema. P. U. Com'n, 77 A 2d 102 (Super. Ct. Pa. 1950).

It may be added that a technical objection made by the appellant concerning the manner in which the license application was signed is lacking in merit. The application sufficiently indicates the capacities in which the licensee is to hold the license.

The action of the respondent Mayor and Council of the Borough of East Rutherford is affirmed.

Accordingly, it is, on this 17th day of October, 1951,

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

ERWIN B. HOCK  
Director.

#### 11. STATE LICENSES - NEW APPLICATIONS FILED.

Edward Fornataro

1181 Fairview Street, Camden, N. J.

Application filed October 15, 1951 for State Beverage Distributor's License.

Peter Lusardi, Inc.

198 West Main Street, Somerville, N. J.

Application filed October 17, 1951 for transfer of licensed premises and salesroom from 6-10 North Doughty Avenue, Somerville, N. J.

Suffern Distributors, Inc.

E/S Franklin Turnpike, Mahwah, N. J.

Application filed October 17, 1951 for additional warehouse at Railroad Avenue, Wharton, N. J.

Edward Ciccarone, t/a Ed Chicco, Importer

1429 Absecon Boulevard, Atlantic City, N. J.

Application filed October 19, 1951 for transfer of State Beverage Distributor's License from 29 North Virginia Ave., Atlantic City, N.J.

Pride Transportation Co., Inc.

Route 25, Avenel, N. J.

Application filed October 22, 1951 for Transportation License.

Concesso Pizzarelli

71 - 7th Ave., Newark, N. J.

Application filed October 22, 1951 for Transportation License.

ERWIN B. HOCK  
Director.

12. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (RENTING ROOMS FOR IMMORAL PURPOSES) - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against )

VIRGINIA P. LARSEN )  
T/a OLE'S RANCH )  
Dutchtown Road, Kresson )  
Voorhees Township )  
P.O. Marlton RFD, N.J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2 for the 1950-51 and 1951-52 licensing years, issued by the Township Committee of Voorhees Township. )

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Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq., Attorneys for the defendant-licensee.  
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"On May 31, 1951, and on divers days prior thereto, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20."

At the hearing an ABC agent testified that at 12:00 noon on May 29, 1951, he and two fellow agents entered defendant's licensed premises and that after taking places alongside of one another at the bar, they conversed with the bartender, subsequently identified as Joseph Daly, with reference to renting rooms. According to this agent's testimony he informed the bartender that he and one of his companions were married men but they would each like to use a room for a short period some night to engage in sexual intercourse with two girl friends of theirs who lived in a nearby city. This witness says that he expressed his concern to the bartender that he and his fellow agent might become involved in trouble but the bartender assured them that there would be no trouble. The ABC agent further testified that he inquired of the bartender the manner in which the register should be signed and was told by him "Just sign Ben Franklin or John Smith, but put Mr. and Mrs." The agent further testified that the ABC agents left the premises about 1:30 p.m. but that they returned to the licensed premises at 5:00 p.m. and spoke to the bartender then on duty who was subsequently identified as James H. Wycoff. The witness testified that he expressed a desire to rent rooms, telling the bartender the purpose for renting rooms as told to the other bartender previously that day; that the bartender agreed to grant this request for such accommodations; that the bartender then showed the ABC agent and his fellow agents rooms situated near the barroom and asked how they liked them; that, after the agents said that they were fine for their purpose, they left the licensed premises.

This witness also testified that, on May 31, 1951 at about 6:00 p.m., two of the ABC agents returned to the licensed premises and spoke to James Wycoff, the bartender on duty, and rented two rooms at a rental of five dollars each. The witness says that he explained to the bartender that the girls with whom they intended to engage in sexual intercourse would arrive about 7:00 p.m. The witness further

testified that the bartender thereupon called to Joseph Daly, who was acting as a waiter at the time and who was the person tending bar on the day when the agents first visited the licensed premises, and requested "a couple of registration cards"; that Joseph Daly went to a desk and obtained two cards, one of which was signed by one of the agents as "Mr. & Mrs. B. Franklin" and the other by his fellow agent as "John Smith"; that James Wycoff, stating to the agent that it was necessary that "and wife" be added to the card signed "John Smith", picked up a pencil and wrote "and wife"; that Joseph Daly left and shortly thereafter returned and gave each agent a key for a room; that the witness then asked James Wycoff if he had any "rubbers" (contraceptive devices) and was told by him that he had none on the premises. The witness said that he and his fellow agent each went to the room assigned to them and that, at about 7:00 p.m., the third agent, who had been with them at the licensed premises on the previous occasions, entered his room accompanied by a State Trooper.

The second agent who had accompanied the aforementioned witness on all occasions corroborated his testimony with reference to the occurrences which took place on the days in question.

It was stipulated by the parties hereto that the testimony of the third agent who had accompanied his fellow agents on their visits to the defendant's premises on May 29, 1951 would be substantially the same as his fellow agents' testimony for that date. The third agent then testified that about 7:00 p.m. on the night of May 31, 1951, in the company of a State Trooper, he entered defendant's premises and identified himself to James Wycoff, the bartender. The third agent testified he questioned the bartender about renting rooms to two men and "he admitted he rented rooms to two men but said they put down 'Mr. and Mrs.'" The witness said that they then proceeded through a corridor which he had observed on previous visits and entered two rooms in each of which was found an ABC agent; that the registration cards signed by the agents were then checked by the witness and he found noted on each card that there were two in the party.

Defendant produced Joseph Daly who testified that the three ABC agents never mentioned the fact that they were married or that they intended at some time to rent rooms in the licensed premises with girl companions. Joseph Daly at times appeared to have a lapse of memory when questioned as to certain alleged conversation between him and the ABC agents.

James Wycoff testified that the agents remarked to him on May 29, 1951 after he had shown them the sleeping rooms that they would like to spend the night there some time and that they would bring their wives out for horseback riding and the use of the other facilities on the premises. He denied that the agents had ever mentioned bringing girls to the premises for illicit purposes. The witness testified that on the evening of May 31, 1951 he rented two rooms to two of the agents and had them register on cards used for that purpose. He admitted that one of the agents who had signed "John Smith" neglected to sign "and wife", so he added the necessary information. He also admitted that the agents asked him for "rubbers" (contraceptive devices) and that he told them that they were not kept on the premises. The witness also admitted that neither of the agents who had rented the rooms had baggage with them at the time in question. Furthermore, he admitted telling them there would be no trouble because, as he put it, "We don't run that kind of place." Although the agents signed the cards "Ben Franklin" and "John Smith", respectively, James Wycoff testified that he did not raise any question as to whether or not their names were fictitious. James Wycoff also admitted that he did not raise any question of either agent as to why they didn't have baggage with them.

Defendant testified that she was not on the premises at the time in question, nor did she have any knowledge of the fact that any of the rooms were rented at any time for immoral purposes.

I am satisfied that the testimony of the ABC agents is an accurate and true account of the events which took place at the times in question. It is immaterial that no illicit sexual intercourse actually occurred in the rooms after they were rented to the agents. The offense charged (allowing, permitting and suffering lewdness and immoral activity in and upon the licensed premises) was complete when the rooms were rented with knowledge on the part of the licensee's employees that they were (ostensibly) to be used for the purpose of illicit sexual intercourse. Cf. Re Hartman, Bulletin 904, Item 2. Judge Jayne in Re Schneider, 12 N. J. Super. 449, stated: "The object manifestly inherent in the rule \*\*\* is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil."

There is no evidence in the instant case that the defendant-licensee participated in the transactions in question. A licensee is under a duty, however, to exercise close supervision over the licensed premises and violations occurring there cannot be excused merely because he has no personal knowledge of them. Rule 31 of State Regulations No. 20; Stein v. Passaic, Bulletin 451, Item 5; Essex Holding Corp. v. Hock, 136 N.J.L. 28. As was said in Re Paton, Bulletin 898, Item 3, "He (a licensee) cannot hide behind his employees."

I find the defendant guilty as charged.

Defendant has no previous adjudicated record. Under the circumstances, I shall suspend defendant's license for a period of 180 days. Re Molenaro, Bulletin 910, Item 1.

Although this proceeding was instituted during the 1950-51 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1951-52. State Regulations No. 16.

Accordingly, it is, on this 22nd day of October, 1951,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of Voorhees Township to Virginia P. Larsen, t/a Ole's Ranch, Dutchtown Road, Kresson, Voorhees Township, P. O. Marlton RFD, be and the same is hereby suspended for a period of one hundred eighty (180) days, commencing at 3:00 a.m. November 1, 1951, and terminating at 3:00 a.m. April 29, 1952.

*Erwin F. Hock*

Director.