

26 Rose Avenue;  
Madison,  
Morris County, New Jersey  
**STATE OF NEW JERSEY**  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1026

AUGUST 10, 1954.

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

BULLETIN 1026

AUGUST 10, 1954.

1. APPELLATE DECISIONS - McCOLLUM ET AL. v. EGG HARBOR TOWNSHIP.  
WILLEY, NELSON AND GIORDANO v. EGG HARBOR TOWNSHIP

DANIEL J. McCOLLUM and )  
ROSE McCOLLUM, his wife, )  
Appellants, )

-vs- )

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF EGG HARBOR, )  
Respondent. )

ON APPEAL

----- )  
EDGAR G. WILLEY and MAURICE )  
NELSON, trading as the PEACH )  
ORCHARD INN and JOSEPH GIORDANO, )  
Receiver, )  
Appellants, )

CONCLUSIONS

-vs- )

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF EGG HARBOR, )  
Respondent. )

----- )  
Samuel Levinson, Esq., Attorney for Appellants Daniel J. McCollum )  
and Rose McCollum. )

Bolte and Repetto, Esqs., by Augustine A. Repetto, Esq., Attorneys )  
for Appellants Edgar G. Willey and Maurice Nelson, and )  
Joseph Giordano, Receiver. )

Harry Souchal, Esq., Attorney for Respondent. )

BY THE DIRECTOR:

These are appeals from respondent's action on May 10, 1954, whereby it denied, by unanimous vote, the application of appellants Daniel J. McCollum and Rose McCollum, his wife, for a person-to-person transfer of a plenary retail consumption license (for the year 1953-54) from appellants Edgar G. Willey and Maurice Nelson (and Joseph Giordano, Receiver in an insolvency proceeding) for premises known as Peach Orchard Inn, located at or near Fire Road.

Respondent, in its resolution denying the transfer, recited that 119 residents of the Fourth District (in which the premises are located) had objected to the transfer for the reason that there are eight plenary retail consumption licenses in that district and approximately only 480 voters, that the number of licenses tends to create disorderly persons and traffic hazards in that district, and respondent expressed its "opinion" that the transfer not be granted for those reasons.

Appellants contend that the McCollums are in all respects qualified to hold a license and that there is "no legal basis" for refusing to transfer.

Respondent contends that the best interests of the community would be served by denying the transfer and that it had "a legal right" to deny the transfer.

These appeals were consolidated and, pursuant to Rule 6 of State Regulations No. 15, were heard de novo.

A review of the evidence discloses that the premises in question have been licensed since 1933; that the license was transferred person to person to appellants Willey and Nelson on October 10, 1951 and renewed annually thereafter, including the 1953-54 licensing period; that the license was extended to the Receiver (Giordano), who, as Receiver, has contracted to sell to the McCollums the property, the business and the stock of alcoholic beverages. There is no evidence that the premises were conducted in an improper manner or that the McCollums are either ineligible or unfit to hold a license. On the contrary, both Mr. and Mrs. McCollum appear to be fully qualified, both have had previous experience in the on-premises liquor business and neither has been involved in any trouble in connection therewith. Willey and Nelson served sandwiches on the premises and the McCollums plan to conduct a luncheonette upon said premises, which apparently serves not only local residents but also transients.

The petition, which evidently formed the basis of respondent's action, contains the following reason for the objectors' desire that the Township Committee "cancel" the license in question and refrain from granting a transfer or renewal thereof:

"There being eight (8) Plenary Retail Consumption Licenses in the Fourth (4th) District and only 480 voters, we are desirous of keeping the ratio of licenses to voters on a more equal basis. We are also desirous of eliminating the continued source of unpleasantness, created by disorderly persons and traffic hazards in our Fourth (4th) District."

None of the objectors testified at the hearing on these appeals. However, one of the neighbors who has resided approximately 200 feet from the licensed premises for over 20 years testified that he has not been disturbed by the licensed business; that he has seen "nothing at all out of the way" in the conduct of the licensed business by Willey and Nelson and that he had refused to sign the petition of objection. He further testified that, although some of the signers of the petition live near the licensed premises, a number of the others live a considerable distance away. He also testified that the area surrounding the licensed premises is rural, with small farms, a nursery and a gravel pit in the general locality.

The only member of respondent to testify on these appeals (Mr. English) testified that he has been a Township Committeeman since August 10, 1953 and that he had opposed the transfer because a large number of objectors (119) had signed petitions and some of them had appeared at the hearing in objection to the transfer. He also expressed it as his opinion that there are too many licenses in the Township. (There are 30 plenary retail consumption licenses and 2 plenary retail distribution licenses.) Mr. English admitted that Fire Road is a paved highway, not too heavily traveled; that there are some truck farms in the area; that there had been no complaints against the licensed premises to his knowledge and that he knew of no evidence that the premises had not been properly conducted.

As the Commissioner said in Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1:

"The transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; Van Schoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Masarik v. Milltown, Bulletin 283, Item 10.

"On the other hand, where it appears that refusal of a transfer is arbitrary and unreasonable, the action of respondent in refusing the transfer will be reversed. Blumenthal v. Wall, Bulletin 169, Item 6; Conn v. Kearny, Bulletin 173, Item 1; Miller v. Paterson, Bulletin 219, Item 6; Rucereto v. Dumont, Bulletin 253, Item 6; Shapley v. Delaware, Bulletin 294, Item 7."

These premises have been licensed for more than twenty years and, as was admitted by Mr. English, there is no evidence that the licensed business has been conducted in anything but a proper manner. The proposed transferees (the McCollums) clearly appear to be qualified to hold a license and their character and fitness have not even been questioned.

On the record before me I find that respondent's action was unreasonable and unwarranted and I have no alternative other than to reverse it. Turf Club Bar, Inc. v. Asbury Park, Bulletin 792, Item 5; Burgard et al. v. Totowa, Bulletin 900, Item 5. The decision below is therefore reversed.

The license sought to be transferred expired at midnight June 30, 1954. However, appellants Willey, Nelson and Giordano (Receiver) filed with respondent an application to renew the license to them for the 1954-55 licensing period. That application has already been denied by respondent. An appeal from such action, filed with me July 1, 1954, is presently pending and the term of the license (C-13) has been extended to the Receiver pending my further order. Thus, the decision herein is merely advisory.

Although the action of respondent is reversed, nevertheless, since the license which is the subject of this appeal has expired, no order requiring respondent to transfer said license will be entered herein.

WILLIAM HOWE DAVIS  
Director.

Dated: July 19, 1954.

2. DONATIONS - SEALED CONTRIBUTION BOXES IN LIQUOR ESTABLISHMENTS TO RAISE MONEY FOR TUBERCULOSIS LEAGUE - APPROVED.

July 20, 1954

Rowan Whealdon, Executive Secretary  
Essex County Tuberculosis League, Inc.  
Newark 2, N. J.

Dear Sir:

In your letter of July 12th you ask whether the Essex County Tuberculosis League, Inc. may place coin collection boxes in taverns or other liquor licensed premises in Essex County in connection with your public drive for funds next November and December. I take it that the boxes will be sealed.

Knowing the wonderful work of the Tuberculosis League, I am happy herewith to give permission for installation of these coin boxes at the liquor places in question, and I extend my heartiest wishes for a successful fund-raising campaign.

Very truly yours,  
WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - CONTRACEPTIVES - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against SIMON MELLER T/a NAT'S BAR 367 Grand Street Jersey City 2, N. J., Holder of Plenary Retail Consumption License C-161 for the 1953-54 and 1954-55 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

Simon Meller, Pro Se. David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) he sold alcoholic beverages at retail in original containers for consumption off his licensed premises, in violation of Rule 1 of State Regulations No. 38, and (2) he possessed and allowed, permitted and suffered contraceptive devices in and upon his licensed premises, in violation of Rule 9 of State Regulations No. 20.

The file discloses that at about 12:30 a.m. on May 30, 1954, an ABC agent purchased from a bartender in defendant's premises a pint of whiskey to take out. The agents then identified themselves, and the bartender admitted the sale. At about 12:50 a.m. the defendant-licensee arrived, was informed of the violation and his licensed premises searched, resulting in the seizure of a large number of contraceptive devices which were found in a back bar drawer.

Defendant has no prior adjudicated record. However, effective September 20, 1952, a license held by Promell Corp. for other premises in Jersey City was suspended for five days by the local issuing authority for a violation similar to that set forth in Charge 1 herein. At that time defendant herein was an officer, director and stockholder of said corporation and participated in said violation. Under all the circumstances I shall suspend defendant's license for twenty days because of the violation set forth in Charge 1, and for an additional period of ten days because of the violation set forth in Charge 2. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 9th day of July, 1954,

ORDERED that Plenary Retail Consumption License C-161, for the 1954-55 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Simon Meller, t/a Nat's Bar, for premises 367 Grand Street, Jersey City, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. July 19, 1954, and terminating at 2:00 a.m. August 13, 1954.

WILLIAM HOWE DAVIS Director.

4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATIONS - BRAWL - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 WILLIAMS-HOGAN-TONNE POST #39, )  
 THE AMERICAN LEGION )  
 118-124 Fourth Avenue )  
 Florence, N. J., )  
 Holder of Club License CB-246 for )  
 the 1953-54 and 1954-55 licensing )  
 years, issued by the State Director )  
 of the Division of Alcoholic )  
 Beverage Control. )  
 ----- )

CONCLUSIONS AND ORDER

American Legion Post #39, by Louis M. Hadarics, Commander. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On Saturday, May 29, 1954, between 2:01 A.M. and 5:00 A.M., you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and permitted the consumption of alcoholic beverages upon your licensed premises; in violation of Section 1 of an Ordinance adopted by the Township Committee of the Township of Florence on December 13, 1944, as amended October 20, 1948 which section prohibits any such activity between the hours of 2:00 A.M. and 7:00 A.M. on weekdays.
- "2. On the occasion aforesaid, you allowed, permitted and suffered a brawl, act of violence and disturbance in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that on Saturday, May 29, 1954, at about 2:45 a.m., two women and a male companion entered defendant's licensed premises where, with others, they were served and consumed alcoholic beverages until about 4:30 a.m. "Bill", who was then acting as bartender, thereafter gave a signed statement admitting the aforesaid violation.

The file likewise discloses that a disturbance occurred on the licensed premises at about 5:00 a.m. on the morning in question. This disturbance started when two men attempted to stop one of the women from using the telephone, and continued until the men ejected both of the women from the premises.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of fifteen days because of the violation set forth in Charge 1 (Re Feola, Bulletin 988, Item 3), and for a further period of fifteen days because of the violation set forth in Charge 2 (Re Bridgeton Lodge, Bulletin 947, Item 4). Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 12th day of July, 1954,

ORDERED that Club License CB-246, for the 1954-55 licensing year, issued by the Director of the Division of Alcoholic Beverage Control to Willits-Hogan-Tonne Post #39, The American Legion, for premises 118-124 Fourth Avenue, Florence, be and the same is hereby suspended for twenty-five (25) days, commencing at 7:00 a.m. July 19, 1954, and terminating at 7:00 a.m. August 13, 1954.

WILLIAM HOWE DAVIS  
Director.

5. DISCIPLINARY PROCEEDINGS - GAMBLING - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against  
 SAMUEL NEGER  
 348 N. Second Street  
 East Newark  
 P. O. Harrison, N. J.,  
 Holder of Plenary Retail Consumption License C-3 for the 1953-54 and 1954-55 licensing years, issued by the Borough Council of the Borough of East Newark.

CONCLUSIONS  
-AND ORDER

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 Sara V. Dunn, by Leo S. Carney, Esq., Attorney for Defendant-licensee.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On January 16 and 19, 1954, you engaged in and allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20.

"2. On January 19, 1954 you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises an alcoholic beverage in a bottle which did not bear any label describing its contents viz., a 29-ounce bottle containing approximately 13 ounces of wine; in violation of Rule 27 of State Regulations No. 20."

As to Charge 1: At the hearing held herein three ABC agents testified that they entered defendant's premises at about noon on Saturday, January 16, 1954; that they sat at the bar, and that Michael Ciborowski was tending bar. The testimony of the first agent concerning this visit may be summarized as follows: While they were present, one James P. Gates went with different male patrons to a rear room where he remained a few minutes before returning to the bar. At about 1:00 p.m. the second agent said to Gates, "I would like two across on Inchin, the 4th at Hialeah" and placed a \$5.00 bill and a \$1.00 bill on the bar. Gates picked up the money and put it in his pocket. The three agents then went to the rear room with Gates, who called someone on the telephone and said "Four across on Inchin, 4th at Hialeah." When they returned to the bar the first agent placed a \$5.00 bill and a \$1.00 bill on the bar and said to Gates, "Give me two across on Ezio, the 2nd at Hialeah." Gates put this money in his pocket. The bartender was immediately in front of the agents and Gates on both occasions when the money was placed on the bar. Gates told the agents that he visited defendant's premises daily between 12:30 and 2:30 and that, if he was not there, he would leave any money they won with "Mike." The second and third agents substantially corroborated the aforesaid testimony.

At the hearing held herein the first and third agents testified that they again entered defendant's premises at about noon on January 19, 1954; that they sat at the bar, and that Michael Ciborowski was tending bar. They further testified that, shortly after they entered, the bartender placed on the bar the sum of \$3.10 which represented the amount won by the first agent on his bet placed with Gates on January 16. The testimony of the first agent as to the other events which occurred on this visit may be summarized as follows: Gates entered about 12:30 p.m. and came to the bar. The first agent placed four \$1.00 marked bills on the bar and told Gates he wanted to bet "a two-four reverse ticket" on two named horses for "my friend who couldn't come in today." Gates put the money in his pocket. Later the two agents went to the rear room where Gates "called this bet in." After they returned to the bar the third agent placed six \$1.00 marked bills on the bar and said to Gates, "Give me two across on Touchdown." Gates placed this money in his pocket. The third agent corroborated the aforesaid testimony. The second agent thereafter entered the premises with members of the East Newark Police Department, and the marked money was found in the possession of Gates.

On behalf of defendant, Michael Ciborowski testified that he has been employed for the past two years as a bartender by defendant. He denied that he knows "anything about horse race" and denied that he heard any conversation between Gates and the agents. He admitted that he had given \$3.10 to the agents at the request of Gates, but said that he didn't know that the money represented a pay-off on a bet. Gates was called as a witness by defendant, but refused to answer a question as to whether he engaged in bookmaking or betting on January 16 or 19 "on the ground I might be incriminated." Defendant denied that he had any knowledge that betting was going on, and stated that Gates "is working every day" in a nearby industrial plant. He admitted, however, that Gates had been arrested in 1947 or 1948 for taking "a couple of bets" in his tavern, but said that the bets were taken without his knowledge. The records of the Division show that defendant's license was suspended by the local issuing authorities for five days effective March 23, 1936, for permitting gambling on his premises, and again for ten days effective January 19, 1948, on a similar charge. I find defendant guilty as to Charge 1.

As to Charge 2: On January 19 one of the agents found an unlabeled soda bottle in a paper bag on the floor under the bar. The bottle contained about thirteen ounces of a white wine fit for beverage purposes. On behalf of defendant a patron testified that he had made the wine about seven years ago and had given it to the bartender "for the cold." The bartender testified that he had received the bottle for his own use from the patron, and that defendant had no knowledge that the bottle was under the bar. It seems apparent from the testimony that the wine was not intended for sale on the premises. Under all the circumstances I shall dismiss Charge 2.

Defendant's prior record of a similar violation more than ten years ago, and a similar violation more than five years ago, is set forth above.

The only mitigating factors in the case are that defendant did not participate in the violation and that his employee may not have heard all of the conversation between the agents and Gates. Under all the circumstances of this case, including defendant's prior record, I shall suspend his license for twenty days.

Accordingly, it is, on this 16th day of July, 1954,

ORDERED that Plenary Retail Consumption License C-3, for the 1954-55 licensing year, issued by the Borough Council of the Borough of East Newark to Samuel Neger, for premises 348 N. Second Street, East Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. July 23, 1954, and terminating at 2:00 a.m. August 12, 1954.

WILLIAM HOWE DAVIS

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ALFRED ANGELICOLA )  
331 Straight Street )  
Paterson 3, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-154 for the 1953-54 and 1954-55 licensing years, issued by the Board of Alcoholic Beverage Control for the City of Paterson. )  
-----)

Alfred Angelicola, Defendant-licensee, Pro Se.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to charges alleging that he (1) sold, served and delivered alcoholic beverages and permitted the consumption thereof on his licensed premises during prohibited hours, and (2) failed to have his licensed premises closed during said prohibited hours, both in violation of a local ordinance.

An ordinance of the City of Paterson prohibits the sale, service and delivery of alcoholic beverages on Sundays between the hours of 3:00 a.m. and 1:00 p.m., and requires that licensed premises (with certain exceptions not here material) shall be closed between said hours.

The file herein discloses that between 11:45 a.m. and 12:15 p.m. Sunday, June 13, 1954, ABC agents saw several men enter the side door of defendant's licensed premises. One agent approached the main entrance, peered through a small uncovered panel in the door, and observed six men at the bar within. The agents made their identity known, gained access to the barroom and seized five drinks of alcoholic beverage from the patrons. Defendant-licensee stated to the agents that the men were in fact employees of his trucking firm, there gathered to discuss important business operations, and that he had served the drinks without charge. The gift of any alcoholic beverages by a licensee constitutes a sale thereof. R.S. 33:1-1(w).

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Dell'Orto, Bulletin 1005, Item 9.

Accordingly, it is, on this 8th day of July, 1954,

ORDERED that Plenary Retail Consumption License C-154, for the 1954-55 licensing year, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Alfred Angelicola, for premises 331 Straight Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. July 19, 1954 and terminating at 3:00 a.m. July 29, 1954.

WILLIAM HOWE DAVIS  
DIRECTOR.

7. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN  
MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary  
Proceedings against

ANGELO FERRARO & JOHN FERRARO  
409 - 21st Avenue  
Paterson 3, N. J.,

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Distri-  
bution License D-56 for the 1953-54  
and 1954-55 licensing years, issued  
by the Board of Alcoholic Beverage  
Control for the City of Paterson.  
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Joseph L. Ferraro, Esq., Attorney for Defendant-licensees.  
David S. Piltzer, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that on  
March 13, 1954 they sold at retail an alcoholic beverage at less  
than the price thereof listed in the then currently effective Minimum  
Consumer Resale Price List, in violation of Rule 5 of State Regula-  
tions No. 30.

The file herein discloses that on March 13, 1954, a clerk,  
with the approval of Angelo Ferraro, one of the defendant-licensees,  
sold to an ABC agent a gallon bottle of Fior Di California Bianco  
Scelto Wine for \$2.45. In the Minimum Consumer Resale Price List,  
effective January 1, 1954, the minimum price of a gallon bottle of  
the item in question was \$2.59.

Defendants have no prior adjudicated record. I shall, there-  
fore, suspend the license for ten days. Re Brooke, Bulletin 1002,  
Item 12. The confessional plea was not entered in these proceedings  
until the day of hearing. Therefore, the remission usually granted  
in cases where the plea is received in time will not be allowed.  
Re Yoches, Bulletin 855, Item 3.

Accordingly, it is, on this 12th day of July, 1954,

ORDERED that Plenary Retail Distribution License D-56 for the  
1954-55 licensing year, issued by the Board of Alcoholic Beverage  
Control for the City of Paterson to Angelo Ferraro & John Ferraro,  
409 - 21st Avenue, Paterson, be and the same is hereby suspended for  
a period of ten (10) days, commencing at 9:00 a.m. July 19, 1954, and  
terminating at 9:00 a.m. July 29, 1954.

WILLIAM HOWE DAVIS  
Director.

8. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION FOR  
 LICENSE - UNDER CIRCUMSTANCES OF CASE CHARGE DISMISSED.

In the Matter of Disciplinary )  
 Proceedings against )

JOSEPH J. HAVLICEK )  
 228 River Road )  
 Edgewater, N. J., )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consump- )  
 tion License C-34 for the 1953-54 )  
 and 1954-55 licensing years, issued )  
 by the Mayor and Council of the )  
 Borough of Edgewater, and transferred )  
 during pendency of proceedings to )

33 State Highway, Route No. 5 )  
 Edgewater, N. J. )

-----  
 Joseph J. Havlicek, Pro Se.

William F. Wood, Esq., appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"In your application dated June 25, 1953, filed with the Edgewater Mayor and Council, upon which you obtained your current plenary retail consumption license, you, after describing the premises to be licensed as the first floor of building at 228 River Road, Edgewater, New Jersey, falsely stated in answer to Questions 8(a) and 8(b) that the premises were rented by you from Mrs. Richard Gaul, Executrix of the Estate of John Dinan, whereas in truth and fact you had not rented the premises from her or anyone else and had no right to possession thereof; said false statement being in violation of R. S. 33:1-25."

The answers set forth in the charge were, in fact, answers given to question 8(a) and 8(b) in the application dated June 25, 1953 for transfer of the license in question from Florence Gaul, Executrix of the Estate of John F. Dinan to defendant.

It appears from the testimony of the defendant that when he negotiated for the transfer of the license he was under the impression that the license would continue at the premises 228 River Road and that the rent to be charged therefor was a mere formality to be agreed upon by the parties in interest at a subsequent date. After the local issuing authority approved the transfer of the license to defendant he discovered that the premises set forth in the application were owned by someone other than the licensee.

Technically, the information given by defendant in the application was incorrect and warranted the institution of the charge herein. However, I am of the opinion that defendant acted in good faith in the instant case and that the answers given by him to the questions aforementioned were not improperly motivated. It appears to be more in the nature of an honest mistake rather than an intention to practice a fraud upon the local issuing authority.

Under the circumstances appearing in this case, I shall dismiss the charge preferred herein.

Accordingly, it is, on this 12th day of July, 1954,

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

WILLIAM HOWE DAVIS  
 Director.

9. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN LUNCHEONETTE - STOCK OF ALCOHOLIC BEVERAGES, FIXTURES, FURNISHINGS AND EQUIPMENT FORFEITED - ICE CREAM CABINET RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on ) Case No. 8552  
 March 12, 1954, of a quantity of )  
 alcoholic beverages and various )  
 fixtures, furnishings, equipment, )  
 and merchandise at 309 North Third )  
 Street, in the Borough of Vineland, )  
 County of Cumberland and State of )  
 New Jersey. )

ON HEARING  
 CONCLUSIONS AND ORDER

-----)  
 Philadelphia Dairy Products Corporation, Inc., by Charles W.  
 Wagner, Jr., Branch Manager.  
 Harry Castelbaum, Esq., appearing for the Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages and various fixtures, furnishings, equipment and merchandise, described in a schedule attached hereto, seized on March 12, 1954 at 309 Third Street, Vineland, New Jersey, constitute unlawful property and should be forfeited.

The scene of the seizure was a luncheonette and candy store located at the above address. The Division of Alcoholic Beverage Control received a complaint that alcoholic beverages were being sold there without a license. Accordingly, an ABC agent visited the premises at about 11:00 p.m. on February 27th. Cleophus Spencer was in charge of the establishment. There was a music box and various pinball machines there. Many youngsters and some adults were in the place. Some of these persons were drinking beer at the counter. The agent purchased five cans of beer from Spencer.

This agent and another agent entered the store on March 12th. Leonard Segers was in charge of the store at this time. A number of persons were drinking beer. These agents purchased four cans of beer from Segers. The agents observed two cases of beer delivered to the store.

After the last purchase of beer, another agent entered and all of the agents disclosed their identity. Neither Spencer nor Segers held any license authorizing either of them to sell alcoholic beverages, and the premises were not licensed for that purpose.

Therefore the agents seized forty-eight cans of beer which were in a refrigerator, bottles of soda, merchandise, a music box, other fixtures, and equipment, including the cash register in which there was \$18.03 in cash, all of which were in the store.

The agents obtained a signed statement from Spencer and Segers wherein it appears, among other things, that Spencer was the owner of the establishment, and had been selling alcoholic beverages there for the past five or six weeks.

It is obvious, under the circumstances, that the seized beer was intended for unlawful sale and hence is illicit. R.S. 33:1-1(i). Such illicit beer, and all personal property seized therewith in the store, including the cash, constitute unlawful property and is subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered on behalf of Philadelphia Dairy Products Corporation, Inc., which sought return of an ice cream cabinet. Forfeiture of the balance of the seized property was not opposed by any person.

The facts above outlined were not contradicted by the ice cream company, which merely sought to establish that it did not know, or have any reason to suspect that alcoholic beverages were being sold in the store.

A written rental agreement dated April 30, 1953 evidencing the rental by the company to Cleophus Spencer of the seized ice cream cabinet, identified by serial number, has been presented. A representative of such company testified that he received a telephone request for the cabinet, inspected the location, met Spencer, and observed that he was in the process of installing equipment, but had not yet commenced any business activities. He ascertained that Spencer also operated a barber shop, and intended to be active at night in the candy store.

The witness further testified that thereafter he visited the store at least once a month, and did not see any alcoholic beverages being sold, or in the store.

I am satisfied that the ice cream company acted in a reasonably prudent manner, and had no reason to suspect that speakeasy activities were being carried on at the store. I shall therefore return the cabinet to such company upon payment of the costs of its seizure and storage. R.S. 33:1-66(f).

Accordingly, it is DETERMINED and ORDERED that if on or before the 22nd day of July, 1954, the Philadelphia Dairy Products Corporation, Inc. pays the costs of the seizure and storage of the ice cream cabinet, such cabinet will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS  
Director.

Dated: July 12, 1954.

SCHEDULE "A"

48 - cans of beer  
13 - cases of soda  
1 - Wurlitzer music box & currency therein  
3 - Pin Ball machines & currency therein  
1 - National cash register  
1 - Electric Coca Cola cooler  
1 - 8-well ice cream cabinet  
1 - counter  
1 - glass show case  
5 - metal stools  
2 - chairs  
1 - table  
1 - electric fan  
1 - cabinet  
47 - packages of cigarettes  
25 - cigars  
carton of assorted candy  
\$18.03 in cash

10. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ERIE POST #1049, V. F. W. )  
Hewson Avenue )  
Waldwick, N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-3 for the 1953-54 and 1954-55 licensing years, issued by the Mayor and Council of the Borough of Waldwick. )  
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Daniel Amster, Esq., Attorney for Defendant-licensee.  
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages and permitted the consumption thereof on its licensed premises during prohibited hours, in violation of a local ordinance.

An ordinance of the Borough of Waldwick prohibits sale and consumption of alcoholic beverages on licensed premises on Sunday and between the hours of 2:00 a.m. and 12:00 noon.

The file herein discloses that on Sunday, June 6, 1954, at approximately 11:35 a.m., ABC agents entered the barroom of defendant's licensed premises and observed therein six men consuming beer. One of the agents ordered two bottles of beer but was refused service by the man tending bar because they were not members of defendant's club. The agents then identified themselves and seized two bottles each of which contained a small quantity of beer.

In attempted mitigation, defendant stated that the persons present were making final plans for a charitable function to be held at a future date. Nevertheless the sale and consumption of alcoholic beverages at the time in question constituted a violation of the local ordinance.

Defendant has no prior record. I shall suspend defendant's license for a period of fifteen days, less five days for the plea entered herein, leaving a net suspension of ten days. Re Camden Lodge #111, Loyal Order of Moose, Bulletin 1023, Item 3.

Accordingly, it is, on this 19th day of July, 1954,

ORDERED that Club License CB-3, issued for the 1954-55 licensing year by the Mayor and Council of the Borough of Waldwick to Erie Post #1049, V. F. W, for premises on Hewson Avenue, Waldwick, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. July 26, 1954 and terminating at 2:00 a.m. August 5, 1954.

WILLIAM HOWE DAVIS  
Director.

11. DISCIPLINARY PROCEEDINGS - SALE TO WOMEN DIRECTLY OVER A BAR, IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against )

ELIZABETH B. FORD )  
T/a CHICK CAMPBELL'S )  
9 & 11 South 3rd St. & )  
233 Taylor Ave. in rear connected )  
Camden, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-186 for the 1953-54 licensing year, and now holder of Plenary Retail Consumption License C-161 for the 1954-55 licensing year, both issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )

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Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq., Attorneys for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On Saturday night February 13, 1954, you served beverages to women directly over a bar on your licensed premises; in violation of Section 10 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934, as amended by Ordinance adopted September 12, 1935."

The pertinent clause of Section 10 of the ordinance hereinabove referred to provides:

"No woman shall be served with any alcoholic beverages directly or indirectly over any bar \*\*\*."

At the hearing held herein two ABC agents testified that they entered defendant's premises on February 13, 1954, at about 9:55 p.m. and observed a waitress serving alcoholic beverages to six women and a number of men at an oblong structure situated to the rear of a similar structure which admittedly was the main bar of the licensed premises. Although the two structures were physically separated, they were both approximately the same height and the rear structure had eight stools for the accommodation of patrons on each side of the structure. The waitress had obtained the alcoholic beverages from the bartender at the other structure.

During the course of the hearing the attorney for defendant admitted that alcoholic beverages had been served to the women at the rear structure, but contended that said structure was not a bar within the meaning of the term as used in the ordinance. However, in Eskridge v. Division of Alcoholic Beverage Control, 30 N. J. Super. 472 (decided May 10, 1954), three Judges of the Appellate Division of the Superior Court unanimously concluded that a similar counter was a bar within the meaning of the ordinance. Hence I find that defendant is guilty as charged.

There are certain mitigating factors in the case. The testimony indicates that, prior to the violation, defendant had been advised by some municipal officials that it was permissible to serve alcoholic beverages to women at the structure in question and, moreover, the violation was committed before decision was rendered in

the Eskridge case. Hence, despite the fact that defendant's license was suspended in 1949 for dissimilar violations (see Bulletin 848, Item 7), I shall suspend her license in this proceeding for the minimum period of five days imposed in cases of this kind. Re Choice Liquors, Inc., Bulletin 827, Item 5.

Accordingly, it is, on this 12th day of July, 1954,

ORDERED that Plenary Retail Consumption License C-161, for the 1954-55 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Elizabeth B. Ford, t/a Chick Campbell's, for premises 9 & 11 South 3rd St. & 233 Taylor Ave. in rear connected, Camden, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. July 19, 1954, and terminating at 2:00 a.m. July 24, 1954.

WILLIAM HOWE DAVIS  
Director.

2. AUTOMATIC SUSPENSION - LICENSE SUSPENDED BY STATE DIRECTOR - SUSPENSION LIFTED.

In the Matter of Disciplinary Proceedings against  
JOS. EBERHARDT & PHILIP EBERHARDT  
T/a HILL VIEW TAVERN  
157 West Main Street  
P. O. Box 23, Denville, N. J.,  
Holders of Plenary Retail Consumption License C-1 for the 1954-55 licensing year, issued by the Township Committee of the Township of Denville.

ON PETITION  
O R D E R

BY THE DIRECTOR:

It appears from the petition filed herein that on July 16, 1954, the petitioner Joseph Eberhardt was convicted in the Morris County Court on a charge of selling alcoholic beverages to minors and was sentenced to pay a fine of \$200.00, which fine has been paid.

It appears from the records of the Division of Alcoholic Beverage Control that on May 20, 1954, this Division suspended the petitioners' license for a net period of fifteen days, commencing on June 1, 1954, and terminating on June 16, 1954, after the petitioners had pleaded non vult in disciplinary proceedings on charges alleging that they had sold alcoholic beverages to the same minors involved in the criminal conviction. Re Eberhardt, Bulletin 1020, Item 6.

Since the license suspension has already been fully served, the automatic suspension resulting from the criminal conviction will, in accordance with the relief requested in the petition herein, be granted.

Accordingly, it is, on this 23rd day of July, 1954,

ORDERED that the automatic suspension of License C-1, now held by Jos. Eberhardt & Philip Eberhardt, t/a Hill View Tavern, for premises 157 West Main Street, Denville, be lifted and said license restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS  
Director.

By: John H. Michelson  
Deputy Director.

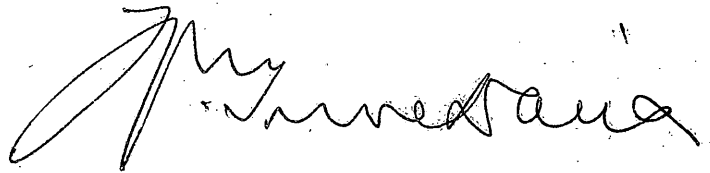
## 13. STATE LICENSES - NEW APPLICATIONS FILED.

John Novak, Jr. & Joseph Novak, t/a Novak Beverage Distributing Co.  
54 Ray Street  
New Brunswick, N. J.  
Application filed July 30, 1954 for State Beverage  
Distributor's License.

Florence Black  
Concord Avenue  
Leonardo, N. J.  
Boat "Reliable"  
Application for Plenary Retail Transit License filed  
August 5, 1954.

Quinn Freight Lines, Inc.  
720 Tonnelle Avenue  
Jersey City, N. J.  
Application for Transportation License filed August 6, 1954.

Ralph Mertineit  
Belmar Marine Basin  
Belmar, N. J.  
Boat "Chief"  
Application for Plenary Retail Transit License filed  
August 6, 1954.



William Howe Davis  
Director.