

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

BULLETIN 1551

February 25, 1964

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1. DISCIPLINARY PROCEEDINGS (West Orange) - FALSE STATEMENTS IN APPLICATION - FRONT - EMPLOYING CRIMINALLY DISQUALIFIED PERSON - RETAILER EMPLOYING EMPLOYEE OF MANUFACTURER - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 90 DAYS UPON PROOF OF CORRECTION.
2. DISCIPLINARY PROCEEDINGS (Ewing Township) - SALE TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

3. From on or about March 12, 1963 to date, you knowingly aided and abetted Charles Davis, Jr., to exercise, contrary to R.S. 33:1-26, the rights and privileges of your current plenary retail consumption license; in violation of R.S. 33:1-52.

4. From on or about March 12, 1963 to date, you employed and had connected with you in a business capacity Charles Davis, Jr., a person convicted of crimes involving moral turpitude, viz., conviction in the Essex County Court of Quarter Sessions on March 1, 1939 of atrocious assault and battery and on March 8, 1939 of assault with intent to rob and possession of a concealed weapon; in violation of Rule 1 of State Regulation No. 13.

5. From on or about March 12, 1963 to date, you employed and had connected with you in a business capacity Charles Davis, Jr., a person, directly and indirectly, interested in the manufacturing and wholesaling of alcoholic beverages; in violation of Rule 29 of State Regulation No. 20.

6. In the application of your predecessor-licensee, Marie A. Mulligan, dated May 14, 1962, filed with the Municipal Board of Alcoholic Beverage Control of the Town of West Orange, upon which said Marie A. Mulligan obtained the issuance of the current plenary retail consumption license which you now hold as the transferee of said licensee, Question No. 30, which asks: "Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?" was falsely answered "No" whereas in truth and fact Charles Davis, Jr., had such an interest in that he was the real and beneficial owner of Marie A. Mulligan's license and her licensed business; in violation of R.S. 33:1-25.

7. In the aforesaid application of Marie A. Mulligan, Question No. 31 which asks: "Have you agreed to pay (by way of rent, salary or otherwise) to any employee, or other person, any portion of percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?" was falsely answered "No", whereas in truth and fact Marie A. Mulligan had agreed to permit Charles Davis, Jr., to retain all the profits and income derived from her licensed business; in violation of R.S. 33:1-25.

8. From on or about February 24, 1960 to on or about March 12, 1963, Marie A. Mulligan knowingly aided and abetted Charles Davis, Jr., to exercise, contrary to R.S. 33:1-26, the rights and privileges of her successive plenary retail consumption licenses; in violation of R.S. 33:1-52.

9. From on or about February 24, 1960, to on or about March 12, 1963, Marie A. Mulligan employed and had connected with her in a business capacity Charles Davis, Jr., a person convicted of crimes involving moral turpitude viz., conviction in the Essex County Court of Quarter Sessions on March 1, 1939 of atrocious assault and battery and on March 8, 1939 of assault with intent to rob and possession of a concealed weapon; in violation of Rule 1 of State Regulation No. 13.

10. From on or about February 24, 1960 to on or about March 12, 1963, Marie A. Mulligan, a retail licensee, employed and had connected with her in a business capacity Charles Davis, Jr., a person, directly or indirectly, interested in the manufacturing and wholesaling of alcoholic beverages; in violation of Rule 29 of State Regulation No. 20.

A motion was made by the attorney for the Division, and consented to by counsel for the corporate licensee, to amend the name of Frank A. Palmieri in the first charge to James Al Palmieri, the error being merely typographical. I recommend that this motion be granted.

The Division's case was based upon the results of a continuing investigation of the licensee by three ABC agents from July 31, 1962, through May 10, 1963. The testimony of these agents was buttressed by numerous statements of officers and employees of the corporate licensee as well as of other witnesses, of invoices, checks and other instruments reflecting the complained of transactions, as well as testimony of these agents with respect to their personal visits on five or six occasions to the licensed premises.

In order to obtain a complete picture of the totality of circumstances within the framework of which the substance of these charges was established, it would be desirable to present a chronological sequence of the investigation as testified to by the agents. This will result in consideration of the charges without regard to the order in which they have been set up hereinabove.

It was established that the corporate structure of the licensee at present is as follows: Miss Margaret Davis is the president and holder of ninety-eight shares of the one hundred shares issued and outstanding; one share each was issued to Mrs. Julia Corbitt and Mr. James Palmieri (the attorney for the licensee).

Marie Mulligan was the predecessor holder of this license and had held the said license since February 1960. At that time she purchased the licensed business upon a down-payment made of \$7,500. The investigation further discloses that, prior to this alleged purchase, Marie Mulligan had a small savings account, and on or about March 7, 1960, two weeks after the purchase of the tavern known as the Village Tap Room, a deposit of \$5,500 was made to her account at the National State Bank of Newark.

On that same day Charles Davis closed out a savings account on the Half Dime Savings Bank of Orange with a withdrawal of \$7,661.66. In a statement given to the ABC agents during the course of this investigation, Charles Davis stated that he loaned Marie A. Mulligan approximately \$20,000 which was used to make improvements in the tavern and which was based upon an oral understanding that Marie Mulligan's aunt (one Helen Kelly) "would reimburse me this money if Marie A. Mulligan did not make the loan good at the end of two years." There were no written indemnification agreements with Helen Kelly and the only security were two promisory notes signed by Mrs. Mulligan.

Questioning of Davis further disclosed that he did not know whether this money was actually used for the purchase of this business. One year later the notes remained unpaid and a promisory note and chattel mortgage were executed in the sum of \$25,000, secured by the furniture and fixtures of the Village Tap Room. No money, except for \$100, has been received by Davis on account as repayment of the said promisory notes.

Davis is, and has been, employed for a number of years as a truck driver for the Liebmann Breweries, Inc., 119 Hill Street, Orange, N. J. He first became acquainted with Mrs. Mulligan in 1959, but denied that he ever worked at the Village Tap Room any time prior or subsequent to the date of the transaction involving the \$25,000. He informed the investigators that he has been at the Village Tap Room approximately every day for a period of two years. He claims that he was keeping an eye on his investment.

On the first visit made to the licensed premises by Agent B on October 22, 1962, he noted that Davis was carrying two cases of beer from one part of the premises to another. Davis was then questioned as to his employment at these premises, particularly in view of the fact that as an employee of Liebmann Breweries he was prevented, under the Rules and Regulations of this Division, from engaging in such employment. Davis told Agent B that he was only giving Julia Corbitt (the manager) a hand for a few days "because she was not used to daytime work."

It appears further that on November 29, 1962, Miss Corbitt was interviewed and she stated that she had now become the manager of these premises because Mrs. Mulligan became mentally ill with a nervous breakdown, necessitating a short period of hospitalization and subsequent psychiatric care. In a statement (marked R-1 in evidence) she stated that Mrs. Mulligan contacted her in May 1962 and asked her to take over the management of the taproom. "About one week after she called me I contacted Charlie Davis to ask him what I should do because I don't know how to run the place. Because there were a lot of bill collectors asking for their money that was owed to them by Marie Mulligan."

She admitted that she had no previous experience in the tavern business but she took over the duties as a manager, waitress, barmaid and so forth, working a total of ten hours during the afternoon and late evening. Her duties included the purchase of alcoholic beverages, and she was then asked the following question:

"Q Who received the alcoholic beverages?"

A Myself and the bartenders which were Al, Chet, Gabe and I believe Charlie Davis received a couple of times."

Since Marie Mulligan was unable to continue any active participation in the latter part of August 1962, she authorized Mrs. Corbitt to sign checks in the name of Marie Mulligan. She also admitted that Davis "helped me out at the tavern from May 1962 to the end of July 1962" and Davis was given a key to the tavern. He also continued thereafter to "advise" her on the operation.

Mrs. Corbitt further admitted that, although she knew

that Davis held a \$25,000 mortgage on this tavern, she never repaid any money thereon. She also insisted that neither Davis nor Mrs. Mulligan received any money from the business but that Mrs. Mulligan "would write herself a check when she needed the funds." Numerous invoices were introduced into evidence which indicate that purchases of alcoholic beverages were approved by Davis. Many of these invoices were marked "OK C.D." There were also checks which were made payable to Davis and which he claimed to be reimbursement for monies advanced by him. However, no records were produced to show what these advances were and for what purpose they were used.

There was a check #262, dated October 6, 1960, made payable to Charles Davis in the amount of \$200, by signature of Marie A. Mulligan. The check was endorsed "Food freezer for Kitchen - Charles Davis." Davis' explanation for this check was that he purchased this food freezer for the business and he was reimbursed by Mrs. Mulligan. Another check #293, dated October 19, 1960, made payable to James A. Palmieri in the sum of \$200, was signed by Marie A. Mulligan and endorsed by James A. Palmieri and Davis. His explanation was "I merely cashed this check for him upon his request." He explained check #482, dated January 9, 1961, made payable to George Diakow in the sum of \$60.63, and check #494, dated January 16, 1961, payable to Ryer Malone in the sum of \$85.50; check #496, dated January 16, 1961, in the sum of \$18 for Christmas decorations; check #1515, dated April 25, 1962, made payable to Charles Davis in the sum of \$500, and check #1634, dated July 3, 1962, made payable to Eddie Hazell in the sum of \$150, all of which were endorsed by Davis as being reimbursements for money loaned to Mrs. Mulligan when she was ill. Davis also stated that he was reimbursed in the sum of \$475 for a payment made by him to the Federal Government for taxes owed by the licensee during Mrs. Mulligan's illness.

After repeated attempts, agents finally interviewed Mrs. Mulligan and obtained a written statement (D-11 in evidence) from her on December 4, 1962. In this statement which was prepared in the presence of her attorney Mr. Palmieri, she stated that she purchased the subject licensed premises from Anthony Adelizio in January 1960 for \$7,500, which sum came from her savings. She could not recall, however, from what bank the money was withdrawn, nor were those records ever produced. She then received \$25,000 from Davis whom she had known since 1959. In addition, to the alleged oral promise of her aunt to secure repayment, she executed two promisory notes to Davis dated March 15, 1961 and April 2, 1962. The first note bore no interest; however, the latter one bore interest at six per cent. and was secured by a chattel mortgage. No payments were ever made by her on account of this indebtedness. The money was used to make repairs to the tavern and was advanced to her "as I needed it for the repair of the tavern. It was usually cash or certified check." In this statement she was asked the following questions:

"Q I understand you have been ill for a period of time. Will you tell me when this occurred and for how long a period of time were you unable to attend to the business of the Village Tap Room?

A Since approximately May of 1962.

Q Who took charge of the Village Tap Room in your absence?

A My cousin, Julie Corbitt.

Q Did Charles Davis help you out at the Village Tap Room during that period of time?

A Charles Davis did manual labor at the Village Tap Room during my illness. When I received a letter from your Division his services were discontinued.

Q Did Charles Davis ever order any alcoholic beverages or accept any deliveries of alcoholic beverages for the Village Tap Room?

A To the best of my knowledge, No.
* * * * *

Q How do you explain the fact that various invoices were found at the Village Tap Room from April 1960 through July 1962 which bear either the name or initials of Charles Davis and that some of these invoices are circled as OK by Charles Davis? I now show you these invoices.

A I do not know. I was not present."

She then denied that Davis had received any salary or profits from this business and stated that she received no set salary, although she states that she drew about \$1,200 a year. She was then asked the further question with respect to Davis' affiliation with the business:

"Q In the signed statement given to Inspector of the ABC, Charles Davis stated on 7/31/62 that during your illness he would keep an eye on the business and if he saw something that required your attention he would tell you. How was Charles Davis so familiar with the business that he would be able to know what required your attention?

A In an emergency, Charlie Davis would give aid to Julie Corbitt, if the need arose."

She further sought to explain two checks issued to Charles Davis in the sum of \$500 and \$100 by saying that these checks must be for "purchases" made by him.

An examination of the invoices (marked D-8 in evidence) shows that a number of invoices for soda, stamps, food products, radio and television repairs and restaurant and bar equipment and supplies covered purchases by this tavern and the invoices were endorsed by Charles Davis either by signing the full name or affixing the initials C.D. or OK C.D. In addition, this exhibit contains twenty-two invoices reflecting purchases of alcoholic beverages, all of which indicate the receipt of this merchandise by Charles Davis who endorsed these invoices "OK C.D." It should be pointed out that several of the deliveries of alcoholic beverages were made by the Liebmann Breweries, Inc. where Davis was employed; indeed, he signed these invoices on behalf of that company as its driver and delivery-man. Exhibit D-9 in evidence contains nine checks signed by Marie Mulligan during 1960 through 1962, made payable to or endorsed by Davis.

Continuing their investigation, the agents revisited the premises on January 18, 1963. They testified that they saw Davis standing behind the bar wearing a bar apron, and two customers were seated at the bar drinking beer. No other person was behind the bar with Davis. When Davis saw the agents, whom he immediately recognized, he immediately came from behind the bar. The other man then put on the apron and went behind the bar. In his statement, referred to hereinabove, Davis denied tending the bar on this occasion.

Mrs. Mulligan sought to sell this business, and the continuing investigation by this Division, according to the testimony, shows that on March 12, 1963, a transfer of the license was granted by the local issuing authority to the Village Tap Room, Inc., a corporation newly organized, and the present stockholders set forth hereinabove were its incorporators and officers.

The agents then interviewed and obtained a statement from Miss Margaret C. Davis (a sister of Davis) who lives at the same address as does Davis. She is listed as the president and ninety-eight per cent. shareholder of the newly formed corporation. In her statement she stated that she had never had any experience in a tavern business but she purchased it because her brother told her that this would be a good investment. In her statement (D-14 in evidence) she set forth the terms of the transaction in the following language:

"An agreement was reached between myself and Marie Mulligan where I personally and as head of the new corporation, Village Tap Room, Inc. would assume all debts of Marie Mulligan, t/a Village Tap Room, that is the \$25,000.00 chattel mortgage plus all interests due on same. Marie Mulligan was to receive no money from the sale of the business, however, she would be released from the debts. An indemnifying agreement was signed by me to this effect, dtd. 1/25/63. Also a bill of sale dated 13 March, 1963 was executed and signed by Marie A. Mulligan. At this date no money has exchanged hands, however, I have a tentative agreement, verbally with my brother Charles Davis to repay him the \$25,000.00 plus the \$5,000.00 interest as follows: every three months \$300.00 on the principal plus \$100.00 towards the interest. This arrangement depends on how the business goes. To my knowledge Marie A. Mulligan signed the consent for the sale of the license."

She further stated that she had purchased the building in which the tavern was located on March 1, 1963, for \$25,000, on which she made a down-payment of \$13,000.

In support of the Division's charge of the motivation that generated Davis' action in purchasing and operating this license in the names of Mrs. Mulligan and his sister Miss Margaret Davis, the Division introduced into evidence (Exhibit D-3) a certified copy of the record of conviction in the Essex County Court of Quarter Sessions on March 1, 1939, and on March 8, 1939, of the respective crimes of atrocious assault and battery, assault with intent to rob, and possession of a concealed weapon, which convictions are against Davis, the person mentioned herein. These convictions are for crimes involving moral turpitude. On the first charge he was sentenced to five to eight years in State Prison on March 10, 1939. Davis has

never had his disqualification removed, and admitted to the agents during questioning that in his answer to the employment questionnaire filed with his employer, the Liebmann Breweries, he falsely denied that he had ever been convicted of a crime. The Division, therefore, contends that, since he was criminally disqualified from being actively engaged in the alcoholic beverage industry, he used the subterfuges as hereinabove described.

At the conclusion of the Division's case a motion was made by the attorney for the licensee for dismissal of the charges on the ground that no affirmative evidence has been introduced in support thereof but that the case is based upon "merely a suspicion, maybe a strong suspicion, that everything was not as it should have been but certainly no proof sufficient to which we are called upon to defend." I recommend that this motion be denied.

The licensee produced as witnesses in its behalf Margaret C. Davis, Julia Corbitt, David Amster and Charles Davis. Margaret Davis essentially reiterated the information given to the agents in the statement heretofore referred to, and denied that her brother was the actual owner of the business. She stated that she was not aware of any indebtedness other than the chattel mortgage in the sum of \$25,000 and approximately \$5,000 interest due thereon. However, she was prepared to meet any other outstanding indebtedness which was not brought to her attention up to this time.

With respect to the chattel mortgage, she stated that, to her knowledge, there was one payment made thereon in the sum of \$300 and that, according to the arrangement, she was obligated to pay \$100 a month. She reiterated that her brother Charles had no connection or affiliation with this business.

On cross examination Miss Davis stated that she was not familiar with any of the accounts payable, and referred such matters to her accountant. She also stated that the transaction was consummated without Mrs. Mulligan receiving any monies, and in fact Mrs. Mulligan was not represented by counsel. Mr. Palmieri was the only attorney who participated in the transaction, and he represented her.

She further admitted that she entered into an oral arrangement with Julia Corbitt whereby Mrs. Corbitt was to manage the business, and was to receive twenty-five per cent. of the profits therefrom. She was then asked the following questions:

"Q Are you aware that Question No. 31 (of your application for the transfer of your license to the corporation) reads, 'Have you agreed to pay (by way of rent, salary or otherwise) to any employee, or other person, any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?' and you answered, 'No'?"

A I don't remember that particular question.

Q Is that correct?

A It evidently is."

Miss Davis then was questioned about the purchase of the building for which she made a cash payment in the sum of \$13,000. She explained that approximately \$8,000 of that sum was taken from her sister's safe deposit box which she explained

was being kept for her for emergency purposes. She kept no record of the amount that she gave to her sister, nor did she retain any receipts therefor. Upon the withdrawal of this amount she stated that she had a total of \$300 left, for emergency purposes.

She was then questioned about the advances made by her brother to Marie Mulligan in the sum of \$25,000, and she disclaimed any knowledge thereof. She also stated that she knew that her brother had a criminal record but professed ignorance of the fact that this would constitute a disqualification of his lawful participation in the alcoholic beverage industry.

The witness was then questioned about the income and expenses of this business, and admitted that she had no knowledge of whether the business was making a profit. She stated that this was handled by the accountant for the licensee and that in fact she had never received a written profit and loss statement or report from the accountant, or anyone else. However, while she personally has never received any profits, she was assured by her accountant that all bills are being paid.

This witness returned at an adjourned hearing of this matter and recanted on that portion of her previous testimony wherein she testified that she had entered into a verbal arrangement to pay a fixed percentage to Mrs. Corbitt. She stated that actually this oral agreement was in her own mind, and that she was really quite confused when she previously testified. She was then asked by me:

"Q Why were you confused the other day?

A I guess it was the first time being on the stand. It wasn't because of the treatment; I don't mean that. I was confused, I really was. I never had testified or anything whatever. It was brand new to me. But I did say that the other day."

She was then asked, "Did you mention a percentage of profits to her without specifying what percentage?" and she answered, "I really told her I was going to give her a bonus at the end of the year."

"Q But you did not agree it would be based upon a percentage of the profits?

A No, but I hoped it would be."

Julia Corbitt testified that she holds one share of stock in the present corporate licensee and that she is employed as the manager for these premises. She had no prior experience in this activity. She took over the management of this business when Marie Mulligan (her first cousin) became ill. She stated that Marie Mulligan is an alcoholic and actually walked out of the business in May or June 1962. This witness was the one who introduced Davis (whom she had known for eight or nine years prior thereto) to Mrs. Mulligan and was responsible for his advancing the approximate sum of \$25,000 to Mrs. Mulligan at the time of and in furtherance of the purchase of the business in 1960. When she took over the management, she performed many duties, including that of cook, waitress, porter and so forth. She never received a fixed salary; insisted that she worked actually for no salary and received her free rent,

utilities and money for food for herself and her four children. She stated that her food bills generally averaged about \$20 a week, and she would make pay-out slips which were turned over to her accountant. None of these slips, however, was produced at this hearing. She did not know whether the business operated at a profit or at a loss, and stated that she was not really concerned about this since this was handled by the accountant.

She turned over the key to the premises to Davis when she had to go to the seashore to care for her sick child, but returned when she was informed that Davis was unable to continue the active management after he was advised by this Division that he was criminally disqualified from such employment. She further insisted that she had not entered into any agreement with Mrs. Mulligan for any salary, but hoped that she would receive a bonus at the end of each year.

She was questioned closely on cross examination about the various invoices which were signed "C. Davis" or "C.D." Her explanation was that they were probably signed by "Gabe" who was then employed as a bartender and, in any event, she denied knowledge of the fact that this merchandise was ever received by Davis. She was then asked the following question:

"Q. Did he (Davis) in any way indicate to you or did you know in any way from your conversations with him that he was in fact either the owner of that tavern and Marie Mulligan's name was on it or he had any interest in the tavern as far as ownership was concerned?

A I knew he had an interest in the tavern as far as ownership; I knew he had loaned Marie Mulligan money."

However, she denied that Davis participated in the active management of the business or that he received any of the profits therefrom.

She was further questioned with respect to the arrangements that she had with Miss Davis. She stated that Miss Davis did not know what her financial arrangements were with Mrs. Mulligan but that, so far as Miss Davis was concerned, all that she was to receive was free rent and utilities. Miss Davis also told her that she would receive a bonus at the end of the year. She emphatically denied that she actually took any money from the business for food, but stated that she would divert some of the food purchased for the tavern for her own use, and that the bills that were turned over to the accountant were actually bills for purchases made by the tavern and not on her own account.

David Amster, the accountant for the corporate licensee, testified that, according to the records given to him by Mrs. Mulligan, the indebtedness to Davis as of December 1960 was \$21,900. He was then told that a chattel mortgage in the sum of \$25,000 was executed by Mrs. Mulligan and the difference between \$21,000 and \$25,000 represented accumulated interest.

He further explained that Mrs. Mulligan took out very little from the business because the business showed practically no profits. For the year 1960 the books reflect a profit of \$1,100; in 1961 a profit of \$938.73, and in 1962 a profit of \$1,341. He further explained that he determined the receipts only

as they were shown on the bank statements that were delivered to him, and determined the expenditures by the vouchers that were presented to him.

On cross examination Amster admitted that, other than deposits reflected in the bank account, he had no way of verifying or checking on the actual receipts of this business; he depended entirely upon what was told to him or what was actually deposited. So, too, with the capital structure of the licensee. He was thereupon examined with respect to the net value of the business.

"Q So that your records show that no investment was made by Marie Mulligan in acquiring the business from her own funds?

A This is what I was told by Mrs. Mulligan; that is correct.

Q That all the money came from Charles Davis?

A That is what my records show; loans payable to Mr. Davis, \$21,900.

Q Which is the total money invested in the business?

A Correct."

Charles Davis denied the gravamen of the charges in so far as they related to his association, participation or affiliation in the corporate licensee except in so far as such testimony as relates to his position as a mortgagee thereof. He stated that he is presently employed (and has been for some time heretofore) with Liebmann Breweries, and gives the following picture of his past dealings as they relate hereto: Six months prior to the purchase of the tavern by Mrs. Mulligan, he gave her \$3,000 and thereafter loaned her sums of money from time to time which aggregated the sum of \$25,000. She executed a note but paid nothing on that note for the first year. In 1961 she executed another note in the sum of \$25,000 which, he explains, represented a total of \$22,000 plus the \$3,000 she had taken from him prior to that date. All of this was noted in a black book which he no longer has in his possession. He never demanded any payment on the first note and then had the chattel mortgage executed by Mrs. Mulligan in order to secure payment of the second note. After this transaction he stated that he would come down to the tavern and help out around the place, but he never participated in its management.

A number of invoices in the exhibit D-8 were shown to him for verification of his signature, and his answer to most of the questions was that they might "possibly" be his. He admitted that he could have received some of the merchandise, but he denied that some of the signatures purported to be his were actually endorsed by him. However, in answer to my question he stated that he did not authorize anyone else to sign in his behalf.

He did identify the signatures on several delivery slips from the Liebmann Breweries as being signed by him as driver for that company. He explained the various checks which were introduced into evidence as representing reimbursements to him from Mrs. Mulligan for money which he "loaned" to the business

during its daily operations.

The witness further insisted that, after he received the notification from this Division that his employment at his tavern conflicted lawfully with his employment at the Liebmann Breweries, he discontinued any further work and has not performed any services either on a compensatory or non-compensatory basis.

He explains his presence at the bar on January 18, 1963, as follows: When the agents came in he was speaking to Gabe (the bartender) and told him that he recognized the two agents, and "You better serve them if they want to get served." He denied that he had an apron on and was asked the following:

"Q Did you have a towel or something in your hand?
Do you know?"

A Well, I know I was cleaning my car. I could have had a rag in my hand, yes."

He further stated that his arrangement with his sister when she took over the license as the major stockholder was that she was to pay him \$100 a month and, if he wanted reimbursement of the monies due to him, his sister said, "Any time you want the money, feel you need money, want to use it, I'll go down and cash in stock and I'll pay you." He was further asked to explain why he told the ABC agents on their first visit that his name was Charles Williams and that he worked at a gas station. His explanation for that was that they had not identified themselves and he didn't feel that it was necessary to give them his true name.

At this point it was stipulated by counsel that this witness will admit that he was convicted of crimes involving moral turpitude and that he was, therefore, criminally disqualified from participating in any way in the alcoholic beverage industry.

On cross examination he was asked whether his signature on the invoice reflecting purchases made by this tavern from the Hawthorne Lumber Supply was his signature. He denied that it was. He was then asked whether or not he admitted that that was his signature during a hearing on an application to remove his disqualification which took place on April 22, 1963. His answer was, "I believed it was my signature five weeks ago. I (now) still say it is not my signature." Subsequent examination on this point produced his admission that he did in fact sign that invoice at the Hawthorne Lumber Supply.

He was then asked whether he signed the questionnaire wherein he denied that he had ever been convicted of crime (Exhibit D-17). He admitted that he had, and explained that this was the only way that he could get employment at the Liebmann Breweries. He then explained that he was advised to go down to this Division to determine whether he was qualified. At this office he spoke to a receptionist and gave her his name and address, but insists heard nothing further with respect thereto.

He was then questioned with respect to the closing of title in 1960. He stated that he did not participate in the closing but remained in the outside office of Mrs. Mulligan's lawyer Mr. Palmieri, but denied that he advanced to Mrs. Mulligan

any money for the purchase of the tavern. He was then shown Exhibit D-13 which shows that on the same date he closed his account at the Howard Savings Bank and withdrew \$9,000. This was admitted, but he could not explain what he did with the \$9,000. With respect to the \$22,000 he loaned to Mrs. Mulligan on the chattel mortgage, he was repaid a total of \$100 in two years.

He was then further questioned with respect to the incident of January 18, 1963, when the agents testified that they saw him behind the bar. He denied this and stated that there was no one who was actually bartending at that time, and that the two men who were drinking beer at the bar had been served before he got to the tavern.

I have carefully examined and evaluated the testimony and exhibits with respect to these charges. I have also observed the demeanor of the witnesses as they testified before me. We are here dealing with purely disciplinary measures and their alleged infractions; such measures are civil in nature and not criminal. Kravis v. Hock, 135 N.J.L. 259 (Sup.Ct. 1947). Thus the Division need establish its case only by a fair preponderance of the credible evidence. Freud and Pittala v. Davis, 64 N.J. Super. 242; Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373.

In other words, the findings must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 C.J.S. Evidence, sec. 1042. By a preponderance of the evidence is meant evidence which is of greater weight or more convincing than that which is offered in opposition. 32 C.J.S. Evidence, sec. 1021, at p. 1051, and cases cited therein. Cf. Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501.

The very nature and characteristic of a "front" case is concealment and subterfuge. Very rarely is the Division's proof buttressed with confessions and/or affirmative admissions. Thus the testimonial presentation must be largely circumstantial and documentary. Therefore, much depends not only upon the credibility of the witnesses but the logic, probability and credulity of the testimony itself. Testimony to be believed must not only proceed from the mouths of credible witnesses but must be credible in itself and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J. Super. 1.

The accepted standard of persuasion relating to the testimony governing the trier of the facts is that the determination must be founded in truth. Riker v. John Hancock Mutual Life Insurance Co., 129 N.J.L. 508. No testimony need be believed but, rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899). Using these principles as a guide, I am particularly disturbed and singularly unimpressed by the conflicting testimony given by the primary witness for the corporate licensee, Charles Davis. It should be noted that Davis admitted that he lied when he answered the questionnaire for his present employer Liebmann Breweries in which he stated that he had never been convicted of crime. His explanation that he needed a job and therefore felt it necessary to set forth this falsehood is unconvincing in the circumstances. This was compounded by his testimony that, knowing of his legal infirmity to participate in the alcoholic

beverage industry, he visited this Division for the alleged purpose of determining whether he was qualified. I am not persuaded that he made any sincere effort to, or that he did, reveal to this Division the facts concerning his criminal record.

His credibility is further impugned by the contradiction in his testimony with respect to the invoices signed by him with his initials or with the legend "C. Cavis." While he admitted that some of them were signed by him, he denied that some of the other invoices were signed by him or the merchandise was received by him upon his signature. Not only is this contradictory to the testimony which he gave at the prior hearing on his application for the removal of his disqualification, but my examination of the signatures on these invoices clearly satisfies me that they are the signatures of this individual. The similarity of the signatures, together with his prior admission that they were his, convince me that this witness was lacking in forthrightness and candor. It should also be noted that, since he has been convicted of crime, the trier of the facts may consider such prior convictions as affecting that witness' credibility. State v. McNair, 59 N.J. Super. 453, at 458, cert. denied 365 U.S. 459. Therefore, viewing his entire testimony in the light of these circumstances, I find little probability of truth in his testimony and it is entitled to little credit. 88 C.J.S. sec. 276, p. 738.

As I stated hereinabove, I shall make determination of the charges as they relate to the case chronologically rather than as set forth in a statement of charges.

With respect to Charges 6, 7 and 8: I am convinced through the credible testimony of the agents, fortified through the exhibits including statements of Marie Mulligan and Julia Corbitt, that the money for this venture was put up by Davis and that no part of it was money belonging to Marie Mulligan. According to the testimony, as pointed out hereinabove, the money allegedly paid by Mrs. Mulligan was first deposited to her account on the same day that money was withdrawn from Davis' account by him. When he was asked to explain the reason for his withdrawal, he stated that it was for personal reasons. It does not seem consistent with human experience for an individual to loan a total of \$22,000 (which, with interest, exceeded \$25,000) without obtaining any substantial collateral. The note signed by Mrs. Mulligan was of obviously little value since she was a person of no resources. Also, the very circumstances surrounding the entire transaction were suspect since there was, in my opinion, no adequate legal representation in this transaction. It is also significant that, during the transaction relating to the alleged purchase of this tavern by Mrs. Mulligan, Davis was present in the office of the attorney although he explains that he remained in the outside office during the actual transaction.

With further reference to the monies invested, I am particularly influenced by the rather forthright and articulate testimony of Mr. Amster, the accountant for the licensee. His statement that the books and records do not reflect any investment of monies toward the purchase of this business by Mrs. Mulligan is, in my view, dramatic corroboration of the allegations of this Division that all of the money used both in the initial transaction and in the physical development and improvement of this business was that of Davis. A clear inference must be drawn that Davis was well aware that he was criminally disqualified from assuming

the title to these premises. It is thus quite apparent why he put said title in the name of Mrs. Mulligan.

The testimony further shows that there was a very small profit shown to have been derived from this business during most of the period set forth in the seventh charge. The explanation proffered by both Mrs. Corbitt and Mr. Amster is that the business during this time was being operated in an unprofitable manner. This was due, they say, to the fact that there were too many employees and, as Mr. Amster pointed out, thirty-five per cent. of the gross income was being paid for salaries whereas twenty per cent. of gross would be the better business formula and more consistent with comparable operations.

However, I do not believe that we have really received an accurate statement of the true gross receipts. It should be borne in mind that there is testimony that Davis assisted in the operation of this business for two years and was in the premises practically every day. For some period of time he also had the key to the premises with unimpeded access thereto, and would open and close the tavern each day. No real check was made on the actual receipts other than as deposited by him in the bank.

Mrs. Corbitt also testified that she used receipts for her own personal needs in terms of food and other expenses. It is not clear whether she actually made pay-out slips; in any event, no such slips were produced.

Mr. Amster frankly concedes that his records only reflect the receipts that were deposited in the bank. No register tapes were delivered to him, nor does he have any other empiric evidence of the actual receipts. Therefore I am persuaded that the net profits of this business, as reflected in the books and records of the accountant, are not accurate and that a logical inference can be drawn that Davis retained the profits and income derived from this business. This was further supported by the fact that Davis did not require obtain any repayment on his advancement to the business for at least two years except for the sum of \$100.

Ruling out a philanthropic attitude on his part, I must draw the inference that Davis retained repayment in the form of income from the business itself. One further point should be noted. During most of this period Mrs. Mulligan had suffered from a nervous condition and was described by both Mrs. Corbitt and Davis as being a chronic alcoholic. I am, therefore, satisfied that she had less than full control over the activities of this business. The evidence is convincing that not only did Davis advise Mrs. Corbitt and the sister in the management but was in fact the true owner and operator thereof.

I am also satisfied from the invoices which bore his signature, and the checks made payable to him, that he not only made substantial purchases of alcoholic beverages and other products used in the operation of this business, but clearly had proprietary command of its operations.

I, therefore, recommend that the licensee be found guilty of Charges 6, 7 and 8.

With respect to Charges 9 and 10. It is admitted by stipulation of counsel for the licensee that Davis was convicted of a crime involving moral turpitude (i.e., a conviction the Essex

County Court of Quarter Sessions on March 1, 1939, of atrocious assault and battery, and on March 8, 1939, of assault with intent to rob and possession of a concealed weapon).

Davis admitted that he performed services at these premises until September 1962 when he was notified by warning letter of this Division that he was ineligible to continue such employment since he was concurrently employed by the Liebmann Breweries (a manufacturer and distributor of alcoholic beverages). He states that he performed no services after that date. However, two ABC agents positively identified him as the bartender of these premises on January 18, 1963. They described the two patrons seated at the bar with alcoholic beverages in front of them, and Davis with his white apron. Davis sought to explain that he did not have an apron on but actually had a towel which he had planned to use to polish his car on this presumably cold, wintry afternoon in January. His explanation appears to be quite flimsy and transparent, and the version as given by the agents is much more believable.

It was admitted by Davis that on January 18, and for a long period theretofore, he was employed as a truck driver for the Liebmann Breweries (a company engaged in the manufacturing and wholesaling of alcoholic beverages). I therefore recommend that the licensee be found guilty of Charges 9 and 10.

With respect to Charges 1 through 5: The testimony developed by the licensee in defense of these charges is to the effect that Miss Davis (a sister of Davis, who lived with him) purchased this tavern business from Mrs. Mulligan through the corporate licensee herein, of which she is the ninety-eight per cent. shareholder, with no actual investment. All she did was to sign an indemnification agreement in which she agreed to become primarily responsible for the repayment of the \$25,000 chattel mortgage.

There is no affirmative evidence presented that Mrs. Mulligan was ever finally relieved from liability on this instrument. However, again viewing the totality of circumstances in this case, I am persuaded that, when Mrs. Mulligan became ill, Davis decided that it was necessary to obtain a legally qualified person to assume a proprietary position. Surely no person could have been trusted as much as his own sister. Obviously his sister was not selected because of her experience and knowledge of the industry. She frankly admitted that she had had no prior experience or association in the alcoholic beverage field, and in fact was and is still employed as a secretary for a local manufacturing company. Her explanation for making this purchase was that she thought it was a "good investment;" and she explained that she invested \$12,500 of her own money as a down-payment for the purchase of the building in which this business was located.

It is always suspect when an individual, particularly a relative, as in this case, undertakes to purchase such business without prior experience. Added to this is the suspicious circumstance of her making this down-payment with cash which she states was taken from a safety deposit box which her sister held in trust for her. An examination of her bank records and those of Davis discloses simultaneous deposits and withdrawals which seem to discredit much of her testimony. It is also significant that not only have no monies been paid by her for the actual purchase of this business but she has repaid on the \$25,000 chattel mortgage

a total of \$300, which is well below the actual amount accruing and due even on the interest on said mortgage. More specifically, with respect to Charge 5 it is admitted that Davis is still employed by the Liebmann Breweries and was employed from on or about March 12, 1963, to the date of the institution of these proceedings.

The testimony demonstrates his continued association with the licensee after March 12, 1963. Thus the invoice of the Hawthorne Lumber Supply to licensee, dated April 22, 1963, bore the signature "C. Davis." As was pointed out in this report, Davis denied at this hearing that this was his signature, although admitting that at the hearing held five weeks prior thereto he admitted that it was his writing. I believe that his contradictory statement with respect to this invoice was willfully false and unbelievable. The conclusion must be reached that he was employed and associated in a business capacity on and after March 12, 1963, with the licensee.

In conclusion, therefore, I am satisfied that the charges herein have been proved by a fair preponderance of the credible proofs, and I recommend that the licensee be found guilty of these charges.

Therefore it is my further recommendation that the licensee be found guilty of all charges as above indicated. Re Sylvestri, Bulletin 1513, Item 2; Re 339 Plane Street, Inc., Bulletin 1220, Item 3.

Licensee has no prior adjudicated record. Since it appears that the unlawful situation continues to exist, it is further recommended that an order be entered suspending the license for the balance of its term, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation and requesting lifting of the suspension after the expiration of ninety days after its commencement. Cf. Re Sylvestri, supra.

Conclusions and Order

Written exceptions to the Hearer's Report and written argument in support of 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 considered the entire record herein, including the transcript of the testimony, the exhibits, argument of counsel, the Hearer's Report and the exceptions and argument with respect thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 23d day of January, 1964,

ORDERED that Plenary Retail Consumption License C-11, issued by the Town Council of the Town of West Orange to Village Tap Room, Inc., t/a Village Tap Room, for premises 442 Valley Road, West Orange, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. Thursday, January 30, 1964, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation for lifting of the suspension of the license on or after 2:00 a.m. Wednesday, April 29, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

