

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

BULLETIN 1384

April 10, 1961

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Union Township - Hunterdon County) - CHARGE ALLEGING THAT LICENSEES PERMITTED THE RENTING OF ROOMS FOR ILLICIT SEXUAL INTERCOURSE DISMISSED.
2. DISCIPLINARY PROCEEDINGS (Newark) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Wall Township) - GAMBLING - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.
4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE CLUB - STOCK OF ALCOHOLIC BEVERAGES, OTHER BEVERAGES, EQUIPMENT, AND FIXTURES AND CASH ORDERED FORFEITED - MUSIC AND CIGARETTE VENDING MACHINES RETURNED TO INNOCENT OWNERS.
5. DISCIPLINARY PROCEEDINGS (Denville) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Buena Vista Township) - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Hoboken) - EMPLOYING FEMALE BARTENDER IN VIOLATION OF LOCAL REGULATION - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1384

April 10, 1961

1. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING THAT LICENSEES PERMITTED  
THE RENTING OF ROOMS FOR ILLICIT SEXUAL INTERCOURSE DISMISSED.

In the Matter of Disciplinary )  
Proceedings against )

KENNETH AND ETHEL BIRD )  
t/a "THE SPOT" )  
South Side of State Hwy. Rt. #22 )  
Union Township, PO Hampton RD, N. J. )

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Consumption )  
License C-1, issued by the Township )  
Committee of Union Township (Hunterdon )  
County). )

Wesley L. Lance, Esq., and James F. McGovern, Jr., Esq., Attorneys  
for Defendant-licensees.

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

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant entered a plea of not guilty to the following  
charge:

'On June 23 and 25, 1960, you allowed, permitted  
and suffered lewdness and immoral activity in and  
upon your licensed premises, viz., the making of  
arrangements for and the renting of rooms, the  
offering to rent and the renting of rooms for  
the purpose of illicit sexual intercourse; in  
violation of Rule 5 of State Regulation No. 20.'

"To substantiate the charge, the Division called as its  
witnesses the three ABC agents who participated in the investigation  
of defendants' licensed business. They will be referred to herein-  
after as Agents O, N and F. The testimony of Agents O and N is  
substantially the same and may be summarized as follows: At 9:15  
p.m., Thursday, June 23, 1960, and at 10:30 p.m., Saturday, June 25,  
1960, both agents visited defendants' licensed premises to investigate  
a specific complaint that defendants were renting rooms for immoral  
purposes and selling alcoholic beverages to minors. The licensed  
premises consist of a tavern building, motel units and the grounds  
surrounding them. Those present in the tavern on their first visit  
were four patrons at the bar, several in the dining area, a waiter, a  
bartender named Lowell and William Bird (hereinafter Bill), son of the  
licensees, who was in the kitchen cooking. At 10:45 p.m. Bill  
entered the barroom and Agent O asked him if he handled the motel  
rentals. Bill replied in the affirmative and told them to pull around  
to the back and go into the kitchen and register. Agent O remarked  
that they didn't have any girls with them; that they were just looking  
for some out-of-the-way place for future use and related how he had  
been playing around with a married waitress and had to be careful  
because she was well known in the Somerville area and was afraid she  
might be recognized, and for that reason he was looking for a place out  
of that area to bring her. He also stated that Agent N was playing

around with the wife of a travelling salesman who was frequently out of town. Bill just smiled and made no comment. Agent O then told Bill that they wanted to bring the women down to the motel for a short time and have sexual relations with them and then take off. He then inquired as to the price of rooms and, when Bill told him that they were \$5 each, Agent O explained that they would be there only a short while, and when he inquired if the price was the same for only a few hours as it would be for all night, Bill said he hadn't rented them out that way previously; that he usually rents them out for all night. Agent O then remarked that the girls like to cleanup before they return to their husbands and was told by Bill that the rooms had showers. When Agents O and N were about to leave, Agent O said, 'At least if I can't be good I can be careful', and Bill admonished him to 'watch your habits'. Agent O then said, 'I'll see you with the broads the next time. We will be back soon', and both agents departed.

"On June 25, 1960 Agent F accompanied the aforesaid agents to the vicinity of defendants' licensed premises and left when they entered the tavern. Agents O and N each had a five-dollar bill, the serial numbers of which had been previously recorded. Peter Johnson was tending bar and there were eleven patrons at the bar and thirty-five to forty guests in the dining area. Two waitresses were on duty and Bill was in the kitchen preparing food. At about 10:50 p.m. both agents left the barroom and went around to the back of the building and entered the kitchen. Hailing Bill, who was engaged in cooking, Agent O said, 'Hi, Bill, do you have time to talk to us or are you too busy?', and Bill replied, 'Yes, I can talk to you' and, stopping his work, came over to them. Agent O then told him that the married 'broads' he was talking about the last time were coming down tonight and that his girl was bringing down another 'sex maniac' for his friend, and inquired if Bill had any motel rooms available. Bill picked up the register and said that he thought he would have something available. Agent O then told Bill that the girls would be down around 11:30 and that, 'All we want to do is just throw one or two quick lays into them and then we are going to take off' and Bill remarked, 'Lucky you'. Agent O then said that since they had a few minutes to kill that they would go back to the bar and Bill said, 'All right, when you are ready just come around the back and register'. At 11:20 p.m. both agents returned to the kitchen and Agent O told Bill that they were going to register and that the 'broads' would be down pretty soon. Bill produced the register book and said, 'I can put you in 14 and 16'. Agent O registered under a fictitious name and address and Agent N registered under his own name and a fictitious address, and both complied with Bill's instruction to put the automobile registration number of their car after their names. Each agent then handed Bill the identifiable currency and, upon inquiry, were told that there was no bar service to the motel rooms. Agent N proceeded to Room 16 and Agent O went around to the barroom where he ordered four drinks from Johnson, who told him that he could go to the motel through the kitchen. Agent O followed his instructions and Bill, who was in the kitchen preparing food, looked at him but said nothing and Agent O continued on his way to Room 14. At 11:45 p.m. Agent F, accompanied by two State Troopers and Bill, approached the motel and knocked on the door of Room 14. Agent O opened the door and the following questions were asked by Agent F and answered by Agent O: 'What are you doing here?' 'I'm waiting for my broad.' 'Are you waiting for your girl or waiting for your wife?' 'I'm waiting for my girl.' 'Who rented you the room?' 'He did' (pointing to Bill). 'Did you tell him you were bringing your girl or your wife here?' 'I told him I was bringing my girl here; I was going to throw a couple of quick lays and that is what I'm doing here.' Agent F then asked Bill whether Agent O had told him he was bringing his wife or his girl to the motel and Bill replied, 'He didn't say whether he was bringing his wife or his girl'. Agent F, the troopers, Bill and Agent O proceeded to Agent N's room and Agent F asked Agent N questions

similar to those asked of Agent O and received answers similar to those given by Agent O. Shortly thereafter, Chief of County Detectives Ray Basteda, Detective Sergeant Euart of the State Police, and Kenneth Bird, one of the licensees, arrived. Agents O and N and the troopers checked some of the other motel rooms and found that the occupants were legitimately married couples. Agents O, N and F, together with Bill, returned to the kitchen and, at the agents' request, Bill turned over the rental money they had given him. Agent O then asked Bill if he recalled having been told that he (Agent O) and Agent N were playing around with married waitresses from Somerville and that they (the agents) were trying to get the women out of that area when they (the agents) had dates with them and Bill replied, 'Yes, I remember'. Bill said also that he remembered Agent O telling him that the women were not the agents' wives and that the agents wanted to use the rooms for a few hours for the purpose of engaging in sexual intercourse.

"The testimony of Agent F, who was in charge of the investigation, corroborates that of the other agents insofar as his activities were concerned. His testimony further shows that after Agents O and N entered the premises, he got in contact with the State Police and brought them to defendants' licensed premises; that he asked Bill if he would give a statement as to what he said he remembered Agent O telling him, and Bill said, 'No, what is the sense of it, I told you all you wanted to know', and that when Kenneth Bird, who was present during the interrogation of Bill, was asked if he would permit his son to give a statement, he replied, 'There is no sense of him giving you a statement'.

"The cross-examination sought to show that when the agents first visited defendants' premises, Agent O inquired of Bill as to where there were some lively places around there and that Bill told them that they would have to go to places near the city to find music, entertainment and dancing. The cross-examination further sought to show that on the second visit, when the agents rented rooms, Bill was so busy cooking for some forty diners that he had little time to engage in any conversation, certainly not for five minutes as the agents testified; that on neither visit to the premises did the agents impart to Bill that they were going to use the rooms for immoral purposes and that Bill was unaware that Agent O was carrying four drinks on a tray to the rented rooms. In the main, however, the cross-examination sought to show that the method of procedure which the agents testified they pursued in their investigation constituted entrapment.

"Defendants called as their witnesses Joseph E. Zimmerman, President of the United Tavern Owners Association of New Jersey, Ray Basteda, County Detective for Hunterdon County, John Lea, Sheriff of Hunterdon County and a former member of the New Jersey State Police, Charles F. Bachman, Mayor of the town in which 'The Spot' is located, and Fred H. Ritsche, another member of the three man governing body, all of whom testified as to the good reputation of the defendants for operating a law-abiding establishment. The last four testified that they had never received any complaints or information or heard rumors that defendants rented rooms for immoral purposes.

"Kenneth Bird testified that he and his wife have held a plenary retail consumption license for fifteen years; that during those years they were charged with but one violation; that he never rented any of the motel rooms knowing that they were to be used for immoral purposes and would never do so; that he didn't remember any conversation between Agent O and his son, stating that 'When I came on the scene why my son went right back in the kitchen cooking. From then on there was some conversation between myself and the three agents and the county detectives and the troopers'.

"William Bird's testimony may be summarized as follows:

He is 34 years of age, resides at and is employed as a cook at 'The Spot' and rents 50 to 60 per cent of the motel rooms. When the agents first visited the tavern, he was sitting in the barroom watching television. The agents ordered a couple of drinks and 'struck up a conversation about where is a lively place in town for amusement and entertainment. I told them they wouldn't find it out here in the country; that they would have to travel closer to Newark, Allentown or Trenton, closer to a large city'. Replying to their question as to whether the tavern was lively on weekends, he told them that at times it was lively on Saturday night. The agents said 'they were looking for a place to go because one fellow was going with a waitress from Somerville and the other fellow was running around with a married woman....They wanted to know if they wanted a motel where would they register or would they call up? I told them if it was a weekend they would have to call up. It would be the best thing to do for a room'. The agents did not say they wanted to rent rooms for the purpose of bringing women to them for immoral purposes. The second time the agents visited the premises 'was an especially busy evening. I was in the kitchen cooking'. Peter Johnson was the bartender. Lowell King was in Florida. The agents came to the back door and wanted to know if there was any chance of getting a room. 'After I told them I had a room for them I asked them if they both wanted to go in the same room or if they wanted their own rooms. They said they wanted two separate rooms. I then looked in the ledger book and I saw I had two rooms....I told them to put their names and addresses and license plate numbers in the register....and went back to my stove to do my cooking.' When he came back he told the agents that each room would be \$5 and 'if they weren't taking the key with them to leave it in the door. They weren't going to use the room right away because they had a couple of dates in Somerville. One of the men was going with a waitress and the other one was going with a married woman. They weren't going to use the rooms right away'. The agent did not tell him that they wanted to rent rooms for immoral purposes or that the girls wanted to clean up afterwards. The motel consists of thirteen rooms, each room having a shower. Agent F and two State Troopers took him to Room 14 and Agent F went inside and addressed the troopers, saying, 'Do you see any women in here? We said no and he said all right'. The same procedure was followed in Room 16. He and the agents then went back to the registration desk where he produced the agents rental money and 'one of the gentlemen asked me if I wanted to sign a statement. My father overheard it and said there would be no statement signed'.

"Upon completion of the testimony, defendants' attorney moved to dismiss the charge. Considering the lateness of the hour and the distance which defendants and their witnesses had to travel, I suggested to the attorney that any argument he was then prepared to offer in support of his motion be incorporated in the memorandum he elected to submit in lieu of summation.

"The memorandum submitted sets forth extracts of the testimony adduced herein, from which it is argued that:

- 'A. The Division of Alcoholic Beverage Control has failed to bear the burden of proving the charge preferred against the licensee.
- 'B. The evidence of the witnesses on direct examination and cross-examination shows an entrapment with the legal result that the licensees cannot be found guilty of the charge alleged.'

"Thereafter, the attorney representing the Division filed an answering memorandum contending that the charge was fully established by competent evidence and that the course of conduct pursued by the agents is not an 'entrapment'.

"Having carefully considered the record herein, including the memoranda submitted by the attorneys for the respective parties, I find that the testimony of the agents convincingly portrays the incidents and conversations which took place in and upon defendants' licensed premises on the dates alleged and that the agents imparted to William Bird, defendants' employee, that they ostensibly rented the rooms for the purpose of engaging in illicit sexual relations therein. The mere fact that the licensees did not personally participate in the conversations or transactions is immaterial. Licensees are duly bound to exercise close supervision over their licensed premises and violations occurring therein cannot be excused merely because they had no personal knowledge of them. Rule 31 of State Regulation No. 20. Essex Holding Corp. v. Hock, 136 N.J.L. 28. Nor is it material that no illicit sexual intercourse actually occurred in the rooms after they were rented to the agents. The violation charged was complete when the rooms were rented with the knowledge on the part of the licensees' employee that they were (ostensibly) to be used for the purpose of illicit sexual intercourse. In affirming an order of suspension by the Director in a case involving a similar factual situation, Judge Jayne, In the Matter of the Appeal of Sam Schneider, 12 N.J. Super. 449 (App. Div. 1950) said: 'We are therefore confronted with the question whether the mere renting of bedrooms in the licensed premises by a licensee with the belief and intention that they will be occupied for the purposes of illicit sexual intercourse is an immoral activity within the signification of Rule 5. We answer the question in the affirmative.' Judge Jayne further states therein: 'The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil.'

"In support of their contention that the course of conduct pursued by the agents constituted entrapment, defendants cite the case of State v. Rosenberg, 37 N.J. Super. 197 (App. Div. 1955). The cited case is an appeal from a criminal conviction and, in his opinion, Judge Francis, commenting on the defense of entrapment, states that: 'Generally, it may be said that where a police officer "envisages a crime, plans it, and activates its commission by one not theretofore intending its perpetration" for the purpose of providing a victim for prosecution, the defense is available.' (Underscoring mine.) However, it should be borne in mind, as pointed out by Judge Jayne in Re Schneider, supra, that: 'We are dealing here with a purely disciplinary measure and its alleged infraction' and that such measures are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252, Sup. Ct. 1948. I find no evidence indicating that the agents engaged in trickery, persuasion or fraud to induce defendants' employee to commit an unlawful act. Their method of investigation was routine and merely afforded the employee an opportunity to commit the violation charged. The agents neither envisaged a crime nor did they intend that the employee perpetrate an indictable offense.

"Defendants have a prior adjudicated record. Effective January 18, 1954 their license was suspended for ten days by this Division for sales to minors. Re Bird, Bulletin 1001, Item 4. Since the prior dissimilar violation occurred more than five years ago, it should not be considered in fixing the penalty herein.

"Considering the facts herein, and the legal principles applicable thereto, I conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence, and that the defense of entrapment is not available in these proceedings. I recommend, therefore, that an order be entered finding

defendants guilty as charged and suspending their license for the minimum period of one hundred eighty days. Re Juhls, Bulletin 1337, Item 3."

Pursuant to Rule 6 of State Regulation No. 16, written exceptions to the Hearer's Report and written argument in substantiation of the exceptions were filed with me by defendants' attorney and, thereafter, on my own motion, I decided to hear oral argument.

Having carefully considered the entire record herein, including the transcript of the testimony, the briefs of the respective attorneys, the Hearer's Report, the written exceptions thereto and the oral argument before me, and having examined the financial reports of defendants' licensed business and the photographs which were received in evidence, I am not disposed to agree with the Hearer's recommendation.

Reviewing the direct testimony of the agents, it is apparent that if any arrangements were made to rent the rooms for immoral purposes, they were made with the licensees' son, Bill, on Saturday night, June 25, 1960, in the kitchen of the licensed premises where he was preparing food for more than forty guests in the dining area. The direct testimony of the agents, standing alone, might warrant a belief that a "renting of rooms" case was established. However, it appears from the cross-examination of Agent N that he was hazy in his recollection of the response to questions allegedly propounded to Bill on that occasion. In fact, he was not certain that Bill heard the questions or the conversations to which the agents testified. Although Bill admitted that the agents had told him that they were running around with married women, he denied that they mentioned renting the motel rooms for immoral purposes. Furthermore, Bill testified that he asked the agents if they wanted to rent one or two rooms. The evidence further shows that neither agent registered as man and wife, an unusual procedure in cases of this kind; that there were only three motel rooms available for rental that night and that a check of the motel by the agents and troopers disclosed that the rooms were occupied either by a single person or by legitimately married couples.

Considering the fact that Mr. and Mrs. Bird enjoy an excellent reputation in the community, as attested to by an impressive array of character witnesses, it seems extremely doubtful that either of them would jeopardize not only their good reputation of years of standing, but a substantial and profitable business by permitting their motel rooms to be used for immoral activities. Of course, as licensees, they are responsible for the acts of their agents and employees on the licensed premises. However, I believe that Bill, the licensees' son, was so engrossed in his duties as a cook during an exceptionally busy dinner hour that he did not pay particular attention to the agents' conversation or fully comprehend its import. While it appears that the Division presented a prima facie case, it failed, on the whole case, to sustain the burden imposed upon it of establishing the truth of the charge by a fair preponderance of the believable evidence. I, therefore, disapprove the Hearer's Report and find defendants not guilty.

Accordingly, it is, on this 8th day of March 1961,

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

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED -  
LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

JOSEPH MARTINO )  
t/a JOE MARTINO BAR & GRILL )  
244 Mulberry Street )  
Newark 2, New Jersey )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-683, issued by the Municipal )  
Board of Alcoholic Beverage Control of )  
the City of Newark. )

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Herman L. Braun, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On January 7, 1961, you possessed, had custody of and  
allowed, permitted and suffered in and upon your  
licensed premises, alcoholic beverages in bottles which  
bore labels which did not truly describe their contents,  
viz.,

Two 4/5 quart bottles labeled 'J. & B. Rare  
Blended Scotch Whisky, 86 Proof',

Two 4/5 quart bottles labeled 'Cutty Sark  
Blended Scots Whisky, 86 Proof',

Two quart bottles labeled 'Calvert Reserve  
American Blended Whiskey, 86 Proof',

Two quart bottles labeled 'Four Roses  
Blended Whiskey, 86 Proof',

One quart bottle labeled 'Schenley Reserve  
Blended Whiskey, 86 Proof',

One 4/5 quart bottle labeled 'Schenley Reserve  
Blended Whiskey, 86 Proof, 100 months old', and

Four quart bottles labeled 'Seagram's Seven  
Crown American Blended Whiskey, 86 Proof';

in violation of Rule 27 of State Regulation No. 20."

The file herein discloses that on January 7, 1961, an ABC  
agent made a preliminary test of the open stock of alcoholic beverages  
in defendant's licensed premises, and seized certain bottles of  
alcoholic beverages as described and set forth hereinabove, when  
his tests indicated that the contents thereof appeared to be off in  
color.

Subsequent analysis by the Division's chemist disclosed that  
the contents of the above-named bottles varied substantially in  
solids and acids and were off in color when compared with an analysis  
of the contents of genuine bottles of the same items.

Defendant orally admitted to the ABC agent that he had

refilled the seized bottles because he was short of whiskey for the holidays, but "I only done it for two weeks".

Defendant has a prior record. Effective June 30, 1938, his license was suspended for ten (10) days for sale of alcoholic beverages during prohibited hours at licensed premises at 366 Walnut Street, Newark. Bulletin 257, Item 5. The prior dissimilar record, having occurred more than five years ago, will not be considered in fixing the penalty. Re Wilcox, Bulletin 1232, Item 4.

After careful consideration of the facts and circumstances in this case, and in view of the fact that there are fourteen bottles involved herein, I shall suspend the defendant's license for forty-five days. Cf. Re Jerry Sheehan, Inc., Bulletin 1308, Item 2; Re Broad and Kinney Bar, Inc., Bulletin 1286, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 7th day of March 1961,

ORDERED that Plenary Retail Consumption License C-683, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joseph Martino, t/a Joe Martino Bar & Grill, for premises 244 Mulberry Street, Newark, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m., Wednesday, March 15, 1961, and terminating at 2:00 a.m., Monday, April 24, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
JOSEPH F. EGGIMANN  
t/a PETE EGGIMANN'S TAVERN  
1701 Route 71  
Wall Township  
PO West Belmar, N. J.  
Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Wall.

CONCLUSIONS  
AND ORDER

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Joseph F. Mattice, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On January 21, 23, 26, 27 and 28, 1961 and on divers days prior thereto, 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 Regulation No. 20."

Acting on information given by Monmouth County detectives, ABC agent D visited the licensed premises on January 21, 1961 at about 1:30 p.m. and observed one David Robinson accept from patrons at the bar about twenty-five horse race bets, which Robinson noted

on slips of paper from a pad kept on the back of the bar. The agent also noted that the licensee, known as "Pete", participated by placing four bets with Robinson. Agent D at that time placed a bet of \$1.00 with the licensee in a pool on a race to be run at Hialeah Park, Florida.

On January 23, 1961, Agents D and K observed the licensee and other patrons place bets with the same David Robinson.

The same experience was repeated on January 26, 1961. Agent D wrote out his bet on a slip of paper and placed the same together with \$8.00 on the bar. The licensee picked up the slip and the money, put the money in his pocket and handed the bet slip to Robinson, Robinson recorded the bet and handed back the slip to the licensee.

Agents re-entered the licensed premises on January 27th, and observed the licensee accept two bets, make appropriate notations and place the money and slips in his pocket. Numerous other betting transactions took place at the time, with the licensee and Robinson participating. Agent K placed a bet with the licensee, and Agent R placed a \$2.00 bet with Robinson. By prearrangement, County detectives then entered the premises and apprehended the licensee and Robinson.

The defendant licensee readily admitted that bookmaking was taking place on the licensed premises, and he thereafter executed a sworn statement in which he admitted that for at least two months prior to his arrest, he had engaged in gambling activity in accepting horse race bets in these licensed premises. The licensee was arraigned in the Wall Township Municipal Court on January 31, 1961, and was held by the magistrate for action by the Monmouth County Grand Jury on charges of violating R.S. 2A:112-3.

Defendant has a prior adjudicated record. Effective May 10, 1954, his license was suspended by this Division for five days for possessing indecent statuettes and drawings on the licensed premises (Bulletin 1016, Item 9); effective March 28, 1955, his license was suspended for ten days by this Division for sale to a minor (Bulletin 1058, Item 11); and effective January 6, 1958 his license was suspended for twenty-five days by the Wall Township Committee for an "hours" violation. The minimum suspension for violations of the type now under consideration is twenty-five days. Re Horstmann, Bulletin 1338, Item 5. Inasmuch as one of the dissimilar violations occurred within the past five years, five days will be added thereto, and an additional fifteen days will be imposed because this is the licensee's fourth violation, thus making a total suspension of forty-five days. Re Black, Bulletin 1293, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 8th day of March 1961,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Wall to Joseph F. Eggimann, t/a Pete Eggimann's Tavern, for premises 1701 Route 71, Wall Township, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m., Thursday, March 16, 1961, and terminating at 2:00 a.m., Tuesday, April 25, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE CLUB - STOCK OF ALCOHOLIC BEVERAGES, OTHER BEVERAGES, EQUIPMENT, AND FIXTURES AND CASH ORDERED FORFEITED - MUSIC AND CIGARETTE VENDING MACHINES RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure on	)	Case No. 10,416
October 2, 1960 of a quantity of	)	
alcoholic beverages, \$5.55 in cash	)	ON HEARING
and various fixtures, furnishings and	)	CONCLUSIONS
equipment in the Blue Eagle Social	)	AND ORDER
Club quarters at 100 Central Avenue,	)	
in the City of Passaic, County of	)	
Passaic and State of New Jersey.	)	

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 Benjamin Osherov, Esq., Attorney for the claimants, Telmusic Service, Inc. and Seaboard Sales.

David S. Piltzer, 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, and further pursuant to two stipulations, dated November 17, 1960, signed by the Seaboard Sales and Telmusic Service, Inc. to determine whether a quantity of alcoholic beverages, a music machine and currency therein, two cigarette machines and currency therein, various equipment, and \$5.55 in cash, described in a scheduled attached hereto, seized on October 2, 1960 at 100 Central Avenue, in the City of Passaic, County of Passaic, constitute unlawful property, and should be forfeited.

Pending seizure hearing in the case Seaboard Sales deposited \$50.00 under protest pursuant to R.S. 33:1-66 with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of the two cigarette machines and thereupon obtained return of the same. Telmusic Service, Inc. deposited \$100.00 under protest representing the retail value of the music machine, and thereupon obtained its return, except for any cash in the said machine. Both Seaboard Sales and Telmusic Service, Inc. stipulated that the Director should determine, in the present proceedings, whether the amounts so deposited shall be forfeited or returned to them.

Normally, upon the conclusion of the hearing in these matters a Hearer's Report would be submitted to the Director, and a copy sent to each party. However, in view of the retirement from this Division of the Hearer who heard this case prior to preparation of a Hearer's Report, the claimant consented to a decision by the Director based on the pleadings, transcript of testimony and exhibits previously presented, waiving the Hearer's Report.

When the matter came on for hearing pursuant to R.S. 33:1-66 and on such stipulations, an appearance was entered on behalf of Seaboard Sales which sought return of its deposit of \$50.00 and on behalf of Telmusic Service, Inc. which sought return of its deposit of \$100.00. No one appeared to oppose forfeiture of the alcoholic beverages and the cash or the other equipment in these premises. It was established by the testimony of ABC agents that they visited the Blue Eagle Social Club on September 24th and October 2, 1960; that on the first visit they observed a number of persons purchasing alcoholic beverages there and that Agent J purchased a total of three bottles of beer from a person later identified as William Coley, the president of the club. On the second visit the ABC agents noted five females and six males in the said premises, some of whom had cans of beer in their possession. Agent J then ordered a bottle of beer from a man later identified as Jesse Batter and paid him the sum of thirty cents with a marked one-dollar bill. Jesse Batter made

several other sales to some of the other occupants therein. Other ABC agents accompanied by local police officers entered the premises and all of such agents revealed their identity. The agents then seized the alcoholic beverages, 113 bottles of soda, cash in the sum of \$5.55 and the machines and equipment set forth in the Schedule "Exhibit A" set forth hereinbelow and made a part hereof. Neither Jesse Batter, William Coley nor the Blue Eagle Social Club held any license authorizing the sale of alcoholic beverages and the premises were not licensed for that purpose. The seized alcoholic beverages, obviously intended for unlawful sale, constitute illicit alcoholic beverages. R.S. 33:1-1(i).

A sample of the contents of one of the cans of beer seized was analyzed by the Division chemist, and his report shows that it is a malt alcoholic beverage fit for beverage purposes and has an alcoholic content by volume of 4.2 percent.

Such illicit alcoholic beverages, the money seized and all other personal property seized on the premises constitute unlawful property and are subject to forfeiture.

It appears from the evidence submitted that in the early part of July 1960 two cigarette machines were placed by the Seaboard Sales in the premises 100 Central Avenue, Passaic, operated by the Blue Eagle Social Club. Mr. Morris Schey testified that he is the owner of Seaboard Sales, that he has machines in 38 locations; that his business is essentially a one-man operation; that he was requested by Coley, who is a truck driver by occupation, and president of this club, to place these machines at this location. He stated further that he had visited the club for the purpose of collection about 10 times and did not notice any alcoholic beverages being served at any of his visits. There was no bar or central serving station at this club. He identified the machines, and the evidence clearly discloses that he is the owner of same.

Several days after the seizure the claimant placed a third machine at these premises. This machine, of course, was not seized and is mentioned only on the issue of the good faith of claimant. His explanation is that he was told by Coley that the Blue Eagle Social Club had a charter for 28 years in the City of Passaic, and that since these premises had been re-opened he felt it was proper to place his machine there.

Manuel Ehrenfeld, the president of Telmusic Service, Inc., testifying on its behalf, submitted in evidence proof of ownership of a music machine which was placed by his company on the premises. He stated that he had personally never been in this club and so far as he knows his employees had no reason to suspect that there was any illegal activity taking place on these premises. He further testified that he placed a second music machine shortly after this place was raided because he was informed that it was now perfectly proper to place a machine therein, after he had discussed the matter with his counsel. His testimony was corroborated by Christopher Bertolene, a sales collector and repairman who was in charge of the machine at the social club. He too stated he had no reason to believe that there were any illegal activities taking place in these premises. The second machine was not seized.

On the basis of the evidence submitted I have decided to resolve doubts with respect to their good faith in favor of both claimants. It is a well-known fact that competition in the cigarette and music machine rental business is extremely keen and I am satisfied that both claimants were naturally anxious to obtain as many locations as possible and were, therefore, concerned solely with their own operations. Under the circumstances, I am convinced that both claimants acted in good faith, and did not know, or have any reason to believe that alcoholic beverages were being sold in the restaurant

in question. I shall therefore recognize their claims R.S. 33:1-66(f) Seizure Case No. 10,095, Bulletin 1321, Item 7.

Accordingly, it is DETERMINED and ORDERED that if on or before the 18th day of March, 1961 Seaboard Sales pays the costs of the seizure and storage of the two cigarette machines, the sum of \$50.00 will be returned to it; and it is further

DETERMINED and ORDERED that if on or before the 18th day of March, 1961 Telmusic Service, Inc. pays the costs of the seizure and storage of the music machine, the sum of \$100.00 will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the \$5.55 in cash, 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.

Dated: March 8, 1961

WILLIAM HOWE DAVIS  
DIRECTOR

SCHEDULE "A"

- 1 - 4/5 quart bottle of whiskey
- 90 - 12 oz. cans of beer
- 113 - bottles of soda
- 1 - music machine and currency therein
- 2 - cigarette machines and currency therein
- 2 - coca cola coolers
- 1 - refrigerator
- 1 - hot plate
- \$5.55 in cash

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

RIVERVIEW TAVERN, INC.  
t/a NOREL'S  
244 Bloomfield Avenue  
Denville, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Denville.

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James F. McGovern, Jr., Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On December 30, 1960, an ABC agent tested defendant's open stock of liquor and seized a number of bottles for further tests by

the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of five of said bottles, when compared with the contents of genuine bottles of the same brand, varied substantially in solids, acids and color.

By way of mitigation, the attorney for defendant alleges that despite the most rigid instructions to its employees, open bottles are often utilized and returned to the bar after weddings and other catered affairs. In any event, defendant is responsible for the actions of its employees or agents. Rule 33 of State Regulation No. 20.

Defendant has a prior adjudicated record. Before referring to said prior record, it appears that when Elmer Scatchard, president and principal stockholder of defendant corporate-licensee, held a license for premises 668 Speedwell Avenue, Morris Plains, his license was suspended by the Director for five days, effective June 2, 1952, for sale of alcoholic beverages to a minor. Re Scatchard, Bulletin 937, Item 7. However, this dissimilar record occurring more than five years ago will not be considered in fixing the penalty herein. However, effective January 11, 1960 defendant's license was suspended for twenty-five days by the Director for possession of mislabeled alcoholic beverages. Bulletin 1322, Item 2. The minimum suspension for a violation as that now under consideration involving five bottles is twenty-five days. Re Matraxia, Bulletin 1353, Item 4. Because of the similar violation occurring within the past five years, I shall suspend defendant's license for a period of thirty-five (35) days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 9th day of March, 1961,

ORDERED that Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Denville to Riverview Tavern, Inc., t/a Norel's, for premises 244 Bloomfield Avenue, Denville, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m., Monday, March 20, 1961, and terminating at 3:00 a.m., Wednesday, April 19, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 THOMAS MAILLARD )  
 t/a TOM MAILLARD'S CAFE )  
 Route 54 )  
 Buena Vista Township )  
 PO Buena, New Jersey )  
 )  
 Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of Buena Vista Township. )

CONCLUSIONS AND ORDER

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 Defendant-licensee, Pro se.  
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On January 27, 1961, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., John ---, age 17, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

Acting upon information received by the New Jersey State Police, ABC agents obtained sworn, written statements from John ---, age 17, and Joseph ---, age 20. From these statements, it appears that on January 27, 1961, at about 8:30 p.m., John, Joseph and two of their friends entered the defendant's licensed premises and John consumed alcoholic beverages served to him by the licensee. John stated that he consumed two glasses of beer on this occasion; that he was not questioned about his age and did not sign any statement of age at the premises. Thereafter, John identified the licensed premises as the place where he was served and consumed the alcoholic beverages, and pointed out the licensee as the bartender who sold and served the same as above outlined.

By way of mitigation, the licensee stated that he failed to recognize the youth as a minor since the order for four beers for the four persons, including the minor, was placed by one of the older boys while the minor was in the washroom.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty days, the minimum suspension for sale to a 17-year-old minor. Re Hafner, Bulletin 1340, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 9th day of March 1961,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Committee of Buena Vista Township to Thomas Maillard, t/a Tom Maillard's Cafe, for premises on Route 54, Buena Vista Township, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m., Monday, March 20, 1961, and terminating at 3:00 a.m., Tuesday, April 4, 1961.

WILLIAM HOWE DAVIS  
 DIRECTOR

DISCIPLINARY PROCEEDINGS - EMPLOYING FEMALE BARTENDER IN VIOLATION OF LOCAL REGULATION - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ROBERT C. GRAY  
600 Newark Street  
Hoboken, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-84, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken; which license was transferred during pendency of these proceedings to

MARGARET KEENAN (same address).

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Andrew F. Batistich, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On March 4, 1960 and January 19, 1961 and on various other days, you employed and permitted the employment of females (other than your wife, mother, daughter or sister) to tend bar on your licensed premises; in violation of Article VIII Paragraph (g) of an Ordinance concerning alcoholic beverages adopted by the Hoboken Mayor and Council on December 7, 1955.
- "2. On March 4, 1960, while an inspector of the Division of Alcoholic Beverage Control was investigating the above alleged violation, you, through Peggy Keenan, your agent and employee, failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation; in violation of R.S. 33:1-35."

ABC agents visited defendant's licensed premises on the evening of January 19, 1961, and found the premises closed. One of the agents re-visited the premises on the evening of January 21, 1961, and observed Mildred Britton (who was behind the bar) serving drinks of alcoholic beverages to two patrons seated at the bar. After the agent identified himself, Mildred Britton told him that she did not work there but was taking care of the place in the absence of Peggy Keenan. Shortly thereafter Peggy Keenan arrived and gave a written statement to the agent in which she stated that Robert C. Gray (the licensee) is sick and has not worked in the premises for more than a year last past; that she has acted as manager of the premises during that period and intends to apply to the local issuing authority for a transfer of the license from the present licensee to herself. She admitted that she serves alcoholic beverages in the premises and stated that Mildred Britton cleans up the tavern and that this is the first time Mildred Britton waited on customers.

Charge 2 is based upon a written statement given by Peggy Keenan to an ABC agent on March 4, 1960. Therein she said that she is a sister of Robert C. Gray. She is not. This misstatement is material because the local regulation prohibiting female bartenders exempts a sister of a licensee from the effect thereof. As a result of the misstatement, the file in an investigation then being made was closed.

In attempted mitigation defendant's attorney has submitted a memorandum in which he states that, because of illness, defendant is unable to work and for some time past has employed Peggy Keenan as manager of the licensed premises. He further states that defendant intended to execute a consent to the transfer of his license to Peggy Keenan, for a consideration.

Defendant has held the license since 1953 and has no prior adjudicated record. The minimum penalty for employing a female bartender in violation of a local regulation is five days. Re Kurc, Bulletin 1340, Item 8. However, two female bartenders, one of whom has been tending bar over a long period, are involved in this case. Hence I shall suspend the license for ten days on Charge 1. The penalty to be imposed in a "hindering" case depends upon the facts of each case. There appears to be no previous case directly in point. Under all the circumstances appearing herein, I shall suspend the license for an additional period of fifteen days on Charge 2. Five days will be remitted for the plea, leaving a net suspension of twenty days.

The records of this Division show that on March 8, 1961, the local Board transferred the license to Margaret Keenan, for the same address.

Accordingly, it is, on this 14th day of March 1961,

ORDERED that Plenary Retail Consumption License C-84, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Robert C. Gray, for premises 600 Newark Street, Hoboken, and transferred to Margaret Keenan, for the same premises, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, March 21, 1961 and terminating at 2:00 a.m. Monday, April 10, 1961.



William Howe Davis  
Director