

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

BULLETIN 1168

MAY 29, 1957.

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

BULLETIN 1168

MAY 29, 1957.

1. APPELLATE DECISIONS - KLEINBERG v. NEWARK.

ANNA KLEINBERG, trading as
IRVING'S WINE, LIQUOR STORE
AND COTTON CLUB,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY
OF NEWARK,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Myron P. Maurer, Esq. and William Osterweil, Esq., Attorneys
for the Appellant.

Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney
for the Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action whereby it suspended appellant's license for ten days, effective October 22, 1956, after finding appellant guilty of a charge alleging that she violated R. S. 33:1-35, to wit:

'She did, on or about the early morning hours of January 15, 1955, hinder and cause a hindrance and delay and failed to facilitate in the investigation of the licensed premises.'

"Appellant's premises are located at 88 Waverly Avenue, Newark.

"Upon the filing of the appeal, an order was entered on October 11, 1956, staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

"At the hearing herein respondent's case was presented upon the transcript of the proceedings held before the respondent local issuing authority pursuant to provisions of Rule 8 of State Regulation No. 15. Additional evidence was presented on behalf of appellant who was not present when the alleged violation occurred.

"The record herein discloses that as a result of a homicide on the defendant's licensed premises in the early morning of January 15, 1955, an investigation was conducted by the local police authorities. It appears from the testimony of Arthur Reid, the bartender, that a short time prior to the fatal shooting, one of the participants handed a gun to him and he in turn placed it in a drawer in back of the bar. Another gun which was used in the shooting Reid took forcibly from the man who had fired the shot. Reid further testified that when Daniel Kleinberg (hereinafter referred to as Daniel), son of the appellant, emerged from the basement, he (Reid) handed the gun used in the homicide to him. Daniel testified that a short time thereafter upon request of a police officer, he turned over said

gun to the police. Daniel further testified that on Sunday, January 16, 1955 at about '12:30 one o'clock' police officers called at defendant's licensed premises and Lieutenant Kinney asked him if he had told the police everything or was there anything he left out. The officer who accompanied Lieutenant Kinney asked, 'Was there another gun involved in the shooting?'; that he (Daniel) answered in the negative; that when the officers left the premises Daniel then remembered the other gun (P-38) not involved in the shooting and which was in a drawer; that he obtained the gun and then went to the telephone to call Lieutenant Kinney and as he was doing so, the police officers returned to the premises. Daniel handed Lieutenant Kinney the gun (P-38) at which time Lieutenant Kinney instructed him to report to police headquarters on the following day.

"The following day which was January 17, 1955, Daniel gave a signed sworn statement to the police authorities in which he stated, among other things, that, 'I was worried about the P-38 and I had decided to turn the gun in to the police and when Lieutenant Kinney came to the tavern Sunday and asked about the gun the first time, I lied to them but when they came back about ten minutes later and asked me again about the gun, I gave it to them'.

"After a careful examination of the testimony in this case, it is apparent that Daniel retained the gun in question in his possession. The failure of Daniel to facilitate the investigation by producing the gun on the first visit of the police at defendant's licensed premises on Sunday, January 16, 1955, cannot be excused as an oversight in view of the statement given by him the following day. The police authorities at the time in question were in the midst of a very serious investigation brought about by the fatal shooting of a man in the licensed premises and it was the obligation of the defendant or of anyone employed on the licensed premises to provide all the necessary assistance to help them in their endeavors.

"The fact that defendant did not personally participate in the act upon which the charge was based is immaterial. Rule 33 of State Regulation No. 20. See Stern v. Passaic, Bulletin 451, Item 5; Essex Holding Corp. v. Hock, 136 N.J.L. 28; Re Garaventi, Bulletin 953, Item 1; Re Mazza, Bulletin 972, Item 1.

"I recommend from the evidence adduced herein that the action of respondent Board in finding appellant guilty of the charge preferred in this case was warranted and its action should, therefore, be affirmed."

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

Having carefully considered the evidence adduced herein, I agree with the conclusions and the recommendations as set forth in the Hearer's Report and adopt them as my conclusions herein. Hence, I shall affirm the action of respondent and reimpose the suspension which was stayed by Order dated October 11, 1956.

Accordingly, it is, on this 16th day of April, 1957,

ORDERED that the action of respondent be and the same is hereby affirmed, and that the ten-day suspension imposed by respondent be restored against the license held by Anna Kleinberg, trading as Irving's Wine, Liquor Store and Cotton Club, for premises at 88 Waverly Avenue, Newark, commencing at 2:00 a.m. April 22, 1957, and terminating at 2:00 a.m. May 2, 1957.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - { 315 PARK AVE., INC. v. PATERSON AND
 GOLDBERG.
 { MEER v. PATERSON AND GOLDBERG.

315 PARK AVE., INC.,)

Appellant,)

-vs-)

BOARD OF ALCOHOLIC BEVERAGE)
CONTROL FOR THE CITY OF PATERSON,)
and DAVID GOLDBERG, t/a DAVE'S,)

Respondents.)

-----)
NADHIM E. MEER,)

Appellant,)

-vs-)

BOARD OF ALCOHOLIC BEVERAGE)
CONTROL FOR THE CITY OF PATERSON,)
and DAVID GOLDBERG, t/a DAVE'S,)

Respondents.)

ON APPEAL

CONCLUSIONS AND ORDER

 No appearance on behalf of Appellant 315 Park Ave., Inc.
 Nussman & Kaplan, Esqs., by Samuel R. Kaplan, Esq., Attorneys
 for Appellant Nadhim E. Meer.
 James D. Ward, Esq., by Joseph R. Brumale, Esq., Attorney for
 Respondent Board of Alcoholic Beverage Control.
 Saul R. Alexander, Esq., Attorney for Respondent David Goldberg,
 t/a Dave's.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the unanimous action of the respondent Board in approving an application for transfer of a plenary retail consumption license from Frank Timmerman, Administrator of the Estate of Cornelius Timmerman, to respondent David Goldberg, and from premises 390 Union Avenue to premises 307 Park Avenue, Paterson.

"At the outset of the hearing respondents moved to dismiss the appeal on the ground that (1) appellant 315 Park Ave., Inc. and respondents Board and Goldberg, respectively, had entered into and filed a stipulation of dismissal, thus terminating said proceedings and, therefore, no order to join Nadhim E. Meer as a party-appellant could be entered by the State Director, and (2) more than thirty days, as provided for the filing of an appeal in Rule 3 of State Regulation No. 15, had elapsed between the date of the action of respondent Board and the date of the petition filed by Meer to be joined as a party-appellant in the instant appeal. It is unnecessary to pass on this motion because, from the testimony taken at the hearing of the proceedings, it is clear that respondent Board's approval of the application for transfer of the license in question was not arbitrary or unreasonable and I recommend that its action be affirmed on the merits.

"It appears from the testimony presented by six witnesses who live in the area of the proposed premises that their opposition to the transfer of the license was based on their apprehension

that such an establishment would constitute a nuisance and would tend to create a moral hazard for those persons living in the immediate neighborhood and especially for the young folks passing the premises; that the neighborhood wherein the proposed premises are located is residential in character and the operation of a tavern in the area would cause their respective properties to depreciate in value and, lastly, that there was no need for or convenience to be served by the transfer of the license to the proposed premises.

"The evidence discloses that the premises are located on the ground floor of a three-story frame building on Park Avenue forty-two feet from the corner of Park Avenue and East 22nd Street. The Susquehanna Railroad crosses on the grade level of said intersection. There is testimony that there are many residences and also business establishments in the vicinity of the proposed premises. The businesses include a gas station, a tailor shop, a plenary retail distribution licensee, a used-car lot and a fruit and vegetable store.

"In so far as the creation of a nuisance and a moral hazard are concerned, I might state that, if the licensed business is properly conducted, it should be no more objectionable than other types of businesses now conducted in the neighborhood. General objections to the issuance of a license for premises located in a neighborhood wherein business establishments are not prohibited do not justify a refusal of a license. Carriel et al. v. Newark, Bulletin 1043, Item 2. In so far as the contention that the surrounding properties will depreciate in value because of the transfer in question, there has been no proof presented in substantiation thereof.

The number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Mita v. Orange, Bulletin 266, Item 10; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1; Alpert v. Asbury Park, Bulletin 380, Item 2; Winslow v. Pennsauken, Bulletin 401, Item 11; Bodrato et al. v. Northvale, Bulletin 433, Item 1; Hearty et al. v. Liberty et al., Bulletin 671, Item 5; Segal et al. v. Clifton et al., Bulletin 732, Item 5; McGill v. Orange et al., Bulletin 900, Item 2; DeCapua v. Ocean Township, Bulletin 941, Item 1.

"The burden rests with appellants to show that such discretion was unreasonably exercised. In an effort to meet such burden, appellants produced divers witnesses who testified that the needs or convenience of people in the neighborhood did not warrant the issuance of an additional license therein. The members of the respondent Board have decided otherwise.

"The Director's function on appeals of this type is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7; Mulcahy et al. v. Maplewood et al., Bulletin 658, Item 4; McGill v. Orange et al., supra.

"I am satisfied, after careful examination of all the evidence adduced herein, that the members of respondent Board

in approving the transfer were not improperly motivated in their action. Moreover, there is no evidence that they acted in an arbitrary, capricious or an unreasonable manner in reaching their determination. I conclude that appellants have not sustained the burden of proof in establishing that respondent Board's action was erroneous (Rule 6 of State Regulation No. 15). I, therefore, recommend that the action of respondent Board in approving the application for the transfer herein be affirmed."

There were no exceptions taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

I have carefully considered all the testimony presented herein and also the Hearer's Report submitted in the matter and agree with the statement of facts and conclusions of law set forth in the Hearer's Report and adopt them as my conclusions herein. Hence, I shall affirm the action of the respondent Board in granting the transfer in question.

Accordingly, it is, on this 17th day of April, 1957,

ORDERED that the action of the respondent Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby affirmed and the appeals herein be and the same are hereby dismissed.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - FEMALE IMPERSONATORS - INDECENT LANGUAGE - CONDUCTING BUSINESS IN SUCH MANNER AS TO BECOME A NUISANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary Proceedings against

BERNARD DOORNEOS
T/a DOC'S TAVERN
219 Water Street
Paterson 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-248, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Murner & Murner, Esqs., by James J. Murner, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult, during the course of the hearing, to the following charge:

"On November 17, 28, 30, December 5 and 19, 1956, January 9, 10, 11 and 12, 1957, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; allowed, permitted

and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered unescorted females frequenting your licensed premises to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them and others; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

The facts in the case appear from the testimony of an ABC agent and reports in the file of other agents.

On November 17, 1956, three ABC agents at the licensed premises observed several males who appeared to be homosexuals dancing with male patrons in an indecent manner and making indecent motions. No specific details of the indecency are stated. One female was heard using vulgar and profane language within the hearing of and without any protest by the bartender. Three other males who appeared to be homosexuals, in that they wore earrings and displayed feminine characteristics, entered the tavern, and purchased alcoholic beverages.

On November 28, 1956, two of these agents were again at the licensed premises and observed two males, who appeared to be homosexuals in that they acted and spoke in an effeminate manner, seated at the bar. The agents described the language of some of the patrons as vulgar and uncouth.

The three agents were at the premises on November 30 and one of the agents was approached by an unescorted female at whose request he purchased for her a drink of whiskey which she consumed. The agents report that during this visit the patrons used extremely vulgar and uncouth language without any objection thereto by the bartender. On December 5 and 19, 1956 and January 9, 1957, ABC agents at the premises heard frequent use of vulgar language by the patrons without intervention by the bartender.

In the late evening of January 10 and the early morning hours of January 11, ABC agents at the premises observed that two males seated at the bar (among twenty or more men and women there) appeared to be homosexuals in that their hair was long, they swayed their hips when they walked, talked in high-pitched voices, wore make-up, mascara and polish on their fingernails and displayed feminine mannerisms. Vulgar language was in constant use. A female patron struck up an acquaintance with one of the agents, asked him to buy her a drink, whereupon he purchased a total of five or six drinks for her during his stay at the premises.

Agents were again at the premises on January 11, 1957 from about 11:15 p.m. until 12:20 a.m. the next morning. On this occasion the licensee and his bartender were both on duty. There were about twenty-five men and women present, including three apparent homosexuals seated at the bar. One of the homosexuals commenced to dance with another male, whereupon the licensee announced to all patrons that there would be no dancing. Thereafter, two of the homosexuals embraced, and when the licensee repeated that there would be no dancing, one of them replied that they were not dancing, just rubbing against each other. The agents also heard frequent use of vulgar language. On this occasion the agents made known their identities to the licensee.

"The evidence herein discloses that by order dated December 27, 1956, the Director suspended defendant's license for fifteen days commencing at 2:00 a.m. January 7, 1957, and terminating at 2:00 a.m. January 22, 1957. Said order was entered in a prior disciplinary proceeding after defendant had failed to appear at a scheduled hearing on a charge of failing to have a true copy of his application on the licensed premises and after the Director had found defendant guilty of said charge upon the evidence presented at the hearing. It further appears that a copy of the Conclusions and Order in the previous disciplinary proceedings was sent by registered mail addressed to defendant at the licensed premises in accordance with the provisions of R.S. 33:1-31. The return receipt was signed by Alex Duncan as agent for Richard Morrisroe.

"On behalf of the Division a Jersey City police officer testified that he entered defendant's premises on January 7, 1957, at about 7:00 a.m.; observed defendant behind the bar and two or three patrons at the bar drinking beer, and that, when he told defendant that he was supposed to close as of 2:00 a.m., defendant replied that he did not know anything about it. Detective John W. Elken, assigned to the Jersey City Liquor Bureau, testified that he and Arthur McHorney, Secretary of the Bureau, entered defendant's premises at about 11:15 a.m.; that defendant was behind the bar and two patrons were drinking beer; that he told defendant that he had the order and had come to pick up the license, but defendant replied that he did not know anything about it and refused to give up the license. An ABC investigator testified that he entered defendant's premises about 1:40 p.m. and purchased a glass of beer from defendant. An ABC inspector testified that, thereafter, he, Detective Elken and two other Jersey City police officers entered defendant's premises; that he (the ABC inspector) identified himself and served a copy of the order dated December 27, 1956, upon defendant who agreed to close the premises immediately. The premises were actually closed at 2:50 p.m.

"Defendant testified at the hearing herein that Alex Duncan is a part-time employee who works on the licensed premises for a couple of hours a day, and that Alex Duncan had never turned over to him a copy of the order dated December 27, 1956. Defendant also testified that Detective Elken did not ask for the license certificate when he entered at 11:15 a.m. but this testimony is contradicted not only by the detective but also by Secretary McHorney. Even assuming that defendant had no prior knowledge of the order suspending his license, it is very difficult to understand why he did not close his licensed premises at 11:15 a.m. when requested to do so by Detective Elken whom he knows very well.

"It is not easy to determine the proper penalty to be fixed in this case. Except for the period between 2:00 a.m. and 2:50 p.m. on January 7, 1957, the fifteen-day suspension imposed in the previous case has been served. However, a violation of this character is very serious and merits a substantial penalty. Giving defendant the benefit of every doubt, I recommend that his license be suspended for fifteen days and that an order be entered accordingly. Cf. Re Union Casino, Inc., Bulletin 1091, Item 6."

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

After careful examination of the record, I concur in the recommended conclusions in the Hearer's Report and adopt said report as my conclusions herein. Hence I find defendant guilty of the charge preferred herein. I shall suspend defendant's license for fifteen days.

Accordingly, it is, on this 8th day of April, 1957,

ORDERED that Plenary Retail Consumption License C-34, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Richard Morrisroe, for premises 605 Ocean Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. April 15, 1957, and terminating at 2:00 a.m. April 30, 1957.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - STATE BEVERAGE DISTRIBUTOR - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against)

WILLIAM DeASCENTIIS)
T/a BREWER'S DISTRIBUTORS)
Rear Bldg. 666 Mantua Avenue)
Woodbury, N. J.,)

CONCLUSIONS
AND ORDER

Holder of State Beverage Distributor's License SBD-39, for the 1955-56 and 1956-57 licensing years, issued by the State Director of the Division of Alcoholic Beverage Control.)
-----)

Frank M. Lario, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On May 26, 1956, 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., William J. ---, age 19; in violation of Rule 1 of State Regulation No. 20.'

"It appears from the record herein that some of the facts in the instant case are not in dispute. These disclose that on the date in question, Madeline DeAscentiis, wife of defendant-licensee, sold twelve cases of beer to a customer for \$36.00. It is further agreed that three males were in the premises at said time and that one of them made the purchase thereof.

"William ---, age 19 years, and Frank ---, age 17 years, testified that they were accompanied by another male whom they had met a short time prior to their visit to the said premises; that this person entered the premises after them and remained a short period of time when he left and sat in the car; that

William made the purchase from Madeline DeAscentiis; that they carted the cases of beer to Frank's automobile and placed said cases in the trunk; and that neither of them was asked anything with respect to his respective age.

"The attorney for the defendant, during cross-examination of William, confronted him with a statement dated July 8, 1956, the signature thereon being identified by William as his, the contents of which stated: 'On or about May 26, 1956, I went to the Brewers Distributors accompanied by Frank --- and another person whose name I do not know. This 3rd party name. However, he was over the age of 21. This 3rd party is about 24 or 25 years of age'. William admitted making the statement with the exception that he denied referring to the person's age stating, 'For that part about the age. I didn't say how old the guy was. I don't know how old he is'; that defendant and his brother-in-law came to his house and the brother-in-law asked him questions and defendant, according to William, said, 'My brother-in-law will write down everything we talk about'. William further testified 'So I didn't mind that because I had nothing to hide from them because I did buy the stuff. They kept on trying to tell me this other guy bought the stuff and I kept on telling them I bought it. They kept telling me he was over the age of twenty-one'.

"An ABC agent testified that on May 31, 1956, he, a fellow-agent, William, and the latter's father visited defendant's licensed premises at which time William identified a photograph exhibited to them by the defendant of Madeline DeAscentiis as the person who sold the cases of beer to him on May 26, 1956; that thereafter on June 4, 1956, the ABC agent, accompanied by the other persons who had been with him on the prior visit, again went to defendant's premises; that on this occasion Madeline DeAscentiis was present and William identified her as the person who had made the sale of the beer to him on the date in question; that she then said that she 'wasn't sure who the sale was made to but she recalled making the sale'.

Madeline DeAscentiis testified that the sale of the twelve cases of beer on May 26, 1956 was made to a man who had accompanied William and Frank into the licensed premises; that 'there was a few other people in there but I didn't, you know, recognize them too much because I was so excited over the sale I made'; that it was the 'First big sale we made since we were there'; that on June 4 she said she would 'be more than glad to cooperate and point out the fellow. I just can't point out the one. I said, "You bring the other two fellows and I will point them out"'.

"The defendant testified that on July 8, 1956, he and his brother-in-law (Clifford A. Vantini) went to William's home but that his brother-in-law did all the talking; that he heard William say that the man who accompanied him and Frank to his (defendant's) premises was twenty-four or twenty-five years of age; that William claimed to be the person who purchased the beer on the day in question.

"I have carefully examined all of the evidence presented in the instant case and I am satisfied that on May 26, 1956 William made the purchase of twelve cases of beer at defendant's licensed premises. Even though I might be disposed to give less weight to William's testimony in view of the written statement made by him, part of the contents of

which he disputes, I am satisfied that the testimony of Frank concerning the purchase of the beer is clear and convincing. I might also add that the testimony given by Madeline DeAscentiis with reference to the sale of beer on the date in question is not too reliable. I am satisfied that her statement on June 4, as testified to by the agents that she was not sure to whom she sold the beer, was actually said by her.

"After careful consideration of the entire record herein, I conclude that the Division has proven its case by a fair preponderance of the evidence. I, therefore, recommend that defendant be adjudged guilty of the charge preferred herein.

"Defendant has no prior adjudicated record. The minimum penalty for a sale of alcoholic beverages to a minor of the age of nineteen years is fifteen days. Re Mercantini & Rossi, Bulletin 1124, Item 12. I recommend that defendant's license be suspended for fifteen days."

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

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein. Hence, I shall suspend defendant's license for fifteen days.

Accordingly, it is, on this 8th day of April, 1957,

ORDERED that State Beverage Distributor's License SBD-39, issued by the Director of the Division of Alcoholic Beverage Control to William DeAscentiis, t/a Brewer's Distributors, Rear Bldg. 666 Mantua Avenue, Woodbury, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m. April 15, 1957, and terminating at 9:00 a.m. April 30, 1957.

WILLIAM HOWE DAVIS
Director.

- 6. DISQUALIFICATION REMOVAL PROCEEDINGS - AIDING AND ABETTING PROSTITUTION - LICENSE PREVIOUSLY REVOKED - FIVE YEARS! GOOD CONDUCT NOT ESTABLISHED - APPLICATION DENIED WITH LEAVE TO REAPPLY JUNE 8, 1959.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, pursuant to R.S.)
33:1-31.2.)
Case No. 1331.)
-----))

CONCLUSIONS
AND ORDER

BY THE DIRECTOR:

Applicant's fingerprint returns disclose that in 1950, four indictments were filed in a Federal Court charging him with transporting women in interstate commerce for immoral purposes, which indictments were dismissed; that on January 24, 1951, he was found guilty before a County Judge of aiding and abetting prostitution and was sentenced to a jail term of four months or \$1,000.00 fine; that on June 8, 1954 he was charged with failing to give a good account of himself and was placed on probation for one year by a Magistrate and ordered to pay 50¢ per week; and that on July 15, 1954, an order was entered

discharging him from probation. The Division records disclose that when applicant held a liquor license in this State, he was found guilty in disciplinary proceedings of permitting on his licensed premises prostitutes, obscene photographs, contraceptive devices, lewdness and immoral activities; and that on November 21, 1950, his license was revoked. Re McCloskey, Bulletin 890, Item 2.

The crime of aiding and abetting prostitution involves the element of moral turpitude and precludes applicant from engaging in the alcoholic beverage industry in this State until his disqualification is removed.

At the hearing herein applicant testified that he is fifty-four years of age, unmarried and a real estate salesman; that he was arrested and charged with the specific crimes disclosed in his fingerprint returns, all of which were dismissed excepting the crime of aiding and abetting prostitution; that the circumstances surrounding his arrest in 1954 were that late one evening he and a woman were sitting in his car parked in front of a house which the woman was interested in buying; that two suspicious men approached him who, he believed, intended to "shake him down"; that the men, later identified as detectives, escorted him to headquarters and charged him with failing to give a good account of himself; that a Magistrate found him guilty thereof and placed him on probation for "I think he said six months", which was lifted after three months. He testified further that he has never been convicted of any other crime and that aside from the 1954 incident he has had no difficulty with the law during the past five years. The police department of the community wherein applicant resides reports no complaints or investigations presently pending against him.

Frankly, I have grave doubts as to the truth of applicant's explanation of the incident surrounding his arrest in 1954. Suffice to say late at night is a strange (notwithstanding romantic) time for a real estate salesman to discuss business with a female client. Apparently the Magistrate gave very little credence to the story as indicated by his decision. I share his feelings.

Three witnesses (a super market manager, a construction worker and a lawyer) appeared on applicant's behalf and testified that they have known him for more than ten years and that he has a good reputation in the community wherein he resides.

Considering the unsavory record of applicant while a licensee, I am not satisfied at the present time that his association with the alcoholic beverage industry would not be contrary to the public interest and hence I shall deny his application. I shall not entertain another application for the removal of his disqualification before June 8, 1959 and I suggest to any succeeding Director that applicant's record be closely scrutinized before affording him relief. In my opinion his continued dissociation with the liquor industry will be in the public interest.

Accordingly, it is, on this 5th day of April, 1957,

ORDERED that the application herein be and the same is hereby denied with leave granted to applicant to renew his application in accordance with my conclusion as hereinabove set forth.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - GAMBLING - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 UKRAINIAN AMERICAN CITIZENS CLUB
 49 Leick Avenue
 Carteret, N. J.,
 Holder of Club License CB-5, issued by the Borough Council of the Borough of Carteret.
 -----)

CONCLUSIONS AND ORDER.

Michael Resko, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On December 28 and 29, 1956, you allowed, permitted and suffered gambling, viz., the playing of a card game for stakes of money, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

The file herein discloses that an ABC agent entered defendant's premises on December 28, 1956, at about 11:30 p.m. He attempted to purchase a glass of beer from a bartender but was refused because he was not a member of the club. This agent observed a card game in progress in an adjoining room and summoned two other ABC agents who had remained outside. The three agents went directly to the adjoining room where they observed six members of the club playing stud poker. The agents identified themselves to the players and later to the bartender. At the time the agents identified themselves, the sum of \$36.50 was on the table where the card game was being played.

Defendant has a prior record. Effective June 7, 1946, the local issuing authority suspended its license for ten days for selling during prohibited hours. However, since this dissimilar violation occurred more than five years ago, it will not be considered in fixing penalty herein. I shall suspend defendant's license for ten days (Re Captain Stephen T. Schumaker Post VFW, Bulletin 903, Item 7). Five days will be remitted for the plea herein, leaving a net suspension of five days.

Accordingly, it is, on this 8th day of April, 1957,

ORDERED that Club License CB-5, issued by the Borough Council of the Borough of Carteret to Ukrainian American Citizens Club, for premises 49 Leick Avenue, Carteret, be and the same is hereby suspended for five (5) days, commencing at 6:00 a.m. April 15, 1957, and terminating at 6:00 a.m. April 20, 1957.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ERWIN RINALDI & ESTHER TRAVIA)
T/a TOWN BAR)
South East side of Pemberton Road)
Springfield Township)
PO Juliustown, N. J.,)

CONCLUSIONS AND ORDER

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

Erwin Rinaldi & Esther Travia, Defendant-licensees, Pro se. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded guilty to a charge alleging that they sold and permitted the sale of alcoholic beverages to a minor and permitted the consumption of alcoholic beverages by said minor on their licensed premises, in violation of Rule 1 of State Regulation No. 20.

Acting upon information received from the office of the Provost Marshal, Fort Dix, an ABC agent obtained signed sworn statements from Pfc. Shirley --- and Sergeant William ---. In her statement Pfc. Shirley --- says that she is 19 years of age; that on February 15, 1957, shortly after 12:01 a.m., she and Sergeant William --- entered defendants' licensed premises and went to a rear room where she drank about three glasses of beer; that she then went alone to the bar where she purchased and consumed about five glasses of beer and about five shots of whiskey; that these drinks were served by a bartender known as "Coochie" who did not question her as to her age; that she and her male companion left the premises about 1:45 a.m. In his statement Sergeant William ---, who is of full age, says that he accompanied Pfc. Shirley --- to defendants' premises at the time stated above; that they went to the rear room where she drank several glasses of beer; that he later saw her sitting at the bar, and that they left the premises about 1:45 a.m.

Defendants have no prior record. It appears that Pfc. Shirley --- was in uniform on the occasion in question as was her companion Sergeant William ---; that she admitted that she had been served alcoholic beverages on prior occasions and that she had been questioned about her age the first time she was served and represented that she was twenty-one. The statement of the owner indicates he was not on the premises at the time and that the bartender "Coochie" was filling in for him when the violation occurred.

Under all of the circumstances, and considering the fact that the defendants have no prior record, I shall suspend defendants' license for ten days, instead of the usual fifteen days, and remit five days for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 8th day of April, 1957,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Springfield to Erwin Rinaldi & Esther Travia, t/a Town Bar, for premises on South East side of Pemberton Road, Springfield Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. April 15, 1957, and terminating at 2:00 a.m. April 20, 1957.

WILLIAM HOWE DAVIS
Director.

9. DISQUALIFICATION REMOVAL PROCEEDINGS - OPERATION OF ILLEGAL STILL - LICENSE PREVIOUSLY REVOKED - EMPLOYMENT ON LICENSED PREMISES WHILE INELIGIBLE - APPLICATION DENIED.

In the Matter of an Application)	
to Remove Disqualification)	
because of a Conviction, Pursuant)	CONCLUSIONS
to R. S. 33:1-31.2.)	AND ORDER
Case No. 1345.)	
-----))	

BY THE DIRECTOR:

Applicant's fingerprint returns disclose that on August 8, 1932, he received a suspended sentence on a charge of loitering and that on February 4, 1952 he pleaded guilty in a Federal Court to conspiracy to operate an illegal still and was sentenced on March 7, 1952 to one year and a day. The sentence was suspended and he was placed on probation for one year and ordered to pay a fine of \$500.00.

The records of this Division disclose that in 1943 applicant herein appealed from the action of a local issuing authority whereby it denied transfer of a license to him because he was an unfit person to hold a license and that he was acting as a "front" for his brother who has a criminal record. The then Commissioner, after reviewing applicant's background and the facts of the case which created a suspicion in his mind, directed that the transfer be granted subject to a condition that applicant's brother "shall not be permitted on the licensed premises at any time for any reason whatsoever." Amato v. Harrison, Bulletin 549, Item 2. The records further disclose that, within four months after the license was transferred to applicant, he pleaded guilty in disciplinary proceedings to charges alleging that he exercised the rights and privileges of a license held by another, he made false statements in his application as to the beneficial owner (his brother) of a half-interest in the business, he knowingly aided and abetted others to exercise the rights and privileges of his license, he permitted known criminals and female impersonators in and upon his licensed premises and he sold alcoholic beverages to minors. The then Commissioner, in his Conclusions and Order, stated, inter alia, "The defendant who once appealed to the Commissioner in the name of justice, will now receive his just desserts -- and speedily." Applicant's license was revoked. Re Amato, Bulletin 569, Item 9. The crime of conspiracy to violate the Federal Internal Revenue Laws

involves moral turpitude and precludes applicant from engaging in the alcoholic beverage industry in this State until his disqualification is removed. Cf. Re Case No. 983, Bulletin 940, Item 12.

At the hearing herein applicant testified that he is forty-four years of age and resides with his wife and two children, one of whom attends college; that he became involved in the conspiracy crime because he loaned money to a fellow who was to return it with a "big interest -- I didn't know anything about the operation of the still;" that from 1944 to 1947 he worked in several licensed premises; that he did not know he was ineligible for such employment; that he desires to engage in the alcoholic beverage industry; that he has never been convicted of any other crime and has had no difficulty with the law for the past five years. The Police Department of the city in which applicant resides reports no complaints or investigations presently pending against him.

Three witnesses (two housewives and a factory supervisor) appeared in applicant's behalf and testified that they have known him for over seventeen years and that his reputation as a law-abiding citizen is good.

Considering applicant's record as a licensee, his conviction of a crime involving the manufacturing of illicit alcohol, his employment in licensed premises while ineligible (all indicating a persistence to engage in the alcoholic beverage industry, whether lawfully or unlawfully), I am convinced, as was the local issuing authority and one of my predecessors, that applicant is not a fit person to be engaged in the alcoholic beverage industry in this State. I find that his association with said industry would be contrary to the public interest. I shall deny his application.

Accordingly, it is, on this 9th day of April, 1957,

ORDERED that the application herein be and the same is hereby denied.



William Howe Davis
Director.