41 Sheffield St.
Jersey City, 5, N. J.

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

BULLETIN 949 DECEMBER 5, 1952.

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ITEM

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

BULLETIN 949 DECEMBER 5, 1952.

1. COURT DECISIONS - ANTHONY ET AL. v. COMMON COUNCIL OF GLOUCESTER CITY ET AL. - HEREIN OF PROPER METHOD FOR COMPUTING REQUISITE NUMBER OF SIGNERS OF REFERENDUM PETITION.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
No. A43-52, September Term, 1952

JOHN ANTHONY and JANE G. ANTHONY, Individually and as partners trading as Twin Bar, and GLOUCESTER CITY LICENSED BEVERAGE ASSOCIATION, an unincorporated association,

Plaintiffs-Appellants,

-vs-

PHILIP V. REA, Mayor of the City of Gloucester City, New Jersey; MESSRS. ROBERT D. BOBO, WILLIAM BOWE, BENJAMIN B. FOSTER, WILLIAM FRITZ, JOHN LINCOLN, FRANK McQUAID, JOHN OVERNACK, ROBERT LUKER and THOMAS SULLIVAN, Members of the Common Council of Gloucester City, Camden County, New Jersey; MARION T. CONNELLY, Acting City Clerk of Gloucester City, Camden County, New Jersey; and FRANK J. SUTTILL, County Clerk of Camden County, New Jersey,

Defendants-Respondents.

Argued October 27, 1952; decided NOVEMBER 3, 1952.

Before Judges McGeehan, Bigelow and Jayne.

Mr. Samuel H. Nelson argued the cause for Plaintiffs-Appellants (Mr. Sidney Simandl, Attorney).

Mr. William J. Shepp appeared for Respondents Philip V. Rea, Mayor, and the Common Council of the City of Gloucester City (Mr. William E. Hughes, Attorney).

The opinion of the Court was delivered by

McGEEHAN, S. J. A. D.

On May 1, 1952, a petition was presented to the governing body of the City of Gloucester City requesting a referendum on the question "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?"; and on June 5, 1952, the Common Council of the City of Gloucester City passed a resolution directing the County Clerk of Camden County to print such question upon the official general election ballot to be used on November 4, 1952. The plaintiffs instituted suit in lieu of prerogative writ in the Law Division of the Superior Court for Camden County, seeking an order declaring this petition and resolution pertaining to the referendum on the public question illegal and void, and for an order restraining the County Clerk of Camden County from printing the question upon the ballot. The plaintiffs appeal from a judgment entered denying the restraint and dismissing the complaint.

The proceedings which the plaintiff sought to review were taken under R.S. 33:1-47 (as amended L. 1949, c. 296, § 4), which in pertinent part provides as follows:

> "Whenever a petition signed by at least fifteen per centum (15%) of the qualified electors of any municipality as evidenced by the total number of votes cast for members of the General Assembly, at the then next preceding general election held for the election of all of the members of the General Assembly, in such municipality, shall be presented to the governing board or body thereof, requesting a referendum on the question hereinafter stated, such governing board or body shall adopt forthwith a resolution directing the clerk of the county in which such municipality is situated to print, pursuant to Title 19, Elections, hereinafter referred to as the 'general election law,' upon the official ballot to be used in such municipality at the next ensuing general election, a question to read: 'Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?' * * * the county clerk * * * shall cause such question to be printed in an appropriate place on the ballot to be used in such municipality at the next ensuing general election, pursuant to the general election law and thereupon all proceedings with respect to the referendum on such question shall be subject to and governed by the general election law as in other cases of the submission of public questions to the electorate." (Italics ours.)

Plaintiffs argue that the inclusion in R.S. 33:1-47 of the language which we have italicized makes the act unconstitutional because it incorporates provisions of another statute by mere reference thereto, in violation of Art. IV, Sec. VII, Par. 5 of our Constitution, which provides: "* * * No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act." A statute which adopts by mere reference the provisions of a prior act, in order to create substantive rights or duties, is within the prohibition of this constitutional provision; but a statute which adopts by reference only the forms of process and procedure necessary to accomplish the purpose of the act, is not within such prohibition. If the statute embody a complete and perfect act of legislation in itself, it may provide for ancillary proceedings to accomplish the purposes expressed in the act by a reference to general laws on the subject, without violating this constitutional provision. Jersey City v. Martin, 127 N. J. L. 18 (E. & A. 1941); Campbell v. Board of Pharmacy of New Jersey, 45 N.J.L. 241 (Sup. Ct. 1883), affd. 47 N.J.L. 347 (E. & A. 1885); 1 Sutherland, Statutory Construction, § 1925 (3rd Ed. 1943). The plaintiffs recognize this distinction, but contend that the use of the words "subject to and governed by" makes it clear that the intention was to adopt not only the procedural provisions of the general election law, but also the substantive provisions thereof. This argument wholly disregards the fact that under this statute it is the "proceedings with respect to the referendum on such question" which are made "subject to and governed by the general election law." It is clear from the language of this statute that the reference to the general election law merely provides for ancillary proceedings to accomplish the purpose expressed in the act; and that the act adopts by reference only the forms of process and procedure contained in the general election law which are necessary to accomplish its purpose.

The next contention is that R. S. 33:1-47 is unconstitutional because the title of the act (L. 1949, c. 296) does not state the object of the enactment as required by Art. IV, Sec. VII, Par. 4 of our Constitution. The title reads as follows: "An Act concerning municipal referenda in connection with the sales of alcoholic beverages, and amending sections 33:1-44, 33:1-45, 33:1-46, 33:1-47 and 33:1-47.1 and supplementing chapter one of Title 33 of the Revised Statutes." The argument advanced in support depends entirely upon the premise that R.S. 33:1-47 adopts by reference all the substantive provisions of the general election law. We have already concluded that this premise is false.

The referendum petition is said to be invalid because it is unverified. It is argued that under the general election law petitions for the submission of public questions to the electorate must be verified, and such requirement applies to this petition. Assuming that the general election law contains such a requirement, it does not apply to petitions under R.S. 33:1-47. This section provides that the ballots shall be printed pursuant to the general election law and that all proceedings thereafter shall be subject to and governed by the general election law; but the requirements of the section concerning proceedings prior to the printing of the ballots are in no way connected with or affected by provisions of the general election law. Since the section contains no requirement that the petitions be verified, the inference is that the legislature intended no such requirement. Cf. In re City of Passaic, 94 N. J. L. 384 (Sup. Ct. 1920).

Last, it is contended that the referendum petition is void because an insufficient number of voters signed it. Under the act, the petition must be signed by at least 15% of the qualified electors of the municipality "as evidenced by the total number of votes cast for members of the General Assembly, at the then next preceding general election held for the election of all of the members of the General Assembly." At such preceding general election in the City of Gloucester City there were 6,957 registered voters, of whom 4,288 actually voted. Three members of the General Assembly were to be elected at this election, and for all seven candidates for such office a total vote of 12,061 was cast. There were 1,383 valid signatures on the petition, which number exceeded 30% of the total number of registered voters who voted at such preceding election, and exceeded 19% of the total number of registered voters for such election.

The plaintiffs argue that the act requires that the petition be signed by qualified electors of the municipality, equal in number to 15% of all the votes cast for all the candidates for the office of member of the General Assembly at the preceding election, which in this case would be 1,809. If this contention is correct, the petition did not contain the required number of valid signatures. We think the statutory language requires signers equal in number to 15% of the total votes cast for all the candidates for the office of member of the General Assembly, divided by the total number of such members which are to be filled at such election, which in this case would be 15% of 4,021 or 603.

Strong support for our interpretation can be found in Schwartz v. Wachlin, 89 N. J. L. 39 (Sup. Ct. 1916), which so interpreted the following language of L. 1911, c. 221, § 18 (The Walsh Act): "provided, however, that the votes cast in favor of the adoption of this act is equal to at least thirty per centum of the votes cast for members of the General Assembly at the last general election immediately preceding the submission of this act." Moreover, if the interpretation urged by plaintiffs were adopted, it could lead to an

absurdity, for if all the registered voters in a municipality in Essex County (which elects 12 members of the General Assembly) voted at such election, and all voted for 12 candidates, the number of signers to a petition which would be required under R.S. 33:1-47 would be 180% of all the registered voters for such election in such municipality.

The judgment is affirmed.

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2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (PROSTITUTION) - LOTTERY - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

17 CLUB, INC.
17 William Street
Newark 2, N. J.,

Holder of Plenary Retail Consumption License C-861 for the 1951-52 and 1952-53 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, and transferred during pendency of proceedings to

36-38 William Street
Newark 2, N. J.

CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

Defendant retracted an earlier plea of not guilty and entered in its place a plea of non vult to the following charges:

"1. On May 16 and 21, 1952, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

"2. On May 16 and 21, 1952, you allowed, permitted and suffered lotteries, commonly known as 'fight pools' to be conducted in and upon your licensed premises and sold and offered for sale and possessed, had custody of and allowed, permitted and suffered tickets and participation rights in such aforementioned lotteries, in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20."

The file discloses that two ABC agents entered defendant's licensed premises at approximately 8:30 p.m. on May 16, 1952, and sat at the bar which was then being tended by "Jerry" (later identified as Gerardo) Faliveno, brother of Anthony Faliveno, the latter being a 50% stockholder and Secretary-Treasurer of the licensee corporation. Among the patrons present were two females known as "Millie" (a blonde) and "Marie" (a brunette). Shortly after the agents entered the licensed premises, a second bartender known as "Leo" went behind the bar and, at approximately 9:30 p.m., the aforementioned Anthony Faliveno also went behind the bar. During all

of this time Millie had been drinking with different male patrons and Marie had been sitting alone at the bar. Soon after 9:30 p.m. Marie left the premises but Millie approached the agents and asked them to take part in a "pool" on the outcome of a prize fight to be shown that night via television, explaining that the chances would cost $1.00 each. Millie had a number of small slips of paper in her hand and each agent took one slip and each handed Millie a dollar which she in turn handed to Anthony Faliveno. When Millie commented that round number 10 which had been drawn by one of the agents was a "good round", she was immediately cautioned by Anthony Faliveno not to "--- mention it to anybody otherwise they won't pull". After Millie had disposed of all of the slips she went to the bar where she joined another female known as "Betty".

Shortly before the end of the last (10th) round of the fight Millie rejoined the agents at the bar and told Anthony Faliveno to pay the proceeds of the pool ($10.00) to the agent who had drawn the tenth round and added "We might as well order now." She then put her arms around the neck of the agent, meanwhile rubbing her breasts and body against his arms and legs. When the fight was over Anthony Faliveno placed a ten dollar bill on the bar in front of the agent who had picked the tenth round. At Millie's request the agent bought drinks for her, Betty and Marie (who apparently had returned). While sitting at the bar consuming a number of drinks at the agent's expense, Millie embraced him and held his hand near her private parts, during which time they made arrangements to meet there (the licensed premises) on the following Wednesday night, and to go to Millie's room to have sexual intercourse, for which Millie was to charge $15.00. During all of this conversation the bartender, Jerry, was moving around behind the bar waiting on patrons, including the agents and their female companions. The agent and the girls were also served by "Leo" and by Anthony Faliveno. When Millie went to the ladies' room the agent called to Jerry, the bartender, and asked, "What's the score with the blonde?" (meaning Millie). Jerry replied, "They're both hustlers, strictly hustlers, but what they'll charge for a bang I don't know." When the agent asked "Will she show me a good time" Jerry answered, "Oh sure, but what she'll charge, I don't know."

Millie then returned to the bar and, while she resumed her conversation with the agent whom she had previously embraced, Marie conversed with the other agent. As a result of these conversations it was agreed that both agents would return to the licensed premises on the following Wednesday evening (May 21, 1952) to meet Millie and Marie for the purpose of having sexual intercourse.

At 8:15 p.m. on May 21, 1952, the same two agents, accompanied by two other agents, arrived in the vicinity of the licensed premises. Leaving the other agents outside, the two agents who had the dates with Millie and Marie entered the licensed premises and took seats at the bar. Millie was already seated at the bar with Betty. Jerry, who was tending bar, greeted the agents and, as they looked in the direction of Millie and Betty, Jerry said, "There's your girl friend down there." Shortly thereafter Millie joined the agents and, when they asked for Marie, Millie left the agents to telephone to Marie to ascertain whether or not she was coming to the licensed premises.

After Millie had left the agents, one of them called Jerry to their place at the bar and told him that they (the agents) had dates to get "laid" that night and that Millie was going to charge him $15.00. Jerry said, "She's all right but I wouldn't give her a dime." The agent then asked Jerry, "How is she?" Jerry replied, "Oh, that blonde is really hot stuff." When the agent asked Jerry how he knew that, he stated that he had had intercourse with her and repeated that he wouldn't give her a dime. In response to another of the agent's questions Jerry said that the girls were "clean".

Upon her return to the bar, Millie said that Marie was unable to keep the date and suggested that Betty substitute for Marie. When the agent asked Millie whether Betty charged $15.00, Millie told him to discuss that with Betty. Millie then left the agents and returned with Betty and all four sat at the bar together. The agents ordered drinks for themselves and their female companions and, as they sat at the bar drinking, Millie informed them that Anthony Faliveno was making up a "fight pool" similar to the one on their previous visit. Soon Anthony Faliveno placed ten small slips of paper on the bar, whereupon Betty picked up one for herself and one for one of the agents, while Millie and the other agent each picked up a slip of paper. At the request of his female companion, each of the agents paid $2.00 to Anthony Faliveno. A little later Anthony Faliveno made up another "pool" and the agents and their female companions again participated.

Within a few minutes the agent who was with Betty handed her $15.00 of marked money. Betty agreed that it was the right amount and placed it in the top of her right stocking. She then asked the agent whether he had any "rubbers" (contraceptive devices) and he replied that he had some in his automobile. Meanwhile the other agent handed $15.00 of marked money to Millie, which she put in her pocketbook which was on the bar. It was then agreed that the agents would leave the tavern together and that the females would follow them a few minutes later; but, before the agents left the premises Betty told one of the agents to leave Jerry a "buck" (as a tip), adding, "He's O.K." Accordingly, one of the agents left a dollar on the bar for Jerry. During all of this time Jerry had been behind the bar waiting on the patrons, including the agents and their female companions. Because there were but few patrons at the bar that night, Jerry was not continuously occupied with his duties and from time to time stood near the agents leaning against the back bar.

The agents then left the premises, followed shortly by the two females. As they walked along the street they were apprehended by other ABC agents and the local police and were taken to police headquarters. As they were being escorted to police headquarters, Betty took the money from her stocking and placed it in the coat pocket of the agent who had given it to her, where it was later found by the police. The marked money which the other agent gave to Millie was found in her pocketbook.

At police headquarters Anthony Faliveno, Gerardo (Jerry) Faliveno and the two females were questioned and, although the questions and their answers were reduced to writing, all but Gerardo Faliveno refused to sign their statements.

Anthony Faliveno orally admitted that he has an interest in the licensed premises; that his brother Jerry tends bar there; that he knows Millie and Betty; that they frequent the licensed premises "once or twice a week", but he denied any knowledge of their solicitation for immoral purposes at the licensed premises. However, he admitted conducting the "fight pools" on the nights in question.

Gerardo Faliveno admitted that he was tending bar at the licensed premises on the night of May 21, 1952 and that he may have been tending bar there on the night of May 16, 1952; that the agents had been in the licensed premises on May 21, 1952; that he had seen them there on one previous occasion; that he knows Millie and Betty; that he saw them seated with the agents on the evening of May 21, 1952, and that the agents conversed with him with regard to Millie and Betty, but he denied that the conversation was as reported by the agents. In this connection he said, "All I remember you coming up to me and telling me that the girl (Millie) wants $15.00 and I told you that I wouldn't give her a dime."

Both Millie and Betty admitted meeting the agents at the licensed premises on the night of May 21, 1952, but denied having solicited for immoral purposes or having agreed to engage in illicit sexual intercourse. Betty denied accepting any money from either agent, but Millie admitted accepting $15.00 from one of the agents, claiming that she had told him that she needed the money for "room rent" and that he had given her the money because he "felt sorry" for her.

From the foregoing it is clear that, on the two occasions when the agents visited the licensed premises, one of defendant's employees (whose brother is an officer of the corporation and the holder of 50% of its stock) had direct personal knowledge of the immoral activity then taking place on the licensed premises, and it is not without real significance that said stockholder was personally present in the barroom on both such occasions and actually participated in the conduct of the lotteries.

In attempted mitigation, defendant's attorney has advised me that a Magistrate of the Family Court dismissed criminal charges against the licensee and its agents or employees. Such dismissal is immaterial to the determination of these proceedings. Disciplinary proceedings against a licensee are civil in nature. Kravis v. Hock (Sup. Ct. 1948), 137 N. J. L. 252; in Re Schneider (Super. Ct. 1951), 12 N. J. Super. 449. Thus, the two proceedings (criminal and disciplinary) are different in kind, involve different issues, quantum of proof and types of penalty. See Re DuPree, Bulletin 108, Item 8; Re Messina and Ruisi, Bulletin 392, Item 12; Re Rosenthal and Geller, Bulletin 843, Item 4.

It has long been held that solicitation for immoral purposes and the making of arrangements for illicit sexual intercourse cannot and will not be tolerated upon licensed premises. The public is entitled to protection from these sordid and dangerous evils. As was said in Re Paton, Bulletin 898, Item 3:

> "Licensees must learn and remember that their liquor license is not a license to engage in activities detrimental to the public welfare."

Considering all of the circumstances in this case, the only proper penalty is revocation of the license. See Re Bond Service Center, Inc., Bulletin 939, Item 1; Re Ewaski, Bulletin 937, Item 1; Re Schumacher, Bulletin 901, Item 5; Re Paton, supra; Re Kaiman, Bulletin 791, Item 4. The license will be revoked.

Although this proceeding was instituted during the 1951-52 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1952-53. State Regulations No. 16.

Accordingly, it is, on this 24th day of November, 1952,

ORDERED that Plenary Retail Consumption License C-861, for the 1952-53 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to 17 Club, Inc., for premises 17 William Street, Newark, and transferred to 36-38 William Street, Newark, be and the same is hereby revoked, effective immediately.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION - AIDING AND ABETTING NON-LICENSEES TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

C. MULFORD SCULL
5802 Edgewater Avenue
Ventnor City, N. J.,

Holder of Plenary Retail Distribution License D-6, issued by the Common Council of Ventnor City.

CONCLUSIONS AND ORDER

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Paul M. Salsburg, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. In your application dated June 3, 1952, filed with the Ventnor City Common Council, upon which you obtained your current plenary retail distribution license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual...., other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Patrick Joseph Connor had such an interest in that he was the real and beneficial owner of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid application, you falsely stated 'No' in answer to Question 31, which asks: 'Have you agreed to pay any employee, or other person, any portion or percentage of the profits or income (by way of rent, salary or otherwise) derived from the business to be conducted under said license?', whereas in truth and fact you had agreed to permit Patrick Joseph Connor to retain all of the profits from the licensed business after payment to you of a fixed monthly fee; said false statement being in violation of R. S. 33:1-25.

"3. From on or about December 15, 1951 until the present time, you knowingly aided and abetted Patrick Joseph Connor, and from in or about 1943 until on or about December 15, 1951, you knowingly aided and abetted Benjamin and Hannah Vanderslice to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail distribution licenses; thereby yourself violating R.S. 33:1-52."

From the file herein it appears that defendant obtained a plenary retail distribution license for the premises in question about eighteen years ago. After defendant had operated the business for a period of time, the license was duly transferred to another person who is not mentioned in these proceedings and who held the license for a period of about five years. The license was then duly retransferred to defendant who has continuously received renewals of said license up to the present time. In 1943 defendant entered into a verbal agreement with Benjamin and Hannah Vanderslice whereby in effect he "farmed out" his license to them, and thereafter they operated the business under defendant's license until December 15, 1951. On the latter date defendant entered into a verbal agreement with Patrick Joseph Connor whereby the latter was permitted to operate the business under defendant's license and retain all profits therefrom upon payment of the sum of $75.00 monthly to defendant. This

agreement was in existence when defendant, on June 3, 1952, filed his application for renewal. This situation continued in existence until after the charges herein were preferred, namely, until November 6, 1952, at which time Patrick Joseph Connor gave to defendant a written surrender of his lease of the premises and executed a bill of sale granting and conveying to defendant the goods and chattels and his lease-hold interest in said premises.

In alleged mitigation defendant says that he entered into the agreements with Benjamin and Hannah Vanderslice and Patrick Joseph Connor because he was in poor health and wanted to operate the licensed business again at some future time. It is also alleged on behalf of defendant that he did not realize he was violating the provisions of the Alcoholic Beverage Law in entering into said agreements. Ignorance of the law cannot be accepted as an excuse. It is clear from the above facts that defendant, in violation of the law, permitted persons other than himself to exercise the rights and privileges of his license.

Defendant has no prior record. From the evidence herein it appears that the illegal situation has been corrected. There is nothing in the record to show that Benjamin Vanderslice, Hannah Vanderslice or Patrick Joseph Connor was ineligible to hold a license. Under the circumstances I shall suspend defendant's license for a period of twenty days. Re Russo, Bulletin 741, Item 4; Re Hoppe, Bulletin 889, Item 6; Re Calandriello, Bulletin 934, Item 9; Re Simon, Bulletin 938, Item 6.

Accordingly, it is, on this 21st day of November, 1952,

ORDERED that Plenary Retail Distribution License D-6, issued by the Common Council of Ventnor City to C. Mulford Scull, for premises 5802 Edgewater Avenue, Ventnor City, be and the same is hereby suspended for twenty (20) days, commencing at 9:00 a.m. December 2, 1952, and terminating at 9:00 a.m. December 22, 1952.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 AND LOCAL REGULATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ALBERT FELDMAN
160 Broadway
Paterson 1, N. J.,

Holder of Plenary Retail Distribution License D-53, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Albert Feldman, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that he (1) sold and delivered an alcoholic beverage at retail in its original container for off-premises consumption on Sunday, in violation of Rule 1 of State Regulations No. 38, and (2) sold and delivered alcoholic

beverages on his licensed premises at 12:00 noon on Sunday, in violation of a local regulation.

The file discloses that two ABC agents, investigating a specific complaint that the licensee was selling alcoholic beverages in original containers for off-premises consumption on Sundays, arrived in the vicinity of defendant's licensed premises at approximately 10:45 a.m. on Sunday, November 2, 1952. One of the agents entered the licensed premises which consisted of a stationery and cigar store and a "package liquor" store. The licensee was engaged in selling newspapers and other articles to various customers. When the agent asked the licensee for a pint of whiskey the licensee replied, "Not on Sunday." The agent then rejoined his companion who had remained outside and both agents placed the licensed premises under observation.

At approximately 12:00 noon a man entered the licensed premises empty-handed and emerged shortly thereafter carrying a paper bag which appeared to contain a bottle. The agents approached this man and ascertained that he had a bottle of wine which he admitted purchasing at the defendant's licensed premises a few minutes earlier. The customer accompanied the agents to defendant's licensed premises where they identified themselves to the defendant, who at first denied selling the wine to the customer. However, the customer admitted purchasing the wine from the defendant at approximately 12:00 noon that day and gave a signed, sworn statement confirming his verbal admission. When asked for a statement the licensee refused, saying that there was nothing to give. The bottle of wine, which bore a label "Casa Mondi California Sherry Wine", was seized, as was the paper bag which had been initialed by the customer.

State Regulations No. 38 prohibit the sale of alcoholic beverages in original containers for off-premises consumption at any time on Sunday, and the local regulation prohibits the sale of alcoholic beverages on Sunday before 1:00 p.m.

Defendant has no prior adjudicated record. Inasmuch as the single offense constitutes a violation of both the ordinance and the State Regulations, I shall suspend the license for twenty days. Re Bolton, Bulletin 774, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 24th day of November, 1952,

ORDERED that Plenary Retail Distribution License D-53, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Albert Feldman, 160 Broadway, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m. December 1, 1952, and terminating at 9:00 a.m. December 16, 1952.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - PREMISES NOW CLOSED - SUBSEQUENT ORDER TO BE ENTERED FIXING EFFECTIVE DATES OF SUSPENSION.

DISCIPLINARY PROCEEDINGS - SPECIAL PERMIT - NO PENALTY IMPOSED FOR VIOLATION OF EXPRESS CONDITION IN VIEW OF THE FACT THAT PERMIT HAS EXPIRED.

In the Matter of Disciplinary)
Proceedings against)
)
PINE LAKE PARK TAXPAYERS IMPROVEMENT)
ASSOCIATION, INC.)
Morningside & 8th Avenue, Pine Lake Park)
Manchester Township)
P.O. Toms River, N. J.,) CONCLUSIONS
) AND ORDER
Holder of Club License CB-1, issued by the)
Township Committee of the Township of)
Manchester; and also holder of Special)
Permit No. 44123 issued by the Director of)
the Division of Alcoholic Beverage Control)
on September 16, 1952.)
- -)

Pine Lake Park Taxpayers Improvement Association, Inc., by Peter McElroy, President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold and delivered alcoholic beverages to a minor, and allowed, permitted and suffered the consumption of alcoholic beverages by said minor on its licensed premises, in violation of Rule 1 of State Regulations No. 20.

At the same time the charge herein was served, defendant was ordered to show cause why Special Permit No. 44123 theretofore issued to it by the Director of this Division authorizing it to sell malt alcoholic beverages at a social affair to be conducted by it on its licensed premises on October 4, 1952 should not be suspended, revoked or cancelled because of the violation of an express condition in said special permit, i.e., the incident referred to in the charge aforementioned.

The records of this Division reveal that defendant, the holder of a club license which limits its sales of alcoholic beverages to its own members and their bona fide guests, obtained a special permit authorizing the sale of beer to the general public at a "barn dance" to be held at its licensed premises on the night of October 4, 1952.

The file discloses that on the night of October 4, 1952, while two ABC agents were upon defendant's licensed premises, a young male patron, 21 years of age, ordered and obtained from a bartender at the bar four glasses of beer which the patron carried to a table at which three females were seated. The male patron kept one glass of beer for himself, and each of the three females took a glass of beer and partly consumed it. Investigation revealed that one of these females, Carolyn --- was nineteen years of age.

The minor admitted in a signed statement that she had consumed a portion of a glass of beer as above recited. Defendant's president, who was present, stated that they were having a "community affair" but denied any knowledge of the incident.

The licensee has no previous adjudicated record. Since no aggravating circumstances appear, I shall impose the usual ten-day

suspendion. Re Richard, Bulletin 937, Item 13. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

The aforesaid special permit, authorizing the sale of alcoholic beverages to the general public, was issued for the period commencing 7:00 p.m. on October 4, 1952 and terminating at 2:00 a.m. on October 5, 1952. It has expired by its own terms. Thus, no effective penalty can now be imposed against it. However, in determining whether or not any similar permit should be issued to defendant in the future, the violation of the express condition contained in Special Permit No. 44123 (that no minor would be permitted to consume alcoholic beverages at the affair) may well be considered.

I am advised that, while the licensed premises are open throughout the week during the summer months, they are now open only on week ends. Therefore no effective penalty can be imposed at this time. Cf. Re Norece Corp., Bulletin 945, Item 4.

Accordingly, it is, on this 20th day of November, 1952,

ORDERED that Club License CB-1, issued by the Township Committee of the Township of Manchester to Pine Lake Park Taxpayers Improvement Association, Inc., for premises on Morningside & 8th Avenue, Pine Lake Park, Manchester Township, or any further license issued to said Pine Lake Park Taxpayers Improvement Association, Inc. or any license issued to any other person for the same premises be and the same is hereby suspended for a period of five (5) days. Further order fixing the period of suspension will be entered if any license is issued to this defendant or to any other person for the premises in question.

DOMINIC A. CAVICCHIA
Director.

6. LICENSED PREMISES - "PEEP HOLE" MOVIE MACHINE FALLS WITHIN BAN AGAINST MOVIE-SHOWING AT TAVERNS.

November 24, 1952

Dear Sir:

In your letter of October 24th you submitted photograph and description of a "miniature movie machine". Your inquiry as to whether such machine is permissible at taverns in New Jersey has received careful attention.

The machine, five feet high, is coin-operated and is in the nature of a so-called "penny arcade" machine. There is a slot into which the patron peers on depositing his coin. Through this slot he views, inside the machine, a film projected onto a small screen or viewing surface therein. The films are of the 16 mm. type.

We have heretofore ruled that there may be no practice of movie-showing at taverns in New Jersey, chiefly because of the risk of indecent films (Bulletin 619, Item 5; Bulletin 761, Item 2). In my view, a machine of the type in question would clearly enhance rather than diminish or eliminate this undesirable hazard.

Hence, I disapprove of the machine in question, and I herewith rule that it comes within the ban against movie-showing at taverns in New Jersey.

Very truly yours,
DOMINIC A. CAVICCHIA
Director.

7. DISQUALIFICATION - CONVICTION FOR CONSPIRING TO OPERATE ILLICIT STILL WHERE CONVICTION OCCURRED AFTER ENTRY OF AN ORDER LIFTING DISQUALIFICATION BECAUSE OF PRIOR CONVICTIONS - APPLICATION TO LIFT DISQUALIFICATION BECAUSE OF SUBSEQUENT CONVICTION GRANTED.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, Pursuant to R.S.) CONCLUSIONS
33:1-31.2.) AND ORDER
)
Case No. 1005.)

BY THE DIRECTOR:

In June 1918 petitioner was convicted on a charge of atrocious assault and battery with an automobile, in June 1922 he was convicted on a charge of receiving stolen goods, and in July 1924 he was convicted on a charge of selling liquor in violation of the National Prohibition Act. On October 16, 1938, the then Commissioner entered an order removing his statutory disqualification because of said convictions. Re Case No. 41, Bulletin 273, Item 11. It appears that thereafter petitioner was granted a plenary retail consumption license by the Board of Commissioners of the City of Trenton.

On September 9, 1939, petitioner was indicted, with others, by a Federal grand jury on a charge of conspiring to violate Section 37 of the Criminal Code (Sec. 5440 of the Revised Statutes), Title 18 U.S.C.A., Sec. 88. The indictment arose from the operation of an illicit still in the State of Pennsylvania during the period from June 1, 1936 to October 1, 1936, and the alleged part played in the conspiracy by the petitioner was that he was a contact man who paid the rent for the still site and for the "drop". On January 6, 1941, petitioner pleaded guilty to said charge in a Federal District Court and on January 10, 1941, he was sentenced to pay a fine of $250.00, which he paid. As a result of said conviction the Board of Commissioners of the City of Trenton denied renewal for the fiscal year beginning July 1, 1941, of the plenary retail consumption license which petitioner had theretofore held. The action of the local issuing authority was affirmed on appeal to the Commissioner on the ground that the conviction was for a crime involving moral turpitude. Berkowitz v. Trenton, Bulletin 484, Item 1.

At the hearing held herein petitioner testified that, after the local issuing authority refused to renew his license, he conducted a cigar store for a period of approximately four years, and discontinued operation of said business because he was unable to renew the lease for his premises. Thereafter he was unemployed for a time because of sickness, and for the last four or five years he has been employed by a son-in-law who conducts a grocery and delicatessen store. Petitioner testified that he has not engaged in any alcoholic beverage activity since 1941.

At the hearing an attorney-at-law who has known petitioner for twenty years, a probation officer who has known petitioner for about twelve years, and a police sergeant who has known petitioner for about ten years testified that since 1941 petitioner has conducted himself in a law-abiding manner.

This is the second case in which an application has been made to remove disqualification because of a conviction occurring after the entry of a previous order removing disqualification. In the prior case (Case No. 856, Bulletin 882, Item 15), relief was granted, apparently with some reluctance, where it appeared that petitioner had conducted himself in a law-abiding manner for five years after being convicted of a crime committed after the date of the entry of

an order removing his disqualification because of the conviction of a prior crime. In the present case the conviction from which petitioner seeks relief occurred in January 1941, but the crime had been committed in 1936 (more than four years prior to the conviction and two years prior to the entry of an order in the prior proceedings). At the hearing herein petitioner testified that his sole connection with the conspiracy, which took place in 1936, was that he had rented the premises where the still was found. Since he was not arrested on the conspiracy charge until October 1939, I shall accept as true his testimony that "when I came before Commissioner Burnett, I didn't know anything about this thing."

From the evidence herein I find that petitioner has been law-abiding for more than five years last past, and I conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 14th day of November, 1952,

ORDERED that petitioner's statutory disqualification, because of his subsequent conviction on January 10, 1941, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2.

DOMINIC A. CAVICCHIA
Director.

8. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against

INTERNATIONAL WINES, INC., t/a ARDITO WINES CO., LARO WINERY, BAY WINE CO., DeMAR WINE CO., UNION WINE CO., GLEN WINE CO., S.K. VINEYARDS CO., ROMA BOTTLING CO. OF JERSEY CITY, N.J., LARO WINE CO. and GARDEN STATE WINE CO., SACRAMENTAL WINE ASSOCIATION and DuBARRY WINE CO.,
161-167 First Street
Jersey City 2, N. J.,

Holder of Plenary Winery License V-43, issued by the Director of the Division of Alcoholic Beverage Control.

ON PETITION
O R D E R

Jack Solomon, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

An order having been entered herein on November 3, 1952, suspending defendant's license for a period of ten days commencing at 7:00 a.m. November 10, 1952, and terminating at 7:00 a.m. November 20, 1952, and

It appearing from the verified petition of William J. Ghiglione, Vice President and Secretary of defendant corporation, that, prior to the entry of said order, the defendant had entered into contracts with numerous New Jersey wholesale and retail licensees and wholesalers outside the State of New Jersey for the sale of large quantities of wines bearing its label, and it further appearing that the general public will be unable to purchase said brands of wines for the Thanksgiving holiday if said sales to wholesalers and retailers are prohibited during the period originally fixed for the suspension of the license, and

It thus appearing that the general public would be inconvenienced by the suspension of defendant's license for the period commencing November 10, 1952;

It is, on this 10th day of November, 1952,

ORDERED that the suspension of ten days imposed in this proceeding, instead of commencing at 7:00 a.m. November 10, 1952, shall, in lieu thereof, commence at 7:00 a.m. November 26, 1952, and terminate at 7:00 a.m. December 6, 1952.

DOMINIC A. CAVICCHIA
Director.

9. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

HARBOR INN, INC.
T/a HARBOR INN
Ashley Avenue
Brielle, N. J.,

Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Brielle.

CONCLUSIONS AND ORDER

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Saul C. Schutzman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On September 1, 1952, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to George ---, John --- and Vincent ---, persons under the age of twenty-one (21) years and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

At the hearing herein the three minors, who are, respectively, 19, 19 and 18 years of age, testified that they spent the Labor Day week-end at Point Pleasant; that on Labor Day evening, while they were driving towards Asbury Park, they decided to stop at defendant's premises in Brielle. The minors testified that they entered defendant's premises about 9:00 p.m. and remained there for more than two hours. Each of the minors testified that he consumed at least ten glasses of beer which had been served to them at the bar by male bartenders, and each of the minors testified that no one had questioned them as to their age while they were in the premises.

On behalf of defendant, Lawrence Cain and Janice Cain, who are stockholders and officers of defendant corporation, denied that the minors were on defendant's premises at any time on the evening of Labor Day, September 1, 1952. Richard Barrett, who was employed at that time as a bartender by defendant, also denied that the boys

were in defendant's premises on that evening. Four other persons who testified that they were in defendant's premises between 8:00 p.m. and midnight on Labor Day testified that they did not see any of the minors on the premises during that period of time.

After carefully considering all the evidence I conclude that the minors' testimony must be accepted as true. I have reached this result for the following reasons: Each of the minors minutely described the interior of the licensed premises, although each of them testified that they never visited Harbor Inn prior to or subsequent to Labor Day. One of the minors testified that a bartender had told him that he went to college and that he was called "Dick". Richard Barrett, the bartender, testified that he was a college student and that he was known as "Dick". The most impressive corroborative testimony is that given by each of the minors concerning the payment of a cash prize of "two hundred and some odd dollars" to another patron on defendant's premises. Although the minors were unable to identify this patron, they testified that, after the patron received the prize money, he purchased two or more rounds of drinks for all persons at the bar. The record shows that Oscar Donat, one of the patrons who testified on behalf of defendant, admitted that on Labor Day evening, shortly after 9:00 p.m., he received in defendant's premises from a mate of a fishing club a cash prize of $201.00 which he had won in a fishing contest. Donat also admitted that, after receiving this prize, he purchased two and perhaps three rounds of drinks for all patrons who were then in the premises. It is inconceivable that the three minors would have known anything of this incident unless they were present when the prize money was paid to Mr. Donat. There is a possibility that defendant's witnesses may not have paid any particular attention to the presence of the three minors on the evening in question but, in any event, I conclude from the evidence that the minors were present and purchased and consumed alcoholic beverages on defendant's premises. Hence I find defendant guilty as charged.

Defendant has no prior adjudicated record. Because of the number of minors involved in the instant case, I shall suspend defendant's license for a period of fifteen days, instead of the minimum period of ten days imposed for a sale to a minor when no aggravating circumstances appear. Re Camarda, Bulletin 946, Item 3.

Accordingly, it is, on this 21st day of November, 1952,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Brielle to Harbor Inn, Inc., t/a Harbor Inn, for premises on Ashley Avenue, Brielle, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. December 1, 1952, and terminating at 2:00 a.m. December 16, 1952.

DOMINIC A. CAVICCHIA
Director.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Jersey Warehouse Corporation
150 and 160-2 Bay St., Jersey City, N. J.
Application filed November 20, 1952 for Transportation License.

Murray M. Radler
11 Commerce St., Newark, N. J.
Application filed December 3, 1952 for Plenary Wholesale License.

Dominic A. Cavicchia
Director.