

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

BULLETIN 1070

JUNE 23, 1955.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - DUCA v. NATIONAL PARK.
2. APPELLATE DECISIONS - BRIGANTINE BEACH HOTEL CORP. v. BRIGANTINE - AMENDED ORDER.
3. DISCIPLINARY PROCEEDINGS (Belmar) - SALE TO MINORS - PRIOR RECORD - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Camden) - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Monroe Twp., Middlesex County) - LICENSE PREVIOUSLY SUSPENDED BY DIRECTOR - APPLICATION TO LIFT GRANTED.
7. DISCIPLINARY PROCEEDINGS (Atlantic City) - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
8. AUTOMATIC SUSPENSION (Riverside) - SELLING ALCOHOLIC BEVERAGES TO MINORS - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY FOR 10 DAYS - APPLICATION TO LIFT GRANTED.
9. ACTIVITY REPORT FOR MAY 1955.
10. DISCIPLINARY PROCEEDINGS (Middletown) - FAILURE TO FILE NOTICE OF CHANGES IN FACTS SET FORTH IN APPLICATION, IN VIOLATION OF R.S. 33:1-34 - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - BRAWL - CHARGE ALLEGING INTOXICATED EMPLOYEE ON LICENSED PREMISES DISMISSED - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO FILE APPLICATION TO LIFT IF ILLEGAL SITUATION CORRECTED AND 35 DAYS EXPIRED FROM DATE OF SUSPENSION.

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

BULLETIN 1070

JUNE 23, 1955.

1. APPELLATE DECISIONS - DUCA v. NATIONAL PARK.

NICK J. DUCA,)
Appellant,)
v.) On Appeal
BOROUGH COUNCIL OF THE) CONCLUSIONS AND ORDER
BOROUGH OF NATIONAL PARK,)
Respondent.)
-----)

William T. Cahill, Esq., and Joseph Mennite, Esq., Attorneys
for Appellant.

William B. Kramer, Esq., Attorney for Respondent.

Alvin E. Granite, Esq., and Carlton W. Rowand, Esq., Attorneys
for Objectors.

BY THE DIRECTOR:

This is an appeal from the action of respondent which resulted in a denial of appellant's application to transfer his license C-4 from 26 River Road to premises at Second Street and Columbia Boulevard, National Park. The Mayor and Councilmen of the Borough were also named as respondents in the Notice and Petition of Appeal but they are neither necessary nor proper parties to the appeal and I have amended the pleadings accordingly.

The pleadings herein admit that on February 28, 1955, a resolution to approve the said transfer was read to the Mayor and members of the Borough Council; that, upon a roll call, three Councilmen voted in favor of the transfer, three Councilmen voted to deny the transfer, and the Mayor of the Borough declined to vote. Under substantially similar circumstances it has been held that the action of the local issuing authority resulted in a denial of appellant's application. Spanier v. Denville, Bulletin 200, Item 12; Lysaght v. Denville, Bulletin 233, Item 6.

The Petition of Appeal alleges that the action of respondent in failing to grant the transfer was arbitrary, capricious and contrary to law. The answer filed herein neither admits nor denies said allegation but leaves appellant to his proof.

At the hearing held herein Nick Duca testified that he has held a plenary retail consumption license for the past five or six years at 26 River Road which is located in "one of the furthest ends of the town", along the Delaware River directly across from the Philadelphia Navy Yard. He further testified that in July 1954 he purchased from the Borough the plot of land at Second Street and Columbia Boulevard; erected thereon a building which cost approximately \$24,000 and thereafter applied to the Borough Council for a transfer of his license to said building. A photograph indicates that it is

a substantial two-story building with living quarters above. Appellant testified that he and his family now occupy said living quarters and that the new building is about three hundred feet from the River Road premises. It was stipulated that there is no zoning ordinance prohibiting the conduct of the licensed business at Second Street and Columbia Boulevard.

No testimony was presented by respondent at the hearing held herein.

Four objectors who live within one block of the premises to which transfer is sought appeared and testified at the hearing held herein. They allege that the new premises are about one thousand feet from the old premises; that the area is primarily residential; that the operation of licensed premises at the new location will be dangerous to children because of increased traffic, and that they are fearful that disturbances will occur at the licensed premises. Seven other objectors (three of whom reside within one block of said premises) also appeared and it was stipulated that, if called to testify, their testimony would be substantially the same. It also appears that a petition containing about seventy-five names of persons objecting to the transfer was presented to the Borough Council. On the other hand, four persons who live within one block of the premises to which transfer is sought appeared herein on behalf of appellant and testified that they had no objection to the transfer. Eighteen other persons (six of whom reside within one block of said premises) also appeared and it was stipulated that their testimony would be substantially the same.

Considering the various objections, I find that, irrespective of the distance between the old and new premises, the transfer of the license will not result in an undue concentration of licenses because the nearest place licensed for consumption will still be over two thousand feet from the new premises. As to the character of the neighborhood, it appears that, while there are numerous residences in the vicinity of Second Street and Columbia Boulevard, there are also two or three stores and a bus line terminates at or near said corner. There is little, if any, evidence concerning the alleged traffic hazard. As to disturbances, the record shows that between December 1952 and December 1954 seventeen complaints were received by the police as to disturbances in or near 26 River Road. However, only two complaints concerned disturbances in appellant's premises and both of these complaints were signed by appellant. No disciplinary proceedings have ever been brought against appellant. These facts are not sufficient to warrant a denial of the transfer. Cf. Kupay v. Passaic, Bulletin 803, Item 9. At the hearing herein appellant testified that his new premises are sound-proof. If there are disturbances at the new premises, action may be taken by the local issuing authority to suspend or revoke or refuse to renew appellant's license.

Objectors also allege that, in deeds affecting the new premises, there are restrictive covenants concerning the use of the property. However, restrictive covenants are not properly the concern of license issuing authorities but are cognizable only by civil courts. Methodist Episcopal Church v. Verona, Bulletin 101, Item 5; Thompson v. Westville, et al., Bulletin 729, Item 1.

After reviewing all the evidence I conclude that the action of respondent was erroneous and must be reversed. O'Bertz v. Perth Amboy, Bulletin 1011, Item 1; Pistilli v. Bernardsville, Bulletin 1030, Item 2.

Accordingly, it is, on this 6th day of June, 1955,

ORDERED that the action of respondent in failing to grant appellant's application to transfer his license is hereby reversed, and respondent is directed to transfer the license in accordance with the application made by appellant.

William Howe Davis,
Director.

2. APPELLATE DECISIONS - BRIGANTINE BEACH HOTEL CORP. v. BRIGANTINE - AMENDED ORDER.

Brigantine Beach Hotel Corp.,)
t/a Brigantine Hotel,)
)
Appellant,)
v.)
Board of Commissioners of the)
City of Brigantine,)
Respondent.)

On Appeal
AMENDED ORDER

BY THE DIRECTOR:

On May 16, 1955, I entered Conclusions and Order herein affirming the action of respondent and restoring the thirty-five-day balance of the suspension imposed by respondent to commence at 7 a.m. May 23, 1955, and to terminate at 7 a.m. June 27, 1955. See Bulletin 1068, Item 1.

It appears from a petition filed herein that, prior to the entry of the aforesaid Conclusions and Order, arrangements had been completed for an affair described as a "Miss Brigantine Ball" to be held on appellant's premises by the Brigantine Lions Club on Saturday, June 4, 1955; that the affair has been given publicity throughout Atlantic County at a great expense to the Club, and that the Club will suffer a severe hardship if the affair is not held as scheduled. The petition requests that the suspension be lifted for one day and that the extra day be added to the original suspension.

It sufficiently appearing that many members of the general public will suffer hardship because of the suspension in accordance with the terms of the original order, and no cause appearing to the contrary,

It is, on this 26th day of May, 1955,

ORDERED that the suspension of thirty-five days, which has been in effect since 7 a.m. May 23, 1955, shall continue in effect until 7 a.m. June 4, 1955; that thereafter said suspension shall be lifted until 7 a.m. June 5, 1955, when it shall again become effective and continue in effect until 7 a.m. June 28, 1955.

William Howe Davis,
Director.

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JAMES W. CAVANAUGH and JOHN J. HRASNA, t/a Hotel New Windsor, 201 Fourth Avenue, Belmar, New Jersey,)

CONCLUSIONS

AND

ORDER

Holders of Plenary Retail Consumption License C-10, issued by the Board of Commissioners of the Borough of Belmar.)

James W. Cavanaugh and John J. Hrasna, Defendant-licensees, Pro se. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold, served and delivered and allowed, permitted and suffered the sale to and consumption of alcoholic beverages on their licensed premises by two minors, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that, as a result of information received from the Belmar Police Department, ABC agents obtained written statements from John --- (age 18) and Paul --- (age 20). In his statement John says that they entered defendants' licensed premises on Sunday, March 20, 1955, at about 4 p.m., and remained there about three hours; that during their visit each minor "had over fifteen glasses of beer" which were purchased from and served by a bartender who did not question either of them as to age. In his statement Paul substantially corroborates the statement made by John except that he alleges that each of them was "served with about twenty or twenty-five glasses of beer." On April 16, 1955, both minors accompanied the ABC agents to defendants' licensed premises, at which time they identified the premises as the place in which they were served, and Daniel Hayes, a bartender, as the person who served them. At that time the bartender verbally denied that he had sold alcoholic beverages at any time to the minors.

Defendants have a prior record. Effective July 27, 1953, the then Director suspended their license for a period of two days after they had pleaded non vult to a charge of permitting mis-labeled beer taps on their licensed premises. Re Cavanaugh & Hrasna, Bulletin 979, Item 8. Taking into consideration the large number of drinks served to the minors and the prior dissimilar violation, I shall suspend defendants' license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Cf. Re New Glass Bar, Inc., Bulletin 922, Item 4.

Accordingly, it is, on this 26th day of May 1955,

ORDERED that Plenary Retail Consumption License C-10, issued by the Board of Commissioners of the Borough of Belmar to James W. Cavanaugh and John J. Hrasna, t/a Hotel New Windsor, 201 Fourth Avenue, Belmar, be and the same is hereby suspended for a period of ten (10) days commencing at 2:00 a.m., June 6, 1955, and terminating at 2:00 a.m., June 16, 1955.

William Howe Davis,
Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LENI R. CAPRIOTTI, t/a Arch Cafe, 200 Arch Street & 6 North 2nd Street, Camden, New Jersey,)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-182, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

ORDER

Frank M. Lario, Esq., Attorney for Defendant-licensee. Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that during prohibited hours he sold an alcoholic beverage in an original container for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that at 10:55 p.m., April 5, 1955, ABC agents who were in defendant's licensed premises, purchased from the bartender therein a pint of whiskey for off-premises consumption. The agents left with the merchandise and shortly thereafter re-entered and identified themselves to the bartender who verbally admitted the prohibited sale.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of fifteen days. Re DeLorenzo, Bulletin 1060, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 26th day of May 1955,

ORDERED that Plenary Retail Consumption License C-182, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Leni R. Capriotti, t/a Arch Cafe, 200 Arch Street & 6 North 2nd Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 7:00 a.m., June 6, 1955 and terminating at 7:00 a.m., June 16, 1955.

William. Howe Davis, Director.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MIKE THURZ, JR., t/a Mike's, 258 Johnston Avenue, Jersey City, N. J.,)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-431, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

ORDER

Ezra L. Nolan, Esq., Attorney for Defendant-licensee. Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On Monday evening, April 25, 1955, at about 11:25 P. M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., six 12-ounce cans of Krueger beer at retail in their original containers for consumption off the licensed premises; in violation of Rule 1 of State Regulations No. 38."

The file herein discloses that ABC agents entered defendant's licensed premises on April 25, 1955 at about 10 p.m. The bartender on duty was the licensee. At about 11:25 p.m., after the agents observed an apparent sale of beer to a patron for off-premises consumption, one of the agents asked the licensee for six cans of beer to take out. The licensee placed a bag containing a cardboard carry pack with six cans of Krueger beer on the bar in front of the agent, and received \$1.10 in payment from the agent. The agents then left the premises with the beer and returned immediately. The licensee had temporarily left the premises, but returned within a short time, and the agents identified themselves.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days. Re Pawlowski's Tavern, Inc., Bulletin 1055, Item 5. Five days will be remitted for the plea entered herein leaving a net suspension of ten days.

Accordingly, it is, on this 31st day of May 1955,

ORDERED that Plenary Retail Consumption License C-431, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Mike Thurz, Jr., t/a Mike's, 258 Johnston Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days commencing at 2:00 a.m. June 11, 1955 and terminating at 2:00 a.m. June 21, 1955.

William Howe Davis, Director

6. DISCIPLINARY PROCEEDINGS - LICENSE PREVIOUSLY SUSPENDED BY DIRECTOR - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against)

MARIE PONE & DOMINIC J. PONE, t/a Hubby's Inn, Kasonbey's Lane & Spotswood Road, Monroe Township, PO Jamesburg, New Jersey,)

On Petition

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Monroe (Middlesex County); transferred to)

O R D E R

CHARLES R. TOLENO,)

for the same premises.)

Charles R. Toleno, Petitioner, Pro se.

BY THE DIRECTOR:

On March 22, 1955, I suspended the license held by Marie Pone and Dominic J. Pone for a period of ninety days commencing at 3 a.m. March 28, 1955, and terminating at 3 a.m. June 26, 1955. In the Conclusions and Order I suggested that the licensees would be well advised to seek a bona fide purchaser for their licensed business. Bulletin 1058, Item 10.

The petition of Charles R. Toleno, received by me on May 20, 1955, recites that he has agreed to purchase the business in question for a substantial sum of money; that he has applied to the local issuing authority for a transfer of the license; that he has been employed as a bartender at other licensed premises for the past nine years; that he has a wife and three small children to support. His petition requests that the suspension heretofore imposed be lifted if and when the license is transferred to petitioner. The local issuing authority was immediately notified that said request had been made to me by petitioner. Thereafter, as appears from a certified copy of a resolution adopted by said Township Committee on May 27, 1955, the pending application for the transfer of the license was granted (necessarily subject to the suspension) and the Township Clerk was authorized to "transfer on the license certificate."

The suspension heretofore imposed has now been in effect for more than sixty-five days. Under all the circumstances, I shall grant the requested relief.

Accordingly, it is, on this 1st day of June, 1955,

ORDERED that the suspension heretofore imposed herein be and the same is hereby lifted, effective as soon as the transfer is endorsed by the Township Clerk on the face of the license certificate.

William Howe Davis,
Director

7. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SARA WEINTROB,)
 t/a Harry's Bar,)
 1225-1227 Baltic Avenue,)
 Atlantic City, New Jersey,)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-29, issued by the Board of Commissioners of the City of Atlantic City.)
 -----)

ORDER

Sara Weintrob, Defendant-licensee, Pro se.
 Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she sold an alcoholic beverage at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that, pursuant to a complaint that defendant was selling pints of Haller's County Fair Bourbon Whiskey below the minimum resale price, an ABC agent entered defendant's licensed premises on May 14, 1955, at about 8:40 p.m. The agent observed a price tag of \$2.77 on a pint bottle of the item in question, which was displayed on a shelf. The agent then purchased from Herman Smith, a clerk employed by defendant, a pint bottle of Haller's County Fair Bourbon Whiskey for \$2.77, plus the city tax. He then notified another ABC agent who had remained outside and, when the other agent entered, both agents identified themselves to the Clerk. The minimum resale price effective April 1, 1955, of the item in question was \$3.10. Defendant alleges that the violation was due to a mistake in price-marking various Haller items but that cannot be accepted as an excuse. Re Grant Lunch Corp., Bulletin 517, Item 3.

Defendant has no prior record. I shall suspend defendant's license for the minimum period of ten days. Re Weisbrot, Bulletin 1052, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 6th day of June 1955,

ORDERED that plenary retail consumption license C-29, issued by the Board of Commissioners of the City of Atlantic City to Sara Weintrob, t/a Harry's Bar, for premises 1225-1227 Baltic Avenue, Atlantic City, be and the same is hereby suspended for five (5) days, commencing at 7 a.m. June 13, 1955, and terminating at 7 a.m. June 18, 1955.

William Howe Davis,
 Director.

8. AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY FOR 10 DAYS - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)

JOHN STETZ,)
t/a White Eagle Tavern,)
St. Mihiel Drive & Chester Avenue,)
Riverside, New Jersey,)

On Petition

To Lift the Automatic Suspension of)
Plenary Retail Consumption License)
C-2, issued by the Township Committee)
of the Township of Riverside.)

O R D E R

Christopher N. Peditto, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from a petition filed herein that on May 19, 1955, petitioner was convicted in the Burlington County Court on a charge of selling an alcoholic beverage to a minor in violation of R.S. 33:1-77, as a result of which he was fined the sum of \$200. Said conviction resulted in the automatic suspension for the balance of its term of the license held by petitioner. R.S. 33:1-31.1. Petitioner's license certificate was picked up by ABC agents on June 2, 1955, and no alcoholic beverage activity has been conducted under said license since that time.

It further appears from the petition and from the records of this Division that, in disciplinary proceedings instituted by the Township Committee of the Township of Riverside, petitioner pleaded non vult to a charge of selling an alcoholic beverage to a seventeen-year-old minor and that, as a result thereof, the Township Committee suspended his license for a period of ten days commencing at 6 a.m. May 19, 1955.

The conviction in the criminal proceedings and the charge in the disciplinary proceedings were based upon the same facts. Since the suspension imposed by the Township Committee in the disciplinary proceedings appears to be adequate, the petitioner's request for the lifting of the automatic suspension of his license will be granted.

Accordingly, it is, on this 3rd day of June, 1955,

ORDERED that the automatic suspension of License C-2 held by John Stetz, t/a White Eagle Tavern, for premises at St. Mihiel Drive and Chester Avenue, Riverside, be and the same is hereby lifted and said license is restored to full force and operation, effective immediately.

William Howe Davis,
Director.

ACTIVITY REPORT FOR MAY 1955

ARRESTS:		
Total number of persons arrested	-	32
Licensees and employees	- 7	
Bootleggers	- 25	
SEIZURES:		
Motor vehicles - cars	-	4
Stills - over 50 gallons	-	1
- 50 gallons or under	-	3
Mash - gallons	-	285.00
Distilled alcoholic beverages - gallons	-	172.49
Wine - gallons	-	.50
Brewed malt alcoholic beverages - gallons	-	46.00
RETAIL LICENSEES:		
Premises inspected	-	1,048
Premises where alcoholic beverages were gauged	-	700
Bottles gauged	-	15,094
Premises where violations were found	-	69
Violations found	-	83
Type of violations found:		
Unqualified employees	- 27	Probable front - 5
Disposal permit necessary	- 9	Reg. #38 sign not posted - 3
Other mercantile business	- 6	Prohibited signs - 1
		Other violations - 32
STATE LICENSEES:		
Premises inspected	-	6
License applications investigated	-	13
COMPLAINTS:		
Complaints assigned for investigation	-	416
Investigations completed	-	383
Investigations pending	-	145
LABORATORY:		
Analyses made	-	120
Refills from licensed premises - bottles	-	1
Bottles from unlicensed premises	-	20
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made	-	33
Persons fingerprinted for non-criminal purposes	-	226
Identification contacts made with other enforcement agencies	-	199
Motor vehicle identifications via N. J. State Police teletype	-	2
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-	12
Violations involved:		
Sale during prohibited hours	- 7	Permitting bookmaking on premises - 1
Sale to minors	- 2	Failure to afford view into premises during prohibited hours - 1
Sale to non-members by club	- 2	
Permitting gambling (cards) on premises	- 1	
Cases instituted at Division	-	20
Violations involved:		
Sale to minors	- 7	Employing criminally disqualified person - 1
Sale during prohibited hours	- 6	Sale below minimum resale price - 1
Possessing illicit liquor	- 2	Permitting lottery (numbers) - 1
Unauthorized transportation	- 1	Failure to afford view into premises during prohibited hours - 1
Sale outside scope of license	- 1	Storage off licensed premises - 1
Fraud and front	- 1	Permitting prostitutes on premises - 1
Failure to file notice of change in application	- 1	Conducting business as a nuisance - 1
Cases brought by municipalities on own initiative and reported to Division	-	10
Violations involved:		
Sale to minors	- 6	Failure to afford view into premises during prohibited hours - 1
Sale during prohibited hours	- 2	Permitting gambling (cards) - 1
Permitting lottery (sweepstakes)	- 1	Permitting brawl on premises - 1
Permitting bookmaking on premises	- 1	
Employing unqualified persons	- 1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-	46
Appeals	- 8	Seizures - 7
Disciplinary proceedings	- 25	Tax revocations - 1
Eligibility	- 4	Applications for license - 1
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-	2,571
Licensees	- 6	Social affair permits - 457
Employment permits	- 270	Miscellaneous " - 339
Solicitors' "	- 46	Transportation insignia - 209
Disposal "	- 94	Transportation certificates - 1150

June 3, 1955

WILLIAM HOWE DAVIS
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE NOTICE OF CHANGES IN FACTS SET FORTH IN APPLICATION, IN VIOLATION OF R.S. 33: 1-34 - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - BRAWL - CHARGE ALLEGING INTOXICATED EMPLOYEE ON LICENSED PREMISES DISMISSED - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO FILE APPLICATION TO LIFT IF ILLEGAL SITUATION CORRECTED AND 35 DAYS EXPIRED FROM DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against ALFRED HILFIKER, JR., t/a Sportsman's Bar, 83 Park Avenue, Middletown Township, PO Port Monmouth, N. J., Holder of Plenary Retail Consumption License C-17, issued by the Township Committee of the Township of Middletown.

CONCLUSIONS AND ORDER

Richard E. Burke, Esq., Attorney for Defendant-licensee. William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. You failed to file with the Middletown Township Committee, within 10 days after the occurrence thereof, written notice of changes in facts set forth in answer to Questions 30 and 31 of your license application dated June 2, 1954, upon which you obtained your current plenary retail consumption license, such changes being that on or about September 17, 1954 you entered into an agreement with Howard Carman whereby he acquired an interest in your licensed business as a real and beneficial owner thereof and by which you agreed to permit him to retain all the profits from the business after payment of rent and other operating expenses; your failure to file such notice being in violation of R.S. 33:1-34.

"2. From on or about September 17, 1954 until the present time, you knowingly aided and abetted Howard Carman to exercise, contrary to R.S. 33:1-26, the rights and privileges of your plenary retail consumption license; thereby yourself violating R.S. 33:1-52."

Defendant pleaded not guilty to the following charges:

"3. On or about November 9, 1954 you allowed, permitted and suffered in and upon the licensed premises a brawl, act of violence, disturbance and unnecessary noise, in violation of Rule 5 of State Regulations No. 20.

"4. On the last mentioned date, you allowed, permitted and suffered an actually or apparently intoxicated person to work in and upon the licensed premises, in violation of Rule 24 of State Regulations No. 20."

The file herein discloses as to charges (1) and (2) that on September 17, 1954, the defendant, and his father Alfred J. Hilfiker, the owner of the building in which the licensed premises are located, entered into a written agreement with Howard

Carman whereby the licensed premises, including the tavern, were leased to the latter for a period of one year at a monthly rental of \$175. for the first six months, and \$200. for the balance of the term. The parties simultaneously entered into a verbal agreement set forth in their signed sworn statements, that Howard Carman was to retain all the profits of the licensed business and was to conduct the same as his own enterprise. Thereafter, the receipts of the business were deposited in Howard Carman's bank account and all bills incurred in the business were paid by him. The defendant is employed elsewhere and is not active in the licensed business.

The lease was drawn by Hilfiker's attorney, who represented that he neglected to notify the local issuing authority of the changes in the conduct of defendant's licensed business within 10 days after they occurred as required by R.S. 33:1-34, although instructed to do so by the defendant.

The license was "farmed out" to Howard Carman, which is a serious violation of the law, even though all parties herein apparently are and have been duly qualified to hold a license in New Jersey. The minimum penalty for this offense is suspension of the license for twenty days. Re Marple, Bulletin 1006, Item 5.

The basis for charges (3) and (4) revolve about what transpired on the licensed premises on November 9, 1954. Oral argument was had before me, at which time the defendant's attorney urged dismissal of these charges on the grounds hereinafter discussed.

It appears from the evidence presented that Howard Carman and three companions returned to the licensed premises from a hunting trip in Maine on the afternoon of the day in question. They left Maine on the previous evening and did not stop anywhere overnight. Howard Carman, unshaven, wearing what is described as red hunting pants, remained in the tavern from the early afternoon hours until about 10 p.m., drinking beer from time to time. Peter Ramirez and Joseph Aldridge entered the tavern about 9 or 9:30 p.m. Ramirez, who resides next door to the licensed premises, had complained to the local police from time to time concerning cars parked on his driveway by patrons of the tavern. It is claimed that Aldridge had previously been involved in some unpleasantness at the licensed premises. Nevertheless, William R. Richardson, a friend of Carman's, who accompanied him on the hunting trip, and who was a frequent visitor at the tavern, testified that he never heard Carman tell either Ramirez or Aldridge to stay out of the tavern nor heard any previous altercation between them.

The ensuing sequence of events after Ramirez and Aldridge entered the tavern, as testified to by Aldridge, is that Howard Carman was on duty as bartender dressed in red hunting pants, and that Carman did not appear to be sober because when Aldridge walked in and asked for a glass of beer Carman took the glass, walked to the tap and stood about twenty minutes fooling around with the tap before he drew a glass of beer for Aldridge. He could not understand Carman's speech and that while Carman was not intoxicated to the degree that he could not stand up, he was intoxicated. Aldridge and Ramirez were playing shuffleboard after they had been served with beer. They left the game and went to the bar to drink their beer. Without

any conversation, argument or discussion between them, Carman removed his shirt, exclaimed, "Watch me get rid of a couple of niggers," came from behind the bar, grabbed Aldridge by the back of his neck and almost pulled him off the stool. Aldridge broke a glass to use in defense. Ramirez and other persons came to Aldridge's aid and other patrons at the bar took Carman outside through the front door. Aldridge and Ramirez remained seated at the bar. Various patrons, who had been in the tavern and had gone outside, came back and said that Carman had a gun and threatened to use it. Whereupon, Aldridge and Ramirez left the tavern by the back door and went to Ramirez's home. This incident was called to the attention of the local police the same night and Aldridge reported the matter to the Division of Alcoholic Beverage Control on the following day.

Peter Ramirez testified that Carman appeared to him to be intoxicated because he could not stand up and nearly fell down when serving beer to him; that he did not talk right. He ascribes the same remarks and action by Carman, as described by Aldridge; that when Carman grabbed Aldridge, Ramirez asked Carman what he was doing and Carman replied, "I am going to kill you too." Two men took Carman outside. Ramirez kept on drinking his beer until somebody ran into the tavern and exclaimed, "He got gun." Ramirez looked through the mirror, saw somebody trying to take a gun out of Carman's hand, whereupon Ramirez and Aldridge ran out the back door and went home.

Rose Ramirez, wife of Peter Ramirez, testified that she was in her home when she heard a commotion with men shouting and saw Carman run towards his car shouting, "I'll shoot, I'll shoot, I'll kill him." She observed men who were in a group with Carman take a gun away from Carman, at the same time shouting he has a gun, call the police. Shortly thereafter, Ramirez came into the house. The shouting continued in the tavern. She called local police. She observed Carman when he arrived there in the afternoon and in the evening and did not think he was sober at either time because he was flushed and seemed unsteady on his feet.

Elsie Kleiber, a neighbor, who lives diagonally across from the tavern, testified that on the evening in question she heard a commotion and a cry for help; that when she went to a point of observation she saw a crowd outside the tavern and heard Carman exclaim, "I'll get you, you son of a so and so." Men in the group were holding him back, he was staggering. After he entered the tavern the shouting and commotion continued therein.

The above account related by the witnesses for the Division clearly indicates that Carman was the aggressor. However, he contends that this is not what occurred; that the complaint against him is unfounded but arises out of the enmity between Ramirez, Aldridge and himself, and additionally, because on November 10, Carman caused a search warrant to be issued for Ramirez's and Aldridge's residence on the allegation that guns stolen from him were located there. Actually when the search warrant was executed, it revealed there were no guns at either residence. It is significant, however, that Carman gives a different reason for the disturbance, entirely apart from the above, stating that Aldridge broke a glass when Carman instructed the bartender not to serve Aldridge or Ramirez with any more beer.

Various witnesses testified on Carman's behalf giving their version of what they observed.

William R. Richardson says that Carman was sober when he arrived at the tavern on the afternoon in question. Richardson left and came back later at night. He saw Ramirez and Aldridge sitting at the bar drinking; there was no noise, no loud talk nor any argument until he heard Aldridge breaking a beer glass. He saw three men together and it looked like they were going to fight; he came between them. Carman had been drinking, but he would not say that he was drunk. He and another person dragged Carman outside. Carman wanted to swing and fight pretty bad, but they quieted him down after about ten minutes. He is not sure whether Carman was wearing a shirt. Aldridge and Ramirez remained in the tavern.

Paul Kester who says that he was the bartender on duty that night testified that he did not see Carman remove his shirt or make the exclamation attributed to him. Kester said that he served Ramirez and Aldridge with beer and that both men were sober. After he served the beer Carman told him not to serve any more on account of previous disturbances. Aldridge and Ramirez played shuffleboard. In contrast to Richardson's statement, Kester states that Ramirez and Aldridge started to talk to Carman, that an argument ensued and that it was a matter of not more than five minutes after the service of the beer to Ramirez and Aldridge that the scuffle started; that neither Ramirez nor Aldridge attempted to order any more beer. Two other witnesses who testified on Carman's behalf claimed that the first they knew of the matter was when they heard the breaking of glass and observed Carman being removed from the tavern.

Howard Carman testified that he first observed Ramirez and Aldridge that evening after they had beer before them on the bar served by Kester (in a signed sworn statement previously given to ABC agents Carman stated that Vincent Walling was the bartender who had served them the beer). He told Kester, in tones not too loud, with a music machine playing, not to serve them any more beer. He does not know whether they overheard him, nevertheless, he says that Ramirez and Aldridge started arguing with him because of such instructions, although he cannot recall what they said. He did not ask either Ramirez or Aldridge to leave. Aldridge broke the glass and Carman concluded that he was going to "cut me up." Thereupon, Carman left his seat at the bar, advanced toward Aldridge who was seated a few feet away, Aldridge got off his stool, four or five men came between them, and one of the men took away the broken glass from Aldridge. Carman never reached Aldridge who was four or five feet away. Carman was taken out of the tavern where he remained for five or ten minutes. Ramirez and Aldridge remained in the tavern. Carman did not call the police that night or on any previous occasion for any disturbance caused by Ramirez or Aldridge.

Alfred Hilfiker, Jr. testified that he requested Carman to give up the conduct of the tavern because Carman drank too much.

Without attempting to compare and evaluate in detail the points of agreement and of conflict between the versions of the affair given by the witnesses for the Division and by those for the defendant, I am satisfied that the account given by the witnesses for the Division is the correct one. The actions of the parties speak louder than words. Ramirez and Aldridge remained in the tavern drinking beer and fled after they had been warned of further danger. Neither the bartender nor any other person attempted to eject them. Carman was the person forcibly removed, who bellowed and raved for at least ten minutes, restrained from violence by his friends. Nothing can more clearly demonstrate

who was considered the aggressor by the persons there assembled in the licensed premises. A long and tiresome trip followed by a long and tiresome stay in the tavern, influenced by drinks sufficient to affect his judgment, if not sufficient for intoxication, gave rise to a temper to match the color of his hunting pants and resulted in Carman committing an act of violence and disturbance. It matters not that the force supplied by Carman was insufficient to cause serious injury to Aldridge. What matters is that he instigated this commotion and needless violence in the licensed premises, directly contrary to his duty to maintain peace and order therein, since Carman was, as aforesaid, in complete charge and conduct of the licensed business.

I, therefore, find that the preponderance of the evidence establishes that the licensee allowed, permitted and suffered an act of violence and disturbance, in and upon the licensed premises, within the contemplation of the rule. I find defendant guilty as to charge (3).

I find that the evidence presented is not sufficiently definitive to support a finding of fact that Howard Carman worked on the licensed premises, on the occasion in question, while actually or apparently intoxicated. The evidence is slim on both scores -- whether he worked or was intoxicated -- therefore, I shall give the licensee the benefit of the doubt. I therefore find defendant not guilty as to charge (4). Re Vernicek, Bulletin 959, Item 1.

The minimum suspension for the offenses set forth in charges (1) and (2) is twenty days. The minimum suspension for the offense set forth in charge (3) is fifteen days. Re Chi-Chi Club, Inc., Bulletin 827, Item 1. Effective September 10, 1938, the license then held in the name of Alfred Hilfiker, Sr. was suspended for five days by the local issuing authority for sale to a minor. Alfred Hilfiker, Sr. appears to still retain some interest in the licensed business. Since the prior dissimilar record occurred more than ten years last past, it will not be considered in fixing the penalty herein.

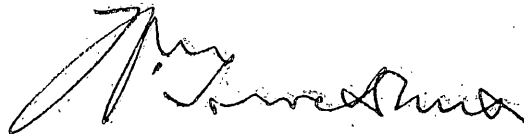
Accordingly, the license will be suspended for a minimum period of thirty-five days. However, because the illegal situation continues to exist, I shall suspend the license for the balance of its term effective immediately. Any license issued in renewal thereof shall be under suspension until the entry of a further order herein. Leave is reserved to defendant or other qualified person to file a petition with me to have the suspension (as it affects the renewed license) lifted upon proof of proper correction. It may be well to point out that such correction, if made, should disclose what interest, if any, Alfred Hilfiker, Sr. then has in the licensed business. No relief will be afforded prior to the expiration of at least thirty-five days from the date upon which the suspension becomes effective.

Accordingly, it is, on this 8th day of June 1955,

ORDERED that Plenary Retail Consumption License C-17, issued by the Township Committee of the Township of Middletown to Alfred Hilfiker, Jr., t/a Sportsman's Bar, 83 Park Avenue, Middletown Township, be and the same is hereby suspended for the balance of its term, effective immediately; and it is further

ORDERED that any license issued in renewal thereof shall be under suspension until the entry of a further order herein; and it is further

ORDERED that, in the event a correction of the illegal situation is effected, leave will be given as aforesaid to make application to the Director for the lifting of the suspension so far as it affects the renewed license but, in any event, no order lifting the suspension will be entered prior to July 13, 1955.



William Howe Davis,
Director.