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

BULLETIN 992 NOVEMBER 30, 1953.

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

BULLETIN 992 NOVEMBER 30, 1953.

1. COURT DECISIONS - MAZZA v. CAVICCHIA - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A 553-52

JOSEPH MAZZA, t/a TRAVELER'S HOTEL & RESTAURANT,
Appellant,
-vs-
DOMINIC A. CAVICCHIA, Director, Division of Alcoholic Beverage Control of New Jersey,
Respondent.

Argued October 13, 1953. Decided November 13, 1953.

Before Judges Eastwood, Jayne and Francis.

Mr. Ralph W. Chandless argued the cause for the Appellant. (Messrs. Chandless, Weller & Kramer, Attorneys.)

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for the respondent. (Mr. Theodore D. Parsons, Attorney General of New Jersey.)

The opinion of the Court was delivered by

FRANCIS, J.

Appellant challenges the validity of an order of the Director of the Division of Alcoholic Beverage Control which suspends his license to sell alcoholic beverages for a period of 180 days. The suspension was predicated on a finding that Mazza "allowed, permitted and suffered lewdness and immoral activity" on his premises in violation of Rule 5 of State Regulations No. 20; also that he "possessed, allowed, permitted and suffered the sale and distribution of prophylactics against venereal disease, and contraceptives and contraceptive devices" thereon in violation of Rule 9 of State Regulations No. 20.

Mazza operated the Traveler's Hotel & Restaurant, a two-story building on the Paterson Plank Road near Secaucus, N. J. The first floor contained a restaurant and a bar; the second floor, the hotel accommodations. Both businesses were conducted by Mazza, and under the application for the beverage license, the entire building constituted the licensed premises.

Without detailing the evidence, ample proof was presented to support the determination that the licensee's employees freely and brazenly rented rooms to the Division's agents for the ostensible purpose of enabling them to engage in illicit sexual intercourse; and further that one of the employees sold them contraceptives to be used in connection therewith.

Mazza denied any knowledge that the rooms were rented or used for such illegal purposes or that contraceptives were sold by his employees. From this assertion the argument is made that unless it appears that the employees, in committing the illegal acts, were acting within the course and scope of their employment, the licensee cannot be found guilty. But the law is otherwise. The responsibility of the licensee is not dependent upon the doctrine of respondeat superior, nor upon his personal knowledge or intent or participation. Indeed, he is not relieved even if the violations were contrary to his express instructions. In re 17 Club, Inc., 26 N. J. Super. 43, 52 (App. Div. 1953); Greenbrier, Inc. v. Hock, 14 N. J. Super. 39, 43 (App. Div. 1951), cert. den. 7 N. J. 581 (1951); In re Gutman, 21 N.J. Super. 579 (App. Div. 1952); In re Schneider, 12 N. J. Super. 449 (App. Div. 1951); Essex Holding Corp. v. Hock, 136 N.J.L. 28 (S. C. 1947); Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408 (S.C. 1943), affd. 130 N.J.L. 554 (E. & A. 1943), cert. den. 320 U.S. 801, 88 L. Ed. 484, 64 S. Ct. 431 (1944).

Appellant contends that error was committed in admitting in evidence certain conversations between his two bartenders and respondent's agents on the night in question relating to the rooms and the nature of their use; also that it was error to admit the signed statement of one of the bartenders who did not appear as a witness. In this connection, it must be kept in mind that as an administrative agency, respondent is not bound by the technical rules of evidence and that the admission of incompetent testimony does not justify a reversal if there is sufficient competent proof in the record to support the determination. N. J. Bell Telephone Co. v. Communications Workers, etc., 5 N. J. 354, 378 (1950); Borgia v. Board of Review, 21 N. J. Super. 462, 466 (App. Div. 1952). Assuming, therefore, but without deciding, that the conversations were inadmissible, and conceding that the written statement was improperly received, our examination of the proofs discloses adequate evidence on which the conclusion of the Director may be based. The final arrangements for the rental of the rooms were made with a waiter who, according to Mazza, was the person entrusted with that responsibility. And there is ample justification for the finding that the waiter knew of the purposed illicit use of the rooms and that he sold the contraceptives to the agents after the rental had been completed.

It appears also that this waiter was paid with bills bearing previously noted serial numbers, that he turned the money over to the bartender, and it was found in Mazza's cash register after the agents disclosed their identity.

Under the circumstances no prejudicial error was committed in receiving the criticized evidence. R. R. 1:5-3(b).

Stress is laid upon certain alleged lack of procedural due process in the conduct and hearing of the matter by the agency. Appellant points out that the basic issue was one of credibility and that the Director, who made the determination, neither saw nor heard the witnesses but reached his conclusion upon examination of a stenographic record compiled by a Hearer designated for that purpose. And reference is made also to the fact that the Director reached his conclusion without an intermediate report or finding by the Hearer and without a brief or oral argument from appellant.

At the outset of a consideration of this problem, cognizance must be taken of the provisions of the Alcoholic Beverage Law, N.J.S.A. 33:1-1, et seq., under which the Director is authorized to make "such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter * * *." Then, after detailing certain subjects which may be covered by such rules and regulations, the section concludes:

"* * * And such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of this chapter." (§ 39)

Section 31 confers upon the Director the power to suspend or revoke a license for violation of rules and regulations promulgated by him. And in connection with the hearing in a suspension or revocation proceeding, the Director may delegate his attorneys and legal assistants to examine under oath, on his behalf, "any and all persons whatsoever * * * ." (§ 35)

The authority given to the Director by these two sections, of course, does not permit the delegation by him of the duty to decide the issue of revocation or suspension; it merely authorizes utilizing the services of one of the specified class of his assistants as a Hearer for purposes of compiling the record. The precise question was considered in Horsman Dolls, Inc. v. Unemployment Compensation Commission, 134 N. J. L. 77, 80, 81 (E. & A. 1945). There, the court said:

"It is contended by the Commission that by virtue of this grant of power under this section of the statute, the Commission has power to refer such matter to a referee, or as the brief describes such role, 'a hearing officer' or 'examiner' or 'moderator' - without power of determination - as a mere compiler of a record - for the purposes of the agency, upon which it is not binding. We concur in this view, pointing out that there is no such office as 'referee' mentioned, nomenclature, however, is not important. But conceding the power to appoint a 'hearer' to 'compile a record', there is not a vestige of authority conferred on the Commission by the statute to invest such appointee with power of decision as plainly was intended by the Commission when the case was referred to Mr. Nowels. The Commission may make and promulgate rules within the power granted it in the statute, supra. Any power of decision invested in or exercised by such hearer, examiner or 'referee' is ultra vires. With regard to a reference of a matter of this kind to a subordinate by the Commission or its executive director, we think the Commission or its executive director may have the aid of assistants in the department. In the case of Morgan v. United States, 298 U. S. 468, the court (at pp. 481, et seq.), passing on the administrative procedure, set out in the Packers and Stockyards Act of 1921 (U. S. C. A., Title 7, § 181-229), where the Secretary of Agriculture is required to make the rate order, held that the official whose duty it is to make the rate must have heard or considered the evidence and the argument of the parties; that it is a duty akin to that of a judge; 'that the one who decides must hear'. The opinion then says:

"'This necessary rule does not preclude practicable administrative procedure in obtaining the aid of assistants in the department. Assistants may prosecute inquiries. Evidence may be taken by an examiner. Evidence thus taken may be sifted and analyzed by competent subordinates. Argument may be oral or written. The requirements are not technical. But there must be a hearing in a substantial sense and to give the substance of a hearing which is for the purpose of making determinations upon evidence, the officer who makes the determinations must consider and

> appraise the evidence which justifies them. That duty undoubtedly may be an onerous one, but the performance of it in a substantial manner is inseparable from the exercise of the important authority conferred. * * * .'
>
> "If the Unemployment Compensation Commission requires the aid of its subordinate in hearing or compiling a record in a matter of the kind under consideration, there is no reason why it should not have such assistance, providing procedure such as is outlined above be followed and the evidence considered and argument heard by the agency which has power of decision - in this instance the Commission or its executive director. A fair and open hearing required by our law will countenance nothing less."

Appellant urges that where the critical issue is one of credibility, the requirements of due process are not served when the one who hears and sees the witnesses neither makes nor has power to make the decision. The objection is not new; it has been offered many times in the field of administrative law and the courts have declared that so long as the one who has the ultimate burden of decision, in fact makes his own independent study of the record and in fact makes the determination of the issue involved, a fair hearing in the sense of due process has been granted. Horsman Dolls, Inc. v. Unemployment Compensation Commission, supra; In re Gutman, supra, p. 581; In re Larsen, 17 N. J. Super. 564 (App. Div. 1952); In re 17 Club, Inc., supra, p. 48; 42 Am. Jur., Public Administrative Law, § 141, p. 484; Gellhorn, Administrative Law, p. 739 (1940). However, Mazza says that this asserted procedural deficiency is brought into sharp focus here because at the close of the hearing, the Hearer simply said:

> "The matter will be submitted to the Director for determination and all parties will be advised."

He points out that no statement was made to the effect that briefs might be filed or that oral argument might be had before the Director, or that the Hearer would present an intermediate report of his conclusions to the Director.

At the oral argument on this appeal, counsel for respondent informed us that under the agency practice as a matter of course, leave is granted by the Director to file briefs or for oral argument, but that there is no officially and publicly promulgated general rule to that effect. We were told also that the Hearer in fact files a report of his conclusions with the Director, although there is no official and public rule which requires it, and no notice of the submission of the report is given to the affected licensee.

We do not think this deficiency, of itself, marks a departure from the strictures of the constitution, especially where, as here, the exhaustive memorandum of the Director notes that he "examined and reexamined the entire record" and became "convinced that the violations were committed as charged * * * ." However, it must be kept in mind that under the Alcoholic Beverage Law, the Director has concentrated in him the functions of investigating, prosecuting and judging the guilt of alleged violators of the enactment and of his own rules and regulations. This trilateral function calls for a deep understanding of and a real sensitivity for the right of an accused to a full and fair hearing. In re Larsen, supra. Accordingly we think that where there is no public rule which gives notice that briefs may be filed and that oral argument may be had before the Director, or any rule, public or intra-agency, which requires the Hearer to make

such announcement at the close of the taking of the testimony, due caution must be exercised by the courts in reviewing the factual findings of the Director - particularly where the issue turns on credibility.

This does not mean that the courts should undertake generally to exercise the authority expressed in R. R. 1:5-3; 2:5 to make an independent determination of the facts. The authority conferred thereby should be marked by the rarity and caution of its exercise, for, as the Director contends, if we undertook to review the weight of the evidence in these cases, his agency would be reduced to the status of a mere conduit for the transmission of evidence to the courts. In this connection, it has been suggested that since these rules require an appellate court, in making independent findings, to give "due regard to the opportunity of the trial court to judge the credibility of the witnesses", the Supreme Court has recognized that the conclusion of a trial court is entitled to more weight when he has seen and heard the witnesses than when such opportunity has not been afforded. So it is said that a more compelling reason for restudy of the weight of the evidence exists here because the Director neither heard nor saw the witnesses. Despite this lack, which is not an uncommon one in modern administrative procedure, the test, which has judicial sanction for general application to the review of an administrative tribunal's decision, is whether the factual finding, out of which it arose, is supported by substantial evidence. N. J. Bell Telephone Co. v. Communications Workers, etc., supra; In re Larsen, supra. In our judgment, this test is a sound one and the caution above referred to does not mean a departure therefrom. It signifies the care that will be exercised by the courts in determining whether the record provides substantial evidence of the licensee's guilt.

In the review of the record, we have been guided by the considerations outlined and, as already indicated, have found the conclusion of the Director to be supported by substantial evidence.

Accordingly, the order suspending appellant's license is affirmed.

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2. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO APPLY FOR THE LIFTING OF SAID SUSPENSION AFTER 30 DAYS IF SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against

STACIA JEDRZEJEWSKI
209 New Brunswick Avenue
Woodbridge Township
P.O. Hopelawn, N. J.,

Holder of Plenary Retail Consumption License C-17 (for the 1952-53 and 1953-54 licensing years), issued by the Township Committee of the Township of Woodbridge.

CONCLUSIONS AND ORDER

Bernard W. Vogel, Esq., by Walter Waverczak, Esq., Attorney for Defendant-licensee.

William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"From on or about August 18, 1952 until the present time, you knowingly aided and abetted Stanley Jedrzejewski to exercise, contrary to R. S. 33:1-26, the rights and privileges of your current plenary retail consumption license; thereby yourself violating R. S. 33:1-52."

An ABC agent testified that during the course of an investigation at defendant's licensed premises on December 5, 1952, he interviewed the defendant and Stanislaus Jedrzejewski, her husband. The latter made a sworn statement, which was admitted in evidence without objection (Exhibit S-1), wherein Stanislaus Jedrzejewski stated that he and the defendant held the liquor license as partners but, because he was charged with the commission of a crime, he had formally requested the local issuing authority to remove his name from the license certificate; that, although his name was deleted from the said license certificate, he and defendant conducted the licensed business in the same manner as theretofore; that the defendant was not actively engaged in the business because of her duties at home as a housewife and mother; that she tended bar on occasions when he could not be present for one reason or another, and that he paid most of the bills incurred in the business with checks signed by him. The agent further testified that he again visited defendant's licensed premises on December 10, 1952, at which time the defendant made a sworn statement which was admitted in evidence without objection (Exhibit S-2), wherein she corroborated the facts relative to the status and operation of the licensed business as outlined by Stanislaus Jedrzejewski, her husband.

Both defendant and her husband testified at the hearing herein to the effect that the information given to the ABC agent at the time the statements were made was correct. Defendant testified in addition thereto that, since the investigation, she has assumed exclusively some of the duties that her husband formerly performed.

I am satisfied, based on all of the evidence adduced herein, that the licensed business is still being conducted by defendant and her husband as partners. I find the defendant guilty as charged.

Defendant has no prior adjudicated record. Since it appears that the unlawful situation continues to exist, I have no alternative

except to suspend the license for the balance of its term. It appears from fingerprint returns that Stanislaus Jedrzejewski has not been convicted of any crime but that he was arrested on August 14, 1952 and that, after pleading not guilty in a Magistrate's Court, he was released on bail after being held to await the action of the Grand Jury on a charge of Grand Larceny. It further appears that to date no action has been taken by the Grand Jury. Hence, I shall entertain an application by verified petition to lift the suspension herein imposed if and when the unlawful condition is corrected, but under no circumstances will said suspension be lifted until after thirty days from the effective date hereof. Cf. Re The Glass Bar, Inc., Bulletin 984, Item 4.

Although this proceeding was instituted during the 1952-53 licensing year, it does not abate but remains fully effective against the renewal license for the present 1953-54 licensing year. State Regulations No. 16.

Accordingly, it is, on this 10th day of November, 1953,

ORDERED that Plenary Retail Consumption License C-17, issued for the 1953-54 licensing year by the Township Committee of the Township of Woodbridge to Stacia Jedrzejewski, for premises 209 New New Brunswick Avenue, Woodbridge Township, be and the same is hereby suspended for the balance of the current licensing term, effective at 2:00 a.m. November 17, 1953; and it is further

ORDERED that, in the event a correction is effected, leave be given, as aforesaid, to make application to the State Director of the Division of Alcoholic Beverage Control to lift the suspension after a period of thirty (30) days has elapsed from the effective date of the suspension imposed herein.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - PERMITTING OBSCENE LANGUAGE AND CONDUCT ON LICENSED PREMISES - HOSTESSES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FRANK KARPINSKI, JR.
T/a SCROGGY'S TAVERN
18-20 Essex Street
Passaic, N. J.,

Holder of Plenary Retail Consumption License C-22, issued by the Board of Commissioners of the City of Passaic.

CONCLUSIONS AND ORDER

Frank Karpinski, Jr., Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On October 1, 8 and 10, 1953, you allowed, permitted and suffered foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"2. On October 1, 8 and 10, 1953, you allowed, permitted and suffered Sophie ---, a female employed on your licensed premises to accept beverages at the expense of and as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20."

The file herein discloses that on October 1, 1953, at about 11:00 a.m., two ABC agents entered defendant's premises, at which time a female, who introduced herself as Sophie to the agents, was tending bar. At that time there were four other male customers seated at the bar. During the course of this visit the agents, at Sophie's request, paid for two shots of "Old Mr. Boston Gin" which she poured and consumed. During the course of her conversation with the agents she used filthy and obscene language. The same agents returned to defendant's premises on October 8, 1953, at about 10:35 a.m., and on October 10, 1953, at about 10:00 a.m. On both occasions Sophie --- was tending bar. On both occasions the agents, at Sophie's request, purchased drinks of alcoholic beverages which she poured and consumed. During the course of the visit on October 8 Sophie named five females and told the agents that they could meet these girls at the licensed premises and take them elsewhere for immoral purposes. On neither of these visits were any of these females present on the licensed premises. On October 10, 1953, the agents identified themselves to the bartender and informed her of the foregoing violations.

In attempted mitigation defendant alleges that he was not present when the violations occurred, and that Sophie was not a regular employee but tended bar without compensation on occasions when an emergency occurred. The fact that the licensee did not participate in the violations constitutes no defense to the charges preferred herein. Rule 31 of State Regulations No. 20. The attempted explanation as to temporary employment loses much of its force in view of the fact that the female in question was acting as bartender on the three occasions when the agents visited defendant's premises.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of ten days because of the violation set forth in charge 1 (Re Lukas, Bulletin 963, Item 4) and for an additional period of twenty days because of the violation set forth in charge 2 (Re Goldberg, Bulletin 962, Item 4). Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 9th day of November, 1953,

ORDERED that Plenary Retail Consumption License C-22, issued by the Board of Commissioners of the City of Passaic to Frank Karpinski, Jr., t/a Scroggy's Tavern, for premises 18-20 Essex Street, Passaic, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. November 16, 1953, and terminating at 3:00 a.m. December 11, 1953.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR SIMILAR VIOLATIONS WHILE LICENSE HELD BY DEFENDANT'S WIFE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SAMUEL CHERLIN
233 Broad Street
Elizabeth 3, N. J.,

Holder of Plenary Retail Distribution License D-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.

CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold an alcoholic beverage at less than its 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 two ABC agents entered defendant's licensed premises on the afternoon of October 3, 1953, to investigate a complaint that defendant was selling "Golden Wedding" whiskey below the listed minimum price, as alleged in the charge. One of the agents asked defendant, who was behind the counter, for two quarts of "Golden Wedding." Defendant placed two quart bottles of "Golden Wedding" whiskey on the counter and quoted the price as $4.66 per quart, the correct price as listed in the Minimum Consumer Resale Price List effective October 1, 1953 and then in effect. The agent then told defendant that a "friend" had told him that he could buy it cheaper at defendant's premises. Defendant asked the identity of the "friend" and, after some further conversation with the agent, made some calculations on a small pad and agreed to sell the whiskey for $4.20 per quart, or a total of $8.40. He refused to reduce the price further, adding "I'm giving you 10% off the way it is." The agent paid defendant the $8.40, which defendant rang up on the cash register. Thereupon, defendant placed the two quart bottles of whiskey in a paper bag with a cardboard separator and handed the package to the agent. The agents identified themselves to defendant, who refused to make a written statement or to initial the bottles, the paper bag or the cash register tape. However, he admitted orally that he had been selling below the minimum consumer resale price for approximately two weeks because some of his customers had told him that they could buy alcoholic beverages cheaper elsewhere.

Defendant has no prior adjudicated record. However, he obtained the license on July 30, 1948, by transfer from Sarah Cherlin, his wife. While the license was held by his said wife, defendant was the manager of the licensed premises and, during that time, the said license was suspended three times by the then State Commissioner for violations similar to the one here charged, as follows: for five days, effective January 12, 1942 (Re Cherlin, Bulletin 490, Item 3); for fifteen days, effective November 9, 1942 (Re Cherlin, Bulletin 537, Item 10) and for thirty days, effective June 1, 1948 (Re Cherlin, Bulletin 804, Item 7). In this connection two further facts are significant. The sale which resulted in the

fifteen-day suspension (Re Cherlin, Bulletin 537, Item 10) was personally made by defendant. Second, the license was transferred to defendant one week after the expiration of the thirty-day suspension (Re Cherlin, Bulletin 804, Item 7). It is not inconceivable that the ever-increasing severity of the penalties imposed for the repeated "cut-rate" sales may have occasioned the transfer.

Defendant, in a letter requesting postponement of the penalty until after January 1, 1954, for the alleged reason that an earlier penalty would cause "serious financial loss," asserts that at no time was it his intention to violate the law and assures me that he has "learned his lesson" and that I will "have no trouble" with him in the future. Despite his protestations the record compels the observation that "actions speak louder than words."

The minimum suspension for an unaggravated first offense of this kind is ten days. Re Zotto, Bulletin 968, Item 9. However, because of the aggravating circumstances hereinabove referred to, I shall suspend defendant's license for twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days. I see no reason for deferring the imposition of the suspension until after January 1, 1954. The hardship, if any, which may result from a suspension in usual course will have been self-inflicted. Defendant should have thought of that before he committed the violation.

Accordingly, it is, on this 9th day of November, 1953,

ORDERED that Plenary Retail Distribution License D-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Samuel Cherlin, 233 Broad Street, Elizabeth, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m. November 16, 1953, and terminating at 9:00 a.m. December 1, 1953.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - PERMITTING FEMALES TO BE SERVED ALCOHOLIC BEVERAGES AT A PUBLIC BAR AND SELLING ALCOHOLIC BEVERAGES TO FEMALE OVER PUBLIC BAR IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against	)
DOMINCELE FARRELL 31 Brunswick Street Jersey City 2, N. J.,	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-68, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	)

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

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On August 6, 9 and 19, 1953, you permitted females to be served alcoholic beverages at a public bar and sold alcoholic beverages over said bar to females to be consumed by them upon your licensed premises; in violation of Section 6 of an ordinance adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950."

The pertinent portion of Section 6 of the indicated ordinance (Ordinance No. K-1299) provides:

> "No female shall be permitted to be served at a public bar nor shall any alcoholic beverages be sold over said bar to and for any female to be consumed upon the premises or for consumption off the premises except in original containers, provided, however, that this shall not limit the right to sell alcoholic beverages at tables to females over the age of twenty-one years in restaurants, hotels or clubs duly licensed pursuant to these rules and regulations ...."

Section 6 was approved by the State Director on July 12, 1950.

The file herein discloses that defendant's licensed premises consist of a large room containing a public bar and four tables. While there is a stove and a refrigerator in a partitioned section of the room, there are no menus or window signs advertising that the premises are conducted as a restaurant. When ABC agents tried to order something to eat, they were told that only hamburgers and boiled eggs were available.

On August 6, 1953, at about 12:15 p.m., two ABC agents observed a female seated at one of the tables drinking beer. On August 9, 1953, at about 2:05 p.m., one of the aforesaid agents observed two women seated at separate tables consuming alcoholic beverages. On August 19, 1953, at about 1:25 p.m., the same agent observed three females seated at a table consuming alcoholic beverages. Later, on the same date, he observed a bartender, Joseph E. Farrell, serve a double shot of whiskey and a beer chaser to another female who was standing at the far end of the bar and also observed another bartender, Albert Hansen, serve a drink of gin to another female who was seated at a table. After the agents identified themselves on this visit, Joseph E. Farrell (defendant's husband) admitted that he had served a female at the bar but stated that he did not know "she was going to drink it while standing at the bar." There was no serving of food on any of the occasions when alcoholic beverages were served at tables.

The word "restaurant", while not defined in the City's ordinance No. K-1299, is defined in R. S. 33:1-1t. Defendant holds a restaurant permit issued by the City but it would seem abundantly clear that there was no bona fide "restaurant" operation within the meaning of R. S. 33:1-1t or within the intendment of Section 6 of the ordinance. Furthermore, and in any event, it is clear that on August 19, 1953 a female was served at the public bar in defendant's licensed premises.

Defendant has no prior record. Hence I shall suspend defendant's license for five days. (See Re DiAngelo, Bulletin 906, Item 10.)

Accordingly, it is, on this 10th day of November, 1953,

ORDERED that Plenary Retail Consumption License C-68, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Domincele Farrell, for premises 31 Brunswick Street, Jersey City, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. November 16, 1953, and terminating at 2:00 a.m. November 21, 1953.

DOMINIC A. CAVICCHIA
Director.

6. WHOLESALE LICENSE - OBJECTION TO ISSUANCE OF LICENSE HELD TO BE WITHOUT MERIT UNDER FACTS OF CASE.

In the Matter of an Application by)

THE HILSOM CORPORATION)
1 Exchange Place CONCLUSIONS
Jersey City, N. J.,)

For a Plenary Wholesale License.)

David Stoffer, Esq. and Milton H. Cooper, Esq., Attorneys for New Jersey Institute of Wine and Spirit Distributors, Inc., Objector.

BY THE DIRECTOR:

Written objection alleging that there is no public need for the license having been filed, a hearing upon said objection was held on October 6, 1953.

At the hearing Stephen E. Somers, President of applicant corporation, testified that he is the owner of all the shares of The Hilsom Corporation which, according to the application filed herein, was incorporated under the laws of the State of New York on October 20, 1950. Our investigation discloses that said corporation was duly authorized, on August 21, 1953, to do business within the State of New Jersey.

Stephen E. Somers further testified that he is a paid representative of Arthur Bell & Sons of Scotland; that "Bell Scotch" has been distributed in the United States since 1940 by G. F. Heublein, Hartford, Connecticut, by virtue of an arrangement which he negotiated between Arthur Bell & Sons and Heublein and that he is paid a commission on said sales. He testified that Arthur Bell & Sons "wish me to take out a wholesale license so that I could buy Scotch whiskey f.o.b. Scotland and sell it to a duly licensed importer and distributor f.o.b. Scotland" and that they suggested that he operate through a corporation so that there would be continuity in the event of his death. Stephen E. Somers admitted that he is also President of Scotch Liqueur Company which holds a New Jersey Plenary Wholesale License but testified that the latter corporation was set up to handle another brand of scotch whiskey exclusively and has never handled the products of Arthur Bell & Sons. He further stated that the applicant would be willing to accept the license requested subject to the express condition that there would be no sales or shipments to retailers.

After considering the testimony I conclude that the issuance of the license in question would remove any possible doubt as to the validity of the activities now carried on by Stephen E. Somers as a representative of Arthur Bell & Sons and, with respect to the matter of public need, that such issuance would continue, without materially affecting, the present distribution of the latter's products.

Accordingly, the license applied for will be granted if and when the application is in proper form, subject, however, to the special ruling that no sales or deliveries to retail licensees shall be made under said license.

DOMINIC A. CAVICCHIA
Director.

Dated: November 5, 1953.

7. DISCIPLINARY PROCEEDINGS - GAMBLING - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ZYGMUND JANKOWSKI & THEODORE JANKOWSKI
T/a T & Z JANKOWSKI TAVERN
273 Grand Street
Jersey City 2, N. J.,

Holders of Plenary Retail Consumption License C-117, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

Zygmund Jankowski & Theodore Jankowski, Licensees, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charge:

"On October 24, 1953, you engaged in and allowed, permitted and suffered gambling, viz., the playing of a card game (stud poker) for stakes of money, in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20."

The file herein discloses that two ABC agents entered defendants' premises at about 1:00 a.m. on October 24, 1953, and took seats at the bar. Theodore Jankowski, one of the defendants herein, was tending bar. During the course of their visit the agents observed that five male patrons who were seated at the bar were playing stud poker with a 50¢ limit, and that the bartender would periodically take out some of the money which was being placed on the bar. Shortly after the agents entered, one of the male patrons suggested that, since they would stop playing soon, the limit be raised to $1.00. All of the players agreed and the game continued, with the stakes amounting to about $10.00 and usually more for each game. The bartender continued to take money from each "pot." The agents identified themselves and stopped the card game. During the course of their investigation they found under the bar an old cigar box, with several decks of cards and $11.00 in bills in the box.

Defendants have no prior adjudicated record. From the facts hereinabove set forth it clearly appears that one of the defendant-licensees was receiving a portion of the money which was being bet on the card games. The minimum suspension imposed in cases involving gambling where the licensee or his agent participated in the violation has been a suspension of the license for twenty days. Re Jarvis, Bulletin 897, Item 9. However, because in this case one of the licensees participated to the extent of "cutting" the game, a more severe penalty is warranted. I shall suspend defendants' license for a period of thirty days. Cf. Re Homestead Inn, Bulletin 989, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 18th day of November, 1953,

ORDERED that Plenary Retail Consumption License C-117, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Zygmund Jankowski & Theodore Jankowski, t/a T & Z Jankowski Tavern, for premises 273 Grand Street, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. November 27, 1953, and terminating at 2:00 a. m. December 22, 1953.

DOMINIC A. CAVICCHIA
Director.

8. DISQUALIFICATION - APPLICATION TO LIFT - FAILURE TO DISCLOSE COMPLETE RECORD OF CONVICTIONS IN QUESTIONNAIRE - APPLICATION DENIED WITH LEAVE TO REAPPLY AFTER JANUARY 15, 1954.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 1099.

CONCLUSIONS AND ORDER

BY THE DIRECTOR:

On July 23, 1915, when petitioner was seventeen years of age, he pleaded guilty in a criminal court in another State to a charge of attempting to commit an assault in the second degree and was sentenced to a reformatory. He testified that he was paroled from the reformatory approximately one year after the date of his entry. On February 18, 1922, petitioner pleaded guilty in the same court to a charge of carrying a pistol after conviction of a crime and received a suspended sentence. On March 31, 1924, petitioner was sentenced to serve from four to six years in State Prison after he had pleaded non vult in a County Court in New Jersey to charges of assault and battery and robbery. He was paroled from State Prison on January 15, 1927. Petitioner was thereafter arrested in January 1930 and April 1933 on charges of felonious assault but on both occasions the charge was dismissed. He has not been arrested or convicted of any crime since April 1933. The crime of which he was convicted on March 31, 1924, unquestionably involved moral turpitude. Re Case No. 883, Bulletin 894, Item 6. Hence it is unnecessary to determine if the crimes of which he was convicted in 1915 and 1922 also involved moral turpitude.

At the hearing a guard and special policeman who has known petitioner for nearly twenty years, an apartment house doorman who has known him for fifteen years, and an elevator operator who has known him for nearly fifteen years testified that he bears a reputation for being a law-abiding citizen in the community in which he resides.

The Chief of Police of the municipality wherein petitioner resides has informed me that no complaint or investigation involving petitioner is now pending.

Petitioner has been employed in another State since March 1935 as a driver or helper by a brewery. He seeks relief herein so that he may be employed in this State by the same brewery.

The records of this Division show that in a questionnaire filed on May 21, 1953, petitioner swore that his only conviction was

for assault in 1915. When interrogated at the hearing regarding his failure to disclose his two other convictions, in 1922 and 1924, he said he was acting in accordance with advice given to him in 1927 by an unnamed parole officer. I am not impressed by this explanation. I cannot overlook his untruthfulness under oath. Under the circumstances I am not convinced that petitioner's association with the alcoholic beverage industry would not be contrary to the public interest and, hence, I shall deny the present petition. I shall give petitioner leave to file a new petition, if he so desires, after January 15, 1954. Cf. Re Case No. 848, Bulletin 883, Item 13.

Accordingly, it is, on this 18th day of November, 1953,

ORDERED that the petition for relief herein be and the same is hereby denied, with leave to file a new petition as aforesaid.

DOMINIC A. CAVICCHIA
Director.

9. STATE LICENSES - NEW APPLICATION FILED.

Harry E. George
62 Laurel Avenue
Union, N. J.
Application filed November 17, 1953 for State Beverage Distributor's License.

DOMINIC A. CAVICCHIA
Director.

10. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FRED E. STROEHMER and FREDERICK E. STROEHMER T/a MASONIC CLUB RESTAURANT 30 Clinton Avenue Jersey City 4, N. J.,

Holders of Plenary Retail Consumption License C-391, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

Fred E. Stroehmer and Frederick E. Stroehmer, Defendant-licensees, by Fred E. Stroehmer.

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

BY THE DIRECTOR:

Defendants have pleaded guilty to the following charge:

"On November 2, 1953, you possessed, allowed, permitted and suffered in and upon your licensed premises, four slot machines or devices in the nature of slot machines which might be used for the purpose of playing for money or other valuable thing; in violation of Rule 8 of State Regulations No. 20."

The file herein discloses that on Monday, November 2, 1953, two ABC agents found four slot machines, commonly referred to as "one arm bandits", in the liquor storeroom located in the basement of defendants' licensed premises.

Defendants have no prior adjudicated record. I shall suspend defendants' license for the minimum period of ten days. Re Paterson Lodge No. 60, B.P.O. Elks, Bulletin 982, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 23rd day of November, 1953,

ORDERED that Plenary Retail Consumption License C-391, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Fred E. Stroehmer and Frederick E. Stroehmer, t/a Masonic Club Restaurant, 30 Clinton Avenue, Jersey City, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. November 30, 1953, and terminating at 2:00 a.m. December 5, 1953.

Dominic A. Cavicchia
Director.