

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

BULLETIN 1491

February 4, 1963

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

BULLETIN 1491

February 4, 1963

1. COURT DECISIONS - HOWARD TAVERN, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-782-61

HOWARD TAVERN, INC., a corporation)
of the State of New Jersey,)
Appellant,)
vs.)
DIVISION OF ALCOHOLIC BEVERAGE)
CONTROL OF THE STATE OF NEW JERSEY,)
Respondent.)

Argued November 26, 1962 -- Decided December 4, 1962

Before Judges Conford, Gaulkin and Kilkenny.

Mr. Edward G. D'Alessandro argued the cause for appellant (Messrs. Friedman & D'Alessandro, attorneys).

Mr. Herbert S. Alterman, Deputy Attorney General, argued the cause for respondent (Mr. Arthur J. Sills, Attorney General, attorney).

The opinion of the court was delivered by KILKENNY, J.A.D.

This is an appeal by Howard Tavern, Inc. from a final order made on May 7, 1962 by the Director of the Division of Alcoholic Beverage Control suspending its plenary retail consumption license for the period from May 14, 1962 until July 13, 1962. (Re Howard Tavern, Inc., Bulletin 1456, Item 2.)

The suspension was based upon the Director's finding from the evidence produced at a plenary hearing that the licensee was guilty of the following charge made against it:

"On Friday night January 12th and early Saturday morning January 13th, 1962, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz. the making of overtures and arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20."

Rule 5 of State Regulation No. 20 provides as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls or unnecessary noises or allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

In its argument for reversal, Howard Tavern, Inc. contends that the Director's findings are not supported by substantial evidence, that the testimony of the A.B.C. agents does not prove the violation by a fair preponderance of the believable evidence, and that the penalty imposed in the instant matter was unreasonable, arbitrary and unduly harsh.

We note first the limited scope of our review. The truth of charges in a proceeding before an administrative agency need be established only by a preponderance of the believable evidence, not beyond a reasonable doubt. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). On an appeal, "the factual determinations of the administrative agency are generally sustained if they are supported by substantial evidence on the whole record." (Ibid.) See, too, Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501, 504-6 (App. Div. 1956). While under R.R. 4:88-13 we may make independent findings of fact, this power will not be exercised if the agency's conclusion appears to be reasonable and legally grounded in the light of all the evidence upon which it is founded. Atkinson v. Parsekian, supra, 37 N.J., at p. 149; Fanwood v. Rocco, 33 N.J. 404, 414-415 (1960); East Paterson v. Civil Service Dept. of N.J., 47 N.J. Super. 55, 65 (App. Div. 1957).

The uncontradicted testimony of three A.B.C. agents established that upon these licensed premises at the time specified there was immoral activity in the manner described in the charge. The following is a brief summary thereof.

The agents entered the licensed premises on Friday evening, January 12, 1962, about 10:25 p.m. They took seats at the bar at which five bartenders, assigned to different sections, were dispensing beverages to about 90 patrons. Eighty of these patrons were colored males. There were 10 females present, eight of whom were colored and the other two appeared to be white. The bartender in charge of the section where the agents sat was later identified as Joe Martin.

The agents observed that the females moved about the premises continuously, conversing with the male patrons but not remaining with them very long. The agents were attracted to one female in particular, named Annette, one of the two white appearing females. A colored male patron asked the agents if they would like to meet her, telling them that she took care of a lot of fellows. This patron then proceeded to talk to Annette and she came over to the agents and inquired whether they wanted to talk to her. One agent offered to buy her a drink and she replied, "Later on. I'll take a rain check on that." She then walked out but on the way talked to Mr. Warner, President of the licensee corporation, who was seated near the front left return of the bar about 15 or 20 feet away from the agents.

When Annette left, the colored male who had first spoken to the agents went in the same direction and out the front hall. Then two colored females, whom the agents had never seen before, entered and sat immediately to the right of the agents. After requesting a drink they asked the agents if they were looking for females and if so they would fix them up. Before the agents could answer two colored males joined the females, spoke to them in low tones, and thereafter a special policeman, also colored, came over and spoke to the group, and then the two colored males and two colored females left that position and went somewhere else.

Annette came back to the tavern about 11:15 p.m., entered through the front door and stopped to talk with Mr. Warner. While they were speaking, both looked in the direction of the agents. She then talked to the special policeman and other patrons and finally rejoined the agents about 11:45 p.m. As she did, she said, "I'll take that drink now." She sat down next to one of the agents. Shortly after the agent bought her a drink, a colored male entered and Annette greeted him and asked if he wanted to see her. He said no, that he had just had relations with a female whom he had taken home. He bought a drink. As he was leaving, Annette said to him, "Well, you come around and see me tomorrow night."

After this incident, one of the agents put the question to Annette as to whether she went out with men and she stated that she did and that for \$15 she would fix him up. He inquired as to whether she would make it ten dollars. She refused, stating that if he didn't want to pay her \$15 she would get it from one of the other patrons in the bar because there were many of them and money was money. The agent agreed upon the \$15 figure. She also said that she would take care of the other agent for the same price. She demanded payment in advance. This was agreed to. Annette then told the agents that she had to meet a friend and would be back in a little while, and then she left.

While awaiting her return, the agents talked with the bartender, Joe Martin. They testified that they told him that Annette wanted \$15 for this purpose and inquired, "That's a lot of bread, isn't it?" The bartender allegedly replied, "It's up to you. You've got to work that out with her." A moment later the agent asked the bartender to change a twenty dollar bill and stated that if he was going to pay Annette \$15, he wanted to have the right change "or she'll keep it all." The bartender went to the cash register and made the change, giving him two fives and a ten.

Annette returned about 12:30 a.m. on January 13, 1962 and came directly to the agents at the bar. She asked the one agent if he was ready to go. She stated that she had to be careful with whom she went out because there were many detectives around, and that she had asked earlier of Mr. Warner, the special policeman and some of the patrons whether they knew if the agents had any connection with the police and had been told that they were not detectives. At 12:40 a.m., the agent gave Annette \$15, including two marked \$5 bills, immediately in front of the bar, and signalled another agent in the tavern to contact the local police. At this time or thereabouts, Martin served them another drink. Then a colored male came up to Annette and stated that she better be careful because "it looks like there is a car full of detectives on the corner." Annette looked out the front door, confirmed that it did look like detectives were there and arranged that the agent should leave alone, get into his car and drive around to the side door on Howard Street where she would join him in the car.

This was done. When Annette got into the agent's car and before the engine started the fellow agent who had received the signal arrived with three Newark detectives and Annette was taken into custody and one of the marked \$5 bills was found, with other money, in an envelope under the front seat. The envelope contained in all \$39.

The foregoing recital makes it abundantly clear that the immoral activity referred to in the charge did take place. Did the licensee "allow, permit or suffer" it upon the licensed premises? There is substantial evidence upon the whole record to support the Director's finding and conclusion that it did. The word "suffer" as used in the regulations of the Division of

Alcoholic Beverage Control imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947); Benedetti v. Bd. of Com'rs of Trenton, 35 N.J. Super. 30, 34 (App. Div. 1955).

The evidence in the instant case supports a finding that the licensee knew or should have known that female patrons were soliciting on the licensed premises for sexual intercourse and that the licensee had allowed them to continue. The relatively overt manner in which the A.B.C. agents, strangers in the premises, were solicited less than a half hour after their arrival at the tavern and while they were seated at the bar in close proximity to the bartender and only 15 or 20 feet away from the President of the licensee, not only by Annette but also by the other two females, is incompatible with the licensee's profession of an unawareness that such overtures were being made in its tavern. When the special policeman spoke in hushed tones to the two colored females who had sought to interest the agents, these women were not directed to leave the tavern. The goings and comings of Annette, an apparent white in a bar patronized almost entirely by colored men, could hardly have gone unnoticed by the licensee and its employees. When the agents called the attention of the bartender to Annette's allegedly excessive fee, and thereafter requested change of the twenty dollar bill for the avowed purpose of paying Annette, no effort was made at any time thereafter to oust her from the premises. Without further recital of details, the Director's finding that the licensee suffered and permitted the immoral activity is reasonable and supported by substantial evidence in the record.

As to the further ground of appeal that the penalty imposed was arbitrary, unreasonable and unduly harsh, we find no substantial merit in this contention. We find no adequate basis for substituting our judgment as to what should constitute a suitable penalty in this type of a violation for that of the Director who has the primary obligation for enforcing the law.

The order under review is affirmed.

2. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION FOLLOWING AFFIRMANCE ON APPEAL.

In the Matter of Disciplinary Proceedings against)

HOWARD TAVERN, INC.)
147 Springfield Avenue &)
121 Howard Street)
Newark, New Jersey)

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-321, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark)

Friedman & D'Alessandro, Esqs., by Edward G. D'Alessandro, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On May 7, 1962, I entered Conclusions and Order herein suspending the license for sixty days, commencing May 14, 1962, for permitting solicitation for prostitution on the licensed premises. Re Howard Tavern, Inc., Bulletin 1456, Item 2. Upon appeal filed, the Appellate Division of the Superior Court stayed the operation of said suspension until the outcome of the appeal. Said Court affirmed my action on December 4, 1962. Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, Bulletin 1491, Item 1. The suspension may now be reimposed.

Accordingly, it is, on this 26th day of December, 1962,

ORDERED that the sixty-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-321, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Howard Tavern, Inc. for premises 147 Springfield Avenue and 121 Howard Street, Newark, commencing at 2:00 a.m. Monday, January 14, 1963, and terminating at 2:00 a.m. Friday, March 15, 1963.

WILLIAM HOWE DAVIS
DIRECTOR

3.

ACTIVITY REPORT FOR NOVEMBER 1962

ARRESTS:

Total number of persons arrested	-----	25
Licensees and employees	----- 14	
Bootleggers	----- 8	

SEIZURES:

Motor vehicles - cars	-----	2
Stills - over 50 gallons	-----	1
- 50 gallons or under	-----	2
Mash - gallons	-----	415
Distilled alcoholic beverages - gallons	-----	121.587
Wine - gallons	-----	13.225
Brewed malt alcoholic beverages - gallons	-----	7.876

RETAIL LICENSEES:

Premises inspected	-----	751
Premises where alcoholic beverages were gauged	-----	599
Bottles gauged	-----	9,406
Premises where violations were found	-----	104
Violations found	-----	137
Prohibited signs	----- 11	Other mercantile business ----- 7
Unqualified employees	----- 34	Disposal permit necessary ----- 4
Reg. #38 sign not posted	----- 28	Improper beer taps ----- 1
Application copy not available	----- 9	Other violations ----- 43

STATE LICENSEES:

Premises inspected	-----	11
License applications investigated	-----	3

COMPLAINTS:

Complaints assigned for investigation	-----	354
Investigations completed	-----	342
Investigations pending	-----	189

LABORATORY:

Analyses made	-----	270
Refills from licensed premises - bottles	-----	30
Bottles from unlicensed premises	-----	38

IDENTIFICATION:

Criminal fingerprint identifications made	-----	7
Persons fingerprinted for non-criminal purposes	-----	217
Identification contacts made with other enforcement agencies	-----	145
Motor vehicle identifications via N.J. State Police teletype	-----	5

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	-----	19
Violations involved	-----	20
Sale during prohibited hours	----- 11	Failure to close premises during prohibited hours ----- 1
Sale to minors	----- 5	Sale to non-members by club ----- 1
Possessing chilled beer (DL lic.)	----- 2	

Cases instituted at Division	-----	21
Violations involved	-----	32

Sale to minors	----- 6	Beverage Tax Law non-compliance ----- 1
Permitting immoral act. on prem.	----- 5	Sale to intoxicated person ----- 1
Sale during prohibited hours	----- 4	Hindering investigation ----- 1
Possessing liquor not truly labeled	----- 4	Fraud and front ----- 1
Permitting hostesses on premises	----- 3	Permitting female impersonator on prem. ----- 1
Permitting lottery activity (numbers) on premises	----- 2	Possessing indecent matter ----- 1
Unqualified employees	----- 2	

Cases brought by municipalities on own initiative and reported to Division	-----	31
Violations involved	-----	33

Sale to minors	----- 16	Permitting persons in improper dress on premises (local reg.) ----- 1
Sale during prohibited hours	----- 4	Unqualified employee ----- 1
Permitting minors unaccompanied by parents on prem. (local reg.)	----- 3	Hindering investigation ----- 1
Permitting brawls on premises	----- 3	Permitting gambling (pool game for money) on premises ----- 1
Act of violence on premises	----- 1	Permitting bookmaking on premises ----- 1
Sale outside scope of license	----- 1	

HEARINGS HELD AT DIVISION:

Total number of hearings held	-----	28
Appeals	----- 5	Eligibility ----- 6
Disciplinary proceedings	----- 17	Seizures ----- 2

STATE LICENSES AND PERMITS ISSUED:

Total number issued	-----	1,465
Licenses	----- 2	Social affair permits ----- 352
Solicitors' permits	----- 51	Miscellaneous permits ----- 229
Employment permits	----- 210	Transit insignia ----- 267
Disposal permits	----- 82	Transit certificates ----- 55
Wine permits	----- 217	

OFFICE OF AMUSEMENT GAMES CONTROL:

Licenses issued	----- 1	Enforcement files established ----- 17
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WILLIAM HOWE DAVIS
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: December 4, 1962.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS - EFFECTIVE DATES OF SUSPENSION DEFERRED.

In the Matter of Disciplinary Proceedings against)

DONTAL, INC.)
t/a MAD HOUSE)
River Styx Road)
Hopatcong, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Mayor and Common Council of the Borough of Hopatcong.)

McGovern and Roseman, Esqs., by William J. McGovern, Esq., Attorneys for Licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charge:

'On August 12, 1962, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Brian ---, age 18, and Joanne ---, age 18, and you allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"The Division's case was presented through the testimony of Brian --- and Joanne --- (both minors) and two ABC agents, and the picture reflected by their testimony is as follows:

"Brian (who was 18 years of age on the date alleged) entered the above licensed premises at about 12:30 a.m. on August 12, 1962; shortly thereafter met Joanne (whom he had known previously) and invited her to have a drink at the bar. They both sat at the bar and he ordered a beer for himself and a scotch and soda for Joanne. They were served the drinks and he made payment to the bartender. No inquiry was made of either him or Joanne in his presence by the bartender or anyone else at that time or at any time during the evening regarding his age, nor did he make any written representation with respect thereto.

"Shortly after these drinks were served and partially consumed by these two persons, and after Joanne had left the bar to dance with another companion, ABC agents approached Brian, questioned him about his age and, ascertaining that he was a minor, thereupon seized both partly consumed drinks. Brian was then interviewed by the agents in a rear office on these premises and executed a signed confessional statement with respect to the incident hereinabove related. On cross examination he insisted that, when he entered these premises on August 12, he paid the admission charge but was not interrogated with respect to his age.

"Joanne testified that she is 18 years of age; that on the early morning of August 12, at about 1 a.m., she, in the company of two other girls, entered the licensed premises herein and met Brian (whom she had known previously). He invited her to have a drink and ordered a scotch and soda for her and a beer for himself at the bar. No inquiry was made of her or of Brian regarding her age or his age, and at no time during her stay at this premises was she required to make any representation or any written representation of her age.

"After she consumed part of the drink, she left Brian to go to the dance floor and, when she returned, she noted that her drink was confiscated and that her pocketbook had been taken by the agents. She was then summoned to the back room and, upon questioning, executed a confessional statement wherein she admitted the above facts.

"Her testimony was substantially unshaken on cross examination. She identified her companions as two teen-age girls (19 years of age) and asserted that she admitted to the agents at the confrontation that she had consumed part of the drink served to her by the bartender.

"ABC agent J testified that, in company of Inspector F, he saw the two minors hereinabove referred to seated at the bar and saw a bottle of beer and a scotch and soda served to them by the bartender. He saw the minors consume part of the drinks and, when Joanne left to go to the dance floor, he questioned Brian who admitted that he was under twenty-one years of age. He was then requested to accompany the agents to the back room, and the drinks were confiscated. The drinks were then sealed in sample bottles, labels placed on them and ultimately they were presented to the chemist for analysis. The report of the Division's chemist, certified by the Director, was admitted into evidence and it indicates that these drinks were alcoholic beverages fit for consumption.

"On cross examination he denied that any slips signed by any patrons were brought into the office during his stay there, and reaffirmed the statements made in his direct testimony. ABC Agent F corroborated his colleague's testimony and testified substantially to the same effect as that of Agent J.

"On behalf of the corporate licensee, Donald F. Caskey (the major stockholder and president) testified that he had hired a "special cop" to check ages of patrons at the door and, in fact, during the past season and on the date in question had also employed an extra doorman and ticket-man to 'check ages, observe anyone coming in, get them to sign slips or prove their age if they were obviously under the age of twenty-six or twenty-seven.'

"He stated that on this night patrons paid admission to enter the premises and had their hand rubber-stamped with a number; that a number of slips were signed by persons who appeared to be under the age of twenty-one. These slips, however, were never produced for identification nor were they offered in evidence. In response to my inquiry, he stated that he did not know, of his own personal knowledge, whether these minors had signed any of the slips.

"A statement was then made by counsel for the licensee that the bartender had entered the military service and, as a result, was not available to testify. Counsel admitted, however,

that no subpoena had been issued, but stated that, had this witness been available to testify, he would have stated that 'he was not sure whether or not he had, in fact, served these two parties.' Counsel further represented that the ticket collector and the special officer could not be located, but that their testimony would be that they did not see the names of these minors on any slips.

"Thus we have the affirmative, certain, unequivocal and forthright testimony of the two minors and the two ABC agents as opposed to the sole testimony of the president of the corporate licensee. There was no specific denial of the essential facts as testified by the Division witnesses other than the statement of counsel that, had the bartender been available, he would have testified that, while the usual procedure is to obtain some written representation, he was 'not sure' whether these minors had in fact made such written representation.

"I was impressed with the credibility of these minors who appeared to give a straightforward, believable account of the incident, and it was clear to me that they had no improper motive in inculcating the licensee. Their testimony, corroborated fully by the ABC agents, remained unshaken under the energetic cross examination of defense counsel and was consistent with the confessional statements which they testified they made at the time of their apprehension.

"The only complete defense in sale or service of alcoholic beverages to a minor is a written representation, among other things, as required under the Rules and Regulations of this Division. Rule 1 of State Regulation No. 20 and Special Note in Section 5 of appendix to the 1957 Pamphlet State Regulations. Re Piet Corp., Bulletin 1479, Item 2. Cf. Re Kaczka and Trobiano, Bulletin 1063, Item 1.

"My observation of both minors convinces me that they both appeared to be under the age twenty-one. This was particularly true of Joanne. Under R.S. 33:1-77, a minor must also appear to be over the age of twenty-one in addition to obtaining a written representation (if one was obtained) in order to establish a defense to the charge.

"After considering the evidence adduced herein and the arguments of counsel at the conclusion of the hearing, and having an opportunity to judge the credibility of the witnesses, I conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence. I, therefore, recommend that the licensee be found guilty as charged. Freud and Pittala v. Davis, 64 N.J. Super. 242 (1960).

"Licensee has no prior adjudicated record. The minimum penalty for sale of alcoholic beverages to two 18-year-old minors is fifteen days suspension of license. Cf. Re Aunt Kate's, Inc., Bulletin 1464, Item 5. I further recommend an order to that effect."

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

Having carefully considered the entire record, including the transcript, the oral argument of counsel, the Hearer's report and the recommendations included therein, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Recent inspection of the licensed premises by an agent of this Division discloses that the licensed business is being conducted only on a limited basis, full operation having been discontinued at the end of the summer season, and thus no effective penalty can be imposed at this time. The effective dates for the suspension will be fixed by the entry of a further order herein, after operation of the licensed business is resumed.

Accordingly, it is, on this 29th day of November, 1962,

ORDERED that Plenary Retail Consumption License C-4, issued by the Mayor and Common Council of the Borough of Hopatcong to Donta, Inc., t/a Mad House, for premises on River Styx Road, Hopatcong, be and the same is hereby suspended for fifteen (15) days, the effective dates thereof to be fixed by further order as aforesaid.

WILLIAM HOWE DAVIS
DIRECTOR

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - MOTOR VEHICLE ORDERED RETURNED TO INNOCENT U-DRIVE-IT TRUCK OWNER - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on September 12, 1962 of a quantity of alcoholic beverages and a Ford truck on the New Jersey Turnpike, Milepost 56, in the Township of Chesterfield, County of Burlington and State of New Jersey.)	Case No. 10,907
)	ON HEARING
)	CONCLUSIONS
)	AND ORDER

Rentals, Inc., by Randolph S. Griffin, General Manager, claimant.
I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, and State Regulation No. 28, to determine whether 380 one-gallon "Mason" jars of alcoholic beverages and a Ford truck, described in a schedule attached hereto and made part hereof, seized on September 12, 1962 on the New Jersey Turnpike, Milepost 56, Chesterfield Township, Burlington County, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Randolph S. Griffin, general manager of Rentals, Inc., a U-Drive truck rental operator, of Fayetteville, North Carolina, entered an appearance on behalf of the claimant of the truck and sought its return. Forfeiture of the alcoholic beverages was not opposed.

Reports of ABC agents and other documents in the file were presented in evidence with the consent of the claimant, and disclose the following facts: On Wednesday, September 12, 1962 at about 1:00 p.m. a New Jersey State Trooper, while on a routine patrol of traffic, stopped the motor vehicle in question on the New Jersey Turnpike. The truck bore license plates of North Carolina, registered in the name of Avis Rent-A-Truck Rentals, Inc., of Rocky Mount, North Carolina and was being operated by one Richard A. Smith of Fayetteville, North Carolina. An examination of the truck

with the consent of Smith, disclosed that it carried the aforementioned "Mason" jars of alcoholic beverages. None of the jars had affixed thereto any stamps indicating payment of taxes on alcoholic beverages. The trooper took possession of the alcoholic beverages and the truck, all of which were later turned over to agents of this Division.

An analysis of the contents of one of said jars was made on September 13, 1962 by the Division chemist, who reports that it is alcohol and water fit for beverage purposes, with an alcoholic content by volume of 47 percent.

Smith was the only occupant of the vehicle, and he was thereupon questioned with respect to the ownership and operation thereof. He executed a voluntary, written statement in which he denied that he knew of the contents of the truck. He explained that he had received a call from someone whose name was unknown to him, asking him if he wanted to make \$50.00 to deliver some furniture to a specified address in New York City. He thereupon made arrangements to pick up the said truck and did pick it up at a point three blocks from his house, and was on his way to deliver the said "furniture" to New York City when he was apprehended.

Smith was subsequently arraigned in the Chesterfield Municipal Court on a charge of the possession of and transportation of illicit alcohol in violation of NJSA 33:1-50 and 33:1-2; and this matter was turned over for action by the Burlington County Grand Jury.

The alcohol is illicit because of the absence of the tax stamp on any of the "Mason" jars, R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol, and the truck in which the said illicit alcohol was found, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Griffin testified that he is the general manager of Rentals, Inc. which has agencies located in various places in North Carolina; that on September 11th at 2:30 p.m. a person representing himself to be one James Andrew Mims of Route 1, Linden, North Carolina, applied to the 301 Truck Stop, Inc. operated by a C. S. MacDonald for a U-Drive truck and made the representation that the purpose of the rental was to go to New York City to pick up a load of furniture for his mother-in-law. Because of the mileage involved and the time that would be required the said applicant was required to and did post a \$250.00 cash deposit.

He further testified that when the truck was not returned an investigation was made and they ascertained that the applicant was not in fact Mims, but was one George Sloan who had travelled under the name of James Mims. As a result of this investigation, a warrant was issued by North Carolina authorities for the arrest of George Sloan.

The testimony further discloses that MacDonald who was the agent for the claimant in this transaction, has been in business for over 37 years and operated in the usual procedure in expediting the said transaction, and that he acted in the accepted manner of operators of such agencies in ascertaining the purported use for which the said motor vehicle was intended.

I am satisfied from the evidence presented by Griffin that the claimant herein acted in good faith and did not know or have any reason to suspect that its truck would be used for the

transportation of illicit alcoholic beverages. It is clear that it was a victim of criminal design and action on the part of Sloan who represents himself as Mims. I am also impressed by a letter written in its behalf by the Honorable Victor Aldridge, Chairman of the Board of Alcoholic Control of the State of North Carolina to the effect that the claimant has an excellent reputation in the State of North Carolina, that the principal of the corporate claimant, Mr. Worth Joyner, is a high official in that State and enjoys a reputation as a businessman of integrity and honesty. Hence, the truck will be returned to the claimant upon payment of the costs of its seizure and storage. Re Seizure Case No. 10,726; Bulletin 1440 Item 6; Seizure Case No. 9991, Bulletin 1300, Item 7; Seizure Case No. 9504, Bulletin 1191, Item 12.

Accordingly, it is DETERMINED and ORDERED that if on or before the 21st day of December, 1962, Rentals, Inc. pays the costs of seizure and storage of the Ford truck, more fully described in Schedule "A", attached hereto, it will be returned to it and it is further

DETERMINED and ORDERED that the alcoholic beverages listed in Schedule "A" constitute unlawful property and that the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
DIRECTOR

Dated: December 10, 1962

SCHEDULE "A"

- 380 - 1/2 gallon "Mason" jars of alleged alcoholic beverages
- 1 - 1960 Ford truck, Serial No. F60CN100166, North Carolina License Plates NC-859-H.

6. MORAL TURPITUDE - CONVICTION OF FAILURE TO OBTAIN FEDERAL GAMBLING TAX STAMP (Non-Wilful) HELD NOT TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

RE: ELIGIBILITY CASE #703

Applicant seeks a determination as to whether or not he is eligible to be associated with the alcoholic beverage industry in this state by reason of a conviction of a crime.

The records received by this Division disclose that applicant and A and B were jointly indicted in a five-count indictment charging them with four violations of the Internal Revenue Code and a conspiracy to violate the same; that on May 18, 1962, applicant, following a plea of nolo contendere to the fifth count (conducting a numbers lottery and failure to pay the special occupational tax (federal gambling stamp)) was fined \$2,500. The remaining four counts charging wilful violations were dismissed.

At the hearing held herein, applicant (33 years old) testified that he was not connected with the co-defendants either as a principal or employee in any gambling activities; that his association with them was purely social; that for a period of sixty

Accordingly, it is, on this 20th day of December, 1962,

ORDERED that Club License CB-3, issued by the City Council of the City of Vineland to Recreation Club for premises 626 Washington Avenue, Vineland, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Wednesday, January 2, 1963, and terminating at 2:00 a.m. Friday, February 1, 1963.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

COLONEL COOPER, INC.)
t/a COLONEL COOPER'S)
Highway #35)
South Amboy, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-36, issued by the Mayor and Common Council of the City of South Amboy.)

Licensee, by Peter Governale, Secretary-Treasurer, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on October 27-28, 1962, it sold drinks of alcoholic beverages to two minors, one age 18 and one 19, in violation of Rule 1 of State Regulation No. 20, and (2) on October 28, 1962, it hindered an investigation (viz., refusal of a bartender to furnish requested information and failure to restrain patrons from interfering with investigation), in violation of R.S.33:1-35.

Absent prior record, the license will be suspended on the first charge for fifteen days (Re Aunt Kate's, Inc., Bulletin 1464, Item 5) and on the second charge for twenty days (cf. Re Delbono, Bulletin 1461, Item 1), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 20th day of December, 1962,

ORDERED that Plenary Retail Consumption License C-36, issued by the Mayor and Common Council of the City of South Amboy to Colonel Cooper, Inc., t/a Colonel Cooper's, for premises on Highway #35, South Amboy, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Wednesday, January 2, 1963, and terminating at 2:00 a.m. Friday, February 1, 1963.

WILLIAM HOWE DAVIS
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FRANK CARNEVALE)
t/a RENDEZVOUS)
6 Charles Street)
Lodi, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-31, issued by the Mayor and Council of the Borough of Lodi.)

DiMaria & DiMaria, Esqs., by Martin J. DiMaria, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 18, 1962, he sold drinks of alcoholic beverages to three minors, all age 19, in violation of Rule 1 of State Regulation No. 20.

Licensee, then in partnership with Louis Lembo (the bartender who made the sales in the instant case) has a previous record of suspension of license by the Director for twenty days, effective October 25, 1960, for similar violation. Re Carnevale and Lembo, Bulletin 1366, Item 5.

The prior record considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Cf. Re Highlander Hotel Corp., Bulletin 1475, Item 1; Re H.P. Bar & Liquor, Inc., Bulletin 1453, Item 5; Re Eisenhower's Musical Bar, Inc., Bulletin 1458, Item 4.

Accordingly, it is, on this 26th day of December 1962,

ORDERED that Plenary Retail Consumption License C-31, issued by the Mayor and Council of the Borough of Lodi to Frank Carnevale, t/a The Rendezvous, for premises 6 Charles Street, Lodi, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Monday, January 7, 1963, and terminating at 3 a.m. Friday, February 1, 1963.

WILLIAM HOWE DAVIS
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

PASSAIC MEMORIAL POST #200, AMERICAN LEGION)
72-74 Hoover Avenue)
Passaic, N. J.)

CONCLUSIONS AND ORDER

Holder of Club License CB-18, issued by the Board of Commissioners of the City of Passaic)

Licensee, by Rosario F. Lomauro, Judge Advocate Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 17, 1962, it sold drinks of beer to non-members, in violation of Rule 8 of State Regulation No. 7.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Court Lakewood #127, Foresters of America, Bulletin 1449, Item 4.

Accordingly, it is, on this 27th day of December 1962,

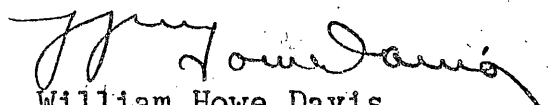
ORDERED that Club License CB-18, issued by the Board of Commissioners of the City of Passaic to Passaic Memorial Post #200, American Legion, for premises 72-74 Hoover Avenue, Passaic, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Monday, January 7, 1963, and terminating at 3:00 a.m. Thursday, January 17, 1963.

WILLIAM HOWE DAVIS
DIRECTOR

11. STATE LICENSES - NEW APPLICATION FILED.

Van Munching Imports, Inc.
6 West 48th Street
New York 36, New York

Application filed January 28, 1963 for Plenary Wholesale License.


William Howe Davis
Director