

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

BULLETIN 892

JANUARY 9, 1951.

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REPORT, WASH
D.C. 20540
OFFICE OF THE
SECRETARY OF THE
NAVY

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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.

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JANUARY 9, 1951.

1. ACTIVITY REPORT FOR DECEMBER 1950

ARRESTS:

Total number of persons arrested	- - - - -	9
Licensees and employees	- - - - - 2	
Bootleggers	- - - - - 7	

SEIZURES:

Motor vehicles - cars	- - - - -	3
- trucks	- - - - -	1
Stills - over 50 gallons	- - - - -	1
- 50 gallons or under	- - - - -	3
Alcohol - gallons	- - - - -	550.00
Mash - gallons	- - - - -	14.61
Distilled alcoholic beverages - gallons	- - - - -	15.85
Wine - gallons	- - - - -	5.71
Brewed malt alcoholic beverages - gallons	- - - - -	

RETAIL LICENSEES:

Premises inspected	- - - - -	907
Premises where alcoholic beverages were gauged	- - - - -	912
Bottles gauged	- - - - -	14,265
Premises where violations were found	- - - - -	59
Violations found	- - - - -	61

Type of violations found:

Reg. #38 sign not posted	- - - - - 6	Probable fronts	- - - - - 2
Prohibited signs	- - - - - 5	Improper beer taps	- - - - - 2
Unqualified employees	- - - - - 3	Other mercantile business	- - - - - 2
Gambling devices	- - - - - 2	Other violations	- - - - - 39

STATE LICENSEES:

Premises inspected	- - - - -	13
License applications investigated	- - - - -	17

COMPLAINTS:

Complaints assigned for investigation	- - - - -	416
Investigations completed	- - - - -	384
Investigations pending	- - - - -	123

LABORATORY:

Analyses made	- - - - -	150
"Shake-up" cases, (alcohol, water and artificial color) - bottles	- - - - -	18
Liquor found to be not genuine as labeled - bottles	- - - - -	5

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	- - - - -	6
Persons fingerprinted for non-criminal purposes	- - - - -	131
Identification contacts made with other enforcement agencies	- - - - -	132
Motor vehicle identifications via N. J. State Police Teletype	- - - - -	7

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	- - - - -	4
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Violations involved:

Sale to minors	- - - - - 1
Permitting bookmaking on premises	- - - - - 1
Permitting females to tend bar	- - - - - 1
Sale during prohibited hours	- - - - - 1

Cases instituted at Division	- - - - -	23*
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Violations involved:

Permitting immoral activity on premises	- - - - - 3	Possessing illicit liquor	- - - - - 2
Mislabeled beer taps	- - - - - 3	Sale to non-members by clubs	- - - - - 2
Sale during prohibited hours	- - - - - 3	Wholesaler giving "free goods" to retailer	- - - - - 1
Fraud and front	- - - - - 2	Permitting bookmaking on premises	- - - - - 1
Permitting hostesses on premises	- - - - - 2	Aiding and abetting unlicensed transportation	- - - - - 1
Sale to minors	- - - - - 2	Failure to file notice of change in application	- - - - - 1
Sale under Fair Trade price	- - - - - 2	Storage off licensed premises	- - - - - 1
Transporting in unlicensed vehicle	- - - - - 2	Conviction of crime involving moral turpitude	- - - - - 1
Transporting without invoice	- - - - - 2		
Permittee engaging in conduct prohibited to employer	- - - - - 2		

*One includes cancellation proceeding (licensee not a bona fide club at the time license application was made)

Cases brought by municipalities on own initiative and reported to Division	- - - - -	14
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Violations involved:

Sale to minors	- - - - - 9	Furthering illegal activity	- - - - - 1
Permitting brawls on premises	- - - - - 3	Conducting business as a nuisance	- - - - - 1
Permitting persons of ill repute on premises	- - - - - 2	Failure to make timely payment for lic.	- - - - - 1

HEARINGS HELD AT DIVISION:

Total number of hearings held	- - - - -	40	
Appeals	- - - - - 2	Seizures	- - - - - 7
Disciplinary proceedings	- - - - - 17	Tax revocation	- - - - - 4
Eligibility	- - - - - 4	Applications for license	- - - - - 6

PERMITS ISSUED:

Total number of permits issued	- - - - -	737	
Employment	- - - - - 90	Social affairs	- - - - - 186
Solicitors	- - - - - 33	Special wine	- - - - - 178
Disposal of alcoholic beverages	- - - - - 108	Miscellaneous	- - - - - 142

Dated: January 2, 1951.

ERWIN B. HOCK, DIRECTOR

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(PERMITTING FEMALE IMPERSONATORS AND KNOWN PERSONS OF ILL REPUTE
UPON THE LICENSED PREMISES) - ALLOWING, PERMITTING AND SUFFERING
THE LICENSED PREMISES TO BE CONDUCTED AS A NUISANCE - LICENSE
REVOKED.

In the Matter of Disciplinary)
Proceedings against)

ONE-THIRTY-FIVE MULBERRY ST. CORP.)
135 Mulberry Street)
Newark 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-915, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

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

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charges:

- "1. On May 25, 26 and 27, 1950, and on June 2, 3, 9, 10, 22, 23, 24, 25 and 28, 1950, you allowed, permitted and suffered known female impersonators and known persons of ill repute, in and upon your licensed premises; in violation of then effective Rule 4 of State Regulations No. 20.
- "2. On July 12, 13, 14 and 15, 1950, you allowed, permitted and suffered female impersonators and persons of ill repute, in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.
- "3. On May 25, 26 and 27, 1950, and on June 2, 3, 9, 10, 22, 23, 24, 25 and 28, 1950, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, viz., foul, filthy and obscene language and conduct and the making of assignations for acts of perverted sexual relations between male patrons; in violation of then effective Rule 5 of State Regulations No. 20.
- "4. On July 12, 13, 14 and 15, 1950, you allowed, permitted and suffered lewdness, immoral activities, and foul, filthy and obscene language and conduct in and upon your licensed premises, viz., conversation and suggestive gestures relating to acts of perverted sexual relations between male patrons and the making of assignations therefor; in violation of Rule 5 of State Regulations No. 20.
- "5. On all the occasions aforesaid, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you permitted female impersonators and persons of ill repute, to frequent your licensed premises and to mingle with and solicit male patrons for acts of sexual perversion and otherwise conducted the licensed business in a manner offensive to common decency and public morals; in violation of Rule 4 of State Regulations No. 20."

The evidence adduced by the Division of Alcoholic Beverage Control consists, in the main, of the testimony of five of its agents, from which it appears that, during the course of an extensive investigation at the licensed premises, observations were made by the agents on at least ten separate occasions. In some instances these visits extended over from the late evening until closing time of the following morning, thus covering an even greater number of days.

Four of the agents testified that from time to time during the seven-week period from May 21, 1950 to July 14, 1950, on their visits to the licensed premises they found that the clientele was almost exclusively male and observed there large numbers of male patrons who were openly conducting themselves in a most peculiar and effeminate manner. The agents testified that these patrons talked and laughed in high-pitched voices; walked in a manner most effeminate (sometimes on tip-toes, sometimes with a "wobble"); frequently embraced each other, meanwhile caressing themselves and each other and running their hands over the abdomen, legs, breasts and thighs and through their hair as women do. Some handled their drinking glasses in a most delicate manner and by their every gesture simulated the subtle movements common to females. One even used mascara and powder.

The agents further testified that these patrons constantly referred to each other as "she" or "sister" and sometimes spoke of a particular male as their "girl friend". A number of these males had feminine nicknames such as "Lois", "Birdie", "Maude", "Mary" and "Duchess". One of their number, Andrew ---, who testified at the hearing, admitted that he is known as "Amber" and "Queen Bee", and the testimony of the agents reveals that at the licensed premises he was also called both "Sister Superior" and "Mother Superior". The agents also testified that the bartender, Harry Laird, who was on duty during much of the time covered by the investigation, knew of Andrew's nicknames and used them frequently. It was admitted that this person had been a patron at the licensed premises for at least two years.

One of the agents testified that on May 26, 1950, he overheard a conversation between three male patrons and another male known as "Birdie", in which the three attempted to make arrangements with "Birdie" to take them out for a perverted sexual act. He admitted, however, that he did not believe the bartender could overhear this conversation.

The same agent testified that on June 2, 1950, when a woman entered the licensed premises, she was approached by a male patron who hugged her, and "acted in a feminine" way, with the result that Max Medwin, one of the stockholders of the licensee corporation, who was tending bar at the time, told him to stop it and to "behave himself". Immediately thereafter Medwin explained to the agent that he had to "keep those guys down", saying, "All these guys are 'fruits' as it is; if I don't do anything the place will go crazy." He then added, "As soon as she comes in she excites them; they are all nuts anyway."

In their testimony the various agents recited numerous incidents which occurred on the licensed premises wherein various male patrons gave evidence of abnormal behavior. Many of these incidents involved disgusting and revolting moral degeneration and were accompanied by equally shocking, filthy and obscene language -- much of it in the jargon of sexual perverts. Not all of these incidents will be detailed here since a few examples will suffice to demonstrate their nature and to indicate the reprehensible and shocking manner in which the licensed premises were operated.

One agent testified that on June 4, while four men were preparing to leave the licensed premises, a fifth male who "wiggled his hips as he walked and bouncing on his toes" in a manner described by the agent as "feminine", joined them and, as he was leaving, made a remark indicating the infamous crime against nature. On the same night, according to the agent's testimony, one male patron approached another and said, "Say, you look as if you are pregnant", to which the other replied, "maybe I am pregnant", meanwhile pulling his shirt away from his body, creating a bulge, and, pointing to the first patron, added, "Maybe you are his mother." When this drew laughter from the group of patrons, Max Medwin waved his finger at them and said, "Naughty, naughty!"

All of the agents testified that from time to time male patrons were seen to use their hands freely on each other, rubbing the backs and legs of other male patrons, including the agents, without any remonstrance from the bartender or any other person on behalf of the licensee. Some even went so far as to fondle the buttocks and privates of other males.

The investigation culminated in an arrangement between Andrew and two ABC agents whereby Andrew agreed to "take care of" both agents if his "sisters 'Bill' or 'Bobby' didn't show up". The arrangements were made at the bar and in the presence of the bartender, Harry Laird, and involved the use of vulgar, obscene and disgusting words and slang expressions describing two methods of unnatural sexual relations between males. In furtherance of these arrangements, Andrew left the licensed premises with the two agents and entered the car of one of them where, by prearrangement, he was apprehended by the police.

The three principal stockholders and officers of the licensee corporation and bartender, Harry Laird, denied knowledge of any abnormal proclivities on the part of any of the patrons or any improper conduct by them at the licensed premises. Max Medwin, vice-president and one of the bartenders, although denying that he knew that Andrew or any of the other male patrons were "queer" or "homosexuals", admitted that the local police had made at least three visits to the licensed premises (the first being in April 1950) to warn them of the presence there of "homosexuals". This was also admitted by Jack Medwin, secretary-treasurer of the corporation and also one of its bartenders, and was confirmed by a police officer who testified that he personally issued the warnings. Taking into account the entire record, I cannot believe that the officers of the defendant corporation and its employees were ignorant of the actions and proclivities of the patrons or what was going on upon the licensed premises. The agents testified that the actions of the patrons were out in the open and that lewd acts and conversations took place in the presence of the officers of the corporation and its bartenders whose claim to ignorance lacks any semblance of truth. In addition to the police warnings concerning the presence of homosexuals, admitted by Jack and Max Medwin, Max Medwin cautioned some of the patrons with a mild "naughty, naughty", as hereinbefore related, and Jack Medwin casually brushed off an agent's query as to the "gay boys" in the licensed premises with an abrupt "I wouldn't know, Bud."

No person of intelligence and awareness could believe the denial by the bartender, Harry Laird. In addition to the other incidents hereinabove set forth, he was present and participated in the conversation which resulted in Andrew leaving the licensed premises with the two agents on the night of July 14, 1950. From the testimony of the agents it appears that Laird greeted them by asking if they had seen Andrew and, when he received a negative reply, proceeded

to volunteer that "she" knew "she" had a date with the agents and would come in later. Laird continued to discuss Andrew as "Mother Superior" and his remarks indicated that he knew Andrew was a pervert who practiced acts of sexual perversion on males. When one of the agents expressed concern lest Andrew take him and his partner for "gay boys", Laird assured him that Andrew "knows the difference because he said you were nice boys", adding with a laugh, "otherwise he would call you nice girls". Continuing the conversation the agents asked Laird, in the parlance of homosexuals, what form of abnormal sexual conduct Andrew engaged in and were informed by Laird that Andrew could engage in only one method for certain physical reasons too revolting to repeat here.

When Andrew finally arrived at the licensed premises, Laird, in telling him that a female had been looking for him, used the most vulgar and obscene slang expressions referring to the female and to Andrew. This conversation ended with Laird making a remark which again clearly indicated that he knew, or believed, that Andrew was a person who practiced acts of sexual perversion on males.

The agents further testified that Laird entered into a conversation with them and Andrew which resulted in several telephone calls to "sisters", during which conversation Laird said that he "should keep a number book on it" for the benefit of male patrons who would ask him for the numbers of "gay boys".

Further establishing that Laird was fully aware of the immoral activities of these "gay boys" or "queers", as they were sometimes referred to, as the two agents were leaving the licensed premises with Andrew, one of them said to Laird, "We are going to take Andy to Elizabeth for a -- -- (denoting an act of sexual perversion practiced on males), to which Laird replied, "Make sure she gives you a good one."

When the police and other agents apprehended Andrew, they took him to Police Headquarters, where he gave a sworn written statement. The Medwins and Laird were also taken to Police Headquarters, where all denied any knowledge of Andrew's activities. Andrew was produced at the hearing first as a witness for the State, then as a witness for the licensee. Much time was consumed in determining whether and to what extent his statement would be admitted in evidence. Finally it was admitted on cross-examination by the State for the purpose of affecting his credibility with respect to his admissions of abnormal sex behavior (made to the agents at Police Headquarters) and as to whether or not the Medwins or Laird should have known, as reasonable people, that he was a homosexual. For all practical purposes his testimony with respect to these matters may be viewed as having neutralized any of his prior admissions on these subjects, and I shall not consider his written statement or admissions as having probative force. Nor can any weight be given his testimony denying the matters admitted in his statement. Perhaps the most significant utterance by Andrew was made on cross-examination (when he was a witness for the State). He was asked, "Did you ever make known to them" (referring to the Medwins and their employees) "in plain language that you were 'queer'?" His answer was, "Never in plain language but -- never in plain language."

The testimony disclosed that customarily there were at least two persons tending bar, either one of the Medwins and the bartender, Laird, or two of the Medwins. As clearly appears from the above recitation of testimony, many of the acts and conversations complained of were personally witnessed by one or more of the officers of the licensee corporation or its bartender. Whether or not all such acts and conversations were so witnessed is immaterial. The conduct of the patrons upon the licensed premises was so brazen and the events which took place there were so overt and unrestrained that these officers and employees can not be heard to say that they were unaware of them. As was said in Bilowith v. Passaic, Bulletin 527, Item 3:

"Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises."

During the course of the hearing, question was raised on behalf of the licensee with respect to the meaning of the word "assignments" in Charges 3 and 4. The licensee contended, in effect, that, as a matter of law, so much of these charges as related to "the making of assignments" could not be supported by mere proof that arrangements were made on the licensed premises for immoral acts to be consummated elsewhere. The argument, in support of which some citation of authority from California and Arkansas is asserted, seems to be that a criminal conviction for maintaining a place of assignment cannot be supported without proof that the ultimate immoral act itself (as distinguished from the preliminary arrangement therefor) occurred at the place in question. However that may be, it must be noted that this is a disciplinary, not a criminal, proceeding and that the licensee has not been charged with maintaining a place of assignment but, rather, has been charged with (among other things) permitting the making of assignments (i.e., arrangements) at its licensed premises, the purpose of which assignments (or arrangements) being perverted sexual relations between males. Obviously the making of arrangements for such a purpose, although short of fruition, is lewd and immoral. In any event, the gravamen of Charges 3 and 4 is that the licensee "allowed, permitted and suffered lewdness and immoral activities in and upon the licensed premises", and the remainder of the two charges following the "viz." is merely a particularization of the acts and things comprising the lewdness and immoral activities. The important question is whether the proof supports the essential violation charged.

From all of the evidence it is abundantly clear that "queers" or, more politely, "female impersonators", within the contemplation of the Rule, were allowed, permitted and suffered in and upon the licensed premises during the period specified in the charges and that lewdness and immorality, including foul, filthy and obscene language and conduct were also allowed, permitted and suffered there. Consequently, I find the licensee guilty on Charges 1, 2, 3 and 4.

As to Charge 5: Considering all of the acts and conversations disclosed by the testimony, I must find that the licensee permitted the licensed place of business to be conducted in such manner as to become a nuisance within the meaning of the Rule. As then Commissioner Driscoll said in Alpine Village Tavern, Inc. v. Newark, Bulletin 629, Item 3:

"The state regulations prescribe rules of conduct which licensees are duty bound to observe. The word 'nuisance' as it is used in Rule 5 of State Regulations No. 20 is not to be restricted by technical definitions applicable in criminal cases. One readily apparent reason for this distinction is that the licensee is engaged in the exercise of a privilege, not a property right. Accordingly, in defining the word 'nuisance', I am not unmindful of its everyday usage. The word 'nuisance' has been defined as 'an offensive, annoying, unpleasant or obnoxious thing, practice or person; a cause or source of annoyance'. Webster's New International Dictionary."

Cf. Re Cosfair Corporation, Bulletin 875, Item 9, where this doctrine was recently reaffirmed. I, therefore, find the licensee guilty as to Charge 5.

The revolting situation disclosed by the testimony in this case cannot be permitted to continue. There can be no excuse for permitting this sort of conduct on licensed premises. Fostering the

presence of prostitutes on licensed premises is bad enough. The activities here permitted were, by all ordinary and accepted standards, far worse. In connection with activities in "places where these denizens of Sodom, politely called 'female impersonators', congregate", the late Commissioner Burnett said:

"Such offenses are particularly abhorrent." Orsi v. Newark, Bulletin 352, Item 2.

The proper penalty in this case is revocation of the license. McCracken v. Caldwell, Bulletin 456, Item 3.

Accordingly, it is, on this 21st day of December, 1950,

ORDERED that Plenary Retail Consumption License C-915, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to One-thirty-five Mulberry St. Corp., for premises 135 Mulberry Street, Newark, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(RENTING ROOMS FOR IMMORAL PURPOSES) - LICENSE SUSPENDED FOR
BALANCE OF TERM.

In the Matter of Disciplinary)
Proceedings against)
SAM SCHNEIDER)
T/a OCEAN HOUSE)
N/W Cor. Main & Water Streets)
Dover Township)
P. O. Toms River, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-1 for the 1949-50)
and 1950-51 licensing years, issued)
by the Township Committee of the)
Township of Dover.)
-----)

Ewart, Bennett & Sutton, Esqs., by Howard Ewart, Esq., Attorneys for
Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On June 21, 1950 and on divers dates prior thereto, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, viz., the renting of rooms for purposes of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20."

An ABC agent testified that on Saturday, June 17, 1950, at 12:01 a.m., he and a fellow agent visited defendant's licensed premises. The witness described the premises as follows: "It is a large frame building operating as a hotel. They have rooms on the second and third floors and a package goods department in the front of it. Part of the building consists of a grocery store front and as you enter to the barroom, through a stairway, he has a large oval shaped bar." The ABC agent testified that he entered into conversation with

the defendant and inquired from him whether he and his companion might hire rooms as they had a "couple of girls" and would "like to use the rooms for an hour or so to have intercourse with them". The defendant, according to the testimony of the witness, stated, "I don't give a ---- if you use it for an hour or a week as long as I get paid for the room", and agreed to let them have rooms, each room's rent to be \$5.00 per couple. In response to the agent's inquiry regarding baggage, the defendant said, "No, you don't need any baggage, you register as 'Mr. and Mrs.'" The agent testified that he told the defendant that the girls were not there, but he would let him know when he needed a room.

The witness further testified that the agent who accompanied him on June 17, 1950, and three other ABC agents arrived in the vicinity of defendant's licensed premises on Wednesday night, June 21, 1950. The witness testified that he and the agent who had accompanied him on the previous occasion entered the premises together at 9:30 p. m. They took positions at the bar near one of the other agents who had preceded them into the premises and thereupon again engaged in conversation with the defendant. The witness testified that he told the licensee that they would like to hire a couple of rooms as they brought a couple of girls, married women, and would want the room for about an hour for the purpose of engaging in sexual intercourse. The licensee reassured the agents that it was not necessary that they have baggage. The licensee thereupon spoke to his wife and the latter approached the agents, saying, "Sam told me you fellows want to rent a couple of rooms."

The wife, subsequently identified as Rose Schneider, led the two agents to the second floor and showed them two rooms, Nos. 11 and 12, which the agents agreed to hire. Each agent thereupon signed the register -- one as Mr. and Mrs. Frank Arthur and the other as Mr. and Mrs. Warner. Upon inquiry by Mrs. Schneider as to "Where are the women?", the agent answered, "Well, they are two married women; they don't want to come here in the hotel with us because they are afraid of getting into trouble." Mrs. Schneider then said, according to the agent's testimony, "These girls don't come from Toms River?" "No, they are not from Toms River", the agent replied. Mrs. Schneider then said, "That's good, I don't want to get into trouble with anybody if they know what is going on around here." Each agent paid Rose Schneider \$5.00 for the respective rooms, the numbers of the money being used therefor having previously been noted. The agents then ordered a bottle of wine and four glasses, all of which were brought to them by Rose Schneider, for which payment to her in the amount of \$1.00 was made. The agent testified that Mrs. Schneider, when leaving the room, said, "Have a good time, boys."

A short time thereafter the other agent who was at the bar, and the two who had originally remained outside of the premises, accompanied by the defendant, entered Room No. 12. The witness further testified that defendant, in response to a question of one of the agents as to what two men were doing in a room, said, "These men are with their wives, they are not here just yet." Thereafter the witness said he heard defendant say to two of the ABC agents that he knew the two men were going to use the room for sexual intercourse with some women for an hour or so.

The agent who had accompanied the aforementioned witness corroborated his testimony with reference to the occurrences at the time in question. The ABC agent who had entered the premises first on June 21, 1950, testified that he heard the conversation engaged in by defendant and the two agents in the barroom when they requested rooms.

The defendant and Rose Schneider, his wife, denied the conversations which they were alleged to have engaged in with the ABC agents.

The defendant, however, when asked whether or not he said, "These men are waiting for their wives" at the time he and the agents entered Room No. 12, answered, "I don't know." Also, defendant did not recollect as to various incidents that allegedly took place when he was questioned about them during cross-examination.

Defendant produced five persons of prominence in the township in which he resides, who testified that the defendant's general reputation was very good in the community in which he lives and conducts his business. None of these persons, however, was in defendant's licensed premises either on the morning of June 17, 1950, or the evening of June 21, 1950. Hence, their testimony is immaterial on the issue in this case.

I am satisfied that the ABC agents' testimony portrays a true picture of events which took place at the times in question. The evidence presented by the ABC agents indicates beyond doubt that the defendant and Rose Schneider, his wife, knew of the ostensibly unlawful purpose for which the rooms were hired by the agents and, in renting the rooms with such knowledge, the defendant was guilty of allowing, permitting and suffering immoral activities on the licensed premises. The fact that no unlawful sexual intercourse followed the violation is immaterial on the question of the defendant's guilt. The offense under the charge preferred was complete when the rooms were rented with the knowledge of the illicit purpose for which the rooms were to be used. Cf. State v. Berman, 120 N.J.L. 381 (Sup. Ct. 1938), where such evidence was considered pertinent in a criminal proceeding for keeping a disorderly house.

The term "immoral" is defined as "not moral; inconsistent with rectitude, purity or good morals; contrary to conscience or moral law". It is synonymous with "indecent". See Webster's New International Dictionary, Second Edition, Unabridged. It is clear that the overt act of renting the rooms for illicit purposes is "immoral" within any of these definitions and constitutes immoral, and also illegal, activity within the intendment of the regulations in question. Indeed, such conduct involves the very commission of an immoral and illegal act and a fortiorari constitutes "allowing, permitting or suffering" the offenses embraced in the charge.

The circumstances surrounding this violation bear a marked similarity to those found in Re Denti, Bulletin 835, Item 8. Under all of the circumstances, I shall suspend defendant's license for the full balance of the term, i.e., through June 30, 1951.

Although this proceeding was instituted during the 1949-50 licensing period, it does not abate but remains fully effective against the renewal license for the licensing year 1950-51. State Regulations No. 16.

Accordingly, it is, on this 27th day of December, 1950,

ORDERED that Plenary Retail Consumption License C-1, issued for the 1950-51 licensing year by the Township Committee of the Township of Dover to Sam Schneider, t/a Ocean House, for premises N/W cor. Main & Water Streets, Dover Township, be and the same is hereby suspended for the balance of its term expiring at midnight, June 30, 1951, effective on January 8, 1951, at 2:00 a.m.

ERWIN B. HOCK
Director.

4. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE - CONCEALING MATERIAL FACT (DISQUALIFYING CRIMINAL RECORD)- LICENSE SUSPENDED FOR BALANCE OF TERM, WITH PERMISSION TO QUALIFIED PERSON TO APPLY FOR LIFTING UPON EXPIRATION OF 90 DAYS.

In the Matter of Disciplinary
Proceedings against

ALEX LUKASZEWICH
427-429 Avenue C
Bayonne, N. J.,

CONCLUSIONS
AND ORDERS

Holder of Plenary Retail Consump-
tion License C-169, issued by the
Board of Commissioners of the City
of Bayonne.

-----)
William Rubin, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he falsified the application for his current license, in violation of R. S. 33:1-25.

In his application, dated May 27, 1950, defendant answered Question 33 which asks: "Have you or has any person mentioned in this application, ever been convicted of any crime?" by falsely stating "No".

In December 1919, when about 21 years of age, defendant was sentenced in a criminal court of another state to a term of from 1 to 25 years in prison after pleading guilty to a charge of "robbery". He was paroled in March 1922 and finally released in April 1923. Conviction of robbery is, per se, the conviction of a crime involving moral turpitude, within the provisions of R. S. 33:1-25. He is not eligible to hold a liquor license in this state. Cf. Re Case No. 883, decided concurrently herewith, wherein I have denied defendant's petition seeking the removal of his disqualification.

Defendant has held his license since about 1939 and has never disclosed his conviction of crime. Apparently he has conducted the licensed business in a satisfactory manner during all this period. However, since he is disqualified by statute from holding a license, I must, therefore, suspend his license for the balance of its term. In the event, however, that the license is transferred to a duly qualified person, such transferee may petition me for a reinstatement of the license, providing, however, that the suspension imposed herein shall continue for at least 90 days. Re Mascio, Bulletin 794, Item 14.

Accordingly, it is, on this 28th day of December, 1950,

ORDERED that Plenary Retail Consumption License C-169, issued by the Board of Commissioners of the City of Bayonne to Alex Lukaszewich, for premises 427-429 Avenue C, Bayonne, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. January 3, 1951; and it is further

ORDERED that if and when the license is transferred, subject to this suspension, by the local issuing authority, application may be made to me for the transferee to vacate the suspension herein imposed; provided, however, that in no event will the suspension be lifted until at least ninety (90) days have elapsed from the effective date of the suspension herein imposed.

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

BATAY CORPORATION
T/a HARMONY BAR
117-119 Central Avenue
Orange, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-49, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Orange.

James A. Palmieri, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that on two separate occasions it sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to minors, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on Friday, October 13, 1950, Jacob Shames, a bartender employed by defendant, sold and served an alcoholic beverage to Lorraine ---, a minor, then aged seventeen; that, on the same evening and continuing into the early morning hours of Saturday, October 14, the same bartender sold and served alcoholic beverages to Jacqueline ---, a minor, then aged sixteen; and that on Sunday, October 15, the same bartender sold and served alcoholic beverages to Jacqueline --- and Helen ---, a minor, then aged nineteen.

It is contended on behalf of defendant that, before making the sale, its bartender had examined a birth certificate in the possession of Jacqueline ---, apparently a certificate of the birth of her sister. It is not contended that he made any other inquiry, or that he obtained written statements necessary to establish a defense under the provisions of R. S. 33:1-77. Cf. Re Smith, Bulletin 890, Item 10. The defendant is guilty as charged.

Defendant has no prior adjudicated record. Considering the age of the two younger minors and the repeated sales, I shall suspend the license for twenty days. Remitting five days for the plea entered herein will leave a net suspension of fifteen days. Re Eucker, Bulletin 844, Item 6; cf. Re Casa Blanca Cocktail Bar, Inc., Bulletin 890, Item 11; Re Smith, supra; Re Nadzeika, Bulletin 891, Item 4 (cases involving the same sixteen-year-old minor).

Accordingly, it is, on this 27th day of December, 1950,

ORDERED that Plenary Retail Consumption License C-49, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Batay Corporation, t/a Harmony Bar, for premises 117-119 Central Avenue, Orange, be and the same is hereby suspended for fifteen days, commencing at 2:00 a.m. January 8, 1951, and terminating at 2:00 a.m. January 23, 1951.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF MUNICIPAL REGULATION - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

CESARE CAPRIOTTI

T/a ARCH CAFE

200 Arch Street & 6 North 2nd Street
Camden, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-159, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Camden.

Benjamin F. Friedman, Esq., Attorney for Defendant-licensee.
Vincent T. Flanagan, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge that he sold, served and delivered an alcoholic beverage on his licensed premises during prohibited hours, in violation of the provisions of an Ordinance of the City of Camden.

On Tuesday, November 14, 1950, at about 6:45 a.m., defendant sold and delivered a drink of an alcoholic beverage on his licensed premises to an ABC agent.

This activity is prohibited by Section 5 of an Ordinance of the City of Camden, adopted December 27, 1934, and now in effect, which in its pertinent part provides:

"Section 5. No alcoholic beverage shall be sold, served or delivered....upon the licensed premises, directly or indirectly, between the hours of 2 a.m. and 7 a.m. (on) any weekday...."

The defendant has a prior adjudicated record. Effective April 20, 1943, his license was suspended for 2 days by the State Commissioner after he had pleaded guilty to a charge of possessing a mislabeled beer tap. Bulletin 563, Item 9. Effective April 19, 1944, his license was suspended for 30 days by the State Commissioner after a plea of non vult to charges of selling during prohibited hours, in violation of a local ordinance and in violation of State Regulations No. 38, Rule 1, Bulletin 613, Item 3.

Ordinarily, I would not consider the prior record in aggravation because of the lapse of time, but in view of the similarity of the violation involved in the 1944 suspension, I must consider that violation. Instead of doubling the penalty herein, as is usual in considering past records for similar violations, I shall, because of said lapse of time, add 5 days to the minimum suspension in "hours" cases. The license will be suspended for 20 days. Remitting 5 days for the plea, will leave a net suspension of 15 days.

Accordingly, it is, on this 27th day of December, 1950,

ORDERED that Plenary Retail Consumption License C-159, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Cesare Capriotti, t/a Arch Cafe, for premises 200 Arch Street & 6 North 2nd Street, Camden, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 7:00 a.m. January 8, 1951, and terminating at 7:00 a.m. January 23, 1951.

ERWIN B. HOCK
Director.

7. APPELLATE DECISIONS - FREED v. WAYNE TOWNSHIP.

JOHN FREED and MARION FREED,)
t/a FREED'S TAVERN,)

Appellants,)

-vs-)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WAYNE,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Frank W. Shershin, Esq., Attorney for Appellants.
C. Alfred Wilson, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial of appellants' application for place-to-place transfer of their plenary retail consumption license.

Respondent denied the application on the grounds that:

"1. The proposed premises to which the license is sought to be transferred does not have sufficient parking area.

"2. The proposed premises are located on the Paterson-Hamburg Turnpike, a four-lane road, at a point where it is joined by the Black Oak Ridge Road -- Route 202.

"Both roads are heavily traveled roads. The traffic entering the Turnpike from Route 202 already creates a hazardous condition.

"To permit a tavern at this location would only add to the hazardous condition."

The Petition of Appeal alleges that respondent's action was erroneous, and prays that such action be reversed, on the grounds that:

"(a) Applicants have adequate parking facilities.

"(b) Premises are in a business zone.

"(c) Traffic on Hamburg Turnpike and United States Highway No. 202 would not create a hazard."

Introduced in evidence herein was the following undated writing signed by the owner of land used for a "pony track" adjacent to the premises sought to be licensed:

"I am giving Mr. Freed my permission to use as much of my property for parking space if necessary.

"Tom Grossi
"P. T. Ranch"

Thus, although the arrangements in this regard were merely prospective and most informal, it would appear that parking facilities might, within a reasonable time, have become adequate.

However, the record herein would indicate that while appellants had leased the premises sought to be licensed, those premises, when the application was denied and when the appeal was heard, were used and operated as an oil burner business. The State Alcoholic Beverage Law (in R. S. 33:1-24) makes it the duty of the municipal issuing authorities "to inspect premises sought to be licensed". It appears that substantial alterations would be necessary for conversion of the premises to tavern use. Certainly the premises, as they stood, could not have been deemed suitable for alcoholic beverage licensed operation. It is possible, therefore, that in the absence of appellants' submission, with the application, of any plans and specifications of the proposed changes, respondent would have had legal justification for denying the application on the ground of such absence.

Appellants' licensed premises are located on Hamburg Turnpike at a point where Pines Road enters said Turnpike. The premises sought to be licensed are also on the Hamburg Turnpike, slightly east of the point where Black Oak Ridge Road (U. S. Route 202) enters said Turnpike and approximately seven-tenths of a mile west of the presently licensed premises.

It was stipulated, at the hearing herein, that a writing purporting to be a petition containing sixty-two signatures was filed with respondent and that the writing (petition) favored the granting of appellants' application. The weight to be accorded petitions for or against the granting of a retail license, or transfer, is a matter properly within the discretion of the municipal issuing authority. (Goff v. Piscataway, Bulletin 234, Item 5; Re Powell, Bulletin 59, Item 15.)

A transfer of an alcoholic beverage license is not an inherent or automatic right. The issuing authority may grant or deny application for transfer in the exercise of a reasonable discretion. If denied on reasonable ground, the action will be affirmed. (Van Schoick v. Howell, Bulletin 120, Item 6.) On the other hand, when it appears that denial of transfer is arbitrary or unreasonable, such denial will be reversed. (Shapley v. Delaware Township, Bulletin 294, Item 7; Blumenthal v. Wall, Bulletin 169, Item 6.)

A municipal issuing authority may validly deny a license or place-to-place transfer of a license because of a reasonable apprehension of aggravated or undue traffic peril. (See Peroni v. Hopewell Township, Bulletin 328, Item 7; Zackerew v. South Bound Brook, Bulletin 216, Item 4.)

In the instant case the testimony regarding traffic hazard or aggravation thereof in connection with establishment of a plenary retail consumption licensed business at the proposed premises is conflicting, but it appears that motor vehicle traffic at the intersection of the Hamburg Pike and U. S. Highway No. 202 is heavy, and even a casual glance at the photographs of such intersection, herein in evidence, is sufficient to demonstrate that respondent's second ground for denial is scarcely fanciful. There is no evidence or suggestion of improper motivation on the part of respondent.

In all appeals the burden of proof to establish "that the action of the respondent issuing authority was erroneous and should be reversed rests with the appellant". (Rule 6, State Regulations No. 15.) There is nothing in the record before me indicating that respondent's denial, on its second ground thereof, was capricious, arbitrary, or discriminatory or that such denial was unreasonable or otherwise erroneous so as to call for reversal. I find, therefore, that appellant has failed to carry the required burden of proof and, thus, the denial of appellants' application will be affirmed.

Accordingly, it is, on this 27th day of December, 1950,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

8. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN GRANTED.

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

CONCLUSIONS
AND ORDER

Case No. 885.)

BY THE DIRECTOR:

In 1929 petitioner pleaded non vult to the crime of burglary, as a result of which he was placed on probation for three years. The crime of burglary of which petitioner was convicted was held to involve moral turpitude. See Case No. 142, Bulletin 166, Item 6.

On July 31, 1950 a petition filed by petitioner for removal of his disqualification was dismissed because petitioner had given false answers in two "questionnaires" filed with this Division. Petitioner was given leave, however, to renew his application for relief after October 30, 1950. See Case No. 831, Bulletin 883, Item 10.

Petitioner has now reapplied for removal of any disqualification that may exist because of his criminal record.

Since July 31, 1950 petitioner has apparently been leading a law-abiding life. He was unemployed from that date to September 5, 1950 when he obtained his present employment as helper in a factory. There is no evidence presented which might indicate that he has been associated with the alcoholic beverage industry since his previous petition was dismissed.

Three persons (a mechanic, a police sergeant and a businessman) testified that they have known petitioner for ten or more years and that, in their opinion, he bears a reputation for being a law-abiding person in the community in which he resides.

The Chief of Police of the municipality wherein petitioner resides has advised that there are no complaints or investigations concerning petitioner at the present time.

I find that petitioner has conducted himself in a law-abiding manner during the past five years and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 15th day of December, 1950,

ORDERED that petitioner's statutory disqualification because of the conviction referred to herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

ERWIN B. HOCK
Director.

9. MORAL TURPITUDE - COMMERCIALIZED GAMBLING HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF THE CASE.

December 21, 1950.

Re: Case No. 626

On January 30, 1950, subject pleaded guilty to a charge of pool selling and bookmaking on the horse races, and as a result thereof was fined \$1,000.00 by a Judge of a County Court. Subject testified that he had taken several bets when he was apprehended by a municipal police officer. Subject further testified that he was the sole operator of the gambling business.

The police authorities of the city in which subject resides have advised that at the time subject was apprehended they found racing sheets and betting slips on his person. The Prosecutor of the county in which subject resides advised that subject was the principal in the bookmaking operation.

After careful review of the evidence in the instant proceeding, I am satisfied that subject operated his gambling business as a principal and that the crime of pool selling and bookmaking on the horse races, to which subject pleaded guilty on January 30, 1950, involves the element of moral turpitude.

I recommend, therefore, that subject be advised that, in the opinion of the Director, he has been convicted of a crime involving moral turpitude and that, in the opinion of the Director, any licensee who employs him or permits him to be associated in any capacity with the alcoholic beverage industry would subject his license to suspension or revocation. R. S. 33:1-25, 26.

APPROVED:
ERWIN B. HOCK
Director.

Clarence E. Kremer
Attorney.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Warehouse Receipts Corporation
48-52 Essex St., Jersey City, N. J.
Application filed December 20, 1950 for Warehouse Receipts License.

Bee-Line Beverage Service
State Highway #36 (South Side), Approx. 1000' West of Waycake Creek
West Keansburg, N. J.
Application filed December 20, 1950 for transfer of State Beverage Distributor's License from Vincent Canzanese, t/a Riverside Beer Distributor, 256 Chester Avenue, Delran Township, P.O. Riverside, N.J.

Lawrence Warehouse Company
502 Atkins Avenue, Neptune, N. J.
Application filed December 28, 1950 for Public Warehouse License.

Erwin B. Hock
Director.