

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

BULLETIN 1429

January 17, 1962

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1. APPELLATE DECISIONS - THE BOSS CO., INC. ET AL. v. ATLANTIC CITY
AND THE CLOCK BAR & GRILL, INC.

APPELLATE DECISIONS - THE BOSS CO., INC. ET AL. v. ATLANTIC CITY,
CLOCK BAR & GRILL, INC. AND SYCUR INC.

#2839)
THE BOSS CO., INC., t/a THE CLICK,)
AND CHRIS L. GROSS, DISTRICT)
DIRECTOR OF INTERNAL REVENUE, CAMDEN,)
NEW JERSEY,)
Appellants,)

v.)

BOARD OF COMMISSIONERS OF THE CITY OF)
ATLANTIC CITY, AND THE CLOCK BAR &)
GRILL, INC., t/a THE CLOCK,)

Respondents.)

ON APPEAL
CONCLUSIONS
AND ORDER

-----)
#2856)
THE BOSS CO., INC., t/a THE CLICK, AND CHRIS L.)
GROSS, DISTRICT DIRECTOR OF INTERNAL REVENUE,)
CAMDEN, NEW JERSEY,)
Appellants,)

v.)

BOARD OF COMMISSIONERS OF THE CITY OF)
ATLANTIC CITY, CLOCK BAR & GRILL, INC.,)
AND SYCUR INC.,)

Respondents.)

-----)
L. Milton Freed, Esq., Attorney for Appellant The Boss Co., Inc.)
Dennis C. DeBerry, Esq., and Chester A. Weidenburner, Esq.)
United States Attorney, District of New Jersey, by Sidney)
Franzblau, Esq., and Frank J. Ferry, Esq., Attorneys for)
Appellant Chris L. Gross, District Director of Internal Revenue)
Murray Fredericks, Esq., City Solicitor, by Chaim H. Sandler, Esq.,)
Associate City Solicitor, Attorney for Respondent Board of)
Commissioners.)
Thomas W. Rauffenbart, Esq., Attorney for Respondents Clock Bar &)
Grill, Inc., and Syncur Inc.)

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"These appeals involve the same issues and may be decided
together.

"Both cases concern plenary retail consumption license C-188
which was issued for the 1960-61 licensing year by respondent Board of
Commissioners (hereafter Board) to respondent Clock Bar & Grill, Inc.

(hereafter Clock) for premises at 19-21 South Tennessee Avenue, Atlantic City.

"In Case #2839, the attorneys appearing for all parties agreed at the hearing held on June 26, 1961, that the facts set forth in the petition of appeal are true, the only disagreement being as to the legal conclusions to be drawn from said facts. I find from the petition of appeal that the facts in Case #2839 are as follows: On August 15, 1958, a lien in favor of the United States arose upon all property and rights to property belonging to respondent Clock because of its neglect or refusal to pay excise taxes in the amount of \$25,914.76, plus interest and costs. Title 26, U.S.C.A., Section 6321, Said lien is still in existence. On March 15, 1961 (pursuant to Title 26, U.S.C.A., Section 6331) an agent of the District Director of Internal Revenue, Camden, New Jersey, made a levy upon the following:

'All rights of the Clock Bar & Grill in and under City of Atlantic City Plenary Retail Consumption Liquor License Number C-188.'

"On April 6, 1961, respondent Board granted an application filed by Clock to transfer its license C-188 from 19-21 South Tennessee Avenue to premises at 22-24 South South Carolina Avenue, subject to completion of a building at said address. On April 10, 1961, the District Director of Internal Revenue, Camden, New Jersey, sold the item upon which the aforesaid levy had been made to appellant The Boss Co., Inc. (hereafter Boss). Title 26, U.S.C.A., Section 6335. On April 12, 1961, Boss filed with respondent Board an application to transfer license C-188 to it and to re-transfer said license to 19-21 South Tennessee Avenue. Because an objection to said application was filed by Clock, respondent Board held a public hearing on May 4, 1961. At the conclusion of said hearing respondent Board adopted a resolution, the pertinent portions of which are as follows:

'WHEREAS, it appeared to the Board of Commissioners that the said The Boss Co., Inc. based its right to said person-to-person and place-to-place transfer on its purchasing said license from the Internal Revenue Service, which attempted to seize said license for nonpayment of taxes owed the United States Government by the objector-licensee, Clock Bar & Grille, Inc.; and

'WHEREAS, it appeared that no written consent to the transfer by Clock Bar & Grille, Inc. appeared on the application for the transfer nor was the application accompanied by a separate written consent to the transfer;

'NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Atlantic City that said Board of Commissioners is of the opinion that under the facts in this case, said Board of Commissioners does not have jurisdiction under the provisions of R.S. 33:1-26 to grant the application for transfer, because said application is not accompanied by either a separate written document signifying the consent of the licensee, Clock Bar & Grille, Inc. to said transfer nor does said application for transfer contain the written consent of said licensee to the transfer; and

'BE IT FURTHER RESOLVED that the Board of Commissioners of the City of Atlantic City is of the opinion that the licensee has no property rights subject to levy or sale in Plenary Retail Consumption License #C-188; and

'BE IT FURTHER RESOLVED that the application for said person-to-person and place-to-place transfer be and the same is hereby denied.'

"Appellants filed this appeal from said action of respondent

Board.

"In Case #2856, appellants appeal from the action of respondent Board whereby, on June 29, 1961, said Board granted an application filed by Clock for renewal of its license, for the 1961-62 licensing year, for premises at 22-24 South South Carolina Avenue, and granted an application filed by Sycur Inc. for a transfer of the renewed license to it for the same premises. Both applications were granted subject to completion of a building at said address. The appeal in this case was scheduled to be heard on September 11, 1961, but said hearing was not held because, prior thereto, the following stipulation, signed by the attorneys for the respective parties, was filed therein:

'IT IS HEREBY STIPULATED AND AGREED by and between counsel of the parties to the above-captioned appeal as follows:

1. The issues in the prior appeal heard June 26, 1961, of "The Boss Co., Inc. and Chris L. Gross v. Board of Commissioners of Atlantic City and Clock Bar & Grille, Inc." are the same in this case.
2. There is no controversy as to the facts in this matter. The point at issue is one of law. It is agreed that the decision in the above-referred prior appeal shall be binding in this case.
3. At a public hearing on the application by Sycur, Inc. for transfer to it from Clock Bar & Grille, Inc. of the subject liquor license here involved held before respondent Board of Commissioners of Atlantic City on June 29, 1961, the Board of Commissioners of Atlantic City granted the application of transfer, with the understanding of all concerned that the transfer was dependent on the outcome of the then pending appeal referred to in paragraph 1.
4. Therefore, the parties therein agree that both matters now before the Director of the Division of Alcoholic Beverage Control may be combined and decided together.'

"At the hearing which was held on June 26, 1961, in Case #2839, the attorney for respondent Board contended, as a preliminary question, that, under the circumstances, the Director of Internal Revenue has no standing or status to prosecute said appeal and is not a proper or necessary party. At that time I reserved decision as to said contention. This preliminary question is governed by the provisions of R.S. 33:1-26. Said Section provides that, if a local issuing authority shall refuse to grant a transfer, such applicant may, within 30 days after the date of service or mailing of a notice of such refusal, appeal to the Director from the action of the issuing authority. The cited Section does not provide for an appeal by any other person from the action of the issuing authority. Cf. Bartges et al. v. Atlantic City et al., Bulletin 1372, Item 1. I find that the contention of the attorney for respondent Board is correct. Hence I shall recommend that an order be entered striking the name of Chris L. Gross, District Director of Internal Revenue, Camden, New Jersey, as appellant in both cases. However, since the brief submitted by the named appellants is a joint brief, it will be considered in determining the merits of the cases as to appellant Boss.

"Considering the first reason for denial, namely, the lack of a written consent by the licensee to the transfer, R.S. 33:1-26 provides:

'In case of death, bankruptcy, receivership or incompetency of the licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the director or other issuing authority may, in his or its discretion, extend said license for a limited time, not exceeding its term, to the executor, administrator, trustee, receiver or other person upon whom the same has devolved by operation of law as aforesaid.

* * * * *

'On application made therefor setting forth the same matters and things with reference to the person to whom a transfer of license is sought as are required to be set forth in connection with an original application for license, which application for transfer shall be signed and sworn to by the person to whom the transfer of license is sought and shall bear the consent in writing of the licensee to such transfer, and after publication of notice of intention by the person to whom the transfer *** is sought, to apply for transfer in the same manner as is required in the case of an original application for license, the director or other issuing authority, as the case may be, may transfer any license issued by him or it respectively to such applicant for transfer by endorsing the license.'

"These provisions have been construed by the Director to permit a person, to whom a license has been duly extended, to consent, as the holder of the extended license, to a transfer of the said license. Appellant Boss did not obtain an extension of the license. In fact, whatever the effect of the attempted levy and sale by the United States, it cannot be seriously contended that the operation of the licensed business thereby devolved by operation of law upon Boss and, hence, this case is not one included in the category of cases in which an extension can be obtained. In all other cases the application for transfer must bear the consent in writing of the licensee to the transfer. In the absence of such consent, respondent Board had no jurisdiction to grant the requested transfer. Norton v. Union, Bulletin 709, Item 5. In appellants' brief it is argued that the certificate of sale issued to Boss under the provisions of 26 U.S.C.A. Section 6335 operates as the required consent of the licensee -- 'a consent in law if you will.' There is no merit to this contention. Cf. Palka v. Passaic et al., Bulletin 816, Item 4; Jensen v. Warren, Bulletin 889, Item 2. I conclude, therefore, that respondent Board properly held that it did not have jurisdiction to grant the application for transfer filed by Boss because of lack of the required written consent by the licensee to the transfer of the license.

"While, in my opinion, the reason set forth above is sufficient to sustain the Board's action, it may be well, because of similar cases which may arise in the future, to consider the additional reason for denial, namely, that the licensee has no property rights in the license which are subject to levy or sale.

"R.S. 33:1-26 also provides:

'Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent

expressly provided by this chapter.'

"The above language clearly sets forth the intent of the Legislature. The same language is contained in the original 'Act Concerning Alcoholic Beverages.' P.L. 1933, ch. 436, Section 23. The same language is repeated in the subsequent amendment to said Section 23 permitting the transfer of a license from person to person, which had been prohibited by the same Section in the original Act. P.L. 1935, ch. 257, Section 9. The fact that the Legislature, with knowledge of the 'existing law', then refrained from changing the above language is evidence that it intended that a license, or rights thereunder, should not be deemed property, despite the added provision permitting a transfer from person to person. Commissioner of Internal Revenue v. Stern, (1958), 357 U.S. 39, 2 L. Ed. 2d 1126, 78 S.Ct. 1047.

"The Courts of the State of New Jersey have uniformly held that, at least as to creditors of the licensee other than the United States, a New Jersey liquor license, or rights thereunder, are not property. Thus, in Rawlins v. Trevethan, 139 N.J. Eq. 226, 230, the Court said:

'In the instant case counsel for the complainants does not deny that the established rule in New Jersey is that a license to sell liquors is in no sense property. Nor does he deny that a public policy has been declared in this state by our legislature and our courts that licensees should hold their licenses free from any device which would subject them to the control of other persons. Walsh v. Bradley, 121 N.J. Eq. 359; 190 Atl. Rep. 88; Lachow v. Alper, 130 N.J. Eq. 588; 23 Atl. Rep. (2nd) 595; Mannion v. Greenbrook Hotel, Inc. (Court of Errors and Appeals) 138 N.J. Eq. 518; 48 Atl. Rep. (2nd) 888; Novack v. Krauz, 138 N.J. Eq. 241; 47 Atl. Rep. (2nd) 586. Counsel for the complainants does argue, however, that our legislature, having provided by law for transfers of licenses, has given to a license the attribute of property. This contention was raised in the case from which I have just quoted. Voight v. Board of Excise Commissioners of the City of Newark. Mr. Justice Gummere commented, "But why the fact that a license may now be transferred in this state converts it from a mere privilege into a property right, he does not tell us, nor have I been able to perceive, and I have therefore concluded that the contention has nothing to rest upon."'

"See also Takacs v. Horvath, 3 N.J. Super. 433 (Sup.Ct. Ch. Div. 1949). There is nothing to the contrary in Feigenspan v. Mulligan, 63 N.J. Eq. 179; aff'd. 64 N.J. Eq. 792 (Ct. E. & A. 1902), in which the relief sought on the foreclosure of a mortgage on a liquor license was denied. There is nothing to the contrary in Drozdowski v. Sayreville, 133 N.J.L. 536 (Sup. Ct. 1946), which holds that a liquor license is not property, but that a license may not be revoked without due process of law. Cf. State Board of Medical Examiners v. Weiner, 68 N.J. Super. (App. Div. 1961) (license to practice medicine and surgery).

"This Division has always ruled that a license is not subject to a levy or sale on execution. In re McRell, Bulletin 173, Item 16 (1937).

"In appellants' brief it is emphasized that the Federal Government does not desire to enter any liquor business by seizing an

issued license but it is argued that, because of the provisions of Title 26, U.S.C.A. Section 6331, the Government has a right to levy upon and sell the license rights, 'more particularly described as the right of transfer to be granted subject to specified conditions.' For clarity, it must be pointed out that a liquor licensee has no right to transfer his license and that no one except the issuing authority may transfer the license. The only 'right' which a licensee has is to consent to such a transfer. This is an incidence to the license, but it is neither 'property' nor 'right to property' within the meaning of Title 26, U.S.C.A. Section 6331. In United States v. Bess (1958), 357 U.S. 51, 2 L. Ed. 2d 1135, 78 S. Ct. 1054, it was held that the right of an insured to change the beneficiary of his insurance policy was not 'property' subject to lien, whereas the cash surrender value of the policy, which the insured could have collected during his lifetime, was a chose in action to the amount thereof and, hence, 'property' or 'rights to property.'

"In appellants' brief it is further argued that the United States may seize and sell the rights in a New Jersey liquor license, despite New Jersey law. However, in Fidelity and Deposit Company v. New York City Housing Authority, (1957) 241 F. 2d 142, it is said that the Congress, in adopting the tax lien legislation, did not create property interests on which a lien might be imposed and that there is no suggestion that it authorized the federal courts to do so. It is further said that Congress took for granted here, as it normally does in the tax law, the vital existence of state laws creating and maintaining various interests. Also, in United States v. Bess, supra, it is not questioned that the rights of the insured debtor are measured by the policy contract as enforced by New Jersey law. Since Congress has not provided that the license is property, and since the state law which created the license provides, by its terms and as construed, that the license, or rights thereunder, shall not be deemed property, the state law should prevail. Commissioner of Internal Revenue v. Stern, supra; United States v. Bess, supra; Aquillino v. United States, (1960) 363 U.S. 509, 4 L. Ed. 2d 1365, 80 S. Ct. 1277.

"It is further argued that a State may not exempt property from a Federal lien. However, this issue is not involved because the license, or rights thereunder, are not property.

"The cases cited from other States are not in point because of the variations in the laws of other States and the interpretation thereof by the Courts of said States.

"For the reasons aforesaid, I conclude that the additional reason for denial was valid.

"It is recommended, therefore, that an order be entered in both cases striking out the name of Chris L. Gross, District Director of Internal Revenue, Camden, New Jersey, as appellant, and that a further order be entered in both cases affirming the actions of respondent Board.

Excellent briefs were submitted by the several attorneys. Pursuant to Rule 14 of State Regulation No. 15, the attorneys for appellants filed exceptions to the Hearer's Report and written argument thereto and attorney for respondent Board filed written answering argument.

On the issue of proper and necessary parties to an appeal, I must remark that in Bartges et als. v. Atlantic City et als., Bulletin 137, Item 1, the transferor had been named as a respondent in an appeal from grant of a license transfer; and in Livingston Land Corp. v. Livingston et als., Bulletin 1136, Item 3 (cited on the point in the Bartges decision).

the proposed transferors had been named as respondents in an appeal from denial of a license transfer. In the instant case the District Director of Internal Revenue joined as a party-appellant not only in the appeal from denial of application for 1960-1961 license transfer but also (in intendment and actual effect) in the appeals from grant of 1961-1962 renewal and 1961-1962 transfer. In Revised Statutes 33:1-22 our State Alcoholic Beverage law provides that, if the municipal issuing authority shall issue a license "any taxpayer or other aggrieved person opposing the issuance of such license may, within thirty days after the issuance of such license, appeal to the commissioner (now Director) from the action of the issuing authority." Revised Statutes 33:1-26 sets forth the same language with respect to right of appeal from grant of a retail license transfer. I shall not, therefore, enter an order striking the name of Chris L. Gross, District Director of Internal Revenue, Camden, New Jersey, as appellant in these cases.

With respect to the merits, I fully appreciate the government's position, most ably presented, that delinquent licensees should not be permitted to avoid their just tax liabilities; but it appears clear to me that relief, if any, in this regard may be afforded only by amendatory New Jersey legislation. In the present posture of the statute, I am convinced that the Hearer's exposition of the law is correct and, therefore, I must adopt his recommendation.

Accordingly, it is, on this 4th day of December 1961,

ORDERED that the actions of the respondent Board of Commissioners be and the same are hereby affirmed, and that the appeals herein be and the same are hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - INDECENT ENTERTAINMENT - HOSTESSES - PRIOR RECORD - LICENSE SUSPENDED FOR 65 DAYS - PREMISES CLOSED - EFFECTIVE DATES OF SUSPENSION TO BE FIXED BY SUBSEQUENT ORDER.

In the Matter of Disciplinary Proceedings against)
)
 PADDOCK INTERNATIONAL (A CORP.))
 t/a PADDOCK INTERNATIONAL)
 1643 Atlantic Avenue)
 Atlantic City, N. J.)
 Holder of Plenary Retail Consumption License C-98, issued by the Board of Commissioners of the City of Atlantic City.)

CONCLUSIONS
AND ORDER

 Leo J. Berg, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On August 5, 1961, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises in that female entertainers performed in a lewd, indecent and immoral manner, including in their routines what is commonly known as the 'strip tease'; in violation of Rule 5 of State Regulation No. 20.

"2. On August 5, 1961, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20."

At about 12:40 a.m. on August 5, 1961, ABC agents entered and seated themselves at the bar in the front of said licensed premises while a floor show was in progress in the rear room. A female, introducing herself as Kathy, an exotic dancer, known professionally as "The Lady Matador", solicited a drink from the agents. She ordered from the bartender, Art Zaris, vodka and water which she quickly finished, and the bartender took payment therefor from money in front of the agents. The bartender inquired whether they wanted to purchase another round and, upon receiving an affirmative answer, immediately poured another un-mixed vodka and water drink. It appeared that Kathy would simulate drinking the vodka but would, in fact, "spit" the vodka into the glass of water, which was then emptied by the bartender. Several other drinks were solicited by both Kathy and the bartender, and payment therefor was made from monies of the agents.

At about 2:00 a.m., Kathy left the agents and engaged in her act and, when she returned, she again solicited drinks from the agents, and she then continued with the same routine with respect to the vodka and water. She informed the agents that sometimes there is no late show, as there was that night, and the agents remarked that this must make her very happy, and she replied, "Are you kidding? That just means that I have to sit out here at the bar longer". The agents observed that other entertainers were also drinking at the bar at the expense of male patrons.

When the floor show began, the ABC agents sat at a table in the rear room and observed the Master of Ceremonies, Rummy Bishop, introduce a woman in a black evening gown and long black gloves. To the rhythm of music, she removed her dress and gloves in a very sensual manner, and revealed a very brief net bra and panties. She then performed bumps and grinds, rotating the lower portion of her body in time with the drum beat, and gyrated in a lascivious manner. The Master of Ceremonies then introduced Kathy as an exotic dancer, identifying her as the "Lady Matador". Kathy wore a tight gold-sequin matador outfit which she rapidly unzipped in stages, finally revealing a brief pair of panties and a tiny gold bra. She too engaged in a bumps and grinds routine with carnal overtones. This act was followed by a dance team. The agents then returned to the bar and observed the conduct of the entertainers as set forth hereinabove. The agents did not identify themselves but, on a return visit to the premises, they identified themselves to Edward Kravis, an officer of the defendant corporate-licensee, who denied any knowledge of what had transpired on August 5th.

Counsel for the defendant has submitted a statement in attempte mitigation hereof, in which he sets forth that the performance was "at best a modified strip" and one that would not ordinarily shock the conscience of a reasonable minded man; that there is no similarity between the offense herein charged and the previous offense of the licensee within the past five-year period. I do not agree with counsel's characterization of the performance. It has been repeatedly pointed out to licensees that such entertainment will not be tolerated on licensed premises. The only mitigating circumstance in the case is that the agents did not identify themselves on this visit and that when they subsequently visited the premises this type of entertainment had been discontinued.

Defendant has a prior adjudicated record. Effective November 28, 1960, its license was suspended by this Division for forty-five days for violations of permitting female entertainers to perform in a lewd, indecent and immoral manner and for hostess activity, Bulletin 1372, Item 2. Prior violations, committed while the license was in the name of Edward Kravis, as set forth in bulletin, occurred more than ten years prior to the date hereof and will not be considered in fixing the penalty to be imposed herein. The minimum suspension on Charge 1 for permitting indecent and immoral dances by entertainers on the licensed premises is thirty days (Re Paddock International (A Corp.), supra) and on Charge 2 for permitting female entertainers to accept drinks at the expense of patrons is twenty days (Re Moniello and Onnen, Bulletin 1248, Item 11), making a total of fifty days. Since similar violations on both charges have occurred within a five-year period, the penalty would ordinarily be doubled, but, under the circumstances of this case, I shall suspend defendant's license for seventy days. Five days will be remitted for the plea entered herein, leaving a net suspension of sixty-five days.

Investigation discloses that defendant's business is conducted on a seasonal basis. Thus, no effective penalty can be imposed at the present time. The effective dates for suspension herein will be fixed by further order to be entered after the licensed premises shall be opened for business for the 1962 season. Cf. Re Shoreview, Inc., Bulletin 1307, Item 3.

Accordingly, it is, on this 29th day of November, 1961,

ORDERED that Plenary Retail Consumption License C-98, issued by the Board of Commissioners of the City of Atlantic City to Paddock International (A Corp.), t/a Paddock International, for premises 1643 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for a period of sixty-five (65) days, the time to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - PERMITTING OBSCENE LANGUAGE AND CONDUCT - HOSTESSES - UNQUALIFIED EMPLOYEE - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 LANIN CORPORATION)
 t/a BAMBOO CLUB)
 2101 Pacific Ave. and)
 38 S. Arkansas Avenue)
 Atlantic City, N. J.)
)
 Holder of Plenary Retail Consumption License C-156, issued by the Board of Commissioners of the City of Atlantic City.)

CONCLUSIONS AND ORDER

 Elias G. Naame, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On September 1, 2 and 7, 1961, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises in that male and female persons performed for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.
- "2. On September 1, 2, 6 and 7, 1961, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.
- "3. On September 7, 1961 and prior thereto, you employed and allowed, permitted and suffered the employment in and upon your licensed premises of persons not bona fide residents of the State of New Jersey, contrary to and in violation of Rule 4 of State Regulation No. 13."

On September 1, 1961, at approximately 10:45 p.m., ABC agents entered the defendant's licensed premises and seated themselves at the rear bar. Shortly thereafter, the stage show commenced and, at about 11:55 p.m., Jenny, the "very exciting Jenny", was introduced. She appeared wearing a tight, full length, blue evening dress with accessories. She immediately started to remove her clothing and, when her dress was removed, appeared in a black lace bra which had a string connecting her two breast patches and a pantie G-string covered by a piece of transparent mesh, partly covering her buttocks. After she removed certain transparent material panels on her hips, she engaged in a grinding movement and thereafter removed the two breast patches, exposing her breasts. She thereafter engaged in other gyrations turning her back to the audience and exposing most of her body. After her performance, Sonny, another entertainer, proceeded to tell several lascivious "jokes", the details of which would serve no useful purpose, and he was then followed by Jenny, who did a repeat of the strip tease dance. After her act was concluded, Jenny dressed, returned to the

center bar and sat down next to an unidentified man and was served an alcoholic beverage which was paid for by this man. The bartender, Leon Pirillo, informed the agents, "It will cost you two dollars for each glass of wine if she sits with you".

At approximately 11:00 p.m. on September 6, 1961, ABC agents returned to the defendant's licensed premises. The entertainment on this night was highlighted by Anita, "The Body Beautiful", who came on stage in a so-called cocktail dress which she proceeded rapidly to remove. In short order, she removed her outer garments, and was then left covered with cloth patches on her breasts and in her public area. She engaged in a particularly lewd and suggestive act, the exact details of which would also serve no useful purpose. She further engaged in gyrations, including bumps and grinds in time with the music, and most of her body was exposed. This act was concluded at approximately 12:50 a.m. on September 7, 1961,

While these agents were seated at the bar at approximately 11:00 p.m. on September 6th, a female, later identified as Julie, was seen drinking with two unidentified males who purchased drinks for her and, after she drank, two dollars were taken from his money by Leon Pirillo, the bartender, in payment thereof. Shortly thereafter, Julie approached the agents and advised them that it would cost them two dollars a drink "if I sat with you". Upon questioning, Julie informed them that she was employed by the licensee. The agents further observed Anita, who had performed the strip tease dance, take a seat at the rear bar next to a male. She was served a glass of champagne and the other bartender, Anthony Iovino, took payment from this male in the sum of five dollars. Julie then proceeded with her act and returned to a place at the center bar where she seated herself next to an aged male and, within a short time, she was served with another champagne cocktail, payment of which was taken from the said elderly male patron. At about 1:20 a.m. on September 7, 1961, after her act, Julie returned to her position at the bar and accepted additional drinks from another male patron for which payment was made by the said patron.

The agents then identified themselves, seized the drinks and the tabs and questioned Anthony Iovino and the two women. Julie orally admitted that she had been coming to these premises at least four nights a week because she is a friend of the owner, adding, "I help out once in a while when they're short of hands". Anita stated that she had worked at these premises since June, 1961 for \$200 a week, but that she neither gets a commission on drinks, nor did she receive any instructions about drinking at the expense of men customers.

Further questioning of these employees at these premises revealed that a trio, known as the Three Clefs, who were out-of-State residents, had been employed on subject premises for the past fifteen weeks and had never applied for an out-of-State employee's permit from this Division.

Defendant has no prior adjudicated record. I have carefully read and considered a statement by the attorney for the defendant in alleged mitigation, but find nothing therein which would warrant the imposition of less than the usual penalty in these cases. The minimum suspension on Charge 1 for permitting indecent and immoral entertainment on the licensed premises is thirty days (Re Paddock International, A Corp., Bulletin 1372, Item 2) and for Charges 2 and 3 is twenty-five days (Re The Holly Club Inc., Bulletin 1232, Item 2), making a total of fifty-five days. Five days will be remitted for the plea herein, leaving a net suspension of fifty days.

Investigation discloses that the licensee customarily discontinues the operation of its business at the beginning of December and reopens in March. Thus, no effective penalty can be imposed at the

present time. I shall enter a further order fixing the effective date for said suspension after the licensed premises shall have reopened for the 1962 season. Cf. Re Storch, Bulletin 1303, Item 7.

Accordingly, it is, on this 29th day of November, 1961,

ORDERED that Plenary Retail Consumption License C-156, issued by the Board of Commissioners of the City of Atlantic City to Lanin Corporation, t/a Bamboo Club, for premises 2101 Pacific Avenue and 38 S. Arkansas Avenue, Atlantic City, be and the same is hereby suspended for a period of fifty (50) days, the time to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION (AS TO CONDUCTING HOTEL). CANCELLATION PROCEEDINGS - LICENSE ISSUED IN VIOLATION OF STATE LIMITATION LAW - LICENSE CANCELLED.

In the Matter of Disciplinary Proceedings against)

MONTEREY MANAGEMENT CO.)
t/a MONTEREY HOTEL)
6th and Ocean Avenues)
Asbury Park, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the City Council of the City of Asbury Park.)

Charles Handler, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"In your applications dated May 10, 1961, and June 8, 1961, filed with the City Council of the City of Asbury Park, upon which you obtained your original issuance and renewal of your current plenary retail consumption license, respectively, in answer to Question 9(a) you misrepresented and falsely stated that you would conduct a hotel on your licensed premises, whereas in truth and fact you did not conduct or intend to conduct a hotel at said premises; such false statement being in violation of R.S. 33:1-25."

In addition to the above charge, defendant herein was ordered to show cause why its plenary retail consumption license should not be cancelled and declared null and void for the following reason:

"The license was improvidently issued in violation of R.S. 33:1-12.14 in that it was the renewal of a new license issued to you on May 23, 1961, at which time the combined total number of plenary and seasonal retail consumption licenses existing in the City of Asbury Park was greater than one for each two thousand of its population as shown by the last then preceding Federal census, and that the issuance of your license was not authorized by the exception of said cited statute contained in R.S. 33:1-12.20 in that you were not the person who operated the hotel at the address of the licensed premises."

On May 23, 1961, pursuant to an application theretofore filed by defendant, a plenary retail consumption license was issued to it by the City Council of the City of Asbury Park. The application in question showed the names of Leonard Zeger, Baruch Zeger and Norman Chapman, as the officers and stockholders of said applicant and furthermore, it was stated in said application that the entire building constituted the licensed premises. The application further disclosed Monterey Land Co., Inc., to be the owner of the building and that defendant had rented the premises from said corporation to be used as a "hotel, restaurant and bar business". Investigation of this matter, conducted by agents of this Division, revealed that the Monterey Land Co., Inc. has always operated the hotel. It had received all the revenue paid by guests or tenants for use of the sleeping rooms and the entire rentals paid by other concessionaires in the building. All expenses in connection with the operation of the hotel were paid by the Monterey Land Co., Inc. On July 27, 1961, the capital stock of the defendant corporate-licensee was transferred by Norman Chapman, Baruch Zeger and Leonard Zeger, the stockholders mentioned in the original application and also in the renewal application for the current license, to Arthur J. Breikopf, Albert Resnikoff and J. Leslie Wooley, respectively. The latter individuals, who are the present officers and stockholders of the defendant corporate-licensee, during the investigation advised the ABC agents that no records concerning the operation of the defendant could be found, and admitted that the defendant had nothing whatsoever to do with the hotel operation. Baruch Zeger, who is treasurer of Monterey Land Co., Inc. and who was the treasurer of the defendant corporate-licensee at the time the license was renewed for the 1961-62 licensing period, also admitted that the defendant at no time operated the hotel.

It is apparent that the license issued to defendant based on information set forth in the application upon which defendant's license was originally issued, as well as in the application pursuant to which it received its renewal for the current licensing year, to the effect that it was the operator of the hotel in order to come within the purview of R.S. 33:1-12.20, constituted a fraud upon the local issuing authority.

R.S. 33:1-12.14 as amended, which is applicable to the facts in the case, reads:

*** no new plenary retail consumption license***
shall be issued in a municipality unless and until
the combined total number of such licenses
existing in the municipality is fewer than one
for each two thousand of its population as shown
by the last then preceding Federal census***.

The 1960 Federal census shows the population of the City of Asbury Park to be 17,366 and on May 23, 1961, when the license was issued to defendant, there were already 75 plenary retail consumption licenses issued and outstanding in the municipality. The ratio of said licenses to the population was one for each 232 persons, thus the issuance of what constituted a new plenary retail consumption license to defendant, was in violation of the State Limitation Law, as amended, et seq.

Inasmuch as defendant's license was illegally issued and illegally renewed for the current period, I have no alternative except to cancel said license. Re Liptak, Bulletin 1130, Item 1; Liptak v. Division of Alcoholic Beverage Control, Department of Law and Public Safety, State of New Jersey, 44 N.J. Super. 140. In the disciplinary proceeding, I find defendant guilty as charged. However, in view of the fact that I shall enter an order cancelling defendant's license, and for the further reason that the present stockholders of defendant corporation were no wise responsible for the fraud practiced upon the local issuing authority, no penalty will be imposed in the disciplinary proceedings. Re International

Worker's Order, Bulletin 1155, Item 5.

Accordingly, it is, on this 27th day of November 1961,

ORDERED that Plenary Retail Consumption License C-4, issued by the City Council of the City of Asbury Park to Monterey Management Co., t/a Monterey Hotel, 6th and Ocean Avenues, Asbury Park, for the current licensing year, be and the same is hereby cancelled, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SOUTH OF THE BORDER RESTAURANT, INC.
t/a SOUTH OF THE BORDER RESTAURANT
Route 521,, New Jersey-New York State Line
Montague Township
PO Port Jervis, N. Y., R.D.1

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of Montague Township.

Klein & Klein, Esqs., by Seymour Klein, Esq., Attorneys for Defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge that it possessed on its licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On September 6, 1961, an ABC agent tested defendant's open stock of liquor and seized two bottles for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of one of the seized bottles, labeled "Seagram's 7 Crown American Blend Whiskey 86 Proof", was high in solids and low in acids when compared with an analysis of the contents of a genuine bottle of the same brand.

Counsel for the defendant has submitted a statement in attempted mitigation hereof, which I have carefully read and considered. The statement sets forth that the principals of the licensee-corporation did not participate in the violation and discharged the bartender employed on that date when this violation was brought to their attention. Nevertheless, the licensee is responsible for the acts of its agents and employees. Rule 33 of State Regulation No. 20.

Defendant has no prior adjudicated record. I shall suspend its license for ten days, the minimum period imposed in cases where one bottle is involved. Re McCloskey, Bulletin 1418, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 4th day of December 1961,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of Montague Township to South of the Border Restaurant, Inc., t/a South of the Border Restaurant, for premises on Route 531, New Jersey-New York State Line, Montague Township, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m., Monday, December 11, 1961 and terminating at 3:00 a.m., Saturday, December 16, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

NOTE: By order dated December 6, 1961 the effective dates of the suspension were changed to commence at 3 a.m. Monday, January 8, 1962 and to terminate at 3 a.m. Saturday, January 13, 1962.

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
AARON GANEK
t/a CHESTNUT BAR & GRILL
26 Chestnut Street
Newark 2, N. J.
Holder of Plenary Retail Consumption License C-606, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
AND ORDER

Defendant-licensee, Pro se.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On October 2, 1961, an ABC agent tested defendant's open bottles of alcoholic beverages and seized a number of bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of six of the seized bottles, when compared with the contents of genuine bottles of the same brands, varied substantially in solids, acids and color.

Defendant has a prior adjudicated record. Effective January 4, 1943, his license was suspended by the local issuing authority for five days for sale to minors. Since aforesaid prior violation occurred more than ten years ago, it will not be considered in fixing the penalty herein. Re Rost, Bulletin 1420, Item 5. Defendant has advised me in writing that he had not been feeling well; that he hired a new bartender to replace him and that he had no knowledge of the violation. Nevertheless, a licensee is responsible for any "refills" found upon the licensed premises. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156. I shall suspend defendant's license for twenty-five days, the minimum penalty imposed in "refill" cases involving six bottles. Re Simmons, Bulletin 1423, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 20th day of December 1961,

ORDERED that Plenary Retail Consumption License C-606, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Aaron Ganek, t/a Chestnut Bar & Grill, for premises 26 Chestnut Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, January 2, 1962, and terminating at 2 a.m. Monday, January 22, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.

Pine Distributors, Inc.
Park Avenue at East 8th Street
Lakewood, New Jersey

Application filed January 11, 1962 for person-to-person transfer of State Beverage Distributor's License SBD-103 from Bay-Shore Distributors, Inc.

Duggan's Distillers Products Corporation
7-11 Paris Street
Newark, New Jersey

Application filed January 12, 1962 for place-to-place transfer of Rectifier and Blender's License R-7 to include additional building.

Duggan's Distillers Products Corporation
7-11 Paris Street
Newark, New Jersey

Application filed January 12, 1962 for place-to-place transfer of Plenary Wholesale License W-17 to include additional building.

Home Beverage, Inc.
732 East St. George Avenue
Linden, New Jersey

Application filed January 16, 1962 for person-to-person transfer of State Beverage Distributor's License SBD-59 from Norman Krouck, t/a Home Beverage.

Alexander Maccia, Jr.
t/a Garden State Beer Depot
12 Ludlow Street
Jersey City, New Jersey

Application filed January 16, 1962 for place-to-place transfer of State Beverage Distributor's License SBD-3 to include additional premises.


WILLIAM HOWE DAVIS
DIRECTOR