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

BULLETIN 1216

April 2, 1958.

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ITEM

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Department of Law and Public Safety
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BULLETIN 1216

1. COURT DECISIONS - OLYMPIC, INC. v. DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR SUSTAINED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket A-32-57

In the Matter of Disciplinary Proceedings Against

OLYMPIC, INC.,

Appellant,

-vs-

DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY,

Respondent.

Argued March 10, 1958 -- Decided March 17, 1958.

Before Judges Goldmann, Freund and Conford.

Mr. Louis Santorf argued the cause for appellant.

Mr. Samuel B. Helfand, Deputy Attorney-General, argued the cause for respondent (Mr. Harold Kolovsky, Acting Attorney-General of New Jersey, attorney).

The opinion of the court was delivered by

GOLDMANN, S.J.A.D.

Olympic, Inc., holder of a plenary retail consumption license, appeals from the conclusions and order of the Division of Alcoholic Beverage Control adjudging it guilty of violating Rule 5 of State Regulation No. 20 and suspending its license for a period of 30 days. This license had some three years before been suspended for 32 days, upon a plea of guilty, for violating curfew and permitting female employees to drink at the expense of male patrons.

The report filed by the hearer fairly summarizes the testimony, and it was concurred in and its conclusions adopted by the Division Director after considering the entire record, the memoranda of counsel, the report itself and the exceptions thereto filed on behalf of the licensee. There is no claim that the basic factual findings of the report lack testimonial support. The basic question, as posed by appellant, is whether the evidence presented established the violation charged.

Rule 5 of State Regulation No. 20 provides:

"No licensee shall allow, permit or suffer in or upon the licensed premises any lewdness, immoral

> activity or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

The specific charge leveled against appellant was that

> "On January 11, 12, 13, 18, 19, February 6, 16 and 17, 1957, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, in that you made offers to procure females for patrons for the purpose of prostitution and for acts of perverted sexual relations, introduced females to patrons for such purposes and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

On the evenings of January 11, 12 and 18, and February 6 and 16 the licensed premises were visited by three ABC agents, who will hereafter be designated as F, N and M, to investigate alleged complaints of prostitution. They arrived at 10 or 10:30 p.m. and stayed until 1:30 a.m. or later. On January 11 they were served by bartender Morris of whom they inquired concerning three girls sitting at the bar nearby. He told them he knew the girls, and that two of them, Diane and Honey, were "sure bang." This information was accompanied by a gesture of the right arm and fist descriptive of intercourse. He volunteered the further information that Phil, the other bartender, had gone out with Diane and she had asked him to engage in intercourse. To this he added that Honey engaged in acts of perversion. All of this intelligence was transmitted in typical gutter language. Morris asked F if he wanted to meet the girls and the agent said "Sure. Should we buy them a drink?" Morris had Phil serve the girls drinks and later suggested that the agents ask them to dance. Before they could do so Honey was called upon to sing three songs, and after doing so made a telephone call, rejoined her girl friends and left the premises. Agent N asked Morris how much the girls charged and he said "Oh, nothing. You just buy them a few drinks." N then inquired whether they would be in the following night and Morris said they might. As the agents prepared to leave, N told Morris that if the girls came in the following night he should "hold them here for us," to which Morris replied "Don't worry about it. If they don't come, I know of two others who are sure," again making the obscene gesture with his arm and fist.

The agents appeared late on the evening of January 12 and were served by Phil, the second bartender. Sitting nearby were two women, Anne and Renee. Agent F asked Morris about the three girls of the previous evening and was told they had not come in. In answer to a question put by Agent M as to whether Anne and Renee engaged in sexual intercourse, Morris said, "Yes, sure." The agents then had Phil serve the girls drinks; the girls joined them, and the men danced with them. Agent P asked the girls if they would go out with them, but they refused and left the tavern at 2 a.m. Morris remarked: "I can't understand it. That Anne I know is a sure ___" (making the arm and fist gesture), "but the other girl I don't know too much about her."

On the third visit, January 18, F asked Morris if there was "Anything doing tonight?" and he replied it was too early. Agent N then inquired about two girls seated at the bar and Morris said, "They're stiffs. They're just drinkers." At about 11:15 Barresi, president of the corporate licensee, entered the place. Morris told the agents he had shortly before spoken to Barresi on the phone about Anne and Renee, the girls who were present on the evening of January 12, and that "Barresi was mad when he found out that we didn't get any place with them, and that Mr. Barresi had told him to just steer us to broads that are sure, not to let us waste our time." To this Morris added the assurance that he would steer the agents to girls he thought were "sure bangs," accompanying this remark by the now familiar motion of the arm and fist. Just before the agents left at 1:20 a.m. Morris agreed with the suggestion made by one of them that it would be "a good idea if you give me a ring first" before coming to the place. "If there is something sure here then I will let you know," -- and again the movement of the arm.

The agents visited the licensed premises on the evening of February 6. Morris at once asked them: "Did you see those broads that just left? They were in here for a little while but I tried to hold them. I even gave them a drink on the house but they seen the place was dead and they took off." The agents left at midnight.

The final visit was February 16, a Saturday evening. As they sat down at the bar Morris raised seven fingers and said, "There were seven of them in here last night including Honey and Diane." Agent N asked Morris, in crude language which we need not repeat, whether they were going to get women that night for purposes of intercourse, to which Morris replied that it was too early yet. He went on to tell the agents about a girl who had been there the preceding week, looking for someone to take her home, and that when the piano player did so she engaged in perverted sexual relations with him. Agent N then said to Morris, "You could have given us a ring," whereupon the bartender handed agent F a paper and pencil and requested him to write down his name and telephone number so that "if any sure bang comes in I can give you a call." F wrote down a name and phone number, both fictitious, and handed the paper to Morris who placed it in a box on the back bar. Shortly after that the telephone rang, and when Morris returned from answering it he remarked to the agents, "I just got a call from a broad who is asking if a certain guy was in here. I knew that this broad was living with this guy but she's separated now and she said she will be down in a few minutes." The agents waited for her, Morris representing to them that she was "bang stuff." She never arrived. At 1:15 a.m. the agents identified themselves, took possession of the slip of paper on the back bar and the pencil Morris had given them, and proceeded to take Morris' statement.

This account by agent F about what had happened on the several visits to the licensed premises was corroborated by Agent N in some detail. Agent M did not testify because he was no longer with the Alcoholic Beverage Control Division. Both F and N stated that aside from their conversations and dealings with Morris and his repeated obscene gesture, there was no lewd or immoral activity on the premises during their five visits.

Morris' testimony was a flat denial of almost everything to which the agent had testified. He had never carried on any conversation with them beyond saying "hello," "good night" and "how are you." He denied ever engaging in any activity to sponsor immoral conduct with female patrons on or off the premises, nor did he know of any such activity having taken place there at any time. His explanation regarding the slip of paper was that he had asked the agents for their names, addresses and phone numbers for the tavern's "mailing list," so that they could be notified of "any change of entertainment and various parties and so forth." These names would then be written in a guest book. There was no explanation for having accepted the slip with only one name and phone number on it. As for Barresi, who managed the premises, he denied ever having told Morris "to steer the agents to the broads that are sure and not to have them waste their time." His rules were very strict; bartenders were not to carry on discussions with patrons, and he had never done or said anything which would permit a bartender to become involved in any immoral activity.

The conclusion reached by the hearer, in which the Director of the Division concurred, was that he was convinced that the testimony of the agents truthfully represented the facts, while that of the witnesses for the licensee was largely compounded of studied and deliberate falsification. We see no reason to disagree. Both the hearer and Director found little room for doubt that Morris' purpose was to encourage the agents to return to the tavern from time to time by holding out the lure of illicit arrangements to be consummated with the women at a future date. In their opinion the conduct on the premises conclusively indicated that the manner of operation of the business was highly improper and that the licensee permitted the place to be conducted in such a manner as to become a nuisance.

Appellant claims that since there was no evidence of actual immoral or improper activity on the licensed premises, the conviction seems unwarranted because it was based on nothing more than "small talk" of bartender Morris. It argues that the private conversations between Morris and the agents should not be construed a nuisance, especially where his utterances were wholly unauthorized. In our view, the conversations and dealings between the agents and Morris were more than innocuous male chit-chat. And as for the assertion that the bartender's activity was "unauthorized," that assuredly presents no valid defense. The licensee's responsibility is not dependent upon the doctrine of respondeat superior, nor upon his personal knowledge or intent or participation; "he is not relieved even if the violations were contrary to his express instructions." Mazza v. Cavicchia, 28 N. J. Super. 280, 284 (App. Div. 1953), reversed upon another ground, but affirming the principle just expressed, 15 N. J. 498, 509 (1954).

No attack is made upon Rule 5 of State Regulation No. 20. It falls well within the authority given the Director by statute to make such rules and regulations "as may be necessary for the proper regulation and control" of the liquor traffic, including such specific objects as prostitution, solicitation, orderliness and decency, and generally "such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration" of the Alcoholic Beverage Act. N.J.S.A. 33:1-39. The act,

intended to be remedial of abuses inherent in liquor traffic, is to be liberally construed. R. S. 33:1-73.

Our courts have long recognized the sui generis character of the liquor trade, and the Legislature has from earliest times treated that subject in an exceptional manner. Mazza v. Cavicchia, above, 15 N. J., at page 505. As was there pointed out, the right to regulate the sale of intoxicating liquors is within the police power and practically without limit, and that power has uniformly been accorded liberal judicial support.

This court has within the past few years had occasion to construe and apply Rule 5 of State Regulation No. 20. See Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N. J. Super. 405 (App. Div. 1957); Davis v. New Town Tavern, 37 N. J. Super. 376 (App. Div. 1955); Benedetti v. Board of Commissioners of Trenton, 35 N. J. Super. 30 (App. Div. 1955); McFadden's Lounge, Inc. v. Division of Alcoholic Beverage Control, 33 N. J. Super. 61 (App. Div. 1954); In re Larsen, 17 N. J. Super. 564 (App. Div. 1952); Greenbrier, Inc. v. Hock, 14 N. J. Super. 39 (App. Div. 1951), certification denied 7 N. J. 581 (1951); In re Schneider, 12 N. J. Super. 449 (App. Div. 1951). The liquor business must be carefully supervised and tightly restrained in the public interest, in accordance with the manifest design of the Alcoholic Beverage Act. As we observed in In re Schneider, above, 12 N. J. Super., at page 458:

> "The object manifestly inherent in the rule with which we are here concerned [Rule 5] is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil." (Italics ours)

This language was approved in the Paddock Bar case, above, where the violation charged was permitting homosexuals to congregate on the licensed premises, and where there was no proof of any immoral activity. The license suspension was sustained because it was the policy and practice of the Division "to nip reasonably apprehended evils while they are in the bud."

Without attempting to detail further the testimony of the conversations and dealings between the agents and the bartender, we find, as did the Division, that the licensee permitted its place of business to be conducted in such a manner as to become a nuisance. If we look to nothing more than the slip of paper on which Morris asked the agent to write his name and phone number, there was present an offer to procure a woman for the purpose of illicit sexual intercourse, natural or otherwise. This would be sufficiently improper to constitute criminal illegality. See N.J.S. 2A:133-2(e). It clearly fell under the ban of Rule 5 and satisfied the charge.

We have not blinked at Morris' other conversations with the agents or his gestures connoting intercourse. These were sufficient to warrant the finding in the Division that the bartender was holding out the lure of sexual entertainment, whether or not in good faith, in order to foster continued patronage by the agents. This, itself, constituted conducting the premises

in a manner offensive to common decency and public morals and would justify the conclusion of defendant's guilt of the charge preferred.

It is of no moment that the men to whom Morris talked were actually ABC agents looking for evidence of improper conduct on the licensed premises, nor that what he said may have been (at least in his own private mind) all smoke and no fire -- an assumption we are not willing to make. We look at the scene, the talk and the actions with an objective eye: the setting was a licensed tavern, the agents patrons like others at the bar, and Morris' talk and gestures of a kind that could have but one meaning and purpose for those patrons. We regard what was said and what was done in the hard light of the public's continuing and legitimate concern with stringently regulating all activities on licensed premises. The liquor trade must, in the public interest, be conducted in a manner that is beyond all suspicion.

In short, the charge is amply supported by the evidence. The offense charged was complete without any requirement that arrangements for the charged purpose be actually consummated. We do not agree with appellant's claim that there should be a reversal because of the alleged "absence of any immoral or improper activity physically conducted upon the licensed premises." That contention was rejected in the Schneider case, above, 12 N. J. Super. 449 (App. Div. 1951), where the licensee was charged with renting rooms for the purpose of illicit sexual intercourse. No women were present, none was procured or offered to be procured by the licensee, and the agents neither intended to nor did they actually consummate the illicit purpose. No other indecent activity was charged or proved. In affirming the finding of guilt, this court said:

> "*** A purpose is that which one sets before oneself as an object to be attained; the end or aim to be kept in view in any plan, measure, exertion or operation; design; intention. Webster's New International Dict. (2d ed.); vide, Sawter v. Shoenthal, 83 N.J.L. 499, 500 (E. & A. 1912). It would seem that the commission of an overt act on the licensed premises in furtherance or promotion or encouragement of an illicit purpose is in itself an immoral activity comprehended by the scope of the regulatory rule.
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> * * * * * * * * * * *
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> The pith of the criticism of the action of the director in suspending the enjoyment of the license is that the appellant should have been exonerated because despite his unbecoming and objectionable intent and purpose, illicit sexual intercourse was (1) not in fact in this instance committed on the licensed premises, and (2) its commission was not in reality anticipated by the investigating agents. In what respect those circumstances exculpate the licensee from the profligacy of his own deliberate misconduct is not clear. So far as the appellant as the licensee of the premises could act, he made the accommodations available and conferred his permission to utilize them in an immoral pursuit." (at pages 457, 458)

As respondent points out, so far as the licensee, through its bartender, could act, it offered to procure women

and make them available to the agents with the avowed purpose that they should indulge in illicit sexual intercourse; and the fact that they, for whatever reason, did not actually engage in intercourse with these "sure bangs" does not in anywise detract from the flagrant misconduct theretofore exhibited by the bartender. Any other rule would predicate the licensee's responsibility upon the wholly fortuitous outcome of the unlawful purpose.

As was said in Davis v. New Town Tavern, above 37 N. J. Super., at page 378, what constitutes interdicted practices on licensed premises may be determinable on a narrower basis than for other places of public resort. See McFadden's Lounge, Inc. v. Division of Alcoholic Beverage Control, above, 33 N. J. Super., at page 68.

Affirmed.

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2. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION - FRONT FOR DISQUALIFIED PERSON - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY FOR ORDER LIFTING SUSPENSION AFTER THE EXPIRATION OF 90 DAYS IF ILLEGAL SITUATION CORRECTED.

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| In the Matter of Disciplinary Proceedings against<br><br>JANET ANETTE NEMIS<br>346 Market Street<br>Perth Amboy, N. J.,<br><br>Holder of Plenary Retail Consumption License C-99, issued by the Board of Commissioners of the City of Perth Amboy. | CONCLUSIONS AND ORDER |

Edward J. Dolan, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On your application dated December 6, 1957, filed with the Perth Amboy Board of Commissioners, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual... other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Louis Orosz had such an interest in that he was co-owner with you of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. From about December 31, 1957 until the present time, you knowingly aided and abetted Louis Orosz to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license; thereby yourself violating R. S. 33:1-52."

The file herein discloses that on or about November 8, 1957 Louis Orosz, Jr. filed an application for transfer to him of the license in question then held by Joseph Trosko. On December 4, 1957 the local issuing authority denied such application because its investigation disclosed that Orosz had a criminal record. On December 6, 1957 Janet Anette Nemis applied for transfer to her of such license and her application was granted on December 31, 1957. There is a meretricious relationship between Orosz and Nemis and these proceedings were instituted because the actual owner and operator of the licensed business is Orosz.

Such ownership is evidenced by the following facts which also appear in the file: Of the purchase price of the tavern of approximately $18,000.00, a little over $10,000.00 was paid by Orosz, the proceeds of a commuted Workman's Compensation award that he received, and the balance was represented by notes. Such payment was made and the notes executed on December 3, 1957 pursuant to an agreement between Orosz and Trosko and prior to the denial of the transfer of the license to Orosz. Faced with the dilemma resulting from the denial of the transfer to him, Orosz made arrangements to have Nemis apply for the transfer and he applied to the Division to remove his disqualification from holding a license by reason of his criminal conviction for a crime involving moral turpitude, as decided by me in a contemporaneous proceeding. In the event that his disqualification was removed, Orosz hoped that the local issuing authority would be persuaded to transfer the license to him.

Since the unlawful situation continues to exist, I have no alternative except to suspend defendant's license for the balance of its term. In the event that the illegal situation is corrected, application may be made to me by defendant or by a transferee of the license for the lifting of such suspension, but in no event will an order be entered prior to the expiration of ninety days (the minimum period of suspension in cases of this character) from the effective date hereof. Re Verga & Rappise, Bulletin 1145, Item 3; Re The Brass Rail Tavern, Inc., Bulletin 1072, Item 3.

Accordingly, it is, on this 26th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-99, issued by the Board of Commissioners of the City of Perth Amboy to Janet Anette Nemis, for premises 346 Market Street, Perth Amboy, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. March 10, 1958, and it is further

ORDERED that, in the event a correction of the illegal situation is effected, leave will be given to make application as aforesaid.

WILLIAM HOWE DAVIS
Director.

3. DISQUALIFICATION - CONVICTION OF ATROCIOUS ASSAULT AND BATTERY - APPLICANT NOW LIVING WITH WOMAN WHO IS NOT HIS LEGAL WIFE - APPLICATION DENIED.

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

Case No. 1391.

CONCLUSIONS AND ORDER

BY THE DIRECTOR:

On March 10, 1944 petitioner pleaded non vult to the crime of atrocious assault and battery, as a result of which he was sentenced to Annandale Reformatory, was thereafter released on a suspended sentence, placed on probation for two years, and ordered to make restitution to the victim for the cost of treatment of injuries received.

Details of the offense, as reported by the Prosecutor of the county, are briefly that on September 19, 1943 petitioner's father and another person were in a tavern and became engaged in an argument. Petitioner entered, overheard part of the argument, and then struck the other person knocking him to the floor. As a result, this person sustained a badly cut eye. The licensee ordered the three persons to leave the tavern. On the outside of the premises petitioner again struck the victim, knocking him to the ground and beat him. Petitioner's father also attacked the victim who was rendered unconscious and eventually taken to a hospital.

Atrocious assault and battery, especially of the nature here involved, is a crime involving moral turpitude. Re Case No. 1137, Bulletin 1023, Item 7; cf. Re Case No. 1375. Merely for completeness of the criminal record, it may be noted that petitioner was convicted in 1945 on the charge of bastardy and was sentenced to thirty days in prison in 1945 for intoxication.

Petitioner's aforesaid conviction on March 10, 1944 therefore rendered him ineligible to be engaged in the alcoholic beverage industry in this State. R. S. 33:1-25, 26.

At the hearing petitioner admitted that for a number of years last past and at the present time he has been living with a woman who is not his legal wife.

Although five years have elapsed since his last conviction, I cannot consider that petitioner has been law-abiding during that period of time because of his unlawful cohabitation. Re Case No. 845, Bulletin 878, Item 10; Re Case No. 704, Bulletin 820, Item 8. Therefore, in the exercise of my discretion, I shall deny his application for relief.

Accordingly, it is, on this 26th day of February, 1958,

ORDERED that the petition herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 40 DAYS - SUBSEQUENT ORDER TO BE ENTERED FIXING DATES OF SUSPENSION AFTER PREMISES ARE REOPENED.

In the Matter of Disciplinary Proceedings against

SUN TAN RECREATION PARK, INC.
t/a SUN TAN RECREATION PARK, INC.
Route #23
Riverdale, N. J.,

Holder of Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Riverdale.

CONCLUSIONS AND ORDER

Robert W. Wolfe, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'1. You sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Edward ---, age 16, on June 9 and 30, 1957, and Robert ---, age 20, on June 30, 1957, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises on the above stated respective dates; in violation of Rule 1 of State Regulation No. 20.'

"Defendant also pleaded not guilty to the following charge (as amended on the date of hearing):

'2. On Sunday, June 9, 1957, you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., five cans of beer, at retail in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of such beverages from your licensed premises; in violation of Rule 1 of State Regulation No. 38.'

"Defendant conducts a recreation park in which its licensed premises are located. The bathing beach in the park is not a part of the licensed premises.

"At the hearing held herein Edward --- testified that he was born on January 28, 1941; that on a Sunday afternoon in June 1957 (which he could not definitely say was June 9) he and four other young men, including William --- who is of full age, visited the Sun Tan Recreation Park and swam for an hour or so at the beach; that thereafter he and William went to the barroom of the licensed premises, where each of them was served with two bottles of beer by Ludwig Schmidt who was acting as bartender; that, after both consumed their drinks, he purchased from Ludwig Schmidt five cans of beer which he carried to the bathing beach where he and William consumed the contents of these cans.

"Edward --- further testified that he again visited the recreation park on the afternoon of June 30, 1957, accompanied by Robert --- (now deceased). As to this visit Edward testified that he and his companion went to the park in his mother's car which was driven by his companion, and that they arrived there about 4:00 p.m.; that it was raining when they arrived, and that they went to the barroom of the licensed premises where three males, including Ludwig Schmidt, were tending bar; that they remained in the barroom until about 6:45 p.m.; that during this visit both he and Robert consumed the contents of two bottles of beer and thereafter consumed several mixed drinks of alcoholic beverages which, with the exception of one round served by an older man, were served to them by Ludwig Schmidt. He further testified that no one in the licensed premises questioned either him or Robert as to their respective ages. It was established by the testimony of the mother of Robert that, on the date in question, her son was twenty years of age. Robert's mother also testified to an alleged dying declaration made to her by her son on the afternoon of Monday, July 1, 1957, approximately twelve hours before his death as the result of an accident which occurred in the recreation park about 7:40 p.m. June 30, 1957. It appears that Robert told his mother on Monday afternoon that on the previous day he had been drinking beer which he got at Sun Tan. Under the circumstances appearing herein, this statement by Robert is admissible as a dying declaration. State v. O'Leary, Sup.Ct. (decided October 14, 1957, and not yet reported).

"William --- substantially corroborated the testimony of Edward as to the sale, service and consumption of the beer when he was at the licensed premises with Edward, but this witness definitely testified that they visited the recreation park on the afternoon of Sunday, June 9, 1957. Both Edward and William denied that Ludwig Schmidt had questioned Edward as to his age.

"An ABC agent testified that he accompanied Edward --- and William --- to defendant's premises on July 7 where Edward identified Ludwig Schmidt as the individual who had sold the alcoholic beverages to him on June 9 and June 30, and William identified Ludwig Schmidt as the person who had sold the alcoholic beverages to Edward and himself on June 9.

"On behalf of defendant, William Schmidt, president of defendant corporation, testified that he and his wife were the only persons who were acting as bartenders on the licensed premises on Sunday, June 9, and that his nephew, Ludwig Schmidt, did not tend bar on that day. He denied that he had sold alcoholic beverages to any of the young men in question on either June 9 or June 30. Ludwig Schmidt testified that he was not at the licensed premises on June 9, but that he did act as bartender on the licensed premises on Sunday, June 16, Sunday, June 23 and Sunday, June 30. He testified that he does not recall serving any drinks to Edward or Robert on the afternoon of June 30, but admits that the premises were crowded at that time. Gordon Butler, who was employed as a special officer on defendant's licensed premises, testified that on the afternoon of Sunday, June 30 he stopped Robert --- from dancing in the lounge room. He further testified that, after Robert was taken to the hospital, he went there and assisted in putting him on the X-ray table, at which time he 'smelled beer odor;' that, when he inquired of Robert as to where he got his drink, Robert replied that he had brought it with him. He also testified that he met Edward at the hospital, and that Edward then

denied that he had been drinking. Chief of Police Card, of the Riverdale Police Department, substantially corroborated the testimony of Officer Butler as to the statements made by Robert and Edward shortly after the accident. However, the Chief of Police testified that, on the following afternoon, Robert had told him that he had gotten drinks at the Lake Taproom. Unquestionably, Robert and Edward made verbal statements shortly after the accident which would indicate that they did not purchase alcoholic beverages at defendant's licensed premises on the afternoon of June 30. However, I believe the dying declaration of Robert and the sworn testimony given herein by Edward. The testimony of William corroborates Edward's testimony as to the purchase and consumption of alcoholic beverages on June 9. Admittedly, the licensed premises were open for business on June 9. Even if the minors were mistaken as to the identification of the person who made the sales to them, their failure to identify properly the person who made the sales is not fatal in disciplinary proceedings. Re Bird, Bulletin 1001, Item 4, and cases therein cited. Considering all the evidence herein, I recommend that an order be entered finding defendant guilty of both charges. Since defendant has no prior record, I further recommend that said order provide that defendant's license be suspended for twenty-five days on Charge 1 (Re Buchanan, Bulletin 1174, Item 6) and for fifteen days on Charge 2 (Re Prawdzik, Bulletin 1190, Item 7), making a total suspension of forty days."

Written exceptions to the Hearer's Report, pursuant to Rule 6 of State Regulation No. 16, together with written argument thereon, were filed with me by the attorney for defendant. I have carefully examined the evidence herein, the Hearer's Report and the exceptions and written argument, and am satisfied that the Hearer's recommendation in this matter should not be disturbed. I adopt the Hearer's conclusions as my conclusions herein. Hence I find defendant guilty as charged, and shall suspend its license for forty days.

Defendant's business is conducted on a seasonal basis and the premises are presently closed. Thus no effective penalty can be imposed at the present time. The effective dates for the suspension will be fixed by a further order which will be entered by me after the licensed premises shall have been opened for the 1958 season.

Accordingly, it is, on this 19th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Riverdale to Sun Tan Recreation Park, Inc., t/a Sun Tan Recreation Park, Inc., for premises on Route #23, Riverdale, or any transfer thereof to any other person for the same or other premises, be and the same is hereby suspended for forty (40) days, the time to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION - FRONT FOR NON-RESIDENT - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY FOR ORDER LIFTING SUSPENSION AFTER THE EXPIRATION OF 20 DAYS IF ILLEGAL SITUATION CORRECTED.

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| In the Matter of Disciplinary Proceedings against | ) |
| A. & L., INC.<br>t/a BERLIN LIQUOR STORE<br>76 S. White Horse Pike<br>Berlin, N. J., | ) CONCLUSIONS AND ORDER |
| Holder of Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Berlin. | ) |

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

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

> "In your application filed November 4, 1957 with the Borough Council of the Borough of Berlin, upon which you obtained your current plenary retail distribution license and wherein you listed your stockholders in answer to Question 22 as Abe Brenner (98 shares or 98%), Louis Greenberg (1 share or 1%) and William Knight (1 share or 1%), you falsely stated 'No' in answer to Question 24, which asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any other stockholder of the applicant corporation?', whereas in truth and fact Louis Greenberg had such an interest in that he was the real and beneficial owner of 50% of your stock; said false statement being in violation of R. S. 33:1-25."

The file discloses that on or about October 2, 1957, the defendant filed an application for transfer to it of the license held by R & L Bar, Inc. The application disclosed that Abe Brenner and Louis Greenberg each held 49 shares (49%) of the issued and outstanding stock of defendant corporation and Louis Greenberg's address was listed as that of the building containing the licensed premises. The municipal clerk informed the applicant that Greenberg was not a resident of New Jersey and that because he held more than ten (10%) per cent of the defendant's stock, the license could not legally be approved for transfer.

On November 4, 1957, an amended application for transfer was filed disclosing Greenberg's address as Philadelphia, Pennsylvania, and indicating that Brenner held 98 shares (98%) of the issued and outstanding stock, whereas Greenberg had only one share thereof. This was a mere subterfuge as the investment of Brenner and Greenberg had not changed since the filing of the original application.

In attempted mitigation, it is alleged that the interested parties acted in good faith and in reliance upon the advice of a lawyer (other than the lawyer who represents the defendant herein). Nevertheless, the answer referred to in the charge as to the respective stockholdings of Brenner and Greenberg was false.

Since the unlawful situation continues to exist, I have no alternative except to suspend defendant's license for the balance of its term. In the event that the illegal situation is corrected, application may be made to me by defendant or by a transferee of the license for the lifting of such suspension, but in no event will an order be entered prior to the expiration of twenty days (the minimum period of suspension in cases of this character) from the effective date hereof. Re The Broad Street Corporation, Inc., Bulletin 1018, Item 5.

Accordingly, it is, on this 18th day of February, 1958,

ORDERED that Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Berlin to A. & L., Inc., t/a Berlin Liquor Store, for premises 76 S. White Horse Pike, Berlin, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. February 25, 1958; and it is further

ORDERED that, in the event a correction of the illegal situation is effected, leave will be given to make application as aforesaid.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - FRONT - ILLEGAL SITUATION CORRECTED - SUSPENSION LIFTED AFTER IT HAS BEEN EFFECTIVE 20 DAYS.

In the Matter of Disciplinary Proceedings against

A. & L., INC.
t/a BERLIN LIQUOR STORE
76 S. White Horse Pike
Berlin, N. J.,

Holder of Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Berlin.

ORDER

BY THE DIRECTOR:

On February 18, 1958 I suspended defendant's license for the balance of its term, effective at 2:00 a.m. February 25, 1958, after defendant had pleaded non vult to a charge alleging that in the application filed by defendant whereby it obtained its current plenary retail distribution license, Louis Greenberg, a non-resident of New Jersey, was listed as the holder of one share (1%) of its capital stock whereas in truth and fact he was the real and beneficial owner of fifty shares (50%) thereof. Leave was given to apply to me for an order lifting said suspension if the illegal situation was thereafter corrected provided, however, that the suspension would not be lifted until the expiration of twenty days from the effective date thereof.

A verified document has been filed with me disclosing that all of the capital stock (including the shares formerly held by said Louis Greenberg) has been transferred to Thomas N. De Luca, Frank A. De Luca, Jr. and Frank De Luca, who are apparently fully qualified to hold said stock.

It thus appearing to my satisfaction that the unlawful situation has been corrected and that the suspension will have been in effect for twenty days at 2:00 a.m. on March 17, 1958,

It is, on this 10th day of March, 1958,

ORDERED that the suspension heretofore imposed be lifted and that License D-1 be restored to full force and operation at 2:00 a.m. March 17, 1958.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - EMPLOYMENT BY RETAILER IN VIOLATION OF RULE 7 OF STATE REGULATION NO. 14 - PERMIT SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against

JOHN SANCHEZ
159 Cooper Street
Trenton, N. J.,

Holder of Solicitor's Permit No. 2826, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

John Sanchez, Defendant-permittee, Pro se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to the following charge:

"On November 23, 1957, and on divers days prior thereto, you, the holder of a solicitor's permit, were interested, directly or indirectly, in a retail license and the business conducted thereunder and were employed by and connected in a business capacity with a retail licensee, in that you acted as a bartender at retail licensed premises of John Fox Fowler, t/a Jack Fowler's Restaurant, w/s of Brunswick Pike at Clarksville, R. D. 1, Lawrence Township, PO Trenton, N. J.; in violation of Rule 7 of State Regulation No. 14."

The file herein discloses that the defendant, while employed as a solicitor for a wholesale licensee, was on November 23, 1957, and divers days prior thereto, also employed as a bartender by a retail licensee. By way of mitigation the defendant states he was unaware that a solicitor was prohibited from accepting additional employment by a retail licensee. However, the above mentioned Rule clearly provides that no holder of a solicitor's permit shall be employed by or connected in any business capacity with any retail licensee.

In the absence of a prior record or aggravating circumstances, I shall suspend defendant's permit for a period of five days (Re Cassidy, Bulletin 1087, Item 4).

Accordingly, it is, on this 19th day of February, 1958,

ORDERED that Solicitor's Permit No. 2826, issued by the Director of the Division of Alcoholic Beverage Control to John Sanchez, 159 Cooper Street, Trenton, New Jersey, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. March 3, 1958, and terminating at 9:00 a.m. March 8, 1958.

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Hub City Distributors, Inc.
835 New York Avenue
Trenton, N. J.
Application filed March 27, 1958 for additional warehouse at 1181 Fairview Street, Camden, New Jersey, on Limited Wholesale License WL-75.

Harrison Beverage Co.
S.E. Cor. Delaware & Mediterranean Avenues
Atlantic City, N. J.
Application filed March 31, 1958 for additional warehouse at 15 South Second Street, Vineland, New Jersey, on State Beverage Distributor's License SBD-67.

Harrison Beverage Co.
S.E. Cor. Delaware & Mediterranean Avenues
Atlantic City, N. J.
Application filed March 31, 1958 for place-to-place transfer to include additional space at existing additional warehouse at 121 Walnut Avenue, North Wildwood, New Jersey, on State Beverage Distributor's License SBD-67.

William Howe Davis
Director.