

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

In the Matter of Disciplinary
Proceedings against

JIVE SHACK BAR (A CORP.)
274 - 15th Avenue
Newark, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-439, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Newark.

Licensee, by William Kochansky, President, Pro se.
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
July 28, 1966, it possessed an alcoholic beverage in one bottle
bearing a label which did not truly describe its contents, in
violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for
ten days, with remission of five days for the plea entered,
leaving a net suspension of five days. Re Root Beer and Checker
Club, Bulletin 1688, Item 9.

Accordingly, it is, on this 24th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-439,
issued by the Municipal Board of Alcoholic Beverage Control of
the City of Newark to Jive Shack Bar (A Corp.) for premises 274
15th Avenue, Newark, be and the same is hereby suspended for five
(5) days, commencing at 2:00 a.m. Monday, October 31, 1966, and
terminating at 2:00 a.m. Saturday, November 5, 1966.


Joseph P. Lordi,
Director.

7. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAPS - PRIOR DIS-
SIMILAR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

EISENHOWER'S MUSICAL BAR, INC.
t/a EISENHOWER'S MUSICAL BAR, INC.
Traffic Circle Rt. #70
Laurel & Union Streets
Lakehurst, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-4, issued by the Borough
Council of the Borough of Lakehurst.

Licensee, by Eleanor Kempienski, President, Pro se.
Michael J. Mehr, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
September 20, 1966, it permitted mislabeled beer taps on the
licensed premises, in violation of Rule 26 of State Regulation
No. 20.

Report of inspection discloses that two beer taps marked
"Piels" and two marked "Schaefer" were connected to barrels of
Rheingold beer.

Licensee has a previous record of suspension of license
by the Director for ten days effective September 6, 1960 for sale
to minors, and for thirty days effective May 29, 1962 for sale to
minors and false statement in the license application. Re
Eisenhower's Musical Bar, Inc., Bulletin 1357, Item 8; Bulletin
1458, Item 4.

The prior record of suspension of license for dissimilar
violation in 1960 occurring more than five years ago disregarded,
the license will be suspended for ten days (Re G & E Enterprises,
Inc., Bulletin 1657, Item 10), to which will be added five days
by reason of the record of suspension in 1962 within the past five
years (Re Manruff Corp., Bulletin 1691, Item 1), or a total of
fifteen days, with remission of five days for the plea entered,
leaving a net suspension of ten days.

Accordingly, it is, on this 25th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-4,
issued by the Borough Council of the Borough of Lakehurst to
Eisenhower's Musical Bar, Inc., t/a Eisenhower's Musical Bar, Inc.,
for premises Traffic Circle Rt. #70, Laurel and Union Streets,
Lakehurst, be and the same is hereby suspended for ten (10) days,
commencing at 2:00 a.m. Tuesday, November 1, 1966, and terminating
at 2:00 a.m. Friday, November 11, 1966.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION
NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

RONALD S. RYBA)
t/a VILLA TAVERN)
N.E. Corner Rt. 206 & Medford)
Lake Road)
Tabernacle Township)
PO East Medford, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-2, issued by the Township)
Committee of the Township of Tabernacle.)

James F. McGovern, Jr., Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, September 11, 1966, he sold a case and a 6-pack of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Fixler, Bulletin 1693, Item 9.

Accordingly, it is, on this 24th day of October 1966,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Tabernacle to Ronald S. Ryba, t/a Villa Tavern, for premises N.E. Corner Rt. 206 & Medford Lake Road, Tabernacle Township, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, October 31, 1966, and terminating at 2 a.m. Thursday, November 10, 1966.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

MICHAEL KUSY AND ANDREW DRAG
354 Grove Street
Jersey City, N. J.

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption
License C-318, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Jersey City.

Licensees, Pro se.

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

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on August 20 and September 2, 1966, they sold on each occasion a pint bottle of wine for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Licensees have a previous record of suspension of license by the Director for fifteen days effective January 8, 1957, for sale during prohibited hours and failure to afford interior view of the licensed premises, in violation of local ordinance. Re Kusy and Drag, Bulletin 1150, Item 4.

The prior record of suspension of license for similar violation occurring more than five but less than ten years ago considered, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Brass Rail Liquors, Inc., Bulletin 1610, Item 7.

Accordingly, it is, on this 24th day of October 1966,

ORDERED that Plenary Retail Consumption License C-318, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Michael Kusy and Andrew Drag, for premises 354 Grove Street, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, October 31, 1966, and terminating at 2 a.m. Tuesday, November 15, 1966.

JOSEPH P. LORDI
DIRECTOR

DETERMINED and ORDERED that the alcoholic beverages are hereby forfeited and shall be retained for the use of hospitals and State, county and municipal institutions, or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI
DIRECTOR

SCHEDULE "A"

104 - containers of alcoholic beverages
\$24.75 in cash
Various furnishings, fixtures and equipment.

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

In the Matter of Disciplinary)
Proceedings against)

RENNA ENTERPRISES, INC.)
t/a West End Casino (Playroom))
710 Ocean Avenue)
Long Branch, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-47, issued by the City)
Council of the City of Long Branch.)

Maclyn S. Goldman, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 20, 1966, it sold mixed drinks of alcoholic beverages to three minors, ages 15, 16 and 17, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days. Cf. Re Tarlowe, Bulletin 1580, Item 6; Re Percudani, Bulletin 1610, Item 6.

Accordingly, it is, on this 25th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-47, issued by the City Council of the City of Long Branch to Renna Enterprises, Inc., t/a West End Casino (Playroom), for premises 710 Ocean Avenue, Long Branch, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Tuesday, November 1, 1966, and terminating at 2:00 a.m. Thursday, December 1, 1966.

JOSEPH P. LORDI
DIRECTOR

careless indifference to the use to which his property was being put. I, therefore, recommend that the application of Joseph Speciale for the return of his music machine be denied, and that an order be entered forfeiting the same.

Unit Vending Corporation also presented a claim for the return of its cigarette vending machine. John T. Gallagher, president of this corporate claimant, testified that this machine was originally installed on March 10, 1966 at a club known as the "Pink Rooster"; that on April 27th the name was changed to the "Parkview Social Club". This witness did not actually service the machine; the service man employed by this claimant did not appear or testify at this hearing.

Gallagher admitted that neither he nor anyone associated with this claimant ever made any investigation of the background of Craig or the Parkview Social Club and he assumed that these premises were being operated as a luncheonette. "We never go into the background who he was, or what he did before or any of those things, and been doing it for years."

On cross-examination, this witness admitted that this claimant had a prior experience involving the seizure by this Division, of its property at premises where alcoholic beverages were unlawfully sold. Notwithstanding that, this claimant made no such investigation. "It is none of my business what they are going to do. Outside of them telling me they were going to open a restaurant, that is all I was concerned in. If they sold liquor that was no concern of mine."

It is similarly evident, as with respect to the prior claim, that this claimant was not concerned with discharging its full statutory responsibility in the operation of its property in the said premises. I therefore find that this claimant did not establish that it has acted in good faith, and did not know or have any reason to believe that the property would be used in unlawful activity. R.S. 33:1-66(f). Under these circumstances, I am constrained to recommend that its claim for the return of its property be rejected, and that an order be entered forfeiting the same. Seizure Case No. 11,597, supra.

Conclusions and Order

No exceptions were taken to the Hearer's report pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's report and adopt them as my conclusions herein.

It is on this 19th day of October, 1966,

DETERMINED and ORDERED that the claim of Joseph Speciale for the return of a music machine be and the same is hereby denied; and it is further

DETERMINED and ORDERED that the claim of Unit Vending Corporation for the return of a cigarette vending machine be and the same is hereby denied; and it is further

DETERMINED and ORDERED that the seized property, including the \$24.75 in cash, as set forth in Schedule "A" attached hereto constitutes unlawful property, and the same be and is hereby forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law; and it is further

the premises and not for the alcoholic beverages is clearly frivolous; even if the consumption of alcoholic beverages under these circumstances were limited solely to club members, it would violate the provisions of the Alcoholic Beverage Law, because the club was required to obtain a license. See Bulletin 1325, Item 3.

Accordingly, the seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, the personal property and cash, as set forth in Schedule "A" herein, constitute unlawful property and are subject to forfeiture.

With particular reference to the cash, the evidence clearly shows that the money obtained from the ABC agent was commingled with the other monies obtained from the sales; thus all of the cash as well as the furnishings and equipment are subject to forfeiture. Seizure Case No. 11,182, Bulletin 1568, Item 5; Seizure Case No. 10,898, Bulletin 1500, Item 2; Seizure Case No. 11,597, Bulletin 1679, Item 7; R.S. 33:1-2; R.S. 33:1-66(b).

I conclude that the Division has established its case by clear and convincing evidence, and, therefore, recommend that the application of the Parkview Social Club for the return of the seized alcoholic beverages, furnishings, equipment, and cash be denied; and that an order be entered forfeiting the same. R.S. 33:1-66, Seizure Case No. 10,009, Bulletin 1391, Item 4; Seizure Case No. 11,597, supra.

Joseph Speciale, the owner of Special Amusement, testified in support of his claim for the return of a music machine. He stated that the machine was an old machine, valued at approximately \$100.00 but he offered no evidence to support his claim of ownership.

In fact, he did not know nor could he identify, the machine by serial or model number. He testified that he did business with Craig, who he knew was the operator of the Parkview Social Club, but he thought that this club operated a luncheonette business because he saw a kitchen in the premises. He insisted that although he saw the bar on the premises, he never saw any liquor dispensed. When he visited these premises during the afternoon, the place would be normally closed, but he thought it was not unusual to be closed during the day. "Many (luncheonettes) open only in the evenings." He made no investigation to determine whether or not any liquor was being actually dispensed nor did he investigate the background of either Craig or the Parkview Social Club.

He was then asked the following question: "Isn't it a fact that you didn't care what his business was as long as you were going to have a good return on your machine? A That is all I was interested in, return on my machine, yes."

I am persuaded that this claimant did not establish, through documents or otherwise, the ownership of the claimed property nor did he act reasonably in the full discharge of his statutory responsibility in the operation of his property in the said premises. The Director has the discretionary authority to return property subject to forfeiture, to a claimant who has established to his satisfaction that he had acted in good faith, and did not know, or have any reason to believe that the property would be used in unlawful liquor activity. R.S. 33:1-66(f). I find that there was, in addition to the absence of said proof of ownership, a lack of good faith on the part of this claimant; that he demonstrated a

The records of this Division disclose that no license or permit authorizing the sale of alcoholic beverages were issued to Peyton D. Craig, Sarah La Verne, Verna Williams, Ruth McGowan, Parkview Social Club or for the premises where the alleged violations took place.

Peyton D. Craig, testifying on behalf of the claim if Parkview Social Club, gave the following account: This club was organized as a combination social and political club and had recently moved in to larger headquarters because it was conducting a membership campaign. A number of the members would bring whiskey and beer for the consumption of the persons present. There was a charge of \$2.50 for males and \$2.00 for females which included drinks and hors d'oeuvres. However, there would be a separate charge for chicken sandwiches. He specifically instructed the barmaids not to accept any tips or gratuities for the service of alcoholic beverages and asserted that the alcoholic beverages were gratuitous because "The admission fee was simply to come in and dance and just have fun."

On cross-examination, he admitted that not only did the "members" bring in whiskey "...but we purchased whiskey". He also admitted that the public, other than members, could enjoy all privileges upon payment of the admission charge, and that they were permitted to drink whiskey which had been brought in prior to the date of the municipal elections. "I told the girls, 'Let them drink it until it is gone.'"

Verna Williams, called as a witness on behalf of this claimant, testified that she was the one who sat at the door and collected the admission fees, but denied saying that the said admission fee included free drinks. On cross-examination, she testified that members of the general public were admitted and that she collected an admission charge from Agent M. She was then asked, "Q When a patron paid \$2.50 and walked over to the bar would they refuse to give him a drink? A I don't guess so; I don't know."

Craig was re-called and stated that the alcoholic beverages as well as the 10 metal bar stools, 15 plastic chairs, 11 chrome chairs, four other chairs, were owned by the Parkview Social Club. He added that he is the Secretary of this club and that, in fact, he was in error when he told the agents that he is the owner. He also admitted that the alcoholic beverages were purchased for the club's purposes with club money.

My examination and analysis of the entire record satisfy me and I so find, that there were unlawful sales of alcoholic beverages on these premises in violation of the applicable statute. It is obvious that the admission fee included alcoholic beverages. That these beverages were served gratuitously and not, in fact, paid for by the general public, is immaterial and constitutes no defense to the clear statutory mandate.

R.S. 33:1-1(w) defines a "sale" as:

"Every delivery of an alcoholic beverage otherwise than by purely gratuitous title,...or the solicitation or acceptance of an order for an alcoholic beverage, and including exchange, barter, traffic in, keeping and exposing for sale, serving with meals, delivering for value, peddling, possessing with intent to sell, and the gratuitous delivery or gift of any alcoholic beverage by any licensee."

The contention of the claimant's attorney that members of the general public were merely paying for the privilege of entering

was owned by it. At a continued hearing of this matter, which was set down to afford other claimants an opportunity to be heard and assert their respective claims, Joseph Speciale, trading as Special Amusement appeared pro se and presented his claim for the return of a music machine. The Unit Vending Corporation also appeared pro se and sought the return of a cigarette vending machine.

The file of this Division, which included the affidavit of mailing, affidavit of publication, complete inventory and the Division's chemist's report were admitted into evidence by stipulation of the claimants herein. This file contained the reports of ABC agents and other documents in the file and reflected the following facts: Acting upon a specific assignment to investigate alleged unlawful sale of alcoholic beverages at the above premises, ABC Agent M proceeded to the said premises on Saturday, May 14, 1966 at about 1:40 a.m. and found the front door of the same locked. He knocked on the door and was admitted to the said premises by an unidentified male. Upon entering, he observed a female (later identified as Verna Williams) seated at a table and in possession of a cash box which contained money. He was informed by Verna that there was a charge of \$2.50 for admission to the premises; whereupon he gave her a \$10.00 bill. After receiving change of this bill, he handed Verna three one-dollar bills and received 50¢ in change, the said \$2.50 representing the charge for admission.

He then proceeded to a large lighted room and observed two females (later identified as Ruth McGowan and Sarah La Verne), serving alcoholic beverages to six males at a bar which was located along the right wall. Agent M. also observed that there was a juke box and numerous tables and chairs located around the room. The agent then seated himself at the bar, ordered and was served a shot of Canadian Club Whiskey by Sarah La Verne. Thereafter, he ordered and was served a bottle of Old Bohemian Beer. When he sought to pay for these drinks, Sarah informed him that the \$2.50 admission charge included the drinks.

At about 2:05 a.m., by pre-arrangement, two other ABC agents, accompanied by local police officers, entered the premises and Agent M identified Sarah La Verne as the female who had served him the alcoholic beverages, and Verna Williams as the female to whom he had paid the admission charge. At this time a male (later identified as Peyton D. Craig) entered the premises and informed the agents that he was the owner of the furnishings, fixtures and alcoholic beverages. He also explained that the \$2.50 charge entitled such person to the use of the privileges of the club, which included dancing. However, he insisted that the whiskey and beer were "on me". Immediately upon identifying themselves, the agents proceeded to search the premises and seized the goods and chattels set forth in the inventory, as well as the \$24.75 in the cash box in the possession of Verna Williams.

Craig was thereupon placed under arrest, charged with possession of alcoholic beverages with intent to sell the same without a license, in violation of R.S. 33:1-50(b). Sarah La Verne, who admitted serving alcoholic beverages to Agent M, was also arrested and charged with the sale of alcoholic beverages without a license in violation of R.S. 33:1-50(a). Verna Williams, who admitted collecting the \$2.50 from all the males present (including Agent M), and \$2.00 from all the females, was also arrested and charged with aiding and abetting the sale of alcoholic beverages without a license, in violation of R.S. 33:1-50. These three individuals were held in bail for arraignment in the Trenton Municipal Court.

It is my view that the acquittal in the criminal proceedings is not relevant on the question of the penalty to be assessed in the within proceeding, and I so hold.

Having carefully considered the entire record herein, including the transcript of the testimony, the Hearer's report and the exceptions thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 17th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-205, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Sabe, Inc., t/a Paul's Musical Tavern, for premises 1817-1819 Broadway, Camden, be and the same is hereby suspended for twenty-five (25) days, commencing at 7:00 a.m. Monday, October 24, 1966, and terminating at 7:00 a.m. Friday, November 18, 1966.

JOSEPH P. LORDI
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CLUB - APPLICATION OF CLAIMANTS FOR RETURN OF PROPERTY DENIED IN ABSENCE OF GOOD FAITH - PERSONAL PROPERTY, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)	CASE NO. 11,715
May 14, 1966 of a quantity of)	
alcoholic beverages, \$24.75 in)	ON HEARING
cash, various furnishings, fixtures)	CONCLUSIONS
and equipment in the Parkview Social Club)	AND ORDER
at 229 West Hanover Street in the City)	
of Trenton, County of Mercer and State)	
of New Jersey.)	

Leonard J. Williams, Esq., Attorney for Parkview Social Club.
Special Amusement, by Joseph Speciale.
Unit Vending Corporation, by John T. Gallagher, President.
I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 104 containers of alcoholic beverages, \$24.75 in cash and various furnishings, fixtures and equipment, more particularly set forth in an inventory attached hereto, made part hereof, and marked Scheuled "A", seized on May 14, 1966 on premises known as Parkview Social Club at 229 West Hanover Street, Trenton, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents in cooperation with local police officers because of alleged unlawful sales of alcoholic beverages at the said premises.

When the matter came on for hearing pursuant to R.S. 33:1-66, Parkview Social Club, represented by counsel, appeared and sought return of certain of the seized property which it alleges

testimony corroborated the testimony given by Agent C relative to Agent C's observations of both Mr. and Mrs. H---. He expressed an opinion that Mr. H--- appeared to be intoxicated.

In defense of the charge, Paul Hildebrandt testified that Mrs. H--- said, "My husband is not drunk. He worked a double shift. He is tired. He may appear to be drunk but he isn't because he worked a double shift today, and we came out here to have a couple of beers and to have something to eat." Additionally, Hildebrandt stated that if H--- "acted or did not answer properly, he was the type of person got upset because he was questioned."

On cross-examination Hildebrandt testified that H--- did not appear to him to be intoxicated, he appeared to be tired, half asleep.

In rebuttal, both ABC agents testified that they did not hear Mrs. H--- say that her husband worked a double shift and that he wasn't drunk, he was tired.

Thus our attention is focused to a purely factual question. Accordingly, I have not only carefully examined and evaluated the testimony presented herein but, additionally, I have carefully observed and noted the demeanor of all of the witnesses.

It is my view that the agents' graphic and detailed testimony clearly established the observable manifestations of apparent or actual intoxication. Their description of H---'s speech, gait and general deportment clearly and inevitably leads to a finding of apparent or actual intoxication. Hildebrandt's failure to observe the patent manifestations of H---'s apparent intoxication (whether the failure was intentional or not) does not present a valid defense to the charge.

It is to the public's best interest that a licensee be held strictly accountable for keeping his place and his patronage under proper control. Seidel v. Upper Freehold, Bulletin 1246, Item 1.

A fair evaluation of the evidence clearly preponderates in favor of a finding of guilt, and I so recommend.

Licensee has a previous record of suspension of license by the municipal issuing authority for forty days effective November 3, 1965 for sale to minors.

It is therefore further recommended that the license be suspended for twenty days (Re Marge's Cafe, Inc., Bulletin 1691, Item 2), to which should be added five days for the record of suspension of license for dissimilar violation occurring within the past five years (Re Manruff Corp., Bulletin 1691, Item 1), making a total suspension of twenty-five days.

Conclusions and Order

Exceptions to the Hearer's report and argument thereto were filed by the licensee's attorney pursuant to Rule 6 of State Regulation No. 16.

Licensee argues that the prior record of suspension of license for sale to minors should be ignored in assessing the penalty in the instant proceeding for the reason that Paul Hildebrandt (the manager of the licensee corporation) was acquitted of the criminal charges relating to the minors.

H--- sat down, Mrs. H--- approached the bar and, while standing alongside the agent, ordered and received two bottles of beer from the bartender (Paul Hildebrandt). Mrs. H--- returned to the table with two opened bottles of beer and placed one of them in front of Mr. H---. In attempting to pour the beer into a glass, H--- spilled a portion of it on the table and then consumed a portion of the beer he had poured into the glass. The agent then described a dance performed by Mr. and Mrs. H--- thusly: "He leaned very heavily on her, his head was very limp, and he continued to kind of have all his weight on her, she held him up, and several times they kind of fell off balance, almost going to the floor, and before the number was over she helped him back to the booths, and he kind of dropped or collapsed in the booth."

Mr. H---, in attempting to refill the glass, spilled more beer on the table and then knocked the glass over in attempting to pick it up. The agent noted that H---'s face was flushed, his hair was in his face, his head bobbed and hung low. In attempting to pick up something on the floor H--- almost fell. His wife got up and "put her hand under his armpit and straightened him up in his seat." Agent C pointed to H---, exclaimed to Hildebrandt "Your friend back there is really loaded. He just spilled his beer all over the place." At this time Mrs. H--- was drying the table with a cloth. Hildebrandt responded, "Well, that is their problem."

A moment or two later Mrs. H--- went to the bar, called Hildebrandt and ordered two bottles of beer. Hildebrandt brought two bottles of beer to the table and placed one of the bottles in front of Mr. H--- and the other bottle in front of Mrs. H---. H--- poured some in the glass, spilled some on the table and then consumed some of the beer. Shortly thereafter, Agent C identified himself to Hildebrandt and together they proceeded to the table where Mr. and Mrs. H--- were seated. Agent C testified that that H---'s condition "remained the same; clothing unkempt, eyes red, flushed face, hair in his face. He talked loud but incoherently... I still felt he was intoxicated."

He had not seen the H---s enter the tavern. He did not see them consume food. In the presence of Hildebrandt Mrs. H--- volunteered the following statement as to her husband: "He doesn't understand what you are saying... He isn't driving. Don't worry. He isn't driving. I will take care of him." Hildebrandt made no comment relative to Mrs. H---'s statement that her husband was intoxicated.

The agent seized the drink that he had seen H--- consume. The chemist's report, certifying that the drink seized by the agent was an alcoholic beverage, was admitted into evidence.

Paul Hildebrandt, who was not only a bartender at the licensed premises but was also the manager thereof and the husband of the major stockholder, appeared in behalf of the licensee corporation. He was advised that he had the privilege of cross-examination.

On cross-examination the agent testified he saw no food on the table where the H---s were seated.

Agent J testified that, accompanied by Agent C in the instant investigation, he entered the licensed premises at midnight. He remained in the service area. His attention was drawn to the table where Mr. and Mrs. H--- were seated. The agent's

2. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - PRIOR
DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary
Proceedings against

SABE, INC.

t/a PAUL'S MUSICAL TAVERN

1817-1819 Broadway

Camden, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption

License C-146 for the year 1965-66

and C-205 for the year 1966-67,

issued by the Municipal Board of

Alcoholic Beverage Control of the

City of Camden.

Licensee, by Paul Hildebrandt, Manager, Pro se.

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

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Friday night, May 13 into early Saturday morning, May 14, 1966, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division, ABC Agent C testified that, pursuant to specific assignment, he and two other Division agents arrived at the vicinity of the licensed premises on May 13, 1966, at 10:45 p.m. He entered the licensed premises (described as a neighborhood tavern catering to a "working-class type" of patronage) at 11:00 p.m. and sat at the bar on the stool nearest to the service room. The service room, located at the rear of the licensed premises, was separated from the barroom by a large opening. There were approximately ten patrons seated at tables in the service room and approximately twenty patrons seated or standing in the barroom.

The agent's attention was attracted to "a couple seated to the left of the side entrance in the service room," identified as Mr. and Mrs. Joseph H---. In walking a distance of approximately fifteen feet to the men's room, Mr. H--- "staggered from side to side, and as he proceeded across the room he bumped into tables and chairs, and then he would regain his balance and continue into the men's room." In describing H---'s appearance, the agent testified that his "hair was hanging down his face, his clothing was disheveled and unkempt, he was flushed, his face was flushed, his eyes were red and glassy." Upon returning to his table after remaining in the men's room from three to five minutes, H--- "staggered and bumped into tables on his way back to his original position." It was the agent's opinion that H--- appeared to be intoxicated. After

According to Hall, just before the agents left the premises, one of them "asked me for the application again and sign the bottle again, and I told him I didn't know where the application was and I wasn't going to sign the bottle."

The evidence presented herein is meager concerning what interest, if any, Marvin Toland has in the licensed premises. The bartender stated that he called Toland to ascertain the location of the licensee and did not request that Toland come to the premises. However, when Toland did enter the premises, Hall told him to talk to the agents. According to the agents' testimony, Toland directed Hall not to sign anything and intercepted Agent S when he attempted to secure the register tape. Although Hall cooperated with the agents prior to Toland's arrival, after a whispered conversation with Hall, the latter refused to cooperate with the agents in any way whatsoever.

The law is explicit that a licensee or his employee is obliged to aid and not hinder, delay or fail to facilitate ABC agents in the course of their investigation of licensed premises. R.S. 33:1-35. There is no doubt that the facts in the instant case plainly show that Hall's conduct impeded the investigation then in progress.

Under the circumstances, I recommend that the licensee be found guilty of hindering and failing to facilitate the investigation being conducted by the agents, as alleged in Charge 2. Cf. Re Konner's Grill, Inc., Bulletin 1359, Item 7.

Licensee has no prior adjudicated record. I therefore further recommend that on the first charge, to which licensee pleaded non vult, the license be suspended for fifteen days and on the second charge for an additional ten days, making a total suspension of twenty-five days, without remission for the confessional plea to the first charge in view of the contest to the second charge. Re Konner's Grill, Inc., supra.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of the proceedings and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 17th day of October 1966,

ORDERED that Plenary Retail Consumption License C-144, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Henry S. Corvino, t/a Juke Box, for premises 213 Thirteenth Avenue, Newark, and transferred during the pendency of these proceedings to 213 Corporation, t/a Juke Box Tavern, for the same premises, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, October 24, 1966, and terminating at 2 a.m. Friday, November 18, 1966.

JOSEPH P. LORDI
DIRECTOR

ABC Agent S testified that he and Agent M arrived at the licensed premises at about 2:30 p.m. on Sunday, April 17, 1966, and that Agent M entered immediately; that at about 3:15 p.m. Agent M rejoined him with a half-pint bottle of liqueur in his possession and both he and Agent M entered the licensed premises; that the agents identified themselves to Leonard Hall, the bartender, and the three then went into the kitchen where Hall admitted the sale of the bottle of alcoholic beverages to Agent M; that he (Agent S) requested the bartender to produce a copy of the license application but Hall said he would telephone "the boss" who should take "no more than ten minutes" to come to the premises. Agent S further stated that "ten minutes later" a man (who identified himself as Johnson but was subsequently learned to be Marvin Toland) came into the kitchen and asked what was going on; that when Agent S inquired who he was, Toland said "he was there in the interests of his wife's cousin who owned the place." Thereafter, Agent S said, he observed Toland whispering to Hall and, when the agent said to Toland that since he was not officially connected with the licensed business, he should leave, Toland left the kitchen. Agent S further stated that although Hall was cooperative with the agents prior to Toland's arrival, Hall refused to answer any more questions asked by the agents. When Agent S requested the cash register tape from Hall, he stated that he did not know how to remove it; and when he (Agent S) went behind the bar to obtain the tape, he was intercepted by Toland, who remarked that he would get it for him; that Toland removed the tape, handed it to Hall who, in turn, handed it to Agent S. When Agent S then asked Hall to initial the tape and also the label on the bottle of liqueur, Toland said to Hall, "Don't sign anything" and Hall followed his instructions. As the agents were about to leave the licensed premises, Agent S again inquired of Hall what the man's name was and Hall replied, "He told you what his name was, Mr. Johnson, didn't he?" Agent S said he again requested the copy of the application for license from Hall but it was never made available to him.

Agent M testified that he entered the licensee's premises at 2:30 p.m. Sunday, April 17, 1966, and purchased a half-pint of Four Roses liqueur from Hall, the bartender; that at approximately 3:15 p.m. he left the premises and rejoined Agent S; that both agents entered the licensed premises, identified themselves to Hall, and the three went into the kitchen. Agent M testified that when Hall was asked to produce the license application, he appeared uncertain as to its whereabouts and asked if he might "contact the boss"; that Hall made a telephone call and about ten minutes later a man entered the premises and, in response to a question concerning his name and connection with the licensed business, said, "My name is Johnson" and "I am here to look after the interests of my cousin." The testimony of Agent M as to what transpired thereafter is substantially similar to that given by Agent S.

The agents were cross-examined at length by the attorney for the licensee, with no substantial change in their testimony given on direct examination.

Leonard Hall testified that he sold the bottle of alcoholic beverages to Agent M on the date in question and, when questioned by the agents, told them he could not find the license application; that he telephoned the licensee and, when he was unable to reach him, he (Hall) called Marvin (Marvin Toland), a cousin, to ascertain where the licensee was, as Marvin "was working with Mr. Corvino and came in some time." Hall contended, however, that he had no knowledge that Marvin had any connection with the licensed premises.

On cross examination, Hall testified that when Marvin came into the premises, he (Hall) told him to talk to the agents.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

December 22, 1966

BULLETIN 1706

1. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE
REGULATION NO. 38 - HINDERING INVESTIGATION - LICENSE
SUSPENDED FOR 25 DAYS - NO REMISSION FOR PLEA TO ONE
CHARGE WHEN ANOTHER CONTESTED.

In the Matter of Disciplinary)
Proceedings against)

HENRY S. CORVINO)
t/a Juke Box)
213 Thirteenth Avenue)
Newark, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-144, issued by the Municipal)
Board of Alcoholic Beverage Control of)
the City of Newark, and transferred)
during the pendency of these proceedings)
to)

213 Corporation)
t/a Juke Box Tavern)

for the same premises.)

Jack I. Doppelt, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded non vult to the first charge and not
guilty to the second charge as follows:

"1. On Sunday, April 17, 1966, at about 3:10 p.m.
you sold and delivered and allowed, permitted and
suffered the sale and delivery of an alcoholic beverage,
viz., a one-half pint bottle of Four Roses Liqueur, at
retail, in its original container for consumption off
your licensed premises and allowed, permitted and
suffered the removal of said alcoholic beverage, in its
original container from your licensed premises; in
violation of Rule 1 of State Regulation No. 38.

"2. On Sunday, April 17, 1966, between 3:20 p.m. and
3:50 p.m. you, through agents, servants, employees and
other persons in your behalf, failed to facilitate and
hindered and delayed and caused the hindrance and delay
of an investigation, inspection and examination at
your licensed premises then and there being conducted
by an Inspector and an Investigator of the Division of
Alcoholic Beverage Control of the Department of Law
and Public Safety, of the State of New Jersey; in
violation of R.S. 33:1-35."

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

December 22, 1966

BULLETIN 1706

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