

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

BULLETIN 910

JUNE 26, 1951.

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

BULLETIN 910

JUNE 26, 1951.

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(RENTING ROOMS FOR IMMORAL PURPOSES) - LICENSE SUSPENDED FOR 180
DAYS.

In the Matter of Disciplinary Proceedings against

LEO MOLENARO
81 First Avenue
Paterson 4, N.J.,

Holder of Plenary Retail Consumption License C-101, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS
AND ORDER

Edward G. Weiss, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On April 26, 1951, and on divers days prior thereto, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, viz., the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20."

An examination of the file herein discloses that, on April 25, 1951, two ABC agents while in defendant's licensed premises talked to John Amendola, the bartender and apparently the only person then in charge of defendant's licensed premises. The ABC agents inquired of the bartender if it were possible to secure rooms in the hotel section of the licensed premises for the purpose of engaging in unlawful sexual intercourse. The ABC agents explained to the bartender that they had a couple of girl friends, and, although they were married men, they desired to do "a little cheating" on their wives. The bartender said he would rent them rooms for said purpose and assured them that they had nothing to worry about. Furthermore, the bartender told the ABC agents that they should "park around in the back -- ring the bell and anyone will take care of you." The bartender, according to the ABC agents, said that they should sign as "Mr. & Mrs. anything" and no baggage was required.

On April 26, 1951, the ABC agents returned to defendant's licensed premises and rented two rooms from John Amendola, the bartender, pursuant to the arrangements made with him on the previous day. Thereafter, two other ABC agents entered defendant's licensed premises, made known their identity, and accompanied the bartender to the upper floor where they found the two ABC agents. The bartender admitted renting the rooms to the two agents.

It is immaterial that no illicit sexual intercourse actually occurred in the rooms after they were rented to the agents. The offense charged (allowing, permitting and suffering lewdness and immoral activities in and upon the licensed premises) was complete when the rooms were rented with knowledge, on the part of the licensee's employees, that they were (ostensibly) to be used for the

purpose of illicit sexual intercourse. Cf. Re Hartman, Bulletin 904, Item 2. Judge Jayne in Re Schneider, 12 N. J. Super. 449, stated: "The object manifestly inherent in the rule -- 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 a disciplinary action until the actual consummation of the apprehended evil."

There is no evidence in the instant case that the defendant-licensee participated in the transaction in question. A licensee is under a duty, however, to exercise close supervision over his licensed premises and violations occurring there cannot be excused merely because he had no personal knowledge of them. Rule 31 of State Regulations No. 20; Stein v. Passaic, Bulletin 451, Item 5; Essex Holding Corp. v. Hock, 136 N.J.L. 28. As was said in Re Paton, Bulletin 898, Item 3, "He (a licensee) cannot hide behind his employees."

Defendant has no previous adjudicated record. Under the circumstances, I shall suspend defendant's license for a period of 180 days. Re Hartman, supra.

Accordingly, it is, on this 12th day of June, 1951,

ORDERED that Plenary Retail Consumption License C-101, issued for the 1950-51 licensing year by the Board of Alcoholic Beverage Control of the City of Paterson to Leo Molinaro, for premises 81 First Avenue, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 20, 1951; and it is further

ORDERED that if any license be issued to the said licensee, or anyone else, for the premises in question for the 1951-52 fiscal year, such license shall be under suspension until 3:00 a.m. December 17, 1951.

ERWIN B. HOCK
Director.

- 2. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - PERMITTING INDECENT STATUETTES AND OTHER OBJECTS ON LICENSED PREMISES - PERMITTING OBSCENE LANGUAGE ON THE LICENSED PREMISES - PURCHASING ALCOHOLIC BEVERAGES FROM PERSON OTHER THAN THE HOLDER OF A NEW JERSEY MANUFACTURER'S OR WHOLE-SALER'S LICENSE - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 ELIZABETH PATRICIA SCULLION
 T/a THE OLD CORNER BAR & GRILL
 634 Gorge Road
 Cliffside Park, N. J.,
 Holder of Plenary Retail Consumption License C-9, issued by the Mayor and Council of the Borough of Cliffside Park.

CONCLUSIONS AND ORDER

 Bernard S. White, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that she (1) sold alcoholic beverages during prohibited hours, in violation of a local ordinance; (2) allowed, permitted and suffered in her licensed premises statuettes and other objects, obscene, indecent, filthy, lewd, lascivious, and disgusting, in violation of Rule 17 of State Regulations No. 20; (3) allowed, permitted and suffered foul, filthy and obscene language in and upon her licensed premises, in violation of Rule 5 of State Regulations No. 20; and (4) purchased or obtained an alcoholic beverage from a person who did not hold either a New Jersey manufacturer's or wholesaler's license, in violation of Rule 15 of State Regulations No. 20.

On Sunday, May 6, 1951, at about 2:10 a.m., agents of the State Division of Alcoholic Beverage Control entered the licensed premises. At 3:00 a.m. some of the customers left, but the agents and eight or ten customers stayed on and the bartender-manager, one Fred Smith, continued to serve all who desired service. At about 3:20 a.m., after purchasing several drinks, the agents identified themselves to the bartender. The local ordinance, adopted December 20, 1939, prohibits the sale of alcoholic beverages between 3:00 a.m. and 12:00 o'clock noon on Sunday.

During the course of their investigation, the agents observed, behind the bar but in plain view, several metal and plastic models of a lewd and obscene nature, which they seized. The agents heard a waitress using foul and indecent language without any hindrance by the manager. They also learned from the manager that he had purchased from an individual, not licensed to sell alcoholic beverages in this state, a bottle of "Grand Old Parr Brand Blended Scotch Whisky".

Although the defendant-licensee was not present during any of the time aforesaid, nevertheless, she must be held responsible for the actions of her agent in the conduct of her business. Cf. Re Greenbrier, Inc., Bulletin 887, Item 3.

Defendant has no prior adjudicated record. Under all of the circumstances, I shall suspend the license for sixty days. Five days will be remitted because of the plea, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 11th day of June, 1951,

ORDERED that Plenary Retail Consumption License C-9, issued by the Mayor and Council of the Borough of Cliffside Park to Elizabeth Patricia Scullion, t/a The Old Corner Bar & Grill, 634 Gorge Road, Cliffside Park, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 19, 1951; and it is further

ORDERED that if any license be issued to this licensee or any other person for the premises in question for the 1951-52 licensing year, such license shall be under suspension until 3:00 a.m. August 13, 1951.

ERWIN B. HOCK
Director.

- 3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATION CONCEALING TRUE INTEREST OF A STOCKHOLDER - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE PRIVILEGES OF ITS LICENSE - PREDECESSOR-IN-INTEREST AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE PRIVILEGES OF ITS LICENSE - EMPLOYING UNQUALIFIED PERSON - PRIOR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM - BECAUSE PREMISES NOW CLOSED, ANY RENEWAL LICENSE IMMEDIATELY SUSPENDED FOR BALANCE OF ITS TERM, WITH LEAVE TO FILE PETITION TO LIFT SAID SUSPENSION 45 DAYS AFTER BUSINESS IS RESUMED.

In the Matter of Disciplinary Proceedings against)

THE WILLOWS HOTEL OPERATING CO.)
T/a THE WILLOWS - FOREST BAR)
W/S Forest Ave. bet. 7th and 8th Sts.)
Lakewood, N.J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-27, issued by the Township Committee of the Township of Lakewood.)
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Alvin H. Gelb, Esq., by Milton Miller, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to charges alleging (1) that it made false statements in its application dated October 17, 1950, for the current licensing period, thereby concealing the true extent of the interest of one Jacob Cohen, a stockholder, in violation of R. S. 33:1-25; (2) that from October 27, 1950 until March 9, 1951, the date these charges were preferred, it knowingly aided and abetted the said Jacob Cohen to exercise the rights and privileges of its current plenary retail consumption license, in violation of R. S. 33:1-52; and (3) that from December 22, 1944 until June 30, 1949, a predecessor in interest (The Willows, a Corp.) knowingly aided and abetted the said Jacob Cohen to exercise the rights and privileges of its successive plenary retail consumption licenses, in violation of R. S. 33:1-52.

Defendant has pleaded non vult to charge (4) which alleges that it employed the said Jacob Cohen, who was not a citizen of the United States or national of a country having an existing trade treaty affording reciprocal privileges to respective nationals, and who had not obtained requisite employment permit, in violation of Rule 5 of State Regulations No. 13.

In its application filed October 17, 1950, defendant listed as its stockholders: Ray Cohen (9 shares or 45%); Rosalie Cohen

(9 shares or 45%); and Jacob Cohen (2 shares or 10%).

A Division agent testified that on February 9, 1951, during the course of an investigation to determine the true ownership of the licensed business operated in the name of defendant corporation, Jacob Cohen, defendant's president, verbally admitted owning the business as well as the licensed building and furniture and fixtures therein. The agent further testified that Cohen stated, as his reason for holding only two shares or 10% of the stock of the corporation, that his attorney had advised him that, because he was a Russian national, he was disqualified by law from holding a larger percentage of the stock. A sworn statement made by Cohen on the above date and admitted into evidence at the trial indicates that no money was paid by any of defendant's shareholders for their stock. The same witness and another agent, who accompanied the former to the premises on February 15, 1951, testified that on the latter date Cohen reiterated his above admission in the presence of both agents.

On the last mentioned date, the Division agents secured a sworn statement from Rosalie Cohen, treasurer of defendant corporation, which statement was also admitted into evidence. This statement clearly indicates that Rosalie Cohen was unfamiliar with the operation of the licensed business and with the financial affairs of the corporation. For example, she answered, when questioned by the agents as to whether she wished to add anything to the statement, "Yes, I want to say that I'm very inactive in the business and know nothing about the operation of the hotel and while I hold nine shares of stock of the twenty issued I didn't know it was nine shares until you told me and it is my understanding that I am holding the stock for my father-in-law, Jacob Cohen." Similarly, when asked by the agents who received the profits from the business, she said, "Mr. Cohen I guess, I know I don't receive any."

Rosalie Cohen was not present at the hearing and, on defendant's application, the case was continued for one week, to March 26, 1951, in order to afford defendant an opportunity to produce the said Rosalie Cohen as a witness. However, Milton Miller, Esq., who represented defendant at the trial of the matter, advised by letter of that date that the defendant did not desire to present any further evidence in the case.

Two other Division agents testified at the hearing that, during an investigation on February 4, 1949, Jacob Cohen told them that he was the owner of the liquor business conducted in the name of The Willows, the then corporate licensee. The latter corporation was formed on December 9, 1944 and held successive plenary retail consumption licenses for the premises here in question until June 30, 1949. A certified copy of its application for renewal of the license for the 1948-49 period, which was marked in evidence, discloses that Jacob Cohen held only one share of stock in that corporation and that the remaining two shareholders, Milton Cohen and Rosalie Cohen, held 19 shares and 10 shares, respectively. Although there is a well-founded suspicion that Jacob Cohen has owned the liquor business since 1944, while always holding only a small portion of the stock of the licensee corporation, no evidence was offered at the hearing concerning the ownership of the business or the distribution of the corporate stock prior to the 1948-49 period.

In contradiction of the testimony of the first mentioned two Division agents, Jacob Cohen testified that the stock of defendant corporation standing in the name of Ray Cohen and Rosalie Cohen, respectively, is their own property and that he has no interest in such stock whatsoever. This witness further testified that, since making his sworn statement of February 9th, he had learned from his accountant that Ray Cohen and Rosalie Cohen had paid a money consideration for the shares issued to them.

Alvin H. Gelb, attorney of record for defendant corporation, when asked whether or not he advised Jacob Cohen that, because of his being a national of Russia, he could not hold more than 10% of the stock, said, "I don't recall actually telling that to Mr. Cohen, but Mr. Cohen seemed to be under the impression that I had told him and I didn't argue the point with him because I didn't check the statute in the particular case."

It is significant that neither Ray Cohen nor Rosalie Cohen were produced as witnesses by defendant at the instant hearing.

I am satisfied from the evidence that Jacob Cohen is the real and beneficial owner of the liquor business licensed in the name of defendant corporation and also the owner of all of defendant's outstanding stock. Although defendant operates a bona fide hotel and, hence, Jacob Cohen was not actually disqualified by statute (R. S. 33:1-25) from holding such stock, he apparently believed that he was disqualified. I therefore find defendant guilty of charges 1 and 2. The evidence further convinces me that Jacob Cohen was the real and beneficial owner of the liquor business operated in the name of The Willows during the 1948-49 licensing period and that, in other words, the latter corporation knowingly aided and abetted him to exercise the rights and privileges of its license for that period. Under the circumstances of this case, Rule 1 of State Regulations No. 16 makes defendant liable for this violation of its predecessor. Accordingly, I find defendant guilty of so much of charge 3 as pertains to the 1948-49 period. As above stated, defendant pleaded non vult to charge 4.

Defendant has a previous adjudicated record. Effective March 5, 1951, defendant's license was suspended for 10 days for permitting gambling on licensed premises. Since it appears that the unlawful situation continues to exist, I have no alternative except to suspend for the balance of its term, expiring June 30, 1951, the license now held by defendant.

The records of this Division indicate that defendant's premises are now closed and will remain closed until some time in the autumn. Thus, no effective suspension can be imposed until the licensed premises shall have reopened for business in the autumn of 1951. If defendant obtains a new license or a renewal of the license for the 1951-52 licensing year or if the present license is transferred to another person prior to June 30, 1951 and such person obtains a renewal of the license for the 1951-52 licensing year, such renewed license shall be immediately suspended for the balance of its term. Leave will be given to file a petition to lift said suspension if the unlawful situation is corrected. The petition may be filed after business is resumed in the autumn of 1951, but in no event will an order lifting the suspension be entered until 45 days after business is resumed in the autumn of 1951.

Accordingly, it is, on this 11th day of June, 1951,

ORDERED that the license for the present licensing year is suspended for the balance of its term and any license for the 1951-52 licensing period issued to defendant for this or any other premises, or issued to any other person for the same premises, be and the same is hereby suspended for the balance of its term, as aforesaid, with leave to apply for lifting of said suspension as hereinabove set forth.

ERWIN B. HOCK
Director.

4. APPELLATE DECISIONS - NEWARK TAVERN ASSOCIATION, INC. ET AL. v. NEWARK AND NEWLER.

Newark Tavern Association, Inc.,
(a corp.), Morris Wymiszner,
Benie Lerham and Jacob Amoda,

Appellants,)

On Appeal

Municipal Board of Alcoholic
Beverage Control of the City of
Newark, and Moses Newler,

CONCLUSIONS and ORDER

Respondents.)

Sidney Simandl, Esq., Attorney for Appellants.
Charles Handler, Esq., by George B. Astley, Esq., Attorney for
Respondent Municipal Board.
Joseph D. Lintott, Esq., Attorney for Respondent Moses Newler.

BY THE DIRECTOR:

This is an appeal from the action of respondent Municipal Board in granting the transfer from 745 Clinton Avenue to 237 Clinton Avenue, Newark, of a plenary retail distribution license held by respondent Moses Newler.

Appellants allege (a) that the sign which was required by a local ordinance to be placed in the window of the premises to which the license was sought to be transferred was not so placed; (b) that the premises to which the license was transferred was less than seven hundred fifty feet from other premises covered by a similar license and, hence, that the transfer was granted in violation of a local ordinance, and (c) that the transfer of the license was not necessary to meet the needs and convenience of the immediate locality.

As to (a): The evidence taken at the hearing below, and introduced as an exhibit at the hearing of the appeal herein, indicates that a sign in compliance with the requirements of the local ordinance was posted in a window of the premises at 237 Clinton Avenue. The members of the respondent Board found as a fact that the sign complied with the local regulation. No further testimony on this ground was presented at the hearing of the appeal. I conclude that ground (a) is without merit.

As to (b): The pertinent portion of the local ordinance provides:

"No Plenary Retail Distribution License *** shall be granted or transferred to another premises within a distance of seven hundred and fifty (750) feet from an existing licensed premises covered by a Plenary Retail Distribution License."

At the hearing below, two surveys were presented for the consideration of the Municipal Board. A survey made on behalf of Newark Tavern Association indicated that the shortest distance between the premises known as 237 Clinton Avenue and premises known as 282 Clinton Avenue (for which a plenary retail distribution license had previously been issued) was 728.6 feet. A survey made on behalf of respondent Moses Newler indicated that the distance between the two premises was at least 780 feet. The testimony before the Municipal Board was concerned principally with the manner in which the two surveys had been made. At the conclusion of the hearing Chairman Quinn stated:

"This Board is not in a position to render a decision in this matter at the present time because of the conflicts in the testimony and in the exhibits submitted regarding the distances between the proposed new location and the existing D-license in the area.

"This Board will confer in executive session regarding the findings of an impartial surveyor to be appointed by the Board to re-measure the distances, with the understanding that counsel for both the applicant and the objectors shall share in the payment of the fee of that impartial surveyor, share and share alike.

"When the report of this surveyor is received by this Board, the entire matter will then be considered in executive session and a decision rendered at that time."

On February 6, 1951, the Municipal Board filed a written decision in which it was recited that the shortest distance between the two premises, as indicated in a survey by a third surveyor selected by the Board, was 756 feet, and as to this point the written decision stated the following:

"Under the circumstances, this Board is of the opinion that the distance between the premises is more than 750 feet as called for by the ordinance."

At the hearing held herein, further surveys were submitted on behalf of appellants which indicated that the distance between the two premises in question, as measured by the surveyor, was substantially less than 750 feet. Although none of the surveys introduced below or at the hearing of this appeal sets forth exactly the proper method of measuring the distance between the two premises, I believe that the essential difference between the surveys introduced by appellants and those introduced by respondent Newler arises from the manner in which the measurements were made in crossing Clinton Avenue at its intersection with Milford Avenue. Appellants contend that this measurement should be taken at an angle across Clinton Avenue, along a prolongation of the westerly line of Milford Avenue. On the other hand, respondents contend that this measurement should be taken across Clinton Avenue at right angles to the southerly curb of Clinton Avenue. As to this point I find that the contention of respondents is correct.

At the time the case was decided below, R.S. 39:4-34 provided:

"At all intersections where traffic is not controlled and directed either by a police officer or a traffic signal, no pedestrian shall cross the highway other than at right angles to the curb ***."

Effective April 5, 1951, P.L. 1951, ch. 23, amended R.S. 39:4-34 to read as follows:

"Where traffic is not controlled and directed either by a police officer or a traffic control signal, pedestrians shall cross the roadway within a crosswalk or, in the absence of a crosswalk, at right angles to the roadway ***."

P.L. 1951, c. 25, effective also on April 5, 1951, defines the word "crosswalk" as follows:

"'Crosswalk' means that part of a highway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the

shoulder or, if none, from the edges of the roadway; also, any portion of a highway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface."

There is no policeman, traffic signal or lines or other markings on the surface indicating a crosswalk at the intersection of Clinton Avenue and Milford Avenue. I conclude that, under the provisions of R.S. 39:4-34 as it existed at the time of the hearing below, the normal way that a pedestrian would properly walk across Clinton Avenue would be at right angles to the southerly sidewalk of Clinton Avenue, and that this continues to be the proper manner of crossing the street under the subsequent amendment of R.S. 39:4-34.

The proper method of measuring the distance between the two premises should follow the rule set down in Aldarelli v. Asbury Park, Bulletin 186, Item 12. Therein it is said:

"*** the rule hereafter will be that the measurement will be made in the direction indicated by the statute in straight lines along the side of walls and street lines nearest to church (or school) and tavern thus to get the shortest distance between them. The courses will commence and terminate at the nearest point on the nearest doors of the respective premises. That is the place where the pedestrian would leave or enter, taking the shortest course, if the door were open."

After the hearing was held herein, measurements in accordance with the rule laid down in the Aldarelli case were made by Inspector Pfeiffer of the Division of Alcoholic Beverage Control. In accordance with the subsequent decision in Franklin Stores Co. v. Newark and Gruber, Bulletin 381, Item 7, these measurements began and ended, not at the recessed door but, at the nearest point of each entrance-way on the sidewalk. According to the aforesaid measurements, the distance between the two premises is 787 feet 4½ inches. Hence I find that ground (b) is without merit.

As to ground (c): The decision below recites the following:

"The members of this Board are familiar with the neighborhood in question and have knowledge of the outlets in the neighborhood.

"Under all the circumstances and giving consideration to the fact that the license in question is a 'D' license, this Board is of the opinion the granting of this license would not create too many alcoholic beverage outlets in the neighborhood so as to injure or affect the neighborhood."

The section in question is of a mixed residential and business character, with business largely predominating. The number of licenses which should be permitted in a section of this character is a question to be decided primarily in the sound discretion of the issuing authority. Appellants have failed to sustain the burden of proof in showing that respondent Board abused its discretionary power in transferring the license to 237 Clinton Avenue. Hence, I conclude that ground (c) is also without merit.

Accordingly, it is, on this 21st day of June, 1951,

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

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - GAMBLING - POSSESSING OBSCENE PRINTING, PICTURES AND OTHER REPRESENTATIONS ON LICENSED PREMISES - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against)

JOHN E. WALLACE)
T/a JOHN E. WALLACE TAVERN)
333 Palisade Avenue)
Cliffside Park, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-28, issued by the Borough Council of the Borough of Cliffside Park.)

Walter R. Gottschalk, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to charges alleging that (1) he engaged in, allowed, permitted and suffered bookmaking and gambling in and upon his licensed premises, in violation of Rule 7 of State Regulations No. 20; and (2) he allowed, permitted and suffered in and upon his licensed premises and had in his possession obscene, indecent, filthy, lewd, lascivious and disgusting printing, pictures and other such representations, in violation of Rule 17 of State Regulations No. 20.

An ABC agent testified that on December 14, 1950, in the company of a member of the State Police, he visited defendant's licensed premises; that defendant-licensee, after the two law-enforcement officers identified themselves to him, was requested to empty his pockets and place the contents thereof on the bar; that, pursuant thereto, the defendant placed on the bar, among other things, a slip of paper containing writing in pencil, "Swamp Son 4 Tropical 2-0-0" and \$119.20. The agent further testified that, when questioned by the officers regarding the slip of paper, defendant-licensee stated that he had taken the slip indicating a bet on a horse from a man about a half-hour before the officers' arrival; that the patron, before leaving, had left two dollars on the bar; that he took it to quiet the man, but intended to return it to the person the next time the defendant saw him. The witness testified, further, that the Trooper found an unsealed envelope alongside the cash register and upon opening same found that it contained nine small picture photographs depicting nude men and women in various filthy and unspeakably vile poses, and adjacent to the envelope he found twelve other picture photographs on postcards depicting nude men and women in various similar poses, and also five lewd pamphlets containing obscene sayings and cartoons. The defendant, according to the witness, said that the twelve postcards were given to him by a soldier who stated that he would return some time in the future and retrieve them. The defendant said that the nine small photographs and the five paper-bound pamphlets were in his business establishment for quite a long time.

The member of the State Police corroborated in substance the testimony of the ABC agent.

The defendant admitted in his testimony accepting the bet, but explained that he intended at the time to put it in the trash box and that when the patron immediately thereafter ordered a glass of beer he put it in his pocket with intentions of destroying it. The defendant further testified that a soldier had given him the various pictures and pamphlets to keep until he returned some time in the future, and that he did not at any time show them to anyone. The defendant produced a letter allegedly received from this soldier in which the latter stated, "he did not want the pictures any more."

I am satisfied after careful examination of the evidence in the instant case that the defendant herein is guilty of both charges (1) and (2).

Defendant has no previous adjudicated record. Under the circumstances herein, I shall suspend his license for a period of fifty days. Cf. Re Skwara, Bulletin 906, Item 5.

Accordingly, it is, on this 21st day of June, 1951,

ORDERED that Plenary Retail Consumption License C-28, issued by the Borough Council of the Borough of Cliffside Park to John E. Wallace, t/a John E. Wallace Tavern, for premises 333 Palisade Avenue, Cliffside Park, New Jersey, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 27, 1951; and it is further

ORDERED if any license be issued to said licensee or to anyone else for the premises in question for the 1951-52 fiscal year, such license shall be under suspension until 3:00 a.m. August 16, 1951.

ERWIN B. HOCK
Director.

6. APPELLATE DECISIONS - EMMET SUPER MARKETS, INC. v. ROXBURY TOWNSHIP.

EMMET SUPER MARKETS, INC.,)

Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)

TOWNSHIP OF ROXBURY,)

Respondent.)

ON APPEAL
ORDER OF DISMISSAL

Shanley, Congleton & Fisher, Esqs., by Harold H. Fisher, Esq.,
Attorneys for Appellant.

Howard F. Barrett, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent in denying a person-to-person and place-to-place transfer of a plenary retail distribution license held by Orrin F. Barnes and Daisey Barnes to appellant, and from premises County Road, Roxbury Township, Ledgewood, to premises Lakeside Boulevard, Landing, N. J.

After the appeal was partially heard, the parties hereto filed written stipulation agreeing to a dismissal of the proceedings without prejudice. No cause appearing to the contrary,

It is, on this 15th day of June, 1951,

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

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - GAMBLING - POSSESSING LOTTERY TICKETS - POSSESSING OBSCENE PRINTING, PICTURES AND OTHER REPRESENTATIONS ON LICENSED PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against)

JOHN GAVLAK)
T/a MAIN STOP)
35 Main Avenue)
Wallington, N. J.,)

CONCLUSIONS
AND
ORDERS

Holder of Plenary Retail Consumption license C-15, issued by the Borough Council of the Borough of Wallington.)

Joseph H. Gaudielle, Esq., by B. Franklyn Boggia, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to charges alleging, in substance, that (1) on April 3, 1951, and on divers days prior thereto, and particularly on March 30, 1951, he engaged in and allowed, permitted and suffered bookmaking and gambling in and upon his licensed premises; (2) on April 3, 1951, and on divers days prior thereto, he possessed, had custody of and allowed, permitted and suffered in and upon his licensed premises numerous tickets and participation rights in lotteries, viz., the so-called "numbers" game and a raffle; (3) on April 3, 1951, and on divers days prior thereto, he allowed, permitted and suffered in and upon his licensed premises and had in his possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting printing, pictures and other such representations.

At the hearing held herein, an ABC agent testified that he and another ABC agent visited defendant's premises on March 22, March 24, March 30 and April 3, 1951. On their first and second visits he observed no direct evidence of gambling, although on the first visit he saw a male patron hand "some change and a slip" to the licensee. However, the agent testified that on March 30, 1951, he observed a patron handing \$2.00 to the licensee, after which the licensee wrote something on a paper and went to the back room. This patron was called as a witness and testified that, on the occasion in question, he handed \$2.00 to the licensee as a "parlay" on two horse-races, and that on the following day he received a sum of money from the licensee when the "parlay" won. The ABC agent further testified that, when he and his companion visited defendant's premises on April 3, 1951, the licensee said to them: "I have a good horse for you today", but there is no evidence that any gambling occurred on the licensed premises on that date. Shortly after this conversation the ABC agents, an ABC inspector and a member of the New Jersey State Police, who had entered the premises, made their identity known and searched the premises.

During the search, two slips were found in a drawer behind an enclosure at the bar. These slips were not definitely identified as gambling paraphernalia, although there is testimony that "the two numbers could very easily be number bets". However, the agents seized a slip of paper which had been produced by defendant from his pocket. The evidence satisfies me that this slip of paper contained five "numbers bets". Two cigar boxes were also seized in a storeroom.

One box contained a slip identified as referring to three horse-race bets. In the other box were slips containing notations which have been identified as referring to odds on baseball games. This second box also contained pieces of white paper with notations thereon which have been identified as referring to bets on horse-races and numbers, and also twelve pieces of paper identified as chances on a lottery. There is also some evidence that slips of a similar character were found in two coats located in the front sitting-room of the licensed premises. However, I am disregarding this latter testimony because defendant denied ownership of the coats and further denied that he had any knowledge of the contents of the pockets of the coats.

During the course of the search an ABC agent also found a paper bag on a small shelf at the rear of the bar. The bag was covered by some telephone directories. Upon opening the bag, it was discovered that it contained a number of filthy and unspeakably vile photographs, and papers and pamphlets the contents of which are unquestionably obscene and indecent.

Defendant did not deny the testimony of the ABC agent and the patron that he took a bet on his licensed premises on March 30, 1951. He testified that the slips had been placed in the cigar box by a porter who cleaned the premises. Defendant denied that he owned the coats that were found in the sitting-room or that he had any knowledge of the papers which were found in the pockets of the coat. Defendant denied that he knew anything about the contents of the bag until after it had been seized from the shelf at the rear of the bar. He expressed the opinion that the bag had been left in his premises by a patron.

On the evidence presented, I find defendant guilty as to charge (1) in so far as said charge refers to bookmaking and gambling on the licensed premises on March 30, 1951. I also find defendant guilty as to charge (2). I am not impressed by defendant's testimony concerning the filthy and obscene photographs and literature. The bag in question was an ordinary paper bag which was not sealed in any way, and I do not believe that it could have been upon the licensed premises without the licensee or some of his agents knowing the contents thereof. Hence, I find defendant guilty as to charge (3).

Defendant has a prior record. On June 20, 1946, his license was suspended for sixty days after he pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages. Under all the circumstances, I shall suspend defendant's license for a period of fifty days. Cf. Re Skwara, Bulletin 906, Item 5.

Accordingly, it is, on this 21st day of June, 1951,

ORDERED that Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of Wallington to John Gavlak, t/a Main Stop, for premises 35 Main Avenue, Wallington, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 27, 1951; and it is further

ORDERED that if any license be issued to defendant or to any other person for the premises in question for the 1951-52 licensing year, such license shall be under suspension until 3:00 a.m. August 16, 1951.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - GAMBLING - POSSESSING LOTTERY TICKETS - POSSESSING FILTHY STATUETTE ON LICENSED PREMISES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

GEORGE T. BITTEL)
T/a DENBROOK TAVERN)
11 East Main Street)
Denville, N. J.,)

CONCLUSIONS AND ORDERS

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Denville.)

Scerbo, Porzio & Kennelly, Esqs., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to the following charges:

"1. On April 20 and 23, 1951, and on divers days prior thereto, you allowed, permitted and suffered bookmaking and gambling in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20.

"2. On April 23, 1951, and prior thereto, you possessed, had custody of and allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as a 'raffle' or a 'drawing' in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20.

"3. On April 23, 1951, and prior thereto, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing an obscene, indecent, filthy, lewd, lascivious and disgusting representation comprised in a certain statuette; in violation of Rule 17 of State Regulations No. 20."

An examination of the file in the instant case discloses that on April 20 and 23, 1951, ABC agents placed bets on horses with a bookmaker on defendant's licensed premises. On April 23, 1951, the bartender also placed a bet on a horse with the bookmaker. Thereafter, the ABC agents made known their identity to the bartender.

During the search of the back bar of the licensed premises, the ABC agents seized two books containing tickets representing participation shares in a lottery sponsored by a religious organization. Also, in the back bar the agents found an indecent statuette. It would serve no useful purpose to describe the statuette in question.

Defendant has no previous adjudicated record. Under the circumstances I shall suspend his license for a period of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 19th day of June, 1951,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Denville to George T. Bittel, t/a Denbrook Tavern, for premises 11 East Main Street, Denville, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 25, 1951; and it is further

ORDERED that if any license be issued to this licensee or any other person for the premises in question for the 1951-52 licensing year, such license shall be under suspension until 3:00 a. m. July 20, 1951.

ERWIN B. HOCK

9. DISCIPLINARY PROCEEDINGS - GAMBLING - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against

SAUL & LILLIE COWEN
185 Market Street
Newark 2, N. J.,

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-801, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Nathan Turesky, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charges:

"1. On April 26 and 27, 1951, and on divers days prior thereto, you engaged in and allowed, permitted and suffered book-making and gambling in and upon your licensed premises, in violation of Rule 7 of State Regulations No. 20.

"2. On April 27, 1951, while an inspector and investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety were conducting an investigation at your licensed premises you hindered and failed to facilitate such investigation; in violation of R. S. 33:1-35."

The file herein discloses that on April 26, 1951, at about 12:10 p.m., two ABC agents who were then present on defendants' premises entered into a conversation with Saul Cowen (one of the licensees) and John E. Haller who was working as a bartender in defendants' premises. Saul told the agents that he was betting \$25.00 that the Yankees would defeat the Red Sox in a baseball game being played that day, and asked the agents how much of the bet they wanted. Each agent agreed to take \$5.00 of the bet and, after Saul took their money, he placed the bet by telephone.

On the same day one of the agents placed a bet of \$6.00 on a horse running at the Jamaica Race Track with one Michael Centanni, who was then on defendants' licensed premises and who accepted the bet after "getting the nod from the bartender".

On April 27, 1951, at about 12:30 p.m., the two agents returned to defendants' premises. At that time Saul Cowen, John E. Haller and another bartender, Edward Hillyer, were in the defendants' premises. One of the agents wrote the names of two horses on a piece of paper and gave the paper, with two marked \$1.00 bills, to Michael Centanni, who, after accepting this bet and other bets from patrons present, left the premises and returned a few minutes later. Shortly thereafter John E. Haller, after answering the telephone, told the agents that he had just received a "hot tip" on a horse. One of the agents wrote the name of a horse on a piece of paper, and handed the paper, with six marked \$1.00 bills, to Michael Centanni, who made a telephone call and then went outside of the licensed premises. The agents also gave Saul Cowen one marked \$5.00 bill and five marked \$1.00 bills to bet on the Yankee-Red Sox baseball game being played that day. At about 2:00 p.m. an inspector and another investigator employed by the Division of Alcoholic Beverage Control, with two members of the Newark Police Department, entered defendants' premises and identified themselves. Saul Cowen, John E. Haller, Edward Hillyer and Michael Centanni were placed under arrest. Sixty lottery slips were found in the possession of John E. Haller.

On April 27, 1951, shortly after the identification referred to above, Saul Cowen went to the rear of the kitchen and started down the stairway leading to the cellar. There he attempted to destroy a white slip of paper which he threw on the cellar floor. Subsequently it was found that the slip of paper gave the odds on baseball games.

I find defendants guilty as to both charges.

Defendants have no prior adjudicated record. Under all the circumstances, including a consideration of the plea entered herein, I shall suspend defendants' license for a period of twenty-five days.

Accordingly, it is, on this 19th day of June, 1951,

ORDERED that Plenary Retail Consumption License C-801, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Saul & Lillie Cowen, for premises 185 Market Street, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 25, 1951; and it is further

ORDERED that, if any license be issued to these licensees, or anyone else, for the premises in question for the 1951-52 licensing year, such license shall be under suspension until 2:00 a.m. July 20, 1951.

ERWIN B. HOCK
Director.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Farruggio's Bristol & Phila. Auto Express, Inc.
1419 Radcliffe St., Bristol, Pa.

Application filed June 20, 1951 for Transfer of Transportation License from Giuseppe Farruggio, t/a Bristol & Philadelphia Auto Express, same address.

Anthony Bottling Co. (1951-52)

S/S of Broad Street at Fillmore St., Palmyra, N.J.

Application filed June 20, 1951 for transfer of 1951-52 State Beverage Distributor's License from Anthony Sacca, t/a Anthony Bottling Co., same address.

James Vetri, t/a James Vetri, Truckman
260 - 39th St., Brooklyn 32, N. Y.

Application filed June 21, 1951 for Transportation License.

Renfield Importers, Ltd. (1951-52)

Room 1210, 744 Broad Street, Newark, N. J.

Application filed June 21, 1951 for transfer of Plenary Wholesale License from Room 416, 1060 Broad Street, Newark, N. J.

Erwin B. Hock
Director.