

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

BULLETIN 1479

October 22, 1962

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1. APPELLATE DECISIONS - COLONIAL HOTEL COMPANY v. CAPE MAY.

Cases Nos. 1 & 2)
COLONIAL HOTEL COMPANY OF CAPE)
MAY, N. J.,)
Appellant,) ON APPEAL
v.) CONCLUSIONS
COUNCIL-MANAGER OF THE CITY OF) AND ORDER
CAPE MAY,)
Respondent.

Charles W. Sandman, Jr., Esq., Attorney for Appellant.
Donald A. Gaver, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The above entitled matters will be considered as one case in this Report for the reason that the issues are integrated and interrelated; they have been treated as such in a single petition of appeal and in a single answer filed by the respondent.

"This is an appeal from the action of the respondent Council-Manager of the City of Cape May (hereinafter respondent) wherein, by resolution dated June 6, 1962, it revoked a plenary retail consumption license theretofore granted to the appellant for premises at Ocean Street and Beach Avenue, Cape May, said revocation to become effective on June 7, 1962, and further declared that the said appellant-licensee became ineligible to be 'subject of any further license of any kind or class under the Alcoholic Beverage Law during the period from June 7, 1962 at 9:00 a.m., the effective date of the revocation to May 1, 1963 at 9:00 a.m.'

"On February 19, 1962, after consideration of the appellant's application for a plenary retail consumption license, respondent adopted the following resolution:

'NOW THEREFORE BE IT RESOLVED that the application (of appellant-licensee) is hereby granted subject to the special condition that the license shall not be issued unless and until the premises shall have been duly completed in keeping with the filed and approved plans and specifications as a hotel containing at least 50 sleeping rooms, and subject to the further special condition that there shall be no renewal or transfer of the license except for or to premises operated as a hotel containing at least 50 sleeping rooms.

'BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to issue Plenary Retail Consumption License #C-19 after final inspection, to the Colonial Hotel Company of Cape May, N. J.'

"After the adoption of this resolution the appellant, which owns and operates a substantial hotel of over one hundred rooms in Cape May, proceeded to furnish and equip a cocktail lounge located in a building adjacent to the hotel which it intended to operate as part of the hotel. Appellant alleges that, acting in reliance upon the action of the respondent in granting the said application, it expended over \$26,000 in remodeling, installing and equipping the said cocktail lounge.

"The appellant corporation is essentially family-owned and controlled, and Raymond L. Fite (its general manager) was the owner of thirty-five per cent. of its issued and outstanding stock at the time of the filing of its application. On March 28, 1962, said Fite, who was also the secretary-treasurer of the appellant corporation, was convicted in the United States District Court of income tax evasion and was sentenced to two years in a Federal penitentiary and \$10,000 fine (the prison sentence was ultimately reduced to sixty days). Thereafter, by May 1, 1962, Fite disposed of all his stockholdings, resigned as an officer of said corporation and, according to the petition of appeal, 'severed entirely his connection, employment and occupation in the conduct or management of the affairs and business of the appellant.' However, no written notice of such conviction and transfer of stock was served upon the respondent as required by R.S. 33:1-34, although the appellant asserts that the fact of his conviction was widely circulated in the local press, was well known to the respondent, and that he did in fact orally notify the respondent of such conviction on April 12, 1962.

"On May 26, 1962, while the application had not as yet been implemented by the issuance of the original license which had been authorized by the adopting resolution of February 19, 1962, the appellant made proper application for renewal of the said license. Such application for renewal has not to this date been acted upon by the respondent. However, on May 31, 1962, the appellant was served with a notice of charges and on June 6, 1962, an order and resolution embodying the charges, which resolution recites the following:

'WHEREAS, charges have been heretofore duly served upon the above named licensee, charging the following violations:

1. Violation of R.S. 33:1-25.

A stockholder of more than ten percent (10%) and an officer holding more than one percent (1%) has been sentenced for a crime involving moral turpitude.

2. Violation of R.S. 33:1-31(1).

After application was made, R. L. Fite was sentenced for the crime of income tax evasion, a crime involving moral turpitude, both individually and as an officer of the Colonial Hotel Co. The sentencing for a crime involving moral turpitude of a holder of more than ten percent (10%) of the corporate stock and of an officer holding more than one percent (1%) of stock bars issuance of the license and required revocation. A license may be suspended or revoked for any happening occurring after time of making application which if it had occurred before said time would have prevented the issuance.

3. Violation of R.S. 33:1-31(a).
Failure to file with the issuing authority the written notice required by R.S. 33:1-34.

4. Violation of R.S. 33:1-31(g) and (j).
R. L. Fite on the basis of the filed application is the holder of thirty-five percent (35%) of the stock and is secretary-treasurer of the Corporation. As a result of his sentencing for income tax evasion a crime involving moral turpitude the license is in violation of R.S. 33:1-25.

5. Violation of R.S. 33:1-12.14.
The license was granted as a result of mistake of fact and law. The application was filed for a seasonal retail consumption license to be used for the purpose of a "cocktail lounge" and to cover other buildings. The statute prohibits additional licenses of this class and the license was mistakenly granted for a hotel under the provision of R.S. 33:1-12.20.

6. Violation of local Ordinance dated April 12, 1940, "Respecting the licensing and sale of alcoholic beverages within the City of Cape May" which prohibits the issuance of a seasonal retail consumption license in the City of Cape May, New Jersey. The license was granted as a result of mistake of law. And

'WHEREAS, at a hearing duly held thereon on the 6th day of June, 1962, the testimony having established that the crime for which R. L. Fite was convicted (income tax evasion) involved moral turpitude and the findings having established the truth of the second charge which permits (rather than required) the revocation for any happening occurring after the time of making application, which, if it had occurred before said time, would have prevented the issuance, and the third charge (also permitting rather than requiring the revocation).

'It is, therefore, on this 6th day of June, 1962, on Motion duly made and seconded,

'RESOLVED and ORDERED, that Plenary Retail Consumption License No. C-19 heretofore granted by the City of Cape May to Colonial Hotel Company for premises at Ocean Street and Beach Drive, Cape May, New Jersey, be revoked effective June 7, 1962, at 9:00 a.m., and it is further

'RESOLVED and ORDERED that the licensed premises located at Ocean Street and Beach Drive, Cape May, New Jersey, be and the same is hereby declared ineligible to become subject of any further license of any kind or class under the Alcoholic Beverage Law during the period from June 7, 1962 at 9:00 a.m., the effective date of the revocation to May 1, 1963 at 9:00 a.m.'

"The petition of appeal filed herein urges reversal of respondent's action for the reasons which may be summarized as follows: (a) that the offense of Fite (the officer and stockholder of the appellant) was not an offense involving moral turpitude and, in any event, it did not constitute a crime committed by the corporate appellant; (b) that, at the time the application was submitted, the statements therein were true; (c) that no written notice was acquired under the provisions of R.S. 33:1-34 because, although the application was granted, the

license was never actually issued and, in any event, the issuing authority had notice of the facts; (d) that, relying upon the approval of the application, the appellant incurred great expense in the construction of its premises, and that the action of the respondent in revoking the license was capricious, unreasonable and imposed an unjust penalty upon the appellant; (e) that the penalty imposed for the failure of the appellant to technically comply with the provision requiring written notice of a change in the application is 'harsh, arbitrary, unreasonable and an abuse of discretion and imposes a hardship and loss upon the appellant not justified by the facts and circumstances.'

"Appellant, therefore, seeks the revision of the penalty of revocation and asks that such penalty be imposed as is equitable and just under the circumstances. Further, it seeks an order directing a renewal of the retail consumption license at the legal expiration date of the original license and, in any event, requests that the existing license be extended until a final determination of this matter.

"The answer of the respondent admits the facts which are covered by Stipulation filed in this appeal between the parties hereto, and submits the following: (a) the crime of income tax evasion, of which Fite (the corporate officer) was convicted, constitutes a crime involving moral turpitude; (b) the failure of appellant to file a written notice of a change in the facts contained in its original application constitutes a statutory violation which authorizes the suspension or revocation of a license at the discretion of the respondent; (c) had the fact of conviction of this corporate officer occurred at the time of the filing of the original application it would have served as a barrier to the approval of such application and, therefore, such conviction should properly prevent the issuance of the license herein; (d) the appellant was informed sufficiently in advance that action was contemplated against it by respondent so that, when it undertook to incur these capital expenditures, it proceeded at its own risk; (e) the penalty imposed by respondent was reasonable and just and within its discretionary powers; (f) that Fite is still in control of the affairs of the corporate appellant, and the transfer of stock was not made in good faith.

"The answer, therefore, seeks to have the order of revocation affirmed, an order directing that the application for renewal of the license be withdrawn, and that no further action be taken by appellant on its application for renewal until May 1, 1962.

"Pursuant to the filing of the notice of appeal, an order was entered by the Director of this Division staying respondent's order of revocation and extending the license pending the appeal hearing and until further order of the Director, in accordance with the provisions of R.S. 33:1-31 and Rule 12 of State Regulation No. 15. Subsequent to the issuance of that order the Clerk of the respondent issuing authority issued a plenary retail consumption license to the appellant under which the appellant is presently operating and conducting its normal business.

"The appeal herein was presented on Stipulation which incorporated the transcript of these proceedings taken before the respondent issuing authority on June 6, 1962, together with all pertinent pleadings and resolutions, pursuant to the provisions of Rule 8 of State Regulation No. 15. The Stipulation succinctly sets forth the basis for the appeal and is, therefore, herein

recited in full:

'It is stipulated and agreed that the facts pertaining to the conviction of Raymond L. Fite in the United States District Court for income tax evasion and the incidents alleged in the appeal filed in this matter are accurate.

'It is stipulated and agreed that Raymond L. Fite was convicted of income tax evasion on the twenty-eighth (28th) day of March, 1962, in the United States District Court, and that Plenary Retail Consumption License C-19 was granted to the Colonial Hotel Company by the City of Cape May Issuing Authority on February 19, 1962.

'It is further agreed that at the time of Raymond L. Fite's conviction on March 28, 1962, he was Secretary and Treasurer of the Colonial Hotel Company, a corporation of the State of New Jersey and at that time he owned more than ten per cent (10%) of the stock in the Colonial Hotel Company.

'It is stipulated that the attached transcript of the hearing by the Cape May Council on June 6, 1962 is complete and shall be made a part of the record on appeal.'

"It should be stated at the outset that, although there are two actions presumably appealed from, i.e., (1) the action of respondent in revoking the license and (2) its failure to renew the original license which it allegedly issued, the fact is that no consideration was ever given by the respondent to the application to renew. Such consideration would, of course, be premature in view of the fact that it had revoked the license (which it is clear had not been technically issued although favorable action was taken on the application) and, therefore, it could not consider the question of renewal. Thus, in the proceedings before the respondent issuing authority Mr. Gaver stated:

'I understand that this was a notice to the licensee for suspension and revocation of the license which was granted but not issued originally and this hearing, as I understand it, turns solely on the question of whether or not the first original license should be suspended or revoked. It doesn't intend to take up the question of renewal at all. I think that the question whether or not it could be renewed will be determined later, depending on what happens at this hearing. If the original license is revoked, there obviously can be no renewal and if there is no revocation and the license is granted then I think we could proceed through the regular channels by advertisement and public hearing, if necessary on question of renewal.'

to which Senator Sandman, counsel for the appellant, replied:

'Then we can stipulate that the argument here today will be isolated to the issuance of the original license and the determination that you are to make from this is whether or not it shall be revoked or suspended.'

"Thus, the substantial and only issue on this appeal is whether or not the action of the respondent in revoking the

license which it authorized to be issued shall be set aside.

I

"Appellant asserts that the conviction of crime by its corporate officer does not constitute a crime committed by itself and that, in any event, the conviction of crime for income tax violation does not constitute a crime involving moral turpitude. I believe it is clear that Fite was an officer and stockholder of the appellant at the time that the application for the issuance of the license was pending and before the actual issuance of the license. It is equally undisputed that Fite disposed of his stockholdings by transferring them to his son. There is little persuasive force to the argument that he is still the moving spirit and the force behind the corporate affairs of the appellant. It is only natural that he should be interested in seeing to it that the transfer was made in a realistic manner and that the business would continue to be conducted in such way as to assure its profitable operation. In any event, the transcript is barren of any proof in support of this allegation.

"A conviction for income tax evasion may or may not involve moral turpitude, depending upon the facts and circumstances in each particular case as well as the penalty imposed. Re Blank, Bulletin 96, Item 10. However, I am persuaded that the circumstances in this case are such that, considering the original sentence of two years in a Federal penitentiary and \$10,000 fine (which prison sentence was later reduced to sixty days), this did involve moral turpitude. Cf. Re Case No. 1380, Bulletin 1225, Item 7.

"Respondent advocates that, since Fite was a stockholder owning more than ten per cent. of the issued and outstanding stock of the corporate appellant, under R.S. 33:1-31(1) respondent is authorized to revoke the appellant's license for Fite's conviction which occurred after the grant of the application. That statute authorizes revocation for an act which, if it had occurred before the said time, would have prevented the issuance of the license. Appellant, however, answers that, at the time the application was made, (1) the answers therein were all truthful and made in good faith, and that (2), in any event, this was not an act of the corporation itself, and (3) it occurred before the actual issuance of the license and, therefore, was not applicable.

"I believe that the appellant acted in good faith and that the transfer of stock was made within a reasonable time after the conviction and sentence of the corporate officer of the appellant. The conviction of Fite was not a conviction of crime of the corporate appellant and the appellant should not be held accountable therefor. It is a non sequitur to argue that the application would not have been granted if this conviction had been noted at the time it was granted because the incident did not occur until some time thereafter. In the technical sense, R.S. 33:1-31(1) does not really apply because no license was actually issued.

"Literalism may give way to resourcefulness. Administrative agencies often view these statutes in a broader and more liberal scope and try to interpret them in accordance with a perception of their true intentions with fair play and consideration for all parties concerned. See Prof. K. C. Davis, Admin. Law, Sec. 69, p. 253; also Sec. 139, p. 444-445.

II

"No written notice was given to the respondent of the change of corporate officers as set forth in the original application within the time required by R.S. 33:1-34. As noted above, the appellant argues that no written notice was required because the application was granted but the license was not actually issued. It further asserts that the widest publicity was given to the conviction of its corporate officer, that oral notice was given to the respondent issuing authority within fifteen days, and that shortly thereafter an affidavit was filed with the respondent incorporating the pertinent facts.

"The fact is, however, that there was a material change which had taken place by reason of the statutory ineligibility of Fite and the transfer of his shares of stock to another. I believe it was intended by R.S. 33:1-34 that a formal written notice of such change should have been communicated to the respondent. The statute permits of no other adequate substitute. It is admitted that to this date no such formal written notice has been so communicated.

"It is undisputed that for a violation of this Section the respondent is given the discretion to suspend or revoke the appellant's license. The respondent undertook to revoke, i.e., to impose a penalty of suspension from June 7, 1962, until May 1, 1963. Appellant urges a reversal or modification of such action for the reason that the same is excessive and unduly harsh.

"It has generally been held by this Division that a suspension or revocation imposed in a local disciplinary proceeding rests in the first instance within the sound discretion of the local issuing authority, and the power of the Director to reduce or modify it will be sparingly exercised, and only with the greatest caution. Robinson et al. v. Newark, Bulletin 54, Item 2; Harrison Wine & Liqueur Co., Inc. v. Harrison, Bulletin 1296, Item 2. The Director has, however, modified such penalty where it was manifestly unreasonable or unduly excessive. Cf. Ziomek v. Clementon, Bulletin 381, Item 3 (reduction from four months to thirty days); Kovacs v. South River, Bulletin 1008, Item 3 (reduction from revocation of license to twenty days); Conklin v. Bridgewater, Bulletin 809, Item 7 (reduction from revocation of license to twenty days). In a recent case decided by this Division (Rigoletti v. Wayne, Bulletin 1430, Item 2), the Director reduced the penalty from one year to sixty days because of mitigating circumstances.

"Considering the fact that the violation of the provision hereinabove cited was technical in nature, it would appear that the penalty imposed was somewhat heavy-fisted and unduly excessive. The usual penalty imposed by the Director for a violation of this provision ranges from ten to thirty days, depending on the peculiar circumstances in each case. Cf. Re Monterey Operating Co., Inc., Bulletin 1325, Item 4 (15 days); Re Villare, Bulletin 1188, Item 3 (30 days); Re Joe D's Blue Room, Inc., Bulletin 1234, Item 1 (10 days). Allowing reasonable latitude for differences of opinion, fifteen days would appear to be ample for the offense charged herein.

"I, therefore, recommend that the action of the respondent in ordering a penalty of revocation and ineligibility for license from June 7, 1962, to May 1, 1963, be modified; that an order be entered therein reducing such revocation to a suspension of fifteen days, said suspension to take effect on dates to be set by the respondent.

III

"Another point urged by the respondent in the original hearing, and included in the charges and the resolution of June 6, 1962, is that the license to the appellant was granted as a result of a mistake in fact and law. The application was filed for a seasonal retail consumption license to be used for the purpose of a cocktail lounge and to cover another building and because the statute prohibits additional licenses of this class. Thus the license was mistakenly granted to a hotel under the provisions of R.S. 33:1-12.20. It further challenges the original issuance as being in violation of the local ordinance dated April 12, 1940, 'respecting the licensing and sale of alcoholic beverages within the City of Cape May' which prohibits the issuance of a seasonal retail consumption license in the City of Cape May, New Jersey. The license, therefore, it is argued, was granted as a result of a mistake of law.

"The appellant submits that the statute requires the issuance of such license to a hotel which contains more than fifty rooms and that the ordinance does not affect the statute under which the hotel qualifies for it in the first instance; that this ordinance 'does not repeal or take away the right given by the Legislature under the statute. Further it couldn't possibly do it because the ordinance passed in the City of Cape May was passed seven years before the Legislature passed the statute that we are relying on.'

"It has been well established that the local issuing authority has the right to limit the issuance of licenses or even to refuse to issue any licenses, and may do so by ordinance further limiting the State statute. This applies as well to hotels having over fifty rooms. A hotel is not entitled as a matter of right to a liquor license. Hosts, Inc. v. Point Pleasant Beach, Bulletin 732, Item 2; Gripper v. Lakewood, Bulletin 862, Item 2; Ostrowsky v. Newark, 102 N.J. Eq. 169; Bachman v. Phillipsburg, 68 N.J.L. 552. The ordinance hereinabove referred to states that no seasonal consumption license shall be issued by the City of Cape May. Significantly, it excepts from the local limitation of the number of plenary retail consumption licenses which may be granted, among others, those that may be granted to bona fide hotels.

"It is undisputed that the application of the appellant was not for a seasonal consumption license but was for a retail consumption license, and the resolution presumably prepared by the Legal Department of the respondent issuing authority approved an application for a plenary retail consumption license. Such license was clearly within the authority of the respondent to issue for a bona fide hotel in view of the ordinance exception. It is significant that, when the license was actually issued by the Clerk of respondent on instructions of its counsel upon the filing of the order extending same by this Division, the respondent issued a plenary retail consumption license and received fee therefor. We must, therefore, conclude that it was the clear intention of the appellant to apply for a plenary retail consumption license and of the respondent to issue the same. Indeed, it must have been clear to respondent that it was statutorily enjoined from issuing any additional seasonal consumption license to the appellant or any one else.

IV

"Appellant urges that the respondent be directed to renew the plenary retail consumption license issued to it after determination of the other issues raised hereinabove.

"As was pointed out earlier in this Report, no consideration with respect to the renewal of the said license was ever had before the respondent. In this connection it is important to point out that the appellant is entitled to a hearing on its application for a renewal of the license. Renewal of a license, just as in the issuance of a new license, will depend upon the sound reasons advanced by the applicant to justify such action. It is well established that there is no inherent right to the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946); Kleinberg v. Harrison, Bulletin 984, Item 2; Bumball v. Burnett, 115 N.J.L. 254. The sale of intoxicating beverages is in a class by itself. Paul v. Gloucester, 50 N.J.L. 585, 595. No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. Meehan v. Jersey City, 73 N.J.L. 382. As Justice Field stated in Crowley v. Christensen, 137 U.S. 86, at p. 92:

'***There is no inherent right in a citizen to thus sell intoxicating liquors by retail ***. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. ***'

"As the Court said in Ward v. Scott, 16 N.J. 16, at p. 23 (See Fanwood v. Rocco, 59 N.J. Super. 306, at p. 322 (reprinted in Bulletin 1324, Item 1)):

'Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications ***.'

"It should be re-emphasized that, while the local ordinance distinguishes bona fide hotels from other licensees, it does not follow that a hotel is ipso facto entitled to a license just because it is a hotel. There is no 'must' in the Alcoholic Beverage Law which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience; not whether a given place is a hotel or not. In order to override a municipal limitation of licenses, that test must be met and passed. Current v. Fredon, Bulletin 184, Item 1; Szczesna v. Wildwood, Bulletin 852, Item 1.

"It is, therefore, my recommendation that this matter be remanded to the respondent issuing authority for the purpose of holding a hearing in which, as set forth hereinabove, the proper issues of public convenience and necessity, the best interest of the community, the fitness of the applicant and other pertinent matters be resolved by the respondent after granting the appellant a full, fair and impartial hearing. I am certain that adequate consideration would be given to the nature of the appellant's business, its investment and the other cogent facts which were developed in the prior hearing.

"It should be borne in mind that, while it lies within the sound discretion of an issuing authority to be determined in the first instance whether an applicant is worthy of its licensed privileges, such exercise of discretion must be based on valid and substantial ground and that it may not be denied capriciously or merely to reduce the number of licenses. Such denial, therefore, must be based on reasonable grounds or it will be reversed. Costa v. Red Bank, Bulletin 133, Item 5; Kleinberg v. Harrison,

supra; B & L Tavern, Inc. v. Bayonne, Bulletin 1459, Item 1.

"One further note: If the respondent, after granting appellant a hearing on its application for a renewal, in accordance with the provisions of the Alcoholic Beverage Law (cf. Handlon v. Town of Belleville, 4 N.J. 99, 105 (1950); Passarella v. Board of Commissioners, 1 N.J. Super 313 (App. Div. 1949)) decides to grant such application, it is recommended that the suspension heretofore recommended be operative for such period during the effective dates of the renewed license.

"I, therefore, recommend that an order be entered modifying the suspension in Case No. 1 from the period set forth to fifteen days, and remand this matter to the respondent for the purpose of considering the application for renewal of the existing license."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of testimony taken before the local issuing authority, the Stipulation submitted in lieu of hearing of these appeals, the written argument and brief submitted by counsel, the Hearer's Report and the specific recommendations included therein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. Hence I shall enter an order as recommended.

Accordingly, it is, on this 7th day of September 1962,

ORDERED that the within appeals be and the same are hereby remanded to respondent Council-Manager of the City of Cape May for its implementation and further action consistent with these Conclusions and Order, and with particular reference to the specific recommendations in the Hearer's Report herein adopted.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED 20 DAYS.

In the Matter of Disciplinary Proceedings against)	
)	
PIET CORPORATION)	
t/a COLONIAL INN)	CONCLUSIONS
345 Oceanport Avenue)	AND ORDER
Oceanport, New Jersey)	
Holder of Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Oceanport.)	

 David Resnikoff, Esq., Attorney for Licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charge:

'On April 6 and 7, 1962, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Douglas ---, age 19 and allowed, permitted and suffered the consumption of alcoholic beverages by said person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20'

"The Division's case was presented through the testimony of Douglas ---, the minor, his two companions, and two ABC agents, and the picture presented is as follows:

"Douglas ---, who was 19 years of age on the dates alleged, is a soldier, private first class, and was then stationed at Fort Monmouth. On April 6, 1962, at about 9:30 p.m., in the company of his two companions, he entered the subject licensed premises and seated himself at the bar. He then ordered a glass of beer for himself, one of his companions ordered a seven and seven and the other one ordered a bottle of beer. He was served by the bartender, known as Pete (later identified as Frank Pietroniro, the vice-president of the corporate-licensee). One of these three persons paid for the first round, and each succeeding round was paid for alternately by another. Douglas had a total of ten bottles of beer. At about 12:00 midnight, one of his companions, James Jones, left, but the minor remained there until 1:30 a.m., during all of which time he continued to drink beer at the bar. He states that at no time was he ever questioned about his age, nor did he make any representation either orally or in writing with regard thereto.

"When he left the premises, he attempted to hitch-hike back to the barracks and was apprehended by the Military Police. He told them that he had spent the evening at the licensed premises, but recalled very little else because at that time he states that he was under the influence of liquor. Some time thereafter, he, was under the influence of liquor. Some time thereafter, he, accompanied by two ABC agents, re-entered the premises and formally identified Pietroniro as the bartender who served him the alcoholic beverages on the evening of April 6 and on the morning of April 7, 1962.

Significantly, it is noted that as Douglas approached the licensed premises, Pietroniro was seen walking toward the package liquor store adjacent to the tavern, and Douglas then pointed him out as the bartender who had served him the beer on the aforementioned dates.

"Douglas' testimony was substantially unshaken on cross-examination, except that he clarified the situation with respect to the ID card belonging to his companion, Jones. His explanation was that when Jones left the tavern at 12:00 p.m., he apparently left his ID card at the bar, and Douglas picked this card up and brought it back to the barracks. He insisted, however, he never used this ID card for any purpose other than to restore it to Jones at their next meeting.

"James Jones and Orville Fuller, Jr., the two companions of Douglas, testified substantially in the same manner and to the same effect as did the minor. They both vigorously denied that any representation had been made by any of them to the licensee's agents respecting their ages, nor, indeed, was any such representation requested by the bartender. On cross-examination, they reaffirmed their direct testimony, stated that Douglas had had approximately ten beers and the bartender at no time questioned him, the minor, with respect to his age, or even sought to examine his ID card. Both of these witnesses signed statements with respect to the activities on these days at the direction of the Commanding Officer, and revisited the licensed premises in the company of ABC agents, where they identified Pietroniro as the bartender who served the three of them on the dates in question. Jones particularly corroborated the minor's testimony with respect to his ID card. He testified that his ID card was in the same pocket with his cigarettes, and he last saw the card sometime during the evening of April 6 on the bar of these premises. The card must have fallen out when he reached for his cigarettes. He had apparently forgotten to retrieve it before leaving the premises. He specifically denied hearing the bartender ask Douglas for any identification, although he was seated 'approximately a foot' away from him.

"It is significant that at the outset of this hearing, I granted the request of counsel for the licensee for the testimony of each of these witnesses to be taken in the absence of the other witnesses so that none of them may be influenced by each other's testimony.

"ABC Agent H testified that he obtained statements from the three prior witnesses, including the minor, and Douglas gave him a detailed description of the bartender who had allegedly served him on April 6 and April 7. After executing these statements, this agent, accompanied by Agent T and the minor, visited the tavern and found that the description of Pietroniro, the bartender, as given to him by the minor, was an accurate one. The agent questioned Pietroniro, who admitted that he had served two companions of Douglas, but couldn't recall whether they were with Douglas on the night in question. He further stated that Pietroniro informed him that 'if he had served him, the boy must have shown some type of proof; he stated he never asked for any representation as to his age--he never asked anybody to make written representation; and the boy appeared to be nineteen years of age'.

"His testimony was corroborated in all respects by Agent T, particularly with respect to the conversation which was had with

Pietroniro regarding his procedures on identification. His recollection of Pietroniro's statement regarding service to the minor was, 'I might have served him. He might have been here on one or two occasions. But if I served him any alcoholic beverages he had to show me some sort of identification'. He repeated that Pietroniro emphasized to him that he never asked for any written representation.

"The licensee's defense consisted, in effect, of a denial of service of alcoholic beverages to the minor on the dates in question. The only witness called on its behalf was Pietroniro, a vice-president and one of two bartenders employed on these dates. Pietroniro testified that when Douglas entered the premises, he showed him the ID card belonging to Jones. He looked at the card and then said to the minor, 'All right, Jonesy, take a walk'. He further testified that he recalls the conversation with the ABC agents in which he stated, 'The only way he could have been served (referring to service to the minor) in here is if he proved his proof of age because the fellow he looks like about 18 or 19 years old'. He recalls serving the two companions of the minor on that night, but has no recollection of serving the minor.

"On cross-examination, he stated that he now recalls that he told Douglas to take a walk because the picture on the ID card was not an accurate reflection of Douglas, and he looked only about 19 years of age. He admitted that Douglas sat at the end of the bar next to his two companions and the only conversation that he had was with Douglas.

"At the request of counsel for the licensee, this matter was adjourned in order to enable counsel to make a more complete investigation of its case, and to produce additional witnesses in support of its defense. On the return date hereof, Pietroniro resumed the stand and stated that he attempted to contact a Military Police officer who might be helpful in his defense, but he ascertained that this man was unavailable. He stated that someone told him that this officer was away without leave. I questioned him on this point and found that no subpoena had been issued or an effort made to subpoena him or anyone else who might know of his whereabouts.

"Thus. we have the clear, unequivocal and forthright testimony of the three main Division witnesses, supported by the admissions made by the agent of the licensee to the ABC agents, contrasted to the equivocal and uncertain denial made by the witness for the licensee. I was particularly impressed with the testimony of Douglas, the minor, who gave a straightforward, credible account of this incident and his testimony in every detail was corroborated by his companions. As noted before, the companions were absented from the court room during his testimony, and their testimony reflected an accurate recital of the facts.

"It was clear to me that the Division witnesses had no improper motive in inculcating the licensee and, under searching and skilled cross-examination, set forth with candor the episode of April 6 and April 7. On the other hand, Pietroniro seems to have a conflicting defense. At first, he says that he told the agents that he did not recall serving this minor, but that if he did serve him, he would have done so only upon questioning him as to his age. He admits, however, that he never requires any written representation, as required under the rules and

regulations of this Division. Rule 1 of State Regulation No. 20 and special note in Section 5 of appendix to rules. Cf. Re Kaczka and Trobiano, Bulletin 1063, Item 1.

"At the hearing he makes the additional claim that this minor looked to him to be about 18 or 19 years of age and he thus told him to 'take a walk'. I am not convinced that this was the fact, and the most charitable considerations of his testimony would lead me to believe that he had no accurate recollection of what transpired on that evening.

"One further observation: When the minor identified Pietroniro, at the confrontation, as the bartender who served him on April 6 and 7, the failure of Pietroniro to deny the same when he heard this accusation, and had a reasonable opportunity to deny the same, his failure to do so raises a strong inference that he could not truthfully deny the same. Cf. State v. D'Adame, 82 N.J. Law 315, 82 Atl. 520, aff. 84 N.J. Law 386, 86 Atl. 414.

"Pietroniro's reply that he 'might have served' (the minor) does not, in my judgment, constitute a denial. His further elaboration that if he did serve him, it was done only upon examining the minor's identification, should be evaluated with his other testimony that he never requires a written representation as to age; and that this minor appeared to him to be about 19 years of age.

"Thus, the conduct of licensee's agent reasonably justifies the conclusion, in fact and in law, of assent, express or implied, to the truth of the accusation. Cf. State v. Toohy, 6 N.J. Super. 97, 70 Atl. 2nd 180.

"His denial of the sale at this hearing appears to be an afterthought, and unbelievable, when viewed within the context of his failure to contradict or deny the testimony of Division's witnesses with reference to the conversations which took place at the confrontations hereinabove referred to.

"After reviewing the evidence and the arguments of licensee's attorney at the conclusion of the hearing, I conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence and I recommend that the licensee be found guilty as charged. Freud and Pittala v. Davis, 64 N.J. Super. 242, 165 Atl. 2nd 850 (1960).

"Licensee had no prior adjudicated record. The minimum penalty for sale of alcoholic beverages to a 19-year-old minor is fifteen days. Re Vance's Bar, Inc., Bulletin 1396, Item 5. However, in view of the quantity of beverages sold to this minor, it is further recommended that an order be entered suspending the licensee's license for twenty days. Re Garcia, Bulletin 1415, Item 1; Re Burstein, Bulletin 1244, Item 12."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, the transcript of testimony, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations

Accordingly, it is, on this 11th day of September, 1962,

ORDERED that Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Oceanport to Piet Corporation, t/a Colonial Inn, 345 Oceanport Avenue, Oceanport, be and the same is hereby suspended for twenty (20) days commencing at 2:00 a.m. Tuesday, September 18, 1962, and terminating at 2:00 a.m. Monday, October 8, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SUSPENSION REIMPOSED AFTER DENIAL OF FURTHER STAY PENDING APPEAL TO APPELLATE DIVISION.

In the Matter of Disciplinary Proceedings against)

GEORGE J. DE FEBB)
2936 High Street)
Camden, N. J.)

ORDER

Holder of Solicitor's Permit No. 2816 issued by the Director of the Division of Alcoholic Beverage Control.)

Harvey L. Stern, Esq., Attorney for Solicitor.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On August 13, 1962, I suspended the solicitor's permit herein for one hundred fifty days commencing August 20, 1962. Re DeFebb, Bulletin 1476, Item 1.

Upon appeal to the Superior Court, Appellate Division, the court on August 17, 1962 entered an order temporarily staying the suspension. On September 10, 1962, the court denied application for further stay of the suspension but directed that the appeal be heard on an accelerated basis. Hence, an order to reimpose the suspension may now be entered.

Accordingly, it is, on this 12th day of September, 1962,

ORDERED that Solicitor's Permit No. 2816 issued by the Director of the Division of Alcoholic Beverage Control to George J. DeFebb, 2936 High Street, Camden, New Jersey, be and the same is hereby suspended for one hundred fifty (150) days, effective 7:00 a.m. Tuesday, September 18, 1962, and terminating at 7:00 a.m. Friday, February 15, 1963.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ORDER TERMINATING SUSPENSION FOR BALANCE OF TERM UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against)
)
 KARUNOS AND ARVANITIS (A Corp.))
 t/a PETERS)
 Ocean Avenue (Boardwalk))
 Long Branch, N. J.) ORDER

Holder of Seasonal Retail Consumption License CS-5 (expiring November 1, 1962), issued by the City Council of the City of Long Branch.)

 Walter J. George, Esq., Attorney for Licensee.
 David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On August 13, 1962, I entered an order suspending the license herein for the balance of its term, commencing August 21, 1962, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the then unlawful situation (farming out the license) for lifting of the suspension on or after 3:00 a.m. Monday, September 10, 1962. Re Karunos and Arvanitis, Bulletin 1476, Item 4.

It now appearing from verified petition submitted by the licensee that the licensee has resumed the sole and complete operation of the licensed business and that all undisclosed interest in the license and licensed business has been terminated, I shall grant its petition requesting termination of the suspension.

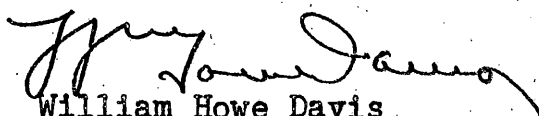
Accordingly, it is, on this 12th day of September, 1962,

ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated, effective immediately.

WILLIAM HOWE DAVIS
 DIRECTOR

5. STATE LICENSES - NEW APPLICATION FILED.

Spatola Wine Company of Pennsylvania, Inc.
 1900 South Delaware Avenue
 Philadelphia, Pennsylvania
 Application filed October 19, 1962 for Wine Wholesale license.


 William Howe Davis
 Director