

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

DORTON

BULLETIN 1251

December 10, 1958

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UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

MEMORANDUM FOR THE DIRECTOR

SUBJECT: [Illegible]

DATE: [Illegible]

TO: [Illegible]

FROM: [Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

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

December 10, 1958.

BULLETIN 1251

1. APPELLATE DECISIONS - THE AMERICAN LEGION, HENRY BUIKEMA POST #121 v. LITTLE FALLS.

THE AMERICAN LEGION, HENRY)
BUIKEMA POST #121,)

Appellant,)

ON APPEAL
CONCLUSIONS AND ORDER

v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LITTLE FALLS,)

Respondent.)

Raymond E. Durham, Esq., Attorney for Appellant.
Mitchel F. Donato, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent on July 7, 1958, whereby it denied appellant's application for a club license for premises located at 55 VanNess Avenue, Little Falls.

"In its petition of appeal appellant contends, in substance, that such action was erroneous in that no resident or organization of the Township objected to the grant of the license, which was only opposed by representatives of tavern owners associations, and appellant met all the requirements as a bona fide club.

"Respondent's answer sets forth in part that the Township is, in the main, a residential community where many taverns are located; that the proposed location is in a residential neighborhood; that it anticipated that other clubs would apply for a similar license, and that the existence of many club licenses would be detrimental to the character of the community; that the provisions for obtaining permits for the sale of alcoholic beverages at affairs to be conducted by clubs would satisfactorily serve the needs of any such clubs and, hence, in the exercise of its sound discretion the application was denied.

"It should be noted at the outset that the relation between appellant and respondent is otherwise friendly and the respondent has at all times been sympathetic to the aims of appellant club but, in the instant case, it was of the opinion that any inconvenience the club might suffer by not having a club license is far outweighed by the inimical effect on the community if the doors were opened to establishment of club licenses therein. There are no club licenses there at present. There are fourteen tavern licenses and one package store license in the community at present which has an estimated present population of 8,272.

"The minutes of the meeting set forth the individual,

attitude of the five Township Committeemen who considered the application. Mr. Fritts, one of such members, stated:

'*** We have never issued a club license up to now and I have always felt that this one particular phrase was an oversight on the part of the Township Committee up to this time. In the twenty (20) years since the original passage of that ordinance there has never been one club license granted in this township or an application for a Club License made.

'I am not going to argue pros and cons of tavern owners, because I feel that the issuance of a club license to this organization would break down the barriers and there would be many, many applications following. Ample evidence can be found in the fact that we already have had a second application for another Club License.

'I do not feel that Club Licenses have any place in the Township of Little Falls, and under these circumstances:

'1. As far as functions that are being held by such organizations, whenever they are held -- applications for licenses to serve beverage at these affairs are always granted by the Township Committee on such occasions.

'2. If they needed a special occasion license I would go along with it, but to just outwardly grant Club Licenses which would have to be renewed year after year, I cannot go along with it.

* * * * *

'I have expressed myself thoroughly before the audience was heard, however, I do not feel that the tavern owners should sway our judgment on this matter. It is for the Committee to decide what is good or bad for Little Falls, and I have made my own decision regardless of what the organization does.

'Once the door is open, in the way of club license, you can have an unlimited number, and it would be a bad thing to start the ball rolling. We have received two applications within the last two weeks.'

Mr. Moore, another committeeman, stated:

'I do not think we should be influenced by the tavern owners, but instead be concerned about the amount of drinking that would go on in town, and the trouble that may come from future club licenses. Where will we stop? Once the license is granted there will be no restrictions as to when they can be opened; which means their hours will definitely be the same as a C license.'

Mr. Schumacher, a third committeeman, stated:

'What I have heard tonight against club licenses has no bearing on my decision. I have nothing against the American Legion, but I am concerned as to how far

it can go. If we were to grant the American Legion this license we cannot be partial on an ordinance to limit the number once the first one is issued. We do not like to step on anyone's toes. The best way for me to express myself would be to reiterate what Mr. Fritts and Mr. Moore have said.'

Committeeman Chairman DeYoung faced an intriguing problem. He stated:

'I have four boys in the family who belong to the Legion and the following are their remarks:

"Give it to them and let's live a little."

"Don't, it will spoil the Legion and no good will come of it."

"We are spending too much on alcohol now; why not education."

"I do not care one way or the other."

(Purple Heart award)

'How can I vote with the above divided thought in my home? There is only one way and that is to let the citizens of Little Falls decide.'

"All of the above mentioned members of the Township Committee voted to deny the application, and the fifth one abstained for the stated reason that he was a member of the applicant club and, hence, he felt that there was a conflict of interest.

"The Commander of the Post testified at the appeal hearing that they presently have 175 members; that during its existence from 1920 it has never previously applied for a liquor license although its activities in conducting social and other affairs during that period have been similar to those presently conducted; that at a meeting held in April or May 1958, attended by 18 or 20 members, it was decided to make the application in question.

"The Vice Commander of the Post testified that he is chairman of the committee which conducts picnics, dinners and other like social affairs and that there has been no difficulty in obtaining special permits for the sale of alcoholic beverages at such affairs. Asked what he conceived to be the advantage to the club of having a club license rather than these special permits, he explained that it was felt to be inconvenient to apply to the Division every time they conduct an affair; that they would like to run more affairs and that, besides the inconvenience, there is an economical factor in that a club license would cost \$50 whereas, if he ran seven affairs a year, it would cost \$70.

"At the appeal hearing Chairman De Young and Committeemen Moore and Schumacher reiterated what they had previously stated at the Township meeting. The fifth member of the Committee, who has abstained from voting on the application, testified that the inconvenience to, and saving in cost by, the club were considerations which would have guided him in granting the license.

"No one is entitled to an alcoholic beverage license as a matter of right. Lakewood Estonian Assn. v. Jackson Township, Bulletin 1001, Item 1. In my opinion it is abundantly clear that the reasons given by the four Township Committeemen who voted to

deny the application demonstrated a reasonable exercise of their discretionary authority and, therefore, are valid and sufficient. Cf. Michael A. Kelly Post #2433 V.F.W. of U.S. v. Union, Bulletin 919, Item 2. I, therefore, recommend affirmance of the respondent's action and dismissal of the appeal."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 28th day of October, 1958,

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

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - MULLIGAN WINE AND LIQUOR CO. v. WOODBRIDGE

MULLIGAN WINE AND LIQUOR CO., A)
CORPORATION OF NEW JERSEY,)
)
Appellant,)
)
v.)
)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WOODBRIDGE,)
)
Respondent.)

ON APPEAL
ORDER

Dughi & Johnstone, Esqs., Attorneys for Appellant.
Nathan Duff, Esq., Attorney for Respondent.
Wilentz, Goldman, Spitzer & Stills, Esqs., Attorneys for Objectors.

BY THE DIRECTOR:

The above appeal was taken from the action of respondent whereby it denied an application for transfer of License C-3 from Melody Lounge, Inc. to appellant and from 118-120 Main Street to 430 Rahway Avenue, Woodbridge.

Prior to the hearing herein, the attorneys for appellant filed a Stipulation of Dismissal wherein it is set forth that appellant does not intend to prosecute the appeal. No reason appearing to the contrary,

It is, on this 27th day of October, 1958,

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

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - THE MART, INC. v. HOPATCONG.

THE MART, INC.,)	
Appellant,)	
v.)	ON APPEAL
)	CONCLUSIONS AND ORDER
MAYOR AND COUNCIL OF THE)	
BOROUGH OF HOPATCONG,)	
Respondent.)	

 Edward F. Smith, Jr., Esq., Attorney for Appellant.
 Dolan & Dolan, Esqs., by John T. Madden, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from a denial of an application to renew appellant's plenary retail consumption license issued for premises located at Maxim Drive, Borough of Hopatcong.

"Upon the filing of the appeal the Director entered an order on June 30, 1958, extending the term of appellant's 1957-58 license until the entry of a further order herein.

"The circumstances of this case are unusual. When respondent considered appellant's application for renewal at a special meeting held on June 27, disciplinary proceedings instituted by the Director against appellant were pending and no hearing thereon had been held. The minutes of this special meeting disclose that, after considerable discussion by the members of the Council and the attorney for appellant, the following resolution was adopted:

'BE IT RESOLVED: that Plenary Retail Consumption License C-6, The Mart Inc., t/a The Mart, Mixim Drive, be granted without prejudice.'

"Five of the six members of Council were present at this meeting -- four of whom voted in the affirmative and one of whom voted in the negative on said resolution. Mayor Modick was present at this meeting but did not vote, presumably because the Mayor has no vote except in case of a tie. However, on the following day (June 28), Mayor Modick submitted a veto message referring to said resolution to the President of the Council who called a special meeting of Council to be held on the afternoon of the same day for the purpose of acting upon the veto. The minutes of the special meeting held on June 28 disclose that four members of Council were present. The veto was read and, after discussion, three members of Council voted in favor of a resolution that the Mayor's veto be sustained and one member voted against said resolution. The appeal herein was filed on July 30.

"The records of this Division disclose that a hearing on the charges mentioned in the disciplinary proceedings instituted by the Director was held on July 21, 1958. No final decision has been entered to date in said proceedings. The appeal herein was heard on August 5, 1958.

"At the hearing held upon this appeal the transcript of the testimony taken in the disciplinary case was introduced into evidence in this case. At said hearing William C. Deane testified that he is Vice-President and Treasurer of appellant corporation which has operated the licensed premises for the past five years. He admitted that on September 23, 1957, he had received from the Director a warning letter referring to alleged sales to minors and that on March 7, 1958, Chief of Police Taylor had spoken to him concerning complaints of excessive noise on the premises. He denied that he had ever received any other complaints and stated that the only charges brought against the corporation were those mentioned in the undecided disciplinary proceedings.

"Mayor Modick testified that he had knowledge of the warning letter dated September 23, 1957; that he had received complaints concerning noise on appellant's premises and that on April 25, 1958, a minor, who was being questioned by Chief Taylor in his presence as to alleged purchases in appellant's premises, was definitely intoxicated. Chief Taylor testified that, when he spoke to William C. Deane on March 7, 1958, he discussed not only the noise complaints but also the warning letter dated September 23, 1957. Willis Davis, President of Borough Council, when questioned as to the reason why the words 'without prejudice' were inserted in the resolution adopted on June 27, 1958, stated that:

'*** the reason this prejudice entered into this particular discussion, was that the attorney for Mr. Deane said that if we denied the license, that it would create a prejudicial attitude on the part of the Alcoholic Beverage Control, and that was the controversial issue, as to whether we could cause that possible disturbance, that feeling, and I think that was the main reason that the license was granted that night, that was the reason for the use of the term, "without prejudice."

'Also, working on the other hand, we felt that if we renewed the license and sent it down or, rather, the case came down here with a renewed license, the fact that we had renewed it without qualifying it in some fashion would indicate that perhaps we were not quite as much interested as we should be, and that was the reason it was finally issued without prejudice.'

"It is noted that in his veto message Mayor Modick says:

'It is my considered judgment that the renewal of License C-6, issued to The Mart Inc., t/a The Mart, should not be considered for a full license year until the charges preferred against them are concluded and judgment is rendered.'

"It is also noted that the three members of Council who voted to sustain the Mayor's veto had voted on the previous day in favor of the resolution granting renewal without prejudice.

"In his brief the attorney for appellant contends that the resolution adopted on June 27 did not require approval of the Mayor, his approval being required only where the resolution is legislative in character or pecuniarily obligates the Borough. However, in my opinion it is unnecessary to determine whether the

Mayor had the power to veto the resolution. Under the provisions of R.S. 33:1-19 and 24, it is primarily the duty of the local issuing authority to determine whether or not the license should be renewed. The use of the words 'without prejudice' in the resolution dated June 27 raises serious doubt as to the meaning of the resolution particularly in view of the testimony of the President of Borough Council and the vote of three members, on the following day, to sustain the Mayor's veto. In Franklin Stores Co. v. Elizabeth, Bulletin 61, Item 1, Commissioner Burnett, referring to the nature of the decision to be made upon an appeal from the action of a local issuing authority, said:

'It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by strict rules he had no right to do, but rather a final adjudication whether the license should be issued NOW.'

"After considering all the evidence herein and the briefs filed by the attorneys for appellant and respondent, it is recommended that final decision herein be withheld until a final order has been entered in the disciplinary proceedings and that immediately thereafter an order be entered herein remanding the case to respondent for the purpose of making a determination as to whether the application for renewal should be granted or denied or granted upon an express condition that the license be transferred to another and suitable person within a specified time. Cf. New Town Tavern, Inc. v. Pennsauken, Bulletin 1098, Item 2."

Written exceptions to the Hearer's Report were filed with me by the attorney for appellant pursuant to the provisions of Rule 14 of State Regulation No. 15. The exceptions allege that the Hearer gave little or no consideration to the contention that the Mayor and Council acted illegally in accepting a veto by the Mayor of Council's action of June 27, 1958, and to the further contention that the action of the Mayor and Council in reversing its action was an abuse of discretion. It must be remembered, however, that no licensee has a vested right to the issuance or renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946). I am of the opinion that the Mayor had the power to veto the resolution but I agree with the Hearer that it is unnecessary to decide that question in this case. The record herein leaves me in serious doubt as to the meaning of the resolution dated June 27, 1958, and, under the circumstances, the case should be remanded to respondent.

Accordingly, it is, on this 27th day of October, 1958,

ORDERED that the matter be remanded to respondent to determine whether appellant's application for renewal should be granted or denied or granted upon an express condition that the license be transferred to another and suitable person within a specified time.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - SALE IN VIOLATION OF
RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 75 DAYS.

In the Matter of Disciplinary Proceedings against

THE MART, INC.
t/a THE MART
Maxim Drive
Hopatcong Borough, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-6 (for the 1957-58 licensing year), issued by the Mayor and Council of the Borough of Hopatcong.

Mackerley & Friedman, Esqs., by William J. McGovern, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

'1. You sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Burt ---, age 18 on March 17, 1958, Joseph S ---, age 18 and Joseph M ---, age 18 on March 19, 1958 and divers days prior thereto, William ---, age 19 on April 17, 1958 and divers days prior thereto, Jack ---, age 18 on April 19, 1958 and divers days prior thereto, Denis ---, age 17 on April 25, 1958 and divers days prior thereto and Thomas ---, age 18 on April 25, 1958, and allowed, permitted and suffered the consumption of alcoholic beverages by said Joseph S ---, Joseph M ---, William ---, Jack ---, Denis --- and Thomas --- in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

'2. On Sunday, April 20, 1958, at about 2:45 P.M. and on Friday, April 25, 1958, at about 10:45 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., twelve 12-ounce cans of Schaefer beer on the former occasion and six 12-ounce cans of Schaefer beer on the latter occasion, at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.'

"At the hearing held herein numerous witnesses testified on behalf of the Division.

"Burt --- testified that he was 18 years of age on March 17, 1958; that on said date, at about 8:45 p.m., he entered defendant's premises and purchased four quarts of beer from a male bartender who did not question him as to his age; that he left the premises with the beer and was driving away with others who had remained outside when the car was stopped by Officer Jacobi, of the Hopatcong Police Department.

"Joseph S --- testified that he is 18 years of age; that on March 19, 1958, at about 8:30 p.m., he and Joseph M --- entered defendant's premises and remained there about one-half hour; that each of them consumed three glasses of beer, and that Joseph M --- purchased one quart of beer to take out; that these sales were made by Herman Boge, Jr. (a bartender) who asked the witness if he was 21 years of age but who requested no written representation of age when the witness answered in the affirmative, Joseph S --- further testified that, after he and his companion left the premises with the beer, Officer Jacobi stopped the car in which they were riding. Joseph M --- (18 years of age) substantially corroborated the above testimony and further testified that he had previously purchased alcoholic beverages at least fifteen times in defendant's premises without being questioned as to his age.

"William --- testified that he is 19 years of age; that on April 17, 1958, at about 8:30 p.m., he purchased six packs of beer from Herman Boge, Jr., who did not question him as to his age. He stated that he had previously purchased alcoholic beverages at least eight times in defendant's premises.

"Jack --- testified that he is 19 years of age; that on April 19, 1958, at about 9 p.m., he purchased two six-packs of beer from Herman Boge, Jr.; that he left the premises with the beer and that, thereafter, Officer Jacobi stopped the car in which he and others were riding. He stated that he had previously purchased alcoholic beverages at least three times in defendant's premises.

"Three adults testified that they visited defendant's premises Sunday, April 20, 1958, at about 2:15 p.m., and that one of them purchased twelve cans of beer which he carried from the premises. They further testified that Officer Jacobi later stopped the car in which they were riding.

"Denis --- testified that he was 17 years of age on April 25, 1958; that on said date he and Thomas --- entered defendant's premises at about 8:30 p.m.; that each of them consumed a 'whiskey and 7-Up' and then left; that they returned about 10:45 p.m.; that each then consumed a similar drink and that he purchased six cans of beer which Officer Jacobi took from him after he left the premises. He further testified that he had previously visited the premises at least nine times. Thomas --- (18 years of age) substantially corroborated the testimony as to the sales on April 25. Both witnesses testified that the sales had been made by William Deane who did not question their ages.

"Officer Jacobi testified that on March 17, March 19, April 19 and April 20 he stopped cars which had left defendant's premises and took from the car the quantities of beer mentioned by four of the above witnesses. He also testified that on April 25, shortly after 10:35 p.m., he took six cans of beer from Denis after he saw Denis leaving the premises. Chief of Police Taylor corroborated Officer Jacobi's testimony concerning the beer which was taken on April 20.

"On behalf of defendant, William C. Deane (vice-president and treasurer of defendant corporation) and Herman Boge, Jr. (his son-in-law) admitted that many of the above minors had visited the licensed premises on numerous occasions. Both admitted some of the sales and testified that they had no recollection of other of the sales mentioned above. Their chief defense seems to be that many of the above minors allegedly displayed drivers' licenses or other identification cards indicating that the holder was 21 years of age or older. Both Deane and Boge admit that they never received from any of the minors a written representation that he was 21 years of age or over, as required by R.S. 33:1-77(a). The evidence of defendant's witnesses, even if true, would not establish a complete defense. Re Roey, Bulletin 747, Item 3; Re Schwartz, Bulletin 1235, Item 1. However, each of the minors who allegedly displayed a driver's license or other identification card denied the testimony of defendant's witnesses on this point, and I am satisfied that the minors told the truth. I recommend that defendant be found guilty of both charges because the evidence is amply sufficient to sustain such a finding of guilt.

"Defendant has no prior adjudicated record although, on September 23, 1957, the Director sent to it a warning letter concerning alleged sale to another minor. The minimum suspension for sale to a 17-year-old minor and numerous other minors is thirty days. Re Landolfi, Bulletin 1165, Item 2. The minimum suspension for a violation of Rule 1 of State Regulation No. 38 is fifteen days. Re Black, Bulletin 1221, Item 6. However, considering the fact that the violations mentioned in Charge 1 occurred over a long period of time; that defendant was previously warned as to sales to minors; that no serious attempt was thereafter made by defendant's agents to prevent sales to minors and that two violations were committed as to sales during prohibited hours, I recommend that an order be entered suspending defendant's license for seventy-five days."

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

Having carefully considered the facts and circumstances herein, I concur in the conclusions of the Hearer and adopt them as my conclusions herein. I also adopt his recommendation.

Accordingly, it is, on this 27th day of October, 1958,

ORDERED that plenary retail consumption license C-6 (for the 1957-58 licensing year), issued by the Mayor and Council of the Borough of Hopatcong to The Mart, Inc., t/a The Mart, for premises on Maxim Drive, Hopatcong Borough, which license has been extended by my order dated June 30, 1958, be and the same is hereby suspended for seventy-five (75) days, commencing at 3 a.m. November 3, 1958, and terminating at 3 a.m. January 17, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

5. AUTOMATIC SUSPENSION - STAYED PENDING DISPOSITION OF DISCIPLINARY PROCEEDINGS BY LOCAL ISSUING AUTHORITY.

In the Matter of a Petition to)	
Lift the Automatic suspension of)	
Plenary Retail Distribution License D-22,)	
issued by the Municipal Board of Al-)	ON PETITION
coholic Beverage Control of the City)	ORDER
of Clifton to)	
)	
MACK WINE & LIQUORS, INC.)	
1057 Main Avenue)	
Clifton, New Jersey.)	

 Anthony Ventura, President, Appearing for Petitioner.

BY THE DIRECTOR:

The petition of Anthony Ventura discloses that he is President of Mack Wine & Liquors, Inc.; that on October 14, 1958, he pleaded guilty in the Municipal Court of the City of Clifton to a charge of selling alcoholic beverages to a minor, in violation of R.S. 33:1-77, and was fined \$200 and costs. Such conviction resulted in the automatic suspension of the license held by Mack Wine & Liquors, Inc. R.S. 33:1-31.1. As a result of the automatic suspension, the license was picked up by ABC agents at 2:50 p.m. October 16, 1958.

It appears from the records of the Division that the matter has been referred to the Municipal Board of Alcoholic Beverage Control of the City of Clifton which intends to institute disciplinary proceedings against the licensee for the same sale but that the case will not be heard by said Board until some time in November 1958. In fairness to the licensee, the effect of the automatic suspension will be stayed pending the entry of a further order entered herein. Cf. Re Faessler, Bulletin 920, Item 15.

If the local issuing authority dismisses the charge in the disciplinary proceedings, a supplemental petition to lift the automatic suspension may be filed with me; or, if the local issuing authority imposes a suspension, a supplemental petition to lift the automatic suspension at the expiration of said suspension may be filed with me.

Accordingly, it is, on this 17th day of October, 1958,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

WILLIAM HOWE DAVIS
 DIRECTOR

6. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION CONCEALING AGREEMENT TO PAY ONE-THIRD OF PROFITS TO EMPLOYEE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY FOR LIFTING THEREOF AFTER SUSPENSION IN EFFECT FOR 10 DAYS IF SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against

JENNIE RIZZO SERRIAN
t/a TUMBLE INN
S/S of Harding Highway
Buena Vista Township
PO Buena, New Jersey

)
)
) CONCLUSIONS
) AND ORDER
)
)

Holder of Plenary Retail Consumption License C-7, for the 1957-58 and the 1958-59 licensing years, issued by the Township Committee of Buena Vista Township.

Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq.,
Attorneys for Defendant-licensee.
William F. Wood, Esq., Appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"In your application dated May 27, 1958, filed with the Buena Vista Township Committee, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 31, which asks: 'Have you agreed to pay (by way of rent, salary or otherwise) to any employee, or other person, any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to pay Gloria Muse, also known as Gloria Robinson, one third of the profits derived from the licensed business; said false statement being in violation of R.S. 33:1-25."

The file herein discloses verbal and signed, sworn statements of the licensee and Gloria Muse, from which it appears that the latter was employed by the licensee some time in 1956 as a barmaid under an arrangement whereby she was to receive one-third of the net profits from the licensed business and the licensee was to receive two-thirds thereof. The licensee explained that such arrangement was not set forth in her annual applications for the license because such applications were prepared for her by her accountant. Defendant alleges that she was ignorant of the fact that the particular question was answered incorrectly. Aside from the failure to answer the question correctly, a licensee is not permitted to enter into an agreement to pay one-third of the profits to a person whose name does not appear on the license for the premises. Re Jacobsen, Bulletin 1239, Item 2.

Defendant has no prior record. So far as appears she acted in good faith and was apparently unaware that such an employment arrangement was illegal or that she was required to disclose

it in her application.

The licensee and her employee fully and frankly disclosed the employment arrangement when questioned by ABC agents. Nevertheless, the licensee is responsible for the false answer in her sworn applications and, hence, a penalty must be imposed. No evidence has been presented that the illegal situation has been corrected by termination of the agreement and, hence, I have no alternative except to suspend the license for the balance of its term. However, I shall entertain a petition to lift the suspension herein upon presentation of satisfactory evidence that such agreement has been terminated, but in no event will the suspension be lifted until the license has been under suspension for a period of ten days from the effective date hereof. Re Whitley, Bulletin 1227, Item 3.

Accordingly, it is, on this 20th day of October, 1958,

ORDERED that Plenary Retail Consumption License C-7, for the 1958-59 licensing year, issued by the Township Committee of Buena Vista Township to Jennie Rizzo Serrian, t/a Tumble Inn, for premises on S/S of Harding Highway, Buena Vista Township, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m., October 27, 1958; and it is further

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

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM LIFTED UPON CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against

JENNIE RIZZO SERRIAN
t/a TUMBLE INN
S/S of Harding Highway
Buena Vista Township
PO Buena, New Jersey

ORDER

Holder of Plenary Retail Consumption License C-7, for the 1957-58 and the 1958-59 licensing years, issued by the Township Committee of Buena Vista Township.

BY THE DIRECTOR:

By order dated October 20, 1958 I suspended defendant's license for the balance of its term, effective at 3:00 a.m., October 27, 1958, after defendant had pleaded non vult to a charge alleging, in substance, that she had illegally agreed to pay one-third of the profits of the licensed business to an employee and had not revealed such arrangements in her application for the license. (It appears in such order that the date of such application is incorrectly stated as May 27, 1958, whereas the correct date is May 27, 1957, and such order is hereby amended in that respect.) Leave was given to apply to me for an order lifting said suspension if the illegal sharing of profits was thereafter terminated, provided, however, that the

suspension would not be lifted until the expiration of ten days from the effective date thereof.

The licensee has since filed her verified petition wherein it appears that the aforesaid profit sharing agreement has been terminated, and that such employee now receives a stated weekly salary.

It thus appearing to my satisfaction that the unlawful situation has been corrected, and that the suspension will have been in effect for ten days at 3:00 a.m., November 6, 1958.

It is, on this 28th day of October, 1958,

ORDERED that the suspension heretofore imposed be lifted and that License C-7 be restored to full force and operation at 3:00 a.m., November 6, 1958.

WILLIAM HOWE DAVIS
DIRECTOR

8. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAX-PAID ALCOHOLIC BEVERAGES - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES RETURNED TO UNWITTING VIOLATOR UPON APPLICATION IN ADVANCE OF STATUTORY HEARING AFTER OBTAINING REQUISITE PERMITS FROM STATE OF DESTINATION.

In the Matter of the Seizure)
on September 11, 1958 of a)
Buick Sedan and a quantity of)
alcoholic beverages on the New)
Jersey Turnpike in the City of)
Elizabeth, County of Union and)
State of New Jersey.)

Case No. 9797

APPLICATION FOR RETURN OF
SEIZED PROPERTY IN ADVANCE
OF STATUTORY HEARING

CONCLUSIONS
AND ORDER

Frank V. Introcaso, Esq., Attorney for Katie Alston, et al.
I. Edward Amada, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Application has been made pursuant to Rule 1 of State Regulation No. 28, for the return of property seized in the case in advance of statutory hearing.

The evidence presented at the hearing on the application establishes that on September 11, 1958 a New Jersey State Trooper took into custody on the New Jersey Turnpike in Elizabeth fourteen cases of tax paid whiskey and a Buick Sedan operated by its owner, Katie Alston, pending determination of the source and destination of such whiskey. Thereafter the motor vehicle and alcoholic beverages were turned over to ABC agents.

It appears that Katie Alston purchased the whiskey from a retail licensee in Washington, D.C. and had in her possession two invoices for all of the alcoholic beverages with her name as consignee noted. She is a resident of New York City. These invoices are in substantial accord with the requirements of Rule 2, State Regulation No. 18 governing the transportation of alcoholic beverages through this state for delivery in another state. However,

Katie Alston, when apprehended, did not present any evidence to establish that she could legally import the whiskey into New York State. This is an integral part of the above mentioned rule.

At this hearing Katie Alston testified that she purchased part of the whiskey for her own use and the balance as an accommodation for other women of her acquaintance. The other women also appeared at the hearing and testified that the whiskey was for their personal use. Under the laws of New York such importation may only be made pursuant to a permit. Bulletin 1204, Item 8. Neither Katie Alston nor any of the other women had any such permit and hence, the transportation in this state was unlawful and subject to criminal prosecution.

Katie Alston, Shirley Walton and Rosalie Roots have since each obtained and now present permits issued by the New York State Liquor Authority authorizing the importation into that state of the alcoholic beverages listed herein in Schedule "A" attached hereto, and receipts for New York State Tax on such liquor issued by the Commodities Tax Bureau of the New York State Department of Taxation and Finance. Hence, the transportation and delivery of the alcoholic beverages in question is now in full compliance with the laws of this state and that of New York insofar as seizure proceedings are concerned. No opinion is expressed as to whether these permits obtained after the event affect the criminal proceedings, which are within the sole jurisdiction of the Prosecutor of the County.

Accordingly, it is DETERMINED AND ORDERED that if on or before November 3, 1958, Katie Alston, Shirley Walton and Rosalie Roots or either of them pay the costs incurred in the seizure and storage of the motor vehicle and alcoholic beverages as listed in the aforesaid Schedule "A", such motor vehicle will be returned to Katie Alston and the alcoholic beverages will be returned to the respective parties.

Dated: October 22, 1958

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

To be returned to Katie Alston:

- 1 - Buick Sedan, Serial and Engine No. 5E3023240,
New York Registration BB2331.
- 1 - case 12 bottles fifths liquor
- 4 - cases 96 bottles pints liquor

To be returned to Shirley Walton:

- 5 - cases 120 bottles pints liquor

To be returned to Rosalie Roots:

- 4 - cases containing 96 pints liquor

9. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - SALE IN VIOLATION OF
 RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 25 DAYS,
 LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

HOLLYWOOD GARDEN, INC.)
 t/a HOLLYWOOD GARDEN)
 401 Hamilton Boulevard)
 South Plainfield, N. J.)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption)
 License C-1, issued by the Borough)
 Council of South Plainfield.)

 William Noel Ogden, Esq., Attorney for Defendant-licensee.
 David S. Piltzer, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On August 6, 1958, 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., Donald ---, age 20, and you allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20

"2. On Wednesday, August 6, 1958, at about 11:20 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., six cans of Schaefer beer, at retail in their original containers, for consumption off your licensed premises, and you allowed, permitted and suffered the removal of such alcoholic beverages from your retail licensed premises; in violation of Rule 1 of State Regulation No. 38."

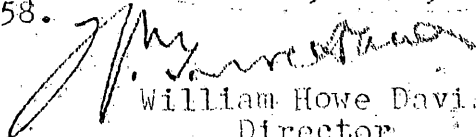
The file herein discloses that at approximately 11:20 p.m. on August 6, 1958, while ABC agents were in defendant's premises, Donald --- (age 20 years) purchased a glass of beer which he consumed on the premises and also purchased six twelve-ounce cans of beer for off-premises consumption. The bartender did not question the minor concerning his age prior to making the sale and service of the alcoholic beverages in question.

Defendant has no prior adjudicated record. The minimum suspension for a sale of alcoholic beverages to a 20-year-old minor is ten days (Re Pistilli, Bulletin 1236, Item 4), and the minimum suspension for the sale of alcoholic beverages for off-premises consumption during prohibited hours is fifteen days (Re D'Amico & Manzo, Bulletin 1239, Item 7), making a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 21st day of October, 1958,

ORDERED that plenary retail consumption license C-1, issued by the Borough Council of South Plainfield to Hollywood Garden, Inc., t/a Hollywood Garden, for premises 401 Hamilton Boulevard, South Plainfield, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. October 28, 1958, and terminating at 2 a.m. November 17, 1958.

New Jersey State Library


 William Howe Davis
 Director