

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

BULLETIN 1206

FEBRUARY 13, 1958.

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

BULLETIN 1206

FEBRUARY 13, 1958.

1. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE
SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

ANNA NARDUCCI)
621 North 5th Street)
Newark 7, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-62, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

Maurer & Maurer, Esqs., by Myron P. Maurer, Esq., Attorneys
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 July 24, 29 and 31, 1957, you engaged in and allowed, permitted and suffered gambling, commonly known as 'numbers writing', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.

"2. On July 24, 29 and 31, 1957, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises, and you possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The file herein discloses that ABC agents visited defendant's licensed premises on July 24, 29 and 31, 1957. On the first mentioned date they observed a man hand a slip of paper and a dollar-bill to Frank Policastro (the bartender). In turn the bartender took a sum of money from a cigar box behind the counter and handed the money to the man. The agents told the bartender they wished to place a "numbers" bet and, after a show of hesitation, he accepted their bet. On their second visit these agents observed Frank Policastro accept a "numbers" bet from two persons, and the agents each placed a similar bet with him. On their last visit the agents again observed Frank Policastro accept a "numbers" bet from two persons in the premises. Each agent again placed a "numbers" bet with him.

Another agent and a local police officer entered on July 31 and all of the officers revealed their identities to Frank Policastro. Four marked one-dollar bills used by the agents to place their "numbers" bets with Policastro earlier on the same day were recovered and a search of the premises disclosed other evidence of "numbers" bets.

Counsel for defendant has submitted a letter setting forth alleged mitigating circumstances. It is urged, in the main, that the licensee has conducted the licensed business in an exemplary manner for the past twenty-two years, except for a ten-day suspension (effective September 7, 1953) for permitting a brawl on the licensed premises, and that the licensee did not know or have any reason to suspect that Frank Policastro (employed at the premises for nineteen years) would be likely to be involved in gambling activities. However, it appears that Frank Policastro was arrested and fined in 1951 for accepting "numbers" bets at these licensed premises, and was again arrested on November 3, 1954, at the licensed premises when found in possession of football pool lottery slips and fined \$200.00.

I shall suspend defendant's license for twenty-five days for the violations charged (Re Cicchino, Bulletin 1187, Item 7), to which five days will be added for the prior dissimilar violation within the past five years (Re Richman, Bulletin 1186, Item 10), making a total suspension 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 27th day of December, 1957,

ORDERED that Plenary Retail Consumption License C-62, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Anna Narducci, for premises 621 North 5th Street, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. January 6, 1958, and terminating at 2:00 a.m. January 31, 1958.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - RIGHT TO CONFRONT WITNESSES - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary)
Proceedings against)

DAVID C. HILLIARD)
T/a DAVE'S INN)
State Highway #70)
Manchester Township)
PO Whiting, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-2, issued by the)
Township Committee of Manchester)
Township.)
-----)

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

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to a charge alleging that on September 17, 1957 he sold, served and delivered alcoholic beverages, directly or indirectly, to a minor, in violation of Rule 1 of State Regulation No. 20.

"Glenn B. --- testified as follows: He is an airman stationed at the Naval Air Station at Lakehurst, N. J. He was

born on September 22, 1938. He has visited defendant's tavern on two occasions, the last such visit having occurred on September 17, 1957 at about 5:30 p.m., when he drove there in a car, accompanied by William --- and James ---, two minor fellow-servicemen. He and William entered the tavern through the rear door, went up to the bar, where he asked a female bartender for four six-packs of Piel's beer. The barmaid placed such beer on the bar and accepted payment therefor. He picked up two of the six-packs and William picked up the other two six-packs and brought them to the car. The barmaid, whom he could not positively identify, did not ask his age or require him to make any written representation thereof. The Amos and Andy television program (which, the witness said, is presented from 5:00 to 5:30 p.m.) was on when he entered. There were three or four other persons present. He and his companions then drove to Lakehurst where, between 7:00 and 7:45 p.m., police officers questioned them but did not ask where the beer was purchased. The following day, when asked by ABC agents, he told them that he had purchased the beer at Hilliard's. He returned to defendant's premises with ABC agents on September 18th and there identified Margaret C. Hilliard as the person who, to the best of his knowledge, sold him the beer, and at the hearing stated that she looked like the lady who served him -- something similar to the lady, but he is not sure she is the person. On the other occasion, about two or three weeks previously, he also purchased beer. He had not been previously refused beer at such premises and was not prejudiced against the licensee by reason of any such refusal.

"William testified that he and Glenn entered defendant's tavern through the rear door on September 17, 1957 at about 5:30 p.m., while James remained in the car; that the Amos and Andy show was on; that he and Glenn stood side by side at the bar, and Glenn asked a woman bartender for a case of Piel's beer; that the woman placed the beer on the bar, for which Glenn paid her, and he and Glenn carried the beer to the car; that neither he nor Glenn was asked to state his age; and that he cannot identify the woman who was behind the bar.

"James testified that he accompanied Glenn and William to the tavern premises, where they arrived at about 5:30 p.m.; that he remained in the car and watched his two companions walk into the tavern empty-handed and emerge about four or five minutes later, each carrying two six-packs of Piel's beer and place them on the floor of the car.

"An ABC agent testified as follows: On September 18, 1957, the three boys directed ABC agents and other officers to defendant's licensed premises which they identified as the place where they had visited the previous day. Glenn, William and two agents then entered the tavern. The minors identified the interior as the place where Glenn had purchased the beer. David Hilliard, Mrs. Hilliard, his wife, and Mrs. Genevieve Sheppard were present. Glenn told the agents that to the best of his knowledge, Mrs. Hilliard was the person who sold him the beer. The agents informed Mr. Hilliard that they were investigating an alleged sale of alcoholic beverages to Glenn and asked Mr. and Mrs. Hilliard if they recognized Glenn. Mrs. Hilliard replied that she had seen Glenn in the tavern on a number of occasions in the company of other boys, but on September 17th she did not come on duty until 10:15 p.m.; and that Mrs. Sheppard had been working that day from noon until 9:00 p.m.

"On defendant's behalf, Margaret Hilliard testified that at 5:30 p.m. on September 17th she was at her home and

Mrs. Sheppard was tending bar; that she did not come to the tavern until 10:15 p.m.; that Glenn had previously been at the tavern quite a few times in the company of another boy, and 'everyone doubted his age'; that she then refused to serve him with any beer, although he asked to be served; that on such occasions 'the other boys always got containers of beer to take out'.

"The licensee testified that he was in the tavern between 5:00 and 6:00 p.m. on September 17th; that although he conducts a gas station on the same premises, he was near the bar; that Mrs. Sheppard, who came on duty at noon and was relieved at 10:15 p.m., and another patron whose name is Henry Danzglock, were also present; that there was no one else in the tavern; that he watched the Amos and Andy program in its entirety from 5:00 to 5:30 p.m., and that no one else came into the tavern; that to the best of his belief no one entered between 5:30 and 6:00 p.m., although he went to his nearby home at 5:45 p.m. to bring over dinner for himself and the two other persons; that none of these three boys or anyone else had entered, up to 5:45 p.m., although he does not remember whether he had any customers at his gas pumps during that period; that Glenn had previously visited his tavern quite a few times with another boy who bought beer to take out; that on Glenn's first visit he had refused to sell alcoholic beverages to him because he had no proof that he was 21, and thereafter Glenn did not ask him for any beer; that on September 17th he did not have any cold Piel's beer because the truck did not deliver that brand of beer until the next day; that he did not have any Piel's beer on Monday; that the salesman comes on Tuesday, 'that's when I give him the order. I mean on a Monday'. Asked when the Piel's beer was delivered, he answered, 'Wednesday, sir. Tuesday, sir.' Continuing, he testified that Piel's beer was delivered on Tuesday, September 17th between 2:00 and 4:00 p.m.; that he did not have any cold Piel's at 5:30 p.m. because it takes a long time to get the beer cold in his refrigerator. On cross-examination, he testified that he did not put this beer in his refrigerator until the next day, but can offer no reason why he did not place it there Tuesday.

"Genevieve Sheppard testified that she is a friend of the licensee's family for many years and that she had been employed at defendant's tavern for a little over a week; that she came on duty at about 12:05 p.m. on September 17th and tended bar until 10:15 p.m.; that between 5:00 and 5:45 p.m. the licensee and Henry Danzglock were the only other persons in the bar-room; that she was present when Glenn and William testified and that she had never seen them before and did not sell beer to Glenn on September 17th; and that no customer came in between 5:00 and 5:45 p.m. that day, and that Piel's beer was not delivered until Tuesday afternoon and the licensee did not place the beer in the refrigerator until Wednesday morning.

"At this stage of the hearing counsel asked that the hearing be adjourned to permit defendant to produce another witness on his behalf. However, the Hearer pointed out that it might be difficult to have the three minors present at an adjourned hearing in view of the imminent discharge of Glenn, who expected to return to his North Carolina home, although William and James would be available. The Hearer remarked further that since the defense presented so far was that no one came in at the time alleged, the inability of defendant's other witness to be confronted with the minors who claimed they did enter the tavern would not prejudice such defense. Nevertheless, the Hearer stated that he did not want to grant a continuance and then have counsel present an objection that he is handicapped because his witness or witnesses could not see one or all of the minors.

"After some further discussion, the Hearer stated that he would grant the continuance on condition that Glenn would not be present at the adjourned date if he is actually discharged from service, because such absence would not appear to prejudice the defense. Thereafter the prosecutor stated that he did not feel obligated to produce either of the other minors because his examination of them had been completed; that if counsel for defendant desired their appearance, he should make the necessary arrangements, except their transportation, which would be arranged for by the prosecutor. William and James were instructed by the Hearer to be present at the adjourned hearing if they remained stationed at Lakehurst.

"Glenn was then called in rebuttal and testified that previously he had been in defendant's tavern on only one occasion, approximately two or three weeks before, alone, and neither the licensee nor Mrs. Hilliard asked his age.

"At the adjourned hearing, at which none of the three minors were present, the prosecutor stated that two days before the adjourned hearing he spoke with the minors' superior officer, a Lieutenant Commander, who stated that since the boys had already testified he could not guarantee their appearance -- that he should advise counsel for defendant to contact their commanding officer if he so desired; that the prosecutor advised counsel to this effect, who replied that he did not intend to call the commanding officer. Counsel explained at the adjourned hearing that he did not consider it his obligation to arrange for the appearance of the boys.

"The adjourned hearing then proceeded and Henry Danzglock testified on behalf of defendant. He stated that he entered the defendant's tavern between 2:30 and 3:00 p.m. on September 17, 1957; that he watched Amos and Andy on the television set at 5:00 p.m.; that he, Mrs. Hilliard (who was tending bar) and the licensee were the only persons present at that time and that insofar as he can remember, no one else entered the tavern up to the time he left, shortly before 7:00 p.m.

"Counsel for defendant moved for a continuance of the hearing for the purpose of presenting four witnesses, whom he named, and the licensee and his wife, all of whom he represented would testify that Glenn was in defendant's tavern on more than one occasion. The Hearer stated that, for his part, he would deny such continuance because such evidence appeared to him to touch upon a minor aspect of the case; that if the Hearer's Report was adverse to the defendant on the question of guilt, counsel could renew such motion if he filed exceptions to such Report and the Director would make a final ruling thereon. (I might add at this time that counsel was fully aware of Glenn's rebuttal testimony and therefore had ample time to present his witnesses on this subject at the adjourned hearing).

"Counsel next presented a motion to dismiss the charge upon the ground that the licensee is entitled to be confronted by the witnesses throughout the hearing and inferentially to afford each of his witnesses an opportunity to confront the minors.

"The details covering the absence of the minors have been set forth at great length merely to indicate that defendant had a full and fair opportunity to present whatever defense he had, and that he was not prejudiced in the slightest degree by the absence of the minors at the adjourned hearing, because, as hereinbefore stated, in the face of an absolute denial by

all of his witnesses that anyone entered the tavern between 5:00 and 5:45 p.m., no purpose would have been served in confronting Danzglock with Glenn or William. As to the other witnesses on behalf of the defendant, including the licensee -- they were confronted with the three minors, who were cross-examined at length. Thus, the licensee was afforded a full and fair hearing.

"It may be noted that the licensee, in this civil proceeding, has no absolute right to be confronted with adverse witnesses.

'The right of trial involves the right to confront adverse witnesses and the rule of confrontation is to be applied where the witnesses are available for that purpose. Constitutional enactments providing that in criminal prosecutions accused shall have the right to meet the witnesses against him face to face are applicable only to criminal proceedings and have no application to the trial of civil actions.' 88 C.J.S., ch. 60, p. 166. (Underscoring mine.)

"To like effect Wigmore on Evidence (3d Ed) ch. 1396. The author states that the process of confrontation has two purposes. The first is to secure for the opposition the opportunity of cross-examination, the second is to have the personal appearance of the witness before the judge from which he can observe the demeanor of the witness. He states:

'Nevertheless, the secondary advantage -- the demeanor evidence -- is an advantage to be insisted upon whenever it can be had. No one has doubted that it is highly desirable, if only it is available.' (Underscoring mine.)

"The author concludes that the rule may be dispensed with in cases of unavailability. See also Sayre v. Admr. of Isaac Sayre, 14 N.J.L. 487, and Case v. Garretson, 54 N.J.L. 44, both involving the taking of testimony of absent witnesses by deposition in lieu of their appearance at the trial. I therefore recommend that the motion to dismiss the charge should be denied both on the basis of the law and facts here involved.

"The merits of the case, that is, whether the defendant is guilty or innocent of the charge, squarely involves the question of which testimony is more credible.

"There is positive testimony by the minor who purchased the beer, his companion who was present and witnessed such purchase, and the third minor who observed the two minors enter empty-handed and emerge with the beer. The failure of the minor to identify the person who sold the beer is not fatal even though there appears to be a marked difference between the appearance of Mrs. Hilliard and Mrs. Sheppard. Re Engle, Bulletin 1001, Item 6. There is no evidence presented to indicate that the minors had any motive to lie about such purchase.

"On defendant's part, Margaret Hilliard, who according to Glenn, looked like the person who sold him the beer, testified that she was not at the premises until 10:15 p.m. The licensee testified that he was in the tavern between 5:00 and 6:00 p.m., and no one came in. Mrs. Sheppard, who stated that she was the bartender on duty, testified that she had never seen Glenn and William and that she did not sell Glenn any

beer on September 17th. Henry Danzglock testified to like effect. The account given by the licensee and Mrs. Sheppard concerning the availability of cold Piel's beer on the afternoon in question is illogical.

"While a finding of guilt should not be made where the evidence is in serious conflict, equally as consistent with innocence as with guilt, nevertheless a categorical denial by the licensee, his employees, and a person who is friendly with the licensee and has patronized the establishment for over ten years, should not be permitted to overcome clear and logical evidence to the contrary. I am of the opinion that a fair evaluation of the evidence leads to the conclusion that the evidence of the minors preponderates in favor of a finding of guilt and I so recommend.

"Defendant has no prior adjudicated record. I recommend that the minimum penalty of fifteen days for sale of alcoholic beverages to an eighteen-year-old minor be imposed. Re DeClementi, Bulletin 1196, Item 7."

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

After carefully considering the facts and circumstances appearing herein, I concur in the Hearer's findings and conclusions and adopt his recommendation. I shall suspend defendant's license for a period of fifteen days.

Accordingly, it is, on this 17th day of December, 1957,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of Manchester Township to David C. Hilliard, t/a Dave's Inn, for premises located on State Highway #70, Manchester Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. January 2, 1958 and terminating at 2:00 a.m. January 17, 1958.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - CECERE v. ORANGE.

DANIEL CECERE, trading as)
BERKELEY BAR,)

Appellant,)

-vs-

ON APPEAL
O R D E R

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF ORANGE,)

Respondent.)

James A. Palmieri, Esq., Attorney for Appellant.
Edmond J. Dwyer, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from a twenty-day suspension imposed by respondent against Plenary Retail Consumption License C-69 held by appellant for premises at 140 South Essex Avenue, Orange. The suspension was imposed after appellant was found

guilty of a charge alleging, in substance, that he permitted a brawl in his licensed premises in violation of Rule 5 of State Regulation No. 20.

Upon the filing of the appeal an order was entered on November 22, 1957, staying the effect of respondent's order of suspension (which was scheduled to become effective November 25, 1957) pending determination of the appeal.

Prior to the date fixed for hearing, the attorney for appellant advised in writing that his client desired to withdraw his appeal and that the attorney for respondent has consented to said withdrawal. No reason appearing to the contrary,

It is, on this 20th day of December, 1957,

ORDERED that the appeal be and the same is hereby dismissed, and that the twenty-day suspension imposed by respondent and stayed by order referred to above is hereby restored to become effective at 7:00 a.m. January 2, 1958, and to terminate at 7:00 a.m. January 22, 1958.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE
SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SPARVITT, INC.)
T/a ROYAL INN)
1680-1690 Princeton Avenue)
Lawrence Township)
PO Trenton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Lawrence.)
-----)

Mario H. Volpe, 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 charges:

"1. On October 29, 31 and November 1, 1957, you allowed, permitted and suffered gambling, viz., making and accepting of bets in a lottery commonly known as the 'numbers game' in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.

"2. On October 29, 31 and November 1, 1957, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The file herein discloses that on the morning of Wednesday, October 29, 1957, two ABC agents entered defendant's

licensed premises, at which time Louis J. Sciarappo was tending bar. During the course of conversation with the agents the bartender asked them if they wanted to play the numbers, and at that time the agents stated that they did not wish to make a play. However, before leaving the premises, one of the agents said to the bartender, "Lou, play 378 for a dollar tomorrow for me and I'll see you Thursday," to which the bartender replied, "O.K., I have it."

On the morning of October 31, 1957, the same agent returned to the licensed premises, at which time Louis J. Sciarappo was again tending bar. The bartender took \$1.00 from the agents' money to cover the bet made on the previous visit. This agent then requested the bartender to give him a pencil and paper so that he might give him additional bets. When the bartender complied, the agent wrote the following on a slip of paper: "7 in the 1st - \$1, 378 - 50¢, 406 - 25¢ and 587 - 25¢." The bartender accepted from the agent the money represented by these bets and placed the slips and the bets in his pocket.

On November 1, 1957, the same agents entered defendant's premises at about 12:10 p.m., at which time Louis Sciarappo was acting as bartender, and one of the agents inquired of the bartender about "hitting" on Number 7 in the 1st on the previous day. Thereupon the bartender summoned a patron (Leonard J. Shiarappa) who paid the agent the sum of \$8.00 on said bet. The agents then wrote various numbers with the amounts to be placed thereon on slips of paper and handed the slips and four marked one-dollar bills to the patron (Leonard J. Shiarappa) who placed the slips and money in his coat pocket. After the patron had walked to a phone booth and called the bets over the phone, these two agents identified themselves and summoned other ABC agents who had remained outside. When the other agents entered with members of the Township police force, the marked money and slips were found in the possession of the patron (Leonard J. Shiarappa) and he and Louis Sciarappo were placed under arrest. The bartender verbally admitted that he had been taking bets on the licensed premises for the patron who, he stated, was his cousin.

Defendant has no prior record. I shall suspend defendant's license for twenty-five days. Re Llewellyn Recreation Center, Bulletin 1146, Item 1; Re Cicchino, Bulletin 1187, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 30th day of December, 1957,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Lawrence to Sparvitt, Inc., t/a Royal Inn, for premises 1680-1690 Princeton Avenue, Lawrence Township, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. January 7, 1958, and terminating at 2:00 a.m. January 27, 1958.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - EMPLOYING BARTENDER WITHOUT IDENTIFICATION CARD IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ISABELLA LA PORTA)
373 Palisade Avenue)
Jersey City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-401, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
-----)

Isabella La Porta, Defendant-licensee, Pro se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to the following charges:

"1. On Sunday, August 4, 1957, you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., six cans of Rheingold 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.

"2. On Sunday, August 4, 1957, you engaged and employed on your licensed premises an agent and bartender in connection with your licensed business, who had not been issued an identification card by the Department of Public Safety of the City of Jersey City in conformity with Sections 13 and 14 of an ordinance adopted by the Board of Commissioners of Jersey City on June 20, 1950; in violation of Section 15 of such ordinance."

The file herein discloses that on Sunday, August 4, 1957, at about 1:05 a.m., an ABC agent, accompanied by another agent, purchased six cans of beer from Louis Hornak who was on duty as bartender in defendant's licensed premises. At about 1:15 a.m. both agents left the premises with the beer, returned immediately and identified themselves to Hornak who orally admitted the aforesaid violation.

The investigation of the case also discloses that the licensee, contrary to a local ordinance, permitted said Louis Hornak (who had not been issued an identification card by the Department of Public Safety of Jersey City) to act as bartender on the licensed premises.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of twenty days (Re Giordano, Bulletin 1197, Item 3). Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 26th day of December, 1957,

ORDERED that Plenary Retail Consumption License C-401, issued by the Municipal Board of Alcoholic Beverage Control of

the City of Jersey City to Isabella La Porta, for premises 373 Palisade Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. January 6, 1958, and terminating at 2:00 a.m. January 21, 1958.

WILLIAM HOWE DAVIS
Director.

6. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAXPAID ALCOHOLIC BEVERAGES - MOTOR VEHICLE RETURNED TO UNWITTING VIOLATOR UPON APPLICATION IN ADVANCE OF STATUTORY HEARING - DISPOSITION OF ALCOHOLIC BEVERAGES RESERVED PENDING DETERMINATION OF LEGALITY OF IMPORTATION INTO NEIGHBORING STATE.

In the Matter of the Seizure on)
November 26, 1957 of a quantity of)
taxpaid alcoholic beverages and a)
Ford sedan on the New Jersey)
Turnpike, at Milepost 39-1/2, in the)
Township of Mount Laurel, County of)
Burlington and State of New Jersey.)

Case No. 9616

APPLICATION FOR RETURN
OF SEIZED PROPERTY IN
ADVANCE OF STATUTORY
HEARING

CONCLUSIONS AND ORDER

Joseph Segal, Pro se.
John Leonardo, Pro se.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Application has been made for the return of the property seized in this case, pursuant to Rule 1 of State Regulation No. 28, on the allegation that irreparable injury would result from awaiting a statutory hearing, and requesting a preliminary hearing.

The evidence presented at such preliminary hearing established that a New Jersey State Trooper, on the above date, and at a Howard Johnson restaurant at the above location, took into custody Joseph Segal's station wagon and a large quantity of taxpaid alcoholic beverages which he observed in such vehicle, pending determination of the source and destination of such beverages, since Segal did not have any license or permit from the Division of Alcoholic Beverage Control authorizing such transportation. Thereafter the motor vehicle and alcoholic beverages were turned over to ABC agents.

It appears that Segal, and Leonardo, his passenger, purchased the alcoholic beverages from a retail licensee in Washington, D. C. and had in his possession a bill for all of the alcoholic beverages naming Leonardo as consignee and seven other bills, five naming other persons as consignees of specific portions of the alcoholic beverages and one naming Segal as consignee of a specific portion thereof and the seventh naming Leonardo as consignee of a specific portion of the beverages.

At the hearing Segal and Leonardo both testified that they are presently employed in the same U. S. postal station located at Idlewild Airport, New York. Segal has been in the postal service twelve years and Leonardo for ten years. Both testified that they are of modest means, hardworking, industrious and law-abiding, without any record of any criminal activities. Segal says that by reason of the detention of his car, except for three days out of the week, he is unable to obtain transportation to his work.

Specifically concerning the purchase, transportation and intended use of the alcoholic beverages, they testified that a few days previous to November 26th they mentioned at the post office that they intended to drive to Washington to purchase alcoholic beverages. Thereupon six fellow employees solicited Segal or Leonardo to purchase alcoholic beverages for them and each wrote out a memorandum setting forth the amount desired and the amount of money advanced. In addition, four of their close social acquaintances requested similar accommodations.

Segal and Leonardo were careful to keep a written record of the amount of money each person advanced and the specific items desired. These records were left at home but they carried with them to Washington a written record containing the composite quantity and brands of alcoholic beverages which they were to purchase. These three documents were produced at the hearing.

When purchasing the alcoholic beverages the clerk itemized all purchases on the same bill totalling \$1518.88. The clerk then asked whether Leonardo was purchasing all of the alcoholic beverages for himself. Told such was not the fact, he suggested that separate bills should be issued to each purchaser. Thereupon another bill was issued for the individual purchase of Leonardo in the amount of \$163.71; for the individual purchase of Segal in the amount of \$183.19; and five other bills in the individual name of each purchaser, which were all the names they could remember without the aid of their memorandum.

Segal and Leonardo positively swear that they purchased the alcoholic beverages for their personal consumption and purchased the alcoholic beverages for their fellow employees and friends for personal consumption as an accommodation, and without any profit to themselves.

I am advised that a check has been made at the place of employment of Segal and Leonardo which confirms their employment and good reputation and two of their fellow employees have confirmed that they advanced the sum of money and requested the purchase of the items designated as testified to by Segal and Leonardo and that such employees were not to pay any excess over cost.

I am satisfied that Segal and Leonardo acted in good faith and I accept their account of what transpired. The Ford station wagon will therefore be returned to Joseph Segal upon payment of the costs of its seizure and storage.

My decision as to the disposition of the alcoholic beverages will be reserved until my further Order because we are presently reviewing with the New York State Liquor Authority whether its present law and regulations permit the delivery of taxpaid alcoholic beverages intended for personal consumption to a resident of that state who is not a passenger in the vehicle used for such transportation.

Accordingly, it is DETERMINED and ORDERED that if on or before the 20th day of December, 1957, Joseph Segal pays the costs incurred in the seizure and storage of the Ford station wagon, described in Schedule "A" attached hereto, such motor vehicle will be returned to him.

WILLIAM HOWE DAVIS
Director.

Dated: December 11, 1957.

SCHEDULE "A"

1 - Ford Station Wagon, Serial and Engine
No. M664246911, New York Registration
46-362.

7. DISCIPLINARY PROCEEDINGS - SALE AT OTHER THAN LICENSED
PREMISES - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION
NO. 38 - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

FRANK H. ASCHETTINO)
T/a CAMMANDER'S BAR)
33 South Broadway)
Long Branch, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-33, issued by the)
Board of Commissioners of the City)
of Long Branch.)

James F. McGovern, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On Sunday, August 11, 1957, at about 9:35 a.m.,
you sold an alcoholic beverage, viz., an opened 4/5
quart bottle of Wilson 'That's All' Blended Whiskey, not
pursuant to and within the terms of your plenary retail
consumption license as defined by R. S. 33:1-1(w), in
that you sold and delivered the aforesaid alcoholic bev-
erage at a place other than your licensed premises, viz.,
in a room on the second floor of the building containing
your licensed premises, which building is known as the
Venice Hotel and is designated No. 33 South Broadway,
Long Branch, New Jersey; in violation of R. S. 33:1-2.

"2. On Sunday, August 11, 1957, at about 9:35 a.m.,
you allowed, permitted and suffered the removal of an
alcoholic beverage in an opened container, viz., a 4/5
quart bottle of Wilson 'That's All' Blended Whiskey with
its seal broken, from your licensed premises; in viola-
tion of Rule 1 of State Regulation No. 38."

The file herein discloses that defendant's licensed
premises are confined to the first floor of a three-story hotel
located at 33 Broadway, Long Branch. On Saturday, August 10,
1957 at about 9:00 p.m., an ABC agent entered the defendant's
licensed premises and rented a room for double occupancy on the
second floor of said hotel from the licensee who was acting as
bartender. The following morning at about 9:15 a.m., said
agent met the licensee in the hallway on the aforesaid second
floor and in a conversation that followed, the licensee agreed
to sell the agent a 4/5 quart bottle of Wilson whiskey. About
twenty minutes later the licensee brought a 4/5 quart bottle of
Wilson "That's All" Blended Whiskey (seal broken) to the afore-
said room, placed it on the table and in payment thereof
requested and received \$5.00 from said agent in the presence of
a second agent. Shortly thereafter, the two agents left the

building with the said bottle of whiskey, returned to the licensed premises and identified themselves to the licensee who orally admitted aforesaid violations.

Defendant has no prior adjudicated record. In view of the fact that the aforesaid violations do not constitute a "speakeasy" type of sale of alcoholic beverages during prohibited hours, I shall suspend defendant's license for twenty days. Cf. Ryan, Bulletin 1093, Item 3 and Ralph & John's Tavern, Inc., Bulletin 1094, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of December, 1957,

ORDERED that Plenary Retail Consumption License C-33, issued by the Board of Commissioners of the City of Long Branch to Frank H. Aschettino, t/a Cammander's Bar, for premises 33 South Broadway, Long Branch, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. January 2, 1958 and terminating at 2:00 a.m. January 17, 1958.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINORS
NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against
PETER and HELEN SKIBA
T/a PETE'S CAFE
115 S. Black Horse Pike
Runnemede, N. J.,
Holders of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Runnemede.

CONCLUSIONS
AND ORDER

Cahill & Wilinski, Esqs., by Robert Wilinski, Esq., Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

It appearing that defendants pleaded not guilty to a charge alleging that on September 15, 1957 they sold, served and delivered alcoholic beverages to minors David G. --- (age 16) and Thomas S. --- (age 19) and permitted the consumption of such beverages by said minors in and upon their licensed premises, in violation of Rule 1 of State Regulation No. 20, and

It appearing at the hearing held on December 6, 1957 (adjourned from November 15, 1957) that the Division's representative moved to nolle pros the aforesaid charge for the following reasons: (1) that the minors are residents of the State of Pennsylvania and not amenable to our subpoena; (2) that the Division is unable to prove its case without the testimony of said minors, and (3) that the minors have changed their original attitude of cooperation and have expressed an unwillingness to appear voluntarily and testify, and

It further appearing that the Hearer has recommended the approval of the motion to nolle pros,

Accordingly, it is, on this 23rd day of December, 1957,

ORDERED that the charge be and the same is hereby nolle prossed.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON -
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

JOE'S WHITE BIRCH BAR, A CORP.)
t/a JOE'S WHITE BIRCH BAR)
185 Paterson Street)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-313, issued by the)
Board of Alcoholic Beverage Control)
for the City of Paterson.)

James F. McGovern, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to the following charge:

"On October 18, 1957, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

The file herein discloses that about 10:20 p.m. on October 18, 1957 two ABC agents at defendant's licensed premises observed an apparently intoxicated man finish a drink and stagger out of the premises. At about 11:25 p.m., another apparently intoxicated man entered the premises, walked unsteadily, staggering to the bar and took a seat on a stool. The bartender served the man with a bottle of beer. The man poured some of the beer into a glass, with an unsteady hand. While seated on the stool, the man attempted to rest his arm on the bar but it kept slipping off, and he almost hit his head on the edge of the bar. The man began to drink this beer, mumbling to himself. The agents then revealed their identity to the bartender and Joseph Damiano, president of the corporate-licensee.

The agents then asked the intoxicated man to walk to another room, which he did, swaying from side to side, and receiving help from the agents. In the presence of Damiano, they attempted to question this man, but had no marked success because he was incoherent in his speech.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days. Re Freud & Pittala, Bulletin 1142, Item 9.

Accordingly, it is, on this 26th day of December, 1957,

ORDERED that Plenary Retail Consumption License C-313, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Joe's White Birch Bar, A Corp., t/a Joe's White Birch Bar, for premises 185 Paterson Street, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. January 6, 1958, and terminating at 3:00 a.m. January 21, 1958.

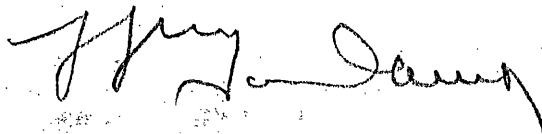
WILLIAM HOWE DAVIS
Director.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Paradise Wine Distributors, Inc.
51 East Bigelow St., Newark, N. J.
Application filed January 29, 1958 for place-to-place transfer of Wine Wholesale License No. WW-10 from 251-257 Hillside Avenue, Newark, N. J.

Miller Motor Haulage
47-51 E. Bigelow St., Newark, N. J.
Application filed February 5, 1958 for place-to-place transfer of Public Warehouse License X-9 to include additional premises at 49-51 E. Bigelow St., Newark, N. J.

Phillips Distributing Company, Inc.
Rear 700 Somerset Street, New Brunswick, N.J.
Application filed February 5, 1958 for place-to-place transfer of State Beverage Distributor's License SBD-58 from Canal Road, Griggstown, N. J.



William Howe Davis
Director.