

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

BULLETIN 1643

November 8, 1965

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1. APPELLATE DECISIONS - HUNTERDON COUNTY TAVERN ASSOCIATION,
INC. v. HOLLAND AND OAK HILL GOLF CLUB, INC.

HUNTERDON COUNTY TAVERN
ASSOCIATION, INC.,

Appellant,

v.

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF HOLLAND, and OAK
HILL GOLF CLUB, INC., t/a OAK
HILL GOLF CLUB, INC.,

Respondents.

ON APPEAL
ORDER

Herrigel and Herrigel, Esqs., by A. Warren Herrigel, Esq., and
Robert W. Wolfe, Esq., Attorneys for Appellant.
William R. Stem, Esq., Attorney for Respondent Oak Hill Golf
Club, Inc.

BY THE DIRECTOR:

Appellant appeals from grant of a club license on
April 7, 1965 by respondent Holland Township to respondent
Oak Hill Golf Club, Inc., for premises located on an extension
of Fernwood Road, Holland Township.

Prior to hearing, by letter dated September 16, 1965,
the attorneys for the appellant advised me that the appeal was
withdrawn.

No reason appearing to the contrary, it is, on this
20th day of September 1965,

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

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF POLICE OFFICER -
POSSESSING LOTTERY TICKETS (NEW HAMPSHIRE SWEEPSTAKES) -
PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary
Proceedings against

ANN KVILESZ
t/a HORVATH'S
9027 Riverside Place
North Bergen, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-11, issued by the Municipal
Board of Alcoholic Beverage Control
of the Township of North Bergen.

Nathan J. Littauer, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleads not guilty to the following charges:

"1. On July 9, 1964, and on divers dates prior thereto, you employed and had connected with you in a business capacity John Kvilesz, a regular police officer of the North Bergen Township Police Department; in violation of Rule 30 of State Regulation No. 20.

"2. On July 9, 1964, you possessed and had custody of tickets and participation rights in a lottery, known as the New Hampshire Sweepstakes, and you 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."

This matter was submitted upon an oral stipulation, and no witnesses were produced to testify herein. I shall consider those parts of the stipulation which pertain to each charge separately.

As to the first charge: It was stipulated as follows: That on June 18, 1964, John Kvilesz was then holding office as a regular police officer of the North Bergen Township Police Department; was engaged in preparing sandwiches in the kitchen of the licensee's licensed premises, and served patrons in the barroom of the licensed premises these sandwiches. Further, on June 19, 1964, John Kvilesz, while still holding such office, cashed checks in the barroom of the licensed premises for patrons of the licensee; further, on June 25, 1964, John Kvilesz, while still holding said office, again cashed checks for patrons of the licensee in the barroom of the licensed premises and answered the pay-phone in the barroom of the licensed premises.

On July 9, 1964, John Kvilesz, while still holding said office, prepared sandwiches in the kitchen of the licensed premises and served them to the licensee's patrons in the barroom. Further, during the period of about May, June and July 1964, John Kvilesz

was authorized to sign checks on the checking account that the licensee maintained for her licensed business at the United National Bank, Cliffside Park, New Jersey, office; and that during that period John Kvilesz, while holding the office of regular police officer of North Bergen Township Police Department, did in fact sign checks on said account.

With further reference to this stipulation, counsel for the licensee added the following:

"...that it is a fact and it is admitted by Ann Kvilesz that during the period of the operation of this tavern that they had one account, one check account ... they had one checking account in two names at this bank, which was used for their joint and individual purposes; that she would deposit certain proceeds of the tavern business in this account and that he would deposit some of his own personal funds in this account, some from his salary checks from the police department and what other income he might have"

It was additionally stipulated that:

"Amongst the checks signed by Mr. Kvilesz were checks in the amount of \$3,000 that he utilized as a loan from the bank upon which they were drawn in order to cash checks for the patrons of the licensee at the licensed premises"

so that these checks were related because of the check-cashing operation.

While admitting the above facts, counsel for licensee argues that the conduct of John Kvilesz "cutting sandwiches, serving sandwiches" is not employment or connected with the tavern. In support of this he advocates that this is a husband-and-wife situation, and many of his duties were associated with the operation of his private household consisting of his wife and six children. He then stated:

"We can't go beyond the stipulation, but in mitigation the fact is, the history is, that that kitchen downstairs, which adjoins the tavern, which has no door, had access to the tavern for all the customers in the tavern who come in for coffee."

Finally, he submits that there was no defiance of the regulation in serving sandwiches because of a family relationship, and he urges that a more liberal view be taken of this regulation. He admits, however, that "This cashing of checks, well, there may be some substance to that."

The argument of counsel must be rejected because it is clear that the regulation which prohibits a regular police officer from being employed or connected in any business capacity with a licensee is clearly in the public interest. The intent of Rule 30 of State Regulation No. 20 is to prevent any conflicts of interest or favoritism with respect to a licensee who employs or has connected with him in a business capacity any regular police officer. It is an inexorable rule for vigorous adherence. No special treatment should be received by such a licensee, nor should the public even think that such treatment is being received.

The licensee must understand that this regulation applies fundamentally to the behavior and responsibility of the licensee. As Justice Van Syckel stated in Paul v. Gloucester County, 50 N.J.L. 585, at p. 595:

"The sale of intoxicating liquor has, from the earliest history of our state, been dealt with by legislation in an exceptional way. It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied."

See Hudson Bergen &c., Ass'n. v. Hoboken, 135 N.J.L. 502.

"It is a business which may be restricted by such conditions as will limit to the utmost its evils."

Crowley v. Christensen, 137 U.S. 86, 34 L. Ed. 620 (1890); In re Schneider, 12 N.J. Super. 449, 456.

Licensee cannot plead ignorance of the regulation, nor does she. That the seriousness of such proscribed conduct was known to the licensee is manifested by the fact that the licensee's license was suspended by the Director effective October 16, 1961, for ten days, for the exact type of violation, which involved employment of her husband John Kvilesz, a regular police officer. Furthermore, by letter of August 22, 1958, the then Director advised the licensee that her husband, also at that time a regular police officer in the North Bergen Township Police Department, could not be employed by her in any way. The letter states in part as follows:

"You will note that the above rule prohibits your husband, a regular police officer, from not only holding a liquor license, but from being employed or connected in any business capacity with the licensee. This means you may not utilize the services of your husband in any connection with your licensed business, including tending bar, whether part-time or full-time."

The licensee replied by letter of September 2, 1958, and stated:

"I have read your letter very carefully and all instructions and regulations contained therein. All instructions and regulations will be very strictly adhered to in the future."

Thus there could be no question in the mind of the licensee as to the meaning of the regulation and its specific provision. It is pure sophistry to argue that the relationship of husband and wife would support a liberal construction or, indeed, an evasion of the prohibited conduct. It is, therefore, abundantly clear that the licensee employed and had connected with her her husband John Kvilesz, a regular police officer in the North Bergen Township Police Department, in violation of Rule 30 of State Regulation No. 20. The alternative to this licensee is clear. If her husband's dichotomy cannot be resolved, she should get out of the liquor business without delay. Under these circumstances I recommend that an order be entered finding the licensee guilty of the first charge.

As to the second charge: The following oral stipulation was entered at this hearing with respect thereto:

"...on the same date [July 9, 1964] five tickets in connection with the New Hampshire Sweepstake race for September, 1964, were found by Detective Stanley Walczak of the Hudson County Prosecutor's Office on the back bar to the right of the cash register in the barroom of the licensed premises; that these five sweepstake tickets were then possessed and in the custody of the licensee, who knew that they were on the licensed premises."

Counsel for the licensee, in explanation of the said stipulation, stated as follows:

"I want to say this for the record, and this is admitted by Ann Kvilesz, the licensee; she admits the possession of New Hampshire tickets, custody. She admits this; that two weeks before the July 9th date, that would be in the latter part of June, I suppose, 1964, through the mails she received from a sister-in-law of hers, who lived in Troy, her name is Mrs. Gleason, these five New Hampshire tickets, sweepstake tickets."

He further goes on to state that the tickets had been issued to specific individuals; that the licensee had no intent to engage in commercial traffic in these tickets; that she never had the intent to negotiate or to sell or dispose of the tickets. These tickets remained in the tavern for about two weeks prior to July 9, 1964. These were admitted into evidence.

In his legal argument counsel asserts that the possession and custody of the New Hampshire tickets do not come within the interdict of the regulation because they were non-negotiable in their present state since they had a named beneficiary. I do not agree with his interpretation of the phrase "such ticket" in the regulation as meaning only a lottery ticket "to be sold or offered for sale." This is a strained construction, inconsistent, in my view, with the clear legislative intent.

The purpose of this regulation is to prohibit completely any lottery activity on licensed premises. Possession is a means to that end. The regulation attempts to eliminate in any way any type of lottery activity on licensed premises, and should be liberally construed. As the court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28, at p. 31:

"Although statutes penal in character must be construed strictly, the injunction of the legislature as hereabove indicated enjoins us to the contrary in reference to liquor traffic. *** Our courts have held that it 'is a subject by itself', to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied."

Cf. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39. See R.S. 33:1-73.

Rule 6 of State Regulation No. 20 states in its pertinent part as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any lottery to be conducted, or any ticket or participation right in any lottery to be sold or offered for sale; nor shall any licensee

possess, have custody of, or allow, permit or suffer any such ticket or participation right, in or upon the licensed premises...."

To entertain the construction urged by the licensee would mean that, once a sale was completed and the Division had no evidence of the sale, the possession by the licensee of that ticket would constitute no violation. In this connection it is interesting to note that the criminal law of the State (N.J.S. 2A:170-18) makes the mere possession of a lottery slip a criminal offense, and it would be anomalous if we construed our regulation to permit such a criminal offense on licensed premises.

Further, we have held in a similar situation involving the Irish hospital sweepstakes tickets that the possession of such tickets and participation rights constitutes a violation of our regulation. Re Sports Bar & Grill, Inc., Bulletin 1124, Item 2.

I therefore recommend that an order be entered finding the licensee guilty on this charge.

Licensee has a prior adjudicated record. Effective October 16, 1961 (as stated hereinabove) her license was suspended for fifteen days (with remission of five days for the plea entered) for employing a police officer (Re Kvilesz, Bulletin 1422, Item 7). In this connection it must be pointed out that the then Director warned, in his Conclusions and Order:

"I might point out that in the event of a similar violation in the future, a greater penalty of defendant's license will be warranted."

Further, in that case a penalty of fifteen days (rather than the minimum of ten days) was imposed upon the licensee because her disregard of a warning letter by this Division constituted, in the Director's opinion, "circumstances [which] must be considered as aggravated." In view of the similar violation occurring within five years, and under the totality of the circumstances herein, I recommend that an order be entered suspending licensee's license for a period of thirty days on the first charge, and fifteen days on the second charge since no commercial gambling is involved (Re Sports Bar & Grill, Inc., supra), making a total of forty-five days.

Conclusions and Order

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 transcript of the proceedings, exhibits, argument of counsel and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 20th day of September, 1965,

ORDERED that Plenary Retail Consumption License C-11, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen to Ann Kvilesz, t/a Horvath's, for premises 9027 Riverside Place, North Bergen, be and the same is hereby suspended for forty-five (45) days, commencing at 3:00 a.m. Monday, September 27, 1965, and terminating at 3:00 a.m. Thursday, November 11, 1965.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - PRIOR RECORD OF DISSIMILAR VIOLATIONS OF OTHER
 CORPORATIONS WITH COMMON STOCKHOLDERS - LICENSE SUSPENDED
 FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

THE COUNT CAFE (CORPORATION)
 39-41 E. Milton Ave.
 Rahway, N. J.

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption
 License C-22, issued by the Municipal
 Board of Alcoholic Beverage Control
 of the City of Rahway.

 Licensee, by Herman Hochberg, President, Pro se.
 Morton B. Zemel, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
 August 18, 1965, it possessed an alcoholic beverage in one bottle
 bearing a label which did not truly describe its contents, in
 violation of Rule 27 of State Regulation No. 20.

Although the licensee corporation has no previous record
 of suspension of license, Division records disclose the following
 with respect to Herman Hochberg and Edward Hennion, respectively
 89 and 10 per cent. stockholders of the corporation:

1. License then held by Herman Hochberg and Abraham
 Weiss for premises 236 Market Street, Newark, suspended by the
 Commissioner for ten days effective June 3, 1942, and for
 premises 81 Main Street, Madison, for fifteen days effective
 October 11, 1948, both for sale below minimum consumer price.
Re Weiss and Hochberg, Bulletin 514, Item 10; Bulletin 817,
 Item 8.

2. License then held by Bloomfield-Adams, Inc. for
 premises 65 Washington Street, Bloomfield (in which Hochberg
 and Hennion were 89 and 10 per cent. stockholders), suspended
 by the municipal issuing authority for five days effective
 October 19, 1960, for thirty-five days effective February 24,
 1962, and for thirty-five days effective May 17, 1965, all for
 sales to minors.

3. License then held by Oak Tavern (a corporation)
 for premises 193-195 Stuyvesant Avenue, Newark (in which Hochberg
 and Hennion were 89 and 10 per cent. stockholders), suspended by
 the municipal issuing authority for five days effective May 7,
 1962, and for fifteen days effective July 27, 1964, both for
 sales to minors.

4. License then held by M 66 Bar (a corporation) for
 premises 66 South Orange Avenue, Newark (in which Hochberg and
 Hennion were 89 and 10 per cent. stockholders), suspended by the
 municipal issuing authority for ten days effective January 6,
 1964, for permitting a brawl on the licensed premises.

The prior record of suspension of license of Weiss and Hochberg in 1942 and 1948 for dissimilar violation occurring more than five years ago disregarded but the prior record of suspension of license of Bloomfield-Adams, Inc., Oak Tavern and M 66 Bar considered (cf. Re Jervic, Inc., Bulletin 1603, Item 6; Re Fun Fair Bowl, Bulletin 1625, Item 6), the license will be suspended for ten days (Re Sachse, Bulletin 1630, Item 9), to which will be added thirty days by reason of the record of six suspensions of license for dissimilar violations occurring within the past five years (cf. Re Hala Corporation, Bulletin 1525, Item 4), or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 21st day of September 1965,

ORDERED that Plenary Retail Consumption License C-22, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway to The Count Cafe (Corporation), for premises 39-41 E. Milton Avenue, Rahway, be and the same is hereby suspended for thirty-five (35) days, commencing at 2 a.m. Tuesday, September 28, 1965, and terminating at 2 a.m. Tuesday, November 2, 1965.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary
Proceedings against

JAMES MARINELLO, JR.,
t/a J'MARI'S CAFE LOUNGE
173 Sussex Avenue
Newark, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-542, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Newark.

George R. Sommer, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On April 12, 1965, 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., Nicholas E.---, age 20, Michael ---, age 20, James T.---, age 20, Dennis P.---, age 20 and John ---, age 20 and allowed, permitted and suffered the consumption of alcoholic beverages by such persons, in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"2. In Your application filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark on June 1, 1964, and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question No. 41 which asks: 'Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled? ___ If so, state details with respect to each surrender, suspension, revocation or cancellation'; whereas in truth and fact plenary retail consumption license held by you for the 1937-38 period for premises 85 Norfolk Street, Newark, N.J., had been suspended by the Municipal Board of Alcoholic Beverage Control of the City of Newark for three (3) days, effective March 14, 1938 on a gambling charge, in violation of State Regulations; such false answer, statement, evasion and suppression being in violation of R.S. 33:1-25."

The testimony indicated that John --- entered the licensed premises on Monday, April 12, 1965 at approximately 10:30 p.m. accompanied by Nicholas E.--- (hereinafter Nick). Later, they were joined by Dennis, James, Michael and J. Friedman.

John testified that he was 20 years of age and that he was born on January 17, 1945. He had been a patron of the licensed premises (a tavern) prior to April 12, 1965, the night in question. Upon entering therein he sat at the bar with Nick. Tending bar was James Marinello, Jr., the licensee. He requested of Marinello, and was served, a drink of Seagram's whiskey with 7-Up, which he consumed. Later they were joined by their acquaintances, Dennis, James and Michael, all of whom are witnesses in this proceeding. He noted that Marinello served them with alcoholic beverages. Finally, he stated that neither Marinello nor anyone else in the tavern questioned him as to his age and he did not make any written representation as to his age.

Dennis testified that he was born on April 16, 1944 and that he arrived at the age of 21 years on April 16, 1965. He entered the tavern alone on April 12, 1965 at approximately 10:30 p.m. and during the course of the evening joined his friends John, Michael, James and Nick. He ordered, and was served, a whiskey sour by the licensee Marinello, which he consumed. He was not questioned by Marinello or by anyone else as to his age, nor was he asked to produce proof of age or make any written acknowledgment as to his age.

James testified that he was 20 years of age and that he was born on October 12, 1944. He entered the licensed premises on April 12, 1965 at approximately 10:30 p.m. accompanied by Michael and J. Friedman. He noted that Dennis, John and Nick were seated at the bar. Tending bar was James Marinello, the licensee. He ordered a whiskey highball of Marinello. He was served the drink by Marinello and he consumed it. He was not asked to produce proof of his age or to make a written representation thereof.

Michael testified that he was born on September 19, 1944 and that he was 20 years of age. He entered the tavern on April 12, 1965 at approximately 10:30 p.m. with James and J. Friedman. He too, noted the presence of John, Dennis and Nick at the bar. Upon request, he was served a whiskey highball by Marinello, which he consumed. He was not questioned as to his age or required to make written representation as to age.

On cross-examination, each of the minors declared that his appearance did not change perceptibly since April 12, 1965. John, Dennis and James were taller and heavier than J. Friedman. Michael and Friedman were about equal in height and weight.

Agent M testified that he entered the licensed premises on April 12, 1965 with Agent G at 9:30 p.m. and sat at the bar. He noted that Marinello was tending bar. He saw John and Nick enter the tavern at 10:35 p.m. followed by Dennis at 10:40 p.m. and by James, Michael and Friedman at 10:45 p.m. All of the aforementioned, except Friedman, appeared to be minors and therefore he kept them under observation. He noted that all were served various alcoholic beverages by the licensee, Marinello, which they consumed. In furtherance of his investigation, he questioned all of the aforementioned patrons as to their ages. All, except Friedman, proved to be minors.

Agent S testified that he accompanied Agents M and G in the investigation on April 12, 1965 and he waited outside the tavern until he was summoned inside. He confirmed the matters concerning the questioning of the aforementioned patrons as to their ages.

On cross-examination he stated that Friedman appeared to be slighter of build, shorter and lighter of weight than John, Dennis, James and Michael. As to age, the witness stated, "He could have been twenty-one, he could have been twenty." He also stated that Friedman appeared to be close to the ages of John, Dennis, James and Michael.

No evidence was introduced by the Division concerning Nicholas E.--- mentioned in Charge 1.

In substantiation of the second charge there was received in evidence a certified copy of the license application for the 1964-65 licensing year filed on June 1, 1964, wherein the applicant (licensee) stated "No" in answer to Question No. 41 which reads "Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled?"

In addition there was received in evidence page 129 of the official docket of the Division which shows a prior suspension against this licensee under our Rev. No. 1177, and in particular that the Municipal Board of Alcoholic Beverage Control of the City of Newark suspended the license of James Marinello, Jr. for "three days, from Mar. 14 at 7 a.m. to Mar. 17 at 7 a.m.", 1938, for a violation of Rule 7 of State Regulation No. 20, concerning gambling.

In defense of the charges the licensee, James Marinello, Jr., testified that during the years 1937 and 1938 he operated a tavern in partnership with a brother; that in March of 1938 he was on vacation and had no knowledge of the violation and license suspension. If he had knowledge thereof he would have included it in his application.

He admitted that the minors and Friedman were in the licensed premises on April 12, 1965 and that inasmuch as Friedman appeared to look the youngest of the group, he questioned only Friedman as to his age. Upon being satisfied that Friedman was 21, he did not question the others as to their ages.

On cross-examination the licensee admitted serving alcoholic beverages to the four minors, John, Dennis, James and Michael on April 12, 1965 and questioned only Friedman as to his age. Further, he admitted that he did not request written representations of any of the group as to their ages.

Next, the licensee called Joseph Esposito, who in the past fifty years was engaged as a director of athletics and in social work with people of all ages. He testified that he saw the four youths who testified herein, namely John, Dennis, James and Michael, for the first time at the instant proceeding. He expressed an opinion that all of the aforementioned youths appeared to be over 21 years of age.

Testifying in an essentially similar vein were Edward Simandl, who in the past fifty years served on various youth committees and promoted various types of athletic endeavors, William R. Hutcheon, who had been engaged as a private investigator for some years, Michael N. Puccio, a college student 24 years of age and Fred Flannery, who is, and has been, a salesman for more than eighteen years.

As to Charge 1, we are confronted with a strictly legal question. The licensee admitted serving alcoholic beverages to the minors, John, Dennis, James and Michael and sought to excuse and defend his action for the reason that the aforementioned minors appeared to be over 21 years of age. The licensee's opinion as to the apparent ages of the minors was buttressed by the opinion of several witnesses. The licensee's attorney articulately argued that the licensee should not be found guilty of this charge because R.S. 33:1-77 contains the wording "...that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over...."

This argument must be rejected. Although it has been the uniform practice of the Director to recognize the legislative intent expressed in the enactment and to permit the statutory proviso to constitute a defense to a like charge in the disciplinary proceedings conducted in the Division, nevertheless, the enactment must be considered in its entirety. R.S. 33:1-77 provides as follows: "Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over." Under-scoring ours. To constitute a valid defense to such a prohibited sale, it has been invariably held that the licensee must establish, not some but all, of the factual elements enumerated in the enactment. See, Re Butera, Bulletin 606, Item 4; Re Cedar Bar of Bergen County, Inc., Bulletin 942, Item 5; Re Wedemeyer, Bulletin 1050, Item 8; Re Eighty-Nine Clinton, Inc. v. Atlantic Highlands, Bulletin 1591, Item 2; Sportsman 300 v. Bd. of Com'rs of Town of Nutley, 42 N.J. Super. 488 (App.Div. 1956).

In Re Wedemeyer, supra the Director said:

"Experience in cases similar to this indicates that for some reason licensees or their agents are reluctant to 'embarrass' a minor by requiring him to reduce to writing his name, age and address. If licensees are willing to use their own methods of determining the age of a minor, rather than follow the statute, they do so at their peril and must accept the consequences of their own neglect."

In a business as highly sensitive as the traffic of liquor, the Director is charged with the exercise of constant vigilance in the enforcement of the various statutes and the rules and regulations pertaining thereto. A relaxation from the strict requirements of the provisos contained in the enactment would be contrary to its intendment, fraught with danger and against the dictates of sound public policy.

As to Charge 2, the evidence amply indicates that there was a false answer in the application by failure to reveal a prior suspension. Without questioning the good faith of the excuse given by the licensee that he was not aware of the prior suspension we must hold that it not a valid defense to the charge. See, Re Talk of the Town, Inc., Bulletin 1614, Item 3; Re Club Rio, Bulletin 1594, Item 3. The public impact of the violation is the same regardless of the manner in which it occurred.

Hence, I conclude that the Division has established the truth of Charge 1, by a fair preponderance of the evidence, and I recommend that the licensee be found guilty of said Charge 1, so far as it relates to Michael ---, James T.---, Dennis P.---, and John ---, and not guilty so far as it relates to Nicholas E. ---, I further recommend that there be a finding of guilt as to Charge 2.

As already indicated, the licensee has a previous record of suspension of license by the municipal issuing authority for three days effective March 14, 1938 on a gambling charge.

It is therefore further recommended that the prior record of suspension for a dissimilar violation occurring in 1938 be disregarded because occurring more than five years ago and that the license be suspended on the first charge for fifteen days, (Cf. Re Parzanese, Bulletin 1627, Item 6), and on the second charge for ten days, (Re Meehan, Bulletin 1609, Item 7), making a total suspension of twenty-five days.

Conclusions and Order

Written exceptions and argument to the Hearer's report and request for oral argument were filed by the licensee's attorney, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions had been considered in detail by the Hearer in his report and that they are without merit. I further find that oral argument is not warranted in the instant proceedings, and the request is therefore denied.

Consequently, having considered the entire record herein, including the exceptions filed, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. I shall therefore impose the penalty recommended by the Hearer, namely, a license suspension of twenty-five days.

Accordingly, it is, on this 20th day of September 1965,

ORDERED that Plenary Retail Consumption License C-542, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to James Marinello, Jr., t/a J'Mari's Cafe Lounge, for premises 173 Sussex Avenue, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, September 27, 1965, and terminating at 2 a.m. Friday, October 22, 1965.

JOSEPH P. LORDI
DIRECTOR

5. DISQUALIFICATION REMOVAL PROCEEDINGS - POOL-SELLING - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application)	
to Remove Disqualification because)	CONCLUSIONS
of a Conviction, Pursuant to)	AND ORDER
R.S. 33:1-31.2)	
Case No. 1947		

BY THE DIRECTOR:

Petitioner's criminal record discloses that on May 26, 1960 he was convicted in the Camden County Court for pool-selling in violation of N.J.S. 2A:112-3 as a result thereof was sentenced to serve 1 to 3 years in N.J. State Prison (suspended) and fined \$1000.

Since the crime of which the petitioner was convicted involves the element of moral turpitude, he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (30 years old) testified that he is married and living with his wife and 2 infant children; that he has resided in New Jersey for over 25 years except for a period of 4 years when he lived in 2 other states; that for the past 3 months he has been unemployed; that between September 1960 and June 1965 he was regularly employed in various jobs; that prior to his conviction on May 26, 1960 and subsequent thereto for a period of about 2 or 3 months he was employed as a bartender in licensed premises and that until August 12, 1960 when notified by this Division by letter he had no knowledge of his ineligibility to continue working as aforesaid.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that, ever since his conviction on May 26, 1960, he has not been arrested, nor has he been convicted of any crime.

Petitioner produced three character witnesses (a detective, an owner of a restaurant and a housewife) who testified that they have known petitioner for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

The Police Department of the municipality wherein the petitioner resides reports there are no complaints or investigations presently pending against the petitioner.

The only hesitation I have in granting the relief sought herein is based on the fact that the petitioner, although disqualified, worked on licensed premises in this State. I am, however, favorably influenced by four factors, viz.: (a) the testimony of his character witnesses, (b) his present attitude, (c) the fact that his record shows only one conviction of crime, and (d) his sworn testimony that he was unaware of his ineligibility to be employed by a licensee. Knowledge of the law, moreover, is not an essential prerequisite to removal of disqualification in these proceedings. Re Case No. 1840, Bulletin 1577, Item 9.

Considering all of the aforesaid facts and circumstances, I am satisfied that the petitioner has conducted himself in a law-abiding manner for five years last past and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 17th day of September 1965,

ORDERED that petitioner's statutory disqualification, because of the conviction described herein, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE NOTICE OF CHANGE IN FACTS IN LICENSE APPLICATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

CANCELLATION PROCEEDINGS - LICENSEE CONVICTED OF CRIME INVOLVING MORAL TURPITUDE - ORDER TO SHOW CAUSE DISCHARGED UPON CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary
Proceedings against

ROSE CAMERON
t/a WEBB'S TELEVISION BAR & GRILL
44 Newark-Pompton Tpke.
Little Falls, N. J.

CONCLUSIONS
AND ORDER

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

Joseph D. Donato, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to the following charge:

"You failed to file with the Township Committee of the Township of Little Falls within ten (10) days after the occurrence thereof, a written notice of change of fact in your application dated May 17, 1965, for your plenary retail consumption license for the period effective July 1, 1965, such being a change of answer from 'No' to 'Yes', with required details, to Question No. 33 therein which asks: 'Have you or has any person mentioned in this

application ever been convicted of any crime?-----If so, state details as to each conviction, giving the name of the person convicted, date thereof, nature of the crime, court in which the conviction was entered and sentence imposed---' in that and by reason of the fact that, on or about June 4, 1965, you were convicted in the Passaic County Court, Law Division, Criminal of the crime of maintaining a gambling resort; said failure to file such notice being in violation of R.S. 33:1-34."

In addition to the above charge, the licensee was ordered to show cause why her license should not be cancelled and declared null and void for the following reason:

"Said license was improvidently issued in violation of R.S. 33:1-25 in that you were disqualified from obtaining such license by reason of the fact that on or about June 4, 1965, you were convicted in the Passaic County Court, Law Division, Criminal of a crime involving moral turpitude, viz., of maintaining a gambling resort."

The facts sufficiently appear from the recited charge and order to show cause. Records of the Division indicate that on September 7, 1965, the license was transferred from the licensee to John and Dorothy, Inc. for the same premises with the effective date of such transfer deferred until the termination of any suspension that might be imposed herein.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective January 8, 1963, for sale to a minor, and by the Director for twenty-five days effective April 20, 1964, for permitting acceptance of horse race bets. Re Cameron, Bulletin 1563, Item 9.

Conviction of the crime of maintaining a gambling resort involves moral turpitude. Re Case No. 1887, Bulletin 1611, Item 6. Hence, the license will be suspended for twenty days (cf. Re Sajdik, Bulletin 1589, Item 6), to which will be added ten days by reason of the prior record of two suspensions of license for dissimilar violations occurring within the past five years (Re Jeanne's Enterprises, Inc., Bulletin 1621, Item 1), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

In view of the correction of the unlawful situation by the transfer of the license, the order to show cause why the license should not be cancelled and declared null and void is discharged. Re Sajdik, supra.

Accordingly, it is, on this 17th day of September, 1965,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Little Falls to Rose Cameron, t/a Webb's Television Bar & Grill, for premises 44 Newark-Pompton Turnpike, Little Falls, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, September 20, 1965, and terminating at 2:00 a.m. Friday, October 15, 1965.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

Martin Klein
180 Wilkinson Avenue
Jersey City, New Jersey,

Holder of Plenary Retail Consumption
License C-2, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Jersey City.

CONCLUSIONS
and
ORDER

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 27, 1965, he sold drinks of beer and mixed drinks of alcoholic beverages to two minors, ages 16 and 17, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Meehan, Bulletin 1609, Item 7.

Accordingly, it is, on this 28th day of September, 1965,

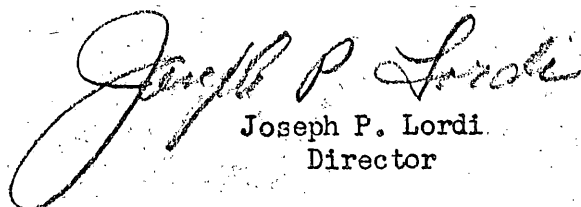
ORDERED that Plenary Retail Consumption License C-2, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Martin Klein, for premises 180 Wilkinson Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, October 5, 1965, and terminating at 2 a.m. Monday, October 25, 1965.

JOSEPH P. LORDI,
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Dealers' Liquor Company
271 Atlantic Avenue
Camden, N. J.

Application filed November 1, 1965 for place-to-place transfer of Additional Warehouse License AW-54, issued pursuant to Plenary Wholesale License W-67, from 200-202 North Texas Avenue, Atlantic City, New Jersey, to 201 West Decatur Avenue, Pleasantville, New Jersey


Joseph P. Lordi
Director

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