

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

August 27, 1959

BULLETIN 1294

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (South Amboy) - FAILURE TO FILE NOTICE OF CHANGE IN FACTS SET FORTH IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE PRIVILEGE OF LICENSE - FALSE ANSWERS IN APPLICATION - POSSESSING INDECENT MATTER - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.
2. DISCIPLINARY PROCEEDINGS (Deptford Township) - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS.
3. DISCIPLINARY PROCEEDINGS (Springfield, Union County) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Buena Vista Township) - SALE TO MINOR - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Millburn) - PURCHASE BY RETAILER FROM RETAILER - FAILURE TO FILE PROPER REPORTS WITH DIVISION OF TAXATION - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Edison Township) - SALE DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Pennsauken Township) - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS.
8. AUTOMATIC SUSPENSION (Paterson) - SALE TO MINOR - SUSPENSION STAYED PENDING ACTION BY LOCAL ISSUING AUTHORITY IN DISCIPLINARY PROCEEDINGS.
9. DISQUALIFICATION REMOVAL PROCEEDINGS - FIVE-YEAR PERIOD NOT ELAPSED SINCE RELEASE FROM PENAL INSTITUTION - PETITION DISMISSED.
10. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 1294

August 27, 1959

1. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE NOTICE OF CHANGE IN FACTS SET FORTH IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE PRIVILEGE OF LICENSE - FALSE ANSWERS IN APPLICATION - POSSESSING INDECENT MATTER - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MATTEO VALENTI  
t/a MARTY'S A. A. BAR & GRILL  
500 Washington Avenue  
South Amboy, N. J.

)  
)  
) CONCLUSIONS  
) AND ORDER

Holder of Plenary Retail Consumption License C-34 (for the 1958-59 and 1959-60 licensing years), issued by the Common Council of the City of South Amboy.

-----  
Matteo Valenti, Defendant-licensee, Pro se.  
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. You failed to file with the South Amboy Common Council, within 10 days after the occurrence thereof, written notice of changes in facts set forth in answer to Questions Nos. 30 and 31 of your license application dated June 2, 1958, upon which you obtained your current plenary retail consumption license, such changes being that in or about January 1959 you entered into an agreement with Ralph Gottstine (also known as Bill Gottstine) and Marion Hubchenko (also known as Marion Gottstine) whereby they acquired an interest in your licensed business as the real and beneficial owners thereof and by which you agreed to permit them to retain all the profits from the business after payment of a fixed weekly fee to you; your failure to file such notice being in violation of R.S. 33:1-34.
- "2. From about January 1959 to about May of 1959 you knowingly aided and abetted Ralph Gottstine (also known as Bill Gottstine) and Marion Hubchenko (also known as Marion Gottstine) to exercise, contrary to R.S. 33:1-26, the rights and privileges of your plenary retail consumption license; thereby yourself violating R.S. 33:1-52.
- "3. In your aforesaid license application 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.... suspended...?' and (although in answer to Question No. 34 you mentioned a 10 day suspension of your license for sales to minors, which was imposed by the South Amboy Common Council effective March 18, 1946) you wholly evaded and suppressed the material fact that your license had also been suspended by the Common Council for 30 days, effective October 1, 1957, for a similar violation; such evasion and suppression being in violation of R.S. 33:1-25.

- "4. In your aforesaid application you falsely stated 'No' in answer to Question No. 39, which asks: 'Are you or is any person mentioned in this application now interested, directly or indirectly, in any other alcoholic beverage license or application therefor in New Jersey?', whereas in truth and fact you were so interested in that you were an officer, director and stockholder of Woodland Grove, Inc., holder of a plenary retail consumption license for premises on Jernee Mill Road, Sayreville, N.J.; said false statement being in violation of R.S. 33:1-25.
- "5. On April 23, 1959, you allowed, permitted and suffered in and upon your licensed premises matter, viz., a cartoon or drawing, containing obscene, indecent, filthy, lewd, lascivious or disgusting printing, writing, picture or other such representation; in violation of Rule 17 of State Regulation No. 20."

The facts underlying the above violations are sufficiently set forth in the charges and obviate the necessity of further dissertation. As indicated in Charge 2, defendant has a prior adjudicated record of two violations dissimilar to those charged herein, one of which, having occurred within a five-year period, necessitates the imposition of an additional five days' penalty to the penalty I am imposing for the violations hereinabove charged. Since defendant, in his affidavit submitted in this case, has stated that the illegal situations set forth in Charges 1 and 2 have been corrected, I shall accept his representation and suspend his license for the minimum period of twenty days on those charges. Re A.W.K. Corporation, Bulletin 1264, Item 7. A further suspension of ten days will be imposed on Charges 3 and 4 since they relate to violations prohibited by the same section of the statute (Re Mazza, Bulletin 1190, Item 6), and a ten-day suspension will be imposed for the violation set forth in Charge 5 (Re Minchin, Bulletin 1165, Item 1), making a total suspension of forty-five days, including the five days imposed for the prior record hereinabove referred to. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 23rd day of July 1959,

ORDERED that Plenary Retail Consumption License C-34 for the 1959-60 licensing year, issued by the Common Council of the City of South Amboy to Matteo Valenti, t/a Marty's A. A. Bar & Grill, for premises 500 Washington Avenue, South Amboy, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m., Monday, August 3, 1959 and terminating at 2:00 a.m., Saturday, September 12, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against )

CHARLES A. BECKAS & MARGARET BEKAEZ )  
s/w Cor. Hurffville Road & Good Intent Road )  
Deptford Township )  
PO Blackwood, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-10 (for the 1958-59 and 1959-60 licensing years), issued by the Township Committee of Deptford Township. )

-----  
Alfred T. Sanderson, Esq., Attorney for Defendant-licensees.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants entered a plea of not guilty to a charge alleging that on February 13 and 25, 1959 they sold, served and delivered alcoholic beverages to a 16-year-old minor, in violation of Rule 1 of State Regulation No. 20.

"At the hearing herein the Division called as its witnesses John ---, John H --- (an older minor), and an ABC agent.

"John --- testified in substance that he was born on August 1, 1942; that at about 8:00 p.m. on February 13, 1959 and February 25, 1959, John H --- drove him to defendants' licensed premises and parked his car at the side entrance thereof; that on each occasion he (John) entered the tavern and without being required to produce any written representation of his age, purchased from the bartender on duty several quart bottles of beer which he carried from the premises and put in the car. On cross-examination he testified that at about 12:30 a.m. or 1:00 a.m., February 26, he and John H --- were stopped by a police officer who, finding a quart bottle of beer in the car, seized it and inquired as to where it was purchased; that when he and John H --- told the officer it was purchased at defendants' tavern, both were taken to the police station and after signing typed statements, were escorted by two police officers to defendants' premises where he was unable to identify the bartender who made the sale. He further testified that on February 27, 1959, he directed an ABC agent to defendants' tavern and that he could not identify the bartender who served him on either occasion.

"The testimony of John H --- corroborates that of John --- in most respects other than what occurred in and upon the licensed premises. However, he testified that on each of the dates alleged he saw John --- go empty-handed through the side entrance door into the licensed premises and shortly thereafter emerge therefrom carrying a paper bag which contained bottled beer. Both minors testified that the amount of beer purchased on February 13 and 25 was four quart bottles and three quart bottles, respectively.

"The ABC agent testified that on February 26 he ascertained the number, names and tours of duty of the bartenders employed by defendants; that on February 27 the two minors directed him to defendants' tavern and identified it as the place where the beer was obtained; that he had John --- come through the back door into the kitchen of the tavern where all the bartenders were present and that John could not identify any of them as the person who had made the sales.

"Witnesses appearing for defendants were Clyde Anthony, Michael Caromano and Lawrence Nelson (bartenders); Edward Delaney and Roland Cross (patrons); John Kilcourse (sergeant of police) and Margaret Bekaez (one of the licensees).

"Anthony testified that he is a part-time bartender and worked in defendants' tavern from 6:45 p.m., February 25 to 2:00 a.m., February 26, 1959; that during his tour of duty he did not serve the minor John and never saw him prior to the time he was brought into the tavern by the police sergeant; that at that time John failed to identify him as the person who made the sale and that on that evening he sold six quarts of beer to a stranger. He further testified that on February 27 when John came to the tavern with the ABC agent, he failed to identify him or the other bartenders who were there present as the persons who served him alcoholic beverages.

"Caromano and Nelson testified that they were on duty during the evening hours of February 13 and that they did not serve John or see him in the licensed premises.

"Delaney and Cross testified that they were playing darts in the licensed premises during the evening hours of February 25, 1959; that they were familiar with the patronage of defendants' establishment and that the only stranger who came in to the tavern during their stay was a male about 26 years of age who purchased six quart bottles of beer.

"Kilcourse's testimony substantiates that of the two minors insofar as what occurred when and after he stopped them. However, he testified that in their statements both minors state that they were in defendants' tavern 'at or about 9:00 p.m.'. The statements were received in evidence.

"John --- was recalled and testified that after hearing the typed statements read to them, both he and John H --- told the officer that 'it was not about 9, it was about 8 o'clock', and that the officer said, 'It won't make too much difference, we'll take it at or about this time.'

"Margaret Bekaez testified that she and her son, Charles A. Beckas, are co-owners of the licensed premises; that Anthony known as 'Tex', was the bartender on the evening of February 25, 1959 and that the price charged for the brand of beer in question is '45¢ with a deposit'. She admitted that her license was suspended by the Director for 35 days, effective October 3, 1957 for selling alcoholic beverages to minors.

"Defendants' attorney submitted a memorandum in which he alleges in substance that the charge herein should be dismissed because of the factual inaccuracies in John's testimony, his failure to identify the persons who served him and the lack of proof respecting the quality of the beverage in question.

"I have carefully evaluated the evidence adduced herein and I find that the minors' version of what occurred on the dates

alleged is in all respects straightforward and convincing. John's failure to identify the specific person who made the sale is not fatal in disciplinary proceedings (Re Dante, Bulletin 771, Item 9) and since it appears that he ordered an alcoholic beverage by name and was served a beverage pursuant to that order, a permissible inference may be drawn that he was actually served the beverage ordered. Furthermore, it warrants judicial notice that such beverage had an alcoholic content of more than 1/2 of one per cent by volume and hence, constitutes an 'alcoholic beverage' within the statutory definition. R.S. 33:1-1(b). See State v. Marks, 65 N.J.L. 85, 87. I conclude, therefore, that the Division has established the truth of the charge by a fair preponderance of the believable evidence and I recommend that an order be entered finding defendants guilty. In view of defendants' prior similar violation which occurred within five years of the violation charged herein (Re Beckas & Bekaez, Bulletin 1194, Item 5), and considering the tender age of the minor involved, i.e., 16 years, I further recommend that defendants' license be suspended for a period of thirty-five days. Re Meury's Barn, Inc., Bulletin 1220, Item 5."

No written exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16. Having carefully considered the record herein, including the transcript of the proceedings, the memorandum filed with the Hearer by defendants' attorney and the Hearer's Report, I concur in the findings and conclusion of the Hearer and adopt his recommendations.

Accordingly, it is, on this 20th day of July 1959,

ORDERED that Plenary Retail Consumption License C-10 for the 1959-60 licensing year, issued by the Township Committee of Deptford Township to Charles A. Beckas & Margaret Bekaez, for premises s/w Cor. Hurffville Road & Good Intent Road, Deptford Township, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 2:00 a.m., Monday, July 27, 1959 and terminating at 2:00 a.m., Monday, August 31, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

TERENCE THOMAS DEMPSEY )  
t/a TERRY DEMPSEY'S COCKTAIL BAR )  
& RESTAURANT )  
624 Morris Avenue )  
Springfield (Union County), N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4 (for the 1958-59 and 1959-60 )  
licensing years), issued by the Township Committee of the Township of Springfield.)

-----  
Del Deo & Conlon, Esqs., by James C. Conlon, Esq., Attorneys for Defendant-licensee.

William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On March 24, 1959, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

One Quart bottle labeled 'Four Roses Blended Whiskey 86 Proof',

Two quart bottles labeled 'Calvert Reserve American Blended Whiskey 86 Proof',

One quart bottle labeled 'Hunter "First Over the Bars" Blended Whiskey 86 Proof',

Three quart bottles labeled 'Seagram's Seven Crown American Blended Whiskey 86 Proof', and

Four quart bottles labeled 'Schenley Reserve Blended Whiskey 86 Proof';

in violation of Rule 27 of State Regulation No. 20."

On March 24, 1959, an ABC agent tested one hundred opened bottles of assorted brands of alcoholic beverages on defendant's premises and seized sixteen which appeared to be off in proof and color. Subsequent analysis by the Division's chemist disclosed that the contents of the eleven bottles mentioned in the charge substantially varied in solids and the contents of one of said bottles varied also in acids when compared with the contents of genuine bottles of the same brands. At the time of the seizure defendant stated to the ABC agent that he could shed no light on the discrepancies and that the violation might have been caused by one of his bartenders, although none of his employees would admit tampering with the contents of the bottles,

Defendant has no prior record. In attempted mitigation

defendant's attorney has submitted a memorandum in which he states that defendant conducts primarily a restaurant employing about twenty-two people; that he has been a licensee since 1938 except for the time he served in the U.S. Navy during World War II; that he closely supervises the operation of the business and that he has been unable to determine how the violation occurred. Nevertheless, a licensee is responsible when alcoholic beverages not truly labeled are found on his licensed premises. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup.Ct. 1947). The usual suspension in a case involving eleven bottles would be forty days. Cf. Re Morris, Bulletin 1276, Item 4 (where the case involved eight bottles and a suspension of thirty days was imposed). Considering the clear record of defendant during the past twenty years, I shall suspend his license for thirty-five days. Five days will be remitted for the plea, leaving a net suspension of thirty days.

Accordingly, it is, on this 17th day of July 1959,

ORDERED that Plenary Retail Consumption License C-4, for the 1959-60 licensing year, issued by the Township Committee of the Township of Springfield to Terence Thomas Dempsey, t/a Terry Dempsey's Cocktail Bar & Restaurant, for premises 624 Morris Avenue, Springfield, be and the same is hereby suspended for thirty (30) days, commencing at 2 a.m. Monday, July 27, 1959, and terminating at 2 a.m. Wednesday, August 26, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JAMES AND ELSIE M. CALVELLO, Partners  
t/a HARDING BAR  
Harding Highway  
Buena Vista Township  
PO Buena, N. J.

CONCLUSIONS  
AND ORDER

-----  
Holders of Plenary Retail Consumption License C-3, for the 1958-59 and 1959-60 licensing years, issued by the Township Committee of the Township of Buena Vista.

Paul M. Salsburg, Esq., Attorney for Defendant-licensees.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

- "1. On Sunday, May 24, 1959, 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., Howard ---, age 17; in violation of Rule 1 of State Regulation No. 20.

"2. On Sunday, May 24, 1959, between 10:00 P.M. and 10:30 P.M. you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., two one pint bottles of wine, 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."

Acting upon information received from the New Jersey State Police, ABC agents obtained sworn, written statements from Howard --- (age 17) and Edward --- (age 20). Howard states that between 10 and 10:30 p.m. on Sunday, May 24, 1959, he, Edward and three other fellows drove to defendants' licensed premises to purchase some wine; that he alone entered the defendants' licensed premises and, without being required to make any written representation of his age, purchased two one-pint bottles of wine from James Calvello (one of the licensees herein); that he carried the alcoholic beverages to the car; that he and his companion later consumed said wine and that he paid for the alcoholic beverages with money contributed by some of the other members in the group. The foregoing is substantially corroborated by Edward's statement. Thereafter Howard and Edward identified the licensed premises as the place where the alcoholic beverages were obtained and Howard identified James Calvello aforesaid as the person who sold the same to him.

Defendants have no prior adjudicated record. Their license will be suspended for twenty days on Charge 1, Re Duffy, Bulletin 1275, Item 4 (the minimum penalty for sale to a 17-year-old minor) and for fifteen days on Charge 2, Re Celtic Bar, Inc., Bulletin 1281, Item 9, or a total of thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 21st day of July 1959,

ORDERED that Plenary Retail Consumption License C-3, for the 1959-60 licensing year, issued by the Township Committee of the Township of Buena Vista to James and Elsie M. Calvello, partners, t/a Harding Bar, for premises on Harding Highway, Buena Vista Township, be and the same is hereby suspended for thirty (30) days, commencing at 3 a.m. Tuesday, July 28, 1959, and terminating at 3 a.m. Thursday, August 27, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - PURCHASE BY RETAILER FROM RETAILER - FAILURE TO FILE PROPER REPORTS WITH DIVISION OF TAXATION - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ARTHUR J. PEDOTA t/a ART'S LIQUORS 71 Main Street Millburn, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-6, issued by the Township Committee of the Township of Millburn. )

-----  
Arthur J. Pedota, Defendant-licensee, Pro se.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On divers days from on or about November 4, 1958 to on or about May 4, 1959, you, a New Jersey plenary retail distribution licensee, without authority of special permit first obtained from the Division of Alcoholic Beverage Control, purchased or obtained numerous cases and bottles of alcoholic beverages, viz., Gallo brand wines of various kinds, from Mansueto, Inc., holder of a plenary retail consumption license for premises 377 - 15th Avenue, Newark, New Jersey; in violation of Rule 15 of State Regulation No. 20.
"2. You failed to file with the State of New Jersey, Department of the Treasury, Division of Taxation, Beverage Tax Bureau requisite reports disclosing the alcoholic beverages distributed, transported, imported, purchased and sold by you during the months of November and December 1958 and January, February, March, April and May 1959, in that you filed for those months reports which did not accurately and truthfully disclose your purchases of alcoholic beverages during those months; in violation of R.S. 54:45-1 and R.S. 54:47-3."

On May 4, 1959, agents of this Division made a check of the stock of alcoholic beverages on the defendant's licensed premises and found fifteen cases of Gallo brand wines for which the licensee had no invoices.

The investigation of this case further disclosed that the licensee, without first obtaining a special permit from this Division, purchased said alcoholic beverages from another retail licensee on divers days from on or about November 4, 1958, to on or about May 4, 1959. In addition, the tax reports of the licensee failed to disclose aforesaid purchases.

Defendant has no prior adjudicated record. I shall suspend defendant's license for thirty days. Cf. Re Suppa, Bulletin 557, Item 7, and Re DeFilippes, Bulletin 1203, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 24th day of July, 1959,

ORDERED that Plenary Retail Distribution License D-6, issued by the Township Committee of the Township of Millburn to Arthur J. Pedota, t/a Art's Liquors, for premises 71 Main Street, Millburn, be and the same is hereby suspended for twenty-five (25) days, commencing at 9 a.m. Tuesday, July 28, 1959, and terminating at 9 a.m. Saturday, August 22, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

OTTO F. SCHMOLDT  
t/a YE COTTAGE INN  
U.S. #1 & Eastside Avenue  
Edison Township  
PO RD 2, Nixon, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-17 (for the 1958-59 and 1959-60 licensing years), issued by the Municipal Council of the Township of Edison.

-----  
Otto F. Schmoldt, Defendant-licensee, Pro se.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to the following charges:

- "1. On Saturday, May 23, 1959, between 2:00 a.m. and 2:30 a.m., you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and allowed the consumption of alcoholic beverages on your licensed premises; in violation of Section 17 of an Ordinance adopted by the Board of Commissioners of the Township of Raritan (presently known as Edison Township) on September 10, 1935, as amended by Ordinance adopted by said Board of Commissioners on September 14, 1943.
- "2. On Saturday, May 23, 1959, between 2:30 a.m. and 2:45 a.m., while Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises, you, by yourself and by your agent, servant and employee, Theodore H. Korth, failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35."

The ordinance referred to in Charge 1 herein prohibits the sale of alcoholic beverages between 2:00 a.m. and 7:00 a.m. on weekdays.

The Division received information that the licensee was violating aforesaid ordinance. On Saturday, May 23, 1959, starting at about 1:45 a.m., two ABC agents kept the licensed premises under surveillance. At about 2:27 a.m. the agents looked into the premises through an open window and observed the bartender serving two bottles of beer to two patrons at the bar. At about 2:30 a.m. one of the agents, followed shortly by the second agent, entered the premises. The agents identified themselves to the bartender and the aforesaid two patrons who were drinking beer at the bar. When the agents attempted to learn the identities of the patrons, the bartender induced them not to answer any questions, and the patrons thereupon refused to reply to the agents' inquiries. In addition, the bartender repeatedly refused to identify himself and also attempted to dissuade the agents from carrying out their duties by mentioning the names of certain individuals whom he knew, including those of two agents of this Division. The police were summoned to assist the agents. In the interim, the licensee appeared and when the agents asked him for his name he referred them to the license application. With the aid of the police, the agents were able to complete their investigation.

By way of mitigation the licensee has submitted a statement which I have carefully read, together with the reports of the agents and the file in the case. I, however, do not find any extenuating circumstances in the case which would impel me to impose less than the established penalties in cases of this kind.

Defendant has a prior adjudicated record. Effective May 2, 1946 defendant's license was suspended for twenty days by this Division for possessing alcoholic beverages not truly labeled. Re Schmoldt, Bulletin 705, Items 10 and 14. Since this prior dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. I shall suspend defendant's license on both charges, for twenty-five days. Re Gambatese Cocktail Lounge & Restaurant, Inc., Bulletin 1282, Item 5. 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 July 1959,

ORDERED that Plenary Retail Consumption License C-17, for the 1959-60 licensing year, issued by the Municipal Council of the Township of Edison to Otto F. Schmoldt, t/a Ye Cottage Inn, for premises on U.S. #1 & Eastside Avenue, Edison Township, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Saturday, July 25, 1959 and terminating at 2 a.m. Friday, August 14, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

AGNES STIRPE  
t/a STIRPE'S CAFE  
4901-03 Chapel Avenue  
Pennsauken Township  
PO Merchantville, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-31 (for the 1958-59 and 1959-60 licensing years), issued by the Township Committee of the Township of Pennsauken.

-----  
Anthony F. Marino, 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 pleaded not guilty to the following charge:

'On March 1, 1959, 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., Carroll ---, age 19; in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein, Carroll testified that on March 1, 1959 he was 19 years of age; that on said date, at about 6:00 p.m., he and a friend, Edward, drove to the defendant's licensed premises where he parked his car; that he alone entered defendant's licensed premises which was crowded and that he, without being required to make any written representation of his age, purchased a quart container of beer from Joseph Carman, a bartender then on duty; that he returned to his car with the said carton of beer; that he and Edward consumed the beer on a side road about six miles from the licensed premises and that he knew of no other place in the neighborhood of the defendant's licensed premises where alcoholic beverages were sold. Carroll further testified that at about 7:00 p.m., he and Edward were taken into custody by a local police officer; that after spending several hours at the police station, he directed an ABC agent to the licensed premises and identified aforesaid Joseph Carman as the individual who sold him the beer.

"Edward testified that he is 14 years of age (an eighth grade pupil); that on March 1, 1959, at about 6:00 p.m., he and Carroll drove to defendant's licensed premises to buy a quart of beer; that Carroll, emptyhanded, left the car, went into the licensed premises and five minutes later returned to the automobile with the alcoholic beverages and handed the same to him; that he retained possession of the alcoholic beverages until Carroll and he had consumed the same while parked off a highway six miles from the licensed premises and that, shortly thereafter, they were taken into custody by a local police officer.

"Edward further testified that when questioned at the police station, he had stated the beer was purchased at the defendant's licensed premises and that he had observed the name Stirpe's on a sign which hung above the licensed premises.

"An ABC agent testified that at about 9:40 p.m. on March 1 aforesaid, he arrived at the police station; that both boys stated that the beer had been purchased at Stirpe's; that at about 9:45 p.m. Carroll, Edward, two local police officers and he drove to the defendant's licensed premises; that Carroll and Edward both identified it as the place where Carroll had purchased the alcoholic beverages; that Carroll and he entered the premises and that Carroll identified Joseph Carman as the bartender who sold him the beer.

"The agent further testified that he informed Joseph Carman of the alleged violation; that Carman replied he did not remember previously seeing Carroll in the premises; that because of the number of patrons in the licensed premises at the time in question, he was unable to remember who had purchased any cartons of beer.

"At the close of the Division's case, counsel for defendant moved to dismiss the charge on the ground that there was no evidence that Carroll had purchased beer at the licensed premises or had beer in his possession. I see no merit to this contention. Even though no sample of the beverage purchased by Carroll was available for a chemical analysis, his testimony that he asked and paid for a quart of beer pursuant to which the bartender handed him a quart carton of a beverage creates the permissible inference that the beverage was beer and that it was an alcoholic beverage within the statutory definition at R.S. 33:1-1(b). See Holmes v. Cavicchia, 29 N.J. Super. 434 (App. Div. 1954) and cases cited therein. I recommend that the motion be denied.

"Joseph Carman, testifying on behalf of the defendant, denied making the alleged sale of beer to Carroll and denied seeing Carroll in the licensed premises prior to the time he entered the same with the agent. Carman further testified that for the past three years he has been employed as a bartender in the licensed premises; that because its patronage is 95 per cent colored he would have immediately observed Carroll (a white individual); that at the time of the alleged violation he was the only bartender on duty; that on Sundays they have an influx of patrons from Philadelphia and Camden and that he was kept busy.

"Walter S. Jones, a witness for the defendant, testified that for the past seven years he has been employed on the licensed premises as a special officer; that his duties are to quell disturbances and to alert the bartender of patrons who, in his opinion, did not appear to be of age; that at the time of the alleged violation, there were no white patrons in the premises and that he was able to make this observation because the premises were not crowded.

"On cross-examination, Jones testified that between 4:15 and 8:10 p.m., he was sitting at the far end of the bar about ten or twelve feet from where Carroll was allegedly served; that during said period he had a few drinks and engaged in conversations with patrons sitting at the bar on either side of him and that he had observed nothing which required his services.

"Norman S. Collins, testifying for the defendant, stated that for the past thirteen years he has daily visited the licensed premises; that on March 1 aforesaid he was in the licensed

premises between 4 and 10:45 p.m., during which time he had listened to the playing of records, watched television, consumed beer and conversed with patrons who sat alongside of him at the bar and that on aforesaid visit he saw no white patrons in the premises. Collins further testified that in anticipation of a visit from his wife, he had noticed all patrons as they entered the licensed premises and that he did not see Carroll in the premises until about 10:00 o'clock that night when he (Carroll) arrived with the agent.

"Agnes Stirpe, on her own behalf, testified that for the past 25 years she has held a license at the aforesaid premises; that she has never been charged with any violation of the liquor laws and that she had given instructions to her bartenders not to serve any patron who did not appear to be of age.

"I have carefully considered all the testimony adduced herein and find that, notwithstanding the exhaustive cross-examination of the Division's witnesses, their testimony remained unshaken and that they gave an accurate and truthful account of what transpired in the case. Under the circumstances, I conclude that the Division has sustained the burden of proof of defendant's guilt by a fair preponderance of the believable evidence. Since the licensee cannot escape the consequences of the acts of her agents (Rule 33 of State Regulation No. 20), it is recommended that the defendant be found guilty as charged. Cf. Re Trosky, Bulletin 1269, Item 3.

"Defendant has no prior adjudicated record. It is further recommended that an order be entered providing the defendant's license be suspended for a period of fifteen (15) days, which is the minimum penalty imposed for sale of alcoholic beverages to a 19-year-old minor. Re McHale's Corner (A Corp.), Bulletin 1274, Item 6."

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 (15) days.

Accordingly, it is, on this 20th day of July, 1959,

ORDERED that Plenary Retail Consumption License C-31 for the 1959-60 licensing year, issued by the Township Committee of the Township of Pennsauken to Agnes Stirpe, t/a Stirpe's Cafe, for premises 4901-03 Chapel Avenue, Pennsauken Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Monday, July 27, 1959, and terminating at 2:00 a.m., Tuesday, August 11, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

8. AUTOMATIC SUSPENSION - SALE TO MINOR - SUSPENSION STAYED PENDING ACTION BY LOCAL ISSUING AUTHORITY IN DISCIPLINARY PROCEEDINGS.

Auto. Susp. #171 )  
In the Matter of a Petition to )  
Lift the Automatic Suspension of )  
License C-361, issued by the )  
Board of Alcoholic Beverage Control) )  
for the City of Paterson to )

ON PETITION  
ORDER

CARL SALVIO AND SOPHIE BEDNARZ )  
t/a CARL & SOPHIE'S BAR )  
337 - 21st Avenue )  
Paterson, N. J. )

-----  
William J. Marchese, Esq., Attorney for Petitioners.

BY THE DIRECTOR:

The petition herein discloses that on July 10, 1959, Sophie Bednarz (one of the petitioners herein) was fined the sum of \$50 after being adjudged guilty in a Municipal Court of the City of Paterson of a charge alleging that she sold alcoholic beverages to a minor, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of the license held by Carl Salvio and Sophie Bednarz. R.S. 33:1-31.1. Because the Division was informed that the licensees intended to apply for a stay of said suspension, the license has not yet been picked up.

Disciplinary proceedings have not yet been instituted against the licensees because of the said sale of alcoholic beverages to a minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioners after the disciplinary proceedings have been decided. In fairness to petitioners I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Faessler, Bulletin 920, Item 15.

Accordingly, it is, on this 16th day of July, 1959,

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

WILLIAM HOWE DAVIS  
DIRECTOR

9. DISQUALIFICATION REMOVAL PROCEEDINGS - FIVE-YEAR PERIOD NOT ELAPSED SINCE RELEASE FROM PENAL INSTITUTION - PETITION DISMISSED.

In the Matter of an Application )  
to Remove Disqualification because )  
of a Conviction, Pursuant to )  
R.S. 33:1-31.2. )

CONCLUSIONS

Case No. 1487  
-----

BY THE DIRECTOR:

Applicant's criminal record discloses that on October 30, 1953 after pleading guilty to two charges of grand larceny, three charges of breaking and entering and three charges of petit larceny, he was sent to Bordentown Reformatory for an indeterminate term. On December 22, 1953 he was transferred to Annandale Farms

from which institution he was paroled on September 24, 1954. On July 26, 1956 he was returned as a parole violator and again paroled on February 22, 1957. On October 22, 1957 he was returned for the second time as a parole violator and re-paroled on April 12, 1958. The aforesaid crimes of grand larceny and breaking and entering involve the element of moral turpitude. Re Case No. 1232, Bulletin 1077, Item 10. In addition to the foregoing, the applicant was convicted as a disorderly person on July 29, 1955, October 12, 1955 and September 8, 1957, for which he served sentences ranging from ten to sixty days in the county jail.

One of the statutory requirements necessary for the lifting of a disqualification is that applicant must have conducted himself in a law-abiding manner for a period of five years last past. R.S. 33:1-31.2; Re Case No. 1226, Bulletin 1073, Item 9.

I am satisfied that the applicant has not so conducted himself and, therefore, will deny his application.

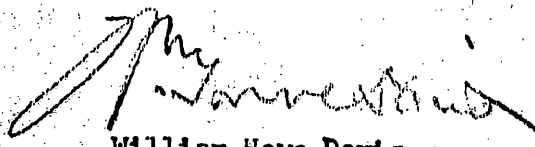
Dated: July 21, 1959

William Howe Davis  
Director

10. STATE LICENSES - NEW APPLICATION FILED.

Frank J. Heck Inc.  
230 Monroe Street  
Passaic, New Jersey

Application filed August 20, 1959 for person-to-person transfer of State Beverage Distributor's License SBD-65 from Frank J. Heck.



William Howe Davis  
Director