

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

BULLETIN 1545

January 21, 1964

TABLE OF CONTENTSITEM

1. COURT DECISIONS - 1643 ATLANTIC AVENUE CORPORATION v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.
2. DISCIPLINARY PROCEEDINGS (Atlantic City) - ORDER REIMPOSING BALANCE OF SUSPENSION FOLLOWING AFFIRMANCE ON APPEAL.
3. DISCIPLINARY PROCEEDINGS (Egg Harbor Township) - LEWDNESS AND IMMORAL ACTIVITY (ROOM RENTING) - HOSTESS ACTIVITY - NO REMISSION FOR PLEA ENTERED TO ONE CHARGE WHEN ANOTHER CONTESTED - LICENSE SUSPENDED FOR 200 DAYS.
4. DISQUALIFICATION REMOVAL PROCEEDINGS - RECEIVING STOLEN PROPERTY - INSUFFICIENT EVIDENCE OF LAW-ABIDING CONDUCT - PETITION DENIED.
5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - MOTOR VEHICLE RETURNED TO INNOCENT OWNER IN ADVANCE OF STATUTORY HEARING.
6. STATUTORY AUTOMATIC SUSPENSION (East Rutherford) - ORDER LIFTING SUSPENSION.
7. DISCIPLINARY PROCEEDINGS (Hamilton Township - Atlantic County) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1545

January 21, 1964

1. COURT DECISIONS - 1643 ATLANTIC AVENUE CORPORATION v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-869-62

1643 ATLANTIC AVENUE CORPORATION, )  
t/a PADDOCK INTERNATIONAL, )  
 )  
Defendant-Appellant, )  
 )  
vs. )  
 )  
DIVISION OF ALCOHOLIC BEVERAGE )  
CONTROL, State of New Jersey, )  
 )  
Respondent. )

---

Argued October 21, 1963 - Decided November 14, 1963

Before Judges Conford, Freund and Sullivan.

Mr. Alexander Blatt argued the cause for appellant (Messrs. Blatt and Blatt, attorneys).

Mr. Avrom J. Gold, Deputy Attorney General, argued the cause for respondent (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

The opinion of the court was delivered by

SULLIVAN, J.A.D.

This is an appeal from a decision of the Division of Alcoholic Beverage Control suspending appellant's liquor license for a period of 150 days. (Re 1643 Atlantic Avenue Corporation, Bulletin 1515, Item 2.) The appeal is directed solely to the quantum of punishment imposed. About forty days of the suspension was served before appellant secured a stay from this court pending appeal.

Appellant is the holder of a retail consumption liquor license issued by the Board of Commissioners of Atlantic City. It purchased the licensed business assets and liabilities from Paddock International, a corporation, in June 1962. Transfer of the license was subsequently approved by the Municipal Board.

Charges were filed against appellant on November 28, 1962, as follows:

"1. On Saturday night, November 10 and early Sunday morning, November 11, 1962, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in

and upon your licensed premises, viz., in that you allowed, permitted and suffered female persons to perform for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.

2. On Saturday night, November 10 and early Sunday morning, November 11, 1962, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.

3. On Saturday night, November 10 and early Sunday morning, November 11, 1962, and prior thereto, you allowed, permitted and suffered the employment in and upon your licensed premises of persons not bona fide residents of the State of New Jersey, contrary to and in violation of Rule 4 of State Regulation No. 13."

Appellant pleaded not guilty to said charges and a hearing date was set for January 9, 1963, but was adjourned on three occasions at appellant's request. On March 20, 1963, a plea of non vult to the charges was entered, and on April 30, 1963, by order of the Acting Director (Director) of the Division appellant's license was suspended for 150 days commencing May 7, 1963.

In fixing the penalty, the Director stated that the minimum suspension for a first offense involving "strip tease entertainment and hostess activity" is fifty days (apparently a Division policy); that while this was the present licensee's first violation, its predecessor in interest Paddock International, a corporation, had its license suspended for similar entertainment and hostess violations in 1960, and 1962, the latter suspension having been for sixty-five days and having run to June 27, 1962. The Director also noted that Edward Kravis, the present licensee's manager, had been president and majority stockholder of Paddock International. Prior to Paddock International, Edward Kravis had been the licensee. His record showed two license suspensions for indecent entertainment in 1939 and 1943, and another suspension in 1943 for permitting disturbances and unnecessary noise. See also Kravis v. Hock, 135 N.J.L. 259 (Sup. Ct. 1947, rev'd, 136 N.J.L. 161 (E. & A. 1947)).

The Director noted that Kravis had secured the entertainers here involved and was present at the performance they gave, and that while being questioned about the present violations Kravis said that they would probably mean the end of his license. The Director in fixing the penalty stated that he was taking into consideration the record of the present licensee's predecessor in interest "to whom it is linked by its employment of Edward Kravis as its manager". As heretofore noted this record consisted of license suspensions in 1960 and 1962 for similar entertainment and hostess violations.

As its first point appellant contends that a 150-day suspension of a seashore resort license which would close the premises during the entire summer season, would in effect mean a revocation of the license since it would put appellant out of business. It is urged that this is unreasonable and harsh punishment for a first offender.

We find it unnecessary to consider this point since appellant secured a stay of the suspension and remained open for most of the 1963 summer season. Since our decision is to uphold the penalty, the balance of the suspension can be served long before the next summer season.

Appellant, however, is fearful that the Director may require the balance of the suspension to be served during the next summer season. The record is barren of any such suggestion and we will not attempt to anticipate the Director by rendering an advisory opinion in advance of any action by him. Suffice it to note that appellant would have the right to seek judicial review of such action if the Director so ordered.

It is also contended that the Director erred in taking into consideration violations by the prior licensee. Appellant points out that the minimum penalty for a first offense involving similar violations is fifty days. We need not consider whether it would be proper for the Director to consider violations by a prior licensee in every case. We are satisfied that under the circumstances presented in the instant case the Director did not err in considering the violations charged to Paddock International. Here, appellant purchased the licensed business at a time when the liquor license for said premises was under suspension for an indecent entertainment violation. Upon acquiring the license, appellant employed as its manager Edward Kravis who had been president and majority stockholder of the prior corporate licensee. (Kravis has a record of violations going back to 1939.) Kravis secured the entertainers involved in the present violations and was present at the performance which they gave. While being questioned about the present violations Kravis said that they would probably mean the end of his license. We find ample justification for the Director's consideration of violations by the prior licensee under the circumstances of this particular case, having in mind the stringent policy of enforcement of the Alcoholic Beverage Control law and the necessity of penalties which will effectively deter violations of that law.

Affirmed.

2. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING BALANCE OF SUSPENSION FOLLOWING AFFIRMANCE ON APPEAL.

In the Matter of Disciplinary Proceedings against )  
 )  
 1643 ATLANTIC AVENUE CORPORATION )  
 t/a PADDOCK INTERNATIONAL ) SUPPLEMENTAL  
 1643 Atlantic Avenue ) ORDER  
 Atlantic City, N. J. )  
 Holder of Plenary Retail Consumption License C-60, issued by the Board of Commissioners of the City of Atlantic City. )

-----  
 Blatt and Blatt, Esqs., by Alexander Blatt, Esq., Attorneys for Licensee.  
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

On April 30, 1963, I entered Conclusions and Order herein suspending the license for one hundred fifty days for permitting lewdness and immoral activity (indecent entertainment), hostess activity and unqualified employees. Re 1643 Atlantic Avenue Corporation, Bulletin 1515, Item 2. The penalty was imposed to commence at 7:00 a.m. Tuesday, May 7, 1963, and to terminate at 7:00 a.m. Friday, October 4, 1963.

After commencement of the suspension, on appeal filed, the Appellate Division of the Superior Court stayed the further operation of the suspension until the outcome of the appeal by its order dated June 17, 1963. The license certificate, picked up by the municipal police at the commencement of the suspension on May 7th, was returned to the licensee at noon on Tuesday, June 18, 1963. Thus, the license was under suspension for forty-two days before operation of the licensed business could lawfully be resumed.

The court affirmed my action on November 14, 1963. 1643 Atlantic Avenue Corporation v. Division of Alcoholic Beverage Control, Bulletin 1545, Item 1. Mandate on affirmance having been received on December 2, 1963, the balance of the suspension, consisting of one hundred eight days, may now be reimposed.

Accordingly, it is, on this 3d day of December, 1963,

ORDERED that the one-hundred-eight (108) day balance of the one-hundred-fifty (150) day suspension heretofore imposed, and stayed during the pendency of proceedings on appeal, be reinstated against Plenary Retail Consumption License C-60, issued by the Board of Commissioners of the City of Atlantic City to 1643 Atlantic Avenue Corporation, t/a Paddock International, for premises 1643 Atlantic Avenue, Atlantic City, commencing at noon, Tuesday, December 10, 1963, and terminating at 7:00 a.m. Friday, March 27, 1964.

EMERSON A. TSCHUPP  
 ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (ROOM RENTING) - HOSTESS ACTIVITY - NO REMISSION FOR PLEA ENTERED TO ONE CHARGE WHEN ANOTHER CONTESTED - LICENSE SUSPENDED FOR 200 DAYS.

In the Matter of Disciplinary Proceedings against

EDNA W. FULLER COMPANY, A CORPORATION  
1117 W. Washington Avenue  
Egg Harbor Township  
PO RFD #1, Pleasantville, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-18, issued by the Township Committee of Egg Harbor Township.

Sidney M. Goodelman, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleads not guilty to the first charge and non vult to the second charge, as follows:

"1. On July 12, 1963, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for the renting of rooms, the offering to rent, and the renting of rooms, for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.

"2. On July 12, 1963, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20."

The plea of non vult to charge 2 obviated the necessity of hearing any evidence in support of the second charge.

The Division's case against the corporate licensee with respect to the first charge was developed through the testimony of two ABC agents, and may be summarized as follows: In the course of an investigation initiated upon a specific assignment to investigate allegations of rental of rooms for immoral purposes, an ABC inspector and an investigator visited the licensed premises on Friday, July 12, 1963, at about 12:01 a.m. Upon seating themselves at the bar, they observed that there were approximately forty males and females in the basement portion of these premises.

These premises consist of a one-story building with a basement bar and an upstairs bar. Two female barmaids, later identified as Mildred DuBois and Bessie Faulkner (hereinafter Bessie), were on duty. The agents engaged in a conversation with Bessie and Inspector J purchased alcoholic beverages for

both barmaids, at their suggestion. The inspector then discussed with Bessie the possibility of renting a room in the Fuller Motel, which is adjacent to the licensed premises, for the purpose of immoral activity. He explained to her that he and Agent C were married and were waiting for some girls and "we wanted to rent a room, wanted to make sure it was all right." The agent told Bessie that these girls were not their wives and, therefore, they would have to be careful. He told her that he would let her know when the girls arrived.

Shortly thereafter, the inspector told Bessie that his girl did show up but that Agent C's girl was unable to meet him that night; that, therefore, he was interested in only one room for himself and his girl friend. He wanted to be certain that it was absolutely safe, and Bessie assured him in the following language: "Well, the police don't raid us. People take the girl friends to bed all the time, so you don't have anything to worry about."

At about 12:55 a.m. Bessie produced a registration card to be signed, and assured the agent that he didn't have to put his correct name on the card. He filled it out and gave her, at her request, the sum of \$8.50 (paid with two five-dollar bills, the serial numbers of which had been previously recorded). He received his \$1.50 change and a key marked Fuller Motel, Pleasantville, New Jersey. The registration card and the key were introduced into evidence.

Inspector J then went to the room, found that the key admitted him thereto, and returned and rejoined Agent C. They thereupon identified themselves as ABC agents to Bessie, and accompanied her upstairs where they met Milton L. Fuller, the manager of the tavern and a member of the licensee corporation. Bessie admitted that she had rented the room for immoral purposes, adding that "she didn't know anything was wrong with it."

The agent, Bessie and Fuller went to a table at which the inspector prepared, in long-hand, a statement from Bessie in question-and-answer form. In that statement she admitted that she had accepted drinks at his expense; that she rented rooms for immoral purposes; and she then agreed to sign the statement. At this point, Fuller interrupted and directed her not to sign the statement in the absence of their attorney. Accordingly, Bessie acceded to his directive.

On cross examination, the agent repeated the fact that, when he informed Bessie about his intention of taking a girl to the motel for immoral purposes, she replied that rooms are rented day and night there. Bessie also told him she had been employed here for a couple of years.

It was agreed, by stipulation, that the direct testimony of Investigator C would be corroborative of the testimony theretofore given by Inspector J. It was further stipulated that the entire licensed premises consisted of the building in which the tavern was located, and that none of the surrounding area constituted any part of the licensed premises; that Edna W. Fuller was president and 94% shareholder, Milton L. Fuller was the holder of four shares, and Veta Turner and Dorothy M. Drinkard each held one share. It was agreed that the motel was not included as part of the licensed premises.

Bessie A. Faulkner, testifying in behalf of the corporate licensee, said that she had actually been employed about ten days or two weeks prior to the date upon which the alleged incident occurred, and that prior thereto she had been employed as a nurse's aide in a local hospital. As a barmaid she was authorized to serve drinks and to rent units in the motel only to "couples, Mr. and Mrs."

She admitted that Inspector J had purchased drinks for her and for the other barmaid. She also admitted that she had rented a room to this agent but didn't hear the agent say anything about a girl friend. She assumed that he was renting a room for himself and his wife and, accordingly, had him fill out the registration card. There was absent on this card any reference to Mr. and Mrs. or to a wife. She did not read the card after it was filled out, and doesn't know just what he put on it. She was also asked the following question:

"Q Do you know that you are supposed to fill in that part of the car license and the make?

A No, I didn't. Half the time people, they don't even know their own car license. You have to go out. I figure they were supposed to fill them in."

She also denied that she said to the agents that there was nothing wrong with that transaction of renting rooms, and also insisted that she would not have rented a room if he told her that he wanted to have intercourse with a girl friend.

On cross examination, Bessie stated that she is still employed at this tavern, and had frequented the tavern with her husband even before she obtained employment at these premises. In fact, she has sometimes assisted her girl friend in work at the motel. She also insisted that she had never rented a room to anyone prior to renting this room to the inspector, but that she had rented numerous rooms after that.

In her conversation with Inspector J, he told her that he was married but didn't say anything about a girl friend. She was then carefully examined about the unsigned statement which was prepared in her presence and in the presence of Fuller after identification was made by the agents. Some of the answers to the propounded questions were admittedly correctly set forth in his statement, but she denied that she had been asked many of the essential questions or had given the answers as documented in the unsigned statement. She also could not remember whether she was permitted to read the statement after it was prepared, and denied advancing as the reason for not signing the statement that Fuller directed her not to sign unless her lawyer was present.

Milton L. Fuller, manager of the corporate licensee, described the operation of the premises and insisted that the only reason he wouldn't permit Bessie to sign the statement was that it did not contain exactly what she had told the agents. He also asserted that Bessie told him, upon questioning, that the agents did not say anything about "girl friends". He also admitted that he did not discharge Bessie after this incident because "I didn't think that she deserved being fired on this account because I think that it was all a mistake."

On cross examination, he admitted that the rooms for the motel are rented from the tavern. He also admitted that, prior to employing Bessie, he explained to her exactly what the procedure was in renting rooms and also explained the rules relating to the tavern operation. He also admitted that the registration card contained only the name placed thereon by the agent and did not contain a legend "Mr. and Mrs." When Bessie was ready to sign the statement, Fuller told her not to sign it until he saw his lawyer, and then the following question was asked:

"Q All right. You did not at any time say to her 'Don't sign this statement because the things in that statement aren't true'?"

A She wasn't going to sign it anyway because she said many of those things she had said wasn't true."

And he insisted that the answers put on the statement by the agent were not accurate in that they did not reflect the answers given by Bessie.

Edna Washington Fuller, produced in behalf of the corporate licensee, testified that she has tried to operate this tavern in a law-abiding manner. She also stated that, since Bessie had been employed by her for just a short time, she had not had a "chance to talk to her," but assumed that her son Luther had discussed the rules and regulations with her.

Inspector J, recalled on rebuttal, reiterated that Bessie did not raise any questions with respect to any of the answers and was prepared to sign the statement until she was enjoined by Fuller. He further asserted that each question was read and each answer as given by Bessie was read to her in Fuller's presence, before proceeding to the next set of questions and answers. The only objection that Fuller made to having the statement signed was that his lawyer was not present at the time.

The general principle in these cases is that no testimony need be believed but, rather, the hearers must always credit as much or as little as they find reliable. 7 Wigmore, Evidence, sec. 2100 (3rd Ed. 1940); Greenleaf, Evidence, sec. 201. Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself; and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J. Super. 1. The accepted standard of persuasion relating to testimony governing the trier of the facts is that the determination must be founded in truth. Riker v. John Hancock Life Ins. Co., 129 N.J.L. 508, 511.

I have carefully evaluated the testimony of the witnesses and have observed their demeanor on the stand. I am fully satisfied, and find as a fact, that the testimony of the Division's witnesses is credible, and accurately portrayed the situation as it existed on the date alleged in the charges. It is irrebuttable that the ABC agents who testified were not in any conspiracy; had never visited the premises prior to this occasion nor had any contact with any of the witnesses, officers or employees of the corporate licensee; and I am satisfied that their version is a true version of what actually transpired.

I am of the conviction that Bessie has played very lightly with the truth. The mere reading of her testimony shows

such inconsistencies as to be completely unbelievable. For example, she states that, although she had been employed at these premises for ten days prior to this incident, she never had rented a room to anybody in the motel prior to the alleged renting in issue. The renting of rooms was clearly part of her assignment. Yet she volunteers the information that many persons who rent rooms do not know their license numbers and put down inaccurate information. She also informed the agents that rooms are rented frequently during the day and night, and that they had no reason to worry about any possible interference by the police.

When she was examined on this point, she stated that she thought the agents were worried about a possible raid on the tavern rather than on the motel. This is a rather naive rationalization of their conversation in view of the totality of circumstances within which this conversation took place. The agents were unaccompanied by any women; they were in the premises for some period of time in the early hours of the morning; they purchased drinks for the two barmaids, as admitted by Bessie; and they engaged in a conversation with respect to the renting of rooms.

It was then that they questioned her about the safety with which rooms could be rented. Plainly, Bessie was not telling the truth when she stated that she conceived of this conversation as referring to the tavern rather than the motel. In addition, it should be pointed out that the registration card did not contain any reference to a wife of Inspector J; and Bessie accepted \$8.50 which, it is assumed, is the established rental for the said room. It is clear to me that this was not her first transaction, and she was fully aware of what was intended thereby.

When the agents prepared the statement, they asked her questions seriatim, to which she supplied answers. It is obvious, as the agents related, that she never raised any objection to the answers given at that time. The answers seem to be in the language of that witness and, in fact, during her examination before me she admitted that many of the answers in the statement were accurate.

Fuller was equally lacking in candor and forthrightness. He admitted that the primary reason for enjoining Bessie from signing the statement was that his attorney was not present, but he now raises the objection that these answers did not truly reflect the answers actually given by Bessie, and asserts that he raised that objection at the time the statement was prepared. I do not believe that he did so. He also gave several conflicting answers with respect to his knowledge of the fact that the barmaids had accepted drinks.

Some question has been raised with respect to the fact that the motel is a separate and distinct operation, is owned by another entity and, therefore, does not fall within the circumscription of In re Schneider, 12 N.J. Super. 449. A careful reading of the first charge will make it crystal clear that the licensee is not charged with the renting of rooms or the offering to rent rooms located on its premises, for the purpose of illicit sexual intercourse. The charge says that "On July 12, 1963, you allowed...lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for the renting of rooms...for the purpose of illicit sexual intercourse..." There is nothing in the charge which suggests that these rooms are necessarily on the premises, but the evidence makes it unmistakable that the rooms in the motel were being rented by the

barmaids at the licensed premises. Thus, the person renting these rooms merely had to cross the parking lot and enter the motel. (For a similar factual situation wherein guilt was found on a similar charge, see Re Mello-D-Club, Inc., Bulletin 1536, Item 1.) As was pointed out in In re Schneider, *supra*: The object inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity--not to withhold disciplinary action until the actual consummation of the apprehended evil.

It is also no defense, as apparently suggested by Mrs. Fuller (the major stockholder of the licensee corporation), that she did not have an opportunity fully to discuss the rules and regulations with the barmaid. This became her primary and precedential obligation before employing anyone on the premises. It is a well established and fundamental principle that a licensee is responsible for the misconduct of its employees, and is surely responsible for their activities during their employment on licensed premises. Kravis v. Hock, 135 N.J.L. 269 (Sup. Ct. 1947); In re Schneider, *supra*; Rule 33 of State Regulation No. 20. Thus, the responsibility of the agent becomes the responsibility of the licensee and does not depend upon the doctrine of respondeat superior nor upon his personal knowledge or participation. In fact, it has been held that the licensee is not relieved even if the employee violates his express instructions. F. & A. Distributing Co. v. Division of Alcoholic Beverage Control, 36 N.J. 34. Cf. Mazza v. Cavicchia, 28 N.J. Super. 280; 15 N.J. 498.

A similar factual situation as herein presented, with similar arguments raised, was disposed of in Re Highlander Hotel Corporation, Bulletin 1475, Item 1 (recently affirmed, N.J. Super., Sept. 1963, not yet officially reported, reprinted in Bulletin 1533, Item 1).

After reviewing the evidence and exhibits, and considering the oral summation by attorneys for the licensee and for this Division, I conclude that the Division has established the truth of the charge alleged herein by the substantial evidence and certainly by a fair preponderance of the believable evidence, and I recommend that an order be entered finding the licensee guilty as charged.

In the course of summation, counsel for the licensee urged that, in the event of a finding of guilt, mitigation of the penalty should be considered because (1) this is licensee's first offense and (2) Bessie would have been discharged if licensee thought she had "acted deliberately, intentionally and with knowledge".

My evaluation of the facts and circumstances herein satisfies me that they do not warrant a lesser penalty than that usually imposed for these violations.

The licensee has no prior adjudicated record. It is further recommended that an order be entered suspending the license for one hundred eighty days on the first charge (Re Highlander Hotel Corporation, *supra*; Re Mello-D-Club, Inc., *supra*) and for twenty days on the second charge (Re Blue Chateau, Inc., Bulletin 1496, Item 4), without remission for the plea in view of the contest on the second charge (Re Tumulty,

Bulletin 1502, Item 3), making a total of two hundred days.

Conclusions and Order

Pursuant to Rule 6 of State Regulation No. 16, written exceptions to the Hearer's Report were filed with me by the attorney for the licensee.

Having carefully considered the record herein, including the transcript of the proceedings, the exhibits, the Hearer's Report, exceptions and written argument with reference thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 25th day of November 1963,

ORDERED that Plenary Retail Consumption License C-18, issued by the Township Committee of Egg Harbor Township to Edna W. Fuller Company, A Corporation, for premises 1117 W. Washington Avenue, Egg Harbor Township, be and the same is hereby suspended for two hundred (200) days, commencing at 7 a.m. Monday, December 2, 1963, and terminating at 7 a.m. Friday, June 19, 1964.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

- 4. DISQUALIFICATION REMOVAL PROCEEDINGS - RECEIVING STOLEN PROPERTY - INSUFFICIENT EVIDENCE OF LAW-ABIDING CONDUCT - PETITION DENIED.

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

)  
) CONCLUSIONS  
) AND ORDER

Case No. 1727

BY THE ACTING DIRECTOR:

Petitioner's criminal record discloses that between June 21, 1940 and July 9, 1948 he was convicted in a local magistrate's court on five occasions including a conviction on March 11, 1948 of the crime of receiving stolen property (jewelry) for which he was placed on probation for one year and that on April 26, 1950, following a plea of guilty in the Essex County Court to a violation of the lottery statute (2A:121-3) he was sentenced to serve twelve months in the Essex County Penitentiary.

Since the crime of receiving stolen property involves the element of moral turpitude (Re Case No. 1238, Bulletin 1075, Item 10; cf Weinstein v. Division of Alcoholic Beverage Control, 70 N.J. Super. 164 (App. Div. 1961), the petitioner was precluded from engaging in the alcoholic beverage industry in this State until his disqualification is removed. R.S. 33:1-25, 26.

In view of this, it is not necessary to determine whether or not petitioner's conviction on April 26, 1950, outlined above, involves that element. Petitioner's other convictions in the

magistrate's court are not convictions of crime.

At a hearing held herein on December 17, 1962, petitioner (46 years old) testified that he has an opportunity to purchase an interest in a tavern; that he is financially prepared to make the investment and that he is asking for the removal of his disqualification in order to be free to engage in the alcoholic beverage industry in this State.

The petitioner produced a character witness who testified that he has been a projectionist for the past twenty years; that he has known the petitioner for ten years; that about three weeks ago he and petitioner were elected president and secretary-treasurer, respectively, of a corporate licensee; that for the past three weeks he, the petitioner and another member of the corporation have been operating a licensed premises owned by the corporation.

Petitioner was recalled and denied he was in the liquor business. Confronted with the testimony of his witness and his previous testimony that he had no interest in the alcoholic beverage industry, petitioner testified that the corporation had not yet commenced business and that he holds one-third interest in the corporate licensee. Pressed for further information, he admitted that the corporate licensee had been in business for three weeks; that the stockholders had been receiving the profits of the business; that he had written (November 29, 1962) to the local issuing authority advising them of the names of the new officers of the corporate licensee; that he purchased his one-third interest for \$3500; that the transaction had not as yet been consummated; that the money was being held in escrow by an attorney and that it would be returned to him if he were not cleared by this Division.

At a further hearing on the within petition held on November 15, 1963, petitioner reiterated his admissions except to say he had held a two per cent interest in the corporation and further testified that he had acted in good faith when he purchased his interest in the corporate licensee; that he was aware of the fact that the license of the corporation had been recently suspended for a "front" violation; that he was innocent of any wrongdoing with respect to the same; that, upon learning of the suspension, he resigned from the corporation and that the sum of \$1500 which he had deposited in escrow with the attorney was returned to him.

In the course of an investigation of the aforesaid "front" violation the petitioner gave a sworn, written statement to an ABC investigator at the licensed premises on December 26, 1962 and set forth therein, among other things, that about two months ago he, the president and a third party each invested \$2,000 to purchase the licensed business; that he paid his share in cash; that although the profits of the business were to be shared equally, ninety-eight per cent of the shares of stock of the corporate licensee was put in the name of the president because he had no criminal record; that one per cent was issued to him because of a conviction of crime in 1949 and that one per cent was issued to the third party in interest.

On January 14 and on February 13, 1963 the aforesaid president and the third party in interest gave sworn written statements to an ABC investigator in which they stated that they were dummy officers and stockholders in the corporate



by the trooper and were thereafter turned over to agents of this Division.

It appears that Belton McGirt purchased the alcoholic beverages from a retail licensee in Baltimore, Maryland, but had no invoices reflecting such purchases. At the hearing held on this application, Belton McGirt testified that he lives in Washington, D.C. and is a friend of Mrs. Brewer and Louis Harris. On Saturday evening Harris, who is also a friend of Mrs. Brewer's, and lives in her house, invited him to take a trip to Newark, to visit some friends over the Armistice Day weekend. In driving through Maryland they purchased the taxpaid alcoholic beverages because they were not sure that they would be able to purchase any liquor in New Jersey during the holidays. He insisted that the liquor was purchased for his own personal use and to help them celebrate at a party.

He further testified that he is a truck driver and has been employed as such for the past 20 years, earning approximately \$90.00 to \$108.00 per week.

Mrs. Ruth Brewer, the claimant, testified that she is married, but separated from her husband, and is the owner of the motor vehicle in question. She stated that she purchased this motor vehicle about 5 months ago and paid approximately \$4,000.00 therefor. She explained that the reason that she needed the car was that she is under the doctor's care and uses this vehicle to drive to the doctor's office. In addition, she has 5 children, ranging in age from 2 to 15, and uses the motor vehicle to transport her children to and from school.

She further testified that she is a good friend of Louis Harris, who lives in the same house, and that he has borrowed her car for his own use on other occasions.

She further insists that she had no reason to believe that this vehicle would be used for the unlawful transportation of alcoholic beverages by Harris. On cross-examination, she stated that she performs day's work as a domestic and earns about \$8.50 per day; in addition, receives a total of \$30.00 a week from roomers in the house in which she lives and owns. She explained that, because of her need of a car for the purposes aforementioned; she was able to borrow the \$4,000.00 from about 4 or 5 friends and relatives, which money was loaned to her without any collateral.

She explained that Harris requested that she loan him the car because he was going to visit some friends. However, she had no idea that he was going to drive the car to New Jersey. Upon further questioning, she stated that she has a broken artery in her leg and that has impeded her ability to drive this car during the past 3 months. However, she has been able to drive occasionally and states that the car is indispensable for the above-stated purposes.

I have made a check of the records of Louis Harris and Belton McGirt and did not find any prior record involving liquor law violations. I am satisfied from the evidence presented that Ruth Brewer acted in good faith and I accept her account of what happened. There has been no proof offered that she had knowledge of the unlawful use to which her Pontiac sedan was put, or of such facts as would have led a person of ordinary prudence to discover such use R.S. 33:1-66. Cf. Seizure Case No. 10,383, Bulletin 1363, Item 3. Consequently, I shall authorize the

return of the said Pontiac sedan upon payment of the costs of the seizure and storage of said motor vehicle.

Accordingly, it is DETERMINED and ORDERED that if on or before the 19th day of December, 1963, Mrs. Ruth Brewer pays the costs of the seizure and storage of her Pontiac sedan, it will be returned to her.

Dated: December 6, 1963

EMERSON A. TSCHUPP  
ACTING DIRECTOR

SCHEDULE "A"

- 1 - Pontiac sedan, Serial No. 863WL4762,  
Registration Washington D.C. plates KA 522 D.C.

6. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto.Susp. #236	)	
In the Matter of a Petition to Lift	)	
the Automatic Suspension of Plenary	)	
Retail Consumption License C-12,	)	ON PETITION
issued by the Mayor and Council of	)	ORDER
the Borough of East Rutherford to	)	
	)	
FRANCIS R. OCELLO	)	
t/a FRANK'S TAVERN	)	
170 Union Ave.	)	
East Rutherford, N. J.	)	

-----  
Joseph Guez, Esq., Attorney for Petitioner.

BY THE ACTING DIRECTOR:

It appears from the petition filed herein and the records of this Division that on November 19, 1963, the licensee-petitioner received a sentence of fine suspended and ordered to pay \$10 costs in the East Rutherford Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on June 29, 1963, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of his license for the balance of its term. R.S. 33:1-31.1. The suspension has not been effectuated because of the pendency of this proceeding.

It further appears that the municipal issuing authority has suspended the license for ten days from August 18 to August 28, 1963, after plea of guilty to a charge in disciplinary proceedings alleging the same sale to the minor. It appearing that the suspension has been served, I shall lift the automatic suspension. Re Konrad, Bulletin 1512, Item 14.

Accordingly, it is, on this 9th day of December, 1963,

ORDERED that the statutory automatic suspension of said license C-12 be and the same is hereby lifted, effective immediately.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MARIE DiNATALE )  
t/a ATLANTIC BAR )  
E/s Black Horse Pike )  
Hamilton Township (Atlantic County) )  
PO Mays Landing, N. J )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-38, issued by the Township Committee of the Township of Hamilton, County of Atlantic. )

-----  
Angelo D. Malandra, Esq., Attorney for Licensee.  
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

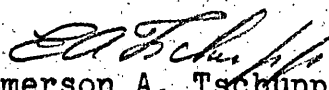
Licensee pleads guilty to a charge alleging that on October 23, 1963, she possessed alcoholic beverages in four bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension by the Director for twenty-five days, effective October 26, 1961, for permitting hostess activity and foul language on the licensed premises. Re DiNatale, Bulletin 1422, Item 8.

The prior record considered, 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 Popelar, Bulletin 1534, Item 4.

Accordingly, it is, on this 10th day of December, 1963,

ORDERED that Plenary Retail Consumption License C-38, issued by the Township Committee of the Township of Hamilton, County of Atlantic, to Marie DiNatale, t/a Atlantic Bar, east side Black Horse Pike, Hamilton Township, be and the same is hereby suspended for twenty (20) days, commencing at 4:00 a.m. Tuesday, December 17, 1963, and terminating at 4:00 a.m. Monday, January 6, 1964.

  
Emerson A. Tschupp  
Acting Director