

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

September 11, 1961

BULLETIN 1406

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1. NEW LEGISLATION - R.S. 33:1-76 SUPPLEMENTED - DISTANCE OF LICENSED PREMISES FROM CHURCH OR SCHOOL - WAIVER PROVISION - CHURCH OR SCHOOL WAIVER A PERMANENT ONE; ANNUAL WAIVER NO LONGER REQUIRED - CHANGE APPLIES TO CLUB LICENSES ONLY.

Assembly, No. 580 was approved by the Governor on June 17, 1961, and thereupon became Chapter 83 of the Laws of 1961. It reads as follows:

"AN ACT concerning alcoholic beverage control, relating to the renewal of certain club licenses.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

Notwithstanding the provisions of section 33:1-76 of the Revised Statutes if a club license has been or shall be granted on a waiver of its protection granted on authority of a church or school, the holder of such license shall be entitled to apply for renewal thereof without further or renewed authority, or waiver, of the church or school; but the renewal or reissuance of the club license after a revocation, or subsequent transfer of the club license, shall not be permitted without a new waiver granted on authority of the church or school.

This act shall take effect immediately."

WILLIAM HOWE DAVIS
DIRECTOR

Dated: August 21, 1961

2. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE (HOMOSEXUALS) - CHARGE ALLEGING POSSESSION OF INDECENT MATTER DISMISSED - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)

Margaret Simmons)
t/a Pine Brook Diner and Marge's)
Keyhole Cocktail Lounge)
Route #46)
Montville Township, PO Pine Brook, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7 (for the 1960-61 and 1961-62 licensing years), issued by the Township Committee of the Township of Montville.)

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

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

- '1. On November 27, 30, December 1 and 3, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., females impersonating males and males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.
- '2. On December 3, 1960 and prior thereto, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting pictures and representations, viz., photographic illustrations of male and female persons depicted in obscene, indecent, filthy, lewd, lascivious and disgusting poses, positions, practices and acts; in violation of Rule 17 of State Regulation No. 20.'

"To substantiate the charges, the Division called as its witnesses the ABC agents who participated in the investigation of defendant's licensed premises. They will be referred to herein as Agents, R, S, G, B, St, Sp, V and N.

"Succinctly stated, the testimony of Agent R shows that he,

Agent S, St, Sp, G and B arrived in the vicinity of defendant's licensed premises at about 3:55 p.m., Sunday, November 27, 1960 and that Agents G and B entered the cocktail lounge shortly thereafter; that at 5:25 p.m. he, Agents S, St and Sp entered and took seats at the bar behind which was Margaret Simmons, the licensee herein; that he observed two females at the bar and one couple at a table; that one of the females who was seated at the bar got up to go to the cigarette machine and 'I observed her attire and her gait was masculine; she walked with a heavy step; she wore a short zipper jacket over a flannel shirt with slacks and loafers on; she had a short crop haircut, no make-up, no facial make-up, no jewelry. The female she was seated with was dressed in a similar manner, but her actions were not masculine as the one I had just described'; that Agents G and B left the premises at 5:45 p.m. at which time he said to Mrs. Simmons: 'Where is all the kids?' and she replied 'Oh, they will be in later. They usually come in between 7 and 7:30', after which he and the remaining agents departed.

"Agent R further testified that at 7 p.m. he, Agents S, Sp and St returned to the licensed premises wherein Carol Darkins was tending bar and two females, using stage names of Elvis and Ronnie, were entertaining on an elevated stage behind the bar; that both entertainers 'were attired exactly the same with the exception of Ronnie who, on this occasion, wore a slipover sweater, a sleeveless sweater over her male-type shirt'; that Elvis 'played the guitar and sang on a couple of occasions and Ronnie played the drums' and sang 'in a deep voice'; that the patronage 'increased to about fourteen females and a couple of male patrons'; that 'ten or twelve of them (females) were all dressed in a similar manner; they wore no -- some wore no facial make-up and other in this group had slight traces of it; that they all wore either male type trousers or female slacks with loafers, sweaters and male type shirts; some acted more masculine and aggressive than the others and the ones who did have some traces of lipstick on and weren't too masculine in their movements remained more passive'; that 'I didn't overhear any of their conversations, but they seemed to be quite friendly and sat very close together and conversing in a low tone of voice'; that 'a couple entered, one girl with long feminine hair, and she wore regular female attire. She was accompanied by a female in a three-quarter coat, male type shirt, slacks, loafers, short crop haircut, no facial make-up. Her actions were masculine. They approached the bar together and the more masculine appearing of the two said to Mrs. Darkins, she says, "Could my girl friend have a drink? She is only nineteen"', and that both girls departed the premises without having been served; that when he and the other agents were about to depart 'two males entered the premises dressed in short jackets and they walked with somewhat of a bounce, bouncing up and down on their toes -- they had that feminine characteristic about them when they moved' and that Carol stated that Elvis was her cousin from New York.

"Agent R further testified that on Wednesday evening, November 30, 1960 he and Agent S returned to the defendant's premises wherein Mrs. Simmons was tending bar; that at the bar 'there was one couple, one lone female and one male seated alone'; that the female 'was dressed in a similar manner as I described the other females'; that Agents G, B and Sp entered the premises about 9:45 p.m. and Agent St came in at about 10 p.m. and 'we joined in one group at the bar'; that the lone female at the bar was 'an apparent lesbian'; that he and the other agents left the premises at 10:50 p.m. and that he and Agent S returned thereto at about 11:10 p.m.; that 'a group of females came in -- I believe there were five. In this group was Carol Darkins, Elvis, Ronnie and they were accompanied by two other females. They were all in one group, entered together and they were all dressed in a similar manner. They all wore either short zip-up jackets or three-quarter coats, slacks, loafers,

male-type shirts, the collar turned up. Two wore turtleneck sweaters and two of the pants were khaki, like you would buy in the army'; that two of the females in the group 'appeared to be more masculine and they were more aggressive in their movements'; that there were two females at a table and although they were dressed in a similar manner, one of the two females remained passive and the other girl acted more masculine in her movements and more or less took the male role and that at about 11:30 p.m. he and the other agents left the premises.

"Agent R further testified that at 10:50 p.m. Saturday, December 3, 1960 he, Agents S, G and B arrived in the vicinity of defendant's premises and that he and Agent S entered and took seats at a table; that Walter Gunderman, Carol Darkins and Margaret Simmons were behind the bar and that Elvis and Ronnie were entertaining; that there were approximately thirty patrons at the bar and about fifty at tables 'and dancing on the dance floor'; that 'Ronnie wore a male type dress shirt with a kerchief around her neck, slacks, male type trousers and she had loafers on. She had a short crop haircut and I saw no signs of make-up from where we were ---. Elvis was dressed in a western type shirt with a kerchief around her neck, short crop haircut, dungarees and loafers'; that 'about fifty-five of the female patrons, although appearing to be feminine in their characteristics, their clothing gave an outward appearance of being lesbians' and that the male patrons appeared to be 'queers'; that at about 11:20 p.m. he and Agent S identified themselves to Margaret Simmons and he asked her 'Do you know what a lesbian is?' and that she replied: 'Yes, I do' and looking over the patrons he asked 'How long have they been coming here' and she said 'Oh, about a month or so. I thought it was all right for them to come in here as long as they behaved themselves'; that 'she said it was a shot in the arm when they came in, a shot in the arm for business'; that he showed the licensee three pictures which were found behind the bar and she said 'They were taken at a picnic for the -- Fund' and 'that there was nothing wrong with the pictures, that they were only props'.

"The testimony of the other agents tends to corroborate that of Agent R insofar as their participation in the investigation is concerned.

"Witnesses appearing for defendant were Paul Harris, Elvis, Carol Darkins, Walter Gunderman, Doris Ryerson and Margaret Simmons.

"Harris testified that he is employed by a High Fashion Department Store as a head window trimmer and 'works with' women's apparel every day; that he lives a block away from defendant's licensed premises, which he visits about twice or three times a week; that he and two friends were in the cocktail lounge on Saturday night, December 3, 1960; that he did not observe any person who appeared to be a sex deviate and that the females were dressed 'casual because Mrs. Simmons' place is the only place around there that is casual'.

"Elvis testified that she is an entertainer and has quite a few western costumes; that she plays rock-n-roll and western music on a guitar and sings; that she does not consider that she has a deep voice; that she is not a lesbian; that on the night of November 30th it was extremely cold when she, Ronnie, Pattie, Carol and her dog arrived at defendant's premises at 11 p.m.; that she wore corduroy slacks, a heavy sweater, a blouse under it and a three-quarter length woman's coat and that Ronnie wore slacks and a woman's coat; that she entertained on the night of December 3rd; that she has her hair barbered by a beautician; that the girls

who frequent defendant's establishment wear casual clothes and that when the agents identified themselves they asked her if she was a lesbian 'I told them I was not'.

"Carol Darkins testified that she is a machine operator in a pharmaceutical plant; that she worked part-time for defendant as a waitress and bartender; that Elvis and Ronnie wore western costumes and sang 'western rock-n-roll'; that the defendant's patrons range in age from twenty-one to thirty-five and that on the night of November 30, 1960 she, Elvis, Ronnie, Pattie and her dog arrived at defendant's establishment at about 11 p.m. after attending a drive-in movie; that she wore slacks and a woman's coat 'it was freezing out'; that she is not a lesbian; that none of the patrons impressed her as being lesbians and that she and Ronnie are first cousins.

"Gunderman testified that on the dates alleged in the charges he was tending bar in defendant's establishment; that the entertainment therein consisted of 'rock-n-roll and a little hill billy'; that the entertainers wore cowboy outfits; that he didn't observe any person who appeared to be a lesbian or homosexual; that Agent R asked him 'Where can I get a date around here?' and he told him that he didn't know; that Agent G asked if he knew there were a lot of lesbians in there and that he said he didn't know 'because I couldn't call them lesbians'.

"Doris Ryerson testified that she is a waitress; that she has known Mrs. Simmons for about ten years and that she visits her establishment four or five times a week; that she was present therein on the dates alleged in the charges; that most of the female patrons wore slacks and sweaters; that she couldn't say the girls were lesbians 'I don't know', and that she didn't see any men there who appeared effeminate.

"Margaret Simmons testified that for ten years she has operated the Pine Brook Diner and the cocktail lounge adjacent thereto; that there are several factories, bowling alley and an auction close by and a small shopping center across the street; that respecting the attire of her patrons 'Well, an awful lot of girls come in slacks, sweaters or heavy coats. After all it was wintertime. Even the patrons from the auction came in dressed that way. Even the girls that worked down at the auction are dressed that way. They have these winterized boots that has fleece lining in it. They wear slacks, heavy sweaters, or they wear these short jackets that are like fleece lined. And they frequent my place'; that at about 11 p.m. December 3rd Agent R walked over to the bar and said, 'Marge, can I see you', he pulled out his badge and said 'We are ABC agents'; then we went into the diner and two local policemen arrived; that the agents said 'You are running a place that has nothing but lesbians and queers', and that she said 'How can you say a thing like that? I haven't got a place like that'; that Agent R said 'Would you say you got at least fifty lesbians in there?' and that she replied: 'I can't say I have any one in there', and I asked him 'Can you?' 'We have working girls that come from Metal Frame and they are rough and tough. I can't say those girls are not women just by their actions and by the way they dress. They all come in - - in fact, those girls even come in in dungarees' and that she never knew any of her female patrons to be lesbians or her male patrons to be effeminate.

"Respecting the second charge, Mrs. Simmons testified that the pictures were taken at a picnic which the tavern owners sponsor to send boys through college. She testified further

that Ronnie was unable to appear as a witness because of a death in her immediate family.

"At the outset it is significant to note that the greater number of charges involving homosexuals heretofore preferred against licensees alleged that males impersonating females were permitted to congregate in large numbers in and upon licensed premises and that those charges were established to the satisfaction of the Director and the Appellate Division of the Superior Court by evidence indicating that such persons 'displayed by speech, tone of voice, bodily movements, gestures and other mannerisms, the common characteristics of homosexuals' and 'had the conspicuous guise, demeanor, carriage and appearance of such personalities'. See Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N. J. Super. 405.

"In the instant case the charge alleges that the licensee permitted females impersonating males and males impersonating females to frequent and congregate in and upon her licensed premises.

"The evidence adduced by the Division to support that charge tends to show that there were some males on the licensed premises who appeared to be 'queers' and the testimony elicited to substantiate that generality is that 'two males entered premises dressed in short jackets and they walked with somewhat of a bounce, bouncing up and down on their toes --- they had that feminine characteristics about them when they moved'. In the main however, the evidence pertains to the female patrons, the barmaid and two female entertainers who were in the licensed premises on Saturday night, December 3, 1960. To establish that those females appeared to be lesbians the Division relies upon the observations of the agents who testified that the females wore no facial make-up, or jewelry, and more significantly that they were attired in mannish clothes.

"It is common knowledge that in recent years a large segment of the female population has adopted an attire which appears to be masculine and that such attire is worn in factories, for sports, at the beaches and places of amusement, while shopping and as casual street dress in both urban and suburban communities. While such garb may incur the displeasure of the more conservative stylists, it is evidently here to stay and to characterize as homosexuals those who wear such casual attire requires 'the courage of a lion'.

"I have had the opportunity to hear and observe two of the females whom the agents specifically identified as lesbians and their speech, mannerisms and deportment convinced me that they were normal females.

"Having carefully considered the testimony elicited herein, I can find no concrete evidence which substantiates the allegation set forth in Charge (1). There is but a modicum of proof that some of the patrons displayed the conspicuous mannerisms characteristic of homosexuals and there is no proof whatsoever that defendant's patrons or female employees indulged in licentious solicitations. I conclude, therefore, that the Division has failed to establish the truth of Charge (1) by the necessary preponderance of the evidence.

"With respect to Charge (2), I find that the three photographs received in evidence are vulgar representations; that one of them is indecent and that none of them should have been permitted on the licensed premises.

"In view of the aforesaid, I recommend that Charge (1) be dismissed and that defendant's license be suspended for fifteen days for the violations set forth in Charge (2). Re Mariner's Bar, Inc., Bulletin 1219, Item 7."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorney appearing for the Division, pursuant to Rule 6 of State Regulation No. 16; and the attorney for the Division and the attorney for the defendant presented oral argument before me, at my request.

The exceptions filed by the attorney appearing for the Division are taken to the Hearer's recommended dismissal of Charge 1 and, at the oral argument, the attorney for the defendant took exception to the Hearer's recommended finding of guilt on Charge 2.

I shall sustain the exceptions filed by the attorney for the Division with respect to Charge 1 and, with respect to Charge 2, I shall sustain the exceptions of the defendant. With respect to Charge 2, I am accepting the explanation made on the licensee's behalf at the oral argument that the alleged indecent photographs were never intended as salacious matter but were representations posed for by the licensee and her then husband with "props" in a spirit of so-called "horseplay" in the presence of a large number of persons at an outdoor picnic and preserved as personal mementos.

It is clear that the large gatherings of women on the various occasions mentioned were for purposes other than pure "sociability" and that the great percentage of the females in question, based on the observations of the agents, were lesbians and were known to be such by the licensee and her employees.

I disagree with the Hearer's comment that it requires "the courage of a lion" to characterize as homosexuals those (women) who wear such "casual" garb as the women in question. I believe that, with exceptions infinitesimal and remote, it takes only common sense, with a reasonable amount of judgment based upon observation as to garb and conduct (abnormal for a woman), to distinguish a so-called lesbian from a normal woman.

Accordingly, I find the defendant guilty on Charge 1 and dismiss Charge 2.

The question of penalty has been a matter of grave concern. While, as stated, there is no question as to the licensee's guilt in this case, it may, however, be said in her favor, and in weighing the penalty, that the lesbians observed in her premises were not observed to engage in any lewd or obscene conduct; that, on each of the agents' visits, there were many patrons present who were normal in appearance; and that the available evidence does not indicate that the premises were a haven for lesbians or deliberately designed as a recreational meeting place for them. Under these circumstances and in view of all the facts in the case, I shall suspend defendant's license on Charge 1 for a period of thirty days. Cf. Re V. M. & S., Inc., Bulletin 1345, Item 6.

It is, therefore, on this 10th day of July, 1961,

ORDERED that Plenary Retail Consumption License C-7, for the 1961-62 licensing year, issued by the Township Committee of the Township of Montville to Margaret Simmons, t/a Marge's Keyhole Cocktail Lounge, for premises on Route #46, Montville Township, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m., Monday, July 17, 1961, and terminating at 2:00 a.m., Wednesday, August 16, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING SUSPENSION PREVIOUSLY IMPOSED.

In the Matter of Disciplinary Proceedings against)	
)	
Margaret Simmons)	
t/a Pine Brook Diner and Marge's)	
Keyhole Cocktail Lounge)	
Route #46)	
Montville Township,)	On Petition
P. O. Pine Brook, N. J.,)	
Holder of Plenary Retail Consumption License C-7 (for the 1960-61 and 1961-62 licensing years), issued by the Township Committee of the Township of Montville.)	O R D E R

BY THE DIRECTOR:

An order having been entered on July 10, 1961, suspending defendant's license for thirty days effective at 2 a.m. Monday, July 17, 1961, and

A petition having been filed herein by Margaret Simmons, the licensee, for a postponement of said suspension because prior thereto she had made definite arrangements for ten affairs to be held on her licensed premises between July 17, 1961, and July 26, 1961, and it appearing to my satisfaction that said affairs had been previously scheduled and that numerous innocent persons would be inconvenienced by the denial of the request for postponement,

It is, on this 14th day of July 1961,

ORDERED that the suspension of thirty days, instead of commencing at 2 a.m. Monday, July 17, 1961, shall, in lieu thereof, commence at 2 a.m. Thursday, July 27, 1961, and terminate at 2 a.m. Saturday, August 26, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING BRAWL DISMISSED.

In the Matter of Disciplinary Proceedings against

Daniel DeCore, Naylor DeCore & Fudie DeCore t/a Como Club 214 So. Warren Street Trenton 9, New Jersey.

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-211, for the 1960-61 and 1961-62 licensing years, issued by the Board of Commissioners of the City of Trenton.

Defendant-licensees, by Daniel DeCore, A Partner. Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charge:

'On or about September 20, 1960, you allowed, permitted and suffered in and upon your licensed premises a brawl and disturbance and acts of violence upon Hilda M. Downs and Theodore Downs; in violation of Rule 5 of State Regulation No. 20.'

"The genesis of this charge was a report received by this Division that Hilda M. Downs and Theodore Downs, her husband, had been assaulted by Daniel DeCore, one of the licensees in the said licensed premises, on September 13, 1960. An investigation of this report by this Division, which included statements given to ABC agents by Mr. and Mrs. Downs, resulted in this hearing, which took place on March 15, 1961.

"It appears from the testimony that the Downs' are tenants of the said Daniel DeCore in premises adjoining the licensed premises, and one Dorothy ---, who also appeared as a witness for the defendant, occupied the apartment immediately above that occupied by the Downs'. Theodore Downs testified that, on the evening in question, at about 8:00 p.m., he entered the licensed premises and engaged in a conversation with DeCore, during which DeCore asked him why he had spit on Dorothy ---. He denied this accusation and stated that he had merely made a whistle noise. He, in turn, accused DeCore of defending this woman because he had had sexual relations with her. DeCore then went from behind the bar and 'bodily pushed' him outside the premises, and he fell on the sidewalk. He immediately returned and DeCore told him that he did not want to serve him and he again grabbed him by the arm and pushed him outside the premises.

"On cross-examination, the following question was asked and answered:

'Isn't it true when I asked you to leave that you said to me, "You are sticking up for Dotty, You are defending her because you are having an

affair with her". Did you make that statement to me?'

Answer: 'Possibly I might have'.

"Downs then admitted that DeCore told him to 'get out and stay out. I don't want your business any more', and he then pushed him out of the tavern. It was further significantly brought out on cross-examination that Downs had had eight to ten beers, in addition to three shots of whiskey during that day.

"Mrs. Downs testified that, shortly thereafter, she entered the licensed premises and, according to her testimony, intended to buy a ginger ale with a dime that she had in her hand. She further testified that DeCore refused to serve her, saying that she and her husband were just troublemakers and he requested that she leave the premises. She then said, 'The trouble with you is you are in league with her, you are afraid of her, and you are trying to put us out because we know too much'. DeCore then called her a vile name whereupon she threw her handbag at him. He then came from behind the bar and beat her with his two fists around the head and right to the floor, and banged her head on the floor at least four times. She grabbed his shirt and tore it off his back. She tried to get his hair but 'it was too short'. She further stated that she tried to kick him and he put his full weight on her foot and twisted her foot. She got up and he was holding her by the arm, and she then tried to throw the bar stools but said that they were too heavy to lift. During the altercation, one of the patrons called the police and she left before the police arrived. The police came up to her apartment and, after some questioning, they left. She further stated that she signed a complaint in the Municipal Court of the City of Trenton and that there was a counter complaint signed against her, but both complaints were dismissed after she was reprimanded by the Court.

"As a result of this alleged beating, she testified that she was examined (several weeks later) on October 3, 1960 by Doctor William E. Mountford, a general medical practitioner in Trenton, and a statement by Doctor Mountford was admitted into evidence. The statement indicates that Mrs. Downs was first seen by him on October 3rd, at which time she claimed that she had been beaten up about three weeks prior thereto in a bar. She had received no prior medical treatment, claiming that she had no money. She claimed to have generalized bruises and discolorations and also a blurring of vision in the right eye and headaches. The statement of Doctor Mountford reflects no evidence of injury to her head or the remainder of her body, but there were residual contusions on both legs near her knees. She was treated by the doctor on eleven separate occasions, most of which were for her complaints of nervousness and headaches. Mrs. Downs further testified that she returned to her apartment, awakened her husband, who was taking a 'nap', and, shortly thereafter, he returned to the licensed premises for the express purpose of finding out why DeCore had struck his wife. The Division did not produce any other witness who was present at the time of this alleged altercation.

"Charles Fischer, called on behalf of the Division, testified that he was walking on the other side of the street near the tavern and saw Downs going out the door. He heard DeCore tell him to get out and stay out and saw DeCore push him out.

He did not see DeCore knock him down, nor was Downs on the ground.

"Carol Comfort, the daughter of Mrs. Downs and the step-daughter of Mr. Downs, testified that her stepfather appeared sober to her when he came into the house on the night in question. When her mother came into the house, her blouse was out and several of the buttons were torn off. Her hair was all mussed up and she had dirt on her legs and her hair.

"Delmar C. Merritt testified that he is a boyfriend of Miss Comfort and corroborated the sobriety of both Mr. and Mrs. Downs on the night in question, and also the appearance of Mrs. Downs when she returned to the apartment, as testified to by Carol.

"Lawrence Comfort, the son of Mrs. Downs, stated that his mother was 'more or less shook up' when he observed her that evening and she looked like she had been through an ordeal. He then left the apartment and spoke to Naylor DeCore, one of the partners, and informed him that he wanted to speak to his brother to find out what happened. He stated that he was pretty upset about the situation, but he decided not to wait for DeCore's return, and went back to the apartment.

"The testimony of defendants is sharply in conflict with that presented by the Division.

"Daniel DeCore, a partner, who was bartender on the night in question, gave the following version: On Monday, September 19, 1960, at approximately 8:00 p.m. (not Tuesday, September 20th, as testified to by the Division witnesses), Dorothy --- entered his premises and complained that Downs had spit at her. Shortly thereafter, Downs entered the tavern and an argument took place with respect to that incident. DeCore thereupon ordered him to leave the premises and Downs, in the presence of and within the hearing of the other patrons, accused him of having an affair with this woman. Downs became very boisterous and DeCore, feeling embarrassed because 'I am a married man', then came around the bar and 'ushered him out. I didn't push him, I didn't knock him down, I just ushered him out the door. I did that'.

"DeCore's testimony continues: Downs immediately returned and again he was ushered out. Downs returned for the third time and ordered a drink. DeCore refused to give him a drink, stating that as far as he was concerned, he did not want him as a customer and told him not to come into the Como Club again. About an hour later, Mrs. Downs entered the premises and started to berate DeCore in a loud voice, calling him filthy names, animadverted to his nationality, and spontaneously threw her handbag at him. She then knocked down some bar stools and he came from behind the bar for the purpose of restraining her. He didn't hit her, he merely tried to restrain her and, in the course of this effort, she tore his top shirt and undershirt completely off. He managed to get hold of her wrists and she was trying to kick him. He then asked a patron, Leonard Cracker, to call the police. Mr. Cracker went behind the bar and picked up the telephone and summoned police help. DeCore then released Mrs. Downs, whereupon she picked up another stool, held it over her head and was about to throw it at him when she was restrained by DeCore. A police officer arrived shortly thereafter at the tavern and was met at the outside by Downs. They proceeded up to the apartment for a discussion with Mr. and Mrs. Downs and then returned to the tavern where he advised DeCore to come into court the following day. DeCore testified that he did, on the following morning, make a complaint against Downs for disorderly conduct, and a complaint against Mrs. Downs for assault and battery. No action

was taken on these charges.

"On cross-examination, DeCore denied that Mrs. Downs asked for any drink, but asserted that she entered the tavern belligerently, in a very excited condition, and immediately proceeded to curse him, using vile and filthy appellations. He denied that he threw her to the floor or that he did anything more than hold her wrists for the purpose of restraining her, and protecting himself from her kicks or attempts to throw the bar stools. He further denied that she received any bruises in his premises that night, nor did he see any about her head, face or body.

"Leonard Cracker testified, on behalf of the defendant licensees, that he was present at the Como Club on the night in question, and substantially corroborated the testimony of DeCore. He stated that there were five or six patrons in the bar and he saw Mrs. Downs come into the premises, throw the handbag, pick up a stool with the intent to throw it, and had an obvious desire to 'damage the premises'. He went behind the bar and phoned the police at the request of DeCore; that immediately after the call, Mrs. Downs left the premises. He further testified that the language of Mrs. Downs was filthy, profane and accusatory and DeCore continued to demand that she leave the premises. He denied that she was ever on the floor during this incident or that she suffered any bruises as a result thereof. He further stated that if she received any injury to her legs, it must have happened while she was trying to kick DeCore.

"Carl Angelini, another patron, also substantially corroborated the testimony of DeCore. He stated that when Mrs. Downs threw the handbag, DeCore moved over and ducked, and it shook the bottles on the bar. She continued to curse and was 'wild as a tiger'. She was kicking and pushing stools, and when DeCore came around the bar, she was picking up a stool to hit him. She then grabbed his shirt and undershirt and ripped them off. He stated definitely that she was never on the floor, that she was never hit by DeCore and, if she received bruises on her feet, it must have come when she kicked the stools. After she ripped his shirt, DeCore grabbed her arms and said, 'I'll let you go if you behave'. She started kicking him, 'I think she was trying to kick him where it hurts the most, I guess'. It was at that point that DeCore asked Cracker to call the police. The rest of his testimony conforms to that already testified to by the other witnesses.

"Dorothy --- testified on behalf of the defendant-licensees as follows: Downs met her in the street, spit at her and called her some filthy names. She entered the licensed premises immediately thereafter and was followed by Downs. An argument took place with respect to that incident and Downs was ordered out of the tavern by DeCore after he accused DeCore, in the presence of the patrons, of having sexual relations with her. On cross-examination, she corroborated the version of the incident with respect to Downs as testified to heretofore by DeCore.

"Mrs. Downs, called in rebuttal, insisted that the incident happened on Tuesday night, January 20th; denied that Cracker was the one who actually made the telephone call to the police; insisted that the reason she did not visit a doctor for several weeks was that she did not have any money; admitted that she continued to work for several hours every day, although her activities were limited because of her condition.

"It should be noted, at this juncture, that Daniel DeCore is a partner, and partnership licensees are strictly accountable in disciplinary proceedings against their license for violations committed, engaged in or permitted on the licensed premises by any of the partners (Re Cronauer, Bulletin 902, Item 7). It is clear that since DeCore was both a partner and the bartender, i.e., the agent of the partnership licensee, the license would fall under the clear interdiction of Rule 33 of State Regulation No. 20, which provides that licensees, as regards disciplinary proceedings against their license, are fully accountable for violations committed by their agents, servants and employees on the licensed premises.

"The charge herein encompasses two separate and distinct incidents--one relating to an alleged brawl and disturbance and act of violence upon Theodore Downs, and another brawl, disturbance and act of violence upon Hilda Downs during the same evening. Although they are part of the same charge, they will be discussed separately. The evidence is not in dispute as to the fact that an argument developed over an alleged incident involving a tenant of Daniel DeCore (Dorothy ---) and that DeCore then ordered Downs to leave the premises. I am persuaded by the testimony that DeCore was actually provoked into taking this action to remove Downs by the slanderous accusations made by Downs with respect to the alleged relations between DeCore and Dorothy ---. I am equally persuaded that DeCore did not knock Downs to the ground, and did not use any more force than was reasonable or necessary under the circumstances.

"A patron may be properly excluded by the use of reasonable force if his conduct is disorderly, annoying or offensive. 43 C.J.S. page 1151; Gore v. Whitmore Hotel Co., 83 S.W. 2nd 1141; 229 Mo. App. 910. I find that DeCore took only such action as was reasonably necessary in order to exclude Downs and, when Downs returned twice after being evicted from these premises, it was in a spirit of ill will and not in the interest of peace and order. Since Downs admitted that he has a substantial criminal record, I do not consider his version of these incidents as being credible.

"The incident with respect to Mrs. Downs is somewhat more troublesome. We are again faced with conflicting testimony as to what actually transpired in the premises. This much is certain. I find from the evidence that she entered these premises without any intent to purchase any drink, notwithstanding her testimony that she ordered a ginger ale. I am convinced that her primary motive was to initiate an argument with respect to the prior incidents involving her husband. Her appearance at this time in these premises was entirely gratuitous and without lawful purpose and she thereby became a casus belli. It is clear also that the first assault was made by her when she, without legal provocation, threw her handbag at DeCore. It was at this point, and with the understandable desire to protect his property, that he came from behind the bar, and sought to restrain her from further damage thereto. At this juncture, there is conflict as to exactly what happened. The uncorroborated testimony of Mrs. Downs was that she was beaten about the body, her head was banged against the wall and she sustained numerous bruises, contusions and abrasions, which required medical treatment. There is no doubt that she was eventually treated for injuries by Doctor Mountford. Doctor Mountford's statement further indicates that he found no evidence of injury to her head or of the remainder of her body other than the contusions on her legs. Whether the injuries of which she complains were received at any other time cannot be ascertained, since her first visit to the doctor was made two weeks after this incident. DeCore testified that he

merely acted to protect himself and his property, and he did not use any more force than was necessary under the facts and circumstances herein. His testimony has been substantially corroborated by two disinterested witnesses, who stated that DeCore did not hit or strike the woman or inflict any of the injuries to which she testified. It would seem to me that if this woman really suffered the injuries of which she complained about her head, face and body, that the police officer who responded to the emergency call would have ordered immediate medical treatment, and could have been called to corroborate her testimony. This was not done. Neither did the son, daughter or friend of Mrs. Downs' daughter testify to that effect. The substance of their testimony was that she merely appeared to have her hair in disarray and be upset. There was not a scintilla of evidence regarding any serious injury to Mrs. Downs.

"It is a generally accepted rule that a person has the right to protect his property against attack, using such force as is reasonably necessary. In so doing, of course, great bodily harm must not be inflicted. 6 C.J.S. 2nd, page 816. The question to be resolved is whether DeCore used such reasonable force as may be or appeared to him at the time to be necessary to protect him against bodily harm. 6 C.J.S., page 810. What is reasonable force must be decided by the peculiar facts of each individual case. Escandioni v. Pan American Foreign Corp., 88 Fed. 2nd 276; 139 Fed. Supp. 71 (C.C.A. 1937).

"Mrs. Downs apparently went into the licensed premises to chastise DeCore for his action in evicting her husband. However, it has been held that one is not justified in committing an assault and battery on one who calls his wife, or as in this case her husband, a 'damn liar'. Hayes v. Sease, 29 S.E. 259; 51 S.C. 2534. It is clearly apparent that DeCore did not come from behind the bar until after this handbag was thrown at him. It seems to me that it would have been better for him to have used the 'phone at the back bar for the purpose of summing police as soon as this took place. However, under all the facts and circumstances, it may be equally argued that the defendant thought it necessary to defend himself, in the face of an actual or threatened attack. It has been held that while the strongly recommended course is to call the police when patrons become obstreperous (Re Polster, Bulletin 388, Item 10); nevertheless, a licensee may use reasonable force in self-defense if and when suddenly and unjustifiably attacked, while in the legitimate discharge of his duty as a licensee. Re DiBernardo, Bulletin 928, Item 7. Cf. Re Teevan and Lynch, Bulletin 676, Item 11.

"The evidence herein raises a strong suspicion with respect to the allegation set forth in the charge. Suspicion, however, no matter how reasonably inferable, is not a substitute for the quantum of proof necessary for a finding of guilt. Re Arlington Inn (A Corp.), Bulletin 982, Item 1; Re Doyle, Bulletin 469, Item 2; Re Sevak, Bulletin 1012, Item 2.

"After considering all the evidence herein, it is recommended that the defendants be found not guilty of the charge and that an order be entered herein dismissing said charge."

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 and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation..

Accordingly, it is, on this 10th day of July, 1961,

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

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary)
Proceedings against)

Bertha M. & Thomas L. Elmer)
t/a Joleo Tavern)
10 Main Street)
East Orange, New Jersey)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption)
License C-16 (for the 1960-61 and)
1961-62 licensing years), issued by)
the Municipal Board of Alcoholic)
Beverage Control of the City of East)
Orange.)

-----)

Defendant-licensees, by Thomas L. Elmer, partner.
Edward F. Ambrose, Esq., Appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

- "1. On June 7 and 22, 1961 and on divers dates prior thereto, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- "2. On June 22, 1961, you possessed, had custody of and allowed, permitted and suffered tickets and participation rights in a lottery, viz., 'Irish Hospitals' Sweepstake' tickets, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

At 11:30 a.m., Wednesday, June 7, 1961, an ABC agent visited defendants' licensed premises and seated himself at the bar which was being tended by Thomas Leo Elmer (hereinafter Thomas), one of the licensees. While on the premises, the agent asked for and received from Thomas a "scratch sheet" and then handed two bills to Thomas who, after making notations on a piece of paper, left the premises and returned thereto in a matter of seconds. During the agent's stay, Thomas accepted from three other patrons slips of paper and currency which he placed in his pocket and from time to time compared the notations on the slips with the entries in the "scratch sheet". When the agent was about to leave, he asked Thomas for the "scratch sheet" and after being questioned, Thomas told him that he had to leave and that if he had something to give it to Jimmy in the barber shop next door and "tell him that I sent you". After Thomas left the premises, the agent departed.

At 10:30 a.m. Tuesday, June 22, 1961, the aforesaid agent and two other agents entered defendant's licensed premises and took seats at the bar which was being tended by Michael McAteer. The licensee's son, Albert Leo Elmer (hereinafter Albert) was also tending bar at times and answering the telephone. At 11:05 a.m., Joseph Tafaro, known as "Jingles", entered and one of the agents placed a horse bet and two numbers bets with him, giving him a ten-dollar bill, the serial number of which had been previously recorded. Albert was shown the piece of paper on which the horse race bet was recorded and when told it was a good bet, he just laughed. The aforesaid agent and one of the other agents recorded another horse bet on a piece of paper, showed it to Albert and gave it to "Jingles" with four marked one-dollar bills. As prearranged, local detectives entered the premises and after they and the agents had identified themselves, "Jingles" was searched and on his person were found the agents' bet slips, the marked money, \$365.83, other numbers slips and a daily racing form. Thereafter the agents located in the cash register a book of sweepstake tickets and nine dollars in an envelope. "Jingles" was arrested and Albert gave the agents a signed, sworn statement in which he states that he knew that "Jingles" took horse race bets and that the lottery tickets were found on the premises.

Defendants have no prior adjudicated record. I shall suspend their license for twenty-five days, the minimum penalty imposed in a case where a licensee or employee is involved. Re Gavenas, Bulletin 1374, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 11th day of July, 1961,

ORDERED that Plenary Retail Consumption License C-16, for the 1961-62 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange to Bertha M. & Thomas L. Elmer, t/a Joleo Tavern, for premises 10 Main Street, East Orange, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Wednesday, July 19, 1961, and terminating at 2:00 a.m., Tuesday, August 8, 1961.


WILLIAM HOWE DAVIS
Director