

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

BULLETIN 1177

JULY 23, 1957.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Newark) - CHARGES ALLEGING SALE TO INTOXICATED PERSONS AND LEWDNESS AND IMMORAL ACTIVITIES (INDECENT WRITTEN OR PRINTED MATTER) DISMISSED - LICENSEE FOUND GUILTY OF LEWDNESS AND IMMORAL ACTIVITIES (INDECENT ACTION AND LANGUAGE) - CONDUCTING BUSINESS AS A NUISANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS.
2. DISCIPLINARY PROCEEDINGS (Trenton) - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Long Branch) - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.
4. DISCIPLINARY PROCEEDINGS (South Plainfield) - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.
5. DISCIPLINARY PROCEEDINGS (Union City) - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS.
6. DISCIPLINARY PROCEEDINGS (Deerfield Township) - SALE DURING PROHIBITED HOURS IN VIOLATION OF REGULATION NO. 33 - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED IN VIOLATION OF LOCAL REGULATION - ACCEPTING ORDERS AT OTHER THAN LICENSED PREMISES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
7. APPELLATE DECISIONS - RUSSO v. LINCOLN PARK.
8. DISCIPLINARY PROCEEDINGS (Paterson) - CONDUCTING BUSINESS AS A NUISANCE - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 240 DAYS.

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

BULLETIN 1177

JULY 23, 1957.

1. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING SALE TO INTOXICATED PERSONS AND LEWDNESS AND IMMORAL ACTIVITIES (INDECENT WRITTEN OR PRINTED MATTER) DISMISSED - LICENSEE FOUND GUILTY OF LEWDNESS AND IMMORAL ACTIVITIES (INDECENT ACTION AND LANGUAGE) - CONDUCTING BUSINESS AS A NUISANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against )

Emanuel Sussman & Hyman Sussman, )  
t/a Joe's Bar, )  
111 Washington Street )  
Newark 2, New Jersey )

CONCLUSIONS  
AND ORDERS

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Holders of Plenary Retail Consumption License C-897, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

Charles Handler, Esq., Attorney for Defendant-licensees.  
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charges:

- '1. On August 9, 1956, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of alcoholic beverages by such persons, in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- '2. On June 14 and 20 and August 9, 1956, you allowed, permitted and suffered in and upon your licensed premises lewdness and immoral activity and foul, filthy and obscene language and conduct; in violation of Rule 5 of State Regulation No. 20.
- '3. On June 14, 1956, you allowed, permitted and suffered in and upon your licensed premises and had in your possession drawings containing obscene, indecent, filthy, lewd, lascivious and disgusting representations, with accompanying captions of like import and meaning; in violation of Rule 17 of State Regulation No. 20.
- '4. On June 14 and 20 and August 9, 1956, you allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance in that you allowed, permitted and suffered unescorted females frequenting your licensed premises to solicit male patrons to purchase drinks

of alcoholic beverages for consumption by them and others; 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.'

"Evidence presented relating to Charge 1 is that on August 9, 1956, ABC agents at defendants' licensed premises observed the sale and service of alcoholic beverages to Pauline --- and William ---, both of whom were actually or apparently intoxicated. The indicia of intoxication was that Pauline's head was slouched on the bar, and at times on the shoulder of a male companion, hair unruly, eyes half-closed, speech incoherent, and unsteady, staggering gait, and William's hair was unruly, clothes disheveled, speech incoherent and he staggered when he walked. In my opinion, the attempt of the defendants' witnesses to account for such indicia as other than evidence of intoxication is not logical or convincing. I, therefore, recommend that the defendants be found guilty of the allegations in Charge 1.

"The evidence presented to support Charge 2 is that on June 13, 1956, ABC agents were at defendants' licensed premises from 9:45 P.M. until 1:55 the next morning, and heard much profanity and foul language, including an exchange of curses by two men which continued for about ten minutes. The agents did not give a specific description of this language. On June 20 agents at the premises heard a man and woman exchange mutual insults couched in loud four-letter words, which continued for about five minutes. The bartender at one point told these persons to watch their language, whereupon the exchange subsided temporarily. On August 9 the agent heard the bartender express himself with a four-letter word when discussing a woman patron, and when discomfited when a piece of pizza dropped on his shirt, and the use of a similar word by William to a bartender. The bartenders on duty on the various dates deny that any such vulgar language was used.

"I am not impressed by the explanation given by the bartenders, and am of the opinion that the agents' account represents what actually occurred. A licensee must maintain sufficient control of his licensed premises to prevent long, continued, vile and indecent epithets by patrons towards one another, and certainly to prevent vulgar and offensive language by his bartenders. I, therefore, recommend that defendants be found guilty of the allegations in Charge 2. Re Rutgers, Bulletin 1133, Item 2.

"I recommend that Charge 3 should be dismissed because the drawing therein referred to is not available for examination and, by reason thereof, an agent's personal interpretation of the combination of a drawing and caption thereunder, glimpsed over the shoulder of a patron, is the only basis for evaluating the nature of the drawing. In my opinion this is insufficient to justify a formal determination that such drawing was obscene or indecent.

"The evidence presented to support that portion of Charge 4 which relates to permitting unescorted females to frequent the licensed premises and solicit drinks from male patrons is limited to an incident on June 13. No such activities were observed by APC agents on June 20 or August 9.

"On June 13, ABC agents were at the premises from 9:45 p.m. until 12:25 the next morning without being approached by any female, although they observed a number of apparently unattached women move about, drinking with each other and with various men. The patrons, male and female, moved around from group to group. The establishment is described as a neighborhood tavern, not a night club, patronized regularly for social purposes by both sexes, mostly residents of the

neighborhood, who have become acquainted with one another.

"At about 12:25 a.m. a woman called Marge approached the agents and asked if they would buy her a drink and, at the agents' request, she was served by the bartender with a glass of beer. As Marge was being served, she called to another woman (Pat) seated a few feet away, and asked if Pat wanted a drink, and the bartender served Pat with a glass of beer at the agents' expense. The bartender asked the agents if they wanted to buy a drink for another woman (Kay) seated at their left and, at their direction, the bartender served Kay with a bottle of beer at the agents' expense. In all, Marge and Pat were each served with two glasses of beer and Kay with a bottle of beer in the ensuing hour-and-a-half. Marge was the only woman who asked the agents to buy a drink. Marge was employed as a housekeeper for three years and was a regular patron of the tavern, for social purposes, and was acquainted with most of the patrons. She claims that the agents persuaded her to have a drink. Accepting the agents' version, it appears to be a single, isolated incident during three visits to defendants' premises. In my opinion, it is apt to refer to Re Weiner, Bulletin 1087, Item 7, wherein it is stated:

'\*\*\* the evidence fails to establish that defendant permitted female "bar flies" to prey upon male patrons, which practice is the basis for a nuisance charge.\*\*\*'

"Factors which might be pertinent on a general nuisance charge are the promotion of drinks for Pat and Kay, and various other indecorous conduct on June 13 which, according to the agents, came close to or actually was lewd, although denied by defendants' witnesses. Assuming that the agents' version is correct, and that the licensees are responsible for each and every incident, it cannot justify a finding of guilt in a general nuisance charge. While not condoning any such incidents, Charge 4 cannot be sustained either on the basis of the unescorted female allegation or upon the basis of any general course of conduct of the licensed business. Re Victoria Bar, Inc., Bulletin 841, Item 5. I, therefore, recommend that Charge 4 be dismissed.

"Defendants have a prior adjudicated record. Effective November 25, 1954, their license was suspended by the Director for 180 days for permitting lewd and immoral activities (arrangements for sexual intercourse) in their licensed premises. See Bulletin 1041, Item 2. The present offenses do not involve grave immorality. I recommend that defendants' license be suspended for twenty days on Charge 1 (Re Blanker, Bulletin 1107, Item 10); for an additional ten days on Charge 2 (Re Piniazik and Osiecky, Bulletin 1011, Item 5), and for an additional five days for the previous violation within the past five years, making a total suspension of thirty-five days."

After the Hearer's Report was filed the Prosecutor filed written exceptions thereto and oral argument by the attorney for defendant-licensees and the Prosecutor as to said exceptions was thereafter heard by me.

The exceptions filed by the Prosecutor allege:

- (1) The penalty is inadequate.
- (2) The Hearer erred in dismissing Charges 3 and 4 in that:
  - (a) It is not necessary to produce the drawings to find guilt where the subject matter is admitted by both sides.
  - (b) The premises were so conducted as to constitute a nuisance.

While I agree that the description of the drawings by the agents would constitute them as being lewd and indecent, nevertheless, the bartender said he did not see them as he was without his glasses, but when he heard the snickering he took them and put them face down on the back bar and later destroyed them. In addition, various patrons denied they saw any lewd or indecent drawings. I sustain the Hearer, therefore, in his dismissal of Charge 3.

While the premises were conducted in a very slipshod and careless manner there is little question that the majority of the patrons knew each other rather intimately and were probably neighbors and as a result their language, while far from being desirable, plus certain familiarities seemingly indulged in (although denied by the per accused thereof) seems to have resulted from an overly friendly or neighborly attitude towards each other sparked by the stimulation of a few (possibly extra) beers. There seemed to be no angry words at any time used and the profane language which prevailed at times seems to have been used in more of a jocular than serious vein. I also sustain the Hearer, therefore, in his dismissal of Charge 4.

In accordance with the recommendation made by the Hearer I find defendants guilty as to Charges 1 and 2 and since the recommended penalty appears to be adequate under the circumstances of the case I shall suspend defendants' license for thirty-five days.

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

ORDERED that Plenary Retail Consumption License C-897, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Emanuel Sussman & Hyman Sussman, t/a Joe's Bar, 111 Washington Street, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m., June 24, 1957; and it is further

ORDERED that if any license be issued to these licensees or to any other person for the premises in question for the 1957-58 licensing year, such license shall be under suspension until 2:00 a.m. July 29, 1957.

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Kent Cafe, Inc. )  
t/a Kent Cafe, Inc. )  
132 Kent Street )  
Trenton 10, New Jersey )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-35, issued by the Board of Commissioners of the City of Trenton. )

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Kent Cafe, Inc., Defendant-Licensee, by Ferdinand C. Scaccetti, Secretary.

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

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to a minor on its

licensed premises, in violation of Rule 1 of State Regulation No. 20.

Acting upon information received from New Jersey State Police authorities, ABC agents obtained a signed sworn statement from Robert ---, wherein it appears that he is nineteen years of age, the date of his birth being November 28, 1937, and that he purchased two quart bottles of beer at defendant's license premises between 8:00 and 9:00 p.m. on March 9, 1957; that the bartender asked Robert for identification and he displayed an identification card issued to another person whose date of birth appeared thereon as August 22, 1934; that he had been in such tavern a number of times before and obtained alcoholic beverages on the basis of the previous display of the same card.

Robert, in the presence of the ABC agents, identified Ferdinand C. Scaccetti as the person who sold him the beer on March 9, 1957. At the time of such identification, both Ferdinand C. Scaccetti and his brother John, who was also an officer of the corporate-licensee and employed in the establishment, told the agents that both had sold and served alcoholic beverages to Robert on the basis of his display to them of the aforesaid identification card.

Defendant has no prior adjudicated record. The minimum suspension imposed for an unaggravated sale of alcoholic beverages to a nineteen-year-old minor is fifteen days. Re Brudzinski, Bulletin 1164, Item 11. In view of the particular circumstances which exist in the instant case, I shall suspend defendant's license for ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Angelotta, Bulletin 1163, Item 12.

Accordingly, it is, on this 27th day of May 1957,

ORDERED that Plenary Retail Consumption License C-35, issued by the Board of Commissioners of the City of Trenton to Kent Cafe, Inc., t/a Kent Cafe, Inc., 132 Kent Street, Trenton, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m., June 3, 1957, and terminating at 2:00 a.m., June 8, 1957.

WILLIAM HOWE DAVIS  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against )

Bobilu Club, Inc. )  
t/a West End Casino )  
717 Ocean Avenue )  
Long Branch, New Jersey )

ORDER

Holder of Seasonal Retail Consumption License CS-2 (for the summer season from May 1, 1956, to November 1, 1956), and now holder of Seasonal Retail Consumption License CS-2 (for the summer season from May 1, 1957, to November 1, 1957), issued by the Board of Commissioners of the City of Long Branch. )

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Bobilu Club, Inc., Defendant-licensee, by Louis Haas, President.  
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

By order dated December 10, 1956, I suspended defendant's license for twenty days. Because defendant's premises were then

closed, the order provided that the effective dates for said suspension would be fixed by a further order which would be entered after the licensed premises reopened for business for the 1957 season (see Bulletin 1150, Item 5).

It appearing that defendant has obtained a seasonal retail consumption license for the summer season from May 1, 1957, to November 1, 1957, and an investigation having satisfied me that said premises are ready to reopen for business,

It is, on this 23rd day of May, 1957,

ORDERED that seasonal retail consumption license CS-2, for the summer season from May 1, 1957, to November 1, 1957, issued by the Board of Commissioners of the City of Long Branch to Bobilu Club, Inc., t/a West End Casino, for premises 717 Ocean Avenue, Long Branch, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. June 6, 1957, and terminating at 3 a.m. June 26, 1957.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against )

Dutch Mele's Club house, Inc., )  
Oak Tree Road & Plainfield Ave. )  
Edison Township, PO RFD #1 )  
South Plainfield, New Jersey )

ON PETITION  
ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Board of Commissioners of the Township of Edison. )

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Norman J. Abrams, Esq., Attorney for Defendant-petitioner.

BY THE DIRECTOR:

An order having been entered on May 27, 1957, suspending defendant's license for ten days commencing at 2 a.m. June 3, 1957, and terminating at 2 a.m. June 13, 1957; and

It appearing from a verified petition filed herein that on May 2, 1957, defendant-petitioner entered into a contract with a "name" band to play on the premises from May 29, 1957, to and including June 23, 1957; and that defendant-petitioner would be liable to pay a substantial penalty if said contract were cancelled, and sufficient cause thus appearing,

It is, on this 29th day of May, 1957,

ORDERED that the suspension of ten days heretofore imposed, instead of commencing at 2 a.m. June 3, 1957, shall, in lieu thereof, commence at 2 a.m. June 25, 1957, and continue in effect until the expiration of said license at midnight June 30, 1957; and it is further

ORDERED that any renewal of said license for the 1957-58 licensing year shall be and remain under suspension until 2 a.m. July 5, 1957.

WILLIAM HOWE DAVIS  
DIRECTOR

## 5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS-- LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings )  
 against )

Benny's Tavern, Inc.  
 915 Bergenline Avenue )  
 Union City, New Jersey )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption  
 License C-66, issued by the Board of )  
 Commissioners of the City of Union City. )

-----  
 Mario M. Polcari, Esq., Attorney for Defendant-Licensee.  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"Defendant has pleaded not guilty to a charge alleging that on February 15, 1957, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to two minors and permitted the consumption of such beverages by said minors on its licensed premises, in violation of Rule 1 of State Regulation No. 20.

"At the hearing in the case Robert ---, one of the minors, was presented as a witness for the Division and testified, without objection by counsel for the licensee, that he was born August 2, 1938, and is eighteen years of age. Charles ---, the other minor, also testified without objection by such counsel, that he was born April 27, 1937 and is nineteen years of age.

"At the conclusion of the direct and cross-examination of these witnesses, counsel for the defendant stated that he desired to make a motion directed to the notice, namely, that the licensee is entitled to a five day notice of the hearing, and did not receive a five day notice; that, therefore, the Director had no jurisdiction to hear the charge and that the matter be dismissed for that reason.

"The attorney appearing for the Division represented that he would make a statement as to the facts (concerning the mailing of the notice) and the Hearer stated that if the attorney for the defendant disputed such statement, it would be necessary to present testimony. Thereupon the attorney for the Division referred to the provisions of R.S. 33:1-31 which read, 'No suspension or revocation of any license shall be made until a five day notice of the charges preferred against the licensee shall have been given to him personally or by mailing the same by registered mail addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him.', and stated that the instant proceeding was instituted by notice of hearing dated February 20, 1957 and on the very same date of February 20, 1957 a copy of that notice in accordance with the statute was mailed to the licensee registered mail, return receipt requested, fixing the date of the hearing as March 1, 1957, a full nine days from the date of the registered letter; that, according to the card, the letter and notice was received on February 25th, four days prior to the date of the hearing.

"Disregarding for the time being the legal effect of the action of counsel for the defendant in cross-examining the Division's

witnesses before moving for dismissal on the jurisdictional ground, decision on that motion was reserved for the Director's consideration. The attorney for the Division thereupon offered to consent to an adjournment of the hearing if defendant's counsel so desired, but such offer was not accepted by counsel. The Hearer then stated that it seemed more expeditious to proceed to take testimony on the merits so that the case would be fully heard; then, in the event that counsel's legal objection was well taken and the case dismissed, and the disciplinary proceedings were again instituted, all pertinent facts would have been developed and counsel could then decide whether further to contest the matter. On the other hand, counsel was given the alternative that the hearing would be then and there adjourned in order to submit the motion for the Director's decision and if his decision was adverse to counsel's contention, a future date would be fixed for the presentation of further testimony. Counsel was informed that he had the choice and that we want to have a full and fair trial in the matter.

"In response, counsel for the defendant stated that he was fully prepared to proceed 'today' to dispose of the matter but that he did not want to confer jurisdiction if such jurisdiction was lacking for failure to comply with the statutory provisions; that if the Hearer decided to proceed, it was up to him. The Hearer remarked that he desired counsel to have a free choice; that if he proceeded to a full hearing on the merits, and the Director, nevertheless, dismissed the charge on the ground of failure to give the statutory notice, the testimony given would be like a deposition and thus save time. Counsel then stated that he was going to proceed on the ground that the proceeding is not a waiver of jurisdiction, which the Hearer clarified by his statement that '---it is stipulated that if the Director decides that the licensee did not get proper notice you will not be held to waive that legal objection by the proceeding.' The full merits of the case were then developed by the testimony of witnesses for the Division and the defendant.

"It is my opinion that the alternative provision of the statute requiring that a five day notice of the charge preferred against the licensee shall be given by mailing the same by registered mail addressed to him at the licensed premises was fully complied with since the notice of charge was mailed to the licensee by registered mail on February 20, 1957. In Borgia v. Board of Review, 21 N.J. 462, involving the provisions of a statute providing for mailing of a Notice of Determination by an administrative agency, Judge Eastwood speaking for the Appellate Division said, at page 467,

'Service of process by mail, when authorized, is deemed complete when the writ is deposited in the post office properly addressed and with the proper amount of postage.'

"My interpretation of the statute is that the provision for due process is dual; first, designating what constitutes due service of process, and secondly, that the defendant be afforded a reasonable opportunity to be heard thereon. Denial of the latter, even though the service was proper, would be a denial of due process. As stated in Kurilla v. Roth, 132 N.J.L. 213, at page 216,

'The design of provisions for such substituted service is to afford the defendant actual notice of the action in time to make defense, if he so chooses, and thus to serve the essential purpose of personal service. The principle of reasonable notice is of the essence. The object of all process is to impart to the person affected notice of the proceeding and an opportunity to defend;

and the sufficiency of the statutory substitute for personal service depends upon whether it is reasonably calculated to provide the defendant with notice of the action or proceeding and an opportunity to be heard.'

"Service of process having been legally complied with in the instant case as above indicated, there cannot be the slightest doubt that the defendant was afforded a full, fair and reasonable opportunity to defend the proceedings. I, therefore, recommend that the motion to dismiss the charge on jurisdictional grounds be denied.

"As to the merits of the case, an ABC agent testified as follows: He and another agent were at the bar in defendant's licensed premises on February 15, 1957 at about 11:20 p.m. to investigate a complaint that alcoholic beverages were being sold to minors. Thomas DeMarlo, vice-president of the defendant corporate-licensee and Robert Schubert were tending bar. The agents observed Charles at the bar drinking beer. During their stay in the premises, they observed Charles served with and drink two additional glasses of beer brought to him by DeMarlo. Shortly after the agents entered, Robert, the other minor, came to the bar with two companions. Schubert approached the group and then drew three glasses of beer and placed one in front of each, including Robert, who drank his beer. Shortly thereafter Robert was served with and consumed another glass of beer brought to him by DeMarlo. Thereafter Schubert served the group of three including Robert with another round of beer. The agent, who was nearby, did not hear either Schubert or DeMarlo ask Robert his age or request him to produce any proof thereof.

"After the last service to Robert, the agents identified themselves to Robert, who first stated that he was twenty-one years of age, and then admitted that he was actually eighteen years of age. The agents then identified themselves to Charles, who first stated that he was twenty-three, and then stated that he was twenty years of age but he displayed to the agents his birth certificate which gave his date of birth as April 27, 1937. The agents then identified themselves to DeMarlo and told him that the two boys were minors and drinking alcoholic beverages on the premises. DeMarlo admitted that both boys had consumed alcoholic beverages but stated that they had presented to him identification showing that they were twenty-one years of age although he had not requested either of them to sign any written representation as to age.

"At the conclusion of the agent's direct testimony the unconsumed portions of beer served to each of the boys, and chemical analysis thereof, were received in evidence without objection. Counsel for defendant stated, 'there is no objection because it is not the issue here whether they were served alcoholic beverages or not. We admit that. The issue is the age.'

"On cross-examination the agent testified that Robert told him that he displayed an identification or draft card to DeMarlo which indicated that he was over twenty-one years of age but that he did not have the card with him. Further, that Charles told him that he told the bartender that he was twenty-four or twenty-three and displayed an identification or draft card which indicated that he was over twenty-one years of age. The agent testified that he did not believe that Charles was twenty-three or twenty-four and continued to question him.

"It was stipulated that the second agent's direct testimony would be similar to that of his companion and his cross-examination was limited to inquiry as to whether he questioned the age of any other person who was in the tavern at the time.

"On defendant's behalf, Thomas William DeMarlo testified that

he is manager of the licensed business and that he served beer to both minors on the date in question; that previously, on the first occasion when Robert came to the tavern, he asked his age and Robert displayed an identification or draft card on which the age of twenty-two was stated and that Robert appeared to be that age and that he had a similar experience with Charles when he first came in previously and that Charles appeared to be over twenty-one years of age. DeMarlo stated that he has been connected with the licensed business for five years and did not know that there is such a thing as a written representation of age which licensees have signed by minors.

"The defense limits itself to a reliance upon the prior display by the minors of draft or identification cards. Such defense has time and again been rejected on the ground that it cannot be accepted as a substitute for a written representation as to age as provided for by R.S. 33:1-77. Re Cirigliano, Bulletin 1141, Item

"The Appellate Division of the Superior Court of New Jersey, when considering this subject in Sportsman 300 v. Nutley and the Division of Alcoholic Beverage Control, Bulletin 1143, Item 1, observed that 'the agency has not, however, considered that a "false representation in writing by the minor" was intended to embrace such writings as a driver's license, a draft card, or a social security card' and affirmed the interpretation by the Director.

"I, therefore, recommend that the defendant be found guilty of the charge preferred herein. Defendant has no prior adjudicated record. Under the particular circumstances existing in the instant case, I recommend that the defendant's license be suspended for ten days instead of the fifteen days (Re Kardasinetz, Bulletin 1141, Item 7) usually imposed for the sale of alcoholic beverages to an eighteen-year-old minor after January 16, 1956. Re Angelotta, Bulletin 1163, Item 12."

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 herein, I concur in and adopt the findings and recommended conclusions of the Hearer. Hence, I shall suspend defendant's license for a period of ten days.

Accordingly, it is, on this 29th day of May 1957,

ORDERED that Plenary Retail Consumption License C-66, issued by the Board of Commissioners of the City of Union City to Benny's Tavern, Inc., 915 Bergenline Avenue, Union City, be and the same is hereby suspended for a period of ten (10) days, commencing at 3 a.m., June 10, 1957, and terminating at 3 a.m., June 20, 1957.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF REGULATION NO. 38 - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED IN VIOLATION OF LOCAL REGULATION - ACCEPTING ORDERS AT OTHER THAN LICENSED PREMISES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Samuel Greco, )  
 s/s Irving Avenue, 1 1/2 miles west )  
 of Morton Avenue )  
 Deerfield Township )  
 PO RD 1 Millville, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Deerfield. )

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 Samuel Adler, Esq., Attorney for Defendant-licensee.  
 David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) he sold during prohibited hours alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38; (2) he sold during prohibited hours alcoholic beverages, in violation of a local ordinance; (3) he failed to have his entire licensed premises closed during prohibited hours, in violation of a local ordinance, and (4) he accepted orders for and sold alcoholic beverages at a place other than his licensed premises, in violation of R.S. 33:1-2.

The file herein discloses that at about 10:15 A.M. Sunday morning, April 14, 1957, State Troopers stopped two cars leaving the vicinity of defendant's licensed premises and learned from the drivers that one of them purchased a quart bottle of beer and the other a 4/5 quart of whiskey from a man and a woman who handed the beverages to them through the back window of a house wherein the couple reside and in which defendant's licensed premises are located. The drivers identified the couple (uncle and aunt of the licensee herein), and all gave signed, sworn statements admitting the aforesaid violations.

Defendant has no prior adjudicated record. In addition to the sale of alcoholic beverages during prohibited hours, the sale of alcoholic beverages on unlicensed premises constitutes a very serious violation. I shall suspend defendant's license for thirty days, less five days for the plea entered herein, leaving a net suspension of twenty-five days (Re Julewicz, Bulletin 1034, Item 8).

Accordingly, it is, on this 29th day of May, 1957,

ORDERED that plenary retail distribution license D-2, issued by the Township Committee of the Township of Deerfield to Samuel Greco, for premises on s/s Irving Avenue, 1 1/2 miles west of Morton Avenue, Deerfield Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 9 A.M. June 6, 1957, and terminating at the expiration of the license at midnight June 30, 1957.

WILLIAM HOWE DAVIS  
 DIRECTOR

## 7. APPELLATE DECISIONS - RUSSO v. LINCOLN PARK.

Joseph Russo, trading )  
as Idle Hour, )

Appellant, )

v. )

ON APPEAL

CONCLUSIONS AND ORDER

Mayor and Council of the )  
Borough of Lincoln Park, )

Respondent. )

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Pridmore and Irwin, Esqs., by William P. Westling, Esq., and  
August A. Alino, Esq., Attorneys for the Appellant.  
Young and Sears, Esqs., by Harry L. Sears, Esq., Attorneys for  
the Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent whereby it suspended appellant's license for 161 days, effective April 22, 1957, after appellant entered a plea of guilty of a charge alleging that on February 21, 1957 he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to an 18-year-old minor.

"Upon the filing of the notice and petition of the appeal it was ordered by the Director that such filing shall not stay respondent's order of suspension pending the appeal hearing in the matter. R.S. 33:1-31.

"Appellant contends that the suspension imposed as a result of the guilty plea was excessive, harsh and unwarranted under the circumstances presented and that it should be reversed to the end that a more just, legal and equitable penalty be imposed against appellant.

"The attorney for appellant did not press for an immediate ruling regarding the question of the stay in this case but left the determination thereof to the discretion of the Director. The said attorney emphasized that his concern on behalf of appellant was the severity of the penalty imposed by respondent.

"Appellant testified herein that John ---, a minor, visited his licensed premises on three separate occasions; that on the first visit during the summer months of 1956 John, when asked by him concerning his age, produced a birth certificate wherein it was disclosed that the person therein mentioned was an adult; that based on said proof of age, he served John a glass of beer; that near the end of the same summer John again came into his licensed premises and the third and last occasion was on February 21, 1957 the date now under consideration, at which time he sold him two containers of beer.

"John -- testified that on February 21, 1957 when he visited appellant's licensed premises he was 18 years of age; that he purchased two containers of beer at that time; that during the summer of 1956 he had visited appellant's establishment on two occasions, on the first visit displaying to the appellant a birth certificate which he had found wherein the certified age of the

person therein referred to was over 21 years.

"William P. Clark, Mayor of the municipality wherein the appellant's licensed premises are located testified that although he did not vote in the matter, he was present and participated in the deliberation at the meeting when the appellant's license was ordered suspended for a period of 161 days by the members of the council; that he was not prejudiced or biased against the appellant and when asked during cross-examination if he desired to see the defendant's 'place closed and out of business' answered 'If it continues to operate the way it has in the past and the difficulty we had in the past with the place, presumably the borough would be better without it.'

"Appellant's license was suspended by the Director for thirty-five days, effective March 18, 1957 and terminated April 22, 1957. The said suspension was imposed after appellant pleaded non-vult to the sale, service and delivery, directly or indirectly, of alcoholic beverages to four minors, two of whom were sixteen years of age, one nineteen years and the other twenty years of age. The Director stated that 'Considering that four minors are involved, the quantity of alcoholic beverages sold to and consumed by them, and the frequency with which two of such minors were in defendant's premises, I shall suspend defendant's license for forty days.' Five days were remitted for the plea entered therein; leaving a net suspension of thirty-five days. Re Russo, Bulletin 1163, Item 1.

"The question to be decided is whether in view of the circumstances appearing in the instant case the suspension imposed by respondent is excessive. The suspension imposed in a local disciplinary proceeding rests, in the first instance, within the sound discretion of the local issuing authority. The power of the Director to reduce or modify a penalty imposed by a local issuing authority will be sparingly exercised and only with the greatest caution. Robinson v. Newark, Bulletin 54, Item 2.

"It is conceded that the suspension imposed is extreme but the violation now under consideration and the previous violation were serious. Sales of intoxicating liquor in large quantities and with recurring frequency to youngsters of sixteen years, eighteen and nineteen years of age cannot be condoned. The respondent, in fixing the suspension, might properly have considered that since no locus poenitentiae (i.e., chance to repent and amend, and thereafter a subsequent violation and adjudication, Re Blanker, Bulletin 254, Item 6) intervened, it cannot here be considered a second offense. In other words there must be an adjudication of guilt followed by punishment, and then, still unregenerate, a subsequent violation and adjudication. Rose v. Bellmawr, Bulletin 411, Item 9. The respondent, in fixing the suspension, was likewise free to consider the fact that appellant had made some effort to prevent sales to the minor by requesting John for proof of his age on the first occasion of his visit to appellant's licensed premises. It is apparent, however, that he did not follow the required procedure outlined in R.S. 33:1-77 to establish a defense to the charge.

"In view of the number of minors involved in the previous violation and their respective ages, the suspension imposed, although severe, does not afford a basis for reversal or even modification on this appeal. The plea for mitigation should be made, if at all, to respondent, which may grant relief in the event that the members thereof determine that such action is advisable. In Re Bischoff, Bulletin 53, Item 5, the Commissioner pointed out that it is within the jurisdiction of the local issuing authority to modify a penalty previously imposed where the facts warrant it.

"I recommend that an order be entered affirming respondent's action and dismissing the appeal."

Written exceptions to the Hearer's Report, pursuant to Rule 14 of State Regulation No. 15, together with written argument in substantiation thereof were filed with me by the attorneys for the appellant. I have carefully considered the transcript of the testimony herein, together with the Hearer's Report and the exceptions thereto filed by appellant, and I concur in and adopt the recommended conclusions of the Hearer. I shall affirm the respondent's action.

Accordingly, it is, on this 10th day of June 1957,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 240 DAYS.

In the Matter of Disciplinary Proceedings against )

Marion Manzo )  
t/a The Casino )  
6 Bank Street )  
Paterson, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-124, issued by the Board of Alcoholic Beverage Control for the City of Paterson. )

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Marion Manzo, 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 charge;

"On February 6, 7, 8, 9, April 3, 12 and 13, 1957 and on divers days prior thereto, 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 male impersonators and persons who appeared to be homosexuals in and upon your licensed premises on all such occasions; allowed, permitted and suffered male impersonators and persons who appeared to be homosexuals to frequent and congregate in and upon your licensed premises on all such occasions; allowed, permitted and suffered a female patron to make overtures to and arrangements with a male patron in and upon your licensed premises on February 6 and 7, 1957, for the purpose of illicit sexual intercourse; allowed, permitted and suffered the sale and service to and the consumption of alcoholic beverages by persons actually or apparently intoxicated in and upon your licensed premises on February 6, 7, April 3, 12 and 13, 1957; allowed, permitted and suffered

lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises on all the above stated specific dates; and otherwise conducted your place of business on all the above stated occasions in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Briefly stated, the facts set forth in the file disclose that on the dates alleged in the charge ABC agents visited defendant's licensed premises wherein they observed several female patrons whose mannish attire, mannerisms and display of affection towards one another confirmed the bartender's characterization that they were lesbians. The agents further observed intoxicated persons being served alcoholic beverages, heard male and female habitués indulge in salacious remarks, recognized a known homosexual on the premises and were informed by the bartender that two female loiterers, whom he importuned to join them, were "hustlers" out for drinks who, "when they are in here business picks up real good." The file further discloses that one of the agents was invited by a female patron to "stop around some night along\*\*\*we'll have some fun."

It is deemed unnecessary to detail the unseemly conduct and the foul and obscene language indulged in by many of the patrons on the licensed premises in the presence of the bartender and obviously acquiesced in by Albert Manzo, husband and employee of the licensee, since no useful purpose would be served thereby.

Defendant has no prior adjudicated record. However, when her immediate predecessor and employee, Albert Manzo (her husband), held the license it was suspended for eight days by the local issuing authority, effective October 2, 1950, for sales to minors; and, effective January 31, 1955, it was suspended for 180 days by me for violations substantially similar to those charged herein. Re Manzo, Bulletin 1050, Item 1.

In mitigation of the penalty to be imposed herein defendant represents that she was absent from her licensed premises for a long period of time due to her attendance on an indisposed relative and she has submitted a number of letters from professional and lay persons extolling her character, integrity and reputation.

A licensee who, as here, absents herself from the licensed premises cannot escape the consequences of the above related incidents on her licensed premises. She, as the wife of Albert Manzo, undoubtedly was familiar with the facts and my conclusions in Re Manzo, supra, yet she failed to heed my admonition to her husband that " \* \* \* defendant will be well advised to see to it that no further violations occur upon his licensed premises whether he is present or not" and that I intend to impose heavier penalties for future violations of the type charged therein.

Since defendant's predecessor in interest has a record of suspension and continued as an employee of the licensee herein, such record will be considered in arriving at the proper penalty to be imposed in the instant case. Re Pioneer Tavern, Inc., Bulletin 988, Item 11; Re Cherlin, Bulletin 992, Item 4; Re Hrycenko, Bulletin 994, Item 9; Re New Town Tavern, Inc., Bulletin 1055, Item 2.

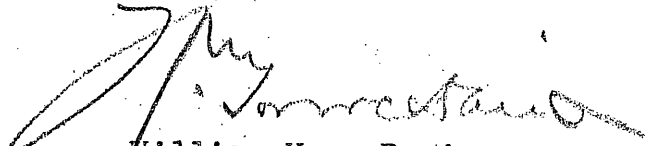
It has long been established that the unholy union of vice and liquor cannot and will not be tolerated on licensed premises. The public is entitled to be protected from the sordid activities which were permitted without compunction by both the licensee and her predecessor. However, since the evidence is insufficient to show that the licensee's employees participated in the alleged overtures by a female patron to engage in illicit sexual relations with a male patron and considering the mitigating circumstances

appearing herein, I shall suspend defendant's license for a period of two hundred and forty days.

Accordingly, it is, on this 14th day of June 1957,

ORDERED that Plenary Retail Consumption License C-124, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Marion Manzo, t/a The Casino, 6 Bank Street, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3 a.m., June 24, 1957; and it is further

ORDERED that if any license be issued to this licensee or to any other person for the premises in question for the 1957-58 licensing year, such license shall be under suspension until 3 a.m., February 19, 1958.



William Howe Davis  
Director.