

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

BULLETIN 1366

December 19, 1960

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THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5301 SOUTH CAMPUS DRIVE
CHICAGO, ILLINOIS 60637

DATE: 10/10/1968

TO: J. H. DUNN

FROM: R. H. SCHNEIDER

RE: 100-100000-100000

100-100000-100000

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

BULLETIN 1366

December 19, 1960

1. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO NON-MEMBER
NOLLE PROSSED.

In the Matter of Disciplinary
Proceedings against)

RAHWAY LODGE NO. 1075 B.P.O. ELKS)
122 W. Milton Avenue)
Rahway, N. J.)

CONCLUSIONS
AND ORDER

Holder of Club License CB-1, issued
by the Municipal Board of Alcoholic
Beverage Control of the City of
Rahway.)

Patten & Pryga, Esqs., by Walter S. Pryga, Esq., Attorneys for
Defendant-licensee.
Davis S. Piltzer, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to a charge alleging that it permitted the service of alcoholic beverages to a person who was not a bona fide member of defendant-club or a bona fide guest of a member, in violation of Rule 8 of State Regulation No. 7.

It appears from the testimony of two ABC agents that while investigating a complaint of gambling in the premises, one of the agents met a member of the defendant-club who was unlocking the door to gain entrance to the club premises and after some conversation, the agent walked to the barroom with the member where eventually they sat beside each other at the bar. The member treated the agent to a glass of beer and purchased a mixed drink for himself, the payment for which was taken from the member's money which he had deposited on the bar. Subsequently, the bartender, at the request of the member and the agent, refilled the empty glasses and took payment from the money belonging to the agent which the latter had placed on the bar. Thereafter during conversation, the member asked the agent, because he looked familiar to him, if he were a member of the club, and the agent told him that he was not. At that point the other agent who later had entered the premises, came into the barroom. Both agents identified themselves to the bartender who, when advised of the situation, immediately explained that he believed the agent who had been served drinks was a guest of the member with whom he entered the barroom.

On the date of the within hearing, after the Division had completed its case, the attorney appearing for the Division moved before the assigned Hearer to nolle pros the case based on the agents' testimony. The Hearer recommended that such action be taken.

I have carefully considered the facts appearing in this matter and am of the opinion that, because of the circumstances of this case, the charge preferred herein should be nolle prossed.

Accordingly, it is, on this 19th day of October 1960,

ORDERED that the charge herein be and the same is hereby
nolle prossed.

WILLIAM HOWE DAVIS
DIRECTOR

2. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN DWELLING - STOCK OF ALCOHOLIC BEVERAGES AND FURNISHINGS AND EQUIPMENT ORDERED FORFEITED.

In the Matter of the Seizure on)	
July 9, 1960 of a quantity of)	Case No. 10,349
alcoholic beverages, furniture,)	ON HEARING
fixtures, and equipment, and \$38.11)	CONCLUSIONS
in cash at premises occupied by John)	AND ORDER
Henry Pye, located at 73 Hamilton Avenue,)	
in the City of Paterson, County of)	
Passaic and State of New Jersey.)	

 Thomas J. McGann, Esq., Attorney for John Henry Pye and Cora Adams.
 I. Edward Amada, Esq., Appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether a quantity of alcoholic beverages, \$38.11 in cash, and various items of furniture, fixtures and equipment, as described in a schedule attached hereto, seized at premises occupied by John Henry Pye, located at 73 Hamilton Avenue, Paterson, New Jersey, constitute unlawful property and should be forfeited.

"John Henry Pye and Cora Adams, represented by counsel, appeared at such hearing and sought return of various articles hereinafter described.

"The facts, not in dispute, are that on July 2, 1960 an ABC agent visited a two-story frame dwelling at the above address to investigate a complaint that alcoholic beverages were being sold there without a license. Three rooms in the basement were used by John Henry Pye ostensibly as club quarters. Two of the rooms had the appearance of barrooms and the third was a kitchen. The agent purchased alcoholic beverages on this occasion, and observed other persons there make similar purchases.

"On July 9th, the agent in question returned to the premises accompanied by a fellow agent. Each agent purchased drinks of alcoholic beverages, for which they paid with bills identified by their serial number. They observed other persons there purchase and consume alcoholic beverages. By prearrangement, other ABC agents and local police officers entered the premises, at which time there were about 38 other persons present. The agents and police officers identified themselves to Chester Brody, who was the bartender behind one bar, and Cora Lee Adams, who was behind the other bar.

"The agents seized 20 bottles of various brands of alcoholic beverages, 47 cans of beer, the fixtures, furnishings, and equipment in the premises, and a total of \$38.11 which was found in two separate amounts in a metal container under each bar, and included the marked money.

"John Henry Pye, Chester Brody and Cora Lee Adams, respectively, did not hold any license authorizing the sale of alcoholic beverages, and the premises were not licensed for that purpose.

"The attitude of the claimants is that they desired to be confronted with evidence that the kitchen where a refrigerator, a speaker used in connection with the hi-fi, a clock and eight chairs

were seized, was part of the "facility", and that such articles were not the property of John Henry Pye. In addition, Cora Adams seeks return of a hi-fi set, and a television set found in one of the other rooms. The claimants mentioned other articles, none of which were seized by the ABC agents, as appears from their itemized inventory of the seizure. Forfeiture of the other articles seized, including the cash, is not opposed.

"An ABC agent who visited the premises on July 2nd, testified that he then observed various persons seated in the kitchen drinking beer; and that when he was at the premises on July 9th he observed 35 persons walking in and out of the kitchen while drinking beer, and food being brought out of the kitchen to the barrooms.

"John Henry Pye testified that he is the superintendent of the building which has thirteen rooms, and the kitchen is used on some occasions for cooking purposes by the roomers, and for the preparation of food sold by him to his patrons; further that the television set, the refrigerator, the hi-fi set, are the property of Cora Adams, and he is the owner of the clock and chairs.

"Cora Adams testified that she is the owner of the articles previously mentioned and she was helping the club by having the articles delivered to the premises when purchased, permitting John Pye to use them; that she, of course, knew of the unlawful alcoholic beverage activities which were being carried on at the premises; and that she resides in an apartment elsewhere, in which there is a television set and radio.

"The seized alcoholic beverages were intended for sale without a license and hence are illicit R.S. 33:1-1(i). Such illicit alcoholic beverages, the sum of \$38.11 in cash, and all other personal property seized in the premises constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"It is abundantly evident from the testimony presented that the kitchen was part and parcel of the food and unlawful liquor activities being carried on at the premises by John Pye, and that Cora Adams participated in such unlawful activities. Hence, neither John Pye nor Cora Adams, as active wrongdoers can obtain the return of any of the property seized. Seizure Case No. 9382, Bulletin 1179, Item 5. Further, by the clear language of the statute, all personal property of whatever nature found in the building is subject to forfeiture, irrespective of any use thereof in the unlawful alcoholic beverage activities. Seizure Case No. 9771, Bulletin 1278, Item 8.

"I therefore recommend that the claims of John Henry Pye or Cora Adams for return of the articles in question be denied, and that an Order be entered forfeiting all of the property seized."

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of October 1960,

DETERMINED and ORDERED that the seized property, including the \$38.11 in cash, more fully described in Schedule "A" attached hereto, constitute unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the state in accordance with State Regulation No. 29 or retained for the use of hospitals

and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 20-bottles of various brands of alcoholic beverages
- 47 - cans of beer
- 20 - bottles of soda
- 9 - tables
- 21 - chairs
- 5 - bar stools
- 1 - refrigerator
- 1 - Ambassador hi-fi
- 1 - clock
- 1 - Emerson television set
- 1 - Ambassador television set
- 8 - flower pots
- 7 - flower pot hangers
- various drinking glasses
- \$38.11 in cash

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the seizure)	Case No. 10,387
on September 5, 1960 of a)	
quantity of alcohol and a)	ON HEARING
Cadillac sedan in front of)	CONCLUSIONS
361 Washington Street in the)	AND ORDER
City of Newark, County of)	
Essex and State of New Jersey.)	

 Vernon Starke, Pro Se.
 Pacific Discount Company, Inc., by Louis Cross II, President.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 12 two-quart jars of alcohol and a Cadillac sedan, described in a schedule attached hereto, seized on September 5, 1960 in front of 361 Washington Street, Newark, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered on behalf of Pacific Discount Company, Inc., which sought recognition of its alleged lien on the Cadillac sedan. An appearance was also entered by Vernon Starke, the registered owner of such motor vehicle, who sought its return. Forfeiture of the alcohol was not opposed.

Reports of ABC agents and other documents in the file, presented in evidence with consent of the claimants, disclose the following facts:

A local police officer had the premises in question under surveillance on the above date on information that unlawful alcoholic beverage activities were being carried on in the vicinity of such premises. He noticed the Cadillac sedan in question parked in front

of the premises and upon inquiry, ascertained that James Arthur Starke was in possession of such motor vehicle. The officer discovered two suitcases in the rear of the car, one with five two-quart jars of alcohol, and the other with seven two-quart jars of alcohol. None of the jars of alcohol had affixed thereto any stamp indicating the payment of tax on alcoholic beverages. Thereupon the officer arrested James Arthur Starke and took into custody the alcohol and car, which were later turned over to ABC agents.

The contents of one of the jars was analyzed by the police department chemist of the City of Newark, who reports that it is alcohol and water (corn whiskey) with an alcoholic content by volume of 46.38 percent.

James Arthur Starke, in a signed sworn statement, asserts that on Saturday, September 3, 1960 his brother Vernon Starke came from Virginia with a U-Haul trailer in which there was a quantity of alcohol; that on Monday he drove in Vernon's car to the parking lot where the trailer had been left, and upon instructions from Vernon removed from the trailer the two suitcases with the 12 jars of alcohol and placed them in the car, returned the trailer to a service station, and transported the alcohol in Vernon's car upon further instructions from Vernon to deliver the alcohol to one Henry Clay, who resides on Washington Street near Court Street, and here Clay was to meet James Starke.

Vernon Starke claims that he does not know whether he was in Virginia on Labor Day weekend, September 3rd, and denies the statements of his brother that Vernon bought the alcoholic beverages from Virginia and that the transportation and intended delivery of the 12 jars of alcohol was engaged in on his instructions. I prefer to accept James Starke's account of the source and destination of the illicit alcohol, but no purpose will be served by a specific denial of Vernon's claim for return of the car, since he has stipulated on the record that if the claim of the finance company is recognized, his request for return of the car need not be considered.

The seized alcohol is illicit because of the absence of a tax stamp on any of the jars. R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Pacific Discount Company, Inc. has presented in evidence a conditional sales contract dated July 27, 1960 signed by Vernon Starke evidencing the conditional sale to him of the Cadillac sedan in question for the purchase price of \$1450.00, which contract the finance company holds by assignment.

It also presented in evidence a motor vehicle certificate of ownership issued on August 4, 1960 by the New Jersey Division of Motor Vehicles evidencing the lien of the finance company on such motor vehicle. The present balance due them, after rebate for prepayment is \$1187.83.

The president of the finance company testified that before extending credit to finance the purchase of the motor vehicle and accepting such contract, the finance company received information that Vernon Starke was 38 years of age, resided at a specific Jersey City address for three years, was married, and resided with his wife and two children; was employed by a painting contractor for three years, with average earnings of \$100.00 a week, and gave the names of various relatives as personal references. The finance company checked the information with two independent credit bureaus; checked the address given as Starke's residence, and spoke with his employer,

who stated that Vernon was good employee, and confirmed the amount of his earnings.

I am satisfied from the evidence presented that the finance company acted in good faith and did not know or have any reason to suspect that Vernon Starke would unlawfully transport alcoholic beverages in such vehicle. I shall therefore recognize the lien of Pacific Discount Company, Inc. upon the motor vehicle in question to the extent of \$1187.83.

It appears that the appraised retail value of the Cadillac sedan does not exceed the amount of the lien claim and the costs of the seizure and storage of the motor vehicle. Such motor vehicle will therefore be returned to Pacific Discount Company, Inc. upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 31st day of October, 1960 Pacific Discount Company, Inc. pays the costs of the seizure and storage of the Cadillac sedan, more fully described in Schedule "A" attached hereto, it will be returned to Pacific Discount Company, Inc.; and it is further

DETERMINED and ORDERED that the alcoholic beverages, as listed in Schedule "A", constitute unlawful property and that the same be and hereby are forfeited, in accordance with the provisions of R.S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

DATED: October 19, 1960

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 12 - quart jars of alcohol
- 1 - Cadillac coupe, Engine No. 556259129,
New Jersey Registration FIU324.

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

STEINHAUSER'S BAR, INC.
997 Madison Avenue
Paterson 3, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-346, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Defendant-licensee, by Walter Steinhauser, President.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that it sold during prohibited hours alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

On Wednesday, September 21, 1960 at about 11:20 p.m., an ABC agent observed the bartender, Walter Steinhauser (president of defendant corporate-licensee) place two one-quart bottles of beer in a paper bag and put it on the bar in front of a patron. After the latter made payment therefor and was about to leave the premises, the agent ordered six 12-ounce cans of beer from the bartender. Thereafter, at 11:30 p.m., the bartender obtained six cans of beer from the refrigerator, put them in a paper bag and placed the bag on the bar in front of the agent, who paid for the beer and then left the premises. The agent joined a fellow-agent who had remained outside the premises and both entered and identified themselves to the bartender. Steinhauser refused to give a signed statement but orally admitted the violation.

Defendant has no prior adjudicated record. However, when Walter Steinhauser held the license for the same premises in his individual name, it was suspended by the local issuing authority for eight days (effective March 1, 1943) for an "hours" violation and again for fifteen days (effective November 27, 1944) for permitting gambling on the licensed premises. Inasmuch as both violations occurred more than ten years ago, they will not be taken into consideration in fixing the penalty herein. I shall suspend defendant's license for the minimum period of fifteen days (Re Lafayette Grill, Inc., Bulletin 1354, Item 7). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 20th day of October 1960,

ORDERED that Plenary Retail Consumption License C-346 issued by the Board of Alcoholic Beverage Control for the City of Paterson to Steinhauser's Bar, Inc., for premises 997 Madison Avenue, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., Monday, October 31, 1960 and terminating at 3:00 a.m., Thursday, November 10, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

FRANK CARNEVALE AND LOUIS LEMBO)
t/a THE RENDEZVOUS)
6 Charles Street)
Lodi, N. J.)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption)
License C-31, issued by the Mayor and)
Council of the Borough of Lodi.)

Harry Zax, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charge:

'On May 14, 1960, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or

indirectly, to a person under the age of twenty-one (21) years, viz., Joseph ---, age 17, in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein, the Division called as its witnesses Joseph ---, Salvatore ---, and two ABC agents hereinafter referred to as Agent R and Agent D.

"Joseph testified that he was born on June 15, 1942 and, hence, was 17 years of age at the time of the alleged violation; that on May 14, 1960 at about 12:30 a.m., he and a friend, Salvatore, drove from a dance in East Paterson to the immediate vicinity of the defendants' licensed premises; that they parked their automobile on the opposite side of the street from the licensed premises; that he alone entered defendants' premises and, without being required to make any written representation of his age, purchased five quart containers of beer from Frank Carnevale who was tending bar with Louis Lembo; that Carnevale placed three of the containers in one bag and two of the containers in another bag; that Carnevale handed him both packages; that in payment thereof he gave Carnevale three one-dollar bills; that he received 50 cents in change and left the premises with the alcoholic beverages.

"On cross-examination, Joseph reiterated the pertinent parts of his direct testimony and further testified that after leaving the licensed premises he and Salvatore drove to the Parkway Lanes (bowling-alleys) in East Paterson where he transferred the alcoholic beverages from Salvatore's car to an unoccupied automobile of John ---; that immediately thereafter he met John coming out of the Parkway Lanes; that he asked John to drive him to Lodi and that just as they entered John's car they were taken into custody by local police officers. Upon further cross-examination, Joseph denied he had been in John's company on the date in question prior to meeting him as aforesaid and also denied that John had purchased the alcoholic beverages.

"Salvatore testified that on the date and time in question he drove Joseph to the defendants' licensed premises from a dance they had attended in East Paterson; that he parked his car across the street from the licensed premises; that he observed Joseph, empty-handed, enter the licensed premises and about five to ten minutes later emerge therefrom with two bags in his arms; that Joseph carried the bags into his car and placed them alongside of him on the front seat; that he looked into the bags; that he saw five containers of beer, three in one bag and two in another and then drove Joseph to the Parkway Lanes, left him there in possession of the alcoholic beverages and drove home.

"On cross-examination, Salvatore stated that he knows John only as an acquaintance and does not socialize with him.

"Agent R testified that on May 17, 1960, he, Agent D. Joseph, Salvatore and John drove to the licensed premises; that Joseph alone accompanied him and Agent D into the licensed premises and in the presence of Mr. Lembo and a Mr. Greco (former owner of licensed premises) identified Frank Carnevale as the person who, on May 14, 1960, sold him the alcoholic beverages; that Mr. Carnevale denied making the alleged sale; that Mr. Lembo and Mr. Greco denied seeing Joseph on the premises at the time in question, and that shortly thereafter John was ushered into the premises by Agent D.

"On cross-examination, Agent R testified that John (20 years old) was brought into the premises because John had informed him that a representative of the licensee had been to his home for the purpose of having his father prevail upon him to say he had made the 'buy' and that this would then place the defendants in a better light because John was three years older than Joseph. Agent R further

testified that Greco had admitted to him in the presence of the defendants that he had visited John's home.

"Agent D was called for cross-examination following a stipulation between counsel that if Agent D were called by the Division, his answers to the questions propounded to Agent R on direct examination would be the same as Agent R's. Agent D denied that he had stated to the licensees that John appeared to be over 21 years of age and corroborated Agent R's description of John, namely, that John is 5'9-10" tall, has light hair, fair complexion, weighs about 180 lbs. and appears to be between 19 and 20 years of age.

"Frank Carnevale, on behalf of defendants, testified that he was on duty behind the bar from about 8:00 p.m. on May 13, 1960 to 3:00 a.m. the following morning, denied seeing Joseph on the premises during said hours and denied making the alleged sale of beer to Joseph.

"On examination by the prosecutor, Carnevale testified that at the time of the alleged sale to Joseph, he, together with his partner, Mr. Lembo, and Angelo Greco, their predecessor in title, were tending bar; that they were busy serving between 30 to 40 patrons most of whom he knew by name or face; that at about 12:45 on the morning in question he personally sold John five quart containers of beer and reiterated his denial to the agents that Joseph was on the premises.

"Louis Lembo testified that he was on duty at the licensed premises between 8:00 p.m. on May 13th to 3:00 a.m. the next morning; that he was certain that Joseph had not visited the premises during said hours and that he would not serve him any alcoholic beverages because he has the appearance of a 16-year-old youth.

"On cross-examination, Lembo testified that he was not tending bar that night; that he was sitting at the bar; that between 8:00 p.m. and 3:00 a.m. on the dates aforesaid, there was only one sale of five containers of beer made to a patron whom he knew; that this patron was not Joseph and that he had observed most of the 30 to 40 patrons who had visited the premises.

"In view of the emphatic denial by the defendants of the charge, I recalled Salvatore who reiterated with certainty that on the date and time in question he drove Joseph to the licensed premises; that he observed Joseph, empty-handed, enter the licensed premises and emerge therefrom with two bags, one of which he later determined had two cartons of beer and the other three cartons; that he then drove Joseph to the Parkway Lanes where Joseph got out of the car and took the alcoholic beverages with him.

"I have carefully considered the testimony adduced herein together with the brief filed on behalf of the licensees and find that Joseph and Salvatore gave an accurate and truthful account of what transpired in the case and am unable to find any inconsistencies or defects in their testimony and cannot conceive that they would conspire against the licensee as suggested in the aforesaid brief. Under the circumstances, I conclude that the Division has sustained the burden of proof of defendants' guilt by a fair preponderance of the believable evidence and it is recommended, therefore, that defendants be found guilty as charged.

"Defendants, individually, have no prior adjudicated record. It does appear that Louis Lembo, one of the partners, was a 49% shareholder in a license held by Flo-Mae, Inc. for other premises located in East Paterson and that such corporate license was suspended, effective June 4, 1956, by the Director for twenty-five days for a dissimilar violation to that charged herein. Re Flo-Mae, Inc., Bulletin 1119, Item 2. However, since Lembo did not participate in the prior violation or in the present violation, I shall not

consider the Flo-Mae, Inc. violation in fixing the penalty herein. It is further recommended that an order be entered suspending the defendants' license for twenty days, the minimum penalty imposed for a sale of alcoholic beverages to a 17-year-old minor (Re Stefanski, Bulletin 1345, Item 7)."

The attorney for the defendant has advised me, in writing, that no exceptions would be taken to the Hearer's Report (Rule 6 of State Regulation No. 16).

After carefully considering all the facts and circumstances herein, I accept the Hearer's conclusion that the defendant is guilty of the charge and so find.

While I cannot agree with the reasons stated by the Hearer for disregarding the previous record of Flo-Mae, Inc., nevertheless, under all the circumstances, I believe that the twenty-day suspension is adequate in this case.

Accordingly, it is, on this 19th day of October 1960

ORDERED that Plenary Retail Consumption License C-31, issued by the Mayor and Council of the Borough of Lodi to Frank Carnevale and Louis Lembo, t/a The Rendezvous, for premises 6 Charles Street, Lodi, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Tuesday, October 25, 1960 and terminating at 3:00 a.m., Monday, November 14, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE (FEMALE IMPERSONATORS) - PRIOR RECORD - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against ESTYRE STEWART t/a MIDTOWN BAR & CAFE 1719 Pacific Avenue Atlantic City, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-229, issued by the Board of Commissioners of the City of Atlantic City.

Paul M. Salsburg, Esq., and Edward I. Feinberg, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On June 11, 12, 18, July 23, 24 and 31, 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 thereon persons, males impersonating females and females impersonating males, who appeared to be homosexuals; 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."

ABC agents visited defendant's licensed premises on the dates set forth in the charge herein. The agents report that on their first visit, early Saturday evening June 11, 1960, there were about nineteen male persons present; that on their second visit, early Sunday morning June 12, 1960, there were about 69 persons (65 males and 4 females) present; that on their third visit, early Saturday morning June 18, 1960, there were about 28 persons (26 males and 2 females) present; that on their fourth visit, Saturday, July 23, 1960 from 10:45 p.m. to 12:05 the next morning, there were about 76 persons (60 males and 16 females) present; that on their fifth visit, early Sunday morning July 24, 1960, there were about 70 persons (55 males and 15 females) present; that on July 31, 1960 they made two visits (12:20 to 1:20 a.m. and 3:05 to 6:55 a.m.) to the premises, on the first of which there were 62 persons (50 males and 12 females) present and on the second visit there were about 50 males at the main bar and 15 males and females at the rear bar and tables; that on five of their visits a large percentage (50 to 90 per cent) of the males appeared to be homosexuals, as evidenced by their lispy, high-pitched voices, their walk and mannerisms, which sexual deviation they further displayed by holding one another's hand and addressing each other as "gay", "honey", "doll" and "adorable".

The investigation further discloses that on their last visit to the premises, one of the homosexuals had invited an agent and another had completed arrangements with a second agent, to engage in perverted sexual relations. On this visit the agents also observed two females who appeared to be lesbians.

Counsel for the licensee has submitted a letter urging in mitigation of the offense that the licensee neither sought nor encouraged the patronage of these persons; that during the summer months homosexuals usually came into the city in large numbers and particularly this past summer, when such deviates descended upon the city in droves and created an acute police problem as indicated by newspaper clippings of the local paper enclosed with counsel's letter; that the licensee did not know that she could order undesirable persons from the licensed premises without initiating legal proceedings; that it was the policy of the police in the past that they would not aid in removing a patron from a licensed premises unless a sworn complaint was filed and a warrant was issued; that she and other licensees have been afraid and reluctant to take such action for fear of subjecting themselves to a civil suit for damages for defamation of character or false arrest; that on July 3, 1960, following a ten-day suspension by the local issuing authority for a similar offense as charged herein, she hired a man to stand at the door and instructed him to bar homosexuals from the licensed premises and that the aforesaid ten-day penalty, coming in the heart of the summer season, entailed a substantial loss to the licensee. However, ignorance of the law or the regulation does not afford any excuse for the violation. Licensees and their employees must know the rules and scrupulously adhere to them. Cf. Re Krynicki, Bulletin 1238, Item 5.

Defendant has a prior adjudicated record. Effective April 28, 1958, I suspended her license for twenty-five days for sale to minors (Re Stewart, Bulletin 1227, Item 4) and effective June 24, 1960 the license was suspended for ten days by the local issuing authority for a violation similar to that charged herein. Considering all the circumstances of the case including the prior record, the plea, and the apparent effort made by the licensee to bar these undesirables from the premises, I shall suspend defendant's license for a period of sixty days.

Accordingly, it is, on this 24th day of October 1960,

ORDERED that Plenary Retail Consumption License C-229 issued by the Board of Commissioners of the City of Atlantic City to Estyre Stewart, t/a Midtown Bar & Cafe, for premises 1719 Pacific Avenue, Atlantic City, be and the same is hereby suspended for sixty (60) days; commencing at 7:00 a.m., Monday, October 31, 1960 and terminating at 7:00 a.m., Friday, December 30, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - EMPLOYING MINOR WITHOUT PERMIT - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against)

GABRIEL'S TAVERN, INC.)
57 Seventh Avenue)
Newark 4, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-525, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Mario V. Farco, 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 May 3, 1960, at your licensed premises, you sold and offered for sale, at retail, directly or indirectly, three 12-ounce cans of Ballantine beer, a malt alcoholic beverage, at less than the price thereof filed with the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30.
- '2. On May 3, 1960 and prior thereto, you employed and allowed, permitted and suffered the employment in and upon your licensed premises of a person under the age of twenty-one (21) years, viz., Gabriel ---, age 19; contrary to and in violation of Rule 3 of State Regulation No. 13.'

"At the hearing held herein the Division called as its witnesses Gabriel --- (age 19) and two ABC agents, hereinafter referred to as Agent O and Agent D.

"Gabriel testified that he was born on March 5, 1941, and, hence, was 19 years of age at the time of the alleged violations.

"Agent O testified that on May 3, 1960, at about 11:30 a.m., he and Agent D arrived in the immediate vicinity of the defendant's licensed premises which he alone entered while his companion waited outside; that he took a seat at the bar and was served a glass of beer by Vincent Contaldi (president of the corporate-licensee); that at about 11:55 a.m., Vincent Contaldi, in response to his request

for three cans of Ballantine beer for off-premises consumption, walked to the end of the bar and spoke with Gabriel; that he then observed Gabriel walk into a back room adjoining the bar, return therefrom with a three-pack of Ballantine beer, place the alcoholic beverages in a bag and deposit the same on the far end of the bar. Agent O further testified that, in the interim, Vincent served him another glass of beer, following which he brought him the alcoholic beverages from the far end of the bar; that in payment thereof Vincent helped himself to three quarters from his money on the bar and, simultaneously therewith, informed him that the price of the three-pack of beer was 55 cents and that of the glass of beer was 10 cents; that he then observed Vincent ring up two separate sales of 55 and 10 cents on the cash register and return with 10 cents in change which he placed on the bar.

"Agent O further testified that he left the premises with the alcoholic beverages and immediately re-entered the same with Agent D; that he and Agent D identified themselves to Vincent Contaldi; that while this identification was taking place, Gabriel disappeared from the premises; that they informed Vincent of the illegal sale of the three cans of beer, in response to which Vincent stated that he had charged 65 cents for the same and that he made no charge for the glass of beer and then articulated that he does not ring up any pennies on the register. In addition, Agent O testified that a search of the records of this Division did not disclose that an employment permit had been issued to Gabriel; that he inquired of Vincent about Gabriel's presence on the licensed premises and that Vincent replied that Gabriel was his nephew, that he was 19 years of age, that he was presently unemployed and that he was temporarily assisting him on the licensed premises. (At this point in the proceedings the attorney for the defendant stipulated that the minimum consumer retail price then in effect for three cans of beer was 57 cents.)

"On cross-examination, Agent O testified that he had consumed three glasses of beer on the premises; that prior thereto he had put a dollar bill on the bar; that after being served his first glass of beer, Vincent removed the dollar bill and placed 90 cents in change on the bar; that following the service of the second glass of beer, Vincent helped himself to 10 cents; that simultaneously with ordering his third glass of beer, he had asked Vincent for the three cans of Ballantine beer; that Vincent had taken 65 cents from the balance of his money on the bar in payment of these two items and that at no time during the transaction did Vincent mention anything about pennies. In addition, Agent O reiterated his direct testimony with respect to Gabriel's aforesaid activities on the licensed premises.

"Agent D substantially corroborated the testimony of Agent O with respect to the events which took place subsequent to his entry into the premises with Agent O. Agent D further testified that upon inquiry, Vincent stated that Gabriel had not been issued an employment permit by the Division and that he intends to obtain one.

"Vincent Contaldi, on behalf of the defendant, denied he employed Gabriel and further testified that at the time he accepted payment of the three cans of beer he had no pennies in his cash register and stated to Agent O, 'Well, you owe me two cents'.

"On cross-examination, Vincent testified that Gabriel was in the back room when the agents entered the premises; that Gabriel had left the licensed premises shortly before Agent O ordered the three cans of beer; that he (Vincent) personally had taken the alcoholic beverages from the refrigerator, placed them in a bag and handed the bag to Agent O. Vincent further testified that he informed the agents that Gabriel's duties on the licensed premises

were to some degree similar to those of a porter; that Gabriel does not handle or serve alcoholic beverages; that Gabriel intends to apply to this Division for a work permit and that he does not carry Gabriel as an employee on his records.

"In the brief submitted by defendant's attorney, it is contended, in effect, that (1) the Division failed to sufficiently establish that Contaldi charged 55 cents for the three cans of beer, and (2) Gabriel cannot be considered an employee of the licensee because he was unsalaried and his work on the licensed premises did not come within the scope of the rule and regulation in question.

"As to the first contention, I find that Agent O gave an accurate and truthful account of what transpired between him and Contaldi on the premises and that Contaldi had unquestionably taken 55 cents of Agent O's money on the bar in payment of the three cans of beer.

"With reference to the licensee's second contention, it has long been established that the word 'employee' as used in the Alcoholic Beverage Law and the rules and regulations of this Division, has been construed to include all persons whose services are utilized by the licensee or who are kept at work or entrusted with some duty on the licensed premises by the licensee. Salary or compensation is not a requisite to employment. Re William Street Bar and Grill, Inc., Bulletin 466, Item 8; Kravis v. Hock, 137 N.J.L. 252; In Re Gutman, 21 N.J. Super. 579; Re Egresi, Bulletin 1317, Item 3.

"I have carefully considered the testimony adduced herein, together with the brief filed on behalf of the licensee, and am satisfied that the Division has amply proven the defendant guilty of the charges herein by a fair preponderance of the believable evidence. Since the licensee cannot escape the consequences of the acts of his agents (Rule 33 of State Regulation No. 20.), it is recommended that the defendant be found guilty as charged.

"Defendant has no prior adjudicated record. It is further recommended that an order be entered providing that the defendant's license be suspended for the minimum period of ten days on Charge 1 (Re Rahway Liquor Company, Bulletin 1226, Item 9) and for an additional period of five days on Charge 2 (Re the New French Quarters, Inc., Bulletin 1281, Item 14), making a total suspension of fifteen days."

No written exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the proceedings, the memorandum filed with the Hearer by defendant's attorney and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations. Hence, I find the defendant guilty as charged.

Accordingly, it is, on this 25th day of October 1960,

ORDERED that Plenary Retail Consumption License C-525, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Gabriel's Tavern, Inc., for premises 57 Seventh Avenue, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Tuesday, November 1, 1960 and terminating at 2:00 a.m., Wednesday, November 16, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

8.

ACTIVITY REPORT FOR OCTOBER 1960

ARRESTS:

Total number of persons arrested	-----	37
Licensees and employees	----- 13	
Bootleggers	----- 24	

SEIZURES:

Motor vehicles - cars	-----	2
Still - 50 gallons or under	-----	1
Mash - gallons	-----	1,200.00
Distilled alcoholic beverages - gallons	-----	62.42
Wine gallons	-----	18.55
Brewed malt alcoholic beverages - gallons	-----	58.46

RETAIL LICENSEES:

Premises inspected	-----	319
Premises where alcoholic beverages were gauged	-----	624
Bottles gauged	-----	9,980
Premises where violations were found	-----	22
Violations found	-----	26
Unqualified employees	----- 10	
Prohibited signs	----- 5	Reg. #38 sign not posted - 1
Application copy not available	----- 3	Disposal permit necessary - 1
Other mercantile business	----- 2	Other violations - 4

STATE LICENSEES:

Premises inspected	-----	19
License applications investigated	-----	11

COMPLAINTS:

Complaints assigned for investigation	-----	329
Investigations completed	-----	376
Investigations pending	-----	147

LABORATORY:

Analyses made	-----	170
Refills from licensed premises - bottles	-----	25
Bottles from unlicensed premises	-----	40

IDENTIFICATION:

Criminal fingerprint identifications made	-----	17
Persons fingerprinted for non-criminal purposes	-----	249
Identification contacts made with other enforcement agencies	-----	171
Motor vehicle identifications via N. J. State Police teletype	-----	3

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	-----	11
Violations involved	-----	12
Sale during prohibited hours	----- 7	
Sale to minors	----- 3	
Service to women at the bar (local reg.)	----- 1	
Failure to close premises during prohibited hours	----- 1	
Cases instituted at Division	-----	20
Violations involved	-----	23
Sale to minors	----- 4	Service to women at the bar (local reg.) - 1
Possessing liquor not truly labeled	----- 4	Permitting bookmaking on premises - 1
Sale during prohibited hours	----- 3	Sale below filed price - 1
Permitting lottery activity (numbers)	----- 2	Aiding and abetting unauthorized sale - 1
Permitting immoral activity on premises	----- 2	Unauthorized transportation - 1
Conducting business as a nuisance	----- 1	Unlicensed sale by solicitor - 1
Sale to intoxicated person	----- 1	
Cases brought by municipalities on own initiative and reported to Division	-----	33
Violations involved	-----	37
Sale to minors	----- 25	Failure to afford view into premises during prohibited hours - 1
Permitting brawl, etc. on premises	----- 3	Failure to have copy of license application on premises - 1
Sale during prohibited hours	----- 2	Permitting bookmaking on premises - 1
Hindering investigation	----- 2	Sale to non-members by club - 1
Permitting lottery activity (numbers)	----- 1	

HEARINGS HELD AT DIVISION:

Total number of hearings held	-----	58
Appeals	----- 11	Seizures - 8
Disciplinary proceedings	----- 32	Tax revocations - 1
Eligibility	----- 6	

STATE LICENSES AND PERMITS ISSUED:

Total number issued	-----	1,736
Licensees	----- 4	Wine permits - 522
Solicitors' permits	----- 43	Miscellaneous permits - 130
Employment "	----- 237	Transit insignia - 233
Disposal "	----- 96	Transit certificates - 17
Social affair "	----- 454	

OFFICE OF AMUSEMENT GAMES CONTROL:

Enforcement files established	-----	46
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WILLIAM HOWE DAVIS
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: November 2, 1960

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

In the Matter of Disciplinary Proceedings against)

ARTHUR MARSHALL & ANNA MARSHALL)
5700 Hudson Avenue)
West New York, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-42, issued by the Board of Commissioners of the Town of West New York.)

Alexander A. Abramson, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On October 8 and 15, 1960 and on divers days 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."

On October 8 and 15, 1960, two ABC agents at defendants' licensed premises placed horse race bets with Arthur Marshall, one of the licensees. On October 8th aforesaid, the agents observed other persons place similar bets with Mr. Marshall. On October 15, 1960 through prearrangement with the local police authorities, a police officer accompanied by ABC agents, came to the licensed premises and found a "scratch sheet", two horse race slips (prepared by the agents), one five-dollar bill and five one-dollar bills (which had been "marked" by the agents) in Marshall's possession.

Upon questioning by the local police officer, Marshall admitted aforesaid violation and stated that he had been accepting horse race bets from his customers at the licensed premises for a period of three weeks prior to October 15, 1960.

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

Defendants have no prior adjudicated record. I shall suspend the defendants' license for twenty-five days, the minimum suspension for gambling as herein, when the licensee is involved. Re Night Owl Club, Inc., Bulletin 1339, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 31st day of October 1960,

ORDERED that Plenary Retail Consumption License C-42, issued by the Board of Commissioners of the Town of West New York to Arthur Marshall & Anna Marshall, for premises 5700 Hudson Avenue, West New York, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Wednesday, November 9, 1960, and terminating at 3:00 a.m., Tuesday, November 29, 1960.

New Jersey State Library

William Howe Davis
William Howe Davis
Director