

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 724

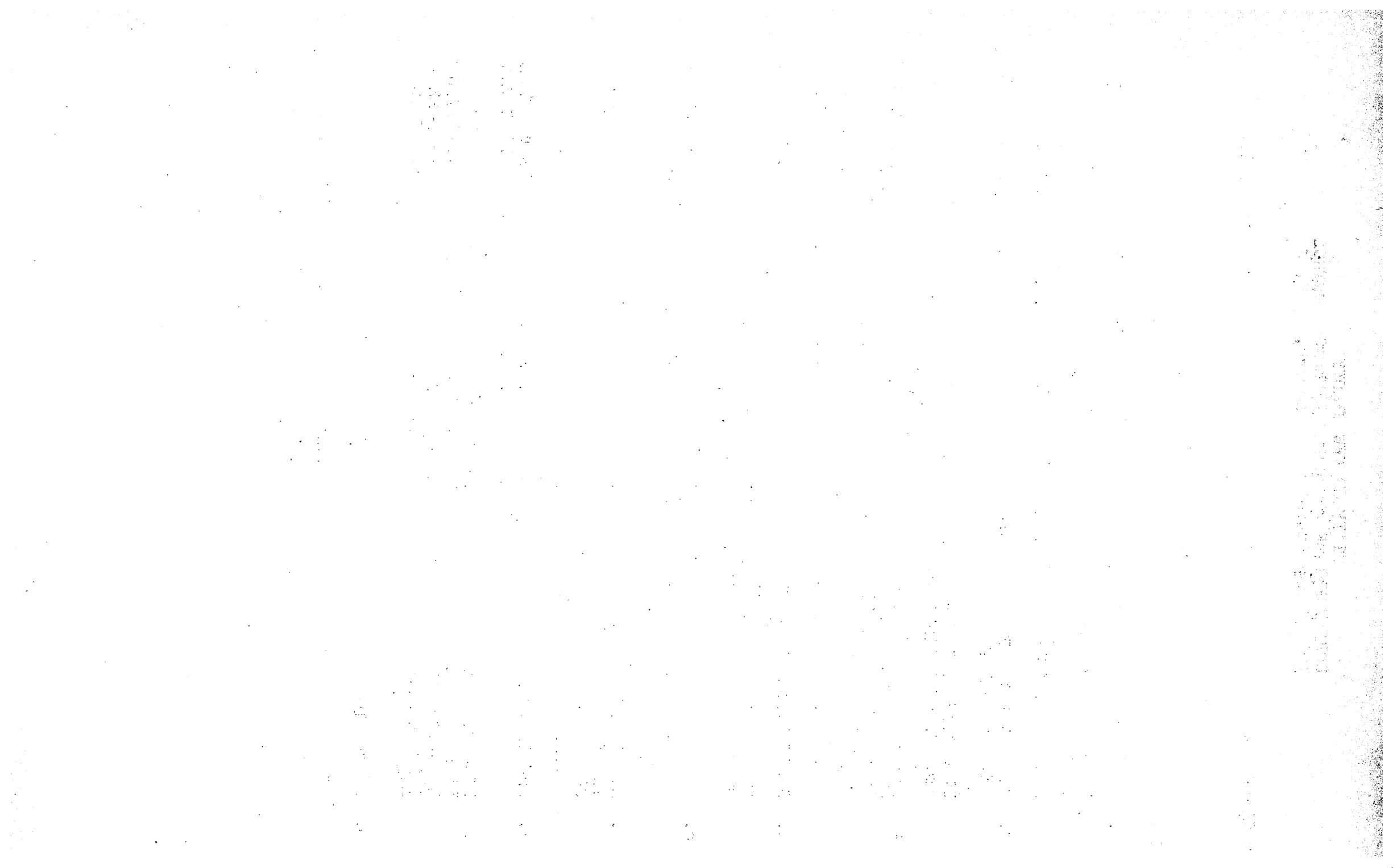
AUGUST 14, 1946.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 724

AUGUST 14, 1946.

- 1. DISCIPLINARY PROCEEDINGS - CHARGE OF PERMITTING LEWDNESS AND IMMORAL ACTIVITY ON LICENSED PREMISES DISMISSED - FAILURE TO CLOSE LICENSED PREMISES DURING PROHIBITED HOURS - PERMITTING LICENSED PREMISES TO BE CONDUCTED AS A NUISANCE - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS.

In the Matter of Disciplinary Proceedings against)

NICK'S TWIN BAR, INC.)
212 River Street)
Paterson, N. J.,)

Holder of Plenary Retail Consumption License C-103 for the fiscal years 1944-45 and 1945-46, and transferred during the pendency of these proceedings to)

HERMAN ROSENZWEIG)
for the same premises,)

and renewed by the said Herman Rosenzweig, now holding Plenary Retail Consumption License C-103 for the fiscal year 1946-47, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
-----)

CONCLUSIONS
AND
ORDER

Samuel S. Black, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., appearing for Department of Alcoholic Beverage Control.

Charges were served upon the licensee alleging:

"1. On April 5, 1945, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, in violation of Rule 5 of State Regulations No. 20.

"2. Between 12:00 o'clock midnight, Thursday, April 5, and 6:00 a.m. Friday, April 6, 1945, viz., until at least 12:20 a.m. of the latter date, you failed to have your entire licensed premises closed and you permitted persons other than yourself and your bona fide employees to be and remain on the licensed premises, in violation of Rule 2 of State Regulations No. 40.

"3. On April 4, 1945, and continuously thereafter until 12:20 a.m., on April 6, 1945, you allowed, permitted and suffered the licensed place of business to be conducted in such manner as to become a nuisance in that, in addition to all the above alleged violations, you allowed, permitted and suffered women to 'pick up' men at your licensed premises and there to solicit them for drinks of alcoholic beverages and for immoral purposes, and conducted your licensed place of business in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulations No. 20."

Defendant-licensee, through its attorney, pleads non vult to charge (2) and pleads not guilty to charges (1) and (3).

The testimony of one of the investigators of the Department of Alcoholic Beverage Control discloses that he visited the defendant's

licensed premises on the night of April 4, 1945, and while there was approached by a girl called "Doris" who requested that he buy a drink for her. The investigator states that he complied with her request and Doris ordered and was served with a glass of gin by a bartender named "Bill" Whittaker.

Two investigators, one of whom was the investigator who had been at defendant's premises on April 4, 1945, testified that, on the evening of April 5, 1945, they entered defendant's place of business and stationed themselves at the bar. While there, according to the testimony of the investigators, each was approached by a woman, one by a woman known as "Fanny" and the other by a woman known as "Jean". At the solicitation of these women, drinks were purchased by the investigators and served to the women by the bartender, Whittaker, who was in charge of the barroom that evening. The investigators' testimony is in agreement that, during the evening, they engaged in conversation with the bartender concerning one of the women. One of the investigators testified that he asked the bartender whether he might be "rolled" or if "Fanny" was free from disease because "Fanny" had suggested that they go to a room which she knew could be rented in another section of the municipality. Both investigators testified that the bartender stated to them that, in so far as he knew, "Fanny" was all right.

One of the investigators left the premises at about 11:10 p.m. on the night of April 5, 1945, accompanied by "Fanny".

Both investigators testified that, during the night of April 5th aforesaid, Whittaker, who was tending bar, continued to serve alcoholic beverages to "Fanny" and to "Jean" whenever they ordered drinks, and took the price of each drink from the investigators' money which was immediately in front of them on the bar.

Winfield Whittaker, the bartender, who was on duty on both evenings, denied any conversation with the investigators concerning "Fanny". He did admit, however, that "Jean" was his girl friend. Whittaker's testimony at the instant hearing is not very impressive in that he gave a statement to the investigators on the early morning of April 6, 1945, wherein he admitted the conversation with the investigators concerning "Fanny". The statement was given under oath and, in addition thereto, was witnessed by two members of the local police department. I am satisfied that the bartender permitted "Fanny" to "pick up" the investigator for immoral purposes.

I am convinced that, in view of the testimony given by the investigators, the licensed premises have been operated in such a manner as to constitute a nuisance. In State v. Berman, 120 N.J.L. 381, 383, Chief Justice Brogan stated:

"It has been repeatedly held that any place of public resort is a public nuisance where illegal practices are habitually carried on or when such place becomes the habitual resort of thieves, drunkards, prostitutes, &c., who gather there for an unlawful purpose or make it a rendezvous where plans may be concocted for depredations upon society and disturbing either its peace or its rights of property."

See also State v. Williams, 30 N. J. L. 102, 104.

I find defendant guilty of charge (3). As to charge (1), there is some evidence of a girl making some remark after completion of a dance, but I do not think that the evidence is sufficient to warrant a finding of guilt as to this charge. Hence, I shall dismiss charge (1). Defendant entered a plea of non vult to charge (2).

Defendant has a previous adjudicated record. Its license was suspended for three days by the local issuing authority, effective July 7, 1941, for an "hours" violation.

Under the circumstances, I shall suspend defendant's license for a period of forty days.

Although this proceeding was instituted against the prior licensee, any transfer is subject to the penalty which may be imposed herein. This proceeding does not abate by reason of the expiration of the licensing year on June 30, 1945, but remains fully effective against the license for the current (1946-47) period. State Regulations No. 16.

Accordingly, it is, on this 6th day of August, 1946,

ORDERED, that Plenary Retail Consumption License C-103, for the 1946-47 fiscal year, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Herman Rosenzweig, for premises 212 River Street, Paterson, be and the same is hereby suspended for a period of forty (40) days, commencing at 3:00 a.m. August 15, 1946, and terminating at 3:00 a.m. September 24, 1946.

ERWIN B. HOCK
Deputy Commissioner.

2. MORAL TURPITUDE - CRIME OF BREAKING, ENTERING AND LARCENY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - PETITION DENIED IN THE ABSENCE OF SATISFACTORY CHARACTER WITNESSES.

In the Matter of an Application to)
Remove Disqualification because of)
a Conviction, Pursuant to R. S.)
33:1-31.2.)
Case No. 520.)
-----)

CONCLUSIONS

In connection with an application by the petitioner, a Pennsylvania resident, for a solicitor's permit to authorize his employment as a truck driver for a brewery, it appears that he was convicted of the disqualifying crime of breaking, entering and larceny in December, 1938. He was sentenced to an indeterminate term at Annandale Reformatory and released on parole in November, 1939. Since his release, petitioner's record is clear of any further convictions of crime.

Allegedly because of his out-of-state residence, petitioner was able to produce character witnesses who have known him only for three years last past. While they testified that, so far as they knew, he had been a law-abiding citizen during that three years, such proof falls short of that necessary to establish to the satisfaction of the Commissioner that the applicant has conducted himself in a law-abiding manner for at least five years prior to the hearing.

Under the circumstances, the application to remove petitioner's statutory disqualification because of the conviction mentioned herein must be denied. However, leave is reserved to the petitioner to reapply when and if he is prepared to produce satisfactory character witnesses who can testify as to his conduct for at least five years immediately prior to his application.

ERWIN B. HOCK
Deputy Commissioner.

Dated: July 30, 1946.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED - PERMITTING A BARTENDER TO WORK ON LICENSED PREMISES WHILE ACTUALLY OR APPARENTLY INTOXICATED - PERMITTING LEWDNESS AND IMMORAL ACTIVITY ON LICENSED PREMISES - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS.

In the Matter of Disciplinary Proceedings against)

NIXON'S CAFE, INC.)
263 Main Street)
Paterson 1, N. J.,)

Holder of Plenary Retail Consumption License C-194 for the fiscal year 1944-45, and transferred during pendency of these proceedings to)

AGNES MARIE MURPHY and)
HELEN MAY PAVIA,)
for the same premises,)

and subsequently transferred to)

LUCKY'S, INC.,)
for the same premises,)

and renewed for the fiscal year 1946-47 in the name of Lucky's Inc., by the Board of Alcoholic Beverage Control of the City of Paterson.)
-----)

CONCLUSIONS AND ORDER

Martin J. Loftus, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensee, through its attorney, pleads not guilty to charges alleging that:

"1. On Saturday night, May 5, 1945, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to persons actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons on the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"2. On the occasion aforesaid, you allowed, permitted and suffered a person, viz., a bartender, to work on the licensed premises while he was actually or apparently intoxicated, in violation of Rule 24 of State Regulations No. 20.

"3. On the occasion aforesaid, you allowed, permitted and suffered lewdness and immoral activity, viz., foul and obscene language in and upon your licensed premises, in violation of Rule 5 of State Regulations No. 20."

The testimony of two ABC agents discloses that on May 5, 1945, at about 11:00 p.m., they entered the defendant's licensed premises and immediately walked to the rear part of the barroom. They testified that a woman and the bartender, later identified as Edward Nixon, were engaged in conversation. The agents related that the conversation consisted of foul, indecent and obscene language. A repetition of the exact words alleged to have been used by the bartender and the woman would serve no useful purpose.

The investigators' testimony was in agreement that Edward Nixon, the bartender, was under the influence of liquor. One investigator states: "Mr. Nixon was in back of the bar acting as bartender and between the bar and the back bar he staggered, bumping into the bar as he walked along; his manner of speech was very thick, his face flushed, his eyes half closed." The other investigator's testimony corroborated in substance the description given by his fellow investigator relative to Edward Nixon's condition at the time in question.

The agents further stated that a short time after they entered the premises they observed an unidentified man leave his place at the bar and walk to another part of the room, where he made a gesture as if to sit on a nearby chair, missed the chair and fell to the floor. Two men assisted him to his feet and he returned to the bar. One of the investigators testified that "he staggered, wavered at the bar, his eyes appeared to be half closed, his manner of speech was thick", whereas the other investigator, referring to this man, stated "*** there was a man standing alongside her who was staggering and swaying and wasn't saying much but appeared to be under the influence of liquor". Both investigators testified that when the man returned to the bar he was served a drink of whiskey by Edward Nixon, the bartender.

The investigators further testified that, in their opinion, Jean H---- and Emma C----, patrons in the establishment, were intoxicated. The investigators alleged that Jean H--- staggered and wavered when she attempted to walk. Regardless of this, the ABC agents claimed that alcoholic beverages were thereafter served to her. They observed that, when Emma C---- left the stool upon which she was seated, she staggered and swayed previous to occupying another seat at the bar. One of the investigators said that her eyes appeared to be half closed or sluggish and that when she changed seats she bumped into him and several other men standing at the bar. Both investigators testified that they heard Emma C--- address filthy and indecent remarks to the bartender relative to a man who had attempted to speak to her. The bartender reprimanded her because of the vile language which she was using but, nonetheless, according to the testimony of the investigators, served her a glass of beer.

Edward Nixon, the bartender, testified at the hearing and denied that he was intoxicated on the night in question. He admitted having an argument with a woman to whom he had refused to serve a drink. He stated that he did not use the language attributed to him by the investigators of the Department of Alcoholic Beverage Control. He did not remember, however, how many drinks he had that night but estimated that he may have had about ten shots of whiskey. Some of the drinks of whiskey, he asserted, were very small. Nixon stated that when the place got busy, about 11:00 p.m., a friend of his assisted him by washing glasses but Nixon had no knowledge that this man served any drinks. However, a witness produced by defendant testified that he was served three glasses of beer by the man in question. Nixon did not remember too well as to things that transpired that evening. He did not remember hearing any off-color conversation or obscene language because of alleged impairment of hearing.

Detective Colligan, who was brought to the tavern by one of the investigators, testified that from his observations none of the patrons at the tavern alleged to be under the influence of liquor were intoxicated. However, in response to a query as to whether any persons in that saloon were drunk, he answered, "There could have been. I was only involved with the inspectors." He also said that he "approached the situation from a different angle than the men here

(investigators) because they are out to observe. My job is to stop rowdiness ***". When interrogated regarding what condition persons would have to be in before he would arrest them for being drunk and disorderly, he answered, "incapable of handling themselves".

After carefully considering the evidence, I am satisfied that Edward Nixon, the bartender, was under the influence of liquor. The testimony given by him on the witness stand was vague and indecisive. He did not remember many of the things that were alleged to have occurred that evening, nor did he remember the number of drinks that he had consumed or the brands of liquor used. He did not "think" that he used some of the language attributed to him, nor did he remember that the man who volunteered to assist him behind the bar had made service to customers. I am satisfied also that the various other persons alleged to have been intoxicated, with the exception of Gerald T---, were apparently intoxicated, if not actually so, and that drinks were served to them thereafter by the bartender. Even though I am convinced that Edward Nixon used foul and obscene language himself, I am not too satisfied, however, that all the language alleged to have been used by several patrons had actually been heard by Edward Nixon. He did on one occasion attempt to discourage one of the women patrons from using indecent language. I therefore find defendant guilty of all charges instituted herein. Under all the circumstances, I shall suspend the license for a period of forty days.

Although this proceeding was instituted against the prior licensee, any transfer is subject to the penalty which may be imposed herein. The proceeding does not abate by reason of the expiration of the licensing year on June 30, 1945, but remains fully effective against the license for the current (1946-47) period. State Regulations No. 16.

Accordingly, it is, on this 6th day of August, 1946,

ORDERED, that Plenary Retail Consumption License C-194, issued for the 1946-47 fiscal year by the Board of Alcoholic Beverage Control of the City of Paterson to Lucky's, Inc., for premises 263 Main Street, Paterson, be and the same is hereby suspended for a period of forty (40) days, commencing at 3:00 a.m. August 15, 1946, and terminating at 3:00 a.m. September 24, 1946.

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - FAILURE TO EXHIBIT BOOKS AND RECORDS TO AN AUTHORIZED INVESTIGATOR OF THE STATE DEPARTMENT OF TAXATION AND FINANCE - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HENRY PHILLIPS)
T/a HEN'S BAR)
2205 Atlantic Avenue)
Atlantic City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-223, issued by the Board of Commissioners of the City of Atlantic City.)
-----)

Henry Phillips, Defendant-licensee, Pro Se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge that he failed and refused to exhibit his books and records to, and failed to facilitate the examination and investigation of an investigator of the State Department of Taxation and Finance, in violation of R. S. 54:42-2, thus violating the provisions of R. S. 33:1-31(d).

On July 15th, the bartender or manager in charge of the licensed premises of defendant refused the authorized request of an investigator of the State Department of Taxation and Finance in connection with an inspection of the books and records of the said defendant as authorized by R. S. 54:42-2.

Defendant says, in an endeavor to mitigate the effect of the violation, that he was ill, is still ill -- awaiting admission to a hospital, and has not been in his licensed premises since July 4th last. The file herein discloses that defendant was not present when the violation was committed.

A licensee who is unable to give proper personal attention to his business must provide a substitute in charge of the business worthy of the same trust and dependence required of a licensee. It has long been established that the licensee is responsible for the acts and neglects of his employees in the conduct of the licensed business. Cf. Re Jacobs, Bulletin 315, Item 8.

The inspection of the premises and its records are proper and necessary functions of control and interference with this activity will not be tolerated. Cf. Danker v. Ocean, Bulletin 448, Item 1.

However, in this case no bodily injury was inflicted upon the investigator and the defendant has no other record of convictions for violations of the law. I shall, therefore, suspend his license for the minimum period of fifteen days and remit five of said days for his plea, leaving a net suspension of ten days. Re Niewinski, Bulletin 549, Item 9.

Accordingly, it is, on this 7th day of August, 1946,

ORDERED, that Plenary Retail Consumption License C-223, issued by the Board of Commissioners of the City of Atlantic City to Henry Phillips, t/a Hen's Bar, for premises 2205 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. August 13, 1946, and terminating at 12:01 a.m. August 23, 1946.

ERWIN B. HOCK
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS -- CHARGE OF AIDING AND ABETTING
NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE
DISMISSED.

In the Matter of Disciplinary)
Proceedings against)

JOHN J. TORPEY)
T/a TORPEY'S)
699 Anderson Avenue)
Cliffside Park, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-24 for the fiscal)
year 1945-46, issued by the Mayor)
and Council of the Borough of)
Cliffside Park.)

Nicholas S. Schloeder, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant has pleaded not guilty to the following charge:

"From about November 3, 1944 and until February 1, 1945,
you knowingly aided and abetted John J. McManus to
exercise, contrary to R. S. 33:1-26, the rights and
privileges of your plenary retail consumption license
for the aforesaid premises, thereby yourself violating
R. S. 33:1-52."

Defendant became the holder of a plenary retail consumption
license for the premises described herein by obtaining a transfer of
the license on or about December 28, 1943 from a former licensee. He
renewed the license for said premises for the fiscal year beginning
July 1, 1944. At the time of the hearing he testified that his
investment in the business amounted to approximately \$7,500.00.

In the latter part of October 1944, defendant was having great
difficulty in obtaining suitable employees to assist in the opera-
tion of the business. He therefore communicated with a friend
(John McManus) and offered to make him a partner in the licensed
business. At the hearing Torpey testified that McManus at that time
declined the partnership offer and wanted a salary of \$50.00 a week.
At the hearing McManus testified that it was then understood that
he was to become a partner if he would help the licensee to conduct
the business. Whatever the arrangement, on or about November 1,
1944, McManus and his family moved into an apartment located above
the licensed premises, the rent for which apartment was being paid
by Torpey, and remained there until approximately February 1, 1945.
McManus paid no rent for the apartment. He invested no money in
the business when the arrangement was first made, although he testi-
fied that some time later he invested approximately \$350.00 of his
own money in the business. During the three-month period while this
arrangement continued in effect, both McManus and Torpey worked on
the licensed premises. McManus was not carried as an employee on
Torpey's payroll.

During this three-month period the liquor bills and all other
bills apparently were paid from the gross receipts of the business.
Torpey always checked the cash register and apparently gave McManus

enough money to pay his household expenses. There seems to have been little, if any, profit over and above the sums thus expended.

During this three-month period McManus and Torpey visited the law offices of Nicholas S. Schloeder on two occasions. On the first occasion they discussed a form of partnership arrangement, but apparently could reach no agreement. On the second visit the attorney suggested the formation of a corporation and the issuance of half of the stock of the corporation to each of the interested parties. The parties left the attorney's office for the purpose of considering this arrangement but they did not return, and the corporation was never formed. On January 16, 1945, John J. Torpey agreed, in writing, that John J. McManus, "through his sincere endeavors and services in the business", had earned a half-share of the selling price if and when the business was sold. Because of a violent disagreement with the licensee, McManus and his family left the licensed premises and the apartment on or about February 1, 1945, and thereafter instituted a suit in Chancery for an accounting. Torpey obtained a renewal of his license on July 1, 1945.

In the Chancery proceedings, Vice Chancellor Fielder concluded that the parties had never formed a partnership but that, for services rendered to Torpey, McManus was entitled to one-half of the assets if and when the business was sold. It has since been sold. The license held by defendant was transferred on November 26, 1945 to Charles N. Coloumbo, subject to the outcome of these proceedings. In a case of this nature, however, it is not necessary to establish that a partnership existed. It is sufficient to show that the licensee permitted another person to exercise the rights and privileges of his license.

The proofs herein establish a very unsatisfactory arrangement so far as the enforcement of the provisions of the Alcoholic Beverage Law is concerned. During this three-month period, McManus, who was not listed as an employee of the licensee, was permitted to manage the business under an arrangement whereby he would eventually become a partner. However, while the arrangement continued, he seems to have obtained only his living expenses and free rental of the apartment. Torpey continued to exercise the privileges of his license. Apparently there were no profits during this period of time. The unsatisfactory arrangement between Torpey and McManus has ended. Under all the circumstances, I conclude that the Department has not established the guilt of the licensee and, hence, I shall dismiss the charge.

Accordingly, it is, on this 7th day of August, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS - CHARGE OF SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED DISMISSED.

In the Matter of Disciplinary Proceedings against)

SILVER STAR CAFE, INC.)
452 Market Street)
Paterson, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-196 for the fiscal years 1944-45, 1945-46 and 1946-47, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)

Michael W. Shershin, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., appearing for Department of Alcoholic Beverage Control.

Defendant corporation has entered a plea of not guilty to the following charges:

"1. On Friday night, December 8, 1944 and early morning of Saturday, December 9, 1944, you sold alcoholic beverages to Anthony C. ---, James --- and Vincent ---, minors, in violation of R. S. 33:1-77.

"2. On the occasion aforementioned, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Anthony C. ---, James --- and Vincent ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"3. On Friday night, December 8, 1944 and early morning of Saturday, December 9, 1944, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon the licensed premises, in violation of Rule 1 of State Regulations No. 20."

One of the alleged minors, Anthony C. ---, testified that he was born June 13, 1925, and, hence, was nineteen years of age when the alleged violation occurred; that on the particular evening in question he entered the licensed premises about seven o'clock in the evening and remained there until about 10:00 p.m.; that during that time he ordered beer and at least three drinks of whiskey from Charles Dondero, who is the President and Treasurer of the corporation, which drinks were served him without any questions being asked as to his age. He further testified that later in the evening he returned and ordered a drink from the bartender, then on duty, by the name of Sutton. He stated that Sutton refused to serve him because he knew his age but that, after refusal by Sutton, he was again served whiskey by Dondero. He further stated that while there he met his nephew, James ---, another minor, and a third party by the name of O'Keefe; that all three ordered drinks of beer and whiskey, which were served by Dondero. He further testified that while he was on the licensed premises he noticed a woman drinking at the bar who was "hollering and dancing around" and who was being served drinks by the proprietor. He stated that he himself was intoxicated when he was served the last drinks by Dondero.

James ---, one of the other alleged minors, testified that he was seventeen years of age; that on the night in question he went to the licensed premises, where he met Anthony ---, and that while there he was served beer and whiskey by Dondero without any questions having been asked as to his age.

Vincent --- testified that he was born March 11, 1925, and, hence, was nineteen years of age when the alleged violation occurred; that on the night in question he went to the licensed premises and was served alcoholic beverages by Dondero. He stated, however, that he was asked as to his age and that he exhibited an identification card which indicated he was twenty-one years of age, but admitted that the card had been altered. He stated, however, that he was not asked to sign any statement.

Robert M. O'Keefe, another one of the party, who was over twenty-one years of age, testified that he was at the licensed premises on the evening in question and while there met Anthony --- and James ---. He testified that early in the evening beer was ordered by these two minors from Dondero, which was served to them without any question on Dondero's part. He testified that he did not recall whether any drinks were served to them on the second visit to the licensed premises.

Dondero, the President and Treasurer of the corporation, testified that on the particular night in question he saw Anthony ---, James ---, Vincent --- and O'Keefe at the licensed premises, but denied that any of the minors were served anything intoxicating while at his premises on the evening in question. One other witness, who appeared in his behalf, testified that he was on the licensed premises the greater part of the evening and that the only one he saw there was O'Keefe.

During the course of the proceedings the three minors and O'Keefe all pleaded constitutional privilege as a bar to answering certain questions propounded to them. As the hearing progressed it became quite evident that some, if not all, were involved in criminal charges as a result of events which occurred later and that the story of being intoxicated may have been told primarily with the hope that it might avail them somewhat in the criminal proceedings in which they were involved.

I am, therefore, not impressed with that part of their testimony which relates to their own state of intoxication and to the condition of the woman whom they testified they saw seated at the bar. However, I am satisfied that all three minors were served alcoholic beverages by Dondero who, as I stated before, is the President and Treasurer of the licensee corporation.

The licensee has a prior record. Effective October 21, 1943, its license was suspended for ten days on the charge of sale to minors, in violation of R. S. 33:1-77. Again, effective April 28, 1944, its license was suspended for a period of twenty days on the same charge. This is the third such violation. Testimony herein shows that Dondero in one instance actually asked one of the minors his age and was shown a card which indicated that the minor was over twenty-one years of age. In another instance the bartender refused to serve one of the minors because of the fact that he was under twenty-one years of age. The efforts of Dondero to ascertain the age of any of the minors were slight, and it is apparent that they were not sufficient to constitute a defense under the provisions of R. S. 33:1-77. Dondero has failed to learn the lesson which it was hoped the penalties in the two prior cases might teach him. I am not charging him with responsibility for any of the later events which resulted in the involvement of the minors in a serious offense, but the case is a vivid illustration of the seriousness of the offense of selling alcoholic beverages to minors.

I find the licensee guilty on charges (1) and (2), and not guilty as to charge (3), and shall impose a penalty of a sixty-day suspension.

Although this proceeding was instituted during the 1944-45 licensing period, it does not abate but remains fully effective against the renewal license for the present fiscal year. State Regulations No. 16.

Accordingly, it is, on this 9th day of August, 1946,

ORDERED, that Plenary Retail Consumption License C-196, for the fiscal year 1946-47, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Silver Star Cafe, Inc., for premises 452 Market Street, Paterson, be and the same is hereby suspended for a period of sixty (60) days, commencing at 3:00 a.m. August 15, 1946, and terminating at 3:00 a.m. October 14, 1946.

ERWIN B. HOCK
Deputy Commissioner.

7. APPELLATE DECISIONS - HUETTEMAN ET AL. v. EAST RUTHERFORD AND LIPTON.
HUETTEMAN ET AL. v. EAST RUTHERFORD AND CZECH.

JOHN HUETTEMAN and GEORGE BRUCKER,)
Appellants,)

-vs-

MAYOR AND COUNCIL OF THE BOROUGH OF EAST RUTHERFORD, and IRVING LIPTON, t/a LIPTON'S WINES AND LIQUORS,)
Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

JOHN HUETTEMAN and GEORGE BRUCKER,)
Appellants,)

-vs-

MAYOR AND COUNCIL OF THE BOROUGH OF EAST RUTHERFORD, and THEODORE CZECH, t/a CARLETON WINE & LIQUOR STORE,)
Respondents)

Samuel Moskowitz, Esq. and Samuel J. Davidson, Esq., Attorneys for Appellants.
Albert V. D'Amato, Esq., Attorney for Respondent Borough Council.
Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq., Attorneys for Respondent, Irving Lipton.
Selser and Shenier, Esqs., by Charles C. Shenier, Esq., Attorneys for Respondent, Theodore Czech.

By stipulation of counsel for the respective parties, both of these appeals were heard at the same time and will be decided together in these conclusions.

Both appeals are from the issuance of distribution licenses for the licensing year 1945-46: one to Irving Lipton for premises 267-269 Paterson Avenue, and the other to Theodore Czech for premises 35 Jersey Street, both in the Borough of East Rutherford, N. J.

For a period of seven years prior to March 18, 1946, the respondent municipality had in force an ordinance limiting the number of distribution licenses to three. On the latter date, the ordinance was repealed and, on April 14, 1946, the two licenses in question were granted. The recent state-wide limitation law (P. L. 1946, c. 147), which became effective on April 24, 1946, is not applicable herein.

With respect to the Czech license, the testimony shows that, of a total population of approximately 8000 inhabitants, more than 2200 reside in the Carleton Hill section of the municipality where the Czech premises are located. There are no other distribution licenses in that section and the nearest such license is held by the appellant Brucker, whose premises are about one and one-half miles distant from those of Czech. Although the Carleton Hill section is primarily residential, the Czech premises are situated amongst a row of stores on a street comprising the neighborhood business street of that section.

The Lipton premises are located in a business area on a busy and well-traveled thoroughfare. While there is a package store located only some 600 feet distant from those of the respondent Lipton, the Mayor of the Borough testified that there was a public need and necessity for an additional distribution license in that business section and that, moreover, the other license was located on the other side of the highway so that it was a distinct convenience to have a distribution license at the Lipton premises in order that a substantial portion of the local population could avoid the necessity of having to cross that busy thoroughfare.

The Mayor further testified that the Borough is a growing community, having thirty-five industrial corporations located there and employing about 5,000 persons. The testimony of the other six Councilmen, all of whom voted in favor of the issuance of both licenses, is to the same effect.

While there may be room for a difference of opinion as to the need for the additional two distribution licenses, the issue is one which is confided, in the first instance, to the sound discretion of the local issuing authority. On appeal, the exercise of such discretion must be sustained unless the testimony shows an unreasonable and arbitrary abuse of such discretion. No such abuse is exhibited in the record herein.

The action of the respondent Mayor and Council of the Borough of East Rutherford in granting the two distribution licenses herein is affirmed.

Accordingly, it is, on this 9th day of August, 1946,

ORDERED, that the petitions of appeal herein be and the same are hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 35 DAYS.

In the Matter of Disciplinary Proceedings against)

JAMES KARAS)
708 Hudson Boulevard)
Union City, N. J.,)

Holder of Plenary Retail Consumption License C-225 for the fiscal year 1945-46, and transferred during the pendency of these proceedings in said year to)

SUNSHINE RESTAURANT, INC.,)
for the same premises,)

and renewed by the said Sunshine Restaurant, Inc., now holding Plenary Retail Consumption License C-225 for the fiscal year 1946-47, issued by the Board of Commissioners of the City of Union City.)
-----)

CONCLUSIONS
AND
ORDER

William E. Sewell, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensee pleaded non vult to charges alleging that (1) he falsely stated in his application for a plenary retail consumption license that no other person was interested in the business conducted under said license, whereas in truth and in fact one Alexander Karas and the Sunshine Restaurant, Inc., a corporation, had such interest; said false statement being in violation of R.S. 33:1-25; and (2) he knowingly aided and abetted Alexander Karas and the Sunshine Restaurant, Inc. to exercise, contrary to R.S. 33:1-26, the rights and privileges of his plenary retail consumption license, in violation of R. S. 33:1-52.

The file in the instant case discloses that James Karas was the owner of 48 shares of the capital stock of the Sunshine Restaurant, Inc., and Calliope Karas and Alexander Karas, Turkish national, the owners of one share each.

On October 28, 1939, James Karas applied for and was granted a plenary retail consumption license in his individual name for the premises in which the restaurant was being conducted. Each licensing year thereafter James Karas applied for and was granted a liquor license in his own name for the premises in question.

Investigation revealed that the said James Karas, the nominal licensee, was actually a "front" for Alexander Karas and the Sunshine Restaurant, Inc. James Karas thereafter admitted that he and his brother, Alexander Karas, were partners in the liquor license and the business conducted thereunder.

The only explanation given for the aforesaid arrangement is that in Turkey, from which both James and Alexander Karas emigrated, it is customary for the oldest son to act as head of the family and that, since James Karas was the older of the two, the license was

secured in his name. The fact that Alexander Karas was a Turkish national, however, did not disqualify him from having an interest in a retail liquor license in New Jersey because of the existence of a reciprocal treaty between the United States and Turkey. Whether or not the establishment of the "front" may have been prompted by belief that Alexander Karas was disqualified because of his lack of citizenship is not indicated in the record. Nevertheless, the deliberate concealment of the true owners of the license and business represents a fraud upon the issuing authority and the public.

Since the institution of these proceedings, the license has been transferred to the corporation, viz., the Sunshine Restaurant, Inc. James Karas and Alexander Karas, apparently legally qualified as stockholders, now own an equal number of shares of the capital stock of said corporation. Hence, the illegal situation has been corrected.

Normally, where the "front" situation, as in the instant case, was continued after January, 1946, I would suspend the license for a period of thirty days. Re Nicomini, Bulletin 686, Item 7. However, I note that, on May 20, 1946, the license then in the name of James Karas was suspended by the local issuing authority for a period of five days. Because of this past record and all facts being considered, I shall suspend defendant's license for thirty-five days.

Although this proceeding was instituted against the prior licensee, any transfer is subject to the penalty which may be imposed herein. The proceeding does not abate by reason of the expiration of the licensing year on June 30, 1946, but remains fully effective against the license for the current (1946-47) period. State Regulations No. 16.

Accordingly, it is, on this 9th day of August, 1946,

ORDERED, that Plenary Retail Consumption License C-225, originally issued by the Board of Commissioners of the City of Union City, to James Karas, for premises 708 Hudson Boulevard, Union City, and transferred during the pendency of these proceedings to Sunshine Restaurant, Inc., for the same premises, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 3:00 a.m. August 15, 1946, and terminating at 3:00 a.m. September 19, 1946.

ERWIN B. HOCK
Deputy Commissioner.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Popper Morson Corp.
48-52 Essex St.
Jersey City, N. J.

Application for Plenary Wholesale License filed
August 14, 1946.

Charles M. Butler
Bay Ave. and Pearl St.
Beach Haven, N. J.

Application for Transportation License filed
August 14, 1946.

ERWIN B. HOCK
Deputy Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (SUNDAY), IN VIOLATION OF MUNICIPAL ORDINANCE - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against AURORA SINGING SOCIETY 145 Morris Avenue Trenton, N. J., Holder of Club License CB-65, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

William Reich, Esq., Attorney for Defendant-licensee. Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant, through its attorney, pleads non vult to a charge that on Sunday, July 14, 1946, it sold and served alcoholic beverages upon its licensed premises during prohibited hours, in violation of a city ordinance adopted on June 23, 1936, as amended on November 30, 1939.

The file in the instant case discloses that on Sunday, July 14, 1946, at about 11:30 a.m., several ABC agents visited defendant's licensed premises and while there observed three men sitting at the bar. One of these men had a full glass of beer in front of him, another a partly filled glass of beer, and a third an empty glass with foam adhering to the side of the glass. The three men admitted that the steward of the club had sold and served beer to them. The steward likewise corroborated the statements of these men.

Defendant has no prior adjudicated record. Hence, I shall suspend its license for a period of fifteen days, less five days for the plea, making a net suspension of ten days. Re Gierwielaniec, Bulletin 653, Item 2.

Accordingly, it is, on this 12th day of August, 1946,

ORDERED, that Club License CB-65, issued by the State Commissioner of Alcoholic Beverage Control to Aurora Singing Society, for premises 145 Morris Avenue, Trenton, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. August 19, 1946, and terminating at 2:00 a.m. August 29, 1946.

Ernie B. Hook Deputy Commissioner.