

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 2035

March 23, 1972

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - MARGARET G. MANSON, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.
2. DISCIPLINARY PROCEEDINGS (Newark) - SUPPLEMENTAL ORDER REIMPOSING SUSPENSION STAYED DURING PENDENCY OF APPEAL.
3. DISCIPLINARY PROCEEDINGS (Wrightstown) - LEWDNESS AND IMMORAL ACTIVITY (PROCUREMENT FOR PROSTITUTION) - LICENSE SUSPENDED FOR 180 DAYS.
4. DISCIPLINARY PROCEEDINGS (Camden) - SALE TO MINORS - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 7 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (East Brunswick) - FALSE STATEMENT IN APPLICATION - CRIMINALLY DISQUALIFIED EMPLOYEE - CHARGES DISMISSED - FAILURE TO KEEP ACCURATE BOOKS AND RECORDS - LICENSE SUSPENDED FOR 20 DAYS.
6. DISCIPLINARY PROCEEDINGS (Sayreville) - SALE TO MINORS - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 9 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Camden) - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE TO MINOR - SUSPENSION OF LICENSE FOR 10 DAYS BY MUNICIPAL ISSUING AUTHORITY - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.
9. STATE LICENSES - NEW APPLICATION FILED.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 2035

March 23, 1972

1. COURT DECISIONS - MARGARET G. MANSON, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1157-70

MARGARET G. MANSON, INC.
t/a THE COBBLESTONES,

Appellant,

v.

RICHARD C. McDONOUGH, DIRECTOR
OF THE DIVISION OF ALCOHOLIC
BEVERAGE CONTROL OF THE DEPARTMENT
OF LAW AND PUBLIC SAFETY, STATE OF
NEW JERSEY,

Respondent.

Argued January 11, 1972 - Decided March 10, 1972.

Before Judges Labrecque, Lane and Lora.

On appeal from Determination and Order of the Director
of the Division of Alcoholic Beverage Control.

Mr. William F. Dowd argued the cause for appellant.

Mr. David S. Piltzer, Deputy Attorney General,
argued the cause for respondent (George F. Kugler, Jr.,
Attorney General of New Jersey).

PER CURIAM

(Appeal from decision in re Margaret G. Manson, Inc.,
Bulletin 1963, Item 5. Director affirmed. Opinion
not approved for publication by Court Committee on
Opinions).

2. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER REIMPOSING
SUSPENSION STAYED DURING PENDENCY OF APPEAL.

In the Matter of Disciplinary)	
Proceedings against)	
Three Joe's Tavern, Inc.)	On Appeal
97-99 Lang Street)	
Newark, N. J.,)	SUPPLEMENTAL ORDER
Holder of Plenary Retail Consumption)	
License C-407, issued by the Municipal)	
Board of Alcoholic Beverage Control of)	
the City of Newark.)	

Oppenheim & Oppenheim, Esqs., by Carl J. Yagoda, Esq., Attorneys		for Licensee
Francis P. Meehan, Jr., Esq., Appearing for Division		

BY THE DIRECTOR:

On May 24, 1971, Conclusions and Order were entered herein suspending the said license for sixty days after finding the licensee guilty of (1) allowing, permitting and suffering gambling on the licensed premises, viz., the making and accepting of bets in a lottery commonly known as the "numbers" game, on November 17 and 21, 1970, in violation of Rule 7 of State Regulation No. 20; and (2) on the same dates, it allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the "numbers" game to be sold and offered for sale on said licensed premises, in violation of Rule 6 of State Regulation No. 20. Re Three Joe's Tavern, Inc., Bulletin 1985, Item 2.

Prior to the effectuation of the order of suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

On February 17, 1972, the said matter was dismissed by stipulation of the parties herein. The suspension may now be reimposed.

Accordingly, it is, on this 23rd day of February 1972,

ORDERED that the sixty-day suspension, heretofore imposed and stayed during the pendency of the proceedings on appeal, be and the same is hereby reinstated against Plenary Retail Consumption License C-407, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Three Joe's Tavern, Inc., for premises 97-99 Lang Street, Newark, commencing at 2:00 a.m. Monday, March 6, 1972 and terminating at 2:00 a.m. Friday, May 5, 1972.

Robert E. Bower
Director

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY
(PROCUREMENT FOR PROSTITUTION) - LICENSE SUSPENDED FOR
180 DAYS.

In the Matter of Disciplinary)
Proceedings against)

Leon J. Stefanoni & Joseph)
Stefanoni,)
t/a Zachey's Shack)
w/s Fort Dix Street)
Wrightstown, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-6, issued by the Borough)
Council of the Borough of Wrightstown.)
-----)

Dimon, Haines and Bunting, Esqs., by John E. Dimon, Esq.,
Attorneys for Licensees
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees pleaded not guilty to the following charge:

"On February 18, 1971, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you, through a person employed as a bartender on your licensed premises, allowed, permitted and suffered solicitation by an ostensible female customer or patron on your licensed premises of a male customer or patron thereon for prostitution, the making of overtures and arrangements by said female with said male customer or patron for acts of illicit sexual intercourse, and further, you, through said person employed on your licensed premises as a bartender made offers to a male customer or patron on your licensed premises to procure a female to engage in acts of illicit sexual intercourse with said male customer or patron, and in furtherance of such offer made arrangements with and procured a female to engage in acts of illicit sexual intercourse with said male customer or patron, as aforesaid; in violation of Rule 5 of State Regulation No. 20."

On behalf of the Division, agent De testified that pursuant to a specific assignment, in the company of agents C, G, Pe and Pa, and troopers of the New Jersey State Police, he arrived in the vicinity of the licensed premises at approximately 9:30 p.m. on February 18, 1971. The witness recorded the serial numbers of two ten-dollar bills and four five-dollar bills.

Agent Pa entered the premises alone at approximately 9:30 p.m. and agent De entered shortly thereafter with the "marked" currency in his possession. He seated himself at the bar, one seat away from agent Pa, and observed approximately sixty male patrons and eight female patrons on the premises. Three males subsequently identified as Rudy Ficarotta, Alfie DiFilippo, Jr., and Michael Molnar, Jr., were tending bar.

Agent De remained on the premises approximately two hours during which time the three bartenders remained on duty. During this period, he was served "by Alfie a couple of different times and Rudy I think twice." Rudy was preparing sandwiches behind the bar. He noted that, on the previous evening, February 17th, he had observed Rudy performing similar duties between the hours of 7:30 p.m. and 9:00 p.m. On the evening of the 17th he had purchased drinks and a sandwich from Rudy who accepted payment, which he rang up on the cash register.

On the evening of the 18th, he observed two female patrons, named Frankie -- and Jeannie -- in the company of a male. Frankie left the premises, from time to time, in the company of different males.

Approximately two hours later agent De rose to leave the premises whereupon Rudy approached him from his position at the sandwich counter and asked him if he wished to have sexual relations that evening. Rudy assured the agent that the girls were "clean" and then proceeded to where Frankie, Jeannie and their male companion were seated and engaged them in a brief conversation. He returned and advised agent De that Frankie "had to go out on a trick" but would be available for purposes of sexual intercourse in approximately fifteen minutes. Agent De returned to his seat and observed Frankie depart with a male companion.

She returned in approximately twenty minutes, whereupon Rudy again engaged them in conversation. He returned to agent De and said "Go over and talk price with her." Agent De thereupon proceeded to have conversation with Frankie and Jeannie and agreed upon a price of \$25.00 for an act of sexual intercourse at a motel of their choice. He then asked the girls for some assurance that he would not be robbed. Jeannie called Rudy over; and he assured agent De that he would not be harmed.

At approximately 11:50 p.m. he departed with Frankie and they drove to a nearby motel where agent De entered the office to register. They then entered the room, agent De paid her \$25.00 and an additional \$15.00 in "marked" bills which she placed in her purse.

At approximately 12:15 a.m. with agent De partly disrobed and Frankie completely disrobed, agents G and C, and an officer of the State Police, knocked at the door. Agent De opened the door and they entered. The State Trooper retrieved the "marked" currency from Frankie's purse and placed Frankie under arrest.

Agents De, C and several police officers returned to the licensed premises at approximately 1:00 a.m. where they found Alfie on duty. They apprised him of the violation, and he informed them that Rudy was gone, that, he, Alfie, was the manager and that Rudy was not employed by the licensees.

Subsequently, at Police Headquarters, both Alfie and Leon Stefanoni, co-licensee, denied that Rudy was an employee.

On cross examination, agent De testified that on February 17, Rudy came from behind the bar, they sat together and had several conversations regarding Rudy's primary employment as a vacuum cleaner salesman. Agent De represented to Rudy that he was in the financing business and the conversation generally pertained to that subject. Rudy was back and forth behind the bar during the conversation.

Neither on the 17th nor the 18th, did he request Rudy to procure a female for sexual intercourse. He repeated that he remained at his seat for the entire two-hour period on February 18, 1971 "...except when I went around after having the conversation with Rudy...." Rudy's attire was similar to that of the other bartenders.

On redirect examination, he reiterated that on the evening of February 17th, Rudy was behind the bar making sandwiches and serving beer for a half hour. Rudy then sat with agent De for approximately fifteen minutes, and returned behind the bar. Thereafter he proceeded to serve patrons. On the evening of the 18th, Rudy remained behind the bar at all times, serving beverages and sandwiches to patrons, including agent De.

Agent Pa testified that, on the evening of February 18th, he arrived in the vicinity of the licensed premises with agent De, other ABC agents and State Police officers. He witnessed the preparation and recordation of the serial numbers of currency to be used in this investigation and was aware that agent De had such currency in his possession.

He entered the premises alone and seated himself at the bar. Shortly thereafter agent De entered and took a seat at the bar one or two stools away. He observed three bartenders on duty and approximately sixty-five patrons on the premises. Rudy served him a bottle of beer, accepted payment and placed the payment in the cash register. He further observed Rudy similarly serve agent De. He particularly observed Jeannie and Frankie frequently engage in conversation with male patrons, leave the premises in the company of male patrons and return unaccompanied.

Some time thereafter, agent De rose to leave and agent Pa overheard the conversation between Rudy and agent De with respect to the offer by Rudy to procure a female companion for agent De to engage in illicit sexual intercourse. He then observed Rudy in conversation with Frankie and Jeannie. He did not hear that conversation because it took place outside his hearing distance. Rudy returned and advised agent De that there would be a brief wait. Frankie departed with a male companion and returned unaccompanied shortly thereafter, whereupon Rudy again engaged her in conversation. He then returned to agent De to instruct him to join Frankie and Jeannie. Agent De did so. Shortly thereafter Jeannie summoned Rudy and they had further conversation. Rudy was behind the bar during these conversations.

Agent Pa departed the premises and joined the other agents and State Police officers. Shortly thereafter he observed agent De leave the premises in the company of Frankie. They entered the agent's car. He later observed agent De and Frankie enter the motel premises but did not take part in any subsequent investigation, either at the licensed premises or the Police Headquarters.

Agent G testified that he accompanied agents De, Pa and the others to the premises, assisted in the preparation of the "marked" money list but did not enter. He observed agent Pa enter at approximately 9:35 p.m. and agent De enter approximately ten minutes later. Agent Pa departed the premises at approximately midnight and agent De departed shortly thereafter in the company of Frankie.

He later observed agent De and Frankie enter the motel, and he thereafter, entered the room with other officers. He found Frankie completely disrobed and agent De partially disrobed. He assisted other agents in the recovery and identity of the "marked" currency.

Leon J. Stefanoni, testified that he and his brother, Joseph, are owners of the premises herein and own an additional license in Springfield Township. Both establishments cater to military trade.

With respect to the subject premises he testified that his brother is in charge during daytimes and Alfie is the manager at night. He, personally, was not present on the premises on either February 17th or February 18th.

He asserted that Mike Molnar is a night bartender but that he never hired Rudy. He was aware that Rudy was a salesman and that he occasionally visited the premises; however, the first notice he had that Rudy was working on the premises was on the night of February 18, 1971, when he phoned Alfie regarding the business and was informed of the alleged prostitution violation.

He, at that time, denied that Rudy was ever in his employ and he did not know Rudy's last name until apprised of it by the officers.

There was submitted in evidence a copy of Division Form E-141-A, which lists all persons employed on the licensed premises. The name Rudy Ficarotta does not appear thereon.

The witness insisted that his employees are expressly instructed to be on the alert for such activity and that he had no knowledge of prostitution activity being conducted on his premises. Only he and his brother Joseph, were authorized to hire and fire. Joseph generally worked from 7:00 a.m. until 6:00 p.m. but would occasionally remain an hour or two later. He repeated that Rudy was never in their employ.

On cross examination, he testified that all employees are listed on the employment list. He has known Rudy approximately one year. Alfie had no authority to hire or fire. If he became unusually busy he would call either of the Stefanoni brothers, one of whom would come to the premises to help. He was not on the premises on the 17th or 18th in the evening; he never asked Alfie whether he had hired Rudy, and he fired Alfie a few days after the incident.

Joseph Stefanoni testified that he and his brother are partners in the license herein and he was not aware that Rudy was employed on these premises. He did not hire Rudy or authorize Alfie to do so. In the event it became necessary to hire or fire anyone he discussed the matter with his brother.

On cross examination, he admitted knowing Rudy and admitted having seen him occasionally on the premises, but denied ever hiring Rudy. He further denied any knowledge that Rudy had ever performed any services on behalf of the licensed premises.

He had several part-time bartenders available and if Alfie could not find any of them he would call Joseph who would then help out. It should be noted that while the name of Rudy Ficarotta does not appear on the employment list, the names of ten individuals designated as part-time bartenders do appear.

He concluded that he generally works from 9:00 a.m. until 4:00 or 5:00 p.m., and that he was not on the premises on the evening of February 18, 1971.

In adjudicating matters of this kind we are guided by the established principle that disciplinary proceedings against

liquor licensees are civil in nature, and not criminal, and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

It has been established by the Division and not refuted by the licensee that Rudy did procure a female companion for agent De for the purpose of illicit sexual intercourse. Indeed, the co-licensees candidly admit that since neither was on the premises on the evening in question, neither is in any position to deny the accusation.

The critical question of the status of Rudy, therefore, becomes the only issue. Simply stated, the question becomes "Was Rudy an employee at the time of the procurement for purposes of prostitution as testified to herein?"

"In disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee, or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings." Rule 33 of State Regulation No. 20.

"The commissioner [now Director] ...has consistently construed the word 'employed' to embrace ... all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship." Kravis v. Hock, N.J.L. 252 (Sup. Ct. 1948) at p.255.

See also Re Equitable Titles, Inc., Bulletin 1968, Item 2.

Having had the opportunity to observe the demeanor of the witnesses I find the testimony of the agents to be forthright and credible in their observations of the activities in these premises on the date charged herein.

From that testimony, I find that, on two successive evenings and for several hours, Rudy clearly performed services in furtherance of the licensed activity. Rudy was observed to be behind the bar serving beverages to patrons and, further, he was observed to accept payment and place the money in the cash register.

It further bears repeating that the agents have clearly identified Rudy, without question, as having procured the female for agent De to engage in an act of prostitution. The "marked" currency found in the possession of Frankie leaves no doubt that such procurement actually occurred.

The testimony of Leon and Joseph Stefanoni, even assuming it to be truthful, fails to absolve them of guilt when subjected to the test of Rule 33 of State Regulation No. 20.

I find, pursuant to the rule of law as set forth in Kravis v. Hock, supra, that Rudy was an employee of the licensees at the time of the violation herein, and conclude that the Division has established by a fair preponderance of the credible evidence that the licensees herein, through their employee, allowed, permitted and suffered the procurement of a female to engage in acts of illicit sexual intercourse. It is, accordingly, recommended that they be found guilty of the said charge.

Licensees have no prior adjudicated record. It is, therefore, recommended that the license be suspended for one hundred eighty days. Re Lark Lounge, Inc., Bulletin 1988, Item 2.

Conclusions and Order

Exceptions to the Hearer's report were filed by the licensee within the time provided by Rule 6 of State Regulation No. 16.

I have carefully considered the matters contained in the said exceptions and find that those matters have either been fully considered and resolved by the Hearer in his report, or are without merit.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the Hearer's report and the exceptions filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein. I shall, therefore, impose a suspension herein of one hundred eighty days.

Accordingly, it is, on this 24th day of February 1972,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Wrightstown to Leon J. Stefanoni and Joseph Stefanoni, t/a Zachey's Shack, for premises w/s Fort Dix Street, Wrightstown, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1972, commencing at 2:00 a.m. Monday, March 13, 1972; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Saturday, September 9, 1972.

Robert E. Bower
Director

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR
AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS,
LESS 7 FOR PLEA.

In the Matter of Disciplinary)	
Proceedings against)	
Sabe, Inc.)	
t/a Paul's Musical Tavern)	CONCLUSIONS
1817-1819 Broadway)	and
Camden, N. J.,)	ORDER
Holder of Plenary Retail Consumption)	
License C-40, issued by the Municipal)	
Board of Alcoholic Beverage Control)	
of the City of Camden.)	
-----)		
Piarulli and Vittori, Esqs., by Sal B. Daidone, Esq., Attorneys		for Licensee
Dennis M. Brew, Appearing for Division		
BY THE DIRECTOR:		

Licensee pleads non vult to a charge alleging that on November 19, 1971, it sold alcoholic beverages to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Licensee has a prior record of suspension by the municipal issuing authority for twenty-five days, effective November 3, 1965, for sale to minors; by the Director for fifteen days, effective April 19, 1967, for possessing liquor not truly labeled (Re Sabe, Inc., Bulletin 1733, Item 6), and by the Director for thirty days, effective April 16, 1968, for sale to minors (Re Sabe, Inc., Bulletin 1793, Item 8).

The prior record of dissimilar violation occurring more than five years ago disregarded for penalty purposes, the license will be suspended for fifteen days (Re Lincoln Lounge, Bulletin 1997, Item 6), to which will be added ten days for the similar violation occurring within the past five years; five days for a similar violation occurring more than five but less than ten years; and five days for a dissimilar violation occurring within the past five years, making a total of thirty-five days; with remission of seven days for the plea entered, leaving a net suspension of twenty-eight days.

Accordingly, it is, on this 24th day of February 1972,

ORDERED that Plenary Retail Consumption License C-40, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Sabe, Inc., t/a Paul's Musical Tavern, for premises 1817-1819 Broadway, Camden, be and the same is hereby suspended for twenty-eight (28) days, commencing 2:00 a.m. on Thursday, March 9, 1972, and terminating 2:00 a.m. on Thursday, April 6, 1972.

Robert E. Bower
Director

5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION -
 CRIMINALLY DISQUALIFIED EMPLOYEE - CHARGES DISMISSED -
 FAILURE TO KEEP ACCURATE BOOKS AND RECORDS - LICENSE
 SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary
 Proceedings against

Otnas Holding Company, Inc.,
 247 Highway 18
 East Brunswick, N.J.,

Holder of Plenary Retail Consumption
 License C-17, issued by the Township
 Council of the Township of
 East Brunswick.

CONCLUSIONS
 and
 ORDER

 Dominick J. Porto, Esq., Attorney for Licensee
 Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. In your application filed June 15, 1969 with the East Brunswick Township Council, upon which you obtained your plenary retail consumption license for the 1969-70 period, and in your application filed with the East Brunswick Township Council upon which you obtained your current plenary retail consumption license, you failed to state and disclose in answer to Question No. 20 in each of said applications which asks for 'Names and residences of all members of the Board of Directors of applicant corporation.' that Carmine Luizza was also a member of the Board of Directors of your corporation; said false statement, representation, evasion and suppression of a material fact being in violation of R.S. 33:1-25.
2. From on or about February 17, 1969, until the present, you had connected with you in a business capacity, Carmine Luizza, a person who had been convicted of a crime involving moral turpitude, viz., on or about July 7, 1953 in the County of Middlesex, New Jersey, of maintaining a gambling resort; in violation of Rule 1 of State Regulation No. 13.
3. From on or about February 17, 1969, to date, you failed to have and keep a true book or books of account in connection with the operation and conduct of your licensed business as required by and in violation of Rule 36 of State Regulation No. 20."

The licensee thereafter waived the presentation of testimony and agreed to submit on the report of investigation and accompanying exhibits in the Division file.

With respect to Charge 1, the Division file reflects that the said Carmine Luizza, on numerous occasions exercised his influence on behalf of the licensee. While Luizza did not function directly in the operation of the liquor license activity, it is clear that he functioned in an advisory capacity with respect to administrative procedures of the corporate licensee as well as in its financial activities.

However, there is no evidence in the file tending to prove that Luizza was ever elected to the position of Director or that he has ever accepted such position. "A person must not only be eligible, but he must be elected and accept election as a director." Cohen v. Miller, 5 N.J. Super 451 (Chancery Division) at 456. I, therefore, find that the Division has failed to establish the necessary elements in support of Charge 1, and recommend that this charge be dismissed.

With respect to Charge 2, the file contains a criminal record from the State Bureau of Identification which sets forth that Carmine Luizza was arrested on July 7, 1953, charged with the offense of maintaining a gambling resort. The record further indicates the disposition of this matter: "Fine \$250.00, Prob. 1 year". Subsequent investigation discloses that the indictment as to Carmine Luizza on the charge of maintaining a gambling house was nolle prossed on March 5, 1954 and that Luizza pleaded non vult to an accusation for gambling.

Luizza's plea of non vult to the criminal charges resulted in his conviction of a crime within the contemplation of the Alcoholic Beverage Law (R.S. 33:1-25). Re Villare, Bulletin 1188, Item 3. Further, it has uniformly been held that one who has been convicted of commercialized gambling as a principal has been convicted of a crime involving moral turpitude. Re Eligibility, Case No. 653, Bulletin 1023, Item 13.

Whether the gambling conviction without more, constitutes a criminal conviction involving moral turpitude has not been established. In any event, since the hearing in this matter, the licensee has submitted a true copy of an order dated March 8, 1971 entered by the County Court wherein the aforementioned conviction has been expunged from the record pursuant to the terms of N.J.S.A. 2A:164-28. In view of the said order, the disability of Luizza, if any, has been removed. Re Case No. 1137, Bulletin 1023, Item 7. I, therefore, recommend that Charge 2 be dismissed.

With respect to Charge 3, the file contains a nineteen page list of numerous subscribers to stock in Otnas Holding Company indicating payments by said subscribers, in the sum total of \$416,650 to Otnas representing subscriptions to 416,650 shares of common stock at \$1.00 per share. The file further discloses the balance sheet of Otnas Holding Company, dated June 30, 1969 setting forth, among others, purported current liabilities of \$341,925.29 and listing the names of nine individual creditors under the heading "loans payable".

With respect to this list of creditors the file contains the sworn statement of Santo R. Santisi, dated April 16, 1970 that he is the holder of 29,500 shares of common stock in Otnas, and is the holder of all 5,000 shares of the voting stock in Otnas. He stated that he makes the final decisions for Otnas Holding Company.

Santisi avers that the nine creditors listed were not, in fact, creditors. They had loaned no money to Otnas but represented names of friends he felt he could rely on for loans of

money if necessary. He explained that the \$416,650 referred to earlier had been collected without the necessary approval of the SEC and that the fictitious amounts of debts were set up so that the funds collected for the subscriptions without SEC authorization approval need not be shown in the financial statement of the corporate licensee.

A statement of John M. Santisi, in the file, indicates considerable personal knowledge of the financial operation of Otnas. He corroborated the revelations of Santo Santisi with respect to fictitious liabilities shown on the financial statement.

A sworn statement of Alphonso F. Covino, one of the nine named creditors discloses that he did not make any loan to Otnas as represented, nor was he aware of the existence of the listing of his name as creditor.

The facts disclosed with respect to Charge 3, clearly indicate an intentional fabrication of the financial records of Otnas Holding Company. Thus, such false representations constitute a failure to keep a true book of accounts in connection with the operation and conduct of the licensed premises.

In Re Whippoorwill Social Club, Bulletin 1376, Item 7, the licensee was adjudged guilty of the charge that no bank account, or books of accounts of receipts and disbursements were maintained. Guilt was established in Whippoorwill even though the Director found that there had been no deliberate attempt to circumvent the Alcoholic Beverage Law.

In Re Newtonville Country Club, Bulletin 1447, Item 2, the licensee was held to be in violation of Rule 12 of State Regulation No. 7, which applies to club licensees wherein the same requirements are applicable with reference to maintaining accurate accounts, books and records, as are applied to plenary retail consumption licenses in Rule 36 of State Regulation No. 20. The evidence therein disclosed inter alia that loans allegedly made to the licensee by its proprietor were not properly or accurately recorded.

I find that the record of the intentional misrepresentation as to the alleged loans to the licensee establishes, by a preponderance of the credible evidence, a violation of the applicable rule.

Accordingly, I recommend that the licensee be found guilty of Charge 3, and not guilty of Charges 1 and 2.

The licensee has a prior adjudicated record. In 1969, National East Brunswick Motor Inn, Inc., was charged with the violation that in its then current license application it falsely denied that its then president and ninety-eight percent stockholder had been convicted of a crime. During the pendency of that proceeding, the unlawful situation was corrected by the transfer of the license to the present licensee. The license was thereupon suspended for fifteen days. Re National East Brunswick Motor Inn, Inc., Bulletin 1849, Item 3.

It is further recommended that the prior dissimilar record be disregarded for penalty purposes, and that the license be suspended for ten days. Re O.K. Corall, Inc., Bulletin 1832, Item 6.

Conclusions and Order

After the expiration of the period granted to the parties herein to file written exceptions to the Hearer's report and notwithstanding absence of written exceptions, I called for oral argument before me, and such oral argument was duly had, pursuant to the provisions of Rule 6 of State Regulation No. 16. Thereafter counsel for the licensee submitted written argument.

Having carefully considered the entire matter herein, including the transcript of testimony, the exhibits, the Hearer's report, the oral argument and the written argument, I concur in the findings and recommendations of the Hearer, with the exception of the recommended penalty, and adopt them as my conclusions herein. Hence, I find the licensee not guilty as to Charges (1) and (2), and guilty as to Charge (3).

With respect to the penalty, it is clear that the situation herein described indicates that the licensee has intentionally maintained improper books and records and the situation differs significantly from that of negligent, unintentional inaccuracies in the maintenance of the said books and records.

Deeming the situation aggravated, I will, therefore, impose a penalty of twenty days suspension.

Accordingly, it is, on this 22nd day of February 1972,

ORDERED that Plenary Retail Consumption License C-17, issued by the Township Council of the Township of East Brunswick to Otnas Holding Company, Inc., for premises 247 Highway 18, East Brunswick, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, March 7, 1972, and terminating at 2:00 a.m. Monday, March 27, 1972.

Robert E. Bower
Director

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 9 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

O'Hara's Bar, Inc.
t/a D'Scene
Route #9, PO Perth Amboy
Sayreville Borough, N.J.

Holder of Plenary Retail Consumption
License C-28, issued by the Mayor and
Borough Council of the Borough of
Sayreville.
-----)
Weiner, Schoifet & Hendler, Esqs., by Robert B. Hendler, Esq.,
Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

CONCLUSI ONS
and
ORDER

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 6, 1971, it sold alcoholic beverages to three minors, ages seventeen, nbnteen and nineteen, in violation of Rule 1 of State Regulation No. 20.

Licensee has a prior record of suspension of license by the local issuing authority for five days, effective November 5, 1967 for sale to minors; by the Director for twenty days, effective October 12, 1968, for sale to minors (Re O'Hara's Bar, Inc., Bulletin 1821, Item 9); and upon order of the Director dated June 14, 1971 licensee paid a fine in lieu of a twenty-five day suspension of license for serving drinks other than ordered (Re O'Hara's Bar, Inc., Bulletin 1990, Item 5).

License will be suspended for twenty-five days (Re Jos. I. Maenner & Sons, Inc., Bulletin 1683, Item 6), to which will be added twenty days by reason of a record of suspensions for prior similar violation occurring more than five years but less than ten years from the date charged herein; a prior similar violation occurring within the past five years, and a dissimilar violation occurring within the past five years, making a total of forty-five days, with remission of nine days for the plea entered, leaving a net suspension of thirty-six days.

Accordingly, it is, on this 23rd day of February 1972,

ORDERED that Plenary Retail Consumption License C-28, issued by the Borough Council of the Borough of Sayreville to O'Hara's Bar, Inc., t/a D'Scene, for premises Route #9, P.O. Perth Amboy, Sayreville, be and the same is hereby suspended for thirty-six (36) days, commencing at 3:00 a.m. on Wednesday, March 8, 1972, and terminating at 3:00 a.m. on Thursday, April 13, 1972.

Robert E. Bower
Director

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Winnie's Grove, Inc.
t/a Winnie's Grove
1219 Mt. Ephraim Avenue
Camden, N.J.,

Holder of Plenary Retail Consumption License C-44, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.
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Levy and Lacktman, Esqs., by Morrey Lacktman, Esq., Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

CONCLUSIONS
and
ORDER

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 15, 1971, it sold alcoholic beverages to two minors, ages seventeen and eighteen, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Parkside Tavern, Inc., Bulletin 1906, Item 8.

Accordingly, it is, on this 22nd day of February 1972,

ORDERED that Plenary Retail Consumption License C-44, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden, to Winnie's Grove, Inc., t/a Winnie's Grove for premises 1219 Mt. Ephraim Avenue, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. on Tuesday, March 7, 1972, and terminating at 2:00 a.m. on Wednesday, March 22, 1972.

Robert E. Bower
Director

8. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - SUSPENSION OF
 LICENSE FOR 10 DAYS BY MUNICIPAL ISSUING AUTHORITY -
 APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary
 Proceedings against

Mary Petronico and Josephine
 Lewis, t/a M & J Tavern
 42 Sherman Avenue and
 84-86 Franklin Street
 Jersey City, N.J.,

CONCLUSIONS
 and
 ORDER

Holders of Plenary Retail Consumption
 License C-65, issued by the Municipal
 Board of Alcoholic Beverage Control
 of the City of Jersey City.

 Friedman, Grundman & Friedman, Esqs., by Meyer Friedman, Esq.,
 Attorneys for Licensees
 Edward A. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensees were found guilty by the municipal issuing
 authority of a charge alleging that on October 29, 1971, they
 sold alcoholic beverages to a minor, in violation of Rule 1 of
 State Regulation No. 20, whereupon their license was suspended
 for ten days.

The effective date thereof was deferred pending
 licensees' application to the Director for the imposition of a
 fine in lieu of suspension in accordance with the provisions of
 Chapter 9 of the Laws of 1971. By resolution adopted February 15,
 1972, the local issuing authority recommended approval of the said
 application for a fine in lieu of suspension.

Having favorably considered the application in question,
 I have determined to accept an offer in compromise by the licensee
 to pay a fine of \$600 in lieu of suspension.

Accordingly, it is, on this 25th day of February 1972,

ORDERED that the payment of a \$600 fine by the licensee
 is hereby accepted in lieu of a suspension of license for
 ten days.

Robert E. Bower
 Director

9. STATE LICENSES - NEW APPLICATION FILED.

Falstaff Brewing Corporation
 t/a P. Ballantine and Sons
 57 Freeman Street
 Newark, New Jersey

Application filed March 22, 1972 for limited wholesale license.

Robert E. Bower
 Robert E. Bower
 Director