

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

BULLETIN 1359

November 2, 1960

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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 1359

November 2, 1960

1. APPELLATE DECISIONS - FOREST HILL LODGE v. BLOOMFIELD AND  
BERTRIP LIQUORS, INC.

FOREST HILL LODGE, A CORPORATION )  
OF NEW JERSEY, AND ALEXANDER J. KUDA, )

Appellants, )

v. )

TOWN COUNCIL OF THE TOWN OF BLOOMFIELD, )  
AND BERTRIP LIQUORS, INC., )

Respondents. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

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Joseph Slifkin, Esq., Attorney for Appellants.  
Henry Sant'Ambrogio, Esq., Attorney for Respondent Town Council.  
Steelman, Lafferty, Rowe & McMahon, Esqs., by James L. R. Lafferty,  
Esq., Attorneys for Respondent Bertrip Liquors, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Town Council, on March 22, 1960, whereby it granted an application filed by respondent Bertrip Liquors, Inc. for a transfer of a plenary retail distribution license which it then held for premises at 16 Orange Street to premises at 61 Belleville Avenue, Bloomfield.

"Appellants allege, in effect, that the action of respondent Town Council was erroneous because (a) it did not have jurisdiction to hear said application because it was based on the same facts as a previous application which was denied, (b) the conduct of the hearing before respondent Town Council was harsh and unfair and (c) the granting of the application constituted an arbitrary and unreasonable use of the discretionary powers vested in respondent Town Council.

"As to (a): On June 15, 1959, the Town Council, as then constituted, denied a previous application filed by Bertrip Liquors, Inc. for a transfer of its license (as renewed for the 1959-60 licensing year) from 16 Orange Street to 61 Belleville Avenue. Bertrip Liquors, Inc. filed an appeal with the Director from said action. While said appeal was pending and undecided, the application which is the subject of this appeal was filed on February 26, 1960, with the Town Council. On March 9, 1960, the Director entered his conclusions and order in the pending appeal whereby he affirmed the action of the Town Council. See Bulletin 1334, Item 1. On March 21, 1960, Judge Collester, in the Superior Court, Law Division, Essex County, denied an application made by Forest Hill Lodge to restrain and enjoin respondents herein from proceeding to hear and determine the merits of the application filed on February 26, 1960. In said proceedings it was argued that the Town Council was without jurisdiction to accept and to act on the application and that the application is barred by res adjudicata. As to the first contention, Judge Collester pointed out that the municipality had merely received the application but had taken no action thereon.

and that the Director had decided the appeal. As to the second contention, Judge Colleser cited Lublimer v. Board of Alcoholic Beverage Control for the City of Paterson, et al., 59 N.J. Super. 419, and indicated that it is for the municipality in the first instance to determine whether or not res adjudicata or collateral estoppel should be applied. At the close of the hearing held by the Town Council on the evening of the same day, the Chairman stated that, in the opinion of the members of Council, the doctrine of res adjudicata did not apply. The facts herein lead to the conclusion that the Town Council had jurisdiction to hear the application and the further conclusion that the doctrine of res adjudicata did not apply. Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5; Tolen v. Kearny et al., Bulletin 880, Item 1; Whalan v. Mount Olive et al., Bulletin 1103, Item 2; Enno v. Howell et al., Bulletin 1120, Item 6; Auerbach v. Newark et al., Bulletin 1178, Item 1; Lublimer v. Paterson et al., Bulletin 1289, Item 3, aff'd, sub nom., Lublimer v. Board of Alcoholic Beverage Control for the City of Paterson, et al., supra.

"As to (b): At its meeting held on the evening of March 21, 1960, the Town Council concluded its regular order of business at about 11:00 p.m. and announced that the hearing upon the application of Bertrip Liquors, Inc. would then be held. Attorneys representing objectors requested an adjournment because the hour was late and the hearing would be long and because Mr. Russoman, a member of the Council, was absent due to a death in his family. The attorney for the applicant objected because his witnesses were present. The request was denied and the applicant and objectors presented their evidence. The transcript of the testimony taken at the hearing covers 135 pages and discloses that the meeting adjourned at 3:05 a.m. It was within the discretion of the members of the Town Council to decide whether the request for adjournment should be granted or denied. It has been represented that it is their usual practice to conduct such hearings after disposing of other business. As will hereinafter appear, a negative vote by Mr. Russoman would not have changed the ultimate result. The facts herein do not support the contention that the Councilmen abused their discretion by denying adjournment or that the hearing was harsh or unfair.

"As to (c): From the Conclusions and Order in Bertrip Liquors Inc. v. Bloomfield (the previous appeal referred to above as reported in Bulletin 1334, Item 1), it appears that Councilmen Soriano and Steinman voted in favor of granting the application filed on June 15, 1959 for a similar transfer; that Councilmen Lintott, Russoman, Fisher and Mayor Scott voted against said application and that Mrs. Jewkes, the other member of the Council did not vote. When the hearing upon the present application was held on March 21, 1960, Mayor Scott and Mrs. Jewkes were no longer members, having been replaced by Councilmen Schmidt and Schroeder. At the conclusion of said hearing a motion to grant the application was adopted by a four-to-two vote, with one member absent. The record shows that Councilmen Soriano, Steinman (then Mayor), Schmidt and Schroeder voted in favor of said resolution; that Councilmen Lintott and Fisher voted against said resolution and that as indicated, Councilman Russoman was absent. Thus, there has been no inconsistency shown in the votes cast by those who considered both applications. The result has been changed by the affirmative votes of Councilmen Schmidt and Schroeder who heard the lengthy testimony and considered the merits of the case for the first time.

"There has been no substantial change in the character of the section to which the transfer was granted except that there is some evidence concerning the proximity of another apartment house (100 units) on Belleville Avenue at the old Oakes Estate. It also

appears that at the meeting held on March 21, 1960, applicant presented a petition signed by 275 persons who stated that they favored the transfer.

"The number of licenses which should be permitted in any given section of a municipality is a matter to be decided primarily in the sound discretion of the local issuing authority. Kalish v. Linden et al., Bulletin 71, Item 14 (1935). The decision in the former appeal is not binding upon respondent Town Council as presently constituted. Each application is a separate application and must be decided in the sound discretion of the local issuing authority, as constituted at the time the application is considered. In the prior appeal the burden was upon appellant to show that the discretionary power of the local issuing authority was unreasonably exercised. The burden is now upon appellants herein to show that the action of the local issuing authority was arbitrary or unreasonable. Rule 6 of State Regulation No. 15. There is a complete lack of evidence that any member of the Town Council was improperly motivated and, under all the circumstances, I conclude that appellants have not sustained that burden. It is recommended, therefore, that an order be entered affirming the action of respondent Town Council, and dismissing the appeal. Tolen v. Kearny et al., supra; Lubliner v. Paterson et al., supra."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

After carefully considering the evidence and exhibits herein and the oral argument made at the close of the hearing, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

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

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

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISQUALIFICATION REMOVAL PROCEEDINGS - FIVE YEARS GOOD CONDUCT  
NOT SHOWN - APPLICATION DENIED.

In the Matter of an Application to )  
Remove Disqualification because of )  
a Conviction, Pursuant to R. S. )  
33:1-31.2. )

CONCLUSIONS

Case No. 1474  
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BY THE DIRECTOR:

Applicant's criminal record discloses that on August 12, 1927 he was sentenced in the State of California to serve one year on a larceny charge; that in 1929 he was placed on probation for three years on a charge of indecent exposure; that on November 26, 1930, following a conviction on two charges of lewdness, he was sentenced to an indeterminate term to Rahway Reformatory (paroled August 15, 1931, returned to reformatory on June 1, 1932), from which institution he was reparaled on March 29, 1933; that on September 21, 1935 he was sentenced to serve ninety days in a county jail on a Disorderly Person's Charge; that on November 19, 1936 he was sentenced in a county criminal court to serve from two to seven years in New Jersey State Prison on several charges of breaking, entering and larceny and was paroled on June 2, 1938; that on February 11, 1943 he was placed on probation for one year and fined \$500. in a county criminal court on a charge of lewdness and on May 27, 1960, following a conviction for obtaining money under false pretenses (R.S. 2A:111-1), he was sentenced in county court to serve one to three years in New Jersey State Prison, sentence was suspended and he was placed on probation for three years and fined \$500. The crimes of (1) larceny, (2) lewdness and (3) breaking, entering and larceny involve the element of moral turpitude and preclude the applicant from working in licensed premises or being otherwise engaged in the alcoholic beverage industry in this State until his disqualification is removed.

One of the statutory requirements necessary for the lifting of a disqualification is that applicant must have conducted himself in a law-abiding manner for a period of five years last past. R.S. 33:1-31.2; Re Case No. 1226, Bulletin 1073, Item 9.

In view of his aforesaid conviction on May 27, 1960, I am satisfied that the applicant has not so conducted himself and, therefore, will deny his application.

WILLIAM HOWE DAVIS  
DIRECTOR

Dated: September 1, 1960

3. DISCIPLINARY PROCEEDINGS - GAMBLING - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against )

J. & W. BAR, A CORP. )  
t/a J. & W. Bar & Grill )  
404 Washington Road. )  
Sayreville, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-53 (for the 1959-60 and 1960-61 licensing years), issued by the Borough Council of the Borough of Sayreville. )

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Wilentz, Goldman, Spitzer & Sills, Esqs., by Henry M. Spitzer, Esq., Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On June 3, 4, 7 and 8, 1960, 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.'

"At the hearing held herein an ABC agent testified that he visited defendant's premises on June 3, 4, 7 and 8, 1960.

"As to his first visit, this agent testified that he entered alone about 3:30 p.m., at which time Thelma Henriette Beatty (vice president, treasurer and holder of 50% of the stock of defendant corporation) was tending bar; that Stanley Sakowski (hereafter Stanley) entered shortly thereafter and sat at the bar; that the bartender gave a pad and pencil to another patron, who wrote something on the pad and gave the slip to Stanley, who went to the 'phone and thereafter told the other patron that he had it in. The agent left without identifying himself.

"As to his second visit, this agent testified that he entered alone about noon; that Stanley was in the premises; that Mrs. Beatty and Benedict Mytnick (hereafter Ben) were tending bar; that both were busy and that Mrs. Beatty also worked at the grill. The agent further testified that he spoke about horses to Joseph Kryzanski (hereafter Joseph) who was seated at the bar; that Joseph told Ben 'this guy wants to bet', after which Ben spoke to Stanley who came over to the agent and took a \$10 bet on a horse which was running that afternoon. The agent left without identifying himself.

"As to his third visit, this agent testified that he entered alone about 11:35 a.m.; that Mrs. Beatty was tending bar and taking care of the grill; that Stanley entered later and told the agent he had lost his previous bet; that the agent then placed with Stanley a \$6 bet on a horse running that day; that Stanley 'phoned the bet in and told the agent that, if he was not there on the following day, he would leave any money he won with the bartender. The agent left without identifying himself.

"As to the last visit, this agent testified that he alone entered about 3:30 p.m. with marked money in his possession; that another ABC agent entered shortly thereafter; that he asked Mrs. Beatty, who was tending bar, if Stanley had left any money for him and she stated that he had not; that Stanley then entered and paid him \$15 which he had won on the bet made the previous day; that Stanley obtained a pad from Mrs. Beatty and accepted bets of \$22 on a horse running that day; that the other ABC agent then left the premises and returned with a third ABC agent and police officers who found the marked money and the bet slip in Stanley's possession.

"On behalf of defendant, Mrs. Beatty testified that she knew Stanley, who worked in a nearby factory, but did not know he was taking bets; that she is particularly busy at noon-time preparing lunches at the grill; that she knew nothing of the gambling activity and did not know that the pads she gave to the other patron and Stanley were to be used to record bets. She admitted that she had spoken to the agent about horses but said that she thought he was going to the race-track to place his bets.

"Joseph Kryzanski testified that he worked as night bartender in defendant's premises; that he was off duty on June 4 when the agent spoke to him at the bar about horses, and that he introduced the agent to Stanley because he knew that Stanley also talked about horses but did not know he was taking bets.

"After reviewing the evidence, exhibits and brief submitted by defendant's attorney, I conclude that gambling occurred on the premises on the four dates and that it was conducted so openly that the agents and employees of defendant corporation knew or should have known that Stanley was accepting bets on the premises. It is recommended that defendant be found guilty as charged.

"Defendant has no prior record. The evidence is not sufficient to establish that any of defendant's agents or employees actively participated in the gambling activities and, hence, it is recommended that an order be entered suspending defendant's license for twenty days, the minimum penalty imposed in cases of this character. Re Ditchcoos, Bulletin 1128, Item 6; Re Verona Inn, Inc., Bulletin 1224, Item 2; Re DeBonis, Bulletin 1287, Item 5."

Defendant's attorneys have advised me, in effect, that they do not intend to file exceptions to the Hearer's Report pursuant to Rule 6 of State Regulation No. 16. The attorney appearing for the Division has filed no exceptions.

After carefully considering the evidence and exhibits herein and the memorandum filed by defendant's attorneys, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 8th day of September 1960,

ORDERED that Plenary Retail Consumption License C-53 (for the 1960-61 licensing year), issued by the Borough Council of the Borough of Sayreville to J. & W. Bar, A Corp., t/a J. & W. Bar & Grill, for premises 404 Washington Road, Sayreville, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. Thursday, September 15, 1960, and terminating at 3 a.m. Wednesday, October 5, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JERSEY AVE., INC. )  
t/a MACK TAVERN )  
72-74 Jersey Avenue )  
New Brunswick, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Board of Commissioners of the City of New Brunswick. )

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Leo J. Berg, Esq., Attorney for Defendant-licensee.  
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On August 19, 1960, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Louis ---, age 17, Robert ---, age 18 and Randall ---, age 20, and you allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

On August 19, 1960, at about 8:25 p.m., three ABC agents observed three young men as they entered defendant's premises and took seats at the bar. Bela Steve Benczik (president of defendant corporation) was tending bar and he questioned the young men, each of whom exhibited to him an identification card. After the bartender had served a glass of beer to each of these patrons and the beer had been partly consumed, the agents identified themselves and seized the drinks. Louis --- admitted he was 17 years of age; Robert --- admitted he was 18, and Randall --- admitted he was 20. Subsequent investigation by the ABC agents disclosed that the identification cards which the minors exhibited were false and the minors admitted they they had previously purchased them for five dollars each. The bartender was placed under arrest. He later signed complaints against each of the minors for violation of R.S. 33:1-81.

Defendant has a prior record. Effective May 7, 1951, its license was suspended for two days for possessing an unlabeled beer tap (Bulletin 906, Item 12). This dissimilar violation occurred more than five years ago and, hence, will not be considered in fixing penalty herein. Effective May 12, 1952, its license was suspended by the local issuing authority for two days for selling to a minor. The minimum penalty for an unaggravated sale to three minors, one of whom is only 17 years of age, is twenty-five days. Re Farmer, Bulletin 1301, Item 3. Because of the prior similar violation in 1952 I would ordinarily suspend the license for an additional five days, but the fact that the minors admitted that they had displayed false identification cards is a mitigating circumstance (Re Happy Hour Inn, Bulletin 1317, Item 6) and, hence, in this case I shall suspend defendant's license for twenty-five days. Five days will be remitted for the plea, leaving a net suspension



the defendant nor anyone on his behalf, appeared at this Division with reference to the within matter. The attorney appearing for the Division reported that no one had communicated with him between July 7 and July 26, 1960 and made a motion that the matter herein be determined on the basis of the record as it then stood. No reason appearing to the contrary, I, as Hearer, announced that the matter was considered completed and that a Hearer's Report would be submitted in connection therewith.

"The report of the Division chemist, marked as an exhibit in evidence in the instant case, disclosed that the analysis of the contents of the seized 4/5 quart bottle marked 'Four Roses Blended Whiskey 86 Proof' showed the whiskey to be low in acids and high in solids when compared with an analysis of a sample of the genuine brand. The attorney for the defendant had thereto previously stipulated that such was the case.

"Under the circumstances, I recommend that the defendant be adjudged guilty of the violation charged herein.

"Defendant has a prior adjudicated record. Effective July 13, 1950 when the license was held by defendant and Mary Rutka, it was suspended for fifteen days for possession on May 4, 1950 of alcoholic beverages bearing labels which did not truly describe their contents. Bulletin 882, Item 5. Again, effective September 7, 1953 defendant's license was suspended by the local issuing authority for five days for permitting gambling (cards) on his licensed premises. Effective May 19, 1955 defendant's license was suspended for twenty-five days for (a) minimum consumer resale price violation, (b) an 'hours' violation (both of which occurred on December 5, 1954) and (c) on October 25, 1954 permitting a brawl on the licensed premises. Bulletin 1065, Item 1. The minimum suspension for the instant violation is ten days. Re Zicaro, Bulletin 1343, Item 8. In view of the similar violation occurring more than five years ago but during a ten-year period, it is recommended that five days be added to the within suspension. Insofar as the dissimilar violations occurring more than five years ago are concerned, it is recommended that they be not considered in fixing the penalty to be imposed in this case. It is, therefore, recommended that an order be entered suspending defendant's license for fifteen days."

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

Having carefully considered the record herein, I concur in the findings and conclusions of the Hearer and shall adopt his recommendation.

Accordingly, it is, on this 8th day of September 1960,

ORDERED that Plenary Retail Consumption License C-318 for the 1960-61 licensing year, issued by the Municipal Board of Alcoholic Beverage Control to John Rutka, t/a Rutka's Tavern, for premises 249 Bruce Street, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Monday, September 19, 1960 and terminating at 2:00 a.m., Tuesday, October 4, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SUSPENSION STAYED AND CASE RE-OPENED TO PERMIT DEFENDANT TO PRODUCE ADDITIONAL TESTIMONY.

In the Matter of Disciplinary Proceedings against )

JOHN RUTKA )  
t/a RUTKA'S TAVERN )  
249 Bruce Street )  
Newark 3, N. J. )

ORDER

Holder of Plenary Retail Consumption License C-318 (for the 1959-60 and 1960-61 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

-----  
John J. Egan, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On September 8, 1960, I entered an order suspending defendant's license for fifteen days commencing at 2 a.m. Monday, September 19, 1960, and terminating at 2 a.m. Tuesday, October 4, 1960. Said order was entered after a contested hearing as a result of which I found defendant guilty of a charge alleging that he possessed on his licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

It has now been represented to me by the defendant that, prior to the entry of the order herein, he had no knowledge that a hearing scheduled to be held on July 7, 1960, had been adjourned to July 26, 1960, and his attorney has submitted to me an affidavit that, through inadvertence, he failed to notify his client of said adjournment. Defendant has requested me to stay the suspension now in effect and to re-open the case in order that he may employ a chemist to make an analysis of the contents of the questionable bottle of alcoholic beverages. Sufficient cause appearing,

It is, on this 21st day of September 1960,

ORDERED that the fifteen-day suspension now in effect be stayed immediately and until the entry of a further order herein; and it is further

ORDERED that a continued hearing be held herein on Thursday, October 20, 1960, at 2 p.m., at the offices of this Division, for the purpose of taking the testimony of chemists produced by the defendant as to the contents of the questionable bottle and the testimony of the Division's chemist as to said contents, if his testimony be deemed necessary.

WILLIAM HOWE DAVIS  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against  
 KONNER'S GRILL, INC.  
 t/a KONNER'S GRILL  
 802-02½ Main Street  
 Bradley Beach, N. J.  
 Holder of Plenary Retail Consumption License C-2 (for the 1959-60 and 1960-61 licensing years), issued by the Board of Commissioners of the Borough of Bradley Beach.

CONCLUSIONS AND ORDER

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 Anshelewitz & Barr, Esqs., by Max M. Barr, Esq., Attorneys 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 non vult to the first charge and not guilty to the second charge herein set forth:

- '1. On Sunday, May 1, 1960, at about 12:30 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a quart bottle of Gori Gori Chianti, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
- '2. On Sunday, May 1, 1960, you, through an agent, servant or person employed on your licensed premises in your behalf, failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35.'

"The facts relating to the first charge, as appears from the file, are that on Sunday, May 1, 1960 at about 12:30 p.m., an ABC agent purchased a quart bottle of wine labeled 'Gori Gori Chianti' from the bartender at the licensed premises for off-premises consumption. The agent then left the premises with the wine, joined a fellow agent who was stationed outside the premises, and both agents immediately entered the premises, disclosed their identity to the bartender and apprised him of the violation.

"What transpired between the agents and the bartender after the agents revealed their identity forms the basis of the second charge. Testimony of two ABC agents on this charge is as follows:

"The agents informed the bartender, whom one of the agents heard was called Milton, that they desired to question him. He replied that he did not intend to answer any questions until he spoke with his lawyer, although at their request, he presented them with a copy of the application of the license. Meanwhile, the bartender was unsuccessful in telephoning, purportedly to his lawyer. So informed, the agents asked Milton, 'What is your name?' In response he stated, 'I told you before, I'm not going to answer any questions until I speak to my lawyer.' Thereupon, an agent said, 'What's your name? What's your name? I want your address and your date of birth. I want you to identify yourself.' The bartender again refused, giving the same reason. One of the agents informed the bartender that his refusal was a serious matter, whereupon the bartender again made a few attempts to reach his party on the telephone but reportedly could not contact him. Asked to initial the bottle of wine sold to the agent, in accordance with departmental practice, he refused. After waiting for about fifteen or twenty minutes, the agents informed the bartender that they could not wait any longer and again told the bartender that they must have his name as they were required to include it in their reports to the Division and remarked that his failure might 'hurt' him, but he refused to give them the information requested. The agents then left the premises. (It was represented at the hearing that Milton is actually Milton Konner, secretary-treasurer of the corporate licensee).

"Milton Konner testified that when the agents asked him if he had sold the bottle of wine he did not answer; that he made a number of telephone calls to his attorney but was unable to contact him; that upon request of the agents he opened a drawer behind the bar and when asked, told the agents that there were no lottery tickets in the drawer or upon his person; that he told the agents if he obtained the advice of his attorney he would answer questions, otherwise he would not, and that during the entire period the agents were there he did not give them his full name or identity or state his connection with the licensed business or premises. Asked why he refused to give the agents this information, he replied that he did not know.

"It needs no extended discussion to demonstrate that the identity of the person who commits a violation of the rules governing conduct of the licensed business is an essential element of an investigation thereof by ABC agents and that the refusal of such information constitutes at least failure to facilitate the investigation. For recent instances of the suspension of a license for such an offense, see Re Schmoldt, Bulletin 1294, Item 6 (non vult plea to such a charge) and Re Tube Bar, Inc., Bulletin 1292, Item 4 (not guilty plea to such a charge).

"Counsel for the defendant-licensee strenuously urges that, nevertheless, the complete defense to such a charge is that Milton had a right to consult his attorney before furnishing the agents with the required information.

"The obligation to aid and not hinder, delay or fail to facilitate ABC agents in the course of their investigation of licensed premises stems from the express language to that effect in R.S. 33:1-35. From the viewpoint of public interest, it matters little whether a licensee in violating the law or rules governing the conduct of a licensed business acted upon advice of his attorney. See language to this effect cited in Re Eva's Tavern, Inc., Bulletin 1037, Item 3. Hence, whatever advice Milton's attorney would have given him, if reached, could not serve as an excuse for Milton's refusal to identify himself as aforesaid. For specific examples of suspension of license by reason of the bartender's refusal to identify himself on advice of counsel, see Re Zuck,

Bulletin 1289, Item 6 wherein it was stated: 'However, licensees must realize they may not escape their responsibility under the Alcoholic Beverage Law by relying upon advice of counsel', citing Re Eva's Tavern, Inc., supra. Also cf. Re Circola, Bulletin 1103, Item 7. For the reasons above expressed, I recommend a finding that the defendant-licensee is guilty of Charge 2.

"Defendant has a prior adjudicated record. Effective November 16, 1959 its license was suspended by the Director for five days for conducting a lottery on the licensed premises. Re Konner's Grill, Inc., Bulletin 1313, Item 8. I recommend that defendant's license be suspended for the minimum period of fifteen days on Charge 1, for ten days on Charge 2 and for an additional five days by reason of the dissimilar violation within the past five years, making a total suspension of thirty days. Re Alexis & Alexopoulos, Bulletin 1343, Item 5; Re Schmoldt, supra."

Pursuant to the provisions of Rule 6 of State Regulation No. 16, exceptions to the Hearer's Report and written argument thereon were filed by the attorney for the defendant-licensee.

One of the contentions advanced in the exceptions is that the Hearer did not give any consideration to the guilty plea in Charge 1, in that the licensee was entitled to a remission of penalty of five days for the entry thereof. Inasmuch as it was necessary to try the case fully on Charge 2, the licensee (in accordance with established practice) is not entitled to any remission for the entry of the plea of non vult as to Charge 1. Re Von Schrag, Bulletin 975, Item 3.

I have given careful consideration to the record as disclosed by the transcript of the hearing, Hearer's Report, exceptions and written argument thereon. I concur in the Hearer's findings and adopt his recommendations. I find defendant-licensee guilty as charged. Although defendant-licensee's premises are in a summer resort community, the establishments in the main business area, including that of the licensee, are an all-year-round operation. The violation in question occurred on May 1, 1960, indicating the non-seasonal operation and hence, a present suspension of the license will serve as an effective penalty.

Accordingly, it is, on this 12th day of September 1960,

ORDERED that Plenary Retail Consumption License C-2 for the 1960-61 licensing year, issued by the Board of Commissioners of the Borough of Bradley Beach to Konner's Grill, Inc., t/a Konners's Grill, for premises 802-02 $\frac{1}{2}$  Main Street, Bradley Beach, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m., Monday, September 19, 1960 and terminating at 2:00 a.m., Wednesday, October 19, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

8. 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 )

MICHAEL MARINO )  
t/a MICHAEL'S TAVERN )  
218 Monticello Avenue )  
Jersey City, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-351, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

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Defendant-licensee, Pro se.

David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

At 1:20 p.m. on Sunday, August 21, 1960, while ABC agents were on the premises of defendant, they observed a male patron whispering to Michael Marino, Jr. (the bartender), who looked in the direction of the agents and shook his head in a manner to indicate "no". The agents left the premises and stationed themselves at a place where they could observe the same. About 1:30 p.m. the male patron who had been seen talking to the bartender came out of the side door carrying a paper bag. The agents intercepted the man and, upon inspection, found that the bag contained twelve 12-ounce cans of beer. The agents and the man returned to the defendant's premises and, when the bartender (defendant's son) was confronted with the violation, he verbally admitted the sale.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of fifteen days. Re Sypko, Bulletin 1336, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 14th day of September 1960,

ORDERED that Plenary Retail Consumption License C-351, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Michael Marino, t/a Michael's Tavern, for premises 218 Monticello Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, September 19, 1960, and terminating at 2 a.m. Thursday, September 29, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PERMITTING OBSCENE LANGUAGE ON PREMISES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 BROADWAY TAVERN, INC. )  
 t/a BROADWAY TAVERN ) CONCLUSIONS  
 142 Broadway ) AND ORDER  
 Jersey City, N. J. )  
 Holder of Plenary Retail Consumption License C-186, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

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 Defendant-licensee, by Daniel A. Arlotto, President.  
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that (1) it permitted during prohibited hours the sale and delivery of alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) it permitted foul, filthy and obscene language in and upon its licensed premises, in violation of Rule 5 of State Regulation No. 20.

ABC agents visited defendant's licensed premises on July 13 and 15, 1960, and heard therein foul, filthy and obscene language participated in by Daniel Arlotto (president of the corporate-licensee). On their last visit, one of the agents, at 10:33 p.m., asked Arlotto for a six pack, 12 ounce cans of beer to take out. Arlotto handed him a paper bag and told him to get the beer out of the refrigerator. The agent complied, paid Arlotto \$1.10 and left with his purchase followed by the other agent. Both returned immediately, identified themselves to Arlotto and informed him of both violations. Arlotto refused to give a signed statement and brushed off the filthy language violation with the remark "but it's a man's bar".

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of fifteen days on Charge 1 (Re Janulis, Bulletin 1346, Item 10) and for ten days on Charge 2 (Re Spillane, Bulletin 1259, Item 7), making a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 14th day of September 1960,

ORDERED that Plenary Retail Consumption License C-186, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Broadway Tavern, Inc., t/a Broadway Tavern, for premises 142 Broadway, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Wednesday, September 21, 1960, and terminating at 2:00 a.m., Tuesday, October 11, 1960.

WILLIAM HOWE DAVIS  
 DIRECTOR

10. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

THEODORE S. LEVY )  
2133 Lemoine Avenue )  
Fort Lee, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-32, issued by the Mayor and Council of the Borough of Fort Lee. )

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Defendant-licensee, Pro se.  
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On June 23, 1960, an ABC agent tested defendant's open stock of liquor and seized a number of bottles for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of three of the bottles varied substantially from the contents of genuine bottles of the labeled brands.

Defendant has conducted his licensed business for many years and has no prior adjudicated record. I shall suspend defendant's license for twenty days, the minimum penalty imposed in cases involving three bottles. Re Brucker's Carlstadt Tavern & Diner, Inc., Bulletin 1347, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

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

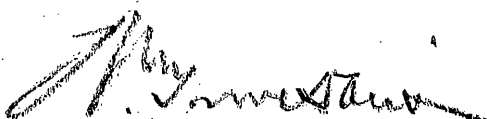
ORDERED that Plenary Retail Consumption License C-32, issued by the Mayor and Council of the Borough of Fort Lee to Theodore S. Levy, for premises 2133 Lemoine Avenue, Fort Lee, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Monday, September 26, 1960, and terminating at 3 a.m. Tuesday, October 11, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

11. STATE LICENSES - NEW APPLICATION FILED.

Sanford Kalb  
t/a Kalb Beverage Company  
R.D. #4, U. S. Highway #9  
Howell Township, PO Freehold, New Jersey  
Application filed November 1, 1960 for  
place-to-place transfer of State Beverage  
Distributor's License SBD-97 from 431  
Stokes Avenue, Ewing Township, New Jersey.

New Jersey State Library



William Howe Davis  
Director