

Harold Miller
41 Sheffield St.
Jersey City, 5, N. J.

DP

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 929

MARCH 19, 1952.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 929

MARCH 19, 1952.

1. APPELLATE DECISIONS - STEIN v. PASSAIC AND FISHMAN.

GUS STEIN,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE
CITY OF PASSAIC, and LOUIS FISHMAN,

Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq., Attorneys
for Appellant.
William N. Gurtman, Esq., Attorney for Respondent Board.
Leo J. Berg, Esq., Attorney for Respondent Louis Fishman.

This is an appeal from the action of respondent Board of Commissioners whereby it granted an application filed by respondent Fishman to transfer his plenary retail distribution license from 350 Passaic Street to 110 Market Street, Passaic. Appellant is the holder of a plenary retail consumption license with broad package privileges at 118 Market Street, Passaic.

On March 6, 1951, the action of the Board of Commissioners (as then constituted), in denying a prior similar application filed by Louis Fishman, was affirmed on appeal. Fishman v. Passaic, Bulletin 900, Item 3. Excepting the Fishman license, the number of licenses issued and outstanding on Market Street is the same at the present time as it was when the prior appeal was decided.

It appears from the Conclusions and Order in the prior appeal that one of the reasons for affirmance was because, at the time the decision was rendered, an ordinance of the City of Passaic prohibited the transfer of a plenary retail distribution license to any premises within 250 feet of other premises for which a plenary retail consumption license or a plenary retail distribution license was outstanding. However, on August 7, 1951, said ordinance was repealed by the Board of Commissioners (as then constituted) so that at the present time there is no ordinance of the City of Passaic which would prevent the transfer of the license to the premises located at 110 Market Street.

Question arises herein as to whether respondent Board of Commissioners acted arbitrarily or unreasonably in the present case in view of the fact that the prior application for transfer had been denied. However, after the date of the prior decision, namely, on May 8, 1951, an election was held in the City of Passaic. At said election Commissioners Martini and Cinamon, who voted to deny the prior application, were reelected. Mayor Pashman, Commissioner Cruise and Commissioner Manney were elected to replace three former members of the Board. On August 7, 1951, the new Board adopted the repeal of the 250-foot ordinance by a four-to-one vote, the sole negative vote having been cast by Commissioner Cruise. On January 8, 1952, the new Board passed the resolution to transfer the Fishman license by a four-to-one vote, the sole negative vote having been cast by Mayor Pashman. In Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5, it is said:

"While in the interest of uniformity, it might be desirable that a succeeding governing body adhere as closely as possible to the policies theretofore enunciated by a former body, it cannot be said that a deviation from those policies is necessarily arbitrary or unreasonable. On the contrary, the general rule of law is that no governing body may tie the hands of its successors in matters involving the exercise of discretion."

At the hearing herein Commissioner Cruise testified that he believed there was merit to the 250-foot ordinance but, after the majority voted to repeal said ordinance, he felt that the transfer should be granted because the premises at 110 Market Street are owned by Fishman's wife and the store is empty. Commissioner Manney testified that he voted to grant the transfer for the same reason and because he believed that the transfer would not in any way adversely affect that area. Commissioner Martini testified that he had changed his mind because he "felt that in the first application we made a mistake in considering this on purely neighborhood basis". He further testified as follows:

"I realized that Market Street is not really a neighborhood street, that to Market Street come people from various other municipalities to do their shopping on Market Street; they walk down Market Street; there are many different types of stores there and most of these people come from outside of Passaic."

Although Mayor Pashman had voted to repeal the 250-foot ordinance, he voted to deny the transfer because "I felt that there was sufficient outlet for liquor in and about the East Side area." Commissioner Cinamon's explanation as to his change of position is not clear but, in any event, there is not the slightest evidence in the case that any member of the Board was improperly motivated. All that appears is that there was a reasonable difference of opinion among the members of the Board as now constituted. Mayor Pashman testified that there was a free discussion among the members of the Board and "Everyone's mind was open throughout the deliberations." The premises known as 110 Market Street are located in a shopping district, and the number of licenses which should be permitted in such a district is a matter to be determined in the sound discretion of the local issuing authority.

Appellant has failed to sustain the burden of proof in showing that the action of respondent Board was arbitrary or unreasonable. Hence the action of respondent Board will be affirmed. Cf. Tolen v. Kearny et al., Bulletin 880, Item 1.

Accordingly, it is, on this 3rd day of March, 1952,

ORDERED that the action of respondent Board of Commissioners of the City of Passaic be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

EDWARD J. DORTON
Acting Director.

- 2. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 AND LOCAL ORDINANCE - FAILURE TO CLOSE LICENSED PREMISES AND TO PROVIDE CLEAR PUBLIC VIEW DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - PREVIOUS RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

JOHN SMITH)
 44 Temple Street)
 Paterson 2, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-6, issued by the)
 Board of Alcoholic Beverage)
 Control of the City of Paterson.)
 - - - - -)

Bernard L. Stafford, Esq., Attorney for Defendant-licensee.
 David S. Piltzer, Esq., appearing for Division of Alcoholic
 Beverage Control.

Defendant pleaded non vult to charges alleging that he (1) sold alcoholic beverages at retail in original containers for off-premises consumption on Sunday, in violation of State Regulations No. 38; (2) sold and permitted the consumption of alcoholic beverages upon his licensed premises during prohibited hours; (3) failed to close the entire licensed premises during prohibited hours; and (4) failed to provide clear public view of the entire interior of the licensed premises during prohibited hours. Charges (2), (3) and (4) alleged violations of the provisions of a local regulation.

The file discloses that shortly after 10:30 a.m. on Sunday, February 10, 1952, two agents entered the barroom of the defendant's licensed premises, where they observed other male patrons purchasing and consuming drinks of alcoholic beverages, and purchasing bottles of alcoholic beverages to take out. The agents then purchased and partly consumed drinks of whiskey and beer, and one of them purchased a pint bottle of Seagram's 7-Crown whiskey. All of these sales were made by the bartender.

In addition, the agents noted that there was no clear view of the interior of the licensed premises from the exterior because of the position of the shades and the presence of cardboard advertising material in the windows.

Defendant has a prior record. In 1944 the local authorities suspended his license for ten days for sale of alcoholic beverages during prohibited hours, in violation of local regulation. The minimum suspension for the first three violations is thirty days, Re Trombley, Bulletin 784, Item 9, and the minimum suspension for the "screen" violation is five days, Re Tamboer, Bulletin 824, Item 5. The previous violation hereinabove referred to was similar to the violations set forth in charges (2) and (3) herein. However, I shall consider the fact that more than five years elapsed between these violations. Cf. Re De Vita, Bulletin 729, Item 7. Therefore, I shall suspend the license for a total period of forty days. Five days will be remitted for the plea, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 7th day of March, 1952,

ORDERED that Plenary Retail Consumption License C-6, issued by the Board of Alcoholic Beverage Control of the City of Paterson to John Smith, for premises 44 Temple Street, Paterson, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. March 18, 1952, and terminating at 3:00 a.m. April 22, 1952.

EDWARD J. DORTON
 Acting Director.

3. DISCIPLINARY PROCEEDINGS - CHARGES OF PERMITTING INDECENT DANCE AND SALES TO MINORS DISMISSED - PERMITTING FEMALE IMPERSONATORS ON LICENSED PREMISES - PREVIOUS RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary)
 Proceedings against)
 GROUCHY OSCAR, INC.)
 T/a FUN HOUSE)
 Route 6)
 Lodi, N. J.,)
 Holder of Plenary Retail Consump-)
 tion License C-23, issued by the)
 Mayor and Council of the Borough)
 of Lodi.)

CONCLUSIONS
 AND ORDER

 Louis A. Mounier, Jr., Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic
 Beverage Control.

Defendant pleaded not guilty to charges alleging that (1) on various dates in October 1951 it allowed, permitted and suffered female impersonators on its licensed premises, in violation of Rule 4 of State Regulations No. 20; (2) on October 5, 1951, it allowed, permitted and suffered an indecent dance on its licensed premises, in violation of Rule 5 of State Regulations No. 20; and (3) on October 27, 1951, it allowed, permitted and suffered the sale of alcoholic beverages to minors on its licensed premises, in violation of Rule 1 of State Regulations No. 20.

As to Charge 1: ABC agents testified that on three occasions during the month of October 1951, namely, on October 5, October 13 and October 19, they observed on defendant's premises four male patrons who undoubtedly were the type of degenerates characterized as "female impersonators". The defendant's witnesses do not seriously dispute the fact that these patrons were on the licensed premises on the dates mentioned and, in fact, admit that they were also present on October 27. The defense is based upon the contention that these patrons began to frequent the premises "early in October" and that William H. Koth, an officer of defendant corporation, evicted them from the premises on October 19 and October 27. The evidence indicates that, on at least one visit, these undesirables stayed there "probably a couple of hours" and were "served drinks *** like regular patrons". They were never ordered to leave during the rather lengthy period of time the agents observed them on three occasions on the premises. Even accepting the testimony of William H. Koth as true, it is obvious that female impersonators were allowed, permitted and suffered on the licensed premises, within the meaning of Rule 4 of State Regulations No. 20, on at least the three occasions referred to by the agents, and to that extent I find the defendant guilty as to Charge 1.

As to Charge 2: The dance alleged to be indecent was performed by one of these female impersonators. Although it was utterly devoid of good taste, it was not of such a character as to justify its classification as an immoral activity within the meaning of Rule 5 of State Regulations No. 20. Hence, Charge 2 must be dismissed.

As to Charge 3: Vincent ---, twenty years of age, testified that on the evening of October 27, 1951, he entered defendant's premises with two companions and purchased a glass of Canadian Club and soda from a bartender whom he was unable to identify. He says they left defendant's premises after he had one drink. This testimony is wholly uncorroborated and is denied by defendant's witnesses. The only other evidence to sustain this charge concerns events which occurred later on the same evening when Vincent, his two companions and five other persons (two of whom were minors) returned to defendant's premises, and took seats at a table in the rear room. The

evidence as to what occurred at that time is conflicting and confusing. It does appear that some one of the eight persons in this party had a pint bottle of whiskey when he entered the licensed premises. Admittedly this bottle was hidden so that it could not be seen by any of defendant's employees. Whether some one in the party surreptitiously poured whiskey into some of the four glasses of ginger ale or "7-Up" served by the waitress cannot clearly be determined. However, defendant's witnesses denied that any alcoholic beverages were sold or delivered to any of the three minors, and they denied that any minor was permitted to consume alcoholic beverages on the licensed premises. After considering carefully all the evidence, I conclude that the Division has not sustained the burden of proof in establishing by a preponderance of the evidence that defendant is guilty as to Charge 3 and, therefore, said charge will also be dismissed.

The defendant has a previous record. In November 1947 its license was suspended by the local issuing authority for fifteen days for sales of alcoholic beverages to minors. See Bulletin 807, Item 7. In view thereof, its license will be suspended for a period of thirty-five days because of the finding of guilt as to Charge 1. Cf. Re P. A. Colored Democratic Club, Bulletin 852, Item 7.

Accordingly, it is, on this 6th day of March, 1952,

ORDERED that Plenary Retail Consumption License C-23, issued by the Mayor and Council of the Borough of Lodi to Grouchy Oscar, Inc., t/a Fun House, for premises on Route 6, Lodi, be and the same is hereby suspended for thirty-five (35) days, commencing at 4:00 a.m. March 18, 1952, and terminating at 4:00 a.m. April 22, 1952.

EDWARD J. DORTON
Acting Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)

ROCCO WINES & LIQUORS INC.)
537 Grand Street and 363 - 6th St.)
Hoboken, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-165, issued by the Board of Commissioners of the City of Hoboken.)

Leo J. Berg, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded not guilty to a charge alleging that it sold alcoholic beverages below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

An ABC agent testified that on December 4, 1951, he visited defendant's licensed premises and purchased two bottles of ginger ale from a man subsequently identified as Anthony Ruocco, President of the defendant corporate licensee; that Anthony Ruocco placed the two bottles of ginger ale in a paper bag, handed it to him, and told the agent, in answer to the agent's inquiry as to the price, that the items were fifty cents. The agent further testified that, after receiving the two bottles of ginger ale but before making payment

for same, he purchased a gallon of Fior Di California Burgundy Scelto Wine and was told by Anthony Ruocco that the price of the wine was \$2.25; that he handed Anthony Ruocco a five-dollar bill and received \$2.25 in change. Another agent, who had remained outside, then entered defendant's premises and the agents identified themselves. When the agents asked Anthony Ruocco what was the price of the wine in question, he began turning pages in the then current "List of Minimum Resale Prices" and then remarked that the price of the wine was \$2.59. The agents inquired whether Anthony Ruocco wished to make a written statement, and Ruocco replied: "Why put myself in trouble? I know I am going to get two or three days, why should I make any statement for it?"

There is no dispute that the minimum consumer price of a gallon of Fior Di California Burgundy Scelto Wine on December 4, 1951, was \$2.59. At the hearing herein Anthony Ruocco testified, however, that he charged \$2.59 for the gallon of wine and charged only eight cents a bottle for the ginger ale. He further testified that "Every year we generally run a little like sale, if you would call it that, on soda just to steam up business right before the holidays and charged 8¢. The year before I think, if I'm not mistaken, it was 10¢, not sure. Right before the holidays, it isn't big business with us, just for our customers, we generally give it cut-rate sort of. They don't have to buy anything. We sold soda that week for 8¢. When this happened I got excited because of the trouble it caused me and I discontinued it."

Anthony Ruocco's sister, who was in the store at the time when the ABC agent was there, testified that she overheard the conversation engaged in by her brother and the agent. This witness testified that "He came in the store and he asked for two bottles of soda, then wanted wine. He asked how much it was and my brother said \$2.75. Then he walked out and my brother followed him. They came back in the store again and the other inspector came in afterwards and he wanted to know how much the wine was. My brother told him \$2.59." Another witness produced by defendant testified that he purchased two bottles of Hoffman's ginger ale "around December 2", and "I paid 10¢ a bottle; no, wait a minute, I was going to pay 50¢ but he charged me 8¢. He said that week, the first week of December, he was running a special on soda."

I am satisfied from all of the evidence presented in this case that the testimony given by the two ABC agents is an accurate representation as to what occurred at the time in question. The story related by Anthony Ruocco and the customer who allegedly paid 8¢ for a well known brand of soda selling regularly for 25¢ is not only unique but unbelievable. Under the circumstances I conclude that the wine was actually sold for \$2.25, rather than at the minimum resale consumer price of \$2.59 per gallon. The defendant is, therefore, guilty as charged. In the absence of a prior adjudicated record, I shall suspend defendant's license for a period of ten days. Cf. Re Carmel, Bulletin 872, Item 7.

Accordingly, it is, on this 7th day of March, 1952,

ORDERED that Plenary Retail Consumption License C-165, issued by the Board of Commissioners of the City of Hoboken to Rocco Wines & Liquors Inc., for premises 537 Grand Street and 363 - 6th Street, Hoboken, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. March 18, 1952, and terminating at 2:00 a.m. March 28, 1952.

EDWARD J. DORTON
Acting Director.

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

WILLIAM PROSS
30 North West Street
Paterson 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-54, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

William F. Hinchliffe, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that he sold and served alcoholic beverages to minors and permitted the consumption of alcoholic beverages by such minors upon the licensed premises, in violation of State Regulation.

The file discloses that on the night of February 15, 1952, two ABC agents observed William --- and Frederick --- (both nineteen years of age) and twenty-year-old John --- enter the licensed premises, take seats at the bar and order beer and sandwiches. The bartender, in response to this order, served each minor a glass of beer and a sandwich, for which he charged each of them thirty-five cents. After each of the minors had consumed a portion of his beer, the agents identified themselves and seized the remaining portions of the drinks. All of the above recited facts were admitted by the minors and the bartender.

The defendant has no prior record. Because of the number of minors involved, I shall suspend defendant's license for a period of fifteen days, instead of the minimum period of ten days imposed for sale to a minor when no aggravating circumstances appear. Re Drenguba, Bulletin 874, Item 13. I shall remit five days for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 10th day of March, 1952,

ORDERED that Plenary Retail Consumption License C-54, issued by the Board of Alcoholic Beverage Control of the City of Paterson to William Pross, for premises 30 North West Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. March 18, 1952, and terminating at 3:00 a.m. March 28, 1952.

EDWARD J. DORTON
Acting Director.

6. DISQUALIFICATION - FALSE ANSWERS IN LICENSE APPLICATIONS - CONCEALING CONVICTION - APPLICATION TO LIFT DISMISSED.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, Pursuant to R.S.)
33:1-31.2.)
Case No. 956.)
-----)

CONCLUSIONS
AND ORDER

Petitioner pleaded guilty in 1936 to the charge of breaking, entering and larceny, as the result of which he was placed on probation and required to make restitution. Since the crime of which he was convicted involves moral turpitude he became ineligible to hold a license or be connected in any business capacity with the alcoholic beverage industry in New Jersey.

Petitioner testified that, after his honorable discharge from the armed forces in 1945, he was released from probation. Shortly after his return to civilian life he applied for and obtained a retail liquor license in partnership with another but from 1946 to 1948 in each successive annual license application signed by him and his partner they denied that either had been convicted of crime, thereby concealing petitioner's aforementioned conviction by their false answer under oath. When this situation came to the attention of this Division the partnership license was suspended for the balance of its term. Re Balletta and Romano, Bulletin 827, Item 6.

Petitioner seeks to explain the failure to disclose his conviction in the license applications by claiming that he believed that his release from probation obliterated his record. On August 12, 1948, while the license was still held by the partnership, petitioner was arrested for assault and battery but this charge was withdrawn and, instead, he was convicted, on August 17, 1948, as a disorderly person. Petitioner testified at the hearing herein that the charges arose out of an incident which began on the licensed premises of the partnership and terminated on the sidewalk outside. He claims that he refused to serve alcoholic beverages to a person who entered the premises in an intoxicated condition as the result of which that person struck him, whereupon petitioner ejected his assailant and they continued the affray on the sidewalk until the police arrived.

Petitioner produced as witnesses three persons who have known him for periods varying from seven to fifteen years. They testified that they have found him to be trustworthy and believed him to have been law abiding for at least five years last past. None of them appeared to be aware of any of his difficulties with the law.

In order for me to grant the relief sought by his petition, I must find that the petitioner has been law abiding during the five years last past. While a conviction as a disorderly person within the five-year period does not necessarily interrupt a period of otherwise lawful conduct (Case No. 789, Bulletin 862, Item 6), in view of petitioner's false answers in his license applications within the last five years, I am unable to find that he has been law abiding within that period. Case No. 791, Bulletin 858, Item 5; Case No. 883, Bulletin 894, Item 6. I shall therefore dismiss the petition. However, petitioner may apply for removal of his present disqualification after December 27, 1953.

Accordingly, it is, on this 3rd day of March, 1952,

ORDERED that the petition herein be and the same is hereby dismissed.

EDWARD J. DORTON
Acting Director.

7. DISQUALIFICATION - PREVIOUS APPLICATION TO LIFT DENIED - FAILURE TO REVEAL CONVICTION - FALSE TESTIMONY - APPLICATION TO LIFT DENIED.

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

CONCLUSIONS
AND ORDER

Case No. 954.
-----)

On May 31, 1950, the Director dismissed a prior petition filed by petitioner for removal of his disqualification resulting from convictions of crimes involving moral turpitude. Re Case No. 845, Bulletin 878, Item 10. There is no need to restate his criminal record set forth therein.

At the hearing herein petitioner denied under oath that he had had any difficulty with the police since the drunken driving episode (1945) mentioned in the prior Conclusions and Order, and in the prior hearing he denied under oath that he had ever been arrested or convicted since April of 1945. However, it not appears that on October 3, 1947, petitioner was arrested in the community in which he resides. He was charged with three separate offenses, as the result of which he was convicted and penalized as follows: disorderly conduct, 90 days; reckless driving, \$25.00 fine; and operating a motor vehicle without a driver's license, \$25.00 fine. None of these matters was disclosed in his petitions or in his testimony at the hearings before this Division.

At the previous hearing petitioner, in answer to specific questions put to him, admitted that for a number of years he has been living with "a common-law wife", his own wife having been confined to a State mental institution for a number of years. At the hearing on the instant petition, petitioner, who is now represented by counsel, seeks to claim that he misunderstood the aforementioned questions put to him at the earlier hearing when he was not represented by counsel. Specifically he claims that he thought that he had been asked whether or not "a woman was living in the same house" with him and whether he was "living with that woman" and he now attempts to explain his affirmative answers to those questions by saying that he believed that he was being asked merely whether a woman or women occupied the same house in which he resided. He produced as a witness a woman who, with her husband, is the tenant of a six-room dwelling owned by petitioner and who in turn re-rents to petitioner one bedroom in that dwelling. Petitioner and this witness testified that this situation has persisted for more than the five years last past. Petitioner also produced as a witness the adult daughter of the first witness, whose testimony was to the same effect. All denied that petitioner had any illicit relations with any woman during that time. Frankly, I do not believe the testimony that petitioner did not have illicit relations with a woman.

The pertinent questions asked of petitioner in the earlier case were clear, leaving no room for misinterpretation, and his answers were equally clear and unequivocal. I cannot accept his present attempted explanation of his previous testimony.

Under all of the circumstances, I cannot find that petitioner had been law-abiding during the five years last past and, as the former Director said in dismissing the earlier petition, "***his criminal record is so bad that I would hesitate, in any event, to grant him permission to engage in the alcoholic beverage industry in New Jersey".

Accordingly, it is, on this 5th day of March, 1952,

ORDERED that the petition herein be and the same is hereby denied.

EDWARD J. DORTON
Acting Director.

8. DISCIPLINARY PROCEEDINGS - CHARGE OF SALE TO MINOR DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary)
Proceedings against)

HACKENSACK CAFE, INC.)
T/a HACKENSACK CAFE)
21 Mercer Street)
Hackensack, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-29, issued by the)
City Council of the City of)
Hackensack.)

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

The defendant pleaded not guilty to a charge alleging that on October 27, 1951, it sold alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

This proceeding was instituted on the basis of written statements obtained from the minor and her adult companion to the effect that, on the occasion in question, the minor was served several glasses of beer at the defendant's tavern. At the hearing herein the minor repudiated her statement, claiming that, since she had visited other taverns on the same night, she "must have the places mixed up". She insisted on the witness stand that she had consumed only soft drinks at the defendant's tavern. Her adult companion also repudiated the written statement previously given by her and, when asked what kind of beverage the minor had been served, testified, "I'm not sure what she was drinking."

In view of the oral testimony, the prosecution was left with no alternative except to offer the written statements for the purpose of neutralizing the testimony of the witnesses. In this posture of the case, there is no proof to sustain the charge and, accordingly, it must be dismissed.

Accordingly, it is, on this 3rd day of March, 1952,

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

EDWARD J. DORTON
Acting Director.

R. S. 33:2-2 provides that any unregistered still, together with all articles, implements or paraphernalia used or adaptable for use in connection therewith, and all personal property of whatsoever kind found in a building or in any yard or inclosure connected with a building or on the premises in which such still is found, is unlawful property. Unlawful property is subject to forfeiture and the premises subject to padlocking. R. S. 33:2-5. A motor vehicle arriving on the premises while the seizure is in progress is subject to forfeiture. Patrick v. Driscoll, 132 N.J.L. 478.

Relief from forfeiture is limited to those cases wherein evidence has been presented which satisfies me that the claimant has acted in good faith and has unknowingly violated the Alcoholic Beverage Law. R. S. 33:2-7.

I conclude that the members of the Pandure family who resided on the farm were fully aware that there was a still in the "chicken house". Although Salvatore Pandure denied at the hearing that he knew the still was there, he admitted that Peter Fazio, who was operating the still at the time of the seizure, occupied a room in the farmhouse. Moreover, one of the agents stated that, at the time of the seizure, Salvatore Pandure, upon being asked why he allowed the still on his farm, said, "I have been sick, and I needed the money, and I was more or less forced into it." Joseph Pandure stated that, during the latter part of June or the first part of July 1951, two strange men came to live in the farmhouse in a room on the second floor; that these men operated the still, which they installed in the latter part of July, and that the tractor was used to dig the mash pits. I believe Joseph told the truth.

Joseph Pandure is about twenty-one years of age. He resided with his father and mother, and has been employed on an ice delivery truck and helps out on the farm in his spare time. The Chrysler sedan is actually his car, but was purchased in the name of his brother-in-law, John Anastasia, because Joseph anticipated that he would be drafted, and, further, because his brother-in-law endorsed the notes given in payment of the car.

For the purpose of this decision, I shall give them the benefit of the doubt and assume that neither of them actually participated in the operation of the still. Joseph's fault, if any, is that he did not notify the authorities of the presence of the still on his father's farm. As was stated in a similar case, considering his youth and the dilemma with which he was confronted, it would be manifestly unfair to characterize him as having acted in bad faith merely because he did not report the matter to the police authorities. See Seizure Case No. 6621. The Chrysler sedan will, therefore, be returned to Joseph Pandure upon payment of costs. Therefore, it will not be necessary to act upon the application of the Plainfield Trust Company for recognition of its lien on the vehicle, since the vehicle will be available to it for such legal proceedings as it deems desirable.

The "Farmall" tractor will not be returned to Salvatore Pandure. Although not a controlling factor in forfeiture, I find that it was actually used in furtherance of the illicit still activity. Salvatore has no one but himself to blame if he became enmeshed in a situation from which he could not escape. Owners of farms who permit their farms to be used for illicit still activities, even though they are not active participants therein, must take the consequences.

Similarly, the Chevrolet truck will not be returned to Minnie Pandure. I disregard her apparently absurd statement that she was not aware that the still operators were actually living in her house, and that she was not aware of the presence of the still. I am

satisfied, from all the circumstances presented, that she was aware of its presence. Such knowledge in her case is inconsistent with good faith. She has a mutual interest with her husband in the activities of the farm, and especially in the use of her home to accommodate the still operators. She could not remain silent under these conditions and yet maintain successfully that she acted in good faith. It may be further noted that there is considerable doubt whether she is the actual owner of the truck. She claims that she purchased the truck for her son, Joseph, for use on the farm. The reasons she gives for such purchase and the registry of title in her name are vague and unsatisfactory.

Seacoast Finance Co. claims a lien on the truck. It has presented documents which establish that the vehicle was purchased by Mrs. Pandure on February 6, 1951, on conditional sales contract for the sum of \$975.00, on which there is a present balance due of \$400.40; that, before it extended credit to her, it received information concerning her background and employment in a tailoring establishment; and that it investigated this information, found it to be correct, and did not uncover anything detrimental concerning her background or character. I am satisfied that the finance company acted in good faith and as a reasonably prudent person and, hence, will recognize its claim.

I am advised that it is desirable that the Chevrolet truck be retained for the use of the State, conditioned upon the payment of the lien claim of \$400.40.

Concerning padlocking: In the absence of strong evidence indicating that Mr. and Mrs. Pandure actually participated in the illicit still activity, it will inflict an undue hardship to padlock their home. There would be no practical purpose served by padlocking the small outbuildings and the barn, which are essential for the care of the livestock. Primarily, padlocking is intended as a deterrent to a subsequent similar unlawful use of the premises. This purpose will be amply served if the "chicken house", the seven-room house, and bungalow are padlocked.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 17th day of March, 1952, Joseph Pandure or John Anastasia pay the costs of the seizure and storage of the Chrysler sedan, more fully described in Schedule "A" attached hereto, it will be returned to either of them; and it is further

DETERMINED and ORDERED that the Chevrolet truck described in such Schedule "A" constitutes unlawful property and be retained for the use of the State of New Jersey conditioned upon payment to Seacoast Finance Co. of its lien claim in the amount of \$400.40; and it is further

DETERMINED and ORDERED that the balance of the seized property described in the aforesaid Schedule "A" constitutes unlawful property, and the same be and is hereby forfeited in accordance with the provisions of R. S. 33:2-5, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the "chicken house" in which the still was found, the seven-room house, and the bungalow, on the "Sunnybrook Farm", owned by Salvatore Pandure, located in the vicinity of Wykoff Road, in the Borough of Eatontown, County of Monmouth and State of New Jersey, being the premises on which the still was seized, shall not be used or occupied for any purpose

whatsoever for a period of six months, commencing the 10th day of April, 1952.

EDWARD J. DORTON
Acting Director.

Dated: March 5, 1952.

SCHEDULE "A"

- 24 - 5-gallon cans of alcohol
- 1 - copper dephlegmator
- 1 - galvanized cooler with copper coil
- 1 - smokestack
- 1 - copper column
- 1 - receiving tank
- 1 - automatic electric sump pump
- 1 - Commercial Oil Burner
- 1 - pre-cooker
- 3 - electric pumps
- 1 - pipe vise
- 3 - 100-lb. bags of sugar
- 1 - hydrometer and measuring cup
- 308 - 5-gallon empty cans
- 18 - 5-lb. cans of yeast
- 1 - tank
- 1 - steam boiler
- 150 - lbs. of brown sugar
- 1 - Farmall Tractor, Motor #H-203715 and scoop
- 5 - wooden vats with mash
- Miscellaneous personal property
- 1 - Chrysler sedan, Serial #70548162, Engine #C-38.43791, 1951 N. J. Reg. MA7745
- 1 - Ford sedan, Serial #4343161, Engine #4343161, 1951 N. J. Reg. EI 46H
- 1 - Chevrolet truck, Serial #2QWF1365, Engine #EEA174199, 1951 N. J. Reg. XP 3382
- 1 - electric motor and pump

10. STATE LICENSES - NEW APPLICATIONS FILED.

Ethel D. Allgair & William M. & Mary A. Weis
T/a Allgair Distributing Co.
21-29 Reid St., South River, N. J.

Application filed March 12, 1952 for transfer of State Beverage Distributor's License SBD-172 from Ethel D. Allgair.

Waugh Beverage Inc.

W/S Delsea Drive at Hillside Ave., Westville, N. J.

Application filed March 12, 1952 for transfer of premises and salesroom from Fillmore Street at Ridgeway St., Gloucester City, N.J.

L. N. Renault & Sons, Inc., t/a Champagne Vintners
Bremen Avenue & Liebig St., Egg Harbor City, N. J.

Application filed March 12, 1952 for Plenary Wholesale License.

John J. Barry

Room 8, 1-7 Foye Place, Jersey City, N. J.

Application filed March 17, 1952 for Plenary Wholesale License.

EDWARD J. DORTON
Acting Director.

11. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PERMITTING OBSCENE LANGUAGE ON LICENSED PREMISES - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against AGNES and HARRY TORETCH T/a LODGE BAR 1340 White Horse Pike Galloway Township P.O. R.D. Absecon, N. J., Holders of Plenary Retail Consumption License C-25, issued by the Township Committee of the Township of Galloway.

CONCLUSIONS AND ORDER

John Rauffenbart, Esq., Attorney for Defendant-licensees. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendants pleaded non vult to charges alleging that they (1) sold and served alcoholic beverages to minors and permitted the consumption of alcoholic beverages by such minors upon the licensed premises, and (2) permitted foul, filthy and obscene language in and upon the licensed premises, both in violation of State Regulations.

The file discloses that on the night of February 15 and early morning of February 16, 1952, two ABC agents observed two young sailors drinking alcoholic beverages at the bar in defendants' licensed premises. One of these youths, eighteen-year-old Thomas ---, was drinking sloe gin and 7-Up while the other, nineteen-year-old Frederick ---, was drinking beer. All of the drinks were sold and served to the minors by a barmaid.

In addition, the agents observed Agnes Toretch, one of the licensees, drinking and mingling with the patrons upon the licensed premises. According to the agents' reports, Agnes Toretch, in a loud voice clearly audible to the more than twenty patrons then present, kept up a virtual stream of exceedingly foul, filthy and disgusting language. Such language is wholly out of place on licensed premises, and its use by a licensee is particularly reprehensible. In fact, there is serious question as to whether a licensee guilty of such conduct is a fit person to hold a license.

The licensees have no prior adjudicated record. The minimum suspension for sale of alcoholic beverages to eighteen and nineteen-year-old minors (Charge 1) is ten days. Re DiRuggiero, Bulletin 923, Item 8. The minimum suspension for the offense involved in Charge 2 is ten days. Re Arno, Bulletin 830, Item 1. However, I deem this case to be a highly aggravated one because this licensee continued to use this very objectionable language for a considerable length of time in the presence of both male and female patrons. Consequently, I shall impose a penalty of twenty days on Charge 2, making a total suspension of thirty days. Five days will be remitted for the plea, making a net suspension of twenty-five days.

Accordingly, it is, on this 11th day of March, 1952,

ORDERED that Plenary Retail Consumption License C-25, issued by the Township Committee of the Township of Galloway to Agnes and Harry Toretch, t/a Lodge Bar, for premises 1340 White Horse Pike, Galloway Township, be and the same is hereby suspended for twenty-five days, commencing at 7:00 a.m. March 20, 1952, and terminating at 7:00 a.m. April 14, 1952.

EDWARD J. DORTON Acting Director.

12. DISCIPLINARY PROCEEDINGS - PERMITTING GAMBLING (CARD GAME) - POSSESSION OF SLOT MACHINES - PREVIOUS RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LAMBERTVILLE LODGE #1070 B.P.O. ELKS)
6 Bridge Street)
Lambertville, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-2, issued by the Board of Commissioners of the City of Lambertville.)

Lambertville Lodge #1070 B.P.O. Elks, Defendant-licensee, by Nicholas F. Gallicchio, Secretary. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges alleging (1) that it allowed, permitted and suffered gambling on its licensed premises, viz., the playing of a card game for money, in violation of Rule 7 of State Regulations No. 20; and (2) that it possessed four slot machines in a room in its licensed building accessible from the licensed portion thereof, in violation of Rule 4 of State Regulations No. 20.

The file in the instant case discloses that on August 16, 1951, law enforcement officers visited defendant's licensed premises and observed seven men playing cards for money. The officers made a search of the licensed premises and found four slot machines in a room adjoining the kitchen. Although an examination of the application filed by defendant indicated that this room was not included as part of the licensed premises, it was directly accessible through a door from the kitchen which was part of the licensed premises.

Defendant has a previous adjudicated record. Effective November 1, 1937 its license was suspended by the local issuing authority for five days for sale of alcoholic beverages during prohibited hours and possession of slot machines. Again, effective January 30, 1950, its license was suspended by the local issuing authority for eleven days for possession of slot machines.

Under the circumstances, I shall suspend defendant's license for a period of twenty-five days, less five days' remission for the plea entered herein, or a net suspension of twenty days.

Accordingly, it is, on this 12th day of March, 1952,

ORDERED that Club License CB-2, issued by the Board of Commissioners of the City of Lambertville to Lambertville Lodge #1070 B.P.O. Elks, 6 Bridge Street, Lambertville, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. March 18, 1952, and terminating at 2:00 a.m. April 7, 1952.

Edward J. Dorton
Acting Director.