

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

BULLETIN 1236

August 6, 1958.

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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.

August 6, 1958.

BULLETIN 1236

1. APPELLATE DECISIONS - TRAVIS v. PATERSON.

ANNA TRAVIS, trading as )  
G. I. BAR & GRILL, )

Appellant, )

-vs-

BOARD OF ALCOHOLIC BEVERAGE )  
CONTROL FOR THE CITY OF )  
PATERSON, )

Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
James E. Abrams, Esq., Attorney for Appellant.  
Theodore D. Rosenberg, Esq., by William K. Azar, Esq.,  
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on May 14, 1958 it suspended appellant's license for a period of twenty-five days after finding appellant guilty on a charge alleging that on October 11, 1957 she permitted a brawl in and upon her licensed premises, in violation of Rule 5 of State Regulation No. 20.

"Upon the filing of the appeal an order was entered on May 21, 1958 staying respondent's order of suspension until a further order herein.

"In her petition of appeal, appellant alleges that respondent's action was erroneous in that it was arbitrary and capricious in not permitting appellant to secure for her defense necessary records which contained credible testimony of great weight.

"Respondent in its answer denies appellant's allegations.

"The hearing was held de novo pursuant to Rule 6 of State Regulation No. 15.

"At the outset of the hearing counsel for appellant entered a plea of non vult to the charge but contended that the twenty-five-day suspension imposed by respondent is too severe and should be modified.

"Respondent produced a certified copy of the original minutes of the hearing before it respecting the charges preferred against appellant which was received in evidence without objection. The minutes contain the testimony of Letcher Smothers and a police officer.

"The testimony of Smothers shows that on the night alleged in the charge, he and Harry Brohen (appellant's bartender), having consumed a number of drinks, became involved in an argument respecting their linguistic abilities; that

Brohen came from behind the bar, unexpectedly hit him in the eye, knocked him down and jumped on him; that he said to Brohen, 'I give up', and that Brohen helped him up, said he was sorry and 'we had a drink together.'

"The police officer testified that he saw at a hospital, Brohen, who had a 'stab wound in the back and scratches on his face and neck.'

"The sole question to be determined herein is whether in view of the aforesaid testimony, the suspension imposed by respondent is excessive.

"It has been held repeatedly in cases heretofore decided by the Director that the penalty to be imposed in disciplinary proceedings instituted by a local issuing authority rests within its sound discretion in the first instance, and that the power of the Director to reduce it on appeal should be exercised only where such penalty is manifestly unreasonable and clearly excessive. Skripko v. Raritan, Bulletin 1081, Item 1.

"There is no allegation in the petition of appeal that the members of respondent Board were improperly motivated and no evidence was presented to indicate such impropriety. Although the penalty imposed may be in excess of that usually imposed by the Director on a similar charge when instituted by the Division, that does not preclude a local issuing authority from imposing a more severe penalty when it acts within the limits of sound discretion. Benedetti v. Trenton, Bulletin 1040, Item 1.

"Considering all the circumstances herein, more particularly the fact that, as appears from the evidence, appellant's employee instigated the fracas, I cannot find that the penalty imposed by respondent was excessive. I, therefore, recommend that the appeal herein be dismissed and that the twenty-five-day suspension heretofore imposed by respondent be reinstated."

Appellant, by her attorney, waived her right to file with me written exceptions to the Hearer's Report as provided by Rule 14 of State Regulation No. 15.

Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 30th day of June, 1958,

ORDERED that the twenty-five-day suspension heretofore imposed by the Board of Alcoholic Beverage Control for the City of Paterson against Plenary Retail Consumption License C-263 issued to Anna Travis, t/a G. I. Bar & Grill, for premises 281 Grand Street, Paterson, be and the same is hereby reimposed and reinstated; and it is further

ORDERED that any renewal for the 1958-59 licensing year or transfer of said license shall be under suspension for twenty-five (25) days, commencing at 3:00 a.m. July 7, 1958 and terminating at 3:00 a.m. August 1, 1958.

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - HOUMAN v. TRENTON.

ANN C. HOUMAN, trading as )  
ANN'S, )

Appellant, )

-vs- )

ON APPEAL  
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF )  
THE CITY OF TRENTON, )

Respondent. )

-----  
Robert W. Wolfe, Esq., Attorney for Appellant.  
John A. Brieger, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action taken on March 20, 1958, whereby it denied appellant's application for a transfer of her Plenary Retail Consumption License C-226 from 188 Jefferson Street to 990 East State Street, Trenton.

"Appellant alleges that the action of respondent was unreasonable, arbitrary, capricious, inequitable, will deprive the licensee of her license, without legal basis and an abuse of discretion.

"The answer sets forth that appellant's application for transfer was denied for the same reasons given by respondent in August 1957 when it denied an application filed by Mercer Vending Inc. for transfer of its license to the same premises to which appellant seeks to transfer her license. The Mercer Vending Inc. application was denied for the following reasons:

'1. There are already 11 licensed liquor establishments located on East State Street, within a three-block area of the place to which this application for transfer is being requested, and there are four other licensed liquor establishments in the immediate neighborhood, so that in all there are a total of 15 liquor establishments.

'2. There are a sufficient number of licensed liquor establishments already located in this area.

'3. There is no public need or necessity for another licensed liquor establishment in the neighborhood.

'4. The 15 outstanding licensed liquor establishments are adequate for this area, and the needs of the public in this area are already amply provided for.

'5. A majority of the residents in that area are opposed to the granting of such transfer.'

"At the hearing held herein the attorneys for both parties stipulated as to the following facts: For a number of years appellant has conducted her licensed business at 188 Jefferson Street in a section known as the Coal Port area of Trenton. The City of Trenton Housing Authority has condemned more than two hundred lots in that area (including the lot upon which appellant's business has been conducted) for a public

housing project, and the building in which her business has been conducted will be razed before the end of June 1958. Appellant has entered into a contract to purchase the property known as 990 East State Street, which is located approximately 3,300 feet from 188 Jefferson Street. There are no licensed premises within five hundred feet of the premises to which she seeks to transfer the license. The area in which 990 East State Street is located is zoned as industrial, and the area on the opposite side of East State Street is zoned as Business 'B.' There has been no change in the number of licensed places existing in the vicinity of 990 East State Street between August 1957 and the date of hearing.

"From the testimony given by Investigator Butcher, and from a map introduced into evidence, it appears that there are now eight licensed premises on East State Street between Chambers Street and Logan Avenue (a distance of eight blocks) and at least four other licensed premises on side streets near East State Street. It also appears that the area to which appellant seeks to transfer her license is of a mixed industrial, business and residential character.

"Appellant apparently contends that the transfer should have been granted because the premises to which transfer is sought are not within five hundred feet of an existing licensed premises and, hence, the transfer was not prohibited by Section 51 of Ordinance No. 41 of the City of Trenton which was in effect when the transfer was denied and when the hearing was held. However, the mere fact that the local ordinance would not prohibit the transfer does not require the issuing authority to grant an application to transfer a license to premises located in another area of the City which it reasonably concludes is already adequately served. Market Liquor Stores Corp. v. Newark, Bulletin 1005, Item 2; L. B. Company, Inc. v. Newark, Bulletin 1111, Item 8.

"Appellant also contends that the Mercer Vending Inc. application is distinguished from her application because of the fact that the Mercer Vending Inc. was not forced to move from its old premises whereas the premises in which she conducted her business are being destroyed. However, even if, as appears, this is a hardship case, nevertheless that fact does not require respondent to transfer the license to another section of the City which it reasonably concludes is already adequately served. This case is distinguished from Geltzeiler v. Newark, Bulletin 1171, Item 1, and Black v. Newark, Bulletin 1219, Item 1, because in the cited cases the transfers were sought for premises in the same area as the old premises and it was determined that the transfers would not increase the number of licenses in that area.

"Appellant also contends that the denial of a transfer is equivalent to a revocation of her license because of the difficulty of finding suitable premises which are not within five hundred feet of existing licensed premises. It is clear that a denial of the transfer is not equivalent to a revocation of the license. If a licensee's interest in the licensed premises ceases, he may apply for a transfer to other premises before the end of the licensing year, or thereafter obtain relief under the provisions of R. S. 33:1-12.18. Moreover, it appears that, subsequent to the hearing held herein, the Board of Commissioners of the City of Trenton adopted Ordinance No. 1046 which amended Section 51 of Ordinance No. 41 to provide

that nothing in said section would be deemed to apply with respect to place-to-place transfer of a license the premises for which are being taken for turnpike, highway or road purposes or for purposes of any federal, state, county or municipal project.

"It is well established that the transfer of a liquor license is not an inherent or automatic right, and that the issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. After considering all the evidence herein, I conclude that appellant has failed to sustain the burden of establishing that the action of the Board was arbitrary or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. It is recommended, therefore, that an order be entered affirming respondent's action and dismissing the appeal."

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument thereon were filed by the attorney for appellant and answering argument was filed by the attorney for respondent.

After carefully considering the entire record, including the transcript of testimony, the Hearer's Report and exceptions and arguments filed, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 30th day of June, 1958,

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

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - PERMITTING OBSCENE LANGUAGE - FEMALE IMPERSONATORS - HOSTESSES - SALE DURING PROHIBITED HOURS - PREMISES PERMITTED TO REMAIN OPEN DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

WALTER SHERRY )  
344 Bergen Boulevard )  
Fairview, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of Fairview. )

-----)  
Edmond J. Dwyer, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant entered pleas of non vult to charges alleging in substance that (1) he allowed and permitted foul, filthy and obscene language and conduct in and upon his licensed premises, (2) he permitted female impersonators who appeared to be homosexuals in and upon his licensed premises, both in violation of Rule 5 of State Regulation No. 20, (3) he permitted female employees to accept beverages at the expense of male patrons in violation of Rule 22 of State Regulation No. 20,

(4) he sold, served and delivered alcoholic beverages during prohibited hours and (5) he failed to have his entire premises closed during said prohibited hours, both in violation of a local Resolution adopted on November 15, 1938.

The file herein discloses that ABC agents visited defendant's licensed premises during the early morning hours of January 5, 11 and 26, 1958, and at 11:35 p.m. January 18, 1958. On their first visit the agents observed patrons being served alcoholic beverages after the 4:00 a.m. closing hour and noted that many of them were permitted to remain on the licensed premises until after 4:15 a.m. On that occasion and on each succeeding visit the agents observed male entertainers whose effeminate mannerisms, endearment toward other males and use of expressions common to deviates, categorized them as homosexuals. Further, the agents heard the aforesaid entertainers and female entertainers regale their apparently appreciative auditors with suggestive parodies of popular songs and with filthy and obscene stories. They also observed the female entertainers accepting alcoholic drinks at the expense of male patrons.

To relate in detail the indecencies permitted on the licensed premises would serve no useful purpose. Suffice to say the licensee tolerated them and, when the agents identified themselves, he agreed with them that "Billy", one of the offenders, appeared to be a homosexual. He also stated that "from here on we'll have the show cleaned up and make Billy knock off the gaiety".

Defendant by his attorney contends that because "affected performers" are favorably received in well-known cafes and cabarets in another state and because patrons of licensed establishments in that state are permitted to remain on the premises but not at the bar after the closing hour to finish drinks purchased before said hour, he believed that such performers and such practices were permitted in this State. It is the duty of a licensee to acquaint himself with the regulations governing the conduct of his licensed business in this State and a plea of ignorance of those regulations affords no excuse. Re Ceasar, Bulletin 1211, Item 4.

Defendant has no prior adjudicated record. The performances which resulted in Charges 1 and 2 have no place and will not be tolerated on licensed premises. Rigid enforcement of the regulation pertaining thereto is essential to the preservation of decency and public morals. I shall suspend defendant's license for forty days on Charges 1 and 2, cf. Re Copa Club, Inc., Bulletin 1112, Item 1; ten days on Charge 3, cf. Re Minchin, Bulletin 1165, Item 1, and fifteen days on Charges 4 and 5, Re Ollie's Bar, Inc., Bulletin 1218, Item 7, making a total suspension of sixty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of sixty days.

Accordingly, it is, on this 16th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of Fairview to Walter Sherry, for premises 344 Bergen Boulevard, Fairview, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m., June 23, 1958; and it is further

ORDERED that any renewal or transfer of such license shall be and remain under suspension until 3:00 a.m. August 22, 1958.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ALBERT PISTILLI and JOSEPHINE PISTILLI )  
 t/a PISTILLI'S )  
 147-149 Morristown Road )  
 Bernardsville, N. J., )

CONCLUSIONS AND ORDER

----- )  
 Holders of Plenary Retail Consumption License C-2, issued by the Common Council of the Borough of Bernardsville. )

Defendant-licensees, Pro se.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor upon their licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that on May 10, 1958, ABC agents, while in defendants' licensed premises, observed a bartender employed by defendants serve a highball containing whiskey to a minor twenty years of age. The agents seized the drink and identified themselves to the bartender who had made the service of the beverage in question.

The minor had been questioned by the bartender relative to his age before service of the drink and displayed a driver's license issued to another person. It appeared from the license that the person mentioned therein was thirty-one years of age. It is claimed that the license was found by the minor. The agents reported that the minor appeared to them to be eighteen or nineteen years of age. He must have also appeared young to the bartender who questioned him and, therefore, it was the duty of the bartender to question him further when the driver's license displayed showed the holder thereof to be thirty-one years old. In any event, the bartender failed to obtain a written representation from the minor as to his alleged age. Thus, one of the necessary requirements in order to establish a valid defense to a sale of alcoholic beverages to a minor was lacking. R. S. 33:1-77.

Defendants have no prior adjudicated record. The minimum suspension imposed for an unaggravated sale of alcoholic beverages to a twenty-year-old minor is ten days (Re Kownacke, Bulletin 1210, Item 5). Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 4th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-2, issued by the Common Council of the Borough of Bernardsville to Albert Pistilli and Josephine Pistilli, t/a Pistilli's, for premises 147-149 Morristown Road, Bernardsville, be and the same is hereby suspended for five (5) days, commencing at 1:00 a.m. June 9, 1958, and terminating at 1:00 a.m. June 14, 1958.

WILLIAM HOWE DAVIS  
 Director.

5. 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 )

LITHUANIAN CITIZENS INDEPENDENT AID CLUB, A CORP. t/a LITHUANIAN CLUB 62 Lafayette Street Paterson, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-122, issued by the Board of Alcoholic Beverage Control for the City of Paterson. )

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Defendant-licensee, by Anthony Gustus, President. Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold during prohibited hours an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that on Sunday afternoon, May 11, 1958, two ABC agents entered defendant's licensed premises, at which time Victor Bastis was tending bar. During the course of their visit, the agents observed a male patron speak to the bartender, who then removed a pint bottle of wine from a display case, and handed the bottle to such patron, who placed it in his pants pocket. The bartender accepted 50 cents in payment. The patron left the premises with the bottle of wine and was followed by one of the agents. A few moments later, both the agent and the patron returned to the premises and, thereupon, both agents revealed their identity to the bartender. The patron and bartender, in each other's presence, verbally admitted the aforesaid sale and purchase of the pint bottle of wine labeled Pirrone California Grape Wine, Ruby Port.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of fifteen days. Re Sada, Bulletin 1217, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 4th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-122, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Lithuanian Citizens Independent Aid Club, A Corp., for premises 62 Lafayette Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. June 9, 1958, and terminating at 3:00 a.m. June 19, 1958.

WILLIAM HOWE DAVIS  
Director.

6. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 MARIO STANGO )  
 t/a CLUB REGENT )  
 85 Broadway )  
 Newark 4, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-781, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
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Mario Stango, Defendant-licensee, Pro se.  
 William F. Wood, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that he allowed, permitted and suffered three mislabeled beer taps and one unlabeled beer tap on his licensed premises, in violation of Rule 26 of State Regulation No. 20.

The file herein discloses that on April 19, 1958, during the course of a retail inspection on defendant's licensed premises, an ABC agent found one tap labeled "Schaefer", one labeled "Rheingold" and one without any label, connected to barrels of Ambassador beer. Another tap labeled "Schaefer" was connected to a barrel of Ballantine beer.

Defendant has no prior adjudicated record. I shall suspend his license for a period of ten days Re Club Windsor, Inc., Bulletin 1223, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 9th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-781, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Mario Stango, t/a Club Regent, for premises 85 Broadway, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. June 16, 1958, and terminating at 2:00 a.m. June 21, 1958.

WILLIAM HOWE DAVIS  
 Director.

LOCAL  
ON  
ON PETITION  
O R D E R  
1236

7. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY - SUSPENSION LIFTED.

Auto. Susp. #154 )  
In the Matter of a Petition to )  
Lift Automatic Suspension of )  
Plenary Retail Distribution )  
License D-3, issued by the )  
Township Committee of the Town- )  
ship of Matawan to )  
  
HOLLYWOOD LIQUORS & GROCERIES, INC. )  
82 Lower Main Street )  
Matawan Township (Monmouth County) )  
New Jersey. )

ON PETITION  
O R D E R

-----)  
Leo Weinstein, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

A verified petition filed herein discloses that on May 28, 1958, David A. Entlich (president of Hollywood Liquors & Groceries, Inc.) received a suspended sentence of from one to two years in State Prison, was placed on probation for two years and fined \$150.00 and costs after he had pleaded non vult in the Monmouth County Court to a charge of selling alcoholic beverages to a minor, in violation of R. S. 33:1-77. It also appears that, on the same day, Adele G. Entlich (secretary of Hollywood Liquors & Groceries, Inc.) received a suspended sentence to a reformatory, was placed on probation for two years and fined \$100.00 and costs in the same Court after she had pleaded non vult to a similar charge. Said convictions resulted in the automatic suspension of the license held by the corporation. R. S. 33:1-31.1. The petition requests the lifting of said suspension.

It further appears from the petition and from the records of this Division that the local issuing authority suspended the license held by the corporation for twenty-five days effective February 22, 1958, after it had pleaded non vult in disciplinary proceedings to a charge of selling alcoholic beverages to the same minor, in violation of Rule 1 of State Regulation No. 20.

It appearing that, under the circumstances of this case, the suspension imposed by the local issuing authority is adequate and that the suspension has been served, the relief requested herein will be granted.

Accordingly, it is, on this 3rd day of June, 1958,

ORDERED that the automatic suspension of License D-3, held by Hollywood Liquors & Groceries, Inc., for premises 82 Lower Main Street, Matawan Township, be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS  
Director.

8. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON -  
 LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary )  
 Proceedings against )  
 DOMINICK CARBONE and PHILIP )  
 BENEDETTO )  
 352 Broadway )  
 Newark 4, N. J., )

CONCLUSIONS  
 AND ORDER

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 Holders of Plenary Retail Consump- )  
 tion License C-869, issued by the )  
 Municipal Board of Alcoholic )  
 Beverage Control of the City of )  
 Newark. )  
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Robert W. Wolfe, Esq., Attorney for Defendant-licensees.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following  
 charge:

'On Saturday night, February 1 and early Sunday  
 morning, February 2, 1958, you sold, served and  
 delivered and allowed, permitted and suffered the sale,  
 service and delivery of alcoholic beverages, directly  
 or indirectly, to a person actually or apparently  
 intoxicated, and allowed, permitted and suffered the  
 consumption of such beverages by such person in and  
 upon your licensed premises; in violation of Rule 1  
 of State Regulation No. 20.'

"The testimony presented on behalf of defendants at  
 the hearing held herein discloses that four drinks of whiskey  
 were served to and consumed by a patron (hereinafter identi-  
 fied as Harold) between the time he entered defendants' prem-  
 ises at 10:45 p.m. February 1, 1958, and the time he left the  
 premises at about 12:20 a.m. on the following morning. There-  
 fore, the sole issue to be decided is whether the patron was  
 actually or apparently intoxicated at the time these drinks,  
 or some of the drinks, were served to him.

"On behalf of the Division two ABC agents testified  
 that they entered defendants' premises at about 11:15 p.m.  
 on the evening of February 1 and took seats at the bar about  
 twenty feet from the portion of the bar at which Harold was  
 seated. One agent testified that, when he first observed  
 Harold, 'he was slouched, his head was going from side to side  
 and his speech was very thick' and that at that time the  
 patron was consuming a drink which admittedly was whiskey;  
 that shortly thereafter Harold walked to the men's room and,  
 after about five minutes, returned to the bar; that he stag-  
 gered from side to side while going to and returning from the  
 men's room; that at about 11:35 p.m. Harold made insulting  
 remarks to a woman patron who apparently ignored these remarks;  
 that thereafter the bartender served another drink of whiskey  
 to Harold; that at about 12:10 a.m. Harold asked one of the  
 bartenders to call a cab and, when the cab driver arrived,  
 Harold ordered glasses of whiskey for the cab driver and

himself, which drinks were being consumed when the agents approached Harold and told him that they thought he was drunk and seized the remainder of his drink as evidence. When Harold refused to give his name or address to the agents, they identified themselves to him and the bartenders and a telephone call to the Newark Police Department was made, at the suggestion of Philip Benedetto. This agent further testified that Harold used vile language when the agents approached him at the bar, but this apparently was before the agents identified themselves. The second agent substantially corroborated the aforesaid testimony. This agent further testified that Harold staggered as he walked out of the premises with the cab driver shortly after members of the Police Department arrived.

"On behalf of defendants, Philip Benedetto testified that, when Harold entered the premises, he was well behaved and sat down and ordered a drink; that Harold was at no time noisy or quarrelsome except that he resented the fact that the agents told him that they thought he was drunk; that Harold was at no time slouched over the bar, and that he walked straight when he left the premises with the cab driver. A female patron testified that she was seated at the bar a short distance away from Harold and that he showed no evidence of intoxication and that he walked straight as he left the premises with the cab driver. One of the police officers of the City of Newark who responded to the telephone call stated that in his opinion Harold was not intoxicated. He admitted, however, that, when the police officers asked Harold 'if he would get up and walk a line,' Harold made no response. He further testified that, as Harold was leaving with the cab driver, he walked about fifteen feet towards the door without wobbling and then, a foot or so from the door, swayed a little to the left. The cab driver, who was drinking with Harold at the latter's invitation, admitted that Harold argued with the agents when they told him that they thought he was drunk. However, the cab driver stated that there was no other loud noise, and that Harold walked straight as he was leaving the premises with him.

"After considering all the evidence herein, I conclude that the testimony as to the patron's appearance and actions, as testified to by the ABC agents, should be accepted as true. This evidence is sufficient to establish that the patron was apparently intoxicated at the time the drinks were served to him. Under the provisions of Rule 1 of State Regulation No. 20 it is sufficient to show that the sale, service or delivery was made to a person apparently intoxicated, without the necessity of showing that the person was actually intoxicated. This case is distinguished from Re LeChateau D'Or, Inc., Bulletin 1180, Item 5 (cited by defendants' attorney), because in the cited case the patron testified at the hearing and the Hearer, observing that the patron was an amputee and highly emotional, concluded that his appearance and actions did not necessarily indicate that he was apparently intoxicated when served. Under all the circumstances of this case, I recommend that defendants be found guilty as charged. Defendants have no prior record. It is further recommended that an order be entered suspending defendants' license for the minimum period of fifteen days (Re Madeira, Bulletin 1199, Item 2)."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by defendants' attorney pursuant to Rule 6 of State Regulation No. 16.

In his written argument defendants' attorney says that the statement of facts in the Hearer's Report is a fair one but argues that the weight of the credible testimony is in favor of the licensees and that the doubt of guilt, if any, should be resolved in favor of the licensees. I have carefully considered the testimony as to whether the patron, Harold, was apparently intoxicated when the drinks were served to him. The patron was not produced to deny the charges although he appears to have been a good customer of licensees. There certainly would be no reason for agents to have manufactured the lewd and indecent remarks directed by Harold at a woman patron unless they actually were made, which I find to be the fact. A normal individual, unless intoxicated, would abhor the use of such remarks as were made by Harold. If a patron, sober at the time, indulged in such language within the hearing of the licensees or their employees without objection being registered by them, a charge embracing such conduct would be in order by this Division against licensees. Considering all the evidence, there is no doubt in my mind that the patron was apparently intoxicated when drinks were served to him. Hence I find defendants guilty as charged and shall suspend defendants' license for fifteen days.

Accordingly, it is, on this 11th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-869, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Dominick Carbone and Philip Benedetto, for premises 352 Broadway, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 18, 1958; and it is further

ORDERED that any renewal for the 1958-59 licensing year, or transfer, of said license shall be and remain under suspension until 2:00 a.m. July 3, 1958.

WILLIAM HOWE DAVIS  
Director.

9. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ALOYSIUS BARTH )  
401 North Avenue )  
Dunellen, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Dunellen. )

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Ervin S. Fulop, Esq., by Francis J. Simone, Esq., Attorney for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"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., Thomas J. ---, age 19, on May 15, 1958 and prior thereto beginning on or about February 15, 1958 and Ronald G. ---, age 19, on divers dates from on or about September 1, 1957 to on or about May 15, 1958 and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises on the above stated respective dates and occasions; in violation of Rule 1 of State Regulation No. 20."

The file herein discloses that an ABC agent, acting on information received from the Metuchen Police Department, obtained sworn, written statements dated May 17, 1958 from Thomas --- (age 19) and Ronald --- (age 19). From these statements it appears that on Thursday, May 15, 1958, at about 9:20 p.m., Thomas entered the defendant's licensed premises and, without being questioned or required to produce any written proof as to his age, consumed a glass of beer served to him by William Pauser, the bartender; that after finishing his glass of beer Thomas purchased twelve cans of Ambassador Beer from the bartender for off-premises consumption; that for several months prior to May 15th aforesaid, both minors had visited the licensed premises on the average of about once a week; that on their visits they each had consumed alcoholic beverages served to them by the licensee and his bartender and that on none of their visits were they ever questioned about their ages.

The file further discloses that on May 17, 1958 Thomas and Ronald identified the licensed premises as the place where they purchased the aforementioned alcoholic beverages and pointed out Aloysius Barth, the licensee, and William Pauser, the bartender, as the persons who sold the same to them as above outlined.

By way of mitigation of penalty, the attorney for the licensee has submitted a statement setting forth therein that the licensee has a clear record during the twenty years he has operated the business; that the sales to the minors were made by the bartender; that the minors appeared over 21 years of age and that the licensee has made a conscientious effort to abide by the law and regulations. The licensee, however, cannot escape the consequences of aforementioned acts of his agent. (Rule 33 of State Regulation No. 20.) Cf. Re Czaplicki, Bulletin 1170, Item 6. I have examined the file and the reports of the agents and find nothing therein to indicate that the minors appeared older than their ages.

Defendant has no prior adjudicated record. The minimum penalty for a sale of alcoholic beverages to a 19-year-old minor is fifteen days. Re Russakow, Bulletin 1197, Item 5. I shall suspend the defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 26th day of June, 1958,

ORDERED that any renewal for the 1958-59 licensing year or transfer of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Dunellen to Aloysius Barth, for premises 401 North Avenue, Dunellen, be and the same is hereby suspended for ten (10) days, commencing at 1:00 a.m. July 7, 1958, and terminating at 1:00 a.m. July 17, 1958.

WILLIAM HOWE DAVIS  
Director.

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

In the Matter of Disciplinary Proceedings against

MICHAEL ROMANO and ANTONIO ROMANO  
405-07-09-11 Jackson Street  
Hoboken, N. J.,

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Consumption License C-178; issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

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

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

"1. On April 4, 10, 12 and 16, 1958, you allowed, permitted and suffered gambling, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.

"2. On April 4, 10, 12 and 16, 1958, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The file herein discloses that on the dates set forth in the charges, a bartender (Anthony Calabrese) accepted numbers bets from ABC agents or from several patrons on the licensed premises. On April 16, 1958, through pre-arrangement with the local police authorities, police officers came into the premises and requested the bartender to empty his pockets, as a result of which four slips of paper bearing lists of numbers and \$134.00, including two one-dollar bills (the serial numbers of which had previously been recorded by the agents and given to the bartender by them in payment of bets), were found on his person.

Defendants have no prior adjudicated record. I shall suspend defendants' license for twenty-five days (the minimum suspension for gambling (numbers) when an employee of the licensee is involved). Re Aroniss, Bulletin 1200, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 25th day of June, 1958,

ORDERED that any renewal for the 1958-59 licensing year or transfer of Plenary Retail Consumption License C-178, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Michael Romano and Antonio Romano, for premises 405-07-09-11 Jackson Street, Hoboken, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. July 8, 1958, and terminating at 2:00 a.m. July 28, 1958.

WILLIAM HOWE DAVIS  
Director.

11. DISQUALIFICATION REMOVAL PROCEEDINGS - APPLICATION TO LIFT DISQUALIFICATION GRANTED UPON REAPPLICATION.

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

CONCLUSIONS  
AND ORDER

Case No. 1343  
-----)

BY THE DIRECTOR:

Petitioner renews his petition for relief, pursuant to the terms of an Order dated May 13, 1957, denying a prior petition with leave to reapply after April 1, 1958 (Re Case No. 1343, Bulletin 1173, Item 7).

Petitioner testified that since March 11, 1957, the date of the hearing in the prior proceedings, he has not run afoul of the law. Petitioner further testified that he is presently unemployed but has an opportunity to work in the liquor business if he is granted relief in this proceeding.

At the hearing herein three witnesses (a retired municipal detective, an employee of an industrial company temporarily laid off because of lack of work, and a businessman) testified that they have known petitioner eight or more years and that he bears a reputation for being a law-abiding person in the community in which he lives.

The Police Department of the municipality wherein petitioner resides reports no complaints or investigations pending against him.

From the evidence I conclude that petitioner has conducted himself in a law-abiding manner during the past five years and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 26th day of June, 1958,

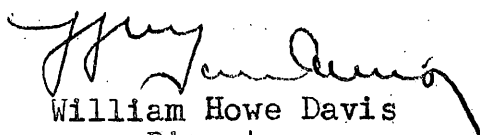
ORDERED that petitioner's statutory disqualification, because of his conviction of crime, be and the same is hereby removed in accordance with the provisions of R. S. 33:1-31.2.

WILLIAM HOWE DAVIS  
DIRECTOR

12. STATE LICENSES - NEW APPLICATION FILED

Edward Fornataro  
1195 Fairview Street  
Camden, New Jersey

Application filed July 31, 1958 for place-to-place transfer of State Beverage Distributor's License SBD-50 from 1181 Fairview Street, Camden, New Jersey.

  
William Howe Davis  
Director