

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

BULLETIN 1231

July 10, 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.

July 10, 1958

BULLETIN 1231

1. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE  
SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

JOSEPH PANDOLFI )  
t/a DROP INN )  
86 Belmont Avenue )  
Paterson 2, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-182, issued by the )  
Board of Alcoholic Beverage Control )  
for the City of Paterson. )

----- )  
Samuel L. Biber, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered alcoholic beverages to three minors and permitted the consumption of such beverages by said minors in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that at 9:30 p.m. on Saturday, March 29, 1958, two ABC agents entered the defendant's licensed premises and observed four young persons seated at the bar, each of whom had a glass containing beer in front of him. Within a short period of time the bartender served the youths another round of beer and the agents then identified themselves to them. It was ascertained as a result of questioning the youths that three were 19 years of age and one was 22 years old.

Although the bartender contends that before he made service of beer to the minors he inquired as to their ages and was told that they were over 21 years, the minors deny ever being questioned concerning same. In any event, the minors made no written representation as to their respective ages as required by R. S. 33:1-77.

The file further discloses that each minor consumed ten glasses of beer during the time he was in the defendant's licensed premises.

By way of mitigation of penalty, the attorney for the defendant submitted a statement which, after careful examination thereof, fails to present any extenuating circumstances which would impel me to lessen the established penalty in a case of this kind.

Defendant has no prior adjudicated record. The minimum penalty for the sale of alcoholic beverages to a 19-year-old minor is fifteen days (Re Russakow, Bulletin 1197, Item 5). However, in view of the fact that three minors were involved herein, and the case is aggravated by the quantity of alcoholic beverages sold to and consumed by each minor, I shall suspend

defendant's license for a period 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 12th day of May, 1958,

ORDERED that Plenary Retail Consumption License C-182, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Joseph Pandolfi, t/a Drop Inn, for premises 86 Belmont Avenue, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. May 20, 1958, and terminating at 3:00 a.m. June 9, 1958.

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

FRANK P. WEAVER )  
t/a BETTY AND FRANKS 19th HOLE )  
954 New York Road )  
Galloway Township )  
PO Absecon RD, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-19, issued by the Township Committee of Galloway Township. )  
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Frank P. Weaver, Defendant-licensee, Pro se.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to a charge alleging that he sold and permitted the sale of alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

The file discloses that ABC agents, acting on information from the Galloway Township Police Department, obtained sworn, written statements from Edward --- (age 17) and two other minors. From these statements it appears that on April 19, 1958, between 7:50 p.m. and 8:00 p.m., the aforesaid minors drove to the defendant's licensed premises; that Edward alone entered the licensed premises and, without being required to make any written representation of his age, purchased a case of Piel's beer from Beatrice Kelly (the barmaid); that he paid her for said beer with money given to him by one of his minor companions; that he carried the beer from the premises to his automobile, and that on three or four occasions during the past month aforesaid barmaid had sold alcoholic beverages to him.

The file further discloses that on April 21, 1958, Edward identified the licensed premises as the place where on April 19, 1958, he purchased aforesaid beer and pointed out Beatrice Kelly, aforesaid, as the person who sold him the beer on April 19, 1958, and on his previous visits to the licensed premises.

Beatrice Kelly admitted the sale of the beer to Edward on April 19, 1958, without questioning him about his age.

By way of mitigation, defendant has submitted a statement setting forth therein that he has a clear record during the fourteen years he has operated the licensed premises; that he was not on the premises when the sale was made, and that the minor is six feet tall and gives the appearance of being considerably older than his age. Absence from the premises does not excuse the licensee from the consequences of the acts of his agents. Rule 33 of State Regulation No. 20. Cf. Re Czaplicki, Bulletin 1170, Item 6.

The defendant has no prior adjudicated record. I shall suspend the defendant's license for twenty days (Re Kelly's Half Way House, Bulletin 1147, Item 1). Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of May, 1958,

ORDERED that Plenary Retail Consumption License C-19, issued by the Township Committee of Galloway Township to Frank P. Weaver, t/a Betty and Franks 19th Hole, for premises 954 New York Road, Galloway Township, be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m. June 2, 1958, and terminating at 7:00 a.m. June 17, 1958.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - STATE BEVERAGE DISTRIBUTOR'S LICENSE - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - HINDERING - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

SUPREME BEVERAGE COMPANY  
631-635 Bergen Street  
Newark 8, N. J.,

CONCLUSIONS  
AND ORDER

Holder of State Beverage Distributor's License SBD-144, issued by the Director of the Division of Alcoholic Beverage Control.

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Saul C. Schutzman, Esq., Attorney for Defendant-licensee.  
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Charges were preferred against defendant corporate licensee alleging in substance the following: (1) that on January 17, 1958, one of its employees sold alcoholic beverages at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulation No. 30, and (2) that on the same date one of its officers and an employee hindered and delayed and did attempt to hinder and delay ABC agents in their investigation of defendant's licensed premises, in violation of R. S. 33:1-35.

"Defendant entered a plea of non vult as to Charge 1 and a plea of not guilty as to Charge 2.

"As to Charge 1: The file discloses that at about 2:20 p.m. Friday, January 17, 1958, an ABC agent entered defendant's licensed premises and asked Benjamin Richman (an employee) for a case of Krueger's beer. Richman handed a case of the named brand of merchandise to the agent, saying 'That will be \$3.65 for the beer.' The agent made payment with four marked one-dollar bills, received twenty cents which Richman said was the only change he had on his person, and departed with the purchase. The minimum resale price then in effect for a case of Krueger's beer was \$4.40. The agent re-entered the licensed premises with a fellow agent and both identified themselves to Richman who readily admitted the violation and turned over the marked bills.

"At the hearing held with respect to Charge 2, the Division called as its witnesses the two agents who participated in the aforesaid investigation. Their testimony clearly establishes that neither Herman Cohen (president of the corporate licensee herein) nor employee Benjamin Richman actually hindered or delayed the agents in their investigation. It is contended, however, that Cohen and Richman, by their remarks, attempted to hinder and delay the investigation. The agents testified that, when Richman was confronted with the violation alleged in Charge 1, he admitted the infraction and then said, 'Why are you guys trying to make such a big deal of this? I didn't kill no one. Let's forget about it' and that when Cohen came upon the scene and was informed of the violation, he remarked, 'I know a lot of big people in your Division' and proceeded to name them. Later Cohen declared 'These guys don't know who they are messing with. I'll make one phone call and have both of their jobs.' There is no evidence that Cohen acted in furtherance of his declaration.

"Giving full credence to the agents' testimony (although Richman denied in part the statement alleged to have been made by him and Cohen denied in toto the remarks attributed to him), did such remarks constitute an attempt to hinder or delay the agents in the performance of their duty?

'In an attempt there must be some act done toward the accomplishment of the purpose. Mere declarations of purpose on the part of a person, where there is no proof of any attempt to carry that purpose into effect, do not constitute an attempt. State v. McCarty, 54 Kan. 52, 58, 36 P. 338.' 6 C.J. 548, footnote 17(a). See 'Attempt', 6 C.J. 547, 548, 549, 550, and 'Attempt', 7 C.J.S. 688, 689, 690 and cases cited thereunder.

"The instant case is distinguishable from others heretofore determined wherein there was proof of hindering coupled with derogatory remarks. In Re Menzel, Bulletin 948, Item 2, the licensee deliberately castigated and vilified the agents and by his conduct so disturbed them that the police had to be called. In Re A. & J. Cocktail Lounge, Bulletin 1014, Item 8, the licensee abused and vilified the agents and attempted to take seized material from them. In Re The Village Barn, Inc. of New Jersey, Bulletin 1051, Item 3, the licensee deliberately castigated and vilified the agents and offered them a sum of money to desist in the performance of their duties.

In each of the aforesaid cases there was proof of some act on the part of the licensee which hindered or delayed the agents in their investigation. In the case sub judice there is no proof that either Cohen or Richman did anything in furtherance of his expressed intentions.

"Considering all the facts and circumstances herein, I find that defendant, by its officer, agent and employee, neither actually hindered or delayed nor attempted to hinder or delay the agents in their investigation of the licensed premises. I recommend, therefore, that Charge 2 be dismissed. In view of the confessional plea entered as to Charge 1, I recommend that defendant's license be suspended for ten days (Re Bilancio, Bulletin 1163, Item 10) and that the usual remission of five days be granted (Re Koper, Bulletin 962, Item 8), leaving a net suspension of five days."

Written exceptions to the Hearer's Report, together with written argument in substantiation thereof, were filed with me by the prosecuting attorney pursuant to Rule 6 of State Regulation No. 16. Written answering argument was filed by the licensee's attorney. At my request, both attorneys presented oral argument before me.

I have carefully considered the entire record in the case, including the transcript of testimony, the Hearer's Report, the exceptions thereto and the written and oral arguments of counsel and, as a result, I find that the facts related by the testimony of the Division agents accurately reflect what transpired during the investigation and that the statements attributed to Richman and Cohen by the agents actually were made by them. The testimony of the licensee's witnesses is not merely at variance, but is in direct irreconcilable conflict, with the testimony of the agents concerning the quoted statements of Cohen. No reason appears why the agents should testify to anything other than the truth.

As to the question of whether the conduct of Richman and Cohen falls within the interdiction of the statute, I find that it was an attempt to deter and interfere with the agents in the performance of their assigned duties and constitutes "hindering" within the meaning of the statute. The threat to cause the loss of the agents' jobs was obviously made with the intention of persuading the agents to deviate from their normal investigative procedure pursuant to which they would file accurate reports. The obvious purpose of the threats was to cause the agents to omit reference to any facts which might result in the institution of disciplinary proceedings looking to the suspension or revocation of the license. That no action was taken to carry out the threat and that the agents continued in the performance of their duties despite the threats is immaterial. The prohibited conduct was the overt acts of intimidation of the agents by verbal threats, not any resulting effect upon the agents or the fulfillment of the threats. Cf. State v. Welech, 10 N.J. 355, 373 (1952). Nor is it necessary that the threats be accompanied by derogatory remarks. See Re Garcia, Bulletin 1102, Item 12.

Intimidation of agents by threatening to place their employment in jeopardy will not be tolerated. To the contrary, agents are entitled to and must receive the utmost cooperation and assistance by licensees and their employees in the conduct of investigations.

Consequently, I find that the licensee, through its agents, "failed to facilitate and hindered and delayed...and did

attempt to hinder, delay and cause the hindrance and delay of such investigation by said Investigators by threats, directly and indirectly, to intimidate said investigators", within the purview of the charge.

I therefore shall not accept the recommendation of the Hearer's Report with respect to Charge 2 and I conclude that the guilt of the licensee concerning that charge has been established by a preponderance of the evidence presented. The licensee has entered a plea of non vult to Charge 1.

Defendant has no adjudicated record. I shall suspend defendant's license for a total of fifteen days.

Accordingly, it is, on this 13th day of May, 1958,

ORDERED that State Beverage Distributor's License SBD-144, issued by the Director of the Division of Alcoholic Beverage Control to Supreme Beverage Company, for premises 631-635 Bergen Street, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m. May 20, 1958 and terminating at 7:00 a.m. June 4, 1958.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR DISMISSED.

In the Matter of Disciplinary Proceedings against  
STEPHEN ONUFRAK and CAMILLE ONUFRAK  
1819 H Street  
Wall Township  
PO W. Belmar, N. J.,  
Holders of Plenary Retail Consumption License C-7, issued by the Township Committee of Wall Township.

CONCLUSIONS  
AND ORDER

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Irving E. Keith, Esq., Attorney for Defendant-licensees.  
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to a charge alleging that they sold, served and delivered alcoholic beverages to a minor and permitted said minor to consume said beverages in and upon their licensed premises, in violation of Rule 1 of State Regulation No. 20.

"The only issue to be decided in this case is whether the defendants fully complied with R. S. 33:1-77.

"The Division called John --- who testified that he is 19 years of age (born November 5, 1938); that between 8:00 p.m. March 22, 1958 and about 2:00 a.m. the following morning he had consumed a few bottles of beer served to him by Stephen Onufrak (one of the licensees); that prior thereto for a period of about six months he visited the licensed premises on the average of once or twice a month and was served beer on each

occasion by the aforementioned licensee. The minor further testified that on his first visit to the premises (latter part of October 1957) Mr. Onufrak inquired of him about his age; that in response thereto he displayed the driver's license of one James Anderson, whose address and date of birth (June 1, 1935) he transcribed upon a printed form (Exhibit D-1 in evidence) given to him by the licensee; that he signed the name 'James Anderson' on the printed form and saw George McHorney and Stanley Dombroski, Jr. affix their signatures to the said form as witnesses.

"An ABC agent testified that he had been assigned to investigate the case; that he had seen the minor four or five times and that the minor appears to him to be 19 or 20 years of age.

"Mr. Onufrak testified that in the latter part of October 1957 John, known to him until recently as James Anderson, entered the licensed premises for the first time; that while John appeared to him to be of age he, nevertheless, requested some identification before serving him any alcoholic beverages; that John thereupon produced a driver's license bearing the name of James Anderson and then executed exhibit D-1 in evidence representing himself to be said James Anderson, 22 years of age; that relying upon this representation and John's appearance he served him alcoholic beverages about once or twice a month ever since the latter part of October 1957 and on March 23, 1958, the date in the charge.

"George McHorney, testifying for the defendant, stated that Stanley Dombrosky and he were present when John H. displayed the driver's license of James Anderson to Mr. Onufrak; that they saw John execute Exhibit D-1, representing himself to be over 21 years of age; that they acted as witnesses to the same and that in his opinion John appears to be over 21 years of age.

"Counsel stipulated that if Stanley Dombrosky were called his testimony would be the same as George McHorney's.

"John C. Downs, called by the defendant, testified that he is the acting chief of police for Wall Township wherein the licensed premises are located; that for the past seven years he has been a member of the police department and in his opinion John appears to be about 21 years of age.

"From the evidence in the record I find that the minor, John, falsely represented in writing that he was over 21 years of age, that his appearance was such that an ordinary, prudent person would believe him to be 21 years of age or over, and that the sales of alcoholic beverages to John by the defendants in the latter part of October 1957 and on the subsequent dates, including that alleged in the charge, were made in good faith and in reliance upon the aforesaid written representation and John's appearance. Thus, the procedure and defense prescribed by the statute appears to have been followed and established by the defendants. I, therefore, recommend that the charge herein be dismissed. See Caruso v. Jersey City, Bulletin 694, Item 1, and Sudzina & Pingicer, Bulletin 1138, Item 5."

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

After carefully considering the facts and circumstances herein, I concur in and adopt the findings and recommended conclusions of the Hearer.

Accordingly, it is, on this 19th day of May, 1958,

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

WILLIAM HOWE DAVIS  
Director.

5. AUTOMATIC SUSPENSION - SALE TO MINORS - APPLICATION TO LIFT GRANTED UPON EXPIRATION OF SUSPENSION IMPOSED BY LOCAL ISSUING AUTHORITY.

Auto. Susp. #151

In the Matter of a Petition to Lift )  
Automatic Suspension of Plenary )  
Retail Distribution License D-9, )  
issued by the Municipal Board of )  
Alcoholic Beverage Control of the )  
City of Clifton to )  
  
JOSEPH N. POLING and JEANETTE POLING )  
t/a VILLAGE WINE & LIQUORS )  
285 Piaget Avenue )  
Clifton, N. J. )

ON SUPPLEMENTAL  
PETITION  
O R D E R

-----  
By order of the Director dated March 27, 1958, the statutory automatic suspension of the license mentioned above was stayed until the local issuing authority had an opportunity to hear and decide a disciplinary proceeding it intended to institute.

A certified copy of the resolution adopted by the local issuing authority on April 28, 1958 discloses that petitioners pleaded non vult in said disciplinary proceeding and that the local issuing authority suspended their license for a net period of ten days effective from 9:00 a.m. May 2, 1958, to 9:00 a.m. May 12, 1958. The criminal proceedings and the charges in the disciplinary proceedings were based upon the fact that petitioners sold alcoholic beverages to two eighteen-year-old minors. The suspension imposed by the local issuing authority is adequate under the circumstances of this case. Hence the statutory automatic suspension will be lifted at the expiration of the suspension imposed by the local issuing authority.

Accordingly, it is, on this 8th day of May, 1958,

ORDERED that the statutory automatic suspension herein will be lifted effective at 9:00 a.m. May 12, 1958, at which time the license will be restored to full force and operation.

WILLIAM HOWE DAVIS  
Director.

By: Edward J. Dorton  
Deputy Director.

6. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOSEPH RIDDLE, WILLIAM RIDDLE & WILLIAM SCHRAMM ) S.E. Cor. Del Sea Drive & Taras Ave. ) Deptford Township ) PO RD Westville, N. J., )

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Consumption License C-15, issued by the Township Committee of Deptford Township. )

Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq., Attorneys for Defendant-licensees. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded nonvult to a charge alleging that they sold an alcoholic beverage at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulation No. 30.

The file herein discloses that on March 7, 1958, an employee of defendants, who was tending bar at the time, sold a pint bottle of Old Overholt Straight Rye Whiskey to an ABC agent for \$3.15. The minimum consumer listed retail price in effect for such item was \$3.30. After the sale the agent left the premises but returned immediately thereafter with another agent and both agents identified themselves to the person who had made the sale of the whiskey in question and then confronted him with the violation. He admitted the sale but declined to give a written statement to that effect.

Defendants have no prior adjudicated record. I shall suspend their license for the minimum period of ten days (Re George Rapp, Inc., Bulletin 1215, Item 8). Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 8th day of May, 1958,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of Deptford Township to Joseph Riddle, William Riddle & William Schramm, for premises at S.E. Cor. Del Sea Drive & Taras Avenue, Deptford Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. May 19, 1958, and terminating at 2:00 a.m. May 24, 1958.

WILLIAM HOWE DAVIS  
Director.

7. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOSEPH FUNICELLI and FRANK FALVO )  
t/a CLUB LEONA )  
373 Straight Street )  
Paterson 3, N. J., )

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Consumption License C-20, issued by the Board of Alcoholic Beverage Control for the City of Paterson. )

William K. Azar, Esq., Attorney for Defendant-licensees.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to charges alleging that on Saturday, April 19, 1958, they (1) sold, served and delivered and allowed, permitted and suffered the sale, service, delivery and consumption of alcoholic beverages on their licensed premises during prohibited hours, and (2) failed to have their entire licensed premises closed during said hours, both in violation of a local ordinance.

An ordinance of the City of Paterson prohibits the sale, service, delivery and consumption of alcoholic beverages on Saturdays between the hours of 3:00 a.m. and 7:00 a.m., and requires that licensed premises (with certain exceptions not material herein) shall be closed between said hours.

On Saturday, April 19, 1958, at about 2:00 a.m., two ABC agents entered the defendants' licensed premises and took seats at the bar which was being tended by Joseph Funicelli (one of the licensees). At 3:00 a.m. Funicelli extinguished all the lights on the premises except those behind the bar; permitted the front door to remain unlocked, and continued serving alcoholic beverages to twelve patrons until about 3:30 a.m. During this period (at 3:09 a.m. and at 3:25 a.m.) Funicelli served each agent a glass of beer and accepted payment thereof. At 3:30 a.m. the agents, shortly after observing Funicelli serve three glasses of beer to three patrons, made their identities known and informed Funicelli of the violations, which he verbally admitted.

Defendants have no prior adjudicated record. I shall suspend defendants' license for fifteen days (the minimum suspension for the instant violation). Re Baumann, Bulletin 1197, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 13th day of May, 1958,

ORDERED that Plenary Retail Consumption License C-20, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Joseph Funicelli and Frank Falvo, t/a Club Leona, for premises 373 Straight Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. May 19, 1958, and terminating at 3:00 a.m. May 29, 1958.

WILLIAM HOWE DAVIS  
Director.

8. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - STOCK OF ALCOHOLIC BEVERAGES AND FURNITURE AND EQUIPMENT IN RESTAURANT ORDERED FORFEITED.

In the Matter of the Seizure on )  
 February 15, 1958 of a quantity )  
 of alcoholic beverages, \$17.56 )  
 in cash, and various fixtures, )  
 furnishings, and equipment in the )  
 "Expresso Coffee Den", located at )  
 258 Clifton Avenue, in the City of )  
 Newark, County of Essex and State )  
 of New Jersey. )  
 ----- )

Case No. 9653

ON HEARING  
 CONCLUSIONS AND ORDER

Renaldo Anelle, Pro se.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R. S. 33:1-66 and further pursuant to a stipulation dated February 24, 1958 signed by Renaldo Anelle, to determine whether a quantity of alcoholic beverages, \$17.56 in cash, and various fixtures, furnishings and equipment, described in a schedule attached hereto, seized on February 15, 1958 in the 'Expresso Coffee Den' located at 258 Clifton Avenue, Newark, New Jersey, constitute unlawful property and should be forfeited.

"Pending hearing in the case Renaldo Anelle deposited \$150.00 in cash under protest pursuant to R. S. 33:1-66, with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of the aforesaid fixtures, furnishings, and equipment, and thereupon obtained return of all of the seized property excluding the alcoholic beverages and \$17.56 in cash. Renaldo Anelle has stipulated that such Director determine in the present proceedings whether such sum should be forfeited or returned to him.

"Renaldo Anelle appeared at the hearing and sought return of the aforesaid sum of \$150.00, and the two bottles of alcoholic beverages and sum of \$17.56 in cash which were retained by the Division.

"An ABC agent testified as follows: He and another agent entered defendant's establishment on two occasions. On their visit on January 19, 1958, he observed that the place was equipped with a makeshift bar, stools, tables, chairs and a refrigerator. A rear room was used as a kitchen. There were about twelve persons present. Marie Anelle, wife of Renaldo, was acting as waitress. The agents took seats at the bar, behind which Anelle was preparing coffee. The agents ordered and were served with coffee by Renaldo Anelle, who asked the agents whether they wished to have 'licorice' in their coffee. Receiving an affirmative response, Anelle poured a clear liquid into their coffee. It had the taste and odor of anisette. Anelle said he had to be careful of the ABC. The agents each ordered a second cup of coffee, to which the anisette was likewise added. Anelle said the first drink was on him, but they would have to pay for the second drink. The agents paid Anelle for two coffees, sandwiches, and the second drink, which was billed as demi-tasse.

"This agent returned on February 15, 1958, accompanied by another agent. A few patrons were there. The agents took seats at a table. Marie Anelle took their order for sandwiches and two demi-tasse coffees. When she served these drinks she informed the agents that they were with 'licorice'. The drinks had the taste and odor of anisette. The agents ordered and were served with two similar drinks of coffee with 'licorice' for which they paid Marie with three one-dollar bills identified by serial numbers.

"Shortly thereafter, by prearrangement, other ABC agents and local police officers entered and all of the agents revealed their identity to Renaldo and Marie Anelle. Neither Renaldo nor Marie Anelle held any license authorizing the sale or service of alcoholic beverages, and the premises were not licensed for that purpose.

"The agents seized a bottle of anisette, a bottle of whiskey, \$17.56 in cash in a box behind the bar, which money included the three marked bills, and the equipment, fixtures and furnishings of the establishment.

"The other agent who was there on February 15th testified to like effect as his fellow agent, and added that he observed Renaldo pour a liquid from a bottle into the demi-tasse that was served to him, and do likewise when serving other persons with cups of coffee.

"One of the drinks served to an agent on January 19th was analyzed by the Division chemist, who reports that it is an alcoholic solution containing coffee and anisette, fit for beverage purposes, with an alcoholic content by volume of 3.1 per cent. Two of the drinks served to the agents on February 15th were similarly analyzed by the Division chemist who reports that each is an alcoholic solution containing coffee and anisette, fit for beverage purposes, with an alcoholic content by volume of 2.6 and 3.0 per cent respectively.

"Renaldo Anelle offers the following explanation of what transpired: He operates a coffee shop. Whatever anisette he had on hand he gave away as an accommodation, without charge. Such has been his practice since the past Christmas or New Year. He served the anisette to his own kind of people, not to young people who came to the establishment. He served the agents with anisette because he thought they were 'regular fellows'.

"The agents testified that they were charged a specific price for the demi-tasse served to them, ranging from fifty cents to twenty-five cents.

"Aside from the fact that Renaldo Anelle appears to have made a specific charge for demi-tasse with anisette, or 'licorice', different in price from coffee without anisette, even by his own account he was selling alcoholic beverages unlawfully, because the service of alcoholic beverages with food and other drinks, with no extra charge for the alcoholic beverages, constitutes a sale of alcoholic beverages. Seizure Case No. 7468, Bulletin 853, Item 12.

"Upon the basis of the evidence presented, I recommend a finding that the seized alcoholic beverages were intended for unlawful sale and hence are illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages, and the furnishings, fixtures, equipment, and all other personal property seized in the establishment, including the \$17.56 in cash, constitute unlawful

property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, R.S. 33:1-66. Such forfeiture must follow as of course, since Renaldo Anelle has failed to establish that he did not sell alcoholic beverages."

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of May, 1958,

DETERMINED and ORDERED that the seized alcoholic beverages, described in Schedule "A" attached hereto, and \$17.56 in cash, constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66, and that such property 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 balance of the seized property consisting of furnishings, fixtures, equipment and all other personal property, listed in the aforesaid Schedule "A", constitutes unlawful property, and that the sum of \$150.00, representing the retail value thereof, paid under protest to the Director of the Division of Alcoholic Beverage Control by Renaldo Anelle to obtain return of such articles, be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law.

WILLIAM HOWE DAVIS  
Director.

SCHEDULE "A"

1 - 4/5 quart bottle of whiskey  
1 - 4/5 quart bottle of anisette  
8 - tables  
32 - chairs  
4 - stools  
4 - lamps  
2 - manikins  
1 - Tyler refrigerator  
1 - meat slicer  
1 - bar  
1 - stove  
Assorted pots and pans  
\$17.56 in cash

9. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION AS TO CONVICTION OF CRIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ELWENA CLARK )  
t/a AUSTIN'S ROSE GARDEN )  
138 N. Maryland Avenue )  
Atlantic City, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-199, issued by the Board of Commissioners of the City of Atlantic City. )

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Edward I. Feinberg, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she falsified the application for her current license, in violation of R. S. 33:1-25.

In her application, dated June 6, 1957, defendant answered Question 33 which asks: "Have you or has any person mentioned in this application, ever been convicted of any crime?", by falsely stating "No".

On April 22, 1957 defendant received an indeterminate sentence to a State Reformatory, the operation of which was suspended and she was placed on probation for three years and fined \$1,000.00 on a charge of conspiracy to keep and maintain lottery premises. The crime aforementioned may or may not, in the opinion of the Director, involve the element of moral turpitude. In view of the present charge, however, it is unnecessary for me to determine in this proceeding whether the conviction of the crime aforementioned does or does not involve moral turpitude. If defendant applies for a renewal of her license it will be necessary for her to reveal the conviction and it will be the duty of the local issuing authority to decide that question in determining whether her license should be renewed.

Defendant has a prior adjudicated record. Effective October 20, 1952 her license was suspended for five days by the local issuing authority for sale of alcoholic beverages to minors. Again, effective January 10, 1956, defendant's license was suspended for a period of thirty-five days for allowing lottery and bookmaking activity on the licensed premises. Re Clark, Bulletin 1094, Item 3. Inasmuch as the conviction for the sale of alcoholic beverages to minors occurred more than five years ago and is dissimilar in character to that now under consideration, it will not be considered in fixing the penalty herein. The latter conviction for allowing lottery and bookmaking activity on the licensed premises, which happened during the last five years, although dissimilar in character, will be taken into consideration in arriving at the penalty in this case. Under the circumstances, I shall suspend defendant's license for a period of fifteen days. Cf. Re Davis, Bulletin 1115, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 27th day of May, 1958,

Accordingly, it is, on this 27th day of May, 1958,

ORDERED, that Plenary Retail Consumption License C-199, issued by the Board of Commissioners of the City of Atlantic City to Elwena Clark, t/a Austin's Rose Garden, for premises 138 N. Maryland Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days, commencing at 7:00 a.m. June 2, 1958 and terminating at 7:00 a.m. June 12, 1958.

WILLIAM HOWE DAVIS  
Director.

10. AUTOMATIC SUSPENSION - SALE TO MINOR - SUSPENSION IMPOSED BY LOCAL ISSUING AUTHORITY - APPLICATION GRANTED.

Auto. Susp. #153 )  
In the Matter of a Petition to )  
Lift Automatic Suspension of )  
Plenary Retail Consumption )  
License C-29, issued by the )  
Township Committee of Madison )  
Township (Middlesex County), to )  
CANTORE'S BAR & GRILL, INC. )  
t/a CANTORE'S BAR & GRILL )  
Englishtown Road )  
Madison Township )  
Box 402, RD 1, Old Bridge, N.J. )

O R D E R

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Messina and Arico, Esqs., by Anthony N. Arico, Esq.,  
Attorneys for Petitioner.

A petition filed herein discloses that on April 25, 1958, Victor Cantore (secretary of Cantore's Bar & Grill, Inc.) was fined the sum of \$250.00 after he had pleaded non vult in the Middlesex County Court to a charge of selling alcoholic beverages to a minor, in violation of R.S. 33:1-77. Said conviction 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.

The license has not been picked up because, at the time of the aforesaid conviction, the Township Committee intended to institute disciplinary proceedings against the licensee. It further appears that on May 5, 1958, the local issuing authority adopted a resolution suspending the corporation's license for ten days (less five for the plea) effective from 6:00 a.m. May 12, 1958, to 6:00 a.m. May 17, 1958, after the corporation 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. The minor was seventeen years of age.

The suspension imposed by the local issuing authority was less than that usually imposed by the Director in cases involving a seventeen-year-old minor. However, the file in this case indicates that the minor appeared to be much older than his actual age. The resolution of the Township Committee indicates that the appearance of the minor was considered in fixing the period of suspension. Under all the circumstances it appears that the suspension imposed by the local issuing authority is adequate. Since said suspension has been served, the relief requested herein will be granted.

Accordingly, it is, on this 19th day of May, 1958,

ORDERED that the automatic suspension of License C-29, held by Cantore's Bar & Grill, Inc., t/a Cantore's Bar & Grill, for premises on Englishtown Road, Madison Township, be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS  
Director.

By: Edward J. Dorton  
Deputy Director.

11. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR  
SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against  
EARL N. SWAYZE  
t/a PARROT CLUB  
s/e Cor. Boardwalk & Sherman Ave.  
Seaside Heights, N. J.,  
Holder of Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Seaside Heights.

O R D E R

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BY THE DIRECTOR:

By order dated October 10, 1957, I suspended defendant's license for fifteen days. Because defendant's premises were then closed, the order provided that the effective dates for said suspension would be fixed by a subsequent order which would be entered after the licensed premises reopened for the 1958 season (see Bulletin 1197, Item 11).

It now appearing to my satisfaction that defendant's premises have been reopened for the 1958 season,

It is, on this 27th day of May, 1958,

ORDERED that the fifteen-day suspension heretofore imposed shall commence at 7:00 a.m. June 2, 1958, and terminate at 7:00 a.m. June 17, 1958.

WILLIAM HOWE DAVIS  
Director.

12. STATE LICENSES - NEW APPLICATION FILED.

Anthony J. Merlo and Nicholas Merlo  
t/a J. & K. Distributors  
109 - 12th St.  
Hammonton, N.J.

Application filed July 8, 1958 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-44 from Maurice Taylor, Easterly Side of New York Avenue, between Walnut & Spruce Avenues, North Wildwood, N. J.

*William Howe Davis*  
William Howe Davis  
Director.

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