

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1050-Broad Street Newark 2, N. J.

BULLETIN 1119

JUNE 26, 1956.

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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 1119

JUNE 26, 1956.

1. APPELLATE DECISIONS - DOWNIE v. SOMERDALE.

JOHN DOWNIE,)
Appellant,)
-vs-) ON APPEAL
BOROUGH COUNCIL OF THE) CONCLUSIONS AND ORDER
BOROUGH OF SOMERDALE,)
Respondent.)

Leo J. Berg, Esq., Attorney for Appellant.
Charles L. Rudd, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from an order of respondent, dated April 14, 1956, revoking appellant's plenary retail consumption license. Respondent revoked the license after it had found appellant guilty of selling alcoholic beverages to two minors, in violation of R. S. 33:1-77; and after it had found that appellant allowed, permitted and suffered his licensed premises to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20. Four members of the Borough Council who were present at the hearing voted unanimously to revoke appellant's license.

On April 18, 1956, an order was entered staying the revocation pending the determination of the appeal. R. S. 33:1-31.

The appellant in his petition of appeal contends that the action of the respondent was erroneous in that "(1) the decision of the Borough Council was contrary to the weight of evidence; (2) the action of the Borough Council was capricious, arbitrary and imposed upon the appellant an unusually cruel and unjust penalty; (3) the action of the Borough Council was illegal in that the decision reached by said Council was not based upon legal evidence and competent testimony."

At the time of the hearing of this appeal the attorneys for the respective parties, in lieu of taking testimony in the case, submitted a signed stipulation of facts upon which they agreed the said appeal was to be decided. The contents of said stipulation is as follows:

"IT IS HEREBY STIPULATED by and between respective counsel for the appellant and respondent that the testimony to be adduced at said hearing would consist of the following facts:

"1: The Borough of Somerdale did issue to John Downie plenary license No. C4 on July 1, 1955.

"2: John Downie, appellant herein, is also the holder of a plenary consumption license located in Pennsauken Township, New Jersey.

"3: On April 7th, 1956; the Borough of Somerdale did cause an investigation to be made at the premises of the appellant-licensee, as a result of which charges were

brought against said appellant-licensee that he had through his servants, agents and/or employees permitted the sale and service to minors of intoxicating beverages. Said minors consisted of two sailors both of whom were in their eighteenth year.

"4: Appellant, John Downie was not present at the premises hereinabove mentioned and instructions had been given to his manager not to make any sale of intoxicating beverages to minors.

"5: Appellant John Downie had previously been convicted during the year of 1954 of making sales from the premises herein after hours and had received a penalty of ten days suspension for said violation.

"6: The Borough of Somerdale charged that the appellant violated the provisions of the Alcoholic Beverage Law in that (1) Revised Statutes 33:1-77; selling alcoholic beverages to minors; and (2) Law 5- Section 20- State regulations in that you allowed, permitted and suffered the licensed premises to be conducted in such a manner as to become a nuisance.

"7: On the evening of April 7th, two special police officers, along with the Mayor of Somerdale and the Councilman in charge of the Department of Law and Public Safety were present during the investigation described above.

"8: The two sailors referred to above each ordered one mixed drink containing alcoholic beverages. They were served one drink each. Many minors were present in the place but apparently were drinking carbonated beverages and not alcoholic beverages.

"9: The Borough of Somerdale on April 14th, 1956 revoked the license of the appellant."

At the hearing, when the above stipulation of facts was submitted, the respective attorneys amended the last sentence of Paragraph 3 to read that the two minors therein mentioned were 19 and 20 years of age, respectively, rather than both being 18 years of age as stated in the aforesaid stipulation.

According to the stipulation, each of the two minors in question ordered and was served a mixed drink containing alcoholic beverages by an employee of the appellant. This appears to be the only violation that occurred in appellant's licensed premises as a result of which the charges were preferred against appellant by respondent. Mention is made of the other charge, to wit, that the appellant's premises were conducted in such a manner as to constitute a nuisance but there are no facts in the stipulation other than "Many minors were present in the place but apparently were drinking carbonated beverages and not alcoholic beverages." I am satisfied that the mere presence of minors on the licensed premises, in itself, was not sufficient reason to sustain the nuisance charge.

The only point remaining, in view of the fact that there is no dispute that an alcoholic beverage was served to each of the minors, is the question of penalty which appellant argues is excessive in view of the violation. I might say at this juncture that, according to the stipulation submitted, appellant had his license suspended on one prior occasion for a period of 10 days for violation of a local ordinance. The

stipulation also sets forth that appellant has an interest in another retail liquor establishment located in a different municipality. Revocation of the license in question would prevent appellant from being associated in any capacity whatsoever with the alcoholic beverage industry in any municipality in this State for a period of two years. R. S. 33:1-31. I am sure it was not the intention of the respondent in revoking appellant's license to penalize him to the extent of preventing him from holding a license or working on licensed premises in this State. Moreover, when considering the facts contained in the stipulation, including the fact that the minors were 19 and 20 years of age, respectively, and that each only consumed one drink containing an alcoholic beverage, the revocation of appellant's license was apparently too harsh. Although reasonable latitude may be allowed for differences of opinion regarding the penalty to be imposed, it appears under the circumstances existing in this case that a suspension of appellant's license for the balance of its term is sufficient.

Accordingly, it is, on this 23rd day of May, 1956,

ORDERED that the penalty of revocation of Plenary Retail Consumption License C-4, heretofore issued to John Downie, for premises located on White Horse Pike, Somerdale, by the respondent herein be and the same is hereby modified to a suspension of said license for the balance of its term, effective at 3:00 a.m. May 28, 1956; and it is further

ORDERED that the order heretofore entered staying respondent's order shall continue in effect until the suspension imposed herein shall become effective.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FLO-MAE, INC.)
134 Market Street)
East Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-9, issued by the Borough Council of the Borough of East Paterson.)
-----)

Zax and Cutler, Esqs., by Harry Zax, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On March 4 and 25, 1956, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises in that on each of said dates a female entertainer performed in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulations No. 20."

It appears from the file in the instant case that on March 4, 1956 at about 12:15 a.m., two ABC agents entered defendant's licensed premises and observed about thirty persons at the bar and about eighty persons seated at tables in the rear sitting room where there was a dance floor and stage. There was a four-piece dance band in the room and a female entertainer was performing a "strip tease" dance, eventually disrobing until her breasts were practically exposed and only a "G string" covered the lower part of her body. The agents left without disclosing their identities.

These agents returned to the premises on Sunday, March 25, 1956 at about 1:30 a.m., took seats in the sitting room and observed many persons there. At 2:10 a.m., a five-piece band made an appearance and one of its members made the announcement that a show was about to be presented. A male vocalist entertained and then "Renee, The Ballerina of Burlesque", was introduced. She proceeded to perform a "strip tease" dance during which she did "bumps and grinds" and continued to disrobe until her breasts were practically exposed and only a "G string" covered the lower part of her body with her legs encased in long, black, net stockings. The agents then identified themselves at which time Vincent Anthony Lippe (president and stockholder of the corporate-licensee), in whose presence the dance was performed, told the agents that he knew the dance was "wrong" and had warned Renee not to do "bumps and grinds".

When submitting the non vult plea, the licensee urged that it booked the entertainment through an agency, was misinformed as to whether it was permitted to allow a female performer to disrobe to the extent that she did and relied on the fact that the performers were professionals and familiar with the entertainment permitted under ABC Regulations. Aside from the fact that this is contrary to Vincent Lippe's admission to the agents that he was aware that the dance was objectionable, in the language of Re Di Angelo, Bulletin 753, Item 4, the licensee cannot "pass the buck" by attempting to place the blame on a booking agent.

The defendant corporate-licensee has no prior adjudicated record. Performances such as those described herein have no place on licensed premises. I shall suspend defendant's license for a period of thirty days. Re Hotel Holiday, Inc., Bulletin 1083, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 22nd day of May, 1956,

ORDERED that Plenary Retail Consumption License C-9, issued by the Borough Council of the Borough of East Paterson to Flo-Mae, Inc., for premises 134 Market Street, East Paterson, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 a.m. June 4, 1956, and terminating at 3:00 a.m. June 29, 1956.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JANBERT, INC.
T/a THE NEW EDDIE'S BAR
N. E. corner Vermont & Adriatic Aves.
& 247 Adriatic Ave.
Atlantic City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-71, issued by the Board of Commissioners of the City of Atlantic City.

Janbert, Inc., Defendant-licensee, by Hermann E. Volpin, Secretary-Treasurer.

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

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on April 1, 1956, it sold, served and delivered and permitted the sale, service and delivery of alcoholic beverages, directly or indirectly, to three minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

Acting upon information obtained from the Northfield Police Department, ABC agents obtained sworn statements from the three minors. In his statement, Clarence --- (16 years of age) says that on April 1, 1956, at about 5:30 a.m., he, an adult and the two other minors entered defendant's premises; that at various times one of the other minors handed him three or four glasses of beer, the contents of which he consumed. In his statement, Ronald --- (16 years of age) says that during the visit to defendant's premises he had two glasses of beer. In his statement, Joseph --- (19 years of age) says that during the visit to defendant's premises he had two glasses of whiskey. When the three minors subsequently visited defendant's premises with ABC agents, they identified the premises but were unable to identify the person who sold the drinks.

Defendant has no prior record. Because of lapse of time, I am disregarding a ten-day suspension imposed for a fair trade violation in 1939 on a license then held by Hermann E. Volpin. Until recently, the usual penalty for sale to a 16-year-old minor was a suspension of the license for twenty days (Re Cramer, Bulletin 1066, Item 3). However, on January 16, 1956, I announced that the penalty in such cases would be increased by five days. Since the violation herein occurred after that announcement, a twenty-five-day penalty is indicated, to which five days should be added because of the number of minors involved (Re Tobolewski, Bulletin 1085, Item 3). I shall suspend defendant's license for thirty days. Five days will be remitted for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 15th day of May, 1956,

ORDERED that Plenary Retail Consumption License C-71, issued by the Board of Commissioners of the City of Atlantic City to Janbert, Inc., t/a The New Eddie's Bar, for premises at N. E.

corner Vermont & Adriatic Avenues & 247 Adriatic Avenue, Atlantic City, be and the same is hereby suspended for twenty-five (25) days, commencing at 7:00 a.m. May 21, 1956, and terminating at 7:00 a.m. June 15, 1956.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD -
AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS,
LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WILLIAM P. McCRORY)
117 S. Mississippi Avenue)
Atlantic City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-175, issued by the Board of Commissioners of the City of Atlantic City.)
-----)

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

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on March 30, 1956, he sold, served and delivered and permitted the sale, service and delivery of alcoholic beverages to three minors and permitted said minors to consume such beverages in and upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

Acting upon information obtained from the Northfield Police Department, ABC agents obtained sworn statements from the three minors. In his statement Clarence --- (16 years of age) says that, shortly after 10:00 p.m. March 30, 1956, he, an adult and the two other minors entered defendant's premises and that, during the course of the next hour, he had about three drinks of whiskey and four glasses of beer which were served directly to him by a barmaid. In his statement Ronald --- (16 years of age) says that, during this visit, he ordered a glass of beer from a barmaid; that she questioned him as to his age; that he exhibited the driver's license of his adult companion and that the barmaid thereafter served to him two glasses of beer, the contents of which he drank. In his statement Joseph --- (19 years of age) says that, during this visit, he had a "few" drinks of whiskey which were served to him by a barmaid who made no inquiry as to his age. On April 10, 1956, the minors and ABC agents visited defendant's premises and Clarence and Ronald identified Dorothy Loughran as the barmaid who made the sales, but Joseph said he could not be sure of the person who served him.

Defendant has a prior record. Effective April 28, 1944, his license was suspended by the then Commissioner for sixty-four days for an "hours" violation and sales to intoxicated persons (see Re McCrory, Bulletin 616, Item 3) and effective April 18, 1949, his license was suspended by the then Director for fifteen days for selling alcoholic beverages to another retailer for resale (Re McCrory, Bulletin 840, Item 9).

However, since these dissimilar violations occurred more than five years ago, I shall not consider them in fixing a penalty herein (Re Spievy, Bulletin 1054, Item 11). Until recently the usual penalty for sale to a 16-year-old minor was a suspension of the license for twenty days (Re Cramer, Bulletin 1066, Item 3). However, on January 16, 1956, I announced that the penalty in such cases would be increased by five days. Since the violation herein occurred after that announcement, a twenty-five-day penalty is indicated, to which five days should be added because of the number of minors involved (Re Tobolewski, Bulletin 1085, Item 3). I shall suspend defendant's license for thirty days. Five days will be remitted for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 15th day of May, 1956,

ORDERED that Plenary Retail Consumption License C-175, issued by the Board of Commissioners of the City of Atlantic City to William P. McCrory, for premises 117 S. Mississippi Avenue, Atlantic City, be and the same is hereby suspended for twenty-five (25) days, commencing at 7:00 a.m. May 21, 1956, and terminating at 7:00 a.m. June 15, 1956.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary)
Proceedings against)
)
 SPARKLE BAR, INC.)
 240 - 70th Street)
 Guttenberg, N. J.,)
)
 Holder of Plenary Retail Consump-)
 tion License C-33, issued by the)
 Board of Council of the Town of)
 Guttenberg.)
 -----)

CONCLUSIONS
AND ORDER

Sparkle Bar, Inc., Defendant-licensee, by Mario L. Zais,
President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) it permitted gambling in and upon its licensed premises, in violation of Rule 7 of State Regulations No. 20, and (2) it possessed and sold lottery tickets in and upon its licensed premises, in violation of Rule 6 of State Regulations No. 20.

The file herein discloses that on March 10, 17, 31 and April 7 and 14, 1956, ABC agents "X" and "Y" visited defendant's licensed premises wherein Mario Zais, president of the corporate licensee herein, was tending bar. On three of their visits, the agents observed pool games being played for money and on other visits they observed horse race betting activities and the sale of lottery tickets in which Zais participated. On those visits, Agent "X" placed horse race bets with Michael Meyer, referred to by Zais as the "bookie". On their last visit, Agent "Y" purchased a lottery ticket from Zais and

Agent "X" placed several horse race bets with Meyer, handing him marked money in payment. Shortly thereafter, the agents identified themselves and presently, as prearranged, a police officer arrived. Meyer was searched and upon his person was found the marked money and other evidence of gambling. The agents then seized from behind the bar a cigar box containing unopened lottery tickets.

Defendant has no prior adjudicated record. Until recently, the usual penalty imposed for permitting commercialized gambling on licensed premises where the licensee or his employee participated was a suspension of the license for twenty days. Re Koch, Bulletin 1093, Item 6. However, on January 16, 1956, I announced that the penalty in such cases would be increased by five days. Re Increased Penalties, Bulletin 1095, Item 1. Since the violations in the instant case occurred after that announcement, I shall suspend defendant's license for twenty-five days and remit five days for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 14th day of May, 1956,

ORDERED that Plenary Retail Consumption License C-33, issued by the Board of Council of the Town of Guttenberg to Sparkle Bar, Inc., 240 - 70th Street, Guttenberg, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. May 22, 1956, and terminating at 3:00 a.m. June 11, 1956.

WILLIAM HOWE DAVIS
Director.

6. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTION TO TRANSFER HELD TO BE MERITORIOUS - APPLICATION FOR TRANSFER DENIED.

In the Matter of Objections to)
the Transfer of a State Beverage)
Distributor's License held by)

CUMBERLAND BEVERAGE CO.)

CONCLUSIONS

from E/S of South Delsea Drive,)
380 feet south of Elmer Road,)
Vineland, to 15 Lake Street,)
Belleville, N. J.)

Addonizio, Sisselman & Gordon, Esqs., by G. George Addonizio, Esq., Attorneys for Applicant.

Keenan & Finch, Esqs., by Thomas C. D'Avella, Esq., Attorneys for the Town of Belleville, Objector.

BY THE DIRECTOR:

Written objections were filed with me by various objectors alleging that the area to which applicant seeks to transfer the license in question is adequately served by the present retail liquor outlets. The Board of Commissioners of the Town of Belleville also opposed the transfer of the said license.

At the hearing scheduled herein, the attorney for the applicant stated that he did not propose to call any witnesses on behalf of applicant but desired to argue the matter before me previous to my determination in the case. Said oral argument was heard by me on April 30, 1956.

A petition containing a number of names of persons in opposition to the transfer and a petition containing a number of names of persons in favor thereof, respectively, were presented and marked in evidence as exhibits herein.

Five persons presently holding plenary retail consumption licenses in the Town of Belleville appeared at the hearing as objectors. One of these licensees said he would not have any objection to the transfer in question if the applicant did not sell unchilled malt alcoholic beverages directly from the proposed premises. Another licensee testified that he would still object regardless of whether the applicant did or did not sell unchilled malt beverages directly from its premises. The remaining three licensees, whose objections were entered by stipulation of the attorneys representing the respective parties, concurred with the opinion of the one who had objected unconditionally to the transfer as requested by the applicant.

In considering the aforesaid objections, it must be borne in mind that municipal consent is not a statutory prerequisite to the issuance of a State license; that the privileges of a State Beverage Distributor's license is State-wide and, thus, the question of public necessity and convenience cannot be determined on the narrow basis of the single municipality wherein the prospective licensee will have its principal office or warehouse. Re Vigor Beverage Co., Inc., Bulletin 941, Item 9. Nevertheless, the transfer of a license, whether State or municipal, to other premises is not inherent in a license. Re Variety Beers and Soda Distributors, Inc., Bulletin 1000, Item 6; Van Schoick v. Howell Township, Bulletin 120, Item 6. If good cause appears, an application for transfer may be denied in the discretion of the issuing authority. Re Variety Beers and Soda Distributors, Inc., supra; Re Warren, Bulletin 945, Item 6; Re Ciccarone, Bulletin 1048, Item 5; Re Bruno, Bulletin 1055, Item 9; Re Cohen and Dickman, Bulletin 1077, Item 9.

After careful examination of the within record, I am satisfied that there are ample licenses in the area proposed to be served by the applicant to meet the needs of the persons residing therein. Furthermore, the municipal authority of the Town where the premises to which the license was requested to be transferred also formally objected thereto. I might also add that the present license is issued for premises located in Vineland which is a considerable distance from the proposed location in Belleville.

Under the circumstances appearing in this case and for the reasons aforesaid, the application for transfer of the license in question will be denied.

WILLIAM HOWE DAVIS
Director.

Dated: May 22, 1956.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOSEPH PCHOLA (AN INDIVIDUAL) AND JOHN M. ZDANOWICZ, ADMIN'R. OF THE EST. OF MARY ZDANOWICZ, DEC'D T/a CLUB TAVERN 363 Grove Street Jersey City 2, N. J.,

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-535, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Joseph Pchola and John M. Zdanowicz, Defendant-licensees, by Joseph Pchola, Pro se. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded guilty to a charge alleging that they possessed on their licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

The file herein discloses that an ABC agent making a routine inspection of defendants' licensed premises on April 5, 1956, tested and gauged twenty-seven open bottles of assorted brands of liquor, the contents of one of which, a quart bottle labeled "Fleischmann's 90 Proof Preferred Blended Whiskey", appeared to be off in proof and color. The agent seized said bottle and an analysis by the Division chemist shows the contents to be too low in solids, slightly low in acids and two proof short when compared with samples of the genuine product.

Defendants have no prior adjudicated record. I shall suspend their license for the minimum period of fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Dzama and Geiger, Bulletin 1099, Item 9.

Accordingly, it is, on this 14th day of May, 1956,

ORDERED that Plenary Retail Consumption License C-535, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Joseph Rhola (An Individual) and John M. Zdanowicz, Admin'r. of the Est. of Mary Zdanowicz, Dec'd., t/a Club Tavern, 363 Grove Street, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 21, 1956, and terminating at 2:00 a.m. May 31, 1956.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BARKEY'S BAR & GRILL, INC.)
422 Ocean Avenue)
Jersey City 5, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-59, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
-----)

Barkey's Bar & Grill, Inc., Defendant-licensee, by Anthony Bartkewicz, President.
Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that at about 5:40 p.m., Sunday, April 22, 1956, an ABC agent, accompanied by another agent, purchased from the bartender in defendant's licensed premises two quart bottles of beer and left the premises with the merchandise. The agents returned within minutes and identified themselves to the bartender, who, in the presence of Anthony Bartkewicz, president of the corporate licensee herein, gave a signed sworn statement admitting the aforesaid sale for off-premises consumption.

Defendant has no prior adjudicated record. I shall suspend its license for a period of fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Garcia, Bulletin 1102, Item 12.

Accordingly, it is, on this 14th day of May, 1956,

ORDERED that Plenary Retail Consumption License C-59, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Barkey's Bar & Grill, Inc., 422 Ocean Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 21, 1956, and terminating at 2:00 a.m. May 31, 1956.

WILLIAM HOWE DAVIS
Director.

9. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTION TO RESCISSION OF RESTRICTION HELD NOT TO BE MERITORIOUS - APPLICATION FOR RESCISSION OF CONDITION IN LICENSE GRANTED.

In the Matter of Objections to a)
Petition to Remove Restriction)
on State Beverage Distributor's)
License No. SBD-12 held by)
CARMINE COCCARO & ANNETTE COCCARO)
T/a MILLVILLE BEVERAGE)
Snyder Avenue)
Vineland, N. J.,)
Box 144, Millville, N. J.)
-----)

CONCLUSIONS
AND ORDER

W. Howard Sharp, Esq., Attorney for Applicants.
Samuel Moskowitz, Esq., Attorney for New Jersey Retail Liquor
Stores Association and South Jersey Retail Liquor Stores
Association, Objectors.

BY THE DIRECTOR:

The records of this Division show that in 1951 a State Beverage Distributor's license containing a condition that "no sales hereunder shall be made at retail" was issued to Carmine Coccoaro. In 1953 said license was transferred to Carmine Coccoaro & Annette Coccoaro, subject to the same condition. Thereafter the license was renewed annually by applicants subject to the same condition. Written objections having been filed to a petition filed by them for a rescission of the restriction upon their license, a hearing thereon was held on April 25, 1956.

At the hearing eight licensees, some of whom are members of the objecting associations, appeared. The holder of a plenary retail distribution license in Vineland testified that he handles twenty-three brands of beer, including Krueger's; that he and other licensees deliver beer in Vineland and surrounding communities and that there is no public need or necessity for the rescission of the restriction on the license held by applicants. It was stipulated that, if another licensee who holds a similar license in Vineland, three licensees who hold consumption licenses in Vineland and three licensees who hold licenses in nearby communities were called to testify, their testimony would be substantially the same.

On behalf of applicants, Carmine Coccoaro testified that applicants handle only Krueger's beer; that their licensed premises are seven or eight miles from the center of Vineland and two or three miles from the nearest package store; that they are now selling only to retailers; that the population of the area in which they are located has increased about 5,000 and that they have numerous calls for beer from consumers.

After considering the evidence, I conclude that sufficient cause has been shown for the rescission of the restriction on applicants' license and, hence, I shall grant their petition.

Accordingly, it is, on this 21st day of May, 1956,

ORDERED that the condition in applicants' license, that "no sales hereunder shall be made at retail", be and the same is hereby rescinded, effective immediately.

WILLIAM HOWE DAVIS
Director.

10. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)

ANN ANDERSCH)

ON PETITION
O R D E R

To Lift the Automatic Suspension of Plenary Retail Consumption License C-12 issued by the Board of Commissioners of the City of Perth Amboy.)

Walter Wawerczak, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from a petition filed herein that on May 10, 1956, petitioner was fined \$250.00 and placed on probation for one year by a Judge of the Middlesex County Court after she had pleaded non vult to a charge of selling alcoholic beverages to minors, in violation of R. S. 33:1-77. Said conviction resulted in the automatic suspension of her license for the balance of its term. R. S. 33:1-31.1. The petition requests that the automatic suspension be lifted.

It further appears from the petition and from the records of this Division that, in disciplinary proceedings instituted by the Board of Commissioners of the City of Perth Amboy, petitioner pleaded guilty to a charge of selling alcoholic beverages to two minors, one of whom was 18 years of age and the other 20 years of age, and to a charge of permitting a brawl and that, as a result thereof, said Board suspended her license for a period of fifteen days, commencing January 9, 1956, and terminating January 24, 1956.

The conviction in the criminal proceedings and the charge concerning sale to minors in the disciplinary proceedings were based upon the same facts. The suspension imposed by the Board of Commissioners in the disciplinary proceedings appears to be adequate and, hence, petitioner's request for the lifting of the automatic suspension of her license will be granted.

Accordingly, it is, on this 11th day of May, 1956,

ORDERED that the automatic suspension of License C-12, held by Ann Andersch, for premises 284 Smith Street, Perth Amboy, be and the same is hereby lifted and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
Director.

11. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD OF PREDECESSOR IN INTEREST NOT CONSIDERED BECAUSE OF LAPSE OF TIME - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MARGARET AGOSTINI
T/a MARDI GRAS
624-26 Pacific Ave. & 101 S.
New Jersey Ave.
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-72, issued by the Board of Commissioners of the City of Atlantic City.

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

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on Saturday night, March 31, and early morning, April 1, 1956, she sold, served and delivered and permitted the sale, service and delivery of alcoholic beverages to a minor and permitted said minor to consume such beverages in and upon her licensed premises, in violation of Rule 1 of State Regulations No. 20.

Acting upon information obtained from the Northfield Police Department, ABC agents obtained a sworn statement from Joseph --- (19 years of age). Therein Joseph --- says that he and an adult companion entered defendant's premises at about 8:00 p.m., March 31, 1956, and that two minors who had been riding with them remained outside; that he was drinking "Seagram's Seven Whiskey and 7-Up" and had "about fifteen dollars worth of drinks" before he and his adult companion left about 5:00 a.m., April 1, 1956. Joseph --- was unable at a later date to identify the bartender who made the sales.

In alleged mitigation defendant alleges that the sales were made by one of her bartenders because the minor looked older than his 19 years. The ABC agents report that the minor is tall and heavy and definitely looks to be an adult.

Defendant has no prior record. Because of lapse of time, I am disregarding two suspensions for dissimilar violations imposed more than ten years ago when a license for the same premises was held by Joseph Agostini. See Bulletin 506, Item 8. Ordinarily, the sale to a 19-year-old minor, subsequent to January 16, 1956, would result in a suspension for fifteen days (Re Goldere, Bulletin 1110, Item 1). In view of the length of time the minor spent in the premises and the number of drinks he consumed, I would, ordinarily, add five days to the suspension (Re Smith, Bulletin 1097, Item 11). However, since the agents report that the minor definitely looks to be an adult, I shall, under the circumstances of this case, impose a penalty of fifteen days, with five days being remitted for the plea, leaving a net suspension of ten days (Re Goldere, supra).

Accordingly, it is, on this 15th day of May, 1956,

ORDERED that Plenary Retail Consumption License C-72, issued by the Board of Commissioners of the City of Atlantic City to Margaret Agostini, t/a Mardi Gras, for premises 624-26 Pacific Avenue and 101 S. New Jersey Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days, commencing at 7:00 a.m. May 21, 1956, and terminating at 7:00 a.m. May 31, 1956.

WILLIAM HOWE DAVIS
Director.

12. DISQUALIFICATION - FALSE ANSWER IN QUESTIONNAIRE - APPLICATION TO LIFT DISQUALIFICATION GRANTED EFFECTIVE 90 DAYS AFTER FILING PETITION HEREIN.

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. 1278.)
-----))

BY THE DIRECTOR:

According to the testimony of petitioner he first ran afoul of the law "in the early 30's" when he was apprehended in another state and charged with assault and battery. The Federal and State fingerprint returns disclose that he received a sentence of two years as a result of the above crime. Petitioner contends, however, that he was held in custody by the law enforcement authorities for twenty months without trial and then released. On October 10, 1938 petitioner, after pleading guilty to a violation of the Internal Revenue Laws, was sentenced to six months in a county jail, being released therefrom on March 1, 1939. On January 2, 1943 petitioner after again pleading guilty to violation of the Internal Revenue Laws received a sentence of nine months in prison, the operation of which was suspended and in lieu thereof petitioner was placed on probation for a period of two years. On February 5, 1947 petitioner after pleading non vult to the crime of atrocious assault and battery with intent to kill was sentenced to State Prison for a period of four to six years, being released on parole on October 21, 1949.

The crime of atrocious assault and battery with intent to kill involves the element of moral turpitude. (Re Case No. 502, Bulletin 582, Item 5). Hence, petitioner's aforesaid conviction necessarily disqualifies him from engaging or being employed in the alcoholic beverage industry in any capacity in this State. R. S. 33:1-25, 26. It is unnecessary here to determine whether any of petitioner's other convictions involve the element of moral turpitude.

At the hearing petitioner produced three witnesses (two businessmen and a former businessman who is presently unemployed) who testified that they have known him six or more years and that he bears a good reputation for being a law-abiding person in the community in which he resides. The Police Department of the municipality wherein petitioner lives has advised this Division that no complaint or investigation involving petitioner is presently pending.

In seeking a removal of his disqualification, petitioner reveals that he was employed from December 1950 until March 27, 1956 as a platform man for a trucking company which holds a

transportation license to transport alcoholic beverages. Petitioner admits that in 1951 he executed, under oath, a questionnaire which was then filed with this Division wherein he denied ever having been convicted of any crime. In the present proceedings petitioner, when asked why he failed to divulge his criminal record, answered "Well, the foreman that was there at the time, when he hands you the form to fill out, he said, 'Now, if you have ever been convicted, you had better not put it on because you would be laid off. It is not much important that you put it on.' So I didn't put it on there, and at that time I was on parole from Trenton, see, and I definitely didn't want to be laid off. I must keep a job and that was what I was trying to do."

Petitioner further claims in the instant proceedings that during all the time he was employed as a platform man for the company holding a liquor transportation license he was unaware that because of his criminal record he was statutorily disqualified from continuing such employment. In view of his false answer in the questionnaire and the reason given therefor, I can hardly accept his plea of ignorance of his disqualification.

Considering petitioner's rather lengthy criminal record as outlined above, as well as the falsification of the questionnaire, I shall deny his request for removal of his disqualification at this time. I shall, however, grant his petition but shall withhold relief until ninety days after April 5, 1956, the date upon which his petition was filed with this Division. Re Case No. 1242, Bulletin 1087, Item 10.

Accordingly, it is, on this 16th day of May, 1956,

ORDERED that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2, effective July 4, 1956.



William Howe Davis
Director.