

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1594

December 31, 1964

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Atlantic City) - SOLICITATION FOR PROSTITUTION - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - HOSTESS ACTIVITY - LICENSE SUSPENDED FOR 125 DAYS, LESS 5 FOR PLEA - SUSPENSION LIFTED 6 DAYS.
2. APPELLATE DECISIONS - OLD MILL TAVERN, INC. v. BLOOMINGDALE.
3. DISCIPLINARY PROCEEDINGS (Kearny) - HOSTESS ACTIVITY - FALSE STATEMENT IN APPLICATION FOR LICENSE - PRIOR DIS-SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS.
4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - MOTOR VEHICLE RETURNED TO INNOCENT OWNER - ILLICIT ALCOHOL ORDERED FORFEITED.
5. DISQUALIFICATION REMOVAL PROCEEDINGS - MAINTAINING GAMBLING PLACE - DISCIPLINARY RECORD AS LICENSEE CONSIDERED AS NOT LAW-ABIDING - ORDER DISMISSING PETITION.
6. DISCIPLINARY PROCEEDINGS (North Brunswick Township) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Monroe Township - Middlesex County) - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Deptford Township) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Roxbury Township) - PIN BALL MACHINES - PRIOR DISSIMILAR RECORD OF STOCKHOLDERS AS INDIVIDUAL LICENSEES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
10. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 1594

December 31, 1964

1. DISCIPLINARY PROCEEDINGS - SOLICITATION FOR PROSTITUTION - LEWD-
NESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - HOSTESS
ACTIVITY - LICENSE SUSPENDED FOR 125 DAYS, LESS 5 FOR PLEA -
SUSPENSION LIFTED 6 DAYS.

In the Matter of Disciplinary)
Proceedings against)

NICHOLAS TALVACCHIA)
t/a TALLY'S BAR)
112 S. Georgia Avenue)
Atlantic City, N.J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-138 for the 1963-64 license)
year and C-218 for the 1964-65 license)
year, issued by the Board of Commis-)
sioners of the City of Atlantic City.)

James F. McGovern, Jr., Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on April 4, April 11-12 and April 28-29, 1964, he permitted solicitation for prostitution on the licensed premises, in violation of Rule 5 of State Regulation No. 20, (2) on April 28-29, 1964, he permitted indecent entertainment (strip tease, aggravated by indecent acts of entertainers on stage and off stage involving male patrons), in violation of Rule 5 of State Regulation No. 20, and (3) on April 28-29, 1964, he permitted hostess activity (female entertainers drinking at the expense of male patrons), in violation of Rule 22 of State Regulation No. 20.

Licensee has a previous record of suspension of license then held for premises 147 South Texas Avenue, Atlantic City, by the municipal issuing authority for ten days effective May 9, 1949, for sale to minors.

The prior record of suspension for dissimilar violation disregarded because occurring more than five years ago, the license will be suspended on the first charge for sixty days (Re Lemongelli, Bulletin 1580, Item 4), on the second charge for forty-five days (Re Schillig, Bulletin 1496, Item 5) and on the third charge for twenty days (Re S.M.S. Corp., Bulletin 1569, Item 15), or a total of one hundred twenty-five days, with remission of five days for the plea entered, leaving a net suspension of one hundred twenty days.

In connection with the entry of the plea, the licensee requested prompt imposition of penalty but also requested that the effect of any suspension imposed be lifted for the period January 3, 1965 through January 8, 1965, to permit the conduct of a previously arranged social affair at which alcoholic beverages will be served

on the licensed premises. Had the request been made after the penalty had been imposed, it would normally have been granted. For good cause appearing, I shall grant the request made in advance. Cf. Re Short Hills Club, Bulletin 1516, Item 7.

Accordingly, it is, on this 29th day of October, 1964,

ORDERED that Plenary Retail Consumption License C-218, issued by the Board of Commissioners of the City of Atlantic City to Nicholas Talvacchia, t/a Tally's Bar, for premises 112 South Georgia Avenue, Atlantic City, be and the same is hereby suspended for one hundred twenty (120) days, commencing at 7:00 a.m. Monday, November 2, 1964, and terminating at 7:00 a.m. Sunday, January 3, 1965, and again commencing at 7:00 a.m. Saturday, January 9, 1965, and terminating at 7:00 a.m. Monday, March 8, 1965.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - OLD MILL TAVERN, INC. v. BLOOMINGDALE.

Old Mill Tavern, Inc.,)	
Appellant,)	On Appeal
v.)	CONCLUSIONS
)	AND ORDER
Mayor and Council of the)	
Borough of Bloomingdale,)	
Respondent.)	

Marcus Mandelbaum, Esq., Attorney for Appellant
McDonald, Podesta & Myers, Esqs., by Charles J. Myers, Esq.,
Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent denying a person-to-person transfer of a plenary retail consumption license for the 1963-64 licensing period from Kenneth H. Sheets to Old Mill Tavern, Inc. for premises 152 Hamburg Turnpike, Bloomingdale.

Appellant contends in its amended petition of appeal that the action of respondent was erroneous and should be reversed for the following reason:

"The Appellant or any of its stockholders or officers were not charged or found guilty of any action involving moral turpitude or any crime under the laws of the State of New Jersey, but one in violation of a local ordinance of the Borough of Bloomingdale, which violation was in no manner a crime under the laws of this state or one involving moral turpitude."

Respondent in its answer states that the transfer in question was denied after a hearing was held wherein inquiry was made "into the circumstances of the transfer and the character, reputation and background of the parties involved."

It appears that Kenneth H. Sheets is president and Ann Marion is secretary of appellant corporation, each holding five shares of the ten shares of capital stock issued and outstanding. It further appears that on April 22, 1964, both Kenneth H. Sheets and Ann Marion were adjudged disorderly persons in the municipal court under and by virtue of a municipal ordinance, each being fined \$50. The convictions resulted from an attack by them on the person of Geraldine E. Sheets (wife of Kenneth H. Sheets).

The only question to be determined in the instant appeal is whether or not, under the circumstances presented herein, the two persons in question, who are officers and majority stockholders of appellant corporation, are proper persons to be entrusted with a liquor license in this state. No one is entitled to a license to sell alcoholic beverages as a matter of right. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). Nor is there any inherent right to transfer such license to other persons or premises. The issuing authority, in the exercise of its discretion, may grant or deny such transfer. If denied on reasonable grounds, its action will be affirmed. Castro and Rodrigues v. Newark, Bulletin 1054, Item 2, and cases cited therein.

Concededly, Kenneth H. Sheets and Ann Marion are not mandatorily disqualified by their record. As to their convictions for disorderly conduct (which do not constitute convictions of "crime"), see Sudol v. Wallington, Bulletin 276, Item 7.

It is contended that the record of Kenneth H. Sheets and Ann Marion justified respondent's determination of their unfitness as a reasonable exercise of its discretion. This contention, normally carrying great weight, is without merit in the instant case because respondent granted to Kenneth H. Sheets a renewal of his license at 152 Hamburg Turnpike for the current licensing period despite the fact that he had been adjudged a disorderly person. Thus it is apparent that respondent considered the conviction of Sheets as not too serious. Ann Marion was convicted of an identical offense. Certainly, if his conviction was not considered disqualifying, her conviction for the same offense could not be considered as disqualifying her.

Attorney for respondent, in his summation, commented on the fact that the license held in the sole name of Kenneth H. Sheets was renewed but argued that the denial of the transfer to appellant was proper because the local issuing authority was of the opinion that if Mr. Sheets individually operated the business, no difficulty would ensue. However, a combination, as he expressed it, of the personalities of both Sheets and Ann Marion and the existing marital difficulties between Sheets and his wife would, in all probability, give rise to an objectionable joint venture under the corporate set-up.

This is merely conjecture on the part of respondent and is not sufficient reason to disapprove the person-to-person transfer of the license. I might comment that the present marital difficulty between Sheets and his wife is strictly a private affair to be determined by the parties themselves or, if necessary, by the civil courts, and may not be considered by respondent.

The license originally sought to be transferred expired at midnight, June 30, 1964. As aforementioned, Kenneth H. Sheets, during the pendency of this appeal, obtained a renewal of his license for the current licensing year for premises 152 Hamburg Turnpike, which renewal is subject to the ultimate outcome of the appeal. Rule 13 of State Regulation No. 15.

Under the circumstances appearing herein, it is recommended that the action of respondent in denying the person-to-person transfer of license from Kenneth H. Sheets to appellant be reversed and that an order be entered directing the transfer of the license to appellant, in accordance with the application heretofore filed.

Conclusions and Order

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

The attorneys for respondent, at the close of the hearing and in their memorandum filed subsequently thereto, questioned the legality of the appellant corporation, i.e., contending there are only two stockholders and two directors in said corporation.

As to this, it has been the position of the Division since its inception that these are matters governed by the general corporation law (rather than the alcoholic beverage law), which provides penalties for violation thereof and remedies for non-compliance therewith; and hence compliance or non-compliance with the corporation law by liquor licensee corporations, or their legal competence to transact business are matters not within the jurisdiction or cognizance of municipal issuing authorities or the Director of the Division of Alcoholic Beverage Control. In this position I concur.

See, in this connection, the language of Judge Freund, speaking for the Superior Court of New Jersey (Chancery Division) in the case of Cohen v. Miller, 5 N.J. Super. 451, 456:

"The Corporation Act provides for the qualification and election of directors and officers, R.S. 14:7-1 et seq., and for the filing of reports of election, R.S. 14:6-2. The requirements relating to acts to be performed subsequent to incorporation, such as the election of directors, are often construed to be merely directory and are not made by statute conditions precedent to the legal existence of the corporation. Vanneman v. Young, 52 N.J.L. 403 (E. & A. 1890); Frawley v. Tenafly Transportation Co., 95 N.J.L. 405 (E. & A. 1920). Failure to observe such statutory provisions does not, ipso facto, result in forfeiture or dissolution of the corporation. R.S. 14:10-2. Hoboken Bldg. Ass'n. v. Martin, 13 N.J. Eq. 427 (Ch. 1861); Appelton v. American Malting Co., 95 N.J. Eq. 375 (E. & A. 1903)."

I have carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, and concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. I find that the denial of the person-to-person transfer was unreasonable. The action of respondent will therefore be reversed.

The license originally sought to be transferred expired at midnight, June 30, 1964. Kenneth H. Sheets, during the pendency of this appeal, obtained a renewal of his license for the current licensing year for premises 152 Hamburg Turnpike, which renewal is subject to the ultimate outcome of the appeal. Rule 13 of State Regulation No. 15.

Accordingly, it is, on this 27th day of October, 1964,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is directed to transfer the license in accordance with the transfer application heretofore filed by appellant.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - FALSE STATEMENT IN APPLICATION FOR LICENSE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against Club Rio (A Corp.) t/a Club Rio Scout Ave. & Hackensack River Kearny, New Jersey, Holder of Plenary Retail Consumption License C-17, issued by the Mayor and Council of the Town of Kearny.

CONCLUSIONS and ORDER

Samuel Raffaello, Esq., Attorney for Licensee Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On February 19, March 5, 10, 11 and 25, 1964 you allowed, permitted and suffered a female employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.
"2. In your application filed with the Mayor and Council of the Town of Kearny on June 5, 1963 and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question No. 41 which asks: 'Have you or has any person mentioned in this application ever had an interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended or revoked or cancelled? ... If so, state details with respect to each surrender, suspension, revocation or cancellation', whereas in truth and fact plenary retail consumption license held by you for these same premises for the 1961-62 period had been suspended by the Director of Alcoholic Beverage Control for eighty-five (85) days commencing August 21, 1961 on charges of immoral activity and sale of alcoholic beverages during prohibited hours; said false answer, statement, evasion and suppression being in violation of R.S. 33:1-25."

At the hearing herein two ABC agents (hereinafter identified as Agents S and Sc) testified on behalf of the Division.

I shall first consider the testimony of the witnesses with relation to Charge 1. Agent S testified that he visited the licensed premises on "February 19, March 5, March 10 carrying over to the 11th, and March 25, all of 1964;" that on his initial visit on February 19 he entered the premises on the early morning thereof and observed Enrico Capozzi (hereinafter Eddie) tending bar, and also employed on the premises at the time were two fe-

males (a waitress later ascertained to be Emma Pavlisko (hereinafter Emma) and one called "mom" subsequently identified as Eva Gitlin). Agent S's testimony further stated that Emma was "serving the bar area, serving the tables in back, carrying food, general waitress duties;" that, as Emma passed the tables in the barroom, she asked all those persons seated thereat "Who the hell is buying me a drink?"; that on "four different occasions patrons purchased her Seagram's 7 and water for a wash, and this drink cost them forty cents;" that she did obtain the respective drinks from Eddie, carry them over to the persons who had treated her, take "forty cents from the individual" and go back to the bar, make payment therefor to Eddie and then consume the drink.

Agent S further testified that on his next visit on March 5 the same persons as on his prior visit were employed on the premises; that Emma came over and sat next to him at the bar and asked "if I was buying her a drink;" that he (Agent S) agreed to do so and she then ordered "Seagram's 7 and water" from Eddie who, after serving her, took payment from his (Agent S's) money on the bar; that Emma remained in his company for forty-five minutes, during which time she ordered a total of four drinks at his expense; that, prior to the second drink, Eva Gitlin came over to Emma and told her to take off her apron while drinking; that, after Emma left him, he observed that on three occasions she had drinks at the expense of other men.

Agent S further testified that on a visit to licensee's premises on March 10 he saw Emma seated at the bar with a man and drinking at the man's expense; that Emma informed him that a boyfriend was waiting for her outside the premises and, shortly thereafter, she left.

On the last visit, March 25, he and other agents entered the premises at "nine-ten p.m." and he "stationed again around the bar area" and observed Eddie, Eva Gitlin and a man later identified as Robert Gerhardt working on the premises; that on this occasion he saw Emma accept a drink from and at the expense of "different male drivers" after asking each "Are you buying me a drink?"; that Emma came over to him (Agent S) and, when he consented to buy her a drink, she ordered "Seagram's 7 and water" and carried it to where he sat, took forty cents of his money lying on the small bar, and took it over to Eddie; that, during the evening, Emma had nine drinks at the expense of the agents.

Agent S testified that he and Agent Sc inquired of Eddie about Emma's drinking at the expense of patrons, and Eddie remarked that she is a "pretty good drinker;" that, when the agents questioned Emma, she admitted that she drank with and at the expense of patrons.

Agent Sc testified that he was with Agent S in the premises on each occasion set forth in the charge. Furthermore, his testimony was substantially similar to that given by Agent S with reference to the things said and the matters and events which took place at the licensed premises during the investigation then under consideration.

Enrico Capozzi (Eddie) testified that, although on duty as bartender on February 19 and March 5, 1964, he did not recall seeing the agents in the premises but did remember seeing them on March 10 and 25 respectively; that on the dates in question he neither took money from patrons in payment for any drinks given to Emma nor had he ever heard Emma ask any man to buy a drink for her; that he had never served Emma any drinks for her personal consumption while she was working at the premises.

Eva Gitlin testified that she was working on the premises

on the various dates set forth in Charge 1 and, although she watched what went on at the bar, she did not at any time see Emma drinking there.

Eva Gitlin further testified that she remembered saying to Emma "When you drink take your apron off." Because she did not see Emma doing wrong, she made that statement not as a threat but "with Emma you had to caution her all the time, you had to remind her;" that Emma was discharged "for the trouble we got into, that she is supposed to have got us into."

As to Charge 2, an attorney (other than the licensee's attorney herein) testified that he prepared the application dated June 5, 1963, for renewal of the license for the 1963-64 licensing term in which it was falsely stated that the licensee's license had never been suspended. In explanation thereof he testified that he recalled the telephone conversation with Mark Gitlin during which the latter advised him that "there was a violation against the Club Rio" and that was to be inserted in the application for renewal; that he gave the application, along with a copy of the previous year's application, to his secretary who handled this work, and instructed her to make sure to set forth the fact that the license had been suspended; that the secretary had inadvertently omitted to disclose such information. He further testified that he did not check the application before forwarding it to Mark Gitlin at the licensed premises.

Mark Gitlin testified that he is the manager of the licensed premises and remembered giving the attorney instructions "to put in about the eighty-five day violation." He further testified that, although he was not present on any of the dates in question, he had some time previously given instructions to Eddie that Emma was not to drink at the expense of customers and had also told Emma herself (who drank considerably) not to accept drinks but "if they want to leave you a tip just tell them they should leave some money."

I am satisfied after careful examination of all the evidence adduced herein that the agents have truthfully stated what actually occurred on the dates mentioned in Charge 1. A person would have to be naive indeed to believe the testimony of Eddie that he never heard Emma request drinks from patrons or that he never saw her drink at the premises during the time she was actually on duty there. I might also add that the testimony of Eva Gitlin -- that at the time she warned Emma to take her apron off when drinking with men she merely did this as a precaution against her doing so -- is unworthy of belief.

I find as a fact that the licensee is guilty of allowing, permitting and suffering Emma, a female employed on the licensed premises, to accept beverages at the expense of and as a gift from customers and patrons, in violation of Rule 22 of State Regulation No. 20.

I have carefully considered the testimony given by the witnesses for the licensee with reference to the second charge and how important information was omitted in the application for renewal of the license for the 1963-64 term. As above indicated, an attorney testified that he delegated the preparation of the application in question to his secretary and thereafter neglected to examine it before sending it to Mark Gitlin for signature of the proper officer.

Mark Gitlin testified that he received the application

from the attorney but did not check the contents thereof as "the town hall does when we get -- and they did not this time." Furthermore, that he thought he arranged for the notary public to take the affidavit of Louis Stein, vice president, but was sure that said Louis Stein did not read the application. Neither the notary public nor Louis Stein was produced as a witness herein.

Assuming that the testimony given by the two witnesses aforesaid is true, it is not a valid excuse. In Gale v. Newark et al., Bulletin 95, Item 6, wherein a question relating to a licensee's conviction of crime was denied because of alleged advice given in the renewal application, Commissioner Burnett said:

"I don't like these obvious 'outs'. Licensees are to obey the law and make applications which are absolutely true."

In this matter the attorney accused his secretary of failing to set forth the fact that the licensee's license had been previously suspended, and Mark Gitlin attempted to shift the blame for the error to the town hall. Responsibility for truthful statements must remain upon the licensee or, as in this case, the officers of the corporate licensee, and they cannot escape responsibility therefor. However, the misstatement occurred, in fact it was a misstatement, proscribed by the alcoholic beverage law. In any event, the public impact of the violation is the same, regardless of how it occurred. I therefore find the licensee guilty of Charge 2.

Licensee has a prior adjudicated record. Effective August 21, 1961 its license was suspended by the Director for eighty-five days on a charge of permitting lewdness, immoral activities and obscene conduct and language on the licensed premises and also for an "hours" violation. Re Club Rio, Bulletin 1412, Item 4.

Under the circumstances it is recommended that an order be entered finding licensee guilty of both charges. On Charge 1 it is recommended that the license be suspended for twenty days (Re D'Ambola, Bulletin 1494, Item 8); on Charge 2 for ten days (Re Lemongelli, Bulletin 1580, Item 4), and for an additional five days for the previous dissimilar record occurring within the past five years (Re Tarlowe, Bulletin 1580, Item 6), making a total suspension of the license for thirty-five days.

Conclusions and Order

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

Having carefully considered the transcript of the proceedings and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 28th day of October 1964,

ORDERED that Plenary Retail Consumption License C-17, issued by the Mayor and Council of the Town of Kearny to Club Rio (A Corp.), t/a Club Rio, for premises at Scout Ave. & Hackensack River, Kearny, be and the same is hereby suspended for thirty-five (35) days, commencing at 2 a.m. Wednesday, November 4, 1964 and terminating at 2 a.m. Wednesday, December 9, 1964.

JOSEPH P. LORDI
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - MOTOR VEHICLE RETURNED TO INNOCENT OWNER - ILLICIT ALCOHOL ORDERED FORFEITED.

In the Matter of the Seizure) Case No. 11,307
on July 18, 1964 of a pint)
bottle of alcohol and a Chevrolet) On Hearing
sedan on Route 73, in the Borough)
of Berlin, County of Camden and) CONCLUSIONS and ORDER
State of New Jersey.

John Ruffles Thorp, claimant, by Booker T. Washington.
I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, and State Regulation No. 28, to determine whether a pint bottle of alcohol and a Chevrolet sedan, more particularly described in a schedule attached hereto and made part hereof, seized on July 18, 1964 on Route 73, Berlin (Boro), County of Camden and State of New Jersey constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66 Miles Thompson, the owner of the alcohol appeared and stated that he does not oppose its forfeiture.

An appearance was also entered on behalf of John R. Thorp, the owner of the motor vehicle in question who sought the return of the said vehicle.

Reports of ABC agents and other documents in the file presented in evidence with the consent of the claimant reflect the following: At about 4:30 P.M. on Saturday, July 18, 1964, a New Jersey State trooper, while on routine patrol of traffic, stopped the motor vehicle in question on Route 73 in Berlin, for a traffic violation. The car bore North Carolina license plates CZ748 registered in the name of John R. Thorp of Stem Gran County, North Carolina. The vehicle was being driven by one Booker T. Washington, who was accompanied by Dorothy Pagett, Louise Thompson, Miles Thompson and Eugene McClellon. The trooper observed a pint bottle of alcohol protruding from a trouser pocket of Miles Thompson. This bottle did not have affixed to it any stamp indicating payment of taxes.

The trooper took possession of the pint bottle of alcohol and the motor vehicle, seizure of both of which were thereafter adopted by agents of this Division.

On June 23, 1964 the content of said pint bottle was analyzed by the Division chemist who reports that it is an alcoholic beverage fit for beverage purposes, with an alcoholic content by volume of 43.6%.

The seized alcohol is illicit because of the absence of a tax stamp on the said bottle. R.S. 33:1-1(i); R.S. 33:1-88. Such illicit alcohol and the Chevrolet sedan in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

At the hearing herein, Booker T. Washington, a Philadelphia resident, appeared on behalf of his half-brother, John R. Thorp,

the registered owner of the said motor vehicle and stated that he is authorized to represent him on this claim. He explained that his brother is unable to read or write and therefore, did not fully comprehend a notice sent to him by this Division informing him of the hearing and of the requirement that he personally appear, and was actually required to remain at his farm since this was harvest time.

With respect to the vehicle involved herein, he gave the following story: He visited his brother in North Carolina in the early part of July and on his trip there the transmission of his automobile was defective and needed repair. He was unable to use it and borrowed his brother's motor vehicle, the one herein seized, so that he could ride back and use it during his own employment.

On the date in question, he, his wife, Miles Thompson and another woman drove to Lawnside, New Jersey on a pleasure ride and while there bought barbecued sandwiches and corn on the cob. Without his knowledge, Miles Thompson purchased the seized bottle of alcohol from a vendor and put it in his pocket. The first he knew about the said whiskey was when the same was confiscated by the State Trooper.

He insists that this motor vehicle was never used for the transportation of alcoholic beverages at any time to his knowledge. Certificate of title, together with a letter of authorization from his brother were introduced into evidence.

Miles Thompson testifying on behalf of the claimant, substantially corroborated the version given by Washington. He stated that he had been standing outside the Cotton Club in Lawnside when some person offered to sell him this pint of "moonshine" whiskey. He paid \$2.00, "took a little taste of it" and then stuck it in his pocket. He did not tell Washington of the purchase nor did Washington know that he had the whiskey in his possession at any time prior to their being apprehended by the State Trooper.

From the proofs in this case, there is nothing that would indicate or suggest knowledge of the presence of "moonshine" whiskey in the motor vehicle on the part of the claimant or his agent. The version given by Washington and corroborated by Thompson appears to be forthright and credible. I am satisfied from the evidence presented that claimant, through his agent, acted in good faith and did not know or have any reason to suspect that Thompson would transport the said illicit alcohol in his motor vehicle and that he would possess such illicit alcohol. I, therefore, shall grant the request for the return to him of the seized motor vehicle. Seizure Case No. 10,157, Bulletin 1336, Item 6; Seizure Case No. 10,584, Bulletin 1419, Item 2. Because of the facts and circumstances in this case, costs of seizure and storage are waived.

Accordingly, it is on this 29th day of October, 1964,

DETERMINED and ORDERED that the said motor vehicle shall be returned to John R. Thorp; and it is further

DETERMINED and ORDERED that the said alcoholic beverages, more fully described in Scheduled "A", attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provision of R.S. 33:1-66 and shall 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.

JOSEPH P. LORDI
DIRECTOR

SCHEDULE "A"

- 1 - pint bottle of alleged alcohol
- 1 - 1953 Chevrolet sedan, Serial No. C-53B156825, North Carolina Registration CZ748.

5. DISQUALIFICATION REMOVAL PROCEEDINGS - MAINTAINING GAMBLING PLACE - DISCIPLINARY RECORD AS LICENSEE CONSIDERED AS NOT LAW-ABIDING - ORDER DISMISSING PETITION.

In the Matter of an Application to Remove Disqualification be- cause of a Conviction, Pursuant to R.S. 33:1-31.2)	
)	CONCLUSIONS
)	and
)	ORDER

Case No. 1859

BY THE DIRECTOR:

Petitioner's criminal record discloses that on December 28, 1934, following a plea of guilty in the Middlesex County Court to a charge of maintaining a gambling place (accepting bets on horse races), he was fined \$1,000 and placed on probation. Since the crime of which the petitioner was convicted involves the element of moral turpitude, he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein petitioner testified that his date of birth is June 30, 1901; that he is married and living with his wife; that for the past thirty years he has resided at his present address; that since June 1964 he has been employed as a bartender by a licensee; that until recently, when notified by an agent of this Division, he had no knowledge of his ineligibility for such employment; that between 1938 and 1956 he was the individual holder of a plenary retail consumption license; that between 1956 and 1962 the license was held by him and his wife as partners; that in 1962 the municipal issuing authority refused to renew the license; that for a period of two years (between 1962 and 1964) he was unemployed, and that he and his wife lived on monies borrowed on their policies and from the proceeds of a mortgage which they placed on their home.

Petitioner further testified that his first application for a license (1938) was prepared by his attorney; that he had fully informed his attorney of the details of his aforesaid conviction; that in this application and in each renewal thereof he admitted that in 1934 or 1935 he had been convicted of a crime in New Brunswick and added thereto the following: "moral turpitude not involved;" that he did not disclose the nature of the crime in question, and that no member of the municipal issuing authority or the municipal clerk questioned him about his conviction.

Petitioner further testified he is asking for the removal of his disqualification to be free to continue his present employment; that he has no other means of earning a livelihood, and that ever since his conviction on December 28, 1934, he has not been convicted of any crime or arrested.

The Police Department of the municipality wherein the petitioner resides reports that there are no complaints or investigations presently pending against the petitioner.

Petitioner produced three character witnesses (a printer, a watchman and a retired tool attendant) who testified that they have known the petitioner for more than five years last past and in their opinion he is now an honest, law-abiding person with a good reputation.

The records of this Division disclose that effective February 24, 1947 his license was suspended by the then Commissioner for sixty days for possession of illicit alcoholic beverages; that effective July 7, 1954 his license was suspended for twelve days by the municipal issuing authority for sale to a minor, which suspension was affirmed on appeal to this Division; that effective July 19, 1954 his license was suspended by the Director for twenty-five days for indecent entertainment and hostess activity; that effective June 21, 1962 the license in question (then held by the petitioner and his wife) was suspended by the Director for seventy-five days (sixty days on a nuisance charge, permitting homosexuals on licensed premises on eight various days, and fifteen days for sales after hours). Bulletin 1466, Item 1.

It further appears that on June 28, 1962 the municipal issuing authority denied an application for a renewal of said license; that on November 7, 1962, on appeal to this Division, the Director affirmed the action of the municipal issuing authority and dismissed the appeal. Bulletin 1487, Item 4. On May 3, 1963, on appeal to the Appellate Division of the Superior Court, the Director's decision was affirmed. Bulletin 1519, Item 1.

To afford petitioner the relief requested it is necessary that I find that he has been conducting himself in a law-abiding manner for five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest. See R.S. 33:1-31.2.

While more than five years have elapsed since his criminal conviction in 1934, I am not satisfied, by reason of his record as a licensee, that he has conducted himself in a law-abiding manner during the last five years, nor am I satisfied that his continued association with the alcoholic beverage industry will not be contrary to the public interest. Cf. Re Case No. 225, Bulletin 597, Item 7.

Accordingly, it is, on this 4th day of November 1964,

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

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Livingston Tavern, Inc. 909 Livingston Avenue North Brunswick Township PO New Brunswick, N. J. Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of North Brunswick

CONCLUSIONS and ORDER

Licensee, by Gertrude Tamburino, President, Pro se. Morton B. Zemel, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 21, 1964, it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for six days effective January 7, 1956, for sale during prohibited hours, and by the Director for ten days effective June 20, 1961, for sale on election day. Re Livingston Tavern, Inc., Bulletin 1402, Item 8.

The prior record of suspension of license in 1956 for dissimilar violation disregarded because occurring more than five years ago but the prior record of suspension for dissimilar violation in 1961 considered, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Wrzesniewski, Bulletin 1567, Item 7.

Accordingly, it is, on this 2d day of November, 1964,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of North Brunswick to Livingston Tavern, Inc. for premises 909 Livingston Avenue, North Brunswick, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, November 9, 1964, and terminating at 2:00 a.m. Thursday, November 19, 1964.

JOSEPH P. LORDI DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Thomas Damasco
t/a "Tom's Liquor Store"
45 Helmetta Road
Monroe Township
PO Jamesburg, New Jersey,

)
)
) CONCLUSIONS
) AND
) ORDER
)
)

Holder of Plenary Retail Distribution License D-3, issued by the Township Committee of the Township of Monroe, County of Middlesex.

Licensee, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on October 3, 1964, he sold two six-packs of beer and a half-pint of liqueur to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Brunswick Grove, Inc., Bulletin 1561, Item 7.

Accordingly, it is, on this 2nd day of November 1964,

ORDERED that Plenary Retail Distribution License D-3, issued by the Township Committee of the Township of Monroe, County of Middlesex, to Thomas Damasco, t/a "Tom's Liquor Store," for premises 45 Helmetta Road, Monroe Township, be and the same is hereby suspended for ten (10) day, commencing at 9 a.m. Monday, November 9, 1964, and terminating at 9 a.m. Thursday, November 19, 1964.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary)
Proceedings against)
Peter P. McEvoy)
t/a "Tall Pines Inn")
Woodbury-Glassboro Road &)
Salina Road)
Deptford Township)
PO RD Sewell, N. J.)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption)
License C-2, issued by the Township)
Committee of the Township of Deptford)

Joseph Wm. Cowgill, Esq., Attorney for Licensee
Morton B. Zemel, Esq., Appearing for the Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
May 18, 1964, he possessed alcoholic beverages in one bottle
bearing a label which did not truly describe its contents, in
violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for
ten days, with remission of five days for the plea entered, leaving
a net suspension of five days. Re Six Steps Down, Inc., Bulletin
1572, Item 5.

Accordingly, it is, on this 2nd day of November 1964,

ORDERED that Plenary Retail Consumption License C-2,
issued by the Township Committee of the Township of Deptford to
Peter P. McEvoy, t/a "Tall Pines Inn", for premises Woodbury-
Glassboro Road & Salina Road, Deptford Township, be and the same
is hereby suspended for five (5) days, commencing at 2 a.m.
Monday, November 9, 1964, and terminating at 2 a.m. Saturday,
November 14, 1964.

JOSEPH P. LORDI
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - PIN BALL MACHINES - PRIOR DISSIMILAR RECORD OF STOCKHOLDERS AS INDIVIDUAL LICENSEES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Triple Lake Ranch, Inc.)
1 Main Street)
Roxbury Township)
PO Succasunna, N. J.)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Roxbury)

Licensee, by Eli Gaynor, President Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 31, 1964, it permitted three pin ball machines on its licensed premises, in violation of Rule 7 of State Regulation No. 20.

Although the licensee has no previous record of suspension of license, the license then held for the same premises by Eli and Janice Gaynor (Eli Gaynor being president and 50% stockholder and Janice Gaynor being vice-president and 49% stockholder of the licensee corporation) was suspended by the municipal issuing authority for ten days effective January 8, 1962, for sale to minors.

The prior record of suspension of license of Eli and Janice Gaynor for dissimilar violation within the past five years considered (Re Maple Hotel, Inc., Bulletin 1583, Item 8), the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Union News New Jersey Service Corp., Bulletin 1580, Item 8.

Accordingly, it is, on this 9th day of November, 1964,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Roxbury to Triple Lake Ranch, Inc. for premises 1 Main Street, Roxbury Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, November 16, 1964, and terminating at 2 a.m. Thursday, November 26, 1964.

JOSEPH P. LORDI
DIRECTOR


10. STATE LICENSES - NEW APPLICATIONS FILED.

Don Q Imports, Inc.
528 Pan American Bank Building
Miami, Florida

Application filed December 22, 1964 for Plenary Wholesale license.

Gallo Wine Sales of New Jersey, Inc.
520 Division Street
Elizabeth, New Jersey

Application filed December 28, 1964 for place-to-place transfer of Wine Wholesale License WW-5 from 85 Empire Street, Newark, New Jersey


Joseph P. Lordi
Director