

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

BULLETIN 955

FEBRUARY 4, 1953.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - LAURENCE HARBOR AMUSEMENT CORPORATION
v. TOWNSHIP OF MADISON (MIDDLESEX CO.).
2. DISCIPLINARY PROCEEDINGS (Hoboken) - FALSE STATEMENTS IN
APPLICATION - AIDING AND ABETTING NONRESIDENT TO HOLD MORE
THAN 10% OF STOCK OF CORPORATION HOLDING RETAIL LICENSE -
EMPLOYING UNQUALIFIED PERSONS - ILLEGAL SITUATION NOT
CORRECTED - LICENSE SUSPENDED FOR BALANCE OF TERM WITH
LEAVE TO APPLY TO LIFT SUSPENSION AFTER 40 DAYS, IF SITU-
ATION CORRECTED.
3. DISCIPLINARY PROCEEDINGS (Elizabeth) - GAMBLING - LOTTERY -
HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED
FOR 40 DAYS.
4. DISCIPLINARY PROCEEDINGS (Newark) - FALSE STATEMENT IN
APPLICATION AS TO AMOUNT OF STOCK OWNED BY NONRESIDENT -
SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS.
5. DISCIPLINARY PROCEEDINGS (Egg Harbor Township) - GAMBLING -
LICENSE SUSPENDED FOR 20 DAYS LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Wayne Township) - ALLOWING
LICENSED PREMISES TO BE USED IN CONNECTION WITH ILLEGAL
ACTIVITY (SLOT MACHINES) RESULTING IN A CONVICTION IN
CRIMINAL PROCEEDINGS - PRIOR RECORD - LICENSE SUSPENDED
FOR 15 DAYS LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Wayne Township) - ORDER POST-
PONING EFFECTIVE DATES OF SUSPENSION.
8. DISCIPLINARY PROCEEDINGS (Jersey City) - ILLICIT LIQUOR -
LICENSE SUSPENDED FOR 15 DAYS LESS 5 FOR PLEA.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5800 S. UNIVERSITY AVENUE
CHICAGO, ILLINOIS 60637

MEMORANDUM FOR THE RECORD

RESEARCH REPORT

1. *[Faint, illegible text]*

2. *[Faint, illegible text]*

3. *[Faint, illegible text]*

4. *[Faint, illegible text]*

5. *[Faint, illegible text]*

6. *[Faint, illegible text]*

7. *[Faint, illegible text]*

8. *[Faint, illegible text]*

9. *[Faint, illegible text]*

10. *[Faint, illegible text]*

11. *[Faint, illegible text]*

12. *[Faint, illegible text]*

13. *[Faint, illegible text]*

14. *[Faint, illegible text]*

15. *[Faint, illegible text]*

16. *[Faint, illegible text]*

17. *[Faint, illegible text]*

18. *[Faint, illegible text]*

19. *[Faint, illegible text]*

20. *[Faint, illegible text]*

21. *[Faint, illegible text]*

22. *[Faint, illegible text]*

23. *[Faint, illegible text]*

24. *[Faint, illegible text]*

25. *[Faint, illegible text]*

26. *[Faint, illegible text]*

27. *[Faint, illegible text]*

28. *[Faint, illegible text]*

29. *[Faint, illegible text]*

30. *[Faint, illegible text]*

31. *[Faint, illegible text]*

32. *[Faint, illegible text]*

33. *[Faint, illegible text]*

34. *[Faint, illegible text]*

35. *[Faint, illegible text]*

36. *[Faint, illegible text]*

37. *[Faint, illegible text]*

38. *[Faint, illegible text]*

39. *[Faint, illegible text]*

40. *[Faint, illegible text]*

41. *[Faint, illegible text]*

42. *[Faint, illegible text]*

43. *[Faint, illegible text]*

44. *[Faint, illegible text]*

45. *[Faint, illegible text]*

46. *[Faint, illegible text]*

47. *[Faint, illegible text]*

48. *[Faint, illegible text]*

49. *[Faint, illegible text]*

50. *[Faint, illegible text]*

51. *[Faint, illegible text]*

52. *[Faint, illegible text]*

53. *[Faint, illegible text]*

54. *[Faint, illegible text]*

55. *[Faint, illegible text]*

56. *[Faint, illegible text]*

57. *[Faint, illegible text]*

58. *[Faint, illegible text]*

59. *[Faint, illegible text]*

60. *[Faint, illegible text]*

61. *[Faint, illegible text]*

62. *[Faint, illegible text]*

63. *[Faint, illegible text]*

64. *[Faint, illegible text]*

65. *[Faint, illegible text]*

66. *[Faint, illegible text]*

67. *[Faint, illegible text]*

68. *[Faint, illegible text]*

69. *[Faint, illegible text]*

70. *[Faint, illegible text]*

71. *[Faint, illegible text]*

72. *[Faint, illegible text]*

73. *[Faint, illegible text]*

74. *[Faint, illegible text]*

75. *[Faint, illegible text]*

76. *[Faint, illegible text]*

77. *[Faint, illegible text]*

78. *[Faint, illegible text]*

79. *[Faint, illegible text]*

80. *[Faint, illegible text]*

81. *[Faint, illegible text]*

82. *[Faint, illegible text]*

83. *[Faint, illegible text]*

84. *[Faint, illegible text]*

85. *[Faint, illegible text]*

86. *[Faint, illegible text]*

87. *[Faint, illegible text]*

88. *[Faint, illegible text]*

89. *[Faint, illegible text]*

90. *[Faint, illegible text]*

91. *[Faint, illegible text]*

92. *[Faint, illegible text]*

93. *[Faint, illegible text]*

94. *[Faint, illegible text]*

95. *[Faint, illegible text]*

96. *[Faint, illegible text]*

97. *[Faint, illegible text]*

98. *[Faint, illegible text]*

99. *[Faint, illegible text]*

100. *[Faint, illegible text]*

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

BULLETIN 955

FEBRUARY 4, 1953.

1. APPELLATE DECISIONS - LAURENCE HARBOR AMUSEMENT CORPORATION
v. TOWNSHIP OF MADISON (MIDDLESEX COUNTY)

LAURENCE HARBOR AMUSEMENT)
CORPORATION)
t/a LAURENCE HARBOR AMUSEMENT)
CORPORATION)

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWN-)
SHIP OF MADISON (MIDDLESEX CO.))

Respondent.)

ON APPEAL

CONCLUSIONS AND ORDER

J. Richard Kafes, Esq., Attorney for Appellant.
Morris Roth, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from an order entered by respondent on October 2, 1952, whereby it suspended appellant's plenary retail consumption license for twenty days, effective May 15, 1953 at 7:00 a.m.; after finding appellant guilty of sale, service and delivery of an alcoholic beverage to a minor and permitting the consumption of such beverage by said minor in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

Appellant contended that respondent's action was erroneous for the following reasons:

"A. The Judgment of guilt was against the weight of the evidence and was based upon prejudice against appellant.

"B. The penalty imposed upon appellant was unreasonable and unduly oppressive."

Appellant prays that respondent's action "be reversed and/or that the penalty prescribed be modified".

Respondent, in its answer, denied that its action was erroneous and asserted that its verdict was based on the evidence and not upon prejudice.

At the hearing herein, the minor, Richard S. ---, seventeen years of age, testified that, on the night of July 26, 1952 he was in the barroom of defendant's licensed premises between 9:15 or 9:30 p.m. and 10:00 p.m.; that he entered alone but joined three other young men at the bar; that he stood behind them but stepped up to the bar to order beer; that when one of his companions ordered four "beers" he called out to the bartender (whom he identified) "make it eight"; that the bartender placed eight small bottles (nips) of Foxhead beer on the bar in front of him and his companions; that he put \$1.20 on the bar which was picked up by the bartender; that he (the minor) then picked up one of the bottles of beer and stepped back from the bar where he consumed a portion of the beer from the bottle, after which one of the ABC agents took the unconsumed portion from him.

Three ABC agents also testified. All substantially corroborated the testimony of the minor with respect to the sale of beer to said minor by the bartender on the night in question and the consumption by the minor of a portion of that beer. All admitted that the barroom was "crowded" and that the patrons were two or three deep at the bar. It was stipulated that the contents of the bottle seized by the agent from the minor contained beer and that it was an alcoholic beverage within the meaning of the Alcoholic Beverage Law (R. S. 33:1-1b). The agents also testified that they saw the minor drinking from another bottle of beer before he ordered the eight bottles but denied any knowledge of how the minor came into possession of said first bottle of beer.

Apparently through a misunderstanding as to the date of the hearing herein, no witnesses appeared for appellant on the day scheduled for the hearing. On the day to which the hearing was continued appellant rested without calling any witnesses.

Over objection by appellant's attorney, Mayor Arrowsmith testified (at the continued hearing) with respect to respondent's decision and its reasons for selecting May 15, 1953 as the date for the commencement of the suspension. He testified that he believed, from the evidence adduced at the hearing before respondent, that defendant was guilty and that the suspension had been made effective in the spring of 1953 because "...that is when the business starts and we feel it wouldn't actually punish the licensee enough if it was given now when it is only a seasonal business, or he might be closed altogether for the winter months". He further testified as follows: "Well, this tavern more or less does a better business during the summer months when more people are down there at the beach for the summer. During the winter, why, there is not too much business around in these taverns, some of them, which this is one of them. And I felt as though the penalty wouldn't be strong enough if it was imposed on them now". While he admitted that he did not know exactly when defendant closed during the winter he testified that "This particular tavern has been closed in the past during parts of the winter months". At another point he testified, "I wouldn't say the full winter months, but it has been closed part time during the winter months". Upon being questioned as to whether or not respondent considered the fact that the suspension would include Memorial Day (May 30th) he answered in the affirmative. He further testified that he did not think the suspension should be made to include Independence Day (July 4th) saying "I didn't feel it should be that severe to pick on the Fourth of July", but also admitted that, because July 4th would be in another licensing year, respondent had been advised that it "couldn't carry it over beyond the licensing period...."

This testimony was entirely competent and material and was properly admitted, particularly since appellant itself in its petition of appeal charged that the decision of the respondent was the result of "prejudice" and that the penalty was "unreasonable and unduly oppressive".

Appeals to the Director from action of the local issuing authority are heard de novo and the burden of establishing that the action of such issuing authority was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15; Neu v. Irvington, Bulletin 923, Item 3.

With respect to appellant's contention that respondent's "judgment of guilt" was against the weight of the evidence, I find that the evidence adduced at the hearing on this appeal amply

warrants the finding of guilt. In addition, I deem it significant that appellant produced no witnesses to deny the charge.

Appellant claims that the respondent's "judgment of guilt" was based upon prejudice against appellant. Improper motivation on the part of public officials may not be presumed. It must be established by direct proof or proof of circumstances from which it may reasonably be inferred. There is no such proof here.

Appellant has failed to sustain the burden of establishing that respondent's finding of guilt was erroneous.

The only point remaining is the question of whether the penalty imposed (a twenty-day suspension of license effective May 15, 1953) was unreasonable and unduly oppressive. "It is well settled that the penalty imposed following a local disciplinary proceeding, in the first instance, within reasonable limitations, rests within the sound discretion of the municipal issuing authority. The power of the State Commissioner (now Director) to reduce a penalty on appeal should be exercised only in those cases where the penalty imposed is manifestly unreasonable and clearly excessive. Dzieman v. Paterson, Bulletin 233, Item 10; Schmidt v. Morristown, Bulletin 457, Item 7; Gene's Pizzeria, 644 Inc. et al. v. Bayonne, Bulletin 510, Item 11; Creston Holding Company v. Belleville, Bulletin 544, Item 2; Ruoff v. Gloucester, Bulletin 749, Item 1." Holzberg v. Orange, Bulletin 872, Item 11.

With respect to the length of the suspension the "crowded" condition of the barroom on the night in question was advanced by appellant as an alleged mitigating circumstance to be considered in determining the quantum of penalty. This contention is without merit. The licensee's responsibility properly to supervise his licensed premises and his liability for violations occurring thereon is the same whether his business be large or small. Re Frank Dailey's Meadowbrook, Inc., Bulletin 769, Item 6. It may be noted, by way of comparison, that the minimum suspension imposed by the Director in similar cases involving sale of alcoholic beverages to a seventeen-year-old minor is fifteen days. However, such minimum penalty policy of the Director does not preclude a more severe penalty if, in the opinion of the local issuing authority, a more severe penalty is warranted.

With respect to the period covered by the suspension, i.e., May 15, 1953, through June 3, 1953, which period includes the Memorial Day holiday, here again the matter rests within the sound discretion of the local issuing authority, in the first instance. On the record before me I cannot find that the inclusion of a holiday in the period of suspension renders the penalty unreasonable or unduly oppressive nor is there any other indication that the respondent was either arbitrary or unreasonable in imposing the penalty in question.

The action of respondent will be affirmed, the present appeal will be dismissed and the twenty-day suspension originally imposed will be reinstated.

Accordingly, it is, on this 21st day of January 1953,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal be and the same is hereby dismissed; and it is further

ORDERED that the twenty-day suspension by respondent of appellant's plenary retail consumption license C-17, for premises Beach Front, Madison (Twp.), be and the same is hereby restored to commence at 7 a.m., May 15, 1953 and terminate at 7 a.m., June 4, 1953.

DOMINIC A. CAVICCHIA
Director

- 2. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATION - AIDING AND ABETTING NONRESIDENT TO HOLD MORE THAN 10% OF STOCK OF CORPORATION HOLDING RETAIL LICENSE - EMPLOYING UNQUALIFIED PERSONS - ILLEGAL SITUATION NOT CORRECTED - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY TO LIFT SUSPENSION AFTER 40 DAYS, IF SITUATION CORRECTED.

In the Matter of Disciplinary)
Proceedings against)

VILLA ROMA HOBOKEN (A CORP.),)
223 Washington Street,)
Hoboken, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-211, issued by the)
Board of Commissioners of the)
City of Hoboken.)

Henry J. Camby, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The following charges were preferred against defendant:

"1. In your application dated June 5, 1952, filed with the Board of Commissioners of Hoboken, upon which you obtained your current plenary retail consumption license, you falsely stated that your stockholders were Frances Passarelli (17 shares or 85%), Aurelio Battistoni (2 shares or 10%) and Anthony F. Ditri (1 share or 5%), whereas in truth and fact your stockholders of record were Aurelio Battistoni (9 shares or 45%), Pasquale DiMenza (9 shares or 45%) and Margarita Troccoli (2 shares or 10%); said false statement being in violation of R.S. 33:1-25.

"2. In your aforesaid application, you falsely stated 'No' in answer to Question 24, which asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any other stockholder in the applicant corporation?', whereas in truth and fact Aurelio Battistoni had such an interest in that he was the real and beneficial owner of all of your outstanding stock; said false statement being in violation of R.S. 33:1-25.

"3. From on or about May 6, 1952 until the present time, you knowingly aided and abetted Aurelio Battistoni to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R.S. 33:1-52.

"4. From on or about October 22, 1951 until on or about May 6, 1952, your predecessor in interest, Pasquale DiMenza (also known as Pasquale DeManza) knowingly aided and abetted Aurelio Battistoni to exercise, contrary to R.S. 33:1-26, the rights and privileges of his plenary

retail consumption license; thereby himself violating R.S. 33:1-52.

"5. On August 5, 1952 and prior thereto, you knowingly employed and had connected with you in a business capacity Louis Cervellin and the aforesaid Aurelio Battistoni, persons who were not bona fide residents of the State of New Jersey and who had not obtained currently effective employment permits from the Director of the Division of Alcoholic Beverage Control; in violation of Rule 4 of State Regulations No. 13."

Defendant has pleaded not guilty to charges 1, 2, 3 and 4 and non vult to charge 5.

The evidence in the instant case discloses that in September 1951 Aurelio Battistoni borrowed \$4,000.00 from Frances Passarelli, his sister-in-law, for the purpose of going into business. By agreement dated October 19, 1951, Aurelio Battistoni acquired from Pasquale DiMenza (also known, by reason of municipal certification of license issuance, as "DeManza") a one-half interest in a liquor license held by the latter and a restaurant business operated in conjunction therewith. On November 26, 1951 the defendant-corporation was duly incorporated, at which time Aurelio Battistoni and Pasquale DiMenza each subscribed for nine shares of the capital stock and one Margarita Troccoli subscribed for two shares of said stock. However, Aurelio Battistoni and Pasquale DiMenza continued to operate the business as partners from October 19, 1951 until April 14, 1952 when Aurelio Battistoni purchased the interest of Pasquale DiMenza and became the sole owner of the liquor license and the business conducted thereunder. On May 6, 1952 the local issuing authority approved the transfer of the license in question from Pasquale DiMenza to the defendant-corporation and on June 26, 1952 said license was renewed in the name of defendant-corporation for the current licensing period. In the applications for transfer and renewal of the license Frances Passarelli was set forth as the holder of seventeen shares of the capital stock of defendant, Aurelio Battistoni as the holder of two shares, and Anthony F. Ditri as the holder of one share.

An ABC agent testified that during the course of the investigation herein he interviewed Frances Passarelli with reference to her interest in the defendant-corporation. She informed him that Aurelio Battistoni, her brother-in-law, borrowed \$4,000.00 from her in September 1951 and, although she requested payment by him of the loan on divers occasions, the debt still remained unpaid. She further stated, according to the testimony of the ABC agent, that the stock set forth in the applications for transfer and renewal, respectively, of the license was actually the property of Aurelio Battistoni and that it was listed as belonging to her because he was not a resident of New Jersey. Such information was reduced to writing on August 5, 1952 and was signed and sworn to by Frances Passarelli on August 6, 1952.

Frances Passarelli, produced at the hearing as a witness for the defendant, acknowledged that she loaned \$4,000.00 to Aurelio Battistoni in September 1951, but asserted that when the loan was not paid she agreed to accept seventeen shares of stock in defendant-corporation. Although she further testified that Aurelio Battistoni had promised that she would receive papers from his lawyer, such papers were never forthcoming. When confronted with the answers to questions propounded to her at the time the statement was taken by the ABC agent, Frances Passarelli claimed, in many instances, that she did not remember what she said at that time.

Aurelio Battistoni testified that when he entered into an agreement on October 19, 1951 with Pasquale DiMenza to acquire a

one-half interest in the liquor license he was, and that he now is, a resident of New York State; that he and Pasquale DiMenza continued operating as partners until April 1952; that when he acquired the half interest in the license he was ignorant of the fact that an individual nonresident could not have an interest in a retail liquor license in New Jersey; that thereafter the defendant-corporation was formed and it was Aurelio Battistoni's intention at that time that he and Pasquale DiMenza each be equal stockholders; that in April 1952 he acquired Pasquale DiMenza's share in the liquor license and that he agreed to give Frances Passarelli seventeen shares of the stock of defendant-corporation.

Anthony F. Ditri testified that in April 1952 he was retained by Aurelio Battistoni as attorney for the defendant-corporation; that he was instructed to prepare stock certificates in conformity with the listing of the stockholders as appeared in the applications for transfer and renewal of the license; that he neglected to do so; that, although there were meetings of stockholders, Frances Passarelli never attended a meeting but voted by proxy.

It may be true that Aurelio Battistoni acquired an interest in the liquor license prior to obtaining knowledge that a nonresident of New Jersey is not eligible to hold a retail liquor license in this State. It is apparent from the evidence that he did not reveal his true interest in the corporate setup. It is evident that Frances Passarelli had no interest in the shares of stock. The inconsistency between her testimony at the hearing and her original statement given by her to the ABC agent, and her acknowledged lapse of memory with reference to many pertinent matters, greatly diminishes the weight of her testimony. From all the evidence herein, I conclude that Aurelio Battistoni is the beneficial owner of all the stock of defendant-corporation. I am satisfied, after consideration of all the evidence, that the defendant is guilty of charges 1, 2, 3 and 4. I so find. A plea of non vult has already been noted as to charge 5.

Defendant has no prior adjudicated record. The usual penalty for violations as set forth in charges 1, 2, 3 and 4 is thirty days. Re Serti, Bulletin 750, Item 6; Re Gordon, Bulletin 796, Item 7. The usual penalty for a violation of the nature set forth in charge 5 is ten days. Re Rock View (Inc.), Bulletin 738, Item 1. This makes a total of forty days.

It is to be noted, however, that the unlawful situation continues to exist. Aurelio Battistoni resides in Brooklyn, N. Y. I have no alternative but to suspend the license for the balance of its term. I shall, however, entertain a petition to lift the suspension herein after a correction of the unlawful situation has been effected, but in no event will the suspension be lifted until the license has been under suspension for a period of forty days from the effective date thereof.

Accordingly, it is, on this 8th day of January, 1953,

ORDERED that Plenary Retail Consumption License C-211, issued by the Board of Commissioners of the City of Hoboken to Villa Roma Hoboken (A Corp.), 223 Washington Street, Hoboken, be and the same is hereby suspended for the balance of its term, expiring at midnight June 30, 1953, effective at 2 a.m. January 14, 1953; with leave to file, as aforesaid, a petition to lift said suspension.

DOMINIC A. CAVICCHIA
Director

3. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against

MICHAEL & CAROLINE KAPLAN & LEON PASZUN, 153-155 Fifth Street, Elizabeth 1, New Jersey,

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.

Stanley W. Greenfield, Esq., Attorney for Defendant-licensees. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants originally pleaded not guilty to the following charges:

"1. On September 13 and 16, 1952, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20.

"2. On September 13, 1952, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20.

"3. On September 16, 1952, while investigators of the Division of Alcoholic Beverage Control were conducting an investigation at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation; in violation of R. S. 33:1-35."

At the hearing herein defendants changed their plea as to charge 1 and pleaded non vult to so much of that charge as relates to September 16, 1952. The not guilty plea remained in effect as to all other allegations contained in the charges.

With respect to the incidents which were alleged to have taken place on September 13, 1952, an ABC agent testified that, when he entered at approximately 11:45 a.m., Michael Kaplan, one of the licensees, was tending bar and that there were six male patrons at the bar. At noon a short man, known as "Rosie", entered the bar-room and talked with some of the men at the bar. One of the men called out a number (527) and handed "Rosie" some change, whereupon "Rosie" wrote the number on a small pad which he took from his pocket and then returned the pad to his pocket. Meanwhile another man who had been seated at the bar reading a horse racing form wrote on a slip of paper and handed it to "Rosie" with some money. "Rosie" soon left the licensed premises but returned twenty minutes later, at which time a woman who had entered during his absence called to him in a voice loud enough to be heard by the agent seated at the bar, saying, "I have three numbers to give you". "Rosie" then took out his pad and wrote on it the three numbers (068, 077

and 078) which the woman called out. While all of these incidents were transpiring the aforementioned licensee, Michael Kaplan, was behind the bar waiting on the patrons. In his testimony, said licensee denied knowing that "Rosie" engaged in booking bets on horse races or "numbers writing" and disclaimed any knowledge of any illegal activities upon the licensed premises. He admitted, however, that "Rosie" frequents the licensed premises and that he is "in and out" daily. He further admitted that "Rosie" was upon the premises when the agent was there on September 13, 1952.

Three ABC agents testified as to the incidents which were alleged to have occurred on September 16, 1952. The testimony of two of these agents may be summarized as follows: They were seated at the bar in the defendants' barroom at approximately 1:30 p.m. One of the agents prepared two horse race betting slips and handed one of them to a barmaid (later identified as the sister of licensee Caroline Kaplan) who handed it to Caroline Kaplan when she (the barmaid) was relieved by her a few moments later. Caroline Kaplan, in turn, handed this slip to "Rosie" who was then in the licensed premises. A short time thereafter the same agent handed to Caroline Kaplan a second horse race betting slip and a five dollar bill. She took the slip and placed it behind and beneath the bar, and the agent left the premises. Within a few minutes the same agent returned to the barroom and approached the bar at the place where there is an opening formed by lifting a hinged section of the bar. The second agent, who had remained in the barroom, was seated a few feet from the aforementioned opening. As the first agent arrived at the opening, licensee Caroline Kaplan was standing behind the bar a few feet from the opening and with her back to the agents. The first agent testified that he called to her, that she came toward him and that he exhibited his badge and announced that he was an "ABC man" and wanted the slip of paper and money which he had lately handed her. Both agents testified that, almost immediately, Caroline Kaplan became boisterous and practically hysterical, shouting at the first agent that he had not properly identified himself and that he had "no business" behind the bar, meanwhile pushing said agent with her hands. Both agents also testified that Caroline Kaplan picked up the slip of paper which the first agent had handed to her and threw it across the bar where it was retrieved by a male patron and thrown back to her, and that she thereafter secreted the slip of paper and, although requested to deliver it to the agents, refused to do so, saying that she would give it to Detective Kolas (of the Elizabeth Police Department). They further testified that, as soon as Caroline Kaplan began to shout, several male patrons became excited and began to interfere with the agents but that the second agent then placed his credentials (consisting of a folder containing his commission and an identifying photograph and his badge) on the bar in front of Caroline Kaplan, informed the patrons of his identity and that of his colleague and warned them not to interfere, and that within a short time everything became calm. They further testified, however, that the slip of paper was not handed over until Caroline Kaplan retrieved it from a garbage can behind the bar several minutes after Detective Kolas arrived at the licensed premises (in response to a telephone call made by a third ABC agent who had entered the barroom after the excitement had subsided). They also testified that Caroline Kaplan told them that the barmaid, who had taken the first horse race betting slip from the first agent, was her sister but steadfastly refused to give her sister's name, claiming that she was ill and should not be disturbed. This refusal was repeated the next day and continued until the day of the hearing.

The third ABC agent who was present on September 16, 1952 testified that, when he arrived at the licensed premises between 3:15 p.m. and 3:30 p.m., on September 16, 1952, Caroline Kaplan

was "in an excitable condition"; that he showed her his credentials and told her he was an ABC agent; that he told her that he was looking for the slip of paper; that he went behind the bar and searched for it but was told by Caroline Kaplan that she would give it to Detective Kolas, only. He further testified that he telephoned for the Elizabeth Police and that, although he searched for the slip during the eight or ten minutes it took the police to arrive, he did not find or receive the slip which was later found by Caroline Kaplan in the garbage can and handed by her to Detective Kolas several minutes after he arrived at the licensed premises. He further testified that as soon as he identified himself to Caroline Kaplan she complained that the first agent had not properly identified himself to her but admitted that the second agent had properly identified himself to her "...five or ten seconds later...".

On behalf of defendants several patrons testified that they witnessed the commotion in the barroom on the afternoon of September 16, 1952; that they saw the first agent behind the bar; that Caroline Kaplan became excited and told the agent that he could not go behind the bar; that the second agent put his credentials on the bar and warned the patrons not to interfere; that Caroline Kaplan threw a piece of paper over the bar, from whence it was returned by a patron; and that Caroline Kaplan thereafter "cooled off". One of these patrons also testified that the third agent also identified himself to and talked with Caroline Kaplan and that she found the slip of paper after the police arrived.

In her testimony Caroline Kaplan admitted that, on September 16, 1952, she had taken one slip from the first agent, who told her that he had a "tip" and asked her to give the slip to "Rosie", and that she had already given to "Rosie" the slip which the agent had handed to her sister. She testified that she placed the second slip on top of the beer cases behind the bar and that, when the first agent asked her for the slip, he came behind the bar while she had her back to him, grabbed her arm (which he denied) and told her that he was "an ABC man" and asked for the slip of paper. She testified that he did not exhibit anything to identify himself as such agent and that she told him that he had no business behind the bar and endeavored to push him from there. She also testified that the second agent exhibited full credentials and admitted that she did not then attempt to find the slip of paper. She further testified that she knew that the slip "...was some kind of bet"; that she threw the slip and thereafter recovered it and had it in her hand and then "I threw it in the garbage". When asked why she threw the slip of paper over the bar she replied, "If he wanted it so bad I will throw it and let him get it". She also admitted that she told the first agent that she would give the slip of paper to Detective Kolas when he arrived and that, although the third agent properly identified himself to her as an ABC agent and searched behind the bar for five minutes before the police arrived, she did not give him the slip of paper. She further admitted that she refused to give the agents the name and address of the barmaid (her sister).

As above recited, the licensees pleaded non vult to so much of charge 1 as alleges that they allowed, permitted and suffered bookmaking on the licensed premises on September 16, 1952. Although strong suspicion arises that similar activities may have occurred there on September 13, 1952 also, such fact has not been established by the requisite preponderance of the evidence and consequently I find defendants not guilty as to that portion of charge 1 which refers to September 13, 1952.

As to charge 2 the evidence is clear that "Rosie" was writing "numbers" in the barroom of defendants' licensed premises on September 13, 1952, and that his activities were open and notorious. Therefore I find defendants guilty as to charge 2.

As to charge 3 there is some conflict between the testimony of the witnesses for the Division and the witnesses for defendants, but the essential facts are not in dispute. When the first agent asked Caroline Kaplan for the slip of paper he had previously given to her he told her that he was an "ABC agent". Caroline Kaplan admitted that he said he was an "ABC agent" but denied his claim that he exhibited his badge. Undoubtedly, the first agent did not fully and completely identify himself to Caroline Kaplan because, admittedly, he did not exhibit to her his commission and photograph. Such failure might have excused her original conduct in pushing him and telling him that he did not belong behind the bar, but it cannot excuse her later conduct in failing to cooperate with the agents after the second agent had properly identified himself "five or ten seconds" later; and nothing in the record in this case justifies her continued failure to deliver the slip of paper to the agents for several minutes after the third agent had properly identified himself or her failure to divulge the name of the barmaid (her sister) as late as the next day. It may be true that, at first, Caroline Kaplan was, to use her own term "scared", but I am convinced that what she was afraid of was, not that the agent was a "stick-up" man (as is contended) but rather the consequences of being caught in a violation. Her guilty knowledge explains very clearly her excitement and her frantic efforts to get rid of the evidence (the betting slip). After carefully considering all of the evidence I find defendants guilty as to charge 3.

Defendants have a prior record. Effective March 8, 1948, their license was suspended by the local issuing authority for five days for allowing, permitting and suffering a brawl or other disturbance upon the licensed premises. I shall suspend defendants' license for twenty days on charges 1 and 2, (Cf. Re Italiano, Bulletin 898, Item 6) and for an additional fifteen days on charge 3, Re Mrozek, Bulletin 906, Item 7. Five days will be added for the prior dissimilar violation occurring within the five-year period. Re Goldberg, Bulletin 952, Item 5. No remission will be made for the entry of the non vult plea as to part of charge 1 because it was necessary to try the case fully upon the other pending charges. Re Victoria Bar, Inc., Bulletin 841, Item 5.

Accordingly, it is, on this 20th day of January 1953,

ORDERED that Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Michael & Caroline Kaplan & Leon Paszun, 153-155 Fifth Street, Elizabeth, be and the same is hereby suspended for a period of forty (40) days, commencing at 2 a.m., January 26, 1953, and terminating at 2 a.m., March 7, 1953.

DOMINIC A. CAVICCHIA
Director

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION AS TO AMOUNT OF STOCK OWNED BY NONRESIDENT - SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

500 MARKET STREET CORPORATION
500 Market Street
Newark 5, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-167, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Martin Gelber, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"In your application dated June 11, 1952, filed with the Municipal Board of Alcoholic Beverage Control of Newark, upon which you obtained your current plenary retail consumption license, you, after listing your stockholders in answer to Question 22 as Emilio Rodriguez (90 shares or 90%), Aurelio Cabalar (8 shares or 8%), Marie Rodriguez (1 share or 1%), and Josephine Cabalar (1 share or 1%), falsely stated 'No' in answer to Question 24, which asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any stockholder of the applicant corporation?', whereas in truth and fact Aurelio Cabalar has such an interest as the real and beneficial owner of a portion of the stock held by Emilio Rodriguez; said false statement being in violation of R. S. 33:1-25."

At the hearing, there were introduced in evidence sworn statements which had been obtained from Aurelio Cabalar and Emilio Rodriguez, the principal stockholders of the licensee-corporation. In their statements, both admitted that their stockholdings in the corporation were set forth in the license application as follows: Emilio Rodriguez, 90 shares - 90%, Josephine Cabalar, 1 share - 1%, Aurelio Cabalar, 8 shares - 8% and Marie Rodriguez, 1 share - 1%, but that they were in fact equal partners in the business. They also admitted that, because Aurelio Cabalar was a nonresident of New Jersey when the application was filed and therefore could not hold more than ten per cent of the corporation's stock, the bulk of the stock was issued to Emilio Rodriguez who is a resident of New Jersey. They also admitted that, of \$300.00 in profits distributed thus far, each received \$150.00. Their statements further show that the total purchase price for the business was \$5,500.00 plus \$600.00 for the stock of liquor on hand; that Cabalar and Rodriguez each paid \$300.00 toward the purchase of the liquor and that Cabalar paid \$2,000.00 toward the purchase of the business while Rodriguez paid \$3,500.00. In the earlier of his two sworn statements Cabalar had stated that he and Rodriguez had each invested \$2,750.00 in the business (one-half of the \$5,500.00 purchase price). At the hearing Cabalar testified that he now resides in New Jersey and expects to become an equal stockholder with Rodriguez after repaying the latter \$750.00 to equalize their investments (thus explaining the apparent discrepancy in his two statements as to the amount he had invested).

It is clear that, in every respect, Cabalar and Rodriguez, who are cousins, were to participate in the licensed business to an equal degree, and that the sole reason for limiting the disclosed stockholdings of Cabalar was to make it appear that he, as a non-resident, did not possess a prohibited interest in the corporation. Defendant is guilty as charged.

Defendant has submitted proof that the unlawful situation has been corrected. Eighty-two additional shares of defendant's corporate stock have been issued to Aurelio Cabalar and he is now on equal terms with Rodriguez as originally planned. Each now appears to be the sole owner of the shares of stock issued to him.

Defendant has no prior adjudicated record. Under the circumstances I shall suspend the license for thirty days, the minimum penalty in this type of case. Cf. Re Club Trio, Inc., Bulletin 896, Item 1.

Accordingly, it is, on this 14th day of January 1953,

ORDERED that Plenary Retail Consumption License C-167, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to 500 Market Street Corporation, 500 Market Street, Newark, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2 a.m., January 19, 1953, and terminating at 2 a.m., February 18, 1953.

DOMINIC A. CAVICCHIA
Director

5. DISCIPLINARY PROCEEDINGS -- GAMBLING - LICENSE SUSPENDED FOR 20 DAYS LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)
MILTON WAYS)
Harding Highway, McKee City)
Egg Harbor Township)
PO RD 1, Pleasantville, N. J.,)

Holder of Plenary Retail Consump-)
tion License C-19, issued by the)
Township Committee of the Township)
of Egg Harbor.)

CONCLUSIONS
AND ORDER

-----)
Coulomb, McAllister & Hunter, Esqs., by Robert N. McAllister, Esq.,)
Attorneys for Defendant-licensee.)
Edward F. Amborse, Esq., Appearing for Division of Alcoholic)
Beverage Control.)

BY THE DIRECTOR:

The defendant pleaded non vult to a charge alleging that he allowed, permitted and suffered gambling, viz., the making and accepting of a horse race bet upon the licensed premises, in violation of Rule 7 of State Regulations No. 20.

The file discloses that, on October 2, 1952, two State Troopers placed a horse race bet with Jean B---, a barmaid employed by defendant. Said bet was made in the barroom of the licensed premises and Jean placed the betting slip and money with other similar slips behind the bar. The Troopers returned to the licensed premises on the following day and arrested Jean for bookmaking.

They obtained a written statement from her in which she admitted accepting bets at the licensed premises from time to time and claimed that she always transmitted the bets to the race track which is nearby. She further admitted that she telephoned bets to two men in Vineland but stated that she did not know whether or not the licensee was aware of her said activities.

In mitigation it is claimed that the licensee had no knowledge of the fact that Jean was accepting bets for transmittal to the race track. Nevertheless, the licensee is responsible for the violation committed by his employee, even though without his knowledge or contrary to his instructions. Re Mayers, Bulletin 731, Item 9; Rule 31 of State Regulations No. 20.

Defendant has no prior adjudicated record. I shall suspend his license for twenty days, the minimum penalty for this type of violation involving a licensee or an employee of a licensee. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days. Re Maiorisi, Bulletin 894, Item 14; Re Elia, Bulletin 801, Item 3; cf. Re Wagenaar, Bulletin 911, Item 9.

Accordingly, it is, on this 21st day of January 1953,

ORDERED that Plenary Retail Consumption License C-19, issued by the Township Committee of the Township of Egg Harbor to Milton Ways, Harding Highway, McKee City, Egg Harbor Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 7 a.m., January 28, 1953, and terminating at 7 a.m., February 12, 1953.

DOMINIC A. CAVICCHIA
Director

6. DISCIPLINARY PROCEEDINGS - ALLOWING LICENSED PREMISES TO BE USED IN CONNECTION WITH ILLEGAL ACTIVITY (SLOT MACHINES) RESULTING IN A CONVICTION IN CRIMINAL PROCEEDINGS - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

NORTH JERSEY COUNTRY CLUB INC.,
t/a "North Jersey Country Club"
Hamburgh Turnpike,
Preakness, Wayne Township,
PO Paterson RFD #1, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Wayne.)

Peter Hofstra, Esq., Attorney for Defendant-licensee.
Edward F. Amborse, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On March 26, 1952, you allowed, permitted and suffered your licensed premises to be used in furtherance and aid of and in connection with an illegal activity or enterprise resulting in a conviction in a criminal prosecution, in that five

slot machines were maintained on an unlicensed portion of your licensed building accessible from the licensed portion, with respect to which you were convicted on or about October 10, 1952 in the Passaic County Court of the crime of keeping slot machines for gaming; in violation of Rule 4 of State Regulations No. 20."

The file herein discloses that on March 26, 1952, two local police officers found five slot machines on the second floor of the building in which defendant's licensed premises are located. The second floor of said building, although not part of defendant's licensed premises, was readily accessible from the first floor which constitutes the licensed premises.

On October 10, 1952, defendant entered a plea of non vult in a county court to a charge of keeping slot machines for gaming and as a result thereof was fined \$1,000.00.

Defendant has a prior adjudicated record. Effective March 26, 1951, its license was suspended for ten days after it pleaded guilty to possession of a bottle of liquor not genuine as labeled. Re North Jersey Country Club Inc., Bulletin 902, Item 8. The minimum penalty for a violation of the type here charged is a suspension of the license for ten days. Re Washington New Jersey Home Association, Inc., Bulletin 912, Item 6; Re Washington Lodge 512, Loyal Order Moose, Bulletin 912, Item 7. I shall add five days for defendant's previous record. This makes a total suspension of fifteen days. 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 January, 1953,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Wayne to North Jersey Country Club Inc., t/a "North Jersey Country Club", Hamburgh Turnpike, Preakness, Wayne Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 3 a.m. January 19, 1953, and terminating at 3 a.m. January 29, 1953.

DOMINIC A. CAVICCHIA
Director

7. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against

NORTH JERSEY COUNTRY CLUB, INC.,
t/a "North Jersey Country Club",
Hamburgh Turnpike,
Preakness, Wayne Township,
PO Paterson RFD #1, N. J.,

ON PETITION
ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Wayne.

Howard Stern, Esq., Attorney for Petitioner

BY THE DIRECTOR:

On January 13, 1953, the license herein was suspended for a period of ten days, commencing at 3 a.m. January 19, 1953, and

terminating at 3 a.m. January 29, 1953. It appears from a verified petition filed herein that, prior to the time petitioner received the notice of the entry of said order, it had arranged to permit the holding of a dinner on its licensed premises on Wednesday, January 21, 1953, which would be attended by twenty doctors from various parts of the State of New Jersey; that it had also arranged to permit the holding of a dinner on its licensed premises on Thursday, January 22, 1953, and that said dinner would be attended by a group of from ninety to one hundred people. The petition also recites that petitioner has arranged to permit the use of its premises by a group of two hundred people on January 29, 1953, and, therefore, requests, if relief be granted, that the commencement of the period of suspension be advanced to take effect at 3 a.m. January 17, 1953, so that the suspension may terminate at 3 a.m. January 29, 1953, in accordance with the terms of the original order.

It sufficiently appearing that many members of the general public will suffer hardship because of the suspension of defendant's license in accordance with the terms of the original order, and no cause appearing to the contrary,

It is, on this 16th day of January, 1953,

ORDERED that the suspension of ten days heretofore imposed in these proceedings shall commence at 3 a.m. January 17, 1953, and continue in effect until 3 a.m. January 21, 1953; that thereafter said suspension shall be lifted until 3 a.m. January 23, 1953, when it shall again become effective and continue in effect until 3 a.m. January 29, 1953.

DOMINIC A. CAVICCHIA
Director

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

In the Matter of Disciplinary Proceedings against)

C. & H. CO., INC.,)
755 Montgomery Street,)
Jersey City 6, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-398, issued by the)
Municipal Board of Alcoholic Beverage Control of the City of)
Jersey City.)

-----)
Oliver T. Cowan, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulations No. 20.

On December 18, 1952, an ABC agent, in the course of a routine inspection of defendant's licensed premises, identified himself to the bartender who was then on duty. While the agent was otherwise occupied he observed the bartender stoop down and place something on the floor under the drainboard and put an empty box in


front of it. When the agent went behind the bar and moved the box he found a 4/5-quart bottle labeled "Imported Seagram's V. O. Canadian Whisky, A Blend 86.8 Proof". The agent then questioned the bartender, who stated that he did not know why he had put the bottle on the floor but said that the licensee had only a small supply of that brand which was very popular and hard to obtain. He claimed that, for that reason, he did not want to give it to "everybody" who asked for it. He denied having tampered with the bottle.

The agent made a field test of the contents of the bottle. When his test disclosed a variance between label and contents, the agent seized the bottle. Subsequent analysis by the Division chemist disclosed that the contents of the seized bottle were not genuine as labeled.

Defendant has no prior adjudicated record. Under the circumstances I shall suspend the license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Charette, Bulletin 940, Item 11.

Accordingly, it is, on this 20th day of January 1953,

ORDERED that Plenary Retail Consumption License C-398, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to C. & H. Co., Inc., 755 Montgomery Street, Jersey City, be and the same is hereby suspended for a period of ten (10) days; commencing at 2 a.m., January 26, 1953, and terminating at 2 a.m., February 5, 1953.


Dominic A. Cavicchia
Director.