

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

BULLETIN 1304

October 27, 1959

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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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October 27, 1959

1. COURT DECISIONS - MEYER'S TAVERN, A CORP. v. NEWARK AND
DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-380-58

MEYER'S TAVERN, A CORPORATION)
OF THE STATE OF NEW JERSEY,)
)
Appellant,)
)
v.)
)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK, AND DIVISION OF ALCOHOLIC)
BEVERAGE CONTROL OF NEW JERSEY,)
)
Respondents.)

Argued September 29, 1959 -- Decided October 9, 1959

Before Judges Price, Gaulkin and Sullivan.

Mr. Samuel Voltaggio argued the cause for appellant.

Mr. Samuel B. Helfand, Deputy Attorney General, argued
the cause for respondent Division of Alcoholic Beverage
Control (Mr. David D. Furman, Attorney General, attorney).

The opinion of the court was delivered by

SULLIVAN, J.A.D.

Meyer's Tavern appeals from an affirmance by the Director of the Division of Alcoholic Beverage Control of New Jersey of a 60-day suspension of its plenary retail license. The suspension was ordered by the Board of Alcoholic Beverage Control of the City of Newark after a hearing on a charge that appellant "did allow, permit and suffer the removal of an alcoholic beverage in an opened container from the licensed premises after 10:00 P.M., on Wednesday, July 23, 1958; in violation of Rule 1 of State Regulation No. 38."

The rule in question reads as follows:

"No licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises, or allow, permit or suffer the removal of any alcoholic beverage in its original or opened container from retail licensed premises, on Sunday, or before 9:00 A.M. or after 10:00 P.M. on any other day of the week."

The determination of the Board was that the charge had been

proven and an order was entered suspending appellant's license as aforesaid.

Evidence in support of the charge came from William Jones, an investigator of the Division of Alcoholic Beverage Control. The essential parts of his story were that on the date in question at about 11:15 P.M., he entered Meyer's Tavern and, after having a beer, ordered a pint of wine "to go." According to Jones, the bartender got a bottle of wine, uncapped it and poured some of the wine into a glass saying that Jones would have to "drink some here first." The bartender then put the cap back on the bottle and placed it on the bar. Jones's story is that he picked the bottle up and put it in his waistband with the bartender watching, paid for it, and after getting his change, left the premises. The bartender's story, supported to some extent by the testimony of three patrons who were at the bar at the time, was that when Jones ordered the bottle of wine to take out, he told Jones that he could not take it out since it was after 10 o'clock and that he would "have to drink it here." When Jones said "all right" the bartender opened a bottle of wine, poured some of the wine in a glass and set the bottle on the bar after throwing away the cap. After serving Jones the bartender went to the other end of the bar to wait on some customers, and when he came back, Jones was missing. It was undisputed that Jones had removed the bottle of wine from the premises.

After considering the testimony, the director concluded that Jones had clearly indicated to the bartender that he desired to purchase the wine for off-premises consumption and that the action of the bartender in requiring him to drink some of the wine on the premises was a mere subterfuge. The director found that the bartender had permitted Jones to remove the bottle from the premises and that this was a violation of Rule 1 of State Regulation No. 38 as charged.

The director also found that the testimony of the bartender was replete with inconsistencies and that the testimony of the patrons was entitled to little weight in considering the issue in this case. He thereupon affirmed the action of the Municipal Board.

Appellant's sole ground of appeal is that the evidence was not sufficient to sustain the determination that a violation had been committed.

Appellate review in this type of case is limited to a consideration of whether the findings and determination of the director are supported by substantial evidence, that is, such relevant evidence as a reasonable mind might accept as adequate. In Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956), the rule is expressed in the following manner at p. 506:

"The choice of accepting or rejecting the testimony of witnesses rests, therefore, with the administrative agency. Where such choice is reasonably made, it is conclusive on appeal. The scope of appellate review does not possess such breadth as would permit a disturbance of the administrative finding unless the court is convinced that the evidence permits of no reasonable latitude of choice. The court canvasses the record, not to balance the persuasiveness of the evidence on one side as against the other, but in order to determine whether a reasonable mind might accept the evidence as adequate to support the conclusion and, if so, to sustain it."

Reviewing the record in this perspective, we conclude that there was sufficient competent evidence to support the findings and determination by the director. The testimony of the state investigator, William Jones, clearly indicated that the violation charged had been committed. After reviewing the entire record the director accepted Jones's story as true and rejected defendant's version. We cannot say that a reasonable man, acting reasonably, could not have reached this decision from the evidence and its inferences. Hornauer v. Div. of Alcoholic Beverage Control (supra).

Affirmed.

2. APPELLATE DECISIONS - MOTACKI v. CLIFTON.

STANLEY MOTACKI AND ANNE MOTACKI,)
t/a DONMOR INN,)

Appellants,)

ON APPEAL
CONCLUSIONS
AND ORDER

v.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF CLIFTON,)

Respondent.)

Benedict E. Lucchi, Esq., Attorney for Appellants.
Edward F. Johnson, Esq., by Manfred Triebel, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on March 23, 1959, it suspended appellants' license for a period of thirty days, effective March 30, 1959, after finding them guilty on a charge alleging that on January 21, 1959 they permitted gambling in and upon their licensed premises, in violation of Rule 7 of State Regulation No. 20.

"Upon the filing of the appeal, an order was entered by the Director on March 30, 1959 staying respondent's order of suspension until further order herein. R.S. 33:1-31.

"Appellants, in their petition of appeal, alleged that they did not, on the date alleged, permit or suffer gambling on their licensed premises.

"Respondent, in its answer, alleges that the evidence adduced before it established that appellants permitted and suffered the making and accepting of horse race bets in and upon their licensed premises.

"The appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15 and, prior to the taking of testimony, appellants alleged that their defense would be based upon the fact that the violation charged 'did not occur at all'. Hence, the question as to whether the alleged offense occurred on January 21 or January 20 is not an issue in the case.

"Respondent called as its witnesses John DeGroot and Philip Calderaro, detective and lieutenant detective, respectively, of

the Clifton Police Department. DeGroot testified that at 12:50 p.m., January 20, 1959, he and Calderaro entered appellants' licensed premises and observed Stanley Motacki (one of the licensees herein) in a phone booth; that when they approached the booth, Motacki suddenly terminated his conversation and stepped out; that he entered the phone booth and 'on the floor of the booth, in crumpled condition, I found a Miss Rheingold ballot' on which 'were horse race bets that were made for that particular day'; that he showed the paper to Calderaro 'who, in turn, showed it to the defendant in my presence'.

"Calderaro testified that at 12:50 p.m., January 20, 1959, he, DeGroot and Detective Peluso entered appellants' licensed premises; that he saw DeGroot enter the phone booth and pick up something which was turned over to him; that it was 'a Miss Rheingold voting form' on the back of which 'there is a list of horses and different race tracks where they are running. I checked the horses that are listed on the back' with two newspapers found in appellants' tavern; that he 'showed him (Motacki) the slip and he said it did not belong to him'. He testified further that five male patrons were in the tavern at the time, all of whom were searched.

"DeGroot was recalled and shown the 'ballot', which previously had been marked for identification. He testified that it was the slip of paper he found in the telephone booth. The 'ballot' was received in evidence and respondent rested.

"Appellants' attorney then moved to dismiss the charge for lack of evidence. Decision thereon was reserved.

"Appellants called as their witnesses Richard Stelleman, Gustav Sonnen and Stanley Motacki. Stelleman testified that on January 20, 1959 he was in appellants' tavern when three police officers entered; that 'they walked to the back of the building and started talking to Mr. Motacki. They searched the place. They went behind the bar and went into the drawers and came back from the back of the bar and started questioning different customers, including myself. I emptied my pockets and they went through me and so forth'; that DeGroot 'was looking around and probably in the toilet or in the telephone booth'; that the police officers were there until 3:00 o'clock; that when the officers were leaving he heard the lieutenant say to Mr. Motacki, 'Well, we haven't got anything so you are clean'. He testified further that he was in the licensed premises on January 21, 1959 and, while waiting for Mr. Motacki to arrive, DeGroot and Calderaro entered the premises.

"Sonnen testified that he was employed as a part-time bartender for the licensees; that he worked on January 21, 1959 and that when the police officers arrived, Mr. Motacki was not present. On cross-examination he testified that on January 20, 1959 he was in the licensed premises as a patron, and stated that Rheingold ballot forms were kept underneath the back bar.

"Motacki testified that at about noon time, January 20, 1959, DeGroot and Calderaro entered the tavern and, at the request of the lieutenant, he submitted to a personal search and a search of the premises; that DeGroot went into the phone booth, 'came out with a slip of paper' and 'he asked me if the slip of paper was mine' and 'I said it was not'; that 'he wanted to know if I was a bookmaker' and 'I said no' and that when Calderaro was leaving he said, 'You are clean today but we are going to watch you'. He testified further that when he arrived at the tavern on January 21, 1959, the detectives were there. On cross-examination he testified that he was in the telephone booth when the detectives

arrived on January 20; that later on he saw DeGroot go into the booth; that he did not see him pick up the Rheingold ballot 'but he came over to me and produced it', saying he had found it in the booth; that no one had entered the phone booth between the time he emerged therefrom and the time the detective entered it; that on January 21, DeGroot asked him, 'Why didn't you take out the phone?'; that he told him it was there for the convenience of the customers; that he remembered saying to Calderaro that he had been asked by several persons, including patrons, to pick up horse bets which he said he refused to do, and that he told him that on several occasions during the past four years, he had personally received telephone calls from people who were attempting to place bets.

"Having evaluated the evidence in support of respondent's case, I find that the horse race bet slip found in the phone booth after Motacki had abruptly terminated his phone conversation upon seeing the detectives enter the tavern, is prima facie evidence that gambling was being conducted in and upon the licensed premises and thus placed upon appellants the burden of going forward with the evidence. I recommend, therefore, that appellants' motion at the close of respondent's case to dismiss the charge be denied. Considering the entire record herein, I find that some suspicious circumstances appear herein but guilt cannot be predicated upon suspicious circumstances or the unfulfilled desires of others. In the absence of proof that Stanley Motacki participated in or permitted gambling activities in and upon the licensed premises, I conclude that respondent has failed to establish the guilt of appellants by a fair preponderance of the believable evidence. I recommend, therefore, that the action of respondent be reversed and that the charge herein be dismissed."

When the above Report was filed with me on June 4, 1959, I reviewed the transcript of the proceedings on which it was based and, noting that the Hearer sustained appellants' attorney's objections to the admission of testimony by Police Detective DeGroot respecting what was transmitted to him when he answered 'phone calls to the licensed premises, I directed that a supplemental hearing be scheduled to elicit such testimony. Pursuant thereto the additional testimony was taken on August 11, 1959 at which time appellants' attorney filed a brief in support of his contention that said testimony does not "constitute substantial, competent and relevant evidence". On August 24, 1959 respondent's attorney filed an answering brief and on September 1, 1959 I heard oral argument by the attorneys for the respective parties hereto.

The evidence adduced at the original hearing and at the supplemental hearing clearly establishes that when Stanley Motacki, one of the licensees, observed the police officers enter the premises on January 20, 1959, he discontinued his telephone conversation abruptly and hastily emerged from the phone booth; that before any other person used the 'phone, Detective DeGroot entered the booth and found on the floor a crumbled Rheingold ballot form upon which were listed the names of two horses and the race tracks at which they were scheduled to run that day; that the information was verified by the listings in daily papers available in the licensed premises; that shortly thereafter Detective DeGroot answered a 'phone call in the same telephone booth and a person attempted to place a horse race bet; that Rheingold ballots similar to the one found in the booth were located behind the bar; that on the following day the officers returned to the licensed premises and during their stay Detective DeGroot received and answered several 'phone calls; that in each case the caller inquired for "Stash", a nickname for Stanley, the given name of one of the

licensees; that one of the callers identified himself as Bill Cherry and being assured by DeGroot that it was "Stash" to whom he was speaking, he placed two horse bets with the officer, and also inquired if an account of their transactions was being kept; that DeGroot confirmed that it was and hung up the receiver.

The above summary of evidence includes the telephone conversations which the Hearer excluded from the record. It is my considered opinion that the testimony with respect to those conversations relates to a material circumstance in the case, i.e., the complicity of one of the licensees in the offense and is competent and admissible evidence which, considered with the substantial evidence adduced, sufficiently supports a finding of guilt.

Having carefully considered the Hearer's Report, the transcripts of the proceedings herein, the briefs filed by the attorneys for the respective parties hereto and the oral argument before me, I conclude that respondent has established the truth of the charge preferred against appellants by the necessary preponderance of the believable evidence. In view of my determination, the recommendations of the Hearer are not approved.

Accordingly, it is, on this 16th day of September 1959,

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

ORDERED that the thirty-day suspension imposed by respondent and stayed during the pendency of these proceedings be and the same is hereby reinstated and reimposed against appellants' license for premises 1663 Main Avenue, Clifton, to commence at 3:00 a.m., Wednesday, September 23, 1959 and to terminate at 3:00 a.m., Friday, October 23, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (RENTING ROOMS FOR ILLICIT SEXUAL INTERCOURSE) - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against HENRIETTA FAESSLER t/a HENRIETTA'S RIVERDALE MANOR 57 Hamburg Turnpike Riverdale, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1 (for the 1958-59 and 1959-60 licensing years), issued by the Borough Council of the Borough of Riverdale.

Leo J. Berg, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On April 29, 30, May 2 and 3, 1959, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20."

On April 29, 1959 at about 11:40 P.M., two ABC agents visited defendant's licensed premises. During the time they spent in the premises and prior to departing therefrom at 12:55 A.M. on April 30th, the agents and defendant discussed the renting of rooms by the agents in the premises for the purpose of bringing females to the establishment to engage in illicit sexual activities. The defendant agreed to provide rooms for the agents and their female companions at a cost of \$5 per room on the following Saturday, May 2nd.

On May 2, 1959 at about 11:00 p.m., the same two agents entered the defendant's premises and told the defendant that they had made arrangements with two married women to meet them there that evening. In view of the fact that other patrons entered the establishment, the final arrangements were made with the defendant in the hallway to rent rooms above the tavern for the purpose of engaging in illicit sexual intercourse. Each agent signed a name and added "and wife" on cards produced by the defendant who then assigned them to Rooms 6 and 7 on the upper floor. The agents inspected their respective rooms and then returned to the barroom where they purchased drinks for themselves and treated the defendant to a drink. One of the agents asked the defendant for "two drinks for the girls" to get them in the mood and suggested "a grasshopper", but the defendant told them that she would make something nice, "a stinger", which would do the trick. After engaging in more conversation with the defendant, the agents gave her two five-dollar bills (the serial numbers of which had been previously recorded) and then picked up their drinks and the two for the "girls" and went upstairs to their respective rooms. A short time thereafter, by prearrangement, other agents and a local police officer came into the premises and they, along with the defendant, entered the room

wherein the respective agents were. When questioned, each agent stated that he was awaiting the arrival of a girl to engage in sexual intercourse. During a search of the building, another couple who were not married to each other occupied a room on the second floor. Questioning of this couple disclosed that each week for a year or more they had rented a room in the premises. The "marked" money was seized as were a number of hotel register cards with various names of former occupants of rooms in the establishment.

Defendant has a prior adjudicated record. Effective November 13, 1951, defendant's license was suspended for six days by the local issuing authority for sale of alcoholic beverages to a minor (increased to fifteen days on petition to lift statutory automatic suspension, Bulletin 921, Item 7). Since the said violation is dissimilar to the one now under consideration and occurred more than five years ago, it will not be taken into consideration in fixing the penalty herein. Re Trezn, Bulletin 1221, Item 3. There has been nothing presented herein which would warrant a lesser penalty than that established for a violation of the type committed herein. I shall suspend defendant's license for a period of one hundred eighty days. Re Molenaro, Bulletin 1265, Item 4; Re Columbo, Bulletin 1257, Item 3; Re Sabatini, Bulletin 1197, Item 1, and cases cited therein.

Accordingly, it is, on this 17th day of September 1959,

ORDERED that Plenary Retail Consumption License C-1, for the 1959-60 licensing year, issued by the Borough Council of the Borough of Riverdale to Henrietta Faessler, t/a Henrietta's Riverdale Manor, for premises 57 Hamburg Turnpike, Riverdale, be and the same is hereby suspended for one hundred eighty (180) days, commencing at 2:00 a.m., Monday, September 28, 1959 and terminating at 2:00 a.m., Saturday, March 26, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PERMITTING OBSCENE MATTER ON PREMISES - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

WALTER'S INN, A CORPORATION OF NEW JERSEY
595-7 Morris Avenue
Springfield, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1 (for the 1958-59 and 1959-60 licensing years), issued by the Township Committee of Springfield.

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for Defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) on March 20, 1959 it sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor in and upon its licensed premises, (2) on April 5, 1959 it sold, served and delivered alcoholic beverages to two

minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, both in violation of Rule 1 of State Regulation No. 20, and (3) on April 5, 1959 it allowed, permitted and suffered indecent drawings in and upon its licensed premises, in violation of Rule 17 of State Regulation No. 20.

On March 24, 1959, ABC agents obtained signed, sworn statements from Charles ---, age 17, and other minors. In his statement, Charles says that at or about 7:30 p.m., Friday, March 20, 1959, he and six minor companions drove to defendant's licensed premises which he and one of his companions entered; that he purchased therein a case of beer from a bartender called "Eddy" who required no written representation as to his age; that he and his companion returned to the car and the seven drove around the area; that at 10:00 p.m. they returned to defendant's tavern which he and a different companion entered and that he purchased another case of beer from the same bartender who required no proof of his age. After signing the statements, Charles and the two companions who had entered defendant's licensed premises with him directed the agents to defendant's tavern and pointed it out as the place where the beer was obtained and Charles identified therein Edward Moran as the person who made the sale. Charles further states that Moran had served him alcoholic beverages prior to the date alleged herein and that on his first visit Moran inquired as to his age and that he verbally stated he was 21 years old. Moran denied that he served Charles on any occasion but refused to give the agents a written statement to that effect.

It appears further that at about 12:15 p.m., Sunday, April 5, 1959, four ABC agents entered defendant's licensed premises and two of them sat at the bar; that the other two sat in a booth across from a booth in which two apparent female minors were seated with adult males; that at 12:25 a.m., the agents in the booth observed a waiter, later identified as Querino Mase, carry four bottles of beer to the booth in which the young ladies and their male companions were seated and place a bottle on the table in front of each occupant; that when the girls had partially consumed their drinks, the agents seated across from them identified themselves and with considerable difficulty ascertained that they were Barbara --- and Helen ---, each 20 years of age; that the minors verbally stated that they had not been required to produce any written representation as to their ages and that Mase stated verbally that he had served only the men. The agents then seized for evidential purposes the remaining portion of the minors' drinks and, in making a routing search of the licensed premises, found behind the bar two indecent drawings which they confiscated.

Defendant has no prior adjudicated record. I shall suspend its license for a period of twenty days on Charge 1 (Re: Silverstein, Bulletin 1249, Item 5); ten days on Charge 2 (Re Boggetti, Bulletin 1246, Item 7) and ten days on Charge 3 (Re Primiterra, Bulletin 1160, Item 2), making a total suspension of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 21st day of September 1959,

ORDERED that Plenary Retail Consumption License C-1 for the the 1959-60 licensing year, issued by the Township Committee of Springfield to Walter's Inn, t/a Walter's Inn, for premises 595-7 Morris Avenue, Springfield, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m., Monday, September 28, 1959 and terminating at 2:00 a.m., Monday, November 2, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PERMITTING OBSCENE MATTER ON PREMISES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against THE CHICKEN COOP, A NEW JERSEY CORP. E/S of Sidney Road and S/S of Lansdowne Road Franklin Township (Hunterdon County) PO Pittstown, R.D., N. J. Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of Franklin Township.

CONCLUSIONS AND ORDER

Defendant-licensee, by Theresa Gansfuss, President. Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On Wednesday, July 22, 1959, at about 10:20 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., two one-quart bottles of Ballantine beer in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
"2. On Wednesday, July 22, 1959 and prior thereto, you allowed, permitted and suffered in and upon your licensed premises and had in your possession obscene, indecent, filthy, lewd, lascivious and disgusting matter in form of photographs, representations, pictures, cartoons, drawings, sketches, writings, stories, accounts of events, etc. having obscene, indecent, filthy, lewd, lascivious and disgusting import and meaning; in violation of Rule 17 of State Regulation No. 20."

On the evening of July 22, 1959, ABC agents visited defendant's licensed premises and took seats at the bar. At 10:05 p.m. a man carrying a paper bag containing empty quart beer bottles entered the premises, placed the bag containing the bottles on the bar and ordered a glass of beer. The bartender removed the bag aforementioned and served the customer the glass of beer. The man picked up the glass and proceeded to a table from which he watched the program on television. At 10:20 p.m. the man returned to the bar, ordered another glass of beer and when served, the agents overheard him say to the bartender "two quarts". Thereafter the man proceeded to the table with his glass of beer. The bartender entered the rear room (kitchen) and a short time later returned, approached the man seated at the table and whispered something to him. The agents watched the bartender return to the kitchen and through the door which was partly open, observed him place large brown bottles in a paper bag and then walk away. About two or three minutes thereafter, the bartender returned to the barroom and resumed tending bar. At 10:55 p.m. the man whom the agents kept under observation left the

premises through the front door, and proceeded to enter his automobile parked near the rear entrance. Two of the agents approached the man and inquired of him what was in the paper bag on the front seat. The man answered that it contained two bottles of beer which he had purchased prior to 10:00 p.m. and which either the bartender or his mother (both of whom were stockholders and officers of defendant corporate-licensee) placed in the car. The agents and the man entered the premises, identified themselves to the bartender, Eugene Gansfuss, and to Theresa Gansfuss, his mother, and Eugene stated he placed the bottles of beer in the patron's car before 10:00 p.m. that evening. I am satisfied that the two bottles of beer were purchased at the time reported by the agents.

During the course of an inspection of the licensed premises the agents found a bag containing pornographic literature, filthy photographs and sketches and miscellaneous indecent articles and pictures. This offense is aggravated by the volume and content of the indecent matter.

Defendant has no prior adjudicated record. I shall suspend its license on Charge 1 for fifteen days (Re Kupiszewski, Bulletin 1278, Item 9) and on Charge 2 for fifteen days (Re Muchnicki and Wozniak, Bulletin 1076, Item 6), making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 17th day of September, 1959,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of Franklin Township to The Chicken Coop, A New Jersey Corp., for premises E/S of Sidney Road and S/S of Lansdowne Road, Franklin Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, September 28, 1959, and terminating at 2:00 a.m., Friday, October 23, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - APPLICATION FOR RETURN OF MOTOR VEHICLE TO ITS OWNER WHO TRANSPORTED SUCH ILLICIT ALCOHOLIC BEVERAGES DENIED - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure) Case No. 10,039
on July 12, 1959 of a gallon)
jug of alcohol and a Ford sedan) ON HEARING
on the White Horse Pike in the) CONCLUSIONS AND ORDER
Borough of Haddon Heights, County)
of Camden and State of New Jersey.)

Haywood Worley, Jr., Pro se.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether a gallon jug of alcohol and a Ford sedan, described in a schedule attached hereto, seized on July 12, 1959 on the White Horse Pike, Haddon Heights, New Jersey, constitute unlawful property and should be forfeited.

"Haywood Worley, the registered owner of the Ford sedan, appeared at the hearing and sought its return. No one opposed forfeiture of the alcohol.

"It appears from the evidence presented that local police officers halted the Ford sedan on the above date and location because they had reason to believe that illicit alcohol was being transported therein. The officers ascertained that there were seven male passengers in the car including Haywood Worley, and they discovered a gallon jug of alcohol under the front seat. The jug did not have affixed thereto any stamp indicating the payment of tax on alcoholic beverages. Thereupon the officers took into custody the alcohol and car, and arrested Worley and another passenger. Later the alcohol and car were turned over to ABC agents.

"A sample of the contents of the jug was analyzed by the Division chemist, who reports that it is alcohol and water fit for beverage purposes with an alcoholic content by volume of 40 percent.

"It appears from Worley's testimony that he and a number of companions left their home in Philadelphia and drove to Lawnside, N. J., where they purchased the moonshine alcohol, evidently for consumption by the group of men.

"The seized alcohol is illicit because of the absence of a tax stamp on any of the jars. R.S. 33:1-1(1), R.S. 33:1-88. Such illicit alcohol and the motor vehicle 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.

"The circumstances presented do not disclose any justifiable grounds upon which the Director can exercise his discretionary authority to return the car to Worley. He is not an unwitting violator of the law. (R.S. 33:1-66(e)). I therefore recommend that his request for return of the car be denied, and instead the motor vehicle and alcohol ordered forfeited."

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

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

Accordingly, it is on this 16th day of September, 1959,

DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or 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.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 1 - 1 gallon jug of alcohol
- 1 - Ford sedan, Serial No. 98-BA-71463, Pennsylvania Registration N70-650.

7. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED SALE OF ALCOHOLIC BEVERAGES FROM MOTOR VEHICLES - APPLICATIONS FOR RETURN OF MOTOR VEHICLES BY PERSONS ENGAGED IN SUCH UNLAWFUL SALE DENIED - MOTOR VEHICLES AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure)	
on June 14, 1959 of a quantity)	ON HEARING
of alcoholic beverages and a)	CONCLUSIONS AND ORDER
Chevrolet sedan in the vicinity)	
of Portertown Road, in the Town-)	Case No. 10,002
ship of Mannington, County of)	
Salem and State of New Jersey.)	

In the Matter of the Seizure on)	
June 14, 1959 of a quart bottle)	
of whiskey and a Mercury sedan in)	Case No. 10,003
the vicinity of Portertown Road, in)	
the Township of Mannington, County of)	
Salem and State of New Jersey.)	

Dorothy Adielia Corsey, Pro se.
 Morris Venning Brown, Pro se.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"These matters, both involving substantially the same facts, may be decided together. They came on for hearing pursuant to R.S. 33:1-66 to determine whether Dorothy Adielia Corsey's Chevrolet sedan and a quantity of taxpaid alcoholic beverages found therein, and whether Morris Venning Brown's Mercury sedan and a quantity of taxpaid alcoholic beverages found therein, both seized on June 14, 1959 at a picnic and revival meeting in the vicinity of Portertown Road, Mannington Township, New Jersey, constitute unlawful property and should be forfeited.

"The seizure was made by ABC agents because Dorothy Adielia Corsey and Morris Venning Brown were selling such alcoholic beverages, including sales to an ABC agent, without a license. Both admitted that they made such unlawful sales. Both claim that such picnic or meeting is an annual event, and that they did not know it was unlawful to sell alcoholic beverages at such an affair without a license.

"It has been uniformly and consistently held that such an excuse will not be accepted; that it is a matter of common knowledge, well publicized over the years, that alcoholic beverages may not be sold without a license, and that a person who engages in such activities cannot escape forfeiture of his property. Seizure Case No. 9382, Bulletin 1179, Item 5; Seizure Case No. 9473, Bulletin 1192, Item 4.

"A further consideration applicable to the instant cases is that although one day permits for a social function conducted by religious or other organizations are issued authorizing the sale of alcoholic beverages at a single affair, application for such a permit by a private individual for private profit at such an affair is invariably refused on the ground that the organization, and it alone, can secure such a privilege.

"While the claimants present many sympathetic aspects, especially Morris Venning Brown, in explaining the reasons they

ventured into the unlawful sale of alcoholic beverages, nevertheless, in the light of the paramount need, as above stated, for strict enforcement of the liquor laws to prevent unlicensed sales of alcoholic beverages, I cannot believe that in good conscience either claimant can be said to have acted in unknowing violation of the Alcoholic Beverage Law, one of the statutory prerequisites before the Director can exercise his discretionary authority to direct the return of property subject to forfeiture.

"I therefore recommend that an order be entered directing the forfeiture of the alcoholic beverages and motor vehicles listed in Schedule 'A'."

A letter received by the Division from Morris Venning Brown will be treated as an exception to the Hearer's Report filed within the time limited by Rule 4 of State Regulation No. 28. Dorothy Adielia Corsey has not filed any exception to such Report.

I have given careful consideration to Mr. Brown's urgent appeal concerning the effect on his economic circumstances if the motor vehicle is not returned but such is not a factor which may be considered to overcome the salutary principles of liquor control that persons selling alcoholic beverages without a license cannot be relieved of forfeiture. Cf. Seizure Case No. 7002, Bulletin 731, Item 2, where it was said, in effect, that motives which prompted violation of the Alcoholic Beverage Law, comparison of the character of the persons who have violated such law, and comparison of the pecuniary loss that such persons may suffer are speculative, difficult of determination and not to be considered as factors in the case.

After carefully considering the transcript, the Hearer's Report and the aforesaid letter of Morris Venning Brown, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is on this 17th day of September, 1959,

DETERMINED and ORDERED that the seized property, more fully described in Schedules "A" attached hereto, constitute unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or 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.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

AS TO CASE NO. 10,002

37 - cans of beer
1 - bottle of whiskey
1 - Chevrolet sedan, Serial No.
73553, New Jersey Registration
ZUR69.

AS TO CASE NO. 10,003

1 - quart bottle of whiskey
1 - Mercury sedan, Serial
No. 9565M2, N. J.
Registration Z148T

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHARLES PALESTIS t/a YALE TAVERN 80 Mallory Avenue Jersey City 4, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-524, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Defendant-licensee, Pro se.
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

On Sunday, August 2, 1959, at about 2:10 p.m., an ABC agent who was in defendant's premises purchased from a bartender a pint bottle of whiskey for off-premises consumption. The agent left with the bottle and he and other agents returned to the premises and identified themselves to the licensee and the bartender.

Defendant has a prior record. Effective March 29, 1959, his license was suspended for fifteen days by the local issuing authority for employing a person without an identification card required by a local ordinance. I shall suspend defendant's license for the minimum period of fifteen days (Re Kozlowski, Bulletin 1281, Item 11), to which five days will be added because of the prior dissimilar violation within the past five years (Re Sherry, Bulletin 1295, Item 4), making a total suspension of twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 17th day of September, 1959,

ORDERED that Plenary Retail Consumption License C-524, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Charles Palestis, t/a Yale Tavern, for premises 80 Mallory Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, September 28, 1959, and terminating at 2 a.m. Tuesday, October 13, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

JULIA BROOKS)
t/a RIVERVIEW TAVERN)
821 McBride Avenue)
West Paterson, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Mayor and Borough Council of the Borough of West Paterson.)

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

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on July 11 and 18, 1959, and on divers days prior thereto, she sold, served and delivered alcoholic beverages to a minor, and permitted the consumption of such beverages by said minor in and upon her licensed premises, in violation of Rule 1 of State Regulation No. 20.

On July 11, 1959, Paul --- (age 19) purchased six cans of beer at the licensed premises from a bartender. On July 18 Paul purchased a few drinks of beer at the bar of the licensed premises and stated that he had previously been served with and consumed beer at such bar. Paul later directed ABC agents to the licensed premises and identified Charles Preston as the person who sold him the beer on July 18. Paul stated that he was not asked his age on any occasion when he purchased beer at the premises.

Defendant has no prior adjudicated record. The licensee submitted a letter setting forth alleged mitigating circumstances, part of which is not in accord with the established facts and part of which does not present any ground for the imposition of less than the minimum penalty. I shall suspend defendant's license for a period of fifteen days, the minimum penalty imposed for sale of alcoholic beverages to a 19-year-old minor. Re Stirpe, Bulletin 1294, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 28th day of September 1959,

ORDERED that Plenary Retail Consumption License C-8, issued by the Mayor and Borough Council of the Borough of West Paterson to Julia Brooks, t/a Riverview Tavern, for premises 821 McBride Avenue, West Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3 a.m. Monday, October 5, 1959, and terminating at 3 a.m. Thursday, October 15, 1959.


William Howe Davis
Director