

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

BULLETIN 1411

October 3, 1961

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

BULLETIN 1411

October 3, 1961

1. APPELLATE DECISIONS - SAYREVILLE ITALIAN-AMERICAN CLUB, INC. v. SAYREVILLE.

SAYREVILLE ITALIAN-AMERICAN CLUB, )  
INC., A CORPORATION OF THE STATE )  
OF NEW JERSEY, )

Appellant, )

v. )

MAYOR AND BOROUGH COUNCIL OF THE )  
BOROUGH OF SAYREVILLE, )

Respondent. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

-----  
Louis J. Milano, Esq., Attorney for Appellant.  
Joseph T. Karcher, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent on May 3, 1961, whereby it denied appellant's application for a club license for premises consisting of a store on the ground floor of a building located at 91 Main Street, Sayreville.

"The petition of appeal alleges that the resolution denying the license sets forth the following stated reasons for denial:

'(a) applicant failed to establish that it formerly had for a three year period or now has exclusive possession of a club house or club quarters.

(b) Objectors established that there exists at the present time an adequate number of liquor outlets in the Borough and the issuance of any more at this time would adversely affect the economic operation of other licensed premises.'

Said petition of appeal alleges that the action of respondent was erroneous because the stated reasons are 'without foundation.'

"The answer filed herein admits that the petition of appeal correctly sets forth the reasons stated in respondent's resolution denying the application, but otherwise denies all allegations set forth in the petition. The answer also sets forth six separate defenses, only one of which, in my opinion, is material in reaching a decision herein. Said separate defense reads as follows:

'SIXTH SEPARATE DEFENSE

The borough ordinance regulating the issuance of liquor licenses in Sayreville as presently amended limits the number of club licenses to four, all of which are issued; no club license is therefore available

in Sayreville without a further amendment to the ordinance enlarging the number, which action the governing body feel would be against public policy and the general welfare of its citizens.'

"At the outset it must be determined whether the matter set forth in the sixth separate defense now bars the issuance of a club license to appellant irrespective of the validity of either reason for denial as set forth in respondent's resolution denying appellant's application.

"From the evidence herein it appears that on November 5, 1952, respondent adopted an ordinance amending 'An Ordinance to Regulate the Sale of Alcoholic Beverages in the Borough of Sayreville, County of Middlesex' whereby it was provided 'that Club Licenses in the Borough of Sayreville shall hereafter be limited to four' and on May 15, 1957, respondent adopted a further amendment to said ordinance whereby it was provided that 'club licenses in the Borough of Sayreville shall hereafter be limited to five in number.' At that time five club licenses were in existence and were held by the following organizations: an American Legion Post, Veterans of Foreign Wars of Sayreville, Veterans of Foreign Wars of Old Bridge, Knights of Columbus, and the Hercules Powder Club. At some undisclosed time thereafter the club license held by the Hercules Powder Club was not renewed with the result that on March 22, 1961, when appellant's application was filed, there were four club licenses in existence and the local ordinance limit the number of said licenses to five.

"The evidence given herein discloses that the regular meetings of respondent are held on the first and third Wednesday of each month; that, after appellant's application was filed on March 22, 1961, it was considered by respondent at its first meeting held in April and referred to the Police Department for investigation; that, prior to respondent's second meeting in April, a written letter of objection was received from members of a Tavern Owners Association and that at said meeting a public hearing (in accordance with the provisions of Rule 6 of State Regulation No. 2) was scheduled to be held on Wednesday, May 3, to consider said objection; that, at the conclusion of the public hearing on May 3, respondent adopted the aforesaid resolution denying appellant's application and thereafter, at the same meeting, adopted on first reading Ordinance No. 762; directed that said ordinance be advertised in accordance with the law and that a public hearing be held thereon on May 17. On May 17, 1961, Ordinance No. 762 was finally adopted.

"Said Ordinance No. 762 further amended the original ordinance to provide as follows:

'Club Licenses in the Borough of Sayreville shall hereafter be limited to four (4) in number.'

"It is fundamental that a liquor license may not lawfully be issued in violation of a local ordinance. Bachman v. Phillipsburg, 68 N.J.L. 552 (Sup.Ct. 1902). It is not the status of the law prevailing at the time of application for a license or permit that controls, but the status of the law prevailing at the time the court or agency decision is rendered. Socony-Vacuum Oil Co. Inc. v. Mt. Holly Township, 135 N.J.L. 112 (Sup.Ct. 1947); Bock Tavern Inc. v. Newark, Bulletin 952, Item 1; Moschera v. Plumsted, Bulletin 1075, Item 8; Jump v. Logan, Bulletin 1179, Item 2; Ming's Chinese Restaurant Inc. v. Teaneck, Bulletin 1279, Item 2; Applegate-Brower Post #4569, Veterans of Foreign Wars, v. Corbin City, Bulletin 1314, Item 1.

"A municipality may, by ordinance, limit the number of licenses to sell at retail, including club licenses, and may amend or repeal such ordinance. R.S. 33:1-40. The aforesaid limitations are, however, subject to appeal to the State Director. R.S. 33:1-41. While doubt was expressed in Phillipsburg v. Burnett, 125 N.J.L. 157, that the Director may declare a limiting ordinance invalid, he may find that such an ordinance is unreasonable in its application to an appellant if evidence establishes any improper motivation or if there is no evidence of any reasonable basis for the ordinance. Cohen v. Wrightstown, Bulletin 1064, Item 1; Shenise v. Jefferson, Bulletin 1155, Item 2. In this case there is no evidence of any improper motivation. Hence the evidence herein must be considered to ascertain if there was any reasonable basis for the adoption of Ordinance No. 762.

"At the hearing herein Councilman Howard Kolb testified that he has been a member of the Borough Council for the past five and one-half years and was formerly Chairman of the Excise Committee; that the amending ordinance was adopted on May 15, 1957, to validate the issuance of a fifth club license which had been issued to Veterans of Foreign Wars of Old Bridge in violation of the amendment of November 5, 1952, which limited the number of club licenses to four. He testified that, when the Hercules Powder Club did not bother to renew its license, 'we didn't take any action at the time because I felt it wasn't necessary at the particular time.' He further testified as follows:

'We do have fifty-seven tavern licenses and six distribution licenses which brings it up to a total of sixty-three. And we do have four club licenses. We felt that we should not issue any more club licenses because we were aware of the fact through general discussions between all members of the governing body.'

"No one is entitled to a liquor license as a matter of right. After reviewing the evidence, I find that Ordinance No. 762 stands as a formal manifestation of policy against issuing any additional club licenses in the Borough.

"The evidence given herein by Peter Scalamoni, president of appellant club, discloses that appellant was incorporated in February 1957; that it now has about sixty-five members; that it had exclusive possession of a small room in a garage from February 1957 until April 1961 and that it has been renting its proposed licensed premises for its exclusive use on a month-to-month basis since that time. These facts would seem to indicate that reason (a) in the resolution denying the license was without merit. Burak v. Irvington et al., Bulletin 130, Item 2. Moreover, assuming that the economic operation of other licensed premises is a matter to be considered, it is doubtful that a club license, which is issued for the convenience of the club members and their bona fide guests, would adversely affect the operation of other licensed premises. Hence, reason (b) also appears to be without merit. Nevertheless, since an additional club license cannot lawfully be issued in Sayreville in the face of the present ordinance prohibiting the issuance thereof, it is recommended that an order be entered affirming the action of respondent and dismissing the appeal. Applegate-Brower Post #4569, Veterans of Foreign Wars, v. Corbin City, supra."

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

After carefully considering the evidence and exhibits herein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 3rd day of August 1961,

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.

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

CATHERINE BEGLEY AND SUZANNE BUCKLEY )  
t/a TURK'S TAVERN )  
235 Cliff Street )  
Cliffside Park, N. J. )

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-25 for the 1960-61 licensing year, issued by the Mayor and Council of the Borough of Cliffside Park, which license has been renewed for the 1961-62 licensing year solely in the name of )

SUZANNE BUCKLEY, t/a TURK'S TAVERN, )

for the same premises. )

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Defendant-licensees, by Suzanne Buckley, Partner.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On June 16, 1961, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Mary ---, age 16, John M. L ---, age 18, John M. K ---, age 19, Edward ---, age 19, Alfred C. ---, age 19, Alfred J. ---, age 20, and Lawrence ---, age 20 and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

On Friday, June 16, 1961, at about 9:40 p.m., two ABC agents who were in the licensed premises observed a group of seventeen youthful appearing males and females followed shortly by Vincent Buckley (the bartender) enter a room in the rear of the premises. At about 9:45 p.m. Buckley returned to the bar, filled some pitchers of beer and placed them on the bar. At 9:50 p.m., 10 p.m. and again at 10:10 p.m., one of the male minors of the group emerged from aforesaid room and returned thereto with a pitcher of beer served to him by Vincent Buckley, assisted by Edward Maxwell (another bartender). In the course of these activities the agents looked into the room and observed a female and all of the males in the party consuming beer or holding glasses of beer.

At about 10:15 p.m. the agents accompanied by local police entered the room and found nine males and five females seated around a table on which there were partially-filled pitchers and glasses of beer.

The agents identified themselves to Vincent Buckley and to aforesaid group, seven of whom identified themselves by their names and ages as set forth in the charge herein.

In sworn, signed statements dated June 16, 1961, the six male minors state that on the night and time in question each contributed \$2.50 toward the purchase of the beer; that each consumed a portion of the same, and that they were not required to make written representations of their ages. Mary ---, in a sworn, written statement dated June 16, 1961, sets forth that on the night in question she consumed some of the beer brought into the rear room of the licensed premises and that no one had questioned her about her age.

Buckley verbally admitted serving pitchers of beer to Edward --- and Alfred C.---

Suzanne Buckley (one of the licensees) verbally admitted that an adult member of the group to whom she rented the room had paid Vincent Buckley \$25 for the beer and that she did not know minors would be consuming the beer. However, licensees cannot escape the consequences of the acts of their agents. Rule 33, State Regulation No. 20.

Defendants have no prior adjudicated record. The minimum penalty for the sale or service of alcoholic beverages to a 16-year-old minor is twenty-five days. Re Lucky's Tavern, Inc., Bulletin 1159, Item 4. I shall suspend defendants' license for twenty-five days, to which will be added fifteen days because of the number of minors involved (cf. Re Lucky's Tavern, Inc., supra), 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 1st day of August 1961,

ORDERED that plenary retail consumption license C-25, for the 1961-62 licensing year, issued by the Mayor and Council of the Borough of Cliffside Park to Suzanne Buckley, t/a Turk's Tavern, for premises 235 Cliff Street, Cliffside Park, be and the same is hereby suspended for thirty-five (35) days, commencing at 3 a.m. Wednesday, August 9, 1961, and terminating at 3 a.m. Wednesday, September 13, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD - LICENSE  
SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against )

OTT'S, INCORPORATED )  
t/a LAUREL RUN TAVERN )  
Hartford & Moorestown Roads )  
Delran Township )  
PO Riverside, New Jersey )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-4 (for the 1960-61 and 1961-62 licensing years) issued by the Township Committee of the Township of Delran. )

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Powell and Davis, Esqs., by Paul Russell Kramer, Esq., Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On May 19, 1961, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., M. Dean---, age 17; in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein, the Division called as its witnesses Dean ---, Terry---, Pamela ---, and an ABC agent, hereinafter referred to as Agent G.

"Dean testified that he was born on June 29, 1943 and, hence, was 17 years of age at the time of the alleged violation; that he recently graduated from high school and was preparing to enter a university in the fall; that on Friday, May 19, 1961, at about 9:30 p.m., he and two friends, Terry and Pamela, drove from a dance at the Moorestown Community House to the immediate vicinity of the defendant's licensed premises; that he parked his car on a parking lot in front of the premises; that the premises are located in the country with a few homes in the area and a gasoline service station across the road; that the premises are contained in a white frame building with a sign 'Ott's Tavern'; that it consists of a tavern and a package store with separate entrances and that he drove to the premises to purchase a six-pack of Piel's beer. Dean further testified that he alone entered the package store and, without being required to make any written representation of his age, purchased a six-pack of Piel's beer from a man who came into the package store from the tavern; that this male had taken the alcoholic beverages from a cooler, placed them in a brown paper bag and handed the same to him; that in payment thereof he gave this male two dollars; that he received ninety cents in change and that he carried the alcoholic beverages from the premises to his friends in the car.

"On cross-examination, Dean testified that on the night in question, he arrived at the dance between 8:50 and 8:55 p.m.; that between 9:10 and 9:15 p.m., he, Terry and Pamela drove to the licensed premises by the most direct route (Bridgeboro Road); that he believes it was Henry F. Ott (seated at the counsel table and identified as the secretary of the defendant corporate-licensee) who sold him the beer; that 'I couldn't be sure. I couldn't say definitely'; that he was reasonably sure it was neither Daniel Payne nor Frank Bechilio (bartenders seated in the hearing room) who had sold him the alcoholic beverages; that on the night in question he was in the licensed premises between four and five minutes; that his companions knew the purpose of his mission before he had left the dance; that he had made the trip to the licensed premises at the suggestion of three other friends at the dance; that he returned to the dance, picked up his other three friends who consumed the beer while riding with him to Mount Laurel. Dean further testified that on Monday night, May 22, 1961, he returned to the licensed premises in the company of Agent G; that he there met Daniel and Frank (the aforesaid bartenders) and Frederick and Henry Ott (officers of the defendant corporate-licensee); that neither of the bartenders nor Frederick Ott was the male who sold him the alcoholic beverages; that the following night (Tuesday) he and Agent G again met Henry Ott; that on both of these occasions he had stated to Agent G that he was unable to make positive identification of Henry Ott as the one who sold him the beer.

"Terry testified that he is preparing to enter college in the fall; that on the date and time in question, he, Dean and Pamela arrived in the immediate vicinity of the licensed premises; that Dean parked his

car in front of the package store of the licensed premises; that he had a full view of the licensed premises; that he observed Dean, empty-handed, enter the package store and later emerge therefrom with a paper bag; that Dean carried the bag to the car and handed the same to him; that he looked into the bag and in it saw a six-pack of Piel's beer, following which they drove off. Terry further testified that Dean drove to the licensed premises to purchase beer; that he saw the back of Dean in the liquor store and that while Dean was in the premises, he saw 'a head' enter the liquor store from the barroom.

"On cross-examination, Terry testified that on the night in question, at about 9:15 p.m., he met Dean at the dance; that the beer was purchased at the suggestion of 'some other people' at the dance; that he had observed Dean ascend a few steps before entering the premises; that the liquor store has two picture windows (front and side) containing beer advertisements in neon signs and, 'I am not sure if there was a clock in the window'; that he had no difficulty in observing 'the head' enter the liquor store; that the beer was consumed by the three friends named by Dean and that on the night in question, no other alcoholic beverages were consumed.

"Pamela testified that she is a high-school junior; that on the night in question, she met Dean and Terry at the Moorestown Community Center and drove with them to the licensed premises; that they arrived at the licensed premises at about 9:30 p.m.; that Dean parked his car 'sort of on the side of the building'; that she sat in the front seat of the car; that she observed Dean enter the package store and about five minutes later emerge therefrom with a package; that Dean brought the package to the car and that she later observed the same to contain a six-pack of Piel's beer. Pamela further testified that about two minutes after Dean had entered the liquor store she saw him and a male standing directly across from each other on opposite sides of a counter.

"On cross-examination, Pamela testified that prior to May 19th aforesaid, she had not been to the defendant's licensed premises and that the alcoholic beverages were consumed by the aforementioned three individuals.

"Agent G corroborated the testimony of Dean as to his description of the licensed premises (inside and outside) and further testified that on May 22nd and May 23rd aforesaid, Dean was unable to make positive identification of Henry Ott as the one who sold him the alcoholic beverages; that Dean eliminated the aforementioned bartenders and Frederick Ott as the ones who sold him the alcoholic beverages; that there is no liquor outlet on the route between the Moorestown Community House and the licensed premises and that the nearest liquor outlet to the licensed premises is about a mile beyond it on Route 130.

"At the close of the Division's case, counsel for the defendant moved to dismiss the charge herein on the ground that the evidence adduced by the Division failed to make out a prima facie case. I find no merit in this contention. It is quite clear that the Division has presented sufficient competent evidence to prove a prima facie case. I recommend that the motion be dismissed.

"Teresa Ott, wife of Henry Ott, on behalf of the defendant, testified that on the night in question she, her husband and family rose from their dinner table at about 7:30, following which Mr. Ott, as was his custom, went upstairs to rest; that about 9:30 p.m. she awakened Mr. Ott, who was in bed partially undressed; that Mr. Ott came downstairs at 9:50 p.m., at which time she drove him to the licensed premises, a distance of  $2\frac{1}{4}$  to  $2\frac{1}{2}$  miles; that at about 9:55 p.m. they arrived at the rear of the licensed premises; that Mr. Ott got out of the car; that she then drove home and that, in response to a telephone call from Mr. Ott, she returned to the premises about 10:15 p.m. with the office keys which Mr. Ott had forgotten to take with him.

"Daniel Payne, on behalf of the defendant, testified that on the night in question he and Frank Bechilio were the only bartenders on duty at the licensed premises; that at about 9:55 p.m. he observed Henry Ott enter the tavern through a rear door of the premises; that prior thereto on that evening, Mr. Ott had not been in the licensed premises; that he had taken particular notice of the time that Mr. Ott entered the premises because Mr. Ott's appearance relieved him of the duty of closing the liquor store at 10:00 p.m. as he had done on previous occasions in the absence of Mr. Ott; that Mr. Ott spoke with the four members of the band, partially consumed a small glass of beer and at 10:00 p.m. walked into the liquor store to close the same.

"Mr. Payne further testified that on the Friday night in question, he did not see Dean in the licensed premises; that Tuesday night, May 23rd aforesaid, he was present with Mr. Ott when Dean stated to Agent G that he 'wasn't sure' if Mr. Ott sold him the alcoholic beverages; that he and Bechilio also serve the patrons in the package store and that either enter the store in response to a sound by a buzzer wired to the front door of the package store.

"On cross-examination, Payne substantially confirmed Dean's and Terry's description of the licensed premises.

"Frank Bechilio, on behalf of the defendant, substantially corroborated the testimony of Payne with respect to their duties in the licensed premises, the time that Mr. Ott allegedly entered the premises on the night of May 19th aforesaid and Mr. Ott's alleged activities from the time he arrived at the premises to 10:00 p.m. Bechilio further testified that prior to Monday, May 22nd aforesaid, he had never seen Dean and that to his knowledge on the night in question, he and Payne were the only ones who served the patrons in the liquor store.

"Theodore P. Kessler, on behalf of the defendant, testified that he is the president of the manufacturing company; that to the best of his knowledge he arrived at the licensed premises on the night in question at about 9:15 p.m.; that there were between 45 and 50 patrons in the premises; that he engaged in a game of pool with William Linskey; that the pool table was located adjacent to the rear entrance of the tavern and between the bar and the door leading to the liquor store; that he observed Mr. Ott enter the premises from the kitchen which leads to the aforesaid rear entrance; that Mr. Ott arrived at the premises before 10:00 p.m. 'because, well I saw Henry when he came in and he closed up'; that Mr. Ott had spoken with him and Mr. Linskey 'for a minute or so' following which Mr. Ott walked to the bar and then came back to the pool table. Mr. Kessler further testified that Mr. Ott entered the liquor store and returned to the barroom; that he assumed this took place at 10:00 p.m. because 'its quite an effect on the pool table when you shut the liquor room door and turn the lights out' and that he had not seen Dean in the premises.

"Mr. Kessler further testified that the lower edge of the front picture window in the package store rests five feet from the ground; that the approximate height of the counter therein is about 2½ feet and that the counter cannot be seen from the outside.

"On cross-examination, Mr. Kessler testified that on the night in question, he looked into the package store many times and that he did not see every patron who entered the same between 9:30 and 10:00 p.m.

"William Linskey, on behalf of the defendant, testified that he arrived at the licensed premises on Friday, May 19th aforesaid, between 8:30 and 8:45; that Mr. Kessler arrived later; that he first saw Mr. Ott in the licensed premises that night after 9:30, 'getting on toward 10:00 o'clock, quarter of, twenty minutes of, ten minutes of'; that he observed Mr. Ott enter the liquor store and that he did not see Dean in the licensed premises.

"On cross-examination, Mr. Linskey testified that on the night in question, he observed Mr. Ott in the licensed premises at about 9:45 p.m. and that he does not know if Dean had been in the package store that night.

"Henry F. Ott, on behalf of the defendant, corroborated the testimony of Mrs. Ott as to the events which took place at their home on the night in question between about 6:00 and about 9:50 p.m.; that Mrs. Ott drove him to the front of the licensed premises and that she later returned to the premises with his office keys. Mr. Ott further testified that he entered the premises by its rear entrance and that at 10:00 p.m. he closed the liquor store and removed the cash therefrom.

"Mr. Ott further testified that the front picture window in the package store measures 4 feet by 5 feet; that it rests about 6½ feet from the ground; that the view of the liquor store through this window is obscured by two 18 inch plants, by a sign which read 'Ott's Package Store--Ballantine Beer'; that neon tubing surrounds the sign and runs along the edges of the window about three inches therefrom and that a circular whiskey display and a rhododendron plant (reaching to the ceiling) are located between the two picture windows (front and side).

"Mr. Ott further testified that he did not see Dean in the licensed premises prior to Monday night, May 22, 1961, when Dean came there with Agent G; that Dean, on this occasion, identified him as the one who made the sale of the alcoholic beverages; that on Tuesday, May 23rd aforesaid, he was again confronted by Dean who was accompanied by Agent G; that Dean, in response to Agent G's question, 'Is this the fellow who served you?' answered, 'I don't think so'; that on the night in question, exclusive of the two bartenders, no males were authorized to serve patrons in the package store.

"On cross-examination, Mr. Ott testified that on Friday night aforesaid, no females were employed in the licensed premises and that he does not know whether the bartenders commissioned anyone to make any sales in the liquor store.

"At this point it was stipulated by the prosecutor that (1) if the four members of the band were called as witnesses they would testify that on the night in question, they made no sales in the package store and (2) that on the night in question, fifteen youngsters were attending a pajama party at Mr. Ott's home and that if these youngsters were produced they would testify that Mr. Ott did not leave his home before 9:45 p.m.

"In the brief submitted by defendant's attorney, it is contended that with respect to the identity of the person making the alleged sale, the Division, by its own witnesses, has excluded all of the agents, servants or employees of the defendant-licensee except Henry Ott and that the Division's single witness, who attempted to identify Mr. Ott, testified that he 'couldn't positively say' that it was Henry Ott, that he 'wasn't sure'. The defendant further contends that it has adduced substantial testimony to the effect that Mr. Henry Ott was nowhere near the licensed premises at a time reasonably close to the time of the alleged sale and that the charge should be dismissed for the aforesaid reasons, citing in support thereof Re Kessler and Silver, Bulletin 876, Item 6.

"I find no merit to these contentions. It has long been established that the failure of the minor to identify the specific person who made the sale of intoxicating beverages to him is not fatal in disciplinary proceedings against the licensee. Re LaCorte, Bulletin 469, Item 1; Re Cohen, Bulletin 495, Item 6; Re Dante, Bulletin 771, Item 9; Re Kurinsky and Ancel, Bulletin 1100, Item 7; Re Mondelli, Bulletin 1142, Item 8; and Re Keller's Tavern & Grove, Inc., Bulletin 1245, Item 4.

"I have carefully considered the testimony adduced herein, together with the brief filed on behalf of the licensee, and find that Dean, Terry and Pamela gave an accurate and truthful account of what transpired in this case and am unable to find any inconsistencies or defects in their testimony. I cannot conceive that they would conspire against the licensee. Under the circumstances, I conclude that the Division has sustained the burden of defendant's guilt by a fair preponderance of the believable evidence and I recommend, therefore, that the defendant be found guilty as charged.

"Defendant has a prior adjudicated record. Effective May 12, 1957 its license was suspended by the local issuing authority for seven days for an 'hours' violation. It is further recommended, therefore, that an order be entered suspending defendant's license for twenty days on the charge herein (Re Miller, Bulletin 1390, Item 4) and for an additional five days for the prior dissimilar violation which occurred within the past five years (Re 183 Meeker Avenue Corporation, Bulletin 1386 Item 7), making a total suspension of twenty-five days."

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

Having carefully considered the record herein, including the transcript of the proceedings, the exhibits, the memorandum filed with the Hearer by defendant's attorney and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 3rd day of August, 1961,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Delran to Ott's Incorporated, t/a Laurel Run Tavern, for premises on Hartford & Moorestown Roads, Delran Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 6:00 a.m., Monday, August 14, 1961, and terminating at 6:00 a.m., Friday, September 8, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

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

In the Matter of Disciplinary Proceedings against )

ANGELINA & CHESTER CANOVA )  
t/a TRENTON HOUSE )  
329 Trenton Avenue )  
Paterson, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-327, issued by the Board of Alcoholic Beverage Control for the City of Paterson. )

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Defendant-licensees, Pro se.

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

BY THE DIRECTOR:

Defendants pleaded guilty to charges alleging that on Sunday, July 2, 1961, they (1) sold, served and delivered and allowed, permitted and suffered the sale, service, delivery and consumption of alcoholic beverages on their licensed premises during prohibited hours and (2) failed to have their entire licensed premises closed during said hours, both in violation of the provisions of a local ordinance.

An ordinance of the City of Paterson prohibits sale, service, delivery and consumption of alcoholic beverages on Sundays between the hours of 3:00 a.m. and 1:00 p.m. and requires that licensed premises (with certain exceptions not material herein) shall be closed between said hours.

On Sunday, July 2, 1961, at 11:55 a.m., ABC agents observed two males, each consuming a glass of beer, seated at the bar in defendants' licensed premises. The agents sought admission to the premises from a man who came to the side door and, when he refused their request, the agents identified themselves. Thereafter, when admitted to the premises, Andrew Ewen, in charge of the place, told the agents he was employed on Sundays as a cleaner in the establishment. He admitted the violation and, when asked if he would make a written statement with reference thereto, stated, "You got me, and that's it."

In explanation of the violation, defendants allege that they were away at the time and that the person who served the beer to the respective patrons had forgotten that it was a violation to do so prior to 1:00 p.m. on Sundays. Nevertheless, a licensee is fully responsible for the action of its employees or agents. Rule 33 of State Regulation No. 20.

Defendants have no prior adjudicated record. I shall suspend defendants' license for fifteen days (the minimum suspension for a violation as the one in question). Re Funicelli and Falvo, Bulletin 1231, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 8th day of August 1961,

ORDERED that Plenary Retail Consumption License C-327, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Angelina & Chester Canova, t/a Trenton House, for premises 329 Trenton

Avenue, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., Tuesday, August 15, 1961 and terminating at 3:00 a.m.m Friday, August 25, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

5. APPEAL CASES - JULY 1, 1960, THROUGH JUNE 30, 1961

TO: William Howe Davis, Director  
FROM: Edward J. Dorton, Deputy Director

APPEAL CASES -- July 1, 1960, through June 30, 1961

Cases Undecided June 30, 1960 29

Cases Filed for period July 1, 1960,  
through June 30, 1961 96

Total . . . 125

Disposition

Affirmed . . . . .	47
Reversed . . . . .	16
Modified . . . . .	2
Remanded . . . . .	11
Withdrawn (after hearing) .	5
Withdrawn (no hearing) . .	16
Undecided (17 cases heard)	
(11 " not " )	<u>28</u>

Total . . . . . 125

Edward J. Dorton  
Deputy Director

Dated: August 4, 1961

6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN HOME - APPLICATION OF CLAIMANT FOR RETURN OF CASH DENIED AS ACTIVE PARTICIPANT AND ABSENCE OF GOOD FAITH - CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure	)	
on January 27, 1961 of a quantity	)	Case No. 10,500
of alcoholic beverages and \$255.75	)	
in cash, at 27 School Street, in	)	ON HEARING
the City of Englewood, County of	)	CONCLUSIONS
Bergen and State of New Jersey.	)	AND ORDER

-----)  
George Weleck, Esq., appearing for Vassena and Eugene Pegeese.  
I. Edward Amada, Esq., and David Piltzer, 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 quantity of alcoholic beverages and \$255.75 in cash, as described in a schedule attached hereto, seized on premises occupied by Vassena and Eugene Pegeese at 27 School Street, Englewood, Bergen County, New Jersey, constitute unlawful property, and should be forfeited.

"Vassena Pegeese, represented by counsel, appeared at such hearing, and sought return of the cash, as stated hereinabove.

"No one opposed forfeiture of the alcoholic beverages.

"Raymond Wright, an Englewood police officer and ABC agents R and S were produced as witnesses on behalf of the Division. Vassena Pegeese testified in support of her claim and produced no other witnesses. Eugene Pegeese, who was present during these proceedings, did not offer himself as a witness.

"From the Division's witnesses the following testimony was adduced: as the result of information received from the Englewood Police Department, ABC agents arranged for a 'buy' of alcoholic beverages at 11:00 p.m. on January 27, 1961. This was executed by one William ---, who was given two one-dollar bills, the serial numbers of which had been previously recorded. William then entered the premises at 27 School Street, in the City of Englewood, and approximately five minutes thereafter emerged with two one-pint bottles of Vincove Apple Wine, which were surrendered to Detective Wright. Immediately thereupon ABC agents and local police officers, fortified with a search warrant issued by the local magistrate, entered the said premises and questioned Mrs. Pegeese about this alleged 'buy'. She denied that she had sold any wine to anyone, and further stated that she had no money on her. She asserted that she had only had \$20.00 which she used that day to pay her insurance (premium).

"The premises herein consist of a three-room apartment, containing a bedroom, living room, kitchen and a small back porch, on the first floor of this two-story building. The ABC agents then made a thorough search of the apartment and found five dollar bills on the bureau in the bedroom thereof, two of which bills were the 'marked' bills held by William for the purposes of the 'buy'. In the kitchen were found two half-gallon whiskey bottles, sealed on top, with a slot in the side of each bottle. These bottles, which were in back of three pint bottles of wine, contained \$255.75 in silver currency of various denominations.

"In addition, they also found, in the kitchen, 323 pint bottles of wine, a substantial part of which was the Vincove Apple Wine. Pegeese and Mrs. Pegeese were then further questioned at police headquarters with respect to this large quantity of wine which was stored in this small room. Pegeese explained its presence in the following language, 'I am a heavy drinker. I like to drink wine. I have some friends who buy wine and I let them store it at my home so that when we get together socially we drink this wine together.' Both he and Mrs. Pegeese denied that they had any transaction with William on that evening.

"Vassena Pegeese, testifying in her own behalf, asserted that the cash was her own personal property, represented her life savings and that she kept it in the kitchen of her home in the half-gallon bottles. She admitted seeing William that evening in her home, but denied that either she or her husband, in her presence, sold him any wine. On cross examination she stated that William entered her home, and stated that he wanted a drink of water. He then went through the bedroom of her apartment into the kitchen and remained there for some time. She further testified that she makes a living by taking in laundry, 'cooking and boarders' and that her husband does little odd jobs as a handyman but hasn't had steady work for several years because of illness. She further stated that she frequently served meals to men in the neighborhood for whom she does laundry work, but she sets no fixed rates for these meals and accepts what is offered to her. She stated that she knew that there was wine in the house but she did not know exactly where it was stored or in what quantity. She further testified that she saw her husband drink this wine and give it to his friends, but that although she knew that the wine was in the kitchen where she prepared meals she didn't realize quite how much wine was in the said kitchen. She admitted further that she had been convicted of receiving stolen goods, was fined \$100.00 and placed on probation for two years on February 11, 1960.

"William was not available on the dates of these hearings. The attorney for the Division stated that efforts had been made to subpoena him but that his present whereabouts are unknown and he was therefore unable to be produced as a witness.

"An analysis by the Division's chemist of the contents of one of the bottles containing Vincove Apple Wine which was turned over by William to the ABC agents shows that it is apple wine fit for beverage purposes with an alcoholic content by volume of 20.0 percent.

"It would be rather ingenuous to believe that this large quantity of pint bottles of wine located in the kitchen of this small three-room apartment was there without the knowledge of the claimant, and that it was there solely for personal consumption. It is more consistent with human experience that the real purpose of its presence was for commercial resale. Since it is manifest that they were intended for sale without a license, these alcoholic beverages are illicit R.S. 33:1-1 (1). Such illicit alcoholic beverages constitute unlawful property and are subject to forfeiture R.S. 33:1-1 (y); R.S. 33:1-2, 33:1-66.

"I am persuaded that the Division witnesses gave a forthright and credible version of what happened on the date hereinabove referred to. I am convinced a 'buy' was made; that the 'marked' money was found on the premises; that the claimant knew of, and indeed participated in, this illegal activity. I am further persuaded that the sum of \$255.75 in silver currency which was found in the kitchen repre-

sented receipts from the sale of the alcoholic beverages found in the same room. The statement by the claimant that this constitutes her life savings, is inconsistent with her assertion to the ABC agents at the time of the original confrontation that she had no money. The credibility of her testimony is seriously affected in my judgment by the fact that she has been convicted of crime.

"Since she is an active wrongdoer, she cannot obtain return of any of the cash seized. This money which was clearly commingled with the 'marked' money which she received for the 'buy' is subject to forfeiture. Seizure Case No. 10,349, Bulletin 1366, Item 2; Seizure Case No. 9382, Bulletin 1179, Item 5; R. S. 33:1-1 (y); R.S. 33:1-2; R.S. 33:1-66.

"I therefore recommend that the claim of Vassena Pageese for the return of the monies in question be denied and that an Order be entered forfeiting all the property seized."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorney for the claimant pursuant to the provisions of Rule 4 of State Regulation No. 28.

After carefully considering the entire record in this case, including the transcript of testimony, the Hearer's Report, the exceptions and written argument filed herein, I concur in the Hearer's findings and adopt them as my conclusions herein,

Accordingly, it is on this 3rd day of August, 1961,

DETERMINED and ORDERED that the seized property, including the \$255.75 in cash, more fully described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66 and shall be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS  
DIRECTOR

SCHEDULE "A"

323 - pints of wine  
22 - cans of beer  
\$255.75 in cash

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ANTHONY T. DWYER, and JAMES A. DWYER t/a DWYER'S ) 228 Monticello Avenue ) Jersey City, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-285, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

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

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that during prohibited hours they sold and permitted the sale of alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

On the afternoon of Sunday, July 23, 1961, an ABC agent entered defendants' premises. At about 2:15 p.m. he purchased from James Fitzgerald (the bartender) six cans of beer which the bartender placed in a paper bag. The agent left the premises with the bag and contacted another ABC agent who had remained outside. Both agents then entered and identified themselves to the bartender who verbally admitted the sale.

Defendants have no prior adjudicated record. I shall suspend defendants' license for the minimum period of fifteen days. Re Royal Room, Inc., Bulletin 1388, Item 8. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 9th day of August 1961,

ORDERED that plenary retail consumption license C-285, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Anthony T. Dwyer, and James A. Dwyer, t/a Dwyer's, for premises 228 Monticello Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, August 15, 1961, and terminating at 2 a.m. Friday, August 25, 1961.

Handwritten signature of William Howe Davis, followed by the typed name WILLIAM HOWE DAVIS and the title DIRECTOR.