

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

BULLETIN 1425

December 18, 1961

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS--SNUG TAVERN INC. v. ORANGE (CASES 1 and 2).
2. APPELLATE DECISIONS - SNUG TAVERN INC. v. ORANGE (CASES 1 and 2) - AMENDED ORDER.
3. DISCIPLINARY PROCEEDINGS (Gloucester City) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Atlantic City) - CHARGE ALLEGING SALE TO MINORS DISMISSED.
5. DISCIPLINARY PROCEEDINGS (Harrison) - GAMBLING (CARD GAME) - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
6. STATE LICENSES - NEW APPLICATION FILED.

STATE OF MICHIGAN  
DEPARTMENT OF THE TREASURY  
DIVISION OF REVENUE  
LANSING, MICHIGAN

1917

REVENUE

1917

STATE OF MICHIGAN  
DEPARTMENT OF THE TREASURY  
DIVISION OF REVENUE  
LANSING, MICHIGAN

1917

REVENUE

1917

STATE OF MICHIGAN  
DEPARTMENT OF THE TREASURY  
DIVISION OF REVENUE  
LANSING, MICHIGAN

1917

REVENUE

1917

STATE OF MICHIGAN  
DEPARTMENT OF THE TREASURY  
DIVISION OF REVENUE  
LANSING, MICHIGAN

1917

REVENUE

1917

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

BULLETIN 1425

December 18, 1961

1. APPELLATE DECISIONS - SNUG TAVERN INC. v. ORANGE (CASES 1 and 2).

CASE NO. 1  
SNUG TAVERN INC., TRADING AS SNUG  
TAVERN, )

Appellant, )

v. )

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

Respondent. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

-----  
Case No. 2.  
SNUG TAVERN INC., TRADING AS SNUG TAVERN, )

Appellant, )

v. )

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

Respondent. )

-----  
Jack L. Cohen, Esq., Assignee for the Benefit of Creditors,  
substituted for Frank A. LaMorte, Esq., Attorney for Appellant.  
John R. Murray, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"In Case No. 1, appellant appeals from the action of respondent whereby on May 8, 1961, it suspended its plenary retail consumption license for premises 133 South Street, Orange, New Jersey, for twenty-five days, commencing at 2:00 a.m. on May 17, 1961. By Order dated May 16, 1961, the Director stayed said suspension until the entry of a further order herein. R.S. 33:1-31.

"In Case No. 2, appellant appeals from the action of respondent whereby on the same date as aforesaid, it suspended appellant's aforesaid license for twenty days, commencing at 7:00 a.m. on June 11, 1961. By Order dated May 16, 1961, the Director also stayed said suspension until the entry of a further order herein. R.S. 33:1-31.

"In Case No. 1, respondent charged that the appellant, on December 30, 1960, committed the following offenses:

- '(1) You, your servant, agent or employee, sold, served and delivered an alcoholic beverage to Robert ---, a person under the age of twenty-one years, and allowed, permitted and suffered the consumption of such beverage by said Robert ---, in or upon your licensed premises, in violation of Rule 1 of State Regulations No. 20, and (2) on December 30, 1960,

you, your servant, agent or employee allowed, permitted and suffered in and upon the licensed premises a brawl, act of violence, disturbance and unnecessary noise, and allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulation No. 20.'

"In Case No. 2, respondent charged that appellant, on December 25, 1960, committed the following offense:

'You, your servant, agent or employee allowed, permitted and suffered in and upon the licensed premises brawls, acts of violence, disturbances and unnecessary noises, and allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulation No. 20.'

"As a result of a hearing held on said charges on May 3, 1961, two resolutions, dated May 8, 1961, were adopted by the respondent, wherein appellant was found guilty of all the charges and its license was ordered suspended for the periods hereinabove mentioned.

"In separate petitions of appeal, appellant asserts that the actions of the respondent in both cases were erroneous, unreasonable, contrary to the weight of the evidence and without legal basis. In separate answers, respondent denies the allegations of the operative part of the petition relating to its actions and requests that the order of suspension be upheld.

"I shall discuss the merits of each case separately; but since these were presented so that Case No. 1 relates to charges which occurred after the date upon which Case No. 2 was grounded, I shall consider them in such inverse order.

"With respect to Case No. 2, counsel for the appellant requested and was granted permission to file a written brief in lieu of oral summation in support of appellant's case. However, shortly after the completion of this case, I was notified by Mr. LaMorte, counsel for the appellant, that his client had applied for an assignment for the benefit of creditors and Jack L. Cohen, Esq., was named assignee for the benefit of creditors, and substituted as counsel in this case. Therefore, Mr. LaMorte indicated that he would not file a brief herein. Although duly notified of the status herein at the time of such assignment, Mr. Cohen has not submitted a legal memorandum, and the Hearer's Report, accordingly, has been prepared upon the testimony herein, together with the other documents admitted into evidence.

"As to Case No. 1: The complaint charges substantially that (1) on December 30, 1960, the defendant, its agents, servants or employees, sold to and permitted the consumption of alcoholic beverages by a minor, in violation of Rule 1 of State Regulation No. 20, and (2) allowed, permitted and suffered a brawl, act of violence, disturbance and unnecessary noise, in violation of Rule 5 of State Regulation No. 20. In support of these separate charges, the respondent called six witnesses to testify.

"It appears from their testimony that one Robert ---, a 19-year-old minor, entered the licensed premises at about 10:30 p.m. on this evening, and was in the company of his girlfriend, Miss Charlene Williams, and another acquaintance, Stanley Barber. After he was there for about ten or fifteen minutes, he got into an argument with his

girlfriend which attracted the attention of some of the other patrons, and, as a result of which, one of the patrons, named James Murray, stabbed him. He then 'grabbed' a beer bottle and ran after Murray, who had then preceded him from the tavern, and Murray was immediately apprehended by police officers who had been summoned to the scene. Robert was then taken to the hospital where he received medical attention, including sutures to bind his wounds. Murray was thereafter arraigned in the Municipal Court of the City of Orange, found guilty of assault and battery, and sentenced to the Essex County Penitentiary. Robert testified, under cross-examination, that he was on the premises for a few minutes before this argument started, and that he believed he was cut with a knife.

"Several local police officers testified that they responded to a police call, which related there was a disturbance at the licensed premises and, when they arrived there, they found Robert about twenty feet from the sidewalk, bleeding about the face from two cut wounds. After speaking to the special police officer, employed by the licensee, they then took Robert to the hospital, and at the same time, arrested his sister because she interfered with their removal of Robert by police radio car.

"Crawford Cox, a special police officer employed by the licensee, testified that after Robert was in the tavern for about five to ten minutes, he started an argument, which included cursing loud talking and general disturbance. He walked from the rear to the front and 'broke up' the disturbance. He then left to return to the rear where another disturbance was apparently taking place. It was then that he learned that Robert had been cut and Murray was running out of the door. It further appears from his testimony that Robert sought to grab his service revolver and, in the ensuing brief struggle, Robert was pushed to the ground and Cox then fired his gun twice to the air, ostensibly to attract the attention of other police officers.

"The bartender who was on duty that night is deceased, and his testimony was not available at the time of the hearing. Leonard Lustig, president of the corporate-licensee, testified that he was not present during this incident.

"The testimony with respect to the charge that alcoholic beverages were sold to a minor and that the consumption of same was permitted by the licensee on the said premises, may be summarized as follows: The two police officers testified that they detected the odor of alcohol on Robert's breath when he was returned from the hospital to police headquarters; that Robert then signed a statement wherein he stated that on the date as alleged in the charge herein he purchased a bottle of beer from the bar and consumed part of its contents. The minor was brought back to the tavern in a police radio car and he identified one Pete Adams as the bartender who sold him the beer, for which he paid thirty cents.

"Robert, as a witness for the respondent, testified both before the local Board and at this hearing that he did not purchase any beer or any other alcoholic beverages on the day in question, nor did he consume any liquor at that place. He stated that when he was taken to Police Headquarters, he was asked to sign a statement inculcating the licensee on a charge of sale to a minor and he refused to do so. He was finally prevailed upon to execute such statement on the promise that his sister, who had been arrested would be released forthwith. The attorney for the respondent Board pleaded 'surprise', and proceeded to cross-examine this witness. He reiterated his story and stated that what he was now testifying to and what he had testified to before the local Board, to the same effect, was the truth.

"Robert's girlfriend, Charlene Williams, corroborated his verbal testimony that he did not purchase or consume any alcoholic beverages. She stated that she did not witness any purchase by him of beer, nor did she see him consume any beer during his stay in the tavern. When she arrived at Police Headquarters, she was informed by the police officers that Robert had signed an inculpatory statement and that it would be to his interest for her to make a similar statement; in consequence of which she did execute the same. However, both in her testimony before the local Board and in her testimony at this hearing, she retracted that statement and denied that there was any alcoholic beverage sold to Robert or purchased and consumed by him on the date in question.

"As to Case No. 2: The charge made against the appellant herein alleges that on December 25, 1960 it allowed, permitted and suffered in and upon its licensed premises, brawls, acts of violence, disturbances and unnecessary noises so as to constitute a nuisance, in violation of Rule 5 of State Regulation No. 20.

"The respondent produced two police officers in support of this charge. Austin F. Davis, Jr., a local police officer, testified that he responded to a police radio call and, when he arrived at the licensed premises, was informed by Leonard Lustig, the president of the corporate-licensee, that there had been a fight, as a result of which one James Barber was cut. It appears from the narrative given by Lustig that Barber came into the tavern and immediately started to curse and threaten one Clarence White. Without provocation, Barber immediately attacked White, and, at the direction of Lustig, the bartender on duty immediately interceded and put Barber out of the tavern. Barber sought to return to the tavern, and Lustig refused to permit him to re-enter. Then his bartender went outside and escorted Barber away from the tavern and, when he was about twenty feet from the premises, Davis and his fellow officer arrived and apprehended him. The witness further testified that both White and Barber had been drinking but were not drunk. They were given medical treatment and were then taken to the Orange Police Headquarters, at which time Lustig signed a complaint against both men. Barber was subsequently found guilty of disorderly conduct in the Orange Municipal Court and was sentenced to thirty days in the Essex County Penitentiary.

"Edward Houston, a sergeant of the Orange Police Department, corroborated the facts of the arrest and the signing of the complaint by Lustig against these individuals.

"At the conclusion of the respondent's case, a motion was made by the attorney for the appellant to dismiss the complaint which, in effect, would have been a judgment for reversal on the ground that the respondent had failed to prove a prima facie case. Since this would be in the nature of a final decision, no action was taken thereon and the case proceeded with the introduction of testimony on behalf of the appellant.

"Three witnesses were produced and testified on behalf of the appellant. James Barber testified that he had visited this tavern earlier in the afternoon and returned to the premises at around 7:45 pm. He stated that a few minutes after he entered the tavern, he provoked an argument with White, as a result of which a fight erupted. William Holland, the bartender in charge, immediately put him out and when he sought to return, Lustig refused to admit him into the premises. White then came out and the argument resumed, in which Holland immediately 'grabbed me and took me down the street, and I tried to break loose from him and fell on some glass and cut my thumb'. It was then that he was arrested, and, upon the complaint of Lustig, was convicted in the Municipal Court. He admitted, under cross-examination, that the incident was precipitated by him and continued for a period of about two minutes.

"Leonard Lustig testified that he is president of the appellant-corporation, and he recounted, to the same substantial effect, the incident involving Barber and White. He stated that when Barber came in, he immediately proceeded to where White was sitting, used profanity and was immediately ordered out of the premises. When he did not leave, he was then ejected by the bartender. When he sought to return to the premises, Lustig barred his entrance and he was arrested shortly thereafter. Lustig went down to Police Headquarters and signed a formal complaint against Barber on a charge of disorderly conduct.

"Clarence White testified that he is employed on a part-time basis for the appellant as a maintenance man and works on these premises during morning hours. He further stated that he returned to the premises at 7:30 p.m. and, shortly thereafter, Barber entered, a fight ensued, and Barber was ejected by the bartender. When Barber sought to return to the premises, White left and continued the fight on the outside of the premises. Shortly after that, both Barber and he were arrested on a complaint signed by Lustig; the complaint against him was dismissed and Barber received thirty days in the Essex County Penitentiary.

"I think that it would be appropriate to consider the charges relating to the alleged brawls or disturbances which occurred both on December 30 and December 25, 1960. A fair appraisal of the facts requires giving consideration to the definition of 'brawl' or disturbance as contemplated within the context of our regulations. A brawl is a clamorous or tumultuous quarrel in a public place to the disturbance of the public peace. See Black's Law Dictionary, 11 C.J.S. 767; Com. v. Foley, 99 Mass. 497, 499. Webster's New International Dictionary defines a disturbance as 'an interruption of a state of peace and quiet... a public commotion; synonym, brawl'. These definitions make it clear that there was a brawl, act of violence, disturbance and unnecessary noise on both of these occasions.

"Therefore, the sole issue to be considered is whether the licensee 'allowed, permitted or suffered' the violations to occur. In Conner v. Fogg, 75 N.J.L. 245, Sup. Ct. 1907, the court said:

'To permit is defined as meaning to authorize or to give leave (McHenry v. Winston, 49 S.W. Rep. 4), but the term "permit" has been often used synonymously with "suffer", so that it may be said that one who suffers the doing of a thing which he might have prevented permits it.' (Emphasis ours.)

"In Essex Holding Corp. v. Hock, 136 N.J.L. 28, 54 Atl. Rep. 2nd 209, the court said:

'Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. 2nd 140.'

"A licensee has the highest degree of responsibility to his fellow citizens, and is under a duty to exercise full control of the acts and conduct of patrons and employees in his establishment. In Re Manber Corp., 165 Atl. 2nd 139, 193 Pa. Super. 416. The cases have consistently held that a licensee or his employees must keep his place under control and is responsible for conditions both inside and outside his premises. Seidel v. Upper Freehold Township, Bulletin 1246, Item 1. Bearing these general principles in mind, Case No. 1 presents a

situation which, in my view, reflected a bad case of judgment and insufficient policing on the part of the appellant's employee, Crawford Cox, who was engaged as a special police officer to keep the peace and quiet of the patrons in these premises.

"He testified that his attention was called to this argument between Miss Williams and Robert; that he heard this loud argument which included profanity. He said that he didn't take particular note to the profanity because 'you don't pay too much attention because you hear it any way'. He then told them to 'cut it out' and then he went 'to the rear to someone else who had some argument. It didn't amount to anything

"This was bad policing. The testimony of other witnesses indicates that it was around this time that people started to mill around Robert and Miss Williams, and some person grabbed Robert around the body and a struggle ensued. Common sense would have dictated, under these circumstances, that this special police officer should have remained at the scene of this disturbance until he was either satisfied that it had finally been dissipated and concluded, or he should have taken affirmative action to separate the parties by ejection from the premises. His withdrawal from this scene was an act of indifference, if not gross negligence. When he finally returned to the site of this activity, Robert had been cut, bottles were broken, and a general melee or disturbance had fully erupted. The situation by this time had become so out of hand that Cox was required to fire two shots from his service revolver in order to attract the attention of local police officers.

"The argument of the appellant that it could not anticipate this disturbance will not bear critical analysis, when it is considered in the light of Cox's testimony that he returned to the point of this disturbance only after he had been told by someone that there had been a 'cutting'.

"A licensee must assume full responsibility where he or his employees fail to take appropriate action to prevent the occurrence of a brawl or disturbance on the licensed premises. Re Johnson, Bulletin 603, Item 9.

"There is, as we have stated, a tremendous responsibility imposed upon licensees. They are required to use their eyes and ears in the exercise of full control of their premises, and if they cannot have such full control, they are in the wrong business. The liquor business is unlike any other business in that the law has imposed a greater responsibility upon the holder of a liquor license, and he must be prepared to accept the hazards if he desires to continue in this business. Thus, if there is even the slightest relaxation or inability to keep the peace, then they must bear the responsibility for such failure. Cf. Re Case v. Belleville, Bulletin 101, Item 8. Under all the facts and circumstances in Case No. 1, I believe that a fair preponderance of the believable evidence here clearly establishes that the appellant allowed, permitted and suffered a brawl or act of violence in and upon its licensed premises. I therefore recommend a finding of guilt, and an affirmance of respondent's action on this part of Case No. 1.

"However, with respect to Case No. 2, it is my considered judgment that the facts and circumstances therein indicate that there was a sudden flareup and that the act of violence occurred on December 25, 1960 before the licensee, its agents, servants or employees had any warning of its occurrence or a reasonable opportunity to act. As the testimony of the police officer called by the respondent appears to indicate, Barber was known to them as a troublemaker and had, on previous occasions, precipitated incidents in other taverns. The testimony further makes it clear that within one or two minutes after he entered this tavern, he

precipitated the incident complaint of, and the agents, servants and employees of the appellant acted without hesitation in dispatching him from the premises. The actions of the bartender and Lustig, the president of the appellant corporation, were immediate and effective, and it further appears that Lustig signed a formal complaint against the antagonist. Such condition bespeaks responsibility and an understanding of the obligations imposed upon the licensee.

"It would be unfair to hold the licensee liable where a disturbance occurs as a sudden flareup without warning, or whether there is an occurrence of an event which could reasonably be construed as a warning.

"As the court said in Re Silidker, Bulletin 405, Item 5:

'Unless the offense (in this case the presence of prostitutes) can be tied in and brought home to the licensees by their knowledge or by acquiescence, which implies knowledge, I cannot, in fairness, hold them responsible. Such a thing might happen in the best regulated club....'

"Sudden flareups cannot, of course, be either prophesied or anticipated by licensees and where the evidence preponderates in support thereof, the licensee will not be held responsible. Zicherman v. Newark, Bulletin 613, Item 5; Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3; Engel v. Belleville, Bulletin 694, Item 5.

"Accordingly, I conclude that the circumstances in this case are insufficient to sustain a finding of guilt and I recommend that the action of the respondent be reversed on this charge. Cf. Iannello and Cassetta v. Hackensack, Bulletin 1008, Item 1; Kandell v. Newark, Bulletin 1091, Item 3; Rule 6 of State Regulation No. 15.

"There is, finally, for consideration the charge in part 1 of Case No. 1 that on December 30, 1960 the appellant sold, served and delivered alcoholic beverages to a minor, and permitted the consumption of same on its licensed premises, in violation of Rule 1 of State Regulation No. 20.

"The respondent called as its primary witnesses the minor, Robert, and Charlene Williams, who was his girlfriend at the time of that incident. Both witnesses at this hearing denied this particular charge, and in both instances the respondent pleaded surprise and cross-examined them. The cross-examination consisted of the production of allegedly sworn statements, executed by both witnesses at Police Headquarters, in which they stated that Robert had been served beer at the tavern which he paid for, and which he partially consumed.

"Robert, under cross-examination, testified that he did not recall being called upon to swear to the truth of any statement, and he said that the statement was made upon the express promise by the local police officers that his sister would be released forthwith. Robert stated that he was brought to the Police Headquarters from the hospital where he had been treated for cuts and injuries and, 'I damn near lost my life; I was in a state of shock, if you want to call it that'. He asserts that his statement relating to the alleged service of alcoholic beverages to him was a complete fabrication and totally untrue.

"The testimony of Charlene Williams is substantially to the same material effect. She states, categorically, that she did not see Robert being served any intoxicating beverages at the tavern, nor

did she see him consume any. She further denied that she signed any statement under oath, but admitted that she did sign a statement at the request of Robert and in order to help him. She further asserted that another reason that she signed the statement was that the detective told her that Robert had orally made an inculpatory statement and she then executed a similar statement, in order to be of some fancied assistance to him.

"Since these two witnesses were called on behalf of the respondent in support of its primary case, it is necessary to examine the effect of their testimony. Counsel for the respondent pleaded surprise and the appellant objected to cross-examination by the respondent for the reason that respondent was not really surprised. The attorney for the appellant pointed out that at the hearing held before the local Board on May 3, 1961, both witnesses testified substantially the same as they testified at this hearing, so that counsel knew prior to this hearing of the circumstances of their testimony. I permitted the cross-examination for the reason that this was a hearing de novo (even though this is really an appeal and not an initial hearing), and I felt that counsel for the respondent should be given great latitude in this connection. I do not resolve the question of whether a previous hearing, reflecting the same type of testimony, bars a plea of surprise in a subsequent appeal hearing, even of a de novo character.

"The general rule is that a party who is 'surprised' by adverse testimony of his own witness may be permitted to prove contradictory statements made by such witness for the purpose of discrediting him. Maloney v. Public Service Railway Co., 92 N.J.L. 539; 106 Atl. 376. In such case, it has been held that a court may permit a party who is surprised by adverse testimony of his own witness to introduce contradictory statement previously made by such witness; such proof not being an impeachment of his own witness but merely an attack upon the trustworthiness of a specific part of such witness's testimony. State v. D'Adame, 84 N.J.L. 386, 86 Atl. 414. In the D'Adame case, the court stated that the State had a right to neutralize or 'discredit' the evidence by showing the witness a contradictory statement. This was not proved by the truth of such contradictory statement, but to neutralize or withdraw the issue of the unexpected testimony. The court quotes Professor Wigmore:

'Since, in the words of Chief Baron Gilbert, it is "the repugnancy of his evidence" that discredits him, obviously the prior self-contradiction is not used assertively, i.e., we are not asked to believe his prior statement as testimony, and we do not have to choose between the two (as we do choose in the case of ordinary contradictions by other witnesses). We simply set the two against each other, perceive that both cannot be correct, and immediately conclude that he has erred in one or the other, but without determining which one. It is the repugnancy and inconsistency that demonstrate his error, and not the superior credibility of the prior statement. Thus, we do not in any sense, accept his former statement as replacing his present one; the one merely neutralizes the other as a trustworthy one. In short, the prior statement is not hearsay, because it is not used assertively, i.e., not testimonially.'

Wigmore, Evidence, Section 1018.

"In State v. Hogan, 137 N.J.L. 497, aff. 1 N.J. 375 (1949), the court stated that a witness may, upon showing of surprise, neutralize the effect of the adverse testimony by proving that, at a previous time,

the witness had made a statement inconsistent with his testimony. The court further stated:

'This cross-examination is permitted for the sole purpose of neutralizing or of wiping the slate clean of the unexpected adverse testimony of the witness and is to be clearly distinguished from impeachment.'

Ciardella v. Parker, 10 N.J. Super 537, 542.

"In State v. Caccavale, 58 N.J. Super. 571, the court held:

'The doctrine of neutralization authorizes the cancellation or, as it has sometimes been described, the "erasure" from the case of unexpectedly adverse testimony given by a party's own witness, when necessary to prevent a miscarriage of justice. Neutralization is available to accused and prosecution alike, although more often resorted to by the latter when a state witness surprises by supplying unexpectedly adverse testimony, damaging to the State's case. In such a circumstance, the witness' prior written or oral statements may be admitted by the trial court, in the sound exercise of its legal discretion, for the purpose of wiping the slate clean or his specific evidence upon the point or points concerned.'

O'Regan and Schlosser, N. J. Criminal Practice (Rev. Ed. 1950), Sec. 361, page 684. Thus, the testimony so neutralized is out of the case completely as a matter of law. 58 Am. Juris. Witnesses Section 799, page 445.

"Under the rule thus cited, the respondent is left solely with the testimony of the police officers, which is clearly hearsay. Both officers testified that these two witnesses admitted to them that Robert had purchased beer at this tavern and that, indeed, Robert revisited the licensed premises, and pointed out the bartender as the one who allegedly sold the beer to him. No statement was taken from the bartender who allegedly made the sale, nor was there any testimony from any witnesses who were present at the time of the alleged transaction.

"In the present posture, there is lacking the quantum of proof necessary to sustain a finding of guilt by the preponderance of the believable evidence. I therefore am constrained to recommend that the finding of guilt on said charge by the respondent was unjustified, and should be reversed.

"Therefore, we are concerned solely with the penalty to be imposed upon the recommended affirmance of respondent's finding of guilt on part (2) of the charge contained in Case No. 1, where I recommended an affirmance of the finding of guilt on the charge that defendant permitted an act of violence or brawl upon its premises on December 30, 1960.

"Defendant has no prior adjudicated record. I therefore recommend, after consideration of the evidence, that an order be entered reversing respondent's action as to part (1) and affirming respondent's action as to part (2) of the charge in Case No. 1, and, under the facts and circumstances in this case, that the penalty heretofore imposed, namely, the suspension of twenty-five days, should be reduced to fifteen days, in view of the finding of 'not guilty' on one of the two charges set forth therein. I further recommend that an order be entered reversing respondent's action in Case No. 2."

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

After carefully considering the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 30th day of October, 1961,

ORDERED that the action of the respondent in finding the appellant guilty on part (1) of Case No. 1 be and the same is hereby reversed; that the respondent's action in finding appellant guilty as to part (2) of Case No. 1 be and the same is hereby affirmed; and that the penalty heretofore imposed in this case, namely, the suspensor by respondent of appellant's license for twenty-five days, be and the same is hereby modified to fifteen days; and it is further

ORDERED that the action of the respondent in finding the appellant guilty on the charges contained in Case No. 2, and suspending appellant's license for twenty days, be and the same is hereby reversed; and it is further

ORDERED that the fifteen-day suspension in Case No. 1 shall commence at 2:00 a.m., Monday, November 6, 1961, and terminate at 2:00 a.m., Tuesday, November 21, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

2. APPELLATE DECISIONS -- SNUG TAVERN INC. v. ORANGE (CASES 1 and 2) - AMENDED ORDER.

Case No. 1 )  
SNUG TAVERN INC., TRADING AS SNUG )  
TAVERN, )

Appellant, )

v. )

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

Respondent. )

ON APPEAL  
AMENDED ORDER

-----  
Case No. 2 )  
SNUG TAVERN INC., TRADING AS SNUG TAVERN, )

Appellant, )

v. )

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

Respondent. )

-----  
Jack L. Cohen, Esq., Assignee for the Benefit of Creditors,  
substituted for Frank A. LaMorte, Esq., Attorney for Appellant.  
John R. Murray, Esq., Attorney for Respondent.

BY THE DIRECTOR:

On October 30, 1961, I entered various orders in the above cases including an order reading as follows:

"ORDERED that the fifteen-day suspension in Case No. 1 shall commence at 2:00 a.m., Monday, November 6, 1961, and terminate at 2:00 a.m., Tuesday, November 21, 1961."

Since the entry of said order I have been advised by the Chief of Police of the City of Orange that the licensed premises are closed, and by the Secretary of the Municipal Board that there is now pending an application for transfer of the license from Jack L. Cohen, Assignee, to another person. Hence, no effective dates for suspension can be fixed at the present time.

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

ORDERED that the order hereinabove set forth be amended to read as follows:

"ORDERED that the effective dates for the fifteen-day suspension in case No. 1 be fixed by a subsequent order to be entered herein after proof has been submitted to me that operation under the license in question has been resumed."

WILLIAM HOWE DAVIS  
DIRECTOR

DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED -  
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
MISTELL, INC.  
t/a Essex House  
238 Essex Street  
Gloucester City, N. J.  
Holder of Plenary Retail Consumption License C-32, issued by the Mayor and Council of the City of Gloucester City.

CONCLUSIONS  
AND ORDER

-----  
Defendant-licensee, by Albert Climaldi, President.  
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that it possessed in and upon its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents and that one of the bottles bore no indicia of tax payment as required by the laws of the United States, in violation of Rule 27 of State Regulation No. 20.

On July 25, 1961, an ABC agent tested defendant's open stock of liquors and seized several bottles, the contents of which appeared to be off in color or low in proof. The seized bottles were turned over to the Division chemist for analysis and his report shows that the contents of two bottles labeled "Seagram's Seven Crown American Blended Whiskey, 86 Proof" are high in solids and low in acids and that the contents of one bottle labeled "Imported Canadian Club Blended Canadian Whisky, 90.4 Proof" are low in solids and light in color when compared with samples of the genuine products of the named brands. The bottle containing the Canadian Club whisky had no U.S. Internal Revenue Red Strip Stamp affixed to it.

Defendant has no prior adjudicated record. I shall suspend its license for twenty days, the minimum penalty imposed in "refill" cases involving three bottles. Re DiGiacomo & Grande, Bulletin 1269, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 26th day of October, 1961,

ORDERED that Plenary Retail Consumption License C-32, issued by the Mayor and Council of the City of Gloucester City to Mistell, Inc., t/a Essex House, for premises 238 Essex Street, Gloucester City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Monday, November 6, 1961, and terminating at 2:00 a.m., Tuesday, November 21, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINORS DISMISSED.

In the Matter of Disciplinary Proceedings against

SAMJO CORPORATION  
t/a STAGE DOOR BAR  
2228-2230 Atlantic Avenue  
Atlantic City, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-226 for the 1960-61 licensing year and C-169 for the 1961-62 licensing year, issued by the Board of Commissioners of the City of Atlantic City.

-----  
Isaac C. Ginsburg, Esq., Attorney 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 April 2, 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., Charles P. ---, age 15 and Thomas J. ---, age 18 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."

"To substantiate the charges, Division called as its witnesses Charles ---, one of the minors; Charles' father, and an ABC agent.

"The father testified that Charles was born in Philadelphia and is 15 years of age.

"Charles testified that on Easter Sunday, April 2, 1961, he and three companions drove from Philadelphia to Atlantic City and arrived there about 12:30 p.m.; that the driver of the car continued on to Wildwood and he, one of his companions named Frank (last name

unknown to him), and Thomas ---, strolled along the boardwalk; that about 1:30 p.m. they entered defendant's tavern which is off the boardwalk and went immediately to the men's room; that he emerged therefrom alone and was walking toward the door to leave the premises when the bartender asked him what he would have; that although he had no intention of drinking when he entered the tavern, he ordered and was served a beer; that shortly thereafter Frank and Thomas joined him and each of them was served a beer by the same bartender; that after they had consumed their drinks, they played five games of pool and that the loser of each game went to the bar and purchased three beers from the same bartender and carried them to the others and that he had lost one game. Charles further testified that he and his companions left the tavern about 3:00 p.m. and that during their stay therein, no one inquired as to their ages or required any written representation thereof.

"On cross-examination, Charles testified that the bartender did not tell him that he was too young and that he couldn't serve him; that he didn't get boisterous and use foul language while playing pool; that he and his companions weren't told to leave the premises and that they didn't leave in a hurry; that he didn't know that one of his companions left his coat behind and had to return for it, and that he had no conversation with anyone on the licensed premises other than with his friends and the bartender. He further testified that after he and his companions left defendant's premises they didn't visit any other tavern but proceeded to Brigantine (a distance of nine miles) where they were apprehended by the police.

"The ABC agent testified that at about 8:00 p.m. on April 2, 1961, he, another ABC agent and a sergeant of the Brigantine Police Department, were directed to defendant's tavern by Charles and Thomas, who identified the premises as the place where they had obtained alcoholic beverages and therein they identified John Ferrick as the bartender who served them. The agent further testified that Ferrick admitted seeing the boys in the tavern and asked where the other boy was. However, he denied having served alcoholic beverages to any of them.

"When Thomas ---, the other alleged minor referred to in the charge, failed to appear, the prosecuting attorney applied for a continuance of the case to enable the Division to further its efforts to produce him. Ruling on the application was deferred until after defendant had put in its defense.

"Witnesses appearing for defendant were John Ferrick, Isadore Holtzin, Joseph Ianesse, Shirley Ianesse and Richard Williams.

"Mr. Ferrick testified that he has been employed as a bartender for twelve years and was so employed by defendant on April 2, 1961, when Charles and two companions entered the Stage Door Bar at 2:30 or 2:40 p.m.; that one fellow approached the bar and put down a dollar bill saying, 'Three beers'; that the other two fellows were a little behind the fellow who ordered the beer; that he said, 'You fellows are too young to be served'; that the fellow picked up his dollar bill and 'I had to go serve somebody else. Now, when I turned back again, they had turned around and started shooting pool'; that they were in the premises about fifteen or twenty minutes and weren't served any alcoholic beverages, 'No sir, not even water'.

"On cross-examination, Ferrick testified that he has been working at the Stage Door Bar for six years; that his tour of duty is from 12 noon to 8:00 p.m.; that he was the only one tending bar on the date alleged and saw the boys come in from the street; that he couldn't give a physical description of the boys except that one wore glasses and another had on an overcoat; that there were about twenty patrons at the bar when the boys came in and that he didn't hear the boys say anything wrong.

"Mr. Holtzin testified that he has been a bartender for twenty-nine years; that on April 2, 1961 he walked into the Stage Door Bar at 2:30 p.m.; that he saw three fellows at the bar, one of whom had glasses on; that he heard one of the fellows ask for three beers and heard the bartender say, 'I can't serve you, you look too young to me'; that one of the fellows asked him for change of a quarter to get peanuts and that he refused him and walked out. On cross-examination, Holtzin testified that he is a free-lance bartender and that in 1959 he was employed by the defendant herein for a period of three weeks

"Mr. Ianesse testified that he is a bartender employed at the Stage Door Bar; that at 2:20 p.m. on April 2, 1961, he visited the licensed premises with his wife and two-year-old daughter; that he saw Charles and two other young men come into the tavern and proceed to the bar; that he heard one of them ask for three beers and that Ferrick said, 'No, you look too young to me', and he didn't serve them; that the three walked over to the pool table and when he heard Charles using profane language, 'I nodded to him once, I said, "Hold it down"'; that 'about two seconds later the same word, that's when I went up to them and I chased the whole three of them out'; that 'they ran out so fast and then the short fellow came in again for his top coat'; that the three were on the premises no more than ten minutes and that during their stay they were not served and did not consume any alcoholic beverages.

"The testimony of Mrs. Ianesse corroborates that of her husband

"Richard Williams testified that he is a waiter and never worked at the Stage Door Bar; that on April 2nd he arrived at the tavern about 2:20 p.m. and remained until 3:40 p.m.; that at 2:25 or 2:30 p.m., he saw Charles and his two companions walk into the tavern; that the tall boy asked Ferrick for three beers and Ferrick shook his head and said, 'No, you fellows are too young'; that the three fellows remained on the premises fifteen or twenty minutes and were not served any kind of beverage; that 'I saw Joe (Ianesse) go over and he grabbed hold of one guy and he said, "Come on, come on", and he pretty near threw them out the door.'

"Defendant rested and the prosecuting attorney renewed his application for a continuance which was granted. When Thomas failed to appear at the continued hearing, despite the efforts of the Division to produce him, the case was concluded.

"In disciplinary proceedings, a preponderance of the evidence is necessary to support and justify a finding of guilt, and in fairness, doubtful questions of fact must be resolved in defendant's favor.

"Considering the evidence adduced herein and having had the opportunity to judge the credibility of the witnesses, I find that the uncorroborated testimony of the minor Charles engenders grave doubt that the bartender who was engaged in serving some twenty patrons would concern himself with a person leaving the premises and ask him what he would have. On the contrary, I find that the testimony of defendant's witnesses is highly credible and presents a true picture of what actually occurred on the licensed premises on the date alleged.

"Considering the fact that after leaving defendant's premises, Charles and his companions traveled nine miles to Brigantine, it is not improbable that they obtained alcoholic beverages in another tavern along the way and that when they were apprehended they implicated the defendant herein because they were refused service in its establishment and were later unceremoniously ousted therefrom.

"Insofar as Thomas is concerned, he is a non-resident and failed to appear at the hearing and no proof was presented which might

properly establish his age. See State v. Huggins, 83 N.J.L. 43; State v. Koettgen, 89 N.J.L. 678; State v. Girone, 91 N.J.L. 498; Hancock v. Catholic, etc., 69 N.J.L. 308, and State v. Andoloro, 108 N.J.L. 47.

"In view of the aforesaid, I conclude, therefore, that the Division has failed to sustain the burden imposed upon it of establishing the guilt of defendant by a preponderance of the evidence, and I recommend that defendant be found not guilty and that the charge herein be dismissed."

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

After carefully considering the testimony and the brief filed by defendant's attorney, I concur in the findings of the Hearer and adopt them as my conclusions herein. Hence, I find defendant not guilty as charged.

Accordingly, it is, on this 30th day of October 1961,

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

WILLIAM HOWE DAVIS  
DIRECTOR

DISCIPLINARY PROCEEDINGS - GAMBLING (CARD GAME) - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

WALTER KROPENSKI AND HELEN P. SUDDER )  
527 Hamilton Street )  
Harrison, New Jersey, )

CONCLUSIONS AND ORDER

-----  
Holders of Plenary Retail Consumption License C-48, issued by the Town Council of the Town of Harrison. )

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

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On Saturday night, September 30 and early Sunday morning, October 1, 1961 and on divers days prior thereto, you allowed, permitted and suffered gambling, viz., the playing of a card game, commonly known as 'Rummy' for stakes of money, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

On Saturday, September 30, 1961, between 11:45 p.m. and about 2 a.m. the next morning, two ABC agents who were in defendants' licensed premises observed Edward Sudder (husband of co-licensee Helen P. Sudder) sitting behind one end of the bar and playing thereon a number of games of "knock rummy" with four patrons for stakes of \$2 and \$4, later raised to \$3 and \$6. At about 1:10 a.m. the agents observed Mrs. Sudder making change of a \$10 bill for one of the players and observed Edward Sudder take a bill of the same denomination from the cash register

to pay some of his losses. During the course of the games Mrs. Sudder was tending bar. At the end of each game the agents observed money being openly passed at the bar between the players.

The defendants have a prior adjudicated record. Effective June 7, 1959, their license was suspended by the local issuing authority for five days for an "hours" violation. Under all the circumstances in this case, I shall suspend defendants' license for fifteen days on the charge herein (cf. Re Cioban, Bulletin 1336, Item 9) and for an additional five days for the prior dissimilar violation which occurred within the past five years (Re Ott's, Incorporated, Bulletin 1411, Item 3), making a total suspension of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 30th day of October 1961,

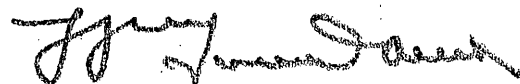
ORDERED that plenary retail consumption license C-48, issued by the Town Council of the Town of Harrison to Walter Kropenski and Helen P. Sudder, for premises 527 Hamilton Street, Harrison, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, November 6, 1961, and terminating at 2 a.m. Tuesday, November 21, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

A. Louis Schlesinger  
t/a South Jersey Distributors  
313-15-17 North Tennessee Avenue  
Atlantic City, New Jersey

Application filed December 12, 1961 for place-to-place transfer of Additional Warehouse License AW-45 on Limited Wholesale License WL-1 from 120 West Spruce Avenue, rear, North Wildwood, New Jersey to 120 West Spruce Avenue, rear and 121 West Walnut Avenue, North Wildwood, New Jersey.



William Howe Davis  
Director