

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

Mr. Gossweiler

BULLETIN 1323

February 8, 1960

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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 1323

February 8, 1960

1. APPELLATE DECISIONS - PAULISON WINE & LIQUOR CO., INC. v. CLIFTON.

Paulison Wine & Liquor Co.,)
Inc.)

Appellant,)

On Appeal

v.)

O R D E R

Municipal Board of Alcoholic)
Beverage Control of the City)
of Clifton,)

Respondent.)
- - - - -)

Nitto and Nitto, Esqs., by Carl F. Nitto, Esq., Attorneys for)
Appellant.)
Manfred Triebel, Esq., Attorney for Respondent.)

BY THE DIRECTOR:

Appellant appealed from respondent's action suspending ap-
pellant's License D-37 (issued for premises 621 Paulison Avenue,
Clifton) for a period of fifteen days effective November 30, 1959.
Said suspension was imposed after respondent found appellant guilty
of a charge alleging that it permitted the sale of alcoholic bever-
ages to a 19-year-old minor, in violation of Rule 1 of State Regula-
tion No. 20.

On January 4, 1960, prior to the hearing herein, the attorneys
for both parties filed a consent to the withdrawal of the appeal. No
reason appearing to the contrary,

It is, on this 7th day of January 1960,

ORDERED that the within appeal be and the same is hereby dis-
missed; and it is further

ORDERED that the fifteen-day-suspension, stayed by my order
dated November 30, 1959, be and the same is hereby restored to become
effective at 9 a.m. Monday, January 18, 1960, and to terminate at
9 a.m. Tuesday, February 2, 1960.

WILLIAM HOWE DAVIS
DIRECTOR.

2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

Charles August Kuyl, Jr. t/a Chuck's Wrigley Park Tavern 98 Graham Avenue Paterson 4, New Jersey)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-107, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

ORDER

-----)

James J. McGovern, Jr., Esq., Attorney for Defendant-licensee. David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The following charges were preferred against the defendant:

- '1. On Sunday, June 7, 1959, you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Schenley Reserve Blended Whiskey, at retail, in its original container for consumption off your licensed premises, and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
'2. On Sunday, June 7, 1959, you possessed, had custody of and allowed, permitted and suffered tickets and participation rights in a lottery in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20.'

"Defendant pleaded non vult to Charge 1 and not guilty to Charge 2.

"Insofar as Charge 1 is concerned, the facts in brief are that on Sunday aforesaid, at about 3:10 p.m., Walter Hascup, the bartender, sold a pint bottle of whiskey for off-premises consumption to an ABC agent who then left the premises. The agent, hereinafter referred to as Agent S, returned immediately, accompanied by another agent (Agent R), and both agents identified themselves to Hascup who admitted the said violation.

"At the hearing held herein, Agent R testified that following the identification to Hascup, he made a routine search of the licensed premises; that underneath the bar he found two cigar boxes, one of which contained blank slips of paper (Exhibit S-2) and the other twenty-one sheets of paper (8" x 10", ten of which listed the names of males and bore other markings; one listed the names of the American League baseball clubs; one listed the names of fifteen males and bore the notations '70 pool' and '30 kitty' and nine sheets were unmarked) (Exhibit S-1 in evidence); that he displayed the latter to

Hascup, who stated that they were used by a patron of the premises to run a baseball pool of which he is a member; that he pays a dollar to the patron each time he participates in the pool, and that the name of 'Walt' appearing on some of these refer to him. Agent R further testified that Hascup also stated he had no knowledge of the blank slips of paper and the sheet bearing the notations '70 pool' and '30 kitty.'

"The parties stipulated that if Agent S were called to testify, his testimony would be similar in nature and purport to that of Agent R on both direct and cross-examination.

"At the close of the Division's case, counsel for the defendant moved to dismiss Charge 2 on the ground that the evidence adduced by the Division had failed to prove the guilt of the defendant beyond a reasonable doubt. I see no merit in this contention. It is quite clear that the Division has presented ample evidence to prove a prima facie case. I recommend that the motion be denied.

"Julius A. Bazewicz, a witness for the defendant, testified that he is a self-employed dry cleaner; that he is a patron of the licensed premises and resides next door to the same; that the blank slips of paper (Exhibit S-2) belonged to him; that he uses them in his business to mark customer's garments; that on Saturday, June 6, 1959, he had borrowed a car from a patron on the licensed premises to make his usual deliveries on that day because his truck was in disrepair; that at the end of the day and prior to returning the said automobile, he had removed all of his belongings from the automobile except the aforesaid box of paper slips which he had overlooked; that he had brought this box of slips into the licensed premises and had left it there and that the said slips were not used in connection with any lotteries. He further testified that on the following day he was in the licensed premises when the agents were interrogating Hascup; that he did not hear their conversation; that he never heard of Hascup participating in a pool; that he knew there was a pool but never heard of one on the licensed premises.

"Edward C. Blauvelt, testifying on behalf of the defendant, stated that he is a postal employee and a patron of the licensed premises and that sometime last winter he gave the aforesaid sheets of paper to the licensee who stated he could use them to record payment of dues from members of a club.

"Charles Kuyl, Jr., the licensee, testified that the aforesaid eleven sheets of paper list the names of members of a club and their bi-monthly contributions to the same; that the funds were used to defray expenses of outings, baseball games, football games and fishing trips; that subsequent to June 7th aforesaid, he was informed by one of the members of the club that the sheet bearing the notations '70 pool' and '30 kitty' was used in connection with a trip made last summer to the seashore, at which time the members' contributions were made on the basis of 70 cents for an adult and 30 cents for the 'kids'. Mr. Kuyl further testified that no lottery took place on his licensed premises; that he had no knowledge of the box containing the blank slips of paper; that the records (names and numerals) appearing on the large sheets of paper were made by the president of the club, of which he is a member; that the name of 'Walt' on several of these sheets refers to Walter Hascup aforesaid, and that he is unable to account for the presence of the sheet listing the names of the baseball clubs among the other eleven sheets.

"Walter Hascup, testifying on behalf of the defendant, denied the statements attributed to him by the agents. He further testified that every Sunday for the past three years he has been tending bar for a few hours at the licensed premises; that prior to the hear-

ing herein, he had never seen the aforesaid two boxes or their contents; that on June 7th aforesaid; while being questioned by Agent R, he was shown a sheet of paper bearing the name of 'Walt' and was asked if the name referred to him and that he stated that he did not know.

"This case presents a conflict between the testimony of the agents and the witnesses for defendant. It will be observed that Mr. Kuyl's testimony with respect to the sheets in question is based on hearsay. In addition, Mr. Kuyl is unable to account for the sheet listing the names of the baseball clubs being found together with the other sheets which he states are records of a club. Mr. Hascup admits the name of 'Walt' on one of the sheets which had been shown to him by Agent R is his name, but denies it refers to him. Mr. Kuyl, however, states the name of 'Walt' on several of the sheets does refer to Mr. Hascup. As to the testimony of the agents, I cannot conceive of any reason why they would deliberately give any false testimony.

"I am satisfied from all the evidence in the case (written and oral) that the Division has amply proven the defendant guilty of Charge 2 herein. Under the circumstances, it is recommended that the defendant be found guilty on the second charge.

"Defendant has no prior adjudicated record. In view of the confessional plea with respect to Charge 1 and aforesaid recommendation on Charge 2, I recommend that an order be entered suspending defendant's license for a period of thirty days. (Cf. Re Samsel, Bulletin 1225, Item 2)."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the defendant-licensee. The principal argument advanced is that the exhibits in question do not constitute "tickets and participation rights in a lottery" as alleged in the charge. This, in turn, raises the question whether composite records of a lottery, rather than the individual lottery slips, are deemed tickets and participation rights in a lottery within the meaning of Rule 6 of State Regulation No. 20.

It is clear that if individual slips evidencing participation in a baseball pool were involved herein, they would be considered as lottery tickets and participation rights prohibited by the rule in question. To say that once the information written on the individual slips is transferred to composite records and the slips perhaps destroyed, the new records no longer are deemed participation rights in a lottery is to unduly narrow the import of the regulation. These records are merely groups of participation rights in a lottery and as such are just as objectionable in the plural as individually. Cf. State v. Hozer, 19 N.J. 301 (1955), holding that the crime of bookmaking encompasses the keeping of books and settling of accounts, as well as the actual taking of individual bets.

I am not impressed with the explanation proffered by the defendant and his witnesses that the exhibits are not records of a lottery, but only records of dues payments by members of a club. I am more impressed with the admission by the bartender, who was at the time of the investigation entrusted with full charge of the licensed premises by the licensee, that the exhibits were records of a baseball pool in which he personally participated.

After carefully considering the entire record herein, I agree with the Hearer and find that the defendant's guilt as to Charge 2 herein has been established by more than a fair preponderance of the believable evidence. However, I feel that the recommended

penalty of thirty days' license suspension should be reduced to twenty-five days, since it appears that this is not a case of commercialized gambling. I shall suspend defendant's license for fifteen days on Charge 1 (Re Clark, Bulletin 1312, Item 11) and for ten days on Charge 2 (Re Konner's Grill, Inc., Bulletin 1313, Item 8).

Accordingly, it is, on this 11th day of January 1960,

ORDERED that Plenary Retail Consumption License C-107, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Charles August Kuy1, Jr., t/a Chuck's Wrigley Park Tavern, for premises 98 Graham Avenue, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m., Monday, January 18, 1960 and terminating at 3:00 a.m., Friday, February 12, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Henry Misiuk & Charles Petkos
Executors of the Est. of George Petkos
t/a Petkos Tavern
2 Holsman Street
Paterson 2, New Jersey

CONCLUSIONS
AND
ORDER

Holders of Plenary Retail Consumption License C-246, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Defendant-licensees, by Henry Misiuk.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

On Sunday, October 25, 1959, at about 3:30 p.m., an ABC agent, while in defendants' licensed premises, observed the bartender make a sale of alcoholic beverages for off-premises consumption. At about 3:35 p.m., the bartender made a similar sale of a pint bottle of wine to the agent. The agent left the premises with the alcoholic beverage and immediately re-entered with another agent. Both agents identified themselves to the bartender, who verbally admitted the violation.

Defendants have a prior adjudicated record. Effective December 8, 1958, defendants' license was suspended by this Division for ten days for an "hours" violation. Bulletin 1258, Item 8. The minimum penalty for an "hours" violation is fifteen days. Re Trosky, Bulletin 1269, Item 3. Since the defendants committed a similar violation within five years, I shall suspend their license for thirty

days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days. Re Trosky, supra.

Accordingly, it is, on this 6th day of January 1960,

ORDERED that Plenary Retail Consumption License C-246, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Henry Misiuk & Charles Petkos, Executors of the Est. of George Petkos, t/a Petkos Tavern, for premises 2 Holsman Street, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m., Monday, January 18, 1960 and terminating at 3:00 a.m., Friday, February 12, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

4. 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

Albert Saleeby
t/a Curley's
154 Jackson Street
Paterson 3, New Jersey

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-191, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

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

BY THE DIRECTOR:

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

At 2:30 a.m. Sunday, November 8, 1959, an ABC agent who was in defendant's licensed premises purchased from William A. Taylor (the bartender therein) a pint bottle of whiskey which he took with him from the premises. Contacting a fellow agent who had remained outside, both entered the premises and identified themselves to the bartender who verbally admitted the violation.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of fifteen days, and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Bartoszak, Bulletin 1307, Item 7.

Accordingly, it is, on this 6th day of January 1960,

ORDERED that plenary retail consumption license C-191, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Albert Saleeby, t/a Curley's, for premises 154

Jackson Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3 a.m. Monday, January 18, 1960, and terminating at 3 a. m. Thursday, January 28, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

Sugar Hill Tavern, Inc.)
t/a Sugar Hill Tavern)
402 Main Street)
Paterson 3, New Jersey)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-201, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)
-----)

Defendant-licensee, by David Meyer, Secretary
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The defendant pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On October 24, 1959, an ABC agent tested defendant's open stock of alcoholic beverages and seized a number of bottles for further tests by the Division's chemist. An examination of the file and the chemist's report indicate that two of said bottles have been refilled with different brands of whiskey.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of fifteen days (Re Gary's Bar, Inc., Bulletin 1309, Item 6). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 7th day of January 1960,

ORDERED that plenary retail consumption license C-201, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Sugar Hill Tavern, Inc., t/a Sugar Hill Tavern, for premises 402 Main Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3 a.m. Monday, January 18, 1960, and terminating at 3 a.m. Thursday, January 28, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

8. 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

Max Schumer & Harry Schumer t/a Jersey Bar 521 Jersey Avenue Jersey City, N. J.,

Holder's of Plenary Retail Consumption License C-453, issued by the Municipal Board of Alcoholic Beverage Control of The City of Jersey City.

CONCLUSIONS

AND

ORDER

Defendant-licensees, by Harry Schumer, a partner Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

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

At about 2:10 p.m. Sunday, October 25, 1959, an ABC agent who was in defendants' licensed premises purchased from Harry Schumer (one of the defendant-licensees) a pint bottle of whiskey for off-premises consumption. The agent left the premises and, after contacting a fellow agent who had remained outside, both entered the premises and identified themselves to Harry Schumer who verbally admitted the violation.

In the absence of a prior record, the minimum suspension for a violation of this type would be fifteen days. Re Bartoszak, Bulletin 1307, Item 7. Defendants, as partners, have no prior adjudicated record. However, effective July 6, 1953, when Max Schumer (one of the defendant-licensees) and one Herman Schreider held the license as partners, it was suspended by the local issuing authority for fifteen days for sale of alcoholic beverages to a minor. Inasmuch as the prior violation is dissimilar to that now under consideration and occurred more than five years ago, I shall not consider it in fixing the penalty herein. I shall suspend defendants' license for fifteen days (Re Bartoszak, supra), less five days remission for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 7th day of January 1960,

ORDERED that plenary retail consumption license C-453, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Max Schumer & Harry Schumer, t/a Jersey Bar, for premises 521 Jersey Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, January 18, 1960, and terminating at 2 a.m. Thursday, January 28, 1960.

WILLIAM HOWE DAVIS DIRECTOR

9. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALES TO MINORS NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against)

Joe Crine's Tavern, Inc.)
t/a Joe Crine's Tavern)
153 Sea Girt Avenue)
Manasquan, N. J.)

O R D E R

Holder of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Manasquan)

Defendant-licensee, by Joseph Tidone, President and Salvatore DiStefano, Secretary-Treasurer.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

It appearing that on September 21, 1959 the Division preferred a charge against the corporate-licensee herein alleging that on September 4, 1959 it sold, served and delivered alcoholic beverages to four minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20; and

It further appearing that at a hearing held on October 27, 1959 the minors in question failed to appear and the matter was adjourned by consent to November 30, 1959; and

It further appearing that notwithstanding the efforts made by the Division to produce the minors at the adjourned hearing they again failed to appear; and

It further appearing that because the testimony of the minors would be necessary to establish essential facts in the case and because the minors reside without the State and cannot be served with subpoena and have refused to appear voluntarily, the attorney representing the Division moved to nolle pros the charge; and

It further appearing that the Hearer has recommended that the motion to nolle pros be approved,

Accordingly, it is, on this 7th day of January 1960,

ORDERED that the charge herein be and the same is hereby nolle prosed.

WILLIAM HOWE DAVIS
DIRECTOR

10. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition to)
 Lift the Automatic Suspension of)
 License C-119, issued by the Board)
 of Alcoholic Beverage Control for)
 the City of Paterson to)
 Jane Ackerman)
 t/a The Friendly Tavern)
 6 Waite Street)
 Paterson, New Jersey)
 - - - - -)

On Petition

O R D E R

BY LOCAL
 BY LOCAL
 BY LOCAL
 BY LOCAL

Irving I. Rubin, Esq., Attorney for Petitioner

The petition herein discloses that on December 4, 1959, Jane Ackerman was fined the sum of \$200 after she pleaded guilty in the Passaic County Court to an indictment for selling alcoholic beverages to a minor, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of her license for the balance of its term. R.S. 33:1-31.1. The petition requests the lifting of said suspension. The license has not been picked up because of the pendency of this proceeding.

The petition and the records of this Division disclose that, by order dated August 27, 1958, the local issuing authority suspended the license then held by petitioner for twenty days, less five for the plea, after she pleaded non vult in disciplinary proceedings to a charge alleging that she sold alcoholic beverages to the same minor, who was then eighteen years of age. The suspension was effective from 3 a.m. September 8, 1958, to 3 a.m. September 23, 1958. Under the circumstances, the suspension imposed by the local issuing authority was adequate. The relief requested will be granted.

Accordingly, it is, on this 8th day of January 1960,

ORDERED that the automatic suspension of License C-119, now held by Jane Ackerman for 6 Waite Street, Paterson, be and the same is hereby lifted and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
 DIRECTOR

By:
 Edward J. Dorton
 Deputy Director

11. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - EMPLOYMENT OF SOLICITOR BY RETAILER - PERMIT SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against

Henry William Bauman
307 Fairway Avenue
Belleville, N. J.

Holder of Solicitor's Permit #3136,
issued by the Director of the
Division of Alcoholic Beverage
Control.

CONCLUSIONS

AND

ORDER

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

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On November 7, 1959, and on divers days prior thereto, you, the holder of a solicitor's permit, were interested directly or indirectly, in a retail license and the business conducted thereunder and were employed by and connected in a business capacity with a retail licensee in that you acted as a bartender at retail licensed premises of Echo Lake Country Club, Springfield Avenue, Westfield, New Jersey; in violation of Rule 7 of State Regulation No. 14."

During the course of the investigation made herein, defendant admitted that during several years last past he worked on Saturday evenings only for a stated salary at Echo Lake Country Club. In alleged mitigation he further states that his employer had no knowledge that he was so employed and that he had accepted such employment solely to supplement his income to pay off medical bills.

Defendant has no prior record. Since it does not appear that there are any aggravating circumstances in this case, I shall suspend defendant's permit for a period of five days. Re LeWinter, Bulletin 1219, Item 10.

Accordingly, it is, on this 11th day of January 1960,

ORDERED that solicitor's Permit #3136, issued by the Director of the Division of Alcoholic Beverage Control to Henry William Bauman, 307 Fairway Avenue, Belleville, be and the same is hereby suspended for five (5) days, commencing at 9 a.m. Monday, January 18, 1960, and terminating at 9 a.m. Saturday, January 23, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)
)
 John's Diner and Mabel's Dinette, Inc.)
 t/a Ben's Wines & Liquors)
 s/w cor. Vineyard Road and John Street)
 Edison Township, PO Nixon, New Jersey)
 Holder of Plenary Retail Consumption License C-4, issued by the Municipal Council of Edison Township.)
 -----)

CONCLUSIONS AND ORDER

David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

On October 8, 1959, an ABC agent tested defendant's open bottles of alcoholic beverages and seized, among other bottles, a quart bottle of "Wilson 'That's All' Blended Whiskey 86 Proof" for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that when compared with an analysis of the genuine product, the contents of said bottle was much higher in solids.

Defendant has a prior adjudicated record. Effective November 27, 1944 defendant's license was suspended by the local issuing authority for four days for an "hours" violation. Since the prior dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. Re Grande & Schipani, Bulletin 1309, Item 7. I shall suspend defendant's license for the minimum period of ten days. Re Grande & Schipani, supra. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 11th day of January, 1960,

ORDERED that Plenary Retail Consumption License C-4, issued by the Municipal Council of Edison Township to John's Diner and Mabel's Dinette, Inc., t/a Ben's Wines & Liquors, for premises s/w cor. Vineyard Road and John Street, Edison Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, January 18, 1960, and terminating at 2:00 a.m., Saturday, January 23, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

13. DISQUALIFICATION REMOVAL PROCEEDINGS - PRIOR APPLICATION DENIED - FIVE YEARS GOOD CONDUCT NOT SHOWN - APPLICATION DENIED WITH LEAVE TO REAPPLY AFTER MARCH 8, 1961.

In the Matter of an Application to)
Remove Disqualification because of)
a Conviction, Pursuant to R. S.)
33:1-31.2.)
Case No. 1513)
- - - - -)

CONCLUSIONS

AND

ORDER

BY THE DIRECTOR:

On May 6, 1955 petitioner's application for removal of his disqualification resulting from his conviction of crime involving moral turpitude was dismissed by me. Re Case No. 1217, Bulletin 1066, Item 4.

It is unnecessary to repeat here petitioner's record or the testimony taken at the previous hearing. His ineligibility has been clearly established by virtue of his convictions on February 25, 1937 and December 11, 1939, respectively, of the crimes of operating an illicit still with intent to defraud the United States of revenue. Re Case No. 1217, supra. When the matter was heard at the previous hearing, the record received at this Division disclosed that on December 6, 1953, petitioner pleaded guilty to a violation of a municipal ordinance (an inmate of a disorderly house wherein gambling was taking place) as a result of which he was fined \$200 in a municipal court. Because said conviction occurred within five years of the date of the hearing, I denied the petition with leave to reapply for relief after December 6, 1958.

On four occasions during 1955 and again on six occasions during 1958 (the last being on March 8, 1958) ABC agents observed petitioner working on the licensed premises owned and operated by his wife, despite the fact that he had been advised that because of his criminal record he could not be so employed. On two occasions the plenary retail consumption license of Florence Tabatneck, wife of petitioner, was suspended by me for violations which included charges that the petitioner was knowingly employed and connected with her in a business capacity despite his conviction of crimes involving moral turpitude. Bulletin 1103, Item 5; Bulletin 1247, Item 2. Thus, petitioner's persistence in working on licensed premises, when he was aware that his disqualifying criminal record precluded him from being so employed, is indicative of his disregard for the alcoholic beverage law.

At the instant hearing, three character witnesses (two retired police captains and a state official) produced by petitioner testified that they have known petitioner fifteen or more years and are of the opinion he bears a good reputation for being a law-abiding person in the community where he presently lives and where he formerly resided. Nevertheless, petitioner's conduct in being associated with the liquor industry in this State by knowingly performing services on licensed premises with knowledge that he was prohibited from so doing because of his criminal record cannot be condoned. As stated above, he was so employed as recently as March 8, 1958.

Under the circumstances, I shall deny petitioner's petition at this time but shall afford him the opportunity to reapply for re-

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lief after March 8, 1961 provided he maintains an unblemished record during the interim.

Accordingly, it is, on this 13th day of January, 1960,

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

WILLIAM HOWE DAVIS
DIRECTOR

14. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY DIRECTOR -
SUSPENSION LIFTED UPON MOTION OF DIRECTOR.

Auto Susp #180)
In the Matter of Proceeding to)
Lift the Statutory Automatic)
Suspension of License C-3, issued)
by the Township Committee of the)
Township of Buena Vista to) ORDER

JAMES AND ELSIE M. CALVELLO, PARTNERS)
t/a HARDING BAR)
Harding Highway)
Buena Vista Township)
PO Buena, N. J.)

Paul M. Salsburg, Esq., Attorney for Licensees.

BY THE DIRECTOR:

On December 21, 1959, James Calvello was fined the sum of \$100 after he pleaded non vult in the Atlantic County Court to an indictment alleging that he sold alcoholic beverages to a minor, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension for the balance of its term of the license held by James and Elsie M. Calvello. R.S. 33:1-31.1 The license was not picked up because of the facts hereinafter set forth.

By order dated July 21, 1959, I suspended the license in question for thirty days after the licensees pleaded non vult in disciplinary proceedings to a charge of selling alcoholic beverages to the same minor. This suspension was effective from 3 a.m. July 28, 1959, to 3 a.m. August 27, 1959. See Bulletin 1294, Item 4. Under the circumstances, I shall, upon my own motion, lift the statutory automatic suspension, effective immediately.

Accordingly, it is, on this 12th day of January 1960,

ORDERED that the statutory automatic suspension of said license C-3 be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.


William Howe Davis
Director