

26 Rose Avenue,
Madison,
Morris County, New Jersey.
STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

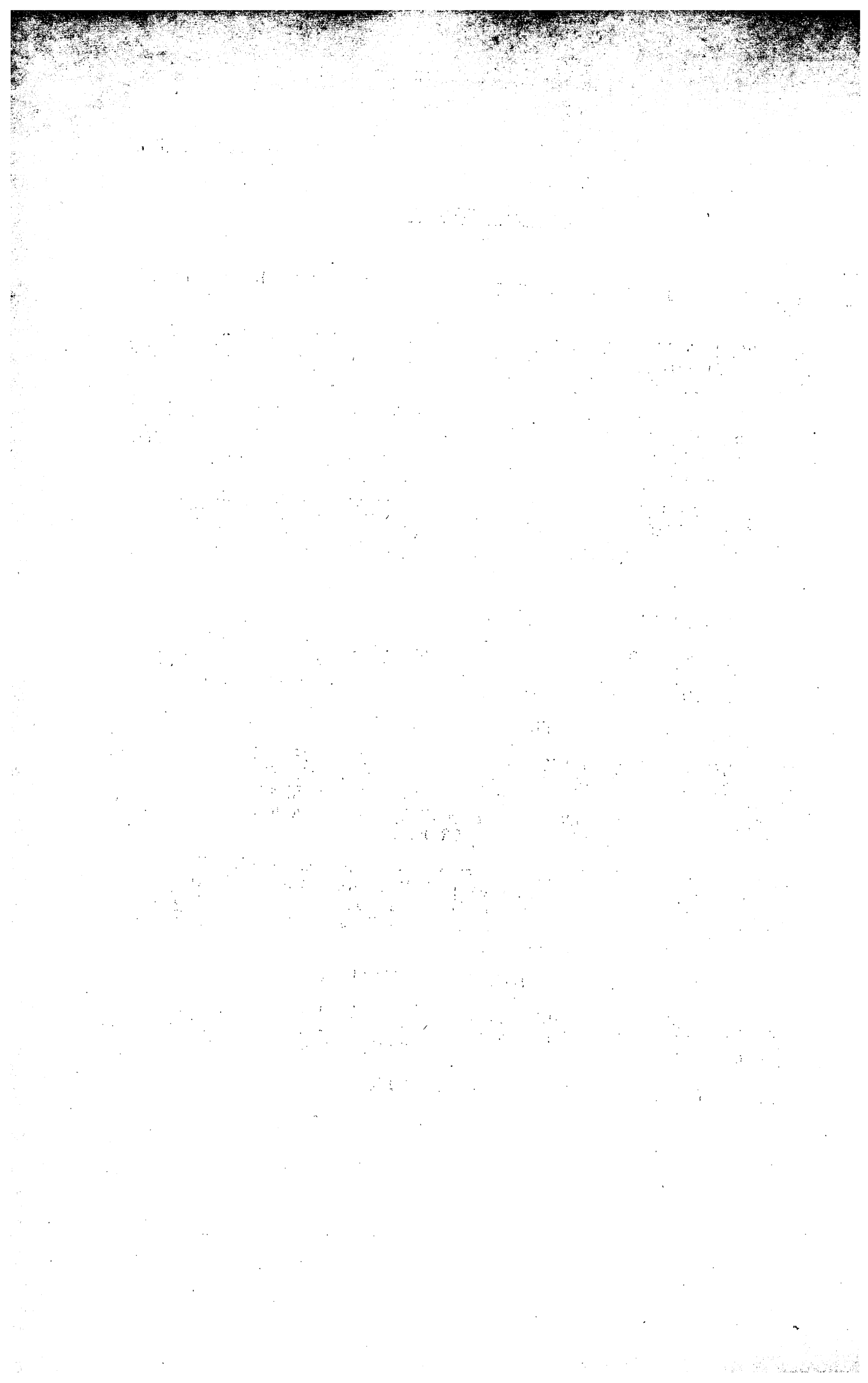
BULLETIN 875

MAY 15, 1950.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - SZALOBRYT v. WASHINGTON TOWNSHIP (WARREN COUNTY).
2. DISCIPLINARY PROCEEDINGS (Elizabeth) - ILLICIT LIQUOR - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Lodi) - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - SUSPENSION FOR BALANCE OF TERM LIFTED UPON EXPIRATION OF 20 DAYS FROM EFFECTIVE DATE OF SUSPENSION.
4. DISCIPLINARY PROCEEDINGS (Bethlehem Township) - PURCHASE OF ALCOHOLIC BEVERAGES BY RETAILER FROM ANOTHER RETAILER - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VEHICLE NOT BEARING TRANSPORTATION INSIGNIA - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
5. ACTIVITY REPORT FOR APRIL 1950.
6. DISCIPLINARY PROCEEDINGS (Wallington) - LEWDNESS AND IMMORAL ACTIVITIES (PROCURING FEMALES FOR PURPOSES OF PROSTITUTION; SOLICITATION FOR PROSTITUTION) - HOSTESSES - LICENSE REVOKED.
7. APPELLATE DECISIONS - FEDDER v. ASBURY PARK.
8. DISCIPLINARY PROCEEDINGS (Montclair) - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 REQUIRING BONA FIDE INVOICES OR MANIFESTS COVERING SHIPMENTS - PEDDLING ALCOHOLIC BEVERAGES FROM TRUCK - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Paterson) - CHARGE OF PERMITTING LEWDNESS AND IMMORAL ACTIVITY DISMISSED FOR LACK OF PROOF - HOSTESSES (AGGRAVATED VIOLATION) - ALLOWING LICENSED PREMISES TO BE CONDUCTED IN SUCH A MANNER AS TO BECOME A NUISANCE - PRIOR RECORD - LICENSE REVOKED.
10. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.
11. DISCIPLINARY PROCEEDINGS (Burlington City) - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS - PRIOR UNSATISFACTORY RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM.
12. STATE LICENSES - NEW APPLICATIONS FILED.



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

BULLETIN 875

MAY 15, 1950.

1. APPELLATE DECISIONS - SZALOBRYT v. WASHINGTON TOWNSHIP (WARREN COUNTY).

CHARLES SZALOBRYT,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP) CONCLUSIONS AND ORDER
OF WASHINGTON, WARREN COUNTY,)
Respondent.)

James B. Maddock, Jr., Esq., Attorney for Appellant.
Wilbur M. Rush, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial of appellant's application for a plenary retail distribution license for premises on State Highway Route No. 30, Township of Washington, Warren County.

Six plenary retail consumption licenses are outstanding in Washington Township which had a 1940 Federal census population of 1,320. The testimony indicates that the neighborhood wherein appellant's premises are located is not thickly populated, and that two plenary retail distribution licenses are outstanding, in an adjacent municipality, about one-half mile from appellant's premises. Retail consumption licenses, subject now to P.L. 1948, c. 98, carry the privilege of selling alcoholic beverages in original containers for off-premises consumption.

No plenary retail distribution license has been issued in the township and, hence, issuance of the license in question is not barred by the provisions of the State Limitation Law -- P.L. 1947, c. 94; nor has the township an ordinance prohibiting issuance of a plenary retail distribution license. However, and of course, the absence of a prohibition does not mean that an application for a new retail license must be granted. The determination to grant or deny such an application rests in the first instance in the sound discretion of the municipal issuing authority. (R.S. 33:1-19.) See Bulletin 762, Item 2; Jorgensen v. Washington Township, Warren County, Bulletin 840, Item 5.

Respondent's Answer states that no need exists in the township for any further outlet for the sale of alcoholic beverages; and that the needs of the residents of the township are presently well served by the taverns now operating therein and the addition of a further license would be contrary to the best interests and general welfare of the residents of the township. Appellant's application was denied by unanimous vote of the three Township Committeemen, each of whom testified, at the hearing herein, that in his opinion there is no public need, in the township, for the license sought.

The burden of proving respondent's action to have been an unreasonable or abusive exercise of its discretionary authority has not been sustained. I shall, therefore, affirm that action.

Accordingly, it is, on this 28th day of April, 1950,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LEON WALEWSKI)
462 Franklin Street)
Elizabeth 1, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-98, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.)

Leon Walewski, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in a bottle bearing a label which did not truly describe the contents thereof, in violation of Rule 28 of State Regulations No. 20.

On April 10, 1950, an agent of the State Division of Alcoholic Beverage Control seized on defendant's licensed premises one 4/5 quart bottle containing an alcoholic beverage, labeled "Canadian Club Blended Canadian Whisky", when his field tests indicated a variance between the label on the bottle and the contents thereof. An analysis by the Division Chemist confirmed this variance and established that the contents thereof were not as described on the label. See Rule 28, State Regulations No. 20.

Defendant has a prior adjudicated record. Effective March 15, 1943 his license, then covering premises 75 Fourth Street, Corner Fulton Street, Elizabeth, was suspended for ten days for a dissimilar violation. Because of the time elapsed since the previous suspension I shall not consider it in aggravation of the present charge. I shall suspend the license for the minimum fifteen days for illicit liquor cases. Re Rudolph, Bulletin 680, Item 1. Remitting five days because of the plea will leave a net suspension of ten days.

Accordingly, it is, on this 28th day of April, 1950,

ORDERED that Plenary Retail Consumption License C-98, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Leon Walewski, for premises 462 Franklin Street, Elizabeth, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 8, 1950, and terminating at 2:00 a.m. May 18, 1950.

ERWIN B. HOCK
Director.

3. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - SUSPENSION FOR BALANCE OF TERM LIFTED UPON EXPIRATION OF 20 DAYS FROM EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)

ALBINO NIGRO)
 T/a ALS' BOWL-O-DROME)
 450 Main Street)
 Lodi, N. J.,)

ON PETITION
 O R D E R

Holder of Plenary Retail Consumption License C-22, issued by the Mayor and Council of the Borough of Lodi.)

 Albino Nigro, Petitioner, Pro Se.

BY THE DIRECTOR:

On April 11, 1950, I suspended defendant's License C-22 for the balance of its term, effective 3:00 a.m. April 17, 1950, after he had pleaded non vult to charges alleging (1) that he falsely denied in his application for his current license that he had agreed to pay any person a percentage of the profits from the licensed business, and (2) that he knowingly aided and abetted Peter Kavalski to exercise the rights and privileges of his license. See Bulletin 873, Item 1. In said order it was provided that, if the unlawful situation were corrected, a petition might be filed with me to lift the suspension after twenty days of the suspension had been served.

Pursuant to said leave, Albino Nigro has requested that the suspension herein be lifted. At a supplemental hearing held at this Division on April 25, 1950, Albino Nigro testified that the agreement heretofore entered into between him and Peter Kavalski has been abrogated in its entirety, and that the business will be conducted by himself without any aid or assistance of any nature whatsoever from Peter Kavalski.

Peter Kavalski corroborated said testimony of Albino Nigro to the effect that he has no further interest in the license or the licensed business owned by Albino Nigro.

It appearing from the facts recited above that the unlawful situation has been corrected, and it further appearing that on Sunday, May 7, 1950, twenty days will have elapsed since the suspension became effective,

It is, on this 1st day of May, 1950,

ORDERED that the suspension heretofore imposed be and the same is hereby lifted and that Plenary Retail Consumption License C-22, issued by the Mayor and Council of the Borough of Lodi to Albino Nigro, t/a Als' Bowl-O-Drome, for premises 450 Main Street, Lodi, be and the same is hereby restored to full force and effect, effective Sunday, May 7, 1950 at 12:01 p.m.

ERWIN B. HOCK
 Director.

- 4. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY RETAILER FROM ANOTHER RETAILER - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VEHICLE NOT BEARING TRANSPORTATION INSIGNIA - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

COLONNA PARK INC.)
 T/a MIR-O-MAR)
 North side - Route 28)
 Bethlehem Township)
 P.O. West Portal, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Bethlehem.)

 Defendant-licensee, by Florence Murphy, President.
 Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that it purchased alcoholic beverages from another retailer, in violation of Rule 15 of State Regulations No. 20, and that it transported the said alcoholic beverages in a vehicle which did not bear a transit insignia, such transportation being in violation of R. S. 33:1-2.

The file herein discloses that on various dates between July 1, 1949 and March 24, 1950, defendant purchased various items of alcoholic beverages from another retailer and transported the alcoholic beverages from the other licensed premises to its licensed premises in two vehicles, neither of which bore a transit insignia.

Defendant has no prior record. I shall suspend defendant's license for fifteen days because of the unlawful purchase, and for an additional five days because of the unlawful transportation. Five days will be remitted because of the plea entered herein, making a net suspension of fifteen days. Cf. Re Fessler, Bulletin 596, Item 1.

Accordingly, it is, on this 1st day of May, 1950,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Bethlehem to Colonna Park, Inc., t/a Mir-o-mar, for premises on North side - Route 28, Bethlehem Township, be and the same is hereby suspended for fifteen days, commencing at 2:00 a.m. May 5, 1950, and terminating at 2:00 a.m. May 20, 1950.

ERWIN B. HOCK
 Director.

May 1, 1950.

5. ACTIVITY REPORT FOR APRIL 1950

ARRESTS:

Total number of persons arrested	-----	23
Licensees and employees	-----	1
Bootleggers	-----	22

SEIZURES:

Motor vehicles - cars	-----	2
Still - 50 gallons or under	-----	5
Alcohol - gallons	-----	2,64
Mash - gallons	-----	1,075.00
Distilled alcoholic beverages - gallons	-----	17.70
Wine - gallons	-----	267.41
Brewed malt alcoholic beverages - gallons	-----	22.87

RETAIL LICENSEES:

Premises inspected	-----	878
Premises where alcoholic beverages were gauged	-----	696
Bottles gauged	-----	12,546
Premises where violations were found	-----	25
Violations found	-----	33
Type of violations found:		
Unqualified employees	-----	21
Reg. #38 sign not posted	-----	6
Prohibited signs	-----	1
Probable fronts	-----	1
Other mercantile business	-----	1
Other violations	-----	3

STATE LICENSEES:

Premises inspected	-----	19
License applications investigated	-----	13

COMPLAINTS:

Complaints assigned for investigation	-----	274
Investigations completed	-----	329
Investigations pending	-----	126

LABORATORY:

Analyses made	-----	111
"Shake-up" cases (alcohol, water and artificial color) - bottles	-----	8
Liquor found to be not genuine as labeled - bottles	-----	2

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	-----	31
Persons fingerprinted for non-criminal purposes	-----	128
Identification contacts made with other enforcement agencies	-----	118
Motor vehicle identifications via N. J. State Police Teletype	-----	4

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	-----	11
Violations involved:		
Sale during prohibited hours	-----	4
Sale to minors	-----	4
Sale to non-members by clubs	-----	2
Permitting bookmaking on premises	-----	1
Cases instituted at Division	-----	20
Violations involved:		
Sale to minors	-----	10
Possessing illicit liquor	-----	3
Sale under Fair Trade price	-----	2
Fraud and front	-----	2
Cases brought by municipalities on own initiative and reported to division	-----	6
Violations involved:		
Permitting brawls on premises	-----	5
Sale to minors	-----	1
Permitting gambling on premises (cards)	-----	1
Hindering investigation	-----	1

HEARINGS HELD AT DIVISION:

Total number of hearings held	-----	38
Appeals	-----	4
Disciplinary proceedings	-----	21
Eligibility	-----	7
Seizures	-----	3
Tax revocation	-----	1
Application for license	-----	2

PERMITS ISSUED:

Total number of permits issued	-----	744
Employment	-----	100
Solicitors	-----	97
Disposal of alcoholic beverages	-----	100
Social affairs	-----	343
Miscellaneous	-----	104

ERWIN B. HOCK, DIRECTOR

6. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (PROCURING FEMALES FOR PURPOSES OF PROSTITUTION, SOLICITATION FOR PROSTITUTION) - HOSTESSES - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

LEONA FILIPPONE)
T/a FLIPP'S HAYWARD LODGE)
63 Union Blvd.)
Wallington, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of Wallington.)

Feder & Rinzler, Esqs., by Joseph A. Feder, Esq., Attorneys for Defendant-licensee.

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

BY THE DIRECTOR:

Defendant pleaded not guilty to charges as follows:

"1. On December 28, 1949, and January 4 and 6, 1950, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, viz., procuring females for purposes of prostitution, solicitation for prostitution and the maintenance of a place for the making of assignations; in violation of Rule 5 of State Regulations No. 20.

"2. On December 30, 1949, you allowed, permitted and suffered a female employed on your licensed premises to accept beverages at the expense of and as a gift from customers or patrons; in violation of Rule 22 of State Regulations No. 20."

According to the testimony, two agents of the Division of Alcoholic Beverage Control visited the defendant's licensed premises on the night of December 28, 1949, and while there engaged in conversation with one Anthony Filippone, called "Flip", the husband of the licensee and admittedly the manager of her licensed business and licensed premises. Upon inquiry by the agents as to whether any "girls were there that night", "Flip" stated that he had a girl from New York there that night, that she was a model and pretty nice, and that she was a "two-way girl". "Flip", the agents testified, indicated that she would engage in sexual intercourse and told them that this girl was "a little high priced" and that she was "clean" and "looked a bit above the ordinary girl". He also told the agents that he had her there "to stimulate trade". Following this conversation the agents observed a woman enter the bar alone and "Flip" indicated that she was the girl to whom he referred. Shortly thereafter this girl left the licensed premises with two men and soon returned alone. The agents then asked "Flip" to introduce the girl to them. In response "Flip" said, "I am a little bit leery; I have to be careful." When one of the agents answered by saying, "All right, skip it.", "Flip" said, "I will take a chance. I will fix you up." Thereafter "Flip" called the girl to the rear of the room and had some conversation with her. A little later "Flip" called the girl over to where the agents were seated and introduced her by saying, "This is Betty." After some further conversation in the presence of "Flip", the girl said to the two agents, "What's the score, boys? Who is first?" One of the agents then went outside of the premises with the girl but because the investigation on that evening was merely preliminary it was not pursued further at that time.

Returning to the licensed premises on the night of December 30, 1949, the agents found no girls present. "Flip" told the agents that the "girls" would soon be there. Later, when no "girls" appeared, "Flip" remarked, "I'll get a couple of new ones next week." On the occasion of this visit the agents observed a female entertainer playing the accordion and singing. After the conclusion of her numbers she sat at the bar with various male patrons who purchased beverages for her and paid for the same.

Again, on the night of January 4, 1950, the agents visited the licensed premises and were greeted by "Flip" with the remark, "She's here tonight." When asked whether she was in the tavern "Flip" said, "No. She's outside now. She should be back any minute." A short time later "Betty" entered the tavern alone. "Flip" then pointed to customers at the bar and said to "Betty", "What am I going to tell these gentlemen? They're waiting for you.", to which the girl said, "I'm sorry. I don't give a damn what you tell them. I'm leaving." Soon thereafter "Betty" left the premises.

The agents again visited the licensed premises on January 6th. Upon entering and walking to the rear of the room, "Flip" called out, "I got a new one tonight, boys. She's a honey. She's cheaper than Betty." During a conversation which followed between "Flip" and the agents, the former said, "She's not as nice as the other one but she's more reliable. She's cheaper and she got around here 8 o'clock tonight and she had three guys out already." The girl, upon returning from a visit to the ladies' room, was told by "Flip", "The old guy down the bar is next." The girl then inquired, "Which one?", to which "Flip" said, "When you're ready I'll go and stand in front of him." Shortly thereafter "Flip" introduced the girl to the agents as "Paula". The agents purchased her a drink and as she finished it, she walked toward the above mentioned customer, "Flip" saying to her, "These boys (indicating the agents) are next. When you come back take care of them because they are good customers." Paula left the premises with the aforesaid customer referred to as "The old guy", returned within a half-hour and sat and talked with the agents and "Flip". After several rounds of drinks Paula said to the agents, "What's the score, boys?" The agents then talked with Paula as to price and after one of the agents had given her three marked \$1.00 bills he left the premises with her. All of this conversation took place in the presence of "Flip". Shortly thereafter other agents and police officers found Paula with the agent who had left the premises with her, in an automobile parked nearby in a position clearly indicating her intentions to engage in sexual intercourse. The three marked one dollar bills handed to her by the agent as above indicated were found in her pocketbook.

Paula, when placed on the stand, refused to answer any but the most formal questions on the ground that such answers might incriminate her. She admitted knowing "Flip" and the licensee's bartender. "Flip", when called by the defense, denied many of the statements allegedly made by him to the Division's agents. He denied knowing Paula and refused to answer many pertinent questions on the ground that the answers might incriminate him. He also did not remember many incidents and denied any acquaintance with Betty except a very casual one.

The straightforward testimony of the witnesses for the Division, excepting "Paula", the lack of any apparent motive requiring them to tell anything but the truth, contrasted with the "I don't remember" and the categorical denials by "Flip", cause me to believe the story told by the agents.

Counsel for defendant contended that, so long as the intended prostitution did not take place, either on the licensed premises or elsewhere, no lewdness and no immoral activities did take place thereon. The evidence quoted or referred to herein, and that too lurid to permit publication, clearly demonstrates that the manager, at least, procured females for the purpose of prostitution; that he and the girls "solicited" for that purpose; and that the business of the licensee depended largely upon the fact that assignations could be made there.

Such conduct clearly constitutes allowing, permitting and suffering immoral activities upon the licensed premises. Cf. Grassot et al., Bulletin 757, Item 1.

It is true that the licensee was not present on the licensed premises at the time of the commission of the immoral acts. In fact, it appears from the record that she is very seldom on the licensed premises. She apparently spends her time taking care of her family and her home as the usual housewife. Although she may not have had any knowledge of the illegal activities, this does not excuse her. This undoubtedly was so because of her substantial abandonment of supervision of the licensed premises. She is responsible for the acts of her agents in her business. Regulations No. 20, Rule 26; cf. Ballerino, Bulletin 660, Item 3, and cases cited. This is especially true when the relationship of the "owner" and "manager" is as close as that of wife and husband. Defendant is guilty as charged.

The finding of guilt on the first charge alone is sufficient warrant for revoking the license. Re Ballerino, supra.

Licensee seeks to mitigate the penalty to be imposed herein by her claim that she did not know what was happening at her licensed premises. Such argument loses all its possible force, however slight, when it is noted that she was advised by letter from the Division, dated October 27, 1949, that her premises were being frequented by an apparent prostitute who was possibly plying her trade to the extent of "soliciting" on the licensed premises. The licensee acknowledged the warning by letter (undated) received November 3, 1949, and answered in part: "In the future I pledge I will be on the alert for such patrons, and will comply with all liquor laws and regulations."

Accordingly, it is, on this 2nd day of May, 1950,

ORDERED that Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of Wallington to Leona Filippone, t/a Flipp's Hayward Lodge, 63 Union Blvd., Wallington, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK
Director.

7. APPELLATE DECISIONS - FEDDER v. ASBURY PARK.

LOUIS R. FEDDER, t/a PLAZA HOTEL)
 BAR & GRILL,)

Appellant,)

-vs-)

CITY COUNCIL OF THE CITY OF)
 ASBURY PARK,)

Respondent.)

ON APPEAL
 CONCLUSIONS AND ORDER

Robert Friedlander, Esq., Attorney for Appellant.
 Abraham Frankel, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's forty-five day suspension of appellant's plenary retail consumption license for premises located at the Plaza Hotel, Asbury Avenue, Asbury Park, such suspension being imposed to begin Wednesday, May 17, 1950, at 2:00 a.m.

The charges upon which appellant was found guilty were: (1) allowing, permitting and suffering (on June 13, 1949 and on divers dates subsequent thereto) in or upon the licensed premises disturbances or unnecessary noises by reason whereof the licensed place of business has been conducted in such manner as to become a nuisance, in violation of State Regulations No. 20, Rule 5; and (2) making, continuing or causing to be made or continued (on June 13, 1949 and on divers dates subsequent thereto) unnecessary noises in violation of an Asbury Park ordinance entitled "An Ordinance Prohibiting Unnecessary and Unusual Noises and Disturbance of the Peace", approved March 15, 1932.

The Petition of Appeal alleges that respondent's action was erroneous because of various procedural defects and includes the allegation that appellant was not given time and opportunity properly to prepare his case and adequately to defend against the charges. Substantiating and probative evidence with respect to these allegations is lacking in the record before me. Furthermore, with the exception of the transcript of testimony of witnesses at the hearing before respondent on September 13, 1949 (which transcript was, upon stipulation and agreement of counsel, introduced in evidence on the appeal -- Rule 8, State Regulations No. 15), this appeal is de novo (Rule 6, State Regulations No. 15) and, accordingly, the procedural errors or defects, if any, of which the Petition complains have been rendered harmless in the light of the hearing herein at which additional testimony was presented.

The Petition alleges, further, that "The basis of the charges presented are not violations of the Alcoholic Beverage Control Act in that the noise violation consisted of music played by accomplished musicians on the licensee's premises which are located in an amusement area and in fact are bounded on both sides by merry-go-rounds and other noise producing businesses."

Revised Statutes, 33:1-31h provides that a license may be suspended or revoked for violation of a municipal ordinance. The Asbury Park ordinance in question, however, was adopted prior to the Alcoholic Beverage Control Act and, therefore, cannot be said to have been adopted pursuant thereto. It is my opinion that in so far as any application to alcoholic beverage licenses is concerned the ordinance became a nullity on December 6, 1933, because of the comprehensive scheme of control embodied in the Control Act. (See Re McNaughton, Bulletin 64, Item 3; Roche v. Jersey City, 40 N.J.L. 257 -- Sup. Ct. 1878; Belmar Delicatessen Co., Inc. v. Atlantic City, Bulletin 835, Item 4.) Hence, respondent's finding of guilt under the second charge -- as to violation of the 1932 ordinance, must be, and is, reversed.

This brings us to respondent's finding of guilt under the first charge -- for violation of Rule 5 of State Regulations No. 20.

Appellant's bar and dance hall are located on the ground floor of a 110-room hotel building, on which floor are located, also, a snack bar and a gift shop. The hotel, which appears to be situated in what is termed by appellant an "amusement area", is bounded by Asbury Avenue, Plaza Square, Lake Avenue and Kingsley Street. Across the street, on Kingsley Street, are a merry-go-round, Ferris wheel, fun-house and other concessions; and across the street, on Ocean Avenue, is another merry-go-round.

Appellant used one band (a trio) until the July fourth weekend when an alternate band (four pieces and a vocalist) was added until the end of the season -- to provide continuous playing and dancing. Four amplifiers were used to carry the sound from the microphones which were placed on the bandstand.

For respondent, Esther T. Duane, owner of the West End Hotel which is located approximately 238 feet from the entrance of the Plaza Bar, testified at the hearing below that she called the police on many occasions during the past summer because of noises emanating from appellant's premises. She testified that the noise consisted of loud music, loud singing, screaming, and the use of profanity.

Walter R. Vevier, manager of the West End Hotel, testified below that practically every night during the summer of 1949 loud noises emanated from appellant's premises. He testified that these noises came from the band music and from crowds shouting and milling in front of the windows of the dance hall.

Radio Officer Griffin testified, at the hearing herein, that at about 1:00 a.m. on June 13, 1949, he received a "noise" call to go to the Plaza Hotel; that, upon his approaching the premises, "the orchestra there was playing in a very loud and raucous noise. It could be heard for quite some distance." He testified that he informed the man in charge as to "the condition, as to how it can be heard outside. He informed me he would stop the noise." Officer Griffin stated that he received another call to go to the Plaza Hotel on June 25, 1949, at about 12:30 a.m. He testified: "The nature of the visit at this time was the noise complaint also. When I got to the Plaza Bar I went upstairs into the lobby and inquired of the bellboy as to Mr. Fedder's whereabouts. I was told he was attending a movie and hadn't arrived back at the hotel. The bellboy then went and got for me the same man who I had spoken to previously, who I assumed was the manager. He then told me he would eliminate the noise for me also." The officer testified that the type of noise emanating from the premises was the "same as I heard previously; loud, blaring sort of music...an offensive tone of music...raucous, very loud, and could be heard at quite some distance."

Police Officer Strano testified, at the hearing herein, that at about 12:45 a.m. on July 25, 1949, he "was ordered by Police Captain Joseph Sullivan to go to the Plaza Hotel and quiet the noise". He testified that as he approached the premises he heard, from the street, loud music and loud singing from the amplifiers in the Plaza Hotel Bar; that he found appellant in the bar and told him the noise was too loud and should be quieted down, that "it's about time we got some cooperation". He testified that as he was leaving he again told appellant that the public address system would have to be quieted down, whereupon appellant remarked that if the officer signed a complaint "seven policemen and a couple more soldiers will testify against you. There is no noise around here."

Appellant testified, herein, that the "amplifiers are not put there to increase the amount of sound emanating from the band but to

distribute it over the area that people are in, and there are people that sit on one side of the hall that would not be able to hear the band or hear the entertainment. The amplifiers are put there to distribute the sound so persons sitting at one end of the hall hear the band as if they were sitting in front of the band". Appellant testified, further, that he was called to this Division's office in 1948 on a complaint from Mrs. Duane, "and, as a result of the investigation of the A.B.C. at that time. We used to run our dance until three o'clock. I cut it down to two o'clock, but I did better than that, I stopped the music at 1:30 in the morning." Appellant testified that he closed the windows on the side facing the West End Hotel in order to prevent the sound from traveling in that direction; that he has never had a complaint from any of his hotel guests or from the operators of businesses located near his premises; and that there is a bus station where people gather near the entrance to the Plaza Bar and dance hall. Four other witnesses, including the manager of the licensed premises, appeared for appellant. These witnesses testified that the music and noise emanating from the licensed premises were not loud enough to cause annoyance.

The evidence convinces me that various warnings regarding the loud music and the local officers' requests to remedy the situation were, in most instances and in large measure, unheeded. Under the circumstances, respondent appears to have been long-suffering and tolerant in its treatment of the licensee. Obviously it takes a greater amount of noise to constitute a noise nuisance in a business section or "amusement area" than in a purely residential area, but even in an "amusement area" loud noises emanating from licensed premises may be so inordinately loud and unwarranted as to constitute a nuisance. In the instant case, respondent's finding of guilt under the first charge is supported by a clear preponderance of the evidence and, therefore, finding appellant guilty under that charge, I affirm respondent's finding of guilt thereunder.

Under the circumstances, and in view of my reversal of the finding of guilt on the second charge, I have decided to remand the case to respondent solely upon the question of the penalty to be imposed. (See Monesson vs Lakewood, Bulletin 847, Item 6.) It is to be clearly understood that my remanding herein is to enable respondent to reweigh and to fix in its sound judgment, upon the basis of appellant's guilt under the first charge, the extent of penalty to be imposed. The redeliberation and determination in the matter of penalty will be entirely up to respondent, in the first instance, and the remanding herein is not to be taken as in any way an indication or comment as to the penalty properly to be imposed.

Accordingly, it is, on this 2nd day of May, 1950,

ORDERED that the action of respondent in finding appellant guilty under the first charge be and the same is hereby affirmed, and the case is hereby remanded to respondent solely for the purpose of considering the proper penalty to be imposed.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 REQUIRING BONA FIDE INVOICES OR MANIFESTS COVERING SHIPMENTS - PEDDLING ALCOHOLIC BEVERAGES FROM TRUCK - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against MORRIS GLASSMAN, FRANK KIPNIS and DAVID FRANKLIN T/a IDEAL BEVERAGE COMPANY Rear of 110 Pine Street Montclair, N. J., Holders of State Beverage Distributor's License SBD-66, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-licensees. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charges:

"1. On Saturday, April 29, 1950, you used your licensed vehicle bearing transportation insignia to deliver alcoholic beverages without the driver having in his possession bona fide invoices or manifests stating the names of the purchaser of each item of alcoholic beverages and the kind and quantity of alcoholic beverages being delivered in said vehicle to each of said purchasers; in violation of Rule 3 of State Regulations No. 17.

"2. On the occasion aforesaid, you peddled, bartered and otherwise sold alcoholic beverages from a vehicle on a public highway, viz., on the street in the vicinity of 146 Boyd Avenue, Jersey City, N. J.; in violation of Rule 3 of State Regulations No. 17."

The file herein discloses that on April 29, 1950, an ABC agent observed defendants' licensed truck which was then parked on Boyd Avenue, Jersey City. After deliveries of beer had been made to two homes on Boyd Avenue, the agent approached the truck and requested James Kirwin, the driver, to sell him a case of beer. The driver sold to the agent from the truck a case of beer for the sum of \$2.85. The driver, of course, had no invoice or manifest covering the sale. I find defendants guilty as charged.

Defendants have a prior record. On October 6, 1949, their license was suspended for a net period of five days after they had pleaded non vult to a charge that they delivered alcoholic beverages without the driver having in his possession bona fide invoices or manifests. See Bulletin 856, Item 5. The prior violation did not involve peddling from the truck. Under all the circumstances, I shall suspend defendants' license for fifteen days, and remit five days for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 2nd day of May, 1950,

ORDERED that State Beverage Distributor's License SBD-66, issued by the Director of the Division of Alcoholic Beverage Control to Morris Glassman, Frank Kipnis and David Franklin, t/a Ideal Beverage Company, for premises Rear of 110 Pine Street, Montclair, be and the same is hereby suspended for ten (10) days, commencing at 7:00 a.m. May 8, 1950, and terminating at 7:00 a.m. May 18, 1950.

ERWIN B. HOCK Director

9. DISCIPLINARY PROCEEDINGS - CHARGE OF PERMITTING LEWDNESS AND IMMORAL ACTIVITY DISMISSED FOR LACK OF PROOF - HOSTESSES (AGGRAVATED VIOLATION) - ALLOWING LICENSED PREMISES TO BE CONDUCTED IN SUCH A MANNER AS TO BECOME A NUISANCE - PRIOR RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against COSFAIR CORPORATION 11 Park Avenue Paterson 1, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-25, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Giuliano & Giuliano, Esqs., by Anthony Giuliano, Esq., Attorneys for Defendant licensee. Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant originally pleaded not guilty to the following charges:

"1. On divers days between November 16, 1949 and January 16, 1950, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., procuring females for purposes of prostitution, solicitation for prostitution and the maintenance of a place for the making of assignations; in violation of Rule 5 of State Regulations No. 20.

"2. On the occasions aforesaid, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of and as a gift from customers or patrons; in violation of Rule 22 of State Regulations No. 20.

"3. On the occasions aforesaid, you allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance, in that you permitted unescorted females to frequent your licensed premises and to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption and apparent consumption by said females, and otherwise conducted the licensed place of business in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulations No. 20."

After the Division had fully presented its evidence at a duly scheduled hearing held in this case, defendant withdrew its plea of not guilty as to charges 2 and 3 and entered a plea of non vult as to said charges.

With respect to the contested charge (1) of permitting lewdness and immoral activity on the licensed premises, a careful consideration of the evidence adduced leads me to the conclusion that the occurrence of the conduct alleged has not been established by the requisite preponderance of the evidence. Accordingly, as to this charge, defendant is found not guilty and the charge is dismissed.

With respect to the second and third charges, admitted by defendant's belated plea of non vult, the uncontradicted testimony discloses that on nine occasions between November 16, 1949 and January 15, 1950 (on all of which defendant's President, Dominick Cosman, was present acting as bartender), defendant utilized, in the promotion of

its licensed business, a number of females (varying from two to six and usually three or four, the group being of more or less constant composition), all of whom posed as merely customers rather than employees but who obviously were engaged in inducing male patrons to spend as much money as possible on drinks for them. Significantly, the testimony discloses that several of these females delivered drinks from the bar to persons seated in booths and that at least four of these females entertained at the licensed premises by singing songs to the accompaniment of the licensee's pianist.

The modus operandi involved having the females available on the premises to join unattached male patrons, their ordering as many drinks (usually sauterne or vermouth with coke chasers) as the traffic would bear, the "spitting back" of the alcoholic drink into the chaser to avoid the necessity of consuming it, the dumping of the, by then, fortified chaser and the ordering of another drink. This situation was aggravated by the fact that at least one of the females had been taught, at the suggestion of the defendant's President, to spit back alcoholic beverages into the chaser. The efficiency and viciousness of the operation are vividly illustrated by the fact that one female could "consume" as many as sixteen drinks (at seventy cents each) in the space of two hours!

In short, defendant was clearly engaged in the "hostess" racket. I consider it highly significant that the testimony of the licensee's President, who was the only witness called for the defense, in no way controverted the testimony adduced by the Division with respect to these activities.

As to charge 3, it is clear that where, as herein described, a licensee permits unescorted females to frequent the licensed premises and to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption, or apparent consumption, by those females, such activity results in the conduct of the licensed place of business in such manner as to become a nuisance within the intendment of Rule 5 of State Regulations No. 20. See in this connection Alpine Village Tavern, Inc. v. Newark, Bulletin 629, Item 3, wherein then Commissioner Driscoll held in a similar situation:

"The State regulations prescribe rules of conduct which licensees are duty bound to observe. The word 'nuisance' as it is used in Rule 5 of State Regulations No. 20 is not to be restricted by technical definitions applicable in criminal cases. One readily apparent reason for this distinction is that the licensee is engaged in the exercise of a privilege, not a property right. Accordingly, in defining the word 'nuisance', I am not unmindful of its everyday usage. The word 'nuisance' has been defined as 'an offensive, annoying, unpleasant or obnoxious thing, practice or person; a cause or source of annoyance'. Webster's New International Dictionary."

Considering both the non vult plea and the testimony elicited prior to entry of that plea, I find the licensee guilty as to the second and third charges.

In imposing penalty, defendant's prior record merits consideration. That record is a suspension of license for the balance of its term effective January 31, 1949 (thus amounting to five months) for permitting its licensed premises to be used for solicitation for prostitution and its licensed place of business to be conducted as a nuisance, in violation of Rules 4 and 5 of State Regulations No. 20. Re Cosfair Corporation, Bulletin 830, Item 7.

Considering the prior record and the aggravated circumstances of this case, the only proper penalty is revocation of the license.

Accordingly, it is, on this 3rd day of May, 1950,

ORDERED that Plenary Retail Consumption License C-25, heretofore issued by the Board of Alcoholic Beverage Control for the City of Paterson to Cosfair Corporation, for premises 11 Park Avenue Paterson, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK
Director.

10. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.

May 8, 1950.

The next official publication of minimum resale prices pursuant to Fair Trade rules (Revised Regulations No. 30) will become effective on July 1, 1950. Prices to be listed must be filed with the office of this Division not later than May 20, 1950. The publication will be a complete pamphlet in accordance with Rule 3 of Regulations No. 30, providing for issuance of quarterly complete publications.

In submitting price listings it is important to note the following:

1. The importance of listing all brands of alcoholic beverages (including malt beverages) is emphasized in light of Rule 6 of Revised Regulations No. 30 which prohibits price advertising of any brand not listed in Fair Trade.
2. It is suggested that close attention be given to the importance of a fair and adequate markup for the retailer.
3. Only manufacturers and wholesalers owning brands or wholesalers having specific written authorization of the owner of brands, may file price listings for publication in minimum resale price pamphlets.
4. Where listers of brands choose to publish a permissive case lot discount, the phrase "Discount of _____% permitted on case lot purchases" should be used.
5. True copies of labels or photostats of labels of brands listed in Fair Trade must be submitted with the price listings, if such labels have not been previously submitted.
6. Price listings may be submitted by letter in the same form as heretofore but must bear a statement certifying the existence of a Fair Trade contract between the manufacturer or wholesaler and a licensed New Jersey retailer. It is important to note that copies of such Fair Trade contracts need no longer be filed with the Division.

Notification of the proportionate share of aggregate expenses involved in the publication of the complete pamphlet will be made to participating companies as soon as the pamphlet is mailed to all retail licensees.

ERWIN B. HOCK
Director.

11. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS - PRIOR UNSATISFACTORY RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)

SCULLY-BOZARTH POST #1817)
VETERANS OF FOREIGN WARS)
S/s River Bank between Wood &)
Talbot Sts.)
Burlington (City), N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-46, issued)
by the Director of the Division of)
Alcoholic Beverage Control.)

Defendant-licensee, by L. G. Cross, Adjutant.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that on April 12, 1950, it sold alcoholic beverages to persons other than members or bona fide guests of members, in violation of Rule 8 of State Regulations No. 7.

On April 12, 1950, four ABC agents purchased alcoholic beverages on defendant's licensed premises. None of the agents was a member or a guest of a member of the defendant association.

Defendant has a previous adjudicated record. In 1940, its license was suspended for five days for the sale of alcoholic beverages to non-members and for off-premises consumption. Bulletin 407, Item 11. Effective March 1, 1948, the defendant's license was again suspended for five days for permitting slot machines, or devices in the nature of slot machines, on the licensed premises. Bulletin 796, Item 9. Effective July 18, 1949, defendant's license was suspended for a period of twenty-five days for sales of alcoholic beverages during prohibited hours and permitting gambling (cards). Bulletin 849, Item 10.

Under all of the circumstances, I shall suspend the license of defendant for the balance of its term.

Accordingly, it is, on this 3rd day of May, 1950,

ORDERED that Club License CB-46, issued by the Director of the Division of Alcoholic Beverage Control to Scully-Bozarth Post #1817, Veterans of Foreign Wars, s/s River Bank between Wood & Talbot Sts., Burlington (City), be and the same is hereby suspended for the balance of its term, effective at 7:00 a.m. May 8, 1950.

ERWIN B. HOCK
Director.

12. STATE LICENSES - NEW APPLICATIONS FILED.

C. F. Hill and R. E. Hamm
19 South 10th St., Harrisburg, Pa.
Application for Transportation License filed May 10, 1950.

Monarch Wine Company
Sawtell Ave., So. Atlanta Station, Atlanta, Georgia.
Application for Transportation License filed May 10, 1950.

New Jersey State Library

Erwin B. Hock

Director.