

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

BULLETIN 1311

December 16, 1959

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APPELLATE DECISIONS - TYLER'S COUNTRY CLUB, INC. v. WOODBRIDGE.

TYLER'S COUNTRY CLUB, INC., )  
Appellant, ) ON APPEAL  
v. ) CONCLUSIONS  
TOWNSHIP COMMITTEE OF THE ) AND ORDER  
TOWNSHIP OF WOODBRIDGE, )  
Respondent.

-----  
Harry B. Kotler, Esq., Attorney for Appellant.  
Nathan Duff, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent when, by resolution dated July 21, 1959, it rescinded its prior action of June 16, 1959 whereby it had granted a renewal of appellant's plenary retail consumption license for the 1959-60 licensing term.

"Upon the filing of the instant appeal, the license issued for the 1958-59 period was extended pursuant to the provisions of R.S. 33:1-22.

"Appellant's attorney was notified by the township clerk by letter dated June 18, 1959 that, because of the receipt of a petition containing names of objectors to the renewal of appellant's license, a hearing thereon had been scheduled for June 30, 1959.

"At the hearing of June 30th, two objectors (neither of whom was under oath) testified that conditions in the vicinity of appellant's licensed premises were bad, especially regarding improper parking by patrons and broken bottles, beer cans and contraceptives scattered around the ground near where the licensed premises were located. The testimony of said witnesses lacked certainty as to dates when the alleged occurrences complained of actually took place. There were four other objectors at the hearing before respondent who did not testify.

"The record indicates that a second mortgage held by Laurence Gale on the licensed premises was in the process of foreclosure at the time of filing of the renewal application and when the action was taken thereon with reference thereto. However, the sale of the property by the sheriff pursuant to the foreclosure proceedings had not been held. On January 28, 1959 the ten shares of capital stock of appellant corporation which had been issued and outstanding and which were pledged to Laurence Gale as additional security for the mortgage were disposed of at public sale. The record discloses that Gale acquired the stock of said corporation and, at the time of filing the application for renewal of the license, held eight shares thereof, and William J. Rokos and Lillian Holzberg each held one share, respectively. The record further indicates that appellant has not operated the licensed premises since January 1959. The reason advanced by the appellant's attorney, which has not been disputed, was that appellant was awaiting the action of the sheriff in the sale of the premises to which the license had been issued, at which time he (Gale) intended to purchase the property.

"Non-user, in itself, will not invalidate a liquor license. As was stated in Empire Liquor Co. v. Newark, Bulletin 995, Item 2:

'Mere non-user does not affect the legal status of a license. Protracted non-user might, in a given case, cause a municipal issuing authority to determine against granting renewal (Re Tarantola, Bulletin 570, Item 5), but such a situation is not present in the instant appeal.'

"From the record in the case now under consideration, it is apparent that the license was not being used until the pending mortgage foreclosure litigation with reference to the premises had been fully determined.

"Subsequent to the approval of the renewal of the appellant's license for the premises in question and issuance of the renewal license certificate pursuant thereto, the respondent 'revoked' its action and held a hearing in the matter. Although petitions were received by respondent after its initial action in the matter, the respondent would have been justified in rejecting them because of lack of jurisdiction to reconsider its action which was essentially judicial in nature. Kane et al. v. Union Beach, Bulletin 1217, Item 1. It has been consistently held by the courts that in the absence of statute or a fraud having been perpetrated upon the issuing authority, it may not reconsider its action. Lantz v. Hightstown, 46 N.J.L. 102; White v. Atlantic City et al., 62 N.J.L. 644; Vanaman v. Adams, 74 N.J.L. 125; Gulnac v. Board of Chosen Freeholders, 74 N.J.L. 543 (E & A 1906). Respondent does not contend that the renewal license in question was fraudulently obtained or that any of the stockholders are statutorily disqualified in any respect. Moreover, the appellant apparently has no prior adjudicated record, and there is nothing to indicate that disciplinary proceedings were ever instituted against appellant.

"Under the circumstances appearing in this case, I conclude that the action of respondent in rescinding its prior grant of the renewal of appellant's license was improper and I recommend that its action be reversed."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered all the facts and circumstances appearing herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 23rd day of October, 1959,

ORDERED that the subsequent action of respondent in denying the renewal of appellant's license be and the same is hereby reversed and that the renewal of appellant's license for the current licensing period as originally granted shall remain in effect.

WILLIAM HOWE DAVIS  
DIRECTOR

2. APPELLATE DECISIONS - EISENHARDT, INC. v. EASTAMPTON.

MAUD EISENHARDT, INC., t/a COLONIAL COTTAGE,	)	
	)	
Appellant,	)	ON APPEAL
	)	CONCLUSIONS
v.	)	AND ORDER
	)	
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EASTAMPTON,	)	
	)	
Respondent.	)	

-----  
 John S. Conroy, III, Esq., Attorney for the Appellant.  
 Alfred M. Bitting, Esq., Attorney for the Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action on June 29, 1959 whereby it unanimously denied what purported to be an application for renewal of appellant's plenary retail consumption license for the 1959-60 licensing year. The premises in question are located on the northwest corner of Jobstown Road and Smithville-Jacksonville Road.

"Upon the filing of the appeal, an order was entered by the Director on July 1, 1959 extending the term of appellant's license until further order herein.

"Respondent's resolution denying the application reads, in pertinent part:

'A petition of objection to the renewal of liquor license #C-2 to Maud F. Eisenhardt, trading as Colonial Cottage .... On motion by Joseph Conover, seconded by Mr. Bensch, all members voting "yes", Plenary Retail Consumption License #C-2 renewal was denied for the following reasons: (1) cesspool open and overflowing, (2) taxes due in 1958 unpaid, (3) improper application and application filed with Clerk after publication of notice of filing, (4) unreasonable noise and nuisance to nearby residents.'

"The reasons for denial are restated in respondent's answer as follows:

- (a) Unsanitary and unhealthful conditions found persisting on the premises after reasonable notice having been given to abate same.
- (b) Written objections by a number of citizens to the granting of said application.
- (c) Substantiated reports of disorderly activities, loud language and rowdiness in and about the licensed premises.
- (d) Failure to have taxes paid up to date.
- (e) Application undated, unsigned, without affidavit, presented to Township Committee on night of

meeting instead of being filed at the required time in advance thereof, no proof of publication of notice of application filed, contradictory answers therein, and license fee not paid or tendered with application.

"The appellant, in its petition of appeal, alleges that if it is required to suspend 'her' operation of the licensed premises 'she' will suffer irreparable damage.

"The reference to the individual stems from the fact that Maud F. Eisenhardt is the holder of 98 of the 100 shares of stock of the corporate licensee, and conducts the licensed business. It is clear from the evidence presented that her difficulties with the respondent arise mainly from lack of funds with which to keep the premises in presentable condition as to sanitary and other aspects.

"However, appellant is confronted at the outset with failure to file an application for renewal in proper legal form, a prerequisite to jurisdiction of the respondent to consider the application. There is considerable confusion concerning such application. On June 24, 1959 respondent notified Maud F. Eisenhardt, as an individual, that it would hold a hearing on June 29th to 'examine the objections to the renewal of Plenary Retail Consumption License C-2 to Maud F. Eisenhardt, trading as "Colonial Cottage"'. Actually there was no application for renewal then on file by either the corporate licensee or Mrs. Eisenhardt. On June 29th she filed the application which was defective with respect to the items set forth in the respondent's answer. Since the application was defective in these many respects, the respondent therefore lacked jurisdiction to consider the application (Klein and Tucker v. Fair Lawn, et als., Bulletin 1175, Item 3), and the respondent Board was fully justified in denying renewal, even though it mistakenly treated the application as presented by Mrs. Eisenhardt.

"It further appears that on July 9th, within the time permitted by statute for filing an application for renewal, the appellant filed a corrected application, in proper legal form except as to publication, and deposited the proper license fee with respondent. This application recites that notice of the application was published on June 18 and 25, 1959. An application for license must be filed with the issuing authority before the first insertion of advertisement. Utrecht v. Hopatcong, Bulletin 1154, Item 7. Since a renewal of license is involved, and the defective advertisement arises out of the confusion in filing successive applications, I recommend that the appellant be permitted to re-advertise its notice of intention, that it file proof thereof with the issuing authority, and that the issuing authority be authorized to accept the re-advertised Notices of Intention in lieu of those heretofore filed by appellant. Cf. Klein and Tucker v. Fair Lawn, et als., supra.

"In any event, the respondent has not acted upon the application for renewal filed on July 9th, and hence I recommend that an order be entered directing that the matter be remanded to the respondent with instructions to act upon appellant's pending application for renewal in accordance with the opinion herein.

"When considering such application, if the Notices of Intention are re-advertised in proper form and time, the respondent may take into consideration that the objectionable cesspool appears to have been replaced by installation of a septic tank; that non-payment of taxes is not a proper ground for denial of renewal of a license

(Cf. Ascher v. Asbury Park, et al., Bulletin 828, Item 3; Winding River Inn, Inc. v. Dover Township, Bulletin 1051, Item 1), and that the economic problems of appellant may be solved within a reasonable time or, if not, by consenting to a transfer of the license to another qualified person.

"I further recommend that the extension of the license remain in effect until the further order of the Director."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

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

ORDERED that the matter be and the same is hereby remanded to respondent Township Committee to consider the merits of the application for renewal of the license filed by the licensee on July 9, 1959 in accordance with the opinion herein, and it is further

ORDERED that the Director's order extending the license pending the outcome of the appeal remain in effect until the further order of the Director.

WILLIAM HOWE DAVIS  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOHN GAVLAK  
t/a Main Stop  
35 Main Avenue  
Wallington, N. J.

)  
)  
) CONCLUSIONS  
) AND ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Borough Council of the Borough of Wallington. )  
)

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Leo J. Berg, Esq., Attorney for Defendant-licensee.  
Dora P. Rothschild, Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that, on Thursday, July 9, 1959, he 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 11:00 p.m. on the above mentioned date, an ABC agent in the licensed premises overheard two men ask Harry Rutt, the bartender, for four cases of beer, to which the bartender replied that the men could "pick it up outside". Thereupon, the two men left the premises and went to a rear door. The agent followed the men and observed the bartender open the door exposing four cases of the beer in the doorway. The men each took two cases of beer and placed them in a motor vehicle. At this time the agent and a fellow agent who had remained outside revealed their identity and the

agents and the two other men entered the licensed premises. There the bartender was confronted with the purchasers of the beer and he verbally acknowledged that he had committed the violation.

Defendant has a prior adjudicated record. Defendant's license was suspended for sixty days, effective June 25, 1946, for a "refill" violation (Re Gavlak, Bulletin 716, Item 7); effective June 27, 1951, defendant's license was suspended for fifty days on charges of permitting gambling on premises and possession of lewd matter (Re Gavlak, Bulletin 910, Item 7); effective May 12, 1952, defendant's license was suspended for fifty days for another "refill" violation (Re Gavlak, Bulletin 936, Item 3); effective September 16, 1958 defendant's license was suspended for twenty days for another "refill" violation (Re Gavlak, Bulletin 1245, Item 6). The minimum suspension for an "hours" violation is fifteen days. Re 677 Ocean Avenue Corporation, Bulletin 1301, Item 7. Under all the circumstances and considering the defendant's past lengthy record for dissimilar violations, I shall suspend defendant's license for forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 20th day of October 1959,

ORDERED that Plenary Retail Consumption License C-14, issued by the Borough Council of the Borough of Wallington to John Gavlak, t/a Main Stop, for premises 35 Main Avenue, Wallington, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m., Tuesday, October 27, 1959 and terminating at 3:00 a.m., Tuesday, December 1, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - FRONT - FAILURE TO FILE NOTICE OF CHANGES IN APPLICATION - UNLAWFUL SITUATION CORRECTED - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOHN PALMOWSKI )  
t/a BUTCHE'S TAVERN )  
197 MacArthur Avenue )  
Sayreville, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-51, issued by the Borough Council of the Borough of Sayreville. )

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Edward A. Modzelewski, Esq., Attorney for Defendant-licensee.  
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. In your application dated June 3, 1958, filed with the Borough Council of the Borough of Sayreville, upon which you obtained your plenary retail consumption license for the 1958-59 licensing year, you falsely stated 'No' in answer to Question 30 and in answer to Question 31 you falsely stated that you employed John Hubchenko as a salaried part

time manager, whereas in truth and fact you had entered into an agreement with said John Hubchenko whereby he acquired an interest in your licensed business as the real and beneficial owner thereof and by which you agreed to permit him to retain all the profits from your licensed business after payment to you of a fixed weekly fee; said false statements being in violation of R.S. 33:1-25.

- "2. You failed to file with the Borough Council of the Borough of Sayreville, within 10 days after the occurrence thereof, written notice of changes of facts set forth in answer to Questions 30 and 31 of your 1958-59 license application, such changes being that on or about September 1, 1958 and March 18, 1959 you entered into agreements with Cora Wilczewski and Viola Lutisan, respectively, whereby on such respective dates they acquired an interest in your licensed business as the real and beneficial owners thereof and by which you agreed to permit them to retail all profits from your licensed business after payment to you of a fixed weekly fee; your failure to file such notices being in violation of R.S. 33:1-34.
- "3. During several periods from on or about July 1, 1957 to on or about March 25, 1959, you knowingly aided and abetted John Hubchenko (from on or about July 1, 1957 to on or about August 1, 1958), Cora Wilczewski (from on or about September 1, 1958 to on or about March 1, 1959) and Viola Lutisan (from on or about March 18, 1959 to on or about March 25, 1959) to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R.S. 33:1-52."

The file discloses that on or about July 1, 1957 the licensee entered into a verbal agreement with John Hubchenko whereby he was given the right to operate the licensed premises for his personal use and benefit upon payment to the licensee of the sum of \$125 per week as rent for the licensed premises. It further appears that this arrangement continued in effect until about August 1, 1958 when Hubchenko gave up the business because of the losses he had sustained. On September 1, 1958 the licensee entered into a second oral agreement under the same terms as hereinabove set forth with Cora Wilczewski who ran the business until March 1, 1959, when she surrendered the same to the licensee because the venture was unsuccessful. On March 18, 1959 the licensee turned over his licensed premises at a weekly rental of \$110 to Viola Lutisan, his barmaid, who conducted the same as her own business until on or about March 25, 1959 when she learned of the within investigation.

The investigation further discloses that in his 1958-59 license application, the defendant falsely stated that no other person had any interest in the licensed premises and that John Hubchenko was employed thereon as a part time manager.

It further appears that the defendant did not file with the local issuing authority a written notice of the aforesaid agreements entered into on September 1, 1958 and March 18, 1959 as required by R.S. 33:1-34.

From the aforesaid facts it clearly appears that the licensee "farmed out" his liquor business on three separate occasions. In defendant's statement given herein, he states that he now employs Viola Lutisan as manager of his licensed premises. Thus, it appears that the unlawful situation has now been corrected.

By way of mitigation, attorney for the defendant has submitted an affidavit (executed on September 24, 1959 by the defendant in Florida) attached to which are two medical certificates. An examination of these instruments discloses that in 1957 the defendant, upon advice of a local doctor, brought his ailing wife to Florida; that he had expected to stay there for a few months; that while on vacation (September 24, 1957) his wife underwent a serious operation and that she is still under medical treatment. It further appears that the defendant is also suffering from a heart ailment and has been advised by his physician not to travel under his present condition and that ever since 1957 he has been prepared to sell his tavern and intends to do so as soon as he finds a satisfactory buyer.

Defendant has a prior adjudicated record. Effective June 2, 1958 the local issuing authority suspended defendant's license for five days for an "hours" violation. Under all the facts and circumstances in this case, I shall suspend the defendant's license on all charges herein for twenty days (Cf. Re Ordine Soccorso, Bulletin 1233, Item 4), to which will be added five days for the dissimilar violation within the past five years (Re Pisano, Bulletin 1293, Item 12), making a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 20th day of October, 1959,

ORDERED that Plenary Retail Consumption License C-51, issued by the Borough Council of the Borough of Sayreville to John Palmowski, t/a Butche's Tavern, for premises 197 MacArthur Avenue, Sayreville, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Tuesday, October 27, 1959, and terminating at 3:00 a.m., Monday, November 16, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - OBSCENE MATTER - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOHN LISOWSKI  
t/a DOVER HOUSE  
620 Main Street  
Paterson, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-307, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

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

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On September 25, 1959, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting printings, writings, pictures and representations; in violation of Rule 17 of State Regulation No. 20."

On September 25, 1959, an ABC agent at the premises discovered therein and seized on the back bar a cardboard box containing an indecent male figure constructed of pipe cleaners, and underneath the bar discovered and seized a number of cards with indecent pictures and double entendre language printed thereon; a sheet of paper with similar matter printed thereon, and an indecent object.

Defendant has a prior adjudicated record. Effective May 31, 1955 the license was suspended by the local issuing authority for a period of fifteen days for sales of alcoholic beverages to minors; effective November 12, 1957 the license was suspended by the Director for a period of ten days for a violation similar to the one presently involved. Re Lisowski, Bulletin 1200, Item 5. I shall double the minimum suspension of ten days for a violation of the type presently under consideration because it is the second similar violation within the past five years, to which five days will be added because of the prior dissimilar violation during the past five years (Re Lisowski, supra), making a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 20th day of October, 1959,

ORDERED that Plenary Retail Consumption License C-307, issued by the Board of Alcoholic Beverage Control for the City of Paterson to John Lisowski, t/a Dover House, for premises 620 Main Street, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Tuesday, October 27, 1959, and terminating at 3:00 a.m., Monday, November 16, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - FRAUD IN APPLICATION (AS TO RESIDENCE) - SITUATION CORRECTED - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against )  
 ANDREW RADAWIEC )  
 t/a PLAZA BAR & LIQUOR STORE ) CONCLUSIONS  
 47 Rutgers Street ) AND ORDER  
 Newark 3, N. J. )  
 Holder of Plenary Retail Consumption License C-414 (for the 1958-59 and 1959-60 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

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 Robert W. Wolfe, Esq., Attorney for Defendant-licensee.  
 William E. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"In your application dated May 19, 1958, filed with the Municipal Board of Alcoholic Beverage Control of Newark, upon which you obtained your current plenary retail consumption license, you falsely stated your residence in answer to Question No. 3 as 125 Hagemen Street, Carteret, N.J. and you falsely stated 'Yes' in answer to Question No. 27(a), which asks: 'Are you and all persons mentioned in this application actual and bona fide residents of the State of New Jersey at the present time?' and you falsely stated 'No' in answer to Question No. 27(c) which asks 'whether you or any person mentioned in this application now maintains a home elsewhere than in New Jersey', whereas in truth and fact you then resided and maintained a home at 421 E. 9th Street, New York, N. Y.; such false statements being in violation of R.S. 33:1-25."

In his application for the 1958-59 license, the defendant-licensee stated that he resided at 125 Hagemen Street, Carteret. In actual fact he then resided at 421 E. 9th Street, New York City, and commuted daily to his home there. In a signed statement dated April 29, 1959, the licensee asserts that he has resided with his wife at the New York address since 1940 or 1941; that he never actually resided at the Carteret address but arranged with a person living at that address to pretend that he lived there (such person when questioned by ABC agents denied that he resided there); that he has operated the licensed premises since May 1954; that he did not know that it was important that he should be a New Jersey resident, as long as he could show a New Jersey address in the application; that now, being made aware of such requirement, he will look for a place to live in New Jersey.

Defendant-licensee has filed his affidavit sworn to on June 25, 1959 wherein he sets forth that since May 3rd he rented and occupies a one and a half room furnished apartment at a Newark address for which he pays a rental of \$14 a week, sleeps there every night except Saturday and Sunday nights when he visits his wife, and that she has refused to move to New Jersey because of her illness. I was reluctant to accept this as definitive evidence of residence in

New Jersey, in view of his previous misrepresentation as to his residence. He, therefore, submitted additionally a letter from his wife wherein she explains that she is 70 years of age, suffers from physical disabilities and depends upon close relatives to supply her needs. Two doctors' certificates accompany the letter, setting forth that she has been under their care for a considerable length of time for various serious ailments. Further, a check by ABC agents indicates that the defendant-licensee actually occupies the Newark quarters for the periods stated by him. Under the circumstances as thus developed, I shall accept defendant-licensee's representation that he is now actually a bona fide resident of this State, and hence, that the illegal situation has been corrected.

Nevertheless, defendant's license is subject to suspension for falsification of the application filed in this matter. I shall suspend defendant's license for a net period of ten days. Re Abate's Tavern, Inc., Bulletin 1281, Item 13.

Accordingly, it is, on this 19th day of October, 1959,

ORDERED that Plenary Retail Consumption License C-414, for the 1959-60 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Andrew Radawiec, t/a Plaza Bar & Liquor Store, for premises 47 Rutgers Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., Monday, October 26, 1959, and terminating at 2:00 a.m., Thursday, November 5, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MARCOS BOURPALIS AND FOTINI BOURPALIS )  
t/a ROYAL BAR )  
12 South Broad Street )  
Penns Grove, N. J. )

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Penns Grove. )

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 September 7, 1959, 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., Robin ---, age 18, Doyme ---, age 19, and Delbert ---, age 19, 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."



"Edward ---, 17 years of age, testified that at 3:00 a.m. on June 10, 1959 he entered defendant's licensed premises and walked to the bar where a friend, Robert McClure, was seated; that Robert Vile was tending bar at the time; that thereafter he and McClure engaged in a game of pool after which another youth joined them; that he (Edward) and his companions played pool until 5:15 or 5:30 a.m.; that he drank about fifteen glasses of beer during the time he spent in the defendant's premises; that McClure would obtain the beer, coming back from the bar with 'two, sometimes three' glasses of beer and he would place them on a table near the pool table; that the drinks were consumed by McClure, their companion and himself; that the bartender did not question him concerning his age.

"Robert McClure testified that on the morning in question he played pool with Edward and 'a boy from Philly', the loser purchasing drinks for the person who won; that he (McClure) would go to the bar, purchase two glasses of beer from Vile and bring them to a table; that either Edward or the other player would drink the beer; that he purchased 'around three' rounds of beer from the bartender who never questioned him as to whom the beer was to be given; that when the person from Philadelphia lost he went to the bar and obtained the beer; that during the time spent in the defendant's premises, Edward was ejected by the bartender on three occasions, but each time Edward returned to the premises and resumed playing pool; that the three left the premises at 5:30 a.m. During cross-examination McClure testified that at no time had Edward been sold any drinks.

"An ABC agent testified that on June 10, 1959 McClure directed him to defendant's licensed premises as the tavern where he and Edward had been that morning; that the following evening Edward again directed him to defendant's premises and at this time both entered the establishment; that John O'Byrne was tending bar and after explaining to him the nature of their visit, O'Byrne sent for Robert Vile; that when the latter arrived, Edward identified him as the bartender on duty on the morning in question, at which time Vile stated that he had never seen Edward previously.

"Robert Vile testified that he was tending bar the morning of June 10, 1959 and he remembered seeing McClure in the premises with 'some fellow I never saw before'; that although he ordered Edward from the premises on three occasions, each time he would return; that on five or six occasions he served two glasses of beer at a time to McClure; that he did not serve either Edward or the other person who was with them. On cross-examination Vile, in response to a question whether he remembered telling the agent that he had never seen Edward before, testified that he believed that he told the agent that he had never served Edward and that he had ordered him from the premises on three occasions.

"Mary Rogers testified that she was seated at the bar near the side entrance when Edward came into the premises and Vile requested him to leave; that there was some commotion and loud indecent language directed by Edward at the bartender before Edward left; that about 'ten or fifteen minutes' thereafter Edward returned to the premises through the same door and again the bartender asked him to leave; that after leaving he (Edward) re-entered the premises for the third time and when she left she saw Edward in the parking lot; that she did not see Edward play pool as he was in the premises for only a few minutes each time prior to the bartender telling him to leave.

"The testimony adduced herein appears to be in agreement that the bartender had ordered Edward from the premises on three separate occasions. However, the testimony of the witnesses for the Division and that of the witnesses for defendant is very contradictory.

McClure corroborated the testimony of Edward that although Edward had not actually made any purchase of beer, he did consume a number of glasses of beer purchased by either McClure or their companion after the completion of each game of pool. The agent testified that when the bartender was identified by Edward as the man who was tending bar on the morning in question, Vile denied that he had ever seen Edward at any time prior thereto and never mentioned that he had ordered Edward from the premises. Vile testified that he did not recall making such a statement but, rather, had said that he had never served Edward and had ordered him out three different times. Mary Rogers testified that she saw Edward being ejected from defendant's premises on three occasions but did not see him play pool although she was in a position to see him at the pool table.

"After careful examination of the pertinent testimony of the witnesses, I am satisfied that although Edward had not actually purchased from and been served beer by the bartender, during the time he was in the defendant's premises he did consume a quantity thereof which had been purchased for him by his two companions. McClure stated that on three occasions he purchased two glasses of beer each time and there is no evidence as to the number of times the third member of their party purchased beer. I am of the opinion that Edward's estimate as to the quantity of beer that he drank was exaggerated. I recommend that defendant be adjudged guilty of allowing, permitting and suffering consumption of alcoholic beverages on the licensed premises in violation of the stated Rule and Regulation. Cf. Essex Holding Corp. v. Hock, 136 N.J.L. 28. I recommend that the portion of the charge alleging sale, service and delivery of the alcoholic beverages to the minor in question be dismissed.

"Defendant has a prior adjudicated record. Effective October 29, 1947 when the license was in the name of Joseph O'Byrne it was suspended by the local issuing authority for three days for sale of alcoholic beverages to a minor. Again, effective December 2, 1957 the license in the name of Joseph O'Byrne was suspended for fifteen days for sale of alcoholic beverages to minors. Re O'Byrne, Bulletin 1201, Item 5. The 1947 similar violation which happened more than ten years ago will not be considered in fixing the penalty herein. The minimum penalty for sale of alcoholic beverages to a 17-year-old minor is twenty days. Re O'Donnell, Bulletin 1131, Item 9. In view of the circumstances appearing in the instant case and the fact that the minor was not served but consumed beer purchased by an adult, I recommend that defendant's license be suspended for fifteen days. Cf. Re Rutt's Hut, Inc., Bulletin 1139, Item 3; Re S. J. Aldarelli, Inc., Bulletin 757, Item 6. I recommend that an additional ten days be imposed because of the similar violation occurring within the past five years, making a total suspension of defendant's license of twenty-five days."

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

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

Investigation by this Division discloses that defendant's premises are now operating on a reduced basis. Thus, no effective suspension can be imposed at the present time. The starting date of the suspension herein will be postponed until my further order, after the licensed premises shall have resumed business on a full-time basis in the Spring of 1960.

Accordingly, it is, on this 27th day of October 1959,

ORDERED that Plenary Retail Consumption License C-20, issued by the Township Committee of Egg Harbor Township to Mary E. O'Byrne, Administratrix of the Estate of Joseph A. O'Byrne, or to any transferee thereof, for premises on Bass Harbor Bridge & Longport Blvd., Egg Harbor Township, be and the same is hereby suspended for a period of twenty-five (25) days, the time to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS  
DIRECTOR

DISCIPLINARY PROCEEDINGS - SERVICE OF ALCOHOLIC BEVERAGES OTHER THAN ORDERED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOSEPH BARRETT )  
t/a DELAVUE GRILL )  
River Road )  
Ewing Township )  
PO RD #5, Trenton, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-20, issued by the Ewing Township Committee. )

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Mario H. Volpe, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On August 7, 1959 and again on August 15, 1959, you served and allowed, permitted and suffered the service of alcoholic beverages other than ordered; in violation of Rule 23 of State Regulation No. 20."

On Friday evening, August 7, 1959, ABC agent D and a female companion seated themselves in the rear dining area of defendant's licensed premises and Agent H stood at the bar near the service area. Agent D ordered five drinks of "Seagram's 7 and 7 Up" from a waitress who proceeded to the bar and ordered "rye". Agent H observed the bartender serve the waitress with whiskey poured from a bottle labeled "Mr. Boston Pinch Bottle" which she would mix with the soda before serving it to Agent D. On Saturday evening, August 15, 1959, the same agents visited the premises and sat at a table in the dining area. Agent H ordered three drinks of "Seagram's 7 and 7 Up" and the same procedure was followed by the waitress and the bartender. When the last order was served, both agents identified themselves and the waitress stated that the licensee instructed her to order "rye" when patrons requested certain named brands of whiskey. The bartender stated that he gives the waitress the brands of whiskey she orders and that if she orders "rye", he gives her "Mr. Boston Pinch Bottle".

Defendant's attorney submitted a letter setting forth alleged mitigating circumstances, among which he states that defendant is engaged in several different enterprises; that he leaves the management of his licensed business to a "capable manager" and that the

"establishment does a large volume of business and caters to one of the finest clientele in the area." In any event, a licensee is responsible for the acts of his servants, agents and employees. A patron is entitled to get what he orders and it is the licensee's responsibility to see that he does.

Defendant has no prior adjudicated record. I shall suspend his license for fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Dutch Mele's Clubhouse, Inc., Bulletin 1176, Item 5.

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

ORDERED that Plenary Retail Consumption License C-20, issued by the Ewing Township Committee to Joseph Barrett, t/a Delavue Grill, for premises on River Road, Ewing Township, be and the same is hereby suspended for ten (10) days, commencing at 2:30 a.m., Monday, November 9, 1959, and terminating at 2:30 a.m., Thursday, November 19, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

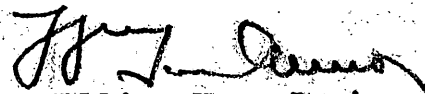
10. STATE LICENSES - NEW APPLICATION FILED.

Joseph Pingitore, Inc.

241-263 Chelsea Avenue

Long Branch, New Jersey

Application filed December 8, 1959 for Additional Warehouse license for premises located at 1434 Parkside Avenue, Ewing Township, New Jersey, on State Beverage Distributor's license SBD-16.



William Howe Davis  
Director