

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

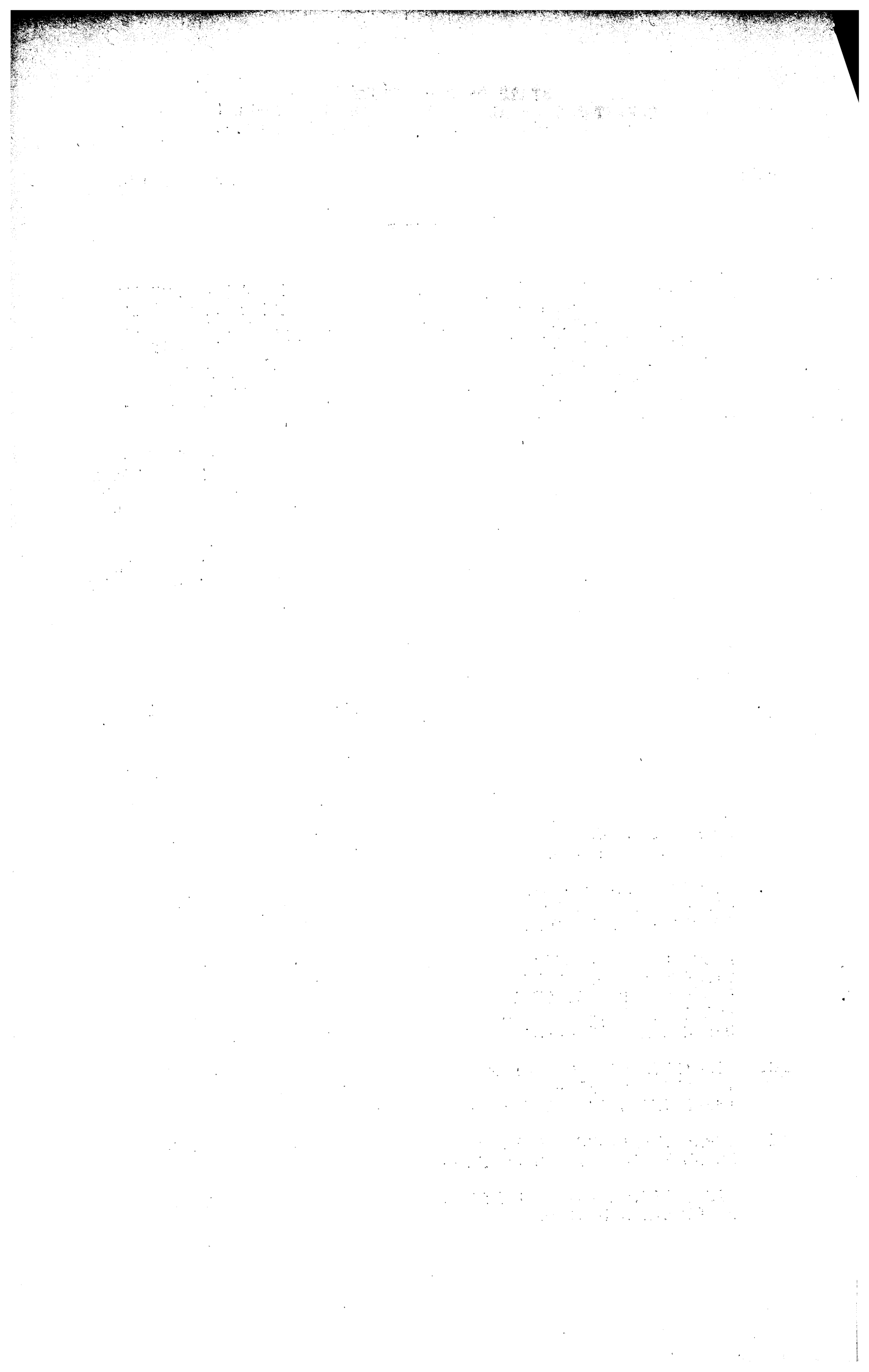
BULLETIN 571

June 4, 1943.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, N. J.

BULLETIN 571

JUNE 4, 1943.

- 1. DISCIPLINARY PROCEEDINGS - PERMITTING HOSTESSES TO ACCEPT BEVERAGES AT THE EXPENSE OF PATRONS, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 AND LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - PERMITTING FEMALE IMPERSONATOR UPON LICENSED PREMISES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)

SIDNEY LITCHENSTEIN,)
317 Market Street,)
Paterson, N. J.,)

Holder of Plenary Retail Con-)
sumption License C-355, issued)
by the Board of Alcoholic)
Beverage Control of the City)
of Paterson.)
- - - - -)

CONCLUSIONS

AND

ORDER

David Newman, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleads not guilty to the following charges with the exception of charge (2) to which he pleads guilty:

"1. On the night of October 14, 1942, and the early morning of October 15, 1942, you allowed, permitted and suffered females employed on the 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.

"2. During the time aforesaid, you served beverages to and permitted hostesses, female entertainers and other female employees to sit at tables and stand at the bar with persons, patrons and customers visiting the licensed premises, in violation of Rule 6 of Rules and Regulations concerning alcoholic beverages adopted June 28, 1935, by the Board of Aldermen of the City of Paterson.

"3. During the time aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to persons actually and apparently intoxicated, and allowed, permitted and suffered consumption of alcoholic beverages by such persons upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"4. On March 20, 1943, and on divers days prior thereto, you allowed, permitted and suffered, in and upon your licensed premises, a known female impersonator, in violation of Rule 4 of State Regulations No. 20."

On the evening of October 14, 1942, two investigators from this Department visited the premises of defendant-licensee. Their testimony discloses that two entertainers, employed by the defendant, were drinking with and at the expense of various men patrons. This was not denied by the one entertainer who by way of explanation testified that instead of accepting drinks directly from the customer, she permitted him to give her money with which she then purchased her own drinks. The other entertainer admitted accepting drinks at the expense of a customer. Each time a drink was ordered by and served to this entertainer, the defendant would take the cost of the drink from the balance of the money remaining on the bar which belonged to the man who did the treating. Regardless of the method used by which payment for the drink was made to the defendant by the customer, it violated Rule 22 of Regulations No. 20 relative to employees accepting beverages at the expense of or as a gift from customers or patrons. I, therefore, find the defendant-licensee guilty of charge (1).

The investigators testified further that when they entered the tavern their attention was drawn to a man who appeared to be asleep at the bar. This man, later identified as Eddie, had his arms and head resting on the bar. Suddenly he moved his arms and overturned a glass of whiskey that was standing on the bar immediately in front of him. His companion, the investigator continued, ordered another round of drinks which were served to them by the defendant. Thereafter, the investigators stated, the defendant had one of the entertainers telephone for a taxi cab and upon its arrival "Eddie" was helped to the street by the cab driver. Eddie's companion thereupon staggered from the premises. Both investigators testified that the two men were intoxicated at the time alcoholic beverages were served to them.

The defendant admitted the presence of the two men in the tavern on the night in question. He stated that "Eddie had his first drink and then his head was on the bar". Under cross-examination the defendant admitted serving two drinks subsequent to the time he noticed that Eddie had his head on the bar. He insisted, however, that he placed the two drinks in front of Eddie's companion. I am satisfied from the testimony that both Eddie and his companion were intoxicated at the time service of alcoholic beverages was made to them.

The testimony discloses that several departmental investigators who had not testified previously visited the tavern of defendant on March 20, 1943 and divers days prior thereto. They stated that they noticed on these occasions a young man on the licensed premises who endeavored to impersonate a woman. This youth, the investigators testified, had his eyebrows heavily mascaraed, rouge or lipstick on his lips and definitely effeminate in manner and talk. The investigators said on several occasions the young man attempted to entertain the customers with songs through a microphone installed on the premises. He also showed a telegram from New Orleans to one of the investigators wherein an offer of employment as a female impersonator was made. His appearance, especially with reference to make-up, was corroborated by two municipal detectives who were summoned to the premises of defendant on March 20, 1943. One of these detectives testified that he had seen the youth on the street on several occasions at which times he was "made up".

Defendant testified that he had known the young man for a number of years, becoming acquainted with him when he was a "shoe-shine boy". He further stated that he did not pay particular attention to the boy's appearance other than to observe that the youth

had his eyes "made up". He further testified that the young man was a local boy and knew almost every person that frequented his tavern.

I have no doubt that the young man was a "female impersonator" within the meaning of that term as used in the Regulations. I find defendant guilty as to charge (4).

I note that, in addition to the instant violations, the defendant has a previous record. In December 1940, defendant's license was suspended for five days for possession of a device in the nature of a slot machine and again, in November 1941, he pleaded guilty to violation of the municipal ordinance regarding closing hours and keeping interior of licensed premises open to public view. His license was suspended for four days because of these latter violations. The present violations indicate that the defendant is progressively becoming more careless in the conduct of his business. Under the circumstances, I have no alternative but to revoke defendant's license.

Accordingly, it is, on this 1st day of June, 1943,

ORDERED that Plenary Retail Consumption License C-355, heretofore issued by the Board of Alcoholic Beverage Control of the City of Paterson to Sidney Litchenstein for premises 317 Market Street, Paterson, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

- 2. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - PERMITTING FEMALE EMPLOYEE TO ACCEPT ALCOHOLIC BEVERAGES AT THE EXPENSE OF PATRONS, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

GERTRUDE GREYER)
t/a CLUB 115)
115 Hudson Street)
Hoboken, N. J.)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-60, issued by the Board of Commissioners of the City of Hoboken.)
-----)

Gottlieb & Gottlieb, Esqs., Attorneys for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges: (1) that she falsely answered Question 26 in her application for her current license, in violation of R. S. 33:1-25 and (2) that she allowed, permitted and suffered a female employee on the licensed premises to accept drinks of beverages at the expense of customers, in violation of Rule 22 of State Regulations No. 20.

The plea of non vult is accepted as fully equivalent to a plea of guilty.

There being no aggravating circumstances, nor previous adjudicated record, I shall impose the minimum penalty for these violations, ten days' suspension on the first charge and twenty days on the second charge. Five days will be remitted for the plea, making a net suspension of twenty-five days.

Accordingly, it is, on this 28th day of May, 1943,

ORDERED that Plenary Retail Consumption License C-60, heretofore issued by the Board of Commissioners of the City of Hoboken to Gertrude Grether, t/a Club 115, for premises 115 Hudson Street, Hoboken, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 A. M. June 2, 1943 and ending at 3:00 A. M. June 27, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FEMALE PERMITTEE ACCEPTED DRINKS AT THE EXPENSE OF PATRONS - EMPLOYMENT PERMIT SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary)
Proceedings against)
DOROTHEA E. A. REICHARDT)
625 Washington Street)
Hoboken, N. J.)
Holder of Employment Permit)
No. 1057, issued by the State)
Commissioner of Alcoholic)
Beverage Control.)
-----)

CONCLUSIONS
AND
ORDER

Gottlieb & Gottlieb, Esqs., Attorneys for Defendant-Permittee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant, holder of an employment permit for the current fiscal year, pleaded non vult to charges in effect that she participated with the holder of a plenary retail consumption license in violation of Rule 22 of State Regulations No. 20.

The plea of non vult is accepted by me as fully equivalent to a plea of guilty herein.

There being no aggravating circumstances, the permit shall stand suspended for the balance of its term, effective forthwith.

Accordingly, it is, on this 28th day of May, 1943,

ORDERED that Employment Permit No. 1057, heretofore issued by the State Commissioner of Alcoholic Beverage Control to Dorothea E. A. Reichardt, be and the same is hereby suspended for the balance of its term, effective forthwith.

ALFRED E. DRISCOLL
Commissioner.

4. ACTIVITY REPORT FOR MAY, 1943

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licenseses and employees - - - - -	5	Bootleggers - - - - -	11	
	Total number of persons arrested- - - - -				16
<u>SEIZURES:</u>	Stills - 1 to 50 gallons daily capacity - - - - -			0	
	50 gallons and more daily capacity - - - - -			0	
	Total number of stills seized - - - - -				0
	Mash - gallons- - - - -				0
	Motor vehicles - Trucks - - - - -			2	
	Passenger cars - - - - -			2	
	Total number of motor vehicles seized - - - - -				4
	Beverage alcohol - gallons- - - - -				2
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - -				67.91
	Wine - gallons- - - - -				.50
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons -				102.23
<u>RETAIL LICENSEES:</u>					
	Number of premises inspected- - - - -				1,763
	Total number of bottles gauged- - - - -				13,526
	Total number of premises where violations were found- - - - -				80
	Number and type of violations found:				
	Illicit (bootleg) liquor -26 "Fronts" (concealed ownership) -	9			
	Gambling devices - - - - -	2	Improper beer tap markers- - - - -	0	
	Prohibited signs - - - - -	1	Stock disposal permits necessary-	8	
	Unqualified employees- - - - -	51	Other types of violations- - - - -	19	
<u>MILITARY AREA PATROL INSPECTIONS:</u>					508
<u>STATE LICENSEES:</u>					
	Premises inspected- - - - -				66
	License applications investigated - - - - -				43
<u>COMPLAINTS:</u>					
	Investigated, reviewed and closed - - - - -				294
	Investigation assigned, not yet completed - - - - -				235
<u>LABORATORY:</u>					
	Analyses made - - - - -				112
	"Shake-up" cases (alcohol, water and artificial coloring) - - - - -				8
	Liquor found to be not genuine as labeled - - - - -				24
<u>IDENTIFICATION BUREAU:</u>					
	Criminal fingerprint identifications made - - - - -				16
	Persons fingerprinted for non-criminal purposes - - - - -				181
	Identification contacts with other enforcement agencies - - - - -				141
	Motor vehicle identifications via N. J. State Police Teletype - - -				11
<u>DISCIPLINARY PROCEEDINGS:</u>					
	Cases transmitted to municipalities - - - - -				24
	Cases instituted at Department- - - - -				24
<u>HEARINGS HELD AT DEPARTMENT:</u>					
	Number of hearings held - - - - -				61
	Appeals - - - - -	4	Seizures - - - - -	1	
	Disciplinary proceedings -	27	Application for license-	1	
	Eligibility- - - - -	7	Tax revocations- - - - -	21	
<u>PERMITS ISSUED:</u>					
	Total number of permits issued- - - - -				595
	Unqualified employees - - - - -			272	
	Solicitors- - - - -			40	
	Social affairs- - - - -			131	
	Home manufacture of wine- - - - -			1	
	Disposal of alcoholic beverages - - - - -			57	
	Miscellaneous permits - - - - -			94	

Respectfully submitted,
 Sydney B. White
 Chief Inspector.

5. APPELLATE DECISIONS - WILLIAMS v. NEWARK

NATHAN WILLIAMS,)
Appellant,)

On Appeal

-vs-

CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)
Respondent.)

James R. Giuliano, Esq., Attorney for Appellant.
Louis A. Fast, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the decision of respondent revoking his plenary retail consumption license C-377 for premises known as 375 Washington Street, Newark.

Before the Municipal Board appellant entered a plea of non vult to charges of selling liquor to minors on two separate occasions, in violation of Rule 1 of State Regulations No. 20. The respondent dismissed two additional charges alleging that appellant sold alcoholic beverages to the same minors, in violation of R.S. 33:1-77. Respondent likewise dismissed a charge that appellant had permitted criminals, prostitutes and other persons of ill repute on his premises in violation of Rule 4 of State Regulations No. 20. Appellant entered a plea of not guilty and, at the conclusion of the hearing below, was found guilty by the respondent of the following additional charges:

"F.6. On or about February 7th, 1943, and on divers days prior thereto, you allowed, permitted and suffered lewdness and immoral activities in and upon the licensed premises, and allowed, permitted and suffered the licensed place of business to be conducted in such manner as to become a nuisance, in violation of Rule 5 of State Regulations #20.

"G.7. On or about February 7th, 1943, and on divers days prior thereto, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to a person, or persons actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon the licensed premises, in violation of Rule 1 of State Regulations #20."

Appellant's grounds of appeal may be summarized as follows: (a) the conclusions of the respondent are contrary to the weight of evidence; (b) there was no proof before the respondent that the premises were used for immoral activities; (c) there was no proof before the respondent that the licensee permitted the premises to be conducted in such a manner as to constitute a nuisance; and (d) the penalty imposed was entirely too severe.

Pursuant to agreement of counsel and Rule 8 of State Regulations No. 14, the appeal was heard on the record, including a stenographic transcript of the testimony, as it was developed before the Municipal Board.

Appellant's plea of non vult to the sale of alcoholic beverages to minors in violation of Rule 1 of State Regulations No. 20 was equivalent to a guilty plea. The entry of the plea carried with it an implied confession of guilt. Non vult contendere cum domina regina, et ponit se in gratiam curioe. 2 Hawk. P.C. 31. Suffice it to say that the testimony clearly discloses that appellant sold alcoholic beverages to the five minors named in the charges. The appellant was guilty of selling alcoholic beverages in violation of R.S. 33:1-77. Under the circumstances, the charge of violating the same should not have been dismissed.

Two of the minors named in the charges were sold alcoholic beverages in violation of Rule 1 of State Regulations No. 20 while they were actually or apparently intoxicated. Cleveland Troupe, age 19, testified that liquor had been served to him by appellant's bartender, Cabastian Lee, after he was intoxicated. Frederick Andrews, another of the minors, admittedly "kind of intoxicated" before he went to the defendant's tavern on February 3, 1943, was nonetheless served alcoholic beverages, including beer, ale and whiskey. Aside from a bare denial by the licensee, there is nothing in the record refuting or even questioning the affirmative testimony of Troupe and Andrews. Despite the unsavory record of the latter, it was within the province of the Municipal Board to accept their testimony and to find, as a fact, that the licensee had violated Rule 1 of State Regulations No. 20.

The remaining charge to be considered is that involving Rule 5 of State Regulations No. 20.

Respondent's charge reads in the conjunctive. Rule 5 of the cited regulation reads in the alternative, as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls, or unnecessary noises, or allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

The power of the Commissioner to promulgate regulations has been recognized and upheld. Franklin Stores Co. v. Burnett, 120 N.J.L. 596 (1938); Gaine v. Burnett, 122 N.J.L. 39 (1939).

On February 7, 1943, at about 1:50 A.M., police officers of the City of Newark raided the premises. They took into custody sundry disreputable characters, among whom were the following:

"Sally", a woman with a vice for every one of her many aliases. The Health authorities, moreover, discovered that "Sally" had a positive case of gonorrhoea. "Sinful" Sal admits to having "a slightly criminal record". Examination of that record discloses that it runs the gauntlet from "neglect of children" through "atrocious assault and battery" ("I cracked a guy over the head with a cue stick") down to solicitation. This woman has been visiting appellant's premises for many years. In 1938, she "tossed a brick" through one of the tavern's plate glass windows. She was thereupon arrested for being drunk and disorderly. She testified that appellant knew that she had been "locked up". Sally's reputation was or should have been well known to the licensee and his bartender. As she philosophizes, "Washington Street is a newspaper".

Sarah _____, in addition to her criminal record, was also afflicted with a social disease. She denied that she had ever discussed her criminal record with the appellant but stated that he knew she was imprisoned on at least one occasion.

Moe _____, who had the kitchen concession on the licensed premises, was similarly discovered to have a criminal record. He, too, denied that he had ever mentioned his record to the licensee or to anyone else.

Vivian _____, a young woman of 23, with an admitted criminal record and a social disease. Vivian had been visiting the appellant's premises rather regularly for about a year.

In addition to the two minors previously mentioned by name, both of whom have records (receiving stolen goods - vagrancy - violation of parole), at least one other minor to whom the appellant admittedly sold alcoholic beverages had a criminal record. Cleveland Troupe testified that he disclosed to the appellant some of the details relative to his record, including his incarceration in a penal institution for vagrancy.

Captain Edward Van Egri, a member of the Newark Police Department, testified that he had warned the appellant on several occasions about the class of people who were frequenting his tavern. Sergeant Doughig of the Newark Police testified that on one occasion he warned the appellant about a man working around the licensed premises who was known to have a criminal record. Three days after the warning, he testified, he saw the same man in the tavern and warned the licensee for the second time.

Appellant contends that he had no knowledge of the criminal background of his patrons.

In view of the warning by the police, it is difficult to believe the latter statement. Several of the witnesses, it is true, denied that they had ever told appellant of their records. Other witnesses, however, clearly had given the licensee sufficient information concerning their past to have put him on notice that he should not have allowed or suffered them to frequent his premises.

In addition to the foregoing, on the night of the raid the police also arrested William _____ and Cornelia _____. The charge against these two individuals was fornication. Their plea - guilty. William and Cornelia were found by the police on the third floor of the building in which the tavern is located. The entire building is leased by the appellant, the second and third floors being run by the wife of the licensee as a rooming house. The licensed premises are confined to the first floor and basement.

William testified that while in the tavern several months prior to the night he was arrested he was told that he could obtain a room over the tavern for immoral purposes. On the evening of February 7, 1943, after a brief visit to the licensed premises for a drink, William and his companion left the tavern, proceeded to the side door, rang a bell and were admitted. William states that he thereupon asked a woman, subsequently identified by him as the licensee's wife, for a room and that, upon the payment of \$1.50 he and his companion were permitted to use a room, subsequently identified as No. 7, on the third floor. (They had followed this procedure for the same purpose on one previous occasion.)

The appellant concedes that William visited his tavern on the night in question and that he and Cornelia were subsequently found on the third floor. He and his wife join in vigorously denying that either of them admitted William and Cornelia to the rooming house or that they had any knowledge of the purpose of their visit. Mary _____, a friend and tenant of Mrs. Williams who sometimes answered the bell and rented rooms, testified that, on the Friday preceding the arrest, William rented a room from her for a period of one week and paid \$5.00 in cash for the same. Mary did not obtain the name of this new roomer or give him any receipt for his money. No register was kept by either Mr. or Mrs. Williams. Apparently, anyone who knew of the bell and chose to ring the same could gain admittance.

From this somewhat conflicting testimony, three facts are clearly developed. William was told by someone on the licensed premises that he could obtain a room upstairs for immoral purposes. He and his companion were in fact on the licensed premises on February 7, 1943, and subsequently used a room upstairs for illegal purposes. No serious effort was made by either the licensee or his wife to adequately supervise the use of the rooms on the second and third floors or to prevent their being used for immoral purposes.

Appellant argues that no immoral activities took place upon the licensed premises. The facts, however, disclose an intimate and wholly undesirable relationship between the tavern on the first floor and the rooming house on the second floor, the former providing the customers for the latter. The licensee, by his conduct of the licensed premises, having abetted the immoral activities cannot escape responsibility therefor merely because they were consummated off the premises.

On August 1, 1939, appellant's license was suspended for thirty days for permitting a known prostitute on his premises. Re Williams, Bulletin 339, Item 4. On a petition for review, the order suspending the license was vacated because of technical deficiencies in the charge. Re Williams, Bulletin 341, Item 9. In May of 1942, appellant was again charged with permitting known prostitutes and other persons of ill repute on the licensed premises. These charges were dismissed when the proofs fell short of that required to convict. In September of 1942, appellant was found guilty of permitting a known prostitute on the licensed premises and the issuing authority thereupon suspended his license for a period of ten days.

There is no doubt in my mind that appellant's tavern was frequented by petty criminals, drunkards and persons of ill repute.

Prior to the institution of the present proceedings, it would appear that the appellant had had ample warning that he was continuing in business at his peril if he did not get rid of the undesirables frequenting his premises. Licensed premises are not a safe haven for petty thieves, prostitutes, criminals and the like. Re Bryant, Bulletin 492, Item 1. In State v. Berman, 120 N.J.L. 381, 383, Chief Justice Brogan stated:

"It has been repeatedly held that any place of public resort is a public nuisance where illegal practices are habitually carried on or when such place becomes the habitual resort of thieves, drunkards, prostitutes, &c., who gather there for an unlawful purpose or make it a rendezvous where plans may be concocted for depredations upon society and disturbing either its peace or its rights of property."

See also State v. Williams, 30 N.J.L. 102, 104.

The proceedings before the Municipal Board, while perhaps penal in nature, were not criminal in character. Cf. Brophy v. Perth Amboy, 44 N.J.L. 217 (E & A. 1882).

Attention is directed to the word "suffer" as found in Rule 5 of the regulations. A licensee may not escape responsibility for the continued presence of criminals or for improper activities or conduct upon the licensed premises merely by pleading ignorance. Personal knowledge is not essential where the circumstances require a licensee to take affirmative action to prevent the occurrences of the violations charged. The purpose of Rule 5 of Regulations No. 20 is to prevent licensed premises from becoming a source of crime and immorality. Hence, a licensee may not allow, permit or suffer lewdness or immoral activities upon his premises. Nor may he allow, permit or suffer the licensed premises to be conducted in such a manner as to constitute a nuisance. No distinction should be drawn between a licensee who violates the law and one who negligently refuses to take affirmative action to prevent the violation of the law.

The continued presence of the persons enumerated in this opinion on the licensed premises notwithstanding the previous warning of the police, coupled with the sale of alcoholic beverages to minors and intoxicated persons, amply supports the decision of the respondent. I fail to find anything in the record indicating that the appellant made any serious effort to control conditions on his premises. When the testimony is studied in the light of appellant's previous adjudicated record, one is led unescapably to the conclusion that appellant suffered the licensed place of business to be conducted in such a manner as to become a nuisance. The finding of guilt by the respondent must be sustained.

The sale of alcoholic beverages in this State is not a matter of right. Gain v. Burnett, 122 N.J.L. 39 (1939). The revocation of the privilege granted to the appellant by the respondent was, under the facts in this case, not unduly severe.

The action of respondent is affirmed.

Accordingly, it is, on this 1st day of June, 1943,

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

ALFRED E. DRISCOLL;

Commissioner.

6. DISCIPLINARY PROCEEDINGS - RE DI PAOLO, BULLETIN 568, ITEM 5 -
SUSPENSION MODIFIED.

In the Matter of Disciplinary)
Proceedings against)

GIOVINO DiPAOLO)
(Giovini DiPaolo),)
t/a RED LION INN,)
Red Lion, about 3½ miles south)
of Vincentown, Southampton)
Township, New Jersey,)

O R D E R

Holder of Plenary Retail Consump-)
tion License C-2 issued by the)
Township Committee of the Township)
of Southampton.)
- - - - -)

Rocco Palese, Esq., Attorney for Defendant.

BY THE COMMISSIONER:

On May 10, 1943, I suspended the license considered herein for a period of twenty days, effective May 15, 1943, at 2 A.M., after defendant pleaded non vult to charges alleging that he had acted as a "front" for other individuals at premises located at 245 Chestnut Street, Camden, New Jersey. Re DiPaolo, Bulletin 568, Item 5.

Defendant has applied to me for a reconsideration of the penalty imposed herein upon the ground that it is excessive. Defendant's record as a licensee in Southampton Township has been clear, and the unlawful situation as it existed in the City of Camden is in the process of being corrected. Under all the circumstances, I conclude that defendant will have been sufficiently punished if the license considered herein is suspended for fifteen days instead of twenty days.

Accordingly, it is, on this 29th day of May, 1943,

ORDERED that the final paragraph of the Order heretofore entered herein be amended to read as follows:

"ORDERED that plenary retail consumption license C-2, heretofore issued by the Township Committee of the Township of Southampton to Giovino DiPaolo (Giovini DiPaolo), t/a Red Lion Inn, for premises at Red Lion, about 3½ miles south of Vincentown, Southampton Township, be and the same is hereby suspended for fifteen (15) days, effective at 2 A.M. May 15, 1943, and concluding at 2 A.M. May 30, 1943."

ALFRED E. DRISCOLL,

Commissioner.

7. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 20 DAYS AND CORRECTION OF UNLAWFUL SITUATION BY BONA FIDE TRANSFER OF LICENSE - UNLAWFUL SITUATION CORRECTED AND TRANSFER APPROVED BY ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED UPON EXPIRATION OF 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)	
)	
GIOVINO DI PAOLO, t/a JACK'S CAFE, 245 Chestnut Street, Camden, New Jersey,)	On Petition
)	O R D E R
Holder of Plenary Retail Consumption License C-48, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)	
-----)	

Rocco Palese, Esq., Attorney for Petitioner, Robert Bowens.

BY THE COMMISSIONER:

On May 10, 1943, I suspended the license of defendant Giovino DiPaolo for the balance of its term, effective May 15, 1943, at 2 A.M., after he had pleaded non vult to charges alleging that he had been a "front" for one Jack Brady and was then a "front" for one Robert Bowens.

In said order it was provided that leave would be given to a qualified transferee of the license to make application to lift said suspension provided that at least twenty days of said suspension were served. Re DiPaolo, Bulletin 568, Item 5.

Pursuant to said leave, Robert Bowens has filed a verified petition wherein it is set forth that, on May 17, 1943, the Municipal Board of Alcoholic Beverage Control of the City of Camden duly granted a transfer of License C-48, subject to the suspension heretofore imposed, from Giovino DiPaolo to Robert Bowens. A true copy of the resolution granting the transfer is attached to and made part of the petition. It is further set forth in the petition that Giovino DiPaolo now has no right or interest in the license.

It appearing that the unlawful situation has been corrected, and it further appearing that twenty days of the suspension will have expired on June 4, 1943, at 2 A.M., the suspension will be lifted effective at that time.

Accordingly, it is, on this 1st day of June, 1943,

ORDERED that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-48, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be restored in full force and operation, effective June 4, 1943, at 2 A.M.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - REFILLING BOTTLE WITH WINE FOR OFF-PREMISES CONSUMPTION, IN VIOLATION OF R.S. 33:1-78 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

JACOB FESSLER)
568 Christopher Street)
Orange, N. J.)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-46, issued by the)
Municipal Board of Alcoholic Beverage Control of the City of)
Orange.)

ORDER

Jacob Fessler, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to the following charge:

"On or about February 24, 1943, you, not being the holder of any license so to do, bottled an alcoholic beverage for sale, in that you refilled a pint bottle with wine and sold said bottle of wine; such bottling being in violation of R. S. 33:1-78."

It appears that there were no aggravating circumstances in connection with the violation and as this is licensee's first adjudicated offense, the minimum penalty of a ten day suspension, less five days for the plea, will be imposed. Re Rice, Bulletin 559, Item 5.

Accordingly, it is, on this 1st day of June, 1943,

ORDERED that Plenary Retail Consumption License C-46, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Jacob Fessler, for premises 568 Christopher Street, Orange, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A. M. June 7, 1943 and terminating at 2:00 A. M. June 12, 1943.

ALFRED E. DRISCOLL,

Commissioner.

9. DISCIPLINARY PROCEEDINGS - PERMITTING SALE OF "NUMBERS" TICKETS AND GAMBLING ON LICENSED PREMISES, IN VIOLATION OF RULES 6 AND 7 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO WOMEN OVER THE BAR, IN VIOLATION OF LOCAL ORDINANCE - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)
)
 THOMAS MAYERS,)
 t/a HI HAT CLUB,)
 224 Market Street,)
 Camden, New Jersey,)
)
 Holder of Plenary Retail Consumption License C-84, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
)

CONCLUSIONS AND ORDER

 Thomas Mayers, Pro Se.
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging that (1) on April 27, 1943, he allowed the sale of tickets and participation rights in a lottery, known as the "numbers game," on the licensed premises, in violation of Rule 6 of State Regulations No. 20; (2) on April 27, 1943, he allowed gambling as aforesaid on the licensed premises, in violation of Rule 7 of State Regulations No. 20; and (3) on March 13, 1943, he served beverages to women directly over a bar on the licensed premises, in violation of a local ordinance.

In the absence of any unusual circumstances in connection with the violations, and it appearing that this is licensee's first adjudicated offense, I shall impose the usual minimum penalties. I shall suspend the license for a period of five days on the first and second charges, and for an additional period of five days on the third charge. Five days will be remitted because of the plea, making a net suspension of five days.

Accordingly, it is, on this 1st day of June, 1943,

ORDERED that plenary retail consumption license C-84, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Thomas Mayers, t/a Hi Hat Club, for premises 224 Market Street, Camden, be and the same is hereby suspended for five (5) days commencing at 2 A.M. June 7, 1943, and terminating at 2 A.M. June 12, 1943.

ALFRED E. DRISCOLL,
 Commissioner.

10. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE ("FARMING OUT" LICENSE) - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against :

EST. OF FRIDA BERINGER, WALTER A. BERINGER, TRUSTEE, 200 Federal Street, Camden, N. J., :

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-209, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden, and transferred during the pendency of these proceedings to :

ROSE ANN ANDERSON, :

for the same premises. :

. :

Ralph W. Wescott, Esq., Attorney for Defendant-Licensee. Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded nolo contendere to the following charge:

"From in and about April 1940 to about March 18, 1943, you knowingly aided and abetted Albert Wohlfarth to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses for the premises located at 200 Federal Street, Camden, New Jersey, thereby violating R.S. 33:1-52."

The investigative reports disclose that, between the dates alleged in the aforesaid charge, Albert Wohlfarth, a step-uncle of the representative of the estate, operated the licensed business under a rental arrangement with the licensee. In effect, therefore, the license was "farmed out" to the tenant by the licensee. This constitutes a violation of the Alcoholic Beverage Law. Cf. Re Stetz, Bulletin 512, Item 3; Re DiPaolo, Bulletin 568, Item 5.

Albert Wohlfarth, the tenant, died on March 18, 1943. The license has since been transferred to Rose Ann Anderson, "subject to special condition that the license shall continue to be subject to any penalty of suspension or revocation that may be imposed by the State Commissioner (in) proceedings now pending before him."

Since there are no aggravating circumstances or previous record, I shall impose a penalty of twenty days against this license. Cf. Re DiPaolo, supra.

Accordingly, it is, on this 2nd day of June, 1943,

ORDERED, that Plenary Retail Consumption License C-209, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Est. of Frida Beringer, Walter A. Beringer, Trustee, for premises 200 Federal Street, Camden, and transferred during the pendency of these proceedings to Rose Ann Anderson, for the same premises, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A.M. June 5, 1943 and terminating at 2:00 A.M. June 25, 1943.

ALFRED E. DRISCOLL,
Commissioner.

11. MORAL TURPITUDE - CRIME OF AIDING AND ABETTING AN ESCAPE FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICATION DENIED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)
Case No. 276.)
-----)

CONCLUSIONS
AND
ORDER

BY THE COMMISSIONER:

Petitioner in this proceeding prays that her disqualification resulting from the conviction of a crime be lifted pursuant to R.S. 33:1-31.2.

In December 1935 petitioner pleaded guilty to the crimes of carrying concealed weapon and aiding and abetting an escape was sentenced to a term of three to five years in the New Jersey State Prison and later transferred to the State Reformatory for Women at Clinton, N. J. She was released from the Reformatory on December 16, 1939. After a study of the facts involved in the crime of aiding and abetting an escape, I find that the element of moral turpitude was involved.

One of the requisites necessary for the lifting of the disqualification is that petitioner must have a clean record for at least five years last past. Re Case No. 250, Bulletin 546, Item 4. It has been held in determining whether a petitioner's conduct has been law-abiding for five years last past that the time of confinement for a crime is not part of the probationary period. See Re Case No. 16, Bulletin 222, Item 12; Re Case No. 270, Bulletin 565, Item 10.

Since it does not appear that five years have elapsed since her release from the Reformatory, I am not satisfied that petitioner has been law-abiding while unconfined in the penal institution for a period of at least five years.

Therefore, I shall not at this time exercise my discretionary power to lift petitioner's disqualification.

The petition is denied.

Alfred E. Driscoll
Commissioner.

Dated: June 2, 1943.