

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

BULLETIN 1344

JULY 13, 1960

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

BULLETIN 1344

JULY 13, 1960

1. APPELLATE DECISIONS - MANN'S MANOR v. NEWARK.

MANN'S MANOR, a Corporation,)
Appellant,) ON APPEAL
v.) CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE) AND ORDER
CONTROL OF THE CITY OF NEWARK,)
Respondent.

Arnold C. Friedman, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by Harry A. Pine, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board whereby on November 17, 1959 it suspended appellant's license for twenty-five days after finding appellant guilty of a charge alleging that on April 7, 1959 it sold alcoholic beverages to and permitted the consumption of such beverages by a 17-year-old minor in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20. Upon the filing of the appeal, an order was entered by the Director on November 20, 1959 staying respondent's order of suspension until the entry of a further order herein. R.S. 33:1-31.

"Appellant alleges that respondent's action was erroneous in that it was against the weight of the evidence and that there was insufficient proof of the minor's age.

"Respondent denies appellant's allegations and contends that its decision was predicated upon the factual testimony adduced before it.

"At the hearing herein on December 10, 1959 the transcript of the proceedings before respondent Board was received in evidence, pursuant to Rule 8 of State Regulation No. 15, and respondent rested. Thereafter, appellant's attorney stated that the appearance of the minor in question was 'vital' to appellant's case; that he had made every effort to have her served with a subpoena; that he was unsuccessful in locating her and that he would 'restrict his comments to the transcript'. He then proceeded to point out contradictions in the minor's testimony, after which he called to the stand Mrs. Mavraides, majority stockholder of the corporate-licensee, who had requested that she be given an opportunity to be heard. Upon completion of Mrs. Mavraides' testimony, the hearing was continued to January 4, 1960 to give appellant an opportunity to produce the minor for further cross-examination. The minor failed to appear at the continued hearing, although subpoenaed, and appellant's attorney stated that he would rely on the testimony already elicited.

"It appears from the transcript that respondent called as its witness the minor, Louise ---, who on direct examination testified,

in substance, that on Tuesday, April 7, 1959, when she was 17 years old, she and a fellow visited appellant's tavern at about 9:30 or 10:00 p.m. and that she consumed therein 'one gin and a beer' which were served to her by the bartender, Charles Smart, who inquired as to her age but required no written representation thereof when she told him she was 21 years old. On cross-examination, she testified that at 4:00 p.m. on the specific date alleged in the charge, she visited her girlfriend's home where she remained until 10:00 p.m.; that during her stay she consumed four or five 'shots' of whiskey and six or seven glasses of beer; that when she left she met a fellow she had known a 'long while' and went with him to appellant's tavern where she had one drink; that she then left and walked about 'trying to get straightened out before I gets home'. Upon further questioning she testified when she left the tavern, she walked from Prince Street to Frelinghuysen Avenue; that she went into a telephone booth and, while there, one of three fellows asked if she needed help; that she said 'Yes, take me home and I got into the car and I was sleeping and the next thing I was riding through Weequahic Park and the cops stopped us'. She later testified that she and her girlfriend were riding in Weequahic Park with two fellows and that she left the car and complained that the fellows were trying to molest her. She also testified that when she was in appellant's tavern on April 7, 1959 there were only a few patrons there; that the only entertainment was the music coming from a juke box; that 'when I drink I black out and I lose my memory'; that she didn't know the surnames of her girlfriend or the male who escorted her to appellant's tavern and that she didn't know whether the men who accosted her and took her for a ride were white or colored.

"William Smart, appellant's night bartender, and Leon McGrady, the night manager, testified in substance that they were on duty in appellant's tavern from 7:00 p.m. to closing time on April 7, 1959, during which time they did not see Louise --- or her companion enter or leave the premises and that on said date a band employed under contract to play on Tuesday and Thursday nights entertained about 100 patrons.

"With respect to appellant's allegation that there was insufficient proof of the minor's age, it is deemed pertinent to state that the cases hold that the testimony of the minor is sufficient to establish her age. State v. Huggins, 83 N.J.L. 43; State v. Koettgen, 89 N.J.L. 678; State v. Girone, 91 N.J.L. 498. See also Hancock v. Catholic, etc., 69 N.J.L. 308, State v. Andoloro, 108 N.J.L. 47.

"Respecting appellant's allegation that respondent's finding of appellant's guilt was against the weight of the evidence, the determination herein must be predicated upon the evidence adduced at the hearing before respondent Board which is hereinabove succinctly set forth. Considering that evidence I find that the uncorroborated testimony of the minor is so replete with contradictions, uncertainties and fabrications, that it engenders disbelief that the alleged violation ever occurred. I conclude, therefore, that the evidence presented herein fails to establish the guilt of appellant by the necessary preponderance of the believable evidence and I recommend that an order be entered reversing the action of respondent Board."

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

Having read the transcript of the proceedings before respondent Board upon which the case herein is based, I am in accord with the Hearer's recommendation. I find that the minor has little, if any, regard for the truth as is evidenced by her testimony which is replete with falsehoods. Typical is her statement that when she left the tavern she went home and her latter statement that she went past her

home and took a walk. Only when cross-examined did she reveal that she and her girlfriend went for an automobile ride with three males whose names she testified she didn't know, and that she couldn't remember whether they were white or colored. It was only after the automobile was stopped by the police and the occupants taken to the police station that she implicated the defendant. When she was asked at the hearing below what she was served at the tavern, she at first said she didn't know and then said she was served beer and gin and, respecting the time that she went to the tavern, she testified that it was around 6:30 or 7:30 p.m. and later changed her testimony, saying it was 9:30 or 10:00 p.m. She further testified that she had visited several taverns since the date alleged in the charge and, because she has "paid for what I have done", she feels she is entitled to continue frequenting taverns in disregard of the law. She also testified that there were only a few patrons in defendant's tavern when she was there, whereas the bartender and the manager testified that it was "amateur night" and some 300 persons were in attendance. The minor further testified that she "blacks out" when she drinks, yet she admitted that she had four or five whiskies and six or seven beers before she went to the tavern where, she said, she had one drink.

I cannot accept the uncorroborated testimony of the minor as against the testimony of defendant's witnesses. I conclude, therefore, that the decision of respondent Board was against the weight of the evidence and must be reversed.

Accordingly, it is, on this 18th day of May, 1960,

ORDERED that the action of respondent be and the same is hereby reversed.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - CATT'S v. LOWER PENNS NECK.

SARAH J. CATT'S AND NORMAN D. CATT'S,)	
t/a "GALA INN",)	
)	
Appellants,)	ON APPEAL
)	CONCLUSIONS
v.)	AND ORDER
)	
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF LOWER PENNS NECK,)	
)	
Respondent.)	

Cahill and Wilinski, Esqs., by Robert Wilinski, Esq., Attorneys
for Appellants.
J. Bernard Rogovoy, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent on October 29, 1959, whereby it suspended appellants' license for a period of twenty-two days after finding them guilty in disciplinary proceedings on a charge alleging that they sold alcoholic beverages to two minors, in violation of R.S. 33:1-77. Appellants' premises are located at 39-41 Main Street, Lower Penns Neck.

"Upon the filing of the appeal herein an order was entered

on November 5, 1959, staying the suspension imposed by respondent until the entry of a further order herein. R.S. 33:1-31.

"At the hearing held herein Joan --- (age 23), Donald --- (age 16), Gerald --- his brother-in-law (age 20) and Beatrice --- (mother of Donald) testified on behalf of respondent.

"Joan --- testified that she is married but separated from her husband and that she resides with her parents. She testified that on the evening in question Donald and Gerald called at her home shortly before 10 p.m. and that the three of them left her home in Gerald's car and drove directly to appellants' premises where Gerald parked the car a short distance away; that they remained in the car for a few minutes, during which time the two young men finished the contents of a can or carton of beer which they had in the car when she entered it; that they then threw the container in the street and entered appellants' premises at approximately 10 p.m. This witness further testified that the bar was crowded and that they took seats at a table on the right side of the premises where she drank two whiskey sours and where Donald and Gerald each drank two glasses of beer, all of which were served at the table by a waitress whom she could not identify, and that shortly thereafter Donald left the table after saying that he was going to the men's room.

"Donald --- testified that on the evening in question he and Gerald left their home in a car driven by Gerald; that they met Joan at her home, drove to appellants' premises and parked outside; that he, Gerald and Joan entered the premises about 10 p.m. and sat at a table where Joan had a mixed drink and where he and Gerald each had a glass of beer, all of which drinks were consumed; that these drinks were served by a waitress whom he could not identify and who did not question him as to his age; that shortly thereafter he went to the men's room and spoke for a few minutes to a bartender who had cut his hand; that thereafter he left the men's room and stood at the end of the bar talking to a friend when his mother entered and took him out of the premises.

"Gerald --- testified that Joan, Donald and he entered appellants' premises about 10 p.m. and sat at a table where Joan had a mixed drink and where he and Donald each had a beer, all of which drinks were served by a waitress whom he could not identify; that Donald then left the table; that Donald's mother came in and accompanied him from the premises and that, shortly thereafter, Joan and he also left the premises.

"Beatrice --- testified that she got a call that her son was in appellants' premises and that she went searching for him. She testified that, when she entered appellants' premises shortly after 10 p.m., she went to a table where Joan and Gerald were then seated; that she did not see either of them drinking but that there were three glasses on the table. She further testified that she then went around the end of the bar and saw her son talking to someone; that, after she gave Norman Catts a 'lacing', she and her son left the premises.

"On behalf of appellants, Norman W. Catts testified that on the evening in question he saw Gerald, Joan and Donald enter the premises; that Gerald and Joan walked to a table and seated themselves there but that Donald walked to the men's room where he remained for a period of about five minutes; that Donald then came from the men's room and was standing at the end of the bar talking to him when Donald's mother entered and took him out of the premises. He denied that he saw any drinks being served to any of the aforesaid persons or that he saw them consuming any drinks.

"Harold Mason testified that he was tending bar; that he cut his hand; that, as he was walking to the men's room, he saw Donald walk in the barroom; that both of them entered the men's room and that, when both of them left the men's room about five minutes later, Donald stood at the end of the bar until his mother came in. He denied that he saw any drinks served to Donald.

"Virginia Buehler testified that she was a waitress in charge of eighteen tables including the table at which the violation is alleged to have taken place. She testified that this was 'a band jamboree night.' When asked if she had served any alcoholic beverages to Donald or Gerald, she replied 'Not to my knowledge.'

"Loretta Snyder testified that she was a waitress stationed in another portion of the premises; that she saw Donald coming out of the men's room and that he stood in front of a cigarette machine until a lady came in and took him out.

"James P. King, who was in charge of entertainment, testified that, when he first saw Donald, he was standing by the cigarette machine just outside of the men's room talking to Mr. Catts.

"The additional witnesses who testified on behalf of appellants were William Grell and Mrs. Martha Jeker. Mr. Grell testified that he is an auxiliary officer of Lower Penns Neck Township and that on the evening in question he saw Gerald, Donald, Donald's mother and Norman W. Catts on the outside of the licensed premises; that Norman's mother asked him what she could do about a minor being served in the premises and that Donald then stated that he hadn't been served. Mrs. Jeker testified that she was on a neighbor's porch when Donald and Gerald got out of a car parked in front of appellants' premises; that Donald took a drink from a bottle of beer and threw the bottle near her house, and that thereafter both young men entered appellants' premises.

"In considering all the evidence, I am particularly impressed by the testimony of Joan --- who, I conclude, gave a complete and accurate account of the events which occurred between the time she met the young men and the time Donald left the table in appellants' premises. It is true that the testimony of Donald and Gerald differed in some respects from the testimony of Joan, but all agreed that they had been served drinks at the table when they first entered the premises. Admittedly, Donald and Gerald denied, when questioned outside the premises, that they had been served in the premises but, at the hearing herein, both testified that they had been served and explained that they, at first, denied that they had been served because they did not wish to get anyone into trouble. I conclude that Norman W. Catts and Harold E. Mason were mistaken when they testified that Donald went directly to the men's room after he entered the premises, and conclude that they, Loretta Snyder and James P. King first saw Donald after he left the table where he and his companions had been served by a waitress. The testimony of Virginia Buehler is that she has no recollection of serving drinks to these three patrons, but she admitted that the place was crowded and that she was serving eighteen tables. The failure to identify the person who made the service is not fatal in disciplinary proceedings. Re LaCorte, Bulletin 469, Item 1; Re Zebrowski, Bulletin 1308, Item 9.

"After considering the evidence, exhibits and briefs herein, I conclude that appellants have failed to sustain the burden of establishing that the action of respondent was erroneous. Rule 6 of State Regulation No. 15. It is recommended, therefore, that an order be entered affirming the action of respondent, vacating the order dated November 5, 1959, and fixing the effective dates for the

twenty-two-day suspension imposed by respondent."

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 evidence and exhibits herein, the briefs filed by the attorneys for both parties and the Hearer's Report, I concur in the findings and conclusions of The Hearer and adopt them as my conclusions herein. Although it is not my practice to consider communications received in a pending case from any party represented by an attorney, I have read a letter, dated April 28, 1960, sent to me by Sarah J. Catts and find nothing therein which would lead me to change my conclusions. I shall enter an order as recommended.

Accordingly, it is, on this 19th day of May 1960,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the twenty-two-day suspension heretofore imposed by respondent be and the same is hereby reinstated against the license held by appellants for 39-41 Main Street, Lower Penns Neck, to commence at 2 a.m. Tuesday, May 31, 1960, and to terminate at 2 a.m. Wednesday, June 22, 1960, and that the order staying said suspension be vacated when the suspension becomes effective at 2 a.m. Tuesday, May 31, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - GONZALES & BORROS v. ELIZABETH.

MANUEL GONZALES & ANNA BORROS,)
t/a CLUB 246 BAR & RESTAURANT,)
)
Appellants,)
)
v.)
)
CITY COUNCIL OF THE CITY OF)
ELIZABETH,)
)
Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

James T. Kirk, Esq., Attorney for Appellants.
Raymond A. Leahy, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on February 11, 1960 it suspended appellants' license for a period of 90 days, commencing February 19, 1960, after finding them guilty (by a vote of 6 to 3) on charges alleging (1) that on November 7, 1959 they allowed, permitted and suffered in and upon their licensed premises a brawl, disturbance and unnecessary noise, and permitted their licensed premises to be conducted as to become a nuisance, in violation of Rule 5 of State Regulation No. 20, (2) that on November 7, 1959 they failed to cooperate with the local police, in violation of R.S. 33:1-35.

"Upon the filing of the appeal, the Director entered an order on February 16, 1960 staying respondent's order of suspension until further order herein. R.S. 33:1-31.

"Appellants, in their petition of appeal, seek reversal of the local board's action on the following grounds: (1) that on the date in question the premises were not permitted to be conducted as a nuisance; (2) that they did not fail to cooperate with the local police but, on the contrary, cooperated promptly and willingly; (3) that they are prepared to prove that there was no disturbance at the licensed premises until two police officers, endeavoring to place a prisoner under arrest, chased him into the licensed premises and that any disturbance which followed was occasioned by the police; (4) that the local board erred in finding appellants guilty, and that under all the circumstances of the case, even if some part of the charges were sustained, the penalty imposed was excessive.

"The answer filed by respondent denies the aforesaid allegations.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, the transcript of the proceedings before respondent Board was received in evidence and additional testimony was presented by appellants, in accordance with Rule 8 of said Regulation.

"It appears from the transcript that respondent called as its witnesses the following police officers: John Cantrell, Nicholas Danchisko, Howard Frankel, Leonard Wilchek and Henry Smolen.

"Officer Cantrell testified that he was on duty at police headquarters as a dispatcher from 7:00 p.m. on November 6, 1959 to 7:00 a.m. the next morning; that his log discloses that he received three calls (10:56 p.m., 11:40 p.m. and 12:01 a.m.) from a Mr. Fernandez (who resides above the licensed premises (complaining of a noisy juke box at the licensed premises; that in each instance a radio car was sent to the licensed premises; that after 12:01 a.m. he also received a call (unrecorded) from Mr. Gonzales (one of the licensees), who complained that the repeated visits by the police were giving him a 'bad name' and who alleged that the reports of a noisy juke box were unfounded and that Fernandez (the former owner of the tavern) was registering these complaints because he was interested in regaining possession of the licensed premises.

"On cross-examination, Officer Cantrell stated that between 12:01 a.m. and 1:45 a.m., he received a call over the police radio from Officer Wilchek; that he made no record of this call except that he noted the words 'wagon sent' alongside of the call at 12:01 a.m.

"Officer Frankel testified that on November 6, 1959 at 11:40 p.m. he received a call from Officer Cantrell to investigate a complaint of a noisy juke box at the defendants' licensed premises; that he and his partner, Officer Wilchek, proceeded to the licensed premises and confirmed the complaint; that he requested Gonzales to tone down the juke box; that Gonzales refused to comply; that an argument ensued in which Mr. Gonzales was joined by a Mr. Carrera (who was behind the bar); that after he had threatened to close the premises, Gonzales softened the music and that he and Officer Wilchek then departed from the premises.

"Officer Frankel further testified that shortly thereafter at 12:01 a.m. he received another call from the dispatcher that a Mr. Fernandez was complaining about loud music at the licensed premises; that he and his partner interviewed Mr. Fernandez in his apartment (above the licensed premises) and while there observed 'the whole floor was vibrating and everything was vibrating from the volume of the juke box'; that they advised Fernandez to file a complaint against the licensees and returned to their car to write

their report; that while writing their report, Mr. Carrera (a patron) came out of the licensed premises, approached their car, abused and threatened them; that he and Officer Wilchek stepped out of their car and informed Carrera that he was under arrest, whereupon Carrera ran back into the licensed premises; that they caught Carrera at the rear side door in the licensed premises; that Carrera resisted arrest, called for help and that 'everybody in the place jumped into the act and tried to pull him away from us' and that he did not know where Gonzales was during this struggle.

"Officer Frankel continued to testify that when he, Officer Wilchek and their prisoner reached the front door, he drew his gun and 'backed everybody up'; that Officer Wilchek and Carrera were behind him; that Carrera (with one handcuff on him) attempted to escape; that he holstered his gun and jumped on Carrera; that while subduing Carrera he felt a sting in his back; that he turned around and observed a male (later identified as Crespo) with a yellow-handled knife in his hand; that he again leveled his gun at the crowd; that Crespo deposited the knife on a nearby shuffle alley machine; that at this point Gonzales came forward from somewhere in front of the bar and picked up the knife; that he asked Gonzales to phone for the patrol wagon; that he had observed Gonzales, in possession of the knife, go behind the bar at which time Gonzales stated he was going to get a dime; that he then saw Gonzales enter a rear room to make the call, following which Officer Wilchek left the premises to call for the patrol wagon over the police radio.

"In addition, Frankel stated that he and Sergeant Smolen found the knife on top of a trash can under the bar; that Gonzales denied he picked up the knife; and that another knife and a bludgeon were found on the premises.

"Officer Wilchek substantially corroborated the testimony of Officer Frankel and further testified that he observed Gonzales walk from behind the bar toward the shuffle alley machine; that he does not know how close Gonzales came to the machine; that he did not see Gonzales pick up the knife because his view was obstructed by some patrons; that he did not see the knife; that he did not see Frankel attacked with a knife; that he does not know at which particular time Frankel was cut; that he called for the police patrol; that the dispatcher informed him that he had already received an order for the wagon and that help was on the way.

"Cantrell was recalled at the suggestion of one of the members of the Board and denied that Gonzales had asked him to send the patrol wagon.

"Officer Danchisko testified that on November 6, 1959 at about 11:00 p.m., he and his partner, Officer Costello, were sent to the licensed premises to investigate a complaint of a noisy juke box; that they asked Gonzales to lower the music; that Gonzales complied with their request and that they then left the premises. Danchisko further testified that sometime after 12 midnight, he and his partner returned to the licensed premises in response to another call from Cantrell; that exclusive of himself and his partner, there were five other police officers at the premises; that one of the police officers called Frankel's attention to his torn coat; that Frankel stated he believed that he had been stabbed; that a general search of the licensed premises, including the area of the shuffle alley, was made for the knife; that he did not question Gonzales about the knife and that he remained at the tavern for about thirty minutes until 'the call was made for the wagon'.

"On cross-examination, Danchisko stated that it was not until after he, Sergeant Smolen and the officers had arrived at the scene that Officer Wilchek called for the patrol wagon.

"Sergeant Smolen testified that he heard Officer Wilchek ask for the patrol wagon over the police radio; that he drove to the licensed premises and found the aforementioned police officers at the scene; that after he had learned that Officer Frankel had been attacked with a knife, he joined Officer Frankel in a search of the premises; that Officer Frankel, in his presence, found the yellow-handled knife on top of a trash can behind the bar; that he also found a pocket knife on the back bar; that Gonzales informed him that he was the only person behind the bar that night and that Gonzales denied any knowledge of the knives.

"The defendants called as witnesses three occupants of the building in which the licensed premises are located. The first of these witnesses was unable to recall whether he was at home on the dates in question; the second one testified that for the past two years he has resided on the third floor front of the building and that on several occasions during weekends he had heard music emanating from the licensed premises, and the third one stated that for the past 17 months he has occupied the second floor rear of the building and that he has never been disturbed by any noises from the tavern.

"Manuel Gonzales, testifying on his own behalf, denied that he had picked up the yellow-handled knife from the shuffle alley machine; denied he had ever seen the pocket knife; denied that on the morning in question the police had interrogated him about the knives, or that they had shown them to him and denied that he had not summoned the patrol wagon as requested by Officer Frankel.

"Gonzales further testified that he is the owner of the yellow-handled knife; that he uses it in his business; that on November 8th aforesaid, he noticed that it was missing from the licensed premises and called the police and notified them to that effect.

"Gonzales continued to testify that for the past 18 years he has been in the liquor business as a bartender and a licensee; that for the past $4\frac{1}{2}$ years he has been one of the owners of the licensed premises; that prior to November 7th aforesaid he was not arrested or convicted of any crime; that he had toned down the juke box on the first visit (11:00 p.m.) of the police; that he did not know why the police returned a second time (11:45 p.m.); that at about 12 midnight he had pulled the plug out of the juke box and that prior to the time that Sergeant Smolen informed Officer Frankel of his torn coat, he had no knowledge that Officer Frankel was cut.

"Angel Vanzquez, testifying for the defendants, stated that at about midnight of November 6, 1959 he was in the men's room when Officers Frankel and Wilchek arrived at the licensed premises; that when he emerged therefrom he observed Carrera in handcuffs in the custody of the police officers and Gonzales standing behind the bar, and that Gonzales had left the bar on only one occasion to enter a back room.

"At the hearing held herein, Manuel Gonzales testified on November 6th aforesaid when the police officers came to his tavern they informed him that Fernandez had complained about his noisy juke box; that he had purchased the licensed premises from Fernandez about $4\frac{1}{2}$ years ago, since which time Fernandez had spoken with him about repurchasing the business on five different occasions.

"The defendants also called five other witnesses who testified that they were in the licensed premises during the time the aforesaid violations were alleged to have taken place; that Gonzales was behind the bar when Officer Frankel had his gun drawn; that upon the request of Officer Frankel, Gonzales went into a back room and used the telephone and that at no time did Gonzales approach the shuffle alley machine.

"After considering all the facts and circumstances herein, together with the briefs filed by the attorneys for the litigants, I am satisfied what occurred here was a sudden 'flare up' which followed the arrest of Carrera in the licensed premises, his struggle to free himself from the police, his appeal to the patrons for help and the unexpected attempt of the patrons to rescue Carrera, all of which events took place in quick succession. I am also satisfied that Gonzales had no warning that the patrons would interfere with the arrest of Carrera and that order was quickly and efficiently restored by the police. Under the circumstances, I cannot find that the licensees allowed, permitted and suffered a brawl or disturbance in and upon the licensed premises.

"As to the allegation in Charge 1 that the licensees permitted unnecessary noise in the licensed premises, I conclude, as the police testified, that on each of their visits to the premises they heard unnecessary loud music emanating from the juke box; that on their first two visits they had requested Gonzales to tone down the music and that on their third visit they observed that the floor above the licensed premises was actually vibrating from the volume of the music.

"With respect to the other remaining allegation in Charge 1, that the licensees permitted the licensed premises to be conducted as to become a nuisance, I am of the opinion that there is insufficient evidence to support the same.

"With respect to the second charge herein, I am satisfied that Gonzales removed the knife from the shuffle alley machine; that he kept the same in his possession behind the bar; that he knew the police officers were searching for the same and that he failed to produce it. The policemen at the time in question were investigating the stabbing of a police officer in the licensed premises and it was the obligation of the defendants to provide all necessary assistance to help them in their endeavors. Cf. Kleinberg v. Newark, Bulletin 1168, Item 1.

"I recommend that an order be entered reversing the action of respondent as to those portions of Charge 1 which refer to the allegations that the licensees allowed, permitted and suffered a brawl and disturbance in and upon their licensed premises and that they permitted their licensed premises to be conducted as to become a nuisance, and affirming their action as to that portion of Charge 1 which refers to the allegation that they permitted unnecessary noise on the licensed premises and also affirming their action in finding the appellants guilty on the second charge herein.

"In view of my recommendations to reverse the action of the respondent on the major allegations in Charge 1 and affirming their action on Charge 2, I recommend that the matter be remanded to the respondent for reconsideration as to the quantum of the suspension. Cf. Hech v. Hammonton, Bulletin 1140, Item 3."

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 recommendations.

Accordingly, it is, on this 23rd day of May 1960,

ORDERED that the action of the respondent, in finding defendants guilty as to Charge 2 and that portion of Charge 1 which refers to the allegation that defendants permitted unnecessary noise on their licensed premises, be and the same is hereby affirmed; and it is further

ORDERED that the action of the respondent, in finding defendants guilty to the remaining allegations in Charge 1, be and the same is hereby reversed; and it is further

ORDERED that the matter be remanded to the respondent for its reconsideration and reimposition of penalty as to Charge 2 and that portion of Charge 1 affirmed herein in accordance with this decision.

WILLIAM HOWE DAVIS
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - UNLAWFUL TRANSPORTATION - TRANSPORTATION IN VEHICLE WITHOUT TRANSIT INSIGNIA - TRANSPORTATION WITHOUT BONA FIDE INVOICE OR MANIFEST - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 CARIDI'S BAR, INCORPORATED
 t/a PAT'S BAR
 700 Mt. Vernon Street
 Camden 3, N. J.
 Holder of Plenary Retail Consumption License C-191, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS
AND ORDER

 Cahill and Wilinski, Esqs., by Robert Wilinski, Esq., Attorneys for Defendant-licensee.
 David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On January 13, 1960, you engaged in the unlawful transportation of alcoholic beverages; in violation of R.S. 33:1-2.
- "2. On January 13, 1960, you transported alcoholic beverages in a vehicle not having a transit insignia affixed thereto; in violation of Rule 2 of State Regulation No. 17.
- "3. On January 13, 1960, you delivered and transported alcoholic beverages in a vehicle without the driver thereof having in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating the bona fide name and address of the purchaser or consignee and the brand, size of container and quantity of each item of the alcoholic beverages being delivered and

transported; in violation of Rule 3 of State Regulation No. 17."

The present charges may best be understood by reference to previous charges for related violations. On December 20, 1958 the licensee aided and abetted a purchaser of alcoholic beverages at its licensed premises to transport such beverages in the purchaser's car to Philadelphia, where such importation was prohibited. On March 6 and 17, 1959, ABC agents were prevented by Patrick Caridi, the licensee's manager, from making an adequate investigation of the records of the licensee. The licensee pleaded non vult to such charges and on January 14, 1960 the Director's Order was entered suspending the license for a net period of forty days, commencing on January 27, 1960. Re Caridi's Bar, Inc., Bulletin 1324, Item 6.

On January 13, 1960, the day before the entry of the above mentioned Director's Order, but while such charges were pending, ABC Agents had the defendant's licensed premises under surveillance, and observed six full cases and two partly full cases of alcoholic beverages carried from the licensed premises and placed in a Chrysler sedan registered in the name of the licensee. The motor vehicle was then driven for a short distance, and then halted by ABC agents who ascertained that Patrick Caridi was the driver of the car. The motor vehicle was not licensed to transport alcoholic beverages, bore no transportation insignia, and the driver did not have in his possession any way bill, invoice or similar document as required by Rule 3 of State Regulation No. 17.

Patrick Caridi at first refused to name or give the address of the person or persons to whom the alcoholic beverages were to be delivered, but within a short time gave the names and addresses of three New Jersey residents represented by him to be the consignees of such alcoholic beverages. A later check by ABC agents with these three persons ostensibly confirmed this claim to some degree.

It is urged in alleged mitigation that the motor vehicle was purchased in October 1959 and that the licensee carelessly neglected to obtain a transportation insignia therefor, and that the alcoholic beverages were intended for delivery to bona fide purchasers who were residents of New Jersey.

If definitive legal proof was available that the alcoholic beverages in question were intended for delivery in Pennsylvania, it would constitute a second similar offense and warrant a severe penalty. As it is, the least that can be said is that the licensee's conduct demonstrates an aggravated, careless and perhaps deliberate disregard of the law governing transportation of alcoholic beverages. It further appears that defendant's license was suspended for ten days, effective July 23, 1957 for selling to women over the bar (Bulletin 1185, Item 3). Under all the circumstances, I shall suspend defendant's license for forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 23rd day of May 1960,

ORDERED that Plenary Retail Consumption License C-191, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Caridi's Bar, Incorporated, t/a Pat's Bar, for premises 700 Mt. Vernon Street, Camden, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m., Monday, June 6, 1960, and it is further

ORDERED that any renewal for the 1960-61 licensing year or transfer of said license shall be and remain under suspension until 2:00 a.m., Saturday, July 16, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING - SALE TO MINOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL AND MARY SWETELL)
 t/a TOWN HALL TAVERN)
 409 Kearny Avenue)
 Kearny, N. J.)

CONCLUSIONS AND ORDER

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 Holders of Plenary Retail Consumption License C-30, issued by the Town Council of the Town of Kearny.)

Donohue & Donohue, Esqs., by Edward G. Madden, Jr., Esq., Attorneys for Defendant-licensees.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

- "1. On March 12, 19, 23 and 26, 1960, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on sports events; in violation of Rule 7 of State Regulation No. 20.
- "2. On March 26, 1960, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years; viz., Daniel ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

Two ABC agents visited defendants' licensed premises on four occasions, viz., March 12, 19, 23 and 26, 1960, respectively. On all of the visits, Robert Rainey, Jr. was tending bar and on all occasions agents observed him soliciting from and making numerous bets with patrons and customers on the outcome of various sporting events, viz., prize fights, hockey, baseball, etc., and on the last three dates he made with and accepted bets from the agents. By prearrangement, on the final visit local police officers accompanied an agent into defendants' premises and after the agents identified themselves, the bartender produced the money wagered by the agents on the basketball games (the serial number of which bills had previously been recorded). One of the patrons present, who had been served beer by the bartender on three occasions, was questioned and it was ascertained that he was 19 years of age.

Defendants have no prior adjudicated record. Despite the fact that neither licensee was present when the violations occurred, they are responsible for the acts of their employee. Rule 33 of State Regulation No. 20. Inasmuch as Charge 1 does not appear to be a case of commercialized gambling and the facts in my opinion are not aggravated as in Re Smith, Bulletin 1163, Item 11, wherein twenty days suspension was imposed, I shall impose a lesser penalty therefor. I shall suspend defendants' license on said charge for ten days and on Charge 2 for an additional fifteen days, the minimum penalty for sale of alcoholic beverages to a 19-year-old minor (Re Becker, Bulletin 1306, Item 7), 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 23rd day of May, 1960,

ORDERED that Plenary Retail Consumption License C-30, issued by the Town Council of the Town of Kearny to Michael and Mary Swetell, t/a Town Hall Tavern, for premises 409 Kearny Avenue, Kearny, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Wednesday, June 1, 1960, and terminating at 2:00 a.m., Tuesday, June 21, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

KATHERINE TECZA)
t/a TECZA'S)
12 Wadsworth Street)
Wallington, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-43, issued by the Mayor and Council of the Borough of Wallington.)

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

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that she sold alcoholic beverages to a minor and permitted the consumption of such alcoholic beverages by said minor on her licensed premises, in violation of Rule 1 of State Regulation No. 20.

Acting upon information received from a municipal police department, ABC agents obtained signed and sworn statements from Robert ---, 16 years of age, and from two other persons who were with him on the night of April 1 and early morning of April 2, 1960. It appears that on the aforesaid times, Robert was served and consumed five or six glasses of beer which had been served to him by the bartender employed in defendant's licensed premises.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the period of twenty-five days, the minimum penalty for sale of alcoholic beverages to a minor who is sixteen years of age. Re Rubin, Bulletin 1309, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 23rd day of May 1960,

ORDERED that Plenary Retail Consumption License C-43, issued by the Mayor and Council of the Borough of Wallington to Katherine Tecza, t/a Tecza's, for premises 12 Wadsworth Street, Wallington, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Tuesday, May 31, 1960 and terminating at 3:00 a.m., Monday, June 20, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against)

SHOREVIEW, INC.)
t/a FLAGSHIP BAR)
S.E. Monroe & Amherst Aves.)
Margate City, N. J.)

ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the City of Margate City.)

Moore, Butler & McGee, Esqs., by Albert A. F. McGee, Esq.,
Attorneys for Defendant-licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

By order dated September 24, 1959, I suspended defendant's license for twenty days. Because it appeared that defendant's licensed business is conducted on a seasonal basis, the order provided that the effective dates for said suspension would be fixed by a subsequent order after the licensed premises opened for business for the 1960 season. Bulletin 1307, Item 3.

It now appearing to my satisfaction that defendant's licensed premises have reopened for the 1960 season,

It is on this 23rd day of May 1960,

ORDERED that the twenty-day-suspension heretofore imposed shall commence at 4 a.m. Tuesday, June 7, 1960, and terminate at 4 a.m. Monday, June 27, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against)
)
 MINNIE MECKER & E. HARRY MECKER)
 t/a LAKE HARTUNG CLUB)
 North end of Roosevelt Road)
 Lake Hartung, Jefferson Township)
 PO Oak Ridge, N. J.)
)
 Holders of Plenary Retail Consumption License C-35, issued by the Township Committee of Jefferson Township.)

ORDER

BY THE DIRECTOR:

By order dated October 29, 1959, I suspended defendant's license for thirty days. Because it appeared that the business was then being conducted only in a limited way, the order provided that the effective dates for said suspension would be fixed by a subsequent order after the business was fully resumed for the 1960 season. Bulletin 1313, Item 1.

It now appearing to my satisfaction that defendants have fully resumed business for the 1960 season,


It is on this 23rd day of May 1960,

ORDERED that the thirty-day suspension heretofore imposed shall commence at 3 a.m. Tuesday, May 31, 1960, and terminate at 3 a.m. Thursday, June 30, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

John A. Worts
433 Central Boulevard
Fort Lee, New Jersey
Application filed July 6, 1960 for person-to-person transfer of State Beverage Distributor's License SBD-91 from Edward J. Pryor, t/a T. J. Beverages.


William Howe Davis
Director