

BULLETIN 1283

June 29, 1959.

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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.

June 29, 1959

BULLETIN 1283

1. APPELLATE DECISIONS - DIXIE TAVERN, INC. v. NEWARK

DIXIE TAVERN, INC., A N. J. CORP.,)

Appellant,)

v.)

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

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Robert W. Wolfe, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action on February 3, 1959 whereby it suspended appellant's license C-539 for fifteen days, effective at 7:00 a.m., February 16, 1959, after finding appellant guilty of a charge alleging that on Thursday, September 25, 1958 it allowed, permitted and suffered the sale and delivery of an alcoholic beverage in its original container for consumption off the licensed premises, in violation of Rule 1 of State Regulation No. 38.

"Appellant's premises are located at 619 Orange Street, Newark.

"Upon the filing of this appeal, an order was entered on February 11, 1959 staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

"At the hearing herein, respondent's case was presented upon the transcript of the proceedings held before respondent. Rule 8 of State Regulation No. 15. No additional evidence was presented on behalf of either party to this appeal. The attorney for appellant presented oral argument and the attorney for the respondent rested upon the record.

"The petition of appeal alleges that the action of respondent was erroneous, unreasonable and contrary to the weight of the evidence and without legal basis.

"A review of the testimony by an ABC agent given at the hearing held by respondent Board discloses that on September 25, 1958 at about 11:05 p.m., while he was in defendant's premises, one Frederick Bell, subsequently identified as the day bartender employed by the respondent, entered the premises and, after making some remark to the bartender on duty, proceeded in back of the bar and then walked to the front of the tavern where package goods were

displayed; that he took a bottle of whiskey from a shelf, put it in his overcoat pocket, went to the cash register, rang up the sum of \$3.99 thereon, proceeded to the center of the bar, took four chaser glasses, set them upon the bar, spoke to the bartender, picked up the glasses and, together with the bottle of whiskey, proceeded to leave the premises; that the agent followed him to the street where there was a parked car in which there were three males; that the agent requested that Bell give him the bottle of whiskey at which time another agent who had remained outside came upon the scene; that Bell and the two agents then returned to the licensed premises and called the violation to the attention of the bartender on duty; that the agent requested the tape from the cash register from the licensee, who had been called to the premises by a special officer on duty; that the tape was produced, upon which indicated the receipt of \$3.99 thereon.

"The agent who had remained outside of the premises, corroborated the testimony of the other agent as to what occurred on the street and also as to what occurred after Bell and the two agents had entered the premises.

"Frederick Bell, produced on behalf of the defendant, testified that at the time in question he did obtain a bottle of whiskey from the licensed premises; that he worked as bartender in defendant's premises on the day in question between 7 a.m. and 5 p.m.; that while he was on duty a customer had ordered a bottle of whiskey but that he had retained it in the licensed premises when the man indicated that he would return to pick up the item some time later in the day; that this man called at his home and asked him for the bottle of whiskey, so he went to the tavern and obtained the bottle for him.

"There appears to be no dispute in the instant case that, whatever happened before Bell went off duty at 5 p.m., a bottle of whiskey was sold by Bell after 10 p.m. on the evening of September 25, 1958. The fact that the president of the appellant corporate licensee or the bartender on duty at the time were not aware that a violation had taken place at the time in question cannot be considered a justifiable defense of the violation in question. Mazza v. Cavicchia, 15 N. J. 498; Rule 33 of State Regulation No. 20.

"After reviewing all of the testimony, I conclude that the respondent was justified in its conclusion that the appellant was guilty of the violation charged. Under the circumstances, I find that appellant has failed to sustain the burden of proof in showing that the action of respondent was erroneous. Rule 6 of State Regulation No. 15. It is recommended, therefore, that appellant's petition filed herein be dismissed and that an order be entered affirming respondent's action and reimposing the fifteen-day suspension."

Written exceptions to the Hearer's Report and written argument were filed with me by the attorney for appellant, pursuant to Rule 14 of State Regulation No. 15. The exceptions alleged, in effect, that the suspension of fifteen days imposed by the respondent, under the circumstances appearing herein, is excessive. It has been repeatedly stated that a penalty imposed by a local issuing authority should not be reduced on appeal unless it appears that such penalty is manifestly unreasonable and clearly excessive. Wally's, Inc. v. Parsippany-Troy Hills, Bulletin 1103, Item 4. Inasmuch as respondent imposed the minimum suspension for the type of violation committed by the appellant, it is apparent that a

reduction of penalty is unwarranted.

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

Accordingly, it is, on this 26th day of May 1959,

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

ORDERED that the fifteen-day suspension imposed by respondent which was stayed during the pendency of these proceedings, be and the same is hereby reimposed and reinstated to commence at 2:00 a.m., Tuesday, June 2, 1959 and terminate at 2:00 a.m., Wednesday, June 17, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - CHET & JOHN'S, INC. v. LITTLE FALLS

Case #2

CHET & JOHN'S, INC., trading as)
CHET & JOHN'S SINGAC LODGE,)
Appellant,)

ON APPEAL
CONCLUSIONS AND ORDER

v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LITTLE FALLS,)
Respondent.)

Oscar F. Laurie, Esq., Attorney for Appellant.
Mitchel F. Donato, Esq., Attorney for Respondent.
Robert W. Moncrief, Esq., Attorney for Fred DeFura, t/a Freddy
Farmers Liquor Store, an Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action on January 5, 1959, whereby it unanimously denied appellant's application for renewal of its plenary retail consumption license for the 1958-59 licensing year. The premises in question are located at 600 Main Street, Little Falls.

"From the records of this Division it appears that said application was originally denied by respondent on August 18, 1958, for the stated reason that the licensed premises had been improperly conducted. After an appeal from said action had been filed with the Director by appellant, respondent on November 24, 1958, adopted by a two-to-one vote a resolution requesting the Director to remand the case to enable respondent to consider further the advisability of renewing the license for the purpose of transferring said license to another person. As a result of said resolution the Director entered an order on December 5, 1958, remanding the case to respondent for reconsideration. Chet & John's

Inc. v. Little Falls, Bulletin 1258, Item 3.

"At the hearing held herein Mrs. Stewart (Township Clerk) produced the minute books of the Township Committee and testified therefrom that a public hearing as to the application for renewal was held on January 5, 1959; that the attorney for appellant then presented his oral argument wherein he alleged in substance that his clients were not of bad character; that the alleged improper conduct occurred 'when the business was under contract to sell to someone else' and that prospective purchasers of the business had agreed that, if the license were renewed and transferred to them, they would not continue the business at this location but would seek a transfer of the license to a new location. Mr. Moncrief, attorney for an objector, presented his argument in favor of denial of the renewal. After the members of the Township Committee had briefly questioned Bernard A. Tissot, Chief of Police of Little Falls, a motion to deny the application was unanimously carried. It is quite apparent from the remarks made by various members of the Township Committee at said meeting that the request for renewal in order to permit a transfer was fully considered and that their action was based upon the belief that violations committed at the premises during the 1957-58 licensing year were of a serious enough nature to warrant denial of renewal of the license.

"From additional testimony herein given by Chief Tissot, Lieutenant Suchorski, Sergeant Benio, Officer Herrman and Officer Cole, of the Little Falls Police Department, it appears that between July 1, 1957, and December 31, 1957, numerous complaints were received by the Police Department as to excessive noise inside and outside the licensed premises. On this point the testimony of Chief Tissot carries great weight because he resides immediately to the rear of appellant's premises. This unsatisfactory situation, which is not seriously disputed, seems to have arisen from the fact that during this period of time appellant permitted Lawrence Stires to manage the premises and that a band, owned by Stires, played on the premises and attracted a large number of teenagers on Friday and Saturday nights. In October 1957 Stires entered into a contract with appellant to purchase the business but this, of course, in no way relieved appellant from responsibility for the conduct of the licensed premises. In any event, the contract was cancelled on New Year's Day 1958 when Stires failed to make a payment thereunder. Thereafter appellant entered into an agreement with Ellen Daley to manage the premises, and said agreement remained in effect until March 1958. There is no allegation that any alcoholic beverages were sold to minors while the premises were under the management of Lawrence Stires, but it appears that on Friday, January 10, 1958, while the premises were managed by Ellen Daley, alcoholic beverages were sold to two minors (18 and 20 years of age); that thereafter disciplinary proceedings were instituted by the Director against the appellant herein; that a plea of non vult was entered to said charge, and that on March 13, 1958, the Director entered an order suspending appellant's license for a period of ten days from March 24, 1958, to April 3, 1958. Re Chet & John's, Inc., Bulletin 1222, Item 7. The license premises were never reopened for business after the expiration of said suspension.

"On behalf of appellant, John Ferriol (president of Chet & John's, Inc.) testified that appellant operated the licensed business between December 1955 and July 1957 without any complaints; that he visited the premises between July 1, 1957, and March 1958 and never observed any violations, and that Stires never told him of any visits by members of the Police Department. Lawrence Stires

admitted that members of the Police Department had told him to cut down the noise on a number of occasions. Frank VanArsdale (secretary of Chet & John's, Inc.) testified that on one occasion Stires told him that he had been warned 'to keep the band down because of the neighbors.'

"No licensee has a vested right to renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion, the action of the issuing authority should be affirmed. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). I conclude that there is ample evidence herein to sustain the action of respondent. Umberger v. Sussex, Bulletin 632, Item 8; Pignotti v. West New York, Bulletin 1086, Item 2; Downie v. Somerdale, Bulletin 1135, Item 1 (aff'd 44 N.J. Super. 84, App. Div. 1957). Under the facts of this case it does not appear that respondent abused its discretion when it denied renewal instead of granting renewal on condition that appellant consent to a transfer of the renewed license. Nordco, Inc. v. State, 43 N.J. Super. 277 at 288 (App.Div. 1957).

"It is recommended, therefore, that an order be entered affirming the action of respondent and dismissing the appeal."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by appellant's attorney within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the evidence, the Hearer's Report and the exceptions and written argument, I concur in the conclusions of the Hearer and adopt said conclusions as my conclusions herein.

Accordingly, it is, on this 26th day of May, 1959,

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

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

BELL BAR, INC.)
t/a BELL BAR)
224 Market Street)
Camden, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-155, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Defendant-licensee, by Vincent J. Venezia, Vice-President.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold during prohibited hours an alcoholic beverage in its original

container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

On Friday, April 3, 1959, at about 11:10 p.m., an ABC agent in defendant's licensed premises purchased a pint bottle of California Vincove Sherry Wine for off-premises consumption from the bartender (later identified as Louis Venezia, president of the corporate licensee). The bartender verbally admitted the sale during prohibited hours.

Defendant has a prior adjudicated record. Effective February 24, 1958 its license was suspended by the Director for ten days for sale during prohibited hours. Re Bell Bar, Inc., Bulletin 1215, Item 9. Since this is the defendant's second similar violation within five years, I shall suspend its license for thirty days. Re Trosky, Bulletin 1269, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

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

ORDERED that plenary retail consumption license C-155, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Bell Bar, Inc., t/a Bell Bar, for premises 224 Market Street, Camden, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, June 1, 1959 and terminating at 2:00 a.m., Friday, June 26, 1959,

WILLIAM HOWE DAVIS
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD OF PREDECESSORS IN INTEREST - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

THE GLEN COCKTAIL BAR A CORPORATION)
699-701 Bloomfield Avenue)
Bloomfield, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-31, issued by the Town Council of the Town of Bloomfield.)

Joseph Slifkin, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant entered a plea of non vult to a charge alleged that it sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

Between the hours of 1 and 1:25 a.m., Saturday, April 4, 1959, ABC agents who were in defendant's licensed premises observed two of defendant's bartenders serve a whiskey and soda to each of two apparent minors. When the youths consumed a portion of their drinks, the agents identified themselves and,

ascertaining that the apparent minors were Janice ---, age 19, and Donald ---, age 20, seized for evidential purposes the remaining portion of the drinks in front of them. Morton Berger and Joseph Berger (33-1/3% and 20% shareholders, respectively, of the corporate licensee) who were in and upon the licensed premises, were informed of the violation but refused to give a signed statement as did the bartenders and Janice. Donald, however, volunteered a signed, sworn statement in which he states that he is on liberty from the U. S. Navy and that he consumed some of the whiskey and soda which was served to him by one of the bartenders who did not require any written proof of his age. He further states that as he entered the premises he presented to a checker stationed at the door, an identification card which did not represent his true age and that he had been served alcoholic beverages in the licensed premises on several previous occasions.

The two bartenders orally admitted that they served the minors in question without requiring any proof of their ages.

Defendant's attorney has submitted a letter alleging circumstances which he asserts should be considered as mitigating factors in fixing the penalty herein. While it appears that Donald presented a false identification card to a checker, it also appears that Janice was admitted to the premises and served an alcoholic beverage without producing any proof of her age to anyone. As was said in Re Johnson, Bulletin 1187, Item 8: "If licensees prefer, either through carelessness on their part or ignorance of the law, to use their own methods of determining the age of a minor, rather than complying with the statute in such case made and provided, [R.S. 33:1-77, see also Re Roey, Bulletin 747, Item 3] they do so at their peril and must accept the consequences thereof."

Defendant herein has no prior adjudicated record. However, when Joseph, Sylvia and Morton Berger held the license, it was suspended by the Director for ten days effective June 21, 1954 for lewdness and immoral activity on their licensed premises (Re Berger, Bulletin 1023, Item 4), and effective August 8, 1957 the license was suspended for twenty-five days by the local issuing authority for permitting a brawl on their licensed premises. The minimum penalty for an unaggravated sale of alcoholic beverages to a 19 and a 20-year-old minor is fifteen days. Re Gertman, Bulletin 1233, Item 2. Considering the prior dissimilar violations which were committed within the past five years by licensees who are substantial shareholders in the corporate licensee herein, I shall suspend defendant's license for twenty days. Re Richman, Bulletin 1186, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

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

ORDERED that plenary retail consumption license C-31, issued by the Town Council of the Town of Bloomfield to the Glen Cocktail Bar A Corporation, for premises 699-701 Bloomfield Avenue, Bloomfield, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Monday, June 1, 1959, and terminating at 2:00 a.m. Tuesday, June 16, 1959,

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD NOT CONSIDERED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

PULASKI CITIZEN CLUB, INC.
310-2 Elm Street
Perth Amboy, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-1013, issued by the Director
of the Division of Alcoholic Beverage
Control.

Defendant-licensee, by Joseph A. Grzankowski, President
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage
Control

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold and delivered 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 1:45 a.m. Sunday, April 12, 1959, ABC agents who were in defendant's licensed premises purchased twelve 12-ounce cans of beer from one of the bartenders and departed with the merchandise. Returning immediately, they identified themselves and seized the cash register tape denoting the sale.

Defendant has a prior adjudicated record. Effective January 2, 1940, its license was suspended for five days by the then Commissioner for the sale of alcohol without a permit (Re Pulaski Citizen Club, Inc., Bulletin 369, Item 11) and effective October 31, 1945, its license was suspended for one hundred eighty-one days by the then Commissioner for sales to minors (Re Pulaski Citizen Club, Inc., Bulletin 683, Item 8; Bulletin 704, Item 6). Since the aforesaid dissimilar violations occurred more than ten years ago, they will not be considered in fixing the penalty herein. I shall suspend defendant's license for the minimum period of fifteen days. Re Smaguler, Bulletin 1261, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 18th day of May, 1959,

ORDERED that plenary retail consumption license C-1013, issued by the Director of the Division of Alcoholic Beverage Control to Pulaski Citizen Club, Inc., for premises 310-2 Elm Street, Perth Amboy, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, June 1, 1959, and terminating at 2 a.m. Thursday, June 11, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

NOTE: By order, dated May 21, 1959, the above suspension was postponed to commence at 2 a.m., Thursday, June 11, 1959 and to terminate at 2 a.m., Sunday, June 21, 1959.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

TEKLA & THEODORE DZIALO t/a TEDDY' & TILLIE'S TAVERN 54 Lester Street Wallington, N. J.)

CONCLUSIONS AND ORDER

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

Louis Wasserstrum, Esq., Attorney for Defendant-licensees Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor in and upon their licensed premises, in violation of Rule 1 of State Regulation No. 20.

On Friday night, April 17, 1959, ABC agents who were in defendants' licensed premises observed an apparent minor consuming beer at the bar. The agents identified themselves and, ascertaining that the apparent minor was John --- (age 20), seized for evidential purposes the remaining portion of his drink and obtained from him a signed, sworn statement in which he states that he was served three or four glasses of beer by the barmaid who required no written proof of his age. The barmaid (Tekla Dzialo, one of the licensees herein) stated that she served the youth believing him to be of full age because he was in the U.S. Navy and had verbally represented to her that he was 21 years old.

Defendants have no prior adjudicated record. I shall suspend their license for the minimum period of ten days for the unaggravated sale of alcoholic beverages to a 20-year-old minor (Re Baran, Bulletin 1273, Item 1) and remit five days for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 18th day of May, 1959,

ORDERED that plenary retail consumption license C-22, issued by the Mayor and Council of the Borough of Wallington to Tekla & Theodore Dzialo, t/a Teddy' & Tillie's Tavern, for premises 54 Lester Street, Wallington, be and the same is hereby suspended for five (5) days, commencing at 3 a.m. Monday, June 1, 1959, and terminating at 3 a.m. Saturday, June 6, 1959.

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)
)
 R.T.B., INC.)
 N. W. Cor. of Ocean and) ORDER
 Farragut Avenues)
 Seaside Park, N. J.)
 Holder of Plenary Retail Consumption License C-1, issued by the Mayor and Borough Council of the Borough of Seaside Park.)
)

BY THE DIRECTOR:

By Order dated January 20, 1959, I suspended defendant's license for twenty days. Because defendant's premises were then closed, the Order provided that the effective dates for the suspension would be fixed by subsequent order after the premises reopened for the 1959 season (Re R.T.B., Inc., Bulletin 1266, Item 4).

It now appearing to my satisfaction that defendant's premises have been reopened for the 1959 season,

It is, on this 19th day of May, 1959,

ORDERED that the twenty-day suspension heretofore imposed shall commence at 2 a.m. Tuesday, June 2, 1959, and terminate at 2 a.m. Monday, June 22, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

8. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CLUB - STOCK OF ALCOHOLIC BEVERAGES, FIXTURES AND FURNISHINGS IN CLUB ORDERED FORFEITED - PERSONAL ITEM RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure) Case No. 9919
 on March 7, 1959 of a quantity of)
 alcoholic beverages, fixtures,)
 furnishings, and equipment, and) ON HEARING
 \$126.58 in cash, in the Sportsmen's) CONCLUSIONS AND ORDER
 Club quarters located at 203)
 Englewood Avenue, in the City of Engle-)
 wood, County of Bergen and State of)
 New Jersey.)

Nicholas A. Carella, Esq., Attorney for the Sportsmen's Club.
 Que City Vending Co., by Charles H. Washington.
 Arthur E. David, Jr., Pro se.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, \$126.58 in cash, and

various fixtures, furnishings, and equipment, described in a schedule attached hereto, seized on March 7, 1959, at the club quarters of the Sportsmen's Club, located at 203 Englewood Avenue, Englewood, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing, pursuant to R.S. 33:1-66, an appearance was entered by counsel for the Sportsmen's Club, who stated that the club desired a determination of what is unlawful and what is not unlawful so far as the property is concerned, which, except as hereinafter set forth, was represented to be owned by the club. Aside from such statement, no evidence was presented on behalf of such club. An appearance was also entered by Charles H. Washington, who sought return of a cigarette machine, and by Arthur E. David, Jr. who sought return of a tape recorder and tapes.

It appears from the testimony of an ABC agent that he visited the premises in question on two occasions to investigate a complaint that alcoholic beverages were being sold there without a license. On the first occasion, on February 28, 1959, he entered a large room equipped with tables, chairs, a bar, bar stools, cigarette machine, a television set, and a tape recorder and tapes. There was also a back bar on which were displayed bottles of alcoholic beverages. Various persons were observed being served alcoholic beverages at the bar and tables, and the agent purchased two drinks of whiskey at the bar.

This agent returned on March 7, 1959, at which time there were about 35 persons present, some seated at the bar and others at tables, who were being served with and were drinking alcoholic beverages. The agent was served with drinks of whiskey and a bottle of beer.

After the agent was served with the last drink of whiskey, other ABC agents and local police officers entered and all of the officers disclosed their identity to Marshall Johnson, the bartender. Walter Farris, who stated that he was the president of the club, was also present.

Neither Marshall Johnson nor Walter Farris hold a license authorizing either of them to sell alcoholic beverages, and the premises were not licensed for that purpose. The agents seized the alcoholic beverages in the premises, the fixtures, furnishings, and equipment therein, and \$67.00 in a drawer back of the bar, and \$59.58 in a metal box on the back bar.

From the evidence presented, it is clear that there was a practice at the club of selling alcoholic beverages without a license, and that the seized alcoholic beverages were intended for that purpose and hence are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages and all other personal property seized therewith in the premises, including the \$126.58 in cash, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Charles H. Washington testified that he and his brother, trading as Que City Vending Co., are the owners of the seized cigarette vending machine, which was placed in the premises some time in September 1958, at the request of one of the members of the club; that he visited the premises about every two weeks to service the machine; that he observed the bar, and that alcoholic beverages may have been displayed, but he never paid any attention, that he was not concerned therewith; and that he did not inquire whether the club had a license to sell alcoholic beverages. It is clear that Washington knew, or should have known, that alcoholic beverages were being served there, and failed, deliberately or otherwise, to ascertain whether or not the club was licensed for

that purpose. Under such circumstances, his application for return of the cigarette machine is denied. Seizure Case No. 7014, Bulletin 735, Item 8. Also see Seizure Case No. 8634, Bulletin 1056, Item 4.

Arthur David, Jr. presented a duplicate sales receipt from Davega Stores Corporation evidencing his purchase on January 22, 1957 of a Webcor Tape recorder, Model TRLP2712, which is identified as the item seized in the case. He testified that he is employed as assistant manager of a retail establishment, is single, resides with his sister, is not a member of the club, and has never been accused of any crime; that about six weeks prior to the seizure he loaned the recorder and six tape recordings to June Wright, a personal friend who resides in Englewood, for use at his home, and does not know how it came about that these items were at the club; that when he heard a tape recorder had been seized at the club, he asked his friend of the whereabouts of his recorder, and Wright merely told him, "Don't worry about it. You will get your tape recorder back" and thereafter visited the Englewood Police Department, who advised him to communicate with this Division.

The evidence presented indicates that Arthur David, Jr. acted in good faith and I shall accept his sworn testimony that he did not know that his recorder and tapes were in the club. They will be returned to him upon payment of the costs of their seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 1st day of June, 1959, Arthur E. David, Jr. pays the costs of the seizure and storage of his tape recorder and six tapes, more fully described in Schedule "A" attached hereto, they will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property listed in the aforesaid Schedule "A", constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Dated: May 20, 1959

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 44 - cans of beer
- 37 - bottles of other alcoholic beverages
- 24 - bottles of soda
- 51 - wooden chairs
- 1 - cigarette machine
- 1 - microphone
- 1 - television set
- 4 - bar stools
- 9 - wooden tables
- 1 - tape recorder
- 6 - Hi-Fi tapes
- 1 - refrigerator
- 1 - record player
- 1 - bar
- \$126.58 in cash

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

In the Matter of Disciplinary Proceedings against)

ANTONIO MONIELLO & FRANK ONNEN)
602 Paterson Plan Road)
Union City, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-216, issued by the Board of Commissioners of the City of Union City.)

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

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by such minors in and upon their licensed premises, in violation of Rule 1 of State Regulation No. 20.

On Saturday evening, April 4, 1959, ABC agents who were in defendants' licensed premises observed a bartender (later identified as Robert J. Bergin) sell and serve a glass of beer to each of two females who appeared to be minors, without requesting any written representation as to their ages. When these females had consumed a portion of their beer, the agents identified themselves and, ultimately, ascertained that their names were Gaetana --- and Barbara ---, ages 18 and 19, respectively.

Defendants have a prior adjudicated record. Effective October 6, 1958 their license was suspended by the Director for fifteen days for permitting hostess activity. Re Moniello & Onnen, Bulletin 1248, Item 11. I shall suspend the defendants' license for a period of fifteen days, the minimum penalty for sale to an 18-year-old minor (Re Andoli, Bulletin 1269, Item 8), to which five days will be added for the dissimilar violation which occurred within a five-year period (Re Pleasure Inn, Inc., Bulletin 1272, Item 7), making a total suspension of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

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

ORDERED that plenary retail consumption license C-216, issued by the Board of Commissioners of the City of Union City to Antonio Moniello & Frank Onnen, for premises 602 Paterson Plank Road, Union City, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m., Monday, June 1, 1959 and terminating at 3:00 a.m., Tuesday, June 16, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

10. CANCELLATION PROCEEDINGS - ALLEGATION THAT LICENSE WAS ISSUED IN VIOLATION OF P.L. 1947, c. 94 - ORDER TO SHOW CAUSE DISCHARGED UPON CORRECTION OF ILLEGAL SITUATION

DISCIPLINARY PROCEEDINGS - SALE FOR OFF-PREMISES CONSUMPTION IN OTHER THAN PUBLIC BARROOM BY HOLDER OF PLENARY RETAIL CONSUMPTION LICENSE, WITHOUT BROAD PACKAGE PRIVILEGE - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Cancellation of License and Disciplinary Proceedings against

MORRIS KESSLER t/a KESSLER HOTEL Mt. Pleasant Road Mendham Township, Brookside PO Morristown, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Mendham, which license has been transferred during pendency of these proceedings to

ESTHER KESSLER, MORRIS KESSLER AND HELEN GOLDNER t/a KESSLER'S HOTEL

for same premises.

Morris Kessler, Defendant-licensee, Pro se. William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant was served with notice to show cause why Plenary Retail Consumption License C-2 should not be cancelled and declared null and void in that it was issued in violation of P. L. 1947, c. 94 (R.S. 33:1-12.13 et seq.).

In November 1958 defendant filed an application for a new license for premises located at Mt. Pleasant Road, Mendham Township. The local governing body issued the license for the 1958-59 licensing year, effective November 26, 1958. Defendant was neither the owner nor lessee of the premises so licensed. The aforesaid statute prohibits the issuance of any new license in said municipality (except to "a person who operates a hotel containing fifty sleeping rooms") because there are presently outstanding therein more than one consumption license for each 1,000 of its population. See R.S. 33:1-12.14 and 12.20. Although the premises so licensed are a hotel comprising 85 sleeping rooms, defendant was not "a person who operates a hotel and, therefore, did not come within the pertinent section of the statute.

However, it now appears that the illegal situation has been corrected by transfer of license C-2 from Morris Kessler to Esther Kessler, Morris Kessler and Helen Goldner as operators of the hotel business at the aforesaid premises.

Under the circumstances appearing in this case, the order to show cause will be discharged.

Because of defendant's illegal activity during the time he

operated under the license issued to him, the following charges have been preferred:

- "1. In or about December 1957 and December 1958 you sold alcoholic beverages in original containers for off-premises consumption not from a public barroom of your licensed premises without having the so-called broad package privilege notation on your then current license certificates as set forth in Rule 4 of State Regulation No. 32; in violation of Rule 6 of State Regulation No. 32.
- "2. On the aforesaid occasions, you sold alcoholic beverages in original containers for consumption off the licensed premises not in a public barroom of your licensed premises; in violation of R.S. 33:1-12.23 (P. L. 1948, ch. 98)."

Non vult pleas have been entered to the above charges and, since the violations are sufficiently set forth therein, it is deemed unnecessary to detail the underlying factors.

In admeasuring the penalty, I shall take into account (a) the fact that defendant has no prior adjudicated record and (b) the confessional plea entered herein. Under the circumstances, a ten-day suspension will be imposed against the license. Cf. Re Faller Bowl O'Drome, Inc., Bulletin 959, Item 8.

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

ORDERED that the order to show cause herein be and the same is hereby discharged and it is further

ORDERED that plenary retail consumption license C-2, issued by the Township Committee of the Township of Mendham to Morris Kessler, t/a Kessler Hotel, for premises on Mt. Pleasant Road, Mendham Township, and transferred to Esther Kessler, Morris Kessler and Helen Goldner, t/a Kessler's Hotel, for premises on Mt. Pleasant Road, Mendham Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., Monday, June 1, 1959, and terminating at 2:00 a.m., Thursday, June 11, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

11. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FOR SUSPENSION PREVIOUSLY IMPOSED FIXED UPON REOPENING OF PREMISES FOR BUSINESS.

In the Matter of Disciplinary Proceedings against)

ABATE'S TAVERN, INC.)
t/a TERRY'S 309 BAR)
309 Jersey Avenue)
Gloucester City, N. J.)

ORDER

Holder of Plenary Retail Consumption License C-35, issued by the Mayor and Common Council of the City of Gloucester City.)

David Novack, Esq., Attorney for Defendant-licensee

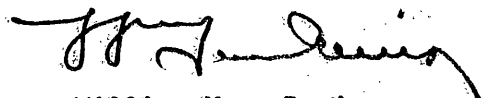
BY THE DIRECTOR:

By order dated May 13, 1959, I suspended defendant's license for ten days. Because it then appeared that the licensed premises were not being operated, the order provided that the effective dates for said suspension would be fixed by a subsequent order after the premises shall have opened for business.

It now appearing to my satisfaction that defendant's premises have been opened for business,

It is, on this 20th day of May, 1959,

ORDERED that the ten-day-suspension heretofore imposed shall commence at 2 a.m. Monday, June 1, 1959, and terminate at 2 a.m. Thursday, June 11, 1959.



William Howe Davis
Director