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

BULLETIN 277 NOVEMBER 2, 1938.

1. DISCIPLINARY PROCEEDINGS - ACTIONS OF FEMALE EMPLOYEES - LICENSE SUSPENDED FOR BALANCE OF ITS TERM.

In the Matter of Disciplinary Proceedings against

GARDEN REST, INC.,
t/a NAN'S TAVERN,
759 Farragut Place,
West New York, New Jersey,

Holder of Plenary Retail Consumption License No. C-26, issued by the Board of Commissioners of the Town of West New York.

CONCLUSIONS AND ORDER

Cohen & Abramson, Esqs., by Theodore Cohen, Esq.,
Attorneys for the Licensee.
Richard E. Silberman, Esq.,
Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge 1 of the charges served upon the licensee alleges, in substance, that on January 13, February 23 and June 17, 1938 it employed a female bartender, contrary to a resolution of the Town of West New York.

On January 13, 1938 Investigators Palmieri and King visited the licensed premises. They testified that a girl, known as "Madeline", was tending bar at that time. On February 23, 1938 Investigators Best and King, while visiting the licensed premises, saw the same girl tending bar. On June 17, 1938 Investigators Kane and Ratti also visited the licensed premises. Investigator Kane testified:

"There was a girl dressed in a blue waitress costume, with a white collar, white cuffs and sleeves. She was tending bar. We later learned her name to be 'Tony'."

The only evidence given at the hearing which tends in any way to contradict the testimony of the Investigators was that of Marie Cohen Balken, who is known as "Nan" and who is President of licensee corporation. She testified that the only female employees of the Corporation during the period in question were Betty Mack and Cecelia Mack, who were employed as waitresses and Betty Delaney, who represented herself to the Investigators as Manager in the absence of the President of the Corporation. Mrs. Balken further testified that she never employed bartenders by the names of "Madeline" or "Tony." This evidence standing alone is insufficient to offset the positive evidence given by the Investigators. The question is not what were the true names of the women but whether female bartenders, whatever their name, were employed on the licensed premises. I find the licensee guilty as to the first charge.

New Jersey State Library

Charges 2 and 3 allege, in substance, that on January 16, 1938 the licensee sold and served alcoholic beverages and permitted persons other than the licensee, its employees or agents in or upon the licensed premises after 3:00 A.M., in violation of a resolution adopted by the Board of Commissioners of the Town of West New York. Investigators Palmieri and King testified that, during the course of their visit on January 16, 1938, they were served alcoholic beverages at approximately 6:00 A.M., and remained on the licensed premises until about 6:30 A.M.; that many other patrons were served with alcoholic beverages between 3:00 A.M. and 6:00 A.M. The President of the licensee admits the violation, her only excuse being that "business was so completely bad before three o'clock; at three o'clock the business would start coming." The licensee is guilty as to Charges 2 and 3.

Charge 4 alleges, in substance, that on January 13, January 16 and June 17, 1938, licensee allowed, permitted and suffered the service and delivery of alcoholic beverages to, and consumption of alcoholic beverages by, persons actually or apparently intoxicated, contrary to Rule 1 of State Regulations No. 20. Investigator Palmieri testified that, during the course of his visit on January 13, 1938, five girls were at the bar drinking with two men; that one of the men named "Tony" was very well under the influence of liquor and in a staggering condition. Investigator King fixed the date of the incident concerning "Tony" as January 16th, but I believe that he was confused as to the date because of the length of time which has elapsed since the incident occurred. His testimony, however, corroborates Palmieri's as to "Tony's" physical condition. Investigator Kane testified that, on June 17, 1938, while he was present, a man named "Frank", who was apparently intoxicated, came out of the sitting room supported by a girl named "Pat;" that "Pat" on several occasions would say to this man "Come on, Frank buy me another drink." This man was also served several drinks. The evidence is sufficient to show that the licensee is guilty on Charge 4 so far as said charge refers to January 13 and June 17, 1938.

Charge 5 alleges:

> "On January 13, January 16, February 23 and June 17, 1938, you allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance, in that you allowed, permitted and suffered your female employees to induce, solicit and entice male patrons to purchase and consume alcoholic beverages; you allowed, permitted and suffered alcoholic beverages to be served to intoxicated persons; you allowed, permitted and suffered your licensed place of business to remain open during prohibited hours; you employed female bartenders; you allowed, permitted and suffered male patrons to be defrauded of funds by trickery, chicanery, allurement and enticement; all in violation of Rule 5 of State Regulations No. 20."

Investigator Palmieri testified that, during the course of his visit to the licensed premises on January 13, 1938, a girl named "Shirley" came up to the bar and requested him to buy her a drink, which he did; that "Shirley" later told him that she was working there on a commission basis, getting twenty cents per drink. He and Investigator King both testified that, during the course of

their visit on January 16, 1938, a girl named "Sally" came to the bar and requested King to buy her a drink, which he did. Investigator Palmieri testified that on this occasion "Madeline", who was tending bar, told him that the girls employed at Nan's were working there on a commission basis and that they were getting twenty cents for each drink that they solicited. Investigator Best testified that, during the course of the visit on February 23, 1938, he and Investigator King purchased three or four drinks at the request of a girl known as "Sugar." The Investigators later learned that her real name was Betty Mack. The President of the licensee corporation has admitted that Betty Mack was employed as a waitress. Investigator Kane testified that, on June 17, 1938, patrons bought drinks for "Shirley" and other girls known as "Bobby" and "Pat" after the girls had requested the patrons to buy the drinks. Despite the testimony of the President of the licensee corporation that none of these girls, except Betty Mack, was employed on the premises, I am satisfied from the evidence that these girls were employed as hostesses. There is nothing in the State law or the municipal regulation of the Town of West New York prohibiting the employment of hostesses on licensed premises and, hence, this evidence is material only in determining whether the employment of these hostesses on a commission basis, together with the other facts, is sufficient to show that the licensed premises were conducted in such a manner as to become a nuisance. Testimony as to service to intoxicated persons, keeping the premises open during prohibited hours and employing female bartenders has been considered. In fairness to the licensee, it should be said that the evidence is not sufficient to show that male patrons were defrauded of funds.

The question to be determined is whether all the evidence considered together is sufficient to show that the licensed business was conducted in such a manner as to become a nuisance. A nuisance may be either private, affecting persons residing in the neighborhood of the premises, or public, that is, injurious to the public health, public quiet or public morals. There is nothing in this case to show that the conduct of the place constituted it a private nuisance. A public nuisance is not clearly defined in the law, but it seems to be well established that a place may be considered a public nuisance despite the absence of any evidence of violence or noise disturbing the neighborhood. In State vs. Williams, 30 N.J.L. 102, the Court says:

> "Any place of public resort, whether an inn, a dwelling house, a storehouse, or any other building, or garden, is a public nuisance, in which illegal practices are habitually carried on, or when it becomes the habitual resort of thieves, drunkards, prostitutes, or other idle, vicious, and disorderly persons, who gather together there for the purpose of gratifying their own depraved appetites, or to make it a rendezvous where plans may be concocted for depredations upon society, and disturbing either its peace or its rights of property.
>
> "Such collections of persons can have no other effect than to debauch and deprave the public morals, although they may be quiet and orderly places, so far as mere noise and confusion is concerned; although the most

scrupulous cleanliness may be observed, and they may be magnificent in ornament, and luxurious in their provisions for mere sensual gratifications, they are notable nuisances at common law, because they are nocumenti, nuisances, that is, injurious to the public health, public quiet, or public morals."

Despite the fact that the licensed premises were conducted in an improper manner on numerous occasions, I conclude that, under the evidence set forth above, it was not conducted in such a manner as to become a "nuisance" within the meaning of Rule 5 of State Regulations No. 20. The fifth charge is, therefore, dismissed.

The licensed premises were closed at the time of the hearing, and the equipment has been removed from the premises. Under the circumstances, the license will be suspended for the balance of its term; leave, however, being reserved to the licensee to apply for a modification of this order after the expiration of ninety (90) days from the date hereof. No order of modification will be entered herein except for the purpose of permitting transfer of said license to a duly qualified person or persons other than those having any interest in the corporate licensee mentioned herein.

Accordingly, it is on this 25th day of October, 1938,

ORDERED that Plenary Retail Consumption License No. C-26, heretofore issued to Garden Rest, Inc., t/a Nan's Tavern, by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for the balance of its term, effective immediately; with leave reserved to the holder of said license to apply for a modification of this order of suspension in accordance with the above conclusions.

D. FREDERICK BURNETT
Commissioner

2. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 25, 1938.

RE: CASE NO.234

Applicant admits that, about 1924, he served thirty days in jail after having been found guilty on some charges concerning the entry of an alien into the United States and that, in 1926, he served twenty months in jail for a violation of the Prohibition Act.

Fingerprint records disclose no criminal record.

The Clerk of the United States District Court, District of Vermont, has advised that, in 1924, applicant pleaded guilty to a violation of the Passport Control Act and was sentenced to a County Jail for thirty days; that he cannot give any history of the case. Applicant testified that the charge arose by reason of the fact that he and his wife had attempted to bring into this country from Canada an alien who was a citizen of Switzerland and a friend of applicant's wife; that shortly after they had crossed the Canadian border on foot, applicant was placed under arrest and the alien ordered to return to Switzerland, from which country she subsequently entered the United States in a legal manner. I conclude that no moral turpitude was involved in this conviction.

A District Attorney, in Pennsylvania, has advised that, in 1926, applicant was found guilty of violation of the Prohibition Enforcement Act and sentenced to pay a fine of $5,000. and to serve one and one-half to three years in the County Prison. Applicant testified that, at that time, he was conducting a "speak-easy" and that his arrest followed a sale of alcoholic beverages. The sentence seems unusually severe but applicant contends that the lengthy sentence was due to politics; that he served twenty months of his term and did not pay the fine. Aside from the length of sentence, there is no evidence leading to the conclusion that there were any aggravating circumstances. I believe that the crime did not involve moral turpitude.

It is recommended that applicant be advised that he is eligible for a license and eligible to be employed by a licensee, despite the convictions set forth herein.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT
Commissioner.

3. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application)
to Remove Disqualification because
of a Conviction, Pursuant to the)
Provisions of R.S. 33:1-31.2 (as CONCLUSIONS
amended by Chapter 350, P.L. 1938).)

Case No. 37.)

. . . .

BY THE COMMISSIONER:

Petitioner prays for the removal of his disqualification because of the conviction against him in 1930, which is set forth in Re Case No. 179, Bulletin 206, Item 12.

Since his release from the Reformatory in 1931, petitioner, a married man, has resided continuously in the City where he lived at the time of his conviction. He was employed by various trucking concerns from 1931 to September 1937, when he lost his employment because of the ruling made in Re Case No. 179 supra, and has worked on W.P.A. projects since that time. In 1935 petitioner was arrested because of some labor trouble, but the case was nolle prossed and there is no conviction against him except the conviction in 1930.

Two officers of his Union testified that they have known petitioner for nine and twelve years respectively, and that his conduct has been good since his release from the Reformatory. A parole agent, of the State Division of Parole, testified that his parole record has been favorable.

I conclude that petitioner has conducted himself in a law-abiding manner since 1931, and that his association with the alcoholic beverage industry will not be prejudicial to that

industry or to the public interest. Accordingly, his disqualification will be removed.

It is, therefore, on this 25th day of October, 1938

ORDERED that petitioner's disqualification from holding a license or being employed by a licensee because of the conviction referred to herein, be and the same is hereby removed, in accordance with R.S. 33:1-31.2, as amended.

D. FREDERICK BURNETT
Commissioner

4. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULE - LICENSEES MAY NOT SERVE ANYBODY ON ELECTION DAY WHILE THE POLLS ARE OPEN EVEN OUT OF SO-CALLED "PRIVATE STOCK."

October 28, 1938.

Wilfred G. Turner,
City Clerk,
Union City, N. J.

My dear Mr. Turner:

I have before me staff report and your letter of October 24th re disciplinary proceedings conducted by the Board of Commissioners on October 19, 1938, against Virginio Molteni, 394 Bergenline Avenue and Carl Wohltmann, 886 Bergenline Avenue.

I note that Molteni was charged with sale or delivery of alcoholic beverages on Primary Election Day last past; that he pleaded not guilty and the charges were dismissed. The staff report states:

> "At the hearing, the licensee admitted that Hendrickson had found two men seated at a table and explained that he had poured the beer from a can which he obtained from the icebox and mixed the highball for himself, the ingredients also being obtained from the icebox. Bergmann, who turned out to be the bartender and porter, corroborated the licensee. The defendant's attorney contended that Regulations 20, Rule 2, in providing that no licensee shall 'deliver' any alcoholic beverages to consumers meant delivery by retailers to their customers via automobile and that a licensee could treat his friends to drinks in his own kitchen."

The alibi of a licensee's private supply is becoming popular. The same claim was made in Re Zenda, Bulletin 271, Item 5. In that case, I held that it mattered not where the beverages were obtained; the important thing was that the regulation prohibiting their service was violated. So in the Molteni case, the important thing is that the State regulation prohibits, among other things, the delivery of any alcoholic beverages while the polls are open for voting. This does not mean, as speciously argued by the licensee's attorney, that only delivery by retailers to their customers via automobile is prohibited. Licensees, just because they are licensees, are

barred from serving alcoholic beverages on election days while the polls are open. It makes no difference to whom the service is made, or whether the liquor comes from the regular icebox or the kitchen sink. I hope your Board will not be hoodwinked by any such alibi again.

I further note that Wohltmann was charged with sale of alcoholic beverages on Primary Election Day and, in addition, sale of less than 72 ounces of beer contrary to the restrictions of his limited retail distribution license; that he pleaded guilty and his license was suspended for ten days.

Please express to the members of the Board of Commissioners my thanks for their prompt action in handling these proceedings and for the ten-day suspension that was imposed on Wohltmann's license. I understand that the licensee sought to escape liability because of the fact that at the time he was in Germany. The Board did exactly right in informing him that he was responsible whether he was there or not.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

5. FAIR TRADE - DISCOUNTS - PERMITTED DISCOUNTS ON CASE LOTS APPLY ONLY TO CASES OF THE SAME ARTICLE - DISCOUNT IS NOT PERMISSIBLE IN RESPECT TO CASES OF ASSORTED ITEMS.

Dear Sir:

Question arises regarding discount of 10% permitted by some distillers on case lot purchases.

Suppose a customer makes up a case of different items produced by a distiller who permits the 10% discount, is the discount on case lots still permissible?

Suppose a customer makes up a case of different items produced by different distillers who permit 10% discount on case lots, is the discount still permissible?

Or does the 10% discount on case lots apply only to a case made up of a single item?

Thank you for your consideration of this matter.

Very truly yours,

City Hall Delicatessen.

October 31, 1938.

City Hall Delicatessen,
East Orange, N. J.

Gentlemen:

In the official bulletins promulgating prices, the term "discount of 10% permitted on case lot purchases" means that such discount may be given only where a case of 12 quarts (or fifths - or 24 pints of half-fifths) of the very same article is sold to one customer.

It does NOT apply to a case of assorted items whether that assortment is made of the goods of a particular or of several manufacturers.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - PITMAN vs. PEMBERTON TOWNSHIP.

MARGARET A. PITMAN,	:	
Appellant,	:	
-vs-	:	On Appeal
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PEMBERTON,	:	CONCLUSIONS.
Respondent.	:	

James M. Davis, Jr., Esq., Attorney for the Appellant,
J. Garfield Lemmon, Chairman of the Township Committee of the Township of Pemberton, for the Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of the appellant's application for a plenary retail consumption license for premises located on the west side of Lakehurst Road, in Browns Mills, Pemberton Township.

The Township is mainly rural and has a population estimated at twenty-five hundred during the summer and one thousand during the remaining seasons of the year. Its only business and population center is the unofficial community of Browns Mills, in which appellant seeks to locate. There are sixteen taverns in the entire Township and twelve of these are located in Browns Mills. There are seven taverns within a half-mile of the premises sought to be licensed by the appellant.

Early in 1938 the licensees of Pemberton Township petitioned the Township Committee not to issue any new licenses on the ground that a sufficient number of establishments had already been licensed and the Committee evidently advised the licensees that they would "go along" with their position. The appellant contends, in effect, that this constituted an illegal promise by the Committee, divesting itself of its duty to exercise its discretion in passing on future applications for licenses. I cannot agree with this contention, particularly in the light of the testimony by each member of the Township Committee introduced at the hearing on appeal. J. Garfield Lemmon, Chairman of the Committee, testified that there are a sufficient number of licensed establishments in Browns Mills and that he agreed with the tavern keepers that they "had enough saloons"; Clifford Emmons, Township Committeeman, testified that in his opinion there are a sufficient number of licensed places of business in Browns Mills and that the reason the appellant's application was denied was because "we thought we had enough there"; and the remaining Township Committeeman, Leon Bush, testified that "twelve in a small area as that is (Browns Mills), I would think it is plenty". In addition, Committeemen Emmons and Bush testified that they thought that they would have voted to deny the appellant's application on the ground that there were enough licenses outstanding in the vicinity even though there had never been any request by other licensees that applications for new licenses be refused.

There can hardly be any question that there are now enough licensed places in Browns Mills and that the Township Committee has discretionary authority to decline to issue any additional licenses for premises in that locality. Cf. Santoriello vs. Howell, Bulletin 252, Item 8; Mita vs. Orange, Bulletin 266, Item 10; Sudol vs. Wallington, Bulletin 267, Item 10. And while it is true that the Township Committee could not lawfully delegate to licensees or other persons the power and duty of determining whether any additional licenses should be granted (cf. Lewis vs. Phillipsburg, Bulletin 232, Item 13; Polansky vs. Millburn, Bulletin 258, Item 2), I am satisfied that no such delegation actually took place but that the members of the Committee, in good faith, agreed with the assertion of the licensees that the number of licenses outstanding was sufficient and that consequently no additional licenses should issue. The fact that the Committee's conclusion that there were enough licenses outstanding was influenced by arguments, economic and otherwise, advanced by the licensees does not indicate an abdication of its functions by the Committee or other impropriety. Cf. Kahn vs. Orange, Bulletin 173, Item 5.

One further item appearing in the record requires mention. The Chairman of the Township Committee testified that he permitted the other eleven licensees in Browns Mills to decide for him whether the twelfth license should be issued to the appellant or to Susie Johnson, an old licensee who had transferred her license to new premises and was applying for renewal. This was clearly improper since it was incumbent upon the Chairman to exercise his own independent judgment on each pending application. However, the impropriety of the Chairman's action is insufficient to warrant a reversal of the denial of the appellant's application. In the first place, the record indicates that the remaining members of the Committee, constituting a majority thereof, exercised their independent judgments in preferring Susie Johnson, the applicant for renewal, over the appellant, the applicant for a new license. In the second place, the appellant has not made Susie Johnson a party to this appeal nor has she taken any independent appeal from the issuance of her license. Accordingly, there could not, in any event, be a determination by the Commissioner on this appeal that the appellant should have been preferred over Susie Johnson and that the latter's license should therefore be cancelled and a new license issued to the appellant. The alternative which the appellant may suggest, namely - that a license be issued to the appellant without affecting Susie Johnson's license - would result in the issuance of an additional license in a vicinity thickly supplied with taverns. This would be directly contrary to the clear public interest.

The action of the respondent is affirmed.

D. FREDERICK BURNETT

COMMISSIONER

Dated: October 30, 1938.

7. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 29, 1938.

RE: CASE NO. 235.

In his application and questionnaire, applicant denied he had ever been convicted of a crime.

At a hearing, he admitted that, in 1931, he had been convicted, on a charge of violating the National Prohibition Act, as his fingerprint records disclosed; that, as a result of said conviction, he had been sentenced to thirty days in jail and fined $150.; that he had served his sentence. Investigation shows that, at the time of his arrest, applicant was conducting a "speak-easy." There appear to be no aggravating circumstances and, hence, no question of moral turpitude is involved.

Applicant testified that he swore he had never been convicted of a crime because he did not think that violation of the National Prohibition Act was a crime and because he had been so advised by his attorney in 1933 and 1936 when he applied for and obtained retail licenses in a New Jersey municipality. The answer is false and the advice, even if given, does not excuse the applicant, who knew that he had served thirty days in jail after his conviction. Applicants must learn that the questions asked must be answered fully and frankly and that, if they choose to depend on poor advice, they must suffer the consequences.

It is recommended that the issuance of the permit be withheld thirty (30) days from the date upon which the application was filed, namely, until November 13, 1938.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT
Commissioner.

8. STATE BEVERAGE DISTRIBUTORS - GIFTS - GIFTS OF ALCOHOLIC BEVERAGES TO RETAILERS PERMISSIBLE - GIFTS OF ALCOHOLIC BEVERAGES TO CONSUMERS PROHIBITED.

October 29, 1938.

Mr. Michael A. Buglio, Jr.,
T/a Imperial Distributing Co.,
Vineland, N. J.

My dear Mr. Buglio:

I have yours inquiring if you may give a quantity of beer, without charge, to a customer who has purchased a certain specified amount.

According to my records, you hold a State beverage distributor's license.

You may, within the limits of ruling in Re Schlesinger, Bulletin 196, Item 2, make such gifts to licensed retailers.

But you may not give beer to consumers. So far as your retail business is concerned, it is prohibited by Rule 20 of Regulations No. 20 (Pamphlet Rules, page 63), which provides that no retail licensee shall offer or furnish any gifts or similar inducements with the sale of any alcoholic beverages for off-premises consumption, excepting only advertising novelties of nominal value.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

9. ADVERTISING - RETAIL LICENSEE MAY ADVERTISE IN SAME CIRCULAR AS NON-LICENSED FOOD STORE.

October 29, 1938.

David A. Entlich,
Summit, N. J.

My dear Mr. Entlich:

You inquire if it is permissible to advertise your wines and liquors on the same circular as a non-licensed food store.

I see no objection, in principle, provided the subject matter of the advertisement is proper, and the wording and layout are such that the liquor store and the other ads are clearly distinguishable as separate advertisements of separate places.

I note that you have taken the precaution of writing into your ad "No connection with Central Market."

The layout and copy is approved as submitted.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALES ON SUNDAY - 20 DAYS' PENALTY.

October 31, 1938.

Arthur V. Conover, Clerk,
Manalapan Township,
Freehold, R.D. #3, N.J.

My dear Mr. Conover:

I have before me your letter of October 20th reporting disciplinary proceedings conducted by the Township Committee on October 14, 1938 against Constantine Borodunovich, State Highway #33, Millhurst, the holder of plenary retail consumption license #C-3, charged with sale of alcoholic beverages on Sunday before 1:00 P.M. in violation of local regulation.

I note that the licensee was found guilty and his license suspended for 20 days. I understand that although the violation was discovered by my investigators, the proceedings

were instituted by the Township Committee on its own initiative without waiting for the synopsis of the investigation to be prepared and transmitted to it.

While I can express no opinion on the merits because perchance the case may come before me on appeal, I nevertheless wish that you would convey to the members of the Township Committee my deep appreciation for their initiative in instituting the proceedings and the substantial penalty imposed.

Penalties such as these are heartening to the cause of law enforcement. They command respect for the law and let the licensees of Manalapan know that the Committee means business. I don't believe you will have any further trouble with Borodunovich or any other licensee because of sales out of hours.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULE - FIVE DAYS IS INADEQUATE PENALTY FOR VIOLATION OF THIS RULE AFTER FIVE YEARS OF REPEAL.

October 31, 1938.

Wilfred R. Woodward,
Township Clerk of Raritan (Middlesex County)
New Brunswick R. D. #1, N. J.

My dear Mr. Woodward:

I have before me staff report and certified copy of resolution and order, and notice of suspension in disciplinary proceedings conducted by the Board of Commissioners on October 17, 1938, against James Tsalos, t/a Blue Heaven Inn.

I note that he was charged with sale of alcoholic beverages on Primary Election Day during the hours the polls were open; that he pleaded not guilty but that his license was suspended for five days.

While I can express no opinion on the merits because the case may come before me by way of appeal, I nevertheless wish that you would convey to the members of the Board of Commissioners my appreciation for their prompt action.

According to the staff report, the licensee freely admitted both to my investigators and to the Board that he had opened his place at 8:00 P. M. and had been doing business since that time. He sought to explain his jumping the gun by an hour by blaming it on the bartender who believed that to be the opening hour. They usually blame it on somebody else and all too often get away with it. After eight Election Days have occurred since Repeal, it seems indeed strange that licensees do not know that they must not open until the polls are closed. Unless heavy-fisted penalties are meted out to Election Day violators, they will never learn that the regulation was made to be obeyed. That's why I recommended that the minimum suspension for sales during prohibited hours on Election Days be made ten days. Please ask the Board to do so next time when they find a licensee guilty.

Very truly yours,
D. FREDERICK BURNETT
Commissioner.

12. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO MINORS.

In the Matter of Disciplinary Proceedings against)
)
AMERICO A. DE VITO,
139 Park Avenue,)
Newark, New Jersey,
) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License No. C-800,)
issued by the Municipal Board of Alcoholic Beverage Control)
of the City of Newark.
)

. . . .

Pellegrino Pellecchia, Esq., Attorney for the Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were duly served upon the licensee alleging that:

1. On August 19, 1938, he sold alcoholic beverages, to wit, rye whiskey and beer, to Dorothy H., a minor of the age of fifteen years.

2. On the same day he sold an alcoholic beverage, to wit, beer, to Charles Castellano, a minor of the age of nineteen years.

3. On August 20, 1938, he sold an alcoholic beverage, to wit, beer, to Dorothy H., a minor of the age of fifteen years.

   All contrary to R.S. 33:1-77 (Control Act, Section 77) and Rule 1 of State Regulations No. 20.

4. On or about August 19, 1938, he sold, served and delivered, allowed, permitted and suffered the service and delivery to, and allowed, permitted and suffered the consumption of alcoholic beverages in his licensed premises by persons actually or apparently intoxicated, contrary to Rule 1 of State Regulations No. 20.

The licensee pleads non vult as to the first three charges, and not guilty as to the fourth charge.

As to Charges 1, 2 and 3: Dorothy H., who was born on July 26, 1923, testified that, on August 19, 1938, she and Charles Castellano visited the licensed premises at the above address; that she was served with and consumed "two highballs with lemon and a little gin, and seven or eight glasses of beer;" that several of the glasses were served by the licensee, and the rest by the bartender, a brother of the licensee; that, on the following night, namely, August 20th, she again visited the licensed premises and was served with two glasses of beer. Charles Castellano testified that he was born on February 2, 1919; that he was served with eight or nine glasses of beer when he visited the licensed premises with Dorothy H. on August 19, 1938.

The licensee testified that he was alone in his place of business on the evening of August 19th; that he was very busy; that the girl and Castellano both seemed to be of age and that he served them with a few drinks without any inquiry as to the age of either of them. The Hearer advises that the girl appeared to be more than fifteen years of age, although she appears to be less than twenty-one years of age.

As to Charge 4: The girl was served with many drinks on the evening of August 19th. It does not appear that she showed any signs of intoxication until after she left the licensed premises. There is testimony that some time later in the evening she returned to the licensed premises showing signs of intoxication but there is no evidence that she was served with drinks at that time. In response to the question: "Could the tavernkeeper tell there was anything wrong with you when the alcoholic beverages were served to you?", she answered: "No, he could not." Castellano testified:

> Q. Did you, while you were there, observe any of the members of your party get drunk on that night?
> A. No, Sir."

While I doubt the capacity of this young girl to drink the quantity of alcoholic beverages she consumed on August 19th without showing signs of intoxcation, the evidence is not sufficient to show that any alcoholic beverages were sold to her while she was actually or apparently intoxicated. The fourth charge must, therefore, be dismissed.

The licensee has no previous record. The license will be suspended for ten days for sales to minors on August 19, 1938 and an additional ten days because of sales to a minor on August 20, 1938, making a total suspension of twenty days.

Accordingly, it is on this 31st day of October, 1938

ORDERED that Plenary Retail Consumption License No. C-800, issued to Americo A. DeVito by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and hereby is suspended for a period of twenty (20) days, effective 3:00 A. M. November 4, 1938.

D. FREDERICK BURNETT
Commissioner

13. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - LEWDNESS - REVOCATION INDICATED AND EFFECTED.

In the Matter of Disciplinary Proceedings against Elsie Travisano 446 No. Fifth Street, Newark, New Jersey Holder of Plenary Retail Consumption License #C-103, issued by the Newark Municipal Board of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

. . . .

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Warren Littman, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The licensee was charged with

(1) Permitting lewdness and immoral activities upon the licensed premises in violation of State Regulations #20, Rule #5;

(2) Permitting known prostitutes and other persons of ill-repute upon the licensed premises in violation of Regulations #20, Rule #4;

(3) Employing females to serve alcoholic beverages to patrons in violation of Section (a) of resolution of the Newark Municipal Board of Alcoholic Beverage Control adopted August 29, 1934;

(4) Employing a female to tend bar on the licensed premises in violation of Section (b) of the above resolution;

(5) Permitting females to act as hostesses on the licensed premises in violation of Section (c) of resolution of the Newark Municipal Board of Alcoholic Beverage Control adopted August 29, 1934;

(6) Sale of alcoholic beverages in open containers for consumption off the licensed premises in violation of R.S. 33:1-12 (Control Act, Section 13(1)).

On June 15, 1938, Investigators Hulin and Best visited the licensed premises and while drinking at the bar, were approached by a colored girl named Edith who asked Investigator Hulin whether he cared to dance to the music of the Victrola. As they danced, she moved her body suggestively against his and at the completion of the dance asked Hulin to buy her a drink, which he did, ordering them from the licensee. She next danced with Investigator Best in the same manner. After another round of drinks, she danced alone to the music of the Victrola lifting her dress above her hips and exposing her body to the investigators. She requested a quarter, and placing it on the table and straddling it, picked up the quarter by a movement of her body and legs.

Again on June 22nd, the same investigators returned to the premises, ordered drinks and were served by Edith from behind the bar. She likewise served another patron a glass of beer. When the investigators started to play the Victrola, Edith again danced alone, this time removing her underclothing. In addition to the investigators, she also exposed her body to the view of a patron who came to the door of the sitting room where she was dancing.

The licensee spoke to Investigator Best and observed that it was too bad that all the girls were busy, suggesting that if they waited a while, some of them might be free. As they were leaving, Edith sugggested that if they were going to get "fixed up", they might as well stay there because Elsie (the licensee) would permit the use of the back room.

On August 4, 1938, Investigator Thievon visited the licensed premises around noon. The licensee showed him the back sitting room and also said that if he was out for a good time,

she had some nice hide-away rooms which she thereupon showed him. The rooms are those comprising an apartment opening off a hall to which access may be had from the licensed premises. There were four rooms in all, each containing a table, two chairs, a couch, a rug, and a lamp and in one room a service bar. In addition to the foregoing equipment, each room had a buzzer button on the wall which the licensee explained was to be used in case drinks were wanted.

On the next day, Investigator Thievon returned with Investigator King. The licensee said that the girls were all busy and that if they would be patient, some of them would be free shortly. While they were consuming the second round of drinks, the licensee introduced a girl named Rose, suggesting that the three of them go into the sitting room. Shortly thereafter, the licensee brought in a girl whom she introduced as Bea. More drinks were had and as the Victrola was playing, Edith appeared and repeated the performance that she had given for Hulin and Best on the occasion of their visit except that this time she raised her dress above her breasts. After King remarked that the performance was pretty good, Bea and Rose said that if the investigators wanted to see something good, they would show it to them. Thereupon Bea and Rose both got up to dance, Bea unbuttoning the front of her dress, which was her sole garment, and all three danced at the same time. At the conclusion of the dance, the licensee came into the sitting room and introduced Edith and a girl named Jean.

At the suggestion of the licensee, the investigators and Rose and Bea retired to the "hide-away" rooms, each couple taking with them from the bar a tray of four drinks. The licensee was paid $3.00 by each investigator, one dollar representing the cost of the tray of drinks and two dollars representing the cost of the room. Immediately upon entering the rooms, both girls disrobed and at the time the raiding party, consisting of Newark policemen and an inspector of this Department, arrived, by prearrangement, one was found in that condition and the other had managed to put on a slip.

The licensee's defense to the charges is that Edith is employed as an entertainer to play the piano and to sing classical songs; that Rose and Bea were merely customers who scraped an acquaintance with the investigators; that she offered the party of four the use of her own apartment in which to drink because a party of six colored people had come into the sitting room and Investigator King objected to their presence. The buzzers, she explained, after first attempting to deny their presence, as having been installed for the use of her invalid mother during her lifetime. With respect to the lewd conduct of Edith, Rose and Bea, the licensee rests on the fact that she was not present at the time. The other violations charged, with the exception of sale of alcoholic beverages in open containers for off-premises consumption (No. 6 above) are categorically denied.

It is incredible that the licensee should permit the use of her home by four strangers, patrons who had been there, by her own admission, not more than once or twice. The testimony of the neighbors and the regular patron that they had never witnessed any improper conduct, is valueless. It does not appear that any of them were there on the occasions that the agents observed the violations. The denials of the employees Edith and Jean are what could be expected.

I find the licensee guilty on all charges. The license will be revoked.

Accordingly, it is on this 31st day of October, 1938, ORDERED that Plenary Retail Consumption License #C-103, heretofore issued to Elsie Travisano for premises 446 No. Fifth Street, Newark, N. J., by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby revoked, effective immediately.

D. Frederick Burnett
Commissioner

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