

BULLETIN 1034

October 19, 1954.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

October 19, 1954.

BULLETIN 1034

1. APPELLATE DECISIONS - GUFFANTI and MAGRINO v. HACKENSACK.

ALBERT GUFFANTI and JOSEPH)
MAGRINO, t/a THEATRE TAVERN,)
Appellants,)

-vs-

CITY COUNCIL OF THE CITY OF)
HACKENSACK,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Herbert F. Myers, Jr., Esq., Attorney for Appellants.
George A. Brown, Esq., by William R. Morrison, Esq., Attorney for
Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellants' plenary retail consumption license (for the 1953-54 licensing year) for a period of fifteen days after it had found appellants guilty of three of four charges preferred against them in disciplinary proceedings. The licensed premises are located at 308-310 Main Street, Hackensack.

The charges preferred against appellants are as follows:

- "1. On Thursday, November 19, 1953, at approximately 3:06 A.M., the licensee sold and served or allowed or permitted the sale and service of alcoholic beverages on the licensed premises in violation of Section 1 of Ordinance No. 269 of the City of Hackensack adopted January 15, 1940 by the City Council of the City of Hackensack.
- "2. Violation of State Regulation No. 20, Rule 24, in that the licensee worked in or upon the licensed premises in an apparently intoxicated condition.
- "3. Violation of State Regulation No. 20, Rule 5, in that on Thursday, November 19, 1953, there was allowed, permitted and suffered in and upon the licensed premises the use of filthy and obscene language, a disturbance and unnecessary noise.
- "4. Violation of State Regulation No. 20, Rule 4, in that on Thursday, November 19, 1953, the licensee allowed or permitted upon the licensed premises a person of ill repute; namely one Charles H. (Junie) Engels."

The minutes of the meeting of February 15, 1954 of respondent Council disclose that the members thereof by a vote of three-to-two found appellants not guilty of charge 1 and guilty of charges 2, 3 and 4.

Appellants in their petition of appeal contend, among other reasons, that the action of respondent with reference to charges 2, 3 and 4 was erroneous because:

- "(b) The findings were contrary to the weight of the evidence produced at the hearing.

"(f) The said verdict, resolution and order insofar as charges Nos. 2, 3 and 4, are illegal and contrary to law."

Upon the filing of the appeal an order dated February 23, 1954, was entered by me staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

The hearing on this appeal was de novo, pursuant to Rule 6 of State Regulations No. 15.

The record below, including the testimony of the witnesses who appeared at the three hearings before respondent, was made part of the record on this appeal and other testimony and exhibits were introduced at the hearing herein, in accordance with the provisions of Rule 8 of State Regulations No. 15.

Joseph Benevento, a local police officer, testified at a hearing below that, while on duty on the morning of November 19, 1953, he observed about forty cars parked on both sides of the street in the vicinity of appellants' licensed premises; that he entered the premises "at about three o'clock" and observed "approximately 40 to 50 people" gathered "two to three deep" around the bar; that he spoke to Albert Guffanti, one of the appellant-licensees, who "talked with a lisp and was gruff" and appeared to him to be under the influence of intoxicating liquor; that he reminded Albert Guffanti of the time and asked him to instruct the people to leave; that, in response to his request, Albert Guffanti said, "They are having a good time. You get them out" and walked away; that he observed "a heavy set bartender handing out the drinks;" that he then walked out of the premises and telephoned police headquarters for assistance; that after about "five minutes" he was joined by Patrolman Cisbani and that they entered appellants' licensed premises; that the appellants Albert Guffanti and Joseph Magrino met them "at the door beyond the vestibule;" that, as he and his fellow-officer were speaking to the appellants, a man named "Junie" Engels came over to them and directed indecent epithets at him and Officer Cisbani, at the same time attempted to place a \$5.00 bill in his hand, and, again using indecent epithets, requested the officers to leave; that he then placed "Junie" Engels (Charles H. Engels) under arrest and took him from appellants' licensed premises.

Claude L. Cisbani, the other police officer, testified at a hearing below that, in response to a telephone call, he arrived in the vicinity of appellants' licensed premises "approximately 3:15 or 3:17" on the morning in question and, after joining Officer Benevento, entered appellants' premises; that he observed about "50 or 60 people;" that he approached Dick Gorman, a bartender, but, before he reached him, he happened to turn around and saw Officer Benevento speaking to Joseph Magrino and Alfred Guffanti, the licensees; that he then joined Officer Benevento and the licensees who were discussing the conduct of the place; that the conversation was interrupted by "Junie" Engels who used indecent language and proffered a \$5.00 bill to Officer Benevento; that then "Junie" Engels was taken into custody.

There is no evidence appearing in the record of this case that any alcoholic beverages were served after the closing hour. Hence it appears that charge 1 was properly dismissed.

As to charge 2: Appellants produced six patrons, including a local police officer, who testified that they were at appellants' licensed premises on the morning of November 19, 1953, and had occasion to observe Albert Guffanti working before closing time and that, in their opinion, he was neither intoxicated nor apparently intoxicated. A musician, two bartenders, and the wife of Albert Guffanti, one of the licensees, testified to the same effect. Another bartender testified at the hearing below that, although Albert Guffanti was not intoxicated, he appeared to be so. There was testimony by several of the witnesses for appellants that Albert Guffanti's attitude appeared naturally "gruff."

The weight of the evidence adduced with reference to the sobriety of Albert Guffanti leads me to conclude that Albert Guffanti was not intoxicated or apparently intoxicated at the time in question.

As to charge 3: There was no evidence that indecent language was used by any one other than Charles H. Engels, as a result of which he was immediately arrested by Officer Benevento. Under these circumstances the evidence is not sufficient to establish that the appellants allowed, permitted and suffered the use of filthy and obscene language or a disturbance on their licensed premises.

As to charge 4: The question to be determined is whether the presence on the licensed premises of Charles H. Engels, who has a criminal record, is a violation of Rule 4 of State Regulations No. 20. The pertinent part of the rule reads as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any prostitute, female impersonator, pick-pocket, swindler, confidence man, or any notorious criminal, gangster, racketeer, or other person of ill repute...."

The rule was not intended to apply to every person who had been convicted of a crime. In an early ruling of the late Commissioner Burnett (Re Gedney, Bulletin 60, Item 5) it was said:

"In its broad sense the word 'criminal' includes any person who has been convicted of the violation of any criminal statute. See Creeden v. Boston & Maine Railroad, 79 N. E. 344 (Mass.); Molineaux v. Collins, 69 N. E. 727 (N. Y.). But the use of the word 'criminal' in association with 'racketeer', 'gangster', etc. evidences an intent to confine its meaning to professional rogues and similar persons universally recognized as social menaces.

"Rule #4 was designed to aid in disassociating the liquor industry from its unsavory elements. To be effective, it must be strictly observed and licensees must consistently decline to permit on the licensed premises persons who are known to defy law. Neither the presence nor the absence of a judicial conviction of crime is conclusive. A person who has been convicted of transporting beer in violation of law is not, without more, considered as a professional rogue; a person who has never been convicted of crime but is a member of a gang of racketeers or habitual law violators, is so considered. The latter type of person comes within the proscribed class; the former does not."

The criminal record of Charles H. Engels indicates that he was convicted of conspiracy to make book, as a result of which he was sentenced on June 14, 1951, to State Prison for not less than two years nor more than three years and to pay a fine of \$1,000.00. Again, on December 4, 1953, Charles H. Engels was sentenced to State Prison for a period of not less than two years nor more than three years, as a result of his conviction of false swearing. However, it appears that, in a decision dated August 24, 1954, the Superior Court of New Jersey, Appellate Division, reversed the latter conviction.

Albert Guffanti, one of the appellant-licensees, testified that he knew Charles H. Engels for "a good eight years, maybe longer", but did not see him often; that he knew that Charles H. Engels had been in jail but did not know what his criminal record consisted of. Joseph Magrino, the other appellant-licensee, testified that he knew Charles H. Engels slightly; that he read that Charles H. Engels had served time in State Prison but that he was not aware of his being on probation or awaiting sentence after conviction of false swearing.

It is apparent that Charles H. Engels, according to the evidence adduced herein, has an unenviable record. However, he is not on trial in the instant case. There is no testimony that the appellants were instructed by the police authorities or any other person to prevent Charles H. Engels from frequenting their licensed premises. The probation officer, under whose supervision Charles H. Engels was placed, testified he did not consider his probationer a person of ill repute. Under the circumstances appearing in this case I am of the opinion that the evidence does not establish that appellants were guilty of allowing or permitting a person of ill repute upon their licensed premises. Weiss v. Newark, Bulletin 164, Item 8. Thus it is unnecessary to consider the other reasons advanced by appellants for reversal of the respondent's action.

In view of the fact that none of the four charges preferred against appellants was sufficiently proven or established by a preponderance of the evidence, I am compelled to reverse the action of respondent whereby it found appellants guilty as to charges 2, 3 and 4.

Accordingly, it is, on this 21st day of September, 1954,

ORDERED that the respondent's action in finding appellants guilty of charges 2, 3 and 4 and suspending their license for a period of fifteen days, which suspension was stayed during the pendency of these proceedings, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

2.. APPELLATE DECISIONS - ARNONE v. RED BANK.

JOHN ARNONE and MINNIE ARNONE,)
t/a MICHAEL'S BAR,)
)
Appellants,)
)
-vs-)
)
BOROUGH COUNCIL OF THE BOROUGH)
OF RED BANK,)
)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for Appellants.
Leon Reussille, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellants' plenary retail consumption license (for the 1953-54 licensing year) for a period of forty-five days. The suspension was imposed after respondent had found appellants guilty of charges alleging that on November 4, 1953, and November 5, 1953, they allowed, permitted and suffered gambling, namely, the making and accepting of horse-race bets, in and upon the licensed premises, in violation of Rule 7 of State Regulations No. 20. The licensed premises are located at 172-172A Monmouth Street, Red Bank.

Upon the filing of the appeal an order, dated March 24, 1954, was entered by me staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

At the hearing held herein an ABC agent, testifying on behalf of respondent, said that he and another ABC agent were in appellants' licensed premises on the afternoon of November 4, 1953; that about 4:00 p.m. the other agent said to John Arnone, who was then

tending bar, "John, can you get a bet in for us?", to which John replied "Sure, Bananas will take it. Bananas will take it for you;" that one Frank Falconetto (known also as Bananas) came over to the agents and accepted from the witness a \$6.00 bet "across the board" on a horse running in the 8th race at Garden State. This agent further testified that they returned to appellants' premises on the afternoon of November 5, 1953, at which time they had marked money with them; that the other agent said to Jerry Donato, a bartender, "Where is Bananas? We have a couple of bets for him", whereupon the bartender went to the end of the bar, spoke to John Arnone, returned to the agents and told them that "Knobby" would take their bets; that one Alexander Golaszewski (known also as Knobby) came over to the agents and accepted from the witness a \$6.00 bet "across the board" on a horse running in the 8th race at Garden State; that at this time John Arnone was behind the bar and said to the agents, "Knobby is all right. If you win, he'll pay." This agent further testified that at about 3:00 p.m. John Arnone and "Knobby" left the premises and were apprehended on the street by the other agent who identified himself and brought them back into the bar. It was stipulated that the other ABC agent would corroborate the aforesaid testimony if called to testify.

On behalf of appellants, Minnie Arnone testified that she is in the licensed premises nightly and that she never allowed, permitted or suffered gambling on the premises. John Arnone testified that both agents were in the licensed premises on November 4, but that they discussed with him only the subject of fishing; that "Bananas" was not on the premises on November 4. John Arnone further testified that the agents returned to the premises on November 5; that "Knobby", who was then talking to the witness, was employed elsewhere as a short-order cook, and that "Knobby" accepted no bets from the agents. Other patrons testified that they had never seen any bets accepted on appellants' premises.

At the oral argument herein, appellants' attorney contended that the charges herein should have been dismissed because there was no evidence that the bets had been recorded. While such evidence may be necessary to sustain a charge of bookmaking in a criminal proceeding, it is not required in a disciplinary proceeding of this character. Evidence that a licensee allowed, permitted or suffered gambling of any kind on the licensed premises is sufficient to establish the guilt of the licensee.

After considering all the testimony, I conclude that the evidence is clearly sufficient to sustain the charges and, hence, the action of respondent will be affirmed.

Accordingly, it is, on this 23rd day of September, 1954,

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

ORDERED that the forty-five-day suspension by respondent of appellants' 1953-54 plenary retail consumption license C-21, for premises 172-172A Monmouth Street, Red Bank, be and the same is hereby restored and reimposed against appellants' 1954-55 license for the same premises, to commence at 7:00 a.m. October 1, 1954, and terminate at 7:00 a.m. November 15, 1954.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - ARNONE v. RED BANK (AMENDED ORDER).

JOHN ARNONE and MINNIE ARNONE,
t/a MICHAEL'S BAR,

Appellants,

-vs-

BOROUGH COUNCIL OF THE BOROUGH
OF RED BANK,

Respondent.

ON APPEAL
AMENDED ORDER

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for
Appellants.
Leon Reussille, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

Following entry of Conclusions and Order dated September 23, 1954, in the above case, the attorneys for appellants advised me that five days of the suspension had been served prior to the entry of an order staying respondent's order of suspension. A review of the file herein discloses that the order entered by respondent herein suspended the license for a period of forty-five days effective March 19, 1954, at 7:00 a.m., and that the order granting the stay was entered by me on March 24, 1954, immediately after the filing of the appeal. It thus appears to my satisfaction that appellants have already served five days of the suspension and that they should now be required to serve only the balance of said suspension. Belmar Delicatessen v. Atlantic City, Bulletin 835, Item 4.

Accordingly, it is, on this 27th day of September, 1954,

ORDERED that the order heretofore entered herein be amended to read as follows:

"ORDERED that the balance of the forty-five-day suspension by respondent of appellants' 1953-54 plenary retail consumption license C-21, for premises 172-172A Monmouth Street, Red Bank, be and the same is hereby restored and reimposed against appellants' 1954-55 license, for the same premises, to commence at 7:00 a.m. October 6, 1954, and terminate at 7:00 a.m. November 15, 1954."

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - PALACE THEATRE, INC. v. PASSAIC AND KLINGHOFFER (APPEAL WITHDRAWN).

PALACE THEATRE, INC.,)

Appellant,)

-vs-)

ON APPEAL
O R D E R

BOARD OF COMMISSIONERS OF THE
CITY OF PASSAIC, and ALEX S.)

KLINGHOFFER,)

Respondents.)

-----)
Robert M. Kronman, Esq., Attorney for Appellant.

William N. Gurtman, Esq., Attorney for Respondent Board of
Commissioners.

H. Dick Cohen, Esq., Attorney for Respondent Alex S. Klinghoffer.

BY THE DIRECTOR:

This appeal was filed from the action of respondent Board of Commissioners whereby it granted renewal for the present licensing year of a plenary retail consumption license held by respondent Alex S. Klinghoffer for premises at 127 Market Street, Passaic.

Prior to the hearing scheduled to be held herein, the attorney for appellant advised me in writing that his client desired to withdraw its appeal. No reason appearing why the request should not be granted.

It is, on this 23rd day of September, 1954,

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

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR THE BALANCE OF ITS TERM, WITH LEAVE TO APPLY FOR LIFTING OF SAID SUSPENSION AFTER 20 DAYS IF SITUATION CORRECTED.

In the Matter of Disciplinary)
Proceedings against)

MARIE PONE)
T/a HUBBY'S INN)
Kasonbey's Lane & Spotswood Road)
Monroe Township (Middlesex County))
P. O. Jamesburg, N. J.,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption)
License C-7 for the 1953-54 and)
1954-55 licensing years, issued by)
the Township Committee of Monroe)
Township (Middlesex County).)

-----)
Marie Pone, Defendant-licensee, Pro Se.

William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. In your application dated November 4, 1953, filed with the Monroe Township Committee, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual...other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Domenick J. Pone (also known as Dominic J. Pone) had such an interest in that he was co-owner with you of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. From on or about November 17, 1953 until the present time, you knowingly aided and abetted Domenick J. Pone (also known as Dominic J. Pone) to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license; thereby yourself violating R.S. 33:1-52."

The evidence adduced herein discloses that defendant filed an application on November 5, 1953 with the local issuing authority for a transfer of a plenary retail consumption license to her. In said application she denied that any individual other than the applicant had any interest, directly or indirectly, in the license or in the business to be conducted thereunder. In accordance with the application, the license was transferred to defendant. During the course of the investigation the defendant admitted that the money used in the purchase of the license and the business was taken from the proceeds received from a sale of another liquor license which had been in the sole name of Domenick J. Pone, her husband. The latter is manager of the licensed premises in question.

It appears that the liquor license of Domenick J. Pone, the husband of defendant, was suspended by former Director Cavicchia for a period of ninety days (Re Pone, Bulletin 963, Item 2) effective April 2, 1953. Both defendant and her husband gave statements to the ABC agent during the course of the investigation which resulted in the instant disciplinary proceedings which were reduced to writing and marked in evidence as exhibits herein. The defendant and her husband both stated that the license was taken in the sole name of defendant because of the unfavorable publicity that Domenick J. Pone received at the time when the suspension was imposed on the license which he formerly held. I am satisfied that the husband has an interest in the business which was concealed at the time the application for transfer of said license was filed. Apparently, Domenick J. Pone was at all times eligible to hold a license.

Under the facts in the instant case I have no other course than to find defendant guilty of the charges preferred herein.

Defendant has no prior adjudicated record. Since it appears that the unlawful situation continues to exist, I have no alternative except to suspend the license for the balance of its term. If, hereafter, the illegal situation is corrected, application may be made to me for lifting of the suspension, but in no event will an order lifting the suspension be entered until the expiration of twenty days from the effective date hereof. Cf. Re Calandriello, Bulletin 934, Item 9.

Accordingly, it is, on this 20th day of September, 1954,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of Monroe Township (Middlesex County) to Marie Pone, t/a Hubby's Inn, for premises on Kasonbey's Lane & Spotswood Road, Monroe Township (Middlesex County), be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. October 5, 1954.

WILLIAM HOWE DAVIS
Director.

6.

ACTIVITY REPORT FOR SEPTEMBER 1954

ARRESTS:			
Total number of persons arrested	- - - - -	19	
Licensees and employees	- - - - - 6		
Bootleggers	- - - - - 13		
SEIZURES:			
Motor vehicles - cars	- - - - -	2	
- trucks	- - - - -	3	
Stillis - over 50 gallons	- - - - -	1	
- 50 gallons or under	- - - - -	5	
Mash - gallons	- - - - -	3,520.00	
Distilled alcoholic beverages - gallons	- - - - -	119.74	
Wine - gallons	- - - - -	5.00	
Brewed malt alcoholic beverages - gallons	- - - - -	77.03	
RETAIL LICENSEES:			
Premises inspected	- - - - -	1,167	
Premises where alcoholic beverages were gauged	- - - - -	738	
Bottles gauged	- - - - -	13,885	
Premises where violations were found	- - - - -	78	
Violations found	- - - - -	128	
Type of violations found:			
Unqualified employees	- - - - - 64	Prohibited signs	- - - - - 4
Reg. #38 sign not posted	- - - - - 10	Gambling devices	- - - - - 1
Other mercantile business	- - - - - 9	Probable fronts	- - - - - 1
Disposal permit necessary	- - - - - 8	Other violations	- - - - - 31
STATE LICENSEES:			
Premises inspected	- - - - -	14	
License applications investigated	- - - - -	8	
COMPLAINTS:			
Complaints assigned for investigation	- - - - -	520	
Investigations completed	- - - - -	431	
Investigations pending	- - - - -	184	
LABORATORY:			
Analyses made	- - - - -	128	
Refills from licensed premises - bottles	- - - - -	5	
Bottles from unlicensed premises	- - - - -	31	
IDENTIFICATION BUREAU:			
Criminal fingerprint identifications made	- - - - -	25	
Persons fingerprinted for non-criminal purposes	- - - - -	178	
Identification contacts made with other enforcement agencies	- - - - -	193	
Motor vehicle identifications via N. J. State Police teletype	- - - - -	2	
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities	- - - - -	14	
Violations involved:			
Sale during prohibited hours	- - - - - 7		
Sale to minors	- - - - - 5		
Possessing chilled beer (DL licensee)	- - - - - 1		
Permitting brawl on premises	- - - - - 1		
Sale to intoxicated persons	- - - - - 1		
Cases instituted at Division	- - - - -	14	
Violations involved:			
Sale during prohibited hours	- - - - - 5	Mislabeled beer taps	- - - - - 1
Sale to minors	- - - - - 3	Permitting female to tend bar (local reg.)	- - - - - 1
Possessing illicit liquor	- - - - - 1	Sale off licensed premises	- - - - - 1
Permitting immoral activity on premises	- - - - - 2	Hindering investigation	- - - - - 1
Permitting gambling (cards) on premises	- - - - - 1	Conducting business as a nuisance	- - - - - 1
Sale outside scope of license	- - - - - 1	Permitting female impersonators on premises	- - - - - 1
Sale during license suspension	- - - - - 1		
Cases brought by municipalities on own initiative and reported to Division	- - - - -		
Violations involved:			
Sale to minors	- - - - - 15	Permitting bookmaking on premises	- - - - - 1
Permitting brawl on premises	- - - - - 2	Permitting gambling (wagering) on prem.	- - - - - 1
Sale during prohibited hours	- - - - - 1	Service in private room (local reg.)	- - - - - 1
		Conducting business as a nuisance	- - - - - 1
HEARINGS HELD AT DIVISION:			
Total number of hearings held	- - - - -		49
Appeals	- - - - - 10	Seizures	- - - - - 12
Disciplinary proceedings	- - - - - 16	Tax revocations	- - - - - 5
Eligibility	- - - - - 5	Applications for license	- - - - - 1
STATE LICENSES AND PERMITS ISSUED:			
Total number issued	- - - - -		1,291
Licenses	- - - - - 5	Social affair permits	- - - - - 343
Employment permits	- - - - - 149	Miscellaneous "	- - - - - 306
Solicitors "	- - - - - 66	Transportation insignia	- - - - - 270
Disposal "	- - - - - 111	Transportation certificates	- - - - - 21

WILLIAM HOWE DAVIS
Director.

Dated: October 4, 1954.

7. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - SALE TO MINORS - LOTTERY - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ARNOLD W. JOHNSON)
T/a "ARNIE'S INN")
Meadow Road, Mountain View)
Wayne Township)
P. O. Mountain View, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Township Committee of Wayne Township.)
-----)

Hubert J. Harrington, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded guilty to the following charges:

- "1. On Friday night, July 30, 1954 between 10:00 p.m. and 12 midnight, and on Saturday morning, July 31, 1954 between 12:01 a.m. and 12:15 a.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off the licensed premises; in violation of Rule 1 of State Regulations No. 38, which prohibits any such sale or delivery before 9:00 a.m. or after 10:00 p.m. on any weekday.
- "2. On Sunday morning, August 1, 1954, between 1:00 a.m. and 2:30 a.m., you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises, to Thomas G. ---, Murray --- and Carolyn J. ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20.
- "3. On Sunday, August 1, 1954, you allowed, permitted and suffered a lottery commonly known as a raffle or drawing to be conducted in and upon your licensed premises and allowed, permitted and suffered tickets and participation rights in such aforementioned lottery in and upon your licensed premises, without authority or an appropriate permit under the Raffles Licensing Law (R. S. 5:8-50); in violation of Rule 6 of State Regulations No. 20."

The file herein discloses that on Friday night, July 30, 1954, ABC agents visited defendant's licensed premises and, between 10:00 p.m. and midnight, observed a bartender therein sell cartons of can beer to several patrons for off-premises consumption. At 12:05 a.m. Saturday, July 31, one of the agents purchased six cans of beer and departed. At this time the agents did not identify themselves. Late Saturday evening the agents returned to defendant's Inn wherein an annual community frolic was in progress, at which tickets on an unlicensed raffle were sold to the agents in the barroom. The raffle was conducted by an association in the dance hall of defendant's premises. About 2:25 a.m. Sunday, August 1, the agents saw three apparent minors consuming alcoholic beverages served to them at the bar by Arnold Johnson, licensee, and John Cullen, the aforesaid bartender. The agents made known their identity and seized the unfinished drinks in front of the youths, who identified themselves as

Thomas --- (age 19), Murray --- (age 19) and Carolyn --- (age 18). The agents then apprised the licensee and the bartender of the afore-said violations and, though both verbally admitted the infractions, they declined to give written statements.

In attempted mitigation it is alleged that the sales for off-premises consumption were made in violation of defendant's instruction. This does not excuse the violation. Rule 31 of State Regulations No. 20. It is further alleged that the minors appeared to be of full age, but that alone does not constitute an excuse. R. S. 33:1-77. With respect to charge 3, there is no evidence to indicate that the licensee participated in the raffle and, since it appears that the organization running it might have qualified for a permit under R. S. 5:8-50, the usual fifteen-day penalty imposed for a lottery violation will be reduced in the instant case to ten days. However, it should be understood that it is the licensee's responsibility to ascertain if an organization is licensed to conduct a raffle and ignorance of such fact will not, hereafter, excuse a licensee from the consequences of his own negligence.

Since the defendant has no prior adjudicated record, I shall suspend his license for fifteen days on charge 1 (Re Zayak, Bulletin 1031, Item 6); fifteen days on charge 2 (Re Rogers, Inc., Bulletin 1002, Item 5) and ten days on charge 3, thus making a total suspension of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 22nd day of September, 1954,

ORDERED that Plenary Retail Consumption License C-14, issued by the Township Committee of Wayne Township to Arnold W. Johnson, t/a "Arnie's Inn", for premises on Meadow Road, Mountain View, Wayne Township, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. September 30, 1954, and terminating at 3:00 a.m. November 4, 1954.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 AND LOCAL REGULATIONS - SALE AT PREMISES OTHER THAN LICENSED PREMISES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HENRY JULEWICZ & STANLEY JULEWICZ)
T/a JULIUS' TAVERN)
141 Pavonia Avenue)
Jersey City 2, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-412, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Henry and Stanley Julewicz, Defendant-licensees, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded guilty to the following charges:

"1. On Sunday, August 29, 1954, you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., one pint bottle of Seagram's Seven Crown Blended Whiskey, at retail in its original container for consumption off your licensed premises; in violation of Rule 1 of State Regulations No. 38.

"2. On Sunday, August 29, 1954 at about 10:30 a.m., you conducted your licensed business in violation of Section 4a of Ordinance No. K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950.

"3. On Sunday, August 29, 1954, you sold alcoholic beverages not pursuant to and within the terms of your plenary retail consumption license in that you sold a pint bottle of Seagram's Seven Crown Blended Whiskey and numerous drinks of alcoholic beverages at premises other than your licensed premises, viz., in an unlicensed hallway and room adjoining your licensed premises, contrary to R. S. 33:1-26; in violation of R. S. 33:1-2."

The file herein discloses that on Sunday morning, August 29, 1954, an ABC agent proceeded to the rear of a hallway separating defendants' licensed premises and a vacant store and there purchased from Stanley Julewicz, one of the licensees, a pint of whiskey for off-premises consumption. Another ABC agent, investigating voices emanating from a room in the rear of the vacant store, found therein a group of males consuming alcoholic beverages. Complying with a suggested procedure, this agent knocked on the rear hall door of defendants' tavern, and ordered from Julewicz a glass of beer which he presently served in the unlicensed room. Confronted by both agents who identified themselves, Julewicz in a signed, sworn statement admitted the aforesaid violations.

Defendants have no prior adjudicated record. This arrangement to obtain alcoholic beverages during prohibited hours has all the attributes of an "old-fashioned speakeasy." In Re Miles, Bulletin 673, Item 8, the Commissioner warned that engaging in illegal operations of this character would result in a minimum suspension of thirty days. Cf. Re Lippens, Bulletin 701, Item 2. Under the circumstances, I shall suspend defendants' license for thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 23rd day of September, 1954,

ORDERED that Plenary Retail Consumption License C-412, issued by the Municipal Board of Alcoholic Beverage Control to Henry Julewicz & Stanley Julewicz, t/a Julius' Tavern, for premises 141 Pavonia Avenue, Jersey City, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. October 4, 1954, and terminating at 2:00 a.m. October 29, 1954.

WILLIAM HOWE DAVIS
Director.

9. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - APPLICATION FOR RETURN OF MOTOR VEHICLE BY ITS OWNER DENIED BECAUSE OF CARELESS INDIFFERENCE TO ITS USE BY ANOTHER - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES FORFEITED.

In the Matter of the Seizure on March 16, 1954 of 253 - two-quart jars of alcohol and a Dodge coupe, on the northbound lane of the New Jersey Turnpike, located in the Township of Washington, County of Mercer and State of New Jersey.

Case No. 8554

ON HEARING CONCLUSIONS AND ORDER

Sidney G. Grad, Esq., Attorney for Tobia White. Harry Castelbaum, 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 253 two-quart jars of alcohol and a Dodge coupe, described in a schedule attached hereto, seized on March 16, 1954 on the northbound lane of the New Jersey Turnpike in the Township of Washington, New Jersey, constitute unlawful property and should be forfeited.

The motor vehicle was seized by a New Jersey State Trooper during his routine patrol of traffic on the highway when he discovered the jars of alcohol in the car. George Earl Harris was the driver of the car. The jars did not have affixed thereto any labels, or stamps indicating the payment of tax on alcoholic beverages. The Division of Alcoholic Beverage Control was notified and the motor vehicle and alcohol were turned over to its agents.

George Harris signed a written statement wherein he relates that he borrowed the motor vehicle from his friend, Tobia White, the registered owner thereof, drove to Virginia, and there purchased the alcohol in order to make a "fast buck", intending to transport the alcohol to New York.

A sample of the alcohol in one of the jars was analyzed by the Division chemist who reports that it is an alcoholic beverage containing alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 48 per cent.

When the matter came on for hearing pursuant to R. S. 33:1-66, Tobia White appeared and sought return of the Dodge coupe. Forfeiture of the alcohol was not opposed by any person.

The alcohol is illicit because there were no labels or tax stamps on the jars in which it was contained. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol, and the vehicle in which it was transported and found, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

I have the discretionary authority to return property subject to forfeiture to a person who establishes to my satisfaction that he acted in good faith, and did not know, or have any reason to suspect that his property would be used in violation of the Alcoholic Beverage Law. R. S. 33:1-66(f).

Tobia White states that he is 24 years of age and has been employed in a dry cleaning establishment in Brooklyn, N. Y. He purchased the Dodge coupe in January, 1954. He did not then and does not now have a driver's license in New York State. For all practical purposes, George Harris was the only person that drove the car, twice

a week with White to pick up clothes in the course of White's employment, and on other occasions for Harris' personal use. On the latter occasions Harris would keep the car for two or three days, and once for seven days.

George Harris states that he is 20 years of age, has resided in New York for about three and a half years, and except for odd jobs, has been unemployed for three months prior to the seizure. Harris had \$350.00 on his person when apprehended. Harris states that he borrowed the car about every other week for his personal use without telling White the purpose he intended to make of the vehicle, or when he expected to return the vehicle. Harris further states that he borrowed the car on Sunday, March 14, 1954. He did not see White until about eleven days thereafter, upon Harris' release from jail, when he informed White for the first time that the car has been seized.

White says that his efforts to locate the car were limited to an unsuccessful attempt to locate Harris on March 16th. He did not then, or thereafter, seek the aid of police authorities to locate his car.

Aside from the license registration, White has not submitted any documentary evidence that he is the actual purchaser or owner of the car. He states that he purchased the car in January, 1954 from some unknown person, intending to obtain a driver's license and drive the car during the summer to the "South" on a visit, but made no effort to obtain a driver's license in the interval between January and March, 1954. He says that his brother was too busy to drive the car for him and his other friends did not have a driver's license. He fails to give a clear picture of what use was made of the car for his personal benefit. There are many implausible aspects presented by these statements which leave a substantial inference that Harris may have had some beneficial interest in the ownership or use of the motor vehicle.

Under these circumstances, it is immaterial whether or not White actually participated in the illegal liquor activities of Harris, since White's conduct displays a marked careless indifference to what use Harris made of the car, so that, insofar as forfeiture proceedings are concerned, White cannot be regarded as having acted in good faith. See Seizure Case No. 7467, Bulletin 857, Item 1, and Seizure Case No. 8227. Tobia White's request for return of the Dodge coupe is therefore denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be 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.

WILLIAM HOWE DAVIS
Director.

Dated: September 16, 1954.

SCHEDULE "A"

- 253 - two quart jars of alcohol
- 1 - Dodge coupe, Serial No. 30953477, Engine No. D24327987, 1954 N. Y. Registration KM20-13.

10. CLUB LICENSEES - "MEMBER" AND "BONA FIDE GUEST" DEFINED - "BOOSTER MEMBERSHIP" CARD HOLDERS, AS DESCRIBED HEREIN, DO NOT QUALIFY.

September 21, 1954

Dear Sir:

In your letter of September 18th you indicate that an American Legion Post holding a club liquor license in your municipality wishes to know whether it may issue so-called "booster membership cards" to persons and thereby be able to sell alcoholic beverages to them. We take it that these persons, as is usual in the case of such "booster membership" plans, are not entitled to participate as normal members in the operation of the affairs of the club.

The answer to the above inquiry is an emphatic No.

Under the Alcoholic Beverage Law, R. S. 33:1-12(5), the holder of a club liquor license may sell alcoholic beverages only to bona fide members and their guests (and only for immediate consumption on the licensed premises). Rule 8 of State Regulations No. 7 implements the foregoing by prohibiting a club licensee, not only from selling, but even from serving any alcoholic beverage to anyone not an actual club member or a bona fide guest thereof.

A "club member" is defined by Rule 1 of the aforesaid State Regulations No. 7 as being a person in good standing who has been admitted to membership in the manner regularly prescribed by the by-laws of the club, and whose name and address are entered in the list of members, and who maintains his membership in a bona fide manner. Both the statute and the foregoing definition in our Regulations clearly contemplate that, to come within the classification of a "member", a person must be an honest-to-goodness member entitled to vote and participate in club matters and in club operation in the same way as any other actual club member.

"Bona fide guests" have been defined in Bulletin 213, Item 4 as "persons expressly invited to the club by a member and who, on arrival at the club, are not only sponsored but personally attended by their respective hosts". The only exception is that one chapter or post of any national organization, such as the American Legion, may sell or serve alcoholic beverages to visiting members of another chapter or post of the same organization, providing such visiting members carry proper credentials of their membership. See Bulletin 109, Item 10.

The apparently contemplated plan of issuing a card or the like to outsiders calling them "booster club members" does not suffice to constitute such persons actual members or bona fide guests thereof. The mere issuance of a card is not the test. Rather, as already indicated, the test is whether the person really meets the foregoing definitions concerning actual members or bona fide guests thereof.

It must be remembered that a club license is a highly specialized type of license, at a comparatively small fee, designed as an accommodation to bona fide clubs for the purpose of enabling the organization, as a club, to serve its actual members and their bona fide guests. Any scheme which seeks to throw over outsiders the form but not the substance of actual club membership or the status of bona fide guests, for the purpose of trying to qualify them to buy or get service of alcoholic beverages on the licensed premises, cannot be permitted. See Bulletin 820, Item 2 and Bulletin 827, Item 14.

Very truly yours,
WILLIAM HOWE DAVIS
Director.

11. DISCRIMINATION - MEMBERSHIP CARD PLAN OF ADMISSION TO RESTAURANTS AND BARS DISAPPROVED.

September 22, 1954

Bernard F. Murphy, Inspector
Liquor License Bureau
Atlantic City, N. J.

Dear Sir:

This acknowledges your letter of September 20th concerning the proposal of an unidentified licensee in Atlantic City "to close his doors and issue membership cards for his Restaurant-Bar establishment".

You are advised that such an operation would complicate the problem of enforcement of the Alcoholic Beverage Law and regulations by local police and agents of this Division. In addition, it has overtones of possible attempted discrimination because of race, creed, color, national origin or ancestry prohibited by the Discriminatory Practices Act (P. L. 1949, ch. 11) and the Civil Rights Law (R. S. 10:1-1 et seq.).

The plan is disapproved.

Very truly yours,
WILLIAM HOWE DAVIS
Director.

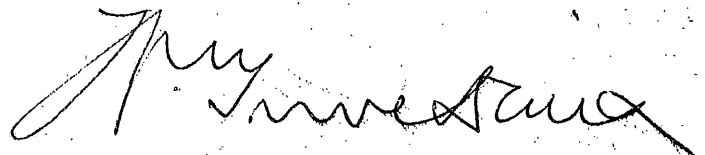
12. STATE LICENSES - NEW APPLICATIONS FILED.

William Stiles and William Ten Cate
Pier #6, Atlantic Highlands, N. J.
Boat "Early Bird"

Application filed October 6, 1954 for Plenary Retail Transit License.

Concesso Pizzarelli
21 Peshine Avenue
Newark, New Jersey

Application filed October 11, 1954 for Transportation License.



William Howe Davis
Director