

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

June 26, 1963

BULLETIN 1519

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1100 Raymond Blvd. Newark 2, N. J.

June 26, 1963

BULLETIN 1519

1. COURT DECISIONS - TUMULTY v. DUNELLEN AND DAVIS - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-280-62

ANNE TUMULTY and)
JAMES J. TUMULTY,)
)
Appellants,)
)
v.)
)
MAYOR and COUNCIL OF THE)
BOROUGH OF DUNELLEN AND)
WILLIAM HOWE DAVIS, DIRECTOR,)
DIVISION OF ALCOHOLIC BEVERAGE)
CONTROL OF THE STATE OF NEW)
JERSEY,)
)
Respondents.)

Argued April 29, 1963 -- Decided May 3, 1963

Before Judges Conford, Gaulkin and Kilkenny

Mr. Robert W. Wolfe argued the cause for appellants.

Mr. Henry Handelman argued the cause for Mayor and Council of the Borough of Dunellen.

Mr. Herbert S. Alterman, Deputy Attorney General, argued the cause for William Howe Davis, Director, Division of Alcoholic Beverage Control of the State of New Jersey (Mr. Arthur J. Sills, Attorney General, attorney).

PER CURIAM.

By "Conclusions and Order" dated June 13, 1962 the Director of the Division of Alcoholic Beverage Control (ABC) suspended Mr. and Mrs. Tumulty's tavern license for 60 days because they had permitted homosexuals to congregate in the tavern, and for an additional 15 days because of sales after hours. (Re Tumulty, Bulletin 1466, Item 1.) They did not appeal from that suspension.

Essentially because of those offenses, Dunellen refused to renew the license. The licensees appealed to the Director, who affirmed, (Tumulty v. Dunellen, Bulletin 1487, Item 4) and now the licensees appeal to us.

The mere fact that the Director imposed a 75-day suspension did not detract from the right of the municipality to refuse to renew the license for the same offenses. Downie v. Somerdale, 44 N.J. Super. 84 (App.Div. 1957). The licensees do not argue otherwise, but they do argue that the Director must have felt the 75-day suspension was adequate punishment, and therefore the refusal to renew the license altogether was

"harsh and oppressive, inequitable and not warranted upon the facts and the law." That does not follow. The problem before the Director was what penalty to impose for what his investigators had discovered the licensees had done in the past. The problem before Dunellen, upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and to the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of its licensees. We hold that Dunellen had the right to say that since these licensees permitted the things recited in the Director's "Conclusions and Order" of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license should be renewed; and that the Director was justified in holding, as he did, that Dunellen "exercised its discretion reasonably, circumspectly, and in the best interests of the community in refusing to renew appellants' license * * *." As the court said in Zicherman v. Driscoll, 133 N.J.L. 586, 588 (Sup. Ct. 1946):

"No licensee has vested right to the 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 this court should not interfere with the actions of the constituted authorities * * * We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses.

The licensees argue that, under the Dunellen ordinance, they were entitled to 5 days' notice of a hearing on the proposed refusal to renew the license and received only 3 days' notice. To begin with, the section of the ordinance referred to deals only with suspension or revocation. Furthermore, the licensees had a hearing de novo before the ABC. Finally, the licensees do not indicate what they could have produced at a hearing that might have affected the result.

We have considered the remaining arguments of the licensees and find them without merit. In short, we find no reason to criticize the actions of the municipality and the Director.

Affirmed.

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - LICENSE SUSPENDED FOR 25 DAYS - SUSPENSION IMPOSED SUBSEQUENT TO DATE OF VIOLATION NOT CONSIDERED AGGRAVATING CIRCUMSTANCE.

In the Matter of Disciplinary Proceedings against)
 EDWARD P. MC KERNAN)
 t/a BIG ED'S TAVERN)
 6400 Dewey Avenue)
 West New York, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-44, issued by the Board of Commissioners of the Town of West New York.)

 Alexander A. Abramson, Esq., Attorney for Licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to charges (1) and (2) alleging that on August 23, 1962, he permitted the acceptance of horse race and numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

"To substantiate the charges, the Division produced Agents S, C and R who participated in the investigation of the licensed premises.

"Agent S testified that at 10:45 a.m. on August 23, 1962, he and Agents C and R entered the licensee's premises and took seats at the bar, with Agent C sitting between him on his right side and Agent R on his (Agent C's) left side; that an unoccupied stool separated Agent R from Allen Anderson, one of three patrons seated at the bar; that Martha McKernan was tending bar; that in the course of a conversation with Mrs. McKernan, she informed him that her son, the licensee, 'plays the horses and numbers'; that he picked up a newspaper from the bar, turned to its racing section and in the immediate presence of Mrs. McKernan, announced, 'I am going to call up and put a bet on this horse. I feel it is going to win'; that Mrs. McKernan stated to him, 'You don't have to do that. He'll take your bet', simultaneously pointing to Anderson and stating, 'Al plays the horses all the time. He'll take your bets'; that Mrs. McKernan assured him if he won his bet that Anderson would leave the money with her; that Anderson confirmed this arrangement, following which he obtained a slip of paper and a pencil from Mrs. McKernan and wrote a horse race and 'numbers' bet on the bar; that he asked Agent C 'to give me the money'; that Agent C openly handed him a \$5 bill and five \$1 bills (the serial numbers of which had been previously recorded); that he gave the slip of paper and the 'marked' money to Anderson, upon receipt of which Anderson stated, 'O.K. I'll put it in now' and left the premises (at about 11:40 a.m.) and that during all of the aforesaid transactions Mrs. McKernan was standing behind the bar in front of him and his companions.

"Agent S further testified that at about 11:50 a.m. Anderson returned to the premises and resumed his position at the bar; that at about 11:55 a.m. Agents R and C left the premises and returned thereto at 12:15 and 12:25 p.m., respectively, and took their same seats at the bar; that Agent R asked for and was given a slip of paper by Mrs. McKernan; that he observed Agent R place the slip of paper on the bar, write a 'combo number' bet thereon and hand the money and slip of paper to Anderson; that this transaction took place in the immediate presence of Mrs. McKernan; that at about the same time he observed George S. LeMond, another of the aforesaid three patrons, approach Anderson; that LeMond, in the presence of Mrs. McKernan, stated to Anderson, 'I want to play 720 for 50 cents' and gave Anderson a slip of paper and some currency; that Anderson stated he would place the bet for him and left the premises followed by Agents R and C and that shortly thereafter Margaret Gardner relieved Mrs. McKernan behind the bar.

"Agent S further testified that at about 1:00 p.m. Agents C and R, accompanied by two local police detectives, Policastro and Pavin, and Anderson, came into the premises; that he and the aforesaid group went to the police station where he met Mrs. McKernan and Edward McKernan, the licensee; that he questioned Mrs. McKernan in the presence of the licensee, Agent C and Detective Policastro and that Mrs. McKernan admitted that all of the aforesaid gambling activities took place on the licensed premises on the day in question.

"On cross examination, Agent S reaffirmed his direct testimony.

"Agent C corroborated the testimony of Agent S and further testified that between 11:55 a.m. and 12:15 p.m. aforesaid, when he and Agent R were outside the premises, he recorded the serial numbers of four \$1 bills; that he gave the four 'marked' \$1 bills to Agent R; that he and Agent R reentered the premises as testified by Agent S; that Anderson, followed by him and Agent R, left the premises after accepting the bets from Agent R and LeMond; that he and Agent R, by prearrangement, met Detectives Policastro and Pavin on the outside of the premises; that the four of them followed Anderson to an apartment house, observed him enter the same and return to the street within a minute; that Detective Policastro stopped and informed Anderson of his aforesaid gambling activities; that Anderson directed him, Agent R and the two detectives to an apartment in the aforesaid building; that upon request of Detective Policastro, Anderson emptied his pockets; that the four 'marked' \$1 bills, used by Agent R to place his 'numbers' bet, were found in Anderson's possession; that the five of them returned to the licensed premises, picked up Agent S and LeMond and went to West New York Police Headquarters; that shortly thereafter Mrs. McKernan and Edward P. McKernan, the licensee, arrived at the police station; that Agent S questioned Mrs. McKernan in his presence and in the presence of the licensee and Detective Policastro; that Mrs. McKernan stated that she had introduced Anderson to him and Agents S and R; that she knew Anderson was accepting 'numbers' and horse race bets and that she was aware of the bets taken by Anderson on the licensed premises from Agents S and R.

"On cross examination, Agent C substantially reiterated his testimony with respect to what took place in the licensed premises during his presence therein and further testified that Agent S, prior to the aforesaid interrogation of Mrs. McKernan, informed

her in the presence of the licensee that she was not required to answer any of his questions; that the licensee stood mute during the examination and that Mrs. McKernan voluntarily answered the questions.

"On further cross examination, Agent C testified that he and his partners were assigned to investigate complaints of gambling at the licensed premises and that, in the course of the investigation, at about 12:15 p.m. he went to the West New York Police Department for assistance and that he rejoined Agents S and R at the licensed premises at about 12:30 p.m.

"Agent R identified Daniel English as one of the aforesaid three patrons on the premises and corroborated the testimony of Agents S and C except for their testimony with respect to the examination of Mrs. McKernan at police headquarters.

"On cross examination, Agent R substantially reaffirmed his direct testimony and further testified that on the day in question, while at the police station, LeMond had given him a signed, sworn statement setting forth therein that he (LeMond) had placed a 'numbers' bet with Anderson and that he had observed Agent S give a slip of paper and money to Anderson.

"Martha McKernan, on behalf of the licensee, denied having any conversation with Agent S at the police station other than identifying Anderson (then qualified the denial by stating 'I don't remember having any'); denied having a conversation with Agent S at the licensed premises or that she had introduced him to Anderson (although she previously testified that she did not remember either event); denied that the newspaper was on the bar; denied she had observed Agent S reading the newspaper; denied seeing Agent S writing on the bar; denied speaking with Anderson about any gambling activities; denied Anderson left the premises between 10:45 a.m. and 12:30 p.m. on the day in question; and further testified that on August 23, 1962 between 9:00 a.m. and 12:30 p.m. she was tending bar at the licensed premises; that at about 10:45 a.m. agents S, C and R entered the licensed premises and took seats at the bar; that at the time two patrons, Allen Anderson and George LeMond, were in the premises; that Anderson had been visiting the premises for about five months; that the agents ordered and were served beer; that Agent S asked for pencil and paper; that she supplied him with the same; that prior thereto Agent S had not conversed with her; that except for serving the agents numerous glasses of beer, she did not remember anything; that she had not seen the agents in the licensed premises previous to August 23d aforesaid and that she did not remember hearing Agent S making any remarks with respect to horses or 'numbers'.

"On cross examination, Mrs. McKernan substantially reiterated her direct testimony.

"Edward P. McKernan, the licensee, testified that on the day in question he arrived at the licensed premises at about 1:00 p.m.; that he drove to the West New York police station with one of the aforesaid police officers; that he was at the police station with Mrs. McKernan when Agent S attempted to interrogate her; that upon advice of his attorney, he advised Mrs. McKernan not to answer any questions; that except for identifying Anderson, Mrs. McKernan made no other statements and that, shortly thereafter, he and Mrs. McKernan left the police station.

"On cross examination, the licensee testified that when he entered the licensed premises, Agent C informed him of the alleged gambling violation; that Mrs. McKernan told him that Anderson was arrested for accepting bets at the licensed premises and again denied that Mrs. McKernan was questioned at police headquarters with respect to any gambling activities at the licensed premises on the day in question.

"George S. LeMond, on behalf of the licensee, testified that from about 10:00 a.m. to about 12:40 p.m. on August 23, 1962, he was in the licensed premises; that Mrs. McKernan was tending bar; that at about 10:45 a.m. Agents S, C and R entered the premises and took seats at the bar alongside of him to his right; that Agent R sat next to him; that Agent S occupied a stool about four or five from him; that Anderson was sitting next to him on his left; that he and Agent R engaged in a general conversation; that he also conversed with Anderson; that he recalled seeing a newspaper on the bar; that he did not hear any conversation between Agent S and Mrs. McKernan; that he did not observe Mrs. McKernan give a slip of paper or pencil to Agent S; that Anderson in a low tone had stated to him, 'I am going down the corner to see if I can play a number'; that Anderson accepted a 'numbers' bet from him; that at the time Mrs. McKernan was behind the bar about four or five feet from Anderson and that Anderson, followed by Agents C and R, left the premises.

"LeMond further testified that within five or ten minutes Anderson reentered the premises; that shortly thereafter Agents C and R, followed by Daniel English, a patron, returned to the premises; that he observed Mrs. McKernan handing a slip of paper and pencil to Agent R; that Anderson inquired of English if he knew the three fellows (Agents S, C and R) sitting at the bar; that English replied, 'Yes, I know the one fellow. I shot pool with him', following which Anderson approached Agent R; that he observed Agent R hand a slip of paper underneath the bar to Anderson; that Anderson, followed by Agents C and R, left the premises; that about fifteen or twenty minutes later Agents C and R returned to the premises; that he accompanied the agents to the police station and that he gave Agent R a signed, sworn statement in which he referred to the three agents by their names but that he did not learn their names prior to the hearing herein.

"On cross examination, LeMond testified that he knew Anderson for about five or six months; that prior to August 23d aforesaid he had also placed a few bets with Anderson in other taverns; that he did not observe Agent S and Anderson in any conversation at the licensed premises; that he did not observe Anderson taking a bet from Agent S; that in his aforesaid written statement, he did state that he had heard Agent S speaking with Anderson about placing a \$9 horse race bet and that he did observe Agent S give Anderson a slip of paper which contained the name of a horse.

"Daniel English, on behalf of the licensee, testified that at about 11:30 a.m. on August 23d aforesaid, he came into the licensed premises; that in response to inquiry by Anderson, he identified Agent C as a fellow with whom he had played pool in another tavern, following which Anderson joined the agents and conversed with them; that at the time Mrs. McKernan was behind the bar about ten to twelve feet from the group; that after consuming a glass of beer, he left the premises; that he met Agents C and R and the two police detectives half way up the street and went with

them to Anderson's apartment and that four 'marked' \$1 bills were found in Anderson's possession.

"English further testified that he, Anderson, the agents and the two detectives returned to the licensed premises; that they observed Mrs. McKernan walking up the street and Agent R remarked, 'Look, Mrs. McKernan doesn't even know what is going on!'; that he was told that he was being held as a material witness and was taken to the police station.

"On cross examination, English substantially reiterated his direct testimony and denied he observed any gambling activities on his aforesaid visit to the licensed premises.

"Agent R, on rebuttal, denied the aforesaid statement attributed to him by English and further testified that LeMond had read and voluntarily signed his statement.

"On recross examination, Agent R testified that Agent S had identified himself to LeMond at the licensed premises and at the police station prior to the taking of LeMond's statement.

"On recross examination, Agent S testified that he and Agents C and R had identified themselves to LeMond at the tavern and that he had again identified himself to LeMond at the police station.

"George LeMond, on surrebuttal, denied that he knew the agents by their names prior to making his written statement; denied that the agents had displayed their credentials to him; denied that Agents S and C had announced their names to him (as testified by Agent S); and testified that he was confused and nervous when he made his statement and that the only remark made to him by Agent R with respect to his statement was 'if I don't tell the truth he would get me one way or the other.'

"From a review of the entire record, I am convinced that the various conversations and incidents described by the agents in their testimony could not have occurred without the knowledge of Mrs. McKernan who was present at all times, and I must, therefore, discount her claim to innocence. Moreover, I am not favorably impressed with Mrs. McKernan's testimony which contains qualified answers and contradictions with respect to vital parts thereof. Nor am I favorably impressed with LeMond's repudiation of important segments of his sworn, written statement. I am satisfied that LeMond knew the agents by their names when he gave his statement to Agent R. Nor can I believe that the agents had conspired against the licensee despite some similarity in the written reports of Agents S and C (Exhibits D-1 and D-2 in evidence).

"However, even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. Not only is it no defense that an employee of the licensee had not participated in the violation (which I am satisfied was not true in the instant case) but, in addition, licensees may not avoid their responsibility for conduct occurring on their premises by merely closing their eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3. Most certainly, Mrs. McKernan 'suffered' the aforesaid gambling activities to take

place on the licensed premises. See Essex Holding Corp. v. Hock, 136 N.J.L. 28.

"Under the circumstances and pursuant to a careful examination of the evidence appearing herein, I conclude that the Division has established the truth of the charges by a fair preponderance of the believable evidence, and I recommend that the licensee be found guilty as charged.

"Effective December 2, 1962, the license of Edward P. McKernan was suspended by the local issuing authority for ten days for sale to a minor. Since this suspension was imposed subsequent to the within violation occurring on August 23, 1962, it is recommended that the suspension not be considered as a prior record in fixing the penalty herein. It is, therefore, recommended that an order be entered suspending the license for twenty-five days. Re Gerbino, Bulletin 1499, Item 9."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 13th day of May 1963,

ORDERED that Plenary Retail Consumption License C-44, issued by the Board of Commissioners of the Town of West New York to Edward P. McKernan, t/a Big Ed's Tavern, for premises 6400 Dewey Avenue, West New York, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Monday, May 20, 1963, and terminating at 3 a.m. Friday, June 14, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - ALLEGED ENTRAPMENT - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against)

EMILY KAHLERT VOGELLUS)
 t/a Hiawatha Bar & Grill)
 S/W side of State Highway #35)
 Raritan Township (Monmouth County))
 PO Box 98, Keyport, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Raritan)

 Philip J. Blanda, Jr., Esq., Attorney for Licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charges:

- '1. On Sunday, March 3, 1963, at about 5:43 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., six 12-ounce cans of Schaefer beer, at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
- '2. On Sunday, March 3, 1963, between 5:47 p.m. and 6:05 p.m. while Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35.'

"The testimony of the two Division agents (hereafter Agent B and Agent O) discloses that they visited the licensee's premises at about 4:00 p.m. on Sunday, March 3, 1963 and, while there, were served beer by the bartender (subsequently identified as Philip H. Draper). At about 5:40 p.m. Agent B asked Draper for a 6-pack of beer and Draper told him that it would be on the kitchen table so that when he was ready to go, he could take the beer and leave by the rear door. Draper went into the kitchen and, when he returned, he accepted \$1.15 in payment for the 6-pack of beer. The agents picked up the paper bag containing the beer and left by way of the rear door. A short time thereafter, they came back to the premises, entering the same door which led to the

kitchen where they were met by the licensee. The agents identified themselves, asked the licensee to call Draper and, when the latter entered the kitchen, they displayed their credentials and said 'State ABC'. Although the agents requested Draper to get the license application, the licensee volunteered to get it, telling the agents to wait in the kitchen. When she returned, she offered the license application to Agent O and when he placed the 6-pack of beer on the table to take the application from her hand, she threw it on the table, grabbed the 6-pack of beer and ran toward the barroom. Agent B followed and took hold of her sweater but she managed to reach the barroom where she shoved the bag containing the 6-pack through the doorway upon the barroom floor. The licensee, in attempting to loosen the hold of Agent B, inflicted scratches on his face. Agent O recovered the carton of beer from the floor and when the licensee 'calmed down' Agent B released his hold. The licensee invited the agents into the kitchen where she said, 'Can't we straighten this out, boys?', to which question Agent O answered, 'No, ma'am.' Draper came into the kitchen and, upon being asked if the 6-pack was the same one sold to Agent B, stated, 'To the best of my knowledge, it is.'

"During cross examination of Agent B, licensee's attorney asked him whether there were any dents on the six beer cans which the licensee had thrown to the floor and, after examination of the cans, the agent agreed that there were 'just a few nicks.' The attorney then violently threw the 6-pack containing the cans of beer to the hearing room tiled floor and, as a result of the impact, the tops of five cans were dented. (The 6-pack was not in a paper bag at the time of the attorney's performance.)

"Philip H. Draper testified that he was on duty when the agents entered the premises at 'fifteen or twenty minutes' after 2:00 p.m. on March 3, 1963. At 5:45 p.m. when Agent B asked him for a 6-pack of beer, he reminded the agent that it was Sunday. However, when the agent said that he (Draper) knew him for a long time, he agreed to the sale. He then put the 6-pack in a paper bag, placed it on the kitchen table, returned to the barroom and received payment therefor. The agents then left the premises. Some time thereafter, the agents returned to the licensed premises and told him they were ABC men and stated that he had committed a violation. Later, while in the men's room, he heard a 'commotion' and when he came out, he saw Agent O in the telephone booth and Angie (the name by which he referred to Agent B) standing with the licensee, who claimed that she had been 'manhandled'. Subsequent thereto, in the presence of the agents and the licensee, he admitted that the violation had been committed without the licensee's knowledge or consent. He also claimed that he had known Agent B for a year and a half and had seen him at various places during that time.

"The licensee testified that at 2:00 p.m. on March 3, 1963, Draper relieved her from bar duty and about ten minutes later at Draper's request she prepared a sandwich for Agent O. After service thereof, she rested until 5:30 p.m. and, upon rising, she saw two men alight from a car on the firemen's fair ground (which is adjacent to the licensed premises) and saw one of them reach into the car and take out a package. She then dressed, walked down the hall and observed the agents standing between the hall and the kitchen. She spoke to them and they said 'ABC men' and told her that Draper had sold them a 6-pack of beer. She called Draper and, receiving no response, she told the agents she would check and, picking up the 6-pack, started for the barroom. Immediately, one of the agents shouted, 'Grab her.' The next thing she knew the other agent seized her

from behind and 'the six-pack went flying.' She testified that since the agents had not shown her any credentials, she believed it was a robbery. Thereafter, the agents accompanied her to the kitchen and, when the agents placed their credentials on the table, she went to the barroom and obtained the license application.

"On rebuttal, Agent B said he never had the nickname of Angie and that he never had seen or spoken to Draper prior to the investigation in question of the licensee's establishment.

"The attorney for the licensee contended that there was entrapment on the part of Agent B.

"In State v. Rosenberg, 37 N.J. Super. 197 (App.Div. 1955), an appeal from a criminal conviction, Judge Francis, commenting on the defense of entrapment, states that 'Generally, it may be said where a police officer "envisages a crime, plans it, and activates its commission by one not theretofore intending its perpetration" for the purpose of providing a victim for prosecution, the defense is available.' However, as pointed out by Judge Jayne in In the Matter of the Appeal of Sam Schneider, 12 N.J. Super. 449 (App.Div. 1950), 'We are dealing here with a purely disciplinary measure and its alleged infraction' and that such matters are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948). In any event, I find no evidence in the instant case from which it can be inferred that Agent B implanted an unlawful design in the mind of Draper or that the agent practiced any trickery, persuasion or fraud to induce him to commit a wrongful act. The agents were investigating a specific complaint alleging sale of alcoholic beverages in original containers for off-premises consumption during prohibited hours; and I believe the testimony of Agent B that during the course of their investigation, he asked about the chance of obtaining a 6-pack of beer. Draper admitted that he had agreed to and did sell a 6-pack of Schaefer beer, placing the carton on the kitchen table so that it could be surreptitiously removed from the licensed premises. Thus, it is my opinion that the defense of entrapment is not available in these proceedings. See Re Highlander Hotel Corp., Bulletin 1475, Item 1.

"I had an opportunity to judge the credibility of the witnesses and I find that the agents' version of the material facts with reference to the occurrences at the time in question and the time of their arrival in the licensee's place of business was credible and convincing. On the contrary, I cannot, in view of all the circumstances in the instant case, give credence to the testimony of the licensee. The latter's account of the happenings which resulted in the hindering charge is unworthy of belief. A licensee cannot escape the consequences of his acts, particularly when he physically interferes with the orderly investigation of officers of the law while in the course of their sworn duty. I am satisfied, therefore, that the Division has established the truth of the hindering charge by a fair preponderance of the believable evidence and, inasmuch as Draper has admitted the sale of alcoholic beverages during prohibited hours, I recommend that the licensee be adjudged guilty of both charges preferred herein.

"The licensee has no prior adjudicated record. The minimum suspension imposed for violation of Rule 1 of State Regulation No. 38 (Charge 1) is fifteen days. Re Ruth & Middaugh, Bulletin 1504, Item 6. Because of the conduct of the licensee which brought about Charge 2, it is recommended that an

additional suspension of twenty days be imposed. Re 500 Communipaw Tavern, Bulletin 1440, Item 5. Thus, I recommend that an order be entered herein suspending the license of the instant licensee for a period of thirty-five days."

No written exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the testimony, the exhibit and the Hearer's Report, I concur in the findings of the Hearer and adopt his recommendation. Hence I find the licensee guilty as charged.

Accordingly, it is, on this 28th day of May 1963,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Raritan to Emily Kahlert Vogellus, t/a Hiawatha Bar & Grill, for premises on S/W Side of State Highway #35, Raritan Township (Monmouth County), be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1963, commencing at 2 a.m. Tuesday, June 4, 1963; and it is further

ORDERED that any renewal license that may be granted shall be and remain under suspension until 2 a.m. Tuesday, July 9, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD OF CORPORATIONS WITH COMMON STOCKHOLDER - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

THE LIVING ROOM (A CORPORATION))
21 No. Harrison St.)
East Orange, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange.)

Carl J. Yagoda, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 2, 1963, it possessed alcoholic beverages in four bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Although the licensee has no previous record of suspension of license, the license of George Mintz, president and 49% stockholder of the licensee, then held for premises 286 - 16th Avenue, Newark, was suspended by the then Commissioner for five days, effective October 7, 1940, for sale below minimum price

(Re Mintz, Bulletin 426, Item 6) and by the municipal issuing authority for thirty days, effective April 22, 1957, for sale to minors. In addition, the license of Mintz's Tavern, Inc. (of which George Mintz was president) for premises 286-288 16th Avenue, Newark, was suspended by the Director for twenty days, effective January 3, 1963, for sale during prohibited hours and sale below filed price. Re Mintz's Tavern Inc., Bulletin 1493, Item 5.

The prior record of suspensions for dissimilar violation in 1940 and 1957 disregarded because occurring more than five years ago but the prior record of Mintz's Tavern, Inc. considered (cf. Re Spring Bar & Grill, Inc., Bulletin 1447, Item 9), the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Bazilus, Bulletin 1439, Item 6.

Accordingly, it is, on this 5th day of June, 1963,

ORDERED that Plenary Retail Consumption License C-11, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange to The Living Room (A Corporation) for premises 21 No. Harrison Street, East Orange, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1963, commencing at 2:00 a.m. Wednesday, June 12, 1963; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Tuesday, July 2, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. STATUTORY AUTOMATIC SUSPENSION - ORDER TEMPORARILY STAYING SUSPENSION.

Auto.Susp. #229)	
In the Matter of a Petition to Lift)	
the Automatic Suspension of Plenary)	
Retail Consumption License C-6,)	
issued by the Board of Commissioners)	ON PETITION
of the City of Millville to)	ORDER
)	
NOLAN, INC.)	
t/a Nolan's)	
500 S. Second Street)	
Millville, N. J.)	

Philip L. Lipman, Esq., Attorney for Petitioner:

BY THE ACTING DIRECTOR:

It appears from the petition filed herein and the records of this Division that on May 27, 1963, Marie Strack, secretary-treasurer and 98% stockholder of the petitioner corporate licensee, was fined \$75 and \$10 costs in the Millville Municipal Court after plea of non vult to a charge of sale of alcoholic beverages on May 8, 1963 to a minor, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. The suspension has not been effectuated because of the pendency of this proceeding.

It further appears that disciplinary proceedings are presently pending before the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after the disciplinary proceedings have been decided. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Hillman, Bulletin 1506, Item 3.

Accordingly, it is, on this 6th day of June, 1963,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

EMERSON A. TSCHUPP
ACTING DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - LICENSE SUSPENDED 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

G. D. & L., INC.)
t/a PARK WINE & LIQUOR STORE)
126 Broadway)
Hillsdale, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Hillsdale.)

Licensee, by George Lipson, President, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 1, 1963, it sold a case of 4/5 quart bottles of whiskey at less than filed price, in violation of Rule 5 of State Regulation No. 30.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Lell, Bulletin 1513, Item 6.

Accordingly, it is, on this 3d day of June, 1963,

ORDERED that Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Hillsdale to G. D. & L., Inc., t/a Park Wine & Liquor Store, for premises 126 Broadway, Hillsdale, be and the same is hereby suspended for five (5) days, commencing at 9 a.m. Monday, June 10, 1963 and terminating at 9:00 a.m. Saturday, June 15, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE
SUSPENDED 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)
)
 LOUIS BOURGUIGNON)
 t/a LOU'S LIQUOR STORE)
 Northeast side of N. Y. Rd.)
 Bass River Township)
 PO New Gretna, N. J.)
)
 Holder of Plenary Retail Distribution)
 License D-1, issued by the Township)
 Committee of the Township of Bass)
 River.)

CONCLUSIONS
AND ORDER

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

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on
April 12, 1963, he sold a case of bottles of beer to a minor,
age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for
fifteen days, with remission of five days for the plea entered,
leaving a net suspension of ten days. Re Stolarz, Bulletin
1512, Item 3.

Accordingly, it is, on this 3d day of June, 1963,

ORDERED that Plenary Retail Distribution License D-1,
issued by the Township Committee of the Township of Bass
River to Louis Bourguignon, t/a Lou's Liquor Store, for premises
on the northeast side of New York Road, Bass River, be and the
same is hereby suspended for ten (10) days, commencing at
9:00 a.m. Monday, June 10, 1963, and terminating at 9:00 a.m.
Thursday, June 20, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

L AND P TAVERN, INC.)
t/a VACATION BAR)
68 Bay Avenue)
Highlands, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Highlands.)

Harvey Schwartzberg, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 23, 1963, it sold drinks of beer to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Stolarz, Bulletin 1512, Item 3.

Accordingly, it is, on this 3d day of June, 1963,

ORDERED that Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Highlands to L and P Tavern, Inc., t/a Vacation Bar, for premises 68 Bay Avenue, Highlands, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Monday, June 10, 1963, and terminating at 3:00 a.m. Thursday, June 20, 1963.

EMERSON A. TSCHUPP,
ACTING DIRECTOR.

9. STATE LICENSES - NEW APPLICATION FILED

Arnold Sacks and Doris Sacks
t/a Frank's Beverage Distributors
256 Water Street
Paterson, N. J.

Application filed June 25, 1963 for person-to-person transfer of State Beverage Distributor's License SBD-93 from 256 Water Street, Inc., t/a Frank's Beverage Distributors.


Emerson A. Tschupp,
Acting Director.