

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

BULLETIN 937

JUNE 2, 1952.

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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.

BULLETIN 937

JUNE 2, 1952.

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY
(PROSTITUTION) - SALES DURING PROHIBITED HOURS - SALES AT LESS
THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LOTTERY -
PREVIOUS WARNING - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)

MARY DOLORES EWASKI)
33 Clark St.)
Paterson 1, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-192, issued by the)
Board of Alcoholic Beverage Control)
of the City of Paterson.)
-----)

Harry Smith, Esq. and Bernard L. Stafford, Esq., Attorneys for
Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

Defendant originally pleaded not guilty to charges alleging that she (1) allowed, permitted and suffered lewdness and immoral activity upon her licensed premises, viz., solicitation for prostitution and maintenance of a place for making arrangements for illicit sexual intercourse, in violation of Rule 5 of State Regulations No. 20, and (2) sold alcoholic beverages at retail during prohibited hours in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38. However, during the course of the hearing and after one ABC agent had completed his direct testimony and had been subjected to considerable cross-examination, defendant withdrew her plea of not guilty as to Charges 1 and 2 and entered a plea of non vult to each of these charges.

Defendant pleaded guilty to charges alleging that she (3) sold alcoholic beverages at less than the minimum resale price thereof, and (4) allowed, permitted and suffered a lottery to be conducted and sold and possessed lottery tickets upon the licensed premises.

The testimony of the agent and the file disclose that at approximately 9:30 p.m. on January 26, 1952, the ABC agent entered the barroom of the licensed premises accompanied by another agent. Almost immediately, one of the female patrons called to the attention of the licensee that "strangers" were present. The agent engaged the licensee in conversation and ultimately she hugged him and introduced the agents to three females (Nora, Sarah and Lois). Thereafter she told the agent that Sarah "could be had".

The same agent returned to the licensed premises at 9:15 p.m. on January 30, 1952, accompanied by another ABC agent. The bartender was selling tickets in a pool on a prize-fight being shown on the television set, and one of the agents bought a chance for fifty cents, drawing the fifth round. The licensee was not on the licensed premises at that time, but entered shortly thereafter and introduced the first agent to Pat ----, a young woman who had entered the barroom. Pat offered to take the agent to her room in a nearby hotel for a "lay" which would cost him \$20.00, but he told

her that he would go with her the following Friday night (February 1, 1952). Although the licensee was not with the agent and Pat when this conversation took place, Pat called the licensee over to vouch for the fact that she would keep the date. The licensee replied "Yes. She is reliable. Her word is good. She will be here." The agent also asked the licensee if it was safe for him to go out with Pat and whether she was "clean". The licensee answered "She is reliable. She takes men out from her regularly." Before the agents left that night, the licensee pointed out Nora and Sarah and said that they and Pat "took men out of the place regularly" and were reliable.

The same two agents returned to the licensed premises on February 1, 1952, but were informed that Pat was not there. However, Sarah made a date to meet one of the agents at the licensed premises on the following Wednesday (February 6, 1952). When the agent informed the licensee of these arrangements, she said that Sarah was "reliable" and "would be there".

On that same night, at approximately 11:00 p.m., the licensee sold a quart bottle of beer to a woman and placed the bottle in a paper bag. The woman left the premises with the unopened bottle of beer. Before the agents left the premises early on the morning of February 2, 1952, one of them purchased a pint bottle of Four Roses Blended Whiskey from the licensee for off-premises consumption. Although the minimum resale price was \$3.03, the licensee charged only \$3.00.

The agents again visited the licensed premises on February 6, 1952, taking with them marked money (one ten dollar bill and two five dollar bills). When they arrived at 9:30 p.m., the licensee was not on the premises, but Sarah was present and the agent who had made the date to meet her there that night completed the arrangements by handing her the marked \$10.00 bill which was the price she asked "for the night". Sarah also requested that the agent get a pint of whiskey, and he thereupon ordered a pint of Four Roses whiskey from the bartender, who spoke to the licensee, who in turn went to the back room and returned with a pint bottle of that brand which she held behind her back. She then handed it to the agent and accepted three dollars in payment therefor.

When the agent left the premises with Sarah and another female, they were apprehended by other ABC agents and local policemen. The agent exhibited the pint of whiskey he had purchased and, at Police Headquarters, the marked ten dollar bill was found in Sarah's purse. After Sarah admitted accepting the money from the agent for sexual intercourse, she was arrested for soliciting for immoral purposes.

It is clear that, in addition to the violations enumerated in Charges 2, 3 and 4 (all of which were deliberate), the licensee not only knew that females made dates with males at her licensed premises to take them out for immoral purposes, but actually encouraged and assisted them in plying their illicit trade. Such conduct on the part of the licensee clearly indicates that she has disregarded her duty as a licensee, i.e., to exercise the privilege of her liquor license in the public interest and demonstrates conclusively her unfitness to hold such a license. Re Baldino & Panasiuk, Bulletin 871, Item 10. I am not impressed by her argument for leniency on the ground that another person had encouraged these females to visit the licensed premises. It is clear that the licensee knew the character of these females and actively participated in these violations.

As was said in Re Paton, Bulletin 898, Item 3:

"Licensees must learn and remember that their liquor license is not a license to engage in activities detrimental to the public welfare."

On November 17, 1948, the licensee was warned against permitting lewdness and immoral activities upon her licensed premises. Apparently she has not heeded the warning. The only proper penalty in this case is revocation of the license. Cf. Re Schumacher, Bulletin 901, Item 5; Re Paton, supra; Re Pecorino, Bulletin 889, Item 4; Re Filippone, Bulletin 875, Item 6; Re Baldino & Panasiuk, supra.

Accordingly, it is, on this 19th day of May, 1952,

ORDERED that Plenary Retail Consumption License C-192, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Mary Dolores Ewaski, for premises 33 Clark Street, Paterson, be and the same is hereby revoked, effective immediately.

EDWARD J. DORTON
Acting Director.

2. DISCIPLINARY PROCEEDINGS - SALES BEYOND TERMS OF LICENSE IN VIOLATION OF R. S. 33:1-2.

CANCELLATION PROCEEDINGS - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P. L. 1951, C. 163, SUSTAINED - LICENSE CANCELLED.

LICENSEE'S APPLICATION FOR STATE BEVERAGE DISTRIBUTOR'S LICENSE APPROVED - AS PENALTY FOR ABOVE VIOLATION, LICENSE NOT TO ISSUE UNTIL MAY 26, 1952.

In the Matter of Disciplinary Proceedings and Cancellation Proceedings against)

TONY JIANNANTINO)
2086 Hudson Street)
Fort Lee, N. J.,)

CONCLUSIONS AND ORDER

Holder of Limited Retail Distribution License DL-6, issued by the Mayor and Council of the Borough of Fort Lee.)

Tony Jiannantino, Defendant, Pro Se.
Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

Defendant has pleaded guilty to a charge alleging that on divers days prior to August 9, 1951, he sold alcoholic beverages not pursuant to and within the terms of his license in that he accepted orders for alcoholic beverages at premises other than the licensed premises, in violation of R. S. 33:1-2.

At the same time the charge herein was served, defendant was ordered to show cause why his license should not be cancelled and declared null and void because it had been improvidently issued in violation of R. S. 33:1-12(3)b (as amended by P.L. 1951, ch. 163).

The file herein discloses that on August 9, 1951, an ABC agent made an inspection of defendant's licensed premises. He reported that the licensed premises consist of a store-room for beer and soda water. It further appears that, for some time prior thereto, customers who desired to order beer from the licensee would write their orders on a pad in an adjoining lunch-room or telephone their orders to the lunch-room or to the home of defendant's brother-in-law who resides in North Bergen. This procedure constituted a violation because orders for alcoholic beverages may be taken only on the licensed premises. Defendant sells a small amount of groceries at his licensed premises, but it is clear that his principal business is the sale of beer and soda water.

Defendant did not appear upon the return day of the order to show cause. I conclude that his license was improvidently issued in violation of R. S. 33:1-12(3)b (as amended by P.L. 1951, ch. 163) and, hence, I shall cancel the license, effective at 9:00 a.m. May 19, 1952.

During the pendency of these proceedings defendant filed an application for a State Beverage Distributor's license. By an order dated today, I have approved the granting of said application if and when it is in proper form. However, in no event will the State Beverage Distributor's license be issued to the applicant prior to 9:00 a.m. May 26, 1952. This will mean that, as a penalty for selling alcoholic beverages beyond the terms of his license, defendant must cease all alcoholic beverage activity from 9:00 a.m. May 19, 1952, until he obtains his State Beverage Distributor's license on or after May 26, 1952.

Accordingly, it is, on this 14th day of May, 1952,

ORDERED that Limited Retail Distribution License DL-6, issued by the Mayor and Council of the Borough of Fort Lee to Tony Jiannantino, 2086 Hudson Street, Fort Lee, be and the same is cancelled, effective at 9:00 a.m. May 19, 1952.

EDWARD J. DORTON
Acting Director.

3. APPELLATE DECISIONS - JOHNSON v. ORANGE ET AL. - ORDER DISMISSING APPEAL.

MARGARET M. JOHNSON,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
ORANGE, FRANK O'CONNOR and)
PATRICK P. ROMANO,)
Respondents.)

ON APPEAL
O R D E R

Margaret M. Johnson, Appellant, Pro Se.
Felix J. Verlangieri, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control.
Leonard G. Brown, Esq., Attorney for Respondent Frank O'Connor.
John F. Monica, Esq., Attorney for Respondent Patrick P. Romano.

This is an appeal from the action of respondent Municipal Board in approving a person-to-person transfer of a plenary retail consumption license from Frank O'Connor to Patrick P. Romano, and a place-to-place transfer of said license from premises 605 Scotland Road to premises 283 A & B Scotland Road, Orange.

Hearing of the appeal was scheduled to be held on May 21, 1952.

Prior to the date of the hearing, the appellant advised by letter that she desired to withdraw the appeal but to date no stipulation of discontinuance has been filed. On the date designated for hearing of the within appeal, appellant failed to appear. I shall, therefore, dismiss the appeal herein for failure to prosecute. Rule 10 of State Regulations No. 15.

Accordingly, it is, on this 21st day of May, 1952,

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

EDWARD J. DORTON
Acting Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - AGGRAVATING CIRCUMSTANCES - PREVIOUS RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOSEPH & ANTHONY MIRAGLIA)
 T/a MIRAGLIA SILVER DIME CAFE)
 302-304 Stevens Street)
 Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-31, issued by the)
 Municipal Board of Alcoholic Beverage Control of the City of)
 Camden. -----)

Leo J. Berg, Esq., Attorney for Defendant-licensees.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

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

The file discloses that seventeen-year-old Roberta ---- entered the licensed premises at approximately 8:15 p.m. on January 10, 1952 and proceeded to the bar where the bartender served her a small glass of beer. The minor states that she remained on the licensed premises until about 1:00 a.m. and consumed about ten glasses of beer served by the same bartender. The other minor, nineteen-year-old Robert ----, entered the licensed premises shortly after Roberta ----, and remained there until at least 12:30 a.m. the next morning, during which time he consumed many glasses of beer served to him by the same bartender.

The licensees have a prior record. While the license was held by Joseph, Michael and Anthony Miraglia, it was suspended by the State Commissioner (now Director) for five days, effective January 29, 1945, for sales of alcoholic beverages to minors (Bulletin 648, Item 12), and for twenty days, effective November 13, 1946, for sale of alcoholic beverages in original containers for off-premises consumption during prohibited hours, in violation of State Regulations No. 38 (Bulletin 737, Item 5). Under all of the circumstances, including the prior similar violation more than five years ago, and the fact that one of the minors was only seventeen years of age, I shall suspend the license for twenty days. Cf. Re Jackson, Bulletin 824, Item 8; Re Montagna, Bulletin 918, Item 8. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 15th day of May, 1952,

ORDERED that Plenary Retail Consumption License C-31, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Joseph & Anthony Miraglia, t/a Miraglia Silver Dime Cafe, for premises 302-304 Stevens Street, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. May 26, 1952, and terminating at 2:00 a.m. June 10, 1952.

EDWARD J. DORTON
 Acting Director.

5. DISCIPLINARY PROCEEDINGS - SALES AND KEEPING OPEN DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ALBERT Z. PARTYKA)
54 Lester Street)
Wallington, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-21, issued by the Borough Council of the Borough of Wallington.)

Albert Z. Partyka, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded guilty to charges alleging that on Saturday morning, April 26, 1952, he (1) sold and permitted the consumption of alcoholic beverages upon his licensed premises during prohibited hours, and (2) failed to close the entire premises during prohibited hours, both in violation of local regulations.

An ordinance of the Borough of Wallington prohibits sale of alcoholic beverages or permitting their consumption on licensed premises between 3:00 a.m. and 6:00 a.m. on weekdays and requires that licensed premises shall be closed between said hours.

The file discloses that two ABC agents entered the licensed premises at approximately 2:00 a.m. on Saturday, April 26, 1952, at which time there were eight other patrons in the barroom. The licensee was present and his wife was tending bar. At 3:00 a.m. no effort was made to close the premises. On the contrary, at 3:15 a.m. the licensee's wife turned out all lights except the ones at the bar, and continued to serve alcoholic beverages to the customers, including the agents, until approximately 4:00 a.m., when the agents identified themselves. There were then six other patrons on the licensed premises, three of whom had drinks on the bar in front of them.

Defendant has no prior adjudicated record. Consequently, I shall suspend the license for fifteen days (the minimum period for local "hours" violations). Re Croal, Bulletin 935, Item 8. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 22nd day of May, 1952,

ORDERED that Plenary Retail Consumption License C-21, issued by the Borough Council of the Borough of Wallington to Albert Z. Partyka, for premises 54 Lester Street, Wallington, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. June 2, 1952, and terminating at 3:00 a.m. June 12, 1952.

EDWARD J. DORTON
Acting Director.

6. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - CHARGE OF PERMITTING LICENSED PREMISES TO BE USED IN AID OF ILLEGAL ACTIVITY DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary proceedings against

LAMBERTVILLE LODGE LOYAL ORDER
OF MOOSE
6 Lilly Street
Lambertville, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-1, issued by the Board of Commissioners of the City of Lambertville.

Emmett D. Topkins, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded not guilty to the following charge:

"On August 16, 1951, you allowed, permitted and suffered your licensed premises to be used in furtherance and aid of and in connection with an illegal activity or enterprise resulting in a conviction in a criminal prosecution, in that a five cent slot machine was maintained in an unlicensed portion of your licensed building accessible from the licensed portion, with respect to which machine your steward, John Burroughs was convicted on or about November 5, 1951, in the Hunterdon County Court, (Law Division) (Criminal) of the crime of possessing the aforementioned slot machine contrary to R. S. 2:135-2 in your licensed building; in violation of Rule 4 of State Regulations No. 20."

Rule 4 of State Regulations No. 20 provides:

"No licensee shall *** allow, permit or suffer the licensed premises or the licensed business to be used in furtherance or aid of, or in connection with any illegal activity or enterprise resulting in a conviction in a criminal prosecution."

On August 16, 1951, a State Police Trooper, while searching defendant's premises pursuant to a search warrant, found a small slot machine in a room located in the basement of defendant's building. The Trooper said that he found the machine on a bench in a room which "looked like it might be a pantry or storeroom of some sort". The room is not part of the licensed premises.

On November 5, 1951, John Burroughs, steward of defendant club, pleaded non vult in the County Court of Hunterdon County to the crime of possession of the slot machine, in violation of R. S. 2:135-2, and was fined \$150.00.

Defendant's building has two and one-half stories and a basement. The club activities are conducted in the upper part of the building. The basement, which "has the appearance of being neglected", is used generally for storage purposes. James McKeon, Treasurer of the club for the past ten months, testified that he had never been in the room where the slot machine was found and that no member uses the room as a "social place or recreational place". The State Police Trooper testified that the machine was covered with a "lot of dust". From all the evidence I conclude that defendant did not permit its licensed premises to be used in furtherance or aid of, or in connection with, any illegal activity or enterprise. The evidence indicates that the machine had not been used for many years and was abandoned.

Under all the circumstances of this case, I shall dismiss the charge.

Accordingly, it is, on this 17th day of April, 1952,

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

EDWARD J. DORTON
Acting Director.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ELMER A. SCATCHARD)
T/a ELMER'S TAVERN)
668 Speedwell Avenue)
Morris Plains, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Morris Plains.)
-----)

Elmer A. Scatchard, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered to, and allowed, permitted and suffered the consumption of alcoholic beverages by a minor upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file in the instant case discloses that on March 26, 1952, defendant served three "Tom Collins" containing alcoholic beverages to a girl nineteen years of age.

Since no aggravating circumstances appear, and the defendant has no prior adjudicated record, I shall impose the usual ten-day suspension, less five days' remission for the plea entered herein, leaving a net suspension of five days. Ferrazzano & Jones, Bulletin 916, Item 9.

Accordingly, it is, on this 22nd day of May, 1952,

ORDERED that Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Morris Plains to Elmer A. Scatchard, t/a Elmer's Tavern, for premises 668 Speedwell Avenue, Morris Plains, be and the same is hereby suspended for a period of five (5) days, commencing at 8:00 a.m. June 2, 1952, and terminating at 8:00 a.m. June 7, 1952.

EDWARD J. DORTON
Acting Director.

8. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary Proceedings against

CHARLES W. VanSCHOICK T/a VILLAGE INN S/S State Highway 33 Howell Township P.O. R#2, Freehold, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Howell.

Samuel S. Sagotsky, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded not guilty to a charge alleging that he sold, served and delivered to, and allowed, permitted and suffered the consumption of alcoholic beverages by, a minor upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

At the hearing herein, Samuel --- testified that he was born on July 30, 1934; that on the evening of June 9, 1951, he and two companions visited defendant's licensed premises and occupied a table on the side of the premises nearest to Asbury Park; that during the time they remained there he had "between five and six" glasses of beer; that he and his companions were served by a waitress whom he subsequently identified as Cecelia Elizabeth Morrison; that on one occasion he sang at the microphone used by the orchestra; that, after being involved in an argument with another patron, he was questioned by the waitress and a bartender as to his age and requested to leave by the defendant; that this questioning occurred after he had been served and permitted to consume alcoholic beverages.

Leroy William Miller, a companion of Samuel ---, corroborated substantially the testimony given by the latter with reference to being on defendant's licensed premises on June 9, 1951, and the occurrences that allegedly took place that evening. Stanley A. Matthews testified that he visited defendant's licensed premises on June 9, 1951, in the company of Samuel --- and Leroy William Miller, but testified that he did not remember whether Samuel --- drank any beer on that evening or sang over the microphone.

The defendant testified that he was present on every Saturday evening during the month of June 1951; that he never saw the three youths on his licensed premises at any time with the exception of one occasion in October 1951, when Samuel --- and Leroy William Miller, accompanied by two ABC agents, visited his premises for the purpose of identifying the person who, allegedly, had made the sale.

Two waitresses, two bartenders, and a banjo player in charge of the orchestra (employees of defendant) testified that, although they were present on the evening of June 9, 1951, they did not see Samuel --- or his two companions on the licensed premises. These witnesses denied that there was any argument between patrons or that Samuel sang over the microphone at any time that evening. The witnesses further testified that Cecelia Elizabeth Morrison does not wait on tables on the "Asbury Park side" of the licensed premises, that section being assigned exclusively to another waitress, Anna VanSchoick.

The alleged sale and service of alcoholic beverages to Samuel --- was not directed to the attention of the Division until the latter part of October 1951, after Samuel ---- had been arrested on charges of stealing two automobiles. On cross-examination Leroy Miller admitted that he had been twice convicted of crimes.

This case presents a conflict between the testimony of the witnesses produced by the Division and those produced by the defendant. Defendant has been a licensee for fifteen years, and has no prior adjudicated record. His employees who testified in his behalf have been employed by him for periods ranging from two to thirteen years. Considering the character of two of the Division's witnesses who testified as to the alleged violation, and the character of defendant's witnesses who denied the alleged violation, I believe the defendant's witnesses. After a careful review of all the evidence, I conclude that the Division has not sustained the burden of proof in establishing defendant's guilt and, therefore, the charge will be dismissed. Cf. Re Cartwright, Bulletin 725, Item 1.

Accordingly, it is, on this 15th day of May, 1952,

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

EDWARD J. DORTON
Acting Director.

9. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary)
Proceedings against)
ROVA FARMS, INC.)
T/a ROVA FARMS)
Trenton Road)
Jackson Township)
P.O. Cassville, N. J.,)
Holder of Plenary Retail Consump-)
tion License C-2, issued by the)
Township Committee of the Township)
of Jackson.)
-----)

CONCLUSIONS
AND ORDER

Edward W. Haines, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded not guilty to a charge alleging that it sold, served and delivered alcoholic beverages to, and allowed, permitted and suffered the consumption of alcoholic beverages by, a minor upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

At the hearing herein, Samuel ---- testified that he was born on July 30, 1934; that on the morning of August 25, 1951, between "12:30 and 2:00 o'clock" he visited defendant's licensed premises; that he went to the bar where he ordered and was served with a glass of Schenley whiskey and a glass of beer by Anton Baronowsky; that thereafter he was served by the same bartender with another glass of whiskey and a glass of beer, and that at no time was he questioned as to his age.

On behalf of defendant, Halbert Leedom testified that he is a special police officer employed by defendant; that on Friday evening, August 24, 1951, at about 11:00 p.m., he observed an automobile "digging up gravel in the parking lot"; that he inquired from Carl Brown, who was accompanied by Samuel ---, as to the ownership of the car; that after a period of five minutes "they drove off"; that the car returned to the parking lot on two occasions later on the same evening, but that he did not see Samuel --- on the licensed premises at any time on the evening of August 24 or the early morning of August 25.

William Skrobko, President of the defendant corporation, testified that he was tending bar on one section of the bar on the evening of August 24, 1951, and early morning of August 25, 1951, and Anton Baronowsky was tending bar on the adjoining section; that he has known Samuel --- for approximately five years and knew that he was a minor; that Samuel was one of a group of boys who created trouble at times on the grounds surrounding the licensed premises; that he did not observe Samuel --- on any part of the premises on the evening or morning in question.

Anton Baronowsky testified that he was tending bar during the evening of August 24 and early morning of August 25, 1951; that he did not serve Samuel --- nor did he see Samuel --- in the licensed premises at any time. He said he was acquainted with Samuel ---- because the latter occasionally played shuffleboard on the licensed premises.

Boris Pimonov testified that he is Manager of Rova Farms; that he was present the evening of August 24 and the early morning of August 25, 1951, but at no time did he see Samuel ---- on the premises.

This case involves inconsistent stories told by the minor and the President and several employees of defendant. The minor admitted that he had stolen the car in which he and Carl Brown were riding on the evening in question. The testimony of the minor is uncorroborated, whereas the testimony of defendant's witness appears to be reliable. The burden of proof to establish the guilt of the defendant rests with the Division. After considering all the evidence I conclude that the Division has not sustained the burden of proof as to the alleged sales of alcoholic beverages to Samuel --- and, hence, I shall dismiss the charge.

Accordingly, it is, on this 15th day of May, 1952,

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

EDWARD J. DORTON
Acting Director.

10. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING THAT NON-LICENSEE EXERCISED THE PRIVILEGES OF LICENSE AND SALES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary Proceedings against THE OAK TAVERN, INC. T/a THE OAK TAVERN 9 Oak Street Butler, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5 for the 1950-51 and 1951-52 licensing years, issued by the Borough Council of the Borough of Butler.

McDonald & Podesta, Esqs., by Gerard B. Podesta, Esq., Attorneys for Defendant-licensee. Anthony Meyer, Jr., Esq. and Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant has pleaded not guilty to a charge alleging that it aided and abetted Morton Zimetbaum to exercise the rights and privileges of its plenary retail consumption license, contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

The Division's case was based primarily upon a written statement dated May 1, 1951, obtained from Joseph Dilzer, President of defendant-licensee, during the course of an investigation made by an ABC agent, and upon certain verbal admissions made by Joseph Dilzer during an investigation by the Alcohol Tax Unit, U. S. Treasury Department. At the hearing herein, the written statement, dated May 1, 1951, was introduced into evidence, and testimony as to the verbal admissions was given by various agents of the Alcohol Tax Unit. This evidence indicated that defendant might have "farmed out" its license to Morton Zimetbaum.

On behalf of defendant, Joseph Dilzer and Morton Zimetbaum testified at the hearing. Considering all the evidence, I find that the following facts have been established: Defendant-licensee had been in financial difficulties almost continuously since it acquired the license by transfer from Joseph Dilzer in June 1949; in the latter part of March 1951 defendant was placed on the "default list"; during the latter part of March 1951 defendant was almost hopelessly in debt, and a meeting of its creditors was held apparently for the purpose of working out some plan to protect their interests; shortly thereafter Morton Zimetbaum entered the licensed premises and, for a period of about eight weeks, acted as manager, or as co-manager with Joseph Dilzer, of defendant's business. It is not clear whether Morton Zimetbaum was then acting in a supervisory capacity to protect the interest of the creditors or whether, as he says, he devoted his efforts with the intention of purchasing the business if a settlement with the creditors could be made. In any event, the evidence shows that Morton Zimetbaum was paid the sum of \$200.00 weekly by defendant corporation from April 2, 1951, until May 26, 1951, and during this same period of time Joseph Dilzer was paid a weekly salary of \$100.00 by defendant corporation. Since the business was then being run on a cash basis, no deposits were made in any bank during this period of time, but there is nothing in the record to disprove Morton Zimetbaum's testimony that he was working

merely on a salary and that the profits, if any, were turned over to Mrs. Joseph Dilzer who kept the books of defendant corporation. The arrangement between defendant and Morton Zimetbaum was terminated on May 26, 1951, apparently because a settlement could not be made with the creditors.

After considering all the evidence, I conclude that the Division has failed to establish the guilt of defendant by a preponderance of the evidence and, hence, I shall dismiss the charge.

Defendant also pleaded not guilty to the following additional charges:

"2. On June 1, 1951, you sold at retail various alcoholic beverages listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control at less than their listed prices, viz., one case of twelve 4/5 quart (fifth) bottles of Gordon's Distilled London Dry Gin, one case of twelve 4/5 quart (fifth) bottles of Calvert Reserve Blended Whiskey, one case of twelve quart bottles of Schenley Reserve Blended Whiskey, and one case of twelve 4/5 quart (fifth) bottles of Schenley Reserve Blended Whiskey; in violation of Rule 5 of State Regulations No. 30.

"3. On June 21, 1951, you sold at retail an alcoholic beverage listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control at less than its listed price, viz., one case of twelve 4/5 quart (fifth) bottles of Gordon's Distilled London Dry Gin; in violation of Rule 5 of State Regulations No. 30."

As to Charge 2: On behalf of the Division, a citizen who conducts his own business testified that he gave to defendant his check, dated June 1, 1951, in the sum of One Hundred and Seventy-four dollars. It was apparent, at the hearing held on January 24, 1952, that the witness had no clear recollection of the transaction with defendant which resulted in the giving of the check. The witness testified that either he or his Secretary had ordered alcoholic beverages from defendant by telephone. He admits that he did not examine the contents of any cases when delivered. He received no bill from defendant. The witness further testified that his check was issued pursuant to an undated memorandum which accompanied delivery of the order and which might indicate that certain cases of alcoholic beverages were sold at less than their listed prices.

On behalf of defendant, Joseph Dilzer, President of defendant corporation, denied that he ever sold any alcoholic beverages to the Division's witness at less than the listed prices. Referring to the undated memorandum, Mr. Dilzer said that "it looks like my handwriting" but that he had no record or recollection of the transaction.

As to Charge 3: The witness who gave the check dated June 1, 1951, further testified that he gave a subsequent check to defendant, dated June 21, 1951. However, he had absolutely no recollection as to the brand or brands of alcoholic beverages allegedly received by him.

After examining all available evidence, I conclude that the Division has not sustained the burden of proof in establishing the guilt of defendant as to either of the additional charges. From the circumstances of this case, I have strong reason to suspect that defendant was selling case-lots at less than the listed prices, but

a finding of guilt cannot be based merely on suspicion. Hence I must find defendant not guilty as to both additional charges.

Accordingly, it is, on this 20th day of May, 1952,

ORDERED that the original charge and the two additional charges herein be and the same are hereby dismissed.

EDWARD J. DORTON
Acting Director.

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

In the Matter of Disciplinary Proceedings against
SURF COLONY CORP.
T/a SURF CLUB
Ocean Avenue between 6th & 7th Aves.
Ortley Beach, Dover (Twp.)
P.O. Box 225, Seaside Heights, N.J.,
Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Dover.

O R D E R

It appearing that, by Order dated October 15, 1951, the license held by the above named defendant was suspended for a period of ten days, and that the effective date of said suspension was to be fixed by subsequent order (Re Surf Colony Corp., Bulletin 919, Item 9), and

It further appearing that defendant's premises have now been reopened for business;

It is, on this 22nd day of May, 1952,

ORDERED that the ten-day suspension heretofore imposed shall commence at 2:00 a.m. June 2, 1952, and terminate at 2:00 a.m. June 12, 1952.

EDWARD J. DORTON
Acting Director.

12. STATE LICENSES - NEW APPLICATION FILED.

Vigor Beverages Co., Inc.
174-178 Sanford Avenue, Kearny, N. J.
Application filed May 27, 1952 for transfer of State Beverage Distributor's License SBD-13 from Raymond D. Wright, t/a Wright's Beverages, 7 Hutton Street, Jersey City, N. J.

13. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)

RAYMOND E. & SARAH M. RICHARD)
74 Speedwell Avenue)
Morristown, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Board of Aldermen of the Town of Morristown.)

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Raymond E. & Sarah M. Richard, Defendant-licensees, by Raymond E. Richard, Partner.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

Defendants pleaded not guilty to a charge alleging that they sold, served and delivered alcoholic beverages to a minor at their licensed premises and permitted the consumption thereof by said minor, in violation of Rule 1 of State Regulations No. 20.

Helen ---, 19 years of age, testified that she and an adult male companion entered defendants' licensed premises at about 6:00 p.m. on March 28, 1952; that she ordered and was served a glass of ginger ale by a bartender; that shortly thereafter the bartender left the premises and defendant Raymond E. Richard replaced him behind the bar; that during the course of the evening she ordered from Raymond E. Richard five or six glasses of whiskey and ginger ale which he served to her and which she consumed. She further testified that no inquiry was made as to her age.

The male companion of the minor testified that he accompanied her and sat at the bar on the evening in question. He corroborated her testimony as to the service and consumption of the drinks of alcoholic beverages.

Raymond E. Richard testified that he served three drinks of "Seven-Up" to Helen but did not serve any alcoholic beverages to her as she requested him to do because she could not produce proof that she was of age. Defendants produced three witnesses who testified that they were in defendants' licensed premises on the evening of March 28, 1952 and did not observe the service of any alcoholic beverages to Helen. It is quite possible that these witnesses did not observe what types of drinks were served to the minor.

After careful review of the evidence, I am satisfied that the minor was served alcoholic beverages by defendant Raymond E. Richard on the evening in question.

I find defendants guilty as charged.

Defendants have no previous adjudicated record. In the absence of aggravating circumstances, I shall suspend defendants' license for a period of ten days.

Accordingly, it is, on this 28th day of May, 1952,

ORDERED that Plenary Retail Consumption License C-14, issued by the Board of Aldermen of the Town of Morristown to Raymond E. & Sarah M. Richard, 74 Speedwell Avenue, Morristown, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m., June 9, 1952, and terminating at 2:00 a.m. June 19, 1952.

EDWARD J. DORTON
Acting Director.

14. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 HERBERT W. SCHMITZ
 T/a WHITE SWANN INN
 W/S Highway #30 between Fleming & Clinton Point, Allerton
 Clinton Township
 PO Lebanon, N. J.,
 Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Clinton.

CONCLUSIONS AND ORDER

 Raymond E. Bowkley, Esq., Attorney for Defendant-licensee.
 David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

The defendant has pleaded non vult to a charge alleging that he sold and served alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on the evening of March 14, 1952, a truck in which four youths were riding was involved in an accident on a highway. The State Police found seven twelve-ounce bottles of beer in the truck.

Subsequent investigation disclosed that one of the youths, Sheridan ----, had previously purchased ten twelve-ounce bottles of beer in defendant's premises and that he had taken the bottles to the truck. The youths deny that they drank any of this beer.

Defendant alleges that prior to the sale he questioned Sheridan as to his age. He says that the minor told him he was over twenty-one and showed him an identification card, issued by the United States Air Force, indicating that the holder thereof was born in 1930. The minor admits that he told defendant he was of age and that he exhibited the identification card which had not been issued to him. The minor states that he was born on March 16, 1936, and, hence, that he was almost sixteen years of age when the violation was committed.

Defendant has held a license since Repeal and has no prior record. Although the minor may have appeared older than his actual age, it is doubtful if he appeared to be of full age. In any event, since the minor did not falsely represent in writing that he was twenty-one years of age or over, defendant has not established a defense under the provisions of R. S. 33:1-77. In cases involving sales to minors sixteen years old, it has been the policy to suspend the license for at least twenty days. Re Gordon, Bulletin 906, Item 8. Because of the mitigating circumstances herein, I shall suspend defendant's license for fifteen days, less five days for the plea, making a net suspension of ten days.

Accordingly, it is, on this 28th day of May, 1952,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Clinton to Herbert W. Schmitz, t/a White Swann Inn, for premises on W/S Highway #30 between Fleming & Clinton Point, Allerton, Clinton Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 9, 1952, and terminating at 2:00 a.m. June 19, 1952.

New Jersey State Library

Edward J. Dorton
 Acting Director.