Mr. Ambrose

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

BULLETIN 1430 JANUARY 19, 1962

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

BULLETIN 1430 JANUARY 19, 1962

1. COURT DECISIONS - CARELIS v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL -- DIRECTOR SUSTAINED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-582-60

EFCHARIS CARELIS,
t/a Hollywood Cafe,

Appellant,

vs.

DIVISION OF ALCOHOLIC
BEVERAGE CONTROL,

Respondent.

Argued November 6, 1961 -- Decided December 21, 1961

Before Judges Gaulkin, Kilkenny and Herbert.

Mr. James V. Segreto argued the cause for the appellant (Messrs. Segreto & Segreto, attorneys).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for the respondent (Mr. David D. Furman, Attorney General, attorney).

The opinion of the court was delivered by

GAULKIN, J.A.D.

The Division of Alcoholic Beverage Control (ABC) charged that on August 13, 18-19 and 21, 1960 Mrs. Carelis "allowed, permitted and suffered" her licensed tavern premises to be conducted "in such a manner as to become a nuisance in that you allowed, permitted and suffered thereon persons who appeared to be homosexuals, viz., females impersonating males, and you allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and you otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20," and that on August 21, 1960, she "sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated, and you allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

She was found guilty on both charges, and her license was suspended for 40 days on the first charge and 15 days on the second charge, or a total of 55 days. She appeals.

I.

In August 1959 the ABC had written her, cautioning her not to permit lesbians to congregate on her licensed premises and she replied, "Whenever I find such a person she is immediately put out of my establishment."

Agent M testified that on August 13, 1960 there were about 45 patrons in the tavern; about 15-20 were women; of these 6 appeared to him to be "lesbians" -- that is, women dressed and acting like men. On August 18-19, he saw about 25 patrons, about half of them women; 7 appeared to him to be such lesbians. On August 21 there were about 50 patrons, of whom 18 were women. Of these, 11 appeared to him to be such lesbians.

Agent G testified that on August 21 he saw, during a three-hour period, a total of 16 such lesbians on the premises, but never more than 11 at one time. Agent S testified that during a ten-minute period, at about 2 A.M. on August 21, there were 40 to 50 people present, of whom about 15 were women; of these 8 or 9 were such lesbians.

Appellant's contention is that the finding that these women "were apparent lesbians is not supported by substantial, sufficient and competent evidence." Appellant's able and thorough brief very fairly concedes that the scope of our review is limited, as defined in such cases as Hornauer v. Div. of Alcoholic Beverage Control, 40 N. J. Super. 501 (App. Div. 1956) and Fanwood v. Rocco, 59 N. J. Super. 306 (App. Div. 1960), aff'd, 33 N. J. 404 (1960). Appellant does not challenge the truthfulness of the agents. What she says is that the evidence given by the agents of what they observed is not sufficient to support a reasonable conclusion that the women were, or had the appearance of, such lesbians.

We find that the testimony of the agents was fairly summarized by the Director when he said in his opinion that:

> " 'The testimony of the agents as to their visit on August 21st with especial reference to Charge 1 is in substantial agreement and may be summarized as follows: that of the fifty patrons (16 or 18 of whom were females) in defendant's licensed premises at one time during the morning in question, at least 8 to 11 were attired in male-type shirts with the top button unbuttoned or some had sweatshirts, many wore tight fitting trousers, one of whom wore dungarees, some of the trousers worn had zipper-fly fronts, 'thick' belts with large buckles, oxford type loafers and tennis shoes. These females according to the testimony of the agents wore no make-up, had short cropped haircuts combed straight back, held cigarettes in the side of their mouths and flicked the ashes therefrom like males. They would gulp a shot of whiskey in one drink, walked with a heavy gait and on one occasion when two of the described females came from the ladies' room they were heard to use filthy language.' "

The alleged lesbians present on the other days in question were similarly described.

The agents testified that these women stayed by themselves, in groups of two or three, and spoke to the female patrons, but not to the male. The ABC concedes that, except for the vile language mentioned above, they were orderly; there was no touching or caressing; no planning or solicitation of immorality; and no molestation or annoyance of other patrons.

Appellant argues strenuously that this is not sufficient to support a finding that these women were or even appeared to be lesbians, especially since Agent G admitted that some of them had eyelashes that were "long and curled", "female type" tweezed eyebrows, and maybe used "lipstick" slightly.

The ABC disagrees and, in addition, stresses the fact that on the several dates these groups of women dressed and acted in a uniformly mannish manner to the degree described. In Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N. J. Super. 405 (App. Div. 1957) Judge Jayne said: "It is often in the plumage that we identify the bird." To this the ABC adds that it can not be put down to mere coincidence when birds of a feather are found repeatedly flocking together. The main entertainment in the Carelis tavern was dancing. The ABC points out that at this summer Saturday night dance (August 20-21) when women ordinarily sport their womanliness and their finery, these women were present attired and acting as men. Mrs. Carelis claimed that they were not lesbians, that several were married, some had children, and at least one was pregnant, but she produced not one as a witness. On the other hand, she testified that these women were not "my customers", but had started to come to her place "recently" because another tavern in the neighborhood had been closed.

Although in Paddock Bar, Inc. v. Alcoholic Beverage Control Division, supra, there were overheard remarks characteristic of homosexuality, we think our holding in that case applies here. We there said (at p. 408) that " 'The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil.' " Then, after pointing out that "the evidence was not of the probative quality to establish beyond uncertainty that the specified patrons of the tavern were in actuality homosexuals" and that there was no "proof that any of such individuals indulged in any licentious solicitations on the premises", we nevertheless held that

> "...The appellant was charged with the misconduct of permitting persons who conspicuously displayed by speech, tone of voice, bodily movements, gestures, and other mannerisms the common characteristics of homosexuals habitually and in inordinate numbers (on one occasion, as many as 45) to congregate at the tavern ***
>
> Assuredly, it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud.
>
> If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise,

> demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.
>
> It cannot be logically determined that in the present proceeding there was no circumstantial or inferential evidence productive of the impression, perhaps general, that the patrons under observation were not so-called female impersonators. Logical inferences are more than mere suspicions."

In Murphy's Tavern, Inc. v. Davis, -- N. J. Super. -- (App. Div. 1961) we commented upon "the public interest in tight control over the liquor business" and said that the "primary concern in this regard is maintenance of accepted standards of public decency and morality" in licensed premises. The ultimate concern of the ABC is not only to suppress the existence of "all forms of licentious practices and immoral indecency on the licensed premises" (Paddock, supra, p. 408) but the appearance or even the simulation thereof which might attract patrons because of appeal to their baser instincts. In re Olympic, Inc., 49 N. J. Super. 299 (App. Div. 1958); McFadden's Lounge v. Div. of Alcoholic Bev. Control, 33 N. J. Super. 61 (App. Div. 1954); In re Schneider, 12 N. J. Super. 449 (App. Div. 1951). In the McFadden case, we said (p. 62):

> "...Experience has firmly established that taverns where wine, men, women, and song centralize should be conducted with circumspect respectability. Such is a reasonable and justifiable demand of our social and moral welfare intelligently to be recognized by our licensed tavern proprietors in the maintenance and continuation of their individualized privilege and concession ***"

For the foregoing reasons, we can not say that it was unreasonable for the Director to conclude that it was a violation of Rule 5 to suffer the repeated congregation in such numbers of women in such attire, acting as they did.

II.

Appellant concedes that "At the hearing, the agents gave detailed descriptions of the deportment of the alleged apparent intoxicant. This testimony standing alone would, it is conceded, raise a legitimate issue of apparent intoxication." But, says appellant, "this testimony must be considered in connection with the evidence elicited on cross examination, to wit: that the agents were able to question the alleged apparent intoxicant and that his answers were responsive; that when he was asked to walk a straight line of 10 to 15 feet, he was able to walk the straight line, one agent adding that he walked the line slowly; and finally, the patron was able to perform the requested bending test." This, says appellant, wiped out the agents' direct testimony of their impressions of apparent intoxication, and therefore the Director should have found the appellant not guilty of this charge.

Agent G testified that he saw the patron in question "coming from the direction of the restrooms...as he walked toward me he staggered against the wall and he bumped into a stool...and he came

over and he bumped into me...he was staggering--as he approached me he says to me in a slurred voice, he says, 'Let me buy you a beer.' " The agent told him he did not want any. Then, continued the agent, as the patron "was swaying a little bit" the tavern "bouncer", Mr. Kelly, came to the patron and told him "You better get out...you've had enough." Kelly then told the bartender "Don't serve this fellow any more. He's had enough." In spite of this, however, the bartender sold the patron two bottles of beer, a few minutes later. After drinking from one of the bottles, the patron "walked over to the licensee" with the other in his hand, "bumping into the people that were sitting at the bar and walking in a zig-zag manner." When the agent seized the bottle, identified himself to the licensee and informed her of the violation, she immediately remarked " 'I know he's drunk, he's always drunk...I told my bouncer to kick him out'."

In short, not only to the agents but to the licensee and her bouncer, the patron appeared intoxicated. This evidence was not counterbalanced by the fact that thereafter, when all parties went into the back room to complete the investigation, the patron was able to walk a straight line "with a little difficulty", bend down and touch his toes, and answer questions. The test is not how drunk was the patron, but was he drunk or apparently drunk? To the experienced eyes of the agent, bouncer and the licensee, he was. That was sufficient. Freud v. Davis, 64 N. J. Super. 242, 247 (App. Div. 1960); Grant Lunch Corp. v. Newark, etc., Alcoh. Bev. Cont., 64 N. J. Super. 553, 561 (App. Div. 1960).

The judgment is affirmed.

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2. APPELLATE DECISIONS - RIGOLETTI v. WAYNE (CASES NOS. 1 & 2)

Case No. 1
Marie Rigoletti, t/a Mountain View Inn,

Appellant,

v.

Township Committee of the Township of Wayne,

Respondent.

ON APPEAL

CONCLUSIONS

AND

ORDER

Case No. 2
Marie Rigoletti, t/a Mountain View Inn,

Appellant,

v.

Township Committee of the Township of Wayne,

Respondent.

David & Albert L. Cohn, Esqs., by Albert L. Cohn, Esq., Attorneys for Appellant.
Peter J. Van Norde, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"In Case No. 1, appellant appeals from the action of respondent whereby, by resolution and order dated February 7, 1961, it suspended her plenary retail consumption license for premises on Boonton Road, Township of Wayne, for sixty days, commencing at 3:00 a.m. on February 15, 1961. By order dated February 15, 1961, the Director stayed such suspension until the entry of a further order herein. R.S. 33:1-31.

"While the aforesaid appeal was pending before this Division, additional charges were brought by respondent against the appellant. In Case No. 2, the appellant appeals from the action of the respondent whereby, by resolution and order dated June 27, 1961, it suspended appellant's renewed license for a period of one year, commencing at 3:00 a.m. on July 1, 1961. By order dated July 18, 1961, the Director stayed said suspension until the entry of a further order herein. R.S. 33:1-31.

"In Case No. 1 respondent charged that the appellant committed the following offenses:

'1. On August 6, 1960 you sold, served and delivered an alcoholic beverage to William ---, age 18, ... a person under the age of 21 years and allowed, permitted and suffered the consumption of such beverage by said William --- in or upon your licensed premises in violation of Rule 1 of State Regulation No. 20.

'2. On November 16, 1960 you sold, served and delivered an alcoholic beverage to Ralph ---, a person under the age of 21 years, and allowed, permitted and suffered the consumption of such beverage by said Ralph --- in or upon your licensed premises, in violation of Rule 1 of State Regulation No. 20.

'3. On November 16, 1960 you sold, served and delivered an alcoholic beverage to Ralph ---, not pursuant to and within the terms of your license, as defined by RS 33:1-12 (1.), viz., a scotch and soda, for consumption off your licensed premises; in violation of RS 33:1-2.'

"At a hearing held on January 31, 1961, respondent found appellant guilty on the three charges and, on February 7, 1961, adopted the resolution and order hereinabove mentioned.

"In Case No. 2, the respondent charged that the appellant committed these additional offenses:

'1. On May 4, 1961, you sold, served and delivered an alcoholic beverage to Edgar ---, a person under the age of twenty-one years, and allowed, permitted and suffered the consumption of such beverage by said Edgar ---, in or upon your licensed premises, in violation of Rule 1 of State Regulation No. 20.

'2. On April 30, 1961, you sold and delivered an alcoholic beverage consisting of five quart containers of beer, to Vincent ---, a person under the age of twenty-one years, in or upon your licensed premises, in violation of Rule 1 of State Regulation No. 20.

'3. On April 30, 1961, you sold and delivered an alcoholic beverage consisting of two quart containers of beer, to Vincent ---, a person under the age of twenty-one years, in or upon your licensed premises, in violation of Rule 1 of State Regulation No. 20.

'4. On April 30, 1961, you sold and delivered an alcoholic beverage consisting of two quart containers of beer, to Vincent ---, a person under the age of twenty-one years, in or upon your licensed premises, in violation of Rule 1 of State Regulation No. 20.'

"At a hearing held on June 27, 1961, respondent found appellant guilty on the four charges and, on the same day, adopted the resolution and order hereinabove mentioned.

"In separate petitions of appeal, the appellant asserts the following: In Case No. 1, appellant states that the action of the respondent is erroneous for reasons which may be summarized as follows:

a. The finding of guilt was contrary to the weight of evidence.

b. The action of respondent was discriminatory, unfair, and the result of bias, partiality, prejudice, and unequal treatment.

c. The penalty imposed was excessive and discriminatory.

"In Case No. 2, appellant states that the action of respondent was erroneous for substantially the same reasons set forth in Case No. 1.

"I shall discuss the merits of each charge separately.

"As to Case No. 1: In support of the first charge, respondent produced Nelson B. Cone, a patrolman, who testified that he observed a car in front of the licensed premises with one young male occupant. Shortly thereafter, he observed another young male emerge from the tavern with two bags and enter the car. He followed the car, stopped it and inspected its interior. He noticed two bags which he determined contained six containers of beer. He directed the driver to produce his driver's license, at which time he ascertained that the driver was 18 years of age. He returned to the licensed premises with the two minors. At that time, he saw the appellant at the doorway of the premises, and had a discussion with her concerning the alleged sale of this beer. He further testified that later, in the presence of the minors, she denied any sale to them and that the two minors remained mute. One of the minors later identified John Attardo as one of the bartenders who served them. Officer Cone further stated that he was unable to retain the contents of the bag because they were quart cardboard containers, and the contents were destroyed. The officer admitted that no complaint was made against William ---, the minor, or the bartender, at any time subsequent to this incident.

"Harry ---, a minor, testified that he was the passenger in the car allegedly driven by William --- on the date in question. He stated that he stayed in the car and William --- went into the premises and, shortly thereafter, emerged with a paper bag. Admittedly, he did not know what the contents of that bag were, nor did he ever see the same. Shortly after they drove away, they were stopped by an officer and returned to the licensed premises. The appellant and the bartender came out and had a conversation with the officer after which they came over to the car. He admitted, under cross-examination, that he did not know the exact date or even the exact month except that, 'All I know, it happened'. He recalls, however, the appellant denying, in the presence of William --- and himself, that there was a sale or consumption of alcoholic beverages to either one of these minors.

"William --- was not produced as a witness. Robert H. Pringle, a detective of the Wayne Township Police Department, testified that he had attempted to serve William --- after institution of these proceedings, and was unable to do so. He stated that William --- was no longer a resident of the community and was not expected to return to this State.

"The defense in this case is a denial that any such sale took place on the alleged date, or at any other time. Marie Rigoletti testified that William --- did not purchase any alcoholic beverages in her place on the date aforesaid, but that she does recall that about that time an elderly male person purchased some beer and walked out of the premises with another person (presumably William ---, although she never did see William's face because, she said, his back was turned). When Officer Cone returned to the premises and questioned her regarding the alleged purchase of beer, she immediately denied the sale or consumption of beer on her premises in the presence of the two minors. She further asserted that the older man had a striking similarity in appearance to this minor, almost as though he were his father, and she further testified that this charge was all part of a 'frameup'.

"The bartender was not produced, and the appellant explains his absence by saying that he left her employ shortly after this incident and went to either California or Mexico. She does not know of his present whereabouts and, therefore, was not able to subpoena him as a witness herein.

"In evaluating the testimony upon which this charge is based, I find that the evidence is substantially circumstantial. There is no direct proof implicating William --- in the purchase of beer on these premises and, of course, there is complete absence of any proof regarding any alleged consumption of alcoholic beverages therein. Actually, the only credible testimony given in support of the respondent is the testimony of Officer Cone, who observed William --- leaving the premises with two bags containing what he later determined to be quart paper containers of beer. Harry's testimony is not helpful. He certainly was not in the premises so that he did not observe the transaction, and, as far as he was concerned, he did not know whether William--- had prevailed upon an older person to make the purchase for him as the defense contends. It is unfortunate that the bartender could not appear and testify herein. I am persuaded, however, that the fault did not lie with the appellant in this regard.

"I find also that this action was started on January 18, 1961, more than five months subsequent to the date of this alleged transgression. Counsel for respondent was asked the reason for this delay. He could give none, except to say that a new administration of the respondent Committee was sworn in in January 1961, and that several weeks thereafter this and the subsequent charge was presented for its consideration. I believe that this delay prejudiced appellant's rights to be faced as promptly as reasonably possible with such charges. William ---, in the meantime, had left the jurisdiction and his version is not available. A guilty finding may not be based upon mere suspicion, no matter how reasonably inferable such suspicion may be. In Re Doyle, Bulletin 469, Item 2; Weiss v. Newark, Bulletin 164, Item 8. I therefore recommend that respondent's finding of guilt on Charge 1 be reversed.

"In support of the second and third charges, Officer Cone testified that at approximately 11:17 p.m. on the above date, he observed a motor vehicle proceed to park in the parking lot adjacent to the licensed premises and noticed two minors in the front seat of the vehicle. Later, he noticed another youth emerge from the tavern carrying two bags, whereupon he approached the youths and questioned them with respect to the contents of the bags. They admitted that these bags contained beer and, upon examination of the driver's license of Ralph ---, he ascertained that he was twenty years of age.

"Officer Cone further asserted, under cross-examination, that Edmund Leonard, the bartender of the licensed premises on this date, admitted upon questioning by the said officer on the following day, that he did serve a mixed drink to the said Ralph---and also the Scotch and soda in a container, as well as several containers of beer for off-premises consumption.

"Ralph --- testified substantially as follows: On the date and time aforesaid, he drove his car to the licensed premises and, upon entering the said premises, ordered a Scotch and soda. No inquiry was made by the bartender or by the appellant-licensee regarding his age, nor was he required to show any proof of age. He then ordered two containers of beer and a container of Scotch and soda which was served to him by the bartender and he then left the premises with these containers and joined two juveniles who were waiting for him in the car. Within a few minutes, he was apprehended by the police officer, taken to Police Headquarters, signed a statement, was given a summons, then returned to his car. Prior to his being taken to Police Headquarters, however, he was asked to point out the person who had served him the alcoholic beverages and, standing on the outside of the premises, he pointed to the window to the bartender, Leonard, as the one who had served these beverages. Upon cross-examination, he admitted that Leonard, upon confrontation

at Police Headquarters the following day, charged him with having presented a spurious identification.

"Robert H. Pringle, a detective attached to the Wayne Township Police Department, testified that he, together with Officer Cone and Ralph ---, went to the home of Leonard on November 17 (the day after the alleged violation), at which time Ralph --- identified Leonard as the bartender who had sold him these alcoholic beverages. Leonard was then taken to Police Headquarters and executed a statement in which he admitted that Ralph--- had been served by him on the day in question; stated that he had asked Ralph ---for identification, and that Ralph --- produced spurious identification in the name of another, which reflected a birth date in 1938. He was asked: 'Did he leave any proof of age in writing?' Answer: 'Nothing at all'. The statement further corroborated the incident relating to the J and B Scotch and soda.

"Edmund Leonard was called on behalf of the appellant, and reiterated his statement that Ralph --- did enter the licensed premises and showed him a spurious identification indicating that he was over the age of twenty-one. He thereupon served him with alcoholic beverages which were paid for by Ralph ---. He was asked upon cross-examination, 'You didn't ask him to sign any proof of age slip?' Answer: 'No, I didn't. I took his license for the age'.

"Marie Rigoletti, the appellant, denied that Ralph --- had ever been on her premises before the evening in question, and admitted that he was not required to sign a statement as to his age by the bartender or by her.

"It is abundantly clear that the appellant is guilty of violation of Rule 1 of State Regulation No. 20 because of the actions of her employee on November 16, 1960, in serving, selling and delivering an alcoholic beverage to a person under the age of twenty-one, and also permitting the consumption of such beverage to him. It is admitted by all witnesses that this boy, upon presentation of spurious identification, did obtain these alcoholic beverages in the manner hereinabove described. It is no complete defense to assert that he looked over twenty-one years of age, and that he presented identification to that effect. There is a duty and responsibility which is resolved upon the licensee or her agents, servants and employees to obtain a signed verification of age by the minor. R.S. 33:1-77. Hence, I recommend that respondent's action in finding appellant guilty on the second and third charges be affirmed.

"As to Case No 2: Respondent offered, and there was received in evidence, a transcript of the testimony taken at the hearing by respondent on June 27, 1961 concerning the violations contained in these charges. Appellant offered additionally, at the hearing before me, two witnesses in support of her defense. See Rule 8 of State Regulation No. 15.

"Concerning the second, third and fourth charges herein, Vincent --- testified substantially as follows: On April 30, 1961, at which time he was 19 years of age, he was an occupant of a car which was driven to the licensed premises. He was accompanied by six friends and, while they were waiting in the car, he entered the premises and took a seat next to the appellant at the bar. He ordered four quarts of beer which were served to him, and no inquiry was made regarding his age, nor was he required to sign any written representation thereof. After paying for this beer, he proceeded to the car, which was then driven about a mile and a half from the premises. He recalls that there were four persons in the car at that time and the beer was then consumed. He was driven back to the bar, entered, and ordered 'a couple of more containers of beer'.

This was served to him by the bartender without any inquiry being made by anyone regarding his age. He left the premises and entered the car which was driven a short distance away, where this beer was consumed. About a half hour later, he returned to the licensed premises and purchased 'two or three (more quarts of beer), altogether we had nine quarts'. He then continued to ride around with the other occupants and, shortly thereafter, this motor vehicle was involved in an accident. Subsequently, he was requested by the appellant to come down to her licensed premises and discuss this matter with her. She urged him to state that he did not purchase any alcoholic beverages at her bar; this he refused to do, asserting, 'I says to her that I know where I bought it, and the guys in the car know where I bought it, and that I don't care what she does'. She informed him that she was going to swear that he bought the beer at another place, and he then left her premises. Under vigorous cross-examination, he reiterated the salient facts of his story and identified the other occupants of the car. He stated that this was the first time he had ever been in these licensed premises, and stated that he paid $2.50 for the beer on his first visit. He was uncertain whether he had first purchased four or five quarts, but was certain that the money for the said purchases was contributed by the other occupants of the motor vehicle.

"Lawrence ---, a minor, testified substantially as follows: He was 17 years of age on the date of the alleged occurrence and was the driver of the car in question. He drove to the said licensed premises and parked on the opposite side of the street. The occupants of the car gave Vincent --- money and Vincent --- then proceeded into the said licensed premises and returned shortly thereafter with containers of beer in a bag. When Vincent --- returned to the car, they drove to a dirt road and consumed the said beer. They then returned twice and Vincent --- entered the premises on each occasion and emerged therefrom with a bag containing quart containers of beer. They thereupon continued to drive around, picked up another young boy and girl and, shortly thereafter, crashed into a tree. His cross-examination consisted of a reiteration of his direct testimony and he denied that he had given a statement regarding these incidents until he was subpoenaed to testify at the hearing before respondent Board.

"Jack ---, who was an occupant of the car, substantiated the testimony of Lawrence ---.

"Detective Sergeant John J. Convery testified that on May 4th he went to the licensed premises with Vincent ---, who pointed out Frank Morris as the bartender who had served him on April 30th. Morris then accompanied them to Police Headquarters and executed a voluntary statement which included the following questions and answers:

Q. 'Frank, the young fellow present here a few minutes ago, have you ever seen him before, known to you as Vincent---?'

A. 'I'm not sure. His facial expression and general clothing including his hair resembles a customer I sold beer to that Sunday evening...'

Q. 'Were you present when I in the presence of Vincent --- read a statement taken from Vincent ---? Do you recall these sales?'

A. 'Yes, I recall these sales. He came in three times. First purchase was five, the second was at least three and the third was two. The last two containers I'm sure of.'

Q. 'Did you ask this fellow his age or any other identification?'

A. 'It seems to me I did, I'm not sure.'

Q. 'Did you have Vincent --- sign a form as to his correct age?'

A. 'No, I did not.'

"On these charges relating to the three incidents of April 30th, the defense produced the bartender, Morris, who, both at the hearing below and in testimony before me, denied that he served Vincent--- on any of the occasions mentioned. He stated that the first time he ever saw Vincent -- was at Police Headquarters. On cross-examination, he was referred to his statement and the questions and answers therein. His explanation was that he never meant to refer to Vincent --- in his answers; that the one he referred to was some other individual who made three separate and distinct purchases on the night in question.

"A careful evaluation of the testimony with respect to the three charges relating to the incidents on April 30, 1961 leads me to the inescapable conclusion that appellant has not sustained the burden of proof in establishing that the action of respondent in finding appellant guilty of said charges was erroneous. Rule 6 of State Regulation No. 15. The testimony of the minors contains the necessary integrals prerequisite to such findings. While they may have been vague with respect to dates, they have forthrightly and with adequate credibility established that there was a purchase by Vincent ---, the minor, on each of these occasions. On the other hand, it is difficult to accept the testimony of Morris, the bartender, that in the statement he did not intend to say what has been set forth. He now seeks to explain his statement by saying that he really didn't mean to refer to Vincent ---; that he meant some other person who did not fit the exact description. This appears to be a shadowy and nebulous afterthought without any logical foundation. It is a well-established and fundamental principle that the licensee is clearly responsible by the misconduct of her employees, and is surely responsible for their activities during such employment. Rule 33 of State Regulation No. 20. Kravis v. Hock, 135 N.J.L. 269, Sup. Ct. 1947; In Re Schneider, 12 N.J. Super. 449. Hence, I recommend that the action of respondent in finding appellant guilty as to the second, third and fourth charges herein should be affirmed.

"As to the first charge: The transcript sets forth, in support of this charge, the testimony of Edgar ---, who stated that he was 18 years of age on the date alleged; that at about 6:15 p.m., he, together with his friend, drove in his friend's car to the appellant's licensed premises. He remained in the premises for approximately one hour, during which time he was served either five or six beers by Frank Leonard, the bartender, and that, at no time was he ever questioned regarding his age, nor was he required to sign any statement delineated by the appropriate rules. While he was having his last beer, Sergeant Convery approached him, questioned him about his age, and he produced a spurious draft card which misrepresented his age as being sufficient for service at the bar. He then accompanied Sergeant Convery and the bartender to Police Headquarters, where he admitted that he was under twenty-one. He further stated that the bartender commented, 'I thought you were twenty-one'. Edgar --- further admitted that he had lied regarding his identity and age or the identity of his companion, and further admitted that, in addition to the draft card, he had a spurious driver's license and a social security card purporting to show that he was over the age of twenty-one. He asserted that the bartender did ask him his age, but did not require that he sign any statement to that effect.

"Sergeant Convery, testifying on this charge, stated the following: He was in the premises investigating the previous charges relating to Vincent --- and noticed Edgar --- sitting at the bar consuming alcoholic beverages. Not being satisfied with the answers given by this witness, and the identifications displayed, he took the witness and the bartender to Headquarters. The bartender executed a voluntary statement which was read by this witness and which contained the following pertinent questions:

Q. 'This evening did you have occasion to serve Edgar --- who is present here in this room at the present time?'

A. 'Yes; I also served him three weeks ago.'

Q. 'On May 4, 1961, did he show you any identification or did you request him to sign any forms?'

A. 'No, I did not, not tonight. Three weeks ago I had checked him out.'

"Sergeant Convery also stated that, in furtherance of his investigation, he contacted John Brosh, the manager of the premises, and inspected a number of signature cards obtained from persons under the age of twenty-one. 'None of the names appearing (on those cards) were any of the youths testifying at this hearing tonight.'

"In its defense, the bartender, Morris, was produced and stated that when he went on duty on that evening, Edgar --- was already seated at the bar drinking beer. He then asked the other bartender whether this young man was old enough and he said, 'Yes, he showed me papers'. He then went over and insisted upon more proof, whereupon Edgar --- showed him the spurious card which he had on his possession.

"The defense also produced Jack Brosh, who was employed as a day bartender and who testified that he had been led to believe by certain evidence produced by Edgar --- that he was over the age of twenty-one, but he admitted on cross-examination that he did not make him sign any statement.

"He was asked on cross-examination:

Q. 'Mr. Brosh, when you looked at this card to indicate that he was twenty-two, did you also have him sign a statement?'

A. 'No, I didn't because when I looked I figured it out that he was twenty-two years old, so I didn't ask him to sign...'

"I have carefully examined and evaluated the testimony of the witnesses produced with reference to this particular charge, and I am satisfied that Edgar ---, a minor, was served beer by the appellant's employee at the time alleged. I believe that the employee was prevailed to do so by certain spurious identifications which were produced by Edgar ---, and that the employee was misled by such identification. Nevertheless, the appellant did not comply with R.S. 33:1-77 (a) and (c) which require the licensee to establish that the minor falsely represented in writing that he or she was twenty-one years of age or over and that the sale was made in good faith relying upon such written representation and appearance.

"There is no serious denial on the part of the appellant that this minor was served alcoholic beverages on the date alleged. The defense is that appellant was misled by the representation of the minor but, as was pointed out hereinabove, this does not constitute a defense to the charge. Under all the facts and circumstances

herein, I recommend that the action of the respondent in finding the appellant guilty on charge 1 should be affirmed.

"As to the Charge of Improper Motivation: There is for additional consideration the charge made by the appellant in both petitions filed herein that the action of the respondent in finding the petitioner guilty of the charges herein and ordering a suspension of her license was based upon partiality, prejudice and mistake, was discriminatory, unfair, and the result of bias and unequal treatment.

"These charges are met by an answer of the respondent, categorically denying that there was discrimination or unfair or unequal treatment or that the order of suspension resulted from bias, impartiality or prejudice. The answer further alleges that the penalty was based upon 'The fact that licensee had been guilty of similar violations within the past five years and also the fact that a series of violations have occurred during the past year and also the ages of the minors involved'. In support of this charge, the appellant charged that she was discriminated against by the respondent because she refused to convey a small parcel of her property for Township purposes unless she was paid for the same. She further testified that when she refused to do so, there was an implied threat that the Township might cause trouble. She could not state the exact words spoken, but she believes that the conversations concerning her property took place some time between November of 1960 and January of 1961. The appellant contends that all of these charges resulted from her failure to so convey her property.

"Richard Browne, the mayor of Wayne Township, testified that he has been a mayor since January of 1961, and denied that there was any improper motivation either on his part or, so far as he knows, on the part of any other official with respect to these charges. He testified that as soon as these charges were brought to his attention and to the attention of the Township attorney, they were acted upon, and the decision of the respondent was based solely upon the consideration of the testimony adduced at the hearing on the charges against the appellant. He also stated that the basis of the penalty was the fact that there had been several violations close to each other, and that there were previous violations within a five-year period of this case. The respondent also produced Mr. Herbert R. Campbell, the Township engineer, who denied that he had made any threats to the appellant with respect to any charges pending against her or that he influenced any of the members of the governing body of respondent in their consideration and determination of the charges presented against the said appellant.

"I have carefully considered the entire record in this case, including the transcript of the testimony, the exhibits in evidence and the testimony produced before me at this hearing, as well as the oral arguments, and I do not find that there has been any improper motivation on the part of the respondent in its determination of these charges. The burden of proving improper motivation, bias and prejudice on behalf of the respondent is upon the appellant. It is my considered judgment that the appellant has not met that burden of establishing that the action of the respondent herein was arbitrary and unreasonable under the circumstances. Cf. Cold Spring Fish and Supply Co. v. Lower Township, Bulletin 1288, Item 1.

"Finally, consideration should be given to the penalty imposed by the respondent on these charges. In view of the fact that I have recommended the reversal of the respondent's decision with respect to the first charge of Case No. 1, relating to the incident of August 6, 1960, I further recommend that, in said case, an order be entered by the Director reducing the penalty from

sixty days to thirty days on the other two charges contained in this case.

"With respect to the penalty imposed in Case No. 2, namely, a suspension of one year of appellant's license, appellant contends that such action was excessive and discriminatory. It has generally been held by this Division that a suspension imposed in a local disciplinary proceeding rests in the first instance within the sound discretion of the local issuing authority, and the power of the Director to reduce or modify it will be sparingly exercised and only with the greatest caution. Robinson et al. v. Newark, Bulletin 54, Item 2; Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2. The Director has, however, modified such penalty where it was manifestly unreasonable or unduly excessive. Cf. Ziomek v. Clementon, Bulletin 381, Item 3 (reduction from four months to thirty days); Howell v. Branchville, Bulletin 385, Item 5 (reduction from ninety days to forty-five days); Kovacs v. South River, Bulletin 1008, Item 3 (reduction from revocation of license to twenty days); Conklin v. Bridgewater, Bulletin 809, Item 7 (reduction from revocation of license to twenty days). In view of the circumstances in Case No. 2, including the spurious identification on the part of the minors which normally would justify consideration as a mitigating circumstance (Re Point Inn, Inc., Bulletin 1355, Item 5), and the fact that the last three charges in Case No. 2 involve the same individual on the same evening, it would appear that the penalty imposed was heavy-fisted and unduly excessive. Allowing reasonable latitude for differences of opinion, sixty days would appear to be ample for the offenses charged herein. I therefore recommend that the action of the respondent in ordering a penalty of one-year suspension in Case No. 2 be modified, and that an order be entered therein reducing the one-year suspension of appellant's license to a suspension for sixty days, said suspension to commence upon the termination of the thirty-day suspension imposed in Case No. 1"

Written exceptions to the Hearer's Report and written argument thereon were filed with me by the attorney appearing for the appellant, and written answering argument was filed by the attorney for the respondent. The attorney for the appellant argues, in substance, that the reduced penalties recommended in the said Report are severe and requests that the penalties in both cases be made concurrent, rather than consecutive. The attorney for the respondent answers that the penalties requested are lenient in view of the past record of the licensee, and believes that they should operate consecutively, as recommended. He also requests that the Hearer's Report be approved. It has never been the policy of the Division to have penalties for separate offenses run concurrently and there will be no exception in this case.

After carefully considering the entire record herein, including the transcript taken before the respondent Board, the testimony taken at the hearing of the appeals, the Hearer's Report, the briefs submitted and the exceptions and written arguments with respect to the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 12th day of December, 1961,

ORDERED that Plenary Retail Consumption License C-16, issued by the Township Committee of the Township of Wayne to Marie Rigoletti, t/a Mountain View Inn, for premises on Boonton Road, Wayne Township, be and the same is hereby suspended for ninety (90) days, commencing at 3:00 a.m., Tuesday, January 2, 1962, and terminating at 3:00 a.m., Monday, April 2, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Samjo Corporation t/a Stage Door Bar 2228-2230 Atlantic Avenue Atlantic City, N. J., Holder of Plenary Retail Consumption License C-169, issued by the Board of Commissioners of the City of Atlantic City.	CONCLUSIONS AND ORDER

Isaac C. Ginsburg, Esq., Attorney for Defendant-licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents, in violation of Rule 27 of State Regulation No. 20.

On August 7, 1961, an ABC agent tested defendant's open stock of alcoholic beverages and seized two quart bottles of "Seagram's Seven Crown American Blended Whiskey, 86 Proof" for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of the seized bottles, when compared with the genuine product of the same brand, varied substantially in solids and acids.

Defendant has no prior adjudicated record. I have considered the letter sent to me by defendant's attorney and find nothing therein which would justify imposition of less than the usual penalty imposed in similar cases. I shall suspend its license for fifteen days, the minimum penalty imposed in "refill" cases involving two bottles. Re Rost, Bulletin 1420, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Since the licensed business is now being conducted on a limited basis, no effective penalty can be imposed at this time. The effective date of the suspension will be fixed by subsequent order which will be entered after the licensed business shall have been resumed on a full-time basis for the 1962 season.

Accordingly, it is, on this 12th day of December 1961,

ORDERED that plenary retail consumption license C-169, issued by the Board of Commissioners of the City of Atlantic City to Samjo Corporation, t/a Stage Door Bar, for premises 2228-2230 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days, the effective dates to be fixed by subsequent order as aforesaid.

William Howe Davis
Director