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

BULLETIN 1264 FEBRUARY 16, 1959.

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ITEM

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

BULLETIN 1264 FEBRUARY 16, 1959.

1. APPELLATE DECISIONS - ELVINGTON v. LAWRENCE TOWNSHIP.

JEAN and COLE B. ELVINGTON, trading as HOLIDAY INN, Appellants, -vs- TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LAWRENCE (Mercer County), Respondent.	ON APPEAL. CONCLUSIONS AND ORDER

Anton J. Hollendonner, Esq., Attorney for Appellants.
Harry Heher, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"On September 3, 1958, respondent granted appellants' application for a transfer of their plenary retail consumption license from 28 Lawn Park Avenue to premises to be located at Lawrenceville Road and Merline Avenue, Lawrence Township, subject to the following condition:

> 'That the building be moved from Lawrenceville Road on to Merline Avenue to the rear end of the plot which is now shown on the plan as a parking area, and that the parking area be moved to the front end where the building itself is now indicated, subject to the approval of the Board of Adjustment, if necessary.'

"Appellants have filed this appeal from the imposition of the condition, which, they allege, is unlawful, unreasonable, arbitrary and capricious.

"Lawrenceville Road is one of the main thoroughfares in the Township of Lawrence and is generally residential in character except for a few sections thereof which are zoned for business. One of these business zones is 150 feet in depth and extends for a distance of four blocks (1100 feet) along the westerly side of the Road. Lawn Park Avenue and Merline Avenue terminate at Lawrenceville Road with the result that the land on the westerly side of Lawrenceville Road between these two avenues is zoned for business to a depth of 150 feet. Traffic regulations provide for one-way traffic in a westerly direction on Lawn Park Avenue and for one-way traffic in an easterly direction on Merline Avenue.

"Appellants have conducted their licensed business for more than eight years at 28 Lawn Park Avenue, which is located in a residence 'B' zone. Recently they purchased land at the corner of Lawrenceville Road and Merline Avenue having a frontage of 53.47 feet on the road and a frontage of 277 feet on the Avenue. The portion of this land which faces on the Road is zoned for business to a depth of 150 feet and the balance of the land facing on the Avenue is in a residential zone. Appellants also purchased a strip of land 12 feet wide fronting on Lawn Park Avenue and extending back to the rear part of the land facing on Merline Avenue.

This strip was intended to permit access from Lawn Park Avenue to the larger plot. Appellants then applied to respondent for a transfer of their license to a building they proposed to erect on that portion of their recently acquired property which is zoned for business and which faces on Lawrenceville Road.

"Before the application for transfer was considered by respondent, a hearing was held before the Lawrence Township Planning Board pursuant to N.J.S.A. 40:55-1.1 et seq. According to the plans originally submitted, appellants intended to have parking space for a number of cars in front of their proposed building. In a letter dated June 30, 1958, the Planning Engineer advised the Secretary of the Planning Board that 'it appears as if parking is proposed for the front yard area. We would much rather see this area in appropriate landscaping.' Appellants then agreed to have parking space for only three cars in front of the proposed premises and to provide parking space for other cars in the rear of the proposed building. At a meeting held on August 12, 1958, the Planning Board granted approval. On August 14, 1958, appellants obtained a building permit and began erection of the building. Written objections to appellants' application having been received, respondent, on August 20, scheduled a public hearing to be held on August 26. At the public hearing more than forty residents appeared in opposition to the transfer and more than forty residents appeared in favor of the transfer. The objectors alleged that the transfer would depreciate their property; that undue traffic congestion would result, and that the transfer would not be conducive to further desirable development of Lawrenceville Road. At the conclusion of the public hearing it was announced that decision would be made at a later date. On September 3 respondent granted the transfer subject to the condition which is the subject of this appeal.

"It appears from the testimony herein that appellants' present premises are about 200 feet from the 12-foot-wide strip of land which faces on Lawn Park Avenue and affords access to the rear of appellants' recently acquired property; that the proposed building (now partly erected) is set back more than 62 feet from Lawrenceville Road; that a gasoline service station adjoins appellants' proposed building and that there are other business places including another service station, a luncheonette and a laundry in this business section. On behalf of respondent, Mayor Carver testified at the hearing that a traffic hazard would result because parking is prohibited on Lawrenceville Road and because Lawn Park Avenue and Merline Avenue are one-way streets. However, a person traveling on Lawrenceville Road and wishing to visit appellants' present premises would have to observe the same traffic regulations. The Mayor expressed the fear that drivers 'might not be in a condition to read the signs that are posted' but that is scarcely a reason for concluding that a traffic hazard exists. Mayor Carver also testified as to the general residential character of and the absence of other licensed premises on Lawrenceville Road. It is difficult to see how the operation of licensed premises, properly conducted, on the front part of appellants' plot would result in the depreciation of residential property, whereas similar operation on the rear part of the same plot would not so result. Moreover, it is clear that, if the condition imposed is permitted to remain in effect, appellants would be required to relocate their building

in a district zoned for residential purposes. In general, licensed premises should be located in a business district. Rucereto v. Dumont, Bulletin 253, Item 6. The sale of alcoholic beverages in a residential area is not desirable. Vannozzi v. Trenton, Bulletin 35, Item 7. It also appears that the operation of the business on the rear of the plot, with parking in the front, would be contrary to the recommendation of the Planning Board which may not be binding on respondent but which should be considered. After reviewing all the evidence I conclude that the condition imposed by respondent is unreasonable.

"In his brief, respondent's attorney alleges that it will be necessary for appellants to obtain a variance from the Board of Adjustment in order to use the rear portion of the property for parking purposes, and cites Garrou v. Teaneck Tryon Co., 11 N. J. 294. The cited case was not a decision on the merits but merely reversed the action of the Law Division dismissing a property owner's suit. I have examined Section 7 of the Zoning Ordinance of Lawrence Township and can find no specific prohibition of the use of land in a Residence "B" District as a parking lot. In any event, it is reasonable to assume that a Board of Adjustment would more readily grant a variance for a parking lot than for a business building in such a district. If the condition herein should be permitted to stand and the Board of Adjustment should refuse a variance to permit a building on the rear portion of the plot, the action of respondent would be tantamount to a complete denial of the application for transfer.

"Respondent's contention that the actions of appellants during consideration of the application constituted contempt of the issuing authority is without basis in fact.

"For the reason aforesaid, it is recommended that an order be entered herein setting aside the condition imposed and directing respondent to transfer appellants' license in accordance with the application filed by appellants if and when the premises are completed in compliance with the plans and specifications filed with said application."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument thereto were filed by the attorney for respondent and written answering argument was filed by the attorney for appellant.

After carefully considering all the evidence presented and the exhibits introduced at the hearing herein, together with the briefs submitted by both attorneys prior to the filing of the Hearer's Report and the exceptions and written arguments thereafter filed with me, I concur in and adopt the findings and conclusions in the Hearer's Report as my findings and conclusions herein.

Accordingly, it is, on this 20th day of January, 1959,

ORDERED that the condition hereinabove set forth which was imposed by respondent when it granted appellants' application for a transfer of their license on September 3, 1958, be and the same is hereby set aside and respondent is directed to transfer appellants' license in accordance with the application filed by appellants if and when the premises are completed in compliance with the plans and specifications filed with said application.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - TUECKMANTEL ET AL. v. BEACH HAVEN AND WHITELOCK (CASE NO. 1).

GUSTAVE TUECKMANTEL, JR., GEORGE TUECKMANTEL, JOHN BEAL, DANIEL ROMMELE, MILTON BRITZ, THOMAS BUCKALEW, ERNEST TUECKMANTEL & HELEN GLEIM,

Appellants,

-vs-

THE BOROUGH OF BEACH HAVEN, IN THE COUNTY OF OCEAN, and JOHN J. WHITELOCK,

Respondents.

ON APPEAL
ORDER AND STIPULATION
OF DISMISSAL

Appeal having heretofore been taken from the transfer of Plenary Retail Consumption License No. C-4 issued by the Borough of Beach Haven and expiring on June 30, 1958 to respondent, John J. Whitelock, on the ground that the said respondent was not a bona fide resident of the State of New Jersey and subsequent thereto the said license having been transferred to Rip Tide, Inc., a New Jersey Corporation, which said corporation and its stockholders qualify in all respects as to residence and other requirements of the Division of Alcoholic Beverage Control, and all parties to said appeal request the dismissal of said appeal and good and sufficient reason appearing for the entry of this Order and this Order being consented to by all parties, it is, on this 19th day of January, 1959,

ORDERED that the above matter be and the same is hereby dismissed without cost as to any party and with prejudice.

WILLIAM HOWE DAVIS, Director
Division of Alcoholic Beverage Control.

THIS ORDER CONSENTED TO:

POWELL & DAVIS
Attorneys for Appellants
By: James M. Davis, Jr.
A Member of the Firm.

BERRY, WHITSON & BERRY
Attorneys for Respondent, Borough of Beach Haven, in the County of Ocean
By: Franklin H. Berry
A Member of the Firm.

HIERING & GRASSO
Attorneys for Respondent, John J. Whitelock
By: William T. Hiering
A Member of the Firm.

NOTE: The records of this Division disclose that, effective June 10, 1958, the Borough Council of the Borough of Beach Haven transferred License C-4, issued for premises at 513 Dock Road, from James and Michael Dougherty, t/a Dougherty's Antlers Bar, to John J. Whitelock, t/a Antlers Tavern.

3. APPELLATE DECISIONS - TUECKMANTEL ET AL. v. BEACH HAVEN AND WHITELOCK (CASE NO. 2).

GUSTAVE TUECKMANTEL, JR., GEORGE TUECKMANTEL, JOHN BEAL, DANIEL ROMMELE, MILTON BRITZ, THOMAS BUCKALEW, ERNEST TUECKMANTEL & HELEN GLEIM,

Appellants,

-vs-

THE BOROUGH OF BEACH HAVEN, IN THE COUNTY OF OCEAN, and JOHN J. WHITELOCK,

Respondents.

ON APPEAL
ORDER AND STIPULATION OF DISMISSAL

Appeal having heretofore been taken from the renewal of Plenary Retail Consumption Liquor License No. C-4 issued by the Borough of Beach Haven covering period expiring on June 30, 1959 to respondent, John J. Whitelock on the ground that said respondent was not a bona fide resident of the State of New Jersey, and for other reasons set forth in said appeal and subsequent thereto the said license having been transferred to Rip Tide, Inc., a New Jersey Corporation, which said corporation and its stockholders qualify in all respects as to residence and other requirements of the Division of Alcoholic Beverage Control, and all parties to said appeal request the dismissal of said appeal and good and sufficient reason appearing for the entry of this Order and this Order being consented to by all parties, it is, on this 19th day of January, 1959,

ORDERED that the above matter be and the same is hereby dismissed without cost as to any party and with prejudice.

WILLIAM HOWE DAVIS, Director
Division of Alcoholic Beverage Control.

THIS ORDER CONSENTED TO:

POWELL & DAVIS
Attorneys for Appellants
By: James M. Davis, Jr.
A Member of the Firm.

BERRY, WHITSON & BERRY
Attorneys for Respondent, Borough of Beach Haven, in the County of Ocean
By: Franklin H. Berry
A Member of the Firm.

HIERING & GRASSO
Attorneys for Respondent, John J. Whitelock.
By: William T. Hiering
A Member of the Firm.

4. APPELLATE DECISIONS - MASCIOLA v. NEWARK.

ANGELO MASCIOLA, t/a JIM'S TAVERN,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Louis R. Cerefice, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action on November 3, 1958, whereby it suspended appellant's license C-353 for ten days effective at 7:00 a.m. November 17, 1958, after finding appellant guilty of a charge alleging that he allowed, permitted and suffered in and upon the licensed premises a brawl, act of violence, disturbance and unnecessary noises, and allowed, permitted and suffered the licensed place of business to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulation No. 20.

"Appellant's premises are located at 749 South Orange Avenue, Newark.

"Upon the filing of this appeal an order was entered on November 10, 1958, staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

"At the hearing herein respondent's case was presented upon the transcript of the proceedings held before respondent. Rule 8 of State Regulation No. 15. Additional evidence on behalf of appellant was given by Michael Masciola who had testified at the hearing held by respondent. The attorney for appellant presented his oral argument. The attorney for respondent rested upon the record.

"The petition of appeal alleges in effect that respondent's finding of guilt was contrary to the clear weight of the evidence.

"A review of the testimony taken at the hearing held by respondent Board and the testimony taken at the hearing of this appeal unquestionably establishes that a brawl occurred on appellant's premises on the afternoon of June 5, 1958, and hence the only issue in the case is whether the evidence is sufficient to establish that the brawl was 'allowed, permitted or suffered' by an agent of appellant, namely, Michael Masciola (appellant's brother who was then acting as bartender).

"At the hearing below Charles Younkers testified that he entered appellant's premises on the morning of June 5,

1958, shortly after he completed his shift at a factory at 8:30 a.m.; that James Mulligan, who had worked on the same shift and with whom he had been on friendly terms for many years, was then in the premises; that another patron (Thomas Murphy) thereafter entered and that the three of them remained on the premises drinking and occasionally having a sandwich until shortly before 3:00 p.m. Younkers further testified that, shortly before 3:00 p.m., he, Mulligan, Murphy and Michael Masciola had been playing pool but that it started getting a little busy then and Mike cut off playing pool; that, while he and Murphy were seated at the bar, Mulligan, who had been at the other end of the bar, came to where he was seated and struck him across the face, with the result that he fell over a stool there and 'blood was pouring over me.' Younkers also testified that Mulligan struck him about four times and that the bartender was then behind the bar and in a position to see everything. As to the events which took place after he was struck Younkers testified that, while Mike Masciola was wiping the blood off his face, Mike asked him not to call the police and stood in the doorway of the telephone booth; that he (Younkers) then went next door to a candy store and 'phoned for the police; that he was still outside when the police arrived and that, after he told the police that he had fallen down the steps, the police left without taking any further action; that he then drove to his home in Edison Township and later made a criminal charge against Mulligan which was subsequently dismissed in a Newark Municipal Court.

"The testimony given at the hearing below by James Mulligan was substantially different. He testified that shortly before 3:00 p.m. he and Younkers were playing as partners at the pool game, and that Murphy and Mike Masciola were their opponents; that 'at the time the fight started Michael Masciola walked into the bathroom;' that Younkers 'came at me with his head down and swings at me and hit me on the left hip and pushed me against the bar;' that, in self-defense, he hit Younkers three or four times with the result that Younkers fell to the floor; that, when Mike came out of the bathroom after the fight was over, he 'stepped between us' and that he does not know who called the police but that Younkers left the premises before the police arrived. When asked what caused this altercation between him and Younkers, Mulligan replied 'To give you an honest answer, I could not tell you for the life of me what caused it.'

"After the aforesaid testimony was given at the hearing below, the Board rested its case and appellant's attorney moved for a dismissal on the ground that the Board had not made out a prima facie case. This motion was renewed at the hearing held herein. The testimony hereinabove set forth is sufficient to establish a prima facie case and, hence, the motion made before respondent was properly denied. The renewed motion made at the hearing herein should also be denied.

"At the hearing below, Thomas Murphy testified on behalf of the defendant (appellant herein). He testified that he, Younkers, Mulligan and Mike had been shooting pool; that he was watching Mulligan shoot and 'Younkers was up here, at the bar;' that Younkers bumped into him and then hit Mulligan who, in turn, struck Younkers two or three times and knocked him down. He said that he did not see Mike go to the bathroom but said that, when Mike 'came out,' he got between the two

participants in the fight. Murphy further testified that he did not know who called the police but that Younkers left the premises after Mike wiped his face. The testimony given below by Stephen Bodchek, who said he was a patron in the premises on the afternoon in question, was that Younkers 'went at' Mulligan who defended himself. He said that Mike went to the bathroom before the fight. Michael Masciola testified that he was playing pool with the three patrons; that he went to the bathroom for a few minutes and that, when he came out, he saw Younkers bleeding. He denied he had stopped this patron from telephoning for the police but admitted he was present when the patron told the police that he had fallen down the steps. At the hearing herein Michael Masciola testified that, after June 5, he heard that Younkers got Mulligan his job at the factory, that Mulligan is now Younkers' boss and 'that caused hard feelings.' All witnesses admitted that the fight was over in a short time.

"The fact that the criminal charge against Mulligan was dismissed is immaterial in this case.

"After reviewing all the testimony I conclude that the fight described above was not a sudden flare-up, as in Ferdinand v. Newark, Bulletin 1084, Item 3. These two patrons had been on the premises for more than six hours and each had consumed ten or twelve drinks. The injured patron was struck three or four times and a cut he sustained required five stitches. Without deciding who was the aggressor, it is difficult to believe that this fight occurred without previous warning to the bartender. There is evidence by Younkers that the bartender was behind the bar when the fight started. I also find as a fact that the bartender prevented the injured patron from using the telephone to summon the police. The bartender admitted at the hearing below that he heard this patron give to the police an explanation of the cause of his injuries which the bartender must have known was untrue and which led the police to drop their investigation. The actions of the bartender after the fight weaken his testimony that he was conveniently absent for a few minutes when the fight occurred and leads to the conclusion that he has attempted to cover up the violation. Gross v. Newark, Bulletin 1218, Item 1. Even if the finding of guilt herein were reversed, the facts would warrant the institution of additional disciplinary proceedings against the licensee because the bartender participated in the attempt to mislead the police, thereby hindering or failing to facilitate an investigation. Kleinberg v. Newark, Bulletin 1168, Item 1. Under the circumstances, I find that appellant has failed to sustain the burden of proof in showing that the action of respondent was erroneous. Rule 6 of State Regulation No. 15. It is recommended, therefore, that appellant's motion to dismiss be denied, and that an order be entered affirming respondent's action and reimposing the ten-day suspension."

Written exceptions to the Hearer's Report and written argument were filed with me by the attorney for appellant, pursuant to Rule 14 of State Regulation No. 15. The exceptions allege, in effect, that the Hearer's recommendations that the motions to dismiss be denied and that respondent's action be affirmed are not supported by the evidence. However, a careful consideration of all the evidence leads me to conclude that the evidence presented to respondent Board established a prima facie case and that appellant has failed to sustain the burden of establishing that the action of respondent was erroneous. I, therefore, deny the motion to dismiss and shall enter an order affirming respondent's action.

Accordingly, it is, on this 21st day of January, 1959,

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

ORDERED that the ten-day suspension imposed by respondent and stayed during the pendency of these proceedings be restored against appellant's license for premises 749 South Orange Avenue, Newark, to commence at 2:00 a.m. Monday, February 2, 1959, and terminate at 2:00 a.m. Thursday, February 12, 1959.

WILLIAM HOWE DAVIS
Director.

5. APPELLATE DECISIONS - HUDSON-BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. RAMSEY AND EILEEN CORP.

HUDSON-BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION, a New Jersey Corporation, Appellant, -v- MAYOR AND COUNCIL OF THE BOROUGH OF RAMSEY, and EILEEN CORP., a New Jersey Corporation, Respondents.	)	ON APPEAL O R D E R

Samuel Moskowitz, Esq., Attorney for Appellant.
James M. Muth, Esq., Attorney for Respondent Mayor and Council.
Otto Saalfeld, Jr., Esq., Attorney for Respondent Eileen Corp.

BY THE DIRECTOR:

The above appeal was taken from the action of respondent Mayor and Council whereby it granted a transfer of License C-8 from Willard Pulis Shuart to respondent Eileen Corp. and from premises on Route 17 to the Ramsey Shopping Center, Route 17, Borough of Ramsey.

Prior to hearing herein, the attorney for appellant advised me in writing that his client desires to withdraw the appeal and filed written consents of attorneys for both respondents to the discontinuance of the appeal. No reason appearing to the contrary,

It is, on this 15th day of January, 1959,

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

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - CHARGE ALLEGING FAILURE TO HAVE COPY OF LICENSE APPLICATION ON PREMISES DISMISSED - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

GAY'S TAVERN, INC.
307 Bergen Boulevard
Fairview, N. J.,

Holder of Plenary Retail Consumption License C-9, issued by the Borough Council of the Borough of Fairview.

CONCLUSIONS AND ORDER

Luke F. Binetti, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On October 4 and 8, 1958, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.

"2. On October 7, 1958, you allowed, permitted and suffered a lottery, commonly known as a 'baseball pool' to be conducted in and upon your licensed premises and sold and offered for sale and possessed, had custody of and allowed, permitted and suffered tickets and participation rights in such aforementioned lottery, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

Defendant entered a technical plea of not guilty to the following charge:

"3. On October 8, 1958, you conducted your licensed business without having a photostatic or other true copy of your application for your current license on your licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20."

As to Charges 1 and 2: During the early morning hours on October 4, 1958, two ABC agents, who were then in defendant's premises, each placed a five-dollar bet with a patron (Edward Miller, also known as Lucky Ed). After they informed Lynn Brooks (the barmaid) that they had placed these bets, she said to the agents, "Don't worry about Lucky. He will pay you off. He takes all my numbers action."

When the same agents returned to defendant's premises on the evening of October 8th, Lynn Brooks gave them thirty-four dollars which she told them had been left with her by Lucky and which represented the winnings due to the agents on their previous bets. The agents then wrote two horse race bets on a slip and gave Lynn two five-dollar bills which she agreed to give to Lucky when she met him. After these agents

left the premises, another ABC agent and two members of the Fairview Police Department entered defendant's premises and found the bet slips and the two five-dollar bills (the numbers on which had been previously recorded) in Lynn's purse. During subsequent investigation a card containing the names of those who had participated in a pool on one of the World Series baseball games was found on the premises.

As to Charge 3: The records of this Division disclose that the license for the premises in question was held by Elizabeth Curoe, t/a Gay's, for more than six years prior to September 9, 1958, at which time it was transferred to Gay's Tavern, Inc. The former licensee holds 98% of the stock of Gay's Tavern, Inc. After the agents identified themselves on October 8th, they found on the premises a copy of the application filed by Elizabeth Curoe for the current licensing year, but were unable to find a copy of the application filed by Gay's Tavern, Inc. for a transfer of the license. The Borough Clerk of Fairview advised me by letter, dated October 21, 1958, that due to an oversight, a copy of the application for transfer had not been given to Mrs. Curoe when the license was transferred, but that a copy thereof had been given to her on the day the letter was written. Under all the circumstances, I shall dismiss Charge 3. Cf. Re Clark, Bulletin 1247, Item 5.

Defendant has no prior record. However, when the license was in the name of Elizabeth Curoe it was suspended by me for ten days, effective March 28, 1955, for sale to minors (Bulletin 1058, Item 8) and by the local issuing authority for ten days, effective November 26, 1956, for selling during prohibited hours. I shall suspend defendant's license for twenty-five days (the minimum suspension for gambling when an employee of the licensee is involved) on Charges 1 and 2. Re Romano, Bulletin 1236, Item 10. Because of the prior dissimilar violations within the past five years, I shall suspend defendant's license for an additional five days. Re Richman, Bulletin 1186, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 19th day of January, 1959,

ORDERED that Plenary Retail Consumption License C-9, issued by the Borough Council of the Borough of Fairview to Gay's Tavern, Inc., for premises 307 Bergen Boulevard, Fairview, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, January 26, 1959, and terminating at 3:00 a.m. Friday, February 20, 1959.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE NOTICE OF CHANGES IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE PRIVILEGES OF LICENSE - PRIOR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY TO LIFT AFTER 25 DAYS IF UNLAWFUL SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against A.W.K. CORPORATION t/a ERIE CAFE 932 N. Front Street Camden, N. J., Holder of Plenary Retail Consumption License C-185 (for the 1957-58 and 1958-59 license years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

Anthony M. Bezich, Esq., Attorney for the Defendant-licensee.
William F. Wood, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

'1. You failed to file with the Camden Municipal Board of Alcoholic Beverage Control, within ten days after the occurrence thereof, written notice of changes in facts set forth in answer to Questions Nos. 30 and 31 of your license application dated June 13, 1957, upon which you obtained your current plenary retail consumption license, such changes being that on or about September 13, 1957 you entered into an agreement with Janet Buzby, your manager, whereby she acquired an interest in your licensed business as the real and beneficial owner thereof and by which you agreed to permit her to retain all the profits from the business after payment of a fixed weekly fee to you; your failure to file such notice being in violation of R. S. 33:1-34.

'2. From about September 13, 1957 to the present time you knowingly aided and abetted Janet Buzby to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license; thereby yourself violating R. S. 33:1-52.'

"At the hearing herein the Division called as its witness the ABC agent who investigated defendant's licensed business. Succinctly stated his testimony shows that on February 4th he interviewed Janet Buzby, who told him that she took over the management of the licensed business on September 16, 1957; that her duties are to hire and fire all bartenders, to purchase all liquor, to pay all bills and to run the business; that none of the stockholders of the corporate-licensee is active in the licensed business; that William Katzman (President and 98% stockholder of the corporate-licensee), who is employed elsewhere, visits the premises each Monday and takes $150.00 from the receipts and that he retains the profits after paying all the bills. The agent further

testified that on February 15, 1958, he interviewed William Katzmar who stated in substance that because some of his employees were 'clipping' him he took employment elsewhere in order to meet his financial obligations; that Janet Buzby receives no salary but performs services in accordance with an agreement. The agreement was turned over to the agent and was received in evidence at the hearing. It reads as follows:

'Sept. 13, 1957

AGREEMENT

AWK-J. Buzby

SUBJECT: MGR. OF ERIE CAFE

This is an agreement between AWK CORP. and J. Buzby to manage the ERIE CAFE.

All proceeds from the entire property - liquor, beer, juke box, cigarette mach, telephone, rooms, garages will go to J. BUZBY.

The starting stock (Dollar Value) shall be replaced at the termination of this agreement.

All purchases shall be for cash only - NO CREDIT.

The oil (Heating) Gas and Electric shall be paid by J. Buzby.

All maintenance will be done by the MGR.

The property shall be kept clean.

The business shall be run in a legal manner.

A guarantee of $150.00 dollars shall be paid to the AWK CORP. weekly.

This agreement will not be terminated by either party without a months notice (in writing) (30 days).

11/18/57

(Signed) Janet Buzby
Ralph N. Cettei (Signed) C. Fornaro (SEAL)
NOTARY PUBLIC (Signed) William Katzmar
OF NEW JERSEY (SEAL)
My Commission Expires June 29, 1961.'

"William Katzmar and Janet Buzby appeared as witnesses for the licensee. William Katzmar testified in substance that the aforesaid agreement was entered into 'to insure that she (Janet Buzby) would not be put out', that 'I would agree to anything that she bought and paid for', that he would 'look at the books, see how they were running. If that figure of $150.00 was there I would get it, if it wasn't I wouldn't get it, it was just an agreement that wasn't held to'; and that 'I took whatever she gave me, if she needed money for other bills I would return money back to her'. On cross-examination he was confronted with his signed sworn statement given to the agent at the time of the interview which he testified was incorrect. In it he states: 'The corporation pays for the liquor from the gross receipts, the corporation received $150.00 per week from the gross receipts and the liquor bills and the bartender's salary and any other expenses such as gas, electric and heat are paid by the corporation. The rest of the money is kept by Janet Buzby'. He testified that social security payments were deducted from Janet Buzby's salary when she was previously employed by the corporation and that such was not the case after the agreement was entered into. He further testified that he personally keeps no record of the amount of money he receives each week from Mrs. Buzby.

"Janet Buzby testified that she is the manager of the defendant's licensed business and has no financial interest in it; that the figure of $150.00 in the agreement was not always met 'If there wasn't enough money each week he (Katzmar) would try to give me back so I would get something for the work'; that she paid cash for the liquor and kept books in which she entered the amount of moneys received and the amount paid out. The Account Book was received in evidence and shows entries commencing on January 15, 1958. The entries therein are wholly inadequate for an analysis of the financial affairs of the licensed business. A certified copy of the defendant's 1957-58 license application was received in evidence and shows no changes in the facts set forth in the answers to questions 30 and 31 therein.

"Considering the facts and circumstances herein I find that Janet Buzby acquired a beneficial interest in the licensed business and that the licensee failed to notify the local issuing authority of the changes in the facts set forth in its 1957-58 license application. I find further that the licensee knowingly aided and abetted Janet Buzby to exercise the rights and privileges of its plenary retail consumption license. I recommend, therefore, that defendant corporate-licensee be adjudged guilty on both charges.

"Defendant has a prior adjudicated record. Effective March 11, 1957, its license was suspended for fifteen days by the local issuing authority for sales to minors. Since the prior dissimilar violation occurred within a five-year period the minimum penalty of twenty days' suspension for the violations set forth in the charges herein (Re Kanzer, Bulletin 1213, Item 3), should be increased by five days, making a total suspension of twenty-five days.

"Because it appears that the unlawful situation has not been corrected I further recommend that defendant's license be suspended for the balance of its term, with leave to apply by petition to lift the suspension if satisfactory proof is presented that the agreement herein has been terminated. However, in no event should the suspension be lifted until the license has been suspended for a period of twenty-five days from the effective date of the Director's order to be entered herein."

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

Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 14th day of January, 1959,

ORDERED that Plenary Retail Consumption License C-185 (for the 1958-59 licensing year), issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to A.W.K. Corporation, t/a Erie Cafe, for premises 932 N. Front Street, Camden, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. Wednesday, January 21, 1959; and it is further

ORDERED that, in the event a correction of the illegal situation is effected, leave will be given to make application to me for the lifting of said suspension as aforesaid.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
PINE LIQUOR STORE, INC. 101-103 South Pine Street South Amboy, N. J.,	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Distribution License D-7, issued by the Common Council of the City of South Amboy.	)	

George G. Kress, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

It appears from the reports herein that ABC agents, acting upon information transmitted to this Division by the Madison Township Police, obtained signed, sworn statements from Richard ---, age 16, Thomas ---, age 18, and Barry ---, another minor. Richard and Thomas state that at about 6:30 p.m., Friday, December 19, 1958, they and Barry drove to the vicinity of defendant's liquor store and, leaving Barry in the car, they entered the premises and purchased from a male clerk therein, two six-pack cartons of beer. They state further that on Friday, December 12, 1958, they visited defendant's premises and purchased four pints of wine from the same clerk, and that on neither occasion were they required to produce any written proof of their ages.

Barry states that on December 19, 1958 he saw Richard enter defendant's licensed premises and emerge therefrom carrying a paper bag which he later opened and saw that it contained a six-pack carton of beer. He also states that he heard Thomas put something in the back seat of the car and found out later that it was another six-pack carton of beer. It appears further that the three minors directed the agents to defendant's licensed premises and identified it as the place where the beer was obtained and Richard and Thomas identified therein Andrew Chinchar (president of the corporate-licensee) as the person who made the sales on December 12 and 19, 1958.

Defendant has no prior adjudicated record. In view of the fact that one of the minors involved was only 16 years of age, I shall suspend defendant's license for twenty-five days. Re Buchanan & Secary, Bulletin 1174, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 21st day of January, 1959,

ORDERED that Plenary Retail Distribution License D-7, issued by the Common Council of the City of South Amboy to Pine Liquor Store, Inc., for premises 101-103 South Pine Street, South Amboy, be and the same is hereby suspended for twenty (20) days, commencing at 9:00 a.m. Wednesday, January 28, 1959 and terminating at 9:00 a.m. Tuesday, February 17, 1959.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - 15-DAY SUSPENSION REIMPOSED UPON TERMINATION OF PROCEEDINGS TO REVIEW.

In the Matter of Disciplinary Proceedings against

SUPREME BEVERAGE COMPANY
631-635 Bergen Street
Newark 8, N. J.

(transferred during pendency of these proceedings to

466-70 South 10th Street
Newark, N. J.),

Holder of State Beverage Distributor's License SBD-144 (for the 1957-58 and 1958-59 licensing years), issued by the Director of the Division of Alcoholic Beverage Control.

ORDER

BY THE DIRECTOR:

On May 13, 1958, the defendant's license was suspended for a period of fifteen days. See Bulletin 1231, Item 3. Upon appeal to the Superior Court, Appellate Division, an order was entered by the Court staying the suspension pending the outcome of the appeal. On January 23, 1959, a stipulation of dismissal of said appeal was filed in the Superior Court, Appellate Division, and, thus, the penalty herein may now be reimposed.

Accordingly, it is, on this 28th day of January, 1959,

ORDERED that the fifteen-day suspension heretofore imposed upon State Beverage Distributor's License SBD-144, issued by the Director of the Division of Alcoholic Beverage Control to Supreme Beverage Company, and now held for premises at 466-70 South 10th Street, Newark, be and the same is hereby reimposed commencing at 7:00 a.m. Friday, February 13, 1959, and terminating at 7:00 a.m. Saturday, February 28, 1959.

William Howe Davis
Director.