

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

BULLETIN 1240

September 10, 1958

TABLE OF CONTENTSITEM

1. APPELLATE DECISIONS - DeLUCCIA v. PATERSON.
2. APPELLATE DECISIONS - LUCKY'S TAVERN, INC. v. NEW BRUNSWICK.
3. DISCIPLINARY PROCEEDINGS (Kearny) - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Trenton) - SALE TO INTOXICATED PERSON - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS.
5. DISCIPLINARY PROCEEDINGS (Trenton) - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.
6. DISCIPLINARY PROCEEDINGS (Hammonton) - LEWDNESS AND IMMORAL ACTIVITIES (OBSCENE LANGUAGE) - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LOTTERY - HOSTESSES - SALES TO INTOXICATED PERSONS - LICENSE SUSPENDED FOR 50 DAYS.
7. DISCIPLINARY PROCEEDINGS (Hanover Township) - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS.
8. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - EMPLOYING BARTENDER WITHOUT IDENTIFICATION CARD IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
9. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 1240

September 10, 1958

1. APPELLATE DECISIONS - DeLUCCIA V. PATERSON.

MICHAEL DeLUCCIA,
t/a CLUB 25,

Appellant,

v.

BOARD OF ALCOHOLIC BEVERAGE
CONTROL FOR THE CITY OF PATERSON,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Robert I. Goodman, Esq., Attorney for Appellant.

Harry L. Schoen, Esq., by Joseph R. Brumale, Esq., Attorney for
Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on April 9, 1958 it suspended appellant's license for a period of ten days effective April 21, 1958 after a finding of appellant's guilt on a charge alleging that he violated a special condition in his current license.

"Upon the filing of the appeal, an order was entered on April 17, 1958 staying respondent's order of suspension until further order of the Director.

"Appellant in his petition of appeal alleges, in substance, that respondent's action was erroneous in that a resolution adopted by respondent on June 26, 1957 is contrary to R.S. 33:1-32 and that said resolution was adopted without due process of law and is discriminatory. Respondent in its answer denies appellant's allegations.

"The appeal was heard de novo and the parties hereto presented the case on an agreed statement of facts pursuant to Rules 6 and 8 of State Regulation No. 15.

"Succinctly stated, the facts are: (a) On June 27, 1957 respondent issued appellant's license subject to the following special condition: 'Pursuant to a resolution adopted by the Board on June 26, 1957, the above mentioned licensee must employ a constable each night of the week to maintain law and order in and adjacent to his licensed premises.' (b) On December 18, 1957 respondent amended its resolution of June 26, 1957 and the following day, at the Board's request, appellant submitted his license to its secretary who caused to have typed thereon the following special condition: 'Pursuant to an amended resolution adopted by this Board on December 18, 1957 the above mentioned licensee must employ a constable each night of the week from 10:00 P.M. to the hour of closing.' (c) Appellant was not afforded an opportunity to show cause why the resolutions should not be adopted. (d) The resolution of June 26, 1957 was adopted without the approval of the State Director as provided by R.S. 33:1-32.

(e) The aforesaid resolution as amended on December 18, 1957 was approved by the Director. (f) No other licensee in the City of Paterson has had his license restricted. (g) There are nine licensees within 500 feet of appellant's licensed premises. (h) That since the imposition of the special conditions the value of the license and premises has been substantially reduced. (i) Appellant admits that on the occasions set forth in the charge preferred against him, no constable was present.

"The power of the local issuing authority to impose special conditions on a license before it is issued is expressly conferred by R.S. 33:1-32 and there is no provision therein that a hearing be held with respect thereto. Re Armstrong, Bulletin 196, Item 8; Van Horn v. Manalapan, Bulletin 735, Item 9; Milchman v. Newark, Bulletin 838, Item 1; Gilmore Realty Corp. v. Belmar, Bulletin 1202, Item 1.

"When the license is issued, as in this case, with a subsequent condition thereon, the applicant may elect to accept the conditional license or withdraw his application. If he accepts the license so conditioned, his failure to comply with the conditions so stated is cause for revocation of the license. R.S. 33:1-32. Re Armstrong, supra.

"In the case sub judice appellant elected to accept the conditional license and conducted his business thereunder from June 27, 1957 to December 19, 1957 when, by virtue of an amending resolution, the special condition was made definite as to the time when the constable must be present in and adjacent to appellant's licensed premises. Appellant, as appears from the agreed statement of facts, continued the operation of business under his license so conditioned until March 14, 1958 when a charge alleging violation of the specific condition was preferred against him by respondent.

"Appellant contends that the resolution of June 26, 1957, lacking the approval of the Director, is invalid; that the condition imposed in the first instance, as set forth in said resolution, was ineffective; that an invalid resolution cannot be amended and that the condition imposed on December 18, 1957, although approved by the Director, is unlawful and not binding upon him.

"It has been uniformly held that the failure to submit special conditions for approval by the Director prior to the issuance of a license is a mere technicality and when raised will be considered on the merits nunc pro tunc. Peck v. West Orange, Bulletin 147, Item 1; Re Fidelity & Harmony Beneficial Assn. of South Plainfield, Bulletin 162, Item 14. The special condition imposed on December 18, 1957 is, in substance, the same as that imposed prior to the renewal of appellant's license. It was not a new condition but a clarification of the previous condition.

"To be legally effective, any special condition imposed upon the license must be imposed by and set forth in the resolution and approved by the State Director.' Rule 10 of State Regulation No. 3. It is clear, therefore, that although the special condition must be imposed by resolution, it is the condition and not the resolution, which must be approved, and if disapproved, the resolution is negated. In the instant case there was no negation of the first resolution and the condition set forth therein was approved by the Director when it was clarified.

"I find, therefore, that the special condition imposed by respondent was made effective when the Director approved it and that appellant's non-compliance with the approved condition warranted the institution of disciplinary proceedings.

"It is deemed unnecessary to determine herein the other points raised by appellant. They are matters to be determined on appeal from the issuance or renewal of the conditional license.

"I conclude from all of the relevant facts and circumstances herein that appellant has failed to establish, by a fair preponderance of the evidence, that respondent's action was erroneous. I recommend, therefore, that said action be affirmed; that the appeal herein be dismissed, and that the suspension heretofore imposed by respondent be reinstated."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by appellant's attorney within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the agreed statement of facts, the Hearer's Report and the exceptions and argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 22nd day of July 1958,

ORDERED that the action of respondent Board be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the ten-day suspension heretofore imposed by respondent Board and stayed during the pendency of these proceedings, be reinstated against the license held by appellant for premises 13 No. Main Street, Paterson, to commence at 3:00 a.m., July 28, 1958 and to terminate at 3:00 a.m., August 7, 1958.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - LUCKY'S TAVERN, INC. v. NEW BRUNSWICK.

LUCKY'S TAVERN, INC. (CORP.),)	
trading as LUCKY'S,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS AND ORDER
v.)	
)	
BOARD OF COMMISSIONERS OF THE)	
CITY OF NEW BRUNSWICK,)	
)	
Respondent.)	

Mayo and Weiner, Esqs., by Benjamin Weiner, Esq., Attorneys
for Appellant.
Joseph J. Takacs, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action taken by respondent on May 6, 1958, whereby it revoked appellant's license effective immediately. Respondent revoked the license after appellant had pleaded non vult in disciplinary proceedings to charges alleging that on December 20, 1957, it sold alcoholic beverages to a minor and employed on its licensed premises a person convicted of a crime involving moral turpitude. Appellant's premises are located at 32-34 French Street,

New Brunswick.

"The petition of appeal alleges that the revocation was unduly harsh and was a result of capricious and arbitrary action by respondent.

"At the hearing held herein William Anklowitz testified that he is president of appellant corporation and that he and his wife are the sole stockholders of the corporation. He further testified that he was not present in the afternoon of December 20, 1957, when a part-time bartender sold a bottle of alcoholic beverages to a minor, but said that he entered the premises on that afternoon while the ABC agents who had witnessed this violation were still upon the premises. He further testified that the part-time bartender, who was t employee alleged to be ineligible because of his criminal record, had been employed on the premises for about four months and that the bartender, before beginning his employment, had told him that he had never been convicted of any crime. William Anklowitz further testified that he has a large sum of money invested in the business and he has receive at least two offers from other persons to purchase the business if the license is suspended instead of revoked.

"On behalf of respondent, Commissioner Luke J. Horvath testified that the members of respondent Board voted to revoke the license because of the many violations in the past and the way the business has been conducted.

"The fact of the matter is that, when appellant pleaded non vult to the charges herein and when respondent revoked its license, said license was then under suspension for a period of two hundred ten days effective March 18, 1958, by reason of an order entered by the Director on March 11, 1958. This suspension was imposed after the Director had found appellant herein guilty of charges alleging that on October 26, 1957, it had permitted lewdness and had permitted an indecent figurine upon its licensed premises. Re Lucky's Tavern, Inc., Bulletin 1219, Item 2. Additionally, William Anklowitz has a very poor record as a licensee. By order dated September 24, 1943, Commissioner Driscoll revoked a license held by Almac Tavern, a corporation in which William Anklowitz was a stockholder. Re Almac Tavern, Bulletin 587, Item 5. When William Anklowitz held a license in his own name, said license was suspended by the local issuing authority for five days beginning January 13, 1947, for an 'hours' violation, and by the then Commissioner for one hundred twenty days beginning July 16, 1947, for possession of illicit liquor. See Bulletin 772, Item 2. It also appears that a license held by appellant herein was suspended by the Director for thirty-five days effective January 23, 1957, for selling to minors and to women directly over the bar. Re Lucky's Tavern, Inc., Bulletin 1159, Item 4. All of the licenses referred to herein had been issued for premises located in the City of New Brunswick.

"Considering the prior record of appellant herein and the prior record of William Anklowitz (its president), it cannot be said that the action of respondent was capricious or arbitrary or that its action in revoking the license was unduly harsh. As to the denial of an opportunity to transfer the license, see Nordco, Inc. v. Department et al., 43 N. J. Super. 277, at p. 288. Under the circumstances it is recommended that an order be entered affirming the action of respondent and dismissing the appeal."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered all the facts and circumstances of the case, I concur in the Hearer's conclusions and adopt them as my conclusions herein.

Accordingly, it is, on this 23rd day of July, 1958,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

WILFRED S. KRAUS
t/a KRAUS SELF SERVICE FOOD & LIQUOR
695 Elm Street
Kearny, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution
License D-22 for the 1957-58 and
1958-59 licensing periods, issued by
the Mayor and Council of the Town of
Kearny.

Wilfred S. Kraus, Defendant-licensee, Pro se.
Dora P. Rothschild, Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that he sold alcoholic beverages at less than the price listed in the Minimum Resale Price List then in effect, in violation of Rule 5 of State Regulation No. 30.

The file herein discloses that on Wednesday, June 18, 1958, ABC agents visited defendant's licensed premises wherein they purchased from Wilfred S. Kraus, the licensee, twenty-four 12-ounce cans of Schaefer beer for \$4.25. The minimum resale price then in effect was \$4.40. When the agents identified themselves the licensee admitted the violation but refused to give a sworn written statement to that effect.

Defendant has a prior adjudicated record. Effective May 14, 1954 his license was suspended for eleven days by the local issuing authority for sale of alcoholic beverages to a minor. The minimum penalty for the violation charged herein is a suspension of the license for ten days. Re Bregman, Bulletin 1128, Item 12. However, considering the dissimilar violation which occurred within a five year period, I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 14th day of July 1958,

ORDERED that Plenary Retail Distribution License D-22

for the 1958-59 licensing period, issued by the Mayor and Council of the Town of Kearny to Wilfred S. Kraus, t/a Kraus Self Service Food & Liquor, for premises 695 Elm Street, Kearny, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m., July 21, 1958 and terminating at 9:00 a.m., July 31, 1958.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary
Proceedings against

ALBERT ANGELONI
t/a AL'S TAVERN
512 N. Clinton Avenue
corner Webster Street
Trenton 9, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-120 (for the 1957-58 and
1958-59 licensing years), issued by
the Board of Commissioners of the City
of Trenton.

Richman & Berry, Esqs., by Edward I. Berry, Jr., Esq., Attorneys
for Defendant-licensee.
Edward F. Ambrose, 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 a charge alleging that he sold and delivered alcoholic beverages to a person actually or apparently intoxicated and permitted the consumption of such beverages by said person in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

"At the hearing herein an ABC agent testified as follows: He and another agent entered defendant's licensed premises at about midnight on March 5, 1958. The tavern was equipped with a bar and in the rear there was a dancing area with an elevated stage or platform on which there were two musicians. Two bartenders were on duty, and there were about twenty patrons at the bar. A third agent entered at about 12:30 a.m., March 6th. The licensee relieved both bartenders at about 1:30 a.m. The agents observed Hiram --- enter the tavern at about 1:35 a.m. His clothing was disheveled and he staggered from side to side as he walked to the bar. He sat on a stool and asked the licensee for a double shot of whiskey and soda. When the licensee served this drink to him, he raised the drink to his mouth with an unsteady motion and slouched over the bar. When Hiram finished his drink he left the bar and went to the bandstand, staggering from side to side and bumping into stools which were in front of the bar. The licensee and the agents observed his progress, and one of the agents remarked to the licensee, 'Boy, that guy really tied a drunk on, didn't he?' The licensee made no response.

"As Hiram reached the bandstand, he grasped the coat of one of the musicians, apparently to prevent himself from falling. He then returned and took a seat at the bar. The agent observed

that his face was flushed, his eyes were glassy and that he 'floundered' over the bar, head drooping, speech slurred, and ordered another double shot of whiskey and soda from the licensee. The licensee served him this drink and at about 1:50 a.m. served him another similar drink. At this time the agents revealed their identity to Hiram and the licensee and walked with them to the rear room. Hiram walked in front of the licensee who was asked by one of the agents to comment on Hiram's condition. The licensee thereupon agreed that Hiram was intoxicated. The agent had some difficulty in ascertaining Hiram's identity because of his slurred speech and general incoherence. The agent asked the licensee whether he was aware that Hiram was intoxicated when he entered, to which the licensee is alleged to have replied that such was the fact and then asked the agent the length of the suspension he would receive.

"It was stipulated that the two other agents would testify to the same general effect.

"The defendant-licensee testified that on the night in question he went on duty behind the bar at about 10 or 10:30 p.m. and remained until closing time; that Hiram entered shortly after midnight, came to the bar and he served him with a drink; that Hiram went to the bandstand two or three times to request that certain selections be played, returning each time to the bar; that Hiram 'looked all right' to him and talked to George ---; and that during the course of the evening he served Hiram three or four, maybe five, 'shots'. Asked whether Hiram staggered or weaved as he walked, he said that he did not pay much attention to him, that he was too busy. He further testified that he talked with Hiram, did not have any difficulty on that score and that Hiram did not rest his head on the bar; that after the agents identified themselves and the group were walking towards the back room he acknowledged to the agents that Hiram was drinking but did not say that Hiram was drunk; that he did not think that Hiram was intoxicated. He admits that he asked the agents how many days suspension he would receive and that when they were in the rear room after the agents identified themselves, he did not notice whether Hiram's face was flushed or his eyes glassy.

"Hiram testified as follows: He arrived at the tavern at about 12:30 a.m., March 6th, had four or five drinks of whiskey, went to the bandstand, and at one time took hold of the coat of one of the musicians to attract his attention because the musician was busy. He spoke with George for a few minutes. He did not stagger when he entered, having had only a few beers before he came in. When in the rear room after their identification, he did not speak to the agents and they did not speak to him. He did not consider that he was drunk at the time.

"The musician who was approached by Hiram testified that the latter requested the playing of various selections on two or three occasions and on one such occasion pulled his coat to attract his attention; that he did not see Hiram bump into stools and would not say he was staggering. Asked if Hiram's face was flushed and his eyes were glassy, he stated that it was hard to tell because the lights are red and blue at the bandstand and he did not look that closely at Hiram's eyes; that he did not pay too much attention to Hiram's condition.

"George testified that he has known Hiram for a considerable period of time and spoke with him for five or ten minutes in the tavern between 12:30 and 1:00 a.m. on the morning in question; that during the five or ten minutes he had Hiram under observation he did not see him stagger or weave while walking and his speech was not slurred, face flushed or eyes glassy; that he left the tavern about 1:30 a.m. (before

the agents revealed their identity).

"The wife of one of the defendant's bartenders testified that she was in the tavern on the night in question and that when Hiram entered he passed her, they exchanged 'Hellos' but she did not observe the manner in which he was walking and did not observe his condition at that time; that she left the premises before the agents revealed their identity.

"It is not disputed that Hiram was actually in defendant's licensed premises on the morning in question and was served there with alcoholic beverages.

"The controlling question for determination is whether the believable evidence establishes that Hiram was actually or apparently intoxicated when the drinks, or some of the drinks, were served to him.

"The tacit implication of the licensee's acknowledgement that Hiram 'was drinking', the natural difficulty of any person impartially to determine whether or not he was intoxicated at a particular time, and the lack of any other than a casual, limited, observation of Hiram by defendant's other witnesses, contrasted with the testimony of the agents, whose duty it was to make specific detailed observations of Hiram's walk, speech, attire and general demeanor, lead to the inevitable conclusion that the agents were justified in their opinion that Hiram was actually or apparently intoxicated. The agents' version of what occurred should, therefore, be accepted. Cf. Re Deutsch, Bulletin 904, Item 5. I recommend that defendant be found guilty as charged.

"Defendant has a prior adjudicated record. Effective August 13, 1956 his license was suspended by the local issuing authority for five days for permitting a minor to loiter on licensed premises. Effective July 27, 1957 his license was suspended by the Director for seven days for a fair trade violation. Bulletin 1185, Item 10. I recommend that defendant's license be suspended for a period of fifteen days (Re Madeira, Bulletin 1199, Item 2) for the violation involved, to which ten days should be added by reason of the two dissimilar violations within the past five years, making a total suspension of twenty-five days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney for the defendant, pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of the testimony, the Hearer's report and the exceptions and argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 21st day of July 1958,

ORDERED that Plenary Retail Consumption License C-120 for the 1958-59 licensing year, issued by the Board of Commissioners of the City of Trenton to Albert Angeloni, t/a Al's Tavern, for premises 512 N. Clinton Avenue corner Webster Street, Trenton, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m., July 28, 1958 and terminating at 2:00 a.m., August 22, 1958.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)

ALBERT ANGELONI)
t/a AL'S TAVERN)
512 N. Clinton Avenue corner)
Webster Street)
Trenton 9, New Jersey,)

ORDER

Holder of Plenary Retail Consumption License C-120 (for the 1957-58 and 1958-59 licensing years), issued by the Board of Commissioners of the City of Trenton.)

Richman & Berry, Esqs., by Edward I. Berry, Jr., Esq., Attorneys for Applicant.

BY THE DIRECTOR:

An order having been entered herein on July 21, 1958, suspending defendant's license for twenty-five (25) days commencing at 2 a.m. July 28, 1958, and terminating at 2 a.m. August 22, 1958; and

Application for postponement of the effective date having been made to me by defendant, who has advised me that he does not conduct a seasonal operation; and good cause appearing for the granting of said application,

It is, on this 28th day of July, 1958,

ORDERED that the twenty-five (25) day suspension, instead of commencing at 2 a.m. July 28, 1958, shall, in lieu thereof, commence at 2 a.m. September 8, 1958, and terminate at 2 a.m. October 3, 1958.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (OBSCENE LANGUAGE) - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LOTTERY - HOSTESSES - SALES TO INTOXICATED PERSONS - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against)

R.C.F., INC.)
t/a FARMER'S EXCHANGE)
500 North Egg Harbor Road)
Hammonton, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-17, issued by the Town Council of the Town of Hammonton.)

Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for 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. On October 23, November 10, 27, 28, December 13 and 14, 1957, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance; in violation of Rule 5 of State Regulation No. 20.

'2. On Sunday, November 10, 1957, between 2:00 a.m. and 2:10 a.m., you sold, served and delivered alcoholic beverages; in violation of Section 9 of an Ordinance adopted by the Mayor and Common Council of the Town of Hammonton on June 8, 1936, as amended April 10, 1944.

'3. On November 27, 1957, you allowed, permitted and suffered tickets and participation rights in a lottery to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20.

'4. On November 27, 28, December 13 and 14, 1957, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.

'5. On December 13 and 14, 1957, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such persons in and upon your licensed premises, in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein an ABC agent testified that he and two other ABC agents made four visits to defendant's licensed premises. He testified that, when they visited the premises on October 23, 1957, at about 11:30 a.m., Ann Davis was tending bar; that Ann Davis and a patron identified as Benny engaged in a loud, long conversation about various sexual experiences which Ann allegedly had and that Joseph Rapici (Secretary-Treasurer of defendant corporation) was seated at the bar during part of the time this conversation was being carried on and while various other indecent and filthy language was being used by the bartender and patron. Nothing would be gained by setting forth the language used,

"This agent testified that he and his fellow-agents returned to the premises on Sunday, November 10, 1957, at about 12:05 a.m., at which time Joseph Rapici was tending bar; that, shortly after they entered, Ann Davis relieved Rapici and that she used foul and indecent language in her conversation with the agents; that Rapici extinguished the outside lights at 1:55 a.m., and that at 2:10 a.m. Ann Davis served to each agent a bottle of beer and that the agents consumed their drinks before they left the premises at 2:25 a.m. This agent further testified that Rapici stated to a patron that things were slow but that 'next week I am going to have two girls in here then.'

"This agent testified that they returned to the premises on November 27, 1957, at about 8:45 p.m. and remained there until 12:10 a.m. on the following morning; that a girl known as 'Murph' was tending bar; that Mrs. Rapici and another girl known as 'Bobbie' were then on the premises; that a third girl known as 'Hazel' entered later and that the agents paid for a drink consumed by Murph and for two rounds of drinks which were served to Mrs. Rapici, Bobbie and

Hazel after they had played pool and shuffleboard with the agents; that during the evening Bobbie and Hazel went to the kitchen and served sandwiches at the bar; that two of the agents purchased from Hazel chances on a raffle, the coupon then received and marked in evidence indicating that the prize to be awarded was the sum of \$500; that Mrs. Rapici sold chances from a similar book.

"This agent testified that they returned to the premises on December 13 at about 11:55 p.m. and remained there until after 2 a.m. on the following morning; that Bobbie was tending bar when they entered and that during their visit Hazel relieved Bobbie for a period of about twenty minutes; that they observed Bobbie serving beer to four male patrons who were apparently intoxicated, and to another patron identified as 'Mike' who was engaged in an argument with the other four patrons and who also was apparently intoxicated. The agent testified that these five patrons were swaying from side to side and that their clothing was disheveled. This agent further testified that during their visit Murph and Hazel brought sandwiches from the kitchen and that both of them drank with male patrons at the latter's expense. The agents identified themselves at 2:10 a.m. During the course of the subsequent investigation Bobbie told the agents that she received \$30 a week plus room and board and works six nights a week from 5 p.m. until closing time. Murph told the agents that she receives \$30 a week, plus room and board, and that she usually works five or six days a week during the daytime. Hazel told the agents that she didn't actually work at the premises but helped out. Mrs. Rapici told the agents that Ann Davis was no longer employed, and that the fact that Ann Davis used indecent language was 'one of the reasons we got rid of her.' She also admitted that she had sold some chances, but stated that she did not know that this was a violation.

"It was stipulated at the hearing that, if the other two ABC agents were called to testify, their testimony on direct and cross-examination would be the same as the testimony given by the agent who testified.

"On behalf of defendant Joseph Rapici testified that he did not hear the conversation on October 23; that he sold the last drink to the agents at 1:55 a.m. on November 10; that he had no knowledge of the lottery slip; that he had ordered his female employees not to drink when back of the bar, and that Mike was sick and not apparently intoxicated on the evening of December 13. Mrs. Rapici testified that she never heard Ann Davis use filthy language; that she never accepted a drink from the agents, and that Mike was not apparently intoxicated on the evening of December 13. Michael Grasso (heretofore identified as Mike) testified that he had three ponies of beer on the licensed premises on December 13 but denied that he was apparently intoxicated and stated that he had hurt his foot in an auto accident about a week prior to said date. Ann Davis testified that she was not working on October 23 or November 10, but admitted that she had stayed at the apartment over the licensed premises between October 16 and October 21. She stated that she knew Benny but that neither she nor he had used filthy language on the licensed premises. Bobbie testified that, when not tending bar, she sometimes sat with male patrons but that she paid for her drinks and they paid for theirs. She admitted that Mike had three or four drinks, but denied that he was apparently intoxicated. Murph testified that she tended bar during the daytime between November 1957 and February 1958, but stated that, whenever she was there after 5 p.m., she was present as a customer and not as an employee and stated that she had never had drinks while tending bar but that she may have had drinks with male patrons outside the bar, at which times she paid for her own drinks.

"After reviewing all the testimony herein, I conclude that the agent correctly described the events which occurred during the four visits to the licensed premises, and I also conclude that Bobbie, Murph and Hazel were employees of defendant at the time they accepted drinks at the expense of male patrons. Kravis v. Hock, 137 N.J.L. 252; In re Gutman, Bulletin 936, Item 4, affirmed 21 N.J. Super. 579. It is recommended, therefore, that defendant be found guilty as charged

"Defendant has no prior record. It is further recommended that an order be entered suspending its license for forty days on Charges 1, 4 and 5 (Re Johar Tavern, Inc., Bulletin 1210, Item 4); for an additional period of fifteen days on Charge 2 (Re Romeo, Bulletin 1146, Item 11) and for an additional ten days on Charge 3 (Re Hoboken Post, Bulletin 1150, Item 3), making a total suspension of sixty-five days."

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

I have carefully considered the facts and circumstances of this case. I concur in the Hearer's findings and conclusions and adopt them as my conclusions herein. Hence I find defendant guilty as charged. However, the penalty recommended by the Hearer appears to be unduly severe particularly in view of the fact that the violations set forth in Charges 3, 4 and 5 are closely connected with and basically part of the "nuisance" charge set forth in Charge 1. Under all the circumstances of this case, I shall suspend defendant's license for fifty days instead of sixty-five days as recommended by the Hearer.

Accordingly, it is, on this 21st day of July, 1958,

ORDERED that plenary retail consumption license C-17 (as renewed for the 1958-59 licensing year), issued by the Town Council of the Town of Hammonton to R.C.F., Inc., t/a Farmer's Exchange, for premises 500 North Egg Harbor Road, Hammonton, be and the same is hereby suspended for fifty (50) days, commencing at 2 a.m. July 28, 1958, and terminating at 2 a.m. September 16, 1958.

WILLIAM HOWE DAVIS
DAVIS

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary
Proceedings against

Joseph Soranno
t/a "Raceway Tavern"
38 Horsehill Road
Hanover Township
PO Cedar Knolls, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-5, for the 1957-58 and
1958-59 licensing years, issued by
the Township Committee of the Township
of Hanover.

Martin Simon, Esq., Attorney for the Defendant-licensee.
Edward F. Ambrose, 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 a charge alleging that he sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

"At the hearing herein John ---, 19 years of age, testified that at 11:30 p.m. on April 5, 1958 he and five companions drove to defendant's licensed premises; that he and William --- entered the premises and the other youths, among whom was Louis ---, remained in an automobile; that a man (subsequently identified as John Gregory, who will be hereinafter referred to as Gregory) was tending bar; that he (John) observed a man on a 'little platform' engaged in playing a guitar; that he (John) ordered six quart containers of beer and the bartender poured the beer into six containers and placed the latter in two paper bags; that John paid \$3 for the beer and left the premises followed closely by William; that he was not questioned regarding his age.

"Gerald --- testified that he accompanied John and the other youths to the licensed premises on the night in question; that he remained in the automobile while John and William entered the establishment; that ten or fifteen minutes thereafter John and William emerged from the premises and John carried two bags in which were containers of beer; that, upon reaching the car, he distributed the containers of beer among the persons present, retaining one for himself.

"It was stipulated by the attorneys for the respective parties that if Louis (one of the persons who remained outside defendant's premises on the night in question) were called as a witness, the testimony given by him would be similar to that of Gerald.

"An ABC agent testified that on Sunday, April 6, 1958, he was called to the Morristown Police Headquarters where he met the six boys who were alleged to have been at the defendant's licensed premises on the previous evening and the entire group, together with two local police officers, proceeded in two cars to the defendant's tavern; that he, John, William and another youth were passengers in a car driven by one of the police officers; that the boys directed the driver to defendant's licensed premises; that upon reaching the premises the police officer, John, William and himself entered the tavern; that Gregory and another man were tending bar; that he identified himself to the bartenders and apprized Gregory of the reason for his visit; that John identified Gregory as the man who had sold him the six containers of beer on the previous evening but William was unable to make positive identification; that Gregory denied seeing either of the boys at the time in question but admitted that he was the only one who had tended bar that evening; that he remembered selling six containers of beer to a person about 30 years of age and during the evening there were two guitar players entertaining the patrons.

"Gregory testified that he sold six containers of beer to a man on the night of April 5, 1958 and that he informed the ABC agent of that fact; that, in his opinion, the person to whom he sold the beer was approximately 30 to 35 years of age; that he had never seen John at any time previous to April 6, 1958 when he came into the premises with the ABC agent; that when he sold the beer he placed the six containers in two bags--three in each bag and received \$3 therefor; and that the person who had purchased the beer had nothing to drink in the premises that evening.

"Helen T. Steele testified that she, her brother and his wife were in the defendant's licensed premises on the evening in question; that she saw William in the tavern but he did not go near the bar; that a man about 30 or 35 years of age purchased six

containers of beer and, when the man left, William followed him out of the premises; that her brother played guitar that evening.

"Grace A. O'Dell testified that she is the sister-in-law of Helen Steele and that her husband played the guitar; that her husband spoke to William and after a man purchased six cans of beer William followed him from the premises; that the man who made the purchase was approximately 30 or 35 years old.

"It was stipulated by the attorneys appearing for the respective parties herein that if several other persons who were unable to be present at the instant hearing, among whom were Harry O'Dell and John Sloan (a cousin of John), were called to testify, their testimony would be to the effect that they saw William but did not see John in defendant's licensed premises on the evening in question.

"The testimony of the State's witnesses disclosed that three of the boys, including William, are now in the armed services and could not be present at the hearing in this matter.

"There is no dispute that on the evening of April 5, 1958 the bartender sold six containers of beer to a patron. The only testimony that is in disagreement is the identity of the person who had made the purchase. Gregory denied that he sold the beer to John. John's testimony on the other hand showed that he was familiar with the activity in the defendant's licensed premises on the evening in question. Furthermore, he readily identified Gregory as the man who sold him the beer and also recalled the patrons at the time being entertained by a guitar player. The testimony of Gerald and Louis corroborated the fact that John and William entered the premises and that, upon their emergence therefrom, John was carrying two bags in which there were six containers of beer. The defendant's witnesses testified that they saw William in the premises that evening but they did not see John. After careful consideration of all the evidence adduced herein, I am satisfied that John was the person who purchased the beer in defendant's licensed premises on the evening of April 5, 1958. Therefore, I recommend that the defendant be found guilty of the charge preferred herein.

"Defendant has a prior adjudicated record. Effective January 10, 1956 his license was suspended for a period of ten days for sale of alcoholic beverages to a minor. Re Soranno, Bulletin 1095, Item 8. A sale of alcoholic beverages to a 19-year-old minor warrants a penalty of fifteen days. Re Russakow, Bulletin 1197, Item 5. In view of the similar violation committed by defendant within a period of five years, I recommend that his license be suspended for ten additional days. I recommend that the defendant's license be suspended for a period of twenty-five days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by defendant's attorney within the time limited by Rule 6 of State Regulation No. 16

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

Accordingly, it is, on this 21st day of July, 1958,

ORDERED that Plenary Retail Consumption License C-5 for the 1958-59 licensing year, issued by the Township Committee of the

Township of Hanover to Joseph Soranno, t/a "Raceway Tavern", for premises 38 Horsehill Road, Hanover Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., July 28, 1958 and terminating at 2:00 a.m., August 22, 1958.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - EMPLOYING BARTENDER WITHOUT IDENTIFICATION CARD IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

GEORGE MISSIRIS)
t/a MISSIRIS' TAVERN)
339 Communipaw Avenue)
Jersey City, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-519 (for the 1957-58 and)
1958-59 licensing years), issued by)
the Municipal Board of Alcoholic)
Beverage Control of the City of)
Jersey City.)

George Missiris, Defendant-licensee, Pro se.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges;

"1. On Sunday, May 25, 1958, you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Seagram's 7 Crown Whiskey, at retail, in its original container for consumption off your licensed premises, and you allowed, permitted and suffered the removal of such alcoholic beverage from your retail licensed premises; in violation of Rule 1 of State Regulation No. 38.

"2. On Sunday, May 25, 1958, you engaged and employed on your licensed premises an agent and bartender in connection with your licensed business, who had not been issued by the Department of Public Safety of the City of Jersey City an identification card available for inspection at your licensed premises in conformity with Sections 13 and 14 of an Ordinance adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950; in violation of Section 15 of this mentioned Ordinance."

The file herein discloses that on Sunday, May 25, 1958 at about 1:37 a.m., an ABC agent purchased a pint bottle of Seagram's 7 Crown Whiskey for off-premises consumption from Alexander Marton who was on duty as bartender in defendant's licensed premises. The agent remained on the premises for about a half hour and observed the bartender make three additional sales of alcoholic beverages for off-premises consumption. At about 2:03 a.m., the agent left the premises with the aforesaid pint bottle of whiskey and returned

immediately with another agent. The agents identified themselves to the bartender who admitted aforesaid illegal sales in the presence of the licensee.

The investigation of the case also discloses that the licensee, contrary to a local ordinance, permitted said Alexander Marton who had not been issued an identification card by the Department of Public Safety of Jersey City to act as bartender on the licensed premises.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of twenty days. Re LaPorta, Bulletin 1206, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 21st day of July 1958,

ORDERED that Plenary Retail Consumption License C-519 for the 1958-59 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to George Missiris, t/a Missiris' Tavern, for premises 339 Communipaw Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., July 28, 1958 and terminating at 2:00 a.m., August 12, 1958.

WILLIAM HOWE DAVIS
DIRECTOR

9. STATE LICENSES - NEW APPLICATIONS FILED.

Phillipsburg Beverage Company
Fifth Street

Morris Park, Lopatcong Township, New Jersey

Application filed August 22, 1958 for place-to-place transfer of Plenary Wholesale License W-98 to include additional space.

S & S Beverage Co., Inc.
321 North Rhode Island Avenue
Atlantic City, New Jersey

Application filed August 27, 1958 for place-to-place transfer of State Beverage Distributor's License SBD-134 from 3601-05 Park Boulevard and 275 West Lincoln Avenue, Wildwood, New Jersey

Joseph Cohen and Robert Dickman
t/a Lake Beverage Distributors
Lots 136, 137, 138, 139 and 140 on New Jersey State Highway 46
Rockaway Borough, New Jersey

Application filed August 27, 1958 for place-to-place transfer of State Beverage Distributor's license SBD-15 from Rear 95 West Main Street, Denville, New Jersey.

Blatz Brewing Company (A Delaware Corporation)
1120 North Broadway, Milwaukee, Wisconsin

Application filed August 28, 1958 for person-to-person transfer of Limited Wholesale License WL-34 from Blatz Brewing Company (A Wisconsin Corporation).

Gold Star Liquors, Inc.

183-187 Monroe Street, Passaic, New Jersey.

Application filed August 28, 1958 for Additional Warehouse License on Plenary Wholesale License W-59 at Branch Warehouse in Building #12 H of Botony Mills, Inc. on Sherman St. between Parker and Dayton Avenues, Passaic, New Jersey.

New Jersey State Library


William Howe Davis
Director