

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

September 19, 1962

BULLETIN 1471

TABLE OF CONTENTS

ITEM

1. STATE REGULATIONS - STATE REGULATION NO. 20, RULE 20, AMENDED.

PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION - PROHIBITION BY STATE REGULATION TO REENFORCE PREVIOUS PROHIBITIONS BY SPECIAL RULING.
2. DISCIPLINARY PROCEEDINGS (Newark) - NUISANCE (HOMO-SEXUALS - LEWDNESS AND IMMORAL ACTIVITY) - FAILURE TO PRODUCE APPLICATION FOR LICENSE - HINDERING INVESTIGATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 110 DAYS.
3. DISCIPLINARY PROCEEDINGS (Jersey City) SALE TO MINORS - CONDUCT OF BUSINESS DURING PROHIBITED HOURS - PERMITTING UNAUTHORIZED PERSONS ON PREMISES DURING PROHIBITED HOURS AND SALE AT BAR TO FEMALES, IN VIOLATION OF LOCAL REGULATIONS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 45 DAYS.
4. DISCIPLINARY PROCEEDINGS (North Bergen) - LEWDNESS AND IMMORAL ACTIVITY (OBSCENE LANGUAGE AND CONDUCT) - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.
5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES - U-DRIVE RENTED TRUCK RETURNED TO INNOCENT OWNER IN ADVANCE OF STATUTORY HEARING.
6. DISCIPLINARY PROCEEDINGS (Trenton) - GAMBLING (NUMBERS BETS) - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Passaic) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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

September 19, 1962.

BULLETIN 1471

1. STATE REGULATIONS - STATE REGULATION NO. 20, RULE 20, AMENDED.

PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION - PROHIBITION BY STATE REGULATION TO REENFORCE PREVIOUS PROHIBITIONS BY SPECIAL RULING.

NOTICE TO ALL RETAIL LICENSEES:

Since Repeal many of the subjects referred to in R.S. 33:1-39, including practices unduly designed to increase consumption of alcoholic beverages, have been covered by special rulings of the Commissioner (now Director). However, the recent decision of the New Jersey Supreme Court in Boller Beverages, Inc. v. William Howe Davis, Director of the Division of Alcoholic Beverage Control, etc., decided June 29, 1962, reprinted in Bulletin 1467, Item 1, has raised some question with respect to the propriety of handling certain matters by way of special rulings rather than by general rules and regulations. Recently a number of practices have been devised and engaged in by licensees which, in the opinion of the Director, constitute practices unduly designed to increase consumption of alcoholic beverages. Accordingly, to eliminate any doubt of the validity or binding effect of special rulings dealing with such practices, Rule 20 of State Regulation No. 20 has been amended to include specifically a prohibition against such practices.

Rule 20 of State Regulation No. 20 is hereby amended to read as follows:

"No licensee privileged to sell any alcoholic beverages at retail shall, directly or indirectly, offer or furnish any gift, prize, coupon, premium, rebate, unauthorized discount or similar inducement with the retail sale of any alcoholic beverage or engage in or allow, permit or suffer in or upon the licensed premises or in connection with the conduct of the licensed business any practice designed to increase unduly the consumption of alcoholic beverages; provided, however, that nothing herein shall prevent such licensees from furnishing advertising novelties of nominal value and further provided that such licensees shall not advertise the availability of such novelties by any sign or display or in any periodical, publication, circular, handbill, direct mailing piece or similar media."

WILLIAM HOWE DAVIS
DIRECTOR

Promulgated Wednesday, August 15, 1962.

Effective Wednesday, August 15, 1962.

Filed with the Secretary of State (N.J.) Wednesday, August 15, 1962.

"The Division's case was presented through the testimony of three ABC agents, who gave the following version:

"On February 7, 1962, at about 11:50 p.m., two ABC agents entered the licensee's premises and remained there until approximately 12:45 a.m. on February 8th. They observed seven male patrons, one normal woman patron and one apparent lesbian, known as Mickey. Her appearance had all the characteristics of a male--her hair was very closely cropped with sideburns; she wore a male-type white shirt with the sleeves rolled up almost to the shoulder; she had a zipper fly front trousers with cuffs, male-type shoes and white socks and a large man's bill-fold projecting from her rear pocket. She walked with a distinctly masculine gait.

"At 12:45 a.m., one of the agents left the premises for five minutes in order to report to several other agents who were at a point of observation outside the said premises; and he re-entered the premises at 12:50 a.m. on February 8th; that on the second visit, he observed this apparent lesbian, Mickey, and another female perform a dance, known as the 'Twist'.

"On February 17, 1962, at approximately 8:05 p.m., two ABC agents revisited the licensed premises and observed a bartender, known as Frankie (later identified as Frank Maiond), serving twelve male, two normal females and four apparent lesbian patrons.

Some of these apparent lesbians danced with the normal women, during which they moved their hands up and down the other female's backs, grabbing their buttocks, and engaged in open kissing. This dancing took place in the rear of the licensed premises, where the bartender as well as other patrons seated in the back part of the tavern, observed them with great interest.

"The agents left the premises at 8:40 p.m. and returned at about 10:20 p.m. At that time they noted that more customers came in, until there were approximately fifteen apparent lesbians among the other customers present, and also five apparent male homosexuals had arrived therein. The lesbians were dancing to the juke box music with the normal females to delight and approval of the other patrons, the bartender, Frank, and the other bartender, Tony (later identified as Anthony Faliveno, the manager of the said premises).

"These dances were characterized also by the vigorous fondling of various parts of the body of one of the normal females by an apparent lesbian.

"During the course of these activities, one of the apparent lesbians came over to a normal girl sitting near one of the agents at the bar and placed her hands on the girl's private parts, kissing her passionately, and making other carnal advances. The dances of some of the other lesbians with some of the other women on the floor encompassed kissing, fondling and other actions which simulated sexual intercourse. This was done in clear view of both bartenders and the agents observed that both bartenders delighted in observing these activities.

"The apparent lesbians, observed on the agents' return to these premises, possessed the same physical attributes, and were dressed in the same manner as were the lesbians, as hereinabove described. These, too, had very close cropped hair, their faces were completely devoid of any makeup, they wore men's type shirts with their sleeves rolled up; some of them had large wrist watches and signet rings; they wore male-type trousers with

cuffs and zipper fly fronts; all had large wallets with combs which they carried in their rear pockets, partly exposed.

"The four apparent homosexuals which the agents observed on this visit had mannerisms which were characteristic of that type of individual. They giggled and used limp-wrist motion; their cigarettes were held very daintily at the tips of their fingers, they swished their hips; and they used, in loud voices, such terms of endearment toward each other as 'honey' and 'sweetie'.

"It was particularly noted that at no time during the evening did any of these apparent lesbians ever dance with a male, nor, indeed, did any female during that evening dance with any male. The dancing consisted only of female pairs of a rather intimate nature, during which the lesbians generously fondled all parts of the body of the regular female, with emphatic pressing of the lower part of the body against the partner.

"During these activities, one significant episode took place. A male named Tony (not to be confused with the bartender and manager) got into a violent argument with one of the female patrons. Tony, an elderly patron, started to shout in vile, filthy, offensive language, that he was not interested in perverted sex, but wanted normal intercourse with this girl.

"In order to quiet him down, one of the agents ordered a drink for him and, while this was being served, Frankie, the bartender, stated that Tony had been interested in having sexual intercourse with one of the girls for the past few days and, 'These lesbians don't like that'. One of the agents remarked to this bartender that one can get into an awful lot of trouble fooling with lesbians and their straight girlfriends, to which the bartender replied, 'You certainly can get into trouble--I ought to know, I see the same ones in here all the time'. The agent then pointed to two apparent lesbians dancing and remarked, 'To me, they look like they're really in love', to which the bartender replied, 'Yes, that's the way they are'.

"At this point, at 11:45 p.m., the agents thereupon identified themselves; the bartender called over Anthony Faliveno, the manager, the agents identified themselves to him and informed him that they intended to make a charge against the licensee. Faliveno immediately walked up and down the bar and, within a few minutes, all of the apparent lesbians and homosexuals left the premises.

"The agents then requested Faliveno to produce the license application, which he refused. He also denied the agents the right to go behind the bar and, in filthy and gutter-type language, ordered them out of the place. One of the agents went to the telephone booth and called the Newark Police Department. The police did not immediately arrive and, because of the apparent hostility of the remaining patrons, the agents did thereupon depart from the said premises without obtaining the license application or completing their investigation.

"On cross-examination, the agents testified that as soon as they made their identities known, Faliveno walked up and down the bar ordering the apparent lesbians to leave the premises. As soon as they did this, Faliveno then shouted, 'You ---, show me the lesbians'. At that time, all of them had departed. The agents reiterated that they identified themselves by displaying the credentials, which consist of a billfold-type identification, with a State seal and the investigator's picture under the caption,

'State of New Jersey, Division of Alcoholic Beverage Control'. These identifications were shown to both Faliveno and to the bartender. The balance of their testimony under cross-examination was substantially the same as that testified to on direct examination.

"Anthony Faliveno, the manager of the licensed premises, and Frank Maiond, the bartender, testified on behalf of the licensee. The substance of Faliveno's testimony is as follows: He denied any violation of the rules and regulations of this Division on February 7th and February 8th. With respect to February 17th, he stated that Agent R came into the bar and fell asleep after being served with two drinks. He further denied that there were any lesbians or homosexuals in the licensed premises, and 'I don't know a lesbian when I see one. I told them before'. He denied any activity such as was described by the agents, particularly with respect to the apparent lesbians and homosexuals. He also specifically denied hearing the remarks of the elderly patron, Tony, as testified to in detail by the agents, although he was present at the time. He further stated that on February 17th, there were only two women present on the premises during the entire evening, one of whom was his wife, and that neither one of these women were lesbians or apparent lesbians. There was a total of twelve or thirteen patrons in these premises during the entire evening. His wife was not called as a witness by the licensee to corroborate this testimony. Faliveno further stated that at about 11:45 p.m., the bartender, Frank, said to him, 'These fellows here identified themselves as agents', whereupon he went to the end of the bar and refused to speak to them. Under cross-examination, the following questions were asked:

'Q. Where were you when the agents first spoke to you or you first spoke to them?

A. I never spoke to the agents.

Q. Not at all?

A. The only time I spoke to the agents is at the end over there. He called me over, he wanted to talk to me.

Q. What did he say?

A. He identified himself. So I walked to the end of the bar. Agent R wanted to come behind the bar and I said, "Go and call the cops first."

"He admitted that the agents had identified themselves to the other bartender, 'but they never showed me anything'. His stated reason for not permitting them to go behind the bar was that they had not adequately identified themselves. He was then asked by me:

'Q. When Frank told you that these two men said they were agents, why didn't you go over to them and say, "Let me see your identification?"

A. Well, I did make a mistake on that. I agree with you. I get excited. That's what's wrong with me.'

"Frank Maiond testified that he is now a stockholder in the corporate-licensee and he denied that there were any lesbians or homosexuals present on the nights in question. He stated that that there were only two girls in the premises on February 17th and

one girl was dancing by herself. He categorically denied any of the activities which were described in detail by the Division's witnesses.

"On cross-examination, he stated that he does not know Faliveno's wife and doesn't know whether she was present on February 17th. He further asserted that there were only two women present on that night, one of whom wore slacks, but he didn't take any particular note of the details of her dress, and did not know whether she was, in fact a lesbian. He admitted that the agents identified themselves and Agent R stated, 'This is Agent --- and I am Agent ---. This is my identification. This is my badge'. He then testified that one of the two women was Tony's wife. He was then asked:

'Q. I thought you said you didn't know his wife?

A. Tony told me after that was his wife.

Q. And who was the other one?

A. What he said, Mickey, there.

Q. I thought you said you didn't know Mickey?

A. I remember now because you told me.'

"A consideration of all of the testimony in this case satisfied me that the Division has proved its case by the clear and convincing testimony, and by a fair preponderance of the believable evidence. Re Carelis, Bulletin 1393, Item 2. The agents gave a straightforward, forthright and highly credible account of what transpired on that evening. Except for the blanket denial by the licensee's witnesses, no attempt has been made to specifically refute any of the substantive testimony of the Division's witnesses.

"The testimony of Faliveno bears particular scrutiny, especially where he denies that he can recognize apparent lesbians by either their manner, gait or other characteristics as described herein by the agents. In proceedings against this licensee, which culminated in an order of suspension dated February 23, 1962 (Re 32 Club, Inc., Bulletin 1444, Item 3) which were introduced for the sole purpose of affecting his credibility, Faliveno testified almost to the same effect. It requires only ordinary frankness to state that his professed inability to recognize so-called lesbians was insincere and ingenuine, both because of his previous experience in the tavern business, and with this particular problem.

"It is clear as crystal that by this time Faliveno should be able to recognize a so-called lesbian even in the darkness, as was observed by the Director in Re Simmons, Bulletin 1406, Item 2:

'I believe that, with exceptions infinitesimal and remote, it takes only common sense, with a reasonable amount of judgment based upon observation as to garb and conduct (abnormal for a woman), to distinguish a so-called lesbian from a normal woman.'

"Faliveno, as the manager of the licensed premises, may not avoid his responsibility as licensee's agent, for the conduct of the licensed premises merely by closing his eyes and ears. On

the contrary, licensees must use their eyes and ears, and use them effectively, to prevent improper use of the premises. Re Ehrlich, Bulletin 1441, Item 5; Bilowith v. Passaic, Bulletin 527, Item 3.

"Finally, it would be appropriate to quote from the Commentaries of the Prophet Jeremiah:

"There is none so blind as he who will not see."
(Jeremiah :20)

"Thus, his testimony with reference to these incidents impresses me as being arrogantly cynical, evasive and offered without conviction. The testimony of the bartender is most incredible, in the light of his expressions to the ABC agents. His examination is also characterized by blatant untruths, evasions and contradictions. It should be observed that his recent acquisition of an interest in the corporate-licensee may have tended to affect his recollection of what transpired on the nights in question. It might also be noted that the incidents in this case transpired after receipt by the licensee of a Hearer's Report recommending a finding of guilt on the same basic charge of 'allowing, permitting and suffering persons who appeared to be homosexuals in and upon the licensed premises', and in conducting the said licensed place of business in such manner as to become a nuisance, in violation of Rule 5 of State Regulation No. 20. See Re 32 Club, Inc., supra. Hence, it is recommended that the licensee be found guilty as to Charge 1.

"With respect to Charge 2, it is undenied by the licensee that no copy of the license application was made available for inspection and examination by Division's agents, in violation of Rule 16 of State Regulation No. 20. Its attempted justification for such failure to produce was that Faliveno was not satisfied that the ABC agents properly identified themselves.

"It is abundantly manifest from the testimony, that proper identification was made by the agents, and the employees of the licensee, having been associated with the liquor industry for many years, should have recognized such identification as being adequate and in proper form. Faliveno admitted that he got 'excited' and made a mistake in failing to facilitate the investigation.

"It may well be assumed that his behavior was clearly occasioned by his consciousness of wrongdoing; it certainly does not constitute a valid defense to these charges.

"These charges have also been proved by a fair preponderance of the believable evidence, and I therefore recommend that the licensee be found guilty on Charges 2 and 3 as well.

"Licensee has a prior adjudicated record. Effective June 23, 1958, the Director suspended for twenty-five days the license which the licensee then held for premises at 132 Orchard Street, after the licensee pleaded non vult to charges of permitting bookmaking and a lottery. Bulletin 1237, Item 4. Effective January 3, 1961, the local issuing authority suspended licensee's license for twenty days for selling during prohibited hours. On February 23, 1962, the Director suspended the license herein for a period of forty-five days because of the finding of guilt on a charge that it permitted its business to be conducted in such manner as to become a nuisance, and that it suffered persons who appeared to be homosexuals, e.g., females impersonating males, in and upon the licensed premises, in violation of Rule 5 of State Regulation No. 20. Bulletin 1444, Item 3.

'Rigid enforcement of the regulations...is essential to the preservation of decency and the protection of the public morals...'

Re Polka Club, Inc., Bulletin 1045, Item 6.

"In view of the fact that there have been three previous violations within the past five years, including two dissimilar violations and one similar violation, it may well be considered such callous disregard of the Alcoholic Beverage Law as to warrant a revocation of the license, especially since this violation occurred during the time that the prior similar violation was being adjudicated by this Division. However, in view of all the facts and circumstances of this case, I recommend that an order be entered suspending this license for a period of ninety days on Charge 1. Since this is the licensee's fourth violation and its second similar violation within five years, such suspension would be consistent with substantial justice. Re Mekis and O'Shaughnessy, Bulletin 952, Item 6. Cf. Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2; Re Clover Leaf Inn, Bulletin 1159, Item 1, (on first violations, absent prior record). To this should be added an additional twenty days on Charges 2 and 3, particularly because 'hindering' is a violation which strikes at the very heart of enforcement and control. Re Pelzer, Bulletin 1377, Item 1; Re Jingoli, Bulletin 1000, Item 1.

"Thus, I recommend the entry of an order of suspension of a total of one hundred ten days."

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

After carefully considering the facts and circumstances herein, including the transcript, the oral argument of counsel at the hearing, and the Hearer's Report, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 16th day of July, 1962,

ORDERED that Plenary Retail Consumption License C-347, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to 32 Club, Inc., t/a Latin Quarter, for premises 47 Pennington Street, Newark, be and the same is hereby suspended for one hundred ten (110) days, commencing at 2:00 a.m. Monday, July 23, 1962, and terminating at 2:00 a.m. Saturday, November 10, 1962.

WILLIAM HOWE DAVIS
DIRECTOR:

- 3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - CONDUCT OF BUSINESS DURING PROHIBITED HOURS - PERMITTING UNAUTHORIZED PERSONS ON PREMISES DURING PROHIBITED HOURS AND SALE AT BAR TO FEMALES, IN VIOLATION OF LOCAL REGULATIONS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against
 BERGEN SMITH RECREATION, INC.
 13-15-17 Smith Street
 Jersey City 6, N. J.
 Holder of Plenary Retail Consumption License C-346, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

 Abraham Miller, Esq., by Leonard Meyerson, Esq., Attorney for Licensee.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The following charges were preferred against the licensee:

- '1. On March 24, 1962, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., James ---, age 18 and Richard ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- '2. On Saturday, March 24, 1962, between 2:00 a.m. and 2:56 a.m., you conducted your licensed business; in violation of Section 4 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950.
- '3. On Thursday, February 8, 1962, between 2:00 a.m. and 3:40 a.m., Saturday, March 17, 1962, between 2:00 a.m. and 3:15 a.m. and Saturday, March 24, 1962 between 2:00 a.m. and 2:56 a.m., you suffered and permitted persons except yourself and your actual employees and agents in and upon your licensed premises; in violation of Section 4 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950.
- '4. On February 8, 10, 11, 16, 25, March 17 and 24, 1962, you permitted females to be served at a public bar on your licensed premises and on said dates of February 8, 10, 11, 25, March 17 and 24, 1962, you sold alcoholic beverages over said bar to females for consumption by them on your licensed premises; in violation of Section 6 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950.

5. On March 24, 1962, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz.,

1 - 4/5 quart bottle labeled "Chivas
Regal Blended Scotch Whisky 86 Proof";

in violation of Rule 27 of State Regulation
No. 20.'

"When the matter came on for hearing the licensee pleaded not guilty to Charges 1, 4 and 5 and to the violations alleged in Charge 3 to have occurred on February 8 and March 17, 1962. It pleaded non vult to Charge 2 and the violation alleged in Charge 3 to have occurred on March 24, 1962.

"On motion of the Division's attorney the violation alleged in Charge 1, involving the minor James ---, was nolle prossed.

"To establish the charges the Division produced two of the four ABC agents who participated in the investigation of the licensee's business, the alleged minor Richard ---, and the Division's chemist. The agents who testified will be referred to as Agents S and C, the others as Agents Sc and T. Agent S testified at length respecting the visits made by him and the other agents to the licensed premises and, upon completion of his cross-examination, it was stipulated by the attorneys for the parties hereto that, if Agent C were interrogated on direct examination, his testimony would corroborate the direct testimony of Agent S.

"A certified copy of the ordinance referred to in Charges 2, 3 and 4 was received in evidence.

"Section 4 of said ordinance provides, in so far as is pertinent herein, that no retail consumption licensee shall conduct business or permit any person other than the licensee, his employees and agents in and upon the licensed premises after the 2 a.m. closing hour.

"Section 6 of said ordinance, in so far as is pertinent herein, provides that no females shall be served at a public bar and that no alcoholic beverages shall be sold over said bar to any female to be consumed upon the premises.

"It appears from the evidence that the first floor of a two-story building containing a U shaped bar, pool tables and bowling alleys and the basement containing a bar and bowling alleys constitute the licensed premises.

"Agent S testified that he and Agent C entered the licensed premises at 1:15 a.m. Thursday, February 8, 1962, and took positions at the bar; that he observed Charles Motkowski (hereinafter Charles), the bartender, serve three Scotch whiskies to a lone female called Jennie who was seated at the bar; that at 2 a.m. the following day Charles served drinks to him, Agent C and Jennie; that he and the others carried their drinks to the bowling alley where they consumed them after the closing hour, and that he and Charles engaged in bowling and all remained on the premises until 3:40 a.m.

"Agent S further testified that he, Agents C and Sc entered the licensed premises at 11:10 p.m. Saturday, February

10, 1962, and seated themselves at the bar; that there were eighty to one hundred patrons on the premises; that he observed thirteen females at the bar consuming alcoholic beverages served to them by a bartender called Bill who was assisting Charles, and that he and the other agents left at 1 a.m. the following morning.

"Agent S further testified that he and Agents C and T entered the licensed premises at 1:55 a.m. Saturday, March 17, 1962, that the female called Jennie was seated at the bar consuming drinks served by Charles; that at 2 a.m. Charles served drinks to him, the other agents and Jennie; that they carried the drinks to the bowling alleys where they were later consumed; that he and Charles engaged in bowling, and all of them remained on the premises until 3:15 a.m.

"Agent S further testified that at 1:55 a.m. Saturday, March 24, 1962, he and Agents C and Sc entered the licensed premises and seated themselves at the bar; that during their stay he observed at the bar a female called Josephine consuming three or four 'shots' of 'Chivas Regal' Scotch Whisky and an apparent minor consuming nips of beer; that he noted that the bottle of 'Chivas Regal' bore no tax stamp and that the contents were light in color; that he identified himself to Charles who had served the female and apparent minor and seized for evidential purposes the bottle labeled 'Chivas Regal Blended Scotch Whisky 86 Proof' and the last nip of beer served to the apparent minor at 2:56 a.m.; that, having ascertained that the apparent minor was Richard ---, age 19 years, he asked Charles if he had served the minor; that Charles replied, 'Yes, you was here. You saw it;' and that Charles also admitted that he served alcoholic beverages to Josephine at the bar.

"Richard --- testified that he was born on September 8, 1942; that he entered the licensed premises with his adult brother; that they bowled until midnight and then approached the bar; that Charles served him and his brother five or six bottles of beer without making inquiry as to his age or requiring any written representation thereof.

"The chemist testified that he received the bottle bearing the label 'Chivas Regal Blended Scotch Whisky 86 Proof' containing about 12½ ounces of liquid; that he analyzed the contents of the bottle and found that it was 14 proof short, low in solids and acids, light in color, and that the liquid had been diluted with water and was not the genuine Scotch Whisky as labeled.

"Charles Motkowski testified that he is the manager of the licensed premises; that he served two or three rounds of nips of beer to Robert (the brother of Richard) and did not see what he did with them; that he did not serve any female at the bar; that Jennie is employed by the licensee as a 'cleaning woman;' that he never served alcoholic beverages after the 2 a.m. closing hour, and that he did not refill or water the 'Chivas Regal' Scotch Whisky.

"Considering the evidence adduced herein, and having had the opportunity to judge the credibility of the witnesses, I find that the testimony of the agents presents a true picture of what the agents observed, heard and did during their investigation on the dates alleged; that the testimony of the minor corroborates that of the agents respecting the sale, service and delivery of alcoholic beverages to him without requiring written representation as to his age; that the testimony of the chemist

confirms the fact that the contents of the seized bottle labeled 'Chivas Regal' were diluted with water; and I conclude that the Division has established the truth of the charges by the necessary preponderance of the believable evidence.

"Since the corporate licensee has no prior adjudicated record, I recommend it be adjudged guilty as charged and that an order be entered suspending its license for fifteen days on Charge 1 (Re New Raritan Liquors, Inc., Bulletin 1453, Item 9), fifteen days on Charges 2 and 3 (Re Canova, Bulletin 1411, Item 4), five days on Charge 4 (Re Stachelski, Bulletin 1396, Item 10) and ten days on Charge 5 (Re Hibbits, Bulletin 1451, Item 9), making a total suspension of forty-five days."

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

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

Accordingly, it is, on this 11th day of July, 1962,

ORDERED that Plenary Retail Consumption License C-346, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Bergen Smith Recreation, Inc., for premises 13-15-17 Smith Street, Jersey City, be and the same is hereby suspended for a period of forty-five (45) days, commencing at 2:00 a.m., Wednesday, July 18, 1962, and terminating at 2:00 a.m., Saturday, September 1, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (OBSCENE LANGUAGE AND CONDUCT) - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

VIKTORIA FIEBIG)
t/a SUNSET BAR & GRILL)
6900 Tonnelle Avenue)
North Bergen, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-51, issued by the Alcoholic Beverage Control Board of the Township of North Bergen.)

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

BY THE DIRECTOR:

Licensee pleaded non vult to the following charge:

"On Friday night, June 15 and early Saturday morning, June 16, 1962, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

On Friday, June 15, 1962, at 10:50 p.m., two ABC agents visited licensee's premises and observed the husband of the licensee tending bar. There were four males and one female in the licensed premises, and the said female was subsequently identified as the licensee. During the evening a male patron danced with the licensee during which he opened the back of her dress and exclaimed that she wore no brassiere. He then placed his hands on her breasts. After releasing his hold, he started dancing alone and, in response to his invitation, the licensee danced toward him and, as she did so, he grabbed her, held her close to him and they then started to simulate sexual intercourse. Thereafter the licensee went behind the bar, served herself a glass of beer, placed the glass of beer on the bar and then took a glass of beer belonging to one of the agents and drank the contents thereof. She then came to the customer's side of the bar and the male patron with whom she danced unzipped the front of his trousers and exposed his genitals, made remarks concerning same which caused the licensee to laugh. Thereafter the patron again danced with the licensee and both again made indecent movements simulating sexual intercourse and, when the dance was over, the male patron kissed the forehead of the licensee.

These depraved performances and disgusting conduct in licensed premises are inimical to the public welfare and morals.

The licensee has no prior adjudicated record. In view of the seriousness of the instant violation, I shall suspend the license for seventy-five days. Cf. Re Club Rio, a corporation. Bulletin 1412, Item 4. Five days will be remitted for the plea entered, leaving a net suspension of seventy days.

Accordingly, it is, on this 16th day of July, 1962,

ORDERED that Plenary Retail Consumption License C-51, issued by the Alcoholic Beverage Control Board of the Township of North Bergen to Viktoria Fiebig, t/a Sunset Bar & Grill, for premises 6900 Tonnelle Avenue, North Bergen, be and the same is hereby suspended for seventy (70) days, commencing at 3 a.m. Monday, July 23, 1962, and terminating at 3 a.m. Monday, October 1, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES - U-DRIVE RENTED TRUCK RETURNED TO INNOCENT OWNER IN ADVANCE OF STATUTORY HEARING.

In the Matter of the Seizure on June 10, 1962 of a quantity of alcoholic beverages and a Ford truck at the south side of Cedar Lane, in the Township of Pilesgrove, County of Salem and State of New Jersey.)	Case No. 10,846
)	ON APPLICATION FOR RETURN OF MOTOR VEHICLE
)	PRIOR TO STATUTORY HEARING

ORDER

Drive-It-Yourself-Company of New Jersey, claimant, by Augustus E. Gondolf, Assistant Manager.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This is an application made at a preliminary hearing, held pursuant to Rule 6 of State Regulation No. 28, by the Drive-It-Yourself-Company of New Jersey, the owner of a 1962 Ford Econoline

truck for the return of the said truck prior to the date of the statutory seizure hearing. Augustus E. Gondolf, assistant manager for the claimant corporation, asserts that this motor vehicle represents rental property used in the regular course of its business and it would suffer an economic hardship if it had to await the outcome of said statutory seizure hearing.

The testimony presented at this hearing reflects the following: On Saturday, June 9, 1962 at about 3:55 p.m. one Mitchell Woodward applied at the office of the claimant for the rental of the U-Drive truck. He was accompanied by a woman and Woodward said that this truck was needed in order to haul furniture and other personal property for her. The woman paid \$30.00 cash deposit and the truck was rented to Woodward with the understanding that it was to be returned on Monday, June 11, 1962.

Woodward stated that he was going to transport light furniture, dishes and boxes to a place in South Jersey. His driver's license was found to be valid but no questions were asked by the claimant's representative with respect to his background or any prior involvement in unlawful liquor activities.

It further appears that on Sunday, June 10, 1962, one Caleb Jenkins Daniels sold alcoholic beverages to an ABC agent from this truck, which was parked on the south side of Cedar Lane, Pilesgrove, County of Salem, New Jersey. The truck was thereupon seized by ABC agents because the said Daniels did not have a license or permit authorizing sale of alcoholic beverages.

On Tuesday, June 12, 1962 when his vehicle had not been returned, claimant made its own investigation and ascertained that the truck was impounded because of the facts hereinabove set forth.

Gondolf was subjected to a careful examination by counsel for this Division and I am satisfied that the claimant is the actual owner of this Ford truck, and that it acted in a routine manner in this transaction. The circumstances under which the truck was rented did not arouse any suspicion that this motor vehicle would be used in illicit liquor activity.

The witness for the claimant also testified that this is the second time in the past 15 years that a situation arose involving transportation of illicit liquor (the first one involved a motor vehicle seized in 1952 by the State of Pennsylvania). Thus, it is clear that the practice in this case has been in accordance with the usual standard heretofore accepted by this Division as evidence of good faith and the exercise of reasonable prudence. Cf. Seizure Case No. 9978, Bulletin 1300, Item 7; Seizure Case No. 9504, Bulletin 1191, Item 12.

There was no suspicious circumstance in this case which would indicate that either Woodward, or the woman accompanying him was a person of ill repute; thus, there was no reason to impose an arbitrary requirement that this claimant should additionally have made inquiry of police authorities concerning whether they had criminal records. Seizure Case No. 9139, Bulletin 1128, Item 11.

I am satisfied from the evidence presented that the Drive-It-Yourself-Company acted in good faith and had no knowledge of the unlawful use to which the said Ford was put, or of such facts as would have led a person of ordinary prudence to discover such use. R.S. 33:1-66(f); Seizure Case No. 10,383, Bulletin 1363, Item 3.

Consequently, I shall return the Ford Econoline truck to claimant in advance of the statutory hearing, upon payment of the costs of the seizure and storage of such motor vehicle.

Accordingly, it is DETERMINED and ORDERED that if on or before the 20th day of July, 1962, the Drive-It-Yourself-Company pays the costs of the seizure and storage of the Ford Econoline truck, such motor vehicle shall be returned to it.

WILLIAM HOWE DAVIS
DIRECTOR

Dated: July 10, 1962

6. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

KENT CAFE, INC.
t/a KENT CAFE, INC.
132 Kent Street
Trenton 10, New Jersey

)
)
) CONCLUSIONS
) AND ORDER
)

Holder of Plenary Retail Consumption License C-35, issued by the Board of Commissioners of the City of Trenton.

Licensee, by Helen Zazzo, President.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic beverage control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on June 9, 13, 16 and 23, 1962, it permitted the acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a prior adjudicated record. Effective June 3, 1957, its license was suspended by the Director for five days for sale of alcoholic beverages to minors. Bulletin 1177, Item 2. Inasmuch as the dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. I shall suspend the license for twenty-five days, the minimum suspension where an employee or licensee participates in the violation. Re DiTerlizzi, Bulletin 1441, Item 4. Five days will be remitted for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 11th day of July, 1962,

ORDERED that Plenary Retail Consumption License C-35, issued by the Board of Commissioners of the City of Trenton to Kent Cafe, Inc., t/a Kent Cafe, Inc., for premises 132 Kent Street, Trenton, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Tuesday, July 17, 1962, and terminating at 2:00 a.m., Monday, August 6, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 of STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 STEIN'S CAFE, INC.)
 t/a STEIN'S CAFE)
 197 Monroe Street)
 Passaic, N. J.)
 Holder of Plenary Retail Consumption License C-117, issued by the Board of Commissioners of the City of Passaic.)

CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Thursday, June 21, 1962, at 10:40 p.m., it sold a pint of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days (Re Sabo, Bulletin 1449, Item 3), with remission of five days for the plea entered, leaving a net suspension of ten days.

Accordingly, it is, on this 11th day of July, 1962,

ORDERED that Plenary Retail Consumption License C-117, issued by the Board of Commissioners of the City of Passaic to Stein's Cafe, Inc., t/a Stein's Cafe, for premises 197 Monroe Street, Passaic, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., Tuesday, July 17, 1962, and terminating at 3:00 a.m., Friday, July 27, 1962.

William Howe Davis
Director