

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

DP

BULLETIN 1462

July 30, 1962

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

BULLETIN 1462

July 30, 1962

1. APPELLATE DECISIONS - RYNAX v. NEPTUNE TOWNSHIP.

LILLIAN E. RYNAX AND MALCOLM R. RYNAX,)	
)	
Appellants,)	
)	ON APPEAL
v.)	CONCLUSIONS
)	AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF NEPTUNE,)	
)	
Respondent.)	

Patterson & Cooper, Esqs., by Peter Cooper, Esq., Attorneys
for Appellants.
Stout and O'Hagan, Esqs., by William J. O'Hagan, Jr., Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Township Committee (hereinafter respondent) whereby, on the 20th day of February, 1962, it denied the application of the appellants for the issuance of a plenary retail consumption license, to expire on June 30, 1962, for premises existing and to be constructed at 3310 Highway No. 33 in the Township of Neptune.

"There is no record of any hearing held on the said application, nor were the minutes or transcript of the said meeting produced at this appeal de novo. The application was denied by respondent for the assigned reason that 'two letters objecting to the issuance of this license had been received'.

"The petition of appeal filed herein sets forth the following reasons why the determination of the respondent should be reversed: (1) the action of the respondent was arbitrary, unreasonable and capricious and (2) that the issuance of said license would render a service and be an asset to the community.

"Respondent, in its answer, denies appellants' allegations, except that it admits that the application was denied for the reasons aforesaid. The appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15, with full opportunity to present testimony under oath and cross-examine witnesses. Shapiro v. Long Branch, Bulletin 901, Item 2.

"Lillian E. Rynax was the sole witness for the appellants. She testified that she presently operates a 33 unit motel in this Township and is in the process of constructing an additional 18 units so that by May of 1962 she will have a total of 51 units, including her own sleeping quarters. She further testified that she made this application because she found that, in order to meet business competition, it would be desirable for her to have a retail consumption license in order

to accommodate her regular guests. She intends to build a cocktail lounge which will have 11 bar stools and she does not contemplate that she will offer any entertainment or conduct an operation in any way characteristic of the "night club" type. According to her testimony, her motel is not located near any churches or schools, the nearest church being approximately one mile therefrom and the nearest school about 3/4 of a mile. The nearest licensed premises is about 1.3 miles from appellants' motel.

"Two ministers, Reverend Albert D. Curry and Reverend Philip S. Brown, testified on behalf of the respondent to the effect that they were generally opposed to the issuance of additional retail consumption licenses in this community because it was their feeling that there was no need or necessity for the same. They also were apprehensive that the issuance of this license in a motel might eventually create the same 'disagreeable experience' which they had encountered with another motel license. Reverend Curry was asked:

'Q. Irrespective of what type of establishment sells alcoholic beverages, you are opposed to it, aren't you?

A. Yes, by the nature of my profession, I am, yes.

Q. And in your opinion there is no need? You don't have any evidence as to whether or not there is a need for this type of operation or not, do you?

A. Well, I suppose to ask a clergyman whether there is a need for anyone to be licensed to sell liquor is a little bit aside from any point.

Q. I understand, yes.

A. It's my feeling that there is no need.'

"Reverend Brown testified, on cross-examination, that his church is presently located approximately two miles from the applicants' premises, although he was unable to state whether it was not actually 2.7 miles.

"Counsel for the respondent introduced into evidence petitions signed by residents of the Township of Neptune and of Ocean Grove, which were brought to the hearing by its witnesses. Also introduced was the copy of the resolution adopted by the Township Committee on February 20, 1962 which, in its operative part, reads as follows:

'WHEREAS, Lillian E. Rynax and Malcolm R. Rynax have applied for a plenary retail consumption license for the premises at 3310 Highway #33; and

WHEREAS, Two letters objecting to the issuance of this license have been received;

THEREFORE, BE IT RESOLVED, That the Township Committee hereby denies the application of Lillian E. Rynax and Malcolm R. Rynax for a plenary retail consumption license.'

"There is nothing in the record before me to indicate whether an actual hearing took place before the resolution denying the issuance was adopted by the respondent. Indeed, neither counsel could shed any light thereon; counsel for the respondent stated he was not present at that meeting, nor does he know what transpired at that time. Therefore, the resolution gives the only clue as to the reasoning which motivated the respondent to act as it did.

"Certainly, no member of the respondent appeared before me, no transcript or summary of the minutes of the meeting were submitted for my consideration; nor, in fact, were any residents of the community other than the two clergymen hereinabove referred to produced to testify with regard to local sentiment.

"It is not even clear whether, in addition to the two letters which the respondent presumably received in opposition to the proposed issuance of this license, they also had before them the petitions which were submitted by respondent in support of the testimony of its witnesses.

"However, even the consideration of the petitions does not adequately justify a decision of the issuing authority, if the petitions and the two letters were the sole reasons for respondent's action.

"The Director's function on appeals of this type is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1; Bertrip Liquors Inc. v. Bloomfield, Bulletin 1334, Item 1; Larion Inc. v. Atlantic City, Bulletin 1306, Item 1.

"Generally speaking, the actions of a local issuing authority will be affirmed, if they are necessary and proper to accomplish the object of the Alcoholic Beverage Law, and secure compliance with its provisions, e.g. that the premises are unsuitable or that there are too many licenses in the vicinity. Alario et al v. Newark, Bulletin 1210, Item 1; Gruhler and Edwards v. Phillipsburg, Bulletin 718, Item 3. The reasons assigned for its actions must be reasonably supported by the evidence in order for such actions to be sustained. O'Bertz v. Perth Amboy, Bulletin 1011, Item 1; Palmer v. Atlantic City, Bulletin 1017, Item 1.

"Although the issuing authority's discretionary powers are broad, the presumption in favor of the authority's action is not conclusive. Alario v. Newark, *supra*; Ways and Witteborn v. Egg Harbor et als., Bulletin 951, Item 3; Olko v. Saddle River et al., Bulletin 914, Item 3.

"Of course, a determination cannot be sustained solely upon the basis of petitions favoring or opposing. Tompetrini v. Hawthorne, Bulletin 1193, Item 3.

"The record before me was incomplete, and failed to clarify in my mind the motivations for the respondent's action, because the respondent failed to articulate any substantially specific reason for its action. It has been repeatedly indicated that, in all fairness, a local issuing authority should state the reasons for its decision, although such failure to do so is not fatal. It is generally recommended that this be done

so that the Hearer can understand the rationale behind the action of the issuing authority. Fanwood v. Rocco, 59 N.J.S. 307.

"If the local issuing authority merely counted noses and, upon the basis of the two letters, summarily rejected this application, such action would clearly be unreasonable and arbitrary and would be sufficient cause for reversal. Tompkins v. Seaside Heights, Bulletin 1398, Item 1. Thus, as Judge Eastwood stated in Brush v. Hock, 137 N.J.L. 257, 259:

'It seems to us, and we so hold, that the licenses were granted more on the basis of expediency rather than on the question of a public need for additional licenses in the community.'

"With respect to the petition, it should be observed that this petition refers to another motel; such reference apparently resulted in an emotional response on the part of the signatories thereto. I consider that the legend on the top of the petition was a non sequitur and did not relevantly or pertinently refer to the paramount issue in this case, namely, that of public need and necessity. The general rule is that while a petition served as a mass character recommendation, it cannot take the place of a considered determination, which is the obligation and responsibility of an issuing authority. Cf. Re Powell, Bulletin 59, Item 15; Lackowitz v. Waterford, Bulletin 125, Item 12.

"As the late Commissioner Burnett stated in Dunster v. Bernards, Bulletin 99, Item 1:

'There is no objection to any person or group presenting a petition. It serves as a convenient medium for presenting to the governing body the views of the group, but the weight to be accorded it, after proper discount for self-interest and the irresponsible way in which petitions are often signed as friendly accommodation without any considered thought of contents or effect or the argument on the other side, depends on what the petition states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of the law and whose duty and privilege it is to hear both sides.

'A petition is not a substitute for, nor may it in any way dispense with independent investigation to determine...(whether the application) is in fact worthy. Neither does it suffice as proof of non-compliance or of unworthiness. Such matters are not proved either way by merely counting noses...'

"If the reason set forth in the resolution is taken in its face value, it would appear that the respondent acted on the basis that these two letters represented the will of the majority. This is an erroneous hypothesis. It was not shown that an independent determination of the propriety or desirability of granting or denying the application was made. It is the duty of respondent to hear both sides, and it then had the responsibility to determine, on all the facts, whether or not the license should be granted. Dunster v. Bernards, supra.

"It should be noted that these petitions were executed by representatives of the two clergymen witnesses, apparently after the matter was referred to in sermons during the church services by these clergymen. Thus, we are confronted with the fact that there is no evidence to indicate that the respondent ever considered the paramount issue of the public necessity and convenience which should have served as the basis for the respondent's action. Robinson et als. v. Glassboro et al., Bulletin 1441, Item 1.

"In Mevoli et al. v. Camden et al., Bulletin 933, Item 1, it was held that:

'A decision of a local issuing authority totally disregarding the paramount issue of public necessity and convenience, such as is involved in connection with the discretionary function of transfer of a liquor license, cannot sustain the local action. Indeed, it is tantamount to a failure to discharge the responsibility which, under the provisions of the Alcoholic Beverage Law (R.S. 33:1-1 et seq.) is vested in each issuing authority in the first instance to determine within its sound discretion whether a license shall be issued or transferred. Passarella v. Board of Commissioners, 1 N.J. Super. 313 (App. Div. 1949); Haefliger v. Allamuchy, Bulletin 880, Item 2.'

"The language used by Justice Jacobs, speaking for the New Jersey Supreme Court in Ward v. Scott, 16 N.J. 16, in a zoning matter (by substituting the words liquor licenses for variance) is apropos to a situation such as that now under consideration. In the said case, Justice Jacobs stated:

'Local officials who are thoroughly familiar with their community's characteristics and interest and are the proper representatives of its people are undoubtedly the best equipped to pass initially on such applications...'

Cf. Tranchito v. Elizabeth, Bulletin 1296, Item 1.

"It is my considered judgment that the reason assigned by the respondent Township Committee in its resolution denying the application of the appellants is inadequate and manifests an improvident exercise of its discretion. Such action normally would require reversal. However, it is my view that as a practical matter, it would be more desirable to have this matter remanded to the respondent for reconsideration rather than to compel it, on the basis of the inadequate record before me, to summarily issue this license.

"Under the circumstances herein, I would recommend that this matter be remanded to the respondent with directions that reconsideration be given to this application at a full hearing; and that, in connection therewith, the issue of public convenience and necessity be determined by the respondent Committee prior to voting upon such reconsideration. The matter of concentration of licenses in the area, the nearness to churches and schools and all other factors should be fully and impartially considered before respondent reaches a decision herein. Mevoli et al. v. Camden et al., supra; Robinson et als. v. Glassboro et al., supra. In connection therewith, it may, with propriety, be suggested that the application be viewed in

the light of the relevant ordinance adopted by the respondent Township Committee on February 7, 1961, and, more particularly, Section 15 of that ordinance which reads as follows:

'Nothing in this ordinance shall prevent issuance of a new license to a person who operates a hotel containing fifty sleeping rooms, or who may construct and establish a new hotel containing at least fifty sleeping rooms pursuant to R.S. 33:1-12.20.'

"The word 'hotel' has been interpreted by the Director of this Division as contemplating and including an exception in favor of 'motels' as well as 'hotels'. Bayshore Tavern Owners Association et al. v. Sea Bright, Bulletin 1378, Item 2; Cf. Schermer v. Fremar Corporation, 36 N.J. Super. 46 (1955). Mrs. Rynax has testified that her facility will contain at least fifty sleeping units before the end of May 1962. Her application may, therefore, be properly considered within the contemplation of this section."

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

Having carefully considered the entire record herein, including the testimony taken, the exhibits introduced in evidence at the hearing of the appeal, the Hearer's Report and the specific recommendations included therein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. Hence I shall enter an order as recommended.

Accordingly, it is, on this 4th day of June 1962,

ORDERED that the within appeal be and the same is hereby remanded to respondent Township Committee for its further action consistent with this opinion and with particular emphasis upon the specific recommendations in the Hearer's Report herein adopted.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - INDECENT ENTERTAINMENT - ALCOHOLIC BEVERAGES NOT TRULY LABELED - SALE IN VIOLATION OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary
Proceedings against

JOHN J. KINAHAN
t/a KILLARNEY INN
466 Central Avenue
Orange, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-13, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Orange.

James A. Palmieri, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., and David S. Piltzer, Esq., Appearing
for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Three separate proceedings were instituted against the licensee herein.

"In the first proceeding (S-5998) the licensee pleaded not guilty to the following charge:

'On October 6, 7 and 21, 1961, and on divers other dates, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language in and upon your licensed premises, viz., in that you allowed, permitted and suffered a male person to perform for the entertainment of your customers and patrons on your licensed premises in a lewd, indecent and immoral manner, use foul, filthy and obscene language and sing songs, recite stories and utter words and phrases having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20.'

"While the first proceeding was pending, the licensee pleaded not guilty to the following charge (S-6049), service of which was effected on January 4, 1962:

'On December 11, 1961, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

One quart bottle labeled "Imported Canadian Club Blended Canadian Whisky 86.8 Proof",

Two quart bottles labeled "Imported Seagram's V.O. Canadian Whisky A Blend 86.8 Proof",

One quart bottle labeled "Seagram's Seven Crown American Blended Whiskey 86 Proof",

One 4/5 quart bottle labeled "Four Roses Blended Whiskey 86 Proof" and

One 4/5 quart bottle labeled "Cutty Sark Blended Scots Whisky 86 Proof"

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

"On February 28, 1962, during the pendency of aforesaid charges, the following two charges (S-6081) were preferred against the licensee and to which the licensee entered no plea and made no appearance with respect thereto:

- '1. On Sunday, February 11, 1962, between 7:10 p.m. and 7:20 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a 4/5 quart bottle of Burrough's Beefeater Distilled London Dry Gin, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
- '2. On Sunday, February 11, 1962, between 7:22 p.m. and 8:00 p.m., you, through one Adolph J. Turlowicz, a person employed as a bartender on your licensed premises, failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination then and there being conducted by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35.'

"On January 11, 1962, a hearing was held on the first charge. The Division called as its witnesses three ABC agents, hereinafter referred to as Agent J, Agent G and Agent C.

"Agent J testified that he and Agents C and G visited the licensed premises from 11:15 p.m. on Friday, October 6, 1961, to 1:45 the next morning; that there were about 150 male and female patrons in the premises; that the premises contained an oval-shaped bar, in the center of which was a raised platform and a microphone; that for a period of about one hour an entertainer (later identified as Charles Mound) was on the platform, sang double entendre songs (as 'Roll me over, lay me down and do it again'), connoting sexual activities and punctuated his performance with similar remarks such as 'Look at this fellow (seated at the bar) 190 pounds of dynamite with a two-inch fuse', 'This is the best-looking fellow (seated at bar) in the house. If you come upon the stage and bend over, I will drive you to your prize.'

"Agent J further testified that at 12:01 a.m. on Saturday, October 21, 1961, he and Agent C, accompanied by a third agent (hereinafter referred to as Agent S) returned to the licensed premises; that he and his partners took seats at the bar opposite the stage; that there were about 150 males and females in the premises; that Mr. Kinahan (the licensee) was in the premises; that at 12:20 a.m. Mound appeared on the stage, repeated the performance he had given on October 6 and 7 aforesaid, and added the following remark, 'Look at this fellow

with his hands in his pocket. He's playing pocket-pool;' that at 1:35 a.m. he and the other agents identified themselves to the licensee and Mound; that Agent S repeated to them (almost verbatim) Mound's songs and remarks and that Mound stated he saw nothing wrong in his performance.

"On cross-examination Agent J reiterated his testimony on direct examination.

"Agents G and C were called to testify and it was stipulated by counsel that, if examined, their testimony would corroborate the testimony of Agent J.

"At the end of the Division's case the attorney for the licensee moved to dismiss the charge on the ground that the evidence presented by the Division (assuming the same to be true for the purpose of the motion) did not fall within the category of the charge herein and that there was nothing in the remarks and songs in question that could be considered in violation of the same. I find no merit to these contentions. Based on the evidence adduced by the Division, I am satisfied that the songs and expressions respectively sung and recited by Mound fall within the prohibitions of Rule 5 aforesaid. I recommend that the motion be denied.

"John J. Kinahan (the licensee) testified that for the past two years he has periodically employed Mr. Mound as an entertainer at the premises, and that on aforesaid dates he witnessed Mound's performances. On cross-examination Mr. Kinahan testified that Mound's performances increased his business and that they were different from the 'run-of-the-mill entertainment.'

"Charles Mound, on behalf of the licensee, denied that his songs are smutty or filthy, and further testified that for the past fifteen years he has been an entertainer; that his songs are of a 'spicy-type', risqué, and that he obtains his material from night clubs in different parts of the country.

"On cross-examination Mound testified that his 'spicy' expressions have a double meaning, neither of which necessarily has a reference to sex practices.

"I find as a fact from the testimony of the Division's agents that, on the dates set forth in the charge herein, Mound's act, in general, consisted of obscene, vulgar and disgusting references to sex and sex behavior. Such 'shows' and conduct have no place on licensed premises. Re McFadden's Lounge, Inc., Bulletin 1003, Item 5, aff'd 33 N.J. Super. 61 (App.Div. 1954). In view thereof, I recommend that the licensee be found guilty as charged.

"With respect to the second charge herein, the hearing was originally scheduled for January 26, 1962, and twice adjourned to March 22, 1962, at 11 a.m. Both the licensee and his attorney failed to appear for the hearing on March 22 aforesaid and, no good reason being given for their absence, the Division, at 2 p.m., proceeded ex parte to prove its case.

"An ABC agent testified that on December 11, 1961, he visited the licensed premises; that, when testing the licensee's open stock of liquor, he seized six bottles which appeared to be off in color; that he sealed the bottles, gave a receipt for the same to the bartender and that, on the following day, he delivered the bottles to the Division's chemist.

"Menoth G. Battista (the Division's chemist) testified that his analysis disclosed that the contents of five of the bottles listed in the charge varied substantially in solids and acids from the contents of genuine bottles of the respective brands involved, and that the contents of the sixth bottle listed in the charge varied substantially in acids from the contents of a genuine bottle of the same brand. In view thereof, I recommend that the licensee be found guilty of the second charge herein.

"With respect to the charges preferred against the licensee on February 28, 1962, a hearing was scheduled for March 22, 1962, at 2 p.m. Neither the licensee nor anyone on his behalf appeared for the hearing on said date and, no good reasons being given for their absence, the Division, at 2:45 p.m., proceeded ex parte to prove its case.

"To substantiate the charges aforesaid the Division called two ABC agents (hereinafter referred to as Agent R and Agent S).

"Agent R testified that on Sunday, February 11, 1962, at about 7:10 p.m., while he and Agent S were in the licensed premises he observed Adolph Turlowicz (the bartender) remove a bottle of Burroughs Beefeater Gin from the back bar and carry the same, together with three bottles of soda, to an open doorway behind the bar where he was joined by an unidentified male patron; that he observed the bartender and the male patron engage in a conversation, in the course of which the bartender put the bottle of alcoholic beverages and the three bottles of soda in a bag, following which the bartender placed the bag at the door of the rear exit of the premises, and the patron returned to his seat at the bar (near the exit).

"Agent R further testified that about 7:20 p.m. he observed the male patron pick up the bag and leave the premises by its rear exit; that he followed the patron into the street and stopped him in the immediate vicinity of the licensed premises; that he examined the contents of the bag; that the bag contained aforesaid bottle of alcoholic beverages and the three bottles of soda, and that he took possession of the bag, returned to the licensed premises with the patron and rejoined Agent S. In addition, Agent R testified he displayed the contents of the bag to the bartender; that, upon questioning, the bartender stated he knew 'It is Sunday. I know I goofed', and that he had given the bottle of gin and the three bottles of soda to the patron.

"With respect to the second of aforesaid charges, it appears that the bartender repeatedly refused to identify the male patron despite a warning by the agents that such refusal may result in a charge of hindering the investigation.

"Agent S substantially corroborated the testimony of Agent R.

"I find as a fact that on February 11, 1962, the bartender delivered the aforesaid bottle of gin to the male patron for off-premises consumption and that he failed to facilitate the investigation then being conducted by the agents. Since the licensee cannot escape the consequences of the acts of his agents (Rule 33 of State Regulation No. 20), it is recommended that the licensee be found guilty as charged.

"The licensee has no prior adjudicated record. It is, therefore, recommended that an order be entered suspending the license for fifteen days on the charge brought under the first proceeding (Re McFadden's Lounge, Inc., supra); for twenty-five days (the minimum period where six bottles are involved) on the charge brought under the second proceeding (Re Club 29, Inc., Bulletin 1444, Item 7); and for twenty-five days on the charges brought under the third proceeding (Re Konner's Grill, Inc., Bulletin 1359, Item 7), making a total suspension of sixty-five days."

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

Having carefully considered the entire record herein, including the exhibits, the Hearer's Report and exceptions and written argument thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein. Hence, I find the licensee guilty as charged.

Accordingly, it is, on this 4th day of June 1962,

ORDERED that Plenary Retail Consumption License C-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to John J. Kinahan, t/a Killarney Inn, for premises 466 Central Avenue, Orange, be and the same is hereby suspended for the balance of its term, effective at 2 a.m. Monday, June 11, 1962; and it is further

ORDERED that any renewal license that may be granted shall be and remain under suspension until 2 a.m. Wednesday, August 15, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

3.

ACTIVITY REPORT FOR JUNE 1962**ARRESTS:**

Total number of persons arrested - - - - -	20
Licenseses and employees - - - - -	9
Bootleggers - - - - -	11

SEIZURES:

Motor vehicles - trucks - - - - -	1
Stillis - 50 gallons or under - - - - -	1
Distilled alcoholic beverages - gallons - - - - -	2,347
Wine - gallons - - - - -	9,500
Brewed malt alcoholic beverages - gallons - - - - -	77,160

RETAIL LICENSEES:

Premises inspected - - - - -	975
Premises where alcoholic beverages were gauged - - - - -	665
Bottles gauged - - - - -	10,764
Premises where violations were found - - - - -	90
Violations found - - - - -	96
Application copy not available - - - - - 23	Disposal permit necessary - - - - - 4
Reg. #38 sign not posted - - - - - 23	Prohibited signs - - - - - 3
Unqualified employees - - - - - 17	Other violations - - - - - 21
Other mercantile business - - - - - 5	

STATE LICENSEES:

Premises inspected - - - - -	12
License applications investigated - - - - -	25

COMPLAINTS:

Complaints assigned for investigation - - - - -	389
Investigations completed - - - - -	418
Investigations pending - - - - -	179

LABORATORY:

Analyses made - - - - -	268
Refills from licensed premises - bottles - - - - -	38
Bottles from unlicensed premises - - - - -	42

IDENTIFICATION:

Criminal fingerprint identifications made - - - - -	9
Persons fingerprinted for non-criminal purposes - - - - -	536
Identification contacts made with other enforcement agencies - - - - -	357
Motor vehicle identifications via N.J. State Police teletype - - - - -	1

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -	16
Violations involved - - - - -	16
Sale during prohibited hours - - - - - 9	Sale of drinks on credit (local reg.) - - - - - 1
Sale to minors - - - - - 6	

Cases instituted at Division - - - - -	40
Violations involved - - - - -	55

Sale during prohibited hours - - - - - 8	Fraud in application - - - - - 1
Possessing liquor not truly labeled - 16	Sale to intoxicated person - - - - - 1
Sale to minors - - - - - 7	Serving women at bar (local reg.) - - - - - 1
Permitting immoral activity on prem. - 3	Permitting bookmaking on premises - - - - - 1
Hindering investigation - - - - - 2	Fraud and front - - - - - 1
Permitting prostitutes on prem. - - - 2	Sale outside scope of license - - - - - 1
Permitting foul language on prem. - - 2	Failure to afford view into premises during prohibited hours - - - - - 1
Permitting lottery activity (numbers) on premises - - - - - 2	Combination sale - - - - - 1
Possessing indecent matter - - - - - 1	Sale at discount - - - - - 1
Conducting business as a nuisance - - 1	Sale during license suspension - - - - - 1
Rebottling by retailer - - - - - 1	

Cases brought by municipalities on own initiative and reported to Division - - - - -	10
Violations involved - - - - -	14

Sale to minors - - - - - 6	Illegal activity connected with licensed premises - - - - - 1
Permitting lottery activity (numbers) on premises - - - - - 1	Unqualified employee - - - - - 1
Permitting brawl on premises - - - - - 1	Act or happening - - - - - 1
Hindering investigation - - - - - 1	Failure to file notice of change in application - - - - - 1
License granted as result of mistake of fact and law - - - - - 1	

HEARINGS HELD AT DIVISION:

Total number of hearings held - - - - -	51
Appeals - - - - - 6	Seizures - - - - - 1
Disciplinary proceedings - - - - - 31	Applications for license - - - - - 2
Eligibility - - - - - 11	

STATE LICENSES AND PERMITS ISSUED:

Total number issued - - - - -	4,405
Licenses - - - - - 1	Social Affair Permits - - - - - 410
Solicitors' Permits - - - - - 2,697	Miscellaneous Permits - - - - - 168
Employment Permits - - - - - 609	Transit insignia - - - - - 380
Disposal Permits - - - - - 108	Transit certificates - - - - - 31
Wine Permits - - - - - 1	

OFFICE OF AMUSEMENT GAMES CONTROL:

Licenses issued - - - - - 40	Enforcement files established - - - - - 59
Premises inspected - - - - - 212	Number of violations found - - - - - 15
Premises where violations were found - 9	

WILLIAM HOWE DAVIS
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: July 9, 1962

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - THIRD SIMILAR VIOLATION - PRIOR DISSIMILAR VIOLATION - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary
Proceedings against

BENNY'S TAVERN, INC.
915 Bergenline Avenue
Union City, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-66, issued by the Board of
Commissioners of the City of Union City.

Lawrence Wolfberg, Esq., Attorney for licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The licensee pleaded not guilty to the following charge:

'On February 3, 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., William ---, age 17, Donald ---, age 18 and Allan ---, 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.'

"When the matter came on for hearing, the charge respecting the sale to and consumption of alcoholic beverages by William --- and Donald ---, on motion of the Division's attorney, was nolle prossed.

"To substantiate the charge as to Allan, the Division produced him and three of the five ABC agents who participated in the investigation. The agents will be referred to herein-after as Agents S, C, Sc, and O'T.

"Allan was called to establish his age and testified that he is 19 years old.

"Agents S and C testified that at approximately 12:20 a.m., Saturday, February 3, 1962, they entered the licensed premises and seated themselves at the center of the bar which was tended by Thomas DeMarlo, secretary and treasurer of the corporate licensee; that during their stay, they observed DeMarlo serve four glasses of beer to each of three apparent minors, one of whom was Allan, without requiring any written proof of their ages; and that they left at 1:30 a.m. when Agents Sc, F and O'T entered the premises and, after identifying themselves, escorted Allan to Police Headquarters. On cross-examination, Agent S testified that he and Agent C were seated at the bar about ten to twelve feet from Allan and that the bar was lighted 'enough for myself to see'; that he learned later that Allan's companions were adults; that he observed DeMarlo draw Schaefer beer from the tap and place a glass of the beverage

in front of each of the three apparent minors, accept payment and ring up 45 cents on the cash register; that DeMarlo told him that he charged 15 cents for a glass of beer; that 'I sighted the contents of his (Allan's) glass being consumed by the other male standing alongside of him, which accounted for no evidence being--physical evidence being seized'; that he didn't hear what Allan ordered and that Allan, when questioned at Police Headquarter didn't state that he drank only soda.

"On cross-examination, Agent C testified that he saw 45 cents showing on the cash register; that he didn't taste or smell what was drawn from the Schaefer tap and that Allan didn't state he drank soda on the licensed premises on the date alleged.

"Agent Sc testified that he and Agents F and O'T entered the licensed premises at approximately 1:25 a.m. on the date alleged and identified themselves to the aforesaid apparent minors, who were seated at the bar near the front entrance; that in front of Allan was a glass containing about 'two ounces of amber colored liquid which had white suds head on it'; that while questioning Allan, one of his companions mistakenly consumed the remaining portion of Allan's drink; that when Allan was questioned at Police Headquarters, he, in the presence of DeMarlo, stated that he was served two or three glasses of Schaefer beer and that DeMarlo said that he served all the minors in the premises and didn't ask their ages or require written proof thereof.

"On cross-examination, Agent Sc testified that he didn't see Allan drink any beer; that the glass allegedly served to Allan smelled 'of a malt alcoholic beverage'; that Allan stated in Police Headquarters that he had drunk soda in the licensed premises on the date alleged; that after being questioned for fifteen minutes, Allan admitted he had been served beer and that DeMarlo, who was present while Allan was being questioned, admitted that he had served beer to Allan.

"It was stipulated that the testimony of Agents F and O'T, on direct and cross-examination, would be the same as that of Agent Sc.

"Allan, called as a witness for the licensee, testified that he was in the licensed premises on the date alleged; that he drank three sodas and no beer; that Agent Sc questioned him at Police Headquarters for about fifteen minutes and that he told the agent that he drank only soda.

"On cross-examination, he testified that one of his adult companions ordered two beers and a soda; that DeMarlo took a big quart bottle from beneath the bar near the beer taps and poured ginger ale into the same type glass in which the Schaefer beer was served to his companions; that neither of his companions drank any part of his soda and that when the agents (Sc, F and O'T) identified themselves, there was no glass in front of him.

"Thomas DeMarlo testified that he is vice-president and treasurer of the corporate licensee; that he was tending bar on the date alleged; that Agents S and C were seated at the center of the bar and Allan was seated about twenty feet away from them; that the bar was 'poorly lighted'; that he charges ten cents per glass for beer; that the only beverage he served Allan was ginger ale poured from small bottles; that when Agents Sc, F and O'T entered, there were three glasses on

the bar where Allan and his companions were seated, two of which were in front of one of the adults; that he didn't hear Allan admit at Police Headquarters that he was served beer and he denied that he served Allan beer, stating that 'The only ones I might have I recall I admitted was the two sailors when we found out they were under age'.

"On cross-examination, he testified that he was at the taps about to put ice in a glass to serve Allan another ginger ale when the agents entered and announced they were 'ABC'; that he must have put the glass in the water; that for over ten years he has charged ten cents for a six-ounce glass of beer; that he doesn't carry quart bottles of ginger ale; that one of Allan's companions usually ordered two glasses of beer to be placed in front of him; that after the three agents left with Allan, he borrowed a nickel from Agent S and called Police Headquarters and told a detective, 'I just had three men down here. They took out three kids, arrested three kids'; that the detective told him he couldn't talk to him over the telephone and hung up and that he didn't remember saying to the detective, 'Look, N---, try to get to the kids because one of them is really under age and he was drinking'.

"Agent S was recalled and testified that he stood alongside the 'phone booth when DeMarlo called Police Headquarters, and that he heard him say, 'Try to get to the kids, one is under age and he was drinking', and that thereafter he and Agent C identified themselves and apprehended two other minors (sailors) whom they had observed consuming beer on the licensed premises.

"Having had the opportunity to judge the credibility of the witnesses, and recognizing the sharp dispute of facts, I find that the testimony of the agents reflects what actually occurred during their investigation, and that the testimony of the licensee's witnesses is incredible. I conclude, therefore, that the Division has sustained the burden imposed upon it of establishing the truth of the charge by the necessary preponderance of the believable evidence.

"The licensee has a prior adjudicated record. Effective June 10, 1957, its license was suspended for ten days by the Director for sale to minors; effective June 23, 1957, its license was suspended for five days by the local issuing authority for an 'hours' violation; and effective April 4, 1961, its license was suspended by the Director for thirty-five days for serving alcoholic beverages to minors. Re Benny's Tavern, Bulletin 1389, Item 4. The minimum penalty imposed for an unaggravated sale of alcoholic beverages to a 19-year-old minor is fifteen days. Re Doelger, Bulletin 1416, Item 3. However, since the violation charged herein is the third similar violation occurring within a five-year period, the penalty should be increased to sixty days (cf. Re Woodlawn Bar & Grill, Inc., Bulletin 1060, Item 2) and five additional days imposed for the prior dissimilar violation which occurred within the same period (Re Richman, Bulletin 1186, Item 10). In view of the aforesaid, I recommend that the corporate licensee's license be suspended for a period of sixty-five days."

No 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 proceedings and the Hearer's Report, I concur in the findings

and conclusion of the Hearer. However, I find that his recommended penalty of sixty days for the three similar violations of sales to minors occurring within a five-year period is not in accord with established precedents in such cases. I shall, therefore, reduce that penalty to forty days (Re Meury's Barn, Inc., Bulletin 1274, Item 4; Re Hafner, Bulletin 1340, Item 7) and impose an additional five days for the prior dissimilar violations which occurred within the same five-year period (Re Richman, Bulletin 1186, Item 10), making a total suspension of forty-five days.

Accordingly, it is, on this 4th day of June 1962,

ORDERED that Plenary Retail Consumption License C-66, issued by the Board of Commissioners of the City of Union City to Benny's Tavern, Inc., for premises 915 Bergenline Avenue, Union City, be and the same is hereby suspended for the balance of its term, effective at 3 a.m. Monday, June 11, 1962; and it is further

ORDERED that any renewal license granted shall be and remain under suspension until 3 a.m. Thursday, July 26, 1962.

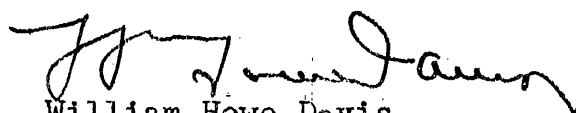
WILLIAM HOWE DAVIS
DIRECTOR

5. STATE LICENSES - NEW APPLICATION FILED.

Delsea Distributing Co.

N/S Wheat Road, approximately 2815.07
feet easterly from center of Brewster Road
Buena Borough, New Jersey

Application filed July 26, 1962 for
place-to-place transfer of State
Beverage Distributor's License SBD-86
from W/S South Delsea Drive, 100' South
of Garrison Road, Vineland, New Jersey.


William Howe Davis
Director.