

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street Newark, N. J.

BULLETIN 482

NOVEMBER 7, 1941.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN COLOR AND SOLID CONTENT - ADMISSION TO REFILLING FOR THE PURPOSE OF MOVING A SLOW SELLER - 30 DAYS' SUSPENSION, WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary
Proceedings against

ANNA K. SMITH, Administratrix,
Estate of Joseph J. Smith,
1237 South Broad St.,
Trenton, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-265 issued by the
Board of Commissioners of the
City of Trenton.

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Andrew J. Duch, Esq., Attorney for Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty to charges alleging (1) that, on or about August 4, 1941, she possessed illicit alcoholic beverages in violation of R. S. 33:1-50, and (2) that, on or about the same date, she bottled alcoholic beverages in violation of R. S. 33:1-78.

The Department file discloses that, on August 4, 1941, investigators of this Department inspected the licensed premises and seized one opened quart bottle of Calvert Special Blended Whiskey, containing seven ounces; one opened quart bottle of Wilson "That's All" Blended Whiskey, containing fifteen ounces; and one opened quart bottle of Penn Ridge Brand, Straight Bourbon Whiskey, containing five ounces. Analysis by the Department chemist shows that the solids in the contents of the three seized bottles were substantially greater than the solids in the contents of genuine samples seized at the same time on the licensed premises and that the contents of the Penn Ridge bottle contained added artificial color, whereas a straight bourbon whiskey should contain no artificial color.

At the time of the investigation the licensee gave a statement to the investigators wherein she admitted that a few days previously she had poured the contents of two bottles of another brand of blended whiskey into the three seized bottles and stated that she had done this because the other blended whiskey was a slow mover.

At the hearing herein she testified to the same effect and pleaded for clemency because this was her first violation and because six of her nine children are dependent upon the licensed business for their support. It appears that her record as a licensee is otherwise clear, but it also appears from our records that, on January 19, 1939, her husband, Joseph J. Smith, who was then the licensee of the same premises, received a warning letter from this Department after a bottle of gin seized on said premises had been found to be under proof. There are no other violations of record against her husband, who held a license from February 1934 until the date of his death.

In Re Kish, Bulletin 454, Item 5, a license was suspended for thirty days where it appeared that a large number of open bottles had been found hidden on the licensed premises; in Re Gypsy Camp, Inc., Bulletin 454, Item 2, a license was suspended for thirty days where it appeared that five open bottles were found and that these bottles were filled with a much cheaper whiskey if, indeed, they were refilled with tax-paid liquor.

In this case I believe licensee's testimony that she refilled these three bottles with tax-paid liquor for the purpose of disposing of a slow moving item. None the less, in view of the reprehensible practice admittedly adopted by the licensee and in the light of previous decisions in illicit liquor cases of this type, I must suspend the license herein for the minimum period of thirty days.

Accordingly, it is, on this 16th day of October, 1941,

ORDERED, that Plenary Retail Consumption License C-265, heretofore issued to Anna K. Smith, Administratrix, Estate of Joseph J. Smith, for premises 1237 South Broad Street, Trenton, by the Board of Commissioners of the City of Trenton, be and same is hereby suspended for a period of thirty (30) days, commencing October 25, 1941, at 2:00 A.M.

ALFRED E. DRISCOLL,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN SOLID CONTENT - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

HATTIE, INC.,)
29 E. Front St.,)
Trenton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Con-)
sumption License C-267, issued)
by the Board of Commissioners)
of the City of Trenton.)

J. Charles Popkin, Esq., Attorney for Defendant-Licensee.
Robert R. Hendricks, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The licensee was charged as follows:

"On or about June 9, 1941, you possessed an illicit alcoholic beverage in that one quart bottle labeled Calvert 'Special' Blended Whiskey found on your licensed premises contained an alcoholic beverage which varied in solid content from a genuine sample similarly labeled used for comparative purposes, in violation of R. S. 33:1-50."

It appears from the testimony that on June 9, 1941, two investigators of this Department, while making a routine inspection at the licensed premises, tested 27 open bottles of liquor, one of which, a quart bottle of Calvert "Special" Blended Whiskey containing 21 ounces of liquor, gave indication of varying in proof and color from the genuine product covered by that label. They seized

that bottle, together with an unopened pint bottle of the same brand, for purposes of comparison. The Department chemist analyzed the beverages in both bottles and, although finding no discrepancy in proof or color in the contents of the quart bottle, reported that the solid content thereof was abnormally high, being 328 grams per 100 liters. The solids in the seized previously unopened pint bottle tested 145.6 grams per 100 liters. The chemist also testified that of 100 genuine samples of the product in question analyzed by him, the solids varied from a low of 120 to a high of 165 grams per 100 liters.

The licensee, through one of its major stockholders and its manager, while not contesting any of these facts, disclaimed all knowledge of any tampering with the bottle and offered, as its sole explanation, the possibility that it might have been refilled by a bartender who had been hired but three weeks prior to June 9, 1941, and who quit on that day after being questioned by the manager about the occurrence.

The facts of this case are strikingly parallel to those in Re Cutter, Bulletin 479, Item 12. Both involve the same brand of liquor, a great deviation in solid content, and a similar explanation in attempted extenuation of the offense.

The many ramifications of the problem of "refills" and the reasons for the necessity of imposing stern penalties for this type of violation despite the professed innocence of the licensee is discussed by me at some length in Re Cutter, *supra*. No useful purpose would be gained by a repetition thereof in this case.

The licensee is guilty as charged.

Since this is the licensee's first violation of record and there are no aggravating or other attendant circumstances warranting a more substantial penalty, the license will be suspended for ten days. Re Cutter, *supra*. It is important to note that my predecessor regarded these illicit cases as being of such great danger to the public and the industry as to warrant in every case a minimum suspension of thirty days. Re Jacobs, Bulletin 315, Item 8. For my part, I have not hesitated to suspend for thirty days where there are aggravating circumstances. Cf. Twelve East Park Street Tavern, Inc., bulletin 481, Item 9; Re Anna K. Smith, Administratrix, Estate of Joseph J. Smith, Bulletin 482, Item 1.

Accordingly, it is, on this 22nd day of October, 1941,

ORDERED, that Plenary Retail Consumption License C-267, issued to Hattie, Inc. by the Board of Commissioners of the City of Trenton, for 29 E. Front Street, Trenton, N. J., be and hereby is suspended for a period of ten (10) days, commencing October 27, 1941, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

3. APPELLATE DECISIONS - SERVICE LIQUORS, INC. v. HACKENSACK.

SUFFICIENT LICENSES IN VICINITY - DENIAL OF TRANSFER AND RENEWAL AFFIRMED.

SERVICE LIQUORS, INC.,)
a corporation of the State)
of New Jersey,)

Appellant,)

-vs-)

CITY COUNCIL OF THE CITY)
OF HACKENSACK,)

Respondent.)
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ON APPEAL
CONCLUSIONS AND ORDER

James H. White, Esq., Attorney for Appellant.
Winne & Banta, Esqs., by Horace F. Banta, Esq., Attorneys for
Respondent.
James V. Ryan, Esq., Appearing on behalf of the Neighborhood Civic
Association of Hackensack, New Jersey, an Objector.

BY THE COMMISSIONER:

On June 30, 1941 respondent denied an application to transfer plenary retail consumption license C-7 from person to person and place to place, namely, from Harry W. Steter to appellant and from 326 Main Street to 383 First Street, Hackensack. At the same meeting respondent denied an application by appellant for a renewal of said license at 383 First Street for the present fiscal year. This appeal is taken from the action of respondent in refusing to transfer and renew the license.

It appears from the testimony of City Manager Wright that the members of the City Council discussed these applications and reached the conclusion that the area in question was adequately served. It appears from the minutes of the meeting held on June 30, 1941 that Councilman Bloodgood offered a resolution that the transfer be granted; that he withdrew the resolution when not seconded; that the Council then unanimously adopted a resolution denying the transfer. The Council also unanimously adopted a resolution to deny renewal of the license.

The evidence given at the hearing discloses that there are three distribution licensees and two consumption licensees on Anderson Street near the railroad, a distance of less than three blocks from 383 First Street, and that there is a consumption licensee on Central Avenue about six blocks from 383 First Street. From this it would appear that this section of the city is adequately served.

Appellant alleges that it intends to cater to the trade of colored people and introduced some slight testimony of alleged discrimination against colored people in other licensed premises. The evidence on this point, however, is far from convincing. The consumption license on Central Avenue is held by a colored licensee and there is no evidence that any licensee on Anderson Street has discriminated against any person because of color.

It is well established that a local issuing authority may, in the exercise of a sound discretion, refuse to transfer or grant a liquor license in a section of a municipality already adequately serviced. Siebel v. Randolph, Bulletin 477, Item 1; Cliff Lodge, Inc. v. Englewood Cliffs, Bulletin 481, Item 6. The burden of proving an abuse of discretion by respondent rests upon the appellant. Under the circumstances of this case, appellant has not sustained the burden of proof in showing that respondent abused its discretion.

The conclusion reached herein renders it unnecessary to consider the character of the neighborhood or the protest containing eighty-five names which was considered by respondent, and also renders it unnecessary to consider appellant's offer to restrict its business to the sale of package goods. It appears that the section is already adequately serviced by both types of licensees.

I find from the evidence that respondent did not abuse its discretion in refusing to grant the transfer of the license. Hence it follows that the renewal of the license was also properly denied.

The action of respondent is affirmed.

Accordingly, it is, on this 22nd day of October, 1941,

ORDERED, that the petition of appeal be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATIONS CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - TRUE OWNER DISQUALIFIED BY NON-RESIDENCE - FULL DISCLOSURE - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE RESERVED TO LIFT AFTER 10 DAYS IF SITUATION CORRECTED.

In the Matter of Disciplinary
Proceedings against

STANLEY PLAGER,
T/a POP'S TAVERN,
State Highway Route 4-9,
Madison Township (Middlesex County);
P.O. Matawan, N.J., R.F.D.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-36, heretofore issued by the
Township Committee of Madison Township
(Middlesex County).

Edward W. Wise, Esq., Attorney for Licensee.
Richard E. Silberman, Esq., Attorney for State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging:

"1. In your license applications dated November 9, 1940 and June 2, 1941, filed with the Township Committee of Madison Township (Middlesex County), upon which Plenary Retail Consumption Licenses C-36 for the years 1940-41 and 1941-42 were granted, you falsely stated 'No' in answer to

Question 28 therein, which asks: 'Has any individual..... other than the applicant any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Clarence Haight had such an interest; said false statements being in violation of R. S. 33:1-25.

"2. Since on or about November 26, 1940 and until the present time, you knowingly aided and abetted Clarence Haight, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

As to the first charge: Licensee pleaded guilty as to the application dated November 9, 1940 and not guilty as to the application dated June 2, 1941. As to the second charge: Licensee pleaded guilty.

From the evidence it appears that investigators of this Department visited the licensed premises on April 16, 1941, and obtained a statement from the licensee wherein he admitted that Clarence Haight, who has not resided in New Jersey for five years, was a partner in the business; that Haight had invested \$800.00 and that he shares in the profits of the business. On the previous day these investigators had obtained a statement from Clarence Haight, wherein he admitted that he had been a resident of this State only since November 1940; that he and Plager were equal partners in the business and shared the profits.

It is undisputed that Haight was a partner in the business, at least until May 15, 1941; that Plager falsely answered Question 28 in his application dated November 9, 1940, and knowingly aided and abetted Haight, who was disqualified because of lack of residential requirements, to exercise the rights and privileges of a licensee from November 26, 1940 until at least May 15, 1941.

After our investigators had obtained the statements referred to herein and before the institution of these proceedings, Stanley Plager assigned to Clarence Haight his interest in a contract to purchase the property wherein the licensed premises are located. The contract is not before me, but I assume from the assignment that the contract dated November 9, 1940 gave to Plager and Haight the right to purchase the premises in question. On May 15, 1941, Clarence Haight, in writing, purported to lease these premises to Plager for one year at a monthly rental of \$50.00. However, the fundamental question involved in this proceeding concerns the operation of the licensed business and not the title to the real estate.

I am satisfied from the evidence that Haight now is a partner, at least, in the licensed business; in fact, the licensee said at the hearing that Haight "has the entire thing to himself now." Hence I find the licensee guilty also as to the application dated June 2, 1941.

Since the present method of operation is improper, I shall suspend the license for the balance of the fiscal year. Because of the frank admissions made to the investigators, the guilty plea to the charges other than that which concerned the second application, and the fact that Haight is apparently disqualified only by lack of residential requirements, I shall entertain an application to lift said suspension upon transfer to a duly qualified licensee, after the expiration of ten days from the effective date thereof. Cf. Re Casagrande, Bulletin 396, Item 11; Re Bowe, Bulletin 423, Item 2.

As to affiliate proceedings concerning Haight's employment permit, see Re Haight, Bulletin 482, Item 5.

Accordingly, it is, on this 24th day of October, 1941,

ORDERED, that Plenary Retail Consumption License C-36, heretofore issued to Stanley Plager, T/a Pop's Tavern, by the Township Committee of Madison Township (Middlesex County), be and the same is hereby suspended for the balance of its term, effective October 29, 1941, at 4:00 A.M.; and it is further

ORDERED, that if and when transfer of the license to a duly qualified purchaser is granted by the local issuing authority, application may be made to me by said purchaser to vacate said suspension; provided, however, that in no event shall said suspension be vacated prior to the expiration of ten days from the effective date thereof.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATIONS FOR EMPLOYMENT PERMITS FALSELY DENYING INTEREST IN ANY ALCOHOLIC BEVERAGE LICENSE - EXERCISE OF THE RIGHTS AND PRIVILEGES OF A LICENSE BY A NON-LICENSEE - EMPLOYMENT PERMIT SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against

CLARENCE HAIGHT,
Highway 9-4,
Cheesequake, N. J.,

Holder of Employment Permit
No. 5781, issued by the State
Commissioner of Alcoholic
Beverage Control.

CONCLUSIONS
AND ORDER

Maurice A. Scotch, Esq., Attorney for Permittee.
Richard E. Silberman, Esq., Attorney for State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon defendant alleging (1) that in his applications for employment permit filed on April 16, 1941, and August 6, 1941, he falsely denied that he was interested, directly or indirectly, in any alcoholic beverage license, whereas in fact he was interested in plenary retail consumption license C-36 granted to Stanley Plager, said false statement being in violation of R. S. 33:1-25; and (2) that since November 26, 1940 he, not being a licensee, exercised the rights and privileges of the license of Stanley Plager, in violation of R. S. 33:1-26. The facts are set forth in Re Plager, Bulletin 482, Item 4.

No testimony was given by defendant herein and, in view of the evidence as set forth in the Plager case, I find the permittee guilty as to both charges.

As to penalty: I shall not permit employment permits to be used as a cloak to permit operation of licensed premises by disqualified persons. Under the circumstances of this case, I shall suspend the permit for the balance of the fiscal year.

Accordingly, it is, on this 24th day of October, 1941,

ORDERED, that Employment Permit No. 5781, heretofore issued to Clarence Haight by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for the balance of the fiscal year, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF OTHERS - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FRONT FOR TWO SEPARATE OWNERS - PRESENT WHEREABOUTS OF LICENSEE UNKNOWN - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

ANTHONY M. CAPELLI,)
T/a BLACKWOOD CAFE,)
N. W. Cor. Black Horse Pike)
and Church Street,)
Blackwood,)
Gloucester Township, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-8 for the fiscal year)
expiring June 30, 1941, issued by the)
Township Committee of the Township of)
Gloucester.)

George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.
No appearance on behalf of Defendant-Licensee.

BY THE COMMISSIONER:

Licensee was charged with (1) making a false statement in his application for license in that he denied that any individual other than himself was interested in the license, whereas in truth and fact Joseph Tano did have such interest, and (2) aiding and abetting Joseph Tano for about six weeks subsequent to July 1, 1940, and Nicholas Priore from March 1, 1941 to May 22, 1941, both non-licensees, to exercise the rights and privileges of his license.

Joseph Tano held a liquor license for the premises in question from May 13, 1940 to July 1, 1940, when he caused the license to be taken in the name of Anthony M. Capelli, who acted as a "front" for Tano until about the middle of August 1940. Thereafter, Capelli continued to operate the business on his own behalf until about March 1, 1941, when he departed for Florida, leaving the business in the hands of Nicholas Priore, who conducted the business as his own until about May 22, 1941, at which time the premises were closed and no further alcoholic beverage business was carried on under the license.

The licensee's whereabouts are unknown, despite a diligent effort made by this Department to locate him. He did not appear at the hearing. The foregoing facts appear from the investigation made by two Departmental agents, which includes signed admissions of those facts by both Tano and Priore.

I find the licensee guilty as charged.

These proceedings were instituted against Plenary Retail Consumption License C-8, issued to Capelli for the fiscal period 1940-41, expiring June 30, 1941. This license was not renewed nor, according to Departmental records, does Capelli hold any liquor license in New Jersey at the present time. The expiration of the license, however, does not bar or abate disciplinary proceedings. Rule 1 of Regulations 15. Despite such expiration, the license will be revoked. This will result in a two year mandatory disqualification against Capelli's holding or receiving another liquor license in this State. R. S. 33:1-31. Cf. Re Roninger, Bulletin 421, Item 10.

Accordingly, it is, on this 24th day of October, 1941,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Gloucester to Anthony M. Capelli for premises N. W. Cor. Black Horse Pike & Church Street, Blackwood, Gloucester Township, for the fiscal year 1940-41, be and the same is hereby revoked.

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FRONT FOR PERSON DISQUALIFIED BECAUSE OF CONVICTION OF CRIME INVOLVING MORAL TURPITUDE - FLAGRANT ATTEMPT TO CONTINUE CIRCUMVENTION OF THE LAW - LICENSE REVOKED.

In the Matter of disciplinary
Proceedings against)

JOSEPH ANTHONY GETTES,)
T/a RENO TAVERN,)
24 Main St.,)
Asbury Park, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-68 (for the fiscal)
year expiring June 30, 1941),)
issued by the City Council of the)
City of Asbury Park.)
- - - - -)

Leo J. Berg, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded not guilty to the following charges:

"1. In your application for license filed June 20, 1940 with the City Council of the City of Asbury Park, on which Plenary Retail Consumption License C-68 for the year 1940-41 was granted, you failed to answer Question 8(b), which

asks, '.....give name and address of person from whom premises are leased or rented,' thereby suppressing the fact that the premises were leased or rented from Sabatino Genovese; said suppression of fact being in violation of R. S. 33:1-25.

"2. In your aforesaid application for license you falsely stated 'No' in answer to Question 28 therein, which asks, 'Has any individual.....other than the applicant any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Sabatino Genovese had such an interest; said false statement being in violation of R. S. 33:1-25.

"3. Since on or about July 1, 1940 and until the present time, you knowingly aided and abetted Sabatino Genovese, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

It appears from the testimony that Joseph Anthony Gettes received his liquor license on the first day of July 1940 and continued to hold the same until June of 1941, when he surrendered it to the local issuing authority.

It further appears from the evidence that Sabatino Genovese, the lessee of the building containing the licensed premises, was convicted of a crime involving moral turpitude, rendering him ineligible to hold a liquor license or be employed by a liquor licensee in this state. Re Case No. 181, Bulletin 208, Item 2, decided October 13, 1937. Thereafter, on July 12, 1939, his petition for removal of such disqualification was denied because, among other things, he had continued to tend bar and work at the premises in question in open contempt of the ruling declaring him ineligible. Re Case No. 62, Bulletin 334, Item 6.

During all of this time the license was issued in the name of August Genovese, brother of Sabatino. August Genovese subsequently became ineligible to hold a liquor license because of having been twice found guilty of employing a disqualified person, to wit, his brother Sabatino, on the licensed premises, in violation of the Alcoholic Beverage Law. See R. S. 33:1-26, and R. S. 33:1-25 prior to its amendment by P. L. 1941, c. 97.

Thereupon, on July 1, 1940, Joseph Anthony Gettes received a liquor license for the same premises. On June 27, 1940 he executed a power of attorney, which was produced at the hearing, to Elvira Genovese, wife of Sabatino, giving her complete authority to manage the business and "to do, execute and perform any other act *** in and about the premises of every nature and kind whatsoever, as fully and effectually as I could do if personally present." During the course of the Departmental investigation, it was learned that Gettes was employed as a cutter in a clothing factory. When questioned by the investigators on March 15, 1941, he admitted that he had not been at the licensed premises for two months; that he had bought the tavern from Sabatino Genovese and had installed Sabatino there as his manager. The next day, upon being further questioned, Gettes retracted the latter statement and said he had purchased the business from August Genovese and had employed Elvira Genovese as manager. He further stated that he had paid \$3,000.00 for the business. The report of the investigators further continues: "We then probed him as to his finances, he said he paid \$300.00 down,

had no receipt, gave no notes for the balance, was paying \$25.00 or \$50.00 now and then, did not know how much he had paid, or how much he owed, thought he had some record somewhere, but as he had moved was not sure he could find it & anyway it was part of the family & everybody trusted everybody. He was asked about the rent, stated it was \$125.00 per month, could produce no receipts or no lease. He stated he had a two year lease signed in May 1940 & it expired May 1942. Asked why he spent \$250.00 for rent when he did not buy the place until June 27th, 1940, he said I knew I was going to buy it. He then saw his error & said he made a mistake - it was about the middle of July 1940 when he took the lease."

Gettes did not appear at the hearing, and no evidence was presented on his behalf. However, a lease between Sabatino Genovese and Gettes dated June 27, 1940 was produced which provided, among other things, that "Sabatino Genovese, shall pay for the electric, water and gas bills assessed against said premises." A book of account of the licensed business discloses, however, that for the calendar year 1940 a total of \$504.00 for electric and water was charged against "operating expense" of the business.

There are many other suspicious circumstances appearing in the record, all of which tend to substantiate the truth of the charges. It is unnecessary, however, to burden this decision with any further details since the only logical conclusion to be drawn from the evidence above set forth is that Gettes acted as a "front" for Sabatino Genovese.

I find the licensee guilty as charged.

As to penalty: Gettes surrendered his license to the local issuing authority in June 1941, subsequent to the institution of these proceedings. A new license for the present fiscal year was issued for the premises in question to a person who, so far as appears, is in no wise implicated in the situation giving rise to the instant charges. The surrender of the license, however, does not bar proceedings to revoke such license. R. S. 33:1-31; nor does its expiration bar or abate these proceedings. State Regulations No. 15. The license will be revoked, despite its surrender and expiration, since it will have the effect of disqualifying Gettes from holding or receiving a liquor license in this state for a period of two years from the date hereof. R. S. 33:1-31; cf. Re Capelli, Bulletin 482, Item 6.

Notice was also served, pursuant to R. S. 33:1-31, upon Harry Strano, the lessor of the premises, requiring him to show cause why, in the event of revocation of the license, the licensed premises should not be declared ineligible to become the subject of any further license for the period of two years.

I have carefully considered all of the evidence on this issue. There is evidence in the record to charge the landlord with notice of the manner in which the business was being conducted. The landlord, however, testified that, until he was served with the notice in this case, he did not know that his lessee was ineligible for a liquor license or that the lessee had any interest in the business operated at his premises. There is no direct evidence in the record to refute this testimony. The Department's proof is circumstantial.

A disqualification of the premises would appear to result in an undue hardship upon the present licensee who, as aforesaid, has no apparent connection with any of the prior violations committed at the premises now occupied by him. Under the circumstances, I shall give

the landlord the benefit of the doubt and shall not enter any order declaring the premises ineligible as a subject for a liquor license.

Accordingly, it is, on this 30th day of October, 1941,

ORDERED, that Plenary Retail Consumption License C-68, issued by the City Council of the City of Asbury Park to Joseph Anthony Gettes, for the fiscal year expiring June 30, 1941, for premises 24 Main Street, Asbury Park, be and the same is hereby revoked.

ALFRED E. DRISCOLL,
Commissioner.

8. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

October 31, 1941

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will become effective on or about Monday, November 17, 1941. New items and changes in old items must be filed at the offices of this Department not later than Friday, November 7, 1941.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is mailed to all retail licensees.

ALFRED E. DRISCOLL,
Commissioner.

9. MANUFACTURERS, WHOLESALERS, RETAILERS AND SOLICITORS - BONUSES, ALLOWANCES AND OTHER SIMILAR INDUCEMENTS - REGULATIONS NO. 35 PROMULGATED.

TO ALL MEMBERS OF THE LIQUOR AND WINE INDUSTRY IN NEW JERSEY:

In 1939, the New Jersey Legislature enacted P. L. 1939, chapter 87, known as the Anti-Discriminatory Price Law. That law provided, in substance, that no manufacturer or wholesaler of distilled spirits or wine should discriminate in price between different retailers purchasing his products, and prohibited the giving of any discriminatory discounts, rebates, deals, free goods and similar inducements. To implement the legislative policy, this Department thereafter promulgated State Regulations No. 34, which are presently in effect, and which, among other things, prohibit the giving of discriminatory discounts and the giving of all rebates, free goods, deals, and similar inducements to a retailer purchasing distilled spirits or wine.

It is common knowledge in the industry that I have been engaged in intensive study of the problems arising out the enforcement of the Anti-Discriminatory Price Law and State Regulations No. 34. During the course of recent conferences and public hearings, I have stated that until the law or regulations are amended they would be enforced as they stood. I have publicly stated that I expected compliance and that non-compliance would result in prosecution of those apprehended in violation.

Notwithstanding the announced policy of this Department, "deals" have been offered by manufacturers and wholesalers involving

the giving of rebates to favored retailers, through the instrumentality of alleged bonuses given to salesmen with the intention that such bonuses should be passed on to retailers.

This practice of a few manufacturers, who from time to time have exerted economic pressure on wholesalers and their salesmen to promote unduly the sale of specific products through the medium of the "bonus" scheme, has resulted in widespread disregard of the anti-discriminatory features of the law and of State Regulations No. 34.

The Alcoholic Beverage Law is intended to be remedial of abuses inherent in liquor traffic and the State Commissioner of Alcoholic Beverage Control is charged with supervising the manufacture, distribution and sale of alcoholic beverages in such manner as to promote temperance and eliminate the racketeer and bootlegger. That law confers upon him the power to promulgate rules and regulations with respect to unfair competition, racketeering, practices designed to increase the undue consumption of alcoholic beverages, gifts of equipment, products and things of value, records to be kept by licensees and such other matters necessary to the fair, impartial, stringent and comprehensive administration of the Alcoholic Beverage Law. In addition, the Anti-Discriminatory Price Law vests the State Commissioner of Alcoholic Beverage Control with power to promulgate such rules and regulations as will assist in supervising the liquor industry and promoting temperance, on the subjects of rebates, free goods, allowances, gifts and deliveries of money, products and other things of value by manufacturers and wholesalers to retailers, the publication of rebates, free goods, allowances and other inducements, and such other matters as may be necessary to fulfill the restrictions embodied in the Anti-Discriminatory Price Law.

I find that the giving of bonuses by manufacturers and wholesalers to their salesmen has been abused and perverted into an instrument to accomplish the violation of the spirit, if not the letter, of the Anti-Discriminatory Price Law and State Regulations No. 34; and particularly that this scheme has resulted in discriminatory practices whereby all retailers were not treated alike, with resultant unfair and unwholesome competition between retailers, to the detriment of the industry.

Therefore, pursuant to H. S. 33:1-39 and P. L. 1939, chapter 87, the following regulations are hereby promulgated effective November 1, 1941. Like the Anti-Discriminatory Price Law and State Regulations No. 34, these regulations are not applicable to the malt alcoholic beverage industry.

REGULATIONS NO. 35

1. No manufacturer or wholesaler of alcoholic beverages other than malt alcoholic beverages shall, directly or indirectly, give to any holder of a solicitor's permit for the State of New Jersey any cash bonus, allowance or other inducement over and above the salary and commission fixed by written contract of employment between the solicitor and his employer.

2. On or before November 15, 1941, as to the holders of New Jersey solicitors' permits now employed, and within five days after the issuance of such solicitors' permits to solicitors hereafter employed, each manufacturer and wholesaler engaged in the sale in New Jersey of alcoholic beverages other than malt alcoholic beverages, employing persons

who hold such solicitors' permits, shall file with the State Commissioner of Alcoholic Beverage Control a copy of the contract of employment pursuant to which said solicitor is employed, which contract shall set forth truly the salary and commission agreed to be paid to such solicitor. Written notice of modification of such contracts together with the provisions thereof shall be filed with said Commissioner within five days after such modification is effected.

3. No holder of a solicitor's permit or any individual or member of a partnership licensee shall, directly or indirectly, give to a New Jersey licensed retailer any cash bonus, gift, rebate, allowance or other similar inducement in connection with the sale of alcoholic beverages other than malt alcoholic beverages to such retailer.

4. On or before the fifteenth day of each calendar month, each manufacturer and wholesaler engaged in the sale in New Jersey of alcoholic beverages other than malt alcoholic beverages shall file with the State Commissioner of Alcoholic Beverage Control a statement, under oath, in a form to be prescribed by said Commissioner, reporting in detail all moneys paid by such manufacturer or wholesaler to each holder of a New Jersey solicitor's permit employed during the month ending on the tenth day of each month for which such report is due.

5. On or before the fifteenth day of each calendar month, each holder of a New Jersey solicitor's permit shall file with the State Commissioner of Alcoholic Beverage Control a statement, under oath, in a form to be prescribed by said Commissioner, reporting in detail all moneys received by him, directly or indirectly, from any licensed manufacturer or wholesaler of alcoholic beverages other than malt alcoholic beverages, together with a statement of cash payments made by him directly or indirectly to New Jersey licensed retailers during the month ending on the tenth day of each month for which such report is due.

6. Violation of any of the foregoing rules is cause for suspension or revocation of the license of the manufacturer or wholesaler and the permit of the solicitor.

I will welcome, from those honest, law-abiding manufacturers, wholesalers, retailers and solicitors, reports of any violation of these regulations. Together, we should be able to drive out of the industry those so unprincipled as to be blind to their obligations in an industry vested with great public interest.

In the meantime, our study of State Regulations No. 34 and related problems will be continued.

Effective immediately, violations of the Anti-Discriminatory Price Law, State Regulations No. 34 and the new State Regulations No. 35 will be vigorously prosecuted and promptly punished.

ALFRED E. DRISCOLL,
Commissioner.

Dated: November 1, 1941.

10. BONUSES, ALLOWANCES AND OTHER SIMILAR INDUCEMENTS - REGULATIONS
NO. 35 - DATE OF FILING FIRST MONTHLY REPORT.

November 6, 1941

TO ALL MEMBERS OF THE LIQUOR AND WINE INDUSTRY IN NEW JERSEY:

Rules 4 and 5 of State Regulations No. 35 require monthly sworn statements by manufacturers, wholesalers and solicitors engaged in the sale of alcoholic beverages other than malt alcoholic beverages, reporting all payments made by manufacturers or wholesalers to solicitors and by solicitors to retailers, to be filed with the State Commissioner of Alcoholic Beverage Control on the "fifteenth day of each calendar month" covering "the month ending on the tenth day of each month for which such report is due."

Inquiry has been made whether the first filing date is the 15th of November or December and, if the former, whether the period to be covered by the statement is November 1st to November 10th or October 11th to November 10th.

In promulgating State Regulations No. 35, it was intended, and in the event that that intention is not readily apparent from the language of the regulations, it is now ruled, that Rules 4 and 5 of State Regulations No. 35 require that the first monthly report shall be filed on December 15, 1941, covering the period from November 11, 1941 to December 10, 1941, inclusive. Thereafter, a similar report is due on the fifteenth of each month covering the period from the eleventh of the preceding month to the tenth of the month when the report is due.

The foregoing explanation is not intended to modify Rule 2 of State Regulations No. 35, which expressly requires the filing, "on or before November 15, 1941," of copies of contracts of employment between manufacturers and wholesalers and their solicitors. I shall expect those copies of contracts to be filed by November 15th, even though the first reports required by Rules 4 and 5 are not due until December 15th.

State Regulations No. 35 cover the sale of alcoholic beverages other than malt alcoholic beverages in the State of New Jersey from November 1, 1941. They were intended, from the date of their promulgation, to eliminate certain abuses which had theretofore existed in the industry. Strict compliance with the letter and spirit of State Regulations No. 35, as well as of State Regulations No. 34, by the industry is indicated. Anything less will be dealt with summarily.

It will be appreciated by this Department if the various manufacturers and wholesalers of alcoholic beverages other than malt alcoholic beverages will direct the attention of their solicitors to this notice.

ALFRED E. DRISCOLL,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR
TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary
Proceedings against

BERNIE FELDMAN'S LIQUOR STORE, INC.,
468 Broadway,
Bayonne, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution
License D-2, issued by the Board of
Commissioners of the City of Bayonne.

Samuel Moskowitz, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge of
selling an alcoholic beverage below Fair Trade price, in violation
of Rule 6 of State Regulations No. 30.

The Department file discloses that on September 30, 1941 two
investigators purchased a half gallon bottle of Calvert's "Special"
Blended Whiskey for the sum of \$5.00 from Bernard Feldman, President
of the licensee corporation. The minimum consumer price at which a
half gallon bottle of this whiskey could be sold at the time was
\$5.25. Bulletin 471.

The licensee offers no explanation for the violation and
shows no mitigating circumstances. On the other hand, no aggravating
circumstances appear. The licensee has no previous convictions of
any kind. The license will, therefore, be suspended for ten days.
See Re Stein, Bulletin 478, Item 11.

By entering a guilty plea in advance of the date set for
hearing, the licensee has saved the Department the time and expense
of proving its case. Five days of the penalty will therefore be re-
mitted.

Accordingly, it is, on this 6th day of November, 1941,

ORDERED, that Plenary Retail Distribution License D-2, here-
tofore issued to Bernie Feldman's Liquor Store, Inc. by the Board of
Commissioners of the City of Bayonne, be and the same is hereby sus-
pended for a period of five (5) days, effective November 10, 1941, at
3:00 A. M.

Alfred E. Driscoll
Commissioner.