

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, 2, N. J.

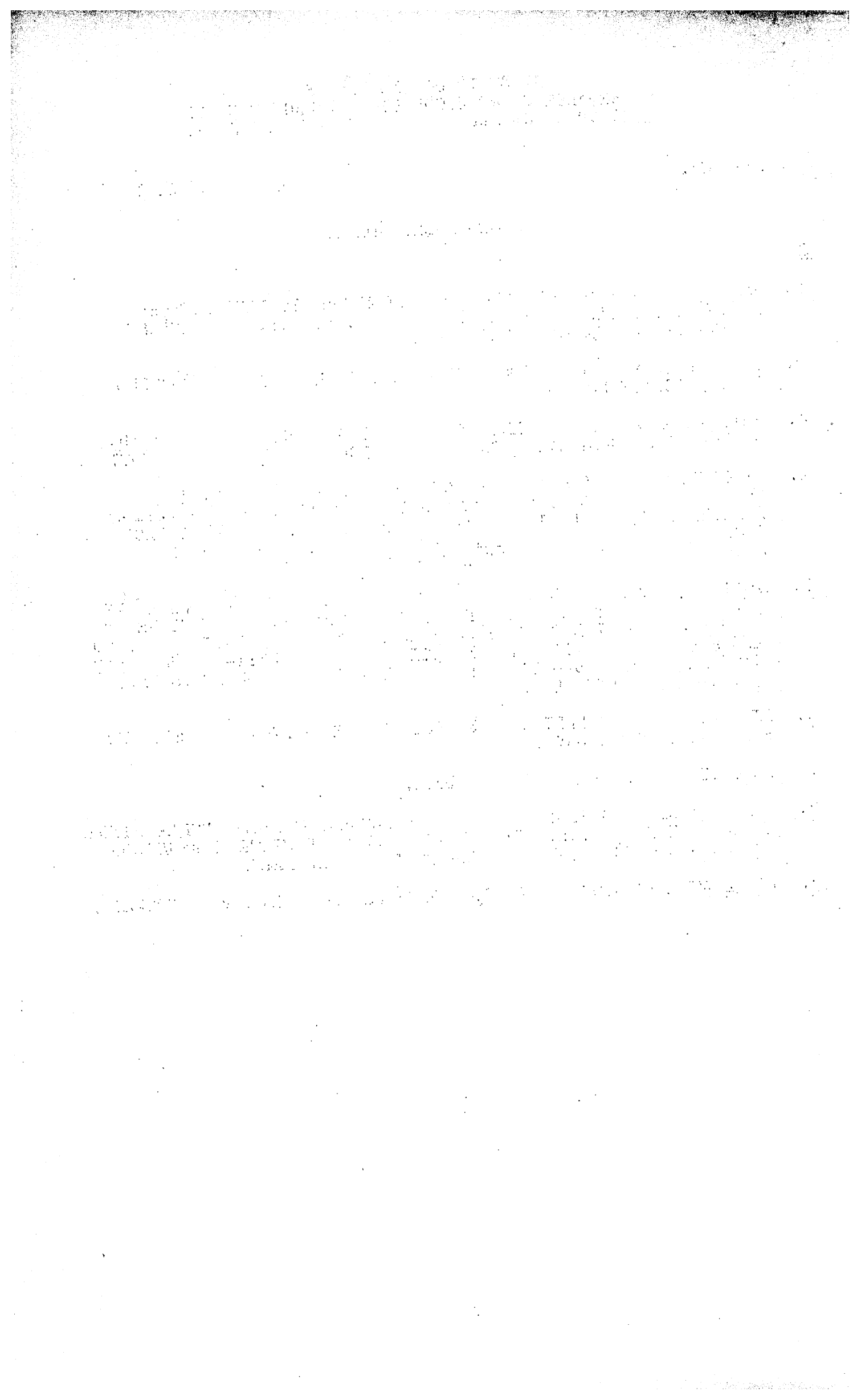
BULLETIN 639

NOVEMBER 15, 1944

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY RETAILER FOR RESALE IN VIOLATION OF R. S. 33:1-2 - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS.
2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR PERIOD OF 20 DAYS.
3. FAIR TRADE - PRICE ADVERTISING -- RULING OF SEPTEMBER 11, 1944 AS MODIFIED HEREIN WILL CONTINUE IN FORCE UNTIL FURTHER NOTICE.
4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FROM DELIVERY TRUCK ON PUBLIC HIGHWAY IN VIOLATION OF R.S. 33:1-2 - PERMITTING DISQUALIFIED EMPLOYEE TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 11 - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY NEW JERSEY RETAILER OTHER THAN FROM NEW JERSEY MANUFACTURER OR WHOLESALER IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - ILLEGAL TRANSPORTATION IN VIOLATION OF R. S. 33:1-28 AND STATE REGULATIONS NO. 16 - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.
6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR PERIOD OF 20 DAYS.
7. ACTIVITY REPORT FOR OCTOBER, 1944.
8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS.
9. APPELLATE DECISIONS - MAJESTIC FRIENDS CLUB, INC. v. MONTCLAIR.



STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, 2, N. J.

BULLETIN 639

NOVEMBER 15, 1944

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY RETAILER  
FOR RESALE IN VIOLATION OF R. S. 33:1-2 - LICENSE SUSPENDED FOR  
PERIOD OF 15 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

DOMENIC GUGLIELMI )  
T/a UNEEDA CAFE )  
2224 Federal Street )  
Camden, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-5, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Camden. )  
-----

Joseph P. Wilson, Esq., Attorney for Defendant-Licensee.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads not guilty to a charge alleging that  
on two occasions during December 1943 he sold alcoholic beverages to  
another retailer for resale, in violation of R. S. 33:1-2.

A holder of a plenary retail consumption license testified  
that he and his bartender called at the defendant's licensed premises  
on two occasions during December 1943; that on their first visit he  
was introduced to defendant by his bartender, who immediately with-  
drew to another part of the tavern; that after some discussion with  
defendant, during which the witness divulged to the defendant that he  
was a retail liquor licensee, an agreement was reached whereby he  
purchased two or three cases of whiskey. This witness also testified  
that, on a subsequent occasion during the month of December 1943, he  
purchased several other cases of whiskey from the within defendant.  
The bartender testified that he presented his employer to the defend-  
ant thusly, "Domenic, this is Bob"; that some time thereafter he  
carried three or four cases of liquor to the car in which they had  
driven to the defendant's establishment; that later in the month he  
again carried three cases of whiskey from defendant's premises to his  
employer's automobile; and that he did not overhear any of the con-  
versation between his employer and the defendant at either time that  
they were in defendant's place of business.

Defendant testified that he remembered the person being at his  
premises once and purchasing whiskey but emphatically denied that he  
was told by anyone that this person was the holder of a retail liquor  
license. He subsequently testified that he was told by the person  
purchasing the liquor that it was to be used by a social club located  
in a nearby municipality. The defendant said that he did not recall  
the Department's witnesses being in his tavern on two occasions.  
When confronted with a written statement signed by him wherein he  
stated that he sold "Bob" divers cases of whiskey for use by a social  
club on two occasions, he admitted, "It may be right." The defendant  
acknowledged that the sale of liquor in such quantities as in the  
instant case was somewhat unusual.

The circumstances surrounding the entire transaction dispel any doubt as to the guilt of the defendant. The perfunctory introduction by the bartender followed, on the first occasion, by the purchase of sundry cases of whiskey and, on the second occasion, by the purchase of an additional number of cases of liquor, lead to the conclusion that defendant was aware of the true identity of the purchaser. I believe the account of the transactions as testified to by the retail licensee who purchased the whiskey. Hence, I find the defendant guilty of the charge preferred herein.

Defendant has no previous adjudicated record. I shall, therefore, suspend the license for a period of fifteen days.

Accordingly, it is, on this 27th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Domenic Guglielmi, t/a Uneeda Cafe, for premises 2224 Federal Street, Camden, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A. M. November 1, 1944, and terminating at 2:00 A. M. November 16, 1944.

ALFRED E. DRISCOLL  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against  
KEYHOLE PIZZERIA, INC.  
809 - 7th Street  
Union City, N. J.,  
Holder of Plenary Retail Consumption License C-132, issued by the Board of Commissioners of the City of Union City.  
-----)

CONCLUSIONS  
AND ORDER

Frank J. Guarini, Esq., Attorney for Defendant-Licensee.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to the following charge:

"On March 24, 1944, you possessed illicit alcoholic beverages at your licensed premises, viz., two bottles labeled 'Carstairs White Seal Blended Whiskey 86.8 Proof', two bottles labeled 'Calvert Special Blended Whiskey 86.8 Proof', one bottle labeled 'Paul Jones Rye - A Blend of Straight Whiskies 90 Proof', two bottles labeled 'Imperial Blended Whiskey 86 Proof', two bottles labeled 'Calvert Reserve Blended Whiskey 86.8 Proof', one bottle labeled 'Seagram's Seven Crown Blended Whiskey 86.8 Proof', one bottle labeled 'Caravan - A Blend of Straight Whiskies 90 Proof', one bottle labeled 'Fleischman's Preferred Blended Whiskey 90 Proof', and one bottle labeled 'Mattingly & Moore Blended Whiskey 80 Proof', all of which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On the date in question Federal agents tested eighty-four opened bottles at the premises of the licensee and found that the thirteen bottles mentioned in the charge appeared to be not genuine as labeled. Subsequent analyses by the Federal chemist showed that the contents of these bottles differed from authentic samples in various respects; in some instances in color and in other instances in the amount of solids and acids, but in each instance there was some pronounced variation from the authentic samples.

A hearing was held at the request of defendant to permit it to present alleged mitigating circumstances.

The President of the corporation appeared as a witness and stated that the corporation employed a manager and two bartenders, and that specific instructions had been issued to all of them not to refill bottles or to buy liquor from any concern other than those from which the corporation was then making its purchases. This witness stated that he had no idea as to how the bottles had been refilled. The manager and the two bartenders likewise testified to the effect that they had no knowledge as to how the refilling took place, although one of the bartenders testified that on various occasions he had poured the contents of one bottle into another bottle, but alleged that it was always the same brand and quality of liquor that was mixed. He stated he thought there was no harm in this practice because he never mixed different brands. The practice described by the bartender is not permissible.

Regardless of whether or not the President of the corporation or the manager or its employees had any knowledge as to how the refilling occurred, the fact remains that the contents of thirteen bottles did differ in some respect from genuine authentic samples, and the licensee cannot evade responsibility for such a violation. I have repeatedly pointed out that it is the duty of the licensee to see that its business is conducted in accordance with the law, that the business as well as the license belongs to the licensee, and that it cannot avoid responsibility simply by pleading ignorance as to how the violation occurred. Re Oprandy, Bulletin 600, Item 5.

Defendant has no prior record. Under the circumstances, I shall suspend the license for twenty days. Re Gotts, Bulletin 562, Item 9.

Accordingly, it is, on this 30th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-132, issued by the Board of Commissioners of the City of Union City to Keyhole Pizzeria, Inc., for premises 809 - 7th Street, Union City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 A. M. November 8, 1944, and terminating at 3:00 A. M. November 28, 1944.

ALFRED E. DRISCOLL  
Commissioner.

3. FAIR TRADE - PRICE ADVERTISING - RULING OF SEPTEMBER 11, 1944 AS MODIFIED HEREIN WILL CONTINUE IN FORCE UNTIL FURTHER NOTICE.

October 31, 1944

On September 14, 1944 I amended my ruling of September 11, 1944 which prohibited price advertising of all alcoholic beverages not listed in or withdrawn from minimum resale price pamphlets to permit, for an experimental period terminating October 31, 1944, the price advertising of items, provided:

- (1) the merchandise advertised was owned and in the possession of the retailer prior to September 11, 1944; and
- (2) the merchandise is advertised at the OPA ceiling price for such merchandise in effect on September 11, 1944.

Operation of the experiment for seven weeks has demonstrated its effectiveness in aiding retailers to liquidate slow-moving items without disturbing an orderly market,

Therefore, the experimental modification of the price-advertising rule scheduled to terminate on October 31, 1944 is hereby extended until further notice. Further, the provision that merchandise not listed in or withdrawn from Fair Trade pamphlets in order to be price advertised must have been owned and in the possession of the retailer prior to September 11, 1944 is herewith abrogated. Henceforth, all merchandise not listed in the current minimum resale price pamphlets of April, July and September 1944 may be price advertised at the OPA ceiling price regardless of the date on which such merchandise came into the ownership and possession of the retailer.

Extension of the modification of the ruling of September 11, 1944 on price advertising shall take effect immediately.

ALFRED E. DRISCOLL  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FROM DELIVERY TRUCK ON PUBLIC HIGHWAY IN VIOLATION OF R. S. 33:1-2 - PERMITTING DISQUALIFIED EMPLOYEE TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 11 - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against JOSEPH PINTO T/a RARITAN LIQUOR STORE 4 East Somerset Street Raritan (Somerset County), N.J.,

Holder of Plenary Retail Distribution License D-1 for the fiscal year 1941-42, issued by the Board of Commissioners of the Town of Raritan (Somerset County), and renewed successively for the fiscal years 1942-43, 1943-44, and for the current fiscal year 1944-45.

In the Matter of Disciplinary Proceedings against SYLVESTER LOUIS ANELLO 9 Thompson Street Raritan, N. J.,

Holder of Employment Permit No. 1801 for the fiscal year 1941-42, issued by the State Commissioner of Alcoholic Beverage Control.

Case No. 6077 In the Matter of the Seizure on July 12, 1941 of an International truck and a quantity of alcoholic and other beverages contained therein, on Second Street, Raritan, Bridgewater Township, County of Somerset, State of New Jersey.

Leo Berg, Esq., Attorney for Joseph Pinto, Defendant-Licensee, and Sylvester Louis Anello, Defendant-Permittee. Abraham Merin, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

These cases involve the same facts and hence may be decided together.

Defendant-licensee, Joseph Pinto, who holds a plenary retail distribution license, has pleaded not guilty to the first charge, which reads:

"On or about July 12, 1941, you distributed, transported, sold and possessed alcoholic beverages with intent to sell same, in and about the Town of Raritan, New Jersey, not pursuant to and within the terms of your plenary retail distribution license, in that you peddled from door to door and sold such beverages from an auto truck

ON HEARING CONCLUSIONS AND ORDER

on the public highway, off your licensed premises; said sale, transportation and possession being in violation of R. S. 33:1-2."

The defendant-licensee has pleaded non vult to the second charge, which reads:

"On or about July 12, 1941, and on divers days prior thereto, you allowed, permitted and suffered Sylvester Louis Anello, a person in your employ, who is not qualified as to age, but who is the holder of an employment permit for a person disqualified by reason of age, to sell alcoholic beverages, in violation of Rule 3 of State Regulations No. 11."

Defendant-permittee, Sylvester L. Anello, has pleaded non vult to the charge that:

"On or about July 12, 1941, and on divers days prior thereto, you, a person not qualified as to age and the holder of Employment Permit No. 1801 for a person disqualified by reason of non-age, which permit was issued upon the condition that if its holder 'does not QUALIFY AS TO            AGE            such permittee shall not in any manner whatsoever serve, sell or solicit the sale            of any alcoholic beverages,' did sell and serve alcoholic beverages in contravention of that condition, and in violation of R. S. 33:1-26."

The basis of these three charges is an admitted sale on July 12, 1941 of a gallon of wine to Investigator Anderson, of the Department of Alcoholic Beverage Control, directly from licensee's International delivery truck parked on Second Street, Raritan.

Pinto, the licensee, and Sylvester Louis Anello, his employee, were engaged in making deliveries of alcoholic beverages and soft drinks, and were using the licensee's truck for that purpose. While Pinto was at a customer's door nearby, Anello sold the wine to Anderson for \$1.00 and gave Pinto the money when he returned to the truck. Anello made the sale without question, and apparently as a routine matter.

Anderson disclosed his identity to Pinto and pointed out to him that the wine had been sold in violation of the law in that the sale had not been made on his licensed premises. Anderson says that Pinto told him that he did not realize that a violation had been committed. Anderson also questioned Pinto as to the destination of the other alcoholic beverages on the truck and apparently concluded that Pinto was peddling alcoholic beverages from door to door. He then arrested Pinto and seized the truck and the alcoholic and other beverages therein.

Pinto contends that actually he has never peddled alcoholic beverages; that the beverages on his truck on the day in question were to be delivered to customers having "standing orders"; that Anello made the sale in question without his knowledge or consent; and that he did not anticipate that Anello would make such sale since Anello was not, and could not be, employed to sell alcoholic beverages because he was under twenty-one years of age.

Counsel, when entering the non vult plea, stated that thereby Pinto assumed responsibility for the unlawful sale by Anello on July 12, 1941 in that, within the meaning of Rule 3 of State Regulations No. 11, he "suffered" Anello to sell alcoholic beverages contrary to the terms of his employment permit. In other words, since his employee actually sold the wine, Pinto concedes that, technically, he "permitted" and "suffered" Anello, the disqualified employee, to make the sale.

It follows that if Pinto is chargeable with "suffering" his minor employee to sell alcoholic beverages in violation of Rule 3 of State Regulations No. 11, he is likewise accountable for the fact that the sale was made directly from his delivery truck and not at the licensed premises. This is a further violation of the Alcoholic Beverage Law in that retail licensees must confine their sales of alcoholic beverages to licensed premises; there can be no perambulating licensed premises from which alcoholic beverages may be sold. Re Goncharoff, Bulletin 544, Item 1.

The Commissioner has uniformly held that licensees are directly answerable for a violation of the Alcoholic Beverage Law and the State Regulations by their employees. Cf. Martins Incorporated, Bulletin 576, Item 8, and cases cited therein. This principle applied with equal force where, as here, the employee commits the violation while helping the licensee to deliver alcoholic beverages at a place other than the licensed premises and the licensee receives the proceeds of the unlawful sale.

The fact that after the hearing in the disciplinary and seizure proceedings Pinto was exonerated, in criminal proceedings, from responsibility for Anello's unlawful sale, is not material. Disciplinary proceedings are separate and distinct from criminal proceedings for violation of the Alcoholic Beverage Law. Re Messina, Bulletin 392, Item 12. See also Seizure Case No. 5439, Bulletin 437, Item 4 and R. S. 33:1-31.1.

The general principle of law that civil and criminal proceedings are entirely independent, as applied to liquor control, is illustrated by the case of Commonwealth v. McMenamin, Superior Court of Pennsylvania (1936), 184 Atl. 679, 122 Pa. Super. 91, where the court said:

"The Liquor Control Act provides two separate and distinct remedies for violation of its prohibitions -- a civil proceeding for suspension or revocation of licenses (applicable only to licensees) and a purely criminal proceeding by indictment (which may be instituted against 'any person' charged with any violation of the statute). The proceedings are not so related that the institution of one is a bar to the other. --- A conviction in a criminal prosecution is neither a bar to a subsequent civil proceeding founded on the same facts, nor is it proof of anything except the mere fact that it has occurred. It is equally true that where the commission of the same acts constitutes a crime and also furnishes ground for a civil proceeding, the acquittal of a defendant, when tried for the criminal offense, is not a bar to the institution of appropriate civil proceedings, nor is it evidence in such proceedings, of his innocence."

The decision in the case of Re Schuyler, Supreme Court Special Term, New York County (1900), 32 Misc. 221, 68 N.Y.S. 251, is to the same effect.

I therefore find Joseph Pinto guilty of the charge of selling alcoholic beverages from his auto truck on the public highway, as set forth in the first charge. Since this is a type of peddling, it is unnecessary to resolve the conflict in the evidence as to whether Pinto is also guilty of peddling alcoholic beverages from door to door.

I have imposed a ten-day suspension of a license where a licensee's employee, with the acquiescence and approval of the licensee, sold alcoholic beverages directly from the licensee's truck to an ABC investigator on the street, and it appeared that the licensee made a practice of peddling alcoholic beverages from door to door. Re Goncharoff, supra.

In the instant case, the evidence is in conflict as to whether Pinto made a practice of selling alcoholic beverages on the street, or from door to door. The only offense for which Pinto is held accountable, and for which he is to be penalized, is that, as Anello's employer, he is responsible for the specific violations Anello committed. Pinto did not himself participate in the sale of wine to Anderson and his sworn testimony is that Anello made the sale without his acquiescence or approval.

Under the circumstances, I shall impose a ten-day suspension of the license.

Pinto, when entering his "not guilty" plea to the first charge, did not contest the facts concerning the sale of the wine to Anderson but merely disputed their legal significance. Nor has it been definitely established that Pinto otherwise peddled alcoholic beverages. Hence, his "not guilty" plea was justified, and five days of the penalty will be remitted, leaving a net suspension of five days.

As to the charge against Sylvester L. Anello, it appears that he did not renew his employment permit when it expired on June 30, 1942, and that he has not held any employment permit since that time. It will therefore serve no purpose to revoke or suspend his then existing permit since, so far as it appears, he has not been connected with the alcoholic beverage industry for a period of over two years.

Although the disciplinary proceedings were instituted during the licensing year which expired June 30, 1942, it does not abate, but remains fully effective against the defendant's renewal license for the current (1944-45) year. State Regulations No. 15.

At the same time that the disciplinary proceedings were instituted, seizure proceedings were brought pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes to determine whether the seized International truck and beverages should be forfeited.

The International truck and beverages were returned to Joseph Pinto upon the payment, under protest, pursuant to R.S. 33:1-66, of their appraised value of \$1200.00. Pinto has stipulated that the Commissioner should determine in these proceedings whether this money should be returned to him.

The transportation of alcoholic beverages with intent to sell the same upon the public highway, as well as the actual sale found to

have taken place, was contrary to the terms of the defendant's license and unlawful. The seized alcoholic beverages are therefore illicit. R. S. 33:1-1(i); R. S. 33:1-2. The law further provides (R. S. 33:1-66) that the vehicle containing the same is subject to forfeiture.

I am authorized to return seized or forfeited property where it appears to my satisfaction that the person seeking its return has unwittingly violated the law while acting in good faith. R. S. 33:1-66(e). In the instant case, Pinto is held responsible for the offense under the principle of respondet superior rather than by reason of any evidence that he had actual knowledge that the offense was being committed. It therefore appears that, so far as he is concerned, the violation was unwitting. Hence, if the costs incurred in the seizure and storage are paid, the money on deposit covering the value of the truck and the beverages will be returned to Joseph Pinto.

Accordingly, it is, on this 31st day of October, 1944,

DETERMINED AND ORDERED, that the costs of seizure and storage in the case be deducted from the \$1200.00 on deposit and the balance thereof be returned to Joseph Pinto; and it is further

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued by the Board of Commissioners of the Town of Raritan, Somerset County, to Joseph Pinto, trading as Raritan Liquor Store, for premises 4 East Somerset Street, Somerset County, Raritan, be and the same is hereby suspended for a period of five (5) days, commencing at 7:00 A. M. November 13, 1944 and terminating at 7:00 A.M. November 18, 1944.

ALFRED E. DRISCOLL  
Commissioner.

- 5. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY NEW JERSEY RETAILER OTHER THAN FROM NEW JERSEY MANUFACTURER OR WHOLE-SALER IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - ILLEGAL TRANSPORTATION IN VIOLATION OF R. S. 33:1-28 AND STATE REGULATIONS NO. 16 - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

ROBERT KEEHFUSS and JOHN MASCIO )  
T/a 3 IN 1 BAR )  
105 E. Main Street )  
Chester Township )  
P. O. Maple Shade, N.J., )

CONCLUSIONS  
AND ORDER

----- )  
Holders of Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Chester. )

Harry M. Mendell, Esq., Attorney for Defendant-Licensees.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants, who hold a plenary retail consumption license, have entered a plea of non vult to charges alleging that on four separate occasions during December 1943 they purchased alcoholic beverages for resale from the holders of plenary retail consumption

licenses, in violation of Rule 15 of State Regulations No. 20. Defendants have also entered a plea of non vult to a charge alleging that subsequent to each of the above purchases, they transported the alcoholic beverages in question in a vehicle which did not bear the transit insignia required by R. S. 33:1-28 and State Regulations No. 16. This transportation constituted a violation of R.S. 33:1-2. Rule 15\* of State Regulations No. 20 prohibits one retailer from purchasing alcoholic beverages from another.

The departmental file discloses that defendants purchased a number of cases of whiskey from two retail liquor licensees for the purpose of resale at their licensed premises. On four occasions, cases containing liquor were transported in an automobile owned by the defendants, which car did not bear any transit insignia.

The defendants, by way of explanation, state that they were not aware of the fact that their purchases from another retailer constituted a violation of the Rules and Regulations promulgated by the State Commissioner of Alcoholic Beverage Control. I am surprised to find that there is a licensee in this State who, at this late date, professes ignorance of the fundamental and well established rule that one retailer may not purchase alcoholic beverages from another. Ignorance of the law cannot be accepted as an excuse.

I can, however, take into consideration that defendants have no previous adjudicated record. When confronted with evidence of their violations they readily admitted their guilt. I shall suspend the license of defendants for a period of fifteen days, less five days for the plea, making a net suspension of ten days.  
Re Gustave Susslin, Bulletin 458, Item 2.

Accordingly, it is, on this 1st day of November, 1944,

ORDERED, that Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Chester to Robert Keehfuss and John Mascio, t/a 3 in 1 Bar, for premises 105 E. Main Street, Chester Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. November 6, 1944, and terminating at 2:00 A. M. November 16, 1944.

ALFRED E. DRISCOLL  
 Commissioner.

\* Rule 15 of State Regulations No. 20 provides:

"No retail licensee shall purchase alcoholic beverages except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit; purchases by one retailer from another are prohibited."

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against

EMILIO BOZZI  
16 Flagler Street  
Morristown, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Mayor and Board of Aldermen of the Town of Morristown.

R. Sar Mischiara, Esq., Attorney for Defendant-Licensee.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to a charge alleging that, on September 22, 1944, he possessed one quart bottle labeled "Carstairs White Seal Blended Whiskey 86.8 Proof", two 4/5 quart bottles labeled "Gallagher & Burton Black Label Blended Whiskey 86.8 Proof", two 4/5 quart bottles labeled "Wilson 'That's All' Blended Whiskey 86.8 Proof" and a 4/5 quart bottle labeled "Calvert Special Blended Whiskey 86.8 Proof", all of which contained alcoholic beverages which were not genuine as labeled, in violation of R.S. 33:1-50.

The departmental file discloses that on the morning in question, an investigator of the Department of Alcoholic Beverage Control tested the contents of twenty-three open bottles of whiskey. Six of the bottles were seized by the investigator when the preliminary tests disclosed that the contents of these bottles appeared to be off in color. Subsequent chemical analysis by the Department chemist showed that these whiskeys were either off in proof, or that the acids contained therein were too low or that the solids were too high. In divers cases a combination of two or more of these discrepancies appeared when compared with the result of an analysis of a genuine sample of the brand.

The bartender admitted in a signed statement that he had refilled the bottles with a brand that had proved to be a slow seller. The defendant disclaimed any knowledge in the matter. Nevertheless, licensees are strictly responsible for any "refills" found in their stock of liquor. Re Kurian, Bulletin 517, Item 2.

This being the defendant's first adjudicated offense, I shall suspend his license for a period of twenty days. Cf. Re Polonsky, Bulletin 583, Item 2.

Accordingly, it is, on this 1st day of November, 1944,

ORDERED, that Plenary Retail Consumption License C-12, issued by the Mayor and Board of Aldermen to Emilio Bozzi for premises 16 Flagler Street, Morristown, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A.M. November 8, 1944, and terminating at 2:00 A.M. November 28, 1944.

ALFRED E. DRISCOLL  
Commissioner.

7. ACTIVITY REPORT FOR OCTOBER, 1944

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - - 1 Bootleggers - - - - - 14  
 Total number of persons arrested - - - - - 15

SEIZURES: Stills - 1 to 50 gallons daily capacity - - - - - 2  
 50 gallons and more daily capacity - - - - - 0  
 Total number of stills seized - - - - - 2  
 Mash - gallons - - - - - 350  
 Motor vehicles - Trucks - - - - - 0  
 Passenger cars - - - - - 0  
 Total number of motor vehicles seized - - - - - 0  
 Beverage alcohol - gallons - - - - - 0  
 Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - - 15  
 Wine - gallons - - - - - 5.5  
 Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - - 19.5

RETAIL LICENSEES:  
 Total number of premises inspected - - - - - 1,249  
 Total number of bottles gauged - - - - - 9,445  
 Total number of premises where violations were found - - - - - 45  
 Total number of violations found - - - - - 58  
 Type of violations found:  
 Illicit (bootleg) liquor - - - - - 12 Improper beer tap markers - - - - - 2  
 Gambling devices - - - - - 0 Stock disposal permits necessary - - - - - 9  
 Prohibited signs - - - - - 0 No sign denoting legal sale hours - - - - -  
 Unqualified employees - - - - - 13 off-premises consumption - - - - - 4  
 "Fronts" (concealed ownership) - - - - - 1 Other types of violations - - - - - 17

MILITARY AREA PATROL INSPECTIONS: - - - - - 474

STATE LICENSEES:  
 Premises inspected - - - - - 38  
 License applications investigated - - - - - 20

COMPLAINTS:  
 Investigated, reviewed and closed - - - - - 333  
 Investigation assigned, not yet completed - - - - - 280

LABORATORY:  
 Analyses made - - - - - 134  
 "Shake-up" cases (alcohol, water and artificial coloring) - - - - - 12  
 Liquor found to be not genuine as labeled - - - - - 11

IDENTIFICATION BUREAU:  
 Criminal fingerprint identifications made - - - - - 23  
 Persons fingerprinted for non-criminal purposes - - - - - 201  
 Identification contacts with other enforcement agencies - - - - - 220  
 Motor vehicle identifications via N. J. State Police Teletype - - - - - 6

DISCIPLINARY PROCEEDINGS:  
 Cases transmitted to municipalities - - - - - 15  
 Cases instituted at Department - - - - - 17  
 Cancellation proceedings at Department - - - - - 1

HEARINGS HELD AT DEPARTMENT:  
 Total number of hearings held - - - - - 40  
 Appeals - - - - - 5 Seizures - - - - - 5  
 Disciplinary proceedings - - - - - 19 Application for license - - - - - 1  
 Eligibility - - - - - 8 Lifting of automatic suspension - - - - - 2

PERMITS ISSUED:  
 Total number of permits issued - - - - - 1,618  
 Unqualified employees - - - - - 176  
 Solicitors - - - - - 51  
 Social affairs - - - - - 186  
 Home manufacture of wine - - - - - 880  
 Disposal of alcoholic beverages - - - - - 131  
 Miscellaneous permits - - - - - 194

Respectfully submitted,  
 Erwin B. Hock  
 Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against )

JOSEPH FAVIRE & JAMES O'CONNOR )  
T/a JOE'S & JIM'S )  
500 Fulton Street )  
Elizabeth, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-261 for the fiscal year 1943-44, and now holder of Plenary Retail Consumption License C-185 for the current fiscal year 1944-45, both issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth. )  
----- )

John T. Glenmon, Esq., Attorney for Defendant-Licensees.  
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensees pleaded not guilty to the following charges:

"1. On the night of December 25, 1943, you sold alcoholic beverages to Ruth ----, a minor, and later during the early morning of December 26, 1943, you sold alcoholic beverages to Private John ----, Adamo ----, Arthur ---- and Lorenzo ----, also minors, in violation of R. S. 33:1-77.

"2. On the occasions as aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to the above named individuals, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"3. On the occasions aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Clinton ----, a person who was actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such person on the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"4. On December 26, 1943, at about 1:45 A.M., you allowed, permitted and suffered a disturbance and brawl in and upon the licensed premises, in violation of Rule 5 of State Regulations No. 20."

As to charges (1) and (2): Ruth ---- was born on July 21, 1923. At the hearing she testified that on the evening of December 25, 1943 she entered defendants' premises with two adults and met in the premises a man and his wife, who were also adults. Ruth, who was a very reluctant witness, testified that, while this party of five was seated at the bar, one of the adults ordered two rounds of drinks; that, following each service, she drank a "Tom Collins." Joseph Favire, one of the defendants, admits serving drinks to this party

but states that the orders, in addition to "Tom Collins" and beer, included lemon soda which he "took \*\*\* for granted" was for Ruth. Despite her reluctance, Ruth was very definite on one point, namely, that she was served and drank two "Tom Collins". A "Tom Collins" is generally and popularly known to be intoxicating and, hence, judicial notice may be taken of the fact that it is an alcoholic beverage. Hence, I find defendants guilty as to charges (1) and (2) so far as Ruth ---- is concerned.

While Ruth's party was present, four young men entered defendants' premises. The oldest youth, John ----, a soldier, was then twenty years of age, and his companions were each seventeen years of age. At the time of the hearing the soldier was unavailable, but two of the other youths testified. They said that John ---- went to the bar and purchased from Joseph Favire four glasses of beer, three of which he passed to his companions who drank the contents, and the contents of one of which he himself consumed. Both witnesses further said that John ---- purchased from Joseph Favire a second round of beers which were passed and consumed in the same manner. The witnesses produced by defendants admit that the youths were present but deny that they received or consumed any drinks. The defendants have attempted to attack the credibility of these youths by showing that they were then unemployed, but I have examined their testimony carefully and find that it has the ring of truth. I believe their testimony. Hence I find defendants guilty as to charges (1) and (2) so far as these four youths are concerned.

As to charges (3) and (4): Shortly after the drinks were consumed by the four youths, they became involved in a fist fight with two of the members of Ruth's party. Clinton ----, a member of Ruth's party, is alleged to have been apparently intoxicated when the fight began, but there is very scant, if any, evidence in the record to sustain this allegation. The fight lasted but a few moments, and Joseph Favire immediately came from behind the bar, ordered all the participants to leave his premises, and notified the police. I am satisfied from all the testimony that the licensees were not responsible for the disturbance, and that one of the licensees who was present at the time did all in his power to quell the disturbance. Hence I shall dismiss charges (3) and (4).

Licensees have no previous record. The minimum suspension for sale to minors where a licensee has no prior record and no aggravating circumstances appear is ten days. In this case, however, five minors were involved, three of whom were only seventeen years of age. Hence I shall suspend the license for a period of fifteen days.

Accordingly, it is, on this 2nd day of November, 1944,

ORDERED, that Plenary Retail Consumption License C-185, issued for the present fiscal year by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Joseph Favire and James O'Connor (Joseph Favire, attorney-in-fact), t/a Joe's & Jim's, for premises 500 Fulton Street, Elizabeth, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A.M. November 10, 1944 and terminating at 2:00 A.M. November 25, 1944.

ALFRED E. DRISCOLL  
Commissioner.

9. APPELLATE DECISIONS - MAJESTIC FRIENDS CLUB, INC. v. MONTCLAIR.

MAJESTIC FRIENDS CLUB, INC., )  
a corporation, )

Appellant, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE )  
TOWN OF MONTCLAIR, )

Respondent )  
-----

M. Eugene Speni, Esq., Attorney for Appellant.

John Ferguson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a club license to appellant for club quarters at 131 Glen Ridge Avenue, Montclair.

The reasons for such denial, as they appear in the minutes of respondent's meeting at which the application was denied, may be summarized as follows:

- (1) The Commissioner of Alcoholic Beverage Control has recommended that no new licenses be granted during the period of the present war;
- (2) At the meeting of June 20, 1944, when an ordinance providing for the abolition of all club licenses was up for consideration, this Commission expressed itself as being opposed to the granting of any new club licenses;
- (3) The experiences of the Police Department with the applicant are such that, even if it were not for the two previous reasons, the application should be denied.

For the purpose of deciding this case, it is sufficient to consider the third reason set forth above.

Appellant has never held a liquor license.

At the hearing held herein, the Deputy Chief of Police of Montclair testified as follows:

"We received numerous complaints over a period of two or three years in regard to the noise, fighting, language used by the patrons of the club in the early hours of the morning, by people in that neighborhood. It was necessary at one time to place a policeman in that particular block - that was in the fall and winter of 1942 and 1943 - to offset some of the complaints coming in on that particular place, and the people were clamoring for protection owing to the fact the patrons leaving the club were intoxicated and on several occasions they had fights occur."

The Deputy Chief of Police also testified that on the morning of June 19, 1943, members of the Montclair Police Department, with agents of the Department of Alcoholic Beverage Control, conducted a raid on appellant's premises. At that time it was alleged that

Alcoholic beverages were being sold on appellant's premises without a license in violation of the Alcoholic Beverage Law. As a result of the raid a quantity of beer and whiskey was seized, and Horace Parish and Nanny Wade were arrested. At that time both of these individuals were officers of the club, and Parish operated the dining room therein. Parish was found guilty in the Essex County Court of Quarter Sessions of selling alcoholic beverages without a license and placed on probation for a term of three years. The case against Wade was apparently nolle prossed. Although the club at that time had a membership of approximately 150, none of the members paid any dues and the expenses incurred in operating the club were paid by Parish out of the profits received from the operation of the dining room. For some time after the raid, the club premises were closed. They were reopened rather recently.

Appellant does not dispute this past record, but alleges that Horace Parish and Nanny Wade have been expelled from the club; that new officers have been elected, and that the club now has approximately 300 members who pay dues. Unfortunately, the club is bound by its previous record and must assume the responsibility for the action of its former officers. This is particularly true where they appear to have been permitted to continue their illegal activities until they were interrupted by the raid.

It is well settled that an issuing authority may refuse to issue a license to an applicant whom it considers unworthy to hold a license and the decision of a municipal issuing authority denying a license upon that ground, when supported by the record, will not be disturbed.

Despite appellant's recent effort to "clean house", the testimony given by the Deputy Police Chief and the violation committed upon appellant's premises in June 1943 are sufficient to sustain the denial.

I have heretofore stated that municipal action denying an application for a club license should be reversed where, on appeal, the municipality produced no evidence to support the denial. See Re Vasa Temple v. Kearny, Bulletin 509, Item 6. In the present case, however, respondent has produced affirmative testimony sufficient to support its refusal to grant a license. The third reason assigned by the respondent, and the evidence supporting the same, convince me that the denial of the license should be affirmed.

Accordingly, it is, on this 9th day of November, 1944,

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

*Alfred E. Griswold*  
Commissioner.