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

BULLETIN 692 JANUARY 31, 1946.

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ITEM

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

BULLETIN 692 JANUARY 31, 1946

1. STATE REGULATIONS NO. 34 - RULE 2, PARAGRAPHS "A" AND "B" AMENDED - PRESCRIBES NEW DATE FOR FILING MONTHLY LISTS OF WHOLESALE PRICES AND STATEMENTS OF DISCOUNTS.

TO ALL NEW JERSEY MANUFACTURERS AND WHOLESALERS:

Experience gained in the mechanical operations necessary to the monthly publication of wholesale price supplements, issued pursuant to the rules of Regulations No. 34, suggests that printing costs of the supplements may be substantially reduced and burdensome delays can be eliminated if the deadline for filing lists of wholesale prices and statements of discounts were advanced from the tenth day of any month to the first day of any month, such lists to take effect (as heretofore) on the first day of the following month.

Accordingly, I am amending paragraphs "a" and "b" of Rule 2, Regulations No. 34 to provide for the filing of wholesale price and discount statements on or before the first day of any month, to take effect on the first day of the following month. The change in the filing date, effective immediately, means that wholesale price lists and discount statements to become effective on March 1, 1946, must be filed with the Department on or before February 1, 1946. Further, the amended rule will now provide that inspection of filed prices and discounts shall be available to manufacturers and wholesalers until 5:00 p.m. of the third day of the month of filing instead of the thirteenth day, and that amended prices and discounts must be filed before 5:00 p.m. of the fourth day of the month instead of the fourteenth day.

Paragraphs "a" and "b" of Rule 2, Regulations No. 34 are amended, effective immediately, to read as follows:

"a. A complete or supplemental list of wholesale prices and statement of discounts must be filed in the office of the Department of Alcoholic Beverage Control on or before the first day of each month to become effective on the first day of the following month.

"b. Each complete or supplemental list of wholesale prices and statement of discounts filed on or before the first day of any month shall be available for inspection at the Department by manufacturers or wholesalers until 5:00 p.m. of the third day of the month of filing. A manufacturer or wholesaler may amend his filed price list and statement of discounts in order to meet lower and competing prices and discounts for alcoholic beverages of the same brand or trade name and of like age and quality, filed pursuant to these regulations by any other manufacturer or wholesaler selling such brand in this State, provided such amended prices and discounts are filed before 5:00 p.m. of the fourth day of the month, and provided further, that such amended prices are not lower and discounts not greater than those to be met.

ALFRED E. DRISCOLL
Commissioner.

Dated: January 23, 1946.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against DOROTHY DEL DUCA T/a VICTORIA BAR & GRILL 2512 Federal Street Camden, N. J., Holder of Plenary Retail Consumption License C-92, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

Frank M. Lario, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge that she possessed a 4/5 quart bottle labeled "Four Roses A Blend of Straight Whiskies", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

On November 26, 1945 an ABC agent, after preliminary tests of defendant's open stock of liquor, seized the bottle in question when tests thereof indicated that the contents of the bottle were not genuine as labeled. Subsequent analysis by the Department chemist disclosed that the bottle had been definitely refilled.

Defendant disclaims any knowledge concerning the violation. Nevertheless, a licensee is strictly accountable for any "refills" found in her stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. Therefore, I shall impose the minimum suspension of defendant's license for a period of fifteen days. Re McKenna, Bulletin 682, Item 2.

Accordingly, it is, on this 22nd day of January, 1946,

ORDERED, that Plenary Retail Consumption License C-92, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Dorothy Del Duca, t/a Victoria Bar & Grill, for premises 2512 Federal Street, Camden, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. January 28, 1946, and terminating at 2:00 a.m. February 12, 1946.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - AGGRAVATING CIRCUMSTANCES - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against)

MILITARY INN, INC.)
T/a MILITARY INN
N/E Cor. Main Street &) CONCLUSIONS
Fort Dix Road AND ORDER
Wrightstown, N. J.,)

Holder of Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Wrightstown.)

-)

Powell & Parker, Esqs., by Robert W. Criscuolo, Esq., Attorneys for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded not guilty to charges alleging that it sold, served and delivered alcoholic beverages to a minor, and permitted the minor to consume alcoholic beverages on its licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

Two couples entered the defendant's premises at about 11:00 p.m. of the evening of September 19, 1945 and seated themselves at a table in the rear room. One of the females was an eighteen-year-old minor. She testified that she consumed "about twelve glasses" of beer which had been served to the table by a waiter. She added that she became intoxicated and, as a result, was unable to furnish an adequate description of the waiter.

The other female, an adult, corroborated the testimony of the minor, except that she stated that she had observed the minor consume "five or six glasses" of beer. It was her opinion that the minor was "quite intoxicated" when both couples left the tavern at about 12:30 a.m. of the next morning. This witness further identified one Francis ---- as the person who had served the group with alcoholic beverages on the occasion in question.

Francis ---- explained that he was employed by the defendant as a general handy man and, at times, acted in the capacity of a casual relief bartender. Although the president of the corporate defendant testified that the male help "never" waited on tables, Francis ---- admitted that for the "last couple of weeks" prior to the date of the hearing which was held on December 12, 1945, "I helped out once in a while in a rush." He had no specific recollection, however, of the evening of September 19, 1945.

It is a curious circumstance that neither of the two waitresses employed by the defendant reported for duty on the night in question. Despite this fact, the defendant's president maintained that none of the male employees served to tables that evening, although at least eight of the tables in the rear room were occupied by patrons during the time that the two couples remained at the premises. It is difficult to believe that all of these patrons obtained their drinks by the self-service method. Indeed, Francis ---- stated that "many girls come in" to the tavern and are "usually served at the tables."

The record impels a belief of the straightforward story told by the minor, especially in view of its detailed corroboration by her female companion. I am satisfied that a finding of guilt on the charges preferred herein is fully warranted.

This is the defendant's second offense of selling alcoholic beverages to a minor. In January 1944 its license was suspended upon its guilty plea to such a charge and the normal penalty of ten days increased because of the youthfulness of the minor therein involved. See Bulletin 601, Item 6. The instant violation is also aggravated by reason of the number of drinks consumed by the minor and her resultant condition of being under the influence of the liquor.

I shall suspend the license for a period of thirty days.

Accordingly, it is, on this 24th day of January, 1946,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Wrightstown to Military Inn, Inc., t/a Military Inn, for premises on N/E Corner Main Street and Fort Dix Road, Wrightstown, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. January 30, 1946, and terminating at 2:00 a.m. March 1, 1946.

ALFRED E. DRISCOLL
Commissioner.

4. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF HOME MADE WINE MANUFACTURED PURSUANT TO SPECIAL PERMIT FOR PERSONAL CONSUMPTION ONLY - STOCK OF WINE, OTHER ALCOHOLIC BEVERAGES AND FLAVORING EXTRACTS DECLARED UNLAWFUL PROPERTY AND ORDERED FORFEITED.

In the Matter of the Seizure on November 20, 1945 of about 200 gallons of home-made wine and a quantity of other alcoholic beverages at 49 Sixth Avenue, in the City of Newark, County of Essex and State of New Jersey.	Case No. 6916 ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether about 200 gallons of home-made wine and a quantity of other alcoholic beverages, itemized in a schedule hereinafter set forth, seized on November 20, 1945 at 49 Sixth Avenue, Newark, New Jersey, constitute unlawful property and should be forfeited.

The State Department of Alcoholic Beverage Control received a specific complaint that wine and other alcoholic beverages were being unlawfully sold at the above address. Accordingly, on November 16, 1945, an A.B.C. agent went to the premises on an under-cover investigation and was admitted by Raffaele Megaro, who resides there. The agent purchased a gallon of wine and drinks of wine from Megaro, who did not hold any license authorizing him to sell or serve alcoholic beverages. On the following day, the agent purchased drinks of wine and a quart of whiskey from Megaro.

On the basis of these unlawful sales, evidencing that Megaro made a practice of selling alcoholic beverages, the agent obtained a search warrant for the premises. On November 20, 1945 the agent, in company with other A.B.C. agents and Newark police officers, went to the premises to execute such warrant. On this occasion, to establish that Megaro sold illicit alcohol as well as wine, the agent purchased a gallon of such alcohol from Megaro before the other officers entered.

The agents seized three 50-gallon barrels of wine, one 10-gallon barrel of wine, 51 quart bottles of wine, three 5-gallon jugs of wine, twelve 1-gallon jugs of wine, 27 bottles of beer and a quantity of flavoring extracts which they found in the cellar. They also seized other alcoholic beverages which were found in Megaro's living quarters.

Megaro was arrested and charged with the unlawful sale of alcoholic beverages, possession of illicit alcoholic beverages and possession of alcoholic beverages with intent to sell such beverages in violation of the law. He gave the officers a signed statement in which he acknowledges that he sold alcoholic beverages to the A.B.C. agent on the aforesaid three occasions and claims that he purchased the alcohol from a fruit and vegetable peddler.

At the time of the seizure, Megaro held a permit, issued to him by the Department of Alcoholic Beverage Control, authorizing him to manufacture not more than 200 gallons of wine for personal consumption only. This is a strictly limited personal privilege, intended to provide home-made wine for general family use. See Seizure Case No. 6800, Bulletin 670, Item 4. It was unlawful for Megaro to sell such wine because he could not manufacture it for that purpose and, further, because he held no license to sell alcoholic beverages.

The wine sold to the A.B.C. agent on the various occasions obviously came from the supply which Megaro had on hand and warrants the inference that he intended to sell the wine found in his dwelling. Such wine, therefore, constitutes an illicit alcoholic beverage. R. S. 33:1-1(i). Furthermore, the seized bootleg alcohol is likewise an illicit alcoholic beverage. Illicit alcoholic beverages and all other alcoholic beverages and flavoring extracts seized therewith are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-66.

When the matter came on for hearing, pursuant to R.S. 33:1-66, no one appeared to oppose forfeiture of the seized property.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions or destroyed in whole or in part at the direction of the Commissioner.

Dated: January 24, 1946

ALFRED E. DRISCOLL
Commissioner.

SCHEDULE "A"

3 - 50-gallon barrels of wine
1 - 10-gallon barrel of wine
25 - jugs of wine
53 - bottles of wine
27 - bottles of beer
1 - jug of alcohol
6 - bottles of other alcoholic beverages
16 - boxes of assorted flavoring extracts

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against MARCELINO SIERRA 500 Market Street Newark 5, N. J., Holder of Plenary Retail Consumption License C-167, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

I. Arthur Levy, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge alleging that he possessed one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whiskey", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On November 27, 1945 a junior inspector employed by the Alcohol Tax Unit Internal Revenue Service tested seventeen open bottles on defendant's premises and seized the bottle mentioned in the charge because it appeared by his preliminary tests that the contents thereof were not genuine as labeled. Subsequent analysis by a chemist employed by the Federal Department confirmed the fact that the contents of the seized bottle were not genuine as labeled. The inference to be drawn from the analysis is that the bottle was refilled with Harwood Whiskey.

In attempted mitigation of the violation described herein, defendant alleges that he obtained a transfer of the license for the premises in question in April 1945 from a former licensee. He states that neither he nor his brother-in-law, his only employee, tampered with the contents of the seized bottle and that he believes that the tampering occurred prior to the time he purchased the business. This is a harsh case but, nevertheless, it is necessary to hold a licensee strictly accountable for any refills found on his licensed premises. Re Kurian, Bulletin 517, Item 2. For his protection, a licensee may request this Department to examine the stock of liquor taken over from a predecessor in interest, but this the defendant failed to do. I must find him guilty as charged.

Defendant has no previous adjudicated record. Without departing from the general policy established in Re Rudolph, Bulletin 680, Item 1, I shall, under the circumstances of this case, suspend defendant's license for a period of ten days. Cf. Re Mitchell, Bulletin 688, Item 2.

Accordingly, it is, on this 24th day of January, 1946,

ORDERED, that Plenary Retail Consumption License C-167, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Marcelino Sierra for premises at 500 Market Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. January 28, 1946, and terminating at 2:00 a.m. February 7, 1946.

ALFRED E. DRISCOLL
Commissioner.

6. SEIZURE - FORFEITURE PROCEEDINGS - STILL PARTS AND OTHER EQUIPMENT FOR THE MANUFACTURE OF ILLICIT ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on November 20, 1945 of various still parts and appurtenant personal property, on a farm located off the Burlington-Jacksonville Road, in the Township of Springfield, County of Burlington and State of New Jersey.	Case No. 6914 ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether various still parts and appurtenant personal property, itemized on a schedule hereinafter set forth, seized on November 20, 1945 on a farm located off the Burlington-Jacksonville Road, in Springfield, Burlington County, New Jersey, constitute unlawful property and should be forfeited.

The still parts and other equipment are implements and paraphernalia for the manufacture of illicit alcoholic beverages, either used or intended to be used for that purpose, and hence constitute unlawful property. R. S. 33:1-1(y). Unlawful property is subject to forfeiture. R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, no one appeared to oppose forfeiture of the seized property.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" annexed hereto, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

ALFRED E. DRISCOLL
Commissioner.

Dated: January 24, 1946.

SCHEDULE "A"

1 lot of miscellaneous pipe
1 - boiler grate
1 - Gould hand pump
1 - copper column
miscellaneous copper
1 - Delco oil heater
1 - Gould pump
2 - Worthington steam pumps
1 - electric generator
1 - set of copper coils
1 - lot of copper tubing
2 - pre-heaters
1 - dephlegmator
1 - steam boiler
1 - galvanized cooler tank
14 - empty steel drums
1 - galvanized receiving tank
1 - steel gravity tank
1 - boiler base
1 - steel mixing tank
76 - empty cans
2 - concrete vats with mash
2 - empty concrete vats

7. APPELLATE DECISIONS - WERNER v. NEWARK.

NATHAN WERNER, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent	ON APPEAL ORDER OF DISCONTINUANCE AND REIMPOSITION OF SUSPENSION

Fast & Fast, Esqs., Attorneys for Appellant.
Thomas L. Parsonnet, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant's plenary retail consumption license was suspended by the respondent for a period of twenty-five days after he was found guilty of charges alleging the sale, on September 9, 1945, of alcoholic beverages to a minor. Upon filing of the petition of appeal, the suspension scheduled to commence on Monday, December 17, 1945 was stayed by Order of the State Commissioner dated December 13, 1945.

The appellant now moves that the appeal be discontinued. The respondent has signified that it has no objection to the discontinuance of the appeal and the reimposition of the suspension effective as of Monday, January 28, 1946.

Since no cause appears to the contrary, the motion will be granted.

Accordingly, it is, on this 25th day of January, 1946,

ORDERED, that the appeal herein be and the same is hereby discontinued; and it is

FURTHER ORDERED, that the Order of December 13, 1945 be and the same is hereby vacated, and that Plenary Retail Consumption License C-755, issued to Nathan Werner by the Municipal Board of Alcoholic Beverage Control of the City of Newark, for premises 157-159 Washington Street, Newark, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. January 28, 1946, and terminating at 2:00 a.m. February 22, 1946.

ALFRED E. DRISCOLL
Commissioner.

8. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF $50.00 - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS IN DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT GRANTED UPON TERMINATION OF SUSPENSION IN DISCIPLINARY PROCEEDINGS.

In the Matter of Disciplinary Proceedings against OLIVE G. WEEKS T/a AIRPORT INN Route 24, Morris Highway Lopatcong Township P. O. Phillipsburg, RD 1, N.J., Holder of Plenary Retail Consumption License C-3 issued by the Township Committee of the Township of Lopatcong.	ON PETITION CONCLUSIONS AND ORDER

Olive G. Weeks, Petitioner, Pro Se.

BY THE COMMISSIONER:

From petition filed herein it appears that, on January 23, 1946, petitioner pleaded guilty in the Court of Special Sessions, Warren County, to a charge of selling alcoholic beverages to minors, and that she was thereupon sentenced to pay a fine of $50.00, which fine has been paid.

Because of the criminal conviction, petitioner's license has been automatically suspended for the balance of its term. R. S. 33:1-31.1. Petitioner requests that the automatic suspension may be lifted.

It further appears that the criminal proceedings arose from the sale of alcoholic beverages to the two minors mentioned in disciplinary proceedings entitled Re Weeks, Bulletin 689, Item 2. In the disciplinary proceedings defendant's license was suspended by the Commissioner for a period of twenty days, commencing at 2:00 a.m. January 8, 1946 and terminating at 2:00 a.m. January 28, 1946.

Under the circumstances I shall grant the relief sought in the petition and lift the automatic suspension of the license at the time the suspension imposed in the disciplinary proceedings terminates.

Accordingly, it is, on this 25th day of January, 1946,

ORDERED, that the automatic suspension of License C-3, held by Olive G. Weeks, t/a Airport Inn, issued by the Township Committee of the Township of Lopatcong for premises on Route 24, Morris Highway, Lopatcong Township, be lifted, effective at 2:00 a.m. January 28, 1946.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT DISCOUNT, IN VIOLATION OF RULE 20 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against MOUNTAINSIDE DRUG CO. 899 Mountain Avenue Mountainside, N. J., Holder of Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Mountainside.	CONCLUSIONS AND ORDER

Mountainside Drug Co., Defendant-licensee, Pro Se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads guilty to charges alleging the sale of three 4/5 quart bottles of Don "Q" Rum at a 10% discount, in violation of Rule 20 of State Regulations No. 20; and to the sale of alcoholic beverages below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On December 4, 1945 an investigator of the Department of Alcoholic Beverage Control purchased from the president of the licensee corporation three 4/5 quart bottles of Don "Q" Rum for $10.00. This price was $1.16 below the minimum consumer price, which at that time was $3.72 per bottle. Bulletin 643.

The licensee claimed that, because of the rush of business and the shortage of help, he forgot what rums were on the "Fair Trade Bulletin." Whether or not this be so, the fact remains that it does not constitute a defense. Licensees should refer to such lists if in doubt. It is their duty to fix their retail prices in accordance with the published prices in the official bulletins. Re Zimmerman et al., Bulletin 688, Item 14.

The licensee has no previous record. I shall, therefore, impose the minimum suspension of ten days, less five days for the plea, or a net suspension of five days.

Accordingly, it is, on this 25th day of January, 1946,

ORDERED, that Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Mountainside to Mountainside Drug Co., for premises 899 Mountain Avenue, Mountainside, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. February 4, 1946 and terminating at 9:00 a.m. February 9, 1946.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT, IN VIOLATION OF R. S. 33:1-25 - SALE OF ALCOHOLIC BEVERAGES AND PERMITTING PATRONS ON LICENSED PREMISES DURING PROHIBITED HOURS, IN VIOLATION OF MUNICIPAL REGULATION - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 35 DAYS, LESS 5 FOR PLEA

In the Matter of Disciplinary Proceedings against	)	
	)	
CLENDENNY TAVERN, INC., t/a Clendenny Tavern, 60 Clendenny Avenue, Jersey City, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-335, issued by the Board of Commissioners of the City of Jersey City.	)	

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J. Arnold Bressler, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license, pleads non vult to charges which, for convenience, may be summarized and restated as follows:

(1) In its license application, defendant, although listing Patrick Gannon and Louise Gannon as holders of 90 shares and 5 shares, respectively, of the corporation's 100 shares of stock issued and outstanding, concealed the fact that Richard McHale was the real owner of those 95 shares, such concealment being in violation of R. S. 33:1-25.

(2),(3) On Sunday, September 9, 1945, between 2:00 a. m. and 1:00 p. m., more particularly at and about twelve noon and until 12:30 p. m., defendant sold alcoholic beverages to and permitted patrons on the licensed premises, in violation of Sections 4(a) and 4(b) of a resolution concerning plenary retail consumption licensees, adopted by the Board of Commissioners of the City of Jersey City on April 18, 1939.

An investigation by the Department of Alcoholic Beverage Control disclosed that in 1938 Richard McHale, although a resident of the State of New York, purchased all of the capital stock of defendant-corporation. Because of his statutory disqualification, due to being a non-resident (R.S. 33:1-25), Richard Mc Hale caused 98 shares of stock to be issued in the name of his brother-in-law, Patrick Gannon, one share in the name of his sister-in-law, Louise Gannon, and one share in his own name. Neither Patrick Gannon nor Louise Gannon have any interest in the corporate business.

Richard McHale became a bona fide resident of the State of New Jersey on October 20, 1945. His former disqualification from holding a retail license or from owning more than 10% of the stock of a corporation holding a retail license has thus ceased to exist. See R.S. 33:1-25, as amended, effective March 27, 1943. All of the corporate stock, except those shares necessary for qualifying

shareholders, has been transferred to the name of Richard McHale, the real and beneficial owner thereof. Hence, it appears that the proper correction of the "front" situation has been made.

Despite the correction of the illegal condition, a fraud was practiced upon the issuing authority by failure to disclose the true ownership of the stock of the corporate licensee. Because the "front" charge was preferred previous to January 1, 1946, and the correction had also been made prior to that time, the announced policy of increasing suspension of licenses to become effective with disciplinary proceedings hereafter instituted which involve "front" situations continued or created after January 1, 1946, does not apply. See Re Nicomini, Bulletin 686, Item 7.

Defendant herein had its license suspended for a period of five days, effective June 11, 1945, by the local issuing authority for sale of alcoholic beverages during prohibited hours. Under all the circumstances, I shall suspend defendant's license for a period of thirty-five days, with remission of five days for the plea entered herein, or a net suspension of thirty days.

Accordingly, it is, on this 29th day of January, 1946,

ORDERED that Plenary Retail Consumption License C-335, issued by the Board of Commissioners of the City of Jersey City to Clendenny Tavern, Inc., t/a Clendenny Tavern, for premises 60 Clendenny Avenue, Jersey City, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a. m. February 4, 1946, and terminating at 2:00 a. m. March 6, 1946.

ALFRED E. DRISCOLL,
Commissioner.

11. APPELLATE DECISIONS - HERMSTEDT v. GREEN BROOK TOWNSHIP-DISCONTINUED.

WILLIAM HERMSTEDT, Appellant,	)	On Appeal
v.	)	ORDER OF DISCONTINUANCE
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF GREEN BROOK, Respondent.	)	

Arthur I. Robinson, Esq., Attorney for Appellant.
Frederick A. Onore, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's denial of appellant's application for a plenary retail consumption license for premises on southerly side of State Highway Route No. 29, Township of Green Brook.

Appellant now desires to withdraw the appeal. Respondent has consented, in writing, to a discontinuance of the appeal. No reason appearing to the contrary,

It is, on this 25th day of January, 1946,

ORDERED that the within appeal be and the same is hereby discontinued.

ALFRED E. DRISCOLL,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR THE BALANCE OF ITS TERM, WITH PERMISSION TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL SITUATION AND EXPIRATION OF 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against HENRY BUDOWSKY 75 yards above Penn. R. R. on Evesham Avenue Delaware Township P. O. Ashland, N. J., Holder of Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Delaware.	CONCLUSIONS AND ORDER

George S. Friedman, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging, in substance that since September 24, 1945, he falsely concealed the fact that his brother-in-law, Max Burday, formerly a resident of the State of Pennsylvania, had an equal undivided half-interest in the license and business conducted thereunder. Max Burday is now a resident of New Jersey. Investigation discloses that he and his family moved from Philadelphia to Ashland, N. J. on October 24, 1945.

The deliberate concealment of the true holders of the license and owners of the business represents a fraud upon the issuing authority and the public. Ordinarily, disciplinary proceedings instituted against licensees which involve "front" situations continued or created after January 1, 1946, shall subject their licenses to at least a minimum suspension of thirty days. Re Nicomini, Bulletin 686, Item 7. However, in this case the "front" was created prior to January 1, 1946. Both partners have apparently been fully qualified to hold a retail license since October 24, 1945. The facts in the case were fully disclosed by both partners to an ABC investigator prior to December 16, 1945. The fact that the present proceedings were not instituted until after January 1, 1946, does not warrant a longer suspension than that imposed in cases decided prior to Re Nicomini, supra.

Defendant has informed the State Commissioner of Alcoholic Beverage Control that there is now pending before the local issuing authority an application to transfer the license in the names of both Burday and himself, as partners.

In view of the illegal situation now existing, I shall suspend the license for the balance of its term. After the license has been properly transferred as above indicated, I shall entertain an application, by verified petition, to lift the suspension; provided, that the suspension will not be lifted until after ten days from the effective date thereof. Re Karbowski, Bulletin 676, Item 3.

Accordingly, it is, on this 29th day of January, 1946,

ORDERED that Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Delaware to Henry Budowsky, for premises 75 yards above Pennsylvania Railroad on Evesham Avenue, Delaware Township, be and the same is hereby suspended for the balance of its term, effective at 9:00 a. m., February 4, 1946; and it is futher

ORDERED that, upon a correction of the existing unlawful situation by a bona fide transfer, application may be made to me to lift the suspension; provided, however, that such suspension shall not be lifted prior to the expiration of ten (10) days from the effective date of such suspension.

ALFRED E. DRISCOLL,
Commissioner.

13. APPELLATE DECISIONS - RIGAMONTI v. BLAIRSTOWN TOWNSHIP.

SYLVIA RIGAMONTI, t/a Mario's Restaurant, Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BLAIRSTOWN, Respondent.	)	

Mackerley & Friedman, Esqs., Attorneys for Appellant.
Dolan & Dolan, Esqs., by John T. Madden, Esq., Attorneys for Respondent.
Thornton C. Land, Esqs., an Objector, Pro Se.

BY THE COMMISSIONER:

This appeal is from the denial of the appellant's application for a plenary retail consumption license for premises on Cedar Lake Road, Blairstown, N. J.

At the hearing, it developed that a prior application for the same premises was filed with the respondent by Joseph Cera who, appellant admits, was merely a "front" for her and her husband. It appears that the appellant's attorney (not her attorney of record) had advised her that a five-years' residence in this state was required of applicants for liquor licenses. Lacking such requirement, she caused Joseph Cera to submit an application in which her interest, as well as that of her husband, was falsely concealed. Appellant's assertion that this was done upon the advice of her then attorney is categorically denied by the latter, who stated that he had informed the appellant that "Mr. Cera would have to be fully responsible for the operation of the liquor business . . . and have an actual interest in the bar itself".

In August, 1945, less than two months after the denial of Mr. Cera's application, the appellant filed the instant application. Several days before this application was filed, the premises in question, which had theretofore been owned jointly by the appellant and her husband, was placed in the sole name of the former. The

obvious reason for this change of title was the fact that Mr. Riganonti is ineligible to hold a liquor license because of non-citizenship. No change, however, occurred in the operation of the business. The appellant continued in her capacity as manager and her husband as chef.

The fraudulent application filed by Mr. Cera on behalf of the appellant and her husband, together with the circumstances surrounding the filing of the present application, constitute a sufficient justification for the respondent's action. Cf. Schwartz v. Bellmawr, Bulletin 145, Item 9, and cases therein cited; Clark v. Haddon, Bulletin 187, Item 3; Klapprott v. Andover, Bulletin 344, Item 9; Hindin v. Egg Harbor, et als., Bulletin 399, Item 1; D'Annibale v. Sparta, Bulletin 529, Item 6; Graham v. Newark, Bulletin 531, Item 10.

An examination of Exh. R-2, appellant's application, furnishes an additional ground for denial. The first notice of application was advertised on August 2, 1945, four days before the application was filed with the respondent issuing authority. Rule 1 of State Regulations No. 2 provides: "Application for license must be filed with the issuing authority before the first insertion of advertisement on forms approved by the Commissioner." Cf. Brost v. East Amwell, Bulletin 304, Item 1; Korte v. Pemberton, Bulletin 581, Item 5.

Moreover, on the merits, and quite apart from the foregoing, the same result must be reached. The premises are located in a residential section, with the neighboring residents objecting to the issuance of a liquor license in that locality. For a population of approximately 1500 residents, there are already in existence six consumption establishments. Several of these are operated as bona fide restaurants. The proof is ample that there is no public need and necessity for the license applied for by the appellant.

The action of respondent is affirmed.

Accordingly, it is, on this 29th day of January, 1946,

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

ALFRED E. DRISCOLL,
Commissioner.

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

In the Matter of Disciplinary Proceedings against WALTER M. CLARK, t/a Walt's Cafe, Bailey Circle, North Side State Highway S-41 & King's Highway Chester Township, P. O. Maple Shade, N. J., Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Chester.	CONCLUSIONS AND ORDER

Walter M. Clark, Defendant-licensee, Pro Se.
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge that he possessed one 4/5 quart bottle labeled "Four Roses A Blend of Straight Whiskies"

one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", and one 4/5 quart bottle labeled "White Label Blended Scotch Whisky", all containing alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On December 11, 1945, an investigator of the State Department of Alcoholic Beverage Control seized the above described three bottles of whiskey on defendant's licensed premises when preliminary field tests thereof indicated that the contents of the said bottles differed in characteristics from the whiskey named on the label. Subsequent analysis by the Department chemist confirmed the fact that the whiskey in each of the three seized bottles was not genuine as labeled.

Defendant's wife, then in charge of the licensed premises, admitted in writing that she had refilled or partly refilled said bottles with whiskey of other brands. Defendant apparently knew nothing of this practice indulged in by his wife. He, however, admits that she was in charge of the licensed premises and that he is liable for her breach of the law. As repeatedly pointed out, a patron is entitled to receive exactly what he orders. Retailers are not permitted to refill bottles. Re Leda, Inc., Bulletin 678, Item 1.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of twenty days. Cf. Zeidner & Cohen, Bulletin 680, Item 2.

Accordingly, it is, on this 30th day of January, 1946,

ORDERED, that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Chester to Walter M. Clark, t/a Walt's Cafe, for premises at Bailey Circle, North Side State Highway S-41 & King's Highway, Chester Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. February 6, 1946, and terminating at 2:00 a.m. February 26, 1946.

Alfred E. Driscoll
Commissioner.