

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

BULLETIN 819

NOVEMBER 4, 1948.

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

November 4, 1948.

BULLETIN 819

1. SEIZURE - FORFEITURE PROCEEDINGS - ILLEGAL STORAGE AND TRANSPORTATION OF TAX PAID WINE BY WHOLESALE LICENSEE WHOSE LICENSE WAS REVOKED FOR SUCH OFFENSE - MOTOR VEHICLE RETURNED TO INNOCENT LIEN CLAIMANT - WINE RETURNED TO FORMER WHOLESALE LICENSEE UPON ISSUANCE OF A DISPOSAL PERMIT AND PAYMENT OF COSTS OF SEIZURE.

In the Matter of the Seizure on)
April 9, 1948 of 57 cases of wine)
and a Packard coupe, at 116 South)
Missouri Avenue, in the City of)
Atlantic City, County of Atlantic)
and State of New Jersey.)

Case No. 7245

ON HEARING
CONCLUSIONS AND ORDER

-----)
Abraham L. Bailine, Pro Se.)
Great Notch Winery, Inc., by Grace E. Vogt, Secretary & Treasurer.)
Harry Castelbaum, Esq., appearing for the State 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 57 cases of wine and a Packard coupe, described in a schedule attached hereto, seized on April 9, 1948 at 116 South Missouri Avenue, Atlantic City, N. J., constitute unlawful property and should be forfeited.

Great Notch Winery, Inc., which at the time of the seizure held a wine wholesale license for premises located in Paterson, N. J., is the owner of a major portion of the wine. The balance of the wine was obtained in one way or another by Isador Fishman, a licensed solicitor for the winery. Part of the wine was seized because it was stored or warehoused in a hotel in Atlantic City, which hotel was not licensed for that purpose. The motor vehicle, owned by Isador Fishman, was seized because there were eight cases of wine in the car being transported by Fishman for delivery to retail licensees, although the car was not licensed for the transportation of alcoholic beverages.

Alcoholic beverages stored unlawfully are subject to seizure and forfeiture. Likewise, alcoholic beverages transported unlawfully, and the vehicle used for that purpose, are subject to seizure and forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-66.

The winery claims that Fishman, without its knowledge or consent, was able to commit the violations because of the inexperience of the person who was in charge of the winery's affairs. In disciplinary proceedings which resulted in revocation of the Great Notch Winery's license, I said that the licensee is responsible for the acts of its agents, and that I had no alternative but to revoke the license. Fishman's solicitor's permit was likewise revoked. Re Great Notch Winery, Inc., Bulletin 812, Item 9; Re Fishman, Bulletin 812, Item 10.

When the matter came on for hearing pursuant to R. S. 33:1-66, Abraham L. Bailine appeared and sought recognition of a lien claim against the Packard coupe. Great Notch Winery, Inc. entered a written appearance and sought the return of its wine.

It appears from Bailine's testimony that he has been employed as a bakery salesman-driver for about nine years; that in November 1947 he sold the motor vehicle in question to Fishman for \$450.00, represented by a series of post-dated checks, the last dated February 21, 1948. Checks in the amount of \$250.00 were paid on their due

dates, but the balance of \$200.00 was not paid. Later, Fishman made an additional payment of \$31.50, leaving \$168.50 as the present balance due.

Early in April 1948, being unable to collect such balance, Bailine extended the time for payment to May 5th, represented by a note due on that date, and secured by a lien on the motor vehicle evidenced by a document issued by the New Jersey Department of Motor Vehicles.

Bailine says that in July 1947 he became acquainted with Fishman by supplying him with bakery products, at which time Fishman had a boarding house; that when he sold the car to Fishman, Fishman told him that he was then employed by a distillery company located in Philadelphia. Bailine further says that he has never been in the liquor business, knows nothing about its regulations, and did not know or have any reason to suspect that Fishman would violate the liquor laws by illegally transporting alcoholic beverages in the motor vehicle.

I am satisfied from the evidence presented that Bailine holds a valid lien of \$168.50 against the Packard coupe and that he acted in good faith and had no knowledge of the unlawful transportation of alcoholic beverages in the motor vehicle, or of such facts as would have led a person of ordinary prudence to discover such use. Under such circumstances, I am authorized to and hereby recognize his lien. R.S. 33:1-66(f); Seizure Case 7211, Bulletin 798, Item 3.

The appraised retail value of the car is \$250.00. It is self-evident that the retention of the motor vehicle by the State upon payment of the lien will not result in any substantial advantage to the State, and further, that the amount of such lien and the costs of seizure and storage of approximately \$80.00 exceed what can be realized at a public sale of the vehicle. The Packard coupe will be turned over to Abraham Bailine, the lien claimant, upon payment of the costs of its seizure and storage.

As to the application of Great Notch Winery, Inc. for return of its wine, it is to be noted that while an unwitting violation can only mitigate and not entirely relieve a licensee from an appropriate penalty against his license, in seizure proceedings the same circumstances may warrant complete remission of forfeiture. See Seizure Case No. 6478, Seizure Case No. 7029, Bulletin 742, Item 7. Thus, in cases involving peddling of alcoholic beverages by retail licensees, illustrated by Re Pinto, Bulletin 639, Item 4, while the licensee suffered a suspension of the license, the vehicle and alcoholic beverages seized were returned to the licensee where it appeared that he had acted in good faith and unknowingly violated the law.

In the instant case, like the Pinto case, supra, the winery is held responsible for the violations under the principle of respondet superior rather than by reason of any evidence that any responsible officer of the winery had actual knowledge that the offenses were being committed. I am, therefore, satisfied that, so far as the winery is concerned, the violations were unwitting, and hence shall afford it relief from forfeiture. Its license was revoked due to the particular facts in the case and not because it was more aggravated than the above cited cases.

The wine cannot be returned directly to the Great Notch Winery, Inc. because it does not hold any license whereby it can dispose of such wine legally. I shall, therefore, in lieu of forfeiture, accept its application for an appropriate permit authorizing it to sell the wine to a licensed wholesaler or retailer or to return it to the licensed dealer from whom it was purchased.

Upon issuance of such permit and the payment of the costs due, paid or incurred in the seizure and storage of the wine, the wine identified in Schedule "A" attached hereto as the property of Great Notch Winery, Inc. will be made available to it for delivery to such retailer or wholesaler. The balance of the wine acquired by Fishman from sources other than the winery will be forfeited.

Accordingly, it is DETERMINED and ORDERED that if on or before the 25th day of October, 1948, Abraham L. Bailine pays the costs of seizure and storage of the Packard coupe, it will be returned to him; and it is further

DETERMINED and ORDERED that if, on or before the 25th day of October, 1948, Great Notch Winery, Inc. applies for an appropriate permit and pays the costs due, paid or incurred by the Department in the seizure and storage of the wine identified in Schedule "A" as its property, such wine will be made available to the winery, upon issuance of such permit, for delivery to the licensee named in such permit. If such application is not made within the time limited, the wine will be forfeited; and it is further

DETERMINED and ORDERED that so much of the seized wine described in Schedule "A" as is not returned 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 State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Commissioner.

Dated: October 14, 1948.

SCHEDULE "A"

Great Notch Winery, Inc. Wine

- 2 - cases - Starlight - (Port) 24 - 4/5 qts.
- 5 - cases - Starlight - (Sherry) 60 - 4/5 qts.
- 4 - cases - Starlight - (Muscatel) 48 - 4/5 qts.
- 6 - 4/5 qts. - Starlight (Port)
- 1 - case Rosa Mia (Burgundy) 11 qts.
- 9 - cases - House of Rothschild (Kosher grape wine) 32 - 1 gal. jugs
- 3 - cases - House of Rothschild (Kosher grape wine) - 36 - 4/5 qts.
- 1 - case containing 24 pints Italian Chianti Wine
- 1 - case containing 12 qts. Italian Chianti Wine
- 6 - cases - Starlight (Port Wine) 144 pints
- 3 - cases - Starlight (Muscatel) 72 pints
- 5 - cases - Starlight (Sherry) 120 pints
- 2 - cases - Starlight (Half & Half) 48 pints
- 6 - cases - Starlight (Port Wine) 72 - 4/5 qts.

Other Wine

- 3 - cases containing 35 - 4/5 qt. bottles of Roma Burgundy Wine
- 5 - cases Imported Pedro Domicq (Spanish Sherry) 60 - 5/4 qts.
- 1 - open carton containing 20 empty pint bottles

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

GAETANO NANI)
T/a NANI'S RESTAURANT)
70 West Passaic Street)
Rochelle Park, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-8 issued by the Township Committee of the Township of Rochelle Park.)
-----)

Gaetano Nani, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he possessed at his licensed premises an illicit alcoholic beverage, viz., one 4/5 quart bottle labeled "Seagram's V. O. Canadian Whisky A Blend", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

The bottle in question was seized by an ABC agent on October 11, 1948, on defendant's premises.

Since the defendant has no previous adjudicated record, I shall impose the usual fifteen-day penalty, less five days for the plea, leaving a net suspension of ten days. Re. Gast, Bulletin 817, Item 5.

Accordingly, it is, on this 14th day of October, 1948,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Rochelle Park to Gaetano Nani, t/a Nani's Restaurant, for premises 70 West Passaic Street, Rochelle Park, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. October 15, 1948, and terminating at 3:00 a.m. October 25, 1948.

ERWIN B. HOCK
Commissioner.

3. STATE REGULATIONS NO. 39 - CREDIT - INTERPRETATIONS OF RULES 1, 2(b), 5(b) and (c).

TO ALL NEW JERSEY LICENSED MANUFACTURERS AND WHOLESALERS:

Regulations No. 39 - Interpretation of Rules 1, 2(b), 5(b) and (c)

State Regulations No. 39, Rule 5(b), requires each manufacturer and wholesaler to file with the State Commissioner of Alcoholic Beverage Control a notice of default "within three (3) days after a retail licensee becomes in default to such manufacturer or wholesaler under Rules 1 and 2" and Rule 5(c) provides for the filing of a notice of termination of default "within three (3) days thereafter". However, it has appeared from numerous investigations conducted by this Department that many manufacturers and wholesalers are in a state of confusion as to the effect of Saturdays, Sundays and legal holidays upon the computation of the three-day period within which report must be made after default occurs.

So that all persons interested may be fully informed, it is announced that the "three days" specified in Rule 5(b) and (c) of State Regulations No. 39 means three successive calendar days except in those instances where the third calendar day is a Sunday or legal holiday designated by R.S. 56:1-1, viz., January 1st (New Year's Day), February 12th (Lincoln's Birthday), February 22d (Washington's Birthday), Good Friday, May 30th (Memorial Day), July 4th (Independence Day), the first Monday of September (Labor Day), October 12th (Columbus Day), November 11th (Armistice Day), the fourth Thursday of November (Thanksgiving Day), December 25th (Christmas Day), any general election day, and every Saturday, in which event the next business day shall be deemed the third day. For example, if the third calendar day is a Saturday or Sunday, the "third day" under Rule 5(b) would normally be the succeeding Monday. Again, if the third calendar day is Good Friday, the "third day" under the Rule would be the succeeding Monday because, in addition to Good Friday, Saturday and Sunday are also legal holidays. So, likewise, if the third calendar day is the Saturday or Sunday before Labor Day, the "third day" under the Rule would be Tuesday, the day after Labor Day, which is the next business day. Note, however, that the "three days" of the Rule is extended only when the third day falls on a legal holiday -- no additional time is granted if the first or second day of the three-day period is a legal holiday or a Sunday.

In this connection, it should also be noted that the thirty-day credit period fixed by Rule 1 may permissibly be computed to end on the next business day succeeding the thirtieth calendar day if the thirtieth day falls on a Saturday, Sunday or one of the legal holidays mentioned.

Question has also arisen as to the responsibility of manufacturers and wholesalers in a situation where, within the thirty-day credit period, an ordinary check is received and promptly deposited for collection as required by Rule 2(b) but thereafter the check is dishonored upon presentation to the drawee bank and returned to the depositing manufacturer or wholesaler. In such case, the retailer must be considered in default as of the thirty-first calendar day (without regard to whether that thirty-first day is a Saturday, Sunday or legal holiday) and the retailer must be reported in default immediately (whether within the "three days" or not) on the day the dishonored check is returned to and received by the manufacturer or wholesaler, even though it may happen that the retailer makes the check good by cash or otherwise on that same day. This is so because the net effect of the dishonor of the check and delayed payment thereof after the thirty-day credit period has expired is to extend to the retailer more than the permissible thirty days' credit.

Dated: October 14, 1948.

ERWIN B. HOCK
Commissioner.

4. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST 1948 TO OCTOBER 1ST 1948 AS REPORTED TO THE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Expired	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	437	198,850.00	68	23,200.00	14	1,366.64						569	223,416.64
Bergen	813	295,759.45	294	77,537.55	55	5,500.00	50	2,187.40	5	1,347.05		1222	382,391.40
Burlington	186	72,325.00	30	8,343.84	38	5,327.80	1	25.00				255	86,021.64
Camden	455	217,650.00	83	29,925.00	57	5,400.61			1	375.00		596	253,350.61
Cape May	133	65,750.00	11	3,700.00	13	1,371.23						157	70,821.23
Cumberland	81	35,300.00	13	3,500.00	29	3,872.20						123	42,672.20
Essex	1376	759,177.19	349	203,608.00	94	12,850.00	33	1,650.00				1852	977,285.19
Gloucester	106	33,600.00	14	3,500.00	12	1,250.00						132	38,150.00
Hudson	1562	677,330.00	298	117,810.00	73	9,026.03	73	3,125.00				2006	807,291.03
Hunterdon	79	22,820.00	6	1,637.50	5	600.00						90	25,057.50
Mercer	425	255,000.00	51	20,700.00	41	5,650.00			1	140.00		513	281,490.00
Middlesex	636	296,450.00	70	21,095.00	51	4,903.64	5	225.00				762	322,673.64
Monmouth	544	268,685.93	109	36,835.00	28	3,398.90	9	350.00	29	12,525.62		719	321,199.45
Morris	355	116,775.00	92	29,200.00	35	3,740.87	1	25.00	6	1,237.50		489	150,978.37
Ocean	185	104,304.47	42	17,633.00	12	1,300.00						239	123,237.47
Passaic	881	361,510.00	164	50,790.00	32	3,975.00	11	500.00				1088	416,575.00
Salem	50	18,900.00	7	1,300.00	9	775.00						66	20,975.00
Somerset	185	77,415.00	33	8,300.00	18	1,950.00						236	88,265.00
Sussex	170	44,055.00	15	3,005.00	6	353.70			1	225.00		192	47,633.70
Union	546	291,100.00	142	56,900.00	60	6,950.00	20	987.50				768	355,937.50
Warren	148	41,370.46	17	3,507.50	25	2,547.74			2	238.42		192	47,463.12
Totals	9408	\$4,253,327.50	1908	\$ 722,290.39	707	\$ 82,109.36	203	\$ 9,074.90	45	\$16,088.59		12271	\$5,082,890.74

Respectfully submitted,
John H. Michelson, Deputy Commissioner.

ERWIN B. HOCK, Commissioner.

5. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, FIXTURES AND FURNISHINGS OF SPEAKEASY IN CLUB ORDERED FORFEITED - TELEVISION SET RETURNED TO INNOCENT LIEN CLAIMANT.

In the Matter of the Seizure) Case No. 7220
on February 4, 1948, of a)
quantity of alcoholic and)
other beverages, furniture,)
fixtures and equipment at) ON HEARING
210 Bloomfield Avenue, in the) CONCLUSIONS AND ORDER
Town of Montclair, County of)
Essex and State of New Jersey.)
- - - - -)

Franklin E. Pellegrin, Esq., Attorney for the National Newark and Essex Banking Co.
Michael Eugene Speni, Esq., Attorney for Crawford Crews Post, American Legion.
J. Bernard Johnson, Esq., Attorney for the Board of Trustees of the Crawford Crews Post, American Legion.
Harry Castelbaum, Esq., appearing for the State 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 a quantity of alcoholic and other beverages, and furniture, fixtures and equipment, and \$98.85 in cash, itemized in a schedule attached hereto, seized on February 4, 1948 in the club quarters of the Crawford Crews Post, American Legion, located at 210 Bloomfield Avenue, Montclair, N. J. constitute unlawful property and should be forfeited.

Apparently there was a practice of selling alcoholic beverages at the Post quarters, which are not licensed for the sale of alcoholic beverages. ABC agents, investigating this unlawful activity at the place, purchased alcoholic beverages there on February 3 and 4, 1948.

ABC agents then seized a quantity of alcoholic beverages, and the furniture, fixtures and equipment in the place, including \$98.85 in cash receipts. The Post Commander and another officer of the Post were arrested on charge of violating the Alcoholic Beverage Law.

Documents seized in the place evidenced a large scale sale of alcoholic beverages there.

When the matter came on for hearing pursuant to R. S. 33:1-66, appearances were entered by counsel who asserted that he represented the Post, by other counsel who asserted that he represented the Board of Trustees, and by counsel for National Newark & Essex Banking Co., which sought recognition of a lien claim on a television set which had been seized.

None of the parties deny that alcoholic beverages were unlawfully sold at the place. The contention of the Post, as such, is that the unlawful sale of alcoholic beverages was the individual venture of the two Post officers, without its knowledge or consent, and hence, that it is not responsible for their misconduct. The contention of the Trustees is, in effect, that although the Post, as such, may have in the past unlawfully sold alcoholic beverages, such a practice had to a large extent been eliminated until the present Post Commander took office, and that he re-engaged in the unlawful sale of alcoholic beverages on a large scale despite all efforts on their part to have him refrain.

It is clear that all the alcoholic beverages seized were intended for unlawful sale. Hence, they constitute illicit alcoholic beverages

which, together with all other personal property seized therewith on the premises, are subject to seizure and forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-68.

My authority to return property subject to forfeiture is limited to a case where it is established to my satisfaction that the claimant acted in good faith and unknowingly violated the law, or, in the case of a lien claimant, that such claimant had no knowledge or reason to suspect that unlawful alcoholic beverage activities were being carried on at the place where its property was located. R. S. 33:1-68(e) and (f).

Apparently the internal dissension in the Post stemmed largely from the manner of distribution of the profits of the unlawful sale of alcoholic beverages rather than from any forceful objection to the practice itself.

If, as it seems, it was in fact a private venture of the two Post officials, the members and Trustees were fully aware of what was going on, and should have taken effective measures to put an end to such activities.

Under the circumstances, neither the officers, members or Trustees of the Post can be said to have acted in good faith, or to have had no knowledge or reason to suspect that speakeasy activities were being carried on at the Post quarters. This case is in essence similar to that of Seizure Case No. 7131, Bulletin 800, Item 2. It differs only in that in the last mentioned case the purpose of the unlawful sales of alcoholic beverages at the Post was to raise money for a worthy objective, while in the instant case it appears to have been for purely private gain.

Any claim for return of the seized property to the Trustees, or to the Post itself, must be, and accordingly is, rejected.

The National Newark and Essex Banking Co. has presented evidence which established that it financed the purchase of the television set by the Post Commander and the Chairman of the House Committee, ostensibly in the name of the Post itself, and holds a conditional sales contract covering such equipment; that there is an unpaid balance of \$641.75 due and owing on said contract.

The bank, through its own efforts and that of an independent credit investigating agency, investigated the activities and background of the Post and the two officers. Such investigation did not reveal anything of a detrimental nature. In any event, since such equipment was placed in a branch of a national organization, the bank could assume that no illegal activities would be engaged in at the Post quarters. See Seizure Case No. 7131, supra. I shall recognize the lien claim presented by the bank.

I am satisfied that the public sale of the equipment, originally purchased for \$895.00, will not realize the amount of the lien claim and the costs of seizure and storage. Hence, the equipment will be returned to the bank upon payment of the costs of seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 25th day of October, 1948, the National Newark and Essex Banking Co. pays the costs of seizure and storage of the television equipment seized in the case, that equipment will be returned to such bank; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, constitutes

unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 38:1-66, 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 State Commissioner of Alcoholic Beverage Control.

Dated: October 15, 1948.

ERWIN B. HOCK
Commissioner.

SCHEDULE "A"

- 45 - cans of beer
- 38 - 4/5 qt. bottles of other alcoholic beverages
- 23 - bottles of soda
- 107 - glasses
- 1 - bar
- 1 - Philco Television set #1323
- 1 - Everett piano
- 1 - shuffleboard
- 39 - wooden folding chairs
- 1 - revolving stool
- 18 - chairs
- 1 - Firestone radio #914
- 1 - flower stand
- 1 - peanut vending machine (and currency therein)
- 1 - Victor victrola VV 210 - 72222
- 2 - gas ranges
- 1 - china closet
- 8 - tables
- 1 - steel file cabinet
- 1 - RCA Victor Radio #25449
- 1 - electric record player
- 1 - Lafayette amplifier and speaker
- 4 - knee hole desks
- 1 - electric clock
- 2 - lamps
- 2 - candelabra and a clock
- 2 - dumbbells
- 20 - Venetian blinds
- 1 - Postal Telegraph clock
- 2 - ice boxes
- 1 - G.E. electric heater
- 1 - Frigidaire
- 2 - clothes racks
- 2 - step ladders
- 1 - tool chest and tools
- 1 - electric fan
- \$98.85 in currency
- miscellaneous dishes

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

VINCENT T. SACCO)
T/a VINCE'S BAR)
129 Monmouth Street)
Red Bank, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of Red Bank.)

-----)
J. Stanley Herbert, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on June 30, 1948, he possessed an illicit alcoholic beverage, to wit, a 4/5 quart bottle of "Canadian Club Blended Canadian Whisky", which bottle was not genuine as labeled, in violation of R. S. 53:1-50.

The fact that the defendant had no personal participation in, or knowledge of, the violation, presents no defense. English v. Hock, 137 N.J.L. 34.

The only adjudicated violation against the defendant's record arose from a dissimilar offense occurring more than five years ago. See Bulletin 589, Item 4. These prior proceedings, therefore, will be disregarded in fixing the penalty on the instant charge. Cf. Rova Farms, Inc., Bulletin 817, Item 16. The usual suspension of fifteen days, less five days for the plea, leaving a net suspension of ten days, will be imposed. Re Gast, Bulletin 817, Item 5.

Accordingly, it is, on this 18th day of October, 1948,

ORDERED that Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of Red Bank to Vincent T. Sacco, t/a Vince's Bar, 129 Monmouth Street, Red Bank, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. October 25, 1948, and terminating at 2:00 a.m. November 4, 1948.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS AND TO INTOXICATED PERSONS - HINDERING INVESTIGATION - PREVIOUS RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)
 JULIUS G. BEESE)
 T/a JULE'S GRILLE)
 2101 Broadway)
 Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-177, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

 Gene R. Mariano, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the following charges:

"1. On Friday, July 2, 1948, between 2:00 a.m. and 2:30 a.m., and again on Sunday, July 4, 1948, between 2:00 a.m. and 2:30 a.m., you sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages upon your licensed premises, thereby violating Section 5 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934, which prohibits any such activity between the hours of 2:00 a.m. and 7:00 a.m. on any weekday and at any time after 2:00 a.m. on Sunday.

"2. On Sunday, July 4, 1948, between 2:00 a.m. and 2:30 a.m., you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Walter Smith, a person who was actually and 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.

"3. On Sunday, July 4, 1948, at about 2:30 a.m., while investigators of the State Department of Alcoholic Beverage Control were investigating the above alleged violations occurring at your licensed premises on that date, you hindered and failed to facilitate such investigation; in violation of R.S. 33:1-35."

The file in the instant case discloses that on July 2, 1948, two ABC agents each purchased a bottle of beer at 2:15 a.m., and again at 2:30 a.m. The legal closing hour, as provided by ordinance in the City of Camden, is 2:00 a.m. As the ABC agents were leaving the licensed premises at 2:35 a.m., the bartender who had served them the beer in question informed them that "there would be no action upstairs tonight".

At 11:00 p.m. on the evening of July 3, 1948, four ABC agents visited the defendant's licensed premises. About 2:00 a.m. on July 4, 1948, two of the investigators left the defendant's tavern. The other two, when told that they could remain as long as they wished, went upstairs at the suggestion of defendant. On the second floor there was a rectangular bar about 10 feet by 12 feet, and at the time the two agents entered there were six patrons sitting at the bar

consuming alcoholic beverages. The agents, while consuming two bottles of beer served to them by the bartender, observed an intoxicated man being served a bottle of beer. Between 2:10 a.m. and 2:30 a.m., about thirty patrons were admitted to the second floor drinking emporium.

At 2:30 a.m., the two ABC agents who had left the tavern on the first floor about a half-hour earlier, returned and, after making known their identity to the defendant, who was guarding the side entrance which led to the second floor, requested that they be admitted. Upon refusal the agents attempted to gain admission and, in the fracas which ensued, one of the investigators was bruised and his eyeglasses were broken. Defendant began to curse and hurl indecent invectives at the ABC agents and, while ascending the stairs, shouted that every one should leave because "the law is downstairs".

Defendant admitted that he has been operating the second floor of the premises on Friday and Saturday nights after legal closing hours for a period of three months.

The facts presented herein and the admissions of the licensee indicate conclusively that the defendant conducted what was tantamount to a "speakeasy" in connection with the operation of his licensed business.

Defendant has a previous adjudicated record. Effective June 18, 1948, defendant's license was suspended for a period of forty-five days for sales of alcoholic beverages on an Election Day; sale of alcoholic beverages to a minor; and sale of alcoholic beverages in other than original containers for off-premises consumption. Cf. Re Beese, Bulletin 574, Item 2.

The conduct of this defendant when considered with his previous record, raises serious doubt as to his fitness as a licensee. His license might very well be revoked outright.

A consideration of all of the attendant circumstances leads to the imposition of a suspension of the license for the balance of its term.

Accordingly, it is, on this 18th day of October, 1948,

ORDERED that Plenary Retail Consumption License C-177, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Julius G. Beese, t/s Jule's Grille, 2101 Broadway, Camden, be and the same is hereby suspended for the balance of its term ending June 30, 1949, effective at 2:00 a.m. October 28, 1948.

ERWIN B. HOCK
Commissioner.

8. APPELLATE DECISIONS - TAFRO v. NEWARK.

WILLIAM J. TAFRO, trading as)
NELSON TAVERN,)

Appellant,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Anthony P. Bianco, Esq., Attorney for Appellant.

Thomas L. Parsonnet, Esq., by George B. Astley, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent whereby it suspended appellant's plenary retail consumption license for a period of thirty days after it had found him guilty of the following charges:

"1. In that you did, on the night of February 20, 1948, sell, serve and deliver alcoholic beverages to Zelda ---, a person under the age of 21 years, and allowed, permitted and suffered the consumption of such beverages upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"2. In that you did, on the night of February 20, 1948, sell, serve and deliver alcoholic beverages to Zelda ---, a minor, in violation of Revised Statutes 33:1-77."

Upon the filing of the appeal, the suspension was stayed pending the outcome of these proceedings. R. S. 33:1-31.

By agreement of the parties, the case was submitted upon the stenographic transcript of a hearing held before respondent Board. See Rule 8 of State Regulations No. 15.

At the hearing below, the minor (a girl thirteen years of age) testified that on the evening of February 20, 1948, she and a male escort, of full age, walked through the barroom and took seats at a table in the rear room of appellant's premises. She says that her escort went to the barroom and returned with a glass of beer and a glass of soda, and that he consumed the beer and she consumed the soda. She testified that her escort thereafter visited the barroom and returned with two glasses of beer, one of which he consumed and one of which she consumed.

The testimony given by the male escort is substantially the same, except that he says that, at the time of the first purchase, the bartender refused to sell him two glasses of beer because the girl was too young and that, at the time of the second purchase, he bought a glass of soda and two glasses of beer which he carried to a rear room. This witness, however, corroborates the testimony of the minor that she consumed at least part of the contents of one of the glasses of beer.

The bartender admitted that, at the time of the second purchase, the male escort carried a glass of soda and two glasses of beer to the rear room, but he alleges that he was told by the escort that the second glass of beer was intended for another patron who was engaged in a game of shuffleboard with the escort. The escort denies that he made any such representation to the bartender. Despite the bartender's testimony and that of the other patron, who admitted that he was not watching the girl, I conclude that the beer was consumed by the minor on the licensed premises as she and her escort testified. From the

evidence I conclude that appellant is guilty as charged. Cf. Gahr, Bulletin 377, Item 7. Even if there were any doubt that the facts established a sale of alcoholic beverages to a minor, the evidence established that appellant allowed, permitted and suffered the consumption of alcoholic beverages by a minor upon his licensed premises. Essex Holding Corp. v. Hock, 136 N.J.L. 28.

The only point remaining is the question of the length of suspension, which appellant argues is excessive. The suspension imposed in a local disciplinary proceeding rests, in the first instance, within the sound discretion of the local issuing authority. The Commissioner will reduce a penalty on appeal in those cases only where the penalty is manifestly unreasonable. Creston Holding Co. v. Belleville, Bulletin 544, Item 2. In view of the age of the minor involved, I would not be warranted in finding that the period of suspension was unreasonable even if the licensee is guilty merely of permitting consumption of alcoholic beverages by this minor on his licensed premises.

The present appeal will be dismissed and the thirty-day suspension reinstated.

Although this proceeding was instituted during the 1947-48 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1948-49. State Regulations No. 16.

Accordingly, it is, on this 19th day of October, 1948,

ORDERED that the thirty-day suspension by respondent of appellant's Plenary Retail Consumption License C-273, for premises 29 Howard Street, Newark, which was held in abeyance pending disposition of the instant appeal, is hereby restored to commence at 2:00 a.m. October 25, 1948, and terminate at 2:00 a.m. November 24, 1948.

ERWIN B. HOCK
Commissioner.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Joseph J. Picinelli
757 Columbus Ave.
Phillipsburg, N. J.

Application for State Beverage Distributor's License filed
October 14, 1948.

Beverage Transport Corporation
56 North Ferry St.
Albany, N. Y.

Application for Transportation License filed October 25, 1948.

ERWIN B. HOCK
Commissioner.

10. APPELLATE DECISIONS - LANGELLA v. FORT LEE.

LOUISE LANGELLA,)
Appellant,)

-vs-

MAYOR AND COUNCIL OF THE)
BOROUGH OF FORT LEE,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Vincent J. Aiken, Esq., Attorney for Appellant.
Lawrence A. Cavinato, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to transfer to the appellant the plenary retail consumption license now held by William H. Maki for premises 200 Main Street, Fort Lee, N. J.

The only issue is whether the appellant was a "resident of the State of New Jersey at the time of the submission of the application". See R. S. 33:1-25.

The "resident" and "residence" qualification, as used in the Alcoholic Beverage Law, has been construed to mean "domicile", or the place where a person maintains his permanent home to which, whenever he is absent, he has the intention of returning. In addition to physical presence, therefore, an applicant for a retail license must reside in this state animo manendi. Such has been the consistent interpretation of the statute ever since its adoption upon the advent of Repeal. Cf. Re Conover, Bulletin 16, Item 4. That such construction is proper in cases involving a rule of public policy, as here; see Brown v. Brown, 112 N.J. Eq. 600 (Ch. 1933).

Appellant, prior to her marriage in October 1946, was a resident of the State of New York. After an extended period of traveling over the country, she and her husband rented a room in a private residence in Hasbrouck Heights, N. J. in July 1947. They subsequently occupied two rooms in this house until December 1947, when they separated and the appellant instituted annulment proceedings in the State of New York. The appellant continued to live in one room of this private residence until about August 1, 1948, when she rented a room in a boarding house in Hackensack, N. J., where she still lives.

The appellant testified that she gave a New York City address as her residence in her petition for annulment, and the interlocutory decree, entered January 9, 1948, which became final three months later, recites her address as "335 East 69th Street, Borough of Manhattan, City of New York". She owns an automobile which carries New York license plates and her "legal residence" listed in her owner's registration and driving license, both issued in December 1947, is given as the same New York City address. She further testified that she had been employed at a large New York department store for many years prior to her marriage and that she intended to resume her employment there during the latter part of September 1948.

If it be argued that the appellant assumed the domicile of her husband, by operation of law, upon her marriage in October 1946, the proofs indicate that such domicile was in the State of New York. It appears that her husband resided in New York City prior to their marriage and, upon their separation in December 1947, returned there to live.

It is apparent from the foregoing that respondent's determination that the appellant failed to qualify as a New Jersey "resident", within the contemplation of the Alcoholic Beverage Law, was neither arbitrary nor unreasonable, and there is nothing in the record which would warrant a reversal of such a determination. Its action in denying the application is, therefore, affirmed.

Accordingly, it is, on this 31st day of October, 1948,

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

ERWIN B. HOCK
Commissioner.

11. APPELLATE DECISIONS - CRAMER v. NEWARK - ORDER OF DISCONTINUANCE.

HENRY CRAMER and MARY CRAMER,)
trading as RATHSKELLER,)

Appellants,)

-vs-

ON APPEAL
ORDER OF DISCONTINUANCE

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)

Respondent)

-----)
John J. Blumette, Esq., Attorney for Appellants.
Thomas L. Parsonnet, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal was taken from a ten-day suspension imposed by the respondent upon the plenary retail consumption license held by the appellants for premises 525 Springfield Avenue, Newark, N. J. The suspension, which became effective August 23, 1948, had been fully served prior to the institution of the appeal.

The appellants now desire to withdraw the appeal and the respondent has signified that it has no objection thereto. Since no reason appears to the contrary,

It is, on this 18th day of October, 1948,

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

Erwin B. Hock
Commissioner.