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

BULLETIN 519 JULY 10, 1942.

1. APPELLATE DECISIONS - CUNEO AND FORKE v. HOBOKEN.

HARRY CUNEO and FRED FORKE, t/a LOG CABIN TAVERN,
Appellants,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

John J. Meehan, Esq., Attorney for Appellants.
James A. Coolahan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Respondent revoked appellants' plenary retail consumption license after finding them guilty of a charge alleging that on March 13, 1942 they permitted bookmaking on their licensed premises, in violation of Rule 7 of State Regulations No. 20. Upon filing their appeal, an ad interim stay of that penalty was granted by me.

From the evidence it appears that, on the day in question, several Department agents observed three men standing at appellants' bar, two of whom were holding horse race forms. Forke, one of the licensees, was acting as bartender. From time to time racing results were announced over the radio and general discussions of those results took place, with Forke taking part therein. A fourth man then entered the premises. When he joined the three men at the bar, one of the latter attempted to place a bet with him, whereupon he cautioned the prospective bettor to be careful. They then proceeded to the rear room, where the fourth man accepted a bet from the other. The bettor then returned to the bar and announced that he "took care of the bet" and pointed out on one of the race forms the horse upon which the wager had been made.

Appellants contend that the penalty of outright revocation of their license is too severe and disproportionate to the charge lodged against them. I am inclined to agree with this contention. Appellants, who have held their license at the same address ever since July 1937, have never heretofore had any proceedings instituted against their license. There is nothing in the evidence relating to the instant violation to indicate that there was any general practice of permitting the licensed premises to be used for the purpose of placing bets on horse races. Nor is there any evidence which directly implicates either of the licensees with having actively participated in the one instance of bookmaking observed by the agents on the occasion of their visit to the licensed premises.

Moreover, I note that in the last two cases conducted by respondent on charges similar to that involved herein, a penalty of twenty-nine days was given in one case and thirty days in the other. No reason is suggested why these appellants should be penalized to

any greater extent. Indeed, an examination of those cases reveals that the facts in each case would appear to have been more aggravated than those of the instant case.

Under all the circumstances, I am of the opinion that the revocation of appellants' license is unnecessarily severe and should be modified to a suspension for thirty days. Since the present licensing period will expire prior to the termination of thirty days, appellants' present license will be suspended for the balance of its term, and I shall direct that any renewal license, or any other license issued to any other person for the premises in question for the fiscal year 1942-43, shall remain subject to this suspension until the full thirty days have elapsed.

Accordingly, it is, on this 25th day of June, 1942,

ORDERED, that the order heretofore entered staying respondent's order of revocation be and the same is hereby vacated; and it is further

ORDERED, that the penalty of revocation of Plenary Retail Consumption License C-41, heretofore issued to Harry Cuneo and Fred Forke, t/a Log Cabin Tavern, for premises 99 Hudson Street, Hoboken, be and the same is hereby modified to a suspension of said license for a period of thirty days, effective June 29, 1942, at 2:00 A.M.; and it is further

ORDERED, that any further license issued for the fiscal year 1942-43 for the premises in question to appellants, or any other person, shall be subject to the suspension herein until July 29, 1942, at 6:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

2. MORAL TURPITUDE - CRIMES OF BREAKING, ENTERING, LARCENY AND RECEIVING ORDINARILY INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - PETITIONER ARRESTED IN MAY 1942 ON THE CHARGE OF MANUFACTURING AND POSSESSING ILLICIT ALCOHOLIC BEVERAGES - NOT YET SUBMITTED TO GRAND JURY - PETITION DISMISSED WITH LEAVE TO RENEW UPON DISMISSAL OF PRESENT CRIMINAL PROCEEDINGS AND PROOF OF INNOCENCE.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 207

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

Petitioner was convicted in 1921 of breaking, entering, larceny and receiving, and placed on probation for three years. This crime involved the theft of about $650.00 worth of machine parts from a factory.

Breaking, entering, larceny and receiving are crimes which, by their very nature, ordinarily involve moral turpitude. Re Case No. 424, Bulletin 506, Item 3. No circumstances are shown to rebut the presence of that element in petitioner's case. Hence he is disqualified under R. S. 33:1-25, 26 from obtaining any liquor license or working for any liquor licensee in this State.

Petitioner prays for the removal of such disqualification pursuant to R. S. 33:1-31.2.

Apart from a number of other arrests and convictions between 1921 and 1935, it appears that in May, 1942 petitioner was arrested on the charge that he manufactured and possessed illicit alcoholic beverages, which case has not as yet been submitted to the Grand Jury.

Obviously, in view of petitioner's arrest on this "bootlegging" charge, he has presently failed to establish that he has conducted himself in a law-abiding manner during the past five years and that his connection with the alcoholic beverage industry will not be contrary to public interest. This is a necessary prerequisite to granting him relief. Whether his acquittal of the charge would place him in a different light must await the event.

The petition to remove his disqualification is therefore dismissed, with leave to renew upon proof that he has been found innocent of the pending criminal proceeding against him for violation of the liquor laws. Cf. Re Case No. 32, Bulletin 269, Item 7.

ALFRED E. DRISCOLL,
Commissioner.

Dated: June 25, 1942.

3. DISCIPLINARY PROCEEDINGS - DISMISSED ON FAILURE OF DEPARTMENT TO PRODUCE ANY EVIDENCE.

In the Matter of Disciplinary Proceedings against

JULES C. RONCHETTI,
102 Railroad Avenue,
Hammonton, N. J.,

Holder of Plenary Retail Consumption License C-10 issued by the Town Council of the Town of Hammonton.

ORDER

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Jules C. Ronchetti, Pro Se.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On May 2, 1942 charges were served upon defendant alleging that, on March 14, 1942 and divers days prior thereto, he sold alcoholic beverages to Rovena Hatcher, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

At a hearing duly scheduled to be held on June 1, 1942, defendant appeared and, in effect, admitted the sale but denied that the girl was a minor. He stated that the girl had told him she was twenty-five years of age.

The Department was unable to produce any evidence at that time as to the correct age of Rovena Hatcher because she could not be located and, despite efforts made, her birth certificate could not be obtained. The Hearer adjourned the hearing until June 23, 1942, to

give the Department additional time to produce evidence. The Department, despite subsequent efforts, is still unable to produce any proof as to the age of the alleged minor. Without such proof, the guilt of defendant cannot be established. Fairness to the licensee requires that this charge should not be permitted to hang over his head indefinitely.

Accordingly, it is, on this 25th day of June, 1942,

ORDERED, that the above case be nolle prossed.

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against THOMAS MALONE, 65 Orchard Street, Elizabeth, N. J., Holder of Plenary Retail Consumption License C-168 issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth, and transferred during the pendency of these proceedings to THOMAS MALONE & E. JOSEPH MALONE, for the same premises.	CONCLUSIONS AND ORDER

Daniel J. O'Hara, Esq., Attorney for Defendant-licensees.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

While the license was in the name of Thomas Malone, the following charges were brought against him:

(1) Licensee falsely answered "No" to Question 28 in his application which asks, "Has any individual.....other than the applicant, any interest directly or indirectly in the license applied for or in the business to be conducted under said license?", in violation of R. S. 33:1-25.

(2) The licensee knowingly aided and abetted E. Joseph Malone, a non licensee, to exercise the rights and privileges of his license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

Before the hearing in the case the license was transferred to Thomas Malone and E. Joseph Malone. Accordingly, the following charge was then brought against the joint licensees:

> "From in or about May 1939 and until May 13, 1942, E. Joseph Malone, a non licensee, exercised the rights and privileges of plenary retail consumption license C-168 then held by Thomas Malone, in violation of R. S. 33:1-26."

The licensees plead guilty to all the charges.

The facts are that from the inception of the business Thomas and E. Joseph Malone, who are brothers, were partners. E. Joseph Malone invested money in the business and received profits therefrom. He considered himself a partner in the business and was so recognized by his brother. E. Joseph Malone had, at the time of the commencing of the business, been employed by the Central Railroad for twenty-two years and did not wish his connection with the liquor business known for fear it might meet with the disapproval of his employers.

It appears from the investigation made herein that both partners were qualified to hold a license.

The transfer of the license to both the Malones has now corrected the "front." In view of this fact and the frank admission of guilt of the licensees, I shall impose the minimum ten day penalty. See Re Pousenc, Bulletin 492, Item 3, and Re Oasis Tavern, Bulletin 506, Item 7. I direct attention to my remarks in Bulletin 512, Item 9, wherein I stated:

> "Fair warning is hereby given that, in all disciplinary cases involving a 'front' created or continued after July 1, 1942, the penalty will be outright revocation of the license or suspension for a period of time as will adequately punish the violator and break up the practice."

Since there are not sufficient days left in the current licensing year (which ends June 30) for the ten-day suspension to be served, I shall suspend the license presently held by Thomas Malone and E. Joseph Malone for the balance of its term and shall direct that any license issued to them, or anyone else, for the premises in question for 1942-43 be under suspension until the full period of ten days have elapsed.

Accordingly, it is, on this 25th day of June, 1942,

ORDERED, that Plenary Retail Consumption License C-168, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Thomas Malone for 65 Orchard Street, Elizabeth, and transferred during the pendency of these proceedings to Thomas Malone and E. Joseph Malone, for the same premises, be and the same is hereby suspended for the balance of its term, effective June 29, 1942, at 2:00 A.M.; and it is further

ORDERED, that if any license be issued to these licensees, or other person, for the premises in question for the 1942-43 fiscal year, such license shall be under suspension until 6:00 A.M. July 9, 1942.

ALFRED E. DRISCOLL,
Commissioner.

5. APPELLATE DECISIONS - O'HANLON v. NEWARK.

MABEL O'HANLON, trading as GREEN DOOR TAVERN,

Appellant,

-vs-

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

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Morris Masor, Esq., Attorney for Appellant.
Louis A. Fast, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the revocation of appellant's tavern (i.e., plenary retail consumption) license for 38 Kitchell Street, Newark.

Respondent revoked this license after finding appellant guilty of the following violations:

(1) Serving alcoholic beverages to intoxicated persons at the tavern, in violation of Rule 1 of State Regulations 20.

(2) Permitting a known prostitute there, in violation of Rule 4 of State Regulations 20.

(3) Permitting disturbances, in violation of Rule 5 of State Regulations 20.

(4) and (5). Selling and serving alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations 20.

By stipulation of counsel, the appeal is being decided on the transcript of evidence taken below. See Rule 8 of State Regulations 14; Starr v. Clementon, Bulletin 381, Item 2.

The evidence will be considered in the order of the alleged violations.

As to (1) - viz., serving intoxicated persons: The most conclusive evidence on this charge relates to a Mrs. Kathryn Bal.

This woman first visited the tavern in January or February last. On that occasion, after having been drinking at home, she, (in her own words) "wound up" at the tavern and was there served some fifteen rounds of whiskey, all being paid for by various male patrons. Totally drunk by closing time (3:00 A.M.), she was taken to the licensee's living quarters over the tavern by "Millie", the licensee's sister, and put to bed.

A week and a half later Mrs. Bal returned to the tavern and spent three days on the premises continuously drinking. Each day she was served some twenty rounds of whiskey, which male patrons bought for her; at each closing time she was carried upstairs

"practically paralyzed drunk"; and on each successive day was permitted to reinstate herself at the tavern and repeat the same sordid performance.

After this three-day episode Mrs. Bal returned to the tavern on March 10th and, on this occasion, similarly spent four days at the tavern continuously drinking. Here again she was served round after round of drinks, which male patrons bought for her, and at each closing time was brought upstairs totally drunk. Eventually, on complaint of Mrs. Bal's eighteen year old daughter, the Newark Police, at 11:00 P.M. March 14th, arrested Mrs. Bal as she was being led from the tavern by a friend. The police found her "helplessly under the influence of liquor", "hysterical and raving" and "very filthy."

The testimony of the licensee and her bartender in no way shakes this sordid story. From the evidence I entertain no doubt that Mrs. Bal was, on all these occasions of drunken carousal, persistently served while obviously intoxicated. Nor do I entertain doubt that she was permitted to remain at the tavern for the unwholesome purpose of serving as a convenient "companion" for male patrons at the tavern to treat and drink with. Such venal abuse, day after day, of this woman's weakness for liquor, presents a shocking and revolting spectacle.

The licensee may not evade responsibility by her protest of illness during the occasions in question. The character and extent of Mrs. Bal's stays at the tavern could not have gone unnoticed by her. Moreover, as licensee she is strictly accountable for all violations by her employees. See Re Wallack, Bulletin 494, Item 2.

Hence, without need for inquiring into the evidence as to service to other intoxicated persons, I find that respondent's determination of guilt on this charge is wholly correct.

As to (2) - viz., permitting a known prostitute on the premises: The evidence shows that Helen Brooks first visited this tavern in January or February last and became a frequent patron there. On March 4th she was arrested at a hotel for having illicit intercourse with a man whom she claims she met outside the tavern. While out on bail in that case she was, on March 22nd, again arrested at another hotel when about to engage in illicit intercourse with a man whom she had met in the tavern.

From the surrounding circumstances in the case I may, indeed, suspect that the licensee and her night bartender were not (as they claim) wholly without knowledge of this woman's illicit activities or her "loose character." However, be such suspicion as it may, I must, in full fairness, note that there is insufficient evidence in the record to establish any actual proof of such knowledge.

Hence, respondent's determination of guilt on this charge must be reversed. See Re Foster & Clauss, Bulletin 248, Item 4; Re Silidker, Bulletin 405, Item 5.

As to (3) - Permitting disturbances at the tavern: It appears that on one occasion the night bartender (Adam Johnson) had an altercation with the licensee; that on another occasion he had an argument with a patron; that in at least one instance the licensee had to take his place at the bar because he had over-imbibed; and that on various occasions he was apparently boisterous.

While these incidents may not speak well of the desirability of this man as a bartender, nevertheless there is no evidence that any of these incidents was attended with any actual disturbance.

Accordingly, the respondent's determination on this charge must likewise be reversed.

As to (4) and (5) - viz., selling and serving minors: The minors in question are Mary Ann Wojcik, aged seventeen, and Regina Lukaszewska, aged eighteen, both of whom visited the tavern together on some six occasions since last February. Their testimony shows that on their first three visits they were served beer by the night bartender without any question being raised as to their ages. On the fourth occasion (March 13th), after they had already been served beer, the licensee's sister ("Millie") asked them to sign a slip representing themselves to be of age. Both minors complied, although using false names. When Regina exhibited reluctance before signing, the licensee's sister (perhaps to allay any fear on the part of the minor about getting into trouble for misrepresenting her age) assured her, "Don't worry. We have the money to back it up." The girls visited the tavern on apparently two subsequent occasions and were served beer on at least the last visit (April 2nd), when they were detected by the Newark Police.

Although the licensee and her night bartender claim that actually no beer was served to these minors at any time before they signed the slips, the girls' story adequately convinces me of the contrary.

Hence, even were the signing of the slips to constitute a defense under R. S. 33:1-77 for any alcoholic beverages served to these minors thereafter, the licensee is fully responsible for the service of the beer which had been served to them on the prior occasions.

Moreover, from the remark of the licensee's sister when prevailing upon the minors to sign these slips, I conclude that she actually knew or suspected they were minors. Such being the fact, these signed slips can present no defense whatsoever even as to the drinks which were served thereafter. See R. S. 33:1-77.

Accordingly, I find respondent's determination of guilt on these two charges to be well taken.

Since, in net, I am thus sustaining respondent's determinations of guilt on (1), (4) and (5), but not (2) and (3), the question arises as to whether I should therefore modify the penalty of revocation which was imposed in the case.

This question may be given short shrift. Even disregarding the violation of sale and service to the minor (as aggravated by the attempted fraud in procuring the age slips), the callous and sordid nature of the violation as to sale to intoxicated persons amply warrants outright revocation.

Hence, respondent's action in revoking this license is, on the basis of the foregoing, affirmed.

Accordingly, it is, on this 25th day of June, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

6. MORAL TURPITUDE - THE CRIME OF BURGLARY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - APPLICANT FAILED TO DISCLOSE PREVIOUS RECORD IN APPLICATION FOR EMPLOYMENT PERMIT - FACTS EXAMINED - APPLICATION DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 222

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1928 petitioner, a Chilean alien, was convicted of assault and battery and sentenced to serve ten months in the county workhouse. In 1932 he was convicted of burglary and sentenced to serve a year and a day in the county workhouse. The first conviction resulted from the complaint of a young girl that petitioner attempted to attack her. The second conviction involved the burglary of a clothing store and a jewelry shop. In consequence, the petitioner had some trouble with the immigration authorities.

The crime of burglary, per se, involves moral turpitude. See Re Case No. 140, Bulletin 455, Item 2. Hence petitioner is disqualified from holding a liquor license or working for a liquor licensee in this State (R. S. 33:1-25, 26), in addition to being disqualified from handling alcoholic beverages because of his alienage.

Nevertheless, in 1941, in the course of a routine investigation of a tavern by investigators of this Department, petitioner was found working there as a chef. In consequence of their visit, he applied for a special employment permit, but did not reveal therein any of his aforesaid convictions. In his pending application for a special employment permit for the current year, he disclosed his conviction of breaking and entering, but did not disclose his conviction of assault and battery.

Advised that he is disqualified by reason of his convictions from being so employed, petitioner now seeks removal of his disqualification, pursuant to R. S. 33:1-31.2.

Petitioner testified that he left Chile in 1924 and came to this State, where he has since resided; that, at first, he worked on and off as a laborer at various plants, but that during the past nine years he worked for a short time on W. P. A. projects, then was out of work for a number of years, and, for the four years last past, has worked as a chef at the tavern in question.

The crimes of which petitioner was convicted are serious in nature. For five out of the past nine years since his release from prison, he was, for the most part, out of employment and without any apparent income. His failure to reveal his convictions in his applications for the special permits places him in an unfavorable light, irrespective of whatever excuses he now offers.

The two character witnesses who testified in petitioner's behalf do not help his case, because they know him merely from casual contacts. Obviously, their testimony is insufficient to

establish that petitioner has reformed and has become a credit to the community.

Accordingly, despite the fact that petitioner has not been convicted of any crime in the past five years, the evidence does not convince me that petitioner's association with the alcoholic beverage industry will not be contrary to the public interest. Hence I shall not, at this time, exercise my discretionary power to lift his disqualification.

The petition is therefore denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: June 27, 1942.

7. ELIGIBILITY - LARCENY OF AUTOMOBILE BY SIXTEEN YEAR OLD BOY DID NOT INVOLVE MORAL TURPITUDE - NO PREVIOUS OR SUBSEQUENT RECORD - APPLICANT HELD NOT DISQUALIFIED.

June 27, 1942

Re: Case No. 438

The applicant seeks a determination as to whether or not he is disqualified from obtaining a solicitor's permit because he was convicted of larceny of an automobile.

At the hearing the applicant admitted that he was convicted of larceny of an automobile in 1931 and was sentenced to three months in the workhouse in Camden County. The incident for which he was arrested and convicted took place when he was sixteen years of age.

The applicant testified that he and another friend were picked up by a mutual friend who had the stolen car and were invited for a ride. The friend said that the car belonged to his uncle. Later the applicant was invited to drive the car and was operating it when the three were apprehended. He further testified that until notified by this Department, he was under the impression that he had been incarcerated for driving without a license and did not realize that he was found guilty of larceny of an automobile. He is employed as a driver by a State Beverage Distributor licensee. He has a clean record and was not in trouble before this incident nor has he been in trouble since that time. He made a very favorable impression upon me at the hearing. Following the rule laid down in Re Case No. 233, Bulletin 273, Item 8, I believe that his youthfulness at the time of the offense should be taken into consideration and that his misconduct was more in the nature of youthful folly than that of a criminal act. I therefore find that under the circumstances I do not deem the offense to be a crime involving moral turpitude.

It is recommended that he be advised that he is eligible to be employed by a liquor licensee.

Herbert F. Myers, Jr.,
Legal Assistant.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

8. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF $100.00 - LICENSED PREMISES CLOSED FOR 11 DAYS - PETITION TO LIFT GRANTED.

In the Matter of the Petition by)

JOHN G. POWELL,)
T/a POWELL BEER GARDEN,)
N. E. Corner Pine St. and State Highway Route 6,)
Mine Hill, N. J.,)

to Lift the Automatic Suspension of Plenary Retail Consumption License C-1 Issued by the Township Committee of the Township of Mine Hill.)

CONCLUSIONS AND ORDER

George M. Passmonick, Attorney for Petitioner.

BY THE COMMISSIONER:

On June 15, 1942, the licensee pleaded guilty to an indictment by the Morris County Grand Jury for selling alcoholic beverages to minors in violation of R. S. 33:1-77, and on the same day he was sentenced in the Morris County Court of Quarter Sessions to pay a fine of $100.00. On June 18, 1942 investigators of this Department visited the licensed premises and picked up the license, which was suspended automatically by virtue of the provisions of R.S.33:1-31.1.

Licensee has filed a petition praying that the automatic suspension be lifted and the license restored.

The records of this Department disclose that the violation consisted in the sale of beer to three minor boys, one twenty years of age and the other two eighteen years of age. When apprehended, the licensee claimed that he had at some time in the past questioned one of the eighteen year old boys as to his age and was assured by the boy that he was over twenty-one. The other two boys were served without question as to their ages. In disciplinary proceedings conducted by the Mine Hill Township Committee prior to the licensee's guilty plea to the indictment, the licensee was found not guilty of charges of sale of alcoholic beverages to minors in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

Department records indicate that the licensee has held a license for the past six years and that this is his first violation of record. The reports of our investigators do not indicate that the violation was in any way aggravated or that the minors involved were so youthful in appearance that they could not reasonably be mistaken for adults.

By virtue of the statutory automatic suspension, the license has already been suspended since June 18th -- a period of eleven days. Under the circumstances, the suspension appears to be adequate punishment for the violation in view of the additional fact that the licensee has paid a fine of $100.00.

Accordingly, it is, on this 29th day of June, 1942,

ORDERED, that the statutory automatic suspension of Plenary Retail Consumption License C-1, heretofore issued to John G. Powell for premises northeast corner Pine Street and State Highway #6 by the Township Committee of the Township of Mine Hill, be and the same is hereby lifted, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF $100.00 - LICENSED PREMISES CLOSED FOR 17 DAYS (LICENSE SUSPENDED FOR 6 DAYS BY LOCAL ISSUING AUTHORITY FOLLOWING DISCIPLINARY PROCEEDINGS) - PETITION TO LIFT GRANTED.

In the Matter of the Petition by)

ARTHUR GLASS,)
T/a MINE HILL TAVERN, CONCLUSIONS
Randolph Avenue,) AND ORDER
Mine Hill Township,
P.O. R.D. #2, Dover, N. J.,)

to Lift the Automatic Suspension)
of Plenary Retail Consumption
License C-4 issued by the Town-)
ship Committee of the Township of
Mine Hill.)

Edward A. Quayle, Jr., Attorney for Petitioner.

BY THE COMMISSIONER:

On June 15, 1942 the licensee pleaded guilty to an indictment by the Morris County Grand Jury for selling alcoholic beverages to minors in violation of R. S. 33:1-77, and on the same day he was sentenced in the Morris County Court of Quarter Sessions to pay a fine of $100.00. On June 18, 1942 investigators of this Department visited the licensed premises and picked up the license which was suspended automatically by virtue of the provisions of R.S. 33:1-31.1.

Licensee has filed a petition herein praying that the automatic suspension be lifted and the license restored.

The records of this Department disclose that the violation consisted in the sale, on September 6, 1941, of a glass of beer and three Tom Collins to an eighteen year old girl and the sale, on October 31, 1941, of a glass of beer to each of two boys, age twenty and seventeen. In disciplinary proceedings conducted by the Mine Hill Township Committee prior to the indictment, the licensee pleaded guilty and his license was suspended for six days.

Department records indicate that the licensee has held a license for the past four years and that this is the licensee's first violation of record. The reports of our investigators do not indicate that the violation was in any way aggravated or that the minors involved were so youthful in appearance that they could not reasonably be mistaken for adults.

By virtue of the statutory automatic suspension, the license has already been suspended since June 18th -- a period of eleven days. The previous suspension of six days imposed by the Township Committee for the same offense makes the total suspension seventeen days. Under the circumstances, that suspension appears to be adequate punishment for the violation in view of the additional fact that the licensee has paid a fine of $100.00.

Accordingly, it is, on this 29th day of June, 1942,

ORDERED, that the statutory automatic suspension of Plenary Retail Consumption License C-4, heretofore issued to Arthur Glass for premises on Randolph Avenue by the Township Committee of the Township of Mine Hill, be and the same is hereby lifted, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF OTHERS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)
)
FRANCES MITCHELL,)
T/a SEVEN GABLES,) CONCLUSIONS AND ORDER
Highway #6,)
Mt. Olive Township, N. J.,)
)
Holder of Plenary Retail Consumption License C-17, issued by the Township Committee of Mount Olive Township.)
- - - - - - - - - - - - - - - - - - -)

Abraham Merin, Esq., Attorney for State Department of Alcoholic Beverage Control.
No appearance on behalf of defendant-licensee.

BY THE COMMISSIONER:

Licensee was served with charges alleging that (1) she falsified her license application by denying that anyone other than herself was interested in her license or the business conducted thereunder, whereas Everett L. Wambold had such interest, in violation of R. S. 33:1-25; and (2) she permitted the said Everett L. Wambold to exercise the privileges of her license contrary to R. S. 33:1-26 and in violation of R. S. 33:1-52.

The licensee failed to appear at the hearing to answer the above charges.

When first approached, the licensee told the investigators of this Department that she had bought the business covered by the license with money left to her by her father. Later the licensee admitted, in a signed statement, that one Everett Wambold had advanced all the money invested in the business and that she was under agreement to repay half of the amount so advanced. During the operation of the business, Wambold, together with his wife, worked on the licensed premises. He acted in the capacity of bartender and manager and his wife did the cooking and cleaning about the place. Wambold received a salary of approximately $20.00 a week.

In effect he was a partner in the business since only half of the money invested was to be paid back to him. It appears that at a subsequent time the licensee did pay back the full amount to Wambold, making a payment of $648.00 in cash and check and giving a promissory note to Wambold for $1348.00. By this transaction Mrs. Mitchell apparently became the sole owner of the business covered by the license. I must conclude that the defendant-licensee is guilty as charged. The license will be revoked.

Prior to the hearing the licensee, in a letter directed to me, advised that the business had been terminated. This statement was substantiated by testimony of the investigators that the place of business had been closed some time prior to the hearing.

Accordingly, it is, on this 29th day of June, 1942,

ORDERED, that Plenary Retail Consumption License C-17, heretofore issued to Frances Mitchell, t/a Seven Gables, by the Township Committee of Mount Olive Township, for premises at Highway #6, Mount Olive Township, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

11. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

June 29, 1942

Re: Case No. 442

This proceeding is to determine whether applicant for a solicitor's permit is disqualified therefrom by reason of a conviction of a crime involving moral turpitude. R. S. 33:1-25, 26.

In 1934 applicant, then about twenty years of age, was convicted of rape, involving a girl thirteen years of age. She had given birth to a child, and applicant was ordered to pay for its support. This was the only penalty imposed upon the applicant.

The Prosecutor of the Pleas reports that the offense apparently was not considered by the court, or his predecessor in office, to be as serious as the name connotes; that the girl in the case, as indicated by the file, was of poor reputation and of easy virtue; that the fact that she was below the statutory age placed applicant in a position of technical guilt.

Giving full weight to these facts, nevertheless the girl was but a mere child. No matter what her character was, or whether applicant was merely guilty of statutory rape, his offense involved moral turpitude. Cf. Re Case No. 284, Bulletin 343, Item 12; Re Case No. 190, Bulletin 222, Item 15.

It is therefore recommended that the applicant be advised that he is ineligible for employment by a liquor licensee in this State, and that his pending application for a solicitor's permit is denied.

Harry Castelbaum,
Attorney.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED AND PERMITTING THE CONSUMPTION OF SAME ON LICENSED PREMISES IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)
)
FRED TRAVERSO,)
1211 Springwood Avenue,) CONCLUSIONS
Asbury Park, N. J.,) AND ORDER
)
Holder of Plenary Retail Consumption License C-67, issued by the City Council of the City of Asbury Park.)
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William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.
No appearance on behalf of defendant-licensee.

BY THE COMMISSIONER:

The defendant-licensee failed to appear in answer to charges duly served upon him alleging that (1) on April 2, 1942 he served and delivered alcoholic beverages to a person or persons actually or apparently intoxicated and permitted the consumption of the same by such a person upon his licensed premises, in violation of Rule 1 of State Regulations No. 20; (2) he falsified his license application by denying that anyone other than himself was interested in his license or the business conducted thereunder, whereas in truth and fact Carmine Vetrano had such interest, said false statement being in violation of R. S. 33:1-25; and (3) he permitted the said Carmine Vetrano, a non-licensee, to exercise the rights and privileges of his license contrary to R. S. 33:1-26 and in violation of R. S. 33:1-52.

The record before me discloses that on April 2, 1942, two soldiers stationed at Fort Monmouth entered the licensed premises, and, notwithstanding their apparent intoxication, were served alcoholic beverages which they consumed upon the premises. The soldiers in question were in uniform. Rule 1 of State Regulations No. 20 reads as follows:

> "No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

It is an unpatriotic act for a licensee or anyone else to sell, serve or give alcoholic beverages to a man in the uniform of his country who is at the time actually or apparently intoxicated. I can imagine few more contemptible or dangerous activities. Those who violate the regulation previously cited are a menace to our national security.

On one or more occasions we have stated that we would not tolerate the sale of alcoholic beverages to men in uniform where they were actually or apparently under the influence of liquor. We meant exactly what we said. The licensee is guilty as charged. The license in this case will therefore be revoked and the licensee thereby disqualified from holding or receiving any other license for a period of two years. This admittedly harsh penalty is entirely warranted under the circumstances. This country is at war. It is the duty of licensees as well as of civilians generally to protect rather than to harm members of our armed forces. Licensees who either fail to recognize this duty or to assume the full measure of responsibility with respect thereto will not be permitted to continue in business in this State.

As to charges (2) and (3), the record discloses that the licensee obtained the license in his name for one Carmine Vetrano with the understanding that upon securing same he was to be given a job as a bartender. This understanding was carried out and the licensee has tended bar at the licensed premises since the issuance of the license. The licensee, in a signed statement, admitted that he had no financial interest in the business but held the license in his name for Vetrano. Presumably, the reason for this front was because Vetrano, not being a citizen of the United States, was disqualified from obtaining a liquor license. R. S. 33:1-25. If the finding of guilt on charge (1) did not warrant the revocation of the license, defendant's guilt as to charges (2) and (3) would.

Accordingly, it is, on this 29th day of June, 1942,

ORDERED, that Plenary Retail Consumption License C-67, issued to Fred Traverso by the City Council of the City of Asbury Park, for premises 1211 Springwood Avenue, Asbury Park, be and the same is hereby revoked, effective immediately.

Alfred E. Driscoll

Commissioner.