

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

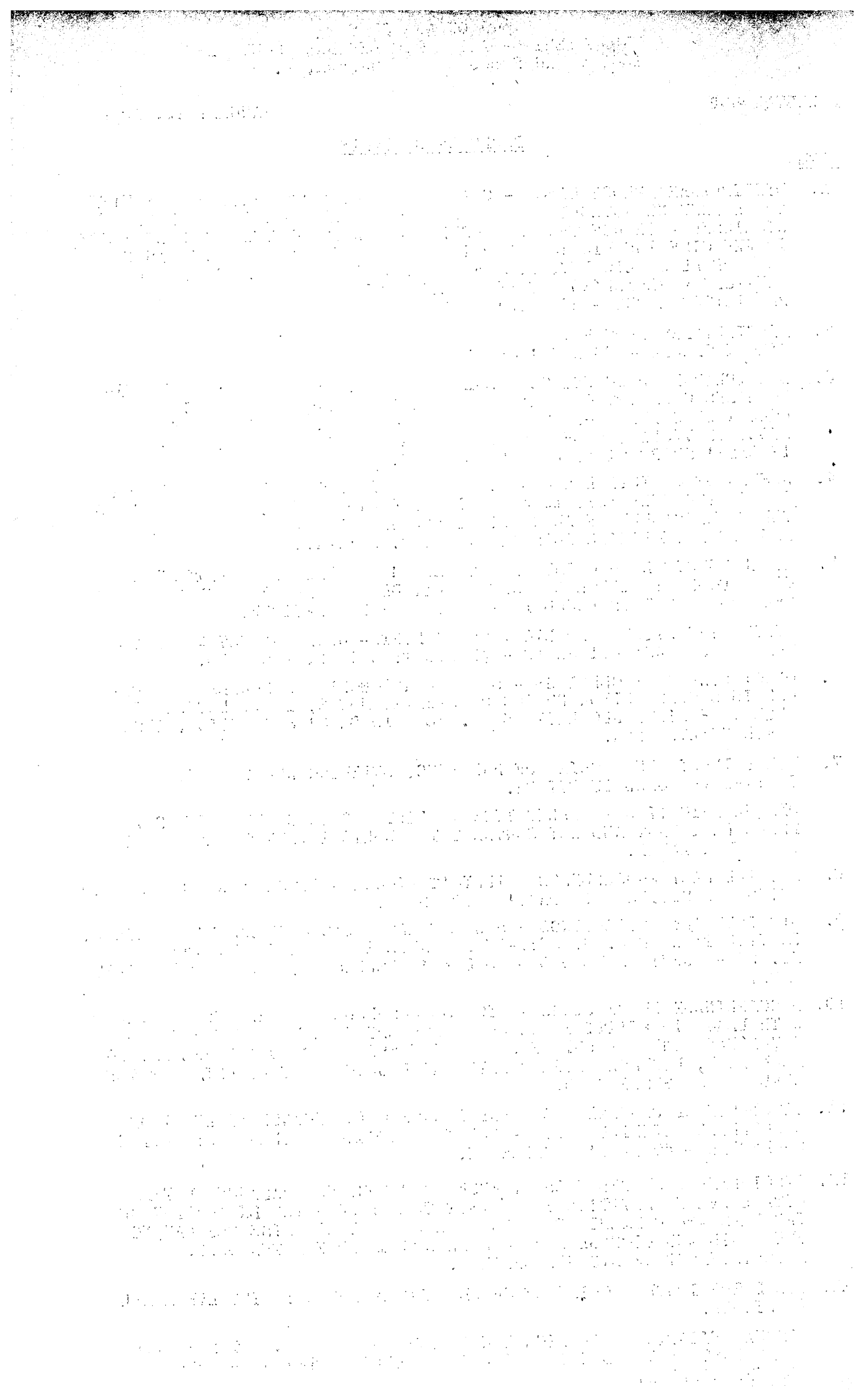
BULLETIN 602

JANUARY 19, 1944.

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

BULLETIN 602

JANUARY 19, 1944.

- 1. DISCIPLINARY PROCEEDINGS - CHARGE THAT LICENSEE FAILED TO NOTIFY LOCAL ISSUING AUTHORITY OF CHANGE OF INTEREST IN THE LICENSE DISMISSED - CHARGE THAT LICENSEE AIDED AND ABETTED A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE DISMISSED - SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE LICENSED PREMISES - REFILLING - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - 40 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

KATHERINE KOSZARECKI, EXECUTRIX)
OF THE ESTATE OF PETER KUCHARSKI)
T/a PETE'S CAFE)
699 Central Avenue)
Camden, N. J.,)

Holder of Plenary Retail Consumption License C-85 for the licensing year expiring June 30, 1942, and holder of C-198 for the 1942-43 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden and transferred during the pendency of these proceedings to)

CONCLUSIONS AND ORDER

KATHERINE KOSZARECKI,)
now holder of Plenary Retail Consumption License C-34 for the current (1943-44) licensing year for the same premises.)
-----)

Frank M. Lario, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant was served with charges which, in substance, allege:

(1) She failed to notify the Camden Municipal Board of Alcoholic Beverage Control that Yates D. Fetterman had acquired an interest in her license.

(2) She permitted the said Yates D. Fetterman to exercise the rights and privileges of her license.

(3) She sold alcoholic beverages off her licensed premises.

(4), (5) and (6). On three separate occasions, she refilled whiskey bottles and sold such whiskey.

(7) On three separate Sundays, she sold alcoholic beverages during prohibited hours.

The defendant pleaded not guilty to charges (1) and (2), and nolo contendere to the remaining charges.

As to (1) and (2): The theory of the state's case is that, by virtue of an agreement entered into on November 26, 1941 between the defendant and one Yates D. Fetterman, the latter was thereby constituted a partner in the defendant's license and business conducted thereunder. After carefully reviewing all of the testimony and exhibits, I have reached the conclusion that the relationship between the parties remained throughout their association merely that of employer and employee. I find that the prosecution has failed to sustain the burden of proving that Yates D. Fetterman had an unlawful interest in the defendant's license or the business conducted thereunder and, therefore, charges (1) and (2) must be dismissed.

As to the remaining charges: On Sunday, January 18, 1942, an investigator of the Department of Alcoholic Beverage Control approached the licensed premises, where he observed Yates D. Fetterman standing in the front doorway, which was open. The investigator told Fetterman he desired to buy a pint of Wilson whiskey. Fetterman entered the tavern and instructed Raymond Lehman, a bartender, to fill an empty pint bottle, which was labeled "Kessler's Private Brand", with whiskey poured from a quart bottle labeled "Wilson 'That's All' Whiskey." It was then about 1:30 P.M. Lehman handed the filled bottle to Fetterman, who delivered and sold it for \$1.55 to the investigator on the sidewalk adjacent to the licensed premises, where the latter had remained during the entire transaction.

On the following Wednesday, January 21, 1942, the investigator entered the tavern at about 1:45 P.M. and observed Lehman behind the bar and Fetterman sitting on a stool. The investigator, after buying two glasses of Wilson whiskey, asked for a pint of the same and Lehman proceeded to fill an empty wine bottle with Wilson whiskey poured from a quart bottle. Lehman handed the filled pint bottle to the investigator, who paid him \$1.55.

On Sunday, January 25, 1942, the investigator returned to the licensed premises, accompanied by another investigator of the Department. Observing that the front door was shut, they approached the side entrance and knocked on the door, which was opened by Lehman. Upon entering the tavern they observed two men drinking beer at the bar, with Fetterman in charge of the premises. It was then about 1:30 P. M. The investigators bought four glasses of whiskey and a bottle of beer which were served to them at the bar by Lehman. One of the investigators asked for a dollar's worth of Wilson whiskey. Lehman poured a quantity of Wilson whiskey from a quart bottle into an empty pint bottle labeled "Trader Post Whiskey", which was closed with a cap and handed to the investigator, who paid him a dollar.

On the following Sunday, February 1, 1942, these investigators again visited the tavern and, after knocking on the side door, were again admitted by Lehman. They observed two men drinking beer at the bar. Fetterman was in the barroom but left soon after they entered. The investigators bought four glasses of Wilson whiskey and a bottle of beer from Lehman, who served them at the bar. It was then about 3:00 o'clock in the afternoon.

The defendant was not on the licensed premises at the time of any of these occurrences. She testified that, upon learning of the infractions, she immediately discharged Fetterman. Although her action in promptly discharging her unfaithful employee is to be commended, she may not escape the consequence of his conduct, committed as manager of her premises. It is axiomatic that, as a licensee, she is held to strict accountability for the acts of her agents and employees while they are acting on her behalf.

Had the defendant been found guilty of the first two charges, the license, in view of the seriousness of the repeated violations involved in charges (3) to (7) inclusive, would have been revoked outright. Under all of the circumstances, and giving due weight to the defendant's lack of personal participation in any of the unlawful sales, I shall suspend the license for a period of forty days.

Although this case was instituted during the licensing term which expired June 30, 1942, it does not abate but remains fully effective against the license held by the defendant for the current (1943-44) term. State Regulations No. 15.

Accordingly, it is, on this 6th day of January, 1944,

ORDERED, that Plenary Retail Consumption License C-34, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Katherine Koszarecki for premises 699 Central Avenue, Camden, and the same is hereby suspended for forty (40) days, commencing at 2:00 A.M. January 12, 1944 and terminating at 2:00 A.M. February 21, 1944.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - AGGRAVATING CIRCUMSTANCES - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against JOSEPH JOHN KUREMSKY, 601 Second Street, Trenton, N. J., Holder of Plenary Retail Consumption License C-262 issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Joseph John Kuremsky, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded non vult to a charge alleging that, on September 29, 1943, he possessed one 4/5th quart bottle labeled "Wilson 'That's All' Blended Whiskey 86.8 Proof", one 4/5th quart bottle labeled "Four Roses, A Blend of Straight Whiskies 90 Proof", one quart bottle labeled "Old Methusalem Brand, A Blend of Straight Whiskies 92 Proof", and one 4/5th quart bottle labeled "Kessler's Private Blended Whiskey, 85 Proof", all of which contained alcoholic beverages which were not genuine as labeled, in violation of R. S. 33:1-50.

The file discloses that, on September 29, 1943, an ABC investigator tested twenty-one opened bottles and seized the four bottles mentioned in the charge. Subsequent analyses by the departmental chemist disclosed that the contents of the seized bottles were, respectively, 11.6, 5.5, 5 and 3.8 points under proof, and that one of the bottles which was supposed to contain artificially colored whiskey actually contained a naturally colored whiskey. In a statement given to a departmental investigator on September 30, 1943, licensee said:

"On occasion, when I had a small quantity of liquor in a bottle, I would pour this whiskey in the handiest bottle found open (sometimes it would be straight whiskey and sometimes blend) without regards to their proof. I did not do it with intention of violating the law but just to get rid of small left-overs. Of course, I know I cannot refill."

It is difficult to understand how the licensee could believe that his action did not constitute a refilling of the seized bottles. By his action he perpetrated a fraud upon his customers.

As to penalty: The licensee has no prior record. However, where a licensee performs or authorizes or acquiesces in the performance of the "refill", the penalty must and will be severe. Re Dilzer, Bulletin 585, Item 4. I shall, therefore, suspend the license for a period of twenty days.

Accordingly, it is, on this 6th day of January, 1944,

ORDERED, that Plenary Retail Consumption License C-262, issued by the Board of Commissioners of the City of Trenton to Joseph John Kuremsky for premises 601 Second Street, Trenton, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 A.M. January 12, 1944 and terminating at 2:00 A.M. February 1, 1944.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - FAILURE TO DISPLAY "HOURS" SIGN, IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 38 - 17 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
WALTER SAMUEL HAND
51 North Main Street
Woodstown, N. J.,
Holder of Plenary Retail Consumption License C-4 issued by the Borough Council of the Borough of Woodstown.

CONCLUSIONS
AND ORDER

Burton D. Zehner, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleads non vult to the following charges:

- (1) That on Saturday, November 20, 1943, at about 10:40 P.M., he sold and delivered, and allowed,

permitted and suffered the sale and delivery of one 4/5th pint bottle of wine, and three twelve-ounce bottles of beer, and at approximately the same time he further permitted and suffered the sale and delivery of two one-quart bottles of beer, at retail prices, in their original containers, for consumption off the licensed premises, thereby violating Rule 1 of State Regulations No. 38 which prohibits any such type of sale after 10:00 P.M. on any weekday;

- (2) That on the same date he failed to keep prominently displayed, on or near the entrance to his licensed premises and clearly visible from the exterior, a sign not less than 10 x 12 inches by size, stating clearly and legibly the legal hours during which the sale of alcoholic beverages in original containers for off-premises consumption is permitted, thereby violating Rule 3 of State Regulations No. 38.

The reports of the ABC investigators disclose that, on the date in question, two agents of the Department entered the licensed premises, and that one of these agents purchased a 4/5th pint bottle of wine and three bottles of beer while the other agent purchased two one-quart bottles of beer, all for consumption off the licensed premises. Although the licensee was present at the time, these purchases were made from employees.

The investigators further report that a sign was not displayed upon the licensed premises as required by Rule 3 of State Regulations No. 38.

The minimum penalties for violations of Rules 1 and 3 of State Regulations No. 38 are fifteen days and two days, respectively. See Re Starn, Bulletin 593, Item 9. In the absence of any aggravating circumstances, the minimum penalty will be imposed. Therefore, the license will be suspended for a period of seventeen days on the two charges, less remission of five days for the plea of non vult, leaving a net suspension of twelve days.

Accordingly, it is, on this 7th day of January, 1944,

ORDERED, that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Woodstown to Walter Samuel Hand, for premises 51 North Main Street, Woodstown, be and the same is hereby suspended for twelve days, commencing at 11:00 P. M. January 13, 1944 and terminating at 11:00 P.M. January 25, 1944.

ALFRED E. DRISCOLL
Commissioner.

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

4. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST, 1943 TO DECEMBER 31ST, 1943
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 Surren- dered Revoked Expired	Number Licen- ses 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	426	\$ 162,650.51	42	\$ 16,950.00	7	\$ 700.00						475	\$ 180,300.51
Bergen	776	257,048.58	230	55,831.35	45	4,299.73	24	\$ 1,091.78	4	\$ 768.06	7	1072	319,039.50
Burlington	176	57,087.86	15	3,750.00	30	3,675.00	1	25.00			1	221	64,537.86
Camden	432	185,095.81	52	18,885.00	55	5,058.36					2	537	209,039.17
Cape May	120	52,254.63	10	2,900.00	7	698.08					1	136	55,852.71
Cumberland	77	22,900.00	8	1,785.27	26	2,750.00						111	27,435.27
Essex	1364	684,259.29	336	158,021.60	77	10,193.84	15	750.00			5	1787	853,224.73
Gloucester	105	29,642.00	10	1,600.00	5	300.00						120	31,542.00
Hudson	1522	627,791.72	264	105,220.25	47	6,027.04	43	1,675.00			4	1872	740,714.01
Hunterdon	69	17,902.80	1	300.00	1	150.00						71	18,352.80
Mercer	420	176,214.73	44	11,200.00	38	4,831.66			1	88.02	3	500	192,334.41
Middlesex	580	227,515.27	42	11,710.00	31	2,710.92	1	25.00			4	650	241,961.19
Monmouth	455	184,300.44	70	19,998.00	19	2,320.49	6	200.00	21	6,934.45	23	548	213,753.38
Morris	299	89,691.07	65	16,100.00	24	2,100.00	1	25.00	9	1,211.16	9	389	109,127.23
Ocean	156	70,514.08	22	8,575.00	6	600.00						184	79,689.08
Passaic	859	331,103.97	114	32,450.00	27	3,200.00	9	400.00	1	125.00	2	1008	367,278.97
Salem	50	15,750.00	4	550.00	10	875.00					3	61	17,175.00
Somerset	176	58,569.95	24	5,575.00	8	800.00						208	64,944.95
Sussex	132	28,488.37	11	1,550.00	3	160.00			3	364.95	3	146	30,563.32
Union	534	263,460.56	124	41,877.98	53	6,225.00	12	550.00				723	312,113.54
Warren	132	34,720.30	12	2,182.50	17	1,830.00			1	150.00	2	160	38,882.80
TOTALS	8860	\$3,576,961.94	1500	\$517,011.95	536	\$59,505.12	112	\$4,741.78	40	\$9,641.64	69	10979	\$4,167,862.43

ALFRED E. DRISCOLL, Commissioner.

Respectfully submitted,

ERWIN B. HOCK
Deputy Commissioner.

- 5. MORAL TURPITUDE - CRIME OF POSSESSING AND PASSING COUNTERFEIT MONEY FOUND TO INVOLVE MORAL TURPITUDE - CRIME OF POSSESSING AND SELLING NARCOTICS FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST NOT SHOWN - APPLICATION TO LIFT DENIED.

In the Matter of an Application)
 to remove Disqualification be-)
 cause of a Conviction, Pursuant)
 to R. S. 33:1-31.2.)

CONCLUSIONS
 AND ORDER

Case No. 304.
 -----)

BY THE COMMISSIONER:

Petitioner has been twice convicted of crimes which involve moral turpitude. In April 1929 he was sentenced to a three-month jail term after he was found guilty of possessing and passing counterfeit money. In June 1933 he pleaded guilty to the crime of sale and possession of narcotics, as a result of which he was sentenced to three years at Lewisburg Penitentiary.

Despite the disqualification resulting from such convictions (see R. S. 33:1-25, 26), petitioner, for more than five years last past, has been employed as a bartender or waiter in various licensed establishments in this state.

When questioned as to whether he had ever been arrested after his release from prison in October 1935, he answered in the negative. Further investigation made by the Department of Alcoholic Beverage Control discloses, however, that, in August 1943, he was arrested on a complaint charging him with larceny of a crate of eggs. Upon petitioner's making restitution, the complaint was withdrawn and he was released.

There can be no excuse for deliberately concealing the fact of an arrest made only three months prior to the hearing. Such concealment, in itself, warrants a denial of any relief to petitioner. Cf. Re Case No. 166, Bulletin 481, Item 3; Re Case No. 180, Bulletin 504, Item 5; Re Case No. 173, Bulletin 504, Item 7; Re Case No. 184, Bulletin 506, Item 5; Re Case No. 239, Bulletin 557, Item 4. Moreover, I am not satisfied that he was unaware that he was not eligible to be employed on licensed premises in this state because of his convictions.

Hence, without further consideration of the merits of the application, the present petition is denied.

ALFRED E. DRISCOLL
 Commissioner.

Dated: January 7, 1944.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

MARY JANE EGIDI)
T/a MARY HUBBARD INN)
115 White Horse Pike)
Berlin, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Berlin.)

-----)
Mary Jane Egidi, Pro Se.)
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.)

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge alleging that, on Saturday, November 27, 1943, at about 10:40 P.M. and again at about 10:45 P.M., she sold on each occasion a bottle of wine for consumption off her licensed premises, in violation of Rule 1 of State Regulations No. 38.

The licensee offers as an excuse that she "was not thinking at the time", although both sales were made within five minutes of each other. This explanation does not present an adequate defense.

The licensee does not have a prior record of having violated the Alcoholic Beverage Control Law or the regulations. In view of this fact, the usual penalty of fifteen days' suspension will be imposed. Five days will be remitted for the plea, leaving a net penalty of ten days. See Re Gattuso, Bulletin 587, Item 1.

Accordingly, it is, on this 7th day of January, 1944,

ORDERED, that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Berlin to Mary Jane Egidi, t/a Mary Hubbard Inn, for premises 115 White Horse Pike, Berlin, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A.M. January 17, 1944 and terminating at 2:00 A.M. January 27, 1944.

ALFRED E. DRISCOLL
Commissioner.

7. MORAL TURPITUDE - CRIME OF BREAKING, ENTERING AND LARCENY FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)
Case No. 311.)
-----)

CONCLUSIONS
AND ORDER

BY THE COMMISSIONER:

Petitioner was convicted of petty larceny in 1930, breaking, entering and larceny in 1932, and gambling in 1938. He received a jail sentence only on the 1932 conviction and was incarcerated from November 1932 to August 1933. For more than five years last past petitioner has neither been arrested nor convicted of any crimes. The Chief of Police of the municipality in which petitioner resides has advised that there are no complaints or investigations pending against him.

Petitioner's conviction of the crime of breaking, entering and larceny involves the element of moral turpitude. Re Case No. 298, Bulletin 590, Item 6.

Petitioner has been employed as a presser for a wholesale clothing concern for more than eight years. He is married and lives with his wife and one child.

Three reputable citizens appeared as character witnesses on petitioner's behalf. They have all known him for upwards of seven years and all testified that petitioner has a good reputation in his community for being honest and law-abiding. From the entire record, it affirmatively appears that petitioner has conducted himself in a law-abiding manner for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 7th day of January, 1944,

ORDERED, that petitioner's statutory disqualification resulting from the convictions described herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, ACIDS AND SOLIDS - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
 OTTO BECKER
 254 North Avenue
 Dunellen, N. J.,
 Holder of Plenary Retail Consumption License C-12 issued by the Mayor and Borough Council of the Borough of Dunellen.

CONCLUSIONS AND ORDER.

Henry Handelman, Esq., Attorney for Defendant-Licensee.
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"On October 23, 1943 you possessed illicit alcoholic beverages at your licensed premises, viz., two 4/5th quart bottles labeled 'Carstairs White Seal Blended Whiskey 86.8 Proof', which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On October 23, 1943 Junior Inspector Evans of the Alcohol Tax Unit, Internal Revenue Service, tested 114 opened bottles upon defendant's premises and seized the two bottles mentioned in the charge. Subsequent analysis by a Federal chemist disclosed that the contents of the seized bottles were approximately 3° lower in proof and slightly lower in acids than the contents of a genuine sample of the same product. The analysis disclosed also that the whiskey in the seized bottles contained approximately three times the amount of solids found in a genuine sample of the same product. The alcoholic beverage in each of the seized bottles constitutes an illicit beverage because the container bears a label which does not truly describe its contents. R. S. 33:1-88.

In mitigation defendant alleges that he has been conducting a licensed business in Dunellen for the past five years and that there has never been any previous complaint of any kind filed against him. He further alleges that his employees deny any tampering with the liquor and that he does not have any reason to suspect any particular one. He does state, however, that he has recently enlarged his premises and, as a result thereof, has required additional help.

Despite the personal innocence of a licensee, however, he must be held strictly responsible for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2. The minimum penalty which has been imposed in numerous cases involving "refills" found upon licensed premises consists of a suspension of the license for a ten-day period. Re Baratta, Bulletin 596, Item 11. I shall impose the minimum penalty in this case and suspend the license for a period of ten days.

Accordingly, it is, on this 10th day of January, 1944,

ORDERED, that Plenary Retail Consumption License C-12, issued by the Mayor and Borough Council of the Borough of Dunellen to Otto Becker, for premises 254 North Avenue, Dunellen, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 A.M. January 17, 1944 and terminating at 1:00 A.M. January 27, 1944.

ALFRED E. DRISCOLL
Commissioner.

9. 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 - PREVIOUS RECORD - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

RALPH INGLESE
T/a RALPH'S CAFE
116 Spring Street
Morristown, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Board of Aldermen of the Town of Morristown.

Ralph Inglese, Pro Se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that he sold alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

As a result of an investigation instituted by the local police of Dover, N. J., a statement was obtained from Arnie _____, a seventeen year old minor. In this statement, the minor sets forth that, during July 1943 and on several prior occasions, she was served alcoholic beverages at the defendant's premises. When ABC agents accompanied the minor to the tavern for the purpose of having her identify the person who had served her, she indicated the bartender, who readily admitted that he had served her several times with alcoholic beverages.

The ABC agents report that the minor "stands 5' 6½" in her stocking feet, weighs 162 lbs. and is well-proportioned. While she is seventeen years of age, she has the appearance of an older person and might well pass for twenty-one." Although the mature appearance of the minor does not excuse the violation (see R. S. 33:1-77), which establishes the procedure by which a licensee may escape responsibility for sale to a minor), such fact may be considered in fixing an appropriate penalty for the violation. I am, furthermore, favorably impressed by the ready and frank admission of the violation by the defendant's bartender. Under the circumstances, I shall not treat the instant violation as aggravated by the fact that the minor was actually less than eighteen years of age at the time of the unlawful sales.

The defendant has a previous record. On January 21, 1939 his license was automatically suspended as a result of his criminal conviction for possession of illicit alcoholic beverages. See R.S. 33:1-31.1. In the disciplinary proceedings instituted by the Department of Alcoholic Beverage Control for the same violation, the automatic suspension was lifted on March 24, 1939, thus, in effect, penalizing the licensee for a period of more than sixty days. Re Inglese, Bulletin 307, Item 1.

In view that the previous violation occurred more than five years ago, and considering all of the other attendant circumstances, I shall suspend the license for the instant violation for a period of fifteen days. Five days will be remitted for the guilty plea, leaving a net penalty of ten days.

Accordingly, it is, on this 10th day of January, 1944,

ORDERED, that Plenary Retail Consumption License C-10, issued by the Board of Aldermen of the Town of Morristown to Ralph Inglese, t/a Ralph's Cafe, for premises 116 Spring Street, Morristown, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. January 17, 1944 and terminating at 2:00 A. M. January 27, 1944.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION FOR REINSTATEMENT UPON THE EXPIRATION OF SEVEN DAYS AND PAYMENT OF COMPROMISE FEE - COMPROMISE FEE HAVING BEEN PAID, LICENSE ORDERED REINSTATED UPON THE CONCLUSION OF THE SEVEN DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
JOSEPH H. REINFELD, INC.,
461-67 Frelinghuysen Avenue
Newark, N. J.,
Holder of Plenary Wholesale License W-11 issued by the State Commissioner of Alcoholic Beverage Control:

ON PETITION
CONCLUSIONS AND ORDER

Milton, McNulty & Augelli, Esqs., Attorneys for the Defendant-Licensee, by Joseph Keane, Esq.
Nathan Davis, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On December 30, 1943 I entered an order in this matter suspending the defendant's license for the balance of its term, effective 8:00 A.M. January 6, 1944, but with leave reserved to the defendant to petition for reinstatement of its license after seven full days of suspension had been served and on payment of a compromise fee of \$3,000.00. See Bulletin 601, Item 1.

The defendant has filed such petition and posted the said fee.

In the exercise of my discretion, and in line with my decision heretofore rendered in this case, I shall grant the petition.

Accordingly, it is, on this 12th day of January, 1944,

ORDERED, that the suspension heretofore imposed on the defendant's license and which commenced at 8:00 A.M. January 6, 1944, shall terminate, and the defendant's license shall be deemed reinstated at 8:00 A.M. January 13, 1944.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION
CONCEALING MATERIAL FACTS - PREVIOUS RECORD - ILLEGAL SITUATION
CORRECTED - 40 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
ROYAL WINE & LIQUOR STORES, INC.
496 Clinton Ave.
Newark, 8, N. J.,
Holder of Plenary Retail Distribution License D-151, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
AND ORDER

Samuel Moskowitz, Esq., Attorney for Licensee.
Nathan Davis, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges alleging that it falsely concealed in its license application that Joseph Strauss (1) is the real and beneficial owner of all its stock, and (2) had been interested in an application upon which a license had been granted for premises in Jersey City.

In March 1943 the Alcoholic Beverage Law, which theretofore had required that a holder of more than ten per cent of the stock of a corporate licensee be a five-year resident of this state, was amended by substituting a provision requiring only a bona fide residence of no specified duration. See R. S. 33:1-25.

In September 1938, at which time Joseph Strauss first became a resident of this state, he purchased a majority interest in a corporate licensee located in Jersey City. Because of his residence disqualification, he caused the stock to be held by another person on his behalf. When this concealed ownership became known to the local issuing authority, he was compelled to dispose of his entire stock holdings in that corporation.

With persistence worthy of a better cause, he moved to Newark and, in April 1939, became the sole owner of all the capital stock of the defendant corporation. This interest was likewise undisclosed by similar subterfuge. After the institution of these proceedings, Joseph Strauss, being then fully qualified, transferred eighteen of the twenty outstanding shares of stock of the corporate defendant to himself, the remaining two shares being held by qualifying shareholders.

The usual ten-day penalty for this type of violation is here totally inadequate. The deliberate creation of a second "front" by Joseph Strauss after his prior experience warrants the imposition of a substantial penalty. Moreover, the previous record of the defendant discloses that, in August 1939, its license was suspended for three days upon its guilty plea to a charge of transporting alcoholic beverages in a vehicle lacking proper decalcomania. See Bulletin 339, Item 13. Giving due weight to all of the attendant circumstances, I shall suspend the defendant's license for a period of forty days.

Accordingly, it is, on this 11th day of January, 1944,

ORDERED, that Plenary Retail Distribution License D-151, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Royal Wine & Liquor Stores, Inc., for premises 496 Clinton Avenue, Newark, be and the same is hereby suspended for forty (40) days, commencing at 2:00 A.M. January 17, 1944 and terminating at 2:00 A.M. February 26, 1944.

ALFRED E. DRISCOLL
Commissioner.

12. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION FOR REINSTATEMENT UPON THE EXPIRATION OF TEN DAYS AND PAYMENT OF COMPROMISE FEE - COMPROMISE FEE HAVING BEEN PAID AND LICENSE HAVING BEEN SUSPENDED FOR TEN DAYS, REINSTATEMENT OF LICENSE ORDERED.

In the Matter of Disciplinary Proceedings against)

BROWNE-VINTNERS)
50 Rockefeller Plaza)
New York, N. Y.,)

ON PETITION
CONCLUSIONS AND ORDER

Holder of Plenary Wholesale License W-51 issued by the State Commissioner of Alcoholic Beverage Control.)

Frederick J. Lind, Esq., Attorney for Browne-Vintners, by
Lawrence Scheewe, Esq.

Nathan Davis, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On December 30, 1943 I entered an order in this matter suspending the defendant's license for the balance of its term, effective 8:00 A.M. January 6, 1944, but with leave reserved to the defendant to petition for reinstatement of its license after ten full days of suspension had been served and on payment of a compromise fee of \$5,000.00. See Bulletin 601, Item 2.

The defendant has, on the date hereof, filed such petition and posted the said fee.

In the exercise of my discretion, and in line with my decision heretofore rendered in this case, I shall grant the petition.

Accordingly, it is, on this 17th day of January, 1944,

ORDERED, that the suspension heretofore imposed on the defendant's license and which commenced at 8:00 A.M. January 6, 1944 shall terminate, and the defendant's license shall be deemed reinstated, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

13. MORAL TURPITUDE - CRIME OF GRAND LARCENY FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST -- APPLICATION TO LIFT GRANTED.

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

CONCLUSIONS
AND ORDER

Case No. 313.
-----)

BY THE COMMISSIONER:

Petitioner in this proceeding prays that his disqualifications, if any, resulting from the conviction of crime, be lifted pursuant to R. S. 33:1-31.2.

During June 1918 petitioner pleaded guilty to the crime of grand larceny and was placed on probation for a period of three years. On March 17, 1922 petitioner was fined \$50.00 by a Police Judge on a charge of petty larceny. Again, on March 1, 1929, subsequent to indictment by the Grand Jury, petitioner pleaded guilty to possession of illicit alcohol in violation of the Hobart Act and, on May 14, 1930, was sentenced to serve twenty-five days in the County Prison.

Grand larceny is a crime which ordinarily involves moral turpitude. Cf. Re Case No. 154, Bulletin 466, Item 11. There is nothing in the record to warrant a finding that the crime in question is free of that element. Under the circumstances, it is unnecessary to decide whether either of the subsequent convictions involved moral turpitude.

In addition to the foregoing convictions, independent investigation by the Department of Alcoholic Beverage Control disclosed several other arrests. These arrests, however, resulted in dismissals by the committing magistrate or Grand Jury, and on one occasion the petitioner was found not guilty after trial by the court.

The petition filed herein indicated that petitioner, although apparently disqualified, had been employed for several years as a bartender by two liquor licensees. When asked to explain this, petitioner stated that he was unaware of any such disqualification. Ignorance of the law would not excuse him if this were a criminal or a disciplinary proceeding. Knowledge of the law, however, is not a necessary ingredient of the good faith essential in rehabilitation proceedings of this character. Re Case No. 61, Bulletin 338, Item 2. After having carefully studied petitioner's case, I conclude that petitioner acted in good faith.

Three witnesses who have known the petitioner for six or more years testified regarding his reputation as a law-abiding citizen. One of these persons, a business man, who has been acquainted with petitioner for a period of nine or ten years, stated that he considered him very trustworthy. Two other witnesses, who live near petitioner and have known him for more than six years last past, also testified that the petitioner bears a good reputation in the

immediate community in which he lives. I am, therefore, satisfied that petitioner has been leading an honest and law-abiding life for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to public interest. Hence his disqualification will be removed.

Accordingly, it is, on this 19th day of January, 1944,

ORDERED, that petitioner's statutory disqualification because of the convictions set forth above be and the same is hereby lifted, pursuant to provisions of R. S. 33:1-31.2.

Alfred E. Driscoll
Commissioner.