

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

BULLETIN 599

DECEMBER 29, 1943

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CONFIDENTIAL

1. The first part of the document discusses the general principles of the project and the objectives to be achieved.

2. The second part of the document describes the methodology used in the study and the data collection process.

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5. The fifth part of the document contains the references and the appendix.

6. The sixth part of the document discusses the limitations of the study and the potential sources of error.

7. The seventh part of the document provides a summary of the key findings and conclusions.

8. The eighth part of the document contains the acknowledgments and the author's contact information.

9. The ninth part of the document provides a list of the abbreviations used in the document.

10. The tenth part of the document contains the index and the table of contents.

11. The eleventh part of the document provides a list of the figures and tables included in the document.

12. The twelfth part of the document contains the glossary and the list of acronyms.

13. The thirteenth part of the document discusses the ethical considerations of the study.

14. The fourteenth part of the document provides a detailed description of the study area.

15. The fifteenth part of the document discusses the theoretical framework of the study.

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17. The seventeenth part of the document discusses the data analysis methods used in the study.

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24. The twenty-fourth part of the document provides a list of the study abbreviations.

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27. The twenty-seventh part of the document contains the study table of contents.

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29. The twenty-ninth part of the document contains the study glossary.

30. The thirtieth part of the document provides a list of the study acronyms.

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

BULLETIN 599

DECEMBER 29, 1943.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 7 - EMPLOYMENT OF DISQUALIFIED PERSONS AS BARTENDERS, IN VIOLATION OF LOCAL ORDINANCE - HINDERING INVESTIGATION, IN VIOLATION OF R. S. 33:1-35 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

PENN BEACH PROPERTY OWNER'S ASSOCIATION, INC.,)
Penn Beach,)
Lower Penns Neck Township,)
P. O. Pennsville, New Jersey,)

Holder of Club License CB-2, issued by the Township Committee of the Township of Lower Penns Neck.)

CONCLUSIONS

AND
ORDER

George S. Friedman, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The following charges were preferred against the defendant-licensee:

"1. On Sunday, June 27, 1943, between the hours of 2:00 A.M. and 2:35 A.M. you sold and served alcoholic beverages on your licensed premises, in violation of Section 7 of an ordinance adopted by the Township Committee of the Township of Lower Penns Neck on April 17, 1936, as amended on May 3, 1940 and September 20, 1940, which ordinance prohibits any such activity after 2:00 A.M. on Sundays.

"2. On the date last aforesaid, between the hours of 12:45 A.M. and 2:35 A.M. you sold alcoholic beverages to persons other than bona fide members of your club and their bona fide guests, in violation of Rule 5 of State Regulations No. 7, and since such sales exceeded the terms of your license as defined by R. S. 33:1-12(5), you thereby also violated R.S. 33:1-2.

"3. On the date last aforesaid, and on divers days prior thereto, you had in your employ Anna Early and Helen Kelly, female bartenders or attendants or employees who served liquor at the bar and elsewhere on the licensed premises, in violation of Section 11 of an ordinance adopted on April 17, 1936 by the Township Committee of the Township of Lower Penns Neck, as amended on May 3, 1940 and September 20, 1940.

"4. On the date last aforesaid, at about 2:35 A.M., while investigators of the Department of Alcoholic Beverage Control were on your licensed premises investigating the above alleged violations occurring on that date, you hindered and failed to facilitate such investigation, in violation of R.S. 33:1-35."

Defendant pleaded guilty to charge (3) and entered a plea of not guilty to charges (1), (2) and (4).

Investigator Schuler of the Department of Alcoholic Beverage Control testified that on Sunday, June 27, 1943, at 1:30 A.M., he entered the licensed premises of defendant and he immediately proceeded to the bar. Notwithstanding the fact that he was neither a member nor a bona fide guest of a member, he was permitted to purchase a glass of beer from a woman bartender. While standing at the bar he engaged in conversation with several men who treated him to several more glasses of beer. The manager of the club informed Investigator Schuler, at about 1:55 A.M. that he was wanted outside and he thereupon left the licensed premises. A little over a half hour later, accompanied by Investigator Lockwood and a local police officer, he returned to the licensed premises and, after identifying himself and his companions, the three were permitted to enter the building. At this time, the patrons were "three deep at the bar". Investigator Schuler immediately seized two pitchers of beer standing on tables near the door. As he attempted to seize a third pitcher containing beer which had just been drawn from the tap and placed on the bar by the bartender, the manager, Clifford Kelly, quickly snatched this pitcher and spilled the contents thereof over his shoulder.

Investigator Lockwood corroborated, in substance, the testimony of Investigator Schuler and stated in addition thereto that his efforts to ascertain data from many persons present, regarding their membership or guest status, were in vain.

Clifford Kelly, the manager, recalled the presence of Investigator Schuler on the two occasions on Sunday morning, June 27, 1943, and admitted the "pitcher grabbing" incident testified to by the investigator. His explanation for this occurrence was that he disposed of the beer in order to prevent its subsequent use as evidence. When asked whether he helped Investigator Lockwood identify the members, Mr. Kelly replied, "No, sir, I was pinched and I never opened my mouth." Mr. Kelly, Anna Early, an employee, and James Cahill, a member of the club, denied that alcoholic beverages were sold or served after legal hours on the morning in question. Anna Early, however, admitted selling and serving a glass of beer to Investigator Schuler during his first appearance at the club on the morning of June 27, 1943. Her testimony also disclosed that she was still selling and serving alcoholic beverages in violation of the municipal ordinance forbidding female employees to do so, even after the charges had been preferred against the defendant.

Regardless of the testimony offered by defendant which denies the sale of alcoholic beverages during prohibited hours on the Sunday morning in question, I am satisfied that a violation occurred. Mr. Kelly's disposition of the pitcher full of beer indicates beyond any question that he was fully aware that a violation had occurred. His explanation at the hearing that the beer was spilled to prevent its use as evidence, dispels any doubt as to the sale and service of alcoholic beverages after 2:00 A.M. Furthermore, the action of the manager in competing with the investigator for possession of the pitcher of beer is in itself evidence of an attempt to hinder the investigation.

His assertion that he "was pinched and never opened his mouth", when asked whether he assisted the other investigator so that the names of members could be obtained, is further proof of his lack of cooperation.

Although defendant-licensee is a corporation, it is responsible for the acts of its employees. Re Kneller, Bulletin 49, Item 4; Stein v. Passaic, Bulletin 451, Item 5. A corporation can only act through its agents, officers or employees. See Re Almac Tavern, Bulletin 554, Item 10. I therefore find the defendant guilty of charges (1), (2) and (4) on the evidence adduced at the hearing. As to charge (3), a plea of guilty has already been entered.

I note that, in addition to the instant violations, defendant has a previous adjudicated record. Its license was suspended by the local issuing authority on two separate occasions for violations of the municipal ordinance regarding closing hours. The first suspension for five days became effective February 18, 1939 and the second suspension for five days became effective March 2, 1942. Inasmuch as defendant has already been penalized twice for violations of closing hour regulations, it is quite apparent that utter disregard and disrespect for law have been shown. In addition to being guilty in the instant case of an after hours violation, it has, through its employees, committed other offenses as well. Under the circumstances, I have no alternative but to revoke defendant's license.

Accordingly, it is, on this 13th day of December, 1943,

ORDERED that Club License CB-2, issued by the Township Committee of the Township of Lower Penns Neck to Penn Beach Property Owner's Association, Inc. for premises Penn Beach, Lower Penns Neck Township, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

2. MORAL TURPITUDE - FACTS EXAMINED - CRIME OF FORGERY 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. 310.
-----)

BY THE COMMISSIONER:

In February 1933 petitioner, in a Court of Quarter Sessions, was found guilty of the crime of forgery and was sentenced to serve from three to seven years in State's Prison. He was released on parole on November 1, 1934. The crime involved moral turpitude and, accordingly, the petitioner was disqualified from holding a license to sell alcoholic beverages or be employed by a licensee in this State.

Petitioner, pursuant to R.S. 33:1-31.2, now seeks removal of the above mentioned disqualification.

At the hearing a sales representative for a large corporation, a former police officer and an employee of a telephone company testified on behalf of petitioner. Each witness has known him for more than five years and each has had ample opportunity to observe his conduct. They testified that petitioner resides with his wife and daughter and that his conduct during the past five years has been excellent. Petitioner testified that his arrest and conviction arose from the fact that, while employed as a bookkeeper for a corporation, he signed the name of an officer of the corporation to certain papers. He alleges that he did so with the consent of the officer but that issue cannot be determined herein. Apparently he made a single misstep and he has been adequately punished.

The fact that despite his conviction petitioner worked on licensed premises for the past several years raises a question as to whether he should be granted relief herein. When asked at the hearing whether he knew of his disqualification, petitioner stated that he was unaware of such disqualification until a short time ago; that no one ever questioned his right to be so employed and that he voluntarily filed this petition immediately after consulting an attorney. Ignorance of the law would not excuse him if this were a criminal or disciplinary proceeding, but knowledge of the law is not a necessary ingredient of the good faith essential in rehabilitation proceedings. Re Case No. 61, Bulletin 338, Item 2. I conclude that petitioner has acted in good faith. Re Case No. 161, Bulletin 477, Item 11; Re Case No. 175, Bulletin 492, Item 7; Re Case No. 163, Bulletin 502, Item 3.

I find that petitioner has been law-abiding for the past nine years and that his continued association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 22nd day of December, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

3. APPELLATE DECISIONS - MONDT and POZNER v. NORTH BERGEN.

RALPH O. MONDT and JACK POZNER,)

Appellants,)

v.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE)
TOWNSHIP OF NORTH BERGEN,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDERS

Cyril J. McCauley, Esq., Attorney for Appellants.
Nicholas S. Schloeder, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellants appealed from a ten-day suspension of their plenary retail consumption license C-70 issued for premises 3101 Hudson Boulevard, North Bergen.

Respondent imposed the suspension after it had found appellants guilty on charges of permitting service and delivery of an alcoholic beverage to, and consumption of said alcoholic beverage by, a minor upon their licensed premises. On the filing of this appeal an order was entered herein staying respondent's order of suspension until further order of the Commissioner.

A stipulation of discontinuance, signed by the attorneys for both parties, has been filed, wherein leave is requested to withdraw the appeal. The minor involved in the case is nineteen years of age. No reason appearing to the contrary, the request to withdraw the appeal will be granted and the suspension imposed by respondent will be reinstated.

Accordingly, it is, on this 23rd day of December, 1943,

ORDERED that the above appeal be and the same is hereby dismissed; and it is further

ORDERED that the ten-day suspension by respondent of appellants' plenary retail consumption license C-70, for premises 3101 Hudson Boulevard, North Bergen, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, to commence at 3 A.M. on December 27, 1943, and to terminate at 3 A.M. on January 6, 1944.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - ORDER ESTABLISHING SUSPENSION PERIOD (SEE BULLETIN 586, ITEM 2).

In the Matter of Disciplinary Proceedings against

BERNARD SOLOMON
t/a HOF BRAU
s/w Cor. Oak & Atlantic Aves.
Wildwood, N. J.

ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the City of Wildwood.

-----)

Harry Tenenbaum, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter being opened to me by Harry Tenenbaum, Esq., attorney for the defendant, and it appearing that the defendant now operates his business on an all-year basis, having for that purpose made substantial alterations to the business premises, including the installation of heating equipment in said premises and the alteration of a part of the second floor of said premises to provide year-round residential quarters for the defendant, and it further appearing that the defendant and his family now live in the premises and a suspension of the license during the month of January will constitute an effective penalty consistent with the violations of which the defendant was found guilty, and it being desirable to close all disciplinary cases as soon as possible,

consistent with a fair and impartial administration of the Alcoholic Beverage Law, and nothing appearing to the contrary,

It is, on this 21st day of December, 1943,

ORDERED that the penalty heretofore, on September 17, 1943, imposed on defendant in the above entitled proceedings, shall commence on the 7th day of January next, and that Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the City of Wildwood to Bernard Solomon, t/a Hof Brau, for premises at the southwest corner of Oak and Atlantic Avenues, Wildwood, be and the same is hereby suspended for ten (10) days, commencing at 3:00 A.M. January 7, 1944 and ending at 3:00 A.M. January 17, 1944.

ALFRED E. DRISCOLL
Commissioner.

- 5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PERMITTING BAR TO REMAIN OPEN, IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 7 AND R. S. 33:1-2 - SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - HINDERING AND FAILING TO FACILITATE INVESTIGATION, IN VIOLATION OF R. S. 33:1-35 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

YOUNG MEN'S DEMOCRATIC CLUB)
of LOWER PENNS NECK)
W/S of Broadway)
Deepwater, Lower Penns Neck Twp.)
P.O. RFD Penns Grove, N. J.)

CONCLUSIONS

AND

ORDER

Holder of Club License CB-3, issued by the Township Committee of the Township of Lower Penns Neck.)
-----)

Young Men's Democratic Club of Lower Penns Neck, by Jerome T. Crossler, Secretary
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control

BY THE COMMISSIONER:

Licensee pleads guilty to charges preferred as follows:

"1. On Sunday, October 3, 1943, you possessed on your licensed premises a barrel from which beer of the Otto Erlanger Brewing Company was being drawn through a spigot or other dispensing apparatus of which the name or brand of the manufacturer of that beer was not attached, in violation of Rule 1 of State Regulations No. 22.

"2. On Sunday afternoon, October 3, 1943, at about 1:45 P.M., and on Sunday evening, November 14, 1943, at about 6:35 P.M., you sold and served alcoholic beverages on your licensed premises in violation of Section 7 of an Ordinance adopted by the Township Committee of the Township of Lower Penns Neck on

April 17, 1936, as amended by Ordinance adopted by said Township Committee on September 20, 1940, which amended Section prohibits any such activity after 2:00 A.M., on Sunday.

"3. On both the dates and at the times aforesaid, you failed to have your bar closed, in violation of Section 6 of an Ordinance adopted by the Township Committee of the Township of Lower Penns Neck on April 17, 1936, as amended by an Ordinance adopted by the said Township Committee on September 20, 1940, which amended Section requires bars to be closed after 2:00 A.M., on Sunday.

"4. On both the dates and at the times aforesaid, you sold alcoholic beverages to persons other than bona fide members of your club and their bona fide guests, in violation of Rule 5 of State Regulations No. 7, and since such sales exceeded the terms of your license as defined by R.S. 33:1-12(5), you thereby also violated R.S. 33:1-2.

"5. On Sunday, November 14, 1943, at about 6:35 P.M., you sold and delivered and allowed permitted and suffered the sale and delivery of alcoholic beverages, viz., one case containing twenty-four twelve ounce bottles of beer, at retail 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 or delivery on Sunday.

"6. On the date and at the time last aforesaid, you sold alcoholic beverages for off-premises consumption, in violation of Rule 5 of State Regulations No. 7, and since such sales exceeded the terms of your license as defined by R.S. 33:1-12(5), you thereby also violated R.S. 33:1-2.

"7. On Sunday, November 14, 1943, while investigators of the Department of Alcoholic Beverage Control were on your licensed premises investigating the above alleged violations occurring on that date, you hindered and failed to facilitate such investigation, in violation of R.S. 33:1-35."

Irrespective of the plea, I am constrained to dismiss charge (1) for the reason that Rule 1 of State Regulations No. 22 does not by its terms specifically apply to club licensees.

In considering the penalty to be imposed by reason of the admitted guilt on the other charges, I must examine the record of the investigation. This record shows that the club-defendant is obviously conducting a plenary retail consumption business under its club license.

The investigation, covering two days about six weeks apart, shows that on the first day, Sunday, October 3, 1943, seventeen people were at the bar and four additional persons were in the service room, all drinking alcoholic beverages. Of these seventeen people, nine names were secured, the others having been allowed to leave the premises against the request of the agents before their names could be secured. Of the nine whose names were obtained, only one definitely proved that he was a

member of the club or a guest of such a member. The others who claimed to be members had no proof of their membership with them and those who claimed to be guests of a member could not give the member's name. The eight persons who did not furnish proof of membership, further, did not appear on the list of membership as contained on the club's applications.

At the time of the second investigation, again a Sunday, November 14, the club seems to have been engaging in the sale of alcoholic beverages to nine people. Most of these had no membership in the club and refused to give the investigators any information. At least six of these nine people do not appear as members in accordance with the membership list contained in the club application. It further appears that the club was exceeding the terms of its license in that it made a sale of a case of beer for off-premises consumption. Incidentally, the persons who purchased the beer for off-premises consumption are not members, or at least their names do not appear on the club application as such members.

It further appears that the club was selling and serving alcoholic beverages at the bar during prohibited hours on two Sundays. This is admittedly a violation of Section 7 of the local ordinance of April 17, 1936, as amended on September 20, 1940, prohibiting any sales or service after 2:00 A.M. on Sunday, and, obviously, in violation of Section 6 of said amended ordinance which requires bars to be closed after 2:00 A.M. on Sunday. In addition thereto, the illegal sale on Sunday for off-premises consumption by this licensee, was further aggravated by the fact that such sale violates Rule 1 of State Regulations No. 38.

In counting the patrons being served, I have purposely refrained from counting investigators although, on at least one of the visits, one of them was served.

It further appears that the licensee, or at least those in charge of the licensed premises, hindered an investigation. The bartender, upon learning of the agents' presence on the second visit, turned out the lights and, while the premises were in darkness, fled the premises. Although this bartender was reputedly a member of the club, no one present on the premises would give the investigator his address, claiming they did not know it, although a few of the persons present were members and might have been presumed to have some knowledge of the bartender's residence, especially when the club would appear from its application to have a total membership of thirty. The hindering of investigations, in itself, is a most serious violation, striking at the very foundation of proper control. Such practices will not be permitted. Danker vs. Monmouth, Bulletin 448, Item 1.

Obviously, all this illegal activity on the licensed premises of a club licensee warrants the belief that the licensee is using the club license for the purpose of operating a plenary retail consumption business. Club licenses are specifically preferred in the fee charged therefor on the assumption that the sale of alcoholic beverages will be limited to members, or the bona fide guests of members, and that such sale will be made only for immediate consumption on the licensed premises. R.S. 33:1-12(5); State Regulations No. 7. The use of a club license to conduct a plenary retail consumption business not only constitutes the use of a license for a purpose never intended by the law but also, by reason of the fact that the license is issued at a much smaller cost than the plenary retail consumption license, perpetrates an actual fraud on the issuing authority.

While it is true that the club has no prior record, in view of all the circumstances in the case, the only proper penalty is a revocation of the license.

Accordingly, it is, on this 23rd day of December, 1943,

ORDERED that Club License CB-3, issued by the Township Committee of the Township of Lower Penns Neck to Young Men's Democratic Club of Lower Penns Neck, for premises W/S of Broadway, Deepwater, Lower Penns Neck Twp., be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

JOSEPH W. & ALICE M. FORNATARO, t/a COLUMBIA HOTEL BAR AND GRILL, 106 Broadway, Long Branch, New Jersey,)

Holder of Plenary Retail Consumption License C-32 issued by the Board of Commissioners of the City of Long Branch.)

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CONCLUSIONS

AND

ORDER

Budd & Larner, Esqs., by John Budd, Esq., Attorneys for Defendant- licensees.

Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded not guilty to a charge that on June 17, 1943, they sold and served to, and permitted the consumption of alcoholic beverages by, persons actually or apparently intoxicated, in violation of Rule 1 of State Regulations No. 20.

Shortly after midnight on June 17, 1943, two military policemen entered defendants' premises. They conversed with a lifeguard who was at the bar, but they did not converse with Joseph W. Fornataro, one of the licensees, who was then tending bar. After the military policemen had been in the premises a few minutes, two British sailors entered. The military policemen testified herein that both sailors went to the bar where one ordered two glasses of beer, which were served by Joseph W. Fornataro. They further testified that one of the sailors immediately left the premises and did not consume his drink.

The lifeguard testified that the military policemen had been talking to him for a few minutes at the north end of the bar, where the bartender was stationed, when the two sailors entered the south door of the licensed premises; that one of the sailors immediately left the premises and that the other sailor walked a few steps from the door to the south end of the bar. The bar is

about eighteen feet long. The lifeguard further testified that the bartender's back was turned to the south door when the sailors entered; that the bartender walked to the south end of the bar, served two beers to the one sailor, and then returned.

Joseph W. Fornataro testified that he was at the north end of the bar listening to the conversation between the military policemen and the lifeguard, and that he did not see either of the sailors enter the premises. He further testified that, after he saw a sailor at the south end of the bar, he went to him and at his request served two glasses of beer, for which the sailor paid, with the remark that, "My buddy will be right in, he stepped out."

It appears that earlier on the same evening two other military policemen had seen both sailors outside of the licensed premises. They testified that both sailors were then actually or apparently intoxicated. From the testimony as to events which occurred after the sale and service were made, it is apparent that the sailor who left the premises was actually intoxicated. The difficulty with this case is that there is no evidence which would lead me to conclude that defendant had any knowledge or reason to believe that either of these sailors was intoxicated or apparently intoxicated when the sale and service were made. The entire episode was over within the space of a few minutes. It is admitted that neither sailor was boisterous or noisy or created any disturbance in the premises prior to the time that the two drinks of beer were served. It is admitted that neither sailor spoke to the bartender, except that one of them ordered the drinks. It does not appear that the licensee had any opportunity to observe whether either of these sailors showed any signs of intoxication while present in the licensed premises. While it is true that a member of the military police, who was not in the premises when the service was made, subsequently told the licensee that one of the sailors had been refused a drink at another bar, that information was given to the licensee after he had made the service. No drinks were served to, or consumed by, the sailors after the licensee received this information.

This is a serious charge. After carefully considering all the testimony, I conclude that the Department has not sustained the burden of proof in establishing the guilt of the defendants. Hence I shall dismiss the charge brought herein.

Accordingly, it is, on this 22nd day of December, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR CLUB LICENSE CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)

FOURTH WARD COLORED)
REPUBLICAN CLUB)
47 Main Street,)
East Orange, N. J.,)

CONCLUSIONS

AND

ORDER

Holder of Club License CB-1)
issued by the Municipal Board)
of Alcoholic Beverage Control)
of the City of East Orange.)

-----)

Fourth Ward Colored Republican Club, by James Ghee, President.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant, through its President, pleads not guilty to charges alleging that (1) it falsely concealed in the application for its current club license that one William Jones is the real and beneficial owner of the license and business conducted thereunder, and (2) it knowingly aided and abetted William Jones to exercise the privileges of its successive club licenses since January 1, 1943.

The licensed premises, consisting of two rooms, are located on the second floor of the building known and designated as 47 Main Street, East Orange.

The testimony of James Ghee, President of the defendant club, reveals that the club treasury had diminished to such an extent in December, 1942, that the officers were personally being dunned by creditors for the payment of debts incurred by the club. It was so "completely broke", as the President expressed it, that the landlord "locked the door". A conference was had by the officers of the club, in January 1943, at which it was decided to appoint one William Jones temporary manager thereof. The latter agreed to pay all expenses incurred in the operation of the club, pay all debts of the club that were outstanding at the time he assumed charge thereof, pay to himself a salary of \$40.00 a week and a salary to an assistant. In June 1943, William Jones was elected manager for a period of one year and, according to Mr. Ghee's testimony, a loan was made to the club by William Jones in an amount necessary to pay for the current liquor license. Mr. Ghee asserted that William Jones did not actually pay the money to an officer of the club as he was a trustee and thereby was empowered to transact business in the club's behalf. Mr. Ghee was asked, "Now, when Mr. Jones took over this business was there any agreement between yourself and Mr. Jones or with anyone as to who was to suffer any losses if Mr. Jones didn't make a go of this business?", and his reply was "Not in so many words but probably a mutual understanding that we ourselves and my brother, Mr. Hammock, Mr. Nelson and myself didn't feel we were able to put any more of our actual earnings in the thing."

William Jones testified that he was made the manager of the club in June 1943. In response to a question as to whether he holds any office other than manager of the club, he stated, "No. The two Ghees, Mr. Nelson and Mr. Hammock are." The salary in the amount of \$40.00 a week which he receives is deducted by him from the receipts from the sale of alcoholic beverages. No provision has been made for withholding a percentage of his salary for payment of income tax. When asked who he would state as his employer if he filed an income tax form, Mr. Jones replied, "I don't know whether I could state anyone or not; I would have to state Republican Club I guess." Mr. Jones gave a statement to an investigator of the Department of Alcoholic Beverage Control and upon being asked whether he acknowledged in the statement to the inspector that he ran the bar, kept all receipts, paid all bills and kept the profits, if any, he answered, "Yes, that's right."

The minute book of the club shows the last recorded meeting to have taken place on July 24, 1942.

Owen Hammock testified that he resigned as Chairman of the Board of Trustees in June 1943. He stated that he was the one who filed the application for the current license after receiving it the previous evening from Mr. James Ghee and Mr. Jones and that Mr. Ghee actually handed the money for payment of license to him. He did not know from whom the money was obtained.

In a statement given by Charles Ghee, Treasurer of the club, marked Exhibit S-5, it is claimed by him that he has never received any money whatsoever from William Jones. Charles Ghee denied that any arrangements were made by the club regarding payment to Jones, stating "If he made it go, he would get his money back, if he didn't it was up to him. He was going to take a chance."

The testimony of the witnesses can scarcely be reconciled. Mr. James Ghee testified that William Jones did not actually pay the money for the license to any officer as he was a trustee of the association who was authorized to act for the club. Mr. Hammock stated that the money was given to him by Mr. James Ghee and that he filed the application for the club license. William Jones testified that he has held no office other than manager and therefore the President's statement that he was a trustee is apparently inaccurate. It is obvious from the testimony of the officers of the association that very little was known by them regarding the amount of business done, especially as to the receipts from the sale of alcoholic beverages which were consumed at the club. All of the officers were apparently uninformed concerning other pertinent matters as the testimony discloses that only occasionally a so-called verbal report was made by the manager. The written statement of William Jones, marked in evidence as Exhibit S-2, admits that he is operating the club bar as his own business, the license being in the name of the club. Acknowledgment on the witness stand by Jones that he told Inspector Kenny that he ran the bar, kept all receipts, paid all bills and kept the profits, if any, together with other indicia of proprietorship, is sufficient proof that he is the beneficial owner of the license even though it was taken out in the club name.

Club licenses, which authorize sale of alcoholic beverages only to club members and their bona fide guests, are issued at a fee substantially less than that chargeable for the plenary retail consumption license which authorizes sale to the general public. The purpose of the law, in authorizing the issuance of club licenses, was to permit bona fide clubs to dispense alcoholic beverages to their members and their guests as a service to those

members. It was never intended that the club license should be used by individuals to operate a licensed business for private gain, in competition with other retail licensees who pay a much higher fee. Re Willow Brook Club, Bulletin 518, Item 12.

Under the circumstances in the instant case, I am fully satisfied that a revocation of the license is warranted.

Accordingly, it is, on this 23rd day of December, 1943,

ORDERED that Club License CB-1, issued to Fourth Ward Colored Republican Club by the Municipal Board of Alcoholic Beverage Control of the City of East Orange for premises 47 Main Street, East Orange, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

HERBERT MARANT,)
13 E. Front Street,)
Trenton, New Jersey,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-229 issued by the Board of Commissioners of the City of Trenton.)
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Herbert Marant, Pro Se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges alleging that (1) and (2) on October 1, 1943, he sold alcoholic beverages to, and permitted the consumption of alcoholic beverages upon his licensed premises by, Seaman Stanford L. --- and Seaman Kenneth E. ---, two minors, aged 19 years and 18 years respectively, in violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20; and (3) and (4) that on October 17, 1943, and on October 25, 1943, he also sold alcoholic beverages to, and permitted the consumption of the same upon his licensed premises by, the aforesaid Stanford L. ---, likewise in violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20.

Reports of ABC agents indicate that on the first evening in question both of the said minors visited the licensed premises and were served alcoholic beverages, and that on the other evenings in question one of the said minors visited the place of the licensee and was served alcoholic beverages. In each instance, their visits covered a period of several hours, and at no time was any effort made by the licensee, or any of his employees, to ascertain the age of either of the minors.

The usual penalty for sale of alcoholic beverages to minors, barring any aggravating circumstances is ten days. Re Kurtz, Bulletin 585, Item 5. While the licensee has no previous record, nevertheless the fact that there are involved three separate and distinct sales to minors does present an aggravating situation and one which, in my opinion, calls for the imposition of a greater penalty than usual. Therefore, a penalty of twenty days, less five for the guilty plea, should be imposed.

Accordingly, it is, on this 23rd day of December, 1943,

ORDERED that Plenary Retail Consumption License C-229, issued by the Board of Commissioners of the City of Trenton to Herbert Marant, for premises 13 E. Front Street, Trenton, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 A.M. December 28, 1943, and terminating at 2:00 A.M. January 12, 1944.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - 60 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

OSCAR W. BACHMAN & CARMINE ESPOSITO
372-374 South Orange Ave.
Newark, 3, New Jersey

CONCLUSIONS

AND

Holders of Plenary Retail Consumption License C-470, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

ORDER

David P. Wiener, Esq., Attorney for Defendants.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants, holders of a plenary retail consumption license in Newark, appeared in answer to charges that they sold alcoholic beverages; served and delivered, and allowed, permitted and suffered the service, delivery and consumption of alcoholic beverages to and by three minors, in violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20.

Defendants pleaded non vult, asking only to be heard in mitigation. The plea will be accepted as fully equivalent to that of a plea of guilty for the purpose of the instant case.

An examination of the file received and considered as evidence, pursuant to a stipulation by the Department and the defendants' attorney, leaves no doubt in my mind that the three minors in question, Doris _____, Thomas _____, and Doris _____, were actually served, sold and permitted to consume alcoholic beverages on the licensed premises.

As to the penalty: The alleged mitigating circumstances, as developed in the testimony of Oscar W. Bachman, one of the

defendants, and Louis Esposito, Attorney-in-fact under a Power of Attorney given to him by his son, Carmine Esposito, the other defendant, are not persuasive. It does not appear that defendants really did all that they could do to prevent sales and service to minors. The licensed premises consist of a thirty-five foot bar and a back room containing fifteen or sixteen booths and tables where meals are served, or at least where sandwiches and cold food may be secured. It is admittedly difficult to secure help and the defendants, except at mealtimes, have no help in the back room. This room, however, is kept open and alcoholic beverages are served there by the defendant, Oscar W. Bachman, by Louis Esposito, and occasionally by the kitchen help. The back room has a separate entrance which admits patrons without the necessity of their going through the bar. Defendants principal effort to control sales to minors has been to post signs, warning the minors of the pertinent provisions of the Alcoholic Beverage Control Law and the Newark Ordinance, and by instructing the waiters to be careful in making sales and service to those who appear to be under the age of twenty-one years. These precautions did not suffice in the instant case.

The three minors in question were seated in the back room, having entered through the side door. They were not observed at all by Mr. Bachman who was then attempting, without assistance, to operate and control this large bar and back room. The actual sale of the liquor, subsequently delivered to the minors, was made at the bar by Bachman to a soldier who may or may not have been a minor. This soldier was not available as a witness and no charges were preferred based upon the sale to him. The drinks were carried by the soldier to the back room and there consumed by the three admitted minors. Mr. Bachman made no effort to learn for whom the liquor was intended. Obviously, the safe way to control situations of this kind; where sufficient help cannot be secured to supervise, properly, all of the premises, would be to close part of them. I dare say that had the back room been closed, there would have been no sale to these minors. It is perfectly obvious from their appearance that they are under twenty-one. In fact, one of them was only fifteen and one-half years old at the time of the service and certainly did not appear to be any older than that age. The other two were seventeen and did not appear older.

Further, the defendants have a previous record. The license of the partnership, early in 1943, was suspended for a period of forty days after conviction of charges of selling to a minor. Bachman's license - for the same premises, but prior to the formation of the partnership - was in 1939 suspended for fifteen days for the same type of violation. It appears that Carmine Esposito had no knowledge of any of these violations. He has been in the Army since June 1942. The rare privilege of license is not unconnected with grave responsibility. The responsibility is the owners and cannot be evaded by any delegation of authority to an employee, a partner, or by the appointment of an attorney-in-fact. The Department has specifically ruled, Re DeMartini, Bulletin 527, Item 8, that those licensees who take advantage of the right to appoint an attorney-in-fact must specifically confirm, adopt and ratify all the acts of their attorney. This must also be their responsibility as to the acts or negligence of a partner. They must not expect to escape their full responsibility and continue to hold the license privilege.

Testimony is offered that the licensed premises were purchased by the mother of Carmine Esposito in order to protect her son's business. This circumstance cannot affect the guilt or innocence of the defendants and I cannot consider the possible loss to the mother in fixing appropriate penalties. Cf. Re Star Cafe,

Inc., Bulletin 588, Item 6. In view of all the circumstances, including the youth of the minors and the prior record, and giving proper consideration to Carmine Esposito's enforced absence in the service of his country, I shall suspend the license for a period of sixty days.

Accordingly, it is, on this 28th day of December, 1943,

ORDERED that Plenary Retail Consumption License C-470 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Oscar W. Bachman & Carmine Esposito, for premises 372-374 South Orange Avenue, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 A.M. January 3, 1944 and terminating at 2:00 A.M. March 3, 1944.

Alfred E. Griswold
Commissioner.