

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

BULLETIN 677

AUGUST 21, 1945.

1. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 30 DAYS AND CORRECTION OF ILLEGAL SITUATION BY BONA FIDE TRANSFER - TRANSFER HAVING BEEN APPROVED BY MUNICIPAL ISSUING AUTHORITY APPLICATION TO LIFT GRANTED UPON EXPIRATION OF 30 DAYS.

In the Matter of Disciplinary Proceedings against

EMMA J. HABER
224-226 Broad Avenue
Palisades Park, N. J.,

ON PETITION

Holder of Plenary Retail Consumption License C-18 for the fiscal year 1944-45, and now holder of Plenary Retail Consumption License C-19 for the current fiscal year; both issued by the Mayor and Council of the Borough of Palisades Park.

ORDER

Joseph M. Rotolo, Esq., Attorney for Petitioner, Vincent P. Spadola.

BY THE COMMISSIONER:

On July 11, 1945 I suspended defendant's license C-19 for the balance of its term, effective at 3:00 a.m. July 17, 1945, after she had pleaded non vult to charges alleging that she was holding said license as a "front" for her brother, Robert M. Burns. Re Haber, Bulletin 673, Item 12. In said Order it was provided that a transferee of the license might apply to me to lift the suspension after at least thirty days of the suspension had been served.

Pursuant to said leave, Vincent P. Spadola has filed a verified petition wherein he sets forth that he has entered into a written agreement with Emma J. Haber for the purchase of her business and, from an investigation made by the Department of Alcoholic Beverage Control, it appears that this is a bona fide transaction and that no person other than petitioner will be interested in the business after the transaction is consummated.

The petition further sets forth that, on July 23, 1945, the Mayor and Council of the Borough of Palisades Park transferred the license in question subject to the suspension heretofore imposed from Emma J. Haber to Vincent P. Spadola.

It appearing from the facts set forth in the verified petition, and from the subsequent investigation, that the unlawful situation has been corrected, and it further appearing that the thirty-day suspension will expire on August 16, 1945, at 3:00 a.m., the suspension will be lifted effective at that time.

Accordingly, it is, on this 6th day of August, 1945,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-19, issued by the Mayor and Council of the Borough of Palisades Park, be and the same is hereby restored to full force and operation, effective August 16, 1945, at 3:00 a.m.

ALFRED E. DRISCOLL
Commissioner.

2.

ACTIVITY REPORT FOR JULY, 1945

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licenses and employees - - - - -	2	Bootleggers - - - - -	25	
	Total number of persons arrested - - - - -				27
<u>SEIZURES:</u>	Stillis - 1 to 50 gallons daily capacity - - - - -	1			
	50 gallons and more daily capacity - - - - -	0			
	Total number of stillis seized - - - - -				1
	Mash - gallons - - - - -				0
	Motor vehicles - Trucks - - - - -	1			
	Passenger cars - - - - -	3			
	Total number of motor vehicles seized - - - - -				4
	Beverage alcohol - gallons - - - - -				0
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -				315
	Wine - gallons - - - - -				0.8
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -				9.5
<u>RETAIL LICENSEES:</u>	Total number of premises inspected - - - - -				963
	Total number of bottles gauged - - - - -				7,532
	Total number of premises where violations were found - - - - -				41
	Total number of violations found - - - - -				60
	Type of violations found:				
	Illicit (bootleg) liquor - - - - -	12	Improper beer tap markers - - - - -		0
	Gambling devices - - - - -	1	Stock disposal permits necessary - - - - -		9
	Prohibited signs - - - - -	0	No sign denoting legal sale hours - - - - -		
	Unqualified employees - - - - -	34	off-premises consumption - - - - -		2
	"Fronts" (concealed ownership) - - - - -	2	Other types of violations - - - - -		0
<u>MILITARY AREA PATROL INSPECTIONS:</u>					575
<u>STATE LICENSEES:</u>	Premises inspected - - - - -				9
	License applications investigated - - - - -				24
<u>COMPLAINTS:</u>	Investigated, reviewed and closed - - - - -				275
	Investigation assigned, not yet completed - - - - -				204
<u>LABORATORY:</u>	Analyses made - - - - -				60
	"Shake-up" cases (alcohol, water and artificial coloring) - - - - -				4
	Liquor found to be not genuine as labeled - - - - -				3
<u>IDENTIFICATION BUREAU:</u>	Criminal fingerprint identifications made - - - - -				21
	Persons fingerprinted for non-criminal purposes - - - - -				329
	Identification contacts with other enforcement agencies - - - - -				410
	Motor vehicle identifications via N. J. State Police Teletype - - - - -				7
<u>DISCIPLINARY PROCEEDINGS INSTITUTED:</u>	Cases transmitted to municipalities - - - - -				12
	Violations involved:				
	Sale to minors - - - - -	7	Mislabeled beer tap - - - - -	1	
	Fraud in application - - - - -	3	Sale outside scope of license - - - - -	1	
	Gambling - - - - -	1	Unqualified employee - - - - -	1	
	Sale during prohibited hours - - - - -	1			
	Cases instituted by Department - - - - -				13
	Violations involved:				
	Fraud and front - - - - -	5	Lewdness - - - - -	1	
	Illicit liquor - - - - -	5	Hostesses - - - - -	1	
	Sale under Fair Trade price - - - - -	2	Sale during prohibited hours - - - - -	1	
	Brawls - - - - -	1	Sale to minors - - - - -	1	
<u>HEARINGS HELD AT DEPARTMENT:</u>	Total number of hearings held - - - - -				43
	Appeals - - - - -	14	Eligibility - - - - -	10	
	Disciplinary proceedings - - - - -	17	Seizures - - - - -	2	
<u>PERMITS ISSUED:</u>	Total number of permits issued - - - - -				4,516
	Unqualified employees - - - - -		1,816		
	Solicitors - - - - -		1,824		
	Social affairs - - - - -		227		
	Home manufacture of wine - - - - -		33		
	Disposal of alcoholic beverages - - - - -		74		
	Miscellaneous permits - - - - -		542		

Respectfully submitted,

Erwin B. Hock
Deputy Commissioner

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against

HELEN KANCIERUS and PETER KANCIERUS
115 John Street
Harrison, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-67 issued by the Town Council of the Town of Harrison.

George D. McLaughlin, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants plead non vult to a charge alleging that, on June 13, 1945, they possessed four 4/5 quart bottles of illicit liquor, viz., one bottle labeled "Carstairs White Seal Blended Whiskey", one bottle labeled "Lansdowne Reserve Blended Whiskey", one bottle labeled "Imperial Hiram Walker's Blended Whiskey", and one bottle labeled "Calvert Special Blended Whiskey." All of these bottles contained alcoholic beverages not genuine as labeled. Possession of these bottles was in violation of R. S. 33:1-50.

On June 13, 1945 an A.T.U. inspector, testing twenty open bottles at the tavern, seized the four bottles mentioned in the charge because they appeared off in color. Subsequent analysis by a Federal chemist disclosed that the four bottles were "refills."

Helen Kancierus, one of the defendants, admitted to the agent that she had put Hunter whiskey into all of the bottles.

Since the defendants have no previous record, I shall suspend their license for a period of ten days.

Accordingly, it is, on this 6th day of August, 1945,

ORDERED, that Plenary Retail Consumption License C-67, issued by the Town Council of the Town of Harrison to Helen Kancierus and Peter Kancierus, for premises 115 John Street, Harrison, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. August 13, 1945, and terminating at 2:00 a.m. August 23, 1945.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against WILLIAM DeFREITAS T/a TALLY HO 309 South Broadway Gloucester City, N. J., Holder of Plenary Retail Consumption License C-16 issued by the Mayor and Common Council of the City of Gloucester City.

CONCLUSIONS AND ORDER

William DeFreitas, Defendant-licensee, Pro se. Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charge:

"From March 15, 1945 and until the present time, you knowingly aided and abetted Wilford L. and Alberta M. Watson to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses, thereby yourself violating R. S. 33:1-52."

An agent of the Department, in making a routine inspection, suspected that Wilford Watson, apparently employed there as a bartender, had an undisclosed interest in the business. Upon being questioned, DeFreitas, the licensee, admitted that on or about March 15, 1945 he had made an arrangement with Wilford Watson and Alberta Watson, his wife, whereby they were to pay him \$1,200.00 a year, which payment was to include the rent. The Watsons were to keep all of the profits of the business. This state of affairs was finally admitted to by the Watsons.

The licensee pleads as the reason for this agreement that he is sixty-eight years of age and in poor health and is unable to operate the business himself. However, upon being advised that the situation could not continue, he stated that he would immediately revoke the agreement and operate the place himself. This appears to have been done, and the licensee now contends that since June 25, 1945 no one other than himself has had any interest in the licensed business. From the record it appears that the illegal situation has been corrected.

Licensee has no previous record. In view of all the circumstances, I shall suspend his license for twenty days.

Accordingly, it is, on this 7th day of August, 1945,

ORDERED, that Plenary Retail Consumption License C-16, issued by the Mayor and Common Council of the City of Gloucester City to William DeFreitas, t/a Tally Ho, for premises 309 South Broadway, Gloucester City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. August 14, 1945, and terminating at 2:00 a.m. September 3, 1945.

ALFRED E. DRISCOLL Commissioner.

- 5. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEES (ALIENS) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 60 DAYS AND CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against)

JOSEPH J. FERRUCCI)
 T/a CIRCLE MARKET)
 Route 6)
 Netcong, N. J.,)

CONCLUSIONS AND ORDER.

Holder of Plenary Retail Distribution License D-4 for the fiscal years 1944-45 and 1945-46, issued by the Common Council of the Borough of Netcong.)
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Joseph J. Ferrucci, Pro se.
 Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the following charges:

"1. In your application filed with the Common Council of the Borough of Netcong and upon which you obtained your current plenary retail distribution license, you falsely stated 'No' in answer to Question 30, 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?', whereas in truth and fact your mother Francesca Ferrucci and your father Albert Ferrucci had such an interest in that they were actually partners with you in the said license and business; your false statement being in violation of R. S. 33:1-25.

"2. From October 16, 1944 and until the present time, you knowingly aided and abetted the aforesaid Francesca Ferrucci and Albert Ferrucci to exercise contrary to R.S. 33:1-26, the rights and privileges of your plenary retail distribution license; thereby yourself violating R. S. 33:1-52."

The records disclose that, on October 16, 1944, defendant obtained a plenary retail distribution license and renewed said license for the current 1945-46 licensing period. It appears from the departmental investigation in the instant case that defendant obtained the licenses in his name, whereas both his father (Albert Ferrucci) and mother (Francesca Ferrucci) had an interest in the liquor business. Neither parent could then hold a liquor license because they were Italian aliens. Re Woertendyke, Bulletin 304, Item 8. The parents of the defendant own the building wherein the licensed premises are located where they have, during the past five years, operated a produce market.

The father, Albert Ferrucci, became a naturalized citizen of the United States on December 6, 1944. Steps are now being taken by

the defendant to correct the unlawful situation that now exists by transferring the license to his father and himself. Francesca Ferrucci has agreed to withdraw from participation in the liquor business. The "front", however, still exists, and hence I must suspend the license for the balance of its term. However, if and when the unlawful situation is actually corrected, I shall entertain a petition to lift the suspension and restore the license. However, the suspension will not be lifted in any event until at least sixty days after the effective date of the suspension herein imposed.

Although this proceeding was instituted during the fiscal year 1944-45, it does not abate but remains fully effective against the renewal license for the 1945-46 fiscal year. State Regulations No. 16.

Accordingly, it is, on this 6th day of August, 1945,

ORDERED, that Plenary Retail Distribution License D-4, for the 1945-46 fiscal year, issued by the Common Council of the Borough of Netcong to Joseph J. Ferrucci, t/a Circle Market, for premises Route 6, Netcong, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. August 13, 1945; and it is further

ORDERED that, in the event the unlawful situation is properly corrected, an application by petition may be made to the Commissioner of Alcoholic Beverage Control for the lifting of said suspension, in accordance with the terms aforesaid.

ALFRED E. DRISCOLL
Commissioner.

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

In the Matter of Disciplinary Proceedings against
BENJAMIN HELLER and AARON HELLER,
t/a Heller & Heller,
45 Fourth Avenue,
East Orange, N. J.,
Holders of Plenary Retail Distribution License D-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange

CONCLUSIONS
AND
ORDER

Benjamin Heller and Aaron Heller, Defendant-licensees, Pro Se.
Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants plead non vult to the charge of selling alcoholic beverages below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The file discloses that on July 3, 1945, an ABC investigator purchased from an employee of the licensees a 4/5 quart bottle of

Speas Apple Brandy for \$3.45, whereas the Fair Trade price for such item was then \$3.56. See Bulletin 668.

Defendant, Benjamin Heller, and the employee of defendants who made the sale contended that they neglected to read the latest Fair Trade bulletin in which the item in question had been listed for \$3.56.

Even though there was no apparent intention to violate the Rules and Regulations of the Department of Alcoholic Beverage Control, a minimum suspension is nevertheless warranted. Defendants have no previous adjudicated record. I shall, therefore, suspend the license for a period of ten days with a remission of five days because of the non vult plea entered herein, or a net suspension of five days. Re Grant Lunch Corporation, Bulletin 517, Item 3; Re Silver Rod Stores Inc., Bulletin 649, Item 4.

Accordingly, it is, on this 9th day of August, 1945,

ORDERED that Plenary Retail Distribution License D-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange to Benjamin Heller and Aaron Heller, t/a Heller & Heller, for premises 45 Fourth Avenue, East Orange, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a. m., August 20, 1945, and terminating at 9:00 a. m. August 25, 1945.

ALFRED E. DRISCOLL,
Commissioner.

7. ELIGIBILITY - VIOLATION OF ALCOHOLIC BEVERAGE LAW - POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES (CONTAINING POISONOUS INGREDIENTS) FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT HELD INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

Re: Eligibility Case No. 574.

A hearing has been held therein to determine applicant's eligibility to own an interest in a liquor license in this State.

In 1931 applicant was fined \$150. after he had pleaded guilty to a charge that he had violated the National Prohibition Act. For the reasons hereinafter stated, it is unnecessary to determine in this proceeding whether the crime of which applicant was convicted in 1931 did or did not involve moral turpitude.

On December 17, 1936, applicant was fined \$500. and sentenced to serve a term of nine months in a County Jail after he had pleaded non vult in a criminal court to charges of (1) possession of illicit beverage and (2) possession of illicit beverage containing poisonous ingredients, in violation of the Alcoholic Beverage Control Act. The prison sentence was suspended during good behavior.

A single violation of the Alcoholic Beverage Control Act, in the absence of aggravating circumstances, may not involve moral turpitude. Re Case No. 478, Bulletin 554, Item 4.

It appears that applicant's second conviction resulted from a complaint made by two ABC agents following a routine inspection of applicant's tavern when from behind the bar the agents seized two bottles of whiskey which apparently were not genuine as labeled, together with a jug containing about a half-gallon of alcohol which they found in applicant's living-rooms above his tavern. Subsequent analysis by the Department chemist disclosed that the contents of both the

seized bottles and the jug contained poisonous ingredients.

At the hearing herein applicant testified that he bought the seized alcohol from a grocery salesman who represented that it was pure grain alcohol and could be used to make anisette. Subsequently applicant attempted, without success, to make anisette and then used a portion of the alcohol to refill two or three whiskey bottles. Applicant alleged that he was ignorant of the fact that the alcohol contained poisonous ingredients.

The sale of poisonous liquor has disastrous consequences and is a real menace to the public. Despite applicant's alleged ignorance of the poisonous nature of the alcohol, nevertheless, he acquired the beverage not from an authorized licensee but from an irresponsible person and thus engaged in an unlawful as well as a reckless business manifesting a careless disregard for human life. A crime of this character ordinarily involves moral turpitude. I have been unable to find anything in the instant case requiring a different finding.

I conclude that applicant is not presently eligible to own an interest in a liquor license in New Jersey.

ALFRED E. DRISCOLL,
Commissioner.

Dated: August 7, 1945.

8. ELIGIBILITY - CONSPIRACY TO VIOLATE UNITED STATES INTERNAL REVENUE CODE FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT ADVISED HE IS INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

August 9, 1945

Re: Case No. 575

Applicant, who has been twice convicted of crimes, seeks a ruling by the Commissioner of Alcoholic Beverage Control to determine his eligibility for association in a business capacity with the alcoholic beverage industry. R. S. 33:1-25,26.

Fingerprint records disclose that, in 1932, applicant was convicted in a Court of Special Sessions for possession of gambling devices and fined \$50. This conviction did not involve moral turpitude. Fingerprint records also disclose that, in 1944, applicant was convicted in a Federal District Court for conspiracy to violate the U. S. Internal Revenue Code and violation of O.P.A. price regulations re alcoholic beverages (black market). As a result thereof he was sentenced to six months in jail and fined \$1,000.

It has heretofore been ruled that conspiracy against the revenue laws of the United States is a crime involving moral turpitude. Re Case No. 268, Bulletin 592, Item 9.

I am also of the opinion that violation of the O.P.A. price regulations, when extensive "black market" activities are indicated, also involves moral turpitude.

Accordingly, it is recommended that applicant be advised that he is ineligible to hold a liquor license in this state or to be employed by or connected in any business capacity whatsoever with a licensee, pursuant to R. S. 33:1-25,26.

Edward F. Hodges,
Attorney.

Approved:

ALFRED E. DRISCOLL,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS.

In the Matter of Disciplinary Proceedings against)

JOSEPH RULLI,)
420 Passaic Avenue,)
East Newark,)
P. O. Harrison, N. J.,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consump-)
tion License C-7, issued by the)
Borough Council of the Borough)
of East Newark.)

Joseph Rulli, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he possessed 16 bottles of assorted alcoholic beverages, the contents thereof not being genuine as labeled, in violation of R.S. 33:1-50.

On June 6, 1945, an agent of the Federal Alcohol Tax Unit of the Treasury Department, during an inspection of the open stock of liquor on defendant's premises, seized 16 bottles of whiskey when preliminary test thereof indicated that the contents of said bottles had different characteristics than the whiskey named on the labels. A subsequent analysis by the chemist of the Federal Treasury Department confirmed that the contents of the bottles were not genuine as labeled.

Defendant admitted that he had refilled the seized bottles. The 16 bottles seized represent approximately 60% of the defendant's open stock, consisting at the time of the inspection of 27 bottles.

The possession of such a large percentage of whiskey not genuine as labeled indicates a deliberate fraud upon the public. The defendant's customers had little chance of getting the liquor that they ordered.

The comprehensive legislative restrictions against rectifying, blending and bottling by retail licensees are supported by sound public policy. Customers are entitled to receive the beverage ordered. The service of adulterated liquor or the use of refilled bottles perpetrates a fraud upon the customer. Even more dangerous than this fraud is the fact that the practice, while it frequently begins with the use of cheap or unpopular tax-paid liquor, opens the door to the use of bootleg liquor.

It is essential to effective control that licensees be severely punished where they have been found guilty of this nefarious practice. To hold otherwise would be to invite a complete breakdown in our law enforcement activities and to place in jeopardy the continuance of the license system. I do not intend to permit a "racket" of this type to fasten itself upon the industry in this State. Licensees are hereby warned that they must not, under any circumstances, tamper with their alcoholic beverages. Those ignoring this warning may expect severe punishment.

Defendant has no prior record of adjudicated violations. I shall suspend his license for a period of 60 days.

Accordingly, it is, on this 15th day of August, 1945,

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of East Newark to Joseph Rulli, for premises 420 Passaic Avenue, East Newark, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 a. m. August 27, 1945, and terminating at 2:00 a. m. October 26, 1945.

ALFRED E. DRISCOLL,
Commissioner.

10. APPELLATE DECISIONS - TRIANO v. BLOOMFIELD

JERRY TRIANO,)	
)	
Appellant,)	On Appeal
)	
v.)	CONCLUSIONS AND ORDER
)	
TOWN COUNCIL OF THE TOWN OF)	
BLOOMFIELD,)	
)	
Respondent.)	

Sidney Simandl, Esq., Attorney for Appellant.
Edward C. Pettit, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from revocation of appellant's plenary retail consumption license, for the license year 1944-1945, for premises located at 2 Montgomery Street, Bloomfield.

Respondent revoked the license after an attorney who then respresented appellant entered a plea of guilty in disciplinary proceedings to charges duly preferred by respondent against appellant. The charges, dated February 5th, alleged that on January 20, 1945, and on occasions theretofore, the appellant sold, served and delivered and allowed, permitted and suffered the service and delivery to, and consumption of alcoholic beverages by five minors, named in the charges, in violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20. Since it appeared from the records of the Department of Alcoholic Beverage Control that the violation was the second adjudicated "minors" violation, a stay of the respondent's order of revocation pending the determination of the appeal was denied.

The petition of appeal sets forth that the action of respondent was erroneous in that (a) it relied upon hearsay evidence and information obtained as to an alleged violation of sale to minors on February 3, 1945; (b) the Board approached the hearing and trial with a preconceived determination to revoke appellant's license, and did not hear testimony which might have mitigated the sentence or tended to indicate that appellant was not present and that neither he nor his agents committed a wilful violation of the Alcoholic Beverage Act; (c) the penalty of revocation invoked by said Council was unreasonable.

unjustified and unduly harsh in light of all of the circumstances.

With respect to (a) and (b): It appears from the record that the hearing in the disciplinary proceedings concluded with the revocation was held before the respondent on February 19th, 1945. On February 6, 1945, prior to the hearing but subsequent to the date of the charges, appellant's bartender, who had previously been arrested in connection with the sales to minors on January 20, 1945, was again arrested for the alleged sale of alcoholic beverages to a minor in appellant's premises on February 3, 1945.

It is stated that respondent, in reaching its decision to revoke appellant's license, took into consideration the alleged violation of February 3, 1945. On this point Councilman Thomas B. Fields, a member of the respondent Town Council, testified that in reaching its decision to revoke appellant's license the members of the Town Council did not take into consideration the February 3rd incident.

No testimony was introduced in the appellate proceedings to show that the members of the Town Council approached the hearing on February 19th with a preconceived determination to revoke appellant's license. Councilman Fields testified that the Council, in reaching its decision, did not consider any "prior record other than a prior conviction" against the appellant in November, 1943 for sales to minors.

Because of the plea of "guilty" to the charges of February 5th, respondent was not required to offer appellant an opportunity to present testimony in contradiction of the charges or for the purpose of showing mitigating circumstances. The admission of testimony following the "guilty" plea rested in the discretion of the respondent. In the instant case, it is to be noted that counsel for the appellant on the date of the hearing did not offer any testimony either in mitigation of the penalty or for any other purpose.

On appeal, the licensee was given a full opportunity to offer testimony. He testified that he has a very substantial investment in the licensed premises and that he was not present when the violations were committed. Appellant further testified that he had instructed his employees to be careful not to sell to persons who appeared to be under the age of twenty-one years. Despite his reported precautions, on the evening of January 20, 1945, one sixteen year old boy, two seventeen year old minors, and two eighteen year old minors were sold, served and permitted to consume alcoholic beverages on the licensed premises. Two of these youngsters testified that they were served at the bar. Neither the extent of the appellant's investment nor his absence from the premises when the violations were committed by his agents is a reason why he should not be punished. See Grant Lunch v. Commissioner of Alcoholic Beverage Control, 129 N.J.L. 408, 411. The severity of the punishment must be measured by the seriousness of the violation rather than by the size of the licensee's establishment or the extent of his investment.

The Hearer reports that all of the minors are youthful in appearance and that a reasonable man should have recognized that they were under 21 years of age. The violation in question appears to have been an aggravated one.

As to (c): It appears from the records of the Department of Alcoholic Beverage Control that on November 9, 1943, I suspended the license held by appellant for a period of ten days with a remission of

five days because of a plea of non vult to charges alleging that he had sold alcoholic beverages to two minors, one nineteen and one twenty years of age, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20. Re Triano, Bulletin 593, Item 13. Respondent properly took into consideration appellant's prior adjudicated record in reaching a decision in the proceedings before it on the 19th.

The plenary retail consumption license held by appellant on February 19, 1945, issued by the respondent for the license year 1944-45, constituted a special privilege "granted to the few, denied to the many". Paul v. Gloucester, 50 N.J.L. 585 (E. & A.). Our Supreme Court has wisely held: "The sale of liquor has never been, in this state, a matter of right." Gaine v. Burnett, 122 N.J.L. 39. The "privilege" granted by a license is clearly of a revocable character. See Garford Trucking, Inc. v. Hoffman, 114 N.J.L. 522, 531. Since municipal issuing authorities are primarily responsible for the policing of licensed premises (R.S. 33:1-24; R.S. 33:1-71) they must be given considerable latitude in determining the extent to which the licensed privilege should be suspended (or revoked) following an adjudication or plea of guilty in appropriate disciplinary proceedings. In numerous decisions the Commissioner has stated that the punishment (suspension or revocation) to be imposed by a local issuing authority in disciplinary proceedings lies within its sound discretion and that such punishment will not be reduced on an appeal unless it is clearly shown to be an abuse of discretion. Falone and Coll v. Englewood Cliffs, Bulletin 401, Item 8. Cf. Robinson and Fountain v. Newark, Bulletin 54, Item 2. The power of the Commissioner on appeal to reduce a penalty is confined to those cases where the revocation or suspension is manifestly unreasonable. The revocation in the present case, while severe, is not so unreasonable as to constitute an abuse of the discretionary authority vested in the respondent Town Council. The plea for mitigation should be made, if at all, to the respondent Town Council which may grant relief in the event that it determines such action to be advisable. Lindenbaum v. Belleville, Bulletin 179, Item 10. I shall affirm respondent's action.

Accordingly, it is, on this 6th day of August, 1945,

ORDERED that the action of respondent Town Council of the Town of Bloomfield in revoking the plenary retail consumption license of Jerry Triano be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

11. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLES USED TO TRANSPORT STOLEN LIQUOR, IN VIOLATION OF ALCOHOLIC BEVERAGE CONTROL LAW, ORDERED FORFEITED.

In the Matter of the Seizure)	Case No. 6796
on February 14, 1945, of a)	
Buick Sedan, and a Buick Coupe)	
in the vicinity of Ferry and)	ON HEARING
Freeman Streets; and the Seizure)	CONCLUSIONS AND ORDER
of a Buick Coupe in the vicinity)	
of 330 Belmont Avenue, both in)	
the City of Newark, County of)	
Essex and State of New Jersey.)	

Michael Breitkopf, Esq., Attorney for Martha Kaleta,
August Kaleta and Thomas Wheaton.
Stanley Blasi, Esq., Attorney for Oscar Vielee.
Harry Castelbaum, Esq., appearing for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Chapter 1 of Title 33 of the Revised Statutes, to determine whether a Buick Sedan, owned by Martha Kaleta, and a Buick Coupe, owned by Thomas Wheaton, both seized in the vicinity of Ferry and Freeman Streets, and a Buick Coupe, owned by Oscar Vielee, seized in the vicinity of 330 Belmont Avenue, in Newark, New Jersey, constitute unlawful property and should be forfeited.

On February 14, 1945 Newark police were searching for alcoholic beverages stolen from the licensed tavern of Charles E. Lysacht in Denville, New Jersey. They were also looking for certain motor vehicles which they were informed were being used to transport these alcoholic beverages.

At about 6:30 p.m. on the 14th, August Kaleta gave the Newark officers the keys to his Buick Sedan. Nine cases of the stolen whiskey were found in the rear trunk of this car.

A Buick Coupe owned by Thomas Wheaton, who was suspected of participating in the theft, was parked in a nearby gas station within about fifteen feet of Kaleta's car, which had been found near the corner of Ferry and Freeman Streets. A partly filled bottle of whiskey was discovered in this car.

The police officers seized the two cars and the whiskey.

At about 10:00 p.m. on the same day police officers went to the home of Oscar Vielee at 330 Belmont Avenue. They asked Vielee the whereabouts of his Buick Coupe. He told the officers that it was parked in front of his home. Ten cases of the stolen whiskey were in this car. The officers seized the car and the whiskey.

The nineteen cases of whiskey were subsequently returned to their respective owners and the three cars were turned over to the State Department of Alcoholic Beverage Control.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Martha Kaleta, Thomas Wheaton and Oscar Vielee appeared and sought return of their respective motor vehicles.

It is unlawful to transport alcoholic beverages, except a limited quantity for personal consumption, in any vehicle unless a license for that purpose is obtained from the Department of Alcoholic Beverage Control. Even for personal consumption, no more than twelve quarts (one case) of whiskey may be transported in an unlicensed vehicle. R. S. 33:1-2. None of the motor vehicles in question were licensed to transport alcoholic beverages.

August Kaleta and Oscar Vielee acknowledge that they transported the stolen alcoholic beverages found in their respective vehicles. Thomas Wheaton denies that he transported alcoholic beverages in his motor vehicle.

Alcoholic beverages illegally transported are declared illicit. R. S. 33:1-1(i). Any motor vehicle used to transport illicit alcoholic beverages constitutes unlawful property (R. S. 33:1-1(y)), and is subject to forfeiture. R. S. 33:1-66. The transportation of stolen alcoholic beverages constitutes a serious violation of the law.

The Kaleta car is registered in the name of Martha Kaleta, wife of August Kaleta, and she claims that her husband transported the stolen alcoholic beverages without her knowledge or consent, and that she had no reason to suspect that her car was to be used for that purpose.

However, 36 cases of the stolen alcoholic beverages were found in the parlor of her home on Wednesday, February 14, 1945, after the seizure had been made. She claims that she did not know that the alcoholic beverages were there. It is a three room apartment. She says that she was in the parlor on Monday and there were no alcoholic beverages there; that on Tuesday her husband "taped the room off" -- hung a bedspread over the door -- and told her not to go in there. Her story cannot be accepted at face value. She, like Bluebeard's wife, must have had an overwhelming curiosity as to what was in the room. It is more reasonable to conclude that she knew of her husband's stolen liquor activities.

It is the unlawful activity and the illegal use of the car that is the material consideration -- it is that which permits the seizure and supports the forfeiture. The guilt or innocence of the owner, under our law, is important only in so far as it demonstrates the presence or absence of good faith or that the owner has "unknowingly violated" the Alcoholic Beverage Law. Cf. Goldsmith v. United States of America, 254 U.S. 505, 513; 65 L. Ed. 376, 379.

Under R. S. 33:1-66(e) I am authorized to return seized or forfeited property only in the event that I am satisfied that the person requesting its return has acted in good faith and has unknowingly violated the law.

The evidence presented does not satisfy me that Martha Kaleta acted in good faith because it seems likely that she knew or should have known that the car was being used unlawfully to transport stolen alcoholic beverages.

Furthermore, the evidence raises considerable doubt as to whether she is actually the owner of the car. It was purchased on July 6, 1943 for \$325.00. \$115.00 was paid in cash, allegedly withdrawn from her bank account, opened at a time when she was unemployed. The installment payments of the car were made with money given to her by her husband. She has no driver's license and does not drive a car.

It was used exclusively by her husband. It seems probable that title to the motor vehicle was placed in her name as a matter of convenience and that August Kaleta is the beneficial owner of the vehicle. This is a further reason for my refusal to exercise my discretionary authority in her favor or in his favor. Her request for return of the car is therefore denied.

Oscar Vielee's story is that, on February 14th, after completing his work for the day, he was cleaning his car, which was parked in front of the bakery where he was employed, when he was approached by Morris Hochhauser, a fellow employee. Hochhauser asked Vielee to go to Hochhauser's home and there get some whiskey and transport it to Vielee's home. Vielee says that at first he refused but later consented to accommodate Hochhauser, at his insistence. Vielee then went with his car to Hochhauser's home, loaded the ten cases in his car and drove to his home. When he arrived there he parked the car and says that he intended to bring the whiskey back to Hochhauser the next morning. He claims that he did not know the whiskey was stolen and was merely doing Hochhauser a favor. He says he thought that it was a black market transaction.

I do not accept Vielee's story at face value. Moreover, his version of what occurred indicates that he knew or should have known that it was a shady illegal transaction for him to remove hurriedly ten cases of whiskey from Hochhauser's home under a vague arrangement to return the whiskey to Hochhauser the next day. He says that he surmised it was a black market transaction. It is equally probable that he knew or surmised that the liquor was stolen whiskey.

Assuming that Vielee did not know that his car was subject to forfeiture by reason of its use for the unlawful transportation of the whiskey, that in itself is not sufficient to characterize him as having acted in good faith and as having unknowingly violated the law.

Ignorance of the law of this State covering the transportation of alcoholic beverages is not, in itself, sufficient to warrant remission of forfeiture. It must also appear as an essential element of good faith that the person seeking return of property subject to forfeiture, aside from the unlawful transportation, was not otherwise engaged in an unlawful enterprise. Seizure Case No. 6544, Bulletin 657, Item 6. It is clear that Vielee, when removing the stolen whiskey from Hochhauser's home, knew or should have known that he was engaging in an unlawful enterprise. His request for return of the car is therefore denied.

The Wheaton car was apparently seized on the basis of an alleged verbal admission by Wheaton that he had transported some of the stolen alcoholic beverages in such vehicle.

Sergeant James J. Madden of the Newark police testified that, in the presence of ABC Inspector Kaufman, he questioned Thomas Wheaton while he was confined at Newark police headquarters. Madden says that he asked Wheaton for the license number of his car; that during the course of this conversation he also asked Wheaton whether he used his car for the purpose of carrying any liquor and that Wheaton told him that around February 14th or 15th he transported ten cases of liquor from a garage at 195 Chambers Street to Kaleta's home at 114 Pulaski Street, both in Newark.

Inspector Kaufman's version of the incident is that Madden questioned Wheaton about the registration of his car, asked him if he used the car in the transportation of stolen liquor, and that Wheaton stated that he had transported ten cases from the Chambers Street to the Pulaski Street address about February 13th or 14th; that he was uncertain as to the date.

The officers did not obtain any written statement to this effect from Wheaton. Later when other officers obtained a written statement from Wheaton it only covered Wheaton's recital of prior thefts in which he was involved. At the hearing, Wheaton denied that he had transported whiskey in his car or that he had told Madden or Kaufman that he had used his car to transport ten cases of whiskey. He says that he told the officers that he had helped Kaleta transport ten cases of whiskey in the Kaleta car.

In order to forfeit Wheaton's car, it must be established that Wheaton had unlawfully transported alcoholic beverages therein. The presence of the bottle of whiskey in the car does not furnish any basis for forfeiture because it was apparently tax paid. Wheaton was permitted to transport this bottle of whiskey if it was intended for personal consumption. It was a partially consumed bottle of whiskey and the inference is that it was for personal use and not intended for sale.

Hence, the only evidence of unlawful transportation of alcoholic beverages is Wheaton's conversation with the officers while confined in jail. This conversation was apparently casual. It is not clear that there was any specific identification of the car. The officers depend upon their recollection of what Wheaton told them. That is insufficient to offset Wheaton's sworn testimony that he did not transport alcoholic beverages in the seized vehicle.

Under those circumstances there is no legal basis upon which I can find as a fact that Wheaton actually transported ten cases of alcoholic beverages in the seized vehicle. The car will therefore be returned to him upon the payment of the costs of its seizure and storage.

Accordingly, it is ORDERED that if, on or before the 30th day of August, 1945, Thomas Wheaton pays the cost incurred in the seizure and storage of his Buick Coupe, such motor vehicle will be returned to him; and it is further

DETERMINED and ORDERED, that the Buick Sedan registered in the name of Martha Kaleta and the Buick Coupe registered in the name of Oscar Vielee, described in a schedule hereinafter set forth, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66 and that it be retained for the use of hospitals and State, county and municipal institutions; at the direction of the Commissioner.

ALFRED E. DRISCOLL
Commissioner.

Dated: August 17, 1945.

SCHEDULE "A"

- 1 - 1938 Black Buick Sedan, 1944 Registration F Z 588
New Jersey.
- 1 - 1937 Maroon Buick Coupe, 1944 Registration NF 208
Connecticut.

12. APPELLATE DECISIONS -- HOFFMAN v. JERSEY CITY AND LOMBARDO.

PHILIP HOFFMAN,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE)

CITY OF JERSEY CITY and)

JOHN LOMBARDO,)

Respondents)

Drewen & Nugent, Esqs., by Samuel Moskowitz, Esq.,
Attorneys for the Appellant.
Milton, McNulty & Augelli, Esqs., by Joseph Keane, Esq.,
Attorneys for the Respondent-licensee.
Charles A. Rooney, Esq., by John J. Meehan, Esq.,
Attorney for the Respondent Board.

BY THE COMMISSIONER:

This is an appeal from the action of the Board of Commissioners of the City of Jersey City granting John Lombardo a transfer of his plenary retail distribution license from 708 Bergen Avenue to 750 Bergen Avenue (corner of Bergen Avenue and Montgomery Street).

The appellant holds a plenary retail distribution license, issued by the respondent Board of Commissioners, for premises at 751 Bergen Avenue (on the opposite side of the street from 750 Bergen Avenue).

Appellant contends that the respondent Board erred in granting the transfer for the following reasons: (1) the transfer is to a neighborhood where there are a sufficient number of licenses; (2) the granting of the transfer is a breach of the discretionary authority vested in the respondent Board by the Legislature; (3) the transfer is "a sham and a pretense" and solely for the purpose of permitting the respondent licensee to sell his license; and (4) that the respondent licensee did not obtain the approval of his landlord to the transfer of the license as required by law.

The respondents deny all of the allegations set forth as grounds for reversal and allege that the transfer was made in good faith and in a proper exercise of sound discretion.

A map of the neighborhood was introduced in evidence as Exhibit A-1 for the purpose of showing the locations of the various licensed premises in the immediate vicinity of the present and proposed premises. From the testimony it appears that the distance between 708 Bergen Avenue and 750 Bergen Avenue is approximately 500 feet, and that within the area covered by the map there are presently located six plenary retail distribution licenses and twelve plenary retail consumption licenses. The locality in question appears to be devoted in part to neighborhood business, including an overabundance of taverns and liquor stores. The latter condition, however, is not materially affected by the transfer.

I am satisfied that the section of Jersey City described in Exhibit A-1 constitutes one general neighborhood. I am unable to agree with the appellant's contention that the transfer is from one neighborhood to another. On the contrary, I find that the transfer is

intra-neighborhood. Cf. Metropolitan Liquor Corporation v. Jersey City, Bulletin 645, Item 1. It cannot be said that the respondent Board abused the discretionary authority confided in it by merely granting a transfer of an already existing license within the same neighborhood.

The premises in question were formerly occupied by the holder of a plenary retail distribution license and have been the subject of a prior appeal. See Tsibikas et al. v. Jersey City et al., Bulletin 543, Item 12. The latter decision, reversing the action of the Board of Commissioners granting a new license, turned upon issues foreign to the present appeal.

The allegation that respondent licensee did not act in good faith and has either sold or plans to sell his license is not supported by the evidence. Moreover, the allegation is of doubtful relevancy. Similarly, the record does not support the suggestion of bad faith on the part of the respondent Board.

There appears to be no merit in appellant's fourth ground of appeal. A transfer of a license may not be refused merely because of an objection by a landlord. Nor may a municipal issuing authority require the approval of the landlord as a condition precedent to the granting of a transfer. The issues raised by an application for a transfer should be determined in the light of public welfare and convenience. Metropolitan Liquor Corporation v. Jersey City, supra.

It does not appear that the respondent Board abused the discretionary authority vested in it by the Legislature.

The appellant having failed to sustain the burden of proof, the action of the respondent Board of Commissioners will be affirmed.

Accordingly, it is, on this 17th day of August, 1945,

ORDERED, that the action of respondent be and the same is hereby affirmed.

Alfred E. Driscoll

Commissioner.