

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

BULLETIN 631

AUGUST 18, 1944.

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THE UNITED STATES OF AMERICA  
DEPARTMENT OF JUSTICE

INVESTIGATION OF THE ACTS OF  
TERRORISM COMMITTED BY  
THE ORGANIZATION OF THE  
BLACK PANTHER PARTY

REPORT OF THE  
ATTORNEY GENERAL

IN RESPONSE TO A RESOLUTION  
PASSED BY THE HOUSE OF REPRESENTATIVES  
ON APRIL 18, 1968

AND TO A RESOLUTION  
PASSED BY THE SENATE  
ON APRIL 18, 1968

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

BULLETIN 631

AUGUST 18, 1944.

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

In the Matter of Disciplinary Proceedings against )

ANDREW NYKUN )  
Main Street )  
Independence Township )  
P. O. Great Meadows, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Independence. )  
----- )

Andrew Nykun, Pro Se.  
Nathan Davis, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has entered a plea of non vult to a charge alleging that he possessed an alcoholic beverage which was not genuine as labeled, in violation of R. S. 33:1-50.

During an inspection of the defendant's open stock by an inspector of the Alcohol Tax Unit of the Federal Revenue Service, the inspector discovered a quart bottle labeled "Old Overholt Bottled-in-Bond Straight Rye Whiskey, 100 Proof" containing whiskey the proof of which was approximately 86 and the color of which was slightly darker than Old Overholt Bottled-in-Bond. Analysis by the chemist of the Alcohol Tax Unit substantiated these facts.

Defendant admitted that he had poured the balance of a 1/5 bottle containing Old Overholt Straight Rye Whiskey 86 Proof into this quart bottle in the belief that all Old Overholt Whiskey was the same. He admits, however, that he hoped to gain some advantage by transferring the liquor to a quart bottle on the theory that "if a customer saw it was a quart bottle he would feel it was old stuff."

In the opinion of the Alcohol Tax Unit chemist, it could well be that the whiskey in this questionable bottle was Old Overholt, 86 Proof. It compared favorably with authentic samples as to proof, acids, solids and color. It could not have been the Bottled-in-Bond Overholt. As a matter of fact, the proof being approximately 86, it is likely that there was none of the original bottled-in-bond whiskey in the bottle when the transfer was made.

Although it has been my policy for the past two years not to institute proceedings where only one questionable bottle is involved, this case falls within one of the exceptions thereto, viz., that "the discrepancy in content is such as to permit only of the positive and unmistakable inference that the bottle has been 'refilled' with another alcoholic beverage." See Vittoria Castle, Bulletin 557, Item 11. The fact that in this case the whiskies were made by the same distiller does not alter the fact that a cheaper type whiskey was being sold to the public as a bottled-in-bond whiskey.

In view of the fact that this is defendant's first adjudicated offense, I shall suspend the license for a period of ten days, the minimum in cases of this kind. See Mullaney, Bulletin 607, Item 2, and cases cited.

Accordingly, it is, on this 3rd day of August, 1944,

ORDERED, that Plenary Retail Consumption License C-4, heretofore issued by the Township Committee of the Township of Independence to Andrew Nykun, for premises on Main Street, Independence Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. August 8, 1944, and terminating at 2:00 A.M. August 18, 1944.

ALFRED E. DRISCOLL  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MEMBERS OF ARMED FORCES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against )

BLANCHE BABETTE STEBBINS )  
T/a BABETTE CLUB )  
N/E Cor. Mississippi and )  
Pacific Avenues )  
Atlantic City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-155 for the fiscal year 1943-44 and now holder of Plenary Retail Consumption License C-213 for the current (1944-45) year, both issued by the Board of Commissioners of the City of Atlantic City. )  
----- )

John Rauffenbart, Esq., Attorney for Defendant-Licensee.  
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant was served with a charge alleging a violation of Section 2(a) of an Atlantic City ordinance adopted on August 11, 1938, as amended September 10, 1942. Section 2(a), at the time of the alleged violation, provided as follows:

"No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverages to any person wearing the uniform of any of the Armed Forces of the United States of America between the hours of 11:30 P. M. and 9 A. M. of any day of the week, excepting, however, that in addition to the hours of sale, service and delivery not prohibited by this section, alcoholic beverages may be sold, served and delivered to such persons between the hours of 11:30 P. M. on Saturday and up to and including 1 A. M. the following morning."

At the hearing, an attorney, appearing for the defendant, advised that he was not authorized by his client to enter a plea to the charge. Hence, a technical plea of not guilty was entered by the Hearer and testimony was taken.

After having carefully considered the record, I have reached the conclusion that the testimony of the local policemen and military police called by the Department does not support a finding that the defendant violated Section 2(a) of the ordinance quoted above.

The police testified that, on the morning of September 7, 1943, at 3:30 A.M., they looked through a window of defendant's premises and observed two officers of the United States Army, together with two young ladies, standing in front of defendant's bar. According to their story, they observed the bartender fill a "small whiskey glass", which was placed in front of one of the young ladies, who thereupon mixed the same in a "highball glass" and handed the latter to one of the officers. According to the policemen, a glass containing an alcoholic beverage was subsequently taken from the possession of one of these army officers.

On behalf of the defendant, the bartender admits serving drinks to the young ladies but denies that there was any service or delivery of alcoholic beverages to either of the army officers. A patron, who was in defendant's premises at the time, testified that he did not observe the army officers having anything to drink at any time.

Neither of the army officers was available at the time of the hearing. Statements executed by each of the army officers, however, were admitted in evidence. Therein each officer states that he was in defendant's premises on the night in question but that no alcoholic beverages were sold or served to him after 11:30 P. M. I shall accept the statements of the army officers.

Accordingly, it is, on this 3rd day of August, 1944,

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

ALFRED E. DRISCOLL  
Commissioner.

3. ACTIVITY REPORT FOR JULY, 1944

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licensees and employees - - - - -	10	Bootleggers - - - - -	23
	Total number of persons arrested- - - - -			33
<u>SEIZURES:</u>	Stills - 1 to 50 gallons daily capacity - - - - -			4
	50 gallons and more daily capacity- - - - -			1
	Total number of stills seized - - - - -			5
	Mash - gallons- - - - -			9,855
	Motor vehicles - Trucks - - - - -		2	
	Passenger cars - - - - -		3	
	Total number of motor vehicles seized - - - - -			5
	Beverage alcohol - gallons- - - - -			115
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -			35.50
	Wine - gallons- - - - -			1.50
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -			4.37

<u>RETAIL LICENSEES:</u>	Total number of premises inspected- - - - -			1,165
	Total number of bottles gauged- - - - -			8,072
	Total number of premises where violations were found- - - - -			72
	Total number of violations found- - - - -			87
	Type of violations found:			
	Illicit (bootleg) liquor- - - - -	6	Improper beer tap markers- - - - -	1
	Gambling devices- - - - -	3	Stock disposal permits necessary - - - - -	16
	Prohibited signs- - - - -	0	No sign denoting legal sale hours - - - - -	
	Unqualified employees - - - - -	36	off-premises consumption - - - - -	15
	"Fronts" (concealed ownership)- - - - -	4	Other types of violations- - - - -	6
<u>MILITARY AREA PATROL INSPECTIONS:</u>				417

<u>STATE LICENSEES:</u>	Premises inspected - - - - -			181
	License applications investigated- - - - -			16

<u>COMPLAINTS:</u>	Investigated, reviewed and closed - - - - -			325
	Investigation assigned, not yet completed- - - - -			298

<u>LABORATORY:</u>	Analyses made- - - - -			54
	"Shake-up" cases (alcohol, water and artificial coloring)- - - - -			8
	Liquor found to be not genuine as labeled- - - - -			0

<u>IDENTIFICATION BUREAU:</u>	Criminal fingerprint identifications made- - - - -			23
	Persons fingerprinted for non-criminal purposes- - - - -			450
	Identification contacts with other enforcement agencies- - - - -			613
	Motor vehicle identifications via N. J. State Police Teletype- - - - -			19

<u>DISCIPLINARY PROCEEDINGS:</u>	Cases transmitted to municipalities- - - - -			19
	Cases instituted at Department - - - - -			15

<u>HEARINGS HELD AT DEPARTMENT:</u>	Total number of hearings held- - - - -			46
	Appeals - - - - -	17	Seizures- - - - -	2
	Disciplinary proceedings- - - - -	12	Application for solicitor's	
	Eligibility - - - - -	14	permit- - - - -	1

<u>PERMITS ISSUED:</u>	Total number of permits issued - - - - -			4,621
	Unqualified employees- - - - -			1,962
	Solicitors - - - - -			1,628
	Social affairs - - - - -			187
	Home manufacture of wine - - - - -			53
	Disposal of alcoholic beverages- - - - -			106
	Miscellaneous permits- - - - -			685

Respectfully submitted,  
 Sydney B. White  
 Chief Inspector

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against )

NATHAN NOVER )  
T/a SNUG )  
131-133 South Street )  
Orange, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-26, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange. )  
----- )

Nathan Nover, 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, on June 17, 1944, he possessed two 4/5 quart bottles of "Four Roses Fine American Whiskey A Blend of Straight Whiskies 90 Proof", and one quart bottle of "Old Overholt Straight Rye Whiskey Bottled in Bond 100 Proof", all of which contained alcoholic beverages not genuine as labeled.

Although the defendant contends that he personally had no active part in the offense, he concedes that he "must take all responsibility" for the act of his bartender. Cf. Re Kurian, Bulletin 517, Item 2.

In October 1942, the defendant's license was suspended for a net period of ten days upon his guilty plea to a charge of selling alcoholic beverages on an Election Day. For the instant violation, a penalty of fifteen days will be imposed.

Accordingly, it is, on this 4th day of August, 1944,

ORDERED, that Plenary Retail Consumption License C-26, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Nathan Nover, t/a Snug, for premises 131-133 South Street, Orange, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A. M. August 9, 1944, and terminating at 2:00 A. M. August 24, 1944.

ALFRED E. DRISCOLL  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - RETAIL LICENSEE PURCHASED ALCOHOLIC BEVERAGES FROM NON-LICENSEE IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

FRANK & MARY SLOHADA )  
221 - 16th Avenue )  
Newark, 3, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-839 for fiscal year 1943-44, and now holder of Plenary Retail Consumption License C-839 for the current (1944-45) fiscal year, both issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
----- )

Sidney Simandl, Esq., Attorney for Defendants.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded non vult to a charge alleging that, in violation of Rule 15 of State Regulations No. 20, they purchased, in September or October 1943, alcoholic beverages from persons who were not the holders of a New Jersey manufacturer's or wholesaler's license.

Defendants requested an opportunity to present evidence to show that at the time of the purchase they had no knowledge that the alcoholic beverages had been stolen. Their request was granted to afford them an opportunity to present evidence which might mitigate the suspension to be imposed for the admitted violation.

At the hearing, defendant Frank Slohada testified that he purchased a case of whiskey from a patron who was employed as a truck driver. The price paid was approximately \$6.00 less than the wholesale price. Both Frank Slohada and a business man who states that he was in the licensed premises at the time the purchase was made, testified that the truck driver told the licensee at the time the purchase was made that he had obtained the case of whiskey as a present. The fact that the purchase was made at midnight; that the truck driver delivered the case of liquor through an alleyway to the kitchen in the rear, and that the price paid was less than the wholesale price are suspicious circumstances in this case.

I deem it unnecessary, however, to decide in this proceeding whether or not defendants had any actual knowledge that the liquor was stolen. That issue may best be determined in criminal proceedings which are now pending against Frank Slohada on a charge of receiving stolen goods. In the instant case it is sufficient to state that the alcoholic beverages were purchased from an unlawful source, under circumstances which make it difficult for me to believe that defendant, Frank Slohada, did not at least suspect, if not actually know, that the vendor had obtained the alcoholic beverages illegally. A substantial penalty will serve notice on retail licensees that it is not profitable to buy liquor from any person other than a licensed New Jersey manufacturer or wholesaler. I would be inclined to revoke the license in this case if it were not for the fact that the licensees have held a liquor license since 1933 without

any previous adjudicated record of any violation. Under the circumstances, I shall suspend the license for a period of sixty days. Re Gilmartin, Bulletin 616, Item 13. Cf. Re Mylor, Bulletin 535, Item 6. Five days will be remitted for the plea.

If the licensee, Frank Slohada, is convicted of the crime of receiving stolen goods, it may well be that he will thereby become disqualified from obtaining any liquor license thereafter. See R. S. 33:1-25. However, that question must await the actual outcome of the criminal proceedings.

Although this proceeding was instituted during the licensing period ending June 30, 1944, it does not abate but remains fully effective against defendants' renewal license for the current (1944-45) fiscal year. State Regulations No. 15.

Accordingly, it is, on this 4th day of August, 1944,

ORDERED, that Plenary Retail Consumption License C-839, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Frank and Mary Slohada for premises 221-16th Avenue, Newark, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 A. M. August 12, 1944, and terminating at 2:00 A. M. October 6, 1944.

ALFRED E. DRISCOLL  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against

SAMUEL and IDA GELLER  
313 Ferry Street  
Newark, 5, N. J.,

CONCLUSIONS  
AND ORDER

-----  
Holders of Plenary Retail Consumption License C-269, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Emanuel I. Metzger, Esq., Attorney for Defendant-Licensees.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants have pleaded guilty to a charge alleging that, on May 17, 1944, they possessed a 4/5 quart bottle of "Imperial, Hiram Walker's Blended Whiskey 86 Proof" and a 4/5 quart bottle of "Carstairs White Seal Blended Whiskey 86.8 Proof", which contained alcoholic beverages not genuine as labeled.

Since the defendants have never heretofore been cited in disciplinary proceedings and no aggravating circumstances attended the instant violation, I shall impose the usual penalty of ten days.

Accordingly, it is, on this 4th day of August, 1944,

ORDERED, that Plenary Retail Consumption License C-269, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Samuel and Ida Geller, for premises 313 Ferry Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. August 8, 1944, and terminating at 2:00 A. M. August 18, 1944.

ALFRED E. DRISCOLL  
Commissioner.

7. APPELLATE DECISIONS - CLARK v. WEST ORANGE.

JACKIE CLARK, )  
 )  
 Appellant )  
 )  
 -vs- )  
 )  
 MUNICIPAL BOARD OF ALCOHOLIC )  
 BEVERAGE CONTROL OF THE TOWN )  
 OF WEST ORANGE, )  
 )  
 Respondent )  
 -----

ON APPEAL  
CONCLUSIONS AND ORDER

William Harris, Esq., Attorney for the Appellant.  
Gerald T. Foley, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at 311 Mt. Prospect Avenue, West Orange.

The resolution adopted by the respondent denying the application recites that the appellant was denied a license "for reasons, among others, that it (the respondent) is not satisfied that the applicant is (a) properly qualified person;".

Rule 6 of State Regulations No. 14 places upon the appellant the burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed.

Appellant, at the hearing on the appeal, testified that he had been a naturalized citizen of this country since 1915; that over a period of many years he had intermittently engaged in the hotel, restaurant and night club or tavern business in a number of different places. During the Prohibition period appellant operated or managed several places where food was sold. He denied that alcoholic beverages were sold at any of the places managed by him during this period, although he admitted that upon occasions patrons were permitted to bring their own liquor and that "set-ups" were provided.\* Appellant testified that he had never been convicted of a crime. Two character witnesses appeared and testified on his behalf.

\* During the Prohibition era, restaurants and hotels where patrons consumed intoxicating liquor brought with them, and which supplied patrons with cracked ice and ginger ale, etc., were, in numerous cases, found to have tacitly consented to violations of the National Prohibition Act (27 U.S.C.A.), and were held to have been a "nuisance" within the National Prohibition Act on the ground that they were public places where liquor was permitted to be "kept" for beverage purposes. United States v. Club Chez Pierre, 31 Fed. 2d 220; Butler Hotel Co. v. United States, 35 Fed. 2d 76, cert. denied 281 U. S. 733; 27 U.S.C.A. 33, 34. (Repealed 1935).

Counsel for the appellant contends that the action of the respondent Board was arbitrary and that its action should be reversed and respondent ordered to issue a license forthwith to the appellant. Counsel for the municipality denies that the action of the latter was arbitrary and argues that the license was refused solely because the appellant's background raised a serious question in the minds of the members of the issuing authority with respect to appellant's qualification to hold a license.

It is entirely competent for a municipal issuing authority to confine its selection of licensees to those who have clearly demonstrated that they are worthy persons to receive the privilege of a license. Hodanish v. Trenton, Bulletin 121, Item 6. A determination by a municipal issuing authority that just cause exists for the denial of an application should, on appeal, be given considerable weight. Orofino v. Millburn, Bulletin 45, Item 15. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N. J. L. 585, 595. "No one has a right to demand a license; license is a special privilege granted to the few, denied to the many." Ibid 596. As Mr. Justice Field, in Crowley v. Christensen, 137 U. S. 86, stated: "There is no inherent right in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen of the state or of the United States." See also Meehan v. Jersey City, 73 N. J. L. 382, 387; Bumball v. Burnett, 115 N. J. L. 254, 255.

The appellant failed to satisfy the municipal issuing authority that the public interest would be best served by granting him a license. There is nothing in the record indicating or even suggesting that the refusal by the respondent to grant the license was "inspired by improper motives." Cf. Bumball v. Burnett, *supra*.

In passing, it may be noted that West Orange, with a population, according to the 1940 census, of 25,662, has 51 places where alcoholic beverages may be sold for consumption on the premises. While the respondent did not assign this as a reason for its refusal to grant an additional license, it may also be noted that, in the opinion of the Commissioner, the municipality presently has a sufficient number of licensed establishments to meet all reasonable needs of the citizens of West Orange.

A municipal issuing authority is not compelled to issue a license merely because the applicant is not disqualified. In the instant case, after considering the appellant's entire history, I have reached the conclusion that the respondent did not abuse the discretionary authority vested in it by the Alcoholic Beverage Law when it refused to issue the license.

I shall affirm respondent's action.

Accordingly, it is, on this 4th day of August, 1944,

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

ALFRED E. DRISCOLL  
Commissioner.

8. MORAL TURPITUDE - CRIME OF PASSING AND POSSESSING COUNTERFEIT MONEY INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, Pursuant )  
to R. S. 33:1-31.2. )  
Case No. 350. )  
----- )

CONCLUSIONS  
AND ORDER

BY THE COMMISSIONER:

In 1925 petitioner was convicted of the crime of passing and possessing counterfeit money, as a result of which he received a one-year jail term and was placed on probation for four years. This crime, prima facie, involves the element of moral turpitude. Re Case No. 227, Bulletin 278, Item 10; Re Case No. 247, Bulletin 546, Item 5. No facts have been adduced to cleanse the conviction of that element.

In addition, the petitioner was convicted in 1928 of the crime of illegal possession of intoxicating liquors and, in 1929, of assault and battery.

Petitioner has held a liquor license in this state for the past ten years despite the fact that he was ineligible as a licensee by reason of his disqualifying conviction. See R. S. 33:1-25. This he was able to do by deliberately suppressing the existence of his criminal record in every license application filed by him since 1934.

The pertinent question in the application reads: "Have you ...ever been convicted of any crime?" Anyone with even a scintilla of intelligence can understand so simple and direct an inquiry. There can be no justification for a thrice-convicted applicant to answer that question in the negative.

Petitioner's explanation for the continuing falsifications is not worthy of belief. He states that, when first filing his application in 1934, he was told by "a lot of people" (not one of whom could he name) that "after five years that you had committed a crime you don't have to put it down". Apart from the fact that the five-year provision in the statute (R.S. 33:1-31.2) simply permits the filing of an application to lift the disqualification and does not, ipso facto, remove such disqualification merely by the lapse of the five-year period, such provision was not incorporated into the statute until 1938, or four years after petitioner first obtained a license. Indeed, until 1937, when the period was fixed at ten years, no relief was afforded to applicants whose criminal records included a conviction involving moral turpitude.

The prayer of the petitioner must be denied.

For the disciplinary proceedings against petitioner's license, decided simultaneously herewith, see Bulletin 631, Item 9.

Accordingly, it is, on this 9th day of August, 1944,

ORDERED that the petition for lifting of the petitioner's disqualification from holding a liquor license or being employed on licensed premises in this state be and the same is hereby dismissed.

ALFRED E. DRISCOLL,  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS (DISQUALIFYING CRIMINAL RECORD) - LICENSE SUSPENDED FOR BALANCE OF TERM WITH PERMISSION TO BONA FIDE TRANSFEREE TO APPLY FOR LIFTING UPON EXPIRATION OF 90 DAYS.

In the Matter of Disciplinary Proceedings against )

VITO LORUSSO, )  
t/a Mesagne, )  
17 Salem Avenue, )  
Carteret, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Carteret. )  
----- )

Matthew Melko, Esq., Attorney for Defendant-Licensee.  
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that, in his applications for license, he falsely denied that he had ever been convicted of a crime, whereas in truth he had been convicted on three separate occasions, one of which involved the element of moral turpitude. See the affiliate proceedings decided simultaneously herewith (Bulletin 631, Item 8), in which I refuse to lift the defendant's mandatory statutory disqualification resulting from the latter conviction. See also R. S. 33:1-25; 31.2.

Following the similar cases of Re Botta, Bulletin 566, Item 10 and Re Muccio, Bulletin 626, Item 2, the license will be suspended for the balance of its term, with leave reserved to a bona fide purchaser of the defendant's license to apply for a lifting of the suspension after the expiration of ninety days from the effective date of the suspension herein.

This disposition renders it unnecessary to pass upon the cancellation charge which, therefore, is dismissed.

Accordingly, it is, on this 9th day of August, 1944,

ORDERED that Plenary Retail Consumption License C-2, heretofore issued for the present fiscal year by the Borough Council of the Borough of Carteret to Vito Lorusso, t/a Mesagne, for

premises 17 Salem Avenue, Carteret, be and the same is hereby suspended for the balance of its term, effective August 14, 1944, at 2:00 A.M.; and it is further

ORDERED that if a bona fide transfer of the license is effected prior to June 30, 1945, such transferee may apply to me for a lifting of the suspension but, in no event, will such suspension be lifted prior to the expiration of ninety days from the effective date of the suspension herein.

ALFRED E. DRISCOLL,  
Commissioner.

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

In the Matter of Disciplinary Proceedings against )

CLUB ARABY, )  
Licata Hall, 2nd Floor, )  
419 Walnut Street, )  
Camden, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Club License CB-44, )  
for the fiscal year 1943-44, )  
issued by the Municipal Board )  
of Alcoholic Beverage Control )  
of the City of Camden. )

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Club Araby, by Charles Follucca, President.  
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging, in substance, that (1) and (2) it was a "front" for three individuals, (3) it lacked three years active operation prior to obtaining its license, and (4) it had not been in exclusive continuous possession of its premises for said period.

The defendant obtained its charter in 1933 and existed thereunder for three months, ever since which time it has not actively operated as a club. In November, 1943, when it obtained its first liquor license, it deliberately falsified, in the application therefor, its length of active operation and possession of its premises. Moreover, the license was originally held for the pecuniary benefit of three individuals and, after two of these individuals had severed their connection with the business, the third individual conducted the business for his sole profit. The alleged secretary of this non-existent organization admitted that (1) no meetings were held, (2) he was never elected as an officer, (3) he knew none of the alleged club members, (4) he kept no records and knew of no dues being assessed, and (5) that

all profits of the restaurant and bar business were retained by the aforementioned individuals.

The license will be revoked despite the fact that no renewal has been issued for the present fiscal year. See State Regulations No. 15. This will mandatorily disqualify the club from obtaining another liquor license for a period of two years. R. S. 33:1-31.

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

ORDERED that Club License CB-44, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Club Araby, for premises Licata Hall, 2nd Floor, 419 Walnut Street, Camden, for the fiscal year 1943-44, be and the same is hereby revoked.

ALFRED E. DRISCOLL,  
Commissioner.

11. RETAIL LICENSES - "BEER & WINE" LICENSE - STATE ALCOHOLIC BEVERAGE LAW DOES NOT PROVIDE FOR "BEER & WINE" LICENSES - A MUNICIPALITY CANNOT, EXCEPT IN ONE SITUATION, ISSUE A LICENSE PERMITTING SALE FOR ON-PREMISES CONSUMPTION OF BEER AND WINE ONLY - HEREIN OF THE EXCEPTED SITUATION: PURSUANT TO A MUNICIPAL REFERENDUM HELD UNDER REVISED STATUTES, 33:1-44.

August 11, 1944.

Mr. Arthur H. Hulfish  
North Wildwood, New Jersey

Dear Mr. Hulfish:

I have your letter of August 6th, asking:

"Whether the City Officials of a City in this State can grant a License for the Purpose of a Tap-Room or Cafe, to sell retail 'Beer & Wine', ONLY, under the present rules, or would it be necessary to enact a special ordinance for this."

The Alcoholic Beverage Law provides for five types of retail licenses issuable by municipal issuing authorities:

1. Plenary retail consumption license, which entitles the holder to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises. (Revised Statutes, 33:1-12(1).)

2. Seasonal retail consumption license, which is like the plenary retail consumption license but authorizes operation only during the designated summer or winter season. (Revised Statutes, 33:1-12(2).)

3. Plenary retail distribution license, which entitles the holder to sell any alcoholic beverages for consumption off the licensed premises, but only in original containers. (Revised Statutes, 33:1-12(3a).)

4. Limited retail distribution license, which entitles the holder to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than seventy-two fluid ounces for consumption off the licensed premises, but only in original containers. (Revised Statutes, 33:1-12 (3b).)

5. Club license, which entitles the holder to sell any alcoholic beverages but only for immediate consumption on the licensed premises and only to bona fide club members and their guests. (Revised Statutes, 33:1-12(5).)

You will note that the statute sets forth the license privileges under each of the five types of licenses. Municipal authorities have no power to limit, by ordinance, the privileges afforded by the statute; nor may they issue any "Beer & Wine" license, or any license other than those authorized by the cited sections of the Revised Statutes.

There appears to be but one situation in which a retail consumption licensee in New Jersey may be only privileged to sell brewed malt alcoholic beverages or naturally fermented wine, or both. Section 33:1-44 of the Revised Statutes authorizes municipal referenda on the question:

"Shall the retail sale of alcoholic beverages, other than brewed malt alcoholic beverages and naturally fermented wine, for consumption on the licensed premises by the glass or other open receptacle... be permitted in this municipality?"

If a majority of the legal voters voting upon the question vote "yes", licenses may be issued in the municipality just as if there had been no referendum held under Revised Statutes, 33:1-44.

If, however, a majority of the legal voters voting upon the question vote "no", it appears, under the cited section, that the municipal issuing authority cannot thereafter issue any license which shall permit the sale of any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, except brewed malt alcoholic beverages and naturally fermented wines. Thus a plenary or seasonal retail consumption license, or club license, might be issued but the holder would be permitted (as a result of the referendum) to sell only the indicated beer and wine. The license fee, however, cannot be less than the minimum fixed by Revised Statutes, 33:1-12, which minimum is \$200 for a plenary retail consumption license; \$150 for a seasonal license; and \$50 for a club license.

It would appear that a plenary or limited retail distribution license would be unaffected by a majority of "no" votes on the referendum, since those licenses permit off-premises consumption only and the referendum question has to do only with on-premises consumption.

This referendum provision is technical and, therefore, I have discussed it here in some detail.

What I have tried to make very clear to you is that there is no such thing as a "Beer & Wine" license in New Jersey. The statute does not permit municipal officials to issue such a license, and their adoption of an ordinance purporting to authorize such a license can have no legal effect.

It is to be understood, of course, that a licensee is not compelled to exercise the full statutory privileges granted under his license. A retail consumption licensee may voluntarily limit the operation of his business to the sale of beer, or of beer and wine.

Very truly yours,  
ALFRED E. DRISCOLL,  
Commissioner.

12. SIGNS - HEREIN OF SIGNS IN SHOW WINDOWS AND ON EXTERIOR OF RETAIL LICENSED PREMISES ADVERTISING "WHISKEY FOR SALE", ETC.

August 14, 1944

TO ALL RETAIL LICENSEES:

Re: Display of Signs and Other Advertising  
Matter in Show Windows and on Exterior  
of Retail Licensed Premises.

It is apparent that a substantial number of retail licensees have taken advantage of the recent announcement that a partial resumption in the manufacture of distilled spirits would be permitted by placing signs in their show windows and on the exterior of their licensed premises, stating: "Whiskey for Sale", "Whiskey Today", "Whiskey In Stock", "Whiskey Available", etc. This practice has spread rapidly. The signs vary in type, size, and text.

The display of such signs is, without question, a practice unduly designed to increase consumption of alcoholic beverages. Furthermore, the appearance of these signs is untimely. The memory of the general public is not so short that it has forgotten that but a few weeks ago it was extremely difficult to purchase bottles of standard merchandise. It is to be regretted that many members of the liquor industry are all too prone to go from one extreme to another.

The Alcoholic Beverage Law explicitly confers upon the Commissioner the power to make rules and regulations concerning the "control of signs and other displays on licensed premises" and "practices unduly designed to increase consumption of alcoholic beverages". R. S. 33:1-39.

Pursuant to the aforesaid authority I, therefore, rule that no sign or other advertising matter stating, "Whiskey for Sale", "Whiskey Today", "Whiskey In Stock", "Whiskey Available",

or containing language of a similar nature shall be displayed on any door or window or in any show window, or on the exterior, of any premises licensed for the sale of alcoholic beverages at retail.

This rule is effective Friday, August 18, 1944 at 9:00 A.M.

Any violation of this rule shall subject the license to revocation or suspension.

*Alfred E. Dusin*  
Commissioner.