

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

BULLETIN 582

AUGUST 31, 1943.

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

BULLETIN 582

AUGUST 31, 1943.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS,
IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS
NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

JOHN R. MODROWSKI)
T/a JOHNNY'S TAVERN)
54 Prospect Ave.)
Bayonne, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-100, issued by the)
Board of Commissioners of the City)
of Bayonne.)
-----)

John R. Modrowski, Pro Se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges which allege, in substance,
that on August 4, 1943 he sold alcoholic beverages to two minors, in
violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The departmental files disclose that on August 4, 1943, at
about 9:30 P.M., two ABC investigators saw a daughter of the licensee
serve two glasses of beer to each of two young men in defendant's
premises. The agents identified themselves and discovered that both
young men were eighteen years of age, one of them being a member of
the British Merchant Marine. The licensee's daughter then stated to
our investigators that, on a previous occasion, both young men had
told her that they were of full age. Even if this were true, it
would not constitute a defense. See R. S. 33:1-77.

As to penalty: Defendant's record is clear for at least seven
years last past. In view of that fact, and the absence of aggravating
circumstances in this case, I shall impose the minimum penalty and
shall suspend the license for a period of ten days, less five days for
the guilty plea.

Accordingly, it is, on this 16th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-100, issued
by the Board of Commissioners of the City of Bayonne to John R.
Modrowski, t/a Johnny's Tavern, for premises 54 Prospect Avenue,
Bayonne, be and the same is hereby suspended for a period of five
(5) days, commencing at 2:00 A.M. August 23, 1943, and terminating at
2:00 A.M. August 28, 1943.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE BY CLUB LICENSEE TO PERSONS OTHER THAN BONA FIDE MEMBERS AND GUESTS, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 7 - PREVIOUS RECORD - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
DUNELLEN LODGE NO. 1488,
B.P.O. ELKS,
121 N. Washington Avenue
Dunellen, N. J.,
Holder of Club License CB-22,
issued by the State Commissioner
of Alcoholic Beverage Control.
- - - - -

CONCLUSIONS
AND ORDER

Dunellen Lodge No. 1488, B. P. O. Elks, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to charge alleging that it sold alcoholic beverages to persons other than bona fide members and their bona fide guests, in violation of Rule 5 of State Regulations No. 7.

Our file discloses that, on June 29, 1943, investigators of this Department entered the licensed premises and were served alcoholic beverages by the steward of the club. Neither was interrogated by the person in charge as to whether he was a member or guest of any member of the fraternal association. Club licensees must scrupulously obey the law respecting sales to non-members. Failure to do so warrants the imposition of severe penalties for violations of this character. I shall, therefore, impose a penalty of fifteen days' suspension for the violation in the instant case. Re Meadowbrook Social Club, Bulletin 549, Item 4.

In view of the fact that the defendant had a previous suspension, by order of the Commissioner, dated December 4, 1940, for possession of slot machines on the licensed premises, no time will be remitted because of the plea of guilty entered herein.

Accordingly, it is, on this 18th day of August, 1943,

ORDERED, that Club License CB-22, issued by the State Commissioner of Alcoholic Beverage Control to Dunellen Lodge No. 1488, B. P. O. Elks, for premises 121 North Washington Avenue, Dunellen, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 1:00 A.M. on August 20, 1943, and terminating at 1:00 A.M. on September 4, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. APPELLATE DECISIONS - GULKA AND RATUSHNY v. NEWARK - CASE NO. 1.

Case No. 1
 ANNA GULKA and HELENE)
 RATUSHNY,)
)
 Appellants,)
)
 -vs-)
)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF NEWARK,)
)
 Respondent)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

Thomas L. Hanson, Esq. and David Bernheim, Esq., Attorneys for Appellants.
 Raymond Schroeder, Esq., by Louis A. Fast, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from revocation of appellants' plenary retail consumption license C-647 for the fiscal year 1942-43, for premises at 124 Ferry Street, Newark.

On June 23, 1943, respondent revoked said license after it had found appellants guilty of a charge of employing a person disqualified by conviction of a crime involving moral turpitude, in violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11.

The case has been submitted upon the transcript of the testimony taken at the hearing held upon said charge before the respondent Board.

The evidence shows that, on December 18, 1942, at about 10:30 A.M., two ABC investigators visited appellants' premises. Both investigators saw a man in the kitchen, which is part of the licensed premises. They testified that the man was in his shirt sleeves, with an apron on, preparing food and cooking some food. In answer to an inquiry, Anna Gulka told the investigators that the man "is a cook and porter." She further told them that the man's name was William Brown; that she did not know where he lived, and that he had been working there "just a week." One of the investigators went to the kitchen for the purpose of questioning the man and was followed by Anna Gulka. When the investigator asked the man his name, Anna replied "William Brown." The man then stated to our investigator that his name was William Brown, that he resided at 93 Belmont Avenue, and that he would exhibit to the investigators within half an hour his registration card, which was at home. He left the premises and (as he admits) as promptly as possible boarded a train for Keyport, New Jersey. He did not return during the day to the licensed premises. The address, 93 Belmont Avenue, was fictitious.

The man in the kitchen was William Gulka, father of both appellants.

In 1908 William Gulka was convicted on a charge of grand larceny; in 1911 he was convicted on a charge of larceny from the person; and in 1925 he was convicted on a charge of burglary. Each of these crimes involved moral turpitude, and he and his daughter,

Anna, were advised by the Commissioner, in 1938, that he was not eligible to be employed by or to be connected in any business capacity with a liquor licensee.

Anna Gulka testified at the hearing that her father arrived at the licensed premises about fifteen minutes before the investigators, and that she permitted him to go into the kitchen to get something to eat for himself. Her actions in the presence of the investigators belie her testimony herein. She admits that she lied to the investigators.

Appellants also produced at the hearing below a farmer from Keyport, New Jersey, who patronized appellants' premises during his frequent visits to the City of Newark. This witness testified that, at the request of Helene Ratushny, he had employed her father on his farm in July 1942, and had continued said employment until some time after Christmas 1942. Helene Ratushny, who admits obtaining this job for her father, told the investigators that her father lived in Wallington.

A review of all the evidence leads me to conclude that at least one of the licensees deliberately permitted an unqualified person to be employed on the licensed premises, and deliberately lied to the investigators when the violation was discovered. I conclude also that the other licensee endeavored to mislead our investigators as to the residence of her father. Even if William Gulka was usually employed by the farmer in Keyport, the evidence is sufficient to show that, at the time in question, he was employed upon appellants' premises. Re Vlamincck, Bulletin 147, Item 4; Re Haino, Bulletin 295, Item 7; Re Geller, Bulletin 312, Item 1; Danker v. Ocean, Bulletin 448, Item 1. The finding of guilt is adequately supported by the testimony.

Appellants contend that the penalty is excessive and unreasonable. At first blush, this might appear to be true. However, the records of this Department show that, on September 6, 1935, a charge was served upon Anna Gulka by the Municipal Board of Alcoholic Beverage Control of the City of Newark, alleging that she was employing William Gulka, an unqualified person, on her licensed premises. This charge was later dismissed "with a warning that William Gulka be prohibited from taking any active part in the management of the licensed premises." In 1937 the Newark Board of Alcoholic Beverage Control instituted disciplinary proceedings against Anna Gulka for employing her father. The case was adjourned from time to time and no decision was rendered therein. On July 25, 1938 Anna Gulka was found guilty by the Commissioner of knowingly employing her father on June 6, 1938, and on divers days prior thereto, and as a result thereof her license was suspended for twenty days on that charge. On July 17, 1941 Helene Ratushny became a partner of her sister, Anna Gulka. Thereafter, in September 1942, the license held by appellants herein was suspended by the Municipal Board of Alcoholic Beverage Control of the City of Newark for a period of thirty days after they had been found guilty of possessing illicit alcoholic beverages. The penalty to be administered in a local disciplinary proceeding rests, in the first instance, within the sound discretion of the municipality. The power of the Commissioner to reduce a penalty on appeal is confined to those cases where the penalty is manifestly unreasonable. Creston v. Belleville, Bulletin 544, Item 2. Considering all the circumstances of this case, I am not warranted in finding that respondent acted unreasonably in revoking the license.

Accordingly, it is, on this 18th day of August, 1943,

ORDERED, that the action of respondent in revoking Plenary Retail Consumption License C-647, issued for the fiscal year 1942-43 to Anna Gulka and Helene Ratushny, for premises at 124 Ferry Street, Newark, be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

4. APPELLATE DECISIONS - GULKA AND RATUSHNY v. NEWARK - CASE NO. 2.

Case No. 2
ANNA GULKA and HELENE)
RATUSHNY,)
)
Appellants,)
)
-vs-)
)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)
)
Respondent)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Thomas L. Hanson, Esq. and David Bernheim, Esq., Attorneys for Appellants.
Raymond Schroeder, Esq., by Louis A. Fast, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of renewal for the current fiscal year of a plenary retail consumption license previously held by appellants for premises 124 Ferry Street, Newark.

At the time the appeal herein was filed on July 1, 1943, the appeal in Case No. 1 from the revocation of appellants' license was pending and undetermined. On July 1, 1943 an order was entered herein extending the term of License C-647 until further order of the Commissioner.

The application to renew the license was denied by respondent because of the fact that it had previously revoked said license. I have found in Case No. 1 that the penalty of revocation was warranted by the evidence produced therein. Even if that penalty were excessive, the facts, which are fully set forth in Case No. 1, would be sufficient to sustain a denial of renewal upon the grounds that appellants are not proper persons to hold a license. A renewal is not a matter of right. In view of the past record of appellants, respondent was fully justified in refusing to renew the license for the current fiscal year.

Accordingly, it is, on this 18th day of August, 1943,

ORDERED, that the action of respondent in refusing to renew appellants' license for the current fiscal year be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED, that the extension of appellants' 1942-43 license, granted by Order of July 1, 1943 to permit appellants to continue to operate pending disposition of this appeal, be and the same is hereby terminated, and that the appellants cease any alcoholic beverage activity thereunder forthwith.

ALFRED E. DRISCOLL
Commissioner.

5. ELIGIBILITY - CRIME OF ASSAULT WITH INTENT TO KILL INVOLVES MORAL TURPITUDE - APPLICANT HELD DISQUALIFIED TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

August 20, 1943

Re: Case No. 502

Applicant herein seeks to have the Commissioner determine whether he is eligible to be employed as a waiter on premises operated by a liquor licensee.

The testimony of the applicant discloses that in 1935 he paid a fine for possession of lottery slips. I conclude that this particular crime probably did not involve moral turpitude.

The testimony of applicant, however, discloses that in 1936 he was found guilty by a jury in another state of a charge of assault with intent to kill. In explanation of the circumstances surrounding the incident upon which the charge was predicated, applicant stated that he had gone to the assistance of a man who was being attacked by two other men. Regardless of the motive of applicant which prompted him to become embroiled in the affray, the verdict of the jury relative to his guilt of the crime charged cannot be collaterally attacked herein. As a result of the conviction, the applicant was sentenced to prison for a period of nine to twelve years. After serving in excess of six years, applicant was paroled on December 17, 1942.

The crime of assault with intent to kill involves moral turpitude. Re Case No. 17, Bulletin 116, Item 5. The seriousness of the crime charged, coupled with his recent release on parole from the penal institution, compels me to rule that applicant is ineligible to be associated with the alcoholic beverage industry.

It is recommended that applicant be advised that he is disqualified, by reason of his 1936 conviction, from holding a liquor license or being employed in any capacity by a liquor licensee in this State.

Clarence E. Krcmer
Attorney.

APPROVED:

ALFRED E. DRISCOLL
Commissioner.

6. MORAL TURPITUDE - CRIME OF PROSTITUTION INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application)
to remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)
Case No. 288.)
-----)

CONCLUSIONS
AND ORDER

BY THE COMMISSIONER:

In 1928 petitioner, then eighteen years of age, was convicted on the charge of prostitution and committed to a reformatory. She was released on parole on January 14, 1930. The crime in question per se involves the element of moral turpitude. See Re Case No. 278, Bulletin 574, Item 12.

Petitioner represents that she has been law-abiding for at least five years last past, and hence, pursuant to R. S. 33:1-31.2, seeks removal of her disqualification from working for a liquor licensee or holding a liquor license in this State by reason of her conviction of a crime involving moral turpitude.

After her release from the reformatory, petitioner worked as a domestic during the year of her probation period. After its expiration she married and worked in a laundry for about a year and since then has been employed as a waitress, serving food in restaurants and a drug store. Her marriage was unsuccessful and she has been separated from her husband since 1938. The reformatory reports that she made a satisfactory institutional adjustment and had a successful parole period.

Apparently, petitioner was not fingerprinted at the time of her conviction in 1928 because her fingerprint returns disclose no criminal record.

Petitioner denies that she ever committed an act of prostitution. She alleges her conviction resulted from her pleading non vult to the charge on the advice of a probation officer and that she did not then know the meaning of the charge. However, she may not here collaterally attack her own confessional plea, or the merits of her conviction in the criminal court. Re Case No. 248, Bulletin 542, Item 7.

A police officer of the municipality in which petitioner resides testified he has known her for about ten years, during which time she has conducted herself in a law-abiding manner and has had a good reputation for honesty and chastity. He believes she is well qualified to be associated with the alcoholic beverage industry. Similar testimony was given by the proprietor of a hairdressing establishment who has known petitioner for more than seven years in business and socially. This testimony was also confirmed by a superintendent of a defense plant who has known petitioner for about four years through frequently meeting her and her brother socially and as a daily patron of her employer's store.

I find that petitioner has conducted herself in a law-abiding manner during the five years immediately past. While her early

record is very unsatisfactory, the testimony at the hearing convinces me that for more than thirteen years she has led a decent and respectable life. I conclude that her association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 20th day of August, 1943,

ORDERED, that the 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.

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

VASCO CANZANESE)
T/a VASCO'S CAFE)
713 South Third Street)
Camden, N. J.,)

Holder of Plenary Retail Consumption License C-200 for the fiscal year 1942-43, and transferred during the pendency of these proceedings in said year to)

RENATO CANZANESE)
for the same premises,)

and renewed by the said Renato Canzanese, now holding Plenary Retail Consumption License C-37 for the fiscal year 1943-44, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

CONCLUSIONS
AND ORDER

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

BY THE COMMISSIONER:

The defendant-licensee pleads non vult to the following charges:

"1. In your application, filed with the Municipal Board of Alcoholic Beverage control of the City of Camden, and upon which you obtained your current plenary retail consumption license for premises 713 South 3rd Street, Camden, New Jersey, 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 Renato Canzanese was so interested in that he was the real and beneficial owner of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. From July 1, 1937 and until October 1941, you knowingly aided and abetted Luigi Canzanese or Renato Canzanese to exercise, contrary to R. S. 33:1-26, the rights and privileges of the successive plenary retail consumption licenses then being held by you at the aforesaid premises in Camden, New Jersey, and thereafter and until the present time, you knowingly aided and abetted Renato Canzanese to exercise, contrary to R. S. 33:1-26, the rights and privileges of the successive plenary retail consumption licenses then being held by you at the aforesaid premises; such aiding and abetting being in violation of R. S. 33:1-52."

By his plea, defendant admitted in effect that he was not the true owner of the licensed business at the time he filed his application for the fiscal year 1942-43. Testimony was taken in order to determine whether the unlawful situation which previously existed had been corrected.

It appears that, during the investigation of this case, defendant gave to our investigators a written statement wherein he said that he had taken the license in his name in order to shield his brother, Renato, from judgment creditors. At the hearing herein defendant testified that he had taken the license in his name for the benefit of his six brothers and himself. Renato Canzanese testified that all of his brothers have withdrawn from the business; that he is the sole owner thereof, and that he never had any judgments against him. During the pendency of these proceedings the license was duly transferred to Renato Canzanese and renewed in his name for the present fiscal year. Whatever may have been the motive which prompted defendant to take out the license in his name, it appears from the evidence that the unlawful situation has now been corrected.

It is clear, however, that defendant has made misstatements in his applications filed with the issuing authority for the past several years. Question 30, which concerns persons who have an interest in the license applied for, is set forth in simple language.

As to penalty: Ordinarily, the minimum penalty imposed in a "front" case of this type would be a ten-day suspension of the license. Re Briggs, Bulletin 580, Item 3. However, defendant has a prior record. On April 25, 1939 his license was suspended for a period of five days after he pleaded guilty to a Fair Trade violation. Re Canzanese, Bulletin 313, Item 4. The minimum penalty in cases of this kind, where defendant has a prior record, has been a suspension of the license for a period of fifteen days. That penalty will be imposed herein.

Accordingly, it is, on this 20th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-37, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Renato Canzanese for premises 713 South Third Street, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 A.M. August 25, 1943, and terminating at 2:00 A.M. September 9, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MEMBERS OF THE ARMED FORCES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PERMITTING A FEMALE EMPLOYEE TO ACCEPT ALCOHOLIC BEVERAGES AT THE EXPENSE OF A CUSTOMER, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - 40 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)

VIRGINIA M. GARMAN)
 Fire Rd. & Reading R. R.)
 Farmington, Egg Harbor Township)
 P.O. #FD-1, Pleasantville, N. J.,)

Holder of Plenary Retail Consumption License C-18, for the fiscal year 1942-43, issued by the Township Committee of Egg Harbor Township, and, upon her marriage, Plenary Retail Consumption License C-13 for the fiscal year 1943-44 was issued to her in the name of)

CONCLUSIONS AND ORDER

VIRGINIA GARMAN YOUNGKINS)

for the same premises.)
 - - - - -)

Frank S. Farley, Esq., Attorney for Defendant-Licensee.
 Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded non vult to charges alleging that, on Sunday, June 20, 1943, she (1) sold and dispensed alcoholic beverages between the hours of 1:30 A.M. and 8:00 A.M. to uniformed persons in the military and naval service, in violation of a local ordinance, and (2) permitted a female employee to accept beverages at the expense of a customer, in violation of Rule 22 of State Regulations No. 20.

An examination of the reports of the A.B.C. agents who participated in this investigation, and the statements obtained from the licensee and her employees, does not indicate the presence of any circumstances warranting an increase in the usual penalties of twenty days for each violation. Cf. Re Keeley, Bulletin 553, Item 5; Re Grether, Bulletin 571, Item 2. Five days will be remitted for the plea, leaving a net suspension of thirty-five days.

The license issued to the defendant for the present fiscal year is subject to the penalty herein despite the fact that these proceedings were instituted against the license held by her for the past fiscal year. State Regulations No. 15.

Accordingly, it is, on this 24th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-13, heretofore issued by the Township Committee of Egg Harbor Township to Virginia Garman Youngkins for premises at Fire Rd. & Reading R.R., Farmington, Egg Harbor Township, be and the same is hereby suspended for thirty-five (35) days, commencing at 1:30 A.M. August 30, 1943, and terminating at 1:30 A.M. October 4, 1943.

ALFRED E. DRISCOLL
 Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE LICENSED PREMISES IN OTHER THAN ORIGINAL CONTAINERS, IN VIOLATION OF R. S. 33:1-2 - REFILLING WINE BOTTLES, IN VIOLATION OF R. S. 33:1-78 - PERMITTING SIGNS UPON THE LICENSED PREMISES ADVERTISING THE SALE OF HOME MADE WINE - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

SALVATRICE PORCORO)
T/a PORCORO'S)
129-133 Monroe Street)
Garfield, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-3 issued by the)
City Council of the City of)
Garfield.)
-----)

Levy, Fenster & McCloskey, Esqs., by John J. McCloskey, Esq.,
Attorneys for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded guilty to charges alleging that (1) she sold wine for consumption off the licensed premises in other than the original containers, in violation of R. S. 33:1-2; (2) refilled bottles of wine for the purpose of sale, in violation of R. S. 33:1-78; and (3) that she permitted signs upon the licensed premises advertising the sale of "home-made wine", whereas in truth and fact she did not and legally could not have any such wine available for sale, in violation of both Rule 4 of State Regulations No. 21 and of Rule 3 of State Regulations No. 22, respectively.

The file discloses that, on June 29, 1943 and several days prior thereto, defendant-licensee, by her agent or employee, sold wine to departmental investigators for off-premises consumption in other than the original containers. Several signs were displayed on the interior of the licensed premises advertising sale of "home-made wine, \$1.60 per gal."

The defendant-licensee has no previous adjudicated record. For violations (1) and (2), I shall suspend the operation of defendant's license for a period of ten days. See Re Fessler, Bulletin 571, Item 8. For violation (3), I shall suspend the operation of the defendant's license for a period of five days.

I shall remit five days for the guilty plea, making a total suspension of ten days.

Accordingly, it is, on this 24th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-3, issued by the City Council of the City of Garfield to Salvatrice Porcoro, trading as Porcoro's, for premises 129-133 Monroe Street, Garfield, be and the same is hereby suspended for a period of ten (10) days, commencing at 4:00 A.M. on August 30, 1943, and terminating on September 9, 1943, at 4:00 A.M.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - LOSCO & COMPANY, INC. v. NEWARK.

LOSCO & COMPANY, INC.,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

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

Respondent)

James B. Reilly, Esq., Attorney for Appellant.
Louis Fast, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the imposition of a ten-day penalty against appellant's license by respondent. The appellant was found guilty of permitting a brawl and disturbance on its licensed premises, in violation of Rule 5 of State Regulations No. 20.

On May 3, 1943 the complaining witness, Peter Barxxis, entered appellant's premises and stood at the bar near his uncle, Henry McFee, who had already been in the premises for some time. After being served a glass of beer by Mr. Losco, who was then acting as bartender, Barxxis saw Losco empty the contents of a water glass into his uncle's face. The only apparent provocation for this act, according to Barxxis, was that "evidently my uncle was talking a little too loud." Barxxis then threw the beer from his glass at Losco, whereupon the latter reached under the bar for a blackjack and took a lusty swing at Barxxis' head, causing a severe laceration of the skull. This is the story told by both uncle and nephew.

On the other hand, Mr. Losco, and George Hill, a waiter employed at the tavern, testified that no blows were struck by anyone. They stated that McFee was intoxicated, used vile language and disturbed several women seated at tables by asking for cigarettes. After refusing to serve him any liquor, they escorted him and his nephew out of the premises. Their story is considerably weakened, however, by several inconsistencies. Although Losco testified that Barxxis and McFee came in together, the waiter placed McFee in the tavern before Barxxis' arrival. While both laid great stress on the filthy language used by McFee as the cause for his ejection, neither of them mentioned this fact to the local detectives who interviewed them only two days after the occurrence in question. Moreover, the waiter admitted that he did not observe everything that occurred because he was busy serving food to patrons at the time.

A witness produced by appellant also testified that no undue force was used in escorting Barxxis and McFee from the tavern. This witness, however, did not observe McFee, or anyone else, disturb any females by asking for cigarettes. He testified that he was eating at a table about twenty-five feet from the front of the bar where Barxxis and McFee were standing, and, although McFee was talking in a very loud voice, he was unable to repeat any of the conversation that took place between McFee and Losco. Barxxis, and Losco, in his statement given to the police, placed the time of the former's arrival at the tavern at some time before 8:30 P. M. This witness, however, testified that Barxxis came in between 9:30 and 10:00 P.M.

After a careful review of the entire record, I am convinced that respondent reached the correct result. I am of the opinion that, of the differing versions of the incident appearing in the testimony, that given by the respondent's witnesses is more credible and entitled to greater weight than that given by the witnesses produced by the appellant. The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 24th day of August, 1943,

ORDERED, that the petition of appeal be and the same is hereby dismissed; and it is further

ORDERED, that the ten-day suspension, heretofore imposed against appellant's license by the respondent, and held in abeyance pending disposition of this appeal, is hereby restored, to commence at 2:00 A.M. August 30, 1943 and terminating at 2:00 A.M. September 9, 1943.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A WOMAN OVER THE BAR, IN VIOLATION OF LOCAL ORDINANCE - 5 DAYS' SUSPENSION, LESS 2 FOR PLEA.

In the Matter of Disciplinary Proceedings against

LOUIS POLATO
T/a SPRUCE CAFE
900 South Fourth street
Camden, N. J.,

Holder of Plenary Retail Consumption License C-118 for 1942-43 and License C-205 for 1943-44, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS
AND ORDER

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

BY THE COMMISSIONER:

The licensee pleaded non vult to a charge alleging that he sold alcoholic beverages to a woman directly over his bar, in violation of local ordinance.

Since there are no aggravating circumstances and the licensee has no previous record, I shall impose the usual penalty of five days, with remission of two days for the plea, or a net suspension of three days. Re Hencinski, Bulletin 546, Item 3.

The licensee, whose premises are within 200 feet of a school, was also directed to show cause why his license should not be cancelled. See R. S. 33:1-76. During the pendency of these proceedings the protection afforded to the school by the cited statute was waived in writing by the school authorities. In view thereof, I shall take

no further steps to cancel the license but shall accept the subsequently obtained waiver as a full corrective procedure. Cf. Re Grove Liquors, Inc., Bulletin 397, Item 3.

Accordingly, it is, on this 26th day of August, 1943,

ORDERED, that the order to show cause herein be and the same is hereby dismissed; and it is, further

ORDERED, that Plenary Retail Consumption License C-205, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Louis Polato, trading as Spruce Cafe, for premises 900 South Fourth Street, Camden, be and the same is hereby suspended for a period of three (3) days, commencing at 2:00 A.M. August 31, 1943, and terminating at 2:00 A.M. September 3, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY LIMITED RETAIL DISTRIBUTION LICENSEE BEYOND THE TERMS OF THE LICENSE, IN VIOLATION OF R. S. 33:1-2 - SALE OF ALCOHOLIC BEVERAGES IN OPEN CONTAINERS BY LIMITED RETAIL DISTRIBUTION LICENSEE FOR CONSUMPTION ON THE LICENSED PREMISES, IN VIOLATION OF RULE 14 OF REGULATIONS NO. 20 - POSSESSION OF CHILLED MALT BEVERAGES ON THE LICENSED PREMISES, IN VIOLATION OF RULE 21 OF REGULATIONS NO. 20 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against
 FRANK KAISER
 T/a HILLTOP GENERAL STORE
 1 Chestnut Street
 Wallington, N. J.,
 Holder of Limited Retail Distribution License DL-1 for the year 1942-43 issued by the Mayor and Council of the Borough of Wallington.
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CONCLUSIONS AND ORDER

Aldon S. Patlen, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant, the holder of a limited retail distribution license for the license year 1942-43, pleads non vult to the following charges: (1) and (2) sale of alcoholic beverages beyond the terms of his limited retail distribution license, in violation of R. S. 33:1-2; (3) sale of alcoholic beverages in open containers for consumption on the licensed premises, in violation of Rule 14 of Regulations No.20; and (4) possession of chilled brewed malt alcoholic beverages on the licensed premises, in violation of Rule 21 of Regulations No. 20.

These proceedings were instituted against Limited Retail Distribution License DL-1 issued to the defendant for the fiscal period 1942-43, ending June 30, 1943. The defendant has not renewed his license for the current (1943-44) year. Rule 1 of Regulations No. 15 provides, inter alia, that disciplinary proceedings shall not

abate by reason of the expiration of the license. Even though the license has expired, it will be revoked. Thus, the defendant will be disqualified for a period of two years from obtaining or holding another alcoholic beverage license in this State. R. S. 33:1-31. Cf. Pankovics, Jr., Bulletin 579, Item 8.

Accordingly, it is, on this 26th day of August, 1943,

ORDERED, that Limited Retail Distribution License DL-1, issued to Frank Kaiser, trading as Hilltop General Store, by the Mayor and Council of the Borough of Wallington, for premises 1 Chestnut Street, Wallington, for the fiscal year 1942-43, be and the same is hereby revoked.

ALFRED E. DRISCOLL
Commissioner.

13. APPELLATE DECISIONS - KOLASKA v. NEWARK.

JOHN KOLASKA,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS AND ORDER
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
)	
Respondent)	

Leon J. Lavigne, Esq., Attorney for Appellant.
Raymond Schroeder, Esq., by Louis A. Fast, Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from an eight-day suspension of License C-351 for premises at 203 Morris Avenue, Newark. The suspension was imposed after respondent had found appellant guilty of allowing, permitting and suffering gambling on and about his licensed premises in violation of Rule 7 of State Regulations No. 20.

A transcript of the testimony taken at the hearing before the local Board was admitted into evidence and additional testimony was presented by the appellant at the hearing herein.

Undoubtedly there was gambling for rather high stakes on the shuffleboard in appellant's premises on the afternoon of June 5th. The only question to be decided is whether or not, upon the evidence, appellant was guilty of allowing, permitting and suffering the gambling upon his licensed premises.

A patron, Fred, was in appellant's premises from about 3:00 P.M. to 6:00 P.M. on the afternoon in question and, during that period, played four or five games of shuffleboard for various sums of money, with the result that he lost about \$20.00. The last two or three games were played with a patron named Charlie. At about 6:00 P.M. Fred's wife entered the premises and was handed two five dollar bills by Charlie, who told her that the money represented the bet made upon the game then being played by him and her husband. At

that time Mrs. Kolaska, wife of the licensee, was behind the bar and near enough to hear the conversation. When the woman who was holding the stakes called Mrs. Kolaska's attention to the bet and requested her to stop the game, Mrs. Kolaska told her that no betting was permitted and that she would stop the game. However, it appears that she permitted the game to be completed and then told the men that they could not play any more. The licensee was not on the premises when the five-dollar bet was made but he had been present during the earlier hours of the afternoon when the other shuffleboard games were being played. He returned shortly after his wife stopped the game.

The evidence shows that the gambling continued over a period of nearly three hours, during which time either the licensee or his agent, or both, were present on the licensed premises. Under the circumstances of this case I conclude that it clearly appears that the licensee or his agent allowed, permitted and suffered the gambling to take place upon the premises. As I said in Bilowith v. Passaic, Bulletin 527, Item 3:

"Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises."

The penalty was not excessive. Because of a prior record, the license was suspended for eight days instead of the usual minimum suspension of five days imposed in cases of this kind. For the reasons aforesaid, I shall affirm the action of respondent.

Accordingly, it is, on this 26th day of August, 1943,

ORDERED, that the appeal herein be and the same is hereby dismissed, and the eight-day suspension reinstated; and it is further

ORDERED, that the eight-day suspension heretofore imposed against appellant's license by respondent, and held in abeyance pending disposition of this appeal, is hereby restored, to commence at 7:00 A.M. August 31, 1943, and to terminate at 7:00 A.M. September 8, 1943.

Alfred E. Biscoll
Commissioner.