

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

BULLETIN 583

SEPTEMBER 7, 1943

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

BULLETIN 583

SEPTEMBER 7, 1943.

1. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT AND PERMITTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

DISCIPLINARY PROCEEDINGS - CHARGE OF FALSE ANSWER IN APPLICATION FOR EMPLOYMENT PERMIT DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against )

JOHN GEORGE PETKEVIS )  
T/a LILLIAN-ON-THE-LAKE )  
630 White Horse Pike )  
Hammonton, N. J., )

Holder of Plenary Retail Consumption License C-14 for the fiscal year 1942-43 and now holder of Plenary Retail Consumption License C-14 for the current (1943-44) year, both issued by the Mayor and Council of the Town of Hammonton; )

-and- )

In the Matter of Disciplinary Proceedings against )

JOHN PETKEVIS )  
630 White Horse Pike )  
Hammonton, N. J., )

Holder of Employment Permit No. 4360 for the fiscal year 1942-43 and now holder of Employment Permit No. 5465 for the current (1943-44) year, both issued by the State Commissioner of Alcoholic Beverage Control. )

CONCLUSIONS  
AND ORDER

Vincent S. Haneman, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.

Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded not guilty to charges alleging that he (1) falsified his license application by stating that no other person had any interest in his license and business, whereas his father, John Petkevis, did have such an interest, and (2) he permitted his father to exercise the rights and privileges of his license.

The defendant-permittee pleaded not guilty to a charge alleging that, in his permit application, he falsely concealed his interest in his son's license.

The record in this case is quite voluminous and no useful purpose will be served by detailing the testimony given at the hearing. It is sufficient to state that, after an exhaustive examination of the entire record, I have reached the conclusion that the Department has failed to carry the burden of proving the truth of the charges herein.

I must point out, however, that the suspicion of the existence of a "front" situation between father and son, created by the lax bookkeeping methods employed by the licensee and the indiscriminate use of the receipts of the business for the benefit of the other members of the licensee's family, fully justified the institution of these proceedings by the Department. In this connection, I have been assured by the licensee that he "will hereafter open a bank account of his own and will not mix any items in his account for charges other than those directly attributed to his business." It is imperative that this be done forthwith and that an adequate bookkeeping system be installed immediately. Further investigation by this Department will be made to make certain that the future operation of the licensed business is in accord with the law. Cf. Nemderoloc Social Club, Bulletin 521, Item 4; and see the aftermath of this case, Bulletin 559, Item 4, where the failure to heed my admonition resulted in the revocation of the license.

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

ORDERED, that the charges against the licensee and the permittee herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL  
Commissioner.

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

In the Matter of Disciplinary Proceedings against  
HYMAN POLONSKY  
112 Elizabeth Avenue  
Newark, N. J.,  
Holder of Plenary Retail Consumption License C-288, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS  
AND ORDER

Saul Schutzman, Esq., Attorney for Defendant-Licensee.  
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty to the following charge:

"On or about May 24, 1943 you possessed illicit alcoholic beverages at your licensed premises, viz., two 4/5 quart bottles labeled 'Old Overholt Straight Rye Whiskey 100 Proof', two 4/5 quart bottles labeled 'Old Taylor Kentucky Straight Bourbon Whiskey 100 Proof', one 4/5 quart bottle labeled 'Kessler's Private Blend Blended Whiskey 85 Proof' and one quart bottle labeled 'Walker's De Luxe Straight Rye Whiskey 90 Proof', which bottles contained alcoholic beverages which were not genuine as labeled; such possession being in violation of R. S. 33:1-50."

It appears from a statement by the bartender that he, the bartender, is solely responsible for this situation. He is seventy years old, has never worked in a tavern before and stated, "I have no knowledge of liquors or 'proof' thereof; presuming that they were all the same I would fill up a bottle that was short with any other bottle that was more full." This naive though orderly bartender explains his misguided activities as follows: "I wanted to have all the bottles looking equal." His statement denies that the licensee was at all involved in the matter.

The story of the bartender is somewhat confirmed by the results of the analysis of the six seized bottles. However, if the customer is to be protected and receive the drink ordered, the licensee must of necessity be held responsible for the acts of his employees. Whether these acts are culpable or merely due to ignorance is immaterial. Re Kurian, Bulletin 517, Item 2.

In view of the fact that the licensee has no previous adjudicated record, I shall suspend his license for a period of twenty days. Re Gotts, Bulletin 562, Item 9.

Accordingly, it is, on this 27th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-288, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Hyman Polonsky, for premises at 112 Elizabeth Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 A.M. September 1, 1943, and terminating at 2:00 A. M. September 21, 1943.

ALFRED E. DRISCOLL  
Commissioner.

- 3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS
- NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO A PERSON ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS
- NO. 20 - 40 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

LENA GENOVESE )  
T/a CASINO BAR )  
200 Cookman Avenue )  
Asbury Park, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-63 for the fiscal year 1942-43 and now holder of Plenary Retail Consumption License C-63 for the current (1943-44) year, issued by the City Council of the City of Asbury Park. )  
----- )

Joseph F. Mattice, Esq., Attorney for defendant-Licensee.  
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded not guilty to the following charges:

"1. On Sunday afternoon, June 6, 1943, you sold alcoholic beverages to Seamen (2nd Class) John --- and William ---, minors, in violation of R. S. 33:1-77.

"2. On the date and at the time aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Seamen (2nd Class) John --- and William ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"3. On the date and at the time aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Seaman (2nd Class) William ---, a person who was actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such person on the licensed premises, in violation of Rule 1 of State Regulations No. 20."

At the time of the alleged violation, Seaman John --- was twenty years and three months of age, and Seaman William --- was eighteen years and ten months of age.

Seaman John testified that, between 3:00 P.M. and 5:40 P.M. on June 6, 1943, he purchased and consumed five glasses of beer in defendant's premises; that these drinks were served by a bartender, Clarence McRae, who did not question him as to his age. He further testified that Seaman William --- entered defendant's premises at about 3:30 P.M., staggered to the bar, and was served two glasses of beer by the same bartender. He testified that in his opinion William was "pretty drunk" when he entered.

Seaman William --- testified that, while he was at liberty during the early afternoon of June 6, 1943, he and a soldier had consumed between them a pint of whiskey in an alley in Asbury Park; that thereafter he was "feeling pretty good" and walked about two blocks to defendant's tavern, where he was served three or four glasses of beer by the bartender, McRae, who did not question him as to his age. William testified further that he did not know what happened thereafter. It appears, however, that John followed William when he left the premises and called a taxicab, in which both young men returned to their barracks. It further appears that William fell asleep in the taxicab. Because of his condition, William was unable to go on duty that evening.

On behalf of defendant, Clarence McRae testified that, on the afternoon of June 6th, fifty-five or sixty patrons were in the licensed premises; that he saw Seaman John but does not remember serving any alcoholic beverages to him. McRae denies that Seaman William was on the licensed premises or that he served alcoholic beverages to any intoxicated person. It does not appear that the licensee was present when the alleged violations occurred.

I conclude from the evidence that alcoholic beverages were served to both minors upon the date mentioned in the charges. I conclude also that on said date alcoholic beverages were served to a uniformed member of our military forces while he was actually or apparently intoxicated. Hence, I find defendant guilty as to all charges.

As to penalty: I have repeatedly warned licensees that the sale of alcoholic beverages to men in uniform when they are intoxicated, or apparently intoxicated, is not only a serious violation but an unpatriotic act. Because of this violation, defendant's premises were declared "out of bounds" and "off limits" by military authorities for a period of about two weeks. Under all the circumstances, I conclude that the license should be suspended for a period of forty days because of the violations set forth herein. Cf. Re Rowley, Bulletin 560, Item 11; Re DiNapoli, Bulletin 573, Item 8.

Although this proceeding was instituted during the license period ending June 30, 1943, it does not abate, but remains fully operative against the defendant's renewal license for the current 1943-44 period. State Regulations No. 15.

Accordingly, it is, on this 30th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-63, issued by the City Council of the City of Asbury Park to Lena Genovese, t/a Casino Bar, for premises 200 Cookman Avenue, Asbury Park, be and the same is hereby suspended for a period of forty (40) days, commencing at 2:00 A.M. September 7, 1943, and terminating at 2:00 A.M. October 17, 1943.

ALFRED E. DRISCOLL  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - EXERCISING THE RIGHTS AND PRIVILEGES OF A LICENSE FORMERLY HELD BY ANOTHER - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against  
MARTY BOHN and NANCY BOHN  
T/a THE NUT CLUB  
N/E Cor. 1st & New Jersey Aves.  
North Wildwood, N. J.,  
Holder of Plenary Retail Consumption License C-11, issued by the Mayor and Common Council of the City of North Wildwood.

CONCLUSIONS  
AND ORDER

A. J. Cafiero, Esq., Attorney for Defendant-Licensees.  
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded non vult to charges that they exercised the rights and privileges of licenses issued to another for premises at the northeast corner of 1st and New Jersey Avenues, North Wildwood, in violation of R. S. 33:1-26.

The plea of non vult is accepted by me as fully equivalent to a plea of guilty. Re Fennia Grill, Inc., Bulletin 568, Item 7.

The violation of which the defendants are guilty is similar to that in the usual "front" cases. In this particular instance the license was issued in the name of another as a "front" for these defendants. Their only disqualification, as far as our records disclose, was that they were not residents of the State for five years. They have resided in New Jersey for about two years and the five-year requirement has been removed by act of the Legislature of the State. P.L. 1943, c. 46.

The illegal situation existing at the time of the Department's investigation was corrected before the charges were preferred. This correction, however, does not excuse the violation of the law. I shall impose a penalty of ten days as punishment therefor. Re Culhane, Bulletin 568, Item 11.

Accordingly, it is, on this 30th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-11, issued by the Mayor and Common Council of the City of North Wildwood to Marty Bohn and Nancy Bohn, t/a The Nut Club, for premises N/E Corner 1st and New Jersey Avenues, be and the same is hereby suspended for ten (10) days, commencing at 3:00 A.M. September 7, 1943, and terminating at 3:00 A.M. September 17, 1943.

ALFRED E. DRISCOLL  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A PERSON ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - 20 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

GIUSEPPE MARINACCIO )

807-809 Main Street )  
Asbury Park, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-39 for the fiscal year 1942-43 and now holder of Plenary Retail Consumption License C-39 for the current (1943-44) year, issued by the City Council of the City of Asbury Park. )  
-----)

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

BY THE COMMISSIONER:

Licensee pleads non vult to a charge alleging, in substance, that, in violation of Rule 1 of State Regulations No. 20, he sold alcoholic beverages to and permitted the consumption of alcoholic beverages by a civilian who was intoxicated.

The charge was preferred after two ABC investigators reported that they had observed a man, who was then intoxicated, standing at the bar and consuming a glass of beer in defendant's premises.

As to penalty: Licensee's previous record discloses a three-day suspension on September 20, 1937, by the local issuing authority, on dissimilar charges. Since no aggravating circumstances appear in this case and defendant's record has been clear for nearly six years, I shall impose the minimum penalty of a twenty-day suspension, less five days for the plea.

Accordingly, it is, on this 30th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-39, issued by the City Council of the City of Asbury Park for the current fiscal year to Giuseppe Marinaccio, t/a Marina's Bar & Grill, for premises 807-809 Main Street, Asbury Park, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 A. M. September 7, 1943, and terminating at 2:00 A.M. September 22, 1943.

ALFRED E. DRISCOLL  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )  
 )  
 ELLBEE, INC., )  
 459 Broad Street and )  
 67 Orange Street )  
 Newark, N. J., )  
 )  
 Holder of Plenary Retail Consumption License C-651 for the fiscal year 1942-43, and now holder of )  
 Plenary Retail Consumption License C-653, both issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
 )  
 ----- )

CONCLUSIONS  
AND ORDER

Paul C. Gorneman, Esq., Attorney for Defendant-Licensee.  
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult, with an explanation, to the following charge:

"On or about March 16, 1943 you possessed illicit alcoholic beverages at your licensed premises, viz., five 4/5 quart bottles, each labeled 'Carstairs White Seal Blended Whiskey,' which bottles contained alcoholic beverages which were not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On March 16, 1943 Federal agents tested thirty-seven opened bottles and seized the five bottles mentioned in the charge. Upon analysis by the Federal chemist, he found that the coloring in the contents of the seized bottles was approximately 50% darker than the coloring in the contents of a genuine sample of the same liquor. He found also that the seized liquor contained approximately three times the amount of solids found in genuine samples.

Samuel Bergman testified that he has been the manager of defendant's premises for the past four years and that he has never purchased any liquors except from a legitimate liquor dealer. He further testified that he has been in the liquor business for a period totaling thirty years and that he has never previously been charged with any violation of any kind. He stated under oath that he did not tamper with the contents of the seized bottles and that he had questioned his four employees, each of whom denied that he had tampered with the bottles. Despite Bergman's lack of personal

participation in the violation, defendant must nevertheless be held strictly accountable for any "refills" found in its stock of liquor. Re Kurian, Bulletin 517, Item 2.

As to penalty: A possible aggravating circumstance is to be found in the number of bottles seized by the agents. However, since this is defendant's first violation of record, I shall, because of Samuel Bergman's clear record in the past, impose the minimum penalty of ten days' suspension of the license. Cf. Re Reineke, Bulletin 570, Item 3.

Accordingly, it is, on this 31st day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-653, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark for the fiscal year 1943-44 to Ellbee, Inc., for premises 459 Broad Street and 67 Orange Street, Newark, be and the same is hereby suspended for ten days, commencing at 2:00 A.M. September 7, 1943, and terminating at 2:00 A.M. September 17, 1943.

ALFRED E. DRISCOLL  
Commissioner.

7. ELIGIBILITY - CRIME OF POSSESSION AND SALE OF NARCOTICS INVOLVES MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

August 31, 1943.

Re: Case No. 504.

This proceeding was held for the purpose of determining whether subject is eligible to be employed by a holder of an alcoholic beverage license in this State.

Beginning in the year 1925, and during the period of fifteen years thereafter, subject admits that he had been, on divers occasions, convicted of crimes in this State and also in the State of New York. On five separate occasions he was convicted either for possession or sale, or both possession and sale, of narcotics, in violation of the law. On at least two occasions, subject has been found guilty of grand larceny. The last conviction for grand larceny was on May 21, 1940. As a result of his last conviction, he was sentenced by a Judge of the Court of Special Sessions of this State to serve a prison term of 2-3 years in the State Prison. This sentence was then suspended and, in its stead, the court put him on probation for a period of three years.

The crime of possession and sale of narcotics is a crime involving moral turpitude. Re Case No. 445, Bulletin 521, Item 7. Grand larceny also is a crime which ordinarily involves moral turpitude. Re Case No. 308, Bulletin 383, Item 2. No facts or circumstances appear which would free subject's crimes from the element of moral turpitude.

It is, therefore, recommended that subject be advised that he is ineligible to be associated in any capacity whatsoever with a liquor licensee in this State.

APPROVED:  
ALFRED E. DRISCOLL  
Commissioner.

Clarence E. Kremer  
Attorney.

8. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF MINOR TO SELL ALCOHOLIC BEVERAGES, IN VIOLATION OF R. S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - PREVIOUS RECORD - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against  
 VICTORIA NICARETTA  
 499 Avenue A  
 Bayonne, N. J.,  
 Holder of Plenary Retail Consumption License C-163 issued by the Board of Commissioners of the City of Bayonne.

CONCLUSIONS AND ORDER

Victoria Nicaretta, Pro Se.  
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge alleging that she knowingly employed a minor to sell alcoholic beverages at her licensed premises, in violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11.

During the course of a routine investigation at the licensed premises, an A.B.C. agent was informed by the bartender, who was then serving alcoholic beverages to patrons at the bar, that he was over twenty-one years of age. When the bartender refused to sign the usual inspection report, the agent's suspicion became aroused and he instructed the bartender to produce his birth certificate. Upon the agent's return to the tavern several days later, Mr. Nicaretta, father of the bartender and husband of the licensee, admitted that his son was only twenty years old. He also told the agent that the licensee had been taken suddenly ill, necessitating her leaving the premises in charge of her son.

In her letter pleading guilty to the charge, the licensee states: "On the day in question, to wit, May 8, 1943, I was in the said tavern and had received a call to go to my home, which is located around the corner from my tavern and about 100 feet from it. Being alone in the tavern at said time, and not having anyone to leave in charge, I asked my son Hugo to come to the tavern and to watch it for the few minutes that I went back to my house." In point of fact, the agent remained at the premises for almost an hour, during all of which time the licensee was not present.

This violation is not only aggravated by the inconsistent stories told by the licensee, but it also appears from a complete check of Departmental records that this is the sixth occasion upon which she has employed a disqualified person. These records disclose that, in August 1938, the licensee employed a non-resident bartender; in November 1939, a non-citizen chef; in September 1940, a minor; in April 1941, a non-resident waitress; and in February 1942, the same non-citizen chef was again found employed there. On three of these occasions, various letters sent to the licensee directing her to apply for permits validating the unlawful employment were ignored by her and it became necessary to assign agents of this Department to visit the premises and compel the proper applications to be made. On

the last occasion, she was specifically warned that any further employment of a disqualified person by her would result in the institution of disciplinary proceedings.

This licensee must be taught that the law must be obeyed. A substantial penalty may teach her this lesson. If not, and a similar violation recurs, I shall see to it that the penalty imposed cannot but indelibly impress upon her this elementary proposition.

In the absence of aggravating circumstances, I would normally impose a five-day penalty for this type of violation. However, in view of the recited history, I will suspend this license for a period of twenty days, with five days remitted for the plea, or a net penalty of fifteen days.

Accordingly, it is, on this 31st day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-163, issued by the Board of Commissioners of the City of Bayonne to Victoria Nicaretta for premises 499 Avenue A, Bayonne, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A.M. September 7, 1943, and terminating at 2:00 A.M. September 22, 1943.

ALFRED E. DRISCOLL  
Commissioner.

9. MORAL TURPITUDE - CRIME OF CONSPIRING TO TRANSPORT WOMEN IN INTERSTATE COMMERCE FOR IMMORAL PURPOSES INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - SUPPRESSION OF MATERIAL FACTS BY APPLICANT - APPLICATION TO LIFT DENIED.

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

CONCLUSIONS

Case No. 285.  
----- )

BY THE COMMISSIONER:

Petitioner pleaded guilty to an indictment containing fifteen separate counts charging him with conspiracy to transport women in interstate commerce for immoral purposes. On December 18, 1936 he was sentenced by the Judge of the Federal District Court for the Southern District of New York to serve a jail term of a year and a day on each count, the sentence to run concurrently. He was released from prison on October 3, 1937.

The crime in question indubitably involves moral turpitude.

Despite petitioner's disqualification from holding a liquor license in this State or being employed by a liquor licensee (R. S. 33:1-25; 26), he acted as manager of a licensed tavern from February 1941 until July 1942, when he became a partner in the business. In his license application petitioner stated, in answer to question asking whether he had ever been convicted of a crime: "Convicted of disorderly conduct in New York Court -- 1935 -- Sentence -- 1 year."

In December 1942 petitioner purchased the stock of a corporate licensee. When questioned by the local police concerning his criminal record, he first stated that he had been convicted of "disorderly conduct." When subsequently pressed for the details of the conviction, he explained that he had been arrested as a result of a fight which took place in a house of prostitution. The true crime of which petitioner had been convicted was later ascertained by the police, as a result of which petitioner severed his connection with the licensee and, so far as appears, he is no longer employed by or interested in any alcoholic beverage business.

At the hearing, petitioner admitted withholding from the police and the local issuing authority the true reason for his conviction. He testified that he was "ashamed" to reveal it. I can well understand his embarrassment. However, his falsification and suppression of the pertinent circumstances surrounding his conviction prevent me from finding, as I am required to do by statute (R. S. 33:1-31.2), that petitioner has been law-abiding for the past five years and that his association with the alcoholic beverage industry will not be contrary to public interest. Cf. Re Case No. 259, Bulletin 566, Item 9.

Accordingly, the petition is denied.

ALFRED E. DRISCOLL  
Commissioner.

Dated: August 31, 1943.

10. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION  
CONCEALING MATERIAL FACTS - ILLEGAL SITUATION CORRECTED -  
10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

SWISS TOWN HOUSE, INC. )  
3312 Hudson Avenue )  
Union City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the City of Union City. )  
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Benedict A. Beronio, Esq., Attorney for Defendant-Licensee.  
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded non vult to a charge alleging that it falsely concealed and suppressed in its license application that John Schader and Arthur Klaschewski are the real and beneficial owners of all of the capital stock of the corporate licensee.

At the time when the licensee's original application for license was executed, the law required that a holder of more than ten per cent of the stock of a corporate applicant be a resident of this State for at least five years prior to the submission of the application. Since they did not become residents of this State until December 1941, Schader and Klaschewski caused the stock of the corporation to be held on their behalf by another person.

On March 27, 1943, the Alcoholic Beverage Law (R.S. 33:1-25) was amended by substituting in place of the five-year residence qualification, a requirement that a holder of more than ten per cent of the stock of a corporate applicant be a bona fide resident of this state. See P. L. 1943, c. 46.

Pursuant to this amendment, the stock of the corporate licensee has been transferred to Schader and Klaschewski in proportion to their respective investments in the business. It further appears that, in accordance with R.S. 33:1-34, the local issuing authority has been notified of the change in stock ownership.

In view of the plea, the correction of the unlawful situation and the absence of any previous record against this licensee, I shall impose a suspension of ten days. Re Tenafly Tavern, Inc., Bulletin 568, Item 6.

Accordingly, it is, on this 31st day of August, 1943,

ORDERED that Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the City of Union City to Swiss Town House, Inc. for premises 3312 Hudson Avenue, Union City, be and the sale is hereby suspended for a period of ten (10) days commencing at 3:00 A. M. September 7, 1943, and terminating at 3:00 A. M. September 17, 1943.

ALFRED E. DRISCOLL  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R.S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary )  
Proceedings against )  
 )  
JOHN C. SMITH, )  
701-703 Tenth Avenue, )  
Belmar, New Jersey, )  
 )  
Holder of Plenary Retail Consump- )  
tion License C-1 issued by the )  
Board of Commissioners of the )  
Borough of Belmar. )  
----- )

CONCLUSIONS  
AND ORDER

John C. Smith, Pro Se.  
Nathan Davis, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

There was served upon defendant a copy of the following charges:

"1. Early on Sunday morning, July 11, 1943, and on various dates prior thereto, you sold alcoholic beverages to Robert ---, a minor, in violation of R.S. 33:1-77.

"2. On the dates aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Robert ---, a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such

person upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

Defendant appeared at the hearing without an attorney. When asked as to the manner in which he pleaded, he answered that he "would just like to state" his case. Accordingly, the Hearer entered a technical plea of not guilty.

The evidence shows that on July 11, 1943, at about 12:05 A.M., two ABC investigators saw Robert --- purchase two glasses of beer from defendant who was then behind the bar in the licensed premises. When questioned by the investigators, the young man told them that he was twenty-one years of age, and produced a food handler's permit which appeared to confirm his statement. Subsequent investigation, however, disclosed that Robert had misstated his age when he obtained his permit. His birth certificate shows that he was born June 26, 1925, thus making him slightly more than eighteen years of age on July 11, 1943. The young man testified at the hearing that he was only eighteen years of age. He admitted that he had purchased and consumed beer in defendant's premises at the time mentioned in the charges.

Defendant testified at the hearing that he could not remember whether or not Robert --- was in his premises on the evening of July 10 and early morning of July 11. He admitted that he had served beer to this young man on prior dates and stated that he had done so because, in response to his inquiry, the young man had told him that he was twenty-one years of age and that he held a food handler's permit.

The evidence is sufficient to show that alcoholic beverages were sold to a minor on the date set forth in the charges. The action of the young man in misstating his age to the investigators and to the licensee was reprehensible. The licensee, however, cannot successfully defend himself against the charge unless he can show compliance with all the provisions of R.S. 33:1-77, namely, (a) that the minor falsely represented in writing that he was twenty-one years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him to be twenty-one years of age or over, and (c) that the sale was made in good faith relying upon such representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over. Defendant admits that he did not obtain from the minor any written representation that he was of full age. Defendant, who was apparently in doubt, was satisfied to accept the verbal assurance of the young man that he was of full age. Under the statute, the verbal statement of the minor does not constitute a defense. Hence, I must find defendant guilty as charged.

Defendant has no previous adjudicated record. The instant violation does not appear to be accompanied by any aggravating circumstances. I shall impose the minimum penalty, and suspend the license for a period of ten days.

Accordingly, it is, on this 1st day of September, 1943,

ORDERED that Plenary Retail Consumption License C-1, issued by the Board of Commissioners of the Borough of Belmar to John C. Smith, for premises 701-703 Tenth Avenue, Belmar, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A. M. September 7, 1943, and terminating at 2:00 A. M. September 17, 1943.

ALFRED E. DRISCOLL  
Commissioner.

12. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE DISQUALIFIED BY CRIMINAL RECORD TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R.S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - EMPLOYMENT OF MINORS TO SELL ALCOHOLIC BEVERAGES, IN VIOLATION OF R.S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - PERMITTING LEWD AND IMMORAL ACTIVITIES UPON THE LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - PERMITTING PROSTITUTES ON LICENSED PREMISES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - PERMITTING THE SALE OF CONTRACEPTIVES ON LICENSED PREMISES, IN VIOLATION OF RULE 9 OF STATE REGULATIONS NO. 20 - LICENSE REVOKED.

PROCEEDINGS TO DISQUALIFY PREMISES - PREMISES IN ABOVE MENTIONED CASE DECLARED INELIGIBLE FOR ANY LIQUOR LICENSE FOR A PERIOD OF TWO YEARS.

In the Matter of Disciplinary Proceedings against  
 MARY ZODA  
 t/a Dan's Cafe  
 53 North Johnston Avenue  
 Hamilton Township  
 P. O. Trenton, N. J.  
 Holder of Plenary Retail Consumption License C-48, issued by the Township Committee of Hamilton Township.

CONCLUSIONS AND ORDER

In the Matter of Affiliate Proceedings to Disqualify the Aforesaid Premises.

Felcone & Felcone, Esqs., by Joseph J. Felcone, Esq., Attorneys for Defendant-Licensee.  
 Andrew Cella, Esq., Attorney for Daniel Petrey, Owner of Premises.  
 Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Nine charges were preferred against the defendant, Mary Zoda. Charges one and two allege, in effect, that defendant is a "front" for Daniel Petrey, alias Daniel Patris, alias Daniel Patriss and alias Daniel Muccioli. Charges three to nine, inclusive, read as follows:

"3. From July 13, 1942 and until July 13, 1943 you allowed, permitted and suffered immoral activity in and upon your licensed premises, viz., male patrons meeting and making arrangements with females for illicit sexual intercourse, in violation of Rule 5 of State Regulations No. 20.

"4. During the period last aforesaid, you allowed, permitted and suffered prostitutes and other persons of ill-repute in and upon your licensed premises, in violation of Rule 4 of State Regulations No. 20.

"5. During December 1942 and March 1943 and on divers other dates, you allowed, permitted and suffered immoral activity in and upon your licensed premises, viz., acts of sexual intercourse, in violation of Rule 5 of State Regulations No. 20.

"6. On July 10, 1943 and on divers dates prior thereto, you knowingly employed J---, a minor, to sell and serve alcoholic beverages and to work as a waitress and helper at your licensed premises, and on July 13, 1943 and on divers dates prior thereto you knowingly employed M--- D---, a minor, in a similar capacity, in violation of R.S. 33:1-26 and also in violation of Rule 1 of State Regulations No. 11.

"7. On July 13, 1943 and on divers prior dates you sold alcoholic beverages to M--- D---, and on July 10, 1943 and on divers prior dates to J--- and R---, and during March 1943 and on divers prior dates to J---, and on two occasions during September and October 1943 to M--- H---, all minors, in violation of R.S. 33:1-77.

"8. On the dates, and prior thereto, as last aforesaid, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to the said minors, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"9. On July 14, 1943 and on divers dates prior thereto, you possessed, allowed, permitted and suffered upon and about your licensed premises contraceptives designed or used for sale or distribution, in violation of Rule 9 of State Regulations No. 20."

The defendant pleaded guilty to the first two charges. Daniel Petrey, the real owner of the licensed business and of the premises, likewise admitted the truth of charges one and two. A plea of not guilty was entered as to the remaining charges (three to nine inclusive). However, no defense was offered and counsel for the defendant and the owner of the premises stipulated that the Departmental records, including the statements taken from the various minors and other persons involved in the investigation, should be admitted in evidence and considered by the Commissioner in reaching a decision. The right of cross-examination was waived.

The sordid record before me leaves no doubt in my mind as to the guilt of the defendant. I find the defendant guilty on all the aforesaid charges.

The plea of guilty to the first and second charges, in view of the aggravating circumstances in this case, in itself, warrants a revocation of the license. The truthfulness of these charges was affirmatively admitted by both the defendant and the real owner of the licensed business. The purpose of the "front" was undoubtedly to permit a person, disqualified by virtue of his criminal record, to engage in the liquor business. This procedure was adopted in open defiance of the local issuing authority who had apparently advised Petrey that no license would be issued to him.

Further, the sordid character of the premises and the degraded nature of the person responsible for the operation of the cafe are apparent by a reference to the statements of the three minor girls, J---, M--- D--- and R---. These girls are, respectively, sixteen, twenty and nineteen years of age. They all admitted having engaged in acts of prostitution on a number of occasions in the immediate vicinity of the premises and stated that the arrangements therefor

were made by the bartender, the real owner of the premises, Daniel Petrey. All three girls admitted that they with Daniel Petrey, himself, engaged in immoral activities on the premises. The record of M--- D---, discloses a previous arrest on charges of prostitution, as well as treatment for a venereal disease.

It would serve no useful purpose to further detail the revolting evidence appearing in the record. Even if it were true, as reported, that the licensee was not personally present on the premises at the times when the violations, alleged in charges three to nine inclusive, occurred she must be held responsible for the action of her employees. Re Franzblau, Bulletin 365, Item 13; Re Clover Inn, Inc., Bulletin 327, Item 2. The application of the foregoing rule in this case is particularly appropriate in view of the fact that one of these employees is the real owner of the licensed business for whom the defendant was a mere "front".

The licensee is not a fit and proper person to be afforded the privilege of a license. The continuation of this license would be contrary to public interest. Accordingly, the license will be revoked.

As to the disqualification of the premises, Daniel Petrey, the real owner of the licensed business, admits that he is the owner of the premises, title to which he holds under the name of Daniel Muccioli.

Under the provisions of R.S. 33:1-31: "Any revocation may, in the discretion of the commissioner \* \* \*, render the licensed premises ineligible to become the subject of any further license, of any kind or class under this chapter, during a period of two years from the effective date of the revocation."

In view of the proof before me that Daniel Petrey, also known as Daniel Muccioli, is the real and beneficial owner of the business conducted under the license of Mary Zoda; that he is directly responsible for all of the disgusting violations mentioned in the charges; and, further, in view of the fact that it appears that he is ineligible to hold a license in his own name by reason of his conviction of a crime or crimes involving moral turpitude, I shall disqualify the premises for a period of two years.

A two year period of isolation from the alcoholic beverage business is none too long a period of time to kill the stench resulting from the violations described in the charges in this case. There is no place in New Jersey for those few lawless persons who want to combine liquor and vice.

Accordingly, it is, on this 31st day of August, 1943

ORDERED that Plenary Retail Consumption License C-48, issued by the Township Committee of Hamilton Township to Mary Zoda, t/a Dan's Cafe, for premises 53 North Johnston Avenue, Hamilton Township, be and the same is hereby revoked, effective immediately; and it is further

ORDERED that premises known as 53 North Johnston Avenue, situate, lying and being in the Township of Hamilton, County of Mercer and State of New Jersey, be and they are hereby declared ineligible for any further license of any kind or class under Chapter 33, Revised Statutes of New Jersey of 1937, for a period of two years, commencing on the date hereof.