

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

BULLETIN 713

JUNE 7, 1946.

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

BULLETIN 713

JUNE 7, 1946.

1. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES TO MINORS - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO NON-MEMBERS - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS. CHARGES OF FALSE ANSWER IN LICENSE APPLICATION AND EMPLOYMENT OF DISQUALIFIED PERSON DISMISSED.

In the Matter of Disciplinary Proceedings against)

6TH WARD REGULAR COLORED)
DEMOCRAT CLUB)
607 Cherry Street)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

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

Robert Burk Johnson, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant was duly served with charges alleging that (1) it permitted sales on Sunday after 2:00 a.m., in violation of a city ordinance; (2) and (3) sold alcoholic beverages to minors; (4) sold alcoholic beverages to non-members, contrary to the terms of its club license; (5) and (6) falsely answered questions in its application for its present license by concealing the name of one of its officers and suppressing his disqualifying criminal record; (7) knowingly employed a person disqualified by his conviction of two or more violations of the Alcoholic Beverage Law, R. S. 33:1 et seq., in violation of R. S. 33:1-26.

Defendant was also served with a rule to show cause why its said license should not be cancelled and declared null and void because it was disqualified to hold a license by reason of the fact that one of its officers was disqualified under the provisions of Rule 6 of State Regulations No. 7.

The defendant pleaded non vult to charges (1), (2), (3) and (4); not guilty as to charges (5), (6) and (7); and appeared to contest the claim of the Department of Alcoholic Beverage Control under the rule to show cause.

As to the first four charges, the facts, as disclosed by the investigation of the agents of the Department of Alcoholic Beverage Control, conclusively show that the bar operated by the defendant under its club license was open and doing business on Sunday, September 30, 1945, during the hour of 7:30-7:45 p.m. This is a clear violation of Section 5 of an ordinance of the City of Camden duly adopted on December 27, 1934, prohibiting any such activity after 2:00 a.m. on Sunday.

It further appears that at the same time and place two minor girls, one sixteen and the other just past her twentieth birthday, were served and permitted to consume beer, falling within the definition of an alcoholic beverage as defined by R. S. 33:1-1(b). This service was made by an officer of the club after the beer had been handed to him by the bartender-steward in charge of defendant's licensed premises.

The same two minor girls were admittedly not members of the club. In fact, the application states that the club has no members who are minors.

There can be no doubt that the defendant is guilty of charges (1), (2), (3) and (4).

The decision as to charges (5) and (6) is not as easy. There is evidence that Lucius Randolph was, in fact, an acting treasurer of the club for about two months during the term of defendant's license, but it is questionable whether he was at the time when the application was filed. It further appears that promptly upon receipt of the charges herein, Randolph was removed as acting treasurer and suspended as a member of the club. As to whether or not Randolph was acting treasurer when the application for the current license was filed is in serious dispute. The most that I can be sure of is that he was the steward and in charge of the bar. The most that I can say is that there is some suspicion, but surely not enough well proven facts to find the defendant guilty on charges (5) and (6).

Charge (7) produces another problem. Randolph was admittedly acting treasurer during part of the time he was alleged to be employed by defendant. He has a criminal record that permanently disqualifies him from holding a license or being employed by a licensee. R. S. 33:1-25, 26.

The question posed here is, did defendant have knowledge of this record.

The club, whether a corporation or a voluntary association, is an artificial person that can act only through its officers and agents. There is no proof that any of defendant's officers or agents, excepting Randolph, had any knowledge of Randolph's disqualifying record. Ordinarily, knowledge of such an entity as the defendant would be presumed if knowledge of its responsible officers or agents was shown. For the purpose of these charges, could the admitted knowledge of Randolph be imputed to the defendant? This situation, I believe, falls within the exception to that exemplary rule. It is improbable that Randolph would actually communicate the facts of his criminal record to other agents or officers of the club. To do so would be contrary to the usual course of human behavior. The presumption that a person would make every effort to keep his unlawful propensities secret from his every-day, non-criminal associates overcomes the presumption of the rule of imputed knowledge. Cf. 19 C.J.S. Par. 1084; Maryland Cas. Co. v. Tulsa, 105 A.L.R. 529. There being no proof of actual knowledge by any other officer of Randolph's record, and knowledge being a necessary element in the violation, I shall find defendant not guilty as to charge (7).

Because of the factual situation discussed herein in relation to charges (5) and (6), the rule to show cause will be dismissed.

In arriving at the proper penalty to be imposed because of the guilt of charges (1), (2), (3) and (4), it is incumbent to consider two aggravating circumstances disclosed by the hearing herein. In the first place, one of the minors was only sixteen years old, and, secondly, the officers and members of the club did not exercise the proper supervision over the activities of the bar. In view of all the circumstances and so that the defendant and its responsible officers may be impressed with the thought that the exercise of the privileges of a club license is a serious matter requiring every effort to keep within the law, I shall suspend the license for a period of sixty days.

Accordingly, it is, on this 27th day of May, 1946,

ORDERED, that Club License CB-44, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to 6th Ward Regular Colored Democrat Club, for premises 607 Cherry Street, Camden, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 1, 1946; and it is further

ORDERED, that if any license be issued to this licensee, or anyone else, for the premises in question for the 1946-47 fiscal year, such license should be under suspension until 2:00 a.m. July 31, 1946.

ERWIN B. HOCK
Deputy Commissioner.

2. APPELLATE DECISIONS - HIGGINS v. ELIZABETH.

WILLIAM A. HIGGINS,)
Appellant,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF ELIZABETH,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

John L. McGuire, Esq., Attorney for Appellant.
Raymond A. Leahy, Esq., Attorney for Respondent.
Herman C. Silverstein, Esq., Attorney for Objectors.

This is an appeal from the denial of appellant's application for a plenary retail distribution license for premises at 355 Monmouth Road, Elizabeth, N. J.

The neighborhood where the appellant proposes to locate is known as the Elmora section of the city. It is undisputed that this section is highly residential, with the vicinity of the appellant's premises consisting of a majority of one-family dwellings.

A great deal of local interest was exhibited by neighboring residents, and at the hearing held by the Board, approximately 100 persons appeared. The sentiment was substantially against the location of a liquor store in this residential section.

The record further indicates that the Elmora section is now serviced by five other distribution licenses, all of which are located within a mile of the proposed site. In addition, there are within that distance several consumption establishments which cater to the business of selling alcoholic beverages in original packages for off-premises consumption.

It is quite obvious that the denial of the application by the local Board was not arbitrary or unreasonable. The action of the respondent is, therefore, affirmed.

Accordingly, it is, on this 27th day of May, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

3. APPELLATE DECISIONS - BECKER v. FAIR HAVEN.

MARTIN BECKER,)
)
 Appellant,)
)
 -vs-)
)
 BOROUGH COUNCIL OF THE)
 BOROUGH OF FAIR HAVEN,)
)
 Respondent)
 -----)

ON APPEAL
 CONCLUSIONS AND ORDER

Martin Becker, Pro se.
 Parsons, Labrecque, Canzona & Combs, Esqs., by Theodore J. Labrecque,
 Esq., Attorneys for Respondent.

This is an appeal from the denial by respondent of appellant's application for a plenary retail distribution license for premises known as 813 River Road, Fair Haven.

At the hearing herein it appeared that appellant holds an option to purchase the vacant plot of ground known as 813 River Road. When he filed his application for the license, he apparently submitted a sketch of a building, but it is doubtful if he ever submitted proper plans and specifications for a new building in accordance with the procedure outlined in Re Harris, Bulletin 183, Item 11. This appeal might well be dismissed upon the technical ground that the license could not be issued for vacant land and that the license could not be even granted because proper plans and specifications have not been filed. I prefer, however, to decide the case upon the merits.

The answer herein alleges, among other reasons, that the application was denied because there are already sufficient licensed premises in the Borough of Fair Haven. Appellant, however, contends that this reason is without weight because at the present time no plenary retail distribution license is in existence within the limits of the Borough.

The population of the Borough, according to the Federal census of 1940, was 2,491. A plenary retail consumption license has been issued for each of three premises located in close proximity to 813 River Road, Fair Haven, and there is a package goods store in the adjoining municipality of Red Bank in close proximity to the dividing line between Red Bank and Fair Haven. No plenary retail distribution licenses have been issued in Fair Haven since June 1942.

Determination of the number of liquor establishments which should be permitted in any particular community is a matter confided to the sound discretion of the local issuing authority. This discretionary power is now limited, of course, by P. L. 1946, c. 147 (which does not apply herein). In determining whether a plenary retail distribution license should be issued, the local issuing authority was justified in taking into consideration the number of plenary retail consumption licenses. This is so because a plenary retail consumption licensee may sell alcoholic beverages for consumption in original containers. Cf. Boody v. Gloucester, Bulletin 300, Item 11. Mayor Denise and Councilman Howie testified that in their opinion there were already sufficient licenses outstanding in the Borough and that the welfare of the Borough required the denial of appellant's application. The testimony produced by appellant, who was his only witness, was insufficient to show that the members of the Borough Council abused their discretionary power in denying his application.

It is unnecessary to consider the other reasons for denial which are set forth in the answer filed.

Appellant has also argued that the action of respondent was unreasonable because he is a disabled veteran of World War II. A similar situation was presented in Iacovone v. Gloucester, Bulletin 644, Item 4, wherein it was said:

"Certainly no one will deny the fact that the entire nation is immeasurably obligated to its war veterans. On the other hand, we are dealing here not with the general subject of aid to veterans but with the unique subject of retail liquor licenses. Speaking generally, liquor licenses are properly issued to serve the public convenience and necessity. They are not properly issued, within the contemplation of the Alcoholic Beverage Law, to serve private, individual interests."

For the reasons set forth above, the action of respondent is affirmed.

Accordingly, it is, on this 27th day of May, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

4. APPELLATE DECISIONS - FIFTH WARD COOPERATIVE CITIZENS' CLUB, INC. v. TRENTON.

FIFTH WARD COOPERATIVE CITIZENS')
CLUB, INC.,)

Appellant,)

-vs-)

BOARD OF COMMISSIONERS OF THE)
CITY OF TRENTON,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

George Pellettieri, Esq., Attorney for Appellant.
John A. Brieger, Esq., Attorney for Respondent.

This is an appeal from the denial of appellant's application for a club license for premises 23 Sweets Avenue, Trenton, New Jersey.

One of the grounds for the denial is that the appellant is not "a proper and bona fide club within the meaning of the statute".

The Alcoholic Beverage Law (R. S. 33:1-12(5)) provides that club licenses shall be issued to organizations "which comply with all conditions which may be imposed by the commissioner of alcoholic beverage control by rules and regulations". Pursuant to the cited statute, the Commissioner adopted State Regulations No. 7 which require, among other things, that a club shall have been in exclusive

continuous possession and use of club quarters for at least three years continuously immediately prior to the submission of its application for license, and that a list containing the names and addresses of all members of the club shall be submitted with the application.

When the application was filed, no such list of members was submitted, nor was any such list thereafter filed with the issuing authority. One of the local licensing inspectors, assigned to investigate the bona fides of the application, finally succeeded in obtaining a book containing a list of names of alleged members, purporting to show the dues paid by them. The inspector contacted many of these so-called members and found, in at least seven instances, that they had never become members of the appellant organization and had never paid any dues to it.

The minute book of the club indicates that very little interest in the organization was shown by the members and, on many occasions, scheduled meetings were not held because of the lack of persons present at the meetings. There were no meetings held between the months of May and August during the years 1942 through 1945. The minute book appears to have been kept in haphazard fashion and none of the minutes bear the signature of the secretary or any other officer.

It further appears from the minutes, and the testimony of one of the members, that the club held meetings on the second floor of a three-story building at 87 Sweets Avenue between November 1941 and March 1944. Information obtained from the Office of Price Administration by the local inspector disclosed that the second floor of the premises in question had been rented to a private individual ever since December 1942.

It was open to the respondent, under the aforesaid circumstances, to find that the appellant association was not a bona fide club within the meaning of the Alcoholic Beverage Law and the State Regulations. The testimony offered by the appellant at the appeal hearing furnished no evidence which would justify a reversal of that finding.

Under the circumstances, the action of the respondent is affirmed.

Accordingly, it is, on this 27th day of May, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWER IN LICENSE APPLICATION AND AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE DISMISSED - EMPLOYING DISQUALIFIED PERSON ON LICENSED PREMISES, IN VIOLATION OF R. S. 33:1-26 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against)

ANN SAMRA and FLORENCE DARDER)
T/a S & D BAR & GRILL)
499 McBride Avenue)
West Paterson, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-11, issued by the Borough Council of the Borough of West Paterson.)

McNamara & McNamara, Esqs., by Edward P. R. McNamara, Esq., Attorneys for Defendant-licensees.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

The defendants pleaded not guilty to charges alleging that: (1) they falsified their license application by failing to reveal therein that their husbands were actual and beneficial owners of the business to be conducted under their license, (2) ever since October 16, 1945 they permitted their husbands to exercise the privileges of their license, and (3) on January 10, 1946, and prior thereto, they employed at their licensed premises Samuel Samra, who had been convicted of a disqualifying crime.

As to (1) and (2): These charges were bitterly contested by the defendants and a great deal of testimony was taken thereon. No useful purpose would be served by detailing the voluminous evidence. Suffice it to say that the record does not satisfy me that the prosecution has sustained the burden of proving that Samuel Samra and Charles Darder, husbands of the defendants, had any actual and beneficial interest in the license and business conducted thereunder which was required to be disclosed in the license application.

It furthermore appears that the interest of Florence Darder has been sold to Ann Samra and that both Mr. and Mrs. Darder have severed all connection with the tavern. As to Samuel Samra, he is ineligible for employment on any licensed premises in this state. See Re Case No. 466, decided today (Bulletin 713, Item 3), in which his application to remove his disqualification because of a criminal conviction was denied.

The first and second charges are dismissed.

As to (3): On December 11, 1945, Samuel Samra served an ABC agent with a glass of beer. He was in sole charge of the tavern at the time. The explanation given is that Mrs. Samra went shopping and requested her husband to stay at the premises until her return.

On January 10, 1946, another ABC agent found Samuel Samra working in the kitchen of the licensed premises. Mrs. Samra admits that, on occasion, her husband helped her in the kitchen, but states that she was under the impression that her husband's disqualification was limited to the sale and service of alcoholic beverages and did not extend to other types of employment at the tavern. In this, of course, she was clearly mistaken. The law (R. S. 33:1-25, 26) prohibits a criminally disqualified person from being employed in any capacity on licensed premises.

I find the defendants guilty on the third charge and shall impose a penalty of ten days thereon.

Accordingly, it is, on this 29th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-11, issued by the Borough Council of the Borough of West Paterson to Ann Samra and Florence Darder, t/a S & D Bar & Grill, for premises 499 McBride Avenue, West Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. June 3, 1946, and terminating at 3:00 a.m. June 13, 1946.

ERWIN B. HOCK
Deputy Commissioner.

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

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - 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
AND ORDER

Case No. 466.
-----)

The petitioner was convicted of the crimes of robbery and carrying concealed weapons in February 1932. He was sentenced to an indefinite term at Rahway Reformatory and paroled on March 9, 1933.

The crime of robbery involves the element of moral turpitude. Re Case No. 203, Bulletin 661, Item 2.

At the hearing held herein, the petitioner admitted, upon being questioned, that his wife was then in process of purchasing a liquor license. He was then cautioned against working at his wife's tavern until such time as his disqualification was lifted by the Commissioner. Despite this warning, ABC agents found the petitioner working at the tavern on several occasions. See Re Samra and Darder, Bulletin 713, Item 5, decided simultaneously herewith.

Under the circumstances, the petitioner is not entitled to the relief sought. Where a person, with knowledge of the fact that he is ineligible for employment on licensed premises, deliberately violates the law in this respect, he does not merit the favorable exercise of the discretion, lodged in the Commissioner under the statute, to determine whether such disqualification shall be removed. Cf. Re Case No. 268, Bulletin 592, Item 9.

Accordingly, it is, on this 29th day of May, 1946,

ORDERED, that the relief prayed for in the petition herein be and the same is hereby denied.

ERWIN B. HOCK
Deputy Commissioner.

7. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL ORDERED FORFEITED - PADLOCKING WAIVED.

In the Matter of the Seizure)
on April 5, 1946 of a still)
and a quantity of alcoholic)
beverages, and mash at 623)
Liberty Street, in the City of)
Camden, County of Camden and)
State of New Jersey.)

Case No. 6971

ON HEARING
CONCLUSIONS AND ORDER

A. and H. Investments, Inc., by Max C. Hecheter, Secretary-Treasurer.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic
Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a still and a quantity of alcoholic beverages, itemized in a schedule attached hereto, seized on April 5, 1946 at 623 Liberty Street, Camden, N. J. constitute unlawful property and should be forfeited, and further to determine whether the premises should be padlocked.

The State Department of Alcoholic Beverage Control received information shortly before the seizure that there was an illicit still at the premises in question. Accordingly, agents of the aforementioned Department obtained a search warrant, which they executed on the day in question.

There is a two-story, four-room dwelling on the premises, occupied by Edward Boxley. The agents found a quantity of illicit alcohol in the kitchen underneath the stove, and found a small still and some mash in a shed adjacent to the dwelling.

Mr. Boxley arrived on the scene while the agents were there and told them that a person, whose name he later disclosed, had placed the still in the premises a few days prior to the seizure and agreed to pay Boxley \$5.00 a week. The agents seized the still and alcoholic beverages and arrested Boxley on a charge of possessing an unregistered still and illicit alcoholic beverages.

Fulton Seeney, who, according to Boxley, brought the still to the premises, was later arrested. Seeney told the agents that he was in partnership with Boxley to manufacture illicit alcoholic beverages and that Boxley was to receive \$5.00 a week and half of the profits. Both Boxley and Seeney have since been convicted in the Camden Police Court and sentenced to pay a fine of \$50.00 or serve 30 days in the County jail.

The still was not registered with the State Commissioner of Alcoholic Beverage Control, as required by R. S. 33:2-1. Hence, such still and the alcoholic beverages seized therewith in the building constitute unlawful property. In addition, the premises are subject to padlocking. R. S. 33:2-3, R. S. 33:2-5.

When the matter came on for hearing pursuant to R. S. 33:2-4, Max C. Hecheter appeared for A. and H. Investments Inc., the owner of the premises, and sought to avoid padlocking thereof. No one appeared to oppose forfeiture of the still and alcoholic beverages.

Mr. Hecheter testified that he has known Mr. Boxley, who is about 85 years of age, for more than 25 years; that Mr. Boxley was formerly employed by him, and later by a religious organization, as a janitor

and also had a part time job in an automobile tire store. Boxley resided in premises owned by the religious organization until some time last year, when his employment and residence were terminated by such religious organization.

Moved by considerations of sympathy, Mr. Hecheter purchased the premises in question in the name of his company for a few hundred dollars for the express purpose of providing a home for Boxley. Boxley paid a rental of \$16.00 per month. Management of the property was entrusted to a real estate agent, at whose office the rent was paid. Hecheter says that he did not know that there was an illicit still at the premises nor have any reason to suspect that Boxley would become involved in an illicit still enterprise, and that neither he nor his real estate agent had any occasion to visit the premises. Boxley has no previous record of violating any liquor laws.

Mr. Hecheter frankly states that it is his desire to permit Mr. Boxley to remain as the tenant of the premises, because he knows of nowhere else that Boxley can obtain living quarters, aside from the fact that it is doubtful whether he can obtain another tenant for the premises.

I can understand and admire the motives which prompt Mr. Hecheter to intercede on Mr. Boxley's behalf, even though Boxley abused his confidence by engaging in illicit still activities. Under the circumstances in the case, I have decided to grant Mr. Hecheter's request and will forego padlocking of the premises. However, Mr. Hecheter is strictly warned that if he permits Mr. Boxley to remain as the tenant and he is again found in possession of an illicit still, the premises will be padlocked. Cf. Seizure Case No. 6455.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property and that the same be and hereby is forfeited, in accordance with the provisions of R. S. 33:2-5, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: May 29, 1946.

SCHEDULE "A"

- 1 - copper cooker
- 1 - lot copper tubing
- 100 - gallons of mash
- 2 - 1-gallon jugs of alcoholic beverages
- 3 - 50-gallon wooden barrels
- Lot of rubber hose

8. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED - GOOD FAITH ESTABLISHED BY OWNER OF JUKE BOX, MACHINE ORDERED RETURNED.

In the Matter of the Seizure)	Case No. 6880
on August 25, 1945 of a quantity)	
of alcoholic and other beverages)	
and a music machine, cash register)	ON HEARING
and other fixtures, furnishings)	CONCLUSIONS AND ORDER
and personal property, on premises)	
located on New Jersey State Highway,)	
Route No. 44, R. D. No. 3, in the)	
Township of Lower Penns Neck,)	
County of Salem and State of New)	
Jersey.)	

Stanger & Howell, Esqs., by Robert G. Howell, Esq.,
Attorneys for Edwin F. Loechner, Jr.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic
Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages, a music machine, cash register and other fixtures, furnishings and personal property, itemized in a schedule attached hereto, seized on August 25, 1945 at premises located in the Township of Lower Penns Neck, New Jersey, constitute unlawful property and should be forfeited.

On August 24, 1945, at about 2:30 a.m., two ABC agents entered a small restaurant operated by Rayfield Tull, on Highway No. 44 in the aforesaid Township, to check a complaint that speakeasy activities were being carried on there. The agents ordered fried chicken and bottles of beer. Both items were served by Harrison Benson, who accepted payment therefor. The agents left without disclosing their identity.

On August 25, 1945, at about 1:15 a.m., the same agents returned in company with local police officers. The agents entered the restaurant and again ordered bottles of beer. On this occasion Nora Benson served them and accepted payment for the beer. When the police officers entered shortly thereafter, there were two bottles of beer in front of the ABC agents. All of the officers identified themselves and arrested Nora Benson, Harrison Benson and Rayfield Tull, the owner of the restaurant, on charge of violating the liquor laws, inasmuch as none of these persons held any license authorizing them to sell or serve alcoholic beverages.

The ABC agents seized the stock of alcoholic and other beverages, a refrigerator, cooler, cash register, music machine, currency in the cash register and music machine and other furnishings and fixtures in the premises.

Rayfield Tull and Harrison Benson and Nora Benson gave the agents written statements which in substance are to the effect that Tull owned and operated the restaurant; and that Mr. and Mrs. Benson were employees and were instructed by Tull to sell beer there. The fingerprint records of Rayfield Tull, Harrison Benson and Nora Benson do not disclose any previous criminal record.

Tull and Mr. and Mrs. Benson pleaded non vult in the Salem County Special Sessions Court to the criminal charges in the instant case. Tull was fined \$350.00 and was sentenced to six months' imprisonment. Mr. and Mrs. Benson were each fined \$50.00 and sentenced to six months' imprisonment. All of the jail sentences were suspended.

The evidence establishes that the seized alcoholic beverages were intended for sale at this speakeasy, and hence are illicit. Such illicit alcoholic beverages, together with the other beverages, fixtures, furnishings and receipts of the unlawful enterprise seized therewith in the building, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, Mr. Loechner appeared and sought return of the music machine. No one appeared to oppose forfeiture of the other seized property.

The premises in question consist of a one-story frame building in which there was a front room, kitchen, and two bedrooms. There were four tables, a number of chairs, and the music machine in the front room. There was no household furniture there. A counter, refrigerator, cooler and a stove were in the kitchen. A sign bearing the inscription "Ray's Restaurant" was on the exterior of the building.

Mr. Loechner owned and operated a number of electrical appliance stores and also was the owner of about 100 music machines which he leased on a profit-sharing basis. He testified that about July 4, 1945 Rayfield Tull informed him that he was about to open a restaurant at the premises in question and requested him to place a music machine there.

Mr. Loechner says that he placed a machine in the front room of Tull's restaurant on a trial basis, to ascertain whether it was a profitable location; that he observed the tables and chairs there; that he returned to the premises about two weeks later, was satisfied with the receipts, and thereupon entered into a written three-year lease of the machine. Mr. Loechner further testified that these were the only visits he made to the premises; that the front room was the only one he inspected; and that he did not observe any sale or service of alcoholic beverages or anything else to indicate that it was a speakeasy. Mr. Loechner did not make any investigation of Rayfield Tull's background or character.

Under R. S. 33:1-66(e) and (f), I have discretionary authority to return property subject to forfeiture to a person who has satisfied me that he acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use.

A person who seeks return of a music machine under these provisions of the law must establish that he did not know or have any reason to suspect that his machine was in a speakeasy or that the person with whom he was doing business was operating a speakeasy. Re Seizure Case No. 6898, Bulletin 687, Item 1; Re Seizure Case No. 6927, Bulletin 697, Item 4.

The beer and other alcoholic beverages apparently were not openly displayed and the place did not contain a bar. To outward appearances it was merely a small restaurant. Hence, from what was visible to Mr. Loechner, it is understandable that he was unable to discern that the premises was actually a speakeasy.

Loechner's failure to inquire concerning Rayfield Tull's background and character is not controlling in the instant case because it does not appear that Tull had a reputation for unlawful alcoholic beverage activities or was ever convicted of violating any liquor laws. See Seizure Case No. 6927, supra. Tull's arrest and conviction in December 1944, to which he refers in his statement, was for disturbing the peace and creating a disturbance, in violation of a local ordinance.

I therefore find that Edwin F. Loechner, Jr. acted in good faith and did not know or have any reason to suspect that his music machine was in the speakeasy.

Accordingly, it is DETERMINED and ORDERED that, if on or before the 14th day of June, 1946, Edwin F. Loechner, Jr. pays the cost of seizure and storage in the case, the music machine will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: May 29, 1946.

SCHEDULE "A"

- 68 - bottles of beer
- 27 - bottles of other alcoholic beverages
- 72 - bottles of soda
- 1 - box of glasses
- 1 - Frigidaire Refrigerator
- 1 - cooler
- 1 - National Cash Register containing \$5.44
- 1 - slot machine
- 4 - tables and 11 chairs
- \$16.40 currency in the music machine

9. MORAL TURPITUDE - CRIME OF "THEFT" - LOCAL ISSUING AUTHORITY APPARENTLY DECIDED CRIME DID NOT INVOLVE MORAL TURPITUDE - APPLICATION TO LIFT GRANTED.

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

CONCLUSIONS
AND ORDER

Case No. 534.)
- - - - -)

In 1930, petitioner was convicted in a neighboring state on a charge of "theft" and fined \$100.00. The punishment imposed seems out of proportion to the crime as charged.

The crime of "theft", a rather loose term referring to the more technically correct "larceny", Downs v. N. J. Fidelity & Plate Glass Ins. Co., 91 N. J. L. 523, ordinarily involves the element of moral turpitude.

Since 1930, petitioner has never been convicted of any crime. The police of his home community advise me that he is not presently under investigation and that no charges are pending against him.

At the hearing petitioner produced three witnesses; one a businessman who has known him for over fourteen years; another a contractor for whom petitioner at one time worked, who has known petitioner for fifteen years; and the other, an attorney at law of New Jersey, who has known petitioner for ten years. All these

witnesses testified that petitioner has been an honest, law-abiding citizen during the period of their acquaintance, and for at least the last five years.

This application has given me some concern because petitioner during the past two years, has been interested in various retail licenses and now holds a plenary retail consumption license in his own name. He did, however, disclose, in his various applications, sufficient facts about his 1930 conviction to put the local issuing authority on notice of his possible disqualification. The said local issuing authority has had the question before it three times and apparently has, in its discretion, determined that said conviction was not a conviction of a crime involving moral turpitude. At the hearing herein petitioner testified that his conviction for "theft" resulted from the fact that a truck he then owned had been used by another individual who stole certain slot machines. I shall remove the disqualification which may exist because of this conviction in order to eliminate hereafter any question as to the correctness of the ruling made by the local issuing authority that the crime did not involve moral turpitude.

I find that petitioner has conducted himself in a law-abiding manner during the five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 3rd day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

10.

ACTIVITY REPORT FOR MAY, 1946

ARRESTS:

Total number of persons arrested -- bootleggers - - - - - 16

SEIZURES:

Total number of stills seized - - - - - 3
 Total number of motor vehicles seized -- passenger cars - - - - - 1
 Alcohol -- gallons - - - - - 4.66
 Brewed malt alcoholic beverages (beer, ale, etc.) -- gallons - - - - - 54.
 Distilled alcoholic beverages (whiskey, brandy, etc.) -- gallons - - - - - 49.1
 Wine -- gallons - - - - - 27.8
 Mash -- gallons - - - - - 460.

RETAIL LICENSEES:

Total number of premises inspected - - - - - 1,007
 Total number of premises where alcoholic beverages were gauged - - - - - 675
 Total number of bottles gauged - - - - - 9,227
 Total number of premises where violations were found - - - - - 68
 Total number of violations found - - - - - 91
 Type of violations found:
 Prohibited signs - - - - - 4
 Unqualified Employees - - - - - 28
 No sign denoting legal sale hours
 off-premises consumption - - - - - 18
 Other mercantile business - - - - - 5
 Price pamphlet not displayed - - - - - 7
 Disposal permit necessary - - - - - 1
 Illicit liquor - - - - - 27
 Other types of violations - - - - - 1

STATE LICENSEES:

Premises inspected - - - - - 3
 License applications investigated - - - - - 130

COMPLAINTS:

Investigated, reviewed and closed - - - - - 281
 Investigation assigned, not yet completed - - - - - 170

LABORATORY:

Analyses made - - - - - 141
 "Shake-up" cases (alcohol, water and artificial coloring) - - - - - 10
 Liquor found to be not genuine as labeled - - - - - 16

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - - 12
 Persons fingerprinted for non-criminal purposes - - - - - 122
 Identification contacts with other enforcement agencies - - - - - 140
 Motor vehicle identifications via N. J. State Police Teletype - - - - - 5

DISCIPLINARY PROCEEDINGS INSTITUTED:

Cases transmitted to municipalities - - - - - 14
 Violations involved:
 Bookmaking - - - - - 1
 Brawls - - - - - 2
 Sale to minors - - - - - 6
 Sale to non-members by clubs - - - - - 1
 Sale during prohibited hours - - - - - 5
 Unqualified Employee - - - - - 1
 Cases instituted at Department - - - - - 13
 Violations involved:
 Fraud and front - - - - - 5
 Illicit liquor - - - - - 5
 Sale during prohibited hours - - - - - 3
 Cases brought by municipalities on own initiative and reported to Department - - - - - 3
 Violations involved:
 Sale to minors - - - - - 2
 Brawls - - - - - 1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - - 57
 Appeals - - - - - 10
 Disciplinary proceedings - - - - - 25
 Eligibility - - - - - 9
 Seizures - - - - - 8
 Applications for license - - - - - 4
 Tax revocation - - - - - 1

PERMITS ISSUED:

Total number of permits issued - - - - - 765
 Unqualified employees - - - - - 89
 Solicitors - - - - - 63
 Social affairs - - - - - 287
 Home manufacture of wine - - - - - 1
 Disposal of alcoholic beverages - - - - - 204
 Miscellaneous permits - - - - - 121

ERWIN B. HOCK
 Deputy Commissioner

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

JACOB THOMAS DRWIEGA)
T/a JACK'S TAVERN)
33 Green Street)
Paterson 3, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-326, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
-----)

Jacob Thomas Drwiega, Defendant-licensee, Pro se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded guilty to a charge alleging that he sold and served alcoholic beverages during prohibited hours, in violation of local ordinance.

On Sunday, April 28, 1946, at about 10:30 a.m., two ABC agents were admitted to the defendant's tavern through a rear door. The defendant sold them each a drink of whiskey and a glass of beer. Four other patrons at the tavern were consuming alcoholic beverages at the time. The local ordinance prohibits the sale and service of alcoholic beverages between the hours of 3:00 a.m. and 1:00 p.m. on Sundays.

In the absence, as here, of any prior adjudicated record, the usual fifteen-day penalty will be imposed. Five days will be remitted for the plea, leaving a net penalty of ten days.

Accordingly, it is, on this 4th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-326, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Jacob Thomas Drwiega, t/a Jack's Tavern, for premises 33 Green Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. June 10, 1946, and terminating at 3:00 a.m. June 20, 1946.

Erwin B. Hook

Deputy Commissioner.