

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

BULLETIN 525

AUGUST 27, 1942.

1. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - FAILURE TO DISCLOSE MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE (QUALIFIED) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

DORA BRESSLER,)
176 Paterson Street,)
Paterson, N. J.,)

Holder of Plenary Retail Consumption License C-135 for fiscal year 1941-2, issued by the Board of Alcoholic Beverage Control of the City of Paterson, which license was renewed for the current fiscal year 1942-3 and thereafter transferred, subject to the outcome of these proceedings, to)

DORA BRESSLER and PHILIP BRESSLER,)

for the same premises.)

CONCLUSIONS

AND

ORDER

J. David Newman, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant, Dora Bressler, holder of a plenary retail consumption license for a tavern in Paterson, was served with charges alleging, in substance, that (1), in violation of R.S. 33:1-25, she falsified her application for license for the fiscal year 1941-2 by failing to disclose therein that Philip Bressler (her husband) was the sole and real owner of the licensed business; and (2), in violation of R.S. 33:1-52, she permitted said Philip Bressler to exercise the rights and privileges of her license.

At the hearing, although entering no formal guilty plea, the licensee, as well as her husband, fully and frankly disclosed that the tavern was a family affair, operated by the husband, and in which husband and wife each had a mutual interest.

Their explanation as to why Mrs. Bressler, in 1934, obtained the license in her name and renewed it from year to year without change, is that in 1933 they suffered financial reverses in a flour business and were left without any means of livelihood; that they then conceived the idea of returning to the tavern business, with which Mr. Bressler was familiar; that Mrs. Bressler borrowed money from one of her relatives for that purpose; that they were fearful that creditors of the flour business would sue Mr. Bressler, hence Dora Bressler applied for the license; that she gave her relative a chattel mortgage on the tavern as security for

his loan; that, after their fears proved to be unfounded in that Mr. Bressler was not pressed by his creditors, they nevertheless did not apply for the license in both names, not because of design or intent to deceive, but merely because, with the lapse of time, they treated the applications for the licenses as a routine matter without realizing that they were violating the law. There is nothing to indicate that Philip Bressler is in any way disqualified from himself holding a liquor license.

To complete the record, the history of the current license is as follows: On May 27 Dora Bressler applied for renewal of her license; on June 23 the issuing authority granted her application; on June 24 the instant proceedings were instituted and hearing therein set for July 23; on July 15 Dora Bressler and Philip Bressler applied for transfer of the license; and on July 22 such application was granted, subject to the outcome of these proceedings.

By virtue of State Regulations No. 15 and, further, by virtue of the express condition which was imposed on the transfer, this proceeding, although instituted during the last licensing year, does not abate but remains fully effective against the current license.

I can readily understand how husband and wife might not stop to make fine distinctions as to their respective interests in a family enterprise and might have inadvertently misunderstood the technicalities of the law. However, the fact remains that the husband did have an undisclosed interest in the licensed business and that the licensee in her application did make false answers concerning the ownership of the business.

These are violations of the law committed in pursuance of a fraudulent plan to safeguard the husband's interest in the licensed business from attack by his creditors. This is a different situation from those present in Re Waldman, Bulletin 404, Item 11, and Re Mascolo, Bulletin 427, Item 7, where the failure to reveal the interest of the husband in the licensed business was prompted by personal convenience, untinged with any intention to deceive the issuing authority or to evade the qualifications of the Alcoholic Beverage Law. There, it merely called for a correction of the "front," whereas here, because of the element of deceit, it calls for the imposition of a penalty despite the fact that the situation has been completely corrected by transfer of the license to husband and wife.

In considering the extent of the penalty, I note that the proceedings were instituted near the close of the fiscal year 1941-2 against the license for that year. At that time the licensee had already applied for renewal of her license for the ensuing year. When served with the charges, she immediately took steps to correct the situation by having the license transferred to herself and her husband.

Under these circumstances I shall not treat this case as one where there is a continuance of the "front" after July 1, 1942, especially since it was not the type of "front" where a person disqualified because of non-residence or because of his criminal record nevertheless engaged in the liquor business. Hence, this case does not come within the ruling as to increased penalties to be imposed where a "front" is created or continued after July 1, 1942. Bulletin 512, Item 9.

I shall, therefore, impose the usual penalty of suspension of the license for a period of ten days. Re Mania, Bulletin 507, Item 2.

Accordingly, it is, on this 14th day of August, 1942,

ORDERED that plenary retail consumption license C-135, heretofore issued by the Board of Alcoholic Beverage Control of the City of Paterson for the current fiscal year to Dora Bressler for 176 Paterson Street, Paterson, and later transferred by the said Board to Dora Bressler and Philip Bressler, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 A.M. August 19, 1942, and terminating at 3:00 A.M. August 29, 1942.

ALFRED E. DRISCOLL,
Commissioner.

- 2. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATIONS CONCEALING THE INTEREST OF OTHERS - SUPPRESSION OF MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE (DISQUALIFIED CORPORATION) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 30 DAYS, UPON PROOF OF BONA FIDE CORRECTION.

In the Matter of Disciplinary Proceedings against)

WILLIAM C. MERKLE,)
t/a ROOSEVELT STADIUM,)
Danforth and West Side Aves.,)
Jersey City, N. J.,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-549, issued by the Board of Commissioners of the City of Jersey City.)
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John Drewen, Esq., Attorney for the licensee, and Harry M. Stevens, Inc.

William F. Wood, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license, has entered a plea of nolo contendere to charges alleging:

(1) On June 26, 1942 he falsely stated in his application for a license filed with the Board of Commissioners of the City of Jersey City that no individual other than himself had any interest directly or indirectly in the license applied for or in the business to be conducted under the license, in violation of R.S. 33:1-25.

(2) From April 21, 1937 to the present time, he knowingly aided and abetted Harry M. Stevens, Inc., a non-licensee, to exercise the rights and privileges of his plenary retail consumption license.

For many years Harry M. Stevens, Inc. has been in business as a concessionaire selling beverages, alcoholic and otherwise, at various sporting events throughout the country. In the early part of 1937 the corporation apparently determined to engage in business

as concessionaire at the Roosevelt Stadium in Jersey City. To carry out its purpose, it was necessary to obtain a license to sell alcoholic beverages. Under the New Jersey law (R.S.33:1-12.1), the Stevens corporation was not then (or now) qualified to obtain such a license because all of its five stockholders, each of whom held more than ten per cent. of its stock, were non-residents of this State.

As of the date defendant applied for his license, R.S. 33:1-25 provided in part as follows:

"Applicants for licenses shall answer such questions and make such declarations as shall be prescribed by rules and regulations. No retail license shall be issued to a natural person unless he is a citizen of the United States and shall have been a resident of the state of New Jersey for at least five years continuously immediately prior to the submission of the application."

Likewise, R.S. 33:1-12.1 provided then, as now, that no Class C license shall be issued to any corporation, except for premises operated as a bona fide hotel, "unless each owner, directly or indirectly, of more than ten per cent. of its stock" qualified in all respects as an individual applicant for a license.

Counsel for the defendant suggests that the disqualification of the Stevens corporation was discussed with a representative of the issuing authority and that the procedure subsequently followed was developed as a result of this discussion. Irrespective of what may have taken place prior to the application, the fact is that the license was secured in the name of William C. Merkle, who had been employed by the Stevens corporation for a number of years and who was a bona fide resident of New Jersey.

The applications filed by the defendant clearly contained false and misleading statements notwithstanding the fact that the defendant, under oath, and as a part of each of said applications, swore that all of "the answers, statements and declarations made in the foregoing application are absolutely true in all respects."

The Alcoholic Beverage Law provides:

"All statements in said applications required to be made by law or by rules and regulations shall be deemed material, and any person who shall knowingly misstate any material fact, under oath, in said application shall be guilty of a misdemeanor." R.S. 33:1-25.

The evidence before me leaves no doubt in my mind as to the licensee's guilt. The real party in interest was the Stevens corporation. The licensee was admittedly merely the nominal holder of the license for the benefit of the disqualified corporation.

A licensee who deliberately establishes a "front" either for his own gain or the benefit of an affiliate organization, perpetuates a fraud upon the State which strikes at the root of the alcoholic beverage licensing system.

Licenses will not be permitted to nullify the clear intent of the statute by obtaining licenses and then constituting

themselves extra-legal issuing authorities by granting their licenses to disqualified persons.

The difficult question in this case is what penalty should be imposed.

On June 1, 1942 I stated that the penalties heretofore imposed had not had the intended effect of discouraging unqualified persons from obtaining licenses in this State through the fraudulent practice of having others "front" for them. At that time I gave fair warning that more severe penalties would be imposed in the case of all "fronts" created or continued after July 1, 1942. Bulletin 512, Item 9. Publication of this declaration of policy in the Department bulletin constituted notice to all licensees. Despite that warning, this licensee has continued a previously existing "front" into the current fiscal year. His application for license was not filed with the issuing authority until June 26, 1942, almost a month after the publication of my statement.

On the other hand, it is to be noted, in the licensee's favor, that the local authorities were apparently not misled by the licensee's failure to disclose the interest of the Stevens corporation. As evidence of the good faith of Harry M. Stevens, Inc., counsel has referred to numerous occasions when the corporation dealt with the local issuing authority with respect to the licensed business. It appears that it was the practice of the defendant to pay the license fee by check drawn by the Stevens corporation on its corporate account. The fact that the issuing authority was not misled, although not a defense, is a circumstance which may fairly be considered in mitigation of the penalty. Cf. J. Barnes Operating Corp., Bulletin 500, Item 7.

Consideration has also been given to the fact that the suspension of the license in the instant case may be more keenly felt by thirsty fans than a repentant licensee. The current baseball season is on the wane and any suspension must necessarily cover the balance of scheduled games. Assuming this to be true, it is, none the less, not within my province to question the wisdom of the law or to give back to the customers that which their concessionaire has taken away from them by his unlawful conduct. The statute permits of no other alternative than the suspension of the license for a period in keeping with the gravity of the violation committed.

Since it does not appear that the unlawful situation has as yet been corrected, the license must, to prevent continued operation of the business in a manner contrary to the statute, be suspended for the balance of its term. However, in view of the plea and frank disclosure of the facts by the defendant, this suspension may, on proper showing of a bona fide correction, be lifted after at least thirty days of such suspension have been served.

Accordingly, it is, on this 15th day of August, 1942,

ORDERED that Plenary Retail Consumption License C-549, heretofore issued to William C. Merkle, t/a Roosevelt Stadium, for premises at Danforth and West Side Avenues, Jersey City, by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for the balance of its term, effective August 20, 1942, at 6:00 A.M.; and it is further

ORDERED that if it satisfactorily appears, on verified petition and proper proof, that the "front" herein has been fully and properly corrected, the said suspension will be lifted, provided, however, that in no event shall such suspension be lifted prior to the expiration of thirty (30) days from the effective date of the suspension.

ALFRED E. DRISCOLL,
Commissioner.

3. ELIGIBILITY - FACTS EXAMINED - VIOLATION OF LOCAL ORDINANCE AND SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF THE ALCOHOLIC BEVERAGE CONTROL LAW HELD NOT TO INVOLVE MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTIONS.

APPLICATION FOR EMPLOYMENT PERMIT - FALSE ANSWERS THEREIN - PERMIT WITHHELD FOR A PERIOD OF TWO MONTHS.

August 18, 1942

Re: Case No. 451

Applicant for an alien's employment permit seeks a ruling as to whether he has been convicted of a crime involving moral turpitude and hence is automatically disqualified under R.S. 33:1-25, 26 from obtaining such permit.

In 1921 applicant was convicted in police court of giving short weight when selling coal and fined \$50.00. This was apparently a violation of a local ordinance, which is not a conviction of crime within the meaning of the Alcoholic Beverage Law. Re Case No. 314, Bulletin 393, Item 9.

In 1934 applicant pleaded non vult in the Court of Quarter Sessions to the charge of selling alcoholic beverages without a license, was fined \$50.00, and placed on probation for a year. This involved the sale by applicant of a small quantity of wine in a club, of which he was the manager. Possession or sale of alcoholic beverages in violation of the Alcoholic Beverage Law is a crime which does not involve the element of moral turpitude where, as here, it is a single unaggravated offense. Cf. Re Case No. 367, Bulletin 447, Item 7. Also cf. Re Case No. 416, Bulletin 501, Item 8.

It is therefore recommended that applicant be advised that the convictions referred to do not automatically disqualify him from being employed by a liquor licensee in this state. He should also be advised that because of his alienage he may not sell, serve or otherwise handle alcoholic beverages, but may work for a licensee in any other capacity, provided he first obtains an employment permit.

However, there remains for consideration the fact that applicant, in his pending application for a permit, as well as in like applications in the past, falsely answered "No" to the question as to whether he had ever been convicted of a crime. He is illiterate and claims that he relied upon others to fill out his applications; that he does not know why the questions were not answered correctly but that it was not because of any deliberate plan on his part to conceal his record. Whatever the reason was, the plain fact is that his answers were false.

Refusal to renew his permit for the current year, pending investigation of his record, has resulted in applicant being unemployed for about six weeks. As further penalty for his failure to reveal his convictions, it is recommended that permit for the current fiscal year be withheld until August 29, 1942 because of the false affidavits.

Harry Castelbaum,
Attorney.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

4. APPELLATE DECISIONS - KAY v. LINDEN.

JACOB KAY,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF LINDEN,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Rakin & Cohen, Esqs., by Maurice A. Cohen, Esq.,
Attorneys for Appellant.
Lewis Winetsky, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application to transfer License D-6 (issued for the fiscal year 1941-42) from Seymour Bieler to appellant, and from 2104 Caroline Avenue to 1002-1004 St. Georges Avenue, Linden.

At its meeting held on June 8, 1942, respondent denied said application for the following stated reasons:

- (a) There are several licensed premises in the neighborhood to take care of the present needs of the residents in that area and two previous applications for liquor licenses were denied;
- (b) The license sought to be transferred was originally given for the Fifth Ward and the transfer of the license will deprive the people of the Fifth Ward of a license;
- (c) The application is further denied because of the reputation of the applicant.

It is fundamental that the right to transfer does not inhere in a license. If a transfer is denied on reasonable grounds, such action will be affirmed. On the other hand, if it appears that the denial is arbitrary or unreasonable, the action will be reversed. Van Schoick v. Howell, Bulletin 120, Item 6; Elmer v. East Orange, Bulletin 447, Item 6.

The evidence herein discloses that an ordinance of the City of Linden limits the number of plenary retail distribution licenses to six. For the fiscal year 1941-42 four such licenses were in existence for various premises located on Wood Avenue, which is the main business street of the city. The other licenses of this type had been issued for two premises in the northwest section of the city; one for premises on Edgar Road and the other to Seymour Bieler for premises at 2104 Caroline Avenue, which is located in the Fifth Ward of Linden. Both of the latter licenses are located near the boundary line between Linden and Elizabeth. Appellant sought to transfer the Bieler license a distance of about three miles to the southwest section of the city. His proposed premises are located in the First Ward, near the boundary line between Linden and Rahway on a highway zoned for business and which contains a number of places devoted to business purposes. In the vicinity of appellant's premises plenary retail consumption licenses have been issued for three stores located on St. Georges Avenue, the nearest about 600 feet to the south and the next nearest about 1250 feet to the north of appellant's premises.

If this were an application for a new distribution license, it would be barred by the limiting ordinance; if this were an application for a consumption license, it would appear that the several licensed premises in the neighborhood are sufficient to take care of the needs of residents in that area. The two previous applications denied in December 1938 and January 1939 were applications for plenary retail consumption licenses. However, a package goods license fills a need quite distinct from that supplied by a tavern. It may well be an important matter of social convenience and necessity that such a license be granted. Hubert v. Linden, Bulletin 251, Item 6, and cases therein cited. The evidence shows that the First Ward has 3035 registered voters as compared with 1758 registered voters in the Fifth Ward; that in the First Ward a large housing development for more than 250 families has recently been completed; that the nearest distribution license to appellant's premises is located on Wood Avenue, about a mile and one-sixth away; that a petition containing the names of 77 nearby residents who favored the transfer, was presented to respondent; and that no one objected to the transfer except competing liquor licensees.

While there should be a proper geographical distribution of licenses, the facts disclosed by the record lead me to conclude that the residents of the Fifth Ward can be adequately serviced by the distribution license on Edgar Road.

No evidence was presented at the hearing which would tend to show that appellant has a bad reputation. On the contrary, he testified that he is fully qualified, a World War veteran and a member of a large number of prominent fraternal organizations.

On the record presented, I would ordinarily be required to reverse the action of respondent.

It appears, however, that the application herein was filed on April 2, 1942. At that time there was no building located at 1002-1004 St. Georges Avenue. The applicant did not, at that time, file plans and specifications for a new building. The notice of intention, which was published on April 2, 1942 and April 9, 1942, was in the usual form required where a building is already in existence. The plans and specifications for the new building were not filed with respondent until May 11, 1942. The building was subsequently erected and appears to have been completed on June 8, 1942, when the license

was denied. Despite the fact that respondent made no mention of the defective advertising at the time it denied the application, it contended at the hearing that appellant had not fully complied with the statutory requirements. R. S. 33:1-25 provides that "every applicant for a license shall cause a notice of intention to make such application to be published in a form prescribed by rules and regulations." Rule 2 of State Regulations No. 2 prescribes the form of notice of application and provides, among other things, that if the application is for a building not yet constructed, the notice must contain the following:

"Plans and specifications of building to be constructed may be examined at the office of the Municipal Clerk."

The objection is technical but it has been decided in a number of cases that there must be strict compliance with the provisions as to advertising notice of intention before jurisdiction may be conferred upon the issuing authority. Trotto v. Trenton, Bulletin 46, Item 11; Emmons v. Eatontown, Bulletin 362, Item 7; Parker v. Newark, Bulletin 425, Item 12. A notice of intention, proper in all respects, is a jurisdictional requisite which the issuing authority may not waive or overlook. Emmons v. Eatontown, supra. Because of the defect in advertising the notice of intention, the action of respondent is affirmed.

The license sought to be transferred expired at midnight, June 30, 1942. However, this appeal does not thereby become moot but is dispositive of identical issues on any application to transfer to appellant and to his premises the Bieler license which, I am informed, has been renewed for his premises for the fiscal year 1942-43. Shelby v. Trenton, Bulletin 129, Item 1; Gross v. Landis, Bulletin 386, Item 5.

Respondent, however, may consider any additional evidence presented as to the character and fitness of appellant herein if a new application is filed to transfer the Bieler license to appellant herein.

Accordingly, it is, on this 20th day of August, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - PETITION FOR RECONSIDERATION AND MITIGATION OF PENALTY FROM REVOCATION TO SUSPENSION DENIED.

In the Matter of Disciplinary Proceedings against

THEODORE P. JANULIS,
381 Springfield Avenue,
Newark, N. J.,

ON PETITION
ORDER

Holder of Plenary Retail Distribution License D-9 (1941-42), issued by Municipal Board of Alcoholic Beverage Control of the City of Newark.

Samuel Poleshuck, Esq., Attorney for Petitioner.

On June 6, 1942 petitioner's plenary retail distribution license was revoked for violation of the State Fair Trade Regulations No. 30. Re Janulis, Bulletin 516, Item 2.

By petition dated June 26, 1942, petitioner prays that the penalty of revocation be mitigated to one of suspension, to the end that he be afforded an opportunity to sell the licensed business as a going concern and transfer the license to a purchaser in order to minimize the allegedly great hardship and undue burden placed upon petitioner and his dependents by the outright revocation of the license.

In support of his plea, petitioner reiterates his claim that the violations involved were purely inadvertent. That aspect of the matter has already been carefully considered and determined to be without merit in the Conclusions and Order heretofore entered.

Petitioner has shown no meritorious reason warranting the mitigation of the penalty from revocation to suspension.

It is to be noted that the public policy of the City of Newark is to further reduce the number of outstanding licenses. This policy cannot be accomplished if those who persist in violating the law are afforded an opportunity to transfer their licenses to new owners.

Accordingly, it is, on this 20th day of August, 1942,

ORDERED, that the petition be and the same is hereby denied.

ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - PERMITTING ALIEN, HOLDER OF AN EMPLOYMENT PERMIT, TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 11 - EMPLOYMENT OF DISQUALIFIED ALIEN WITHOUT PERMIT, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 11 - PREVIOUS RECORD -- 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT AND IN VIOLATION OF R. S. 33:1-26 - PERMITTEE HAVING FAILED TO APPLY FOR A PERMIT FOR THE CURRENT FISCAL YEAR (1942-43), PREVIOUS PERMIT REVOKED.

In the Matter of Disciplinary Proceedings against)

CHARLES SABULUS,)
T/a CHARLIE'S TAVERN,)
109 Court Street,)
Elizabeth, N. J.,)

Holder of Plenary Retail Consumption License No. C-124 for the fiscal year 1941-42, and now holder of Plenary Retail Consumption License No. C-204 for the current (1942-43) fiscal year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.)

CONCLUSIONS AND ORDER

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In the Matter of Disciplinary Proceedings against)

FRANK GOBER,)
210 Front Street,)
Elizabeth, N. J.,)

Holder of Employment Permit No. 5348, issued by the State Commissioner of Alcoholic Beverage Control for the fiscal year 1941-42.)
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Charles Sabulus, Pro Se.
Frank Gober, Pro Se.
William F. Wood, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded guilty to charges alleging that he (1) permitted his employee, Frank Gober, holder of an alien's employment permit, to sell alcoholic beverages, in violation of Rule 3 of State Regulations No. 11; and (2) employed Minnie Stephenosbus, an alien, without permit, in violation of Rule 1 of State Regulations No. 11.

The defendant-permittee, Frank Gober, pleaded guilty to a charge that he sold alcoholic beverages contrary to the terms of his employment permit, in violation of R. S. 33:1-26.

In a written statement obtained from the licensee, he admitted that, for a period of three months prior to March 30, 1942, Frank Gober had been acting as a part-time bartender at the licensed premises. He also admitted that he knew that Gober was a citizen of

Lithuania and held a permit from this Department under which Gober could be employed only in a capacity other than the sale, service or handling of alcoholic beverages. He further stated that he had permitted Minnie Stephenosbus to tend bar on occasions, although he knew that she also was a citizen of Lithuania.

The permittee admitted in a written statement that he was aware that he was not allowed, because of his non-citizenship, to sell or serve alcoholic beverages.

Since the licensee apparently permitted Gober to sell alcoholic beverages in deliberate defiance of the regulations of this Department, I shall impose a ten-day penalty against his license on the first charge. Cf. Re Fromm, Bulletin 500, Item 8. In view of the fact that the licensee employed a second ineligible person, as appears from the second charge, five days will be added to this penalty. In addition, licensee's previous record shows that his license was suspended in November 1940 for five days for selling alcoholic beverages on an Election Day while the polls were open, in violation of Rule 2 of State Regulations No. 20. Because of such previous record, the aforesaid fifteen-day penalty will be increased to twenty days. Five days of this penalty will be remitted by reason of the guilty plea, leaving a net penalty of fifteen days.

The permittee, Frank Gober, has not applied for an employment permit for the current fiscal year. The only effective penalty that may be meted out against his employment permit for the fiscal year 1941-42, which is the subject of these proceedings, is to revoke it. This will disqualify him, under R. S. 33:1-31, from working for a New Jersey licensee for a period of two years. Re Gardella, Bulletin 507, Item 7.

It should be pointed out that these proceedings are not barred or abated despite the fact that they were instituted during the last fiscal year against a license and permit which subsequently expired on June 30, 1942. State Regulations No. 15.

Accordingly, it is, on this 20th day of August, 1942,

ORDERED, that Plenary Retail Consumption License No. C-204, heretofore issued to Charles Sabulus, t/a Charlie's Tavern, for the current (1942-43) fiscal year, for premises 109 Court Street, Elizabeth, New Jersey, by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth, be and the same is hereby suspended for a period of fifteen days, commencing at 2:00 A.M. August 24, 1942, and terminating at 2:00 A.M. September 8, 1942, and it is further

ORDERED, that Employment Permit No. 5346, heretofore issued to Frank Gober for the fiscal year 1941-42 by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked.

ALFRED E. DRISCOLL,
Commissioner.

- 7. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION DENYING PAST SUSPENSION OF LICENSE - SALE BELOW FAIR TRADE PRICE (DELIBERATE VIOLATION) - SALE DURING FORBIDDEN HOURS ON SUNDAY - SALE OFF LICENSED PREMISES - TOTAL SUSPENSION 26 DAYS - SINCE LICENSE HAS EXPIRED AND NO CURRENT LICENSE IN EXISTENCE, SUCH SUSPENSION TO BECOME EFFECTIVE WHEN LICENSEE OBTAINS FURTHER LICENSE - CHARGES OF FRONT DISMISSED - CANCELLATION PROCEEDINGS DISMISSED.

In the Matter of Disciplinary Proceedings against)

CENTRAL DISTRIBUTORS, INC.,)
 301 York Street,)
 Burlington City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-3 for the fiscal year 1941-42, issued by the Common Council of the City of Burlington.)

Budd M. Rigg, Esq., Attorney for licensee.
 William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. In your applications for license dated June 13, 1940 and June 11, 1941, upon which Plenary Retail Distribution Licenses D-3 for the years 1940-41 and 1941-42 were granted to you, you falsely stated 'No' in answer to Question 28 therein, 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 Eva J. Frederick, the nominal holder of .05% of your corporate stock, was so interested in that she was the real and beneficial owner of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid applications for license you falsely listed Pearl Cooper as the holder of 99.9% of your corporate stock in answer to Question 22 therein, which requires a listing of the 'per cent of the stock issued and outstanding' of '....all stockholders holding one (1) or more per cent of the stock of the applicant corporation....', whereas in truth and fact Eva J. Frederick was the real and beneficial owner of all of your corporate stock and Pearl Cooper was the real and beneficial owner of none of your corporate stock; said false statements being in violation of R. S. 33:1-25.

"3. In your aforesaid application for license for the year 1941-42 you falsely stated 'No' in answer to Question 23 therein, which asks, 'Has any....individual other than the stockholders hereinbefore set forth any beneficial interest directly or indirectly in the stock held by said stockholders?', whereas in truth and fact Eva J. Frederick, not listed in said application as a stockholder, was the true and beneficial owner of all of the stock held by Pearl Cooper, the only stockholder listed in said application; said false statement being in violation of R. S. 33:1-25.

"4. In your aforesaid applications for license you falsely stated 'No' in answer to Question 37 therein, which asks, '....has any person mentioned in this application ever had any interest, directly or indirectly, in any application for an alcoholic beverage license in New Jersey which was denied, or which, if granted, was surrendered, suspended or revoked,' whereas in truth and fact Eva J. Frederick, mentioned in divers places in said applications, held an interest in the plenary retail distribution license of Charles King, which license had been suspended for the balance of its term effective May 20, 1940; said false statements being in violation of R. S. 33:1-25.

"5. From on or about July 1, 1940 and until the present time you knowingly aided and abetted Eva J. Frederick, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

"6. On or about April 18, April 25 and May 4, 1941, without having first obtained a special permit so to do, you sold a pint bottle of 'Mount Vernon Brand Maryland Straight Rye Whiskey Bottled in Bond' below the minimum consumer price published in Bulletin 416 of this Department, in violation of Rule 6 of State Regulations No. 30.

"7. At about 2:15 P.M. on Sunday, May 4, 1941, you sold, served and delivered, and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages in violation of Section 4 of an ordinance concerning alcoholic beverages adopted by the Common Council of the City of Burlington on June 11, 1940, which ordinance prohibits sale of alcoholic beverages between the hours of 2:00 A.M. and midnight on Sundays.

"8. On or about the date last aforesaid you sold alcoholic beverages and possessed such beverages with intent to sell the same not pursuant to and within the terms of your plenary retail distribution license, in that you sold beer off your licensed premises in the kitchen connected therewith; said sale and possession being in violation of R.S. 33:1-2."

As to Charges 1, 2, 3 and 5: It appears from our records that the Common Council of the City of Burlington issued plenary retail distribution license D-3 for the fiscal year 1939-40 to one Charles King, 301 York Street, Burlington City. Thereafter, this Department preferred against Charles King charges alleging, in substance, that he was a "front" for Eva J. Frederick. After the licensee pleaded guilty to said charges, an order was entered in said proceedings on May 15, 1940 suspending said license for the balance of its term. Re King, Bulletin 404, Item 5. No application was made to lift the suspension in accordance with the terms of said order.

Central Distributors, Inc. was duly incorporated on June 10, 1940. Its authorized capital stock consists of 2,000 shares, each share having a par value of \$1.00. The incorporators and number of shares subscribed for by each were as follows:

Pearl Cooper	-	1998 shares
Eva J. Frederick	-	1 share
Charles Marant	-	1 share

Eva J. Frederick is the mother of Pearl Cooper and the mother-in-law of Charles Marant.

At the first meeting of the stockholders of Central Distributors, Inc. held on June 10, 1940, a written offer was received from Charles King wherein he agreed to sell to the corporation all of his right, title and interest in the liquor business owned by him at 301 York Street, Burlington City, for the sum of \$2,000.00, payable in the capital stock of the corporation, to be issued in the names and amounts as directed by him. The stockholders thereupon adopted a resolution authorizing the Board of Directors to consider the proposition and if approved, to carry the transaction into effect and to pay for the same in the capital stock of the company at par value and to the persons designated by the said Charles King. At the first meeting of the Board of Directors of the corporation held upon the same day, the following resolution was adopted:

"RESOLVED that the action of the stockholders in connection with matter of the purchase of the liquor business of Charles King be approved and the offer therein be accepted and that payment be made therefor in the capital stock of the company at par value.

"AND FURTHER RESOLVED that the officers of the company are hereby authorized and directed to issue the capital stock in accordance with the directions of the said Charles King."

It appears from the records of the corporation that, in accordance with said directions received from Charles King, Certificate No. 1, for 1998 shares, was issued on the same date to Pearl Cooper; Certificate No. 2, for one share, was issued to Eva J. Frederick; and Certificate No. 3, for one share, was issued to Charles Marant. So far as appears, all of the stockholders of defendant corporation are fully qualified to hold a license as individual licensees.

On June 13, 1940 Central Distributors, Inc. applied to the Common Council of the City of Burlington for a plenary retail distribution license for the fiscal year 1940-41. The license was subsequently granted, effective July 1, 1940, and renewed for the fiscal year commencing July 1, 1941. While the business was conducted by the corporation, Eva J. Frederick acted as manager and purchased liquors on behalf of the corporation. Apparently none of the incorporators invested any substantial sum of money when the corporation was organized. There is nothing in the evidence, however, which would lead me to conclude that Eva J. Frederick is the true and beneficial owner of the stock issued to Pearl Cooper or that Eva J. Frederick held herself out as the licensee or that anyone other than the corporate licensee, through its agents, operated the licensed business.

Under the circumstances, the answers given to the questions set forth in Charges 1, 2 and 3 were correct. Hence I shall dismiss said charges.

Since there is an entire lack of evidence that Eva J. Frederick exercised the rights and privileges of the license, Charge 5 is also dismissed.

As to Charge 4: True copies of the applications referred to in said charge show that defendant answered "No" to Question 37 therein. These copies show also that Question 35 therein was answered as follows:

"35. Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any application for an alcoholic beverage license in New Jersey? Yes. -- If so, state date of application, type of license and name of issuing authority -- Mrs. Eva Frederick was interested in the plenary distribution license of Charles King in 1939."

Despite the information set forth in answering Question 35, it appears that the answer to Question 37 was false. Hence I find defendant guilty as to Charge 4, but in fixing the penalty shall consider the fact that the information was substantially set forth in answering Question 35.

As to Charges 6, 7 and 8: Investigator Wagi of this Department testified that on April 18, 1941 and again on April 25, 1941 he purchased, at the licensed premises, one pint of Mount Vernon Straight Rye Whiskey for the sum of \$1.50. He testified also that during the afternoon of May 4, 1941 he purchased of Eva J. Frederick, President of defendant corporation, one bottle of beer for ten cents and one pint of Mount Vernon Straight Rye Whiskey for the sum of \$1.50, and that these purchases were made in a kitchen directly in the rear of the licensed premises. On all dates mentioned herein, the minimum consumer price for Mount Vernon Straight Rye Whiskey was \$1.55 per pint. Eva J. Frederick, who was the only witness called on behalf of defendant, did not seriously dispute the evidence given by the investigator. In fact, she admitted that she had sold a pint of Mount Vernon Whiskey for \$1.50 after the investigator had told her that some people sell the item for that price.

I find the licensee guilty as to Charges 6, 7 and 8.

The records of this Department show that Central Distributors, Inc. has not renewed its license for the present fiscal year. In view of that fact, affiliate proceedings instituted herein to cancel the license issued for the fiscal year 1941-42 because the Common Council of the City of Burlington had first denied and thereafter granted said license, will be dismissed.

As to penalty herein: Ordinarily, I would suspend the license for a period of one day because of the finding of guilt as to Charge 4; fifteen days because of the deliberate violation of the Fair Trade regulations, as set forth in Charge 6; five days as to Charge 7, and five days as to Charge 8, making a total suspension of twenty-six days. However, in view of the fact that the license against which proceedings were brought has already expired, and the further fact that defendant-licensee is not the holder of a license at the present time, no effective order of suspension can be entered herein at the present time. If and when defendant-licensee obtains a liquor license, a further order will be entered in these proceedings suspending said license for a period of twenty-six (26) days and fixing an effective date for said suspension.

Dated: August 20, 1942.

Alfred E. Dunsell
Commissioner.