

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

BULLETIN 544

DECEMBER 30, 1942

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FROM DELIVERY TRUCK UPON THE PUBLIC HIGHWAY IN VIOLATION OF R. S. 33:1-2 - 10 DAYS' SUSPENSION - RETAIL LICENSEES NOT PERMITTED TO SOLICIT FROM HOUSE TO HOUSE FOR IMMEDIATE OR FUTURE DELIVERY.

SEIZURE - FORFEITURE PROCEEDINGS - FACTS EXAMINED - SEIZED ARTICLES ORDERED RETURNED UPON PAYMENT OF COSTS OF SEIZURE AND STORAGE.

In the Matter of Disciplinary  
Proceedings against

WILLIAM I. GONCHAROFF,  
1705 Broadway,  
Camden, N. J.

Holder of Plenary Retail Distribution  
License D-13 for the year 1941-42, and  
now t/a ORIGINAL RUDOLPH'S, holder of  
Plenary Retail Distribution License  
D-16 for the current fiscal year, both  
issued by the Municipal Board of Alcoholic  
Beverage Control of the City of Camden.

Case No. 6173

In the Matter of the Seizure on November 27,  
1941, of a Dodge truck, and a quantity of  
alcoholic and other beverages contained  
therein, on Morgan Boulevard, in the City of  
Camden, County of Camden and State of New  
Jersey.

CONCLUSIONS  
AND  
ORDER

Benjamin F. Friedman, Esq., Attorney for William I. Goncharoff,  
Defendant-Licensee, and Solomon Goncharoff.  
Abraham Merin, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

These cases involve the same facts, hence may be decided  
together.

Defendant-licensee, who holds a plenary retail distribution  
license, has pleaded not guilty to the following charge:

"On or about November 27, 1941, you distributed, trans-  
ported, sold and possessed alcoholic beverages with intent  
to sell the same, in and about the City of Camden, New  
Jersey, not pursuant to and within the terms of your plenary  
retail distribution license, in that you peddled from door  
to door and sold such beverages from an auto truck on the  
public highway, off your licensed premises; said sale,  
transportation and possession being in violation of R. S.  
33:1-2."

The testimony discloses that, on November 27, 1941, Samuel  
Schwartz, an employee of the defendant-licensee, sold a quart of  
whiskey, six bottles of beer and a gallon of wine to ABC agents. The  
sale in question took place on a public highway within the City of

Camden. Schwartz at the time was engaged in making deliveries for his employer and was using, for that purpose, the licensee's Dodge truck from which he procured the beverages sold to the agents. Schwartz apparently made the sale to the ABC men because he believed that they were residents of the neighborhood. When the sale was completed, the agents disclosed their identity, arrested Schwartz and seized the truck and all the beverages therein.

It further appears from the testimony that, previously on the same day, Schwartz had sold six bottles of beer directly from the truck to a customer at her home in the vicinity. This customer had not previously placed any order for the beer with the defendant-licensee at his place of business.

The defendant-licensee represents that Schwartz was not authorized to make the sales in question. The evidence, however, convinces me that it was the licensee's practice to load his truck with alcoholic beverages in excess of the quantity required to fill the "standing" orders of his customers. These additional supplies were used by Schwartz, with defendant-licensee's acquiescence and approval, to fill original orders received by him while engaged in making deliveries for his employer. The delivery of alcoholic beverages by Schwartz following the acceptance of these original orders by him constituted the sale of alcoholic beverages from the truck. Upon Schwartz's return to the licensed premises it was apparently the practice of the licensee to credit him with whatever beverages he returned and to hold him accountable for the value of the beverages sold.

I am convinced, after a careful study of the testimony, and therefore find, that the licensee used his truck to transport alcoholic beverages intended for sale directly from the same, and that in fact two sales were actually made from such truck on the date in question.

The sale of alcoholic beverages by a licensee directly from a delivery vehicle, either to a customer in the street or at his home, constitutes a peddling of alcoholic beverages and is prohibited by the Alcoholic Beverage Law.

Retail licensees must confine their sales of alcoholic beverages to the licensed premises. Re Cousins Co., Inc., Bulletin 288, Item 3. There can be no perambulating licensed premises from which alcoholic beverages may be sold. Re Anderson, Bulletin 465, Item 5; Re Carlton, Bulletin 195, Item 7. Retail licensees are not permitted even to solicit from house to house for future delivery of alcoholic beverages. State Regulations No. 20, Rule 3.

The privilege afforded retail licensees under R.S. 33:1-28, to use their licensed vehicles to deliver their customers' purchases, may not be used as a means to cover peddling of alcoholic beverages. The licensee is guilty as charged.

As to penalty: It is extremely doubtful whether at this late date the licensee did not know that he was violating the law by doing business in the manner outlined above. Nevertheless, even if he were ignorant of the law and regulations, it affords him no excuse in disciplinary proceedings. Licensees and their employees are required to know the rules and scrupulously adhere to them. Re Broodwinner and Van Der Hoek, Bulletin 477, Item 3; Re Case No. 61, Bulletin 338, Item 2. Where a licensee, even unwittingly, abuses the privilege of his license, he should, where such abuse is of a sufficiently serious character, be penalized by an appropriate loss of his license privileges.

Accordingly, William I. Goncharoff's license will be suspended for ten days. If experience demonstrates that this is not a sufficient deterrent, the penalty will be increased in future cases.

Although the disciplinary proceedings were instituted during the last licensing year which expired June 30, 1942, it does not abate but remains fully effective against the defendant's renewal license for the current (1942-43) year. State Regulations No. 15.

At the same time that the disciplinary proceedings were instituted, seizure proceedings were brought pursuant to the provisions of Title 33, chapter 1 of the Revised Statutes to determine whether the seized Dodge truck and beverages should be forfeited.

The Dodge truck was returned to its record owner, Solomon Goncharoff, upon the payment, under protest, pursuant to R. S. 33:1-66, of its appraised value of \$150.00. Counsel has stipulated that the Commissioner should determine in these proceedings whether this money should be returned to the owner. Likewise, the licensee, who is the owner of the alcoholic and other beverages seized, seeks their return.

The transportation of alcoholic beverages, with intent to sell the same upon the public highway, as well as the actual sales found to have taken place, were contrary to the terms of the defendant's license and unlawful. The seized alcoholic beverages are therefore illicit. R. S. 33:1-1(i); R. S. 33:1-2. The law further provides (R. S. 33:1-66) that the vehicle containing the same is subject to forfeiture.

I am authorized to return seized or forfeited property where it appears to my satisfaction that the person seeking its return has unwittingly violated the law while acting in good faith. R.S. 33:1-66(e). In the instant case I am inclined to give the parties the benefit of any reasonable doubt consistent with an adequate penalty in the case. Suspension of the license and Schwartz's conviction and fine of \$100.00 in the criminal court for this offense are substantial penalties. I shall, therefore, accept the licensee's sworn statement that, while acting in good faith, he violated a law, the significance of which he did not understand. Hence, if the costs incurred in the seizure and storage are paid, the alcoholic and other beverages will be returned to William I. Goncharoff. The money on deposit covering the value of the truck will likewise be returned to Solomon Goncharoff.

Accordingly, it is, on this 18th day of December, 1942,

DETERMINED AND ORDERED, that if, on or before the 2nd day of January, 1943, the costs of seizure and storage in the case are paid, the seized alcoholic and other beverages itemized in Schedule "A" hereinafter set forth shall be returned to William I. Goncharoff; and it is further

ORDERED, that, upon payment of such costs, the sum of \$150.00 deposited in this case shall be returned to Solomon Goncharoff; and it is further

ORDERED, that Plenary Retail Distribution License D-16, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to William I. Goncharoff, for premises 1705 Broadway, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. January 2, 1943, and terminating at 2:00 A.M. January 12, 1943.

ALFRED E. DRISCOLL,  
Commissioner.

SCHEDULE "A"

12 - cases of beer and ale  
 132 - bottles of beer and ale  
 1 - 1-gallon glass jug of wine  
 2 - 1-quart bottles of whiskey  
 5 - cases of soft drinks (12 bottles to a case)  
 1 - case of soft drinks (24 bottles to a case)  
 2 - cases of empty beer bottles  
 21 - empty beer bottles

2. APPELLATE DECISIONS - CRESTON HOLDING COMPANY v. BELLEVILLE

CRESTON HOLDING COMPANY, a

New Jersey Corporation, trading

as "THE FOUNTAIN,"

Appellant,

On Appeal

-vs-

CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE

TOWN OF BELLEVILLE,

Respondent.

Max N. Schwartz, Esq., Attorney for Appellant-Licensee.

Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

On September 22, 1942, the Board of Commissioners of the Town of Belleville found the licensee, holder of a Plenary Retail Consumption license at 46 Watsessing Avenue, Belleville, guilty of having sold alcoholic beverages to four minors on the evening of May 2 and early morning hours of May 3, 1942, in violation of R.S. 33:1-77 and Rule 1 of the State Regulations No. 20, and in penalty suspended the license for thirty-five days.

The licensee has appealed, claiming the evidence to be insufficient to warrant the finding of guilt and, further, that the penalty imposed is excessive. The licensee obtained an ad interim stay of the suspension, pending decision upon the appeal.

Three of the minors appeared at the hearing of the appeal: two girls seventeen years of age, and a boy nineteen years of age. They testified that, while they were at the licensed premises on the above mentioned dates, they ordered and were served three rounds of various alcoholic beverages without being questioned as to their ages. They gave a detailed account of their stay at the tavern. The fourth minor was in the Army when the appeal was heard.

In defense the licensee represents that none of its employees has any recollection of serving the minors, and relies upon the fact that, when the minors were brought back to the premises at a subsequent date, they had some difficulty in identifying the waiter who served them. However, the three minors clearly identified the licensed premises as the place where they were served with alcoholic beverages on the above dates.

Licensee's denial that the minors obtained alcoholic beverages at its premises, considering its interest in the outcome of the appeal, is not sufficient to nullify the clear-cut and logical statements of the minors who apparently have no interest at stake in the case nor any reason to accuse unjustly the licensee.

Hence, I conclude that respondent's finding of guilt against the licensee may not be viewed as error.

Licensee's claim that the suspension of thirty-five days is an excessive penalty is without merit. The penalty to be administered in a local disciplinary proceeding rests, in the first instance, within the sound discretion of the municipality. The power of the Commissioner to reduce a penalty on appeal is confined to those cases where the penalty is manifestly unreasonable. Dzieman v. Paterson, Bulletin 233, Item 10; Schmidt v. Morristown, Bulletin 457, Item 7.

While the thirty-five days' suspension in question is heavy-fisted, nevertheless, three minors - seventeen and nineteen years of age - were involved. The Board of Commissioners, in imposing the penalty, stated it had made a lengthy study of all of the testimony and felt that the dangers incident to the sale of liquor to minors should be brought home to those in the business with sufficient force to cause licensees to exercise more caution.

The Board's attitude was entirely proper. I am not warranted in finding that respondent acted unreasonably in imposing the penalty in question. Cf. Pizzeria v. Bayonne, Bulletin 510, Item 11, where a thirty-day suspension for the sale of beer to a nineteen year old boy was upheld.

The present appeal is dismissed and the thirty-five-day suspension reinstated.

Accordingly, it is, on this 21st day of December, 1942,

ORDERED that the Plenary Retail Consumption License C-20, issued to Creston Holding Company, t/a "The Fountain," at 46 Watsessing Avenue, Belleville, by the Board of Commissioners of the Town of Belleville, be and the same is hereby suspended for thirty-five (35) days, commencing the 28th day of December, 1942, at 2:00 A.M. and terminating the 1st day of February, 1943, at 2:00 A.M.

ALFRED E. DRISCOLL,  
Commissioner.

### 3. DISCIPLINARY PROCEEDINGS - CHARGE OF POSSESSING ALCOHOLIC BEVERAGES DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary  
Proceedings against

HOUR GLASS INC.,  
57 Branford Place,  
Newark, N. J.

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption  
License No. C-6, issued by the Municipal  
Board of Alcoholic Beverage Control of  
the City of Newark.

Sidney Simandl, Esq., Attorney for Defendant-Licensee.  
William F. Wood, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to a charge alleging that:

"On or about May 4, 1942 you possessed illicit alcoholic beverages in that you possessed four 4/5th quart bottles labeled 'Burke's \*\*\* Blended Irish Whiskey 90 Proof,' the labels of which did not truly describe the contents thereof with respect to proof, and the solid and acid contents of which varied from the solid and acid contents of a genuine sample similarly labeled used for comparative purposes; said possession being in violation of R.S. 33:1-50."

On May 4, 1942, inspectors of the Federal Alcohol Tax Unit examined seventy opened bottles of alcoholic beverages on defendant's premises and seized the four bottles of "Burke's \*\*\* Blended Irish Whiskey 90 Proof" when their tests showed that the proof of the contents of these bottles was substantially lower than 90°. At the time of the seizure, one of these bottles was one-third filled and the other three were approximately half-filled. The labels on these bottles were dark and discolored. The whiskey in question is, as its name indicates, an import.

Analysis by the Federal chemist of the contents of the seized bottles disclosed the following as to proof, acid content and solid content:

	<u>Proof</u>	<u>Acids (grams per 100 liters)</u>	<u>Solids (grams per 100 liters)</u>
Bottle #1	70.4	19.2	194
" #2	83.1	16.8	144
" #3	86	16.8	141
" #4	74.5	21.6	171

At the hearing the Federal chemist testified that he had also analyzed the contents of another (previously unopened) bottle of this product which had been obtained from another licensee on June 16, 1942. He testified that the contents of this bottle had a proof of 90.4°, an acid content of 26.4 grams per 100 liters and a solid content of 170 grams per 100 liters.

As a result of all his analyses, the Federal chemist expressed the opinion that the samples examined by him had been diluted with water. Amplifying his testimony, this witness stated there were three possibilities: (1) the contents of these bottles may have been diluted with water; (2) there may have been some evaporation; and (3) there may have been some refilling with other liquor.

This proof was sufficient to establish a prima facie case. P.L. 1939, ch. 177.

On behalf of the licensee, Abe H. Geltzeiler, secretary of the Hour Glass Inc., testified that he did not refill any of these bottles and that he had no information as to the refilling or dilution of these bottles with any other substance. He testified that the licensed premises has a bar which contains six stations, at each of which stations there is always kept a supply of whiskies consisting of between 200 and 250 bottles. He testified further that defendant, during the past five years, made only one purchase of "Burke's Irish Whiskey." This testimony, standing alone, would not have been sufficient to have exculpated the defendant. However, there was introduced into evidence an invoice showing the purchase by licensee, on December 30, 1937, of six bottles of "Burke's Irish Whiskey." Geltzeiler testified further that this item is a very slow seller; that the four seized bottles were part of the purchase made on December 30, 1937, and that, at the time of the seizure, the other two bottles were in the storeroom of the licensed premises, and were subsequently turned over to defendant's chemists for analysis.

Louis Kanengeiser, a teacher of chemistry in the Newark High Schools and a practicing chemist since 1922, testified, on behalf of defendant, that he made an analysis of the contents of the two bottles turned over to him by Geltzeiler. His analysis showed that the contents of these two bottles had a proof of 90°, an acid content of 24 grams per 100 liters, and a solid content of 129 grams per 100 liters. This analysis was subsequently checked and substantially confirmed by Chemist Battista of the Department of Alcoholic Beverage Control.

Chemist Kanengeiser expressed the opinion that, if the contents of the seized bottles had been diluted with water, the proof, acid content and solid content thereof would all be lower, whereas, on the basis of his experiments, the solid content in the seized bottles was, in fact, higher than that in the bottles used by this witness for comparative purposes. He further expressed the opinion that, if the dilution had been made with a whiskey, the proof could not be reduced as low as 70°. As a result of his analysis, Chemist Kanengeiser expressed the opinion that the difference in analysis between the contents of the seized bottles and the contents of the bottle which he examined was due entirely to evaporation.

The testimony given by Chemist Kanengeiser on behalf of the licensee was corroborated by Archie D. Gellis, an analytical chemist.

The charge herein is serious, and the Department must establish guilt by a preponderance of the evidence. The seized bottles were apparently old stock. There is testimony that these bottles had, for a long period of time, had attached thereto bottle-stoppers which permit evaporation. The bottle used for comparative purposes by the Federal chemist was obtained from another licensee, and the bottles used for comparative purposes by defendant's chemists came, according to the evidence, from the same shipment as the seized bottles. The evidence leads me to conclude that the variation in proof, acids and solids, may have been due entirely to evaporation and not to dilution with any other liquid. While the Department established a prima facie case, I conclude, upon all the evidence, that it had failed to sustain the burden of proof in showing that the seized bottles contained illicit liquor.

Accordingly, it is, on this 21st day of December, 1942,

ORDERED that the proceedings herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL,  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary  
Proceedings against

UNION OF BROTHERLY LOVE,  
524-526 West Street,  
Camden, N. J.

CONCLUSIONS  
AND  
ORDER

Holder of Club License No. CB -17,  
issued by the Municipal Board of  
Alcoholic Beverage Control of the  
City of Camden.

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

BY THE COMMISSIONER:

Defendant has pleaded guilty to a charge alleging that:

"From about 10:00 A.M. on Sunday, September 13, 1942 until about 2:15 A.M. on Monday, September 14, 1942, you sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages upon your licensed premises in violation of Section 5 of an ordinance concerning alcoholic beverages, adopted December 27, 1934 by the Board of Commissioners of the City of Camden, which ordinance prohibits the sale of alcoholic beverages between the hours of 2:00 A.M. on Sunday and 7:00 A.M. the following Monday."



The departmental record discloses that, on Monday, September 14, 1942, at about 2:15 A.M., investigators of the Department of Alcoholic Beverage Control and members of the Police Department of the City of Camden entered the licensed premises and saw three men drinking alcoholic beverages. The bartender, who was in charge, admitted to the agents that he had opened the licensed premises at 10:00 A.M. on Sunday, September 13, and had kept them open until the time of the raid, and that he had been selling beer throughout the time the premises were open.

As to penalty: Club licensees must be brought to the realization that they are not privileged to dispense alcoholic beverages with a half-hearted regard for the regulations. The usual penalty for Sunday sales by a club licensee is fifteen days' suspension of the license where it is a first offense. Camden County Italian Democratic Club, Bulletin 535, Item 3. The licensee has not been convicted of any previous violation and, hence, the license will be suspended for a period of fifteen days, with a remission of five days for the guilty plea, or a net suspension of ten (10) days.

Accordingly, it is, on this 21st day of December, 1942,

ORDERED that Club License No. CB-17, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Union of Brotherly Love, for premises 524-526 West Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. December 28, 1942, and terminating at 2:00 A.M. January 7, 1943.

ALFRED E. DRISCOLL,  
Commissioner.

5. DISCIPLINARY PROCEEDINGS- FRONT - FAILURE TO DISCLOSE MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SURRENDERED - PROCEEDINGS DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary  
Proceedings against

ALBERT SAMOGI,  
t/a Mountain Crest Tavern,  
Route #28 bet. Bloomsbury and  
Clinton,  
Bethlehem Township,  
P. O. West Portal, N.J.

CONCLUSIONS

AND  
ORDER

Holder of Plenary Retail Consumption  
License C-2, issued by the Township  
Committee of the Township of Bethlehem.

Hauck and Griffin, Esqs. by Bryant W. Griffin, Esq., Attorney  
for Defendant-Licensee.

Abraham Merin, Esq., Attorney for the Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded not guilty to charges alleging that (1) one Stewart A. Seifert held an undisclosed interest in his license and business, and (2) he permitted the said Stewart

A. Seifert to exercise the privileges of his license.

At the hearing, because of the unavailability of an important witness for the Department, the proofs failed to sustain the truth of the charges. The evidence presented is as consistent with the innocence of the licensee as it is with his guilt.

The licensee closed his tavern in November 1942 and it has remained closed ever since. He is presently employed in a defense job and has represented on the record that he has no intention of ever again applying for a liquor license.

Since the hearing, the licensee has tendered his license for surrender to the local issuing authority and such surrender has been accepted. Under all of the circumstances, and in view of the failure of the Department to sustain the burden of proving the charges at the hearing and the acceptance of the surrender of the license by the issuing authority, the case will be closed and the proceedings dismissed. Cf. Re Marchisio, Bulletin 403, Item 5.

Accordingly, it is, on this 21st day of December, 1942,

ORDERED that these proceedings be and the same are hereby dismissed.

ALFRED E. DRISCOLL,  
Commissioner.

6. SEIZURE - FORFEITURE PROCEEDINGS - ILLEGAL STORAGE OF TAX-PAID LIQUORS BY HOLDER OF PLENARY RETAIL DISTRIBUTION LICENSE WITH INTENT TO EVADE FEDERAL FLOOR TAX - FEDERAL TAX SUBSEQUENTLY PAID - LICENSEE ORDERED TO PAY PENAL FEES TO THIS DEPARTMENT TOTALING \$1000.00, TOGETHER WITH COSTS OF SEIZURE - LICENSEE SUBJECT TO FURTHER DISCIPLINARY PROCEEDINGS.

In the Matter of the Seizure on  
November 19, 1942 of 434 cases,  
11 - 1-gallon jugs, and 11 bottles  
of alcoholic beverages, at 134 Floyd  
Street, in the Town of Belleville,  
County of Essex and State of New  
Jersey.

CONCLUSIONS  
AND  
ORDER

Harold Simandl, Esq., Attorney for Sarah Miller.  
Milton H. Cooper, Esq., Attorney for the Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether certain alcoholic beverages hereinafter referred to and seized at Sarah Miller's home at 134 Floyd Street, Belleville, constitute unlawful property and should be forfeited.

Sarah Miller is the holder of a plenary retail distribution license for a "package store" at 477 Washington Avenue, Belleville. On November 19, 1942 agents of this Department seized eleven 1-gallon jugs of scotch malt and eleven nondescript bottles of alcoholic beverages found in the attic of her home at 134 Floyd Street. The investigators also seized

431 cases of liquor which she was storing in the cellar of her home for eventual use in her licensed business. In addition, they seized three other cases of liquor found in her daughter's bedroom in the house.

The jugs and nondescript bottles in the attic were seized on suspicion that they contained "bootleg" liquor. The other alcoholic beverages were seized because they were stored in the same building with the alleged illicit liquor (R.S. 33:1-66 (b)) and, further, because the licensee had no authority to keep at her home any alcoholic beverages intended for sale in her store.

Seizure hearing in the case was duly scheduled for January 5, 1943, pursuant to R.S. 33:1-66. Upon being apprized of this hearing date, Sarah Miller filed a petition for immediate hearing under Rule 1 of State Regulations No. 28, alleging that the 431 cases seized in the cellar of her home actually constituted the bulk of her available stock for use in her store during the current holiday season; that, consequently, it would cause her irreparable damage to have the matter heard and decided after this holiday season. She prays that the seized items be returned subject to whatever conditions may be imposed by this Department. Sufficient cause being shown, the case was, as requested, given an immediate hearing.

As to the eleven jugs and eleven nondescript bottles: Although these items give rise to a grave suspicion that their contents are "bootleg" in origin, nevertheless I am satisfied by the evidence presented at the hearing (as corroborated by the readily apparent age of various of the items) that they are all carry-overs of pre-Prohibition liquor owned by Barney Miller, husband of the licensee, and that they were properly declared at the time Repeal became effective. There is no evidence or sign that these admittedly aged items were being used in any way except for family purposes.

Hence, I must find that these particular alcoholic beverages are not illicit within the meaning of the Alcoholic Beverage Law. Accordingly, they may be returned.

As to the 431 cases of liquor found in the cellar: While these various cases of liquor were all duly purchased by the licensee for use in her licensed business, her storage of them at home, off the licensed premises, constituted a violation of the Alcoholic Beverage Law. See R.S. 33:1-2, 50. Retail licensees, as properly ruled by the late Commissioner Burnett, are privileged under that law to possess and store their liquor stock only on the licensed premises, or in a licensed warehouse, or at other premises pursuant to special permit from this Department. See Re Max, Bulletin 24, Item 10; Re Bock, Bulletin 118, Item 5; Re Butera, Bulletin 197, Item 9. Cf. Re United Brewing Co., Bulletin 203, Item 3.

In consequence of this illegal storage, these 431 cases of liquor technically became unlawful property subject to seizure and forfeiture. R.S. 33:1-1(i) and (y), 66.

In seeking return, the licensee urges that she was ignorant of the fact that it was illegal to store the beverages at her home. Were there no more to the case, I might well, in view of this plausible plea, return the liquor on the condition that the licensee pay the costs of seizure and also obtain a special permit from this Department, at a moderate fee, to validate the storage. See R.S. 33:1-66(e), 74.

The case, however, involves significantly more than casual storage of liquor off the licensed premises. The evidence fully

convinces me that the liquor was kept at the house, rather than at the store, in deliberate perpetration of a scheme to evade the recent Federal "floor tax" upon alcoholic beverages. The Federal law imposing that tax required licensees to inventory their full stock of alcoholic beverages on November 1, 1942 and to file such inventory with the Federal authorities on December 1, 1942, with tax payment to be made on the basis of this inventory by February 1, 1943. It is clear that the licensee or her manager (her husband or son) purposefully schemed to conceal the great bulk of the store's liquor stock by keeping it hidden at her home. The licensee intended thereby to omit such liquors from her inventory for the Federal tax, and hence to evade paying any tax on these concealed liquors. This reprehensible scheme appears to have been concocted some months ago in anticipation of the tax. I readily find that, as far back as last May, the licensee began systematically to withdraw cases of alcoholic beverages from the store and to keep them in the cellar of her home, with various cases being returned from time to time when needed in the business. To cover up the periodic withdrawals of the liquor to the house, the licensee, in her monthly returns to the State Tax Department, falsely listed such beverages as having been sold in the course of the business.

The licensee's scheme failed only because, on November 19, 1942, after her inventory was made but before it was filed with the Federal authorities, a Federal agent uncovered the fact of the hidden stock of liquor at her home and thus brought the entire matter to light. This Department was notified and the seizure in question ensued. The licensee, her scheme exposed by the Federal agent and investigators of this Department, quickly changed her inventory and filed an apparently correct list of all her alcoholic beverages with the Federal authorities before the December 1st deadline, and is now liable in usual course to pay the Federal "floor tax" on her entire stock of alcoholic beverages.

In determining whether and under what conditions the illegally stored liquor may be returned, I shall, and properly, give great weight to the reprehensible plan the licensee was seeking to effect.

Bearing this factor in mind and all circumstances being considered, I deem that the ends of justice will be achieved by returning the 431 cases of liquor, but only on the following express conditions: (1) that the licensee shall pay the full cost of the seizure and shall apply for and obtain requisite permits from this Department at a sufficiently penal fee to correct the unauthorized storage at her home; and (2) that it be fully understood that these permits merely correct the storage and in no way bar appropriate disciplinary proceedings for the suspension or outright revocation of Sarah Miller's license for her false returns to the State Tax Department (and, if the facts warrant, for the possibility that the licensee may be a "front" for her husband or son). See R.S. 33:1-31 and R.S. 54:45-1.

As to the aforesaid permits, I shall require that the licensee obtain one such permit to cover the storage from May through the then current fiscal year (viz., through June 30, 1942), and an additional permit for the current fiscal year to the date of seizure (November 19, 1942). The fee for each permit will be full \$500.00, or a total of \$1,000.00.

As to the three cases of liquor found in the daughter's bedroom: It sufficiently appears that this liquor belongs to the daughter and her husband; was used in no illegal activity; and hence may be returned.

Accordingly, it is, on this 22nd day of December, 1942

ORDERED, that all the alcoholic beverages hereinbefore referred to (and more particularly itemized in an inventory on file in the case) shall be returned to the licensee, Sarah Miller, provided that on or before Monday, the 28th day of December, 1942, she applies for and obtains from me the aforesaid special permits, and that on or before the said date she pays the full costs of seizure and storage of these items by this Department.

ALFRED E. DRISCOLL,  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION - FAILURE TO DISCLOSE MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - EMPLOYING PERSON DISQUALIFIED BY VIRTUE OF CITIZENSHIP - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary  
Proceedings against

ERNEST SILLIS,

t/a FORKED RIVER HOUSE,  
East side of State Highway #4,  
Lacey Township, N.J.

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption  
License C-101, issued by the Township  
Committee of the Township of Lacey.

Francis J. Tanner, Esq., Attorney for Defendant-Licensee.  
Richard C. Gossweiler, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charges:

"1. In your license-application dated June 19, 1942, filed with the Township Committee of the Township of Lacey, upon which Plenary Retail Consumption License C-101 for the year 1942-43 was granted to you, you falsely stated 'No' in answer to Question 28 in said application, which question 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 Henry Ullrich was so interested as a partner in the licensed business; such false statement being in violation of R.S. 33:1-25.

"2. From on and about July 1, 1940, and until the present time, you knowingly aided and abetted Henry Ullrich, 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.

"3. On October 14, 1942, and on divers days prior thereto, you knowingly employed Willy Waldo Hustig, a person who would fail to qualify as a licensee because of non-citizenship, in violation of R.S. 33:1-26 and also Rule 1 of State Regulations No. 11."

On October 14, 1942, investigators from the Department of Alcoholic Beverage Control visited the licensed premises. They found one Willy Hustig tending bar. Interrogation of Hustig by the investigators disclosed that he was a German national. Hustig signed a statement to the effect that he had tended bar on the licensed premises on numerous occasions prior to October 14, 1942.

During the course of the agents' investigation of the premises it developed that one Henry Ullrich was defendant's undisclosed partner in the licensed business. Apparently, the defendant, Ernest Sillis, had applied for the license in his individual name because his partner, Ullrich, was also a German national and hence disqualified from holding a license.

A German national is disqualified from holding a liquor license in the State of New Jersey, and is also ineligible to sell, serve or handle alcoholic beverages. See Re Aliens, Bulletin 491, Item 8. The defendant's answer to Question 28 in the application was false. This false answer in the application, the truthfulness of which the licensee swore to in the affidavit attached thereto, constituted a violation of R.S. 33:1-25.

As to penalty: The Acting Township Clerk of the Township of Lacey has advised me that the licensee became a member of the Armed Forces of the United States, by induction, on or about August 20, 1942, and that he has surrendered his license. Our investigators recently visited the licensed premises and found them closed. Under all the circumstances I shall suspend the license for the balance of its term.

Accordingly, it is, on this 23d day of December, 1942,

ORDERED that plenary retail consumption license C-101, heretofore issued by the Township Committee of the Township of Lacey to Ernest Sillis, t/a Forked River House, for premises on East side of State Highway #4, Lacey Township, be and the same is hereby suspended for the balance of its term, effective immediately.

ALFRED E. DRISCOLL,  
Commissioner.

8. CANCELLATION PROCEEDINGS - STATEMENT CLARIFYING DISMISSAL ORDER OF OCTOBER 16, 1942, IN RE SUSKOWITZ, BULLETIN 534, ITEM 2.

An Order issued October 16, 1942 dismissed cancellation proceedings against License C-20 issued to Stella Suskowitz by the Borough Council of the Borough of South River in violation of the Borough's operative limitation ordinance. (Bulletin 534, Item 2).

In clarification of the Order of Dismissal it should be noted that on September 28, 1942, the Borough Council, in an attempt to cure the defective issuance of License C-20, adopted an ordinance repealing the Borough's numerical limitation regulation.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: December 23, 1942.

9. DISCIPLINARY PROCEEDINGS - SALE BY CLUB LICENSEE DURING PROHIBITED HOURS - SALES BY CLUB LICENSEE TO NON-MEMBERS - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE FOR OFF-PREMISES CONSUMPTION, IN VIOLATION OF R.S. 33:1-2 - 35 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary  
Proceedings against

GEORGE E. BRUNNER,  
3rd WARD DEMOCRAT CLUB,  
305 Benson Street,  
Camden, N. J.

CONCLUSIONS  
AND  
ORDER

Holder of Club License CB-2, issued  
by the Municipal Board of Alcoholic  
Beverage Control of the City of Camden.

George E. Brunner, Third Ward Democrat Club, by Daniel Galasso,  
President.  
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

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

"1. On Sunday, October 18, 1942, at about 7:45 P.M., you sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages upon your licensed premises, in violation of Section 5 of an Ordinance concerning alcoholic beverages adopted by the Board of Commissioners of the City of Camden on December 27, 1934, which Ordinance prohibits any such activity after 2:00 A.M. on Sundays.

"2. On or about the date aforesaid, you sold alcoholic beverages to persons other than bona fide members of your club and their bona fide guests, in violation of Rule 5 of State Regulations No. 7.

"3. In making the said sales of alcoholic beverages on or about the aforesaid date to persons other than bona fide members of your club and their bona fide guests, you also violated R.S. 33:1-2, in that such sales were beyond the terms of your license as defined by R.S. 33:1-12(5).

"4. On or about the date aforesaid, you further exceeded the terms of your license as defined by R.S. 33:1-12(5), in that you sold alcoholic beverages which were intended for consumption off your licensed premises, such sale being in violation of R.S. 33:1-2."

The defendant, a club licensee, through its President entered a plea of guilty to all the charges.

It appears from departmental records that on Sunday, December 18, 1942, detectives of the Camden Police Department observed a man leave the licensed premises with a package which they subsequently found to contain a quart bottle of beer. Interrogation by the detectives disclosed that the man had purchased the alcoholic beverage from the defendant-licensee. The detectives entered the licensed premises with the purchaser who identified

the bartender as the person who had sold him the beer. The detectives observed a number of other people consuming alcoholic beverages at the bar. It appears that neither the man who purchased the beer, nor the men who were consuming alcoholic beverages at the bar, were members of the club or guests of members.

I have repeatedly stated that club licensees must be brought to the full realization of the responsibilities that go with their licenses. They are not privileged to dispense alcoholic beverages with an indifferent attitude toward the regulations but, rather, must meticulously observe the rules and regulations.

As to penalty: Since the defendant-licensee has no previous record, I shall impose the usual penalty on all charges. I shall suspend the license for a period of fifteen days on the first charge (Re Eighth Ward Progressive Republican Club, Bulletin 514, Item 4); for an additional period of fifteen days on the second charge (Re Vittorio Veneto Lodge, Bulletin 539, Item 9); and for a further period of five days on charges (3) and (4). Five days will be remitted because of the guilty plea, making a net suspension of thirty (30) days.

Accordingly, it is, on this 24th day of December, 1942,

ORDERED that Club License CB-2, heretofore issued to George E. Brunner Third Ward Democrat Club, for premises 305 Benson Street, Camden, New Jersey, by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for a period of thirty (30) days commencing at 2:00 A.M. January 2, 1943 and terminating at 2:00 A.M. February 1, 1943.

*Alfred E. Smith*  
Commissioner.

CHECKED BY No. 2