

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

BULLETIN 592

NOVEMBER 1, 1943

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

BULLETIN 592

NOVEMBER 1, 1943

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PREVIOUS RECORD - 25 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

ALFRED WAGNER,)
t/a Wagner's Tavern,)
Cor. Pennsylvania Ave. & Route 30,)
Raritan Township,)
P. O. Flemington, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-5, issued by the Township)
Committee of the Township of Raritan.)
-----)

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

BY THE COMMISSIONER:

The defendant-licensee pleads guilty to the sale of a pint bottle containing alcoholic beverages at 1:50 A. M. on Sunday, September 19, 1943, in violation of Rule 1 of State Regulations No. 38.

If there were no previous record in this case, I would normally suspend the license for fifteen days. The defendant herein, however, had his license suspended for a period of four days, in July 1937, by the local issuing authority for sales of alcoholic beverages on Sunday in violation of a municipal ordinance. Again, on February 24, 1942, defendant's license was suspended for fifteen days by me when he was adjudged guilty of selling alcoholic beverages to minors. In view of this past record such minimum penalty may not here be imposed. Under all the circumstances, I shall suspend the license for a period of twenty-five days, with remission of five days for the guilty plea, or a net suspension of twenty days.

Accordingly, it is, on this 22nd day of October, 1943,

ORDERED that Plenary Retail Consumption License C-5 issued by the Township Committee of the Township of Raritan to Alfred Wagner, trading as Wagner's Tavern, for premises corner Pennsylvania Avenue and Route 30, Raritan Township, P. O. Flemington, New Jersey, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A. M. October 27, 1943, and terminating at 2:00 A. M. November 16, 1943.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO NON-MEMBERS, IN VIOLATION OF R. S. 33:1-2 AND RULE 5 OF STATE REGULATIONS NO. 7 - PREVIOUS RECORD - 45 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

WOODROW WILSON DEMOCRATIC CLUB OF CAMDEN, N. J., 1181 Liberty Street, Camden, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Club License CB-9, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

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

BY THE COMMISSIONER:

The defendant pleaded guilty to charges alleging that on Sunday, September 19, 1943 (1) it sold alcoholic beverages, in violation of local ordinance, and (2) it sold alcoholic beverages to persons other than members or guests of members, in violation of R. S. 33:1-2 and Rule 5 of State Regulations No. 7.

Reports of two ABC agents disclose that, on the occasion in question, admittance to the club barroom was gained in a manner reminiscent of the old "speakeasy" days -- a knock on the door and approval by the doorman. When the agents entered the barroom after following a party of four persons who had been admitted by the usual procedure, they found over fifty patrons there. The agents ordered and were served with alcoholic beverages although they were neither members of the club nor guests of such members.

This is the second time that defendant has violated the local regulation prohibiting Sunday sales. Its license was suspended in February 1939 for an identical violation. On the first charge, therefore, I shall impose a penalty of thirty days. Re Vittorio Veneto Lodge, Bulletin 539, Item 9. On the second charge, the penalty will be fifteen days. Re Dunellen Lodge No. 1488, B.P.O. Elks, Bulletin 582, Item 2. With remission of five days for the guilty plea, the net suspension totals forty days.

Accordingly, it is, on this 22nd day of October, 1943,

ORDERED that Club License CB-9, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden, to Woodrow Wilson Democratic Club of Camden, N. J., for premises 1181 Liberty Street, Camden, be and the same is hereby suspended for a period of forty (40) days, commencing at 2:00 A. M. October 27, 1943 and terminating at 2:00 A. M. December 6, 1943.

ALFRED E. DRISCOLL Commissioner.

3. APPELLATE DECISIONS - ANGIUOLI v. ORANGE.

ANTHONY ANGIUOLI, trading as)
 CARTERET COCKTAIL LOUNGE,)
)
 Appellant,)
)
 -vs-)
)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF ORANGE,)
)
 Respondent.)
 -----)

ON APPEAL
 CONCLUSIONS AND ORDERS

Edward A. Palmieri, Esq., Attorney for Appellant,
 Edmond J. Dwyer, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appealed from a five day suspension imposed on his license C-12, issued for premises 466 Central Avenue, Orange, by the Municipal Board of Alcoholic Beverage Control of the City of Orange.

The suspension was imposed by the respondent after it had found appellant guilty on a charge of selling to minors. On the filing of this appeal an order was entered staying respondent's order of suspension until the further order of the Commissioner, After the hearing, but before the matter was decided by me, appellant, by his attorney, requested leave to withdraw and abandon the appeal. Respondent, by its attorney, consented to said withdrawal and an order was submitted, consented to by both attorneys, that the suspension be re-imposed, commencing November 1, 1943. Both requests are granted.

Accordingly, it is, on this 22nd day of October, 1943,

ORDERED that the appeal herein be and the same is hereby dismissed and it is further,

ORDERED that the five day suspension imposed by respondent on plenary retail consumption license C-12, which suspension was stayed pending disposition of the instant appeal, be hereby restored to commence at 2:00 A. M. November 1, 1943 and terminate at 2:00 A. M. November 6, 1943.

ALFRED E. DRISCOLL
 Commissioner.

4. ELIGIBILITY - CRIME OF RECEIVING STOLEN GOODS FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT ADVISED THAT HE IS NOT ELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE IN THIS STATE.

October 25, 1943.

Re: Case No. 519.

Applicant seeks a determination of his eligibility to hold a liquor license and to work for a holder of such a license.

On February 15, 1943, applicant pleaded non vult contendere to the charge of receiving stolen goods and was fined seventy-five dollars. It appears that applicant who, then with his brother, was operating a garage, bought six stolen automobile tires.

Applicant testified that he did not know the tires were stolen property. He alleged the seller represented them as being tires which he owned and had used on his car. However, applicant admitted that before buying he examined the tires and concluded they were new and had not been used. He also admitted that this fact, coupled with the conduct of the seller during the negotiations, made him suspicious that the tires were stolen property. Nevertheless, he purchased the tires without question or investigation.

I am convinced that since applicant bought the tires despite the suspicious circumstances surrounding the transaction, he was not an innocent purchaser of the stolen property. The crime of receiving stolen goods ordinarily involves moral turpitude. Re Case No. 488, Bulletin 561, Item 3, and cases cited therein. No facts were presented at the hearing taking the instant case out of the category of a crime involving moral turpitude.

It is recommended, therefore, that applicant be advised that he is not eligible to hold a liquor license nor to work for a liquor licensee in this State.

Gaylord R. Hawkins,
Attorney.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
GEORGE VOUCHIDES
131 Carteret Avenue
Jersey City, N. J.
Holder of Plenary Retail Distribution License D-69, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS
AND ORDER

Eric H. Jentz, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that, after 10:00 P. M. on Friday, September 10, 1943, he sold a quart bottle of beer for consumption off his licensed premises, in violation of Rule 1 of State Regulations No. 38.

In view of the guilty plea, five days of the usual fifteen-day penalty will be remitted, leaving a net suspension of ten days. Re Gattuso, Bulletin 587, Item 1.

Accordingly, it is, on this 25th day of October, 1943

ORDERED that Plenary Retail Distribution License D-69, heretofore issued by the Board of Commissioners of the City of Jersey City, to George Vouchides, for premises 131 Carteret Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. November 1, 1943 and terminating at 2:00 A. M. November 11, 1943.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)
)
 JOSEPHINE BELZA)
 t/a Miami Gardens)
 Brunswick Pike and Bakers)
 Basin Road)
 Lawrence Township,)
 P. O. Trenton, N. J.)

Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Lawrence.)

CONCLUSIONS AND ORDER

John J. Connell, Esq., Attorney for Defendant-Licensee.
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges that on June 28, 1945, she possessed alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The testimony by which the licensee endeavored to explain this condition discloses that the person left in charge of the licensed premises deliberately refilled two bottles, originally containing a brand of whiskey, the supply of which was exhausted, by pouring into the two bottles an entirely different brand. An analysis shows, further, that one bottle contained considerable foreign matter. Obviously the customers in this case would not get what they ordered.

The fact that the refilling was done by an employee does not relieve the licensee. The doctrine of respondeat superior is well established in the Alcoholic Beverage Law. Cf. Re Parker, Bulletin 587, Item 9.

The licensee has a prior record. In 1942 her license was suspended by the local licensing authority for seven days after she had pleaded guilty to a charge of selling alcoholic beverages to minors. In view of all the circumstances and the previous record, I shall suspend the license for twenty days.

Accordingly, it is, on this 25th day of October, 1943,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Lawrence, to Josephine Belza, t/a Miami Gardens, for premises Brunswick Pike and Bakers Basin Road, Lawrence Township, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 A. M. October 28, 1943 and terminating at 2:00 A. M. November 17, 1943.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES ON ELECTION DAY, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - 15 DAYS' SUSPENSION, LESS 5 FOR PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND DELIVERY OF ALCOHOLIC BEVERAGES BY PERMITTEE ON ELECTION DAY, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - EMPLOYMENT PERMIT SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against JOHN GEO. PETKEVIS t/a LILLIAN-ON-THE-LAKE 630 White Horse Pike Hammonton, New Jersey

Holder of Plenary Retail Consumption License C-14, issued by the Mayor and Council of the Town of Hammonton.

CONCLUSIONS AND ORDERS

In the Matter of Cancellation Proceedings against JOHN PETKEVIS 630 White Horse Pike Hammonton, New Jersey

Holder of Employment Permit No. 5465, issued by the State Commissioner of Alcoholic Beverage Control.

Vincent S. Haneman, Esq., Attorney for Defendant-Licensee and Defendant-Permittee. Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee was served with the following charge:

"On September 21, 1943, Primary Election Day, at about 12:45 P. M., you sold at retail and delivered alcoholic beverages to consumers while the polls were open for voting, in violation of Rule 2 of State Regulations No. 20."

In the cancellation proceedings, the defendant-permittee was ordered to show cause why his alien permit should not be cancelled for the following reason:

"On September 21, 1943, Primary Election Day, at about 12:45 P. M., you, while working at the retail licensed premises of John Geo. Petkevis, t/a Lillian-on-the-Lake, 630 White Horse Pike, Hammonton, New Jersey, sold at retail and delivered alcoholic beverages to consumers while the polls were open for voting, despite the fact that retail licensees were prohibited from any such sale or delivery by Rule 2 of State Regulations No. 20."

A plea of non vult was entered on behalf of defendant-licensee and a statement, by way of explanation, was entered on behalf of defendant-permittee.

As to the licensee: The charge was preferred after two A. B. C. agents had each purchased alcoholic beverages on the licensed premises on the Primary Election Day during prohibited hours from the defendant, John Petkevis, father of the defendant John Geo. Petkevis. It appears that John Geo. Petkevis, the licensee, has been inducted into the armed forces and during his absence the tavern is being operated by his father. The doctrine of respondeat superior is well established in our Alcoholic Beverage Law. Licensees must, of necessity, be held responsible for the acts of their agents and servants. Re Gourley, Bulletin 590, Item 5; Re Stoerrle, Bulletin 586, Item 7.

In recent months I have determined upon a minimum penalty of fifteen days for the sale of alcoholic beverages during prohibited hours where the licensee does not have a previous record and where there are no aggravating circumstances. Obviously, sales on Election Day come within the purview of this policy. Re Hamill, Bulletin 590, Item 11; Re Langton, Bulletin 590, Item 10. Five days of the penalty will be remitted for the plea, making a net suspension of ten days.

As to the permittee: It is represented on behalf of John Petkevis, the permittee, that he was ignorant of the fact that the day in question was the date for the Primary Election. It is axiomatic that ignorance of the law is no excuse.

In the absence of a prior record or aggravating circumstances, I shall not cancel the permit. A penalty of fifteen days suspension of the permit will, however, be imposed. Five days will be remitted for the plea, making a net suspension of ten days.

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

ORDERED that Plenary Retail Consumption License C-14, issued by the Mayor and Council of the Town of Hammonton to John Geo. Petkevis, t/a Lillian-on-the-Lake, for premises at 630 White Horse Pike, Hammonton, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A. M. November 1, 1943 and terminating at 2:00 A. M. November 11, 1943; and it is further

ORDERED that Employment Permit No. 5465, issued to John Petkevis by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A. M. November 1, 1943 and terminating at 2:00 A. M. November 11, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE -- PERMITTING PREMISES TO BE OPEN DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PREVIOUS RECORD - 60 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
 ALFRED LUKER,
 t/a Luker's Tavern
 26 Reid Street
 South River, N. J.

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of South River.)

Alfred Luker, Pro Se.
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has entered a plea of guilty to charges alleging: (1) that he sold and delivered alcoholic beverages in original containers for consumption off the licensed premises on Sunday, August 29, 1943, in violation of Rule 1 of State Regulations No. 38; (2) that on Sunday, August 29, 1943, he sold alcoholic beverages for consumption upon the licensed premises, in violation of a local ordinance; (3) that his licensed premises were open on the same Sunday in further violation of the local ordinance.

The record to which I have referred, in view of the guilty plea, discloses the defendant to be a willful and persistent violator of the local ordinance prohibiting the sale of alcoholic beverages on Sundays prior to 1:00 P. M., as well as of State Regulations No. 38 prohibiting the sale of package goods on Sundays for off-premises consumption. The licensee admits that he conducted a Sunday morning business in open defiance of the local ordinance for "quite some time". A customer confesses that he has been buying alcoholic beverages in this tavern during prohibited hours "every Sunday morning" for a very considerable period of time.

On the Sunday morning in question the licensee was observed by A. B. C. agents to be doing a thriving business as early as 10:00 A. M.

The primary responsibility for the enforcement of the law relative to retail licensees rests with the local authorities. R. S. 33:1-24 provides in part as follows:

"It shall be the duty of each * * * issuing authority to receive applications for such licenses as such * * * issuing authority is authorized to issue; to investigate applicants and to inspect premises sought to be licensed; to conduct public hearings on applications and revocations; to enforce primarily the provisions of this chapter and the rules and regulations so far as the same pertain or refer to or are in any way connected with retail licenses, except plenary retail transit licenses * * *." (Underlining ours.)

The primary responsibility of the state agents is to supervise state licensees, cooperate with state, federal and municipal enforcement agents and the various military commands within the state, and to prevent the operation of bootleggers and racketeers in New Jersey. In these war days the limited number of A. B. C. agents are hard put to it to fill these full time assignments.

The apparent contempt of the defendant-licensee for local enforcement is perhaps illustrated by the little drama that took place immediately prior to his apprehension by the A. B. C. agents. The characters, in order of appearance, are a customer, the licensee and the agents. The patron states to the licensee: "You better watch your step. There are some F. B. I. men in town." The licensee thereupon glances at the two A. B. C. agents who had but recently entered his premises and says: "I give up boys, I guess you fellows are the law. I am guilty. I knew it had to happen sooner or later."

The law has caught up with the licensee. His statement that "it had to happen sooner or later" should be taken to heart by all licensees who may be tempted to violate the Alcoholic Beverage Control Law, the regulations of the Department and local ordinances.

The licensee has a prior record. In 1940 his license was suspended for thirty days. Under all the circumstances, and considering the prior record, I shall suspend his license for the instant violations for a period of sixty days. Because of the plea and the consequent saving of time to the Department, I shall remit five days of the penalty leaving a net suspension of fifty-five days.

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

ORDERED that Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of South River, to Alfred Luker, t/a Luker's Tavern, for premises 26 Reid Street, South River, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 A. M. October 29, 1943 and terminating at 2:00 A. M. December 23, 1943.

ALFRED E. DRISCOLL
Commissioner.

9. MORAL TURPITUDE - FACTS EXAMINED - CONSPIRACY TO TRANSPORT, BUY, SELL AND TRANSFER DISTILLED SPIRITS IN VIOLATION OF FEDERAL LAW FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICATION DENIED.

In the Matter of an Application to)
Remove Disqualification because of)
Convictions, Pursuant to R.S. 33:1-31.2)

CONCLUSIONS

Case No. 268.)

BY THE COMMISSIONER:

Applicant herein, a resident of the City of New York, was sentenced to the Federal penitentiary on three separate and distinct occasions. The first two sentences followed convictions for violations of the National Prohibition Law, commonly known as the

Volstead Act. On November 6, 1936, he was again sentenced to a Federal penitentiary for a period of a year and a day upon conviction of conspiracy to transport, buy, sell, transfer distilled spirits not having affixed to the immediate containers thereof the proper Internal Revenue tax stamps.

One of the salient purposes of the State Alcoholic Beverage Control Law is to eliminate the racketeer and bootlegger. This being the laudible object of the law, it is quite obvious that a person who is convicted for a violation of a Federal law designed to prevent bootlegging, has committed a crime which involves moral turpitude. It is therefore unnecessary for me to determine at this time whether or not the two former convictions for violations during National Prohibition may involve moral turpitude.

Applicant was released, according to the official record, by conditional release on August 26, 1937. Thus, more than six years have elapsed since applicant's last adjudicated offense or since he was confined in an institution by reason thereof. However, it is necessary for applicant, before I shall exercise the statutory discretion vested in me, to prove to my satisfaction that he is a proper person to be associated in any capacity with the alcoholic beverage industry.

The testimony of applicant discloses that from December 1937 to April 1942 he was employed as a cashier by a corporation which then held a retail liquor license in a New Jersey municipality. During this period, because of his criminal record, he was ineligible for such employment. On one of several occasions, in June 1940, applicant borrowed money from a bank located in a New Jersey municipality and upon his applications set forth that this loan was to be used for a restaurant license. A year later, i.e. June 1941, he stated on the application for the loan that it was also to be used for a license. The following year, May 1942, subject herein again made application for a loan and stated that this was to be used for a liquor license. In explanation of this, applicant testified that he had borrowed this money on each occasion for the corporate liquor licensee even though the records showed that they were personal loans. On two of the applications for the years 1940 and 1941, applicant herein stated that he had received a salary of \$3,500.00 and \$10,000.00, respectively, whereas he testified at the hearing that he had never earned more than \$2,000.00 per year. In explaining this overstatement on the applications for the loans, subject herein stated that he did not fill in the data given on the loan forms, but merely affixed his signature thereto. It is hard for me to believe that an employee of a bank would fill out a false application for a loan without obtaining the information from the applicant therefor. Although applicant apparently severed his connection with the corporation in April 1942, I believe that for more than four years prior thereto he was not only illegally employed on licensed premises but that, in fact, he had an undisclosed beneficial interest in the licensed corporation.

In view of the circumstances enumerated above, I shall not exercise the discretion vested in me by the legislature and remove the disqualification in the instant matter. (R. S. 33:1-31.2).

Accordingly, the petition is denied.

ALFRED E. DRISCOLL

Commissioner.

Dated: October 26, 1943.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSEE CONVICTED IN COURT OF QUARTER SESSIONS OF BURLINGTON COUNTY AND LICENSE AUTOMATICALLY SUSPENDED - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against FLORENCE C. FRANTZ, t/a Florence Inn, Chatsworth-Pemberton Road, Woodland Township, P. O. Chatsworth, N. J. Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Woodland.

CONCLUSIONS AND ORDER

Florence C. Frantz, Defendant-Licensee, Pro Se. Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads guilty to the following charges: (a) sale and service of alcoholic beverages to minors in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20, and (b) knowingly employing a minor to sell alcoholic beverages in violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11.

The file discloses that, on June 1, 1943, Georgianna _____, 15 years of age, was served with four or five glasses of whiskey and three or four glasses of beer. Her girl companion, Alberta _____, age 17 years, was served with two glasses of whiskey and two glasses of beer on the same evening.

Defendant, upon her plea of guilty in the Court of Quarter Sessions of Burlington County after indictment by the Grand Jury for aiding and abetting the sale of alcoholic beverages to the minors aforementioned, was sentenced to serve a prison term and to pay a fine of \$100.00 R. S. 33:1-31.1 provides that a liquor license shall automatically suspend upon conviction of a violation of any of the provisions of Chapter 1 of the Alcoholic Beverage Law. Following the above conviction, the defendant's license certificate was picked up on October 12, 1943 by a representative of this Department. To date no petition to lift the automatic suspension has been filed.

In view of the automatic suspension of the license for the balance of the term, I shall at this time impose the same penalty in this proceeding and suspend the license for the balance of its term because of the violation herein set forth. The penalty herein imposed may be reconsidered by me if and when a duly verified petition to lift the automatic suspension of the license is filed.

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

ORDERED that plenary retail consumption license C-5, issued by the Township Committee of the Township of Woodland to Florence C. Frantz, t/a Florence Inn, for premises on Chatsworth-Pemberton Road, Woodland Township, be and the same is hereby suspended for the balance of its term, effective immediately.

ALFRED E. DRISCOLL Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN ACIDS AND SOLIDS - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

FRANK VONELLA,)
t/a Frank's Bar,)
12 Fourth Avenue,)
Long Branch, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the City of Long Branch.)

Julius J. Golden, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on August 13, 1943, he possessed two one-quart bottles of "Carstairs White Seal Blended Whiskey 86.8 Proof" which contained alcoholic beverages not genuine as labeled.

Chemical analysis of the bottles in question discloses that the contents are considerably lower in acids and solids than a genuine sample of the same product.

Although the defendant testified that he had no personal knowledge of the violation, he stated that his bartender had admitted, subsequent to the seizure of the bottles, that he had refilled them with other liquor. The defendant is, nevertheless, strictly responsible for the condition of his liquor stock. Re Kurian, Bulletin 517, Item 2.

The defendant, who has been a licensee ever since April 1935, has never heretofore been cited in disciplinary proceedings. Department records, however, disclose that in October 1938 he received a warning after Federal agents found a single bottle of under-proof Scotch whisky at his premises. While, ordinarily, a warning against a similar recurrence results in an increased penalty (see Re Wnoroski, Bulletin 454, Item 6), the defendant's otherwise clear record and the length of time that has elapsed since the warning, absolve him from such consequence in the instant case. Cf. Re Donohue, Bulletin 572, Item 10.

The license will be suspended for the usual ten-day period.

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

ORDERED that Plenary Retail Consumption License C-5, heretofore issued by the Board of Commissioners of the City of Long Branch to Frank Vonella, t/a Frank's Bar, for premises 12 Fourth Avenue, Long Branch, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. November 1, 1943 and terminating at 2:00 A. M. November 11, 1943.

ALFRED E. DRISCOLL,
Commissioner.

12. APPELLATE DECISIONS - MICHE v. HOBOKEN.

VICTOR LEON MICHE,)	
Appellant,)	
-vs-)	ON APPEAL
BOARD OF COMMISSIONERS OF THE)	CONCLUSIONS AND ORDER
CITY OF HOBOKEN,)	
Respondent.)	

Bernard S. Glick, Esq., Attorney for Appellant.
Robert F. McAlevy, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to renew appellant's plenary retail consumption license for premises 321 Washington Street, Hoboken, for the current fiscal year.

Appellant's original application for license, submitted in August 1942, was denied by respondent. Upon appeal to this Department, such denial was reversed and respondent directed to issue the license applied for to the appellant. See Bulletin 538, Item 2.

Upon respondent's refusal to comply with such mandate, the order directing the issuance of the license became self-executing (see R. S. 33:1-38) and appellant conducted his business under such order from November 19, 1942 to June 30, 1943. Thereafter, upon issuance of a temporary extension permit, appellant operated his licensed premises until July 6, 1943, when the respondent, by unanimous vote, denied appellant's application for renewal upon the ground that appellant's premises were unsuitable to be licensed. Because of this background, I have examined the voluminous record in this case with great care. I have reached the conclusion that respondent's action must be sustained.

Respondent's determination of the unsuitability of appellant's premises is predicated upon his failure to comply with a local sanitary directive concerning the installation of separate lavatory facilities for the use of his patrons. This directive was adopted pursuant to two releases which I issued shortly after the notorious Boston night-club fire which resulted in such tragic consequences. The first of these releases, dated May 12, 1943, was directed to retail licensees and read, in part, as follows:

"A licensee who seeks to renew must comply with all requirements pertaining to his original application. Accordingly, he must:

* * *

"4. Ascertain at once whether or not the premises to be licensed comply with all pertinent health and safety laws and regulations and be prepared to certify to such fact upon application for renewal of your license for the next fiscal year. Information as to the health laws and regulations may be obtained from the State Department of Health and your local health authorities, and as to safety laws and regulations from your local police and fire authorities. In the event that the premises do not comply in every respect, immediate steps must be taken to correct the situation so that proper certification may accompany the license application."

This release was followed by another on May 19, 1943 which, because of its purpose and the importance of the subject matter, it may not be amiss to reproduce substantially here:

"TO ALL LICENSE ISSUING AUTHORITIES:

"Routine investigations of licensed retail liquor establishments throughout the state by agents of this Department have disclosed a substantial number of licensed premises wherein unsanitary conditions appear to prevail. Likewise, a number of licensed premises may not be complying with pertinent fire prevention regulations.

"Licenses to sell alcoholic beverages are issued under our law for the purpose of meeting public convenience and necessity. On licensed premises the public may be expected to gather in substantial numbers. A license is a privilege, not a right. Hence, the privilege should not be granted to applicants for premises which may be a menace to the health and safety of the public. It is your duty before granting a license to ascertain whether or not premises to be licensed comply with all pertinent health and safety laws and regulations. Failure to do so may result in incidents of serious consequence such as have occurred in licensed establishments in other states.

"Your attention is called to R. S. 33:1-24 (Duties of municipal authorities issuing licenses) which provides:

'It shall be the duty of each * * * issuing authority to receive applications for such licenses as such * * * issuing authority is authorized to issue; to investigate applicants and to inspect premises sought to be licensed; to conduct public hearings on applications and revocations; to enforce primarily the provisions of this chapter and the rules and regulations so far as the same pertain or refer to or are in any way connected with retail licenses, except plenary retail transit licenses; to maintain proper records; to keep full and correct minutes; and to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this chapter. The enumeration of the above specific duties shall not be construed to limit or restrict in any way the general authority given by this chapter to each said * * * issuing authority.'

"Herewith is a copy of my notice of May 12, 1943 in respect to the renewal of retail licenses expiring on June 30, 1943. A copy of the aforesaid notice has been forwarded directly to every retail licensee in New Jersey.

"Read the notice carefully and kindly see to it that premises to be licensed in your municipality meet the requirements of state health laws and regulations and municipal ordinances and regulations pertaining to health and safety and that all applicants answer every question appearing on the application correctly and honestly."

On May 27, 1943, after consultation with the members of the Board of Commissioners, the local Health Officer prepared the following instructions to his inspectors:

"As Health Officer of the Board of Health of the City of Hoboken, I hereby request that to facilitate the Board of Commissioners of The Mayor and Council of the City of Hoboken in its consideration of applications for Plenary Retail Consumption Licenses, of which you may be informed by John J. Delaney, Esq., Supervisor of Licenses, that you or one of you, together with a representative of the City Fire Department, and said Supervisor, visit places mentioned in applications for licenses such as classified hereinabove, with a view of ascertaining whether said places comply with all pertinent health and safety laws and regulations, and that if deficiencies of pertinent health laws and regulations be found with respect thereto, the applicants for licenses, or the licensees, be informed by you particularly thereof and advised that they must remedy the deficiency before they file with the City Clerk their application for license, or if such application has been filed with the City Clerk, that they comply therewith before action be taken by the Board of Commissioners aforesaid with respect to such application.

"I advise you that in your investigation as to whether premises which are to be used for the conduct of business under a license as aforesaid, and to which male and female patronage is catered to by the licensee, that the business establishment of such licensee be equipped with separate toilet and lavatory facilities for male and female patrons, and that each thereof be properly designated by a sign posted thereon so as to readily indicate which thereof are to be for the use of male, and which thereof for the use of female, patrons."

Pursuant to these instructions, Mr. Delaney, the local license inspector, together with a health inspector and fireman, visited all of the licensed places in the municipality and orally notified the licensees in accordance therewith.

The testimony discloses that all local licensees complied, either fully or substantially, with all pertinent health and sanitary regulations, with the single exception of the appellant, Victor Miche. Mr. Delaney and the fireman testified that there were several instances of licensees failing to comply with fire regulations and these licenses were either denied or the disqualified portion of the premises completely excluded from the operation of the license. Concerning the immediate problem under consideration, namely, the provision for separate toilet facilities, Mr. Delaney stated that all other licensees actually completed or commenced such installation prior to June 30, 1943 or, at least, had entered into binding agreements for such installation.

Appellant's attempted compliance, on the other hand, merely reached the stage of his causing his landlord to write a letter on June 8, 1943 to the license inspector in which the landlord advised "that if Mr. Miche is successful in securing his license, for the coming year, we will have two lavatories installed in the premises as required by you." This letter was handed to Mr. Delaney by the

appellant on June 10, 1943, when appellant filed his application for renewal. Subsequently thereto, both appellant and his landlord were advised by Mr. Delaney that respondent would not issue a "conditional license" and that the additional toilet must be installed, or contracted for, before the license would issue. This action was neither arbitrary nor unreasonable.

It cannot be gainsaid that the conditions concerning the separate toilet accommodations were adopted pursuant to a reasonable exercise of local police power. The mere statement that an establishment open to the members of both sexes of the public should afford such separate facilities is in itself an answer to the question whether those conditions are reasonable. Cf. Lipnicki v. Trenton, Bulletin 30, Item 6; Re Old Red Bank Yacht Club, Inc., Bulletin 262, Item 12; Re Craster, Bulletin 357, Item 8. That being so, respondent was clearly empowered to insist upon at least substantial compliance with them before acting favorably upon appellant's application. Respondent was not required to give appellant any formal assurance that his license would issue as a condition precedent to his meeting those reasonable conditions. Stated conversely, an applicant for license must establish to the satisfaction of the local issuing authority that he has complied, at least substantially, with all reasonable requirements relating to the issuance of the license for which he has applied, prior to any favorable action by such authority on his application. It may reasonably refuse to accept the burden of continual investigations of licensed premises in order to ascertain whether conditions subsequent to the issuance of a license have been met. That is what appellant necessarily insisted that respondent do. His position in this regard is clearly untenable.

I find that the sanitary requirements concerning the installation of two toilets for the use of male and female patrons on licensed premises in the respondent municipality are reasonable, and that appellant did not comply with such requirements. Respondent's action, therefore, in refusing to renew appellant's license, is wholly proper and must be affirmed.

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

ORDERED that appellant's petition of appeal from respondent's refusal to renew his plenary retail consumption license for premises 321 Washington Street, Hoboken, for the current fiscal year, be and the same is hereby dismissed.

Alfred E. Griswold
Commissioner.