

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

BULLETIN 633

SEPTEMBER 8, 1944.

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

BULLETIN 635

SEPTEMBER 8, 1944

1. FAIR TRADE - NOTICE OF SUPPLEMENTAL PUBLICATION - ALCOHOLIC BEVERAGES OTHER THAN MALT BEVERAGES NOT LISTED IN FAIR TRADE PUBLICATIONS OF APRIL, JULY AND SEPTEMBER 1944 MAY NOT BE PRICE-ADVERTISED IN ANY PERIODICAL, PUBLICATION, CIRCULAR, HANDBILL OR DIRECT MAILING PIECE, EITHER DIRECTLY OR INDIRECTLY, ON OR AFTER SEPTEMBER 11, 1944.

August 24, 1944

It is apparent that the current resumption of the manufacture of alcohol may indirectly bring about the introduction of new items into this State or a change in the formula of spirit content of old items now listed in the complete Minimum Resale Price Publication of April 1944 and the supplemental pamphlet thereto of July 1944. In order to afford manufacturers and wholesalers an opportunity to list new items or changes in old items, it is my decision that a supplemental publication of Minimum Resale Prices, pursuant to Fair Trade Regulations No. 30, shall become effective on or about September 11, 1944.

Listings must be filed at the offices of this Department not later than Wednesday, August 30, 1944.

In my Fair Trade Notice of June 8th, I directed the attention of listers to a few instances in which certain types of products were not submitted for publication in the April Minimum Resale Price Pamphlet, pursuant to my request of March 13th. Manufacturers and wholesalers are now finally cautioned that items previously omitted must be submitted for publication in the forthcoming supplemental price pamphlet effective September 11, 1944, unless good cause be shown the Commissioner on or before Wednesday, August 30th, why items formerly omitted should not be submitted for listing or why any currently listed items should be withdrawn.

In order to effectuate my determination to maintain an orderly distribution of alcoholic beverages among consumers with equal fairness to all retailers, it is imperative that all products offered to the consumer public shall be listed in the Minimum Resale Price Pamphlets issued by this Department. It is, therefore, my ruling that on and after September 11, 1944, the effective date of the next supplemental Minimum Resale Price Pamphlet, any alcoholic beverages (excepting malt alcoholic beverages) not listed therein or in the publications of April and July 1944, may not be price-advertised (including direct or indirect reference to price) in any periodical, publication, circular, handbill or direct mailing piece in this State by a manufacturer, wholesaler or retailer. Private brands owned or controlled by a retailer or exclusive brands confined to or distributed by one retailer are excepted in my ruling, providing such private and exclusive brands were in existence and in the hands of retailers prior to the date of this release, August 24, 1944.

As a final note of caution, listers are placed on notice that I desire the maintenance of O.P.A. markups on all items listed for publication. It follows, therefore, that if listers submit new prices on old items reflecting drastic reductions to the consumer, the wholesalers will be expected to file new wholesale price statements pursuant to Regulations No. 34 setting forth comparable reductions to the retailers.

Notification of the proportionate share of the aggregate expense involved in the publication of the supplemental price list will be made to participating companies as soon as the price list is mailed to all retail licensees.

ALFRED E. DRISCOLL
Commissioner.

2. APPELLATE DECISIONS - ORDER DISCONTINUING APPEAL.

FRANCIS J. DWYER,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE)
 CITY OF CAPE MAY,)
)
 Respondent)

ON APPEAL
ORDER

 William T. Cahill, Esq., Attorney for Appellant.
 Lewis T. Stevens, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant filed an appeal from denial of his application for a plenary retail distribution license for premises at 614 Washington Street, Cape May.

Prior to the date fixed for hearing, appellant advised the Commissioner, in writing, that he did not desire to continue his appeal. Respondent having made no objection thereto, and no reason appearing to the contrary,

It is, on this 24th day of August, 1944,

ORDERED, that the within appeal be and the same is hereby discontinued.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING INTEREST OF DISQUALIFIED PERSON - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO BONA FIDE PURCHASER TO PETITION TO LIFT UPON EXPIRATION OF 60 DAYS OF SUSPENSION.

In the Matter of Disciplinary)
 Proceedings against)
)
 FRIEDA WALTER)
 T/a BLACK HORSE TAVERN)
 7618-20 Broadway)
 North Bergen, N. J.,)
)
 Holder of Plenary Retail Consump-)
 tion License C-13, issued by the)
 Board of Alcoholic Beverage Control)
 of the Township of North Bergen.)

CONCLUSIONS
AND ORDER

 Frieda Walter, Defendant-Licensee, Pro Se.
 Edward F. Ambrose, Esq., appearing for Department of
 Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charges:

"1. In your application, filed with the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30,

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 Heinz Walter had such interest in the license and in the business; such false statement being in violation of R. S. 33:1-25.

"2. From April 1, 1944 and until the present time, you knowingly aided and abetted Heinz Walter to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses, thereby yourself violating R. S. 33:1-52."

It appears that Heinz Walter, husband of Frieda Walter, formerly held a plenary retail consumption license for premises 119 Hudson Street, Hoboken. On June 30, 1942 he became ineligible to secure a further license by reason of the fact that he is an alien and a German national. Re Aliens, Bulletin 491, Item 8. The license for the 1942-43 fiscal year for 119 Hudson Street, Hoboken, was then issued to Frieda Walter, the wife of Heinz Walter, and the business was transferred to her without consideration. Thereafter, the business was sold and with the proceeds Frieda Walter purchased the business at 7618-20 Broadway, North Bergen, N. J. and had that license transferred to her. Payment for the new business was made from funds secured from the sale of the old, which had been deposited in the joint names of Heinz Walter and Frieda Walter. The business seems to have been operated since the acquisition thereof for the joint benefit of the parties. Heinz Walter had previously thereto made application for and been granted an employment permit. He immediately, upon the acquisition of the business, became manager thereof and has acted as the owner, or at least co-owner with his wife, of said business ever since.

I am advised that the licensee has found a purchaser for the business and desires an opportunity to sell the same so that she may retrieve as much as possible of the joint savings of her and her husband, and that she will withdraw with her husband entirely from the liquor business, at least while her husband is disqualified.

The "front", however, still exists, and hence I must suspend the license for the balance of its term. Re Scharnberg, Bulletin 540, Item 4. However, in the event that the business is sold to a bona fide purchaser and the license transferred to said purchaser subject to this suspension, I shall entertain purchaser's petition to remove the suspension and restore the license to full operation, providing that no such order will be entered until at least sixty days after the effective date of the suspension herein imposed.

Accordingly, it is, on this 25th day of August, 1944,

ORDERED, that Plenary Retail Consumption License C-13, issued by the Board of Alcoholic Beverage Control of the Township of North Bergen to Frieda Walter, t/a Black Horse Tavern, for premises 7618-20 Broadway, North Bergen, be and the same is hereby suspended for the balance of its term, effective at 3:00 A. M. August 28, 1944; and it is further

ORDERED, that in the event the business is sold and the license transferred to a bona fide purchaser, said purchaser may make application by petition to the Commissioner of Alcoholic Beverage Control for the lifting of said suspension as aforesaid.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR EMPLOYMENT PERMIT CONCEALING MATERIAL FACTS - PERMIT SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against HEINZ WALTER 27 - 8th Street Fairview, N. J., Holder of Employment Permit No. 3329, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Heinz Walter, Defendant-Permittee, Pro Se. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charge:

"In your application filed with the State Commissioner of Alcoholic Beverage Control and upon which you obtained Employment Permit No. 3329 for the current licensing year, you evaded and suppressed a material fact in answer to Question 13 which asks: 'Are you interested or have you ever had any interest, directly or indirectly, in any alcoholic beverage licenses or permits in this State or outside of this State?.....If so, describe fully such interest', in that you, while revealing you held a liquor license at 119 Hudson Street, Hoboken, New Jersey, between April 1, 1938 and June 30, 1942, failed to reveal the fact that from April 1, 1944 until the present time you have had an interest in the successive plenary retail consumption licenses issued to Frieda Walter, t/a Black Horse Tavern, for premises 7618-20 Broadway, North Bergen, New Jersey; such evasion and suppression being in violation of R. S. 33:1-25."

It appears that defendant is an alien and a German national, and therefore is disqualified from having any proprietary interest in the liquor business in the State of New Jersey. Re R. S. 33:1-25; see Re Aliens, Bulletin 491, Item 8.

The facts involved in this case are fully set forth in the contemporary proceedings against the license held by Frieda Walter. Re Walter, Bulletin 633, Item 3.

Under the circumstances, I shall suspend the employment permit now held by the defendant for the balance of its term.

Accordingly, it is, on this 25th day of August, 1944,

ORDERED, that Employment Permit No. 3329, issued by the State Commissioner of Alcoholic Beverage Control to Heinz Walter, 27 - 8th Street, Fairview, be and the same is hereby suspended for the balance of its term, effective immediately.

ALFRED E. DRISCOLL Commissioner.

- 5. DISCIPLINARY PROCEEDINGS - CHARGE OF PURCHASE OF STOLEN LIQUOR FROM NON-LICENSEES IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS - PREVIOUS RECORD - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
 Proceedings against)

THEODORE J. WNOROSKI)
 205 Vanderpool Street)
 Newark, 5, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-609 for the fiscal)
 years 1943-44 and 1944-45, issued)
 by the Municipal Board of Alcoholic)
 Beverage Control of the City of)
 Newark.)

Sol L. Kesselman, Esq., Attorney for Defendant-Licensee.
 Harry Castelbaum, Esq., appearing for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

The defendant was charged with (1) purchasing stolen liquor and (2) falsely denying in his license application that he had been convicted of a crime.

The defendant pleaded not guilty to the first charge and guilty to the second charge.

Because of circumstances beyond its control, the prosecution was able to produce but one witness on the first charge. Without needlessly detailing the testimony of that witness, suffice it to say that his uncorroborated story does not convince me that the defendant actually purchased any stolen liquor and, accordingly, the first charge is dismissed. However, the defendant was arrested and is presently awaiting Grand Jury action on a criminal complaint of receiving stolen goods. In the event of his indictment and conviction, further appropriate action against his license will be taken. Cf. Re Slohada, Bulletin 631, Item 5.

In February 1937 the defendant was convicted of the crime of petty larceny under circumstances which negative the presence of the element of moral turpitude therein. It appears that, being unable to compel repayment of a loan which he had made to his employer, he surreptitiously pocketed about \$75.00 of his employer's funds in an attempt to recoup some of the moneys due him. Although originally charged with grand larceny, this was reduced to petty larceny and, upon being convicted, he was given a suspended sentence. This conviction does not mandatorily disqualify the defendant from holding a liquor license under the provisions of the Alcoholic Beverage Law. See R. S. 33:1-25; cf. Re Case No. 157, Bulletin 467, Item 4; Re Case No. 389, Bulletin 475, Item 5; Re Case No. 406, Bulletin 491, Item 7; Re Case No. 498, Bulletin 579, Item 9.

No defense is presented by the defendant's explanation that it was his opinion that, because of the suspended sentence which followed his conviction of petty larceny, no conviction of a crime

resulted therefrom. His admitted failure to seek proper advice when filling out his application does not relieve him from responsibility for the false denial of his conviction in the application.

Defendant's license was suspended for ten days in April 1941 for possession of "refilled" liquor. See Bulletin 454, Item 6. For the instant violation, I shall impose a penalty of fifteen days, with a remission of five days for the plea, or a net penalty of ten days. Cf. Re Tumulty, Bulletin 558, Item 2; Re Stasny, Bulletin 566, Item 6; Re Tansky, Bulletin 588, Item 9.

Accordingly, it is, on this 25th day of August, 1944,

ORDERED, that Plenary Retail Consumption License C-609 for the current (1944-45) fiscal year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Theodore J. Wnoroski, for premises 205 Vanderpool Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. August 30, 1944 and terminating at 2:00 A.M. September 9, 1944.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO NON-MEMBERS IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 7 AND R. S. 33:1-2 - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - PERMITTEE AIDING AND ABETTING CLUB LICENSEE TO VIOLATE RULE 5 OF STATE REGULATIONS NO. 7 AND R. S. 33:1-2 - PERMIT SUSPENDED FOR PERIOD OF 30 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

S. M. S. LA FRATELLANZA)
SOCIETY)
54 Second Street)
Raritan, N. J.,)

Holder of Club License CB-67,)
issued by the State Commissioner)
of Alcoholic Beverage Control.)

CONCLUSIONS

In the Matter of Disciplinary Proceedings against)

AND ORDER

PIETRO DeMASSARI)
44 First Avenue)
Raritan, N. J.,)

Holder of Employment Permit No. 3548,)
issued by the State Commissioner of)
Alcoholic Beverage Control.)

S. M. S. La Fratellanza Society, by Adorno Marinetti, President.
Pietro DeMassari, Defendant-Permittee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded guilty to a charge of selling alcoholic beverages to non-members, and the defendant-permittee pleaded guilty to a charge that he aided and abetted the defendant-licensee in that violation.

In the absence, as here, of any previous record against either defendant or any aggravating circumstances attending the violation, I shall suspend the club's license for fifteen days (cf. Re 4th Ward Italian Republican Club, Bulletin 630, Item 5) and the permit for thirty days (cf. Re Borushko, Bulletin 551, Item 1). Five days will be remitted from each suspension because of the guilty pleas.

Accordingly, it is, on this 25th day of August, 1944,

ORDERED, that Club License CB-67, issued by the State Commissioner of Alcoholic Beverage Control to S. M. S. La Fratellanza Society, for premises 54 Second Street, Raritan, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 A. M. August 30, 1944 and terminating at 1:00 A. M. September 9, 1944; and it is further

ORDERED, that Employment Permit No. 3548, issued by the State Commissioner of Alcoholic Beverage Control to Pietro DeMassari, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 1:00 A. M. August 30, 1944, and terminating at 1:00 A. M. September 24, 1944.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO BONA FIDE PURCHASER TO PETITION TO LIFT UPON EXPIRATION OF 40 DAYS OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)

CIRIACO D'ALOIA and)
ELSIE TRAVISANO)
446 No. 5th Street)
Newark, 7, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-959, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

David R. Hochberg, Esq., Attorney for Defendant-Licensees.
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded non vult to a charge alleging that they aided and abetted Frank Potter, a non-licensee, to exercise the rights and privileges of their license.

The facts as disclosed by the investigation of the Department of Alcoholic Beverage Control are: Ciriaco D'Aloia, one of the licensees, has been in the armed forces for about two years. Elsie Travisano, who is the aunt and partner of Ciriaco D'Aloia, operated the business for the partnership until some time in the early winter of 1942-43, when she was taken seriously sick. The licensed premises were then closed.

In May 1943 Elsie Travisano, for the partnership, entered into an agreement with one Frank Potter; the net result of which was to

lease to Frank Potter the license privilege. In consideration thereof, Frank Potter agreed to pay certain stipulated sums to the partnership each week for a period of five years. At the expiration thereof the said Frank Potter was to be permitted to buy the business for a nominal consideration. Since February 1, 1944 the unlawful situation has been discontinued and the premises have again been closed.

Admitting the impropriety of the agreement, Elsie Travisano urges, in mitigation, that she was too ill to operate the business personally and that her one desire in entering into the Potter agreement was to salvage as much thereof as possible for her nephew partner. Further, that the nephew partner, Ciriaco D'Aloia, knew nothing of the unlawful agreement and did not in any way participate in the wrongful action.

The "farming out" of a license, in effect virtually constituting the licensee an extra-legal issuing authority, is a serious type of violation and will not be permitted. Cf. Re Stetz, Bulletin 512, Item 3; Re Beringer, Bulletin 571, Item 10.

I am cognizant of the previous record of Elsie Travisano. In 1938 her license was revoked after she was found guilty of a very serious charge. This disqualified her from holding a license for two years after that date. R. S. 33:1-3.

I am nonetheless very sympathetic with the plight of Ciriaco D'Aloia, who finds himself, by reason of matters beyond his control, unable to care for his interest in the business. His choice of a partner and attorney-in-fact was perhaps unfortunate. The local issuing authority, however, apparently decided to give Elsie Travisano a second chance. It is apparent that she is unable to conduct the licensed business and has entered into an agreement to transfer the license to a bona fide purchaser.

I do not wish to disqualify Ciriaco D'Aloia by revoking the license. It is to be hoped that in the not too distant future he will return home safely from his tour of duty overseas. Under the circumstances, I shall suspend the license for the balance of its term, with leave granted to a bona fide purchaser of the business, upon a transfer of the license, to file a petition for an order lifting the suspension after at least forty days of the suspension have been served.

Accordingly, it is, on this 29th day of August, 1944,

ORDERED, that Plenary Retail Consumption License C-959, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ciriaco D'Aloia and Elsie Travisano, for premises 446 No. 5th Street, Newark, be and the same is hereby suspended for the balance of its term, commencing at 2:00 A. M. August 31, 1944, with leave to petition for the lifting of said suspension as aforesaid.

ALFRED E. DRISCOLL
Commissioner.

8. ABC and OPA - STATEMENT OF POLICY.

It has been and will continue to be the policy of the Department of Alcoholic Beverage Control of the State of New Jersey to assist the Federal authorities in the enforcement of OPA maximum price ceiling regulations applicable to alcoholic beverages promulgated by the Federal agency. In all cases where a plenary retail distribution or consumption licensee is convicted in a court of appropriate jurisdiction of a violation of the OPA regulations, immediate action will be instituted by the Department to suspend or revoke the liquor license.

While ill-advised action and poorly conceived regulations by the Federal Government were a contributing cause of black market activities within the liquor field, this Department nonetheless waged war against black marketeers over a period of three years. As a result of its activities, a large number of criminal indictments and convictions were obtained.

The Department, however, did not confine its activities to criminal investigations and prosecutions. It sought to eliminate the cause of black marketing by securing a modification of Federal regulations and policies and the strengthening of its own policies and regulations. In this work, the Department has had the wholehearted, intelligent and constructive cooperation of local, district and State OPA officials. These officials have themselves recognized that, within the liquor field at least, the OPA regulation, because of its complexity, lack of definiteness and provision for frequent variations and changes, was difficult to enforce and in fact invited evasion through change of name, label, content or otherwise. These local officials generally concurred in our recommendation of more than two years ago that the State Department of Alcoholic Beverage Control, because of its extensive experience in the field of liquor control, should be permitted to promulgate rules establishing maximum dollars and cents prices which would be equally applicable throughout the entire State. It is unfortunate that, although the OPA office in Washington informally admitted the merit of the New Jersey plan and conceded that it, in large measure, would eliminate the confusion then prevailing, facilitate enforcement, protect the consumer and strike a blow at the heart of the black market, it never got around to formally approving the plan or granting the permission requested.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - LICENSE SUSPENDED FOR PERIOD OF 25 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

RALPH HARRIS)
T/a SHOW PLACE BAR)
184-186-188 S. Virginia Ave.)
Atlantic City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-156, issued by the Board of Commissioners of the City of Atlantic City.)
-----)

John Rauffenbart, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads non vult to charges alleging that, on June 13, 1944, he sold alcoholic beverages to and permitted the consumption of alcoholic beverages on his licensed premises by Albert ----, a minor, and that, on June 18, 1944 and June 19, 1944, he likewise sold alcoholic beverages to and permitted the consumption of alcoholic beverages on his licensed premises by James ----, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

Both minors, aged eighteen years and nineteen years respectively, are members of the armed forces of the United States.

In mitigation of the charges the licensee states that, while the sales were made either by himself or one of his employees, every precaution was taken to verify or check the ages of the minors in order to make certain that both were over the age of twenty-one years before being served. According to the licensee and his employee, who also testified, the verification consisted in checking the military identification cards of the two minors in question. In addition, the licensee alleges that both minors appeared to him to be well over the age of twenty-one years. The licensee further states that it has been his invariable custom to check the identification card of anyone entering his place about whose age the licensee or any of his employees had any doubt.

However, James ---, one of the minors in question, testified and flatly refuted the testimony of the licensee and his employee, stating that so far as he was concerned no effort was made to ascertain his age before being served. While I am satisfied that in the case of James ---- not even a verbal inquiry as to age was made, nevertheless, as has been repeatedly stated, a licensee cannot successfully defend himself against a sale to a minor unless he has obtained a written statement from the minor and otherwise complied with R. S. 33:1-77. In this case the licensee chose to adopt his own method and can blame no one but himself if his system failed.

Licensee has a prior record. In May 1937 his license was suspended for two days by the local issuing authority for possession and sale of alcoholic beverages in original containers of improper size (nips) in violation of the State Regulations. In June 1942, while the defendant held a license in partnership with one Platt,

their license was suspended by the local issuing authority for a period of sixteen days for sale to minors. In view of this previous record and after considering all the circumstances, I shall suspend the license for a period of twenty-five days, less five days for the plea, making a net suspension of twenty days.

Accordingly, it is, on this 30th day of August, 1944,

ORDERED, that Plenary Retail Consumption License C-156, heretofore issued by the Board of Commissioners of the City of Atlantic City to Ralph Harris, t/a Show Place Bar, for premises 184-186-188 S. Virginia Avenue, Atlantic City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 8:00 A. M. September 5, 1944, and terminating at 8:00 A. M. September 25, 1944.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - ORDER OF DISCONTINUANCE.

UKRAINIAN NATIONAL CLUB,)

Appellant,)

-vs-

ON APPEAL
ORDER OF DISCONTINUANCE

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF OXFORD,)

Respondent)
-----)

Francis L. Thompson, Esq., Attorney for the Appellant.

Wilbur M. Rush, Esq., Attorney for the Respondent.

Herman Distler, Esq., Attorney for an Objector.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to grant appellant's application for a Club License for premises located on East Nail Street, Oxford, New Jersey.

The appellant has requested that the appeal be discontinued and the attorneys for the respondent and an objector have consented thereto. Since no reason appears to the contrary, the request will be granted.

Accordingly, it is, on this 29th day of August, 1944,

ORDERED, that the within appeal be and the same is hereby discontinued.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against

DAVID H. BROOKS, T/a BROOKS CAFE N/E Cor. Vermont and Adriatic Avenues Atlantic City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-75, issued by the Board of Commissioners of the City of Atlantic City.

Defendant-licensee, Pro Se. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he possessed eight bottles of alcoholic beverages which were not genuine as labeled, to wit: Two 4/5 quart bottles labeled "Calvert Special Blended Whiskey 86.8 Proof", two 4/5 quart bottles labeled "Carstairs White Seal Blended Whiskey 86.8 Proof", two 4/5 quart bottles labeled "Wilson 'That's All' Blended Whiskey 86.8 Proof", one 4/5 quart bottle labeled "Seagram's Seven 7 Crown Blended Whiskey 86.8 Proof", and one 4/5 quart bottle labeled "Imperial Hiram Walker's Blended Whiskey 86 Proof."

On August 8, 1944, after an ABC agent had tested and gauged the defendant's entire open stock, consisting of 21 bottles of variously labeled alcoholic beverages, the defendant admitted, in a signed statement, that he had refilled all of the eight bottles in question with "Three Feathers VSR" whiskey. He frankly stated that the current scarcity of the more popular brands of liquor had impelled him to substitute Three Feathers whiskey, with which he was then plentifully supplied, for the liquor called for by the aforesaid labels. The net result was that a substantial percentage of the defendant's customers received Three Feathers whiskey irrespective of what they ordered. A more deliberate and calculated fraud upon the public is hard to conceive!

The record of this state in suppressing the practice of "refilling" compares most favorably with that of all the other states of this Union -- and I mean to keep it so. The influx into the present market, and the consequent availability, of whiskey manufactured with cane and fruit spirits, has presented a great temptation to unscrupulous licensees to palm off this whiskey on an unsuspecting public. If this practice assumes any more serious proportions than it has to date, I give fair warning to all licensees that the penalty for this type of violation will be increased to a standard that will virtually insure its complete elimination.

In the meantime, I shall suspend the license of this defendant, who has an otherwise clear record, for a period of thirty days. Cf. Re Hrubec's Inc., Bulletin 565, Item 3; Re La Rosa, Bulletin 605, Item 8.

Accordingly, it is, on this 31st day of August, 1944,

ORDERED, that Plenary Retail Consumption License C-75, heretofore issued by the Board of Commissioners of the City of Atlantic City to David H. Brooks, t/a Brooks Cafe, for premises N/E Cor. Vermont and Adriatic Avenues, Atlantic City, be and the same is hereby suspended for a period of thirty (30) days, commencing at 8:00 A. M. September 6, 1944, and terminating at 8:00 A. M. October 6, 1944.

ALFRED E. DRISCOLL
Commissioner.

12. APPELLATE DECISIONS - HEALY v. WATERFORD AND PANGIA.

PATRICK J. HEALEY,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WATERFORD and)
FRANK PANGIA, t/a EL CAMPO)
GRILL,)
Respondents.)

ON APPEAL

-----)
PATRICK J. HEALEY,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WATERFORD,)
Respondent.)
-----)

CONCLUSIONS AND ORDER

John H. Reiners, Jr., Esq., Attorney for Appellant.
Norman Heine, Esq., Attorney for Respondents.

BY THE COMMISSIONER:

These two appeals, one from the denial of appellant's application for a plenary retail consumption license, and the other from the granting of a plenary retail consumption license to respondent Frank Pangia, involve the same issues, were consolidated at the hearing for the convenient presentation of the facts, and will be decided together.

On June 8, 1944 Patrick J. Healey, the appellant, duly filed his application for a plenary retail consumption license for premises on the White Horse Pike in the Township of Waterford approximately opposite the premises covered by his license for the then current year of 1943-44. The latter premises will hereafter be referred to as El Campo Grill, a name that has been used for this property for many years.

On June 13, 1944 Frank Pangia duly filed his application for a plenary retail consumption license for El Campo Grill, the premises then occupied by the appellant, Patrick J. Healey, on the White Horse Pike.

Each of these applications was for a new license. Neither could meet all the tests required to qualify as a renewal. R. S. 33:1-96, as amended by P. L. 1944, c. 187, effective April 20, 1944.

The El Campo Grill is owned by one John Pangia, the father of Frank Pangia. The former has refused to renew the lease formerly held by the appellant, Healey.

The buildings on the two properties in question are both situated on the White Horse Pike in the Township of Waterford and are well within 1000 feet of each other.

At the meeting of the Township Committee, held on June 22, 1944, the applications of Frank Pangia and Patrick J. Healey were considered together with all other applications for plenary retail consumption licenses then pending before the Township Committee.

It appears from the record that members of the Township Committee were of the opinion that the El Campo property, for which a license had been issued continuously since Repeal (and before Prohibition) and which had been designed and built as a roadhouse (tavern and restaurant), would be greatly depreciated in value if the license were not granted, thereby depriving the municipality of tax income and quite possibly becoming an eyesore or a "white elephant." The Township Committee accordingly granted Pangia's application for a license.

Having granted the Pangia application for El Campo, the Township Committee thereupon denied the Healey application on the ground that the local ordinance prevented the issuance of a license for any premises within 1000 feet of other licensed premises. The pertinent part of said ordinance provides:

"No plenary retail consumption license shall be issued to be used or maintained in any store, dwelling or other building within 1000 feet of the site or location of any store, dwelling or other building where a plenary retail consumption license is being used or maintained. Said 1000 feet shall be measured in the normal way that a pedestrian shall properly walk from the nearest entrance of said store, dwelling or other building where a plenary retail consumption license is being used or maintained to the nearest entrance of the store, dwelling or other building sought to be licensed."

At the hearing on these appeals, members of the Township Committee advanced as a further reason for the refusal to grant the Healey application the fact that on the day the applications were considered Healey's premises were not suitable for a tavern (the building had been a garage and storehouse), had no heat, floor or toilet facilities, and that the building was not at the time of filing the application properly equipped, and that no plans showing the proposed alterations in the structure and installation of equipment had been filed with the application. See State Regulations No. 2.

The members of the Township Committee, in their testimony, were quite insistent that they considered the undesirability of the Healey premises in arriving at their conclusion and that, as between the two premises in question, the El Campo was the more suitable place for a license.

These Township Committeemen were called by the appellant, and though appellant's attorney was allowed great leeway in treating the witnesses as adverse, he did not succeed in showing prejudice or abuse of discretion sufficiently to convince me that the respondent municipality had abused the discretion vested in it by the Alcoholic Beverage Law.

The only other witnesses (except the Township Clerk, whose testimony was formal) were the appellant and appellant's attorney. Both these witnesses attempted to show that the Township Committee members -- most of them outside of and before the meeting -- had made certain promises (this was denied by the committee members) and that the committee had been improperly influenced by its counsel, who sometimes represented Frank Pangia. I can find no persuasive evidence supporting these allegations.

Respondent Township Committee was faced with the responsibility of determining, on June 22, 1944, whether a new license should be granted to Patrick J. Healey, a former licensee, for premises which had not been previously licensed, or to Frank Pangia for the premises previously licensed to Patrick J. Healey. It appears that both licensees were fully qualified. Patrick J. Healey, despite the fact that he held a license for the 1943-44 fiscal year, was not entitled to a license as a matter of right. Gimber v. Galloway, Bulletin 427, Item 9.

It follows then that the Township Committee acted properly in considering all the advantages and disadvantages from the standpoint of the public, including the desirability of the premises, and apparently made a choice based on public consideration alone. Cf. Giberti v. Franklin, Bulletin 150, Item 3. The mere fact of prior filing does not ipso facto entitle such applicant to any preferential treatment. Curry v. Margate, Bulletin 472, Item 7; Giberti v. Franklin, supra.

In making the choice favoring premises undoubtedly more suitable for the conduct of the business as against premises admittedly not at that time as suitable, the Township Committee, in my opinion, acted in a manner reasonably designed to most favorably serve the public interest.

The alleged remarks, even if promises, made by individual members of the Township Committee outside of the regular meeting, are not binding on the Township Committee. Cf. Pergola, Bulletin 398, Item 6; Hobbs v. Lower Penns Neck, Bulletin 372, Item 6.

Having determined that the license for El Campo should be issued to Frank Pangia, the respondent was forced by a valid, subsisting ordinance to deny the Patrick J. Healey application. There can be no dispute that Patrick J. Healey's proposed location is within the proscribed distance of El Campo.

The ordinance is one of limitation designed to prevent a concentration of licensed premises and provide a greater distribution thereof. Such ordinances have been upheld. Barkey v. Parsippany-Troy Hills, Bulletin 331, Item 9. Such an ordinance is not for the benefit of any licensee or applicant for a license, but solely for the benefit of the public, and is a proper and valid exercise of the control and regulation of the sale of alcoholic beverages as provided for in the Alcoholic Beverage Law. R. S. 33:1-1 et seq. Gruber v. Atlantic City, Bulletin 289, Item 5; see Atlantic City Licensed Beverage Association v. Atlantic City, Bulletin 296, Item 6; Barkey v. Parsippany-Troy Hills, supra.

Finding no reversible error, the instant appeals will be dismissed.

Accordingly, it is, on this 31st day of August, 1944,

ORDERED, that the appeals herein be and the same are hereby dismissed.

Alfred E. Grisoll
Commissioner.