

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

BULLETIN 556

MARCH 5, 1943.

- 1. DISCIPLINARY PROCEEDINGS - PERMITTING BRAWL ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

HELEN WOOD McLEAN)
T/a BELLE MEAD INN)
Route 31)
Belle Mead, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-4, issued by the)
Township Committee of Hillsborough)
Township.)
-----)

Helen Wood McLean, Pro Se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charge:

"On the night of September 4, 1942, and on September 5, 1942, during the early morning, you allowed, permitted and suffered a disturbance in and upon the licensed premises, in violation of Rule 5 of State Regulations No. 20."

The Departmental file discloses that on the evening of September 4, 1942, and during the early morning hours of September 5, 1942, Paul A. Plant, defendant's bartender, became involved in an argument with a patron concerning the amount of change due the latter following the purchase of a glass of beer. The argument was protracted and eventually became overly heated. The bartender ultimately came from behind the bar, brandishing a pistol, and pointed it at the patron. Fortunately for all concerned, a waiter took the gun from the bartender and found it to be unloaded. The man behind the bar was described as "half drunk."

The licensee, who was present on the premises, apparently took no steps either to peaceably settle the argument or to prevent the bartender's use of the gun.

The belligerent employee was subsequently arrested, charged with being drunk, disorderly conduct and having a gun without a permit, in violation of the local ordinance. Following his guilty plea before the local recorder, he was ordered committed to the county jail for 206 days, but was released upon the payment of \$206.75.

The unfortunate argument offered no excuse for the use of force by the bartender or his display of the weapon. If customers become unduly argumentative or unruly, the proper procedure is to call the police. Neither licensees nor their employees, agents or servants may aggressively take the law into their own hands.

The unruly and improper conduct of the bartender, coupled with the failure of the licensee to take any action with respect thereto,

requires that I find the licensee guilty of permitting a brawl as charged. The license will be suspended for fifteen days, with a remission of five days for the guilty plea, making a total suspension of ten days.

Accordingly, it is, on this 23rd day of February, 1943,

ORDERED, that Plenary Retail Consumption License C-4, heretofore issued by the Township Committee of Hillsborough Township, to Helen Wood McLean, t/a Belle Mead Inn, for premises on Route 31, Belle Mead, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A.M. March 1, 1943, and terminating at 2:00 A. M. March 11, 1943.

ALFRED E. DRISCOLL
Commissioner.

2. APPELLATE DECISIONS - SCHIRMER v. NEWARK.

HEDWIG SCHIRMER,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS AND ORDER
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
)	
Respondent)	

Abe Silverstein, Esq., Attorney for Appellant.
Raymond Schroeder, Esq., by Louis A. Fast, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from respondent's action whereby it suspended for a period of ten days her plenary retail consumption license C-402 for premises located at 612 South Orange Avenue, Newark.

Respondent suspended the license for ten days after it had found appellant guilty of the following charge:

"1. That, on or about June 19, 1942, you allowed, permitted or suffered in or upon the licensed premises a disturbance, brawl or unnecessary noise, or allowed, permitted or suffered the licensed place of business to be conducted in such manner as to become a nuisance, in violation of Rule 5, State regulations 20."

The testimony of Helen Kuhl and Russell Kearny, who testified on behalf of respondent, was substantially as follows: They entered the licensed premises on June 19, 1942, at about 11:30 P. M., with another woman. While they were dancing, Helen Kuhl discovered that her change purse, which she had left on the bar, was missing. She asked Henry Hegemaier, the bartender, if he had seen her pocketbook and he walked away. Thereupon she started to go behind the bar to see if she could find the purse. The bartender, without warning, punched her twice in the stomach and once in the jaw. Kearny then went behind the bar to assist his friend, and was punched by the bartender and Leroy Evans, a patron in the licensed premises. Helen

Kuhl and Russell Kearny both testified that they then left the premises to see if perchance the purse had been left in Kearny's automobile; that they returned almost immediately; that the bartender and Evans again struck Kearny, who ran from the premises closely followed by both of his assailants; that, after he had reached the street, Kearny was again struck by the bartender and Evans.

A police officer of the City of Newark testified on behalf of respondent that, as he and a fellow officer were cruising in a radio car, they saw a large crowd in front of the tavern. When they arrived in front of the tavern, the fight had stopped and Evans came from the crowd and requested the policemen to take him to a hospital. Another police officer of the City of Newark who responded to a call sent to headquarters by the radio car said that, when he arrived, he saw that Kearny had been cut on the lip and over the eye, that Evans had been cut over the eye, and that thereafter both were taken by the police to the City Hospital.

On behalf of appellant, the version of the affair is entirely different. Evans testified that, when he arrived on the premises with his sister (Mrs. Lechleiter) and Mrs. Fraser, Kearny and Mrs. Kuhl were drinking beer and using abusive language; that Kearny and the two women who were with him then left the tavern, after characterizing it as a "joint." Evans says that, shortly thereafter, he went to the lavatory and, as he was leaving this room, Kearny came in the front door of the tavern like a "madman" and began to throw bottles and bowls at the bartender; that one of the bottles struck Evans, who thereupon chased Kearny to the street and struck him. The testimony of Evans, Mrs. Lechleiter, Mrs. Fraser and the bartender is in substantial agreement. However, I am inclined to believe the testimony by the respondent's witnesses rather than that given by the witnesses produced by appellant. The bartender denies that there was any argument about a purse which was alleged to have disappeared, but every other witness in the case testified that there was such an argument. Moreover, at the hearing below the bartender testified that, when the police arrived, he asked them to arrest Kearny, but this was denied by the police officers and thus casts a doubt upon all of the testimony given by the bartender herein. Nearly all of the witnesses stated that Mrs. Kuhl had been behind the bar. It may well be that she was struck by the bartender while Evans was in the lavatory. In any event, Kearny and Evans engaged in a brawl which, I believe, began on the licensed premises and was carried to the street. The bartender took no steps to prevent a brawl although he says that Kearny was abusive before the trouble started. Admittedly, the bartender did not call the police, although he says he tried to telephone to Police Headquarters.

I am satisfied from all the evidence that the bartender, who was the agent of the licensee, allowed and permitted a brawl and disturbance upon the licensed premises on the evening in question. Therefore, the action of respondent is affirmed.

Accordingly, it is, on this 24th day of February, 1943,

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

ORDERED, that the ten-day suspension heretofore imposed by respondent, and held in abeyance pending disposition of this appeal, is hereby restored, to commence at 2:45 A.M. March 1, 1943, and to terminate at 2:45 A. M. March 11, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN SOLIDS AND COLORING - PREVIOUS RECORD - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
 LOUIS SOLOW
 76 Kearney Avenue
 Jersey City, N. J.,
 Holder of Plenary Retail Consumption License C-168, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS AND ORDER

Louis Solow, Pro Se.
 Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded guilty to the charge of possessing illicit alcoholic beverages in violation of R. S. 33:1-50 of the Alcoholic Beverage Law.

On September 29, 1942 a Federal inspector tested forty-one bottles of the open stock of liquor at the defendant's licensed premises and seized two bottles which appeared to be unsatisfactory. One of the bottles was labeled "Four Roses A Blend of Straight Whiskies" and the other bottle was labeled "Three Feathers The Aristocrat Blended Whiskey." Upon subsequent analysis by the Federal chemist, the liquor in the Four Roses bottle was found to contain 525 grams of solids per hundred liters as against 204 grams ordinarily found in the genuine product of Frankfort Distilleries labeled as above. In addition, the Four Roses bottle was found by the chemist to contain 40% artificial coloring, whereas in an authentic bottle of the same brand no artificial coloring is present. The liquor in the Three Feathers bottle contained 334 grams of solids per hundred liters compared with 110 grams usually found in the genuine brand. Such unusual amounts of solids, plus the detection of artificial coloring in the straight whiskeys, warranted the conclusion of the Federal chemist that the bottles in question had been refilled with other liquor.

The defendant disclaimed any knowledge that anything was wrong with the whiskeys until seized by the Federal agent. For the illicit character of such "refills" and the fact that the licensee must be held strictly responsible for liquor in his possession, even though personally innocent of any tampering with the liquor, see Re Agostino, Bulletin 506, Item 8.

Since the circumstances surrounding the violation do not appear to be aggravated, I would, if this was the licensee's first offense, ordinarily suspend the license for ten days. However, this defendant has a previous record. In 1938 his license was suspended for seven days because of sale of alcoholic beverages on Election Day of that year. Again, in 1939, he received a three-day suspension for sales of alcoholic beverages on a Sunday during prohibited hours. In view of this previous record, I shall impose a penalty of twenty days for the instant violation.

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

ORDERED, that Plenary Retail Consumption License C-168, heretofore issued by the Board of Commissioners of the City of Jersey City to Louis Solow for premises 76 Kearney Avenue, Jersey City, be and the same is hereby suspended for a period of twenty (20) days, commencing March 2, 1943, at 2:00 A.M. and terminating March 22, 1943, at 2:00 A. M.

ALFRED E. DRISCOLL
Commissioner.

4. ELIGIBILITY - FACTS EXAMINED - CRIME OF ASSAULT WITH INTENT TO KILL INVOLVED MORAL TURPITUDE - APPLICANT HELD INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

February 25, 1943

Re: Case No. 482

Applicant herein seeks a ruling as to his eligibility to hold a license or to be employed in any business capacity by a licensee.

Our investigation discloses that, on November 24, 1941, applicant pleaded non vult in a Court of Quarter Sessions to two indictments: one charging him with the crime of assault with intent to kill, and the other charging him with carrying a concealed weapon. He was sentenced to pay a fine of \$200.00 on the first indictment, and to pay a fine of \$50.00 on the second indictment.

At the hearing herein applicant testified that he and another individual had an argument; that, during the course of this argument, the other individual struck him, whereupon applicant drew a gun and shot his assailant. The latter subsequently recovered from the effects of the wound.

Under the circumstances of this case, I believe that the crime of assault with intent to kill involved moral turpitude.
Re Case No. 372, Bulletin 455, Item 4.

It is recommended, therefore, that applicant be advised that he is not eligible to hold a liquor license or to be employed in any business capacity by a liquor licensee in the State of New Jersey.

Edward J. Dorton
Deputy Commissioner
and Counsel.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

5. MILITARY FORCES - SALE AND SHIPMENT OF ALCOHOLIC BEVERAGES HAVING ALCOHOLIC CONTENT IN EXCESS OF 3.2 PER CENTUM BY WEIGHT TO ARMY PERSONNEL BY LICENSED MANUFACTURERS, WHOLESALERS AND TRANSPORTERS AND BY NON-LICENSEES LOCATED OUTSIDE NEW JERSEY PROHIBITED.

NOTICE TO LICENSED MANUFACTURERS, WHOLESALERS AND TRANSPORTERS.

As a result of instructions of the Secretary of War, (section VI, Circular No. 29, War Department, January 25, 1943) prohibiting "the sale of or dealing in beer, wine or other liquors containing an alcoholic content in excess of 3.2 per centum by weight by any person in any exchange or canteen or Army transport or upon any premises used for military purposes by the United States, including officers' clubs or messes", there seems to be some confusion among New Jersey licensees as to their status in respect to sales and shipments of alcoholic beverages to persons located upon premises used for military purposes by the Federal Government.

The Alcoholic Beverage Law (R. S. 33:1-11.1) provides that:

"The holders of any valid and unrevoked class A or class B license, as defined in Sections 33:1-10 and 33:1-11 of the Revised Statutes, except the holder of a bonded warehouse bottling license, shall be entitled, subject to rules and regulations, to distribute and sell alcoholic beverages within the limits of their licenses to any voluntary unincorporated organization of army or navy personnel operating a place for the sale of goods pursuant to regulations promulgated by the secretary of war or the secretary of the navy, or, if the consent of the state military board shall have first been obtained, under the state national guard regulations."

In view of the above and for the purpose of cooperating with the aforesaid instructions of the Secretary of War, notice is hereby given that, effective March 1, 1943, licensed New Jersey manufacturers and wholesalers may not sell or ship and licensed transporters may not transport alcoholic beverages having an alcoholic content in excess of 3.2 per centum by weight to any person at any exchange or canteen or Army transport or upon any premises used for military purposes by the United States, including officers' clubs or messes. Likewise, non-licensees located outside New Jersey may not transport or cause to be transported alcoholic beverages into this State contrary to the tenor of the aforesaid notice.

Violation of the foregoing is cause for suspension or revocation of license and seizure of any vehicle and the alcoholic beverages thereon.

Dated: February 25, 1943.

ALFRED E. DRISCOLL
Commissioner.

*See New Regulation
Chapter 26 Laws of 1950
Effective April 11, 1950.*

6. 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)

JOHN A. GROSS CORPORATION)
T/a GROSS BAR & GRILL)
4404 Dell Avenue)
North Bergen, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen.)
-----)

John A. Gross Corporation, by John Gross, Jr., President.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charge:

"On Sunday, November 15, 1942, between the hours of 4:00 A.M. and 12:00 noon, to wit, from about 10:30 A. M. to 11:40 A.M., your predecessor in interest, John Gross, then the holder of the current plenary retail consumption license C-7 for premises 4404 Dell Avenue, North Bergen, N. J., sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and allowed the consumption of alcoholic beverages on the licensed premises, in violation of Section 9 of an ordinance adopted on December 4, 1940 by the Board of Commissioners of the Township of North Bergen, and for which violation you are answerable under Rule 2 of State Regulations No. 15 as the present holder of the said license."

The file discloses that two investigators of this Department were in the vicinity of the defendant's premises at about nine o'clock on the morning of Sunday, November 15, 1942 and saw several men enter the tavern through a side rear door. One of the investigators approached the building and found several men inscribing the names of soldiers on a large honor roll erected next to the tavern. After talking with them for a while, he followed one of the men as he entered the tavern by the side door and proceeded to the bar where John Gross, Jr., the bartender, was serving beer and whiskey to seven men and two women seated at the bar. The investigator ordered a Carstairs Whiskey and two beers which were served to him and the man with whom he entered. The time was then about 10:30 A. M. Later he was served another beer by John Gross, Sr., who had replaced his son as bartender. In the meantime, the other investigator entered and was also served a beer by John Gross, Sr. The father and son, in signed statements, admitted the sale and service of such alcoholic beverages prior to 12:00 o'clock noon, which they both knew was the opening hour for Sundays.

As to penalty: There is no record of any prior conviction. John Gross, Jr. pleaded in mitigation that the tavern was opened in response to the urgent pleas of certain of their patrons, members of the John A. Gross Association organized in honor of his father, who

were dedicating the honor roll which they had erected for their friends in the armed forces. The liquor laws must be enforced in war as well as in peace, and it would be a dangerous precedent for this Department to countenance violations on patriotic occasions, however commendable they may be. I shall suspend defendant's license for fifteen days, which is the minimum penalty for selling during prohibited hours. Re Disbrow, Bulletin 540, Item 3. Five days of said suspension will be remitted because of the guilty plea, thus reducing the suspension to ten days.

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

ORDERED, that Plenary Retail Consumption License C-7, heretofore transferred to John A. Gross Corporation, t/a Gross Bar & Grill, by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen, for premises at 4404 Dell Avenue, North Bergen, be and the same is hereby suspended for a period of ten (10) days, commencing March 2, 1943, at 3:00 A.M., and terminating March 12, 1943, at 3:00 A. M.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO A MINOR IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

ZENAS PENLAND)
T/a THE PENLAND)
E/S Bridge Street)
Pemberton Township)
P. O. Browns Mills, N. J.,)

CONCLUSIONS
AND ORDER

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

Robert W. Criscuolo, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded not guilty to charges alleging that, on August 18 and September 9, 1942, he sold, served and delivered alcoholic beverages to a minor in violation of R. S. 33:1-77 and also Rule 1 of State Regulations No. 20.

At the outset, I am confronted by the question whether it sufficiently appears from the evidence that Mary Agnes N----, the alleged minor, was under twenty-one years of age on August 18, 1942.

The only evidence of Mary Agnes N----'s age comes from her own lips. She testified that her mother told her some six or seven years ago that she was born on March 23, 1922. However, doubt is cast upon the reliability of this testimony by the fact that Mary also testified

that her mother told her she was born in Lackawanna County, Ohio, whereas in fact there is no such county in that State. She says that she does not know the particular place where she was born, and hence it is impossible to obtain any record of her birth. Moreover, she professed to have no knowledge of the place or other details concerning her recent marriage, and thus shut off any possibility of checking whether her license application or other documents concerning her marriage disclose her age. Although she may be under twenty-one years of age, nevertheless, from her outward appearance at the hearing, held some two months after the violation is alleged to have occurred, it would be as reasonable to conclude that she was over twenty-one years of age as it would be to conclude that she was a minor.

The unsupported testimony of an alleged minor may, under normal circumstances, of itself be sufficient to form the basis of a finding that such person was under twenty-one years of age at the time of the offense. Where the very appearance of the minor confirms his or her testimony concerning age, it is clear that the licensee can have no valid protest against such finding. However, it is an entirely different matter in a case where, as here, the appearance of the minor is of no help in determining age, and where, even according to the minor, she lacked only a few months of being twenty-one years of age. In such a case it would be manifestly unjust to find the licensee guilty unless the minor's testimony was clear-cut, convincing, and appeared to be based upon a solid foundation.

Mary Agnes N---'s testimony falls far short of meeting these requirements. Her character is such as to cast a doubt upon her veracity. Moreover, if she can be mistaken in her recollection as to her mother's statement to her concerning the state and county where she was born, she may likewise be mistaken in her recollection of what her mother told her was the date of her birth. In fairness, a licensee should not be convicted on such slim evidence.

I therefore conclude that the Department has not sustained the burden of proving that Mary Agnes N--- is under twenty-one years of age and that, in consequence, these proceedings must be dismissed. Cf. Re Lustbader & Co., Bulletin 432, Item 7.

Accordingly, review of the evidence, in order to determine whether or not Mary Agnes N--- was served with alcoholic beverages on the dates in question, will serve no purpose.

However, it may not be amiss to point out to the licensee that he would be well advised to take more adequate precautions in the future so as to avoid the service of alcoholic beverages to persons of doubtful age. The next time he may not escape because of sheer inability to prove that which is strongly suspected.

Accordingly, it is, on this 2nd day of March, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

8. ACTIVITY REPORT FOR FEBRUARY, 1943

To: Alfred E. Driscoll, Commissioner

<u>APRESTS:</u>	Licensees and employees - - - - -	4	Bootleggers - - - - -	9	
	Total number of persons arrested - - - - -				13
<u>SEIZURES:</u>	Stillts - 1 to 50 gallons daily capacity- - - - -				1
	50 gallons and more daily capacity - - - - -				0
	Total number of stillts seized- - - - -				1
	Mash - gallons - - - - -				0
	Motor vehicles - Trucks- - - - -				0
	Passenger cars- - - - -				1
	Total number of motor vehicles seized- - - - -				1
	Beverage alcohol - gallons - - - - -				0
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons- - - - -				8.13
	Wine - gallons - - - - -				148.67
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons- - - - -				.79
<u>RETAIL LICENSEES:</u>					
	Number of premises inspected - - - - -				1,797
	Total number of bottles gauged - - - - -				12,736
	Total number of premises where violations were found - - - - -				106
	Number and type of violations found:				
	Illicit (bootleg) liquor - 22 "Fronts" (concealed ownership) - - - - -				6
	Gambling devices - - - - - 1 Improper beer tap markers- - - - -				0
	Prohibited signs - - - - - 9 Stock disposal permits necessary - - - - -				7
	Unqualified employees- - - - - 84 Other types of violations- - - - -				5
<u>MILITARY AREA PATROL INSPECTIONS</u>					448
<u>STATE LICENSEES:</u>					
	Premises inspected- - - - -				102
	License applications investigated - - - - -				11
<u>COMPLAINTS:</u>					
	Investigated, reviewed and closed - - - - -				471
	Investigation assigned, not yet completed - - - - -				334
<u>LABORATORY:</u>					
	Analyses made - - - - -				121
	"Shake-up" cases (alcohol, water and artificial coloring) - - - - -				11
	Liquor found to be not genuine as labeled - - - - -				8
<u>IDENTIFICATION BUREAU:</u>					
	Criminal fingerprint identifications made - - - - -				20
	Persons fingerprinted for non-criminal purposes - - - - -				85
	Identification contacts with other enforcement agencies - - - - -				102
	Motor vehicle identifications via N. J. State Police Teletype - - - - -				2
<u>DISCIPLINARY PROCEEDINGS:</u>					
	Cases transmitted to municipalities - - - - -				15
	Cases instituted at Department- - - - -				20
	Cancellation proceedings- - - - -				2
<u>HEARINGS HELD AT DEPARTMENT:</u>					
	Number of hearings held - - - - -				41
	Appeals- - - - - 9		Seizures - - - - -		3
	Disciplinary proceedings - 19		Objection to issuance of		
	Eligibility- - - - - 5		State license- - - - -		1
			Tax revocation - - - - -		4
<u>PERMITS ISSUED:</u>					
	Total number of permits issued - - - - -				631
	Unqualified employees- - - - -				301
	Solicitors - - - - -				41
	Social affairs - - - - -				82
	Home manufacture of wine - - - - -				36
	Disposal of alcoholic beverages- - - - -				42
	Miscellaneous permits- - - - -				129

Respectfully submitted,
 Sydney B. White
 Chief Inspector.

9. DISCIPLINARY PROCEEDINGS - PERMITTING ALIEN, HOLDER OF EMPLOYMENT PERMIT, TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 11 - 5 DAYS' SUSPENSTON, LESS 2 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against JAMES CINDRARIO 1105-07 Bergenline Avenue Union City, N. J.,

Holder of Plenary Retail Consumption License C-45, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS AND ORDER

In the Matter of Disciplinary Proceedings against FEDERICO CATTANEO 1107 Bergenline Avenue Union City, N. J.,

Holder of Employment Permit No. 1295, issued by the State Commissioner of Alcoholic Beverage Control.

James Cindrario, Pro Se. Federico Cattaneo, Pro Se. Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded guilty to the charge of permitting his employee, Federico Cattaneo, who holds an employment permit for a person disqualified by reason of non-citizenship, to sell and serve alcoholic beverages in violation of R. S. 33:1-26 and also in violation of Rule 3 of State Regulations No. 11.

Defendant-permittee has pleaded guilty to the charge of selling alcoholic beverages contrary to the conditions upon which his employment permit was issued.

Both proceedings will be treated and disposed of herein since they arise out of the same transaction.

On January 26, 1943 two investigators called at the defendant's tavern, where they found one customer at the bar and Cattaneo acting as bartender. Neither the defendant-licensee nor any other employee was present. The investigators ordered and were served beer and wine, after which they secured from Cattaneo a signed statement admitting that he had served and sold alcoholic beverages, was not a citizen and that he held an alien's employment permit. The permit in question did not authorize him to sell or serve alcoholic beverages.

As to penalty: Since no previous record appears against either licensee or permittee, the usual penalties of five days and thirty days, respectively, will be imposed. Two days of the licensee's suspension and five days of the permittee's suspension will be remitted because of the guilty plea. Re Penguin Club Inn, Inc., Bulletin 555, Item 1.

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

ORDERED, that Plenary Retail Consumption License C-45, heretofore issued by the Board of Commissioners of the City of Union City to James Cindrario for premises 1105-07 Bergenline Avenue, Union City, be and the same is hereby suspended for a period of three (3) days, commencing on March 3, 1943, at 3:00 A.M., and concluding on March 6, 1943, at 3:00 A.M.; and it is further

ORDERED, that Employment Permit No. 1295, heretofore issued to Federico Cattaneo by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, commencing on March 3, 1943, at 3:00 A. M., and concluding on March 28, 1943, at 3:00 A. M.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - PENDERGAST v. UNION CITY.

KATHERINE PENDERGAST,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE)
 CITY OF UNION CITY,)
)
 Respondent)
 - - - - -)

ON APPEAL
CONCLUSIONS AND ORDER

Louis Gluck, Esq., Attorney for Appellant.
James C. Agnew, Esq., by Cyril J. McCauley, Esq., Attorney
for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to grant a transfer of a plenary retail consumption license to appellant for premises 4615 Bergenline Avenue, Union City.

Appellant had previously held a consumption license in the Town of West New York. On April 1, 1941, the latter license was suspended for ten days, with remission of five days because of her guilty plea, for being open and selling alcoholic beverages during prohibited hours. Re Pendergast, Bulletin 452, Item 8. On this occasion A.B.C. agents found twenty-two patrons drinking after the closing hour, when "the outside lights of the licensed premises were extinguished and the front door locked."

On April 28, 1942 the local issuing authority of West New York suspended appellant's license for twenty days because of "violation of curfew hours and other charges." These "other charges" involved a woman patron who stole the sum of \$100.00 from a male customer and then took him to a hotel for the purpose of sexual intercourse. Although denied by appellant, there is ample testimony from which respondent could properly conclude that appellant knew that the woman patron had taken the money from the man and that appellant arranged for the couple to be taken to a hotel for immoral purposes.

The foregoing would be sufficient to warrant respondent's conclusion that appellant is not a fit person to hold a liquor license in its municipality.

In addition, however, appellant falsified her present application for transfer by answering, in the negative, Question 41 therein, which reads, "Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license in New Jersey which was surrendered, suspended or revoked?", and also by answering "Yes - April 1941 - 5 Days (Curfew)" to Question 34 therein, which reads, "Have you or has any person mentioned in this application ever been convicted of or committed any violation of the Alcoholic Beverage Control Act (P. L. 1935, c. 436 as amended and supplemented) or R. S. Title 33, c. 1?.....If so, state details as to each violation, giving date and nature thereof and if conviction was entered, the court in which sentence was imposed." Her explanation with respect to her answer to Question 41 is that she "didn't read it thoroughly." As to Question 34, she explained that she interpreted that question as calling only for proceedings brought directly before this Department and, since the charges involved in her second violation were heard before the local issuing authority, she omitted this violation from the answer.

There is neither cause nor color in the question asked for any such self-favoring exemption. The inquiry is simple and makes no distinction between suspensions imposed directly by the Commissioner or by the local issuing authority. Respondent's contention that appellant's failure to disclose her entire record of previous violations in the application was a deliberate evasion of the true facts would appear to be well-founded.

Respondent's conclusion that, because of the circumstances set forth above, appellant is not a fit person to receive a liquor license, cannot be said to be unreasonable or arbitrary. Its action in denying appellant's application for transfer of the license in question is, therefore, affirmed.

Accordingly, it is, on this 2nd day of March, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

11. APPELLATE DECISIONS - CINO AND MESSINA v. NEWARK.

ORTENZIO CINO and THOMAS)
MESSINA, t/a "T" BAR AND)
GRILL,)

Appellants,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Harold Simandl, Esq., Attorney for Appellants.
Raymond Schroeder, Esq., by Louis A. Fast, Esq., Attorney
for Respondent.

BY THE COMMISSIONER:

Respondent suspended for a period of twenty-five days appellants' license C-328 for premises at 257 Market Street, Newark. The charges of which appellants had been found guilty alleged, in substance, that, on October 4, 1942, they sold alcoholic beverages to, and permitted the consumption of alcoholic beverages by, Leonard Zaleski and John Joseph Makowski, both of whom were minors. Appellants filed an appeal from said action and an order was entered herein staying said suspension pending determination of the appeal.

At the time of the alleged violation Leonard Zaleski was nineteen years and one month of age. John Makowski was twenty years and eleven months of age. Both of these young men were in a highly intoxicated condition when, during the early morning hours of October 5, 1942, they were arrested by members of the Newark Police on Broad Street, a considerable distance from appellants' premises. The closely contested question is whether or not they had been served alcoholic beverages in appellants' premises on the evening prior to their arrest.

It appears from the testimony taken on this appeal that, on October 6, 1942, Howard Murray, appellants' bartender, was called to Police Headquarters, and that the young men were then asked if they could identify him as the bartender who had sold the drinks. Zaleski was a little hesitant at first, and stated that he was not the man, but thereafter he identified Murray as the bartender who had served him on October 4th. Makowski identified Murray as the man who had served him. In a statement given to the Newark Police immediately after this identification, Howard Murray stated that he had never before seen either of the two young men.

The case below was based almost entirely upon the evidence given before the local Board by these two young men. Zaleski then testified that, on the 4th of October, he met Makowski on Market Street, Newark, and went with him to appellants' premises, where he had "quite a few" drinks of whiskey between the hours of 7 P.M. and 9 P.M. At the hearing below he identified Howard Murray as the bartender who had made the sales. However, he also testified, with some inconsistency and apparent confusion, as follows:

"Q. I want to find out from you whether there is any question about your being served there.

A. I don't remember."

At said hearing he also denied that he was intoxicated, or had had any drinks at home, prior to the time he went to appellants' premises. He further testified that, after leaving appellants' premises, he walked around for about an hour but could not remember what he did between 10 P.M. and 12:45 A.M. on the following morning when he was arrested.

John Makowski testified at the hearing below that he was sober when he met his friend Zaleski on Market Street; that they entered appellants' premises at about 7 P.M. and that he purchased a number of drinks of whiskey from the bartender, Howard Murray. Makowski also testified at said hearing that they remained in appellants' premises two or three hours.

At the time the appeal herein was heard, both Zaleski and Makowski had been inducted into the armed services and could not be produced. Over objections of appellants' counsel, a verified transcript of their testimony taken at the hearing below was admitted into evidence. For the reasons stated in Starr v. Clementon, Bulletin 381, Item 2, I shall consider said transcript of their evidence in reaching a conclusion herein.

However, at the hearing herein appellants produced affidavits executed on October 26, 1942 by Leonard Zaleski and John Makowski. These affidavits were executed subsequent to the date of the hearing below. In the ordinary case I would not consider the affidavits because the testimony in all cases should be given under oath and subject to cross-examination. However, these affidavits affect the credibility of the only witnesses produced to establish appellants' guilt. These witnesses are not available because they are in the military service and their whereabouts are unknown. Since, in accordance with the provisions of Rule 14 of State Regulations No. 14, I have relaxed the rules to consider the transcript of their testimony given below, I believe that the interests of justice require that I should also consider the contents of these affidavits in reaching a conclusion. Additional evidence may be presented on appeal since this is a trial de novo. Ritter v. North Bergen, Bulletin 546, Item 2. My ruling as to the admissibility of these affidavits is confined strictly to the present case and is not intended to vary otherwise the usual rule applying to evidence given in appeal cases or disciplinary proceedings.

In his affidavit Leonard Zaleski says:

"On this day, I had a few drinks before I met Joe. I had the drinks in my room. I did not tell this to anybody before, because no one asked me. When I met Joe I thought that he had a couple of shots also. I was feeling pretty good and we took a walk and later I think we went to a saloon somewhere along Market Street. When my case came up I said the T Bar and I also said some man who was shown to me in the police station was the bartender. I have been in jail a couple of weeks and wish to say now that I could have been mistaken about what I told the police captain. I was so drunk that I got into a fight in some hotel and was locked up in jail. I am anxious to set things straight. When I picked out a man whose name I am told is Murray and who worked in the T. Bar, I did so because I believed what they told me. The truth is I am not absolutely sure where I drank on Market Street or what the man who sold me drinks looked like. Then we went in front of some men about the case and because I said before where I got the liquor I repeated the story and signed some papers they gave me that had the same story in it. I wanted to tell them I was not certain but I was scared. I was never locked up before and the whole thing upset me so that I could not think right. I did not get over the drunk for several days and then I was afraid to say that what I said to the police and put down

on paper was something I wasn't just certain about. The only thing I want to get straight is that what I said and did was that I was not sure. My mind was foggy when it all happened."

In his affidavit John Joseph Makowski says:

"When I met Leonard, I came directly from my room at 24 Court Street, Newark, where I am living. Before I left my room, I took a couple of drinks of whiskey and then went to meet Leonard. Later that day, I was arrested for assault and battery on a bartender up at the Continental Hotel and later locked up in jail. At the time of my arrest, I was very drunk and I cannot think clearly just what happened that night. I remember being in a saloon on Market Street but what I saw or talked about is sort of hazy in my mind. Frankly, I don't remember much of anything that happened. The next day, while in jail, I was brought into the captain's office and there were a couple of men. I was asked by somebody present if a certain man there was the bartender who sold me drinks. I said he was, although I was not a hundred per cent sure. I was so nervous and shaky from the drunk I had been on that my mind was sort of up-set. Because, I had told them that the man shown to me was the bartender, I repeated the same story later on before some board. I did this because of what I said before. I now want to say, that from the time I took some drinks before I met Leonard, I am not exactly sure of just what happened. I have had time to think this all over and I now want to say that I am not positive I was right in picking the bartender out as the man who sold me drinks. I could have been mistaken. All I know is that I got drunk, where or how, I am not sure."

I have examined and minutely reexamined all of the oral testimony below and on appeal, the affidavits produced on appeal, and the statements made prior to the hearing below. With especial and emphatic attention I have compared the testimony of Zaleski and Makowski, under both direct and cross-examination below, with their affidavits produced on appeal. Those two young men may be taken to have been more nearly disinterested than any other witnesses involved in the proceedings. Their oral testimony below indicates, rather obviously, their mental shortcomings. Despite that fact, or - more accurately - because of it, I am impressed with the very probable truthfulness of their oral testimony that they had been sold alcoholic beverages by appellants and been permitted to consume alcoholic beverages on appellants' premises.

I believe that the finding of the local Board, upon the evidence before it, was correct; and that the oral testimony on appeal fails to impugn, adequately, the testimony below. Further, I believe, under the peculiar circumstances of this case, that the content of the affidavits adduced herein fails to cast creditable doubt upon appellants' guilt. It is my conclusion that the action of respondent be affirmed.

The penalty imposed herein does not appear to be unreasonable or excessive under the circumstances of this case. Creston v. Belleville, Bulletin 544, Item 2.

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

Accordingly, it is, on this 3rd day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-328, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ortenzio Cino and Thomas Messina, t/a "T" Bar and Grill, for premises at 257 Market Street, Newark, be and the same is hereby suspended for twenty-five days, commencing at 2:45 A.M. March 8, 1943, and terminating at 2:45 A.M. April 2, 1943.