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

BULLETIN 617 MAY 4, 1944

TABLE OF CONTENTS

ITEM

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

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1. NEW LEGISLATION - LICENSES - R. S. 33:1-96 AMENDED - TERM "RENEWAL LICENSE" CLARIFIED.

Assembly Bill No. 123 was approved by Governor Edge on April 20, 1944, and thereupon became Chapter 187, P. L. 1944.

It was effective immediately.

"An Act to amend 'An act concerning the renewal of alcoholic beverage licenses, and supplementing chapter one of Title 33 of the Revised Statutes,' approved August second, one thousand nine hundred and thirty-nine (P. L. 1939, c. 281).

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section one of the act of which this act is amendatory is amended to read as follows:

"1. Any license for a new license term, which is issued to replace a license which expired on the last day of the license term which immediately preceded the commencement of said new license term or which is issued to replace a license which will expire on the last day of the license term which immediately precedes the commencement of said new license term shall be deemed to be a renewal of the expired or expiring license; PROVIDED, that said license is of the same class and type as the expired or expiring license, covers the same licensed premises, is issued to the holder of the expired or expiring license and is issued pursuant to an application therefor which shall have been filed with the proper issuing authority prior to the commencement of said new license term or not later than thirty days after the commencement thereof. Licenses issued otherwise than as above herein provided shall be deemed to be new licenses.

"2. This act shall take effect immediately."

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2. MORAL TURPITUDE - CRIME OF RECEIVING STOLEN GOODS INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2. Case No. 332.	CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

Pursuant to the provisions of R. S. 33:1-31.2, petitioner herein, an Italian national, seeks to have any disqualification removed that may exist by reason of his having been convicted of crime.

Petitioner, in 1908, when 18 years of age, served six months on Blackwell's Island, New York. The record does not disclose the nature of the offense. In 1912, petitioner was convicted of the crime of robbery and was incarcerated in a reformatory of New York State for a period of sixteen months.

In 1929, petitioner received a suspended sentence on an assault and battery charge and, in 1931, he was sentenced to State's prison for two years after being convicted of the crime of receiving stolen goods. He was released from said penal institution on May 22, 1933. Since that time petitioner apparently has had no further encounters with the law.

Inasmuch as the petitioner's last conviction for receiving stolen goods is a crime involving moral turpitude, it is unnecessary to express an opinion as to his prior crimes at this time.

Two men and one woman who have known petitioner for five or more years appeared at the hearing in the instant matter and were unanimous in their opinions that petitioner bears a reputation in his community as being a law-abiding person. There is nothing to indicate anything to the contrary, especially during the five years last past. Hence, even though petitioner's record during years long past has been bad, I am satisfied that he has made a conscientious and successful attempt to live a law-abiding life since his discharge from State's prison in 1933. I shall, therefore, lift any disqualification that may exist because I believe his association with the alcoholic beverage industry will not be detrimental to the interest of the public.

Accordingly, it is, on this 27th day of April, 1944,

ORDERED that petitioner's statutory disqualification because of conviction of the crimes set forth herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2. Because of his alienage, petitioner is ineligible to hold a license, but if proper application be made, employment permit to work on licensed premises may issue.

ALFRED E. DRISCOLL,
Commissioner

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - CHARGE OF PERMITTING FEMALE EMPLOYEE TO ACCEPT BEVERAGES AT THE EXPENSE OF A CUSTOMER, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20, DISMISSED - 40 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against EUGENE N. KNOBLAUCH, t/a THREE PINES INN, S/E cor. Black Horse Pike and Lakeland Road, Grenloch, Gloucester Township, P.O. Blackwood, RFD, New Jersey, Holder of Plenary Retail Consumption License C-3 issued by the Township Committee of Gloucester Township.	CONCLUSIONS AND ORDER

Moe A. Joseph, Esq., Attorney for Defendant-licensee.
Milton H. Cooper, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee was served with charges alleging in substance:

(1) and (2): Violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20, in that defendant sold and served alcoholic beverages to three minors.

(3): Violation of Rule 1 of State Regulations No. 20, in that defendant sold and served alcoholic beverages to three persons who were actually or apparently intoxicated.

(4): Violation of Rule 22 of State Regulations No. 20, in that defendant permitted a female employee to accept beverages at the expense of a customer.

At the hearing defendant pleaded non vult to charges (1) and (2), and not guilty to charges (3) and (4).

As to charges (1) and (2): The charges were preferred after two ABC agents reported that, during the late night of May 28 and early morning of May 29, 1943, they had observed Edward ---, Jane ---, and Joseph --- served alcoholic beverages in the licensed premises. Edward --- was eighteen years of age, Jane --- was twenty years of age, and Joseph --- seventeen years of age.

The usual penalty for sale of alcoholic beverages to minors, where there are no aggravating circumstances, is ten days. Re Kurtz, Bulletin 585, Item 5. Although the licensee has no previous record, the sale of alcoholic beverages to three minors, one of whom was seventeen years of age, is an aggravating factor. Hence, I shall increase the penalty to fifteen days. Five days will be remitted in view of the non vult plea, making a net suspension of ten days for these violations.

As to charge (3): The testimony of two ABC agents discloses that about 10:10 P.M. on May 28, 1943, they entered the defendant's tavern and remained on the licensed premises until 1:15 A.M. on May 29, 1943. They visited the barroom and also the adjoining dining room where they observed a floor show.

While in the barroom the agents observed an unidentified man roaming around the premises carrying a glass of beer. His speech was incoherent, he swayed when walking, and admitted in the presence of the agents that he was drunk. The agents observed the licensee serve the man beer at the bar on two occasions. On another occasion he was served a drink of beer at the bar by Joanna Marshall, an employee of the licensee. The man was in the tavern at the time the agents left.

In the dining room the agents observed two patrons - Frank Steinberg and Harry Hardy - seated at a table with an unidentified woman. Steinberg was apparently intoxicated. His voice was mumbling, his breath alcoholic, he staggered as he walked and, when standing, had to support himself by leaning on the table. On several occasions he interfered with the show until he was taken to his table by the wife of the licensee and compelled to remain seated. The agents observed that Hardy was swaying when on several occasions he left the table and visited the barroom. Steinberg and Hardy were each served several glasses of beer by an employee of the licensee during the time they were seated in the dining room. As the agents were leaving the tavern accompanied by the licensee to investigate the ages of the aforesaid minors, they spoke to the licensee about the intoxicated persons observed on the premises and the licensee instructed someone at the bar "to call a cab and get rid of those two men."

The evidence presented on behalf of the defendant consisted of the testimony of the licensee, one of his employees, a county policeman, and two patrons, all of whom were on the premises at various times during the night in question. Their testimony is too voluminous to be detailed herein. It is not persuasive. Nor does it rebut the affirmative testimony of the agents. It is perhaps significant that, while both Steinberg and Hardy were present during the entire hearing, neither of them was called by the defendant to deny the testimony of the ABC agents. After a careful study of all the evidence, I find the defendant guilty as to charge (3).

The usual penalty for sale of alcoholic beverages to an intoxicated civilian, where there are no aggravating circumstances, is a suspension of twenty days. Re Marinaccio, Bulletin 583, Item 5. However, in the instant case the evidence discloses that Steinberg and Hardy were employed as attendants at a county hospital located about three-quarters of a mile from the licensed premises. Apparently the excessive drinking of alcoholic beverages by the attendants created a serious problem for the hospital authorities, as the evidence shows a county policeman was assigned to the institution for the purpose of "checking" the attendants. The licensee admitted Steinberg and Hardy were regular patrons who visited his tavern two or three nights a week and sometimes in the afternoons. He testified Steinberg had been in the tavern "hundreds of times" and that he knew both men were attendants at the hospital. There is no doubt in my mind that the manner in which the licensee conducted his tavern contributed to the unfortunate problem which confronted the hospital authorities. The reprehensible conduct of the licensee, in permitting employees entrusted with the care and supervision of unfortunate patients, to become intoxicated is an aggravating factor which warrants a stern penalty. I shall suspend the license for a period of thirty days for this violation.

I admonish the licensee that, if there is a recurrence of the violation of sale of alcoholic beverages to intoxicated employees of the hospital in question, I may revoke the license.

As to charge (4): The testimony offered by the Department and the defendant is irreconcilable. On the record presented, I am inclined to give the defendant the benefit of the doubt that exists in my mind as to what actually occurred. Charge (4) will be dismissed.

Accordingly, it is, on this 28th day of April, 1944,

ORDERED that plenary retail consumption license C-3, issued by the Township Committee of Gloucester Township to Eugene N. Knoblauch, t/a Three Pines Inn, for premises at S/E cor. Black Horse Pike and Lakeland Road, Grenloch, Gloucester Township, be and the same is hereby suspended for forty (40) days commencing at 2:00 A.M. May 5, 1944, and terminating at 2:00 A.M. June 14, 1944.

ALFRED E. DRISCOLL,
Commissioner

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against G. & G. LIQUOR CO., INC., 529A Broadway, Bayonne, New Jersey, Holder of Plenary Retail Distribution License D-8, for fiscal year 1942-43, and now holder of Plenary Retail Distribution License D-8, for fiscal year 1943-44, both issued by the Board of Commissioners of the City of Bayonne.	)	CONCLUSIONS AND ORDER

Leon Miroff, Esq., Attorney for Defendant-licensee.
Milton H. Cooper, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee, a corporation, through its officers, pleads not guilty to the following charges:

"1. During the late evening of June 18, 1943, you sold alcoholic beverages to the following minors, namely, Charles ---, Dale ---, and Joseph ---, members of the United States Navy, in violation of R. S. 33:1-77.

"2. On the date and at the time aforesaid, you sold served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to the following persons under the age of twenty-one (21) years, namely, Charles ---, Dale --- and Joseph ---, members of the United States Navy, in violation of Rule 1 of State Regulations No. 20."

United States Seamen Joseph ---, and Charles ---, both 19 years of age, testified that they visited the licensed premises of defendant, on June 18, 1943, at which time they purchased a bottle of Calvert Special Whiskey. This whiskey, according to the testimony of both youths, was consumed during their attendance at a nearby theatre. Charles ---, who was subsequently taken to a hospital following a melee in which he was involved, testified that he had no recollection of what occurred after he drank some of the whiskey. His hospital record, however, definitely establishes the date appearing in the charges.

A Navy lieutenant testified that he accompanied the youths to the liquor establishment of defendant-licensee at the time identification of the place was made. At that time, the naval lieutenant states, a woman was in charge of the store. The youths claimed that the liquor had been sold to them by a man.

On June 23, 1943, a local detective testified that he was present when Joseph --- immediately identified Morris Shapiro, president of the defendant corporation, as the man who sold the whiskey to them on the day in question. Two A.B.C. investigators corroborated the detective's testimony. At the time of the hearing, both Joseph --- and Charles --- again identified Morris Shapiro as the person who waited on them at the time the liquor was purchased.

Morris Shapiro, president of defendant-corporation, testifying on its behalf, stated that he was not at the store at the time alleged because of illness. This statement by Mr. Shapiro was corroborated by two witnesses who conduct places of business in the immediate vicinity.

After carefully considering all of the testimony adduced at the hearing, I find that Seamen Joseph --- and Charles --- purchased whiskey as charged. I am also convinced that the purchase was made from Morris Shapiro, president of defendant-corporation. The testimony of the two minors was unmistakably clear and truthful with reference to the obtaining of the whiskey from the defendant-licensee. Joseph ---, without the slightest hesitation, identified the licensed premises for both the local detectives and the departmental investigators. Both youths identified Mr. Shapiro at the hearing and Joseph --- had immediately identified him at his place of business on June 23, 1943, according to the testimony of Detective Meaney.

The testimony of the naval lieutenant, standing alone, relative to the age of one Seaman Dale ---, an alleged minor who was named in the charges but was transferred to sea duty prior to the hearing, is not adequate to substantiate the age of the seaman. The charge as to Dale --- will therefore be dismissed. As to Joseph --- and Charles ---, both testified as to their respective ages. A person is competent to testify as to his own age, irrespective of the consideration that the fact of age is one of the essentials necessary to be established in order to constitute the violation charged. Cf. State v. Huggins, 83 N.J.L. 43; State v. Girone, 91 N.J.L. 498. The birth certificate of Joseph --- was introduced into evidence. It corroborates his testimony as to the date of birth. I therefore find defendant-licensee guilty of the violations charged in that alcoholic beverages were sold to Joseph --- and Charles ---, minors, respectively.

The minimum penalty imposed for a sale to minors is ten days where no aggravating circumstances are involved. See Re Abrams, Bulletin 562, Item 8. Defendant-licensee has no previous adjudicated record. I will therefore suspend the license of defendant for a period of ten days.

Accordingly, it is, on this 28th day of April, 1944,

ORDERED that Plenary Retail Distribution License D-8, for the current fiscal year, issued by the Board of Commissioners of the City of Bayonne to G. & G. Liquor Co., Inc. for premises 529A Broadway, Bayonne, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. May 3, 1944, and terminating at 2:00 A.M. May 13, 1944.

ALFRED E. DRISCOLL,
Commissioner

5. DISCIPLINARY PROCEEDINGS - CHARGE THAT RETAIL LICENSEE SOLD ALCOHOLIC BEVERAGES FOR RESALE CONTRARY TO TERMS OF LICENSE, IN VIOLATION OF R. S. 33:1-2, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against METROPOLITAN LIQUOR CORP., t/a Bettinger's, 50 Journal Square, Jersey City, New Jersey, Holder of Plenary Retail Distribution License D-94, issued by the Board of Commissioners of the City of Jersey City.	CONCLUSIONS AND ORDER

John J. Meehan, Esq., and Charles Hershenstein, Esq., Attorneys for Defendant-licensee.
Milton H. Cooper, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant, through its attorneys, pleads not guilty to the following charge:

> "On or about October 26, 1943, you sold alcoholic beverages not pursuant to and within the terms of your plenary retail distribution license, in that you sold thirty-four cases of various brands of alcoholic beverages to John Jacob Betskoff for the purpose of resale and not consumption; such sale by you thereby being in violation of R. S. 33:1-2."

The charge must be dismissed. The Department failed to sustain the burden of proof. The sole witness called by the Department repudiated previous sworn statements and denied that he had disclosed to any agent of the defendant that he was a liquor salesman. He likewise denied that he had disclosed to defendant or any of its agents that the liquor purchased by him was intended for resale. Thus the licensee, despite its unconscionable sale of thirty-four cases of whiskey to a single individual during a period of scarcity when all retail licensees had been asked to ration their merchandise, escapes punishment --- this time. The defendant is emphatically warned that it must not, in the future, discriminate in its sales to customers. All retail licensees are expected to treat all of their customers fairly and equitably. Disproportionately large sales to favored customers

are out for the duration! Each licensee is expected to carefully ration available supplies.

Accordingly, it is, on this 28th day of April, 1944,

ORDERED that the charge herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against ISIDOR LOUIS LEVIN 548 South Warren Street Trenton, N. J., Holder of Plenary Retail Consumption License C-54, issued by the Board of Commissioners of the City of Trenton.	CONCLUSIONS AND ORDER

Irving H. Lewis, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that on February 12, 1944 he sold, served and delivered alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The minor, Richard ----, who at that time was not quite eighteen years of age, testified that, on the evening in question, he and a sailor, seventeen years of age, went to the place of business of the licensee and asked the licensee of he had any liquor. He further testified that the licensee and his wife were in the store; that the licensee himself picked up three bottles of whiskey from under the counter - Three Feathers, Wilson and another brand he could not remember - and sold him a bottle of Wilson. Richard's testimony was corroborated by that of the sailor, Thomas ----.

The licensee denies that either of the minors was in his place of business on the evening in question and says that he made no sale to either of them. Furthermore, he stated that on the night of February 12, 1944, he had no Wilson in stock; that he had received a limited supply during January and the first five days of February, and that for a few days prior to February 12th he was completely out of Wilson. The licensee further stated that he maintains a neighborhood store, knows all his customers, and that if either of the boys had been in his place he would have recalled it.

The testimony of the licensee's wife and his employee corroborates the licensee's testimony. There were also offered invoices of purchases made by the licensee during the months of January and February, 1944, for the purpose of showing the limited supply of Wilson

whiskey received by the licensee during that period.

The minor to whom the sale was made and the sailor are residents of Trenton, both having been born there and apparently having resided there all their lives. It is, therefore, difficult to assume that they were confused about the location of the licensee's place of business which might have been the case if strangers were involved. They identified the premises and the licensee on February 14, 1944 when they were taken to defendant's premises by ABC investigators and members of the Trenton Police Department. They identified the licensee and his wife at the hearing. Furthermore, there is no evidence of any hostility on their part toward the licensee, nor has any such contention been made by the licensee.

I find the defendant guilty as charged. He has no prior record. Because of his clear record and the lack of aggravating circumstances in the case, I will impose a penalty of ten days' suspension.

Accordingly, it is, on this 28th day of April, 1944,

ORDERED that Plenary Retail Consumption License C-54, issued by the Board of Commissioners of the City of Trenton to Isidor Louis Levin, for premises 548 South Warren Street, Trenton, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A.M. May 8, 1944 and terminating at 2:00 A.M. May 18, 1944.

ALFRED E. DRISCOLL,
Commissioner

7. DISCIPLINARY PROCEEDINGS - PERMITTING BOOKMAKING ON LICENSED PREMISES, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against HENRY O. LOPEZ, INC., t/a CUBA'S NITE CLUB, 1147 Springwood Avenue, Asbury Park, New Jersey, Holder of Plenary Retail Consumption License C-35 for fiscal year 1942-43, issued by the City Council of the City of Asbury Park, and transferred on June 28, 1943, to HENRY O. LOPEZ, t/a CUBA'S NITE CLUB, and renewed in his name for the present fiscal year, for the same premises.	CONCLUSIONS AND ORDER

Alvin Newman, Esq. and Haydn Proctor, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to a charge alleging that it allowed the sale of tickets and participation rights in a lottery,

known as a numbers game, on the licensed premises, in violation of Rule 6 of State Regulations No. 20.

While the testimony offered by the Department and the defendant is conflicting, I am satisfied that, on the date in question, defendant's agent and bartender, Henry Overton, allowed and permitted the sale of a number ticket on the licensed premises. An agent for the Department testified that, before purchasing the ticket, he asked the bartender "whether it was alright to place a number with this man" (referring to an alleged number writer), and the response was, "Sure, he is alright; I know him." The bartender, while admitting that he "OK'd" the alleged number writer, denies that his conversation with the agent had any reference to the writing of numbers. His explanation is not plausible.

The corporate defendant has a bad record. Its license was suspended in 1937 for sales during prohibited hours and again in 1942 for permitting prostitutes and immoral activities upon the licensed premises. Accordingly, in the absence of aggravating circumstances in the instant case, the usual penalty for the present violation will be increased, and a fifteen-day suspenison will be imposed.

Although these proceedings were instituted during the license period 1942-43, they do not abate but remain fully operative against the present license held by Henry O. Lopez. State Regulations No. 15; Re Municipal Board, Bulletin 325, Item 11.

Accordingly, it is, on this 28th day of April, 1944,

ORDERED that plenary retail consumption license C-35, issued by the City Council of the City of Asbury Park to Henry O. Lopez, Inc., t/a Cuba's Nite Club, and transferred during the pendency of these proceedings to Henry O. Lopez for the same premises, and renewed in his name for the present fiscal year, be and the same is hereby suspended for a period of fifteen (15) days commencing at 2:00 A.M. May 4, 1944, and terminating at 2:00 A.M. May 19, 1944.

ALFRED E. DRISCOLL,
Commissioner

8. SALES - TRADE, SWAP OR BARTER OF ALCOHOLIC BEVERAGES CONSTITUTES SALE THEREOF WITHIN R. S. 33:1-1(w) - PERMISSIBLE ONLY PURSUANT TO LICENSE OR PERMIT.

April 28, 1944.

K. K., Box 412,
News Office,
Montclair, New Jersey.

Dear Sir or Madam:

My attention has been caught by your intriguing advertisement in the Newark Evening News of April 28th, in which you offer to trade a bottle of a popular brand of whiskey "for a first-class raincoat, size 40, or what have you?".

I might perhaps wish to avail myself of this offer were it not for the rather serious obstacle that the swap would be in direct violation of the Alcoholic Beverage Law in the state.

Under our law, there may be no sale of any alcoholic beverages in New Jersey except pursuant to a requisite license or permit.

This includes any trade, swap or barter!

Hence, by way of friendly advice, I suggest that you drop your advertised offer.

Otherwise, I must inform you that you subject yourself to arrest on charge of committing a criminal misdemeanor, punishable by fine of not less than $100.00 and not more than $1000.00, or imprisonment for not less than 30 days nor more than 3 years, or both.

I am confident that you will immediately withdraw your offer from the market.

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner

9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against ELIZA ELLEN DE FREITAS, Roosevelt & West Avenues, Long Beach (Twp.), P.O. Beach Haven Heights, Ocean County, New Jersey, Former holder of Plenary Retail Consumption License C-3 for the fiscal year 1943-44, issued by the Board of Commissioners of the Township of Long Beach, surrendered to said Board on April 7, 1944, and WILLIAM DE FREITAS, JR. AND ELIZA ELLEN DE FREITAS, now holders of Plenary Retail Consumption License C-56, issued by the State Commissioner of Alcoholic Beverage Control on April 26, 1944, for the same premises.	CONCLUSIONS AND ORDER

Berry and Whitson, Esqs., Attorneys for Defendant-licensee.
Edward F. Hodges, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads non vult to charges alleging that (1) she falsified her application for a plenary retail consumption license by concealing the fact that William DeFreitas was an equal partner in the said licensed business, and (2), ever since July 1, 1943, she knowingly aided and abetted William DeFreitas to exercise the rights and privileges of the license held by her.

During the course of a retail inspection by an investigator of the Department of Alcoholic Beverage Control, certain memoranda and records of the defendant indicated that William DeFreitas, husband of defendant, had an interest in the business. The money realized from the sale of merchandise, including liquor, was deposited in a local bank in the account of William DeFreitas. The debts incurred in the operation of the business, including the payment of the 1943-44 license fee, were satisfied by checks drawn on his account.

Statements received from Eliza Ellen DeFreitas and William DeFreitas, her husband, disclose that they considered themselves to be partners in the enterprise.

William DeFreitas is a member of the governing body of the municipality wherein the licensed premises are situated. For a number of years previous to the current licensing period, the license had been issued by the State Commissioner of Alcoholic Beverage Control in their joint names.

Notification has been received from the Board of Commissioners of the Township of Long Beach that the defendant, Eliza Ellen DeFreitas, surrendered her license on April 7, 1944 and that such surrender of the license was immediately accepted by said Board.

A plenary retail consumption license was issued, on April 26, 1944, to defendant and William DeFreitas by the State Commissioner of Alcoholic Beverage Control. The said license is subject to any penalty that may be imposed herein.

Since the illegal situation has now been corrected and in view of the plea of non vult entered in the instant case, I shall suspend the present license for a minimum period of ten days.

Accordingly, it is, on this 28th day of April, 1944,

ORDERED that Plenary Retail Consumption License C-56 issued by the State Commissioner of Alcoholic Beverage Control to William DeFreitas, Jr. and Eliza Ellen DeFreitas for premises Roosevelt & West Avenues, Township of Long Beach, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A.M. May 3, 1944, and terminating at 2:00 A.M. May 13, 1944.

ALFRED E. DRISCOLL,
Commissioner

10. APPELLATE DECISIONS - ROY v. DEPTFORD TOWNSHIP

AVA D. ROY, Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DEPTFORD, Respondent.	)	

Fred A. Gravino, Esq., Attorney for the Appellant.
Harold W. Hannold, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This is an appeal from a decision of the Township Committee of the Township of Deptford, County of Gloucester, finding the defendant guilty of having sold, served or delivered to, and of having allowed, permitted or suffered the consumption of alcoholic beverages by two minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The minors in question, Mary --- and Margaret --- are twelve years and sixteen years of age, respectively. They testified that about 1:00 A.M. on February 21, 1944, they entered the licensee's place of business in company with Sam Taylor, twenty-eight years of age, and that Taylor ordered from the licensee a pitcher of beer and three glasses which were served to them at a table by a waitress named Mary; that each of the minors drank about a glass and a quarter of beer, and that Taylor drank the rest. They testified that neither the licensee nor the waitress inquired as to their ages, nor was either of them requested to sign a card stating that she was over twenty-one years of age. The testimony of Taylor corroborates this story.

The defendant and her witnesses allege that on the particular evening in question, neither of the minors were in the licensee's place of business; that Taylor came into her place about 1:00 A.M. and that he was accompanied by a party named Singleton; that he was served at the bar with a drink of whiskey and a beer by the husband of the licensee who alleges he was tending bar at the time, and that neither of the said minors was with Taylor at that time. Some of the defendant's witnesses state that their recollection in this respect is sharpened by recalling an incident which took place between Taylor and Singleton, at which time Singleton undertook to cover every dollar bill Taylor had with a ten dollar bill of his own.

During the hearing, it developed that the licensee herself went to the mothers of the two minors prior to this hearing. She states that she went there to inquire what time the girls had left home on the day in question. Mary ---, one of the minors, however, testified that she heard the defendant ask her mother to tell her to say that she was not at the licensee's place but at another place nearby. This is denied by the defendant. While the testimony is completely contradictory as to what took place at the time of the visit, nevertheless, the fact that the licensee did go to the girls' mothers while the hearing was pending is an indication that she was fearful of their testimony. I am loathe to believe that she went there simply to ascertain the time the two minors in question left their homes on the date the alleged sale took place.

The defendant further contends that the action of the respondent is against the weight of evidence, and that the testimony did not sustain such a conviction. I am unable to agree with this contention. I am satisfied from the evidence adduced that there was sufficient testimony before the local issuing authority to warrant a finding of guilt on the part of the defendant, at least as to the charge of having permitted the consumption of alcoholic beverages on the licensed premises by the two minors. The burden of establishing that the finding below is erroneous has not been borne by the appellant.

There is no contention that the penalty is excessive. The action of the respondent is hereby affirmed.

Accordingly, it is, on this 1st day of May, 1944,

ORDERED that the fifteen-day suspension imposed by respondent on appellant's Plenary Retail Consumption License C-18, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, effective at 2:00 A.M. May 8, 1944 and terminating at 2:00 A.M. May 8, 1944 and terminating at 2:00 A.M. May 23, 1944.

ALFRED E. DRISCOLL,
Commissioner

11. APPELLATE DECISIONS - HOCHBERG v. BERNARDS TOWNSHIP.

MAX HOCHBERG and ROSE HOCHBERG, t/a THE RIDGE STORE, Appellants,	)	On Appeal
vs.	)	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS, Respondent.	)	

Myron L. Levy, Esq., Attorney for Appellants.
Sanford T. Looker, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a Limited Retail Distribution License by the Township Committee of the Township of Bernards.

The various grounds upon which this appeal is based are (a) the determination of the Township Committee was made at a special meeting closed to the public, (b) respondent's action was arbitrary and unreasonable, (c) the issuance of the license is a necessity and also would be a convenience, and (d) the respondent abused its discretion in not issuing the license for which application had been made.

The undisputed testimony adduced herein discloses that the appellants are the proprietors of a general store on the main business street in the community known as Basking Ridge, a component part of the Township of Bernards. A hotel located across the street from the premises in question has a plenary retail consumption license with the

privilege of selling package goods. The store operated by the appellants handles various merchandise including groceries, magazines, toys, candy, ice cream and soda. The proprietors provide a delivery service for the accommodation of their customers. At certain hours of the day, it is alleged by witnesses for respondent and acceded to by appellant, Max Hochberg, the store is visited by a large number of children and young people, especially between the hours of 12:00 noon and 1:00 P.M. and between 3:00 P.M. and 4:30 P.M. Albert Mayo, Chairman of the Township Committee, states, in addition thereto, that he has observed, on numerous occasions, a number of minors congregating in the store during the early evening on week days and on Saturday afternoons. Max Hochberg, one of the appellants, admits that this was true at one time but claims that, because the young men of the community are now in the armed services and for other reasons, conditions have changed in this respect. Nonetheless, a pastor of a church situated in the community corroborated, in substance, the testimony of Chairman Mayo, especially as to young people patronizing the appellants' place of business.

The denial was predicated to a great extent on the fact that the store conducted by appellants is frequented by children, especially during certain hours of the day and evening and the local issuing authority accordingly held that the sale of beer would not be conducive to the welfare of these youngsters. I agree. Furthermore, numerous written communications from citizens of the community opposed to the issuance of the license were received by the governing body. These appear to be valid reasons for the action taken by respondent herein.

The appellant states that after he had filed an application for a license in the proper manner, he was advised by the chairman of the respondent Board, by telephone, that at a special meeting the committee determined to deny the application for a license. At the next regular meeting of the Township Committee, the appellant voluntarily appeared with his attorney and consented to the matter being heard. One objector voiced his opposition to the granting of the license. The application for a limited retail distribution license was denied.

It thus appears that appellant was given an opportunity to be heard before respondent. It might be mentioned in this regard that the purpose of a local hearing is to insure that, before any application is granted, objectors have a full opportunity to be heard. Gomulka v Linden, Bulletin 294, Item 8; Lipman v. Newark, Bulletin 356, Item 6; Gelber v. Freehold, Bulletin 487, Item 5. Rule 8 of State Regulations No. 2 provides:

> "No hearing need be held *** if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant."

The power to issue retail liquor licenses has been conferred upon municipal issuing authorities. Subject to review by the State Commissioner of Alcoholic Beverage Control on appeal (R. S. 33:1-22; R. S. 33:1-26), it rests within the sound discretion of the local issuing authority either to grant or deny a license. Mr. Justice Parker, speaking for the New Jersey Supreme Court in Bumball v. Burnett, 115 N.J.L. 254, stated, "We see no illegality whatever in the refusal

of a particular license, at least so long as the refusal is not shown to be fraudulent, corrupt, or inspired by improper motives ***."

The members of the respondent Board, according to the chairman thereof, are of the opinion that the liquor licensee operating across the street from the appellants' premises, adequately supplies the public demand for alcoholic beverages.

There is no evidence that the denial in the instant case was inspired by prejudice or improper motives nor can it be said that the respondent acted arbitrarily or unreasonably.

The action of respondent is affirmed.

Accordingly, it is, on this 2nd day of May, 1944,

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

Alfred E. Driscoll
Commissioner