

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

BULLETIN 494

FEBRUARY 20, 1942

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN ACID AND SOLID CONTENT - FOUR REFILLS - ABSENCE OF AGGRAVATING CIRCUMSTANCES - 10 DAYS' SUSPENSION.

FALSE STATEMENT IN LICENSE APPLICATION - FAILURE TO DISCLOSE CHATTEL MORTGAGE - 5 DAYS' SUSPENSION.

FRONT - FALSE STATEMENTS IN LICENSE APPLICATION CONCEALING THE INTEREST OF OTHERS - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - DISMISSED FOR FAILURE ON THE PART OF THE DEPARTMENT TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against )

JAMES CERVINO, )  
107 - 48th Street, )  
Union City, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-221, issued by the Board of Commissioners of the City of Union City. )  
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James R. Giuliano, Esq., Attorney for Defendant-licensee.  
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that:

"1. On or about May 1, 1941 you possessed illicit alcoholic beverages in that two quart bottles labeled 'Calvert Reserve Blended Whiskey 90 Proof,' one quart bottle labeled 'Calvert Special Blended Whiskey 90 Proof,' and one quart bottle labeled 'Calvert Reserve Blended Whiskey 86.8 Proof,' found in your licensed premises, contained alcoholic beverages which varied from genuine samples used for comparative purposes in acid and solid content; in violation of R. S. 33:1-50.

"2. In your application for transfer of license dated March 20, 1941, and in your application for license dated June 12, 1941 filed with the Board of Commissioners of the City of Union City, upon which Plenary Retail Consumption License C-221 was transferred to you for the year 1940-41 and was granted to you for the year 1941-42, you falsely stated 'No' in answer to Question 28 therein, 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 Edward Florio had such an interest; said false statements being in violation of R.S. 33:1-25.

"3. In your license applications aforesaid, you falsely stated 'No' in answer to Question 29 therein, which asks, 'Does any individual....hold any chattel mortgage....on any furniture, fixtures, goods or equipment used or to be used in connection with the conduct of the alcoholic beverage business to be operated under the license herein applied for?'; whereas in truth and in fact one Alphonse Arzonico held such a chattel mortgage; said false statements being in violation of R. S. 33:1-25.

"4. Since about April 3, 1941, and until the present time, you knowingly aided and abetted Edward Florio, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

Licensee pleaded non vult as to charges (1) and (3) and not guilty as to charges (2) and (4).

As to charges (2) and (4): On April 3, 1941, License C-221 was transferred from Alphonse Arzonico to defendant, James Cervino. The Department contends that since said date, Edward Florio has had an interest in the license and the business conducted thereunder. Defendant denies that Edward Florio has or ever has had such an interest.

Documentary proof produced at the hearing shows that on March 19, 1941 Alphonse Arzonico and James Cervino entered into a written contract for the sale of the business conducted at the licensed premises; that, on March 24, 1941, the owner of the premises in which the licensed business is located, leased said premises to James Cervino for a term of five years commencing April 1, 1941 and that James Cervino is the holder of a receipt for \$405.00 deposited with the owner as security for rent under the lease; that, on April 3, 1941, Alphonse Arzonico executed a bill of sale conveying all the goods, chattels and fixtures on said premises to James Cervino and took back a purchase money chattel mortgage thereon for the sum of \$500.00, in accordance with the terms of the contract of sale.

The evidence introduced by the Department for the purpose of showing that Edward Florio has an undisclosed interest is circumstantial in character. Detective Vervoort of the Union City Police Department testified that on fourteen different dates, between June 3, 1941 and June 21, 1941, Edward Florio was the last person to leave the licensed premises at closing time and that, on many of these dates, upon looking into the tavern from the street, he saw Florio behind the bar and checking the cash register. Alphonse Arzonico, the former owner, testified that Florio accompanied Cervino when the sale of the business was first discussed and was present at the closing of the transaction. The other evidence consists of fifteen checks, amounting in all to \$459.04, made to third parties and endorsed by the third parties and Edward Florio, which checks were part of the purchase price paid to Arzonico at the closing on April 3, 1941.

On behalf of the licensee, Florio testified that he is a stevedore and interested in the pin ball machine business; that he has been friendly with Cervino for nearly thirty years and accompanied him as a friend at the interview with Arzonico and the closing of the transaction; that the fifteen checks which bore his endorsement represented part payment made by him to Cervino for an interest which Cervino formerly held in his pin ball business. Florio denies

that he ever tended bar, checked the cash register or did anything whatsoever in connection with the operation of the business. He admits that, in June 1941, he often left the premises with other customers at closing time but denied that he ever closed the premises.

George Roman, then manager for defendant-licensee, testified that he checked the cash register and closed the tavern. He denied that Florio ever tended bar or checked the cash register or closed the licensed premises.

Defendant-licensee denies that Florio, whom he has known for many years, has any interest in the license or the business conducted thereunder. He says that he sold his interest in the pin ball business to Florio; received from him the fifteen checks as part of the purchase price for said interest and used these checks and his own cash to purchase the licensed business. He testified also that he employed George Roman as his manager; that Roman takes the receipts when he is not there and that, to his knowledge, Florio has never tended bar at the licensed premises.

The attorney who represented Cervino at the closing denies that he ever represented Edward Florio in any transaction.

There are suspicious circumstances in this case but, upon reviewing all the evidence, I conclude that the Department has not sustained the burden of proof as to these charges, and hence, upon the evidence presented, I must dismiss charges (2) and (4).

As to charge (1): Analysis made by the Department chemist discloses that the contents of these four bottles varied in solids and acids from the contents of genuine samples. Licensee denies that he ever tampered with these bottles and alleges that they were part of the stock of liquor taken over by him from the former licensee. Despite the fact that four bottles are involved, I conclude that there are no aggravating circumstances in this case at least so far as the present defendant is concerned. In accordance with precedents established in former cases, the license will be suspended for ten days on charge (1). Re Van Vooren, Bulletin 485, Item 7; Re Moritko, Bulletin 490, Item 4.

As to charge (3): Neither of the applications referred to in the charge disclosed the chattel mortgage given to Alphonse Arzonico at the time of closing. I shall suspend the license for an additional period of five days on charge (3), making a total suspension of fifteen days.

Accordingly, it is, on this 10th day of February, 1942,

ORDERED, that Plenary Retail Consumption License C-221, heretofore issued to James Cervino by the Board of Commissioners of Union City, be and the same is hereby suspended for a period of fifteen (15) days, effective February 16, 1942, at 3:00 A.M., and concluding March 3, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - PERMITTING FEMALE EMPLOYEES TO ACCEPT BEVERAGES AT THE EXPENSE OF PATRONS - EMPLOYMENT OF NON-RESIDENTS WITHOUT PERMITS - SALES DURING PROHIBITED HOURS - VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

MARTIN WALLACK, T/a NEW FOUNTAIN INN, Highway 29, Bridgewater Township, R. F. D. Bound Brook, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-21, issued by the Township Committee of the Township of Bridgewater. )

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Norman J. Abrams, Esq., Attorney for Defendant-Licensee. Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging:

(1) Since about August 1, 1941 he aided and abetted non-licensees to exercise the privileges of his license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52;

(2) On September 4 and 19, and October 4, 1941 he permitted female employees to accept beverages at the expense of patrons, in violation of Rule 22 of State Regulations No. 20;

(3) On October 4, 1941 he employed non-residents without permits, in violation of Rule 1 of State Regulations No. 11;

(4) On September 13 and October 4, 1941 he sold alcoholic beverages between the hours of 2:00 A.M. and 7:00 A.M., in violation of local ordinance;

(5) On September 4, 1941 he permitted his employees to publicly engage in indecent and obscene conversations on the licensed premises, in violation of Rule 5 of State Regulations No. 20.

Although the licensee pleaded not guilty to all charges, he does not dispute the facts proven by the Department with respect to charges 2 to 5, inclusive.

On the first charge the evidence shows that on July 25, 1941 the licensee entered into a written contract with one Alexander Meyers by which he agreed to sell the business to Meyers for the sum of \$3600.00. In this contract, copy of which was introduced in evidence, the licensee agreed that Meyers "shall on and after this date and until the time of (title) closing, be constituted the General Manager of the business and entitled for his services as such to all receipts and shall be liable for payment of all indebtedness from and after this date."

Meyers thereupon took possession of the licensed premises and gave Wallack a check for \$300.00 on account of the purchase price. This check was returned unpaid because of "insufficient funds." Wallack then called upon Meyers to make the check good, whereupon he was threatened by Meyers that unless he could have more time to make this payment that "the place would be broken up" and Wallack would be physically assaulted.

Wallack thereafter visited the licensed premises on many occasions and, by his own admission, "there seemed to be more individuals hanging around every time I came around." During the course of the two months following July 25, 1941 Wallack had many conferences at the licensed premises concerning the balance of the money due him, at which these "individuals" were present and at which the licensee learned that they were also interested in the business as partners of Meyers; that in addition to knowing that Meyers was disqualified from holding a liquor license because of non-residence (Meyers was described in the aforesaid contract as being "of New York City"), he also ascertained that Meyers and these other "individuals" had criminal records or, at least, such bad reputations as would render them unfit to receive a liquor license in this State. He nevertheless permitted the illegal scheme to continue for a considerable period of time thereafter and did nothing to terminate it until it was uncovered by agents of this Department in October 1941. On October 27, 1941, a day before the charges in this case were brought, he picked up the license and caused the premises to be closed.

It is unnecessary to detail any further the testimony on this charge. Suffice it to say that I find as a fact that Wallack virtually constituted himself as an extra-legal issuing authority and "farmed out" his license to persons disqualified from becoming licensees in their own right.

This is sufficient justification for revoking the license outright. A licensee who deliberately turns over his license to another for financial gain perpetrates a serious fraud upon the State which strikes at the very root of the liquor licensing system. Cf. Re Laurence Brook Country Club Inc., Bulletin 335, Item 6; Re Business Men's Associates, Inc., Bulletin 348, Item 6.

It further appears, however, that during the operation of the business by the ineligible "syndicate," female entertainers were imported from New York to act as hostesses at the licensed premises with instructions to "mix" with the patrons; that these hostesses accepted drinks at the expense of patrons; that they did not possess employment permits required of non-residents; that they indulged in filthy and obscene conversations with patrons; that alcoholic beverages were sold as late as 5:00 A. M., the time of closing depending upon the endurance of the customers, despite the fact that the local ordinance prohibits the sale of liquor between the hours of 2:00 A.M. and 7:00 A.M.

Licensee contends that he should not be deemed guilty of the violations covered by charges 2 to 5, inclusive, since they occurred after he had turned over the entire operation of the business to Meyers as his "manager." This contention has no merit. If such were the law, all that a licensee would need to do to absolve himself from liability for any violation would be to remain away from the licensed premises.

The true principle applicable to this situation was well expressed by the late Commissioner Burnett in Re Jacobs, Bulletin 315, Item 8, where he said:

"One thing is clear -- the master is responsible for the wrongdoing of his servants. A licensee is, therefore, accountable, irrespective of his personal innocence, for violations committed on the licensed premises. Liquor regulations are made to eliminate the undesirable conditions at which they are aimed. From the viewpoint of public interest, it matters little whether a violation is committed by the licensee himself or by one of his employees. However harshly this principle operates in a particular case, it is the only rule which protects the public and under which the liquor industry itself may survive."

I recently had occasion to rule in somewhat similar vein in the case of Bryant v. Newark, Bulletin 492, Item 1, where I said:

"The business in which the licensee sought to participate is different from an ordinary trade or business. Licensees have heretofore been held strictly accountable for the character of the liquor found upon their licensed premises. Re Cutter, Bulletin 479, Item 12. Illicit liquor is out! So also are those knowingly engaged in illicit enterprises. \*\*\* By the same token, licensees cannot be permitted to escape their responsibility for conditions on their premises by the delegation of authority to someone else."

I find the licensee guilty of all charges. The license will be revoked.

Accordingly, it is, on this 10th day of February, 1942,

ORDERED, that Plenary Retail Consumption License C-21, heretofore issued to Martin Wallack, t/a New Fountain Inn, by the Township Committee of the Township of Bridgewater, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,  
Commissioner.

3. MORAL TURPITUDE - CONVICTION FOR EMBEZZLING A SUBSTANTIAL SUM FROM EMPLOYER INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, pursuant )  
to R. S. 33:1-31.2. )  
Case No. 195 )

CONCLUSIONS  
AND ORDER

BY THE COMMISSIONER:

Petitioner, in this proceeding, requests that his disqualification resulting from convictions of crimes be removed pursuant to R. S. 33:1-31.2.

In May 1919 petitioner was convicted of embezzlement and sentenced to serve twelve months in a penitentiary. In September 1919 sentence was recalled and he was then placed on probation for three years and fined \$250.00. In July 1925 he was found guilty of assault and battery in a Magistrate's Court and fined \$25.00. In October 1928 he pleaded non vult to a charge of operating a disorderly house (conducting a gambling house) and was sentenced in February 1929 to thirty days in a County Jail.

It appears from petitioner's testimony and independent investigation that, in 1919, petitioner embezzled a substantial sum of money from his employer. The assault and battery charge arose from a dispute after an automobile accident. The disorderly house charge arose from petitioner's connection with a so-called "private club" where gambling on roulette wheels was carried on. It is unnecessary to determine whether either of the two latter charges involved moral turpitude because the conviction for embezzling a substantial sum from an employer clearly involves moral turpitude. Hence, unless relief is afforded herein, petitioner is disqualified from holding a license or being employed by a licensee.

Petitioner testified that after his release in March 1929, he was employed for a few years in a clothing business conducted by members of his family and that thereafter, for approximately ten years last past, he has been engaged in the catering business with his brother. His record since 1929 has been clear.

On behalf of petitioner, an insurance agent, a printer and the owner of a linoleum and carpet store testified that they have known him for twenty, twelve and twenty-five years respectively; that petitioner has lived during the time they have known him in the same municipality where he now resides; and that, since 1929, he has been law-abiding and engaged in legitimate business.

From the evidence, I conclude that petitioner has conducted himself in a law-abiding manner for more than twelve years and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 10th day of February, 1942,

ORDERED, that petitioner's statutory disqualification because of any of the convictions described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - A MINIMUM PENALTY OF FIVE DAYS FOR FIRST OFFENSE LACKING AGGRAVATING CIRCUMSTANCES RECOMMENDED FOR SALES DURING PROHIBITED HOURS.

WAR TIME - IS STANDARD TIME.

February 13, 1942

Otto Ehrlich,  
Borough Clerk,  
Ridgefield, N. J.

My dear Mr. Ehrlich:

I have before me copy of resolution and order adopted by the Borough Council on February 3rd in disciplinary proceedings against Arthur H. Knobloch, 732 Bergen Boulevard, charged with sale of alcoholic beverages during prohibited hours, and note that on confession of guilt the license was suspended for two days.

I understand that although curfew in Ridgefield is 3:00 A. M. on Sunday, our investigators were served drinks as late as 3:30 A. M., and that during the half hour's overtime business, three other customers were admitted and served drinks.

Please express to the Mayor and Council my appreciation for their conduct of these proceedings. I cordially suggest, however, that in future similar cases involving violations of the curfew regulation, a minimum penalty of five days be imposed for a first offense lacking aggravating circumstances, with a reduction of not more than two days for a guilty plea in advance of hearing.

It is noted that the license suspension became effective on February 17th at 3:00 A. M. "Daylight Saving Time." I take it that the reference is to the new War Time which went into effect at 2:00 A. M. on February 9, 1942. However, the latter is not Daylight Saving Time -- it is still Eastern Standard Time, both under the Act of Congress and Chapter 7 of the New Jersey Pamphlet Laws of 1942, which amends R. S. 1:1-2.3. See Bulletin 493, Item 7. Daylight Saving Time is the time that may go into effect during the summer months at the option of the various municipalities as heretofore. The new Eastern Standard Time, which is one hour in advance of the old and popularly known as War Time, is now in effect, so far as the State of New Jersey is concerned, by act of our Legislature.

Very truly yours,  
ALFRED E. DRISCOLL,  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO BONA FIDE TRANSFEREE TO LIFT SUSPENSION AFTER 10 DAYS - 17 DAYS ELAPSED - PETITION BY TRANSFEREE TO LIFT AS AFORESAID GRANTED.

In the Matter of Disciplinary Proceedings against

CLIFFSIDE PARK TOWN TAVERN, INC., 399 Palisade Avenue, Cliffside Park, N. J.,

ON PETITION ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Cliffside Park.

Harry A. Accomando, Esq., Attorney for Thomas J. Fogarty, Jr., Petitioner.

On January 23, 1942 I suspended the license of defendant herein for the balance of its term, effective January 27, 1942, after it had pleaded guilty to charges alleging, in substance, that it was a front for John McManus. In said order leave was given to a duly qualified purchaser, if and when transfer of the license was granted to him, to make application to me to vacate said suspension. Re Cliffside Park Town Tavern, Inc., Bulletin 492, Item 4. Pursuant to said leave, Thomas J. Fogarty, Jr. has filed a verified petition, wherein he sets forth that he has purchased the business formerly conducted by Cliffside Park Town Tavern, Inc.; that he is qualified to hold a license; that he is not acting for or on behalf of John McManus; and that, on February 9, 1942, the Borough Council of the Borough of Cliffside Park transferred said license to him.

Since it appears from said petition and a letter received from the Borough Clerk that the license herein has been transferred to a duly qualified person and since it further appears that more than ten days have elapsed since the suspension became effective,

It is, on this 13th day of February, 1942,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-8 be and the same is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL, Commissioner.

## 6. ADVERTISING - SOMETHING FOR NOTHING.

ADVERTISEMENTS IN WINDOWS OF RETAIL LIQUOR STORES EXTENDING INVITATION TO STEP INSIDE FOR FREE BOOKS, ETC. - DISAPPROVED.

February 12, 1942

Dear Sir:

I have before me your letter of February 3rd enclosing a copy of an advertisement entitled "Pay Your Income Tax With A Smile!", which we are advised is presently being used by your client, a distiller.

In your letter you state that this company is desirous of posting these advertisements in the windows of retail liquor stores in the State of New Jersey and you therefore ask if there is any objection on the part of the Commissioner to such posting.

A further reference to the proposed poster discloses that prominently inscribed thereon is the invitation: "Step Inside For Your Free Book." All of this, as appears from the poster, is with the "Compliments of \_\_\_\_\_."

Rule 2 of State Regulations No. 21 provides:

"2. No retail licensee shall permit or suffer the display, on the exterior of the licensed premises, of any signs or other advertising matter bearing the name, brand or trade-mark of any manufacturer or wholesaler of any alcoholic beverage."

If the free books in question bear the name of your client, they would be classified as advertising matter. Rule 1 of State Regulations No. 21 provides:

"1. No manufacturer or wholesaler shall directly or indirectly furnish (by sale, loan, gift or otherwise), deliver, service or repair any fixtures, equipment, signs or other advertising matter to any retail licensee or at any retail licensed premises, subject to the following exceptions:

"a. Manufacturers and wholesalers may furnish to retail licensees inside signs and advertising specialties (such as trays, coasters, display racks, menu-cards, and calendars), bearing their names, brands or trade-marks, provided, however, that the aggregate cost or reasonable value of the signs and advertising specialties does not exceed Fifty (\$50.00) Dollars for each licensed premises in any one license year."

The books in question could not be classified as advertising specialties, such as trays, coasters, calendars, and hence if they bear the name of your client they could not be lawfully furnished to retailers.

Assuming, however, that the distiller in question is prepared to comply with the technical requirements of Regulations No. 21, there is, nonetheless, a broader objection to the proposed advertisement. The writer is personally opposed to all advertisements extending an invitation to the unwary passerby to step inside licensed premises upon the promise that acceptance of the invitation will result in his receiving something for nothing.

Let's be frank about it and admit the true purpose of this type of advertisement. Perhaps it builds up good will for the distiller, but primarily its object is to get the boys inside to buy a shot or a bottle of "Old Glove."

Why not advertise: "One drink of our 'Old Faithful' and you will pay your income tax with a song in your heart?" Or perhaps this ad would do the job: "Step inside and take three drinks of our 'Over Done' and you will pay your income tax without knowing it." It does not make sense.

Why step inside a tavern for your income tax information? Why not a church where you could pray over it? Or a hospital where a sedative could be administered with the information; or even, perhaps, a Post Office Building?

A bartender has enough troubles now. What will it be when he gets an order for one fizz and two income tax returns.

There are sufficient inducements to make purchases of this type without the added inducement of a free book, or a free canary, or a free anything else.

We therefore do not approve of this type of advertising.

Very truly yours,  
ALFRED E. DRISCOLL,  
Commissioner.

#### 7. FAIR TRADE - NOTICE OF NEXT PUBLICATION

February 16, 1942

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will become effective on or about Monday, March 9, 1942. New items and changes in old items must be filed at the offices of this Department not later than Monday, February 23, 1942.

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

ALFRED E. DRISCOLL,  
Commissioner.

8. DISCIPLINARY PROCEEDINGS - PERMITTING ALIEN MINOR, HOLDER OF AN EMPLOYMENT PERMIT, TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 11 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN MINOR PERMITTEE, CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT - 40 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

LOUIS FAUSTINI, )  
T/a Louis' Bar & Grill, )  
136 Mehrhof Road, )  
Little Ferry, N. J., )

CONCLUSIONS

Holder of Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Little Ferry, )

and

ORDER

and )

WILLIAM FAUSTINI, )  
136 Mehrhof Road, )  
Little Ferry, N. J., )

Holder of Employment Permit No. 683, issued by the State Commissioner of Alcoholic Beverage Control. )

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Louis Faustini )  
William Faustini ) Pro Se.

G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee was charged with permitting his son, William Faustini, who is the holder of an employment permit for a person disqualified by reason of age and non-citizenship, to sell alcoholic beverages in violation of Rule 3 of State Regulations No. 11. Defendant-permittee was charged with selling and serving alcoholic beverages contrary to the condition upon which his employment permit was issued and in violation of R.S. 33:1-26. Guilty pleas have been entered by both defendant-licensee and defendant-permittee. Since both proceedings have arisen out of the same occurrence, both matters will be treated and disposed of herein.

The Department file discloses that two investigators entered the licensed premises on the morning of Saturday, November 22, 1941. They found the permittee, William Faustini, behind the bar. Each ordered a glass of whiskey, which was sold and served to them by said William Faustini, who is an Italian national, nineteen years of age. They took a statement from the son in which he admitted that he had made the sales. The licensee, who was not present when the sales were made, was called into the licensed premises by his son. The licensee told the investigators that he did not wish to make a statement and that he intended to "let the boy tend bar the rest of the day." There is nothing in the record to show whether the son thereafter tended bar on that or any subsequent day.

So far as defendant-licensee is concerned, the minimum penalty which has been imposed for a violation of this nature is five days. Re Broodwinner, Bulletin 477, Item 3. In this case, however, the son was doubly disqualified. The licensee has offered no explanation for the violation and the case has all the appearances of a deliberate violation of the State regulations. Under these circumstances, I shall double the usual minimum penalty and impose a ten-day suspension of defendant's license.

So far as defendant-permittee is concerned, the usual minimum penalty is thirty days. Under the circumstances of this case, I shall suspend the permit issued to defendant-permittee for a period of forty days.

By entering the guilty pleas, the licensee and the permittee have saved the Department the time and expense of proving its cases. Five days of the penalty imposed on each defendant will, therefore, be remitted.

Accordingly, it is, on this 16th day of February, 1942,

ORDERED that Plenary Retail Consumption License C-11, heretofore issued to Louis Faustini, t/a Louis' Bar & Grill, for premises 136 Mehrhof Road, Little Ferry, by the Mayor and Council of the Borough of Little Ferry, be and the same is hereby suspended for a period of five (5) days, commencing February 23, 1942, at 1:00 A.M. and terminating February 28, 1942, at 1:00 A.M.; and it is further

ORDERED that Employment Permit No. 683, heretofore issued to William Faustini by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of thirty-five (35) days, commencing February 23, 1942, at 1:00 A.M. and terminating March 30, 1942, at 1:00 A.M.

ALFRED E. DRISCOLL,  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSEE ASSUMES THE RISK IF ILLICIT LIQUOR IS FOUND ON PREMISES - ABSENCE OF AGGRAVATING CIRCUMSTANCES - 10 DAYS' SUSPENSION FOR FIRST OFFENSE.

In the Matter of Disciplinary Proceedings against )

TWIN RIVERS INN CORP., )  
Two Bridges, )  
Lincoln Park, N. J., )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption License C-5 issued by the Borough Council of the Borough of Lincoln Park. )

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David Young, 3rd, Esq., Attorney for Defendant-Licensee.  
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant was served with charges alleging that:

"1. On or about June 20, 1941, you possessed

illicit alcoholic beverages in that one quart bottle labeled 'Wilson "That's All" Blended Whiskey,' two quart bottles labeled 'Four Roses Rye A Blend of Straight Whiskies,' and one quart bottle labeled 'High Point Apple Jack Apple Brandy,' found in your licensed premises, contained alcoholic beverages which varied from genuine samples used for comparative purposes in proof, and acid, solid and color content, in violation of R.S. 33:1-50.

"2. On or about the date aforesaid and prior thereto, you, not being the holder of a brewery, distillery, winery or rectifier's license, bottled alcoholic beverages for sale and resale in that you refilled one quart bottle labeled 'Wilson "That's All" Blended Whiskey,' two quart bottles labeled 'Four Roses Rye A Blend of Straight Whiskies,' and one quart bottle labeled 'High Point Apple Jack Apple Brandy' with other alcoholic beverages, in violation of R.S. 33:1-78."

On June 20, 1941, storekeeper-gauger Lawson of the Alcohol Tax Unit, Treasury Department, examined twenty-four opened bottles of alcoholic beverages at the licensed premises and seized four bottles mentioned in the charges.

Analysis by the chemist of said Unit disclosed that the contents of the "Wilson" bottle and both "Four Roses" bottles were substantially lower in acid content and substantially higher in solid content than that found in genuine samples; that the contents of the "High Point" bottle were lower in acid and solid content than that found in a genuine sample and also contained artificial coloring which should not be present in a genuine sample.

Defendant does not question the analysis.

On behalf of defendant, Louis Urfer testified that, on January 27, 1941, he purchased from former stockholders all of the corporate stock of Twin Rivers Inn Corp. He has presented an inventory taken at that time which shows that some bottles of each of the items mentioned in the charges were on the licensed premises when he assumed control. He testified that each of these bottles was then open. He further testified that between that time and the date of seizure he purchased no "Wilson" but admits that, during said period, he purchased small quantities of "Four Roses" and "High Point." This evidence is material, however, only in determining the penalty.

Since the solid content and acid content of the liquor contained in the seized bottles varied substantially from genuine samples, I find that these bottles contained illicit beverages. Mere possession of illicit beverages constitutes a violation of R.S. 33:1-50. It is apparent from the analysis in this case that the seized bottles were refilled. I find defendant guilty on both charges. One penalty will be imposed, because both charges arose out of the same set of circumstances. Re Cutter, Bulletin 479, Item 12.

As to penalty: Louis Urfer testified that he never tampered with the contents of the seized bottles and that he has no reason to suspect any of his employees. While not conclusive, the evidence tends to show that some, if not all, of the seized bottles were on the premises before the present management took control. Twin Rivers Inn Corp. has no previous record. Louis Urfer was previously connected with two other licensed corporations, neither of which was ever accused of violating Federal or State laws. I conclude that there are no aggravating circumstances in this case. The usual ten-day penalty will be imposed. Re Moritko, Bulletin 490, Item 4; Cf. Re Leininger, Bulletin 493, Item 1.

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

ORDERED that Plenary Retail Consumption License No. C-5, heretofore issued to Twin Rivers Inn Corp. by the Borough Council of the Borough of Lincoln Park, be and the same is hereby suspended for a period of ten (10) days, commencing February 24, 1942, at 2:00 A.M. and terminating March 6, 1942, at 2:00 A.M.

ALFRED E. DRISCOLL,  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - PREVIOUS RECORD - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )

BEN GOTT'S GRILL, INC., )  
122 Central Avenue, )  
Passaic, New Jersey, )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Con- )  
sumption License C-29, issued )  
by the Board of Commissioners )  
of the City of Passaic. )

----- )

Ben Gott's Grill, Inc., the defendant-licensee, by Harry Gott, Secretary.  
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to the charge of having sold liquor below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department's file discloses all the pertinent facts.

On November 7, 1941, an investigator of this Department visited the defendant's licensed premises and there purchased from Ben Gott (president of the corporate licensee) a pint bottle of Seagram's "V.O." Blended Canadian Whiskey for \$1.49, although the Fair Trade price for such item was then \$2.55. See Bulletin 480.

The agent thereupon identified himself and called attention to the fact that the sale was below the Fair Trade price. Ben Gott's son, who had apparently fixed the store's price for this item, explained that, in his view of the matter, only the new seven-year old product of Seagram's "V.O." Blended Canadian Whiskey was on Fair Trade and not the item in question, a six-year old product no longer being manufactured.

The Fair Trade listing of that brand is without any specification whatsoever as to age and, hence, necessarily includes all products of that brand on the retailer's shelves irrespective of age. If Ben Gott or his son had any doubt on this score, they should have consulted this Department for advice. Their mistake is no exoneration. A licensee is bound to comply with the Fair Trade listings as they actually stand. For an exactly similar case, see Re City Wine and Liquor Stores, Bulletin 490, Item 2.

Normally, since there was apparently no intent to "chisel" in this case, I would, as penalty for the violation, suspend the defendant's license for ten days, less five for the guilty plea, or a net of five days. See Re City Wine and Liquor Stores, *supra*; Re Park Liquors Corp., Bulletin 492, Item 5. Cf. Re Samuel Vogel, Inc., Bulletin 493, Item 10.

However, I note that the defendant has a past record. In 1938 the Passaic Board of Commissioners found the licensee guilty of selling to a minor, and suspended its license for ten days. Moreover, in 1935, while the license for this business was in Ben Gott's individual name, the Passaic Board found him guilty of possessing several bottles of liquor off-proof, but suspended sentence.

In view of such past record, and all facts being considered, penalty for the present violation will be fifteen days, less five for the guilty plea, or a net of ten days.

Accordingly, it is, on this 20th day of February, 1942,

ORDERED that Plenary Retail Consumption License C-29, heretofore issued to Ben Gott's Grill, Inc., by the Board of Commissioners of the City of Passaic, for premises 122 Central Avenue, Passaic, be and the same is hereby suspended for ten (10) days, commencing at 3:00 A.M. February 25, 1942 and concluding at 3:00 A.M. March 7, 1942.

*Alfred E. Griscoll*  
Commissioner.