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

BULLETIN 698 MARCH 5, 1946.

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1. DISCIPLINARY PROCEEDINGS - SERVING ALCOHOLIC BEVERAGES TO WOMEN DIRECTLY OVER A BAR, IN VIOLATION OF MUNICIPAL ORDINANCE - PERMITTING FEMALE EMPLOYEE TO ACCEPT BEVERAGES AT THE EXPENSE OF PATRONS; SERVING ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED; PERMITTING INTOXICATED EMPLOYEES TO WORK ON LICENSED PREMISES; PERMITTING LEWDNESS AND IMMORAL ACTIVITY ON LICENSED PREMISES; PERMITTING KNOWN PERSONS OF ILL REPUTE ON LICENSED PREMISES, AND PERMITTING LICENSED PREMISES TO BE CONDUCTED AS A NUISANCE, ALL IN VIOLATION OF STATE REGULATIONS NO. 20 - LICENSE REVOKED - DISQUALIFICATION ACCOMPANYING REVOCATION CONFINED TO HOLDER OF LICENSE AT TIME VIOLATIONS WERE PERMITTED.

In the Matter of Disciplinary Proceedings against

MARIANO BERARDI
T/a BROADWAY TAP ROOM
1007 Broadway
Camden, N. J.,

Holder of Plenary Retail Consumption License C-72 for the fiscal year 1944-45, and transferred in said year to

NUNZIA CANZANESE
for the same premises,

and renewed by the said Nunzia Canzanese, now trading as Nancy's Cafe, and holding Plenary Retail Consumption License C-197, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDERS

Edward V. Martino, Esq., Attorney for Defendant-licensees.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to charges that may be summarized as follows: (1) serving women at bar, in violation of a local ordinance; (2) permitting female employee to accept drinks at expense of patrons, in violation of State Regulations No. 20, Rule 22; (3) permitting service of alcoholic beverages to and consumption by persons actually or apparently intoxicated, in violation of Rule 1 of State Regulations No. 20; (4) permitting intoxicated employees to work on premises, in violation of Rule 24 of State Regulations No. 20; (5) permitting lewdness and immoral activity on licensed premises, in violation of Rule 5 of State Regulations No. 20; (6) knowingly employing without permit a non-resident, in violation of the statute and Rule 4 of State Regulations No. 13; (7) permitting known persons of ill repute on the licensed premises, in violation of Rule 4 of State Regulations No. 20; and (8) permitting the licensed premises to be operated as a nuisance, in violation of Rule 5 of State Regulations No. 20.

The evidence shows that the investigation on this matter covered a period of well over a week and was concluded the early morning of June 2, 1945.

At the very start of the investigation and practically on every occasion that the investigators were present, women were served alcoholic beverages directly over the bar. It further appears that the sole effort of the licensee and his employees to prevent the practice was a warning not to consume the drinks at the bar, a warning often too late. I call attention to the fact that service is sufficient to violate the City of Camden ordinance of December 27, 1934 as amended September 12, 1935.

On at least two occasions the female bartender accepted and consumed beverages at the expense of the investigators. On at least one of the occasions the beverage was purchased at the solicitation of the licensee. Many other occasions involving other patrons of the tavern were observed.

There is no substantial denial that both the barmaid and one other employee of the licensee were intoxicated or apparently in such condition. It is also apparent that they both consumed alcoholic beverages while in that state. It may be that these drinks were not served to them and that they "helped themselves." However, the fact that the licensee allowed, permitted and suffered them to consume the alcoholic beverages -- and he was admittedly present -- is sufficient.

Not only did the intoxicated barmaid and other employee consume alcoholic beverages while so intoxicated but in that condition they continued to work on the licensed premises. The salutary purpose of the rule prohibiting intoxicated employees from working on the premises makes this rule worthy of the strictest enforcement.

It is unnecessary to detail the "foul and indecent" language that seemed to be the usual mode of expression in the licensed premises. I may comment on the fact that at least two of the employees of the then holder of this license were among the worst offenders. It must also be concluded that many of the persons habitually allowed in the licensed premises fall within the category of "known persons of ill repute." It is only necessary to consider the testimony of the then licensee and other witnesses, particularly a police officer produced by him, to be convinced that the then licensee knew them as such persons.

Finally, we must determine whether or not the licensed premises were conducted in such manner as to become a nuisance within the meaning of Rule 5 of State Regulations No. 20. In _State v. Williams_, 30 N. J. L. 102, at 104, the Court said:

> "Any place of public resort, whether an inn, a dwelling house, a storehouse, or any other building, or garden, is a public nuisance, _in which illegal practices are habitually carried on,_ or when it becomes the habitual resort of thieves, drunkards, prostitutes, or other idle, vicious, and disorderly persons, who gather together there for the purpose of gratifying their own depraved appetites, _or_ to make it a rendezvous where plans may be concocted for depredations upon society, and disturbing either its peace or its rights of property.
>
> "Such collections of persons can have no other effect than to debauch and deprave the public morals, although they may be quiet and orderly places, so far as mere noise and

confusion is concerned; although the most scrupulous cleanliness may be observed, and they may be magnificent in ornament, and luxurious in their provisions for mere sensual gratifications, they are notable nuisances at common law, because they are nocumenti, nuisances, that is, injurious to the public health, public quiet, or public morals." (emphasis ours)

It would seem that practically the every day operation of the premises, if the 7-10 day period of the instant investigation is a sample, resulted in at least one and often several violations of the Statute, R. S. 33:1 et seq., the State Regulations, the city ordinance and possibly even the criminal laws of the State. Consideration of the evidence herein permits only the conclusion that the then licensee did permit his premises to be operated in such a manner as to become a nuisance within the meaning of Rule 5 of State Regulations No. 20. Cf. State v. Elliott, 129 N. J. L. 169.

The evidence supporting the sixth charge, that relative to the residence of the female bartender employed by the then licensee, is not clear. There is some suspicion that possibly she was not a bona fide resident of the state. However, there is some doubt as to her actual residence and there is real doubt as to the knowledge thereof by the then licensee. In this posture of the proof, I shall dismiss Charge #6.

The evidence offered by the defendant, through the testimony of the former licensee (the licensee at the time the violations were committed), several habitues, the female bartender, and a police officer of the city, is not convincing. Other than categorical denials of guilt and equally unsupported claims of "we are nice people", the testimony adduced from these witnesses is only notable as evidence of their complete forgetfulness of surrounding circumstances. The testimony of the police officer is rather in support of Charge #7, both as to the generally known character and reputation of many of the persons who habitually frequented the licensed premises and as to the then licensee's knowledge thereof.

The facts based upon the testimony herein leave no doubt in my mind that the violations charged in Charges 1, 2, 3, 4, 5, 7 and 8 were committed. This must result in a finding of "guilty!" and a revocation of the license. Cf. Re Utter, Bulletin 580, Item 9.

One phase of this case has given me considerable concern. The holder of the license at the time the violations were committed was one Mariano Berardi. Before the charges were served the license had been transferred to the defendant herein. Of course she takes the license subject to the penalty resulting from any violations of her predecessor in title. State Regulations No. 16, Rules 1 and 2, cover this point:

"Rule 1. Disciplinary proceedings shall not be barred or abated by the expiration, transfer, surrender, renewal or extension of the license or permit.

"Rule 2. Any license or permit may be suspended or revoked for proper cause, notwithstanding that such cause arose prior to transfer or extension of the license, or during the term of a prior license held by the licensee or his predecessor in interest or during the term of a prior permit held by the permittee."

This provision is necessary for the proper control of this highly regulated business and has been applied innumerable times to support such necessary control.

In so far as the license is concerned, the penalty is enforced against the license in anyone's hands. However, the proper interpretation and application of the statutory provision in R. S. 33:1-31, which provides, in part:

> "****A revocation shall render the licensee ineligible to hold or receive any other license, of any kind or class under this chapter, for a period of two years from the effective date thereof and a second revocation shall render the licensee ineligible to hold or receive any such license at any time thereafter.***"

requires, in the instant case, careful consideration.

It would seem, if proper control so required, that the two-year disqualification would also apply to the transferee no matter how innocent of any violation of the Alcoholic Beverage Law or Regulations. Such a result, I believe, is not always necessary to proper control and to enforce such a punitive penalty against a party who is only technically guilty would work a hardship not within the contemplation of the Legislature.

My feeling in this matter is strengthened by a consideration of the conditions existing at the time the law was adopted.

Originally the Alcoholic Beverage Control Law, P. L. 1933, Chapter 436, par. 23, specifically prohibited transfers providing "***Licenses are not transferable.***"

The disqualification section of the law, then P. L. 1933, Chapter 436, par. 28, now R. S. 33:1-31 supra, would have of necessity affected only the guilty licensee -- no one else could have held the license. The real purpose of the disqualification was to provide a real period of repentance for those convicted of violations warranting revocation. If it had been otherwise, revocation would have been a mockery and farce -- the next day a new license could have been applied for.

To now hold that a law so adopted for the specific purpose of providing a real period of repentance after violations so serious as to warrant a revocation should apply to a person not in any way involved in the violations, would be neither just nor equitable.

Because of the time lag between transfers by local municipality and the receipt of the notice thereof by the State Department of Alcoholic Beverage Control, charges were actually served on Mariano Berardi, then subsequently on Nunzia Canzanese. Mariano Berardi also entered a plea of not guilty, was present at the trial and gave his testimony, and in fact was in most respects treated by everyone at the trial as the real defendant. He has had his day in court.

I must, therefore, hold that the licensee referred to in R. S. 33:1-31 means the licensee at the time of the violation, and not an innocent transferee.

Although I believe that Mariano Berardi has had his day in court and has presented his full defense I will, on petition showing probable cause, permit so much of the order entered herein affecting Mariano Berardi's personal disqualification to be opened so that any further reason, legal, factual or equitable, tending to warrant a modification of said order, may be considered, so that no injustice may be done.

Accordingly, it is, on this 18th day of February, 1946,

ORDERED, that Plenary Retail Consumption License C-197, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Nunzia Canzanese, t/a Nancy's Cafe, for premises 1007 Broadway, Camden, subject to the charges pending against the said license resulting from the violations herein described while the prior license for said premises was held by Mariano Berardi, be and hereby is revoked, effective immediately; and it is further

ORDERED, that the personal disqualification resulting from said revocation shall affect Mariano Berardi, the holder of the prior license for said premises at the time of the violations above referred to, to wit, on June 2nd, 1945, for a period of two years from the date hereof, and that said revocation shall not personally disqualify the said Nunzia Canzanese, the present holder of the license.

ALFRED E. DRISCOLL
Commissioner.

2. MORAL TURPITUDE - CRIME OF OPERATING UNLAWFUL STILL FOUND TO INVOLVE 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. 507

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In September 1936 petitioner pleaded guilty in a Federal District Court to an indictment which charged that he and another individual had operated an unlawful still. He was sentenced to serve six months in a Federal House of Detention and served his sentence. Fines then imposed were remitted. The crime involved moral turpitude.

Petitioner has never been convicted of any other crime and has recently been honorably discharged after completing 29 months of military service. The Chief of Police of the municipality in which he has resided since birth has certified that there are no pending complaints against him or pending investigations concerning his conduct.

Three businessmen, each of whom has known him for more than ten years, testified that petitioner is a person of good character and that he bears a good reputation in the community.

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

Accordingly, it is, on this 20th day of February, 1946,

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

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 10 DAYS AND TRANSFER OF LICENSE TO QUALIFIED PERSON - 10 DAYS HAVING EXPIRED AND TRANSFER HAVING BEEN GRANTED BY MUNICIPAL ISSUING AUTHORITY, APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against

JOHN J. KELLY & JOSEPH SILVER
T/a CARLTON INN
94 Carlton Avenue
East Rutherford, N. J.,

Holders of Plenary Retail Consumption License C-21 for the fiscal year 1941-42, and transferred during said year to

CARLTON INN (a corporation)
for the same premises;

renewed by the said Carlton Inn for each successive fiscal year, and now holding Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of East Rutherford.

ON PETITION
ORDER

Albert V. D'Amato, Esq., Attorney for Petitioners.

BY THE COMMISSIONER:

On February 7, 1946 I suspended defendants' license C-21 for the balance of its term, effective at 2:00 a.m. February 11, 1946, after they had pleaded non vult to charges alleging that they had concealed the interest of one Cormack in the license and business conducted thereunder. Re Kelly & Silver, Bulletin 694, Item 8. In said Order it was provided that a subsequent transferee of the license might apply to lift the suspension after at least ten days of the suspension had been served.

Pursuant to said leave, George Kolb and Edward Urciuoli have filed a verified petition wherein they set forth that they have purchased the business in question and that no person or corporation other than the petitioners will have any interest in the licensed business.

The petition further sets forth that on February 18, 1946 the Mayor and Council of the Borough of East Rutherford transferred the license in question subject to the suspension heretofore imposed from Carlton Inn to the petitioners.

It appearing from the facts set forth in the verified petition that the unlawful situation has been corrected, and it further appearing that the ten-day suspension has expired,

It is, on this 21st day of February, 1946,

ORDERED, that the suspension heretofore imposed be lifted and that Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of East Rutherford, be and the same is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

4. ELIGIBILITY - FACTS EXAMINED - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

February 21, 1946

Re: Case No. 566

Applicant seeks a determination as to whether he has been convicted of a crime involving moral turpitude within the meaning of R. S. 33:1-25 and R. S. 33:1-26, thus disqualifying him from holding a license under the provisions of Title 33, Chapter 1, Revised Statutes of 1937, and from being employed by or connected in any business capacity whatsoever with the holder of such a license.

There is no dispute as to the facts. Briefly, it appears that applicant was indicted in Atlantic County for aiding and abetting a lewd exhibition. Petitioner, first pleading not guilty, subsequently changed his plea to nolo contendere and was, on December 10, 1943, sentenced by the Judge of the County Court as follows: "Sentence suspended, probation three years, to pay $30.00 a month for 33 months, payment not to start until after third month."

Two questions are here presented: (1) did the crime involve the element of moral turpitude within the meaning of R. S. 33:1-25 and (2) was there a "conviction" within the meaning of the Alcoholic Beverage Law (R. S. 33:1, etc.). The Commissioner's authority to determine these questions stems from the grave duty devolving upon him to administer the Alcoholic Beverage Law in "such a manner as to promote temperance and eliminate the racketeer and bootlegger", (R. S. 33:1-3) and the power conferred upon the Commissioner by that Statute to make "such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter." (R. S. 33:1-39)

There can be no doubt that the exhibition presented on the premises then licensed to applicant and named in the indictment was lewd, lascivious, indecent and consisted of notorious acts of public indecency tending to corrupt the morals and manners of the people. The description of the so-called dances and the remarks by the so-called Master of Ceremonies leave no doubt as to the nature of the exhibition. That the exhibition was part of the entertainment provided by applicant for the "edification" and amusement of the customers at his place of business cannot be denied. In disciplinary proceedings against the license, upon information furnished by the State Department of Alcoholic Beverage Control, the local issuing authority found licensee guilty and suspended his license for ninety days. Such an exhibition must involve several acts of baseness, vileness, depravity or immorality.

Moral turpitude has been defined as: "An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man or to society in general contrary to the accepted and customary rule of right and duty between man and man." Bouvier's Law Dictionary (Rawle 3rd ed.), Volume 2, page 2347.

"Baseness", in itself, expresses extreme moral turpitude. Bouvier's, *supra*, page 225.

In my opinion, the crime involved herein contains the element of moral turpitude. Cf. Re Case No. 467, Bulletin 695, Item 1.

This makes it necessary to determine whether or not applicant has been "convicted of a crime." Counsel for applicant depends on the holding of the New Jersey Court of Errors and Appeals in

Schireson v. Board, etc., 130 N. J. L. 570. The Court held therein, in essence, that a plea of nolo contendere to a charge in a criminal court did not per se amount to a conviction of the designated crime within the contemplation of an act to regulate the practice of medicine and surgery, particularly R. S. 45:9-16, and, hence, could not, alone, support the revocation of a medical doctor's license by the State Board of Medical Examiners.

While superficially the provisions of R. S. 45:9-16 and 33:1-25 would seem to be similar, there is a great difference in the subject matter of the two statutes.

Since the beginning of the Department of Alcoholic Beverage Control the Commissioner has ruled that a "conviction" within the intendment of the Alcoholic Beverage Law results as well from the implied confessive pleas of non vult and nolo contendere as it does from a plea of guilty or a verdict of guilty after trial. This construction has been consistently followed (since 1934) and was before the New Jersey Supreme Court recently in the case of Vesey v. Driscoll, 132 N. J. L. 294. In this case, however, the Court refused to consider the issue raised as to the effect of a plea of non vult, deciding the case on other grounds.

It is a well recognized doctrine in the law that a long continued construction given to a statute by the administrative official charged with its enforcement will not be lightly disturbed by the courts. Cf. United States v. Farrar, 281 U. S. 624; 74 L. ed. 1078, where the court held that the fact that a construction for a period of ten years by the executive departments charged with the administration of the National Prohibition Act has not been questioned by the Congress is evidential of the correctness of such construction. This doctrine has also been applied by our Supreme Court to construction of the Alcoholic Beverage Law by the Commissioner. See Cino v. Driscoll, 130 N. J. L. 535, where Justice Perskie, in writing the decision for the court, said:

> "Moreover, the legislature charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidenced by these rules, has done nothing to indicate its disapproval thereof. Cf. Young v. Civil Service Commissioner, 127 N. J. L. 329; 22 Atl. Rep. (2d) 523. The contemporaneous construction thus given to a law of the state for over a decade is necessarily respected by us. State v. Kelsey, 44 N. J. L. 1; Graves v. State, 45 Id. 203; affirmed, Id. 347; Central Railroad Co. v. Martin, 114 Id. 69, 80; 175 Atl. Rep. 637; Burlington County v. Martin, 128 N.J.L. 203; 28 Atl. Rep. (2d) 116; Martini v. Civil Service Commission, 129 N. J. L. 599, 603; 30 Atl. Rep. (2d) 569."

It is significant, therefore, that the pertinent language of the statute in question, R. S. 33:1-25, although under consideration by the Legislature at least four times since its original passage, has not been changed.

Further, the Court, in the Schireson case, supra, considered that the license of a medical doctor constituted a property right. Idem, page 575. It may well be that the Court was motivated in its conclusion by that fact and was loath to disfranchise an individual of a "property right" upon the sole basis of a judgment record such as was involved in that case. A liquor license, on the other hand, has never attained a legal status higher than that of a mere privilege, as distinguished from a property right. See Meehan v. Excise Commissioners, 73 N. J. L. 382. Indeed, the Alcoholic Beverage Law

specifically provides that "Under no circumstances, *** shall a license *** be deemed property ***." R. S. 33:1-26. This principle would seem to be well established. Paul v. Gloucester, 50 N.J.L. 585; Hagan v. Boonton, 62 N. J. L. 150.

The Legislature adopted the Alcoholic Beverage Law as a remedial statute. It directed that the Act be liberally construed. See R. S. 33:1-73, originally Chapter 436, Laws of 1933, Section 74, where the Act says: "This chapter (act) is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."

In construing a similar statutory provision contained in the Prohibition Act of 1922, it was held in State v. Medinkowitz, 5 N. J. Misc. 844, at page 846:

> "This legislative direction places the act, for the purposes of construction, on a plane with that class of statutes commonly termed remedial statutes, which must be liberally construed in order to advance the remedy and suppress the mischief. Board of Conservation and Development v. Veeder, 89 N. J. L. 561; 99 Atl. Rep. 335***.
>
> "In Snyder v. Compton, 87 Tex. 374; 28 S. W. Rep. 1061, the Supreme Court of Texas held: '***in passing a law the legislature has the power to declare in the body of the act the construction which shall be put upon it. It is but a mode of expressing its intent, and that intent, however expressed, is binding upon the courts.'"

It would seem that the principle laid down in the Schireson case, supra, cannot be applied to defeat the obvious intention of the Legislature expressed in the Alcoholic Beverage Law, particularly in a case wherein the facts upon which the criminal charges were based are known to the Commissioner.

Giving full consideration to all the facts herein and to the end to be attained by the proper enforcement of the Alcoholic Beverage Law, I am compelled to recommend that the applicant be advised that he is not eligible to receive a liquor license or to be employed by or connected in any business capacity whatsoever with the holder of such a license by reason of the fact that he has been convicted of a crime involving moral turpitude within the meaning of R. S. 33:1-25.

Edward F. Hodges,
Attorney.

APPROVED - applicant is ruled ineligible as determined herein.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - PERMITTING GAMBLING ON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 5 DAYS, LESS 2 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JAMES F. DALY
T/a DALY'S GRILLE
1238-40 Kaighn Avenue
Camden, N. J.,

Holder of Plenary Retail Consumption License C-51, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

William T. Cahill, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge that he allowed, permitted and suffered gambling on his licensed premises in violation of Rule 7 of State Regulations No. 20.

On January 18, 1946 two investigators of the State Department of Alcoholic Beverage Control observed four patrons of the tavern seated at a small table near the bar engaged in the playing of a card game known as "rummy." The winner was paid by the loser at the end of each game.

The licensee was not personally present at the time the game was in progress. There is no evidence that the "house" either participated in, or received any profit or fee from, the game. The bartender in charge of the licensed premises during the one and one-half hours the game was observed claims that he did not know the game was other than a "social" game. He did, it seems, have ample opportunity to observe the real situation had he looked. Licensees will be held strictly responsible when they or their employees permit gambling of any kind on licensed premises.

The defendant has no prior adjudicated record. Therefore, the minimum period of suspension for the violation in the instant case is five days. Re Smith, Bulletin 603, Item 7. Two days of said suspension will be remitted because of the plea, leaving a net suspension of the license for a period of three days.

Accordingly, it is, on this 21st day of February, 1946,

ORDERED, that Plenary Retail Consumption License C-51, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to James F. Daly, t/a Daly's Grille, for premises 1238-40 Kaighn Avenue, Camden, be and the same is hereby suspended for a period of three (3) days, commencing at 2:00 a.m. February 26, 1946, and terminating at 2:00 a.m. March 1, 1946.

ALFRED E. DRISCOLL
Commissioner.

6. APPELLATE DECISIONS - ANDREWS v. CLIFTON.

| | | |
|---|---|---|
| HELEN ANDREWS, | ) | |
| Appellant, | ) | |
| -vs- | ) | ON APPEAL<br>CONCLUSIONS AND ORDER |
| MUNICIPAL COUNCIL OF THE CITY OF CLIFTON, | ) | |
| Respondent | ) | |

Donald G. Collester, Esq. and Israel Friend, Esq.,
Attorneys for Appellant.
John G. Dluhy, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent whereby appellant was found guilty of two charges hereafter set forth. A hearing upon these charges was held before the local Board on December 10, 1945, and at the conclusion thereof appellant was found guilty of both charges and her license was revoked. On December 18, 1945 the penalty of revocation was modified by respondent to a suspension of the license for the balance of the licensing period, which expires June 30, 1946.

The charges allege that:

"1. On or about October 29th, and November 2nd, 1945 and on divers other occasions prior thereto, you allowed, permitted or suffered in or upon the licensed premises known prostitutes or other persons of ill fame and you allowed, permitted or suffered the licensed premises or the licensed business to be used in furtherance or aid of, or in connection with the illegal activity or enterprise of prostitution, in violation of Rule 4 of State Regulations No. 20.

"2. On or about October 29th, and November 2nd, 1945, and on divers other occasions prior thereto, you harbored immoral individuals, permitted the licensed premises to be used in procuring or furnishing of women for immoral purposes or for the commission of crime or immoral acts, or for the defrauding or permitting the defrauding of persons in the licensed premises by misrepresentation or threats."

Rule 4 of State Regulations No. 20 provides:

"No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill-repute; nor shall any licensee allow, permit or suffer the licensed premises or the licensed business to be used in furtherance or aid of, or in connection with any illegal activity or enterprise."

Paragraph 6 of a resolution of the Municipal Council of the City of Clifton, adopted August 7, 1934 and still in effect, provides:

> "No licensee shall harbor criminals or lawless or immoral individuals, or permit the licensed premises to be used in the procuring or furnishing of women for immoral purposes, or for the commission of crime or immoral acts, or for the defrauding or permitting the defrauding of anyone in the licensed premises by misrepresentation or threats."

The resolution provides that a license shall be revocable for a violation thereof. See also R. S. 33:1-31(h).

Six grounds of reversal are advanced by appellant. The first four, briefly summed up, allege that the finding of guilt was against the weight of evidence and based upon inference and supposition; the remaining two grounds allege that evidence detrimental to appellant was considered at an executive session and in the enforced absence of the appellant and her counsel. As this is a trial de novo, the last two reasons may be disregarded in deciding this appeal.

The evidence in support of the charges was given principally by one Samuel ---, recently discharged from military service. He testified that on October 29, 1945 he entered defendant's premises and observed a woman known as "Rose" sitting alone at the bar. He went over and sat with Rose, who, during the course of conversation, offered to have sexual intercourse with him, but he refused her offer. Apparently neither the licensee nor any of her employees heard this conversation. Samuel and Rose remained at the bar drinking for many hours and the licensee and her bartender Joe had a number of drinks at Samuel's expense. After closing hour the licensee drove Samuel and Rose to their respective homes. Samuel was apparently in an intoxicated condition at that time. When he awoke the following day, he found that he had no money. He had had $40.00 when he entered defendant's premises. He believed that Rose had taken his money, or a large part thereof.

On the evening of November 2, 1945, Samuel visited defendant's premises with two male companions. At that time Rose was seated at the end of the bar with a soldier and "another fellow." One of Samuel's companions displayed a large roll of bills and Rose then joined the newly arrived patrons and "propositioned the three of us for $8.00." The licensee was tending bar at this time but apparently did not hear this conversation. Later in the evening Rose left the licensed premises in an automobile with Samuel and his two male friends. During the course of the evening Samuel lost the sum of $30.00, which was later repaid to him by Rose's attorney. One of his companions mysteriously lost the sum of $150.00. Rose was again suspected.

Samuel testified that prior to his entry into the armed services, he had been employed in defendant's premises and knew the bartender Joe, who is still employed by defendant. He testified that three or four years ago, while so employed, he met Rose in defendant's premises, took Rose to a car in the back of the tavern, had sexual intercourse with her, and afterwards told the bartender Joe of this occurrence. Joe has been employed by defendant for more than five years and resides in the same house with her.

If Rose is not a known prostitute within the meaning of the rule, she is at least a person of ill-repute and an immoral individual within the meaning of the rule and resolution.

The only meritorious question in this appeal is whether or not the defendant or her employees knew or should have known of Rose's true character. The licensee alleges that Rose acted as any other individual on the licensed premises and that she had no knowledge that Rose was a prostitute or immoral. Mere proof that a prostitute or a person of ill-repute was permitted on licensed premises is insufficient to establish the offense. Re Foster and Clauss, Bulletin 248, Item 4. As was said in that case:

> "Unless the offense can be tied in and brought home to the licensees by their knowledge or by acquiescence, which implies knowledge, I cannot, in fairness, hold them responsible. Such a thing might happen in the best regulated club. The mere presence of a prostitute or other person of ill-repute on licensed premises does not make out a case."

In general, I agree with the principle set forth above. However, the evidence in the present case shows that Rose, a married woman, frequently entered defendant's premises unescorted over a period of more than four years last past. Apparently, she has been on friendly terms with the licensee and the bartender Joe, who occasionally drove her to her home after the licensed premises closed. I accept as true Samuel's testimony as to the information he gave to Joe concerning the immoral act committed four years ago in the car parked in back of the tavern. It is inconceivable that the licensee did not know the true character of Rose when the relationship between the licensee and Rose and the bartender is considered. Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent improper use of their premises. Bilowith and Sanson v. Passaic, Bulletin 527, Item 3.

Upon the evidence, I find that the licensee Helen Andrews knew or should have known of the true character of the patron Rose. Hence, I affirm the finding of guilt as to both charges.

Accordingly, it is, on this 25th day of February, 1946,

ORDERED, that the action of respondent in suspending appellant's license for the balance of its term be and the same is hereby affirmed, and that the appeal be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE WRITTEN NOTICE OF CHANGE IN FACTS AS SET FORTH IN APPLICATION FOR A LICENSE AS REQUIRED BY R. S. 33:1-34 - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

GARDEN COCKTAIL LOUNGE & GRILL, INC. )
204 Market Street ) CONCLUSIONS AND ORDER
Paterson 1, N. J., )

Holder of Plenary Retail Consumption License C-22 issued by the Board of Alcoholic Beverage Control of the City of Paterson. )

A. Leon Kohlreiter, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"You failed to file with the Board of Alcoholic Beverage Control of the City of Paterson, within 10 days after the occurrence thereof, a requisite written notice of the full changes occurring in the facts as set forth in Questions 22, 23 and 24 of your application filed with the said Board and upon which you obtained your current 1945-46 plenary retail consumption license, those full changes being that on or about June 29, 1945, your stockholders of record became Eugene Leibowitz - 18 shares, Alexander Wasserman - 1 share and August C. Michaelis - 1 share, with Alexander Wasserman and/or Abraham Wasserman being the beneficial owner of all the said shares; your failure to file such requisite notice being in violation of R. S. 33:1-34."

The file in this case discloses that on June 29, 1945, Abraham Wasserman became the beneficial owner of all of the shares of defendant corporation by purchase thereof from the former shareholders of defendant corporation. Apparently because there was some doubt at that time as to his bona fide residence in New Jersey and, hence, a doubt as to his right to hold more than ten per cent. of defendant's stock, Abraham Wasserman then caused eighteen shares of stock to be issued in the name of Eugene Leibowitz, a friend. The defendant corporation failed to file with the local Board a notice, in writing, of any change of shareholders within ten days after the occurrence thereof on June 29, 1945, as required by R. S. 33:1-34. In fact, no notice was filed with the local issuing authority until November 1, 1945, after investigation herein was instituted. Hence defendant is guilty as charged.

It appears that Abraham Wasserman formerly resided with his family in New York City; that from June 1945 to November 19, 1945 he lived in a hired room in Paterson while his family remained in New York; that on November 19, 1945 his family moved to 30 Church Street, Paterson, where Abraham Wasserman and his family now reside. A certificate received from the Board of Alcoholic Beverage Control of the City of Paterson shows that on December 10, 1945 a further notice, in writing, was filed with the local Board advising that the eighteen shares of stock of defendant corporation had been transferred from Eugene Leibowitz to Abraham Wasserman, and that the remaining two shares, also beneficially owned by Abraham Wasserman,

are now in the names of Alexander Wasserman and Sidney Wasserman as qualifying shareholders. It thus appears that the unlawful situation has been corrected.

As to penalty: Licensee has a prior record. On November 14, 1945 its license was suspended for a period of fifteen days after it had pleaded non vult to a charge alleging that it possessed two bottles containing alcoholic beverages not genuine as labeled. Re Garden Cocktail Lounge & Grill, Inc., Bulletin 685, Item 1.

In view of all the circumstances of this case, I shall suspend defendant's license herein for a period of twenty days, less five days for the plea, making a net suspension of fifteen days.

Accordingly, it is, on this 26th day of February, 1946,

ORDERED, that Plenary Retail Consumption License C-22, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Garden Cocktail Lounge & Grill, Inc., for premises 204 Market Street, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. March 5, 1946, and terminating at 3:00 a.m. March 20, 1946.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 10 DAYS AND CORRECTION OF ILLEGAL SITUATION - ILLEGAL SITUATION CORRECTED AND MORE THAN 10 DAYS HAVING EXPIRED - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against )

HENRY BUDOWSKY )
75 yards above Penn. R. R. on Evesham Avenue )
Delaware Township
P. O. Ashland, N. J., )

Holder of Plenary Retail Distribution License D-2 issued by the Township Committee of the Township of Delaware. )

ON PETITION
O R D E R

George S. Friedman, Esq., Attorney for Petitioners.

BY THE COMMISSIONER:

On January 29, 1946 I suspended defendant's license for the balance of its term, effective at 9:00 a.m. February 4, 1946, after he had pleaded non vult to charges alleging that he had falsely concealed the fact that Max Burday had an undivided half-interest in the license. Re Budowsky, Bulletin 692, Item 12. Leave was given to apply to me for an order lifting the suspension after the license had been properly transferred and after ten days of the suspension had been served.

Henry Budowsky and Max Burday have filed a verified petition herein, from which it appears that they are the sole owners of the license and that on February 25, 1946 the license was transferred by the local issuing authority from Henry Budowsky to Henry Budowsky and Max Burday, trading as Ashland Food Market. Certificate received from the Township Clerk verifies the fact that the transfer has been made as set forth in the petition.

It appearing from the verified petition that the unlawful situation has been corrected, and more than ten days of the suspension having been served,

It is, on this 28th day of February, 1946,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Delaware, be restored to full force and operation, effective immediately.

Alfred E. Driscoll
Commissioner.

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