

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

BULLETIN 564

APRIL 26, 1943.

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THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

RESEARCH REPORT NO. 1000

BY
J. H. GOLDSTEIN AND
R. F. STEIGER

DEPARTMENT OF CHEMISTRY
UNIVERSITY OF CHICAGO

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1960

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

BULLETIN 564

APRIL 26, 1943.

1. 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, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

ANTONIO PANETTA)
T/a BIG HORN GRILLE)
336 Arch Street)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-28 issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)

Edward V. Martino, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee entered a plea of not guilty (subsequently withdrawn) to charges alleging that, on October 22, 1942, he sold alcoholic beverages to and permitted the consumption of alcoholic beverages on his licensed premises by Ralph G----, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20. At the time of the alleged violation this minor was twenty years and seven months of age.

On October 22, 1942, Ralph G---- and Fred H----, both of whom were then and now are serving in the United States Navy, visited defendant's premises with a Mr. Bantle, whom they had met earlier on the same evening. Mr. Bantle testified that he went to the bar and attempted to buy three glasses of beer - one for himself and one for each of the sailors; that the licensee refused to serve Fred H---- because he was too young; that the licensee did serve a glass of beer to Mr. Bantle, who is of full age, and a glass of beer to Ralph G---, who, the licensee said, was "all right." Mr. Bantle says that he complimented the licensee for refusing to sell to the younger sailor, and the licensee replied, "I am trying to live within the law." While Ralph G--- was consuming his drink, two police officers of the City of Camden entered the licensed premises. Apparently they were then investigating some other matter. One of the police officers testified that Ralph G--- told him that he was twenty-one. This police officer further testified that this sailor appeared to him to be more than twenty-one years of age but that, after looking at the sailor's identification card, he discovered that he was in fact a minor. Mr. Bantle also testified that this sailor appeared to be more than twenty-one years of age. Defendant-licensee was unable to appear at the hearing herein because of illness. In view of the peculiar facts of this case and the apparent efforts of the licensee to prevent the sale of alcoholic beverages to the other sailor who obviously appeared to be youthful, I have permitted defendant to withdraw his plea of not guilty. In lieu thereof, he has entered a plea of non vult to the charge of permitting Ralph G---, a minor twenty years and seven months old, to consume alcoholic beverages on his licensed premises.

The license will be suspended for the minimum period of ten days, less five for the plea of non vult.

Accordingly, it is, on this 19th day of April, 1943,

ORDERED, that Plenary Retail Consumption License C-28, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Antonio Panetta, t/a Big Horn Grille, for premises 336 Arch Street, Camden, be and the same is hereby suspended for five (5) days, commencing at 2:00 A. M. April 26, 1943, and terminating at 2:00 A.M. May 1, 1943.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

HARRY G. WELLS)
T/a HARRY'S TAPROOM)
941 Pearl Street)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-175, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
-----)

Harry G. Wells, Pro Se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging that, on October 22, 1942, he sold alcoholic beverages to, and permitted the consumption of alcoholic beverages in his licensed premises by, Ralph G--- and Fred H---, minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The two minors mentioned in the charges are the same individuals referred to in Re Panetta, Bulletin 564, Item 1. On the evening of October 22, 1942 they had visited defendant's premises with Mr. Bantle prior to visiting the premises operated by Mr. Panetta.

It appeared from our file that Bantle approached the bar in defendant's premises with these two young men and purchased a glass of beer for himself, a glass of beer for Ralph G--- and a glass of whiskey for Fred H---, all of which were consumed. At the time of the violation, Fred H--- was seventeen years of age.

As to penalty: Whatever excuse there may be as to serving the older sailor, I can think of no reason why service should have been made without question to the sailor who was seventeen years of age. The usual penalty for sale to a minor, where there are no aggravating circumstances, is ten days. However, because of the youthfulness of one of the sailors mentioned herein, I shall increase this penalty to fifteen days. Five days will be remitted for the guilty plea, making a net suspension of ten days.

Accordingly, it is, on this 19th day of April, 1943,

ORDERED, that Plenary Retail Consumption License C-175, issued to Harry G. Wells, t/a Harry's Taproom, by the Municipal Board of Alcoholic Beverage Control of the City of Camden, for premises 941 Pearl Street, Camden, be and the same is hereby suspended for ten days, commencing at 2:00 A.M. April 26, 1943, and terminating at 2:00 A. M. May 6, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - CHARGES OF SELLING ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

BERT BOTTURA)
T/a BERT'S BAR)
720 South Fifth Street)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-122, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
-----)

Edward V. Martino, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to charges alleging that, on October 22, 1942, he sold alcoholic beverages to, and permitted the consumption of alcoholic beverages in his licensed premises by, Ralph G--- and Fred H---, minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

After the two sailors mentioned in Re Panetta, Bulletin 564, Item 1, were found in Panetta's premises, information was obtained which led the members of the Camden Police and ABC investigators to believe that these sailors had been served alcoholic beverages earlier upon the same evening in other licensed premises. Accordingly, the two sailors, Mr. Bantle, one of the police officers and the two ABC investigators entered a police car and toured around the city to identify the other premises. Neither of the sailors had ever been in the City of Camden on any previous occasion. The first place which Mr. Bantle and the two sailors identified from the outside was Bottura's premises at the corner of 5th and Pine Streets. At that time the premises were closed. On the following morning the police officer and the investigators returned to Bottura's premises with the two sailors. When the sailors first entered the licensed premises they said that they had never been there before, but later stated that they had been in the premises on the previous evening. At that time they also stated that drinks had been served to them by a woman.

At the hearing herein Mr. Bantle testified that he was in the licensed premises at the corner of 5th and Pine Streets on the

evening of October 22 when the two sailors entered. He asked them to have a drink. One sailor "said he didn't care for any." The other sailor did have a beer. Mr. Bantle said that the drink was served by a "lady bartender"; that he did not know the name of the tavern and that he had never been in the place before or since.

At the time of the hearing, Fred H--- could not be produced because he was then in active service. Ralph G---- testified that he was born on March 2, 1922; that, on the evening in question, he entered a licensed premises with the other sailor and met Mr. Bantle but "I could not tell you just where it is at"; that he then had one glass of beer which was served by a woman.

The licensee testified that he was not in his premises on the evening of October 22; that the premises were then in charge of Angelo Nigro; that Nigro was not produced to testify because the licensee does not know where he is at the present time; that, on the evening in question, the licensee did not employ any woman as bartender or waitress. The licensee has held a license since Repeal and has no prior record.

After carefully considering all the evidence, and particularly defendant's testimony that no woman was employed by him as bartender or waitress on the evening in question, a serious doubt exists as to the guilt of the licensee. I shall resolve that doubt in favor of defendant. Hence, I conclude that the Department has not sustained the burden of proof in establishing the guilt of defendant. This decision is not to be taken as evidence that the Department is in any manner relaxing its vigilance in "minors" cases. On the contrary, the defendant and all other licensees must take every precaution necessary to prevent sales of alcoholic beverages to minors. The defendant is on notice; he should conduct himself accordingly.

Accordingly, it is, on this 19th day of April, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

4. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST 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.)

CONCLUSIONS
AND ORDER

Case No. 258.)
- - - - -)

BY THE COMMISSIONER:

Petitioner in this proceeding prays that his disqualification resulting from the conviction of a crime be lifted pursuant to R. S. 33:1-31.2.

On April 26, 1937 petitioner entered a plea of non vult to the crime of embezzlement and was sentenced to probation for a period of three years. His conviction was the outgrowth of petitioner's activities as a salesman. The employing firm was in the process of going

into bankruptcy and, upon checking its accounts, the receiver for the bankrupt found petitioner's account to be short and thereafter the embezzlement complaint was made. Apparently the feeling between employer and employee was cordial, since his former employer is responsible for the position he presently holds.

At the hearing three character witnesses, all business men, appeared and testified. Two of them stated that they had known the petitioner for over twenty years and the other stated that he has known him for twelve years. One of the witnesses, a member of the local draft board in the community in which petitioner resides, testified that petitioner is highly regarded and is well known in the community for his work with young boys in teaching them to play football, and has kept a club going for the benefit of the boys for the past eight years. The witnesses further testified that petitioner has a fine home, is well behaved and of excellent character. He is presently employed by a large corporation as a contact man and has been thus employed for the past five years.

Petitioner has never been in any difficulty prior to 1937 and his fingerprint records show a clean record from that time to the present date. The Chief of Police of the municipality in which he resides has advised this Department that there are no pending complaints or investigations against him.

From all of the foregoing, I am satisfied that petitioner has been leading an honest and law-abiding life for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to public interest. Hence, his disqualification will be removed.

Accordingly, it is, on this 16th day of April, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

5. APPELLATE DECISIONS - LASCHITZKI v. BORDENTOWN.

PEARL E. LASCHITZKI,)

Appellant,)

-vs-

CITY COMMISSION OF THE)
CITY OF BORDENTOWN,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

R. James Stewart, Esq., Attorney for Appellant.

Jay B. Tomlinson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, holder of a plenary retail consumption license issued by the respondent City Commission for premises 117 Farnsworth Avenue, Bordentown, appeals from the Commission's denial of transfer of such license to adjoining premises, known as 115 Farnsworth Avenue.

Respondent asserts that it denied such transfer because:

"The removal of the business from 117 Farnsworth Avenue to 115 Farnsworth Avenue would bring the operation of the business closer to the residential neighborhood of the City of Bordentown and immediately adjacent a building occupied by a sick person whose health would be imperilled by any additional noise or commotion. It also was shown to respondent that the premises now occupied by the appellant are better suited for the purpose of the business conducted by the appellant and more in keeping with the character of the neighborhood."

The premises known as 117 Farnsworth Avenue are located at the corner of that avenue and a narrow alley known as Miles Alley. Erected thereon is a small three-story brick building about fourteen feet wide; one of a row of similar structures having common party walls. The appellant's tavern occupies the first floor, while the appellant resides on the second floor. She describes the building as being quite dilapidated, with few conveniences. The roof and windows leak, and there is no bathroom. Only cold water is on tap in the tavern. There is no central heating system, and there is inadequate ventilation and toilet facilities.

A statement of these facts raises the question: Why was a license issued or renewed in the first place for these premises so apparently unsuited for use by the public? A license should neither be issued nor renewed for premises that fail to meet elementary health, sanitary and safety standards. Unsightly and unsanitary premises are objectionable from every point of view.

The respondent holds a tax lien upon the premises and rent therefor is paid to the city.

The building next door, formerly a service station, to which transfer is sought, was purchased by the licensee in August 1942. The entrance is described as being between ten to twenty feet from the doorway of the premises now licensed. The licensee, at considerable expense, has made extensive alterations to these premises, so that it is completely renovated and has many of the facilities which are lacking in her present tavern. Obviously, this building, rather than the building at 117 Farnsworth Avenue, is better suited for the purpose of a tavern. There is no basis for respondent's contrary conclusion, upon which, in part, it rests its denial of the application for transfer.

Respondent's conclusion that granting the transfer would imperil the health of a next door neighbor because of the attendant noise or commotion is likewise unsupported by the evidence. All that the Commission had before it was a letter from the neighbor stating this objection in general terms. No evidence was presented that there was noise or commotion in the conduct of the licensed business. It is significant that, on the appeal, the appellant presented a letter from such neighbor stating that he did not oppose the transfer.

This leaves for consideration respondent's remaining conclusion that transfer of the license would bring the operation of the business closer to a residential neighborhood, which, inferentially, would affect the neighborhood unfavorably.

The licensed premises are located on the east side of Farnsworth Avenue, which is the main local thoroughfare. To the north, on the same block, there is, in order, the vacant building to which

transfer of license has been applied for, a grocery store, a ladies' dress shop, a vacant lot, a two-family apartment house, another vacant lot and an historic residence. To the south, on the next block, there is a Masonic Hall, various restaurants and stationery stores, a theatre, and other business establishments. On Farnsworth Avenue, starting opposite the historic residence and proceeding south, there is a brick building, a garage, three or four small residences, an upholstery store, a food market and a dress shop. It is therefore evident, considering the facts in a light most favorable to respondent, that it is a mixed residential and business neighborhood, with the latter predominant.

Two of the objectors who appeared before the respondent board appeared at the appeal hearing. One objector, who appeared for the owner of the apartment house and the old residence, protested solely on the ground that to move the entrance of the licensed premises fifteen or twenty feet nearer to those buildings would be detrimental to the neighborhood. However, in view of the nature of the buildings in the vicinity, this objection does not rest upon a sure footing. It is to be noted that the owner of these buildings apparently had no complaint concerning the licensee's conduct of her business and raised no objection to the original issuance of the license to appellant in 1940, or to the renewals thereof in 1941 and 1942.

The other objector, who is the owner of the ladies' dress shop, stated that, in general, he objects to a tavern; that he is disturbed by the conduct of this tavern; and protests the establishment of such tavern at a place nearer his shop. Although he claims that disturbing incidents have occurred at least since July 1941, he can recall only two such incidents -- one on New Year's Day, 1943, when an apparently intoxicated driver made some noise opposite the Masonic Hall; and one later in January, when two drunken persons conducted themselves unpleasantly on the sidewalk next door to the present licensed premises. This witness admits that, although the premises have been licensed continuously since 1935, he did not previously register any objections to the issuance of such license and made no formal complaint after either of the two incidents mentioned.

This is but slight evidence of misconduct. It would seem unreasonable to deny a transfer because, in a few instances, patrons may have misconducted themselves after leaving the licensed premises, particularly where it does not appear that the licensee had any knowledge of such misconduct or received any warning to correct the situation. Cf. Hobbs v. Lower Penns Neck, Bulletin 405, Item 4.

The issue on an application to transfer a license from place to place, particularly where the transfer sought is within the same locality, is not to be confused with the issue raised by an application for a license or the renewal thereof. The respondent municipality, in the exercise of its sound discretion, having issued to the appellant the license in question, the issue on this appeal is confined to the question of transfer.

While a transfer of a liquor license is not an inherent or automatic right, a refusal to transfer will be reversed where it appears that the refusal is arbitrary or unreasonable. There is no evidence to support a finding that the premises to which transfer is sought are unsuitable, or that such transfer would affect the residential character of the neighborhood. For the balance, the objections urged are merely of a general character, not affecting the personal fitness of the licensee. Mere general objections would not justify refusal by an issuing authority to transfer a license in a business district, especially where it is merely to a building next door.

Cf. Clemens v. Wallington, Bulletin 408, Item 4. I therefore conclude that the refusal to transfer was unreasonable.

The action of respondent is therefore reversed, and the respondent is directed to issue the transfer as applied for.

ALFRED E. DRISCOLL
Commissioner.

Dated: April 16, 1943.

6. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA - ILLICIT LIQUOR (ONE BOTTLE) - 10 DAYS' SUSPENSION - TOTAL: 15 DAYS.

In the Matter of Disciplinary Proceedings against)

FRED SIEMS DINER INC.)
64 Pavonia Avenue)
Jersey City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-171 issued by the Board of Commissioners of the City of Jersey City and transferred, during the pendency of these proceedings, to)

FRED SIEMS, ERNEST F. OPPEL)
and JOHN VENROOY.)

John D. Craven, Esq., Attorney for Defendant-Licensee.
Richard C. Gossweiler, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, a corporate licensee, pleads guilty to the following charges:

1. In answering Question 22 in its license application it suppressed the fact that Rudolph Becker was the holder of 25% of the outstanding corporate stock, this being in violation of R. S. 33:1-25.
2. In answering Question 32 in the aforesaid application it failed to disclose the existence of a conditional bill of sale covering certain of the chattels used in connection with the conduct of its alcoholic beverage business, this being in violation of R. S. 33:1-25.
3. On or about September 21, 1942, it possessed an illicit alcoholic beverage in that one 4/5th quart bottle labeled "Old Crow Brand Straight Rye Whiskey," found in its licensed premises, contained an alcoholic beverage which was not a straight whiskey, in violation of R. S. 33:1-50.

As to charge (1): Defendant corporation obtained a plenary retail consumption license in 1933 and has renewed its license from year to year since that time. In 1933 the shares of stock issued by defendant were held by the following individuals:

Fred Siems	-	25	shares
Ernest Oppel	-	25	"
John Venrooy	-	25	"
Rudolph Becker	-	25	"

It appears from the Department's file that in January 1936 Becker obtained employment elsewhere but continued to hold the twenty-five shares in his name until October 20, 1942, when he transferred his shares to the three other stockholders, each of whom now holds 33-1/3 shares. Shortly thereafter, due notice of this change in stockholders was given to the local issuing authority in accordance with the provisions of R. S. 33:1-34.

It is admitted that, when the application for the present fiscal year was filed, the fact that Becker then held twenty-five shares of the stock was not disclosed. Ernest Oppel, the President of defendant corporation, testified that he filled out this application and that the omission of Becker's name and interest was an oversight and not due to any intent to evade the law. It is clear that the application suppressed a material fact. As indicated above, the situation was corrected on October 20, 1942. Under all the circumstances, I shall suspend the license for a period of five days because of the violation set forth in charge (1).

As to charge (2): It appears from the Department's records that the conditional bill of sale had been in existence for a long period of time and that nearly all payments thereon had been made. The failure to disclose the existence of the bill of sale, however, cannot be overlooked. All questions in the application must be answered correctly. I shall suspend the license for a further period of five days because of the violation set forth in the second charge.

As to charge (3): On September 21, 1942 an inspector of the Alcohol Tax Unit visited defendant's premises. He inspected twenty-seven bottles of liquor. One bottle, labeled as containing a straight rye whiskey, was seized following the discovery that the contents contained artificial coloring. Straight rye whiskey should contain all natural coloring. The President of the defendant corporation testified that all the corporate officers worked on the licensed premises and were the only persons who handled alcoholic beverages with the exception of the "night man." He denied that any of the corporate officers had tampered in any way with the contents of the seized bottle. He further stated that the only explanation which could be advanced was that perhaps the "night man", who acted as bartender and who had left the corporation's employ prior to the finding of the illicit liquor, had poured a blended whiskey into the seized bottle. Despite the personal innocence of the officers of defendant, the corporation must be held responsible for the violation. Re Kurian, Bulletin 517, Item 2. I therefore shall suspend the license for an additional period of ten days on the third charge.

From the total suspension of twenty days, five days will be remitted because of the guilty plea, making a net suspension of fifteen days.

Accordingly, it is, on this 16th day of April, 1943,

ORDERED, that Plenary Retail Consumption License C-171, heretofore issued by the Board of Commissioners of the City of Jersey City to Fred Siems Diner Inc., for premises 64 Pavonia Avenue, Jersey City, and transferred during the pendency of these proceedings to Fred Siems, Ernest F. Oppel and John Venrooy, be and the same is

hereby suspended for a period of fifteen (15) days; commencing at 2:00 A.M. April 21, 1943, and terminating at 2:00 A.M. May 6, 1943.

ALFRED E. DRISCOLL
Commissioner.

7. APPELLATE DECISIONS - PETTI v. BAYONNE.

MICHAEL PETTI,)

Appellant,)

-vs-)

BOARD OF COMMISSIONERS OF THE)
CITY OF BAYONNE,)

Respondent)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Joseph Scala, Esq. and Maurice A. Cohen, Esq., Attorneys for Appellant.

Edward Griffin, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application for transfer of his plenary retail consumption license from 428 Broadway to 642-44 Broadway.

From the transcript of the proceedings before the local Board which was introduced into evidence, and the testimony of Mayor Donovan given at the appeal hearing, it is evident that the dominant reason for the Board's unanimous refusal to transfer the license is because of the proximity of the Bayonne Hospital and Dispensary to the proposed site.

The premises to which appellant desires to transfer his license are located at the southeast corner of Broadway and 30th Street. The hospital is located on the south side of 30th Street, immediately around the corner from the tavern. Less than 40 feet separate the two properties. The entrance to the hospital clinic is about 65 feet from the side entrance to the tavern on 30th Street and about 120 feet from the Broadway entrance.

These premises were licensed for many years prior to Prohibition, and also continuously between 1934 and June 1942, when the license of the then holder was revoked because the premises had been operated as a disorderly house. The hospital has been situated at its present location for at least fifteen years and it does not appear that it has ever objected to the issuance of a liquor license for the premises at 642-44 Broadway.

The present Board of Commissioners of the City of Bayonne, consisting of five members, took office in May 1939. Four of those members had never theretofore served in that capacity and the fifth member was first elected a commissioner in 1935. Thus, none of the present members of the Board were responsible for the original issuance of the license for the premises in question in 1934.

The apparent position of the Board is, as expressed by the Mayor, that although the proposed site has been licensed for many years, the Board has always been opposed to a tavern being located in such close proximity to the city hospital. It is true, as the Mayor points out, that the Board continued to renew the license for the tavern each year between 1939 and 1942. However, that action was taken because the Board did not wish to destroy a business already established and deprive the licensee of his means of livelihood. I agree that this was the fair and equitable thing to do.

However, that is a far cry from saying that the Board, having fallen heir to a situation which was distasteful to it, must continue to live with that situation in perpetuity. This is not a case, as in Taylor v. South River et al., Bulletin 520, Item 4, where I reversed the action of the local Council in granting a license shortly after that same Council had refused to issue a license to the same person for the same premises. On the contrary, the instant case is analogous to that of Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5, in which I held that a governing body may, where, as here, there may be a reasonable difference of opinion as to the propriety of issuing a license in a certain locality, properly take a different stand than that taken by the former board. In the cited case, I stated:

"While, in the interest of uniformity, it might be desirable that a succeeding governing body adhere as closely as possible to the policies theretofore enunciated by a former body, it cannot be said that a deviation from those policies is necessarily arbitrary or unreasonable. On the contrary, the general rule of law is that no governing body may tie the hands of its successors in matters involving the exercise of discretion. Cf. Rafalowski v. Trenton, supra; Lewis v. Phillipsburg; Bulletin 232, Item 13."

My function on appeals of the type now before me is to determine whether the action of the local issuing authority is so arbitrary and unreasonable as to warrant a reversal of its action. I do not substitute my opinion for that of the Board below but merely decide whether reasonable cause exists for its opinion, and if so, to affirm irrespective of my personal view. Cf. Northend Tavern, Inc. v. Northvale et al., supra. Applying this test, I cannot say that the action of the Bayonne Board of Commissioners is either arbitrary or unreasonable. While it is, perhaps, significant that the hospital has not entered any objection to the instant application for transfer, the decision of the issuing authority may nonetheless be predicated upon what it deems best for the interest of its community, despite the lack of any individual protests.

The action of respondent is affirmed.

Accordingly, it is, on this 19th day of April, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - PERMITTING MINOR, HOLDER OF EMPLOYMENT PERMIT, TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF R. S. 33:1-26 AND RULE 3 OF STATE REGULATIONS NO. 11 - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY MINOR PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT, IN VIOLATION OF R. S. 33:1-26 - PERMIT PRIVILEGE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against BENJAMIN ROSENZWEIG T/a ADLON LIQUOR SHOP 704 Anderson Avenue Cliffside Park, N. J., Holder of Plenary Retail Distribution License D-2 issued by the Borough Council of the Borough of Cliffside Park.

CONCLUSIONS AND ORDER

In the Matter of Disciplinary Proceedings against IRVING ROSEN 292 Lawton Avenue Cliffside Park, N. J., Holder of Employment Permit No. 5845, issued by the State Commissioner of Alcoholic Beverage Control.

Benjamin Rosenzweig, Pro Se. No appearance for Defendant-Permittee, Irving Rosen. Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded guilty to a charge of permitting his son, Irving Rosen, who holds an employment permit for a person disqualified by reason of age, to sell and serve alcoholic beverages, in violation of R. S. 33:1-26 and Rule 3 of State Regulations No. 11.

A charge of selling alcoholic beverages contrary to the conditions upon which his employment permit was issued was served upon defendant-permittee. His father, Benjamin Rosenzweig, on behalf of the permittee who is now in the Army, has entered a plea of guilty to said charge. Under the circumstances, the plea will be accepted.

On February 13, 1943 an ABC investigator saw Irving Rosen make a sale of alcoholic beverages on the licensed premises of Benjamin Rosenzweig. The investigator discovered that Irving Rosen was a minor.

As to penalty: Defendant-licensee has informed me that, on the day in question, he was confined to bed because of illness and that his wife had requested their son to keep the store open and not to sell any merchandise until she could take charge of the licensed premises. If such instructions were given, it is apparent that the son did not follow them. The emergency does not excuse the violation. Re Ludanski, Bulletin 560, Item 4. Minors must not handle, sell or serve alcoholic beverages. It appears, however, that the son was

then twenty years of age, and that the licensee has no previous record. Under the circumstances, I shall suspend the license for the minimum period of five days, less two for the guilty plea, making a net suspension of three days. I shall suspend the permit for the balance of its term.

Accordingly, it is, on this 21st day of April, 1943,

ORDERED, that Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Cliffside Park to Benjamin Rosenzweig, t/a Adlon Liquor Shop, for premises 704 Anderson Avenue, Cliffside Park, be and the same is hereby suspended for a period of three (3) days, commencing at 3:00 A. M. April 27, 1943, and terminating at 3:00 A.M. April 30, 1943; and it is further

ORDERED, that Employment Permit No. 3845, issued to Irving Rosen by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for the balance of its term, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

- 9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE (ALIEN) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SALE OF ALCOHOLIC BEVERAGES ON TWO OCCASIONS DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

PATRICK SINATORE)
17 River Street)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-139 issued by the Board of Alcoholic Beverage Control of the City of Paterson.)

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Charles Turndorf, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty at the hearing to the following charges:

"1. In your application, filed with the Municipal Board of Alcoholic Beverage Control of the City of Paterson, and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' to Question 30, which asks: 'Has any individual,....other than the applicant, any interest, directly or indirectly, in the license applied for, or in the business to be conducted under said license?', whereas in truth and fact John Castello, alias 'Gypsy John', was so interested in that he was the real and beneficial owner of the said business; such false statement being in violation of R. S. 33:1-25.

"2. From June 3, 1940, and until the present time, you knowingly aided and abetted the said John Castello, alias

'Gypsy John', to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license in the City of Paterson, thereby yourself violating R. S. 33:1-52.

"3. On Saturday morning, February 20, 1943, from 3:00 A.M. until about 4:30 A.M., you sold, served and gave away alcoholic beverages on your licensed premises, in violation of Section 2 of a Resolution Concerning Alcoholic Beverages, adopted June 28, 1935, by the Board of Aldermen of the City of Paterson, as amended by the said Board's resolution of June 30, 1939.

"4. On Monday, February 22, 1943, from 3:00 A.M. until about 3:25 A.M., you sold, served and gave away alcoholic beverages on your licensed premises, in violation of the aforesaid Section 2 of a Resolution Concerning Alcoholic Beverages, adopted June 28, 1935, by the Board of Aldermen of the City of Paterson, as amended by the said Board's resolution of June 30, 1939."

By stipulation of counsel, the Department's file was produced and admitted in evidence.

A consideration of the file, particularly the statement of the licensee taken March 4, 1943, shows conclusively that the licensee had no interest in the licensed premises at the time the license was first issued in 1940 or thereafter, except his interest as an employee. His interest as an employee ceased early in 1942. The real party in interest and the beneficial owner of the license is John Castello, alias "Gypsy John".

In Re Case No. 490, decided concurrently herewith, I ruled that John Castello is not a qualified or proper person to hold a license or to be employed in any business capacity by a licensee. In the latter proceedings, Castello was found to be an alien. He likewise has a criminal record. In addition, by one fraudulent means or another, he has persistently sought to thwart the law prohibiting him from holding a liquor license.

The guilty plea herein also includes charges "3" and "4" alleging two separate violations of the closing hours.

The evidence in the case indicates that the licensed premises have been operated with little or no regard for the law. Previous to the hours violations covered by the charges in this case, the license was suspended for five days, in February of 1942, for the sale of alcoholic beverages during prohibited hours. The licensee has thus violated the local ordinance on at least three occasions.

The licensee's persistent falsification of his application for a license, his failure to disclose material facts and his fraudulent concealment of the interest of "Gypsy John", in addition to the hours violations, clearly warrant the revocation of this license.

This will disqualify the licensee from holding or receiving any liquor license in this State for a period of two years from the date of said disqualification. Re DeDomenico, Bulletin 550, Item 8; Re Roninger, Bulletin 421, Item 10.

This case illustrates the need for careful scrutiny and painstaking study by issuing authorities of all applications for licenses

before the same are granted. Trouble may be anticipated when licensed premises are controlled by those who are not qualified to hold a license. The activities of these lawless individuals place in jeopardy the entire license system.

Accordingly, it is, on this 21st day of April, 1943,

ORDERED, that Plenary Retail Consumption License C-139, heretofore issued to Patrick Sinatore by the Board of Alcoholic Beverage Control of the City of Paterson for premises 17 River Street, Paterson, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

10. ELIGIBILITY - FACTS EXAMINED - ALIEN NATIONAL OF ITALY HELD NOT QUALIFIED TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED IN ANY BUSINESS CAPACITY BY A LIQUOR LICENSEE.

April 21, 1943.

Re: Case No. 490

These proceedings to determine the eligibility of John Castello to hold a license or to be employed by a licensee were instituted contemporaneously with disciplinary proceedings against a license held in the name of Patrick Sinatore, Bulletin 564, Item 9.

It is admitted that Patrick Sinatore actually held License C-139, issued by the Board of Alcoholic Beverage Control of the City of Paterson, as a "front" for John Castello, alias "Gypsy John", ever since that license was first issued in 1940. There is also evidence in the records of this Department which leads me to believe that Castello formerly had a substantial ownership interest in at least one other license, the fact of which ownership was never disclosed to the local issuing authority.

John Castello was born in Italy. He came to this country while an infant. When he was about fifteen years of age, John left his father's home in Tampa, Florida, and, as he states, "I went on my own." There is no proof that he ever became a citizen of the United States either by his own naturalization or by the naturalization of his father, Giuseppi Castello, during John's residence, as an unemancipated minor, in his father's home. The last time that John was in touch with his parents was when he was seventeen years of age. He is now fifty-four. From the evidence herein it appears that John Castello is a national of Italy. Therefore he is not qualified to hold a license in this State. (R. S. 33:1-25). *

For the purpose of this hearing, it need not be determined whether the two criminal convictions -- one for possession of slot machines and one for violation of the Alcoholic Beverage Law -- involve the question of moral turpitude. Since Castello is an alien, he may not hold a license and he may not be employed by or connected in any business capacity with a licensee unless and until he obtains an employment permit from the Commissioner of Alcoholic Beverage Control (R. S. 33:1-26).

In anticipation that Castello may file an application for an employment permit, I have carefully reviewed his record. In addition to the above crimes of which he was convicted, he was indicted in 1932 on a charge of murder. No disposition was ever made of said indictment which is still open.

Despite the above record, which in itself probably would have prevented Castello from obtaining a license if he had made an application in his own name, it appears that in fact he has been engaged in the alcoholic beverage industry for a number of years. As stated above, I believe that he formerly had an interest in another license and, clearly, since 1940, he has been operating under the license issued in the name of Patrick Sinatore. Moreover, as an alien, he has been unlawfully employed on the licensed premises without an employment permit (R. S. 33:1-26). Thus, by devious means, "Gypsy John" has endeavored to "beat" a law supported by sound public policy. By his conspiracy with the licensee, who held the license for him, he perpetrated a fraud upon the municipal issuing authority.

As was to be expected, from a review of the foregoing facts, the premises, known as the Isle of Capri, for which the 1940 license and subsequent licenses were issued, have had a turbulent career. Unsatisfactory conditions may be anticipated when licensed premises are permitted to fall into the hands of persons not qualified to hold a license or to operate a tavern.

Under all the circumstances, I find that John Castello is not a qualified or proper person to hold a license or to be employed in any business capacity by a licensee.

Alfred E. Driscoll
Commissioner.

*Treaty with Italy terminated in 1939.