

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

BULLETIN 596

NOVEMBER 30, 1943

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

BULLETIN 596

NOVEMBER 30, 1943.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES CONTRARY TO TERMS OF LICENSE, IN VIOLATION OF R. S. 33:1-2 - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VEHICLE NOT BEARING TRANSPORTATION INSIGNIA, AS REQUIRED BY R. S. 33:1-28 AND STATE REGULATIONS NO. 16, IN VIOLATION OF R. S. 33:1-2 - PREVIOUS RECORD - 20 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

SAMUEL FESSLER)
T/a FESSLER'S TAVERN)
182 Hill Street)
Orange, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-47, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Orange.)

Michael N. Steinberg, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant, who holds a plenary retail consumption license, pleads non vult to the following charges:

"1. On August 2, 6 and 7, 1943, you sold alcoholic beverages not pursuant to or within the terms of your plenary retail consumption license as defined by R. S. 33:1-12(1), in that you sold half-barrels of beer for resale to Jacob Fessler, another retailer; such sales by you thereby being in violation of R. S. 33:1-2.

"2. On August 2 and 6, 1943, you transported in and about orange half-barrels of beer, sold to Jacob Fessler as aforesaid, in a vehicle which did not bear the transit insignia provided by R. S. 33:1-28 and State Regulations No. 16; such transportation thereby being in violation of R. S. 33:1-2."

The records in the Department of Alcoholic Beverage Control disclose that, on August 6, 1943, Orange police officers seized the defendant's Dodge sedan and three half-barrels of beer which were being transported to his father, who likewise holds a plenary retail consumption license, because the automobile did not bear a transportation insignia required by R. S. 33:1-28 and State Regulations No. 16. The car and beer were turned over to ABC agents. On that day they obtained a signed statement from the defendant in which he acknowledged that he had used the same vehicle to deliver beer to his father on August 2, 1943. On the day following the seizure, ABC agents, while at the father's licensed premises, discovered that the defendant had that day delivered several half-barrels of beer to his father.

Retail licensees may sell alcoholic beverages only to members of the consuming public. Hence, the licensee's sale and delivery of the beer to his father, being outside the scope of his plenary retail consumption license, is a violation of R. S. 33:1-2. See Re Wagi, Bulletin 591, Item 1. Transportation of alcoholic beverages in an unlicensed vehicle is likewise a violation of R. S. 33:1-2.

In considering the penalty to be imposed on these two related violations, it may be true, as the defendant claims, that he was prompted by his natural instinct to help out his father, who claims to have been hard-pressed for a supply of beer due to the current scarcity thereof, and that he considered the transaction with his father different in nature from a sale to a retailer who was not related to him. Nevertheless, it is to be noted that the defendant acknowledged in his signed statement that he knew that it was unlawful for one retail liquor dealer to sell alcoholic beverages to another. His delivery of beer to his father the day after his car had been seized further aggravates his offense. In addition, the defendant has a previous record in that his license was suspended for fifteen (15) days, effective June 7, 1943, for permitting a brawl on his licensed premises and conducting his business in a manner constituting a nuisance, in violation of the local ordinance.

After due consideration of the aggravated nature of the offense, I shall impose a penalty of twenty-five days' suspension on this charge, five days of which shall be remitted because of the plea of non vult entered herein, making a net suspension of twenty (20) days.

Whether the car and beer should be confiscated will be determined in the pending affiliate seizure proceedings.

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

ORDERED, that Plenary Retail Consumption License C-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Samuel Fessler, t/a Fessler's Tavern, for premises 182 Hill Street, Orange, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A. M. November 26, 1943, and terminating at 2:00 A.M. December 16, 1943.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY
RETAILER IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 -
PREVIOUS RECORD - 20 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

JACOB FESSLER)
568 Christopher Street)
Orange, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-46, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Orange.)
-----)

Michael N. Steinberg, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to the following charge:

"On August 2, 6 and 7, 1943, you, a New Jersey retailer,
purchased from Samuel Fessler, another such retailer, half-
barrels of beer for the purpose of resale; such purchase by
you being in violation of Rule 15 of State Regulations No. 20."

The file discloses that, on August 2, 6 and 7, 1943, the
defendant-licensee, the holder of a plenary retail consumption
license, purchased beer from his son, also the holder of a plenary
retail consumption license issued by the same municipal authority.
The minimum penalty for such a violation would normally be fifteen
days. See Re Susslin, Bulletin 458, Item 2.

It appears, however, that defendant has a previous adjudicated
record. His license was suspended, effective June 7, 1943, by this
Department for refilling and selling alcoholic beverages in violation
of the statute in such case made and provided. See Re Fessler,
Bulletin 571, Item 8. In view of licensee's past record, such mini-
mum penalty may not be imposed herein. Under the circumstances, I
shall suspend the license for a period of twenty days, with remission
of five days for the non vult plea, or a net suspension of fifteen
days.

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

ORDERED, that Plenary Retail Consumption License C-46, issued
by the Municipal Board of Alcoholic Beverage Control of the City of
Orange to Jacob Fessler, for premises 568 Christopher Street, Orange,
be and the same is hereby suspended for a period of fifteen (15) days,
commencing at 2:00 A.M. November 26, 1943 and terminating at 2:00 A.M.
December 11, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. CANCELLATION PROCEEDINGS - FACTS EXAMINED - ORDER TO SHOW CAUSE DISMISSED.

In the Matter of Cancellation)
 Proceedings against)
)
 SOPHIE LEBOFF)
 903 - 76th Street)
 North Bergen, N. J.,)
)
 Holder of Plenary Retail Distri-)
 bution License D-16, issued by)
 the Municipal Board of Alcoholic)
 Beverage Control of the Township)
 of North Bergen.)
 -----)

CONCLUSIONS
AND ORDER

John J. Meehan, Esq., Attorney for Defendant-Licensee.
 Milton H. Cooper, Esq., Attorney for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

On September 7, 1943, an order was directed to Sophie Leboff to show cause why Plenary Retail Distribution License D-16, transferred to her by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen for premises at 903 - 76th Street, North Bergen, should not be cancelled and declared null and void for the following reasons:

"1. On August 10, 1943 a limited distribution license then being held by you for 903 - 76th Street, North Bergen, N. J., was revoked, effective immediately, by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen, such revocation automatically rendering you ineligible, under R. S. 33:1-31, to hold or receive any other alcoholic beverage license in New Jersey for a period of two years thereafter.

"2. In obtaining from the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen a transfer of your present plenary retail distribution license from 7508 Broadway to 901 - 76th Street, North Bergen, N. J., you failed to deposit with your application for the transfer, or any time thereafter, the five dollar (\$5.00) fee required by R. S. 33:1-26 and Rule 15 of State Regulations No. 3 for such place to place transfer."

The testimony of witnesses in this case and the records of the Municipal Board of Alcoholic Beverage Control disclose that the Board had, on August 10, 1943, revoked the limited retail distribution license of the defendant after having adjudged her guilty of selling chilled beer to minors in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20. The result of this decision was to render the defendant ineligible to hold an alcoholic beverage license of any kind or class for a period of two years from the date when the revocation of the license became effective. R. S. 33:1-31.

On August 18, 1943 the municipal issuing authority granted to the defendant a person to person and place to place transfer of a plenary retail distribution license. In view of the operative revocation and the defendant's two year disqualification resulting therefrom, the local Board was not authorized to grant these transfers.

At the hearing herein, the Secretary of the Municipal Board of Alcoholic Beverage Control presented a certified copy of a resolution dated, and passed by the Board, September 22, 1943, reading:

"WHEREAS, the Limited Distribution License heretofore issued to Sophie Leboff for premises located at 901 - 76th Street, North Bergen, New Jersey, was, on August 10, 1943, revoked by the Municipal Board of Alcoholic Beverage Control of North Bergen,

"AND WHEREAS, the revocation automatically rendered the licensee ineligible, under R. S. 33:1-31, to hold or receive any other alcoholic beverage license in New Jersey for a period of two years thereafter,

"AND WHEREAS, the Municipal Board of Alcoholic Beverage Control feels that the penalty heretofore imposed for the sale of chilled beer to a minor was too severe and harsh,

"BE IT RESOLVED that the order of revocation entered on August 10, 1943, revoking the aforesaid limited distribution license be and the same is hereby vacated, and that an order be entered suspending the aforesaid license for a period of seven (7) days beginning August 10th, 1943."

The local Board, while it may not grant a rehearing for the purpose of adjudging guilt or innocence, may, in its sound discretion, reconsider the penalty imposed and reduce the same from a revocation to a suspension:

".....while for the sake of finality of decision and affording terminal facilities to repeated litigation, no rehearing may be held by a municipal governing body or local Excise Board after it has once adjudicated facts, or guilt, or innocence, there is nothing to prevent the mitigation of a penalty or punishment previously inflicted.....The question of whether or not the punishment should be mitigated is a matter which rests in the sound discretion of the issuing authority. It is they who inflicted the penalty and it is (in the absence of an appeal to the Commissioner) their sole responsibility to decide if it should be moderated....."
Re MacLeod, Bulletin 112, Item 4; see also Re Bischoff, Bulletin 53, Item 5, and Robinson v. Newark, Bulletin 54, Item 2.

Although the Board's authority to mitigate the punishment is not presently questioned, I have been unable to find a justification for its ultimate disposition of a mere seven day suspension in this case in lieu of its previous revocation. Under the aggravated circumstances of the defendant's case before the local Board, the suspension for a period of seven days was woefully inadequate.

The resolution to mitigate the Leboff penalty, while obviously designed to reach back in remedy of the transfers theretofore erroneously granted, did not, by its terms, do so. A careful study of the resolution and its obvious purpose leads me to construe the resolution of September 22, 1943 as having sufficiently accomplished the intended corrective result. It is apparent that the local Board did not intend either to put the defendant out of the liquor business for any substantial period of time or to disqualify her for the two year period. The members of the Board were apparently unaware of the full force of the provisions contained in R. S. 33:1-31.

The Board's Secretary testified at the hearing that she inadvertently erred in not requesting the place to place transfer fee of \$5.00 as required by R. S. 33:1-26 and Rule 15 of State Regulations No. 3. She testified further that upon discovering her error she notified the defendant, who thereupon paid the fee at once.

Considering all the circumstances of this case and notwithstanding my lack of agreement with the punishment inflicted in the disciplinary proceedings below (the merits of which are not in issue in this proceeding), I shall dismiss the order to show cause.

Accordingly, it is, on this 22nd day of November, 1943,

ORDERED, that the order to show cause why plenary retail distribution license D-16, transferred to Sophie Leboff by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen for premises 903 - 76th street, North Bergen, New Jersey, should not be cancelled and declared null and void, be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

4. ELIGIBILITY - CRIME OF ATROCIOUS ASSAULT AND BATTERY INVOLVES MORAL TURPITUDE - APPLICANT ADVISED THAT HE IS NOT QUALIFIED TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE IN THIS STATE.

November 22, 1943

Re: Case No. 521

Applicant seeks a ruling as to whether or not he is disqualified to work for a liquor licensee in this State by reason of his conviction of a crime involving moral turpitude, within the purview of R. S. 33:1-25, 26.

In 1937, when applicant was a little past seventeen years of age, he was convicted of assault and battery and fined \$6.50.

On April 1, 1942 applicant was sentenced to four months each, on two counts of atrocious assault and battery, terms to run concurrently.

The latter assault and battery was committed upon applicant's fiancée. As a result of the assault she suffered a deep laceration in her right cheek, caused by a knife wielded by the applicant, and some other injuries caused by his subsequently striking her. None of the injuries seem to have been serious. However, the fact that no serious injuries were inflicted is immaterial.

It has been heretofore ruled that, where atrocious assault and battery involves the use of a weapon, moral turpitude is involved. Re Case No. 455, Bulletin 529, Item 4; Re Case No. 474, Bulletin 543, Item 10.

Since applicant is thus disqualified, it will not be necessary to determine whether or not the crime involved in the first mentioned arrest involved moral turpitude. It is, therefore, recommended that applicant be advised that he is not eligible to hold a liquor license or be employed by a liquor licensee.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

Edward F. Hodges
Attorney.

- 5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - PERMITTING MINOR EMPLOYEE TO SELL ALCOHOLIC BEVERAGES, IN VIOLATION OF R. S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - 25 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

THE WAGON WHEEL, INC.)
 7 White Street)
 West Orange, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange.)
 -----)

The Wagon Wheel, Inc., by Lillian R. Brown, Secretary and Treasurer. Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to charges alleging that (1) and (2), it sold alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20, and (3) it permitted a minor employee to sell alcoholic beverages, in violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11.

On October 9, 1943 two ABC agents observed a young man, subsequently learned to be seventeen years of age, serve a party of four minors with alcoholic beverages. Each of these minors so served was seventeen years old.

The service to four minors, none older than seventeen years, warrants the imposition of a penalty of twenty days on charges (1) and (2). Cf. re Konvitz, Bulletin 539, Item 8; re Powers, Bulletin 572, Item 4; re Brighton Hotel Co., Bulletin 590, Item 15.

It appears that the licensed premises are operated as a bona fide restaurant. The minor, therefore, did not require an employment permit in order to work at defendant's premises. See R. S. 33:1-26. However, he is not qualified to sell or serve alcoholic beverages. Idem. The fact that the minor may have disregarded instructions in making the service in question does not relieve defendant of its responsibility for the violation. Cf. re Solomon, Bulletin 586, Item 2. I shall suspend the license for five days on charge (3). Cf. re Cook, Bulletin 432, Item 9; re Feldman, Bulletin 498, Item 5; re Horvath, Bulletin 579, Item 5.

From the total penalty of twenty-five days, five days will be remitted for the guilty plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 22nd day of November, 1943,

ORDERED, that plenary Retail consumption License C-3, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange to The Wagon wheel, Inc. for premises 7 White Street, West Orange, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A.M. November 26, 1943 and terminating at 2:00 A.M. December 16, 1943.

ALFRED E. DRISCOLL
 Commissioner.

6. APPELLATE DECISIONS - RAFELSON v. MOUNT ARLINGTON.

ISADORE RAFELSON,)
)
 Appellant,)
)
 -vs-)
)
 BOROUGH COUNCIL OF THE)
 BOROUGH OF MOUNT ARLINGTON,)
)
 Respondent)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

Louis J. Goldberg, Esq., Attorney for Appellant.
Harry A. Shuback, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the refusal of the Council of the Borough of Mount Arlington to renew a plenary retail consumption license for the year 1943-44 for premises located on Howard Boulevard, and issued to the appellant, Isadore Rafelson.

The testimony discloses that the premises in question consist of a restaurant and tavern. In addition to the bar, there are seven tables standing along the two walls of the barroom with a music box, commonly known as a juke box, in the corner nearest the entrance. Mount Arlington, while being an all year residential community, is also frequented by vacationists during the summer months.

The record shows that a plenary retail consumption license had been issued to the appellant for each successive licensing year since the repeal of the National Prohibition Act. On April 25, 1943 appellant was brought up on charges of sale or service of alcoholic beverages to minors, to which charges he pleaded guilty, and, by order of the governing body, his license was suspended for a period of twenty days, commencing May 1, 1943 and ending May 21, 1943.

When application was made for the renewal of his plenary retail consumption license for the year 1943-44, it was denied for reasons which were incorporated in a resolution duly adopted by the Borough Council of Mount Arlington. The resolution went at great length to explain the reasons for said denial, and part of the resolution is incorporated herewith:

"That the place of business operated by applicant is a nuisance, a disorderly place; that the law and ordinances of the Borough are habitually violated; that the licensed premises caters to habitual drunkards and persons of ill repute; that the police have been repeatedly called upon to quell rowdiness and disorderly conduct in the vicinity of said place of business; that minors have been habitually served; that the applicant has professed his guilt in the sale of and aiding and abetting in the sale of liquor to minors, and has admitted that he has catered to persons of ill repute and habitual drunkards; that the applicant caters to persons who become drunk and disorderly, using foul and indecent language audible to people passing by said place of business; that the applicant, through his servants and agents, sells on credit and caters to men working in defense plants, selling intoxicating liquors to such an extent that they are unable to work and are dangerous to other fellow employees, and for other reasons making the said place of business a detriment to peace and good order."

At the hearing, the appellant produced as witnesses on his behalf his wife, one employee, two summer residents of the Borough and three permanent residents, one of whom stated that, while she was a resident of the Borough, she nevertheless claimed a voting residence in an adjoining municipality. The testimony of the witnesses produced by the appellant was in accord that in so far as they knew or had the opportunity to observe, the licensed premises were operated in a proper manner, and that none of them had heard or seen anything that could be considered offensive.

The appellant claims that the action of the Borough Council in refusing to grant a renewal of his license for the current year was predicated on political and racial bias. Such an accusation cannot be lightly glossed over. They constitute grave charges and must be considered and scrutinized carefully to ascertain whether or not they are supported by fact. The record shows that the license was denied by the unanimous action of the Council. Two of the Councilmen testified that each had voted in favor of the renewal for several years previous to the present application. There is no indication, from the testimony adduced, that the action of these two Councilmen was predicated on personal prejudice or any improper motive. The remaining Councilmen are not charged with acting other than in their best judgment and in accordance with their oaths of office. If the conduct of the licensee had been free from mismanagement of his business, the charges of personal animosity might be given greater weight. Under all of the circumstances, not being supported by any facts whatever, they cannot be given any credibility.

As stated above, the licensee had pleaded guilty to the charges of sale to two minors. In addition, nine witnesses, including the Mayor of the Borough, testified to conditions that they had observed in and about the licensed premises. The Mayor, a member of the governing body for the past fourteen years, testified as to numerous complaints from neighbors and residents concerning the operation of the tavern, some of which complaints were from wives concerning their husbands' drinking to the state of intoxication, and parents complaining about their sons who were under age obtaining liquor on the premises. Other complaints were because of the noise, use of foul language and arguments both inside and outside of the tavern. The Mayor testified that on each occasion of the renewal of the license, the appellant was warned about these disturbances. His testimony further stated that he bore no personal prejudice toward the appellant and, in fact, on some occasions had acted as an accommodation endorser on promissory notes of the appellant.

One of the Councilmen, Mr. Nicholas, testified as to the unfit language coming from the place while he was passing the premises with his daughter, and another Councilman, Claude Silverton, testified as to numerous complaints he had received concerning the disturbances there and which he had referred to the police department. He further testified, in particular, to one occasion which occurred on the night of Primary Election, September 1942, when he called a disturbance to the attention of Mrs. Rafelson, but only met with the reply, "the noise in the street is nothing." This witness testified to his actually ejecting the disturber on the night in question. The testimony of one of the officers of the Borough, John Wirth, is replete with incidents which took place both on and off the premises, and he testified that on numerous occasions he warned Mrs. Rafelson and asked her to be more careful in the future. It appears that the place was operated most of the time by Mrs. Rafelson, her husband being employed outside the premises. The testimony indicates little regard on the part of Mrs. Rafelson for the peace and well being of the neighborhood. On one occasion when she was

requested to eliminate the music, she replied, "Good heavens, don't you understand this place is a summer resort and we have only two or three months to make any business and after that we might as well sit on our left ear and play pinochle." The officer testified as to another occasion after closing hours when he noticed six drinks being mixed and he instructed Mrs. Rafelson not to serve them, to which she remonstrated with the reply, "These drinks were ordered at 2:40 A.M. What do you think we are, race horses?" However, it was only on the insistence of the officer that Mrs. Rafelson did not serve the drinks in question. He further testified seeing intoxicated persons coming out of the place and also seeing young children being permitted to go in the tavern and play the juke box.

Other witnesses living in close proximity to the premises also testified regarding the noise, as well as the foul and indecent language emanating from the licensed premises, as well as numerous acts which it is unnecessary to enumerate.

I am satisfied that the licensed premises were conducted in a manner detrimental to the public interest. The warnings given to both the licensee and his wife, and the requests to remedy the conditions fell, in most instances, upon deaf ears. The attempts of the enforcement officers to see that the law was properly enforced usually met with sarcastic replies. The licensee showed a consistent disregard of the comfort and convenience of the neighbors. Such conduct by a licensee, or his agents or employees, cannot be condoned. The municipal governing body was very patient and tolerant in its treatment of the licensee and I see no reason that might impel me to supersede its judgment. Nothing appears in the instant case to indicate that the refusal was fraudulent, corrupt or inspired by improper motives. As ruled in Bumball v. Burnett, 115 N.J.L. 254, as well as Paul v. Gloucester, 50 N.J.L. 585, "No one has a right to demand a license; license is a special privilege granted to the few, denied to the many."

The action of the respondent is affirmed.

Accordingly, it is, on this 22nd day of November, 1943,

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

ORDERED, that the extension of appellant's 1942-43 license, granted by order of June 30, 1943 to permit appellant to continue to operate pending disposition of this appeal, be and the same is hereby terminated, and that the appellant forthwith cease any alcoholic beverage activity thereunder.

ALFRED E. DRISCOLL
Commissioner.

7. 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)

JACOB and GEORGE W. SAUNDERS T/a OMEGA BAR & GRILL 302 East Ninth Avenue Roselle, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-8 issued by the Borough Council of the Borough of Roselle.)

George W. Saunders, appearing on behalf of Defendant-partners. Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded non vult to charges alleging sale and service of alcoholic beverages to a minor, in violation of R.S.33:1-77 and Rule 1 of State Regulations No. 20.

On October 22, 1943, an ABC investigator observed defendant, George W. Saunders, serve a glass of beer to the minor in question on the licensed premises. The young man was eighteen years and six months of age.

Since no aggravating circumstances appear in this case and defendants have no previous adjudicated record, I shall suspend the license for ten days, less five days for the plea, making a net suspension of five days. Re Lombardi, Bulletin 588, Item 8.

Accordingly, it is, on this 22nd day of November, 1943,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Roselle to Jacob and George W. Saunders, t/a Omega Bar & Grill, for premises 302 East Ninth Avenue, Roselle, be and the same is hereby suspended for five days, commencing at 2:00 A.M. November 29, 1943 and terminating at 2:00 A. M. December 4, 1943.

ALFRED E. DRISCOLL Commissioner.

8. ALCOHOLIC BEVERAGES - WARTIME SCARCITY - DEPARTMENTAL ACTIVITIES SEEKING A FAIR AND EQUITABLE DISTRIBUTION OF AVAILABLE SUPPLIES APPROVED BY NEW JERSEY LICENSED BEVERAGE ASSOCIATION.

November 20, 1943

Alfred E. Driscoll, Commissioner Department of Alcoholic Beverage Control Newark, N. J.

Dear Commissioner:

It is my pleasure to quote for you below the text of resolution adopted by the delegates to this Association's Eleventh Annual Convention:

"WHEREAS the inability to obtain sufficient merchandise for resale is the chief problem of the tavern licensee; and

"WHEREAS Commissioners Alfred E. Driscoll and J. Lindsay de Valliere have made strenuous efforts to influence the distillers and brewers so that a fair and equitable share of their products will be distributed in New Jersey;

"THEREFORE the House of Delegates of the New Jersey Licensed Beverage Association at the Annual Convention October, 1943 goes on record as heartily appreciating these efforts on our behalf."

Again on behalf of the Association permit me to express our warmest thanks for your sincere efforts.

Cordially yours,
Neil F. Deighan,
Director of Public Relations

9. RETAIL LICENSEES - MAY NOT HOLD STOCK IN A DISTILLERY.

WAREHOUSE RECEIPTS - HEREIN OF THE SALE AND TRANSFER OF THE SAME - PRIVATE INDIVIDUALS MUST OBTAIN LICENSE OR PERMIT BEFORE DISPOSING OF WAREHOUSE RECEIPTS.

HEREIN OF THE IMPORTATION OF LIQUOR BY PRIVATE INDIVIDUALS.

November 22, 1943

NOTICE RE DISTRIBUTION OF WAREHOUSE RECEIPTS COVERING WHISKEY AS DIVIDENDS BY DISTILLERS TO STOCKHOLDERS RESIDING IN NEW JERSEY.

I understand that certain distillers contemplate the issuance of warehouse receipts, covering alcoholic beverages owned by such distillers, as dividends to their stockholders. In connection therewith I believe it essential that both liquor licensees and persons residing in this State who presently hold stock in a distillery be advised as to the New Jersey Law applicable thereto.

Under our law (R.S. 33:1-43), it is unlawful for anyone interested directly or indirectly in the retailing of alcoholic beverages to be a shareholder of a distillery. Violation of the aforesaid provision is cause for suspension or revocation of license. Therefore, any person who either holds a retail license or is interested directly or indirectly in the retailing of alcoholic beverages in this State and who may hold stock in any distillery within or without this State, should immediately dispose of such stock.

Presumably, private individuals who receive warehouse receipts as dividends will wish either (1) to obtain the liquor for their personal use, or (2) to dispose of the warehouse receipts by sale. In either event, there are certain requirements of the law which must be complied with.

As to the obtaining of the liquor for personal use, under no circumstances may a private individual secure delivery thereof in bulk, viz., in containers having a capacity in excess of one wine gallon. Neither may arrangements for bottling of the liquor be made through any New Jersey liquor licensee because manufacturers and wholesalers in this State may not deal with consumers and retail licensees may not deal in warehouse receipts.

In the event the liquor is bottled outside New Jersey, it may then be shipped to the person's home in New Jersey for his personal use via a carrier licensed to transport alcoholic beverages in this State or be brought into this State by the individual on his person or in a vehicle under his control, without license or permit from

this Department provided the quantity does not exceed one gallon. On the other hand, if the quantity exceeds one gallon, the individual must first obtain a Special Permit from this Department at a cost of \$5.00, irrespective of how it is brought into this State. In addition, a State tax at the rate of \$1.00 per gallon must be paid (1) if the quantity to be imported is in excess of one gallon, or (2) if the liquor is brought into this State by a licensed carrier, regardless of the quantity.

With respect to the sale of warehouse receipts which may be distributed to New Jersey residents, such receipts may not (other than as hereafter noted) be sold except pursuant to a Warehouse Receipts License (issued by the Commissioner at a cost of \$100.00 per annum. (R. S. 33:1-72.) Where a person, however, wishes to conduct an isolated sale of a warehouse receipt and special cause is shown, I will entertain an application for a Special Permit to dispose of the receipt pursuant to R. S. 33:1-74. The minimum fee for such permit is \$10.00. Warehouse receipts may be sold under the aforesaid license or Special Permit only to licensed New Jersey manufacturers or wholesalers.

Any person who shall knowingly violate any of the above cited provisions of the law shall be guilty of a misdemeanor and may be punished by a fine or imprisonment or both.

Information with respect to the procedure for obtaining the required permits is available at this office upon request.

Private individuals who receive as dividends warehouse receipts covering liquor are urged to communicate directly with this office before attempting either to obtain the whiskey for their own use or to sell the warehouse receipts.

ALFRED E. DRISCOLL
Commissioner.

10. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$50.00 - LICENSE SUSPENDED IN DISCIPLINARY PROCEEDINGS BY LOCAL ISSUING AUTHORITY FOR A PERIOD OF TWENTY DAYS - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)
EARL WILLIAM SPRIGGS)
T/a EARL'S LOG CABIN)
Halsey and Chesterfield Roads)
Lake Parsippany) ON PETITION
Township of Parsippany-Troy Hills) CONCLUSIONS AND ORDER
P.O. R.F.D. Morris Plains, N. J.,)
To Lift the Automatic Suspension of)
Plenary Retail Consumption License)
C-19 issued by the Township Committee)
of the Township of Parsippany-Troy Hills.)
- - - - -)

Anthony Giuliano, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from petition filed herein that, on November 19, 1943, the licensee pleaded non vult in the Court of Special Sessions, Morris County, to an indictment alleging that he had sold alcoholic beverages to minors, and that he has paid a fine of \$50.00 imposed as a result of said conviction.

It further appears from said petition, and from the records of this Department, that the Township Committee of the Township of Parsippany-Troy Hills had previously suspended petitioner's license for a period of twenty days effective from September 8, 1943, at 12:01 A.M. to September 28, 1943, at 12:01 A.M., after the licensee, in proceedings instituted by said Township Committee, had pleaded guilty to charges of selling alcoholic beverages to minors.

The indictment in the criminal proceedings, and the charges in the disciplinary proceedings, were based upon the same facts. Because of the conviction in the criminal proceedings, petitioner's license has been automatically suspended for the balance of its term. R. S. 33:1-31.1. The petition filed herein prays that the automatic suspension may be lifted.

This case concerns the sale of one glass of beer to a married girl who was nearly sixteen years of age, and a glass of beer to each of two boys who were eighteen years of age. The minors were accompanied by a number of adults when the sales were made to the party.

It has been the policy of this Department to lift an automatic suspension when, and only when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. Re Solitare, Bulletin 538, Item 4. Under all the circumstances, the penalty imposed by the Township Committee appears to be adequate. Hence the relief prayed for in the petition will be granted.

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

ORDERED, that the automatic suspension of License C-19, held by Earl William Spriggs, t/a Earl's Log Cabin, be and the same is hereby lifted, effective immediately. The license certificate may be returned to the licensee.

ALFRED E. DRISCOLL
Commissioner.

By: Edward J. Dorton
Deputy Commissioner and
Counsel.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, ACIDS AND SOLIDS - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)
)
 ANTHONY A. BARATTA, JR.)
 T/a ESCORT BAR)
 2200 Atlantic Ave.)
 Atlantic City, N. J.,)
)
 Holder of Plenary Retail Consumption License C-41 issued by the Board of Commissioners of the City of Atlantic City.)
 -----)

CONCLUSIONS AND ORDER

John B. Baratta, Esq., Attorney for Defendant-Licensee.
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has entered a plea of nolo contendere to the following charge:

"On September 1, 1943 you possessed illicit alcoholic beverages at your licensed premises, viz., two 4/5 quart bottles labeled 'Carstairs White Seal Blended Whiskey 86.8 Proof', which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On September 1, 1943, Jr. Inspector Evans of the Alcohol Tax Unit, Internal Revenue Service, tested eighty-eight opened bottles upon defendant's premises and seized the two bottles mentioned in the charge when his tests disclosed that the contents of the bottles were darker than normal. Subsequent analysis by a Federal chemist disclosed that the contents of the seized bottles were approximately 2° lower in proof and substantially lower in acids than the contents of a genuine bottle of the same product. This analysis also disclosed that the whiskey in the seized bottles contained approximately three times the amount of solids found in a genuine sample of the same product. The proof satisfies me that the alcoholic beverages in the seized bottles constitute an illicit beverage because the container bears a label which does not truly describe its contents. R. S. 33:1-88. Hence, I find defendant guilty as charged.

In mitigation, defendant alleges that he carries a large stock of liquor and that he did not tamper with the contents of the seized bottles. Despite his personal innocence, however, a licensee must be held strictly responsible for any "refills" found in his stock of liquor. Re Agostini, Bulletin 506, Item 8; Re Kurian, Bulletin 517, Item 2. In cases involving "refills" found upon licensed premises, the minimum penalty which has been imposed in numerous cases consists of a suspension of license for a ten-day period. Licensee alleges, however, that the facts in the instant case are similar to the facts in Re DiRocco, Bulletin 457, Item 2, in which no penalty was imposed, and in Re Gallagher, Bulletin 558, Item 5, in which a three-day suspension was imposed. In both of the cited cases, however, it affirmatively appeared to the satisfaction of the Commissioner that the bottles were refilled by individuals who were not servants, agents or employees of the licensee when the violations were committed. There

is an entire absence of any such evidence in this case. The most that the defendant herein has shown is that he cannot explain how the violations occurred. Defendant's record is otherwise clear. Under all the circumstances, and in view of the numerous precedents established in similar cases, I shall suspend his license for the minimum period of ten days.

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

ORDERED, that Plenary Retail Consumption License C-41, issued by the Board of Commissioners of the City of Atlantic City to Anthony A. Baratta, Jr., t/a Escort Bar, for premises 2200 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days, commencing at 8:00 A.M. November 30, 1943, and terminating at 8:00 A.M. December 10, 1943.

Alfred E. Griswold
Commissioner.