

Commissioner Hock
Sent to Regular Mailing List
STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 741

DECEMBER 19, 1946.

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

BULLETIN 741

DECEMBER 19, 1946.

1. DISCIPLINARY PROCEEDINGS - CHARGE OF SALE OF ALCOHOLIC BEVERAGES TO MINORS DISMISSED (MITIGATING CIRCUMSTANCES) - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)

EDWARD KOBBLE)
11-15 Union Square)
Phillipsburg, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-182 for the 1945-46 licensing year; and C-219 for the 1946-47 licensing year, issued by the Board of Commissioners of the Town of Phillipsburg.)
-----)

Jerome Litvak, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded not guilty to charges alleging that (1) he allowed, permitted and suffered the consumption of alcoholic beverages by minors upon his licensed premises, in violation of Rule 1 of State Regulations No. 20; and (2) he sold and delivered, during prohibited hours, alcoholic beverages in original containers for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38.

On August 15, 1945, when the entire nation was celebrating V-J Day, the defendant's premises were frequented by a multitude of exuberant merry-makers throughout that day and evening. The tavern was crowded with throngs of milling persons, amongst whom were several minors. These youngsters, in the spirit of the occasion, were engaging in playful pranks, seizing bottles of beer from patrons and squirting their contents. On occasion, they took a sip from the bottles in a room contiguous to the main barroom. Most of the time, however, they were out on the street, in front of the tavern entrance, where they were carrying on in horse-play fashion.

There is no probative evidence that any sale of alcoholic beverages was made to these minors. While, technically, it might be possible to spell out a violation of permitting consumption of beer by the minors on the licensed premises, it would be doing a manifest injustice to the licensee to find him guilty of the violation in question under the very extenuating circumstances of this case. This is especially true in view of the uncontradicted testimony that the licensee made sincere efforts at keeping the minors off his premises by chasing them from the tavern on several occasions.

I find after a careful examination of the record that, under the mitigating circumstances attending the alleged offense, the licensee should not be held to have "allowed, permitted and suffered" the minors to consume alcoholic beverages on the premises and, accordingly, the first charge is dismissed.

A different situation exists, however, with respect to the second charge. Two ABC agents testified that, at least half a dozen times after 10:00 p.m., they observed patrons purchase bottled beer from the bartenders and leave the licensed premises. No attempt was made to prevent the patrons from removing the bottles from the premises, except an alleged perfunctory announcement to that effect by one of the bartenders. This cannot be said to constitute a reasonable effort at compliance with the regulation even under the unusual conditions present on the night in question.

The defendant contends that, since all of the bottles were first opened by the bartenders before delivery to the patrons, no violation of the regulation took place. This contention is without merit. The violation is complete when the bottles are removed from the licensed premises, be they sealed or uncapped. See Bulletin 580, Item 10. Any other construction of the regulation would render it nugatory.

I find the defendant guilty of the second charge herein.

The determination of the proper penalty herein has given me grave concern. Since the defendant has twice heretofore suffered suspensions of his license for selling alcoholic beverages during prohibited hours on Sunday, in violation of local regulation, the penalty for the instant offense would normally warrant a most substantial period of suspension. Indeed, instances may be found where for such third similar violation the license has been revoked outright. However, on this issue, I am again constrained to consider the extremely unusual conditions existing when the violation occurred. Viewing all of the related events against the background prevailing in this case, I consider that a twenty-day suspension is adequate and such will be the order.

A cautionary word to the licensee would not be amiss. He now stands convicted on three separate occasions. In the event he is guilty of a fourth infraction of the law, the defendant may very well suffer a total deprivation of his license privileges.

Accordingly, it is, on this 16th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-219, issued for the 1946-47 licensing year by the Board of Commissioners of the Town of Phillipsburg to Edward Kobble, for premises 11-15 Union Square, Phillipsburg, be and the same is hereby suspended for a period of twenty (20) days, commencing at 1:00 a.m. January 7, 1947, and terminating at 1:00 a.m. January 27, 1947.

ERWIN B. HOCK
Deputy Commissioner.

2. APPELLATE DECISIONS - CAULFIELD v. CHATHAM - DISCONTINUED.

JOHN CAULFIELD, t/a CAULFIELD)
 BAR & GRILL,)
)
 Appellant,)
)
 -vs-)
)
 MAYOR AND COUNCIL OF THE)
 BOROUGH OF CHATHAM,)
)
 Respondent)

ON APPEAL
ORDER OF DISCONTINUANCE

 Williams & Dempsey, Esqs., by Wilfred L. Dempsey, Esq.,
 Attorneys for Appellant.
 Richard Lum, Esq., Attorney for Respondent.
 Ralph E. Lum, Jr., Esq., Attorney for Objectors.

This is an appeal from the refusal to transfer the appellant's plenary retail consumption license from premises 8-10 Passaic Avenue to 119-133 Main Street, Borough of Chatham.

The appellant has requested permission to withdraw the appeal and the attorneys for the respondent and the objectors have no objection thereto.

Since no reason appears to the contrary,

It is, on this 16th day of December, 1946,

ORDERED that the within appeal be and the same is hereby discontinued.

ERWIN B. HOCK
Deputy Commissioner.

3. APPELLATE DECISIONS - KORNBLUH v. PASSAIC AND SALEK - DISCONTINUED.

MARTIN KORNBLUH,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE)
 CITY OF PASSAIC, and JOHN V.)
 SALEK, t/a COLUMBIA HOUSE,)
)
 Respondents)

ON APPEAL
ORDER OF DISCONTINUANCE

 Joseph J. Weinberger, Esq., Attorney for Appellant.
 Thomas E. Duffy, Esq., Attorney for Respondent Board of Commissioners.
 Stanley J. Polack, Esq., Attorney for Respondent, John V. Salek.

This is an appeal from the issuance of a plenary retail consumption license to the respondent, John V. Salek, for premises 262 Passaic Street, City of Passaic.

The attorney for the appellant has submitted a request for permission to withdraw the appeal.

Since no reason appears why the request should not be granted,

It is, on this 16th day of December, 1946,

ORDERED that the within appeal be and the same is hereby discontinued.

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

In the Matter of Disciplinary Proceedings against

ROMOLO RUSSO
T/a ROMA CAFE
117 Remsen Avenue
New Brunswick, N. J.,

Holder of Plenary Retail Consumption License C-11, issued by the Board of Commissioners of the City of New Brunswick, and transferred during the pendency of these proceedings to

ROMOLO RUSSO and JAMES RUSSO
T/a ROMA CAFE,

for the same premises.
-----)

CONCLUSIONS AND ORDER

John A. Lynch, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensee pleaded non vult to charges alleging that (1) in answer to Question No. 30 in his application filed with the Board of Commissioners of the City of New Brunswick, as to whether any individual other than the applicant had any interest, directly or indirectly, in the business, he answered "No", whereas in fact his brother James Russo was a partner, such false statement being in violation of R. S. 33:1-25; and (2) from December 14, 1933 and until the present time, he knowingly aided and abetted the said James Russo to exercise, contrary to R. S. 33:1-26, the rights and privileges of his plenary retail consumption license, thereby violating R. S. 33:1-52.

In the statements signed by both the licensee and his brother, James Russo, they readily admitted that since 1933 the licensed business has been operated as a joint enterprise, although the license was in the name of the defendant. All transactions were carried on in his name with the exception of a short time when the bank account was placed in both names due to the fact that the licensee was compelled to go to Florida because of illness. All the profits of the tavern business were equally divided between the two brothers. Thus, from the outset, the true situation was not disclosed. James Russo, the undisclosed partner, appears to be fully qualified to hold a liquor license.

Since the institution of these proceedings, the license has been transferred to Romolo Russo and James Russo, t/a Roma Cafe. Hence, the illegal situation has been corrected.

Experience has shown that, in certain cases, the thirty-day minimum suspension fixed in Re Nicomini, Bulletin 686, Item 7, has been unduly harsh. It has been decided that, hereafter, the minimum period of suspension will be twenty days where all parties are fully qualified and the party for whom the front was established has no criminal record. Hence, I would ordinarily suspend the license

herein for twenty days. However, on January 19, 1943, the license, then in the name of Romolo Russo, was suspended by the local issuing authority for a period of five days. Because of this past record and all the facts being considered, I shall suspend the license for a period of twenty-five days.

Accordingly, it is, on this 17th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-11, originally issued by the Board of Commissioners of the City of New Brunswick to Romolo Russo, t/a Roma Cafe, for premises 117 Remsen Avenue, New Brunswick, and transferred during the pendency of these proceedings to Romolo Russo and James Russo, t/a Roma Cafe, for the same premises, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. January 6, 1947, and terminating at 2:00 a.m. January 31, 1947.

ERWIN B. HOCK
Deputy Commissioner.

5. APPELLATE DECISIONS - TEMEL v. PASSAIC AND GILMARTIN - DISCONTINUED.

HARRY TEMEL,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	ORDER OF DISCONTINUANCE
BOARD OF COMMISSIONERS OF THE)	
CITY OF PASSAIC, and CHARLES L.)	
GILMARTIN,)	
)	
Respondent)	
-----)	

Joseph J. Weinberger, Esq., Attorney for Appellant.
Thomas E. Duffy, Esq., Attorney for Respondent Board of Commissioners.
Stanley J. Polack, Esq., Attorney for Respondent,
Charles L. Gilmartin.

This is an appeal from the issuance of a plenary retail consumption license to the respondent, Charles L. Gilmartin, for premises 410 Broadway, City of Passaic.

The attorney for the appellant has submitted a request for permission to withdraw the appeal.

Since no reason appears why the request should not be granted,

It is, on this 16th day of December, 1946,

ORDERED that the within appeal be and the same is hereby discontinued.

ERWIN B. HOCK
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JAMES SCOTTI)
133 Madison Street)
Hoboken, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-27, issued by the Board of Commissioners of the City of Hoboken.)

James Scotti, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that he sold a 4/5 quart bottle of Carstairs "1788" Blended Whiskey below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On November 14, 1946, the defendant sold the product in question to an ABC agent for the sum of \$4.40, whereas the established Fair Trade price is \$4.42. See Bulletin 723, page 7.

The penalty will be fixed at ten days, with five days remitted for the plea, leaving a net penalty of five days. Re Mack Drug Co., Inc., Bulletin 695, Item 9.

Accordingly, it is, on this 17th day of December, 1946,

ORDERED that Plenary Retail Distribution License D-27, issued by the Board of Commissioners of the City of Hoboken to James Scotti, for premises 133 Madison Street, Hoboken, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 6, 1947, and terminating at 9:00 a.m. January 11, 1947.

ERWIN B. HOCKEY
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 SOPHIE BROTMAN)
 T/a BROTMAN'S LIQUOR STORE)
 513 Washington Street)
 Hoboken, N. J.,)
 Holder of Plenary Retail Distribution License D-6 issued by the Board of Commissioners of the City of Hoboken.)
 -----)

CONCLUSIONS AND ORDER

Sophie Brotman, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads non vult to a charge of selling alcoholic beverages below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

On November 14, 1946, an investigator of the Department of Alcoholic Beverage Control purchased at defendant's premises a 4/5 quart bottle of Hunter Blended Whiskey for \$4.00. The minimum retail price of said item as established in Bulletin 690, effective January 14, 1946, was \$4.21.

Defendant has no previous adjudicated record. Where a licensee has no previous adjudicated record and the violation does not appear to be an aggravated one, a minimum suspension of the license for a period of ten days is imposed. Re Metropolitan Liquor Corp., Bulletin 554, Item 5. I shall suspend defendant's license for ten days, less five days for the plea, making a net suspension of five days. Re Mack Drug Co., Inc., Bulletin 695, Item 9.

Accordingly, it is, on this 17th day of December, 1946,

ORDERED that Plenary Retail Distribution License D-6, issued by the Board of Commissioners of the City of Hoboken to Sophie Brotman, t/a Brotman's Liquor Store, for premises 513 Washington Street, Hoboken, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. January 6, 1947, and terminating at 2:00 a.m. January 11, 1947.

ERWIN B. HOCK
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 ROSE GELB
 Front Street
 Union Beach, N. J.,
 Holder of Plenary Retail Consumption License C-3 issued by the Mayor and Council of the Borough of Union Beach.

CONCLUSIONS AND ORDER

Rose Gelb, Defendant-licensee, Pro Se.
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that, in violation of R. S. 33:1-50, she possessed one 4/5 quart bottle labeled "Old Taylor Kentucky Straight Bourbon Whiskey", which bottle contained an alcoholic beverage not genuine as labeled.

On September 25, 1946, an inspector of the Alcohol Tax Unit, while making an inspection, seized the above bottle, together with one bottle each of White Horse, Lauder's and John Begg whiskies for analysis by the Federal chemist. An analysis of the bottle of Old Taylor showed the same to be off in proof, acids and solids. The other bottles showed no discrepancies sufficient to warrant charges.

Defendant has a prior adjudicated record. On August 9, 1946, her license was suspended by the local authorities for a period of eleven days for sale and service of alcoholic beverages after the curfew hour set by the municipal ordinance. Under the circumstances, I shall suspend defendant's license for a period of twenty days, less five days for the plea, making a net suspension of fifteen days. The remission for a plea in "refill" cases is a departure from the former practice of the Department. In order to save time and the expense incurred in trying cases, a remission of five days of the penalty imposed will be granted until further notice in unaggravated "refill" cases wherein a guilty plea or a plea of non vult is entered within the time allowed for pleading. This policy will apply to all pending cases of a similar character wherein the effective date of suspension has been reserved for future determination.

Accordingly, it is, on this 17th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Union Beach to Rose Gelb, for premises on Front Street, Union Beach, be and the same is hereby suspended for fifteen (15) days. Pursuant to notice of August 23, 1946 (Bulletin 727, Item 12), the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
 Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against H & R WINES & LIQUORS, INC. 93 Washington Street Hoboken, N. J., Holder of Plenary Retail Distribution License D-11, issued by the Board of Commissioners of the City of Hoboken.

CONCLUSIONS AND ORDER

Louis L. Feinseth, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that it sold two one-gallon bottles of Fior Di California Burgundy Scelto Wine below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On November 14, 1946, an ABC agent purchased the two gallon bottles aforesaid for the total sum of \$5.50. The minimum price fixed in Bulletin 723 for a single bottle of this item is \$3.00.

I shall impose the usual penalty of ten days, less five days for the plea, or a net penalty of five days. Re Mack Drug Co., Inc., Bulletin 695, Item 9.

Accordingly, it is, on this 17th day of December, 1946,

ORDERED that Plenary Retail Distribution License D-11, issued by the Board of Commissioners of the City of Hoboken to H & R Wines & Liquors, Inc., for premises 93 Washington Street, Hoboken, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 6, 1947, and terminating at 9:00 a.m. January 11, 1947.

ERWIN B. HOCK Deputy Commissioner.

10. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)

RUSSIAN AMERICAN REG. DEMOCRATIC CLUB, INC. 264 Warren Street Jersey City 2, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-539 for the 1945-46 and 1946-47 licensing years, issued by the Board of Commissioners of the City of Jersey City.)

Joseph Tarby, Esq. and George A. Enright, Esq., Attorneys for Defendant-licensee. Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads non vult to the following charge:

"From April 1942 until November 1943, you knowingly aided and abetted John Fedak and Nicholas Gutch, and from November 1943 until February 1944 you knowingly aided and abetted John Fedak and John Madzi, and from February 1944 to January 1946 you knowingly aided and abetted John Fedak to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses, thereby yourself violating R. S. 33:1-52."

Investigation by the Department discloses that prior to April, 1942, defendant's bar business began to fail and thereupon two members, Nicholas Gutch and John Fedak, agreed with a committee representing the club to take over the operation of the bar business and run it themselves. This arrangement continued for about a year when Gutch withdrew and, in November, 1943, disposed of his interest to one John Madzi. Madzi and Fedak operated the bar until February, 1944, when Madzi withdrew, and Fedak operated the bar alone until the early part of January, 1946, when a dispute arose between Fedak and the new officers of the club, which resulted in the closing of the clubrooms and bar from January 5, 1946 to February 12, 1946. The club and bar were reopened on or about the latter date and it is now claimed by the present officers of the club that the bar has been operating solely for the benefit of the club itself and in a proper and legal manner.

Most of the above facts are borne out by the minutes of the club, as well as by statements of the present officers. At the request of the club, a hearing was afforded it to present any facts it might desire to offer in mitigation of the above offenses, as well as to present proof of the correction of the illegal situation. The officers of the club testified that, prior to April, 1942, the membership of the club dropped considerably due to the fact that it was composed principally of young members who entered service and that in order to maintain the existence of the club the officers at that time entered into the above mentioned illegal arrangements. They also testified that, while it was true that Fedak and others operated the

bar in the manner above mentioned, nevertheless, it was the belief among the members of the club that Fedak was operating as houseman, or steward. Testimony was offered that none of the present officers of the club were officers during the time the said violations took place. It was further stated that, sometime during the latter part of 1945 or early part of 1946, a dispute arose between the officers of the club and Fedak when the officers attempted to exercise full supervision of the bar and to require an accounting from Fedak; and as a result of said dispute the officers, in order to accomplish the correction, were forced to close the club and bar from January 6, 1946 until February 12, 1946, when it was again reopened under complete control of the present regime. Since that time it is claimed the club has been operating in a proper manner. Numerous exhibits were offered, including the membership roster, cancelled checks, check stubs, reports and minutes in support of the club's contention that full and complete correction has been made. There is further the assurance on the part of the officers that from now on the operation will be under their strict supervision and in all respects legal and proper.

There is little that can be said in mitigation of the conduct of the former officers of the club. There is evidence that the new personnel endeavored to correct the situation the early part of this year and, apparently, the club is now operating the bar in its own behalf.

Heretofore the minimum penalty in a "front" case has been thirty (30) days. See Re Nicomini, Bulletin 686, Item 7. This, however, is not the usual "front" situation where a license is obtained to hide the true party or parties in interest. It rather appears that the situation was foolishly created in an effort to preserve the existence of the club during a period of stress. Nevertheless, a penalty must be imposed. Under all of the circumstances, I shall suspend the license for a period of twenty days. Cf. Laurence Brook Country Club, Inc., Bulletin 335, Item 6.

Although this proceeding was instituted during the 1945-46 licensing year, it does not abate but remains fully effective against the renewal license for the 1946-47 licensing year. State Regulations No. 16.

Accordingly, it is, on this 17th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-539, issued for the present fiscal year by the Board of Commissioners of the City of Jersey City to Russian American Reg. Democratic Club, Inc., for premises 264 Warnen Street, Jersey City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. January 7, 1947, and terminating at 2:00 a.m. January 27, 1947.

ERWIN B. HOCK
Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM ANOTHER RETAILER - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ALPS, INC.)
178 Smith Street)
Perth Amboy, N. J.,)

Holder of Plenary Retail Consumption License C-83, issued by the Board of Commissioners of the City of Perth Amboy.)

-----)
Patten & Patten, Esqs., by Edward J. Patten, Esq., Attorneys for Defendant-licensee.

Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Defendant corporate licensee, through its attorneys, pleads guilty to the following charges: (1) that during June, 1946, it purchased a bottle of "Usher's Green Stripe Blended Scotch Whiskey" from another retailer, in violation of Rule 15 of State Regulation No. 20, and (2) on September 10, 1946 it possessed a bottle of illicit whiskey containing an alcoholic beverage not genuine as labeled, such possession being in violation of R. S. 33:1-50.

The departmental file discloses that an ABC agent tested about forty bottles of defendant's open stock of liquor and seized a bottle of "Usher's Green Stripe Blended Scotch Whiskey" when the preliminary test thereof indicated that it was under proof. Ben Polan, president of defendant corporate licensee, admitted that he purchased the bottle in question from another retail licensee. He disclaimed any knowledge of the "refill" violation in so far as he himself was concerned but thought that a bartender discharged the week previous to the discovery of the illicit bottle of liquor may have been responsible. However, "possession" is the gravamen of the violation and the explanation given does not in any way affect defendant's liability. Re Barrale, Bulletin 705, Item 5.

Defendant has a previous adjudicated record. Effective July 21, 1943, defendant's license was suspended for twenty days after pleading guilty to (a) failure to file a true statement of the change in shareholdings, (b) fronting for a disqualified person by reason of non-residence, and (c) sale to a minor.

Under the circumstances, I shall suspend defendant's license for a period of thirty-five days, less five days for the plea entered herein, or a net suspension of thirty days. Re O'Neill, Bulletin 727, Item 8; Re Rudolph, Bulletin 680, Item 1; Re Gelb, Bulletin 741, Item 8.

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

ORDERED that Plenary Retail Consumption License C-83, issued by the Board of Commissioners of the City of Perth Amboy to Alps, Inc., for premises 178 Smith Street, Perth Amboy, be and the same is hereby suspended for a period of thirty (30) days. Pursuant to Notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CONGRESS HALL HOTEL COMPANY Perry St., Beach Ave., Congress St. & Congress Place Cape May, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2 issued by the Board of Commissioners of the City of Cape May.)

T. Millet Hand, Esq., Attorney for Defendant-licensee. Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant, through its attorney, pleaded non vult to a charge alleging that it possessed one 4/5 quart bottle labeled "The Blended Scotch Whisky of the White Horse Cellar", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On September 13, 1946, an investigator of the State Department of Alcoholic Beverage Control seized the bottle in question when preliminary test thereof indicated that the contents of the bottle appeared to be off proof, and also off in color. Subsequent analysis by the departmental chemist disclosed that the contents of the seized bottle varied substantially in acids, solids and proof when compared with the contents of a genuine bottle of the same product.

Joseph B. Uhler, President of the defendant corporation and also manager thereof, disclaimed any knowledge of the violation. None the less, the licensee is strictly accountable for any "refills" found on its licensed premises. Re Kurian, Bulletin 517, Item 2.

Defendant has a prior adjudicated record. Effective June 15, 1940, its license was suspended by the State Commissioner for a period of five days because of a Fair Trade violation. Bulletin 371, Item 5. In view of the fact, however, that more than six years have elapsed since the aforementioned suspension, I shall disregard it in considering the penalty to be imposed in this case. Therefore, I shall suspend the license for a period of fifteen days for the within violation, less five days because of the plea entered herein, leaving a net suspension of ten days. Re Gelb, Bulletin 741, Item 8.

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

ORDERED that Plenary Retail Consumption License C-2, issued by the Board of Commissioners of the City of Cape May to Congress Hall Hotel Company, for premises at Perry St., Beach Avenue, Congress Street and Congress Place, Cape May, be and the same is hereby suspended for a period of ten (10) days. Pursuant to Notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK Deputy Commissioner.

13. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MORRIS ARONOW and MILTON ROSENBERG)
 T/a THE A & R CAFE)
 534-36 Kaighn Avenue)
 Camden, N. J.,)

CONCLUSIONS AND ORDER

-----)
 Holders of Plenary Retail Consumption License C-150 for the fiscal year 1945-46, and C-206 for the fiscal year 1946-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Benjamin Asbell, Esq., Attorney for Defendant-licensees.
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendants entered a technical plea of not guilty to charges alleging that in their application for their 1945-46 license they falsely stated "No" in answer to Question 34, which asked: "Have you...ever been convicted of or committed any violation of the Alcoholic Beverage Control Act....?", whereas in truth one of the partners, Milton Rosenberg, on December 3, 1941, had been fined \$50.00 in the Camden Police Court upon his plea of non vult to charges alleging the sale to a minor in violation of R. S. 33:1-77.

At the time of entry of the plea, counsel for defendants stated that the defendants did not desire to dispute any of the facts and waived a hearing, but requested an opportunity to assert any legal defense they might have to the charge. This opportunity was afforded.

The gist of the defendants' argument is that the answer "No" to the said Question 34 was in fact a correct answer. Defendants admit that Rosenberg did plead non vult in the Camden Police Court to charges alleging sale to a minor in violation of R. S. 33:1-77 and that he paid a fine of \$50.00, but they contend that this does not constitute a conviction of a crime for the reason that the Camden City Police Court did not have jurisdiction to try such matters without a written waiver of indictment and trial by jury.

It is true that violations of the Control Act are properly indictable and triable by jury. Bulletin 108, Item 4. However, the fact is that Rosenberg was convicted by a court which assumed jurisdiction of the criminal charge and that the conviction remains of record. While it may well be that this conviction might have been set aside by the Supreme Court upon an appeal duly filed for that purpose, nevertheless this Department cannot permit a collateral attack to be made before it on the grounds that the proceedings before the Police Court were ultra vires.

Counsel for defendants has cited in support of his claim a ruling of this Department in Bulletin 109, Item 18, wherein it appears that an applicant for a solicitor's permit failed to set up in his application a conviction on a disorderly house charge and wherein the failure to disclose the conviction was excused. The record in that proceeding indicates that before he made application for his permit, applicant inquired at the Police Record Bureau and was advised that there was no record of his conviction. A checkup with the Police Record Bureau showed no such record, the said record of the conviction being in the Hall of Records and not the Police Record Bureau where

the applicant had inquired. It was decided that applicant had acted in good faith when he answered the question. The situation is different in this case wherein it appears that Rosenberg failed to furnish information concerning his conviction of record, of which he was well aware.

I am disposed, however, in view of all the circumstances, to extend as much consideration as possible. I shall, therefore, suspend the license for a period of ten days, less five days for admitting the facts and waiving hearing, or a net suspension of five days.

Although this proceeding was instituted during the licensing year 1945-46, it does not abate but remains fully effective against the renewal license for the 1946-47 fiscal year. State Regulations No. 16.

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

ORDERED that Plenary Retail Consumption License C-206, issued for the 1946-47 fiscal year by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Morris Aronow and Milton Rosenberg, t/a The A & R Cafe, for premises 534-36 Kaighn Avenue, Camden, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. January 6, 1947, and terminating at 2:00 a.m. January 11, 1947.

ERWIN B. HOCK
Deputy Commissioner.

14. STATE LICENSES - NEW APPLICATIONS FILED.

Michael T. Babalya, George T. Babalya and Alexander Torma
T/a Central Jersey Beverage Co.
10 Oak St.
Trenton, N. J.
Application filed December 3, 1946 for transfer of State Beverage Distributor's License SBD-17 from Frank Bisanzio, t/a Bisanzio Beverages.

Park & Tilford Distillers, Inc.
223-25-27-29-31 Orient Ave.
Jersey City, N. J.
Application for Rectifier and Blender License filed December 6, 1946.

St. Remy & Cie
60 Branford Place
Newark, N. J.
Application for Plenary Wholesale License filed December 12, 1946.

Morris Glassman, Frank Kipnis and David Franklin
T/a Ideal Beverage Co.
Rear of 110 Pine St.
Montclair, N. J.
Application filed December 17, 1946 for transfer of State Beverage Distributor's License SBD-66 from Ida Glassman and Frank Kipnis, t/a Ideal Beverage Co.

ERWIN B. HOCK
Deputy Commissioner.

15. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ROSE PIZZINO)
T/a RED STAR W. & L. CO.)
413-415 Fifth Street)
Hoboken, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-25 issued by the Board of Commissioners of the City of Hoboken.)
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Alfonso Bivona, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that she sold a 4/5 quart of "Four Roses Blended Whiskey" below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On November 14, 1946, a clerk (the husband of the licensee) employed by the licensee on her licensed premises sold to an ABC agent the product in question for the sum of \$4.22, whereas the established minimum retail price of this product was \$4.26. See Bulletin 723.

The facts being undisputed, I find defendant guilty as charged.

The defendant has no prior adjudicated record. I shall suspend the license for ten days, less five days because of the plea, leaving a net suspension of five days. Re Mack Drug Co., Inc., Bulletin 695, Item 9.

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

ORDERED that Plenary Retail Distribution License D-25, issued by the Board of Commissioners of the City of Hoboken to Rose Pizzino, t/a Red Star W. & L. Co. for premises 413-415 Fifth Street, Hoboken, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. January 6, 1947, and terminating at 2:00 a.m. January 11, 1947.

Erwin B. Hoek
Deputy Commissioner.