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

BULLETIN 565 MAY 3, 1943.

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ITEM

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

BULLETIN 565 MAY 3, 1943.

1. RETAIL LICENSEES - FIVE YEAR RESIDENCE NO LONGER REQUIRED - REQUISITES FOR CORPORATE STOCKHOLDERS.

RETAIL LICENSES - RENEWAL APPLIED FOR BY ATTORNEY-IN-FACT - COPY OF APPROVED POWER OF ATTORNEY MUST BE ATTACHED TO EACH RENEWAL APPLICATION - HEREIN IMPORTANT DIRECTIONS CONCERNING PROPER FORM OF SIGNING APPLICATION AND ISSUING LICENSE.

April 22, 1943

Miss Ethel M. Hoyt
City Clerk
Hackensack, N. J.

Dear Miss Hoyt:

I have your letter of April 17th containing the following three questions:

"1. Under the new law, is it a fact that an applicant for a liquor license need only be a resident of the State of New Jersey at the time he makes application. The 5 year residence is no longer a requirement?

"2. What are the qualifications of the individuals interested in corporations? (I am not interested in airports - we have none)

"3. May an attorney-in-fact, holding a power of attorney in a form approved by the Commissioner of Alcoholic Beverage Control, sign for a renewal application without submitting anything further to your office. I have one in the files, at this time, (a copy of which is also on file in your department) and the thought occurred to me that your department might want it photostated for the 1944 license."

Taking your questions in order:

1. The five-year residence requirement has been removed. The law now requires that "No retail license shall be issued to a natural person unless he is....a resident of the State of New Jersey at the time of the submission of the application", and, further, that "Cessation of.....New Jersey residence shall be cause for the suspension or revocation of the license." (Underscoring ours.) P.L. 1943, c. 46, amending R. S. 33:1-25.)

2. "No retail license shall be issued to any corporation, except for premises operated as a bona fide hotel" (or for designated "airport" premises) "...unless each owner, directly or indirectly, of more than ten per centum (10%) of its stock qualifies in all respects as an individual applicant...." (Underscoring ours.)

The requirement concerning the designated stock owners does not prevent renewal of a retail license held by a corporation on July 4, 1935 and since renewed each year, although stockholders of the corporation would have failed to qualify as individual applicants. (P. L. 1943, c. 46, amending R. S. 33:1-25. The confusion as to retail license qualifications of corporations under the inconsistent

provisions of R. S. 33:1-25 and 33:1-12.1 has been eliminated through the repeal of R. S. 33:1-12.1 by P.L. 1943, c. 47.)

3. After a power of attorney has been granted in form approved by me, the attorney-in-fact may sign applications for license renewal without submitting anything further to this Department.

A copy of the original power is kept by me and another copy is filed with the Clerk of the local issuing authority. In addition, each application filed by the attorney-in-fact should have attached a copy of the power. The underscored requirement is for the desirable completeness in the record file of each separate application, and imposes no undue hardship upon the attorney-in-fact. If, in the case of a second or third renewal, the issuing authority wishes to assume the responsibility of preparing the additional copy of the power and attaching it to the application, I have no objection.

Considering the nearness of renewal time, two further matters should be stressed:

Each application for license by an attorney-in-fact must be made and signed in the name of the grantor of the power, viz., "John Doe, by Mary Doe, Attorney-in-fact"; and

Each license granted upon such application should be issued to the grantor (viz., "John Doe, Mary Doe, Attorney-in-fact"), and not to the attorney (viz., "Mary Doe" or "Mary Doe, Attorney-in-fact for John Doe").

If there are further questions, please call upon us.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - PERMITTING BOOKMAKING AND GAMBLING UPON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>JOHN HYETT<br>T/a JOCKEY'S DERBY CLUB<br>7 S. North Carolina Avenue<br>Atlantic City, N. J.,<br><br>Holder of Plenary Retail Consumption License C-216, issued by the Board of Commissioners of the City of Atlantic City. | CONCLUSIONS AND ORDER |

John Hyett, Pro Se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded non vult to the following charge

"On March 11, 1943, you allowed, permitted and suffered bookmaking and gambling on and about your licensed premises, in violation of Rule 7 of State Regulations No. 20."

A licensee must be held strictly accountable for improper activities upon the licensed premises.

In view of the investigation, disclosing that the licensee is absent in the Army; that he knew nothing of the matter; that, upon being informed of the situation, he immediately discharged his bartender, who seems to have been the guilty party, I shall impose the minimum penalty of ten days, with a five-day remission for the guilty plea. Re Trabb, Bulletin 509, Item 7; Re Balog, Bulletin 499, Item 3.

It is, therefore, on this 20th day of April, 1943,

ORDERED, that Plenary Retail Consumption License C-216, heretofore issued by the Board of Commissioners of the City of Atlantic City to John Hyett, t/a Jockey's Derby Club, for premises 7 S. North Carolina Avenue, Atlantic City, be and the same is hereby suspended for a period of five (5) days, effective April 26, 1943, at 12:01 A.M., and concluding on May 1, 1943, at 12:01 A. M.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, SOLID AND ACID CONTENT - 30 DAYS' SUSPENSION - 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 GUILTY PLEA - TOTAL: 35 DAYS.

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| In the Matter of Disciplinary Proceedings against<br><br>HRUBEC'S BAR & LIQUOR STORE, INC.,<br>281-283 Hall Avenue<br>Perth Amboy, N. J.,<br><br>Holder of Plenary Retail Consumption License C-34, issued by the Board of Commissioners of the City of Perth Amboy. | CONCLUSIONS AND ORDER |

Hrubec's Bar & Liquor Store, Inc., by Joseph R. Hrubec, President.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that (1) it possessed five 4/5 quart bottles of "Carstairs White Seal Blended Whiskey", all of which contained alcoholic beverages not genuine as labeled, and (2) and (3) it sold alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

As to (1): On February 23, 1943 an ABC agent seized five bottles of Carstairs Whiskey at the licensed premises after his preliminary field test disclosed that the contents of all were under proof. Three of the bottles were practically full, one about three-quarters full and the other about one-fifth full. Upon analysis by the ABC chemist, all five bottles were found to vary substantially from an original sample of that whiskey obtained from this licensee for comparative purposes, in proof and also in solid and acid content.

In a signed statement obtained from the Vice-President of the corporate defendant, he stated that Carstairs Whiskey is the licensee's biggest selling item and that it sold about two cases (24 bottles) of this whiskey each week. An examination of the seized bottles discloses that the labels are soiled and give the appearance of being handled over some length of time. This does not coincide with the statement made by the officer of the defendant corporation. Accepting his statement as fact, five bottles of Carstairs Whiskey should not ordinarily last the licensee more than two days. It is apparent that all five bottles were definitely refilled with other liquor. The number of bottles involved indicates that the defendant has been palming off on the public a liquor other than Carstairs, its largest revenue producer.

In the recent case of Re Gotts, Bulletin 562, Item 9, I imposed a penalty of twenty days for possession of eight refilled bottles. There, however, the bottles were all of different brands and the evidence was as consistent with a "lack of proper supervision" as with "deliberate chiseling." In this case, the evidence leads only to the conclusion that the defendant is guilty of a practice of deliberate chiseling with respect to its biggest selling brand of liquor. I shall suspend the license for thirty days on this charge. Cf. Re Gypsy Camp, Inc., Bulletin 454, Item 2; Re Smith, Bulletin 482, Item 1.

As to (2) and (3): On March 19, 1943, two ABC agents observed the bartender serve two glasses of beer to a nineteen year old minor. The bartender's excuse for this service is that, on a prior occasion, the minor had told him that he was twenty-two years of age. This mere verbal representation by the minor presents no valid defense to the violation. Re McGovern, Bulletin 559, Item 3. The usual penalty of ten days, less five days for the guilty plea, will be imposed on these charges.

The total suspension against this license is thirty-five days.

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

ORDERED, that Plenary Retail Consumption License C-34, heretofore issued by the Board of Commissioners of the City of Perth Amboy to Hrubec's Bar & Liquor Store, Inc., for premises 281-283 Hall Avenue, Perth Amboy, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 2:00 A.M. April 26, 1943, and terminating at 2:00 A.M. May 31, 1943.

ALFRED E. DRISCOLL
Commissioner.

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

DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS BY PERMITTEE, IN VIOLATION OF R. S. 33:1-77 - PERMIT PRIVILEGE SUSPENDED FOR 30 DAYS.

DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY PERMITTEE OFF THE LICENSED PREMISES, IN VIOLATION OF R. S. 33:1-2 - PERMIT PRIVILEGE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against )

HUDSON FREDRICKS )
Clinton Road
West Milford Township )
P.O. Hewitt,
Passaic, N. J., )

Holder of Plenary Retail Consumption License C-13, issued by the Township Committee of West Milford Township, Passaic County. )

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In the Matter of Disciplinary Proceedings against )

MELVIN MARSHALL )
Box 47
Warwick, New York, )

Holder of Employment Permit No. 1696, issued by the State Commissioner of Alcoholic Beverage Control. )

CONCLUSIONS AND ORDERS

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In the Matter of Disciplinary Proceedings against )

DOROTHY M. MARSHALL )
Box 47
Warwick, New York, )

Holder of Employment Permit No. 1697, issued by the State Commissioner of Alcoholic Beverage Control. )

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Hudson Fredricks, Pro Se.
Nathan Davis, Esq. ) Attorneys for State Department of
Milton H. Cooper, Esq.) Alcoholic Beverage Control

BY THE COMMISSIONER:

The defendant-licensee pleads guilty to charges served on him alleging that (1) on September 5, 1942 he sold alcoholic beverages to two minors, in violation of R. S. 33:1-77, and (2) on the same day, he permitted the consumption of alcoholic beverages by said minors upon his licensed premises in violation of Rule 1 of State Regulations No. 20, and (3) on September 8, 1942 he sold alcoholic beverages off his licensed premises, viz., in the grocery or similar store adjoining his licensed premises, in violation of R. S. 33:1-2.

The licensee was also served with an order to show cause why a special ruling and order should not be entered directing that any and all doors and passageways between the licensed premises and his grocery or similar store, adjoining thereto, be kept permanently closed.

The defendant-permittee Melvin Marshall was served with a charge alleging that on September 5, 1942, he, while acting as an employee for the licensee, sold alcoholic beverages to two minors in violation of R. S. 33:1-77.

The defendant-permittee Dorothy M. Marshall was served with a charge alleging that on September 8, 1942, she, while acting as an employee for the licensee, sold alcoholic beverages off the licensed premises, viz., at a grocery or similar store owned by the licensee and adjoining his licensed premises, in violation of R. S. 33:1-2.

There was no appearance at the hearing on the part of the defendants Melvin Marshall and Dorothy M. Marshall, husband and wife, holders of non-resident employment permits, both of whom had previously sent letters to this Department virtually admitting the charges, but stating they would not appear and that they were leaving the matter to the Commissioner for decision.

As to charges (1) and (2): On September 5, 1942 an investigator of the Department of Alcoholic Beverage Control visited the licensed premises at about 8:55 P.M. and observed some fifty people in the barroom, approximately twenty-five being children under the age of fifteen. The licensee was not present and the defendant Melvin Marshall was acting as bartender. The investigator observed a young woman and a young man, each nineteen years of age, standing at the bar drinking beer. The defendant Melvin Marshall, in a statement given to our investigator, says he did not sell the beer direct to the minors but admits the sale of beer to the girl's uncle and the boy's friend. This is the first offense of any nature by the defendants.

Defendant's premises are located in a neighborhood which has a large summer colony and is a popular meeting place for their families and friends, many of whom are minors. The licensee and his employees must be held to strict accountability for even an indirect sale or service of beer to minors. For the violation set forth in charges (1) and (2), defendant's license will be suspended for ten days, and the employment permit of the defendant Melvin Marshall for thirty days.

As to charge (3): The tavern adjoins a grocery or similar store. Both the tavern and grocery store are owned and operated by the licensee, Hudson Fredricks. In the rear of the tavern there is a small refrigerator room with a door opening into the grocery store through which the licensee and his employees may pass to and fro between the tavern and grocery store. The grocery store is not part of the licensed premises and, indeed, cannot be part thereof. R. S. 33:1-12(1).

On September 8, 1942 an investigator of the Department visited the grocery store. The defendant Dorothy M. Marshall was in charge of the store and the investigator asked for two bottles of beer. Mrs. Marshall went to a cooler in the refrigerator room and returned with two bottles of Koenigs Special Beer which she sold to the investigator. After the sale, the investigator obtained a signed statement from Mrs. Marshall in which she admits the sale and also that she knew she was not permitted to sell beer off the licensed premises. The licensee was in a back room of the store at the time of the transaction.

I shall suspend the license for an additional ten days because of the violation set forth in charge (3). Re New Jersey Bottling Co., Inc., Bulletin 548, Item 2. I shall suspend the employment permit of Dorothy M. Marshall for thirty days.

Because of the guilty plea entered herein by the licensee, five days will be remitted from the total suspension of twenty days herein imposed, making a net suspension of fifteen days.

As to the order to show cause: Because of the provisions of R. S. 33:1-12(1), the licensed premises and the grocery store cannot be operated as a single place of business with free access to the public from one to the other. In similar situations, the Department has heretofore permitted a doorway of this character to remain open solely for the convenience of the licensee and his employees. There is no evidence in this case that the general public was permitted to use the door, and hence there appears to be no reason why an order should be entered herein requiring that the said door be permanently closed. The order to show cause will be dismissed, with a warning to the licensee that the doorway must not be used other than by himself and his bona fide employees.

Accordingly, it is, on this 26th day of April, 1943,

ORDERED, that Plenary Retail Consumption License C-13, issued by the Township Committee of West Milford Township to Hudson Fredricks, for premises on Clinton Road, West Milford Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 A.M. May 3, 1943, and terminating at 2:00 A.M. May 18, 1943; and it is further

ORDERED, that Employment Permit #1696, issued to Melvin Marshall by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 A.M. May 3, 1943, and terminating at 2:00 A.M. June 2, 1943; and it is further

ORDERED, that Employment Permit #1697, issued to Dorothy M. Marshall by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 A.M. May 3, 1943, and terminating at 2:00 A.M. June 2, 1943.

ALFRED E. DRISCOLL
Commissioner.

5. FAIR TRADE - NOTICE OF SUPPLEMENTAL PUBLICATION.

April 27, 1943

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will become effective on or about Monday, May 17, 1943. New items and changes in old items must be filed at the offices of this Department not later than Wednesday, May 5, 1943.

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

ALFRED E. DRISCOLL
Commissioner.

6. MORAL TURPITUDE - CRIME OF KEEPING A DISORDERLY HOUSE (HOUSE OF PROSTITUTION) INVOLVES MORAL TURPITUDE.

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

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| In the Matter of an Application to remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2. | CONCLUSIONS AND ORDER |
| Case No. 264. | |

BY THE COMMISSIONER:

In 1935 petitioner was convicted on the charge of keeping a disorderly house (house of prostitution). He was sentenced to serve two to three years in prison and released on parole February 16, 1937.

The crime in question, per se, involves the element of moral turpitude. See Re Case No. 244, Bulletin 543, Item 2.

Petitioner claims that he has been law-abiding for at least five years last past, and hence, pursuant to R. S. 33:1-31.2, seeks removal of his disqualification from working for a liquor licensee or holding a liquor license in this State by reason of his conviction of a crime involving moral turpitude.

Petitioner's previous record shows that in 1918 he was sentenced to an indeterminate term in the New Jersey Reformatory on a charge of robbery and released on parole in 1920. In 1928 he was convicted of assault and battery and received a suspended sentence. In 1929 he was arrested on the charge of assault with pistol, robbery, and carrying concealed weapons. No disposition was made of the case. In 1931 petitioner was convicted of conspiracy, sentenced to serve two years in prison and discharged in November 1932. In March 1933 he was arrested for passing counterfeit money but released after investigation.

Petitioner was born in this State in 1899 and has lived in the same community practically all his life. After finishing the sixth grade in school, he served a four year apprenticeship as a painter. He has followed this trade and also engaged in the candy business. Since 1937 he has worked at intervals as a painter and waiter in clubs, taverns and restaurants. His first marriage in 1921 proved unsuccessful and he obtained a divorce in 1931. He remarried in 1938 and lives with his wife, who works as a waitress in a tavern where he is employed as head waiter.

According to the report of the parole agent, petitioner made every effort to adjust himself during his 1937 probation period, and there were no complaints on him at any time.

At the hearing a member of the detective bureau of the municipality wherein petitioner resides, who has known petitioner for many years and who is acquainted with his criminal record, testified as to the good conduct and reputation of petitioner for the last five years, and that the police department has had no complaints against him during this time. The officer believes petitioner realizes his

mistakesand is now trying "to make a decent living." Two reputable business men of the same municipality, who have known petitioner during the last five years, also testified they consider him a reliable, law-abiding citizen, and that he bears such a reputation in the community and among his associates. Petitioner made a full and frank disclosure of his criminal record and testified he did not discover he was disqualified to work as a waiter for a liquor licensee until recently, whereupon he immediately filed the instant petition.

I find that the applicant has conducted himself in a law-abiding manner during the five years immediately past. Despite his very bad record, I believe that he is making a sincere effort to live down his past. I conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

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

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

ALFRED E. DRISCOLL
Commissioner.

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 GUILTY PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>SALVATO COMPANY, INC.,<br>T/a RENAULT TAVERN<br>1639 Boardwalk<br>Atlantic City, N. J.,<br><br>Holder of Plenary Retail Consumption License C-164 issued by the Board of Commissioners of the City of Atlantic City. | CONCLUSIONS AND ORDER |

Vincent S. Haneman, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the following charges:

"1. On Saturday night, March 20, 1943, you sold alcoholic beverages to Seaman (2nd Class) Vance D. B----, U. S. Coast Guard, a minor, in violation of R. S. 33:1-77.

"2. On the date aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Seaman (2nd Class) Vance D. B----, U. S. Coast Guard, a person under the age of twenty-one years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon your licensed premises, in violation of Rule 1 of State Regulations No. 20; and also in violation of an ordinance adopted by the Board of Commissioners of Atlantic City on July 16, 1936, as amended by Section 3 of an ordinance adopted by said Board on August 11, 1938."

On March 20, 1943 two department investigators and a member of the military police observed Seaman Vance D. B----, 18 years of age, of the U. S. Coast Guard, being served beer in the tavern of the defendant-licensee. In mitigation of penalty for this violation, defendant-licensee states that there were several hundred patrons in the tavern at the time of the sale and, furthermore, the youth was not wearing leggings pursuant to order issued by District Coast Guard Officer of the Fourth Naval District. (See Bulletin 550, Item 10).

Inasmuch as no aggravating circumstances appear to have attended this violation, I shall impose the minimum penalty of ten days for a sale to a minor, less five days because of the non vult plea. Re McGovern, Bulletin 559, Item 3.

Accordingly, it is, on this 28th day of April, 1943,

ORDERED, that Plenary Retail Consumption License C-164, heretofore issued by the Board of Commissioners of the City of Atlantic City to Salvato Company, Inc., trading as Renault Tavern, for premises 1639 Boardwalk, Atlantic City, be and the same is hereby suspended for a period of five (5) days, commencing at 12:01 A. M. May 3, 1943, and terminating at 12:01 A. M. May 8, 1943.

ALFRED E. DRISCOLL
Commissioner.

8. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

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| In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.<br><br>Case No. 269. | CONCLUSIONS AND ORDER |

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 November 23, 1934 petitioner was found guilty in the United States District Court, for the Southern District of New York, of the crime of knowingly causing a stolen motor vehicle to be transported in interstate commerce and a conspiracy so to do, and was sentenced to the Federal Penitentiary at Lewisburg, Pennsylvania for a term of eighteen months. His conviction followed his misguided effort to liquidate a debt owed him by a patron of his night club. The patron agreed that if petitioner sold his car, the money realized from the sale could be applied toward the debt. Petitioner introduced the patron to a friend from Connecticut and the sale was consummated. Payment was made by check made payable to petitioner's order. The car was subsequently discovered to be stolen property. He stated that he knew the seller of the car only as a good patron of his night club and had no reason to suspect his character or honesty.

At the hearing three character witnesses, two businessmen and an author appeared to testify. All three have known the petitioner

for from seven to fifteen years. They were unanimous in their opinions concerning the fact that petitioner is honest, respectable and law-abiding. They further stated that he has always been a sincere, conscientious businessman and has a fine, respectable family. Petitioner stated that he has always been gainfully employed and that he has never been in any trouble of any nature before or since the offense committed in 1934.

According to the report of the Chief Inspector of the Precinct in which petitioner resides, there have been no complaints concerning petitioner's conduct since the offense committed and the records disclose no pending investigations.

I therefore conclude that the petitioner has been law-abiding for at least five years last past and that he has lived an honest and law-abiding life, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 20th day of April, 1943,

ORDERED, that petitioner's disqualification be lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL
Commissioner.

9. APPELLATE DECISIONS - SOLOMON v. NUTLEY.

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| LEE SOLOMON, trading as ONYX COCKTAIL LOUNGE, Appellant, -vs- BOARD OF COMMISSIONERS OF THE TOWN OF NUTLEY, Respondent | ) | ON APPEAL CONCLUSIONS AND ORDER |

James J. Higgins, Esq., Attorney for Appellant.
William F. Gorman, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the imposition of a five-day suspension of appellant's license by the respondent. The appellant was found guilty of permitting a brawl and disturbance upon her licensed premises, in violation of Rule 5 of State Regulations No. 20.

On June 22, 1942, at about 1:15 A.M., the complaining witness, James Payne, entered appellant's premises and, seating himself at the bar, ordered and was served a glass of beer by the bartender. Shortly thereafter, there ensued a verbal argument between himself and Daniel Solomon, husband of the licensee and manager of the tavern, about the charge of fifteen cents for the beer. Payne pointed out, admittedly in a loud voice, that the price of beer in the tavern across the street was ten cents, to which Solomon replied that, if Payne had any objections to paying the higher price, he was not obliged to patronize the premises. Then, according to Payne, "all at once he hauled off and hit me right in the lip." The blow caused a severe laceration necessitating five sutures being taken in the lip.

Both the licensee and her husband deny that the latter struck Payne. Although admitting that words passed between Payne and Mr. Solomon, they both testified that Mr. Solomon walked away from Payne after telling him that his patronage was not desired. They further testified that Payne then attempted to strike Mrs. Solomon with a bar stool but was prevented from doing so by the intervention of two other male patrons who were seated at the bar next to Mrs. Solomon.

Neither of these two men was produced as a witness by the appellant. The bartender who had served the beer to Payne testified, however, that he heard a commotion and rushed over to the scene, whereupon he observed Payne holding one hand over his face and his shirt covered with fresh blood stains.

From this evidence, it was within the province of the Board below to find that Payne had been struck without legal provocation by Mr. Solomon. There was a clear-cut factual issue which was decided against the licensee. Weighing the stories told by Payne and the bartender, on the one hand, and that told by the licensee and her husband, on the other hand, it cannot be said that the determination of this issue against the licensee by respondent may be viewed as error.

The penalty is clearly not excessive. If anything, it is too lenient. Cf. Re Polster, Bulletin 388, Item 10; Re Riley, Bulletin 557, Item 6.

Accordingly, it is, on this 29th day of April, 1943,

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

ORDERED, that the five-day suspension heretofore imposed against appellant's license by respondent, and held in abeyance pending disposition of this appeal, is hereby restored, to commence at 2:30 A. M. May 3, 1943, and to terminate at 2:30 A.M. May 8, 1943.

ALFRED E. DRISCOLL
Commissioner.

10. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICATION TO LIFT DENIED.

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| In the Matter of an Application to Remove Disqualification because of Convictions, Pursuant to R. S. 33:1-31.2.<br><br>Case No. 270. | CONCLUSIONS AND ORDER |

BY THE COMMISSIONER:

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

In March of 1930 petitioner pleaded guilty to the crime of sodomy and was sentenced to five years in the State Penitentiary at Trenton. In June of 1935 he was found guilty of breaking, entering and larceny in Tennessee and served three years in a penitentiary.

One of the requisites necessary for the lifting of disqualification is that petitioner must have a clean record for at least five years last past. Re Case No. 250, Bulletin 546, Item 4. Because of the conviction in 1935, petitioner served a sentence of three years and was released from the penitentiary some time in 1938.

It has been held, in determining whether a petitioner has conducted himself in a law-abiding manner for five years last past, that the time while one is confined for a crime is not part of the probationary period. See Re Case No. 16, Bulletin 222, Item 12.

Since it does not appear that five years have elapsed since his release from the penitentiary, I am not satisfied that he has been law-abiding, while unconfined in a penal institution, for a period of at least five years.

Moreover, petitioner has been given three hearings on this petition. At the first hearing he stated that he had never been in any trouble since the commission of the crime in 1930. A departmental check of the Federal records disclosed that petitioner had been convicted of a crime in Tennessee in 1935. When called to appear at this Department for a supplemental hearing, petitioner was confronted with the conviction in 1935. His excuse for not revealing the conviction was that he had forgotten the incident and that, had he thought of it, he was under the impression that it was only necessary for him to reveal convictions in the State of New Jersey. I am not satisfied with his explanation and am convinced that he purposely concealed the conviction in 1935. Because of this, and because he has not been law-abiding for the five years last past, I shall not at this time exercise my discretionary power to lift petitioner's disqualification.

Therefore, the petition is denied.

Dated: April 29, 1943.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 10 DAYS AND BONA FIDE CORRECTION OF ILLEGAL SITUATION - ILLEGAL SITUATION CORRECTED - SUSPENSION IN EFFECT FOR MORE THAN 10 DAYS - APPLICATION TO LIFT GRANTED.

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| In the Matter of Disciplinary Proceedings against<br><br>MITCHELL LAMBERT<br>T/a LAMBERT'S CAFE<br>1427 South 9th Street<br>Camden, N. J.,<br><br>Holder of Plenary Retail Consumption License C-88, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. | ON PETITION<br>ORDER |

Walter W. Holl, Esq., Attorney for Licensee and for Conrad Lambert and Mitchell Lambert, co-partners, t/a Lambert's Cafe.

BY THE COMMISSIONER:

On April 14, 1943 I suspended the license of the defendant Mitchell Lambert for the balance of its term, effective April 19, 1943, after a plea of guilty to charges alleging that he was a "front" for his father Conrad Lambert.

In said order it was further provided that if the "front" was fully and properly corrected, leave was to be given to make application to lift said suspension provided that at least ten days thereof be served. Re Mitchell Lambert, Bulletin 563, Item 6.

Pursuant to said leave, Mitchell Lambert filed a duly verified petition wherein it is set forth that the business conducted at 1427 South 9th Street, Camden, under the provisions of Plenary Retail Consumption License C-88, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden, has been acquired by the petitioner and Conrad Lambert as partners, t/a Lambert's Cafe, and that the said Municipal Board of Alcoholic Beverage Control has granted an application for a transfer of said license to the said Conrad Lambert and Mitchell Lambert as co-partners, t/a Lambert's Cafe, as further appears by the records in this Department.

It appearing from the verified petition aforesaid that the unlawful situation has been corrected, and it further appearing that ten days of the suspension have been served, the suspension will be lifted.

Accordingly, it is, on this 30th day of April, 1943,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-88, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

12. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 60 DAYS AND BONA FIDE CORRECTION.

DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR EMPLOYMENT PERMIT CONCEALING MATERIAL FACTS - PERMITTEE EXERCISED THE RIGHTS AND PRIVILEGES OF THE LICENSE - PERMIT PRIVILEGE SUSPENDED FOR BALANCE OF TERM.

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| In the Matter of Disciplinary Proceedings against<br><br>VINCENZA D'ANNA<br>809 - 7th Street<br>Union City, N. J.,<br><br>Holder of Plenary Retail Consumption License C-132, issued by the Board of Commissioners of the City of Union City. | CONCLUSIONS AND ORDER |
| In the Matter of Disciplinary Proceedings against<br><br>GAETANO DE MARTINO<br>33 - 8th Street<br>Fairview, N. J.,<br><br>Holder of Employment Permit No. 2168, issued by the State Commissioner of Alcoholic Beverage Control. | |

Frank J. Guarini, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded guilty to charges alleging that she (1) falsely concealed in her license application that Gaetano De Martino is the real and beneficial owner of the license and business

conducted thereunder, and (2) permitted the said Gaetano de Martino to exercise the rights and privileges of the license.

The defendant-permittee pleaded guilty to a charge alleging that he falsely concealed in his permit application that he was the real and beneficial owner of the license issued in the name of Vincenza D'Anna.

Gaetano De Martino is a national of Italy and thus disqualified from holding a liquor license in this state. See Re Case No. 490, Bulletin 564, Item 10. Between March 1939 and July 1941 the license was held on his behalf by a relative, one Peter M. Campana. Since July 1941 the license has been issued in the name of Vincenza D'Anna, a niece of Gaetano De Martino. It is admitted that since the original issuance of the license in March 1939, Gaetano De Martino has been the sole beneficial owner of the license and business conducted thereunder.

The "front" has not yet been corrected. The license, therefore, must be suspended for the balance of its term. Upon a correction of the unlawful condition, however, I will entertain a petition to lift the suspension. Such suspension will not be lifted, however, until the license has remained suspended for a full sixty days. Cf. Re Katsch and Paulsen, Bulletin 551, Item 9.

The permit of the defendant-permittee will be suspended for the balance of its term, viz., until June 30, 1943. Cf. Re Paulsen, supra.

Accordingly, it is, on this 28th day of April, 1943,

ORDERED, that Plenary Retail Consumption License C-132, issued by the Board of Commissioners of the City of Union City to Vincenza D'Anna for premises 809 - 7th Street, Union City, be and the same is hereby suspended for the balance of its term, effective at 3:00 A.M. on May 1, 1943; and it is further

ORDERED, that upon a correction of the existing unlawful situation by a bona fide sale and transfer, application may be made to me to lift the suspension, provided, however, that such suspension shall not be lifted prior to the expiration of sixty (60) days from the effective date of the suspension herein; and it is further

ORDERED, that Employment Permit No. 2168, issued to Gaetano De Martino 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.

13. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR EMPLOYMENT PERMIT CONCEALING CRIMINAL RECORD - EMPLOYMENT PERMIT REVOKED.

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| In the Matter of Disciplinary Proceedings against<br><br>NICOLA GERACITANO<br>(Nicola Geraciptano)<br>25-27 East Dickerson St.<br>Dover, N. J.,<br><br>Holder of Employment Permit No. 4467, issued by the State Commissioner of Alcoholic Beverage Control. | CONCLUSIONS AND ORDER |

Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant in these proceedings is charged with having given a false answer in his application for an employment permit. Accompanying the charge was an order directing the defendant to show cause why the permit should not be suspended or revoked.

The defendant failed to appear at the hearing.

Subsequent to the issuance of the employment permit the Department obtained a copy of the defendant's fingerprint record. This record disclosed that the defendant had been convicted of the crime of possessing untaxed liquor in 1938. In his application for employment permit and notwithstanding the fact that he swore under oath to the truthfulness of the statements therein contained, defendant failed to disclose the above mentioned conviction.

The failure of the defendant to disclose his criminal record warrants the revocation of the permit and his disqualification for further employment in the alcoholic beverage business in this State. Re Bernabo, Bulletin 543, Item 13.

Accordingly, it is, on this 30th day of April, 1943,

ORDERED, that Employment Permit No. 4467, heretofore issued to Nicola Geracitano (Nicola Geraciptano) by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective immediately.

Alfred E. Driscoll
Commissioner.