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

BULLETIN 645 JANUARY 9, 1945

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ITEM

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

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1. APPELLATE DECISIONS - METROPOLITAN LIQUOR CORPORATION, T/A BETTINGER'S v. JERSEY CITY.

Case #2 METROPOLITAN LIQUOR CORPORATION, trading as BETTINGER'S, Appellant -vs- BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

William George, Esq. and Samuel Moskowitz, Esq., Attorneys for Appellant.
Samuel Pesin, Esq. and John F. Lynch, Esq., Attorneys for Respondent.
Maurice C. Brigadier, Esq., Attorney for Tube Bar, Inc., an Objector.
Milton, McNulty & Augelli, Esqs., by Joseph Keane, Esq., Attorneys for Silver Roc Stores and Judicious Holding Co., Objectors.
Matthew Swerling, Esq., Attorney for Fourteen Journal Square Corporation, and Bickford's, Inc., Objectors.

BY THE COMMISSIONER:

This appeal is from respondent's refusal, on December 5, 1944, to transfer appellant's 1944-45 plenary retail distribution license from premises 50 Journal Square, Jersey City, to premises 5 Journal Square, Jersey City (directly across the Square). The license in question was issued to the appellant by the respondent on June 29, 1944, effective July 1, 1944.

The appellant, in its petition of appeal, urges the following grounds for reversal:

(a) That the Board of Commissioners of the City of Jersey City were guilty of abuse of discretion and a mistake of law and fact;

(b) The refusal to transfer appellant's license was arbitrary and unreasonable;

(c) The refusal to transfer was a direct violation of the rights of the appellant.

In its answer, respondent Board of Commissioners asserts that the denial of the appellant's application for transfer of its license was "in conformity with 'An Ordinance to Limit the Number of *** Plenary Retail Distribution Licenses *** in the City of Jersey City,' adopted Oct. 5, 1937," as amended, and that the denial "was made *** because the granting would aggravate to a great degree the existing concentration of licenses already in this small area;" and, further, that the denial "was made in order to serve the best interests of the City of Jersey City."

The application to transfer was opposed by five individual objectors who appeared before one of the Commissioners of Jersey City and were permitted to intervene herein, to cross-examine appellant's witnesses and to offer testimony. These objectors were two competing licensees, two owners of real estate in the Journal Square area, and the operator of a restaurant located on the Square near the proposed premises.

R.S. 33:1-26 empowers a municipal issuing authority, on an appropriate application, to transfer any license issued by it "to a different place of business than that specified therein, by endorsing permission upon such license." The same Section of the Alcoholic Beverage Law further provides:

> "The action of the other issuing authority in granting or refusing to grant any application for a transfer of license to a different place of business *** shall be subject to appeal to the Commissioner within thirty days from the date such action was taken."

A major portion of the testimony on the appeal has to do with the alleged differences between the licensee and its landlord, The Fifty Journal Square Corporation. The latter is apparently controlled by one Louis Deutsch, who is likewise President of the Tube Bar, Inc., the holder of a plenary retail consumption license and one of the objectors. This testimony is of doubtful relevancy, and is important only to the extent it discloses (1) a selfish interest on the part of the Tube Bar, Inc., (2) a somewhat unusual relationship between appellant and its landlord due to the common interest of Deutsch in the latter and in the competing objector, and (3) the impending termination of the lease between the appellant and its landlord requiring the former to seek other premises.

The appellant's lease expires on December 31, 1944. The testimony discloses that, despite protracted negotiations, the appellant and its landlord have been unable to agree upon the terms of a new lease. The landlord at one time offered to renew the lease for a period of five years, subject to certain conditions not here important, for an annual rental of $15,000. The rent for the current year is reported to be $8,100.

The provision in the Law permitting the transfer of a license from place to place may not be nullified or otherwise diminished by municipal regulation, or denied, except for good cause. Such cause, generally speaking, is that which appears to be necessary to accomplish the objects of the Alcoholic Beverage Law and to secure adequate control over the sale and distribution of alcoholic beverages. Cf. Re DeYoe, Bulletin 278, Item 8.

A transfer of a license may not be refused merely because the landlord objects. To hold otherwise would be to serve the private interests of property owners by giving them a stranglehold (not contemplated by the Alcoholic Beverage Law) on their tenants, and to permit them to exact exorbitant rents.

The issue raised by an application for a transfer is not to be determined in the light of private controversies between the applicant and its landlord. Re Richmond Realty Corp. v. City of Plainfield, Bulletin 411, Item 1.

It is unnecessary to further consider this aspect of the case.

The distance between appellant's premises on the west side of Hudson Boulevard, at 50 Journal Square, adjacent to the West Concourse, and the proposed premises directly opposite, at 5 Journal Square, is approximately 287 feet. Journal Square is an important shopping and business center. The Journal Square Station of the Hudson and Manhattan Railroad, used daily by thousands of persons traveling back and forth between New Jersey and New York City is located in the immediate neighborhood. Numerous bus lines also use Journal Square as a terminal. The Public Service bus and trolley terminal is located just a short distance from the Square.

Next door to 50 Journal Square, on the second floor, there is a plenary retail consumption license. Around the corner, on the north side of Hudson Boulevard, between the Square and Tonnele Avenue, there are located three additional retail consumption licensees. On the opposite or east side of Journal Square, between the East Concourse and Sip Avenue, the Silver Rod Stores, Inc., an objector, holds a plenary retail distribution license for 12 Journal Square. The latter premises are approximately 128 feet south of the proposed premises. The Silver Rod Store extends through to the Public Service bus and trolley terminal. Also fronting on this terminal, and just north of Sip Avenue, are premises occupied by the appellant for which a plenary retail distribution license has been issued. The Tube Bar, Inc. is located on the East Concourse, approximately 175 feet distant from the proposed premises. (See sketch on page 5.)

A plenary retail distribution licensee may sell alcoholic beverages for consumption off the licensed premises but only in original containers (R.S. 33:1-12(3a)). In contrast, a plenary retail consumption licensee may sell by the glass for on-premises consumption, and in original containers for consumption off the premises (R.S. 33:1-12(1)).

If the appellant's application for transfer is granted, it will result in the location of two package stores in the same block approximately 128 feet apart. One of these stores (the Silver Rod), in addition to its liquor department, operates a general purpose drug store and soda fountain. Appellant at its present location is engaged exclusively in the sale of alcoholic beverages.

Respondent offered no proof in support of its refusal to grant the transfer other than the testimony of one of its police officers that objections had been received and investigated.

The local ordinance cited by the respondent in its answer does not by its terms bar the transfer. Section 5 of this ordinance states, inter alia:

> "In the event a licensee desires to transfer to another premises, he shall be permitted to do so within 750 feet of the premises wherein he is located at the time of said transfer ***."

I am not impressed by the suggestion that 50 Journal Square and 5 Journal Square are located in two entirely separate neighborhoods. Both locations are in the same business area. The testimony and the exhibits disclose that the stores and theatres in the vicinity of Journal Square are competing for the same patronage.

The proposed transfer would not in anywise aggravate the existing concentration of licenses in this shopping center. The only effect of the transfer would be to shift a distribution license from the west to the east side of the Square.

Two well-known realtors testified that many more pedestrians use the sidewalk on the east side of the Square than on the west side. Both of these witnesses testified that the location of a package store at 5 Journal Square would not detrimentally affect business in the immediate vicinity. This testimony was not refuted.

Since the only other licensee having premises facing on Journal Square between the East Concourse and Sip Avenue is likewise a plenary retail distribution licensee, there is no likelihood of a "rum row" developing. Distribution licensees, with their limited privilege, are, in common with all other licensees, subject to State Regulations No. 38 prohibiting the sale of alcoholic beverages in original containers for consumption off licensed premises on Sunday, or before 9 A.M. or after 10 P.M. on weekdays.

If appellant were outside of the Journal Square area and seeking to transfer into it, I would be inclined to sustain the refusal to transfer. Such, however, is not the case. It appears that the respondent was more impressed by the objections of the competitors than by the apparent merit of the application. Cf. Kelley v. Manalapan, Bulletin 531, Item 3.

There are certain irrelevant phases of this case that have given me considerable concern. Stripped of the formalities, it appears that The Fifty Journal Square Corporation, in cooperation with the related Tube Bar, Inc. and others, has endeavored to take advantage of an unusual situation for the purpose of either getting rid of an aggressive licensee in the Journal Square area or, in the alternative, to obtain a very substantial increase in its rent. An effort has been made to cover this plan with a cloak of public welfare. The plan and the cloak are poorly mated.

After having carefully studied the entire record, I find that respondent's grounds for refusing the transfer are not supported by the testimony and that no valid objection to the transfer appears to exist.

The denial of the transfer appears to have been unreasonable and the action of the respondent must, therefore, be reversed.

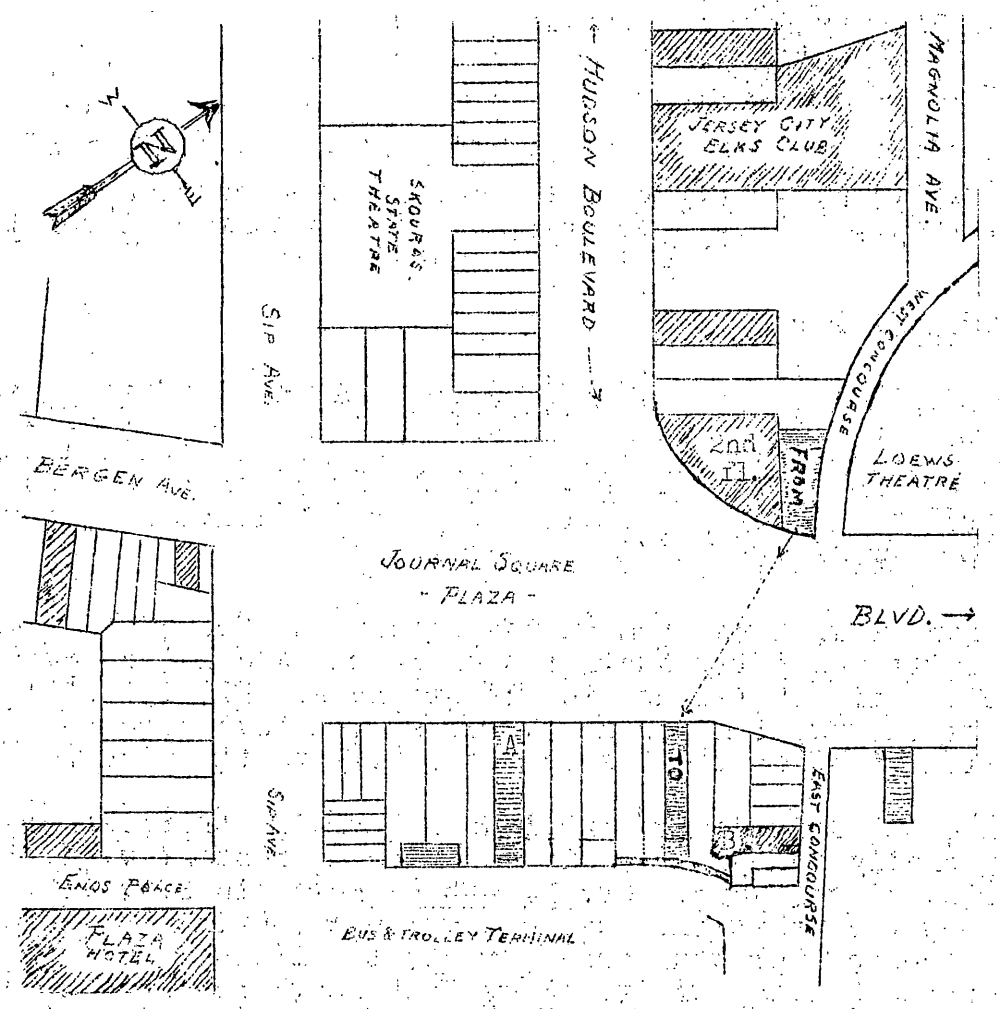
R.S. 33:1-23 empowers the Commissioner to adopt procedures and methods to insure the fair and impartial administration of the Alcoholic Beverage Law. R.S. 33:1-38 empowers the Commissioner to hear and conduct all appeals and to enter appropriate orders. In addition, R.S. 33:1-39 also empowers the Commissioner to make such special rulings and findings as may be necessary for the proper regulation and control of the sale and distribution of alcoholic beverages and the enforcement of the Alcoholic Beverage Law.

Accordingly, it is, on this 29th day of December, 1944,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is directed to transfer the license as requested.

ALFRED E. DRISCOLL,
Commissioner.

SKETCH SHOWING JOURNAL SQUARE AREA AS TAKEN FROM EXHIBIT R-3
METROPOLITAN LIQUOR CORPORATION, T/A BETTINGER'S v. JERSEY CITY.



NOTE: Premises occupied by holders of plenary distribution licenses are shaded across

Premises occupied by holders of plenary consumption licenses are shaded diagonally

Present licensed premises - 50 Journal Square — From

Proposed licensed premises - 5 Journal Square — To

Silver Rod Stores — A

Tube Bar, Inc. — B

2. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH PERMISSION GRANTED TO PETITION TO LIFT UPON THE EXPIRATION OF 10 DAYS' SUSPENSION AND CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against CHESTER BOND & GEORGE WUEST, 200 N. 5th Street, Harrison, New Jersey, Holders of Plenary Retail Consumption License C-32, issued by the Town Council of the Town of Harrison.	CONCLUSIONS AND ORDER

- - - - - - - - - - - - - - - - - - - -

John J. Murphy, Esq., Attorney for Defendant-Licensees.
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded nolo contendere to charges alleging that (1) they falsified their license application by failing to reveal that one William Hewitt had an interest in their license, which was issued August 8, 1944, and the business conducted thereunder; and (2) they permitted the said William Hewitt to exercise the privileges of their license.

So far as appears from an investigation made by ABC agents, William Hewitt was fully qualified under the Alcoholic Beverage Law to hold a liquor license in his own name. His interest in the license in question was not disclosed, however, because of the aversion of other members of his family to the liquor business.

Since the defendants' previous record is otherwise clear, I would normally suspend the license for the instant violation for a period of ten days. Cf. Re Woods, Bulletin 576, Item 7. In view, however, that the business may not continue to be operated under the present unlawful arrangement, the license must be suspended for the balance of its term, with leave reserved to apply for lifting of such suspension upon the submission of proper proof that a bona fide correction has been effected. The full ten-day penalty must be served, however, before the suspension is lifted.

Accordingly, it is, on this 2nd day of January, 1945,

ORDERED that plenary retail consumption license C-32, issued by the Town Council of the Town of Harrison to Chester Bond and George Wuest for premises 200 N. 5th Street, Harrison, be and the same is hereby suspended for the balance of its term, effective at 2:00 A.M. January 8, 1945; and it is further

ORDERED that application may be made to the Commissioner of Alcoholic Beverage Control for a lifting of such suspension upon submission of proper proof of a bona fide correction; provided, however, that in no event will such suspension be lifted prior to the expiration of ten (10) days from the effective date of the suspension herein.

ALFRED E. DRISCOLL
Commissioner.

3. LICENSEES - DISQUALIFICATION - LICENSEE TWICE CONVICTED OF VIOLATION OF MUNICIPAL ORDINANCE IN RECORDER'S COURT NOT MANDATORILY DISQUALIFIED BY R. S. 33:1-25.

December 27, 1944

Davis L. Horuvitz, Esq.,
Bridgeton, N. J.

Dear Mr. Horuvitz:

This will acknowledge receipt of your letter inquiring "whether two convictions in a Recorder's Court for violation of a municipal ordinance concerning alcoholic beverages, disqualifies a licensee from retaining a license or securing renewal of a license."

You will note that the provisions of R. S. 33:1-25 are limited to a "violation of this chapter", namely, the Alcoholic Beverage Control Law. Further, the section specifically provides that the disqualified person must have been "twice convicted in a court of criminal jurisdiction **".

Accordingly, a person twice convicted in a Recorder's Court for the violation of a municipal ordinance is not thereby disqualified by R. S. 33:1-25.

The mere fact that a person is not disqualified by statute from holding a license does not require that his license be renewed. Whether or not a retail license should be renewed is a matter to be decided by the issuing authority in the exercise of its sound discretion. Repeated violations of the local ordinance would seem to raise serious question as to whether or not the individual involved should be permitted to continue in a privileged business.

Very truly yours,

ALFRED E. DRISCOLL
Commissioner.

4. APPELLATE DECISIONS - SINGER AND RIDILA, T/A THE RENDEZVOUS v. UNION TOWNSHIP AND DANZIS - ORDER OF DISCONTINUANCE.

KARL SINGER and GEORGE RIDILA, t/a The Rendezvous, Appellants,	ON APPEAL ORDER OF DISCONTINUANCE
-vs-	
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UNION and BENJAMIN DANZIS, Respondents.	

William Toker, Esq., Attorney for Appellants.
Charles Wagner, Esq., Attorney for Respondent Township Committee.
Gustave G. Kein, Jr., Esq., Attorney for Respondent, Benjamin Danzis.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail distribution license to the respondent, Benjamin Danzis, for premises 1231 Magie Avenue, Union Township.

The attorney for the appellants has submitted a stipulation of discontinuance duly consented to by the attorneys for the respective respondents.

Since no reason appears to the contrary, it is, on this 3rd day of January, 1945,

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

ALFRED E. DRISCOLL
Commissioner.

5. CLUB LICENSES - NOT CONVERTIBLE INTO PLENARY RETAIL CONSUMPTION LICENSES - PREVIOUS RULINGS TO THE CONTRARY OVERRULED.

Mr. Andrew A. Heller
Borough Clerk
Haledon, N. J.

December 28, 1944

Dear Mr. Heller:

I have your letter asking whether it would be permissible for the Borough Council to act on an application for a club holding a club license "to convert same into a Plenary Retail Consumption License, and if the change were made would the Club be entitled to a refund on fee paid for the Club License."

Your letter contains, also, the following paragraph:

> "In the same connection the club is also considering renting the bar on its premises to two individuals who plan to run the business on a partnership basis. The Club would have no interest in that part of its premises other than ownership of the fixtures, etc. and the partners would apply for a necessary license in their own names."

You request my advice in respect to the first question; and, regarding the second question, you ask whether or not I would have any objection to issuance of a new license at this time.

Your letter concludes with the statement that you have no ordinance limiting the number of licenses in Haledon.

The Alcoholic Beverage Law contains no provision authorizing conversion of one type of license to a license of another type. It is, therefore, my ruling, as indicated in Re Moskowitz, Bulletin 524, Item 13, that a club license may not be converted into a plenary retail consumption license, and conclusions to the contrary in Re Keevil, Bulletin 158, Item 11, and Re Van Hook, Bulletin 241, Item 4, are hereby expressly overruled.

With regard to your second question, it is true that there is no ordinance limiting the number of licenses in Haledon. According to my records, however, a resolution passed by the Haledon Borough Council July 16, 1934, and approved by the Mayor July 18, 1934, provides that "the issuance of Plenary Retail Consumption Licenses for the sale of alcoholic beverages in the Borough of Haledon, be limited to twenty and that no greater number of such licenses shall be issued."

Section 33:1-40 of the Revised Statutes provides in part:

> "The governing board or body of each municipality may, as regards said municipality, by ordinance, limit the number of licenses to sell alcoholic beverages at retail, but any such limitation adopted by ordinance or resolution prior to July first, one thousand nine hundred and thirty-seven, shall continue in full force and effect until repealed, amended or otherwise altered by ordinance." (underscoring mine.)

My records show that the Borough's plenary retail consumption license quota of twenty (20) has not been repealed, or changed, by ordinance and is, therefore, still in operation and effect. My records show, further, that the Borough's plenary retail consumption license quota is already filled, there being twenty such licenses now outstanding.

It has long been my conviction, amply borne out by experience, that our problem in New Jersey is one of too many licenses rather than too few. Twenty plenary retail consumption licenses in Haledon represent, by the 1940 census, one to each 265 persons. This, by any reasonable standard and will full allowance for populational increases since 1940, indicates a more than adequate number of licenses. Alcoholic beverage licenses are properly issued only when they serve the public convenience and necessity and the State Commissioner has, on appeal to him from municipal issuances, cancelled licenses issued pursuant to an increase in the limitation quota where it did not appear that they were issued to serve that essential purpose. (See Franco v. Phillipsburg, Bulletin 392, Item 5.)

Very truly yours,

ALFRED E. DRISCOLL
Commissioner.

6. ELIGIBILITY - FACTS EXAMINED - APPLICANT HELD ELIGIBLE FOR SOLICITOR'S PERMIT.

January 3, 1945

Re: Case No. 553.

Subject herein has made application to the State Commissioner of Alcoholic Beverage Control for a solicitor's permit. In said application he denied that he had ever been convicted of a crime. Fingerprint records obtained from the State Bureau of Identification indicated otherwise.

At a departmental hearing held for the purpose of determining whether he was eligible to be associated in any capacity with the alcoholic beverage industry, applicant testified that he had been convicted of the crime of adultery.

On February 1, 1944, applicant, by reason of the conviction aforesaid, was sentenced to a county jail for a period of ninety days by a Judge of the Court of Special Sessions. Applicant testified that he had employed a woman to keep house for him and that her husband preferred the charges which resulted in his arrest and subsequent conviction.

Although admitting the conviction at the present hearing, applicant denied that he had, in fact, committed an act of adultery, as charged. His story is that he followed a suggestion made by a county official and elected to plead guilty to the complaint rather than remain confined in prison until the Grand Jury convened some months later. In view of his plea, the question of his guilt or innocence cannot be redetermined in this proceeding.

Conceding that adultery is an offense against morals, it does not necessarily follow that those convicted of the crime of adultery, in all cases, are guilty of moral turpitude. The facts present in each case are determinative of the seriousness of the offense. Re Schroeder, Bulletin 45, Item 18. After fully considering the evidence submitted in the instant case, I am satisfied that applicant's lapse from virtue does not indicate such baseness of conduct in which moral turpitude inheres. Re Case No. 182, Bulletin 208, Item 10. Applicant's testimony that he has not at any other time been convicted of crime or in any way run afoul of the law is corroborated by the police records received by the Department of Alcoholic Beverage Control. Therefore, he is not disqualified by statute from being employed by a liquor licensee.

When interrogated relative to the reason why he had denied in his application for a solicitor's permit that he had ever been convicted of a crime, applicant stated that in view of the nature of the conviction he was "ashamed" to admit it. Even though that be so, it still does not constitute a valid reason for deliberately giving false information in his application.

Normally, applicant could obtain his solicitor's permit immediately, but due to his denial under oath relative to criminal convictions in his application for said permit filed with this Department, I recommend that the issuance of the permit be withheld for ten (10) days from the date hereof. Re Case No. 498, Bulletin 579, Item 9.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

Clarence E. Kremer
Attorney.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN ACIDS, SOLIDS AND COLOR - LICENSE SUSPENDED FOR A PERIOD OF TEN DAYS.

In the Matter of Disciplinary Proceedings against	)	
	)	
JOSEPH & OLGA CEASAR, 82-82½ Ferry Street, Newark 5, New Jersey,	)	CONCLUSIONS AND ORDER
	)	
Holders of Plenary Retail Consumption License C-306, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark	)	

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Carl J. Yagoda, Esq., Attorney for Defendant-Licensees.
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded non vult to a charge alleging that they possessed alcoholic beverages which were not genuine as labeled, in violation of R.S. 33:1-50.

On October 19, 1944, an ABC agent tested the licensees' stock of eighteen open bottles and seized two 4/5 quart bottles of "Imperial Hiram Walker's Blended Whiskey 86 Proof". Upon analysis, the liquor in both bottles was found to vary substantially in acid and solid content, and to contain only natural color whereas a genuine sample of the same product contains artificial color. The consequent inference from this data is that both bottles were "top-to-bottom refills".

In the absence, as here, of any aggravating circumstances attending the instant violation, or of any previous record, I shall suspend the license for the usual period of ten days.

Accordingly, it is, on this 3rd day of January, 1945,

ORDERED that plenary retail consumption license C-306, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joseph & Olga Ceasar, for premises 82-82½ Ferry Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. January 8, 1945, and terminating at 2:00 A.M. January 18, 1945.

ALFRED E. DRISCOLL,
Commissioner.

8. ELIGIBILITY - CRIME OF OPERATING A BAWDY HOUSE INVOLVES MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO BE ASSOCIATED IN ANY CAPACITY WITH THE ALCOHOLIC BEVERAGE INDUSTRY.

January 3, 1945

Re: Case No. 554.

Subject, a non-resident of New Jersey, stated in his application for an employment permit that he had never been convicted of a crime. Fingerprint records obtained from the Federal Bureau of Identification disclosed that he had been convicted of a crime on two separate occasions. When confronted with this disclosure at a hearing to determine applicant's eligibility to be employed on licensed premises, he admitted the offenses shown.

On April 16, 1925, applicant was convicted in an adjacent State of maintaining and operating a bawdy house and of disorderly conduct. As a result thereof, he was fined $100 and sentenced for a period of nine months to a county prison by a Judge of a Court of Quarter Sessions. On January 11, 1926, applicant received his release from said penal institution.

On January 3, 1932, applicant was convicted of violation of the Federal Narcotic Laws and on the same date was sentenced to imprisonment for one year in a Federal penitentiary. This sentence, however, was immediately suspended and in its stead applicant was placed on probation for a like period.

Applicant's testimony relative to the facts surrounding the charge of maintaining and operating a bawdy house was that he merely operated a lunch room in a hotel and did not in any manner participate in the renting of the hotel rooms which were used for immoral purposes. In view of the fact, however, that he had been convicted in a court of competent jurisdiction of the offense charged, the justification therefor cannot be questioned in the instant proceeding.

Maintenance and operation of a bawdy house is, per se, a crime which involves moral turpitude. Re Case No. 305, Bulletin 365, Item 11.

Therefore, it is unnecessary at this time to determine whether or not the subsequent conviction for violation of the Federal Narcotic Laws may involve moral turpitude.

It is recommended that applicant, for the reason above mentioned, be declared ineligible to be associated in any capacity with the alcoholic beverage industry.

Clarence E. Kremer
Attorney.

APPROVED:
ALFRED E. DRISCOLL
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	)	
	)	
NATHAN MELNICK, 885 Broadway, Bayonne, New Jersey,	)	CONCLUSIONS AND ORDER
	)	
Holder of Plenary Retail Consumption License C-16, issued by the Board of Commissioners of the City of Bayonne.	)	

- - - - - - - - - - - - - - - - - - -

Nathan Melnick, Defendant-Licensee, Pro Se.
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, by his non vult plea in these proceedings, admits the sale, on December 12, 1944, of a gallon bottle of Paradise Selected Reserve Barberone wine for the sum of $2.75. This amount is less than the established Fair Trade price of $2.99 for that product. See Bulletin 614.

The defendant's otherwise clear record warrants the imposition of the usual penalty of ten days for the instant violation. Re Gold's Drug Stores, Bulletin 640, Item 9. Five days will be remitted because of the plea, leaving a net suspension of five days.

Accordingly, it is, on this 3rd day of January, 1945,

ORDERED that plenary retail consumption license C-16, issued by the Board of Commissioners of the City of Bayonne to Nathan Melnick, for premises 885 Broadway, Bayonne, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A.M. January 8, 1945, and terminating at 2:00 A.M. January 13, 1945.

ALFRED E. DRISCOLL
Commissioner.

10. ACTIVITY REPORT FOR DECEMBER, 1944

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - - - 3 Bootleggers - - - - 9
Personating an ABC officer- 1
Total number of persons arrested- -13

SEIZURES: Stills - 1 to 50 gallons daily capacity - - - - - - - - - - - - 0
50 gallons and more daily capacity- - - - - - - - - - - - 2
Total number of stills seized - 2
Mash - gallons- 2,999
Motor vehicles - Trucks - 0
Passenger cars - 0
Total number of motor vehicles seized - 0
Beverage alcohol - gallons- 0
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - - - - 7
Wine - gallons- 5
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - 19

RETAIL LICENSEES:
Total number of premises inspected- 991
Total number of bottles gauged- -7298
Total number of premises where violations were found- - - - - - - - - - - 61
Total number of violations found- 86
Type of violations found:
Illicit (bootleg) liquor- - - - -4 Improper beer tap markers - - - - - - - 1
Gambling devices- - - - - - - -5 Stock disposal permits necessary- - - 7
Prohibited signs- - - - - - - -0 No sign denoting legal sale hours -
Unqualified employees - - - - 38 off-premises consumption - - - - -16
"Fronts" (concealed ownership)-7 Other types of violations - - - - - - 8

MILITARY AREA PATROL INSPECTIONS: -519

STATE LICENSEES:
Premises inspected - 40
License applications investigated- 13

COMPLAINTS:
Investigated, reviewed and closed- -186
Investigation assigned, not yet completed- - - - - - - - - - - - - - - - -306

LABORATORY:
Analyses made- -126
"Shake-up" cases (alcohol, water and artificial coloring)- - - - - - - - 22
Liquor found to be not genuine as labeled- - - - - - - - - - - - - - - - - 5

IDENTIFICATION BUREAU:
Criminal fingerprint identifications made- - - - - - - - - - - - - - - - - 1
Persons fingerprinted for non-criminal purposes- - - - - - - - - - - - -13
Identification contacts with other enforcement agencies- - - - - - - - -13
Motor vehicle identifications via N. J. State Police Teletype- - - - - 1

DISCIPLINARY PROCEEDINGS:
Cases transmitted to municipalities- 1
Cases instituted at Department - 1
Supplemental charges in case already instituted at Department- - - - - -

HEARINGS HELD AT DEPARTMENT:
Total number of hearings held- 3
Appeals - - - - - - - - - - - - - - 6 Seizures - - - - - - - - - - 3
Disciplinary proceedings- - - -15 Application for license- - 2
Eligibility - - - - - - - - - - -10

PERMITS ISSUED:
Total number of permits issued -69
Unqualified employees- 109
Solicitors - 22
Social affairs - 99
Home manufacture of wine - 132
Disposal of alcoholic beverages- - - - - - - - - - - - - - - - - - - 127
Miscellaneous permits- 207

Respectfully submitted,
Erwin B. Hock
Deputy Commissioner.

11. APPELLATE DECISIONS - D'ANNIBALE v. SPARTA TOWNSHIP.

JOSEPH D'ANNIBALE AND MAGDALINE D'ANNIBALE, Appellants,	)	ON APPEAL CONCLUSIONS AND ORDER
-vs-	)	
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF SPARTA, Respondent.	)	

Vito A. Concilio, Esq., Attorney for Appellants.
William A. Dolan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of the respondent in adopting an ordinance, on September 12, 1944, limiting the number of plenary retail consumption licenses in the said Township to thirteen; and also an appeal from the denial by the respondent of the appellants' application for a plenary retail consumption license.

In effect, the appellants ask that the respondent be directed to amend its ordinance, increasing the number of plenary retail consumption licenses from thirteen to fourteen, and to issue the additional license to them.

Appellants are the owners of Mohawk Inn located on Lake Mohawk, Sparta. The premises were acquired by them on September 25, 1941. At that time the premises were licensed and an application for the transfer of the then existing license to Joseph D'Annibale was approved by the respondent. The license, however, was revoked on June 19, 1942, for failure of the applicant to disclose that he had been convicted of a crime which, however, did not involve moral turpitude. Subsequently, Magdaline D'Annibale, the other appellant, applied for a license in her name, which application was denied. The respondent's denial was upheld on appeal. D'Annibale v. Sparta, Bulletin 529, Item 6. Since the revocation on June 19, 1942, the premises have been unlicensed.

Prior to the adoption of the present ordinance, the respondent had adopted an ordinance fixing the number of licensed premises at thirteen without specifying the type of licenses. Inasmuch as an "aggregate" license quota is improper, the Department of Alcoholic Beverage Control recommended that the ordinance be amended so as to provide for a definite numerical limitation of each type of license proposed to be issued. Such an amended ordinance was introduced limiting the number of plenary retail consumption licenses to thirteen, an increase of one over the number of such licenses then in existence. In the amended ordinance the number of club licenses was fixed at one. The appellants and one Ann M. Juhre applied for plenary retail consumption licenses and, at the time of hearing on the final adoption of the ordinance on September 12, 1944, both applicants appeared. The appellants' application was returned for correction, but the application of Ann M. Juhre was retained. Appellants at that time requested the amending of the proposed ordinance to provide for fourteen plenary retail consumption licenses. After the hearing, respondent adopted the ordinance limiting

the number to thirteen. Subsequent to the adoption of the ordinance, the application of Ann M. Juhre was granted, and at the next meeting of the respondent the appellants' application was denied for the reason that no vacancy existed.

Appellants charge that the sole purpose of the amended ordinance was to favor the application of Ann M. Juhre in discrimination of the appellants' application.

I am unable to agree with this contention. Two members of the governing body appeared and testified that there was no discrimination; that in the territory where the Juhre premises were located there were no licensed premises, whereas in the area where the premises of the appellants are located there were three licensed premises within a radius of three hundred feet. Further, members of the governing body were of the opinion that thirteen licensed premises were sufficient for all requirements of the needs of the municipality. The population of the Township is about 1,700, but is substantially increased during summertime.

The question of the number of licensed premises should be decided in the sound discretion of the municipal authorities and should not be disturbed except for good cause shown.

In Re Meisler v. Independence Township, Bulletin 520, Item 6, I stated that, although the Supreme Court in Re Phillipsburg v. Burnett, 125 N.J.L. 157, expressed some doubt that a State administrative officer may repeal a municipal ordinance, I was, nevertheless, ready to take such a step in a proper case. However, I see nothing in the record in this proceeding to justify such action. There appears to be nothing unreasonable in the limitation. The evidence presented herein certainly does not support any charge of undue discrimination against appellants in the present proceeding. I will, therefore, affirm the action of the respondent.

Accordingly, it is, on this 4th day of January, 1945,

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

Alfred E. Driscoll
Commissioner.