

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

BULLETIN 563

APRIL 21, 1943.

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

BULLETIN 563

APRIL 21, 1943.

1. 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 20 DAYS AND BONA FIDE TRANSFER OF THE LICENSE.

In the Matter of Disciplinary)
Proceedings against)

GEORGE SPARBER)
t/a Max's Tavern)
556 Valley Street)
Orange, N. J.)

CONCLUSIONS

AND

Holder of Plenary Retail Consump-)
tion License C-38, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Orange.)
- - - - -

ORDER

Martin J. McHugh, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for the Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleads not guilty to charges alleging, in substance, that:

(1) He falsified his application for license for the fiscal year 1942-43 by failing to disclose therein that Max Sparber (his father) and Gussie Sparber (his mother) were the true owners of the licensed business, in violation of R. S. 33:1-25; and

(2) He permitted said Max Sparber and said Gussie Sparber to exercise the rights and privileges of his license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

There is no dispute as to the essential facts. In 1940 Max Sparber, father of the defendant, acquired a plenary retail consumption license for the licensed premises and renewed the same for the 1940-41 and 1941-42 periods. Max Sparber then believed he was an Austrian national and that his wife was a Russian national. Their son George who was born in the United States lived with them on the premises but worked elsewhere and never took any active part in the operation or management of the tavern. In June 1942 when Max Sparber prepared to file his renewal application he was informed that the declaration of war on the United States by Austria had abrogated the reciprocal trade treaty between the two countries and as Austrian nationals were no longer protected by treaty he was no longer qualified to hold a license. In order to carry on the business he transferred the license during the past fiscal year to his son who renewed it for the current fiscal year. The tavern, however, remained under the joint ownership and management of both parents.

There was no consideration for the transfer which was made because Mr. and Mrs. Sparber had never been naturalized and believed they were not qualified to hold a license by lack of citizenship.

In the summer of 1942 George Sparber was inducted into the armed forces but did not execute a power of attorney authorizing his parents to conduct the business in his absence. On January 7, 1943 investigators of the Department of Alcoholic Beverage Control visited the licensed premises and discovered the violation. Max Sparber signed a statement in which he makes a full disclosure of the facts and says his son never had any financial interest in the business and did not share in the profits. This is the first offense of any kind by either the defendant-licensee or his father.

At the hearing no effort was made to conceal the real ownership of the license. Certificates from the Consulate General of the Republic of Poland (in New York City) were introduced certifying that Max Sparber and Gussie Sparber are natives of Poland and are considered Polish nationals by the Consulate. These certificates apparently indicate that both Mr. and Mrs. Sparber have been Polish nationals since 1918 when their respective birthplaces became part of the Republic of Poland by virtue of the Treaty of Versailles. These certificates were offered in mitigation of the violations charged since this Department has held that Polish nationals are qualified to hold a New Jersey license, being protected by a reciprocal trade treaty. Re Zimmerman, Bulletin 352, Item 3.

The present method of operation is improper. In making application for a renewal of this license for the current fiscal year, the defendant concealed the true ownership of the business despite my warning of June 1, 1942. (Bulletin 512, Item 9), wherein it was stated:

"Fair warning is hereby given that, in all disciplinary cases involving a 'front' created or continued after July 1, 1942, the penalty will be outright revocation of the license or suspension for a period of time as will adequately punish the violator and break up the practice.

"There is no excuse for perjury. Applicants for liquor licenses must answer each question in the application frankly and honestly. Public policy in this State demands a full disclosure of all persons interested in the application and the business. False swearing will not be tolerated."

I have no alternative but to suspend the operation of the license for the balance of the term. Cf: Re Scharnberg, Bulletin 540, Item 4 and Re Sillis, Bulletin 544, Item 7.

However, a careful study of the evidence convinces me the transfer was a family affair motivated by a mistaken belief as to citizenship and since a frank disclosure was made and an apparent sincere effort to correct the unlawful situation is pending, I shall entertain an application to lift said suspension upon transfer of the license to a duly qualified licensee after the expiration of twenty days from the effective date hereof.

Accordingly, it is on this 12th day of April, 1943,

ORDERED that Plenary Retail Consumption License C-38, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to George Sparber, trading as Max's Tavern, for premises 556 Valley Street, Orange, be and the same is hereby suspended for the balance of its term, effective at 2:00 A. M. on April 16, 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 twenty (20) days from the effective date of such suspension.

ALFRED E. DRISCOLL,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CHARGES OF FRONT, FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS, AND PERMITTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

WARNING - HEREIN OF A LICENSEE WHO CHOOSES TO EMPLOY HER HUSBAND, WITH PREVIOUS DISCIPLINARY RECORD, AS MANAGER OF HER TAVERN.

In the Matter of Disciplinary
Proceedings against

MARY DAVOLOS,
t/a Victoria Cafe,
2512 Federal St.,
Camden, N. J.

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-33, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

ORDER

Frank M. Lario, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant, Mary Davolos, holder of a plenary retail consumption license for a tavern in Camden, pleaded not guilty to charges served upon her alleging, in substance, that (1) in violation of R. S. 33:1-25, she falsified her application for license for the fiscal year 1941-42 by her failure to disclose therein that Frank Davolos (her husband) was the true owner of the licensed business; and (2) in violation of R. S. 33:1-52, she permitted said Frank Davolos to exercise the rights and privileges of her license.

These charges resulted from a visit by two investigators of the Department of Alcoholic Beverage Control to the tavern, on December 26, 1941, where they found the lease for the premises, dated April 7, 1941, made to and signed by Mary Davolos and her husband, Frank Davolos, and monthly rental receipts to date similarly executed to them. They also found certain bills and receipts for payments on equipment purchased in connection with the business made out to the husband, a Public Service gas and electric bill made

to him and a union agreement in respect to wages, hours and working conditions at the tavern signed by him as "Employer". The investigators interviewed the defendant and her husband and both insisted that Mrs. Davolos was the sole owner of the business and Mr. Davolos was only acting as her manager without salary. On the advice of their attorney they refused to give any statements.

At the hearing the Department introduced a report of checks cleared through the demand account of Frank Davolos with the Camden Trust Company for the period from April 19, 1941 to January 21, 1942, prepared by the company in response to a subpoena, showing checks drawn apparently for rent, equipment payments and other bills in connection with the business. The Department's theory of the case is that Mr. Davolos, who formerly held a license which on two occasions was suspended by the local Board, is the real owner of this license and his wife merely a "front" to protect him from his previous record. No actual disqualification of Frank Davolos to hold a license is alleged or proven.

The case for the defense is based upon the testimony of Mr. and Mrs. Davolos and four other witnesses whose story is that in the winter of 1941 Mrs. Davolos, having some money which she desired to invest in a tavern, secured a lease on the licensed premises, procured through transfer a license; bought the necessary equipment and made an arrangement with her husband to manage the business which was opened in the spring. These witnesses further state that Mrs. Davolos limited her visits to the tavern to three or four nights a week. They claim that while she authorized her husband to conduct the business in her absence she employed, discharged and paid the employees, as well as all carrying costs and when Mr. Davolos expended his own money in paying bills she reimbursed him. Their explanation regarding the incriminating papers is that the owner of the premises refused to rent to Mrs. Davolos unless her husband joined in the lease and his signature to the same caused the other papers to be made out to him. A correction of the objectionable practices was asserted to have been made by the defendant after the investigators visited the tavern. The evidence of the defense witnesses was to the effect that no one other than Mrs. Davolos is the owner of the business or has any interest therein.

While there are indeed suspicious circumstances indicating that the licensee is a "front" for her husband, a study of the record shows that the evidence for the defense was neither contradicted nor discredited. In fairness, I cannot, on the present record, find that the Department has sustained the burden of proof on these charges. Hence, the present proceedings must be dismissed. Re Zielinsky, Bulletin 284, Item 8; Re Szodowski, Bulletin 404, Item 1; Re Budny, Bulletin 409, Item 7.

However, the fact that there is technically insufficient evidence to prove that the licensee is a "front" for her husband does not mean that she is to be viewed as unaffected by her husband's past record of two suspensions. To the contrary I specifically point out that, since she chooses to install her husband as manager of her tavern, any violation occurring at the tavern will be viewed in the nature of a third offense and penalty will be meted out accordingly. Sheer realism and the public interest in sound control over the liquor industry require as much. Let the licensee take care!

Accordingly, it is on the 12th day of April, 1943,

ORDERED that the present charges be and the same are hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

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

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND
ORDER

Case No. 265.
-----)

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.

In February 1924 petitioner pleaded non vult to the crime of receiving stolen goods and was sentenced to three years on probation and a fine of \$250. After a few weeks he was released from further reporting to the probation office. His conviction was an outgrowth of a transaction wherein he bought stolen cigars for his tobacco shop from a person who represented himself to be a jobber. Shortly thereafter the police interrogated him concerning the purchase. Petitioner readily admitted buying the cigars but denied knowing that the cigars were stolen goods.

At the hearing three character witnesses - a doctor, a businessman and a rabbi - appeared and testified. All three have known the petitioner for at least the five years last past. Their opinions were in accord concerning the fact that petitioner is honest, respectable and law-abiding. Petitioner stated that he has always been gainfully employed and that he had never been in any trouble of any nature before or since the offense committed in 1924.

According to the report of the Director of Public Safety of the city in which petitioner resides, there have been no complaints concerning petitioner's conduct since the offense committed, nor does the record disclose any pending investigations.

I, therefore, conclude that petitioner has been law-abiding for at least five years last past, that he has lived an honorable 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 12th 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.

4. LICENSEES - SPECIAL CONDITIONS - HEREIN OF THE IMPOSITION OF
"SPECIAL CONDITIONS" BY MUNICIPAL ISSUING AUTHORITIES.

April 12, 1943

Mr. A. F. Eschenfelder
Acting Borough Clerk
Glen Ridge, New Jersey

Dear Mr. Eschenfelder:

I have yours of April 7th, relating that:

1. A plenary retail consumption license was issued to a Howard Johnson restaurant in 1940 with a verbal understanding that liquor would not be served at a bar, but only at tables in the restaurant.

2. The place has been closed for about three months and the new management plan to have a bar for dispensing liquor and, also, to have dancing, entertainment and a cabaret.

3. The Mayor wishes to know (a) whether there are provisions in the Alcoholic Beverage Law or State Regulations whereby a municipality may place limitations or restrictions on a plenary retail consumption license so as to allow the serving of liquors only to diners at tables and prohibit the serving of liquor at a bar; and (b), whether it is possible to refuse altogether a license for this place, there being no other plenary retail consumption license issued in Glen Ridge.

Section 33:1-32 of the Revised Statutes reads:

"Subject to rules and regulations, each issuing authority by resolution, first approved by the commissioner, may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of this chapter and secure compliance with the provisions hereof, and all such licenses shall become effective only upon compliance with the conditions so stated and shall be revocable for subsequent violation thereof."

(You will observe that the "verbal understanding" with the Howard Johnson restaurant had no legal force or effect, under the quoted section, since special conditions must be imposed by resolution and require the approval of the Commissioner.)

Resolutions containing a special condition similar to that proposed in your letter have been submitted to this Department and have been approved. It is doubtful, however, that such a special condition imposed at the original issuance of a license or, as here contemplated, a license transfer would carry over in the event of a subsequent transfer or renewal unless the transfer or renewal should be expressly so conditioned. I suggest, therefore, that if the indicated special condition is imposed it contain the further language "that any renewals or person-to-person transfers shall be subject to the same terms and conditions as the license herein authorized."

Subject to the approval of the Commissioner first obtained, the governing body of each New Jersey municipality may, by ordinance, "regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted." (R. S. 33:1-40.) Even in Glen Ridge, where a single plenary retail consumption license is outstanding, it would appear preferable to establish the "no public bar" regulation by ordinance rather than by attaching the special condition to a particular license. It is suggested that the Mayor and Council give serious consideration to the desirability of the ordinance method in this regard.

Within the scheme of the Alcoholic Beverage Law, the granting or denial of a retail license application is left to the municipal issuing authority in the first instance. (R. S. 33:1-19 and 33:1-24.) In view of the possibility of an appeal pursuant to R. S. 33:1-22, I cannot comment on the denial of the particular application at this time.

If there are further questions, please call upon us.

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - 5 DAYS' SUSPENSION - SALE OF ALCOHOLIC BEVERAGES TO MINORS, 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: 10 DAYS.

In the Matter of Disciplinary)
Proceedings against)

BAYOU HOLDING CO. INC.,)
22-24 East Park Street,)
Newark, N. J.,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consump-)
tion License C-641, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

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

BY THE COMMISSIONER:

The following charges were served upon the licensee:

"1. In your application, filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark and upon which you obtained your current plenary retail consumption license, you, after listing Anna M. Thorne, Esther Aarons and Rose Rich as the stockholders in your corporation, falsely stated 'No' in answer to Question 23, which asks: 'Has any corporation, partnership,

association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', whereas in truth and fact the St. Francis Hotel Co. did have a beneficial interest, directly and indirectly, in all the stock listed in the above names; such false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid application, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact the St. Francis Hotel Co. did have an interest, directly and indirectly in the said license; such false statement being in violation of R. S. 33:1-25.

"3. Early in the morning of March 3, 1943, you sold alcoholic beverages to Corporals Donald Ellsworth B----- and Edward V. C-----, minors, in violation of R. S. 33:1-77.

"4. On the date and at the time aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Corporals Donald Ellsworth B----- and Edward V. C-----, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

As to (1) and (2): Although it pleaded not guilty to these charges, the licensee does not dispute the facts disclosed by the Department's investigation.

The licensed premises are located in the basement of a building operated by the St. Francis Hotel Co. (hereinafter referred to as Hotel). Between May 1936 and October 1938, the license was issued to one Norman Kruvant, related to one of the stockholders of Hotel. On October 31, 1938, the license was transferred to Bayou Holding Co. (hereinafter referred to as Bayou) and has remained in that corporation ever since.

Hotel leased the premises to Bayou for a term of three years, expiring October 1941. Contemporaneously with the signing of the lease Anna M. Thorne, who owned all of the ten outstanding shares of Bayou (two shares nominally being in the names of qualifying stockholders), agreed with Hotel that immediately upon expiration of the lease, whether by its terms or otherwise, she would assign "absolutely and forever" all of the stock of Bayou to Hotel, or its nominee. She further agreed that during the term of her lease she would not assign the stock to any other person or in any way encumber such shares of stock.

On October 27, 1941 the lease was renewed for a period of eight months, expiring June 30, 1942. At the same time, Bayou adopted a resolution authorizing "its proper officers" to execute

all instruments necessary for a transfer of the liquor license and gave authority to Hotel's attorney to complete the blank form of consent to transfer the license to be executed by the "proper officers" of Bayou. This consent was signed in blank by Anna M. Thorne as president of Bayou and delivered to Hotel's attorney. She also assigned "absolutely and forever" all of the stock of Bayou to Hotel's attorney to be held in escrow by him, and empowered him to deliver the stock to Hotel, or its nominee, upon the termination of the renewal lease. She further agreed, as principal stockholder of Bayou not to permit any transfer of the liquor license to anyone other than Hotel, or its nominee. By this "guaranty", so called by the parties, it was stated that its purpose was "to transfer to the landlord (Hotel) ... the stock to give the Landlord control of Bayou Holding Co. Inc., devoid of all assets and of all liabilities, except the licenses ... and the 'Good Will' of the business."

On June 29, 1942 the lease was again extended for a period of one year, until June 30, 1943, subject to all the terms, covenants and conditions of the prior lease and agreements entered into between the parties.

It should be noted at the outset that all of the various agreements by which Hotel was purportedly given a preferential right to compel an assignment of the liquor license to it, or its nominee, by Bayou, are invalid and unenforceable. The Alcoholic Beverage Law (R. S. 33:1-26) provides that "Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to ... pledge (or) lien ...".

In Walsh v. Bradley, 121 N. J. Eq. 359 (1937), V. C. Bigelow held void an agreement between a landlord and tenant-licensee by which the latter agreed that "if the landlord of the premises sells by reason of any action he might bring on account of default in rent, I agree to transfer to such purchaser my license upon the payment to me of \$100 in cash." After indicating that the parties had attempted to make the license subject to the lien of the landlord and liable to execution and seizure for the debts of the licensee, the Vice Chancellor held, "This scheme is contrary to the policy of the law. The purpose of the legislature is clear that licensees should hold their licenses free from any device which would subject the licenses to control of other persons."

This case was followed in Lachow v. Alper, 130 N. J. Eq. 588 (1942). The landlord here sought to enjoin his tenant from transferring his (the tenant's) liquor license to another person for other premises. They had agreed that the tenant "will not transfer his liquor license from the above premises during the duration of this lease or any renewal term. An attempt of such transfer shall constitute a breach of this lease entitling the landlord to dispossess the Tenant herein. The Landlord shall also have the right of injunctive remedy in order to prevent the Tenant from effectuating such transfer." Vice Chancellor Stein, in dismissing the bill of complaint, said:

"...The lease in so far as it relates to the liquor license is contrary to the policy of the law. Walsh v. Bradley, 121 N. J. Eq. 359; 190 Atl. Rep. 88.

"R. S. 33:1-26 discloses a clear legislative intent that licensees should hold their licenses free from any device which would

subject the licenses to the control of other persons ...

"By the agreement complainant sought after the transfer of his license to Alper to exercise a property right thereunder and in effect the license was pledged as a sort of security for the performance of the lease during its term or any renewal thereof.

"The bill of complaint will be dismissed".

See also Thorman v. Mt. Ephraim, Bulletin 169, Item 7.

Since the agreements herein differ in no substantial respects from those under consideration in the cited cases, it would appear that they are invalid and unenforceable as against public policy.

However, despite the unenforceability of the agreements, the question remains whether they, nevertheless, attempted to give the landlord such an interest in the stock of Bayou, and its license and business conducted thereunder, as to require their disclosure in answers to Questions 23 and 30 of the license application (see the questions quoted verbatim in charges (1) and (2) above). I am of the opinion that this question must be answered in the affirmative. The fact that the agreements were not legally enforceable would not prevent the parties from voluntarily carrying out their terms, thus effecting a transfer of the corporate stock and license in a manner clearly disapproved by the legislature. It is no answer to say that the parties never carried to fruition the provisions of their agreements. By the terms thereof, the landlord was given actual possession of the corporate stock and a blank consent to transfer of the license which could ripen into legal ownership, immediately upon any breach of the agreements, at the option of the landlord. The licensee, although it retained complete ownership of the liquor business, relinquished all control over the liquor license and its corporate stock. By vesting this control in the landlord, it gave Hotel a beneficial interest in both the license and stock which should have been disclosed in the application. If such disclosure had been made, it would have given the local issuing authority an opportunity to investigate the agreements and the circumstances under which they were given. Perchance, with such information in hand, the issuing authority would have refused issuance of the license to Bayou because of the breach of public policy involved in those agreements. Certainly, it would then have been in a position to deny any transfer to Hotel, or its nominee, whereas, in the absence of any knowledge of the manner in which the consent was obtained, nothing would appear on the face of the proceeding to prevent such transfer.

I do not believe, however, that Bayou's failure to disclose the agreements in its license application was motivated by any deliberate intention to conceal the nature of those agreements from the issuing authority. When the ABC agents instituted their investigation, all of the parties frankly admitted the entire agreement between them and voluntarily proffered all of the pertinent documents constituting the contractual arrangement. The reason which prompted Hotel to lease to Bayou was its desire to be relieved of the responsibility attendant to the operation of a liquor license "because this type of business requires such strict and responsible supervision constantly". At the same time, however, it wanted to retain some control over the liquor license in order to assure itself

against the possibility of the license being transferred by its tenant to another location. This is understandable. I can appreciate that the owner of a hotel, although finding it impracticable to assume the burdens of conducting a licensed business, would nevertheless attempt to make certain that the license, a valuable and sometimes necessary asset of a hotel, is not removed from the hotel premises. However, although the motive is understandable, the difficulty of accomplishing the desired result lies in the fact that any means adopted to such an end are, under the law, invalid and unenforceable.

While it is true that I can discern no apparent intent to violate any of the provisions of the Alcoholic Beverage Law, the fact nonetheless remains that a violation was committed by the licensee's concealment, albeit not deliberately, of the agreements with the landlord. This violation is further tempered, however, by the complete cooperation offered the ABC agents when the matter was under investigation, and the fact that this is a case of novel impression with this Department. This is the first time in the history of this Department that charges involving the concealment of an arrangement such as is here under consideration have been brought. Under all of the circumstances, I am not inclined to impose more than a five-day penalty for the instant violation.

As to (3) and (4): The licensee pleaded guilty to these charges. It appears that on March 3, 1943, while two ABC agents, who had disclosed their identities to the bartender, were in the midst of a routine inspection of the licensed premises, a group of four soldiers entered and were each served a glass of beer by the bartender. Two of these soldiers were minors, one being nineteen and the other twenty years of age. The bartender's excuse for serving these minors, both of whom were corporals, was that they "did not appear to be minors to me because they had stripes on their sleeves." Some corroboration of the bartender's explanation may be found in the fact that the service was made in full view of the ABC agents, known to be such by the bartender. However, the agents apparently had no difficulty in recognizing the fact that two of the four soldiers had not yet reached their majority. In any event, the reason given by the bartender for serving the beer to the minors, presents no valid defense to the charges. Cf. Re McGovern, Bulletin 559, Item 3, where a ten-day penalty, with remission of five days for the guilty plea, was given for a similar violation. The same penalty will be meted out on the instant charges.

The suspension against this licensee thus totals ten days.

Accordingly, it is, on this 14th day of April, 1943,

ORDERED that Plenary Retail Consumption License C-641, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Bayou Holding Co. Inc., for premises 22-24 East Park Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. April 19, 1943, and terminating at 2:00 A. M. April 29, 1943.

ALFRED E. DRISCOLL,
Commissioner.

6. 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 (ALL PARTIES FULLY QUALIFIED) - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 10 DAYS AND BONA FIDE CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against

MITCHELL LAMBERT

t/a Lambert's Cafe
1427 South 9th Street
Camden, N. J.

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-88, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

ORDER

Walter W. Holl, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded guilty to the following charges:

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

"2. From December 15, 1933, and until the present time, you knowingly aided and abetted Conrad Lambert to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license in the City of Camden, thereby yourself violating R. S. 33:1-52."

Conrad Lambert is the father of Mitchell Lambert. It is clear that the illegal condition referred to in the charges has been in existence ever since the inception of the business conducted on the licensed premises. It is further evident that the real person in interest, Conrad Lambert, was and is actually fully qualified to hold the license. There is nothing in the record which would indicate that the placing of the license in the son's name was motivated by any fraudulent purpose. Conrad Lambert, the father, came to this country from Poland many years ago and although he is naturalized, he apparently retains some of the "old country" philosophy respecting the family relationship. The son lives in the property with the father and the whole domestic

arrangement seems to be on, more or less of, a community basis.

This, however, does not excuse the violation of the law and I have no other course, upon the plea of guilty, than to suspend the license for the balance of its term. Re Alberti's, Inc., Bulletin 514, Item 5. However, in view of the plea and the frank disclosure of facts and the circumstances herein, this suspension may, on proper showing of a satisfactory and bona fide correction, be lifted after at least ten days of such suspension have been served. Re Alberti's, supra.

Accordingly, it is on this 14th day of April, 1943,

ORDERED that Plenary Retail Consumption License C-88, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Mitchell Lambert, t/a Lambert's Cafe for premises 1427 South 9th Street, Camden, be and the same is hereby suspended for the balance of its term, effective 2:00 A. M. April 19th, 1943; and it is further

ORDERED that if it satisfactorily appears, on verified petition and proper proof, that the unlawful condition herein has been fully and properly corrected, the said suspension will be lifted after the expiration of ten days from the effective date thereof.

ALFRED E. DRISCOLL,
Commissioner.

7. STATE STORES - HEREIN CONTEMPORARY COMMENT APPEARING IN THE PUBLIC PRESS - (THE OPINION EXPRESSED IS THAT OF THE AUTHOR AND DOES NOT NECESSARILY REFLECT THE OPINION OF THIS DEPARTMENT).

Toledo (Ohio) Blade

(Editorial)

March, 1943.

"LIQUOR BUSINESS IS NO BUSINESS FOR THE STATE"

"The time has come, in fact it came a long time ago, for Ohio to get out of the liquor business. This is not said to reflect a general idea that the state and the national government are too far into business all the time. The Blade has made no blanket condemnation of government regulation or even of some forms of government ownership. But this deplorable liquor situation presents a completely convincing example of the abject failure of the State of Ohio in operating a business not only with total inefficiency but in a manner that makes for bad government and the demoralization of the citizenry. One has only to look at the rum line before any state store in Toledo to realize the extent of the disgrace to which the state liquor store system has brought us.

"Charges Patronage

"The system is permeated with evils. In the first place, it is bogged down with patronage. The whole business is deep in politics. Liquor store jobs are political jobs. When there is no liquor to be sold, the clerks are not left off. They are not dismissed, as under the ordinary processes of private business. They don't go into war industry. They are kept in their places

and the taxpayers pay them. It is a wasteful, extravagant, illy operated system which pleases nobody and which is thoroughly demoralizing.

"We believe that liquor of all kinds should be sold in privately owned stores, conducted under the properly severe laws of Ohio. The wholesale or packaged goods business should be licensed just as retail sellers are licensed today. State control should be exact. The law should be lived up to, to the letter. But the stores should be owned and operated by private individuals and conducted as any well managed private enterprise is conducted.

"No Open State Shortage

"States which do not have state owned stores do not have whiskey lines. Politicians are not in control. There is no state political favoritism, for or against this or that distiller. If there are shortages, it depends naturally upon the supply and not on bad management.

"A bill has been introduced in the Ohio Senate to remove the state from the liquor business. The bill proposes that the state stores be replaced by wholesale and retail stores, operated by private persons under regulation of the State Liquor Control Board. That bill is in the hands of a committee. It should receive the most careful attention, and when in proper form should be recommended to the legislature and passed."

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

THERESA MOLOSSO)
t/a Vineland Bowling Academy)
726-28 Landis Avenue)
Vineland, N. J.)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consump-)
tion License C-3, issued by the)
Board of Commissioners of the)
Borough of Vineland.)
- - - - -)

Theresa Molosso, Pro se.

Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to a charge alleging that, on March 10, 1943, she sold a quart bottle of Brugal Rum (Puerto Rican) and a quart bottle of Wilen Sherry Wine below the minimum retail price, in violation of Rule 6 of State Regulations No. 30.

On March 10, 1943, two investigators of the Department of Alcoholic Beverage Control purchased a quart bottle of Brugal Rum (Puerto Rican) for \$3.14 and a quart bottle of Wilen Sherry Wine for 65¢. The Fair Trade price of the Rum was \$3.58 a quart and the Fair Trade price of the Wine was 71¢ a quart.

The licensee has advised me by letter that the violation resulted from the neglect of a former manager of her licensed premises to check prices with the Fair Trade pamphlet and bulletin. She states that she has employed a new manager and that she is "fully in favor of the control of retail prices."

Licensee has no prior record. I shall suspend her license for the minimum period of ten days less five days for the guilty plea. Re Metropolitan Liquor Corp., Bulletin 554, Item 5.

Accordingly, it is, on this 14th day of April, 1943,

ORDERED that Plenary Retail Consumption License C-3, heretofore issued to Theresa Molosso by the Board of Commissioners of the Borough of Vineland for premises 726-28 Landis Avenue, Vineland, be and the same is hereby suspended for a period of five (5) days commencing April 19, 1943, at 1:00 A. M. and terminating April 24, 1943 at 1:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - MISLABELING OF BEER TAPS - FIRST CONVICTION - 3 DAYS' SUSPENSION, LESS 1 FOR GUILTY PLEA.

In the Matter of Disciplinary
Proceedings against

CESARE CAPRIOTTI
t/a Arch Cafe
136 Arch Street
Camden, N. J.

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-115, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Cesare Capriotti, Pro se.

Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads guilty to the following charge:

"On or about March 1, 1943, you possessed on your licensed premises a barrel from which beer of the Camden County Beverage Company was being drawn through a spigot or other dispensing apparatus which did not contain the name or brand of the manufacturer of that beer but, instead, was labeled 'Schmidt's', in violation of Rule 1 of State Regulations No. 22."

A routine inspection by this Department disclosed that beer made by the Camden County Beverage Company was being dispensed through a spigot labeled "Schmidt's". Defendant does not deny this condition existed. His claim that the discrepancy was due to a rush hour oversight does not excuse the guilt. A customer is entitled to get the beer he asks for.

Since this is defendant's first conviction, his license will be suspended for three days, with a remission of one day for the guilty plea, leaving a net suspension of two days. Re Sudol, Bulletin 501, Item 9, and cases cited.

Accordingly, it is, on this 15th day of April, 1943,

ORDERED that Plenary Retail Consumption License C-115, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Cesare Capriotti, t/a Arch Cafe, for premises 136 Arch Street, Camden, be and the same is hereby suspended for a period of two (2) days, commencing at 2:00 A. M. April 20, 1943 and concluding at 2:00 A. M. April 22, 1943.

Alfred E. Driscoll
Commissioner.