

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

BULLETIN 684

NOVEMBER 15, 1945.

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STATE OF NEW YORK
DEPARTMENT OF ALCOHOLIC BEVERAGES CONTROL
100 Broad Street

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

BULLETIN 684

NOVEMBER 15, 1945.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ANTONIO MORIELLI,)
406 Monmouth Street)
Jersey City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-138, issued by the Board of Commissioners of the City of Jersey City.)
-----)

Irving Solomon, Esq. and Abraham Miller, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to a charge that he sold a gallon of wine below the minimum consumer price, thus violating Rule 6 of State Regulations No. 30, the "Fair Trade" regulation.

On September 28, 1945, the licensee sold to an agent of the State Department of Alcoholic Beverage Control a gallon jug of Colony Club Deluxe California Burgundy Wine for the price of \$2.50. The minimum retail price as contained in the then current "Minimum Resale Price Supplement", effective August 1, 1945, was \$2.85 per gallon. See Bulletin 675.

Defendant seeks to excuse the violation with the explanation that a salesman employed by the winery from whom he purchased the wine had advised him that the "minimum price of fair trade" (for this wine) "had been reduced beginning September 1st to \$2.33 a gallon and \$1.21 for half gallons". This statement, however, is not substantiated by the wholesale price listed on the invoice covering the purchase.

However, the explanation, even if true, does not alter the fact that defendant was required by State Regulations No. 30 to sell his merchandise at prices not less than those listed in the then current (August, 1945) Minimum Resale Price Supplement as published in Bulletin 675, on July 30, 1945, by the Department of Alcoholic Beverage Control. Defendant was required to keep the supplement referred to above, together with all prior supplements and the complete Minimum Resale Price pamphlet of January, 1945 on his counter available for his use and for the convenience of the public. Until such time as the price of items listed in the complete Minimum Resale Price pamphlet and the supplements thereto is changed or withdrawn in future supplements, licensees must use the latest price listed. Licensees must not depend upon any other source for resale price information respecting merchandise subject to "Fair Trade" regulations.

I find the defendant guilty.

The defendant has no prior adjudicated record. I shall, therefore, impose the minimum ten days' suspension, less five days for the plea, making a net suspension of five days. Cf. Re Gold's Drug Stores, Bulletin 640, Item 9.

Accordingly, it is, on this 30th day of October, 1945,

ORDERED that Plenary Retail Consumption License C-138, issued by the Board of Commissioners of the City of Jersey City to Antonio Morielli, for premises 406 Monmouth Street, Jersey City, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a. m. November 5, 1945, and terminating at 2:00 a. m. November 10, 1945.

ALFRED E. DRISCOLL,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against
JOHN MEYER,
t/a Maple Bar,
105 Maple Street
Jersey City, 4, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-224, issued by the Board of Commissioners of the City of Jersey City.

John Meyer, Defendant-licensee, Pro Se.
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on September 6, 1945, he possessed three 4/5 quart bottles of ("Schenley Reserve Blended Whiskey", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R.S. 33:1-50.

The license will be suspended for a period of twenty days. Cf. Zeidner & Cohen, Bulletin 680, Item 2.

Accordingly, it is, on this 1st day of November, 1945,

ORDERED that Plenary Retail Consumption License C-224, issued by the Board of Commissioners of the City of Jersey City to John Meyer, t/a Maple Bar, for premises 105 Maple Street, Jersey City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a. m. November 6, 1945, and terminating at 2:00 a. m. November 26, 1945.

ALFRED E. DRISCOLL,
Commissioner.

3. ACTIVITY REPORT FOR OCTOBER, 1945

To: Alfred E. Driscoll, Commissioner

| | | |
|---|--|---|
| <u>ARRESTS:</u> | Bootleggers - - - - - | 11 |
| <u>SEIZURES:</u> | Total number of stills seized - - - - - | 3 |
| | Mash - gallons - - - - - | 1,850 |
| | Alcohol - gallons - - - - - | .80 |
| | Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - - | 28.25 |
| | Wine - gallons - - - - - | .25 |
| | Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - - | 1 |
| <u>RETAIL LICENSEES:</u> | | |
| | Total number of premises inspected - - - - - | 1,031 |
| | Total number of premises where alcoholic beverages were gauged - - - - - | 1,016 |
| | Total number of bottles gauged - - - - - | 13,389 |
| | Total number of premises where violations were found - - - - - | 63 |
| | Total number of violations found - - - - - | 76 |
| | Type of violations found: | |
| | Illicit liquor - - - - - 17 | Stock disposal permits necessary - - - - - 6 |
| | Unqualified employees - - - - - 23 | No sign denoting legal sale |
| | "Fronts" (concealed ownership) - - - - - 5 | hours - off-premises consumption - - - - - 22 |
| | Improper beer tap markers - - - - - 1 | Other types of violations - - - - - 2 |
| <u>STATE LICENSEES:</u> | | |
| | Premises inspected - - - - - | 17 |
| | License applications investigated - - - - - | 23 |
| <u>COMPLAINTS:</u> | | |
| | Investigated, reviewed and closed - - - - - | 338 |
| | Investigation assigned, not yet completed - - - - - | 232 |
| <u>LABORATORY:</u> | | |
| | Analyses made - - - - - | 120 |
| | "Shake-up" cases (alcohol, water and artificial coloring) - - - - - | 7 |
| | Liquor found to be not genuine as labeled - - - - - | 22 |
| <u>IDENTIFICATION BUREAU:</u> | | |
| | Criminal fingerprint identifications made - - - - - | 19 |
| | Persons fingerprinted for non-criminal purposes - - - - - | 248 |
| | Identification contacts with other enforcement agencies - - - - - | 247 |
| | Motor vehicle identifications via N. J. State Police Teletype - - - - - | 10 |
| <u>DISCIPLINARY PROCEEDINGS INSTITUTED:</u> | | |
| | Cases transmitted to municipalities - - - - - | 18 |
| | Violations involved: | |
| | Sale during prohibited hours - - - - - 8 | Bookmaking - - - - - 1 |
| | Sale to minors - - - - - 4 | Brawls - - - - - 1 |
| | Sale to intoxicated persons - - - - - 3 | Numbers writing - - - - - 1 |
| | Lewdness - - - - - 2 | Prostitutes and immoral activity - - - - - 1 |
| | Unlabeled beer taps - - - - - 2 | Sale to non-members by clubs - - - - - 1 |
| | Unqualified employees - - - - - 2 | |
| | Cases instituted at Department - - - - - | 18 |
| | Violations involved: | |
| | Illicit liquor - - - - - 9 | Hindering investigation - - - - - 1 |
| | Sale during prohibited hours - - - - - 4 | Improper bottling by retailer - - - - - 1 |
| | Fraud and front - - - - - 3 | Sale to non-members by clubs - - - - - 1 |
| | Sale to minors - - - - - 3 | Sale outside scope of license - - - - - 1 |
| | Unqualified employee - - - - - 2 | Sale under Fair Trade price - - - - - 1 |
| | Brawls - - - - - 1 | Slot machines on premises - - - - - 1 |
| | Business conducted as nuisance - - - - - 1 | Unlabeled beer taps - - - - - 1 |
| | Cases brought by municipalities on own initiative and reported to Department - - - - - | 13 |
| | Violations involved: | |
| | Sale to minors - - - - - 7 | Gambling - - - - - 1 |
| | Fraud in application - - - - - 2 | Sale to intoxicated persons - - - - - 1 |
| | Sale during prohibited hours - - - - - 2 | Sale to non-members by clubs - - - - - 1 |
| | Brawls - - - - - 1 | Unqualified employees - - - - - 1 |
| <u>CANCELLATION PROCEEDINGS INSTITUTED:</u> | | 1 |
| | Violation involved: | |
| | Premises within 200 feet of church | |
| <u>HEARINGS HELD AT DEPARTMENT:</u> | | |
| | Total number of hearings held - - - - - | 63 |
| | Appeals - - - - - 15 | Eligibility - - - - - 6 |
| | Disciplinary proceedings - - - - - 35 | Seizures - - - - - 7 |
| <u>PERMITS ISSUED:</u> | | |
| | Total number of permits issued - - - - - | 1,504 |
| | Unqualified employees - - - - - | 190 |
| | Solicitors - - - - - | 124 |
| | Social affairs - - - - - | 248 |
| | Home manufacture of wine - - - - - | 672 |
| | Disposal of alcoholic beverages - - - - - | 167 |
| | Miscellaneous permits - - - - - | 103 |

Respectfully submitted,
 ERWIN B. HOCK
 Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - CHARGE OF AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

ZETTA MARY ROSS, t/a Maple Lake Park, Cooper Folly Road, West Atco, Winslow Township, P.O. Atco, R.F.D., N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-23 issued by the Township Committee of the Township of Winslow.)

Joseph T. Sherman, Esq., Attorney for Defendant-licensee. Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded not guilty to the following charges:

"1. In your application filed with the Township Committee of the Township of Winslow, New Jersey, and upon which you obtained your current plenary retail consumption license for premises on Cooper Folly Road, West Atco, Winslow Township, P.O. Atco, R.F.D., New Jersey, you answered 'No' to Question No. 30, 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 Lee Coney was so interested in that he was a partner with you in the operation of the business conducted under the aforementioned license; such false statement being in violation of R. S. 33:1-25.

"From about July 3, 1945 and until the present time, you knowingly aided and abetted the said Lee Coney to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license for the aforesaid premises, thereby yourself violating R. S. 33:1-52."

The proof presented by the Department of Alcoholic Beverage Control consists of written statements taken by an ABC inspector from Zetta Mary Ross, the licensee, Andrew Ross, her husband, Lee Coney, her brother, and Jay B. Coney, another brother. The statements were taken on various dates shortly after the license was issued to defendant. In her statements defendant said that she invested \$200. in the business and that Lee Coney "put in" \$50. She also said:

"My brothers Jay B. and Lee Coney are working in the place. Jay is acting as manager and Lee is a bartender. Jay B. Coney is going to fix up the cellar and pump and when this is finished we are going to run the business to-gether."

In the statement taken from Lee Coney, the following question and answer appears:

"Q. How much money do you receive as bartender?

A. I receive 10% of the business for myself and that is the way I'm going to work until the business gets going and the place fixed up as we want it. After we get the place fixed up we will have to set a price. Will talk on that later."

At the hearing defendant testified that in June, 1945, she borrowed \$50. from Lee Coney, which she has repaid; that he received no profits from the business, and that she never had any understanding with him in reference to being a partner in the business. She further testified that he has no authority to purchase liquor or to hire help and that he has previously worked as a bartender on her premises on Saturday nights and Sunday nights under an arrangement whereby she agreed to "pay him \$4. a night, and when I don't have it I don't pay him anything."

At the hearing Lee Coney corroborated the testimony given by defendant. He further testified that there is a playground and lake on the same property and that the reference to "10% of the business" in his statement applied to the profits which might hereafter arise from the operation of the playground and lake, after the place is fixed up.

This is a very close case because the statements introduced into evidence contain damaging admissions. However, after considering these statements and the evidence given under oath at the hearing, I am forced to conclude that the Department has not sustained the burden of proof in establishing the guilt of defendant. I shall dismiss the charges.

Accordingly, it is, on this 1st day of November, 1945,

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

ALFRED E. DRISCOLL,
Commissioner.

5. FAIR TRADE - CORRECTION - BULLETIN #681 CONTAINING SUPPLEMENTAL LIST OF MINIMUM RESALE PRICES EFFECTIVE OCTOBER 22, 1945 AMENDED.

Through an error of omission made by the Department, a listing of the withdrawal of Riondo Rum submitted by Somerset Importers, Ltd., does not appear in Bulletin #681 containing a supplemental list of minimum resale prices.

The rule providing a time limit for the submission of Fair Trade listings for publication was fully complied with by Somerset Importers, Ltd., its listing having been received in the offices of this Department on October 1, 1945.

Bulletin #681, page 8, under classification "IMPORTED RUM", is hereby amended to include:

RIONDO RUM

Gold or White

Label

Quarts WITHDRAWN

4/5 Qts. WITHDRAWN

Dated: October 22, 1945.

ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

HIGHLAND PARK LIQUORS, INC., t/a Park Liquors, 437 Raritan Avenue Highland Park, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Highland Park.)

Sol L. Kesselman, Esq. and Leo J. Berg, Esq., Attorneys for Defendant-licensee. Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to charges that on August 21, 1945, it sold alcoholic beverages to minors; first, for on-premises consumption and, second, in original packages for off-premises consumption.

On September 20th three veterans fresh from the European theatre arrived at Camp Kilmer in the process of demobilization or reassignment. On September 21st they left camp and went to Highland Park, their first visit to that town.

Subsequently, they returned to camp and, becoming involved in a breach of Army discipline, it was determined that they had been drinking and in fact were intoxicated. The next day two of the soldiers -- the other one was not available -- apparently identified the premises of the defendant as the place where they had secured their liquor.

At the hearing only one of the minors was produced, the other two not being available. The one witness testified that he had been served liquor by the glass and had purchased a bottle of whiskey to take with him, in the premises of defendant on September 21, 1945. He could not identify the secretary-treasurer of the corporation as the person who had served him and, in fact, could not identify any employee of the corporation as such person.

The secretary-treasurer of the defendant corporation testified that he was in charge of the premises on the day and at the time in question. He denied that any of the three boys had been in the premises.

The Department of Alcoholic Beverage Control did not produce any other witness tending to substantiate the charges. The defendant produced one witness, a tailor, with a shop next to the licensed premises, whose testimony tended to corroborate that given by its officer.

All of the minors were strangers in the area around Camp Kilmer and could well have been mistaken as to the identity of the tavern. Cf. Re Bash, Bulletin 638, Item 8. It is quite possible that the one minor produced at the trial was confused as to where the alcoholic beverages had been secured, and that his apparent familiarity with the location was the result of a visit he made to the tailor shop adjacent to the licensed premises.

After considering the uncorroborated and rather uncertain evidence of the one Department witness, as against the totally contradictory story of the secretary-treasurer of the defendant corporation, supported in part by a witness who seems to have no interest in the matter, I conclude that the Department has failed to sustain the burden of proof and hence I shall dismiss the charges.

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

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

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - PERMITTING SLOT MACHINES ON LICENSED PREMISES, IN VIOLATION OF RULE 8 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

TAVISTOCK COUNTRY CLUB,
Tavistock Lane
Tavistock
P. O. Haddonfield, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-1,
issued by the State Commissioner
of Alcoholic Beverage Control.

Rocco Palese, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that it possessed slot machines on its licensed premises, in violation of Rule 8 of State Regulations No. 20.

An ABC agent, during a routine investigation of the defendant, found twelve pull-handle slot machines on the licensed premises. Eight of the machines were located in the men's locker room and four in the ladies' game room.

State law requires a periodic inspection of all licensed premises. R. S. 33:1-23. The possession of the slot machines constituted a direct and flagrant violation of the State Regulations.

The defendant's license will be suspended for a period of fifteen days, with five days remitted for the plea, leaving a net suspension of ten days.

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

ORDERED that Club License CB-1, issued by the State Commissioner of Alcoholic Beverage Control to Tavistock Country Club, for premises on Tavistock Lane, Tavistock, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a. m. November 7, 1945, and terminating at 12:01 a. m. November 17, 1945.

ALFRED E. DRISCOLL,
Commissioner.

8. APPELLATE DECISIONS - LINDSTROM v. DELAWARE TOWNSHIP.

| | | |
|---------------------------|---|-----------------------|
| Case No. 3 |) | |
| JOHN W. LINDSTROM, |) | |
| |) | On Appeal |
| Appellant, |) | |
| |) | CONCLUSIONS AND ORDER |
| v. |) | |
| |) | |
| TOWNSHIP COMMITTEE OF THE |) | |
| TOWNSHIP OF DELAWARE, |) | |
| |) | |
| Respondent. |) | |

John L. Morrissey, Esq., Attorney for Appellant.
 Bruce A. Wallace, Esq., by William T. Cahill, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The parties to this appeal are the same as those referred to in Lindstrom v. Delaware, Bulletin 586, Item 3, and Lindstrom v. Delaware, Bulletin 635, Item 11.

From December 11, 1944, until June 30, 1945, appellant was the holder of a plenary retail consumption license for premises at Chapel and Kenilworth Avenues, Township of Delaware. During this period he did not operate under his license. On June 13, 1945, appellant filed an application to transfer his license to Route 38 and Church Road, and an additional application to renew his license at the latter premises for the present fiscal year beginning July 1, 1945. Both applications were denied. Hence this appeal.

The issue in this case is substantially the same as that presented in Lindstrom v. Delaware, Bulletin 586, Item 3. Route 38 is designated therein as Coles Avenue.

The premises in question are approximately two and one-half miles apart. The five objectors who appeared at the hearing of the present appeal raised the same objections as those presented by them or others in the first appeal; namely, that the neighborhood was a residential community and that the territory was amply supplied with plenary retail consumption licensed establishments.

Appellant presented evidence herein that, since the hearing of the first appeal, a roadstand has been established and a small factory to manufacture prefabricated houses is being erected at the traffic circle near the premises to which he seeks to transfer his license. He also called as witnesses four persons who reside nearby and who testified that they had no objection to the transfer and renewal of the license at Route 38 and Church Road. These witnesses testified that in their opinion the property in the immediate vicinity of the traffic circle is now devoted largely to business purposes. There has been no change in the number or location of other licensed premises.

After reviewing all the testimony herein, I conclude that, under the circumstances, the question as to whether the transfer and renewal should be granted was a matter to be decided in the sound discretion of the members of the Township Committee. It does not appear that the surrounding area has so clearly become a business

district as to justify a reversal of respondent's action. Moreover, no additional evidence has been presented to show that the territory is not already supplied with plenary retail consumption licensed establishments. It is clear that another license is not needed to take care of the needs of those residing in the section of the Township to which appellant seeks to transfer the license.

The action of respondent is affirmed.

Accordingly, it is, on this 5th day of November, 1945,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against HARRY L. SIRVENT, t/a La Poloma, Bloomfield Avenue, Route 6 Mountain Lakes, N. J. Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Mountain Lakes.

CONCLUSIONS AND ORDER

Harry L. Sirvent, Defendant-licensee, Pro Se
Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to charges alleging sale and service of alcoholic beverages to Virginia --- and Seaman Lawrence ---, minors, in violation of R.S.33:1-77 and Rule 1 of State Regulations No. 20.

On October 31, 1945, two ABC investigators observed an employee of defendant serve a glass of whiskey to each of the minors in question on the licensed premises. The serviceman was nineteen years of age and his girl companion was seventeen years of age.

This is defendant's first adjudicated offense. Where no aggravating circumstances appear, the usual suspension of the license is for a period of ten days. Because of the youthfulness of Virginia, I shall increase the suspension to fifteen days. Five days will be remitted for the plea entered herein. See Re Kurtz, Bulletin 585, Item 5.

Accordingly, it is, on this 9th day of November, 1945,

ORDERED that Plenary Retail Consumption License C-1 issued by the Borough Council of the Borough of Mountain Lakes to Harry L. Sirvent, t/a La Poloma, for premises on Bloomfield Avenue, Route 6, Mountain Lakes, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a. m. November 14, 1945, and terminating at 3:00 a. m. November 24, 1945.

ALFRED E. DRISCOLL,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD OF PRESIDENT OF DEFENDANT CORPORATION - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against
 SIDWELL, INC.,
 t/a Tumble Inn,
 801 Baltic Avenue,
 Atlantic City, N. J.,
 Holder of Plenary Retail Consumption License C-124, issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS AND ORDER

Bertram M. Saxe, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that it possessed one 4/5 quart bottle labeled "Imperial Hiran Walker's Blended Whiskey", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On August 20, 1945, an investigator of the Department of Alcoholic Beverage Control seized the bottle mentioned in the charge when a preliminary test indicated that the contents of the bottle were not genuine as labeled. Subsequent analysis by a chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents of the seized bottle varied in solids and acids from the contents of a genuine bottle of the same product. His analysis also disclosed that the contents of the seized bottle contained natural color whereas this type of whiskey has added artificial color.

Defendant's bartender, who was present at the time of the seizure, stated to the agent that he was unable to give any explanation of the manner in which the violation occurred. In any event, a licensee must be held strictly responsible for any refills found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

As to previous record. It appears that in 1936 a license then held by J.J. Nathanson, president of defendant corporation, was suspended in disciplinary proceedings and thereafter revoked in subsequent disciplinary proceedings. These violations were of a very serious character. Mr. Nathanson returned to the liquor business as a stockholder in the defendant on July 1, 1943.

Accordingly, it is, on this 5th day of November, 1945,

ORDERED that Plenary Retail Consumption License C-124, issued by the Board of Commissioners of the City of Atlantic City to Sidwell, Inc., t/a Tumble Inn, for premises 801 Baltic Avenue, Atlantic City, be and the same is hereby suspended for a period of thirty (30) days, commencing at 7:00 a. m. November 6, 1945, and terminating at 7:00 a. m. December 6, 1945.

ALFRED E. DRISCOLL,
 Commissioner.

11. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED.

HEREIN OF JAIL SENTENCES FOR THOSE WHO ENGAGE IN SPEAKEASY ACTIVITIES.

| | | |
|---|---|-----------------------|
| In the Matter of the Seizure on August 25, 1945 of a quantity of alcoholic beverages, a music machine, two vending machines, and various articles of furniture and furnishings at 68 Walnut Street, in the Borough of Penns Grove, County of Salem and State of New Jersey. |) | Case No. 6879 |
| -----) |) | ON HEARING |
| |) | CONCLUSIONS AND ORDER |

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

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages, a music machine, two vending machines and various articles of furniture and furnishings, itemized in an inventory hereinafter referred to, seized from Nelson Rivers on August 25, 1945 at 68 Walnut Street, Penns Grove, New Jersey, constitute unlawful property and should be forfeited.

On August 23, 1945, at about 11:30 p.m., two ABC agents, on an undercover investigation, visited Nelson Rivers' dwelling at the above address. It is a one-story frame building with a kitchen, two bedrooms, a front room furnished as a barroom, with a counter, shelves, coolers (for beer), a juke box, cigarette and candy vending machines, and a room in which there was a pool table apparently utilized for a dice or "crap" gambling game. The agents went into the kitchen and there gave Juanita Forten an order for drinks of alcoholic beverages. She served the agents with these drinks and accepted payment therefor from them. There were at the time about 50 or 60 people in the dwelling drinking various alcoholic beverages. The agents left without disclosing their identity.

At about 10:00 p.m. on the following day, these agents returned. They went to the kitchen and were again served with drinks of alcoholic beverages by Juanita Forten, whom they paid for the drinks. Nelson Rivers was present. Neither Nelson Rivers nor Juanita Forten held a license authorizing either of them to sell or serve alcoholic beverages.

The agents remained in the dwelling until about 12:40 a.m. the following morning (August 25, 1945), at which time, by prearrangement, other ABC agents entered. The agents seized three bottles of whiskey displayed on the counter; a cooler (Coca Cola ice box) behind the counter and the bottles of beer and soda therein; also the bottled beer under the counter; a register containing \$75.76 in cash; the music machine, in which there was \$5.10 in cash; the two vending machines; and other personal equipment in the building including electric fans, tables, chairs, a radio and the furniture in the bedrooms.

While making the seizure, the agents obtained signed statements from Nelson Rivers and Juanita Forten. In his statement Rivers acknowledges that he was running a "speakeasy" at the premises selling whiskey, beer and soda, and that Juanita Forten tended bar for him. He disclaimed any financial interest in the "crap" game.

Rivers admitted that he had been running a speakeasy at the premises for about a year, and that he had been convicted on two previous occasions of operating a speakeasy. Juanita Forten corroborates Rivers' story as to his speakeasy activities at the premises in question.

Rivers, who was arrested by the ABC agents, has a long criminal record for speakeasy activities. He was arrested in 1929 at 65 Walnut Street, Penns Grove, and charged with the unlawful sale and possession of alcoholic beverages. After indictment by the Grand Jury he was fined \$75.00 by the Judge of the Quarter Sessions Court of Salem County. In 1932 he was again arrested in Penns Grove and charged with the unlawful sale and possession of alcoholic beverages. No indictment was found by the Salem County Grand Jury! In 1936, again at 65 Walnut Street, he was arrested by ABC agents and charged with unlawful possession of alcoholic beverages and fined \$100.00 by the Judge of the Quarter Sessions Court of Salem County (a license fee permitting the legal sale of alcoholic beverages for on-premises consumption in Penns Grove was \$300.00). In 1940, at 118 Tyrone Avenue, Penns Grove, he was once again arrested by ABC agents and charged with possession of illicit alcoholic beverages and possession of alcoholic beverages with intent to sell the same unlawfully, fined \$300.00 by the Judge of the Quarter Sessions Court of Salem County, and given a suspended sentence of six months in jail.

These fines, for the most part in an amount less than the minimum a law-abiding citizen is required by law to pay for a tavern license, seem to have been regarded by Rivers as an invitation to continue his speakeasy activities. It is quite apparent that these fines did not deter him from brazenly continuing his criminal activities. He was apparently prepared to pay the extra legal fees charged by the judge of the criminal court on an if, as and when caught basis.

A forceful demonstration of Rivers' attitude is the fact that on July 11, 1945, less than two months prior to the instant seizure, Juanita Forten was caught and arrested for selling alcoholic beverages without a license at these very same premises. Nevertheless, despite the fact that criminal proceedings in the case against Juanita Forten were then and still are pending, Rivers reopened his speakeasy and continued to notoriously and in open defiance of local and county enforcement agencies operate the speakeasy until he and his barmaid, Juanita Forten, were again caught by the ABC agents on the present occasion.

It is obvious that Rivers, and others of his ilk, should be taught that speakeasy operators will not escape lightly when caught. The well deserved sentence of six months in the County Jail, a fine of \$300.00, and probation for three years, which the Judge of the Salem County Quarter Sessions Court imposed upon Rivers in the instant case, and the sentence of four months in the County Jail, a fine of \$100.00 and probation for two years, which the same Judge imposed upon Juanita Forten, will perhaps bring Rivers to the realization that the time has come for him to abandon his nefarious and unlawful ventures.

It is clear under the facts that the seized alcoholic beverages were intended for sale at this speakeasy. Hence, such alcoholic

beverages, intended for sale without a license, are illicit. Such illicit alcoholic beverages, together with all fixtures and other personal property (including the receipts of the unlawful business) seized in the building in which such illicit alcoholic beverages are found, are subject to forfeiture. R. S. 33:1-1(i) and (y); R. S. 33:1-2; R. S. 33:1-66.

When the matter first came on for hearing, Nelson Rivers appeared at the Department but later left the hearing room and did not respond when the hearing was moved for trial. Walter J. Conine, trading as Mutual Vending Service, who had previously advised that he sought return of the vending machines and who was notified of the time and place of hearing in the case, did not appear at such hearing. Because Rivers had appeared at the hearing but did not wait, perhaps mistakenly, the hearing was adjourned and both Rivers and Conine were notified of such adjourned date and were advised to appear at that time if they wished to present any claim for the return of the seized property. Neither Rivers nor Conine appeared, nor were represented at the adjourned hearing.

All of the seized property will be forfeited.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

ALFRED E. DRISCOLL
Commissioner.

Dated: November 5, 1945.

SCHEDULE "A"

- 129 - bottles of beer
- 4 - bottles of other alcoholic beverages
- 456 - empty beer bottles
- 10 - empty whiskey bottles
- 216 - bottles of soda
- 1 - music machine (Wurlitzer Simplex Multi Selector #200628) containing \$5.10 in coins
- 1 - coal stove
- 1 - General Electric fan and stand
- 2 - tables and 8 chairs
- 1 - National cash register containing \$75.76
- 1 - Detrola radio
- 1 - Steward & McGuire cigarette vending machine
- 1 - candy vending machine
- 1 - Coca Cola ice box
- 1 - electric fan
- 1 - pool table
- 2 - beds
- 20 - whiskey glasses
- 7 - dice

12. LIMITATION OF LICENSES - FACT THAT THERE IS NO LICENSE QUOTA FIXED BY ORDINANCE, OR THAT ORDINANCE QUOTA IS NOT FILLED, DOES NOT REQUIRE MUNICIPALITY TO GRANT APPLICATION FOR A NEW LICENSE.

MUNICIPAL ORDINANCE - LIMITATION - HEREIN SUGGESTION THAT WHERE ORDINANCE QUOTA IS NOT FILLED AND LICENSES OUTSTANDING ARE SUFFICIENT TO SERVE PUBLIC NEED, PROPER COURSE IS TO REDUCE ORDINANCE QUOTA.

PETITIONS - WEIGHT TO BE ACCORDED PETITIONS FOR OR AGAINST ISSUANCE OF RETAIL LICENSE IS WITHIN DISCRETION OF MUNICIPAL ISSUING AUTHORITY.

November 8, 1945

E. L. Morris, Clerk of
Manchester Township
Whitings, N. J.

Dear Mr. Morris:

I have your letter of November 3d stating that the Township's ordinance (adopted January 16, 1940) limits the number of plenary retail consumption licenses to five (5); that there are now three plenary retail consumption licenses outstanding; that an application for a fourth such license has been presented and is pending before the Township Committee; and that objections have been registered with the Committee to the effect that no more licenses should be granted, that the three licenses in operation are sufficient according to the population (estimated at 1,000). You ask:

"May the Township Committee if they so desire decline to permit the issuing of the license in this case, if they come to the conclusion that three places now licensed are sufficient according to the size of population in Manchester Township.

"May any group or individual be permitted to register objections to granting this license, their objections not against the character of applicant, but against the increase of this type of business in Manchester Township."

The fact that a municipality may have no limitation ordinance, or an ordinance fixing a quota that is not filled, does not mean that the municipal authority must grant a license application. The determination to grant or deny a particular retail license application rests in the first instance with the municipal issuing authority (Revised Statutes 33:1-19); and the municipal action upon an application is subject to appeal to the State Commissioner pursuant to Revised Statutes 33:1-22. The Commissioner may not comment in advance upon the merits of any specific application since the matter may come before him on appeal.

Not infrequently persons and groups file petitions objecting to or favoring the granting of a particular license. The weight to be accorded such petitions is entirely within the discretion of the issuing authority. (See Newmark v. Wood-Ridge, Bulletin 311, Item 9). The Township Committee will, of course, be aware of the fact that a municipal issuing authority must afford a hearing on objections duly filed. (Rules 6 and 7 of State Regulations No. 2).

Although the State Commissioner may not speak to the merits of a pending retail license application, he may comment generally upon the subject of license limitation.

Our Alcoholic Beverage Law contemplates that licenses are properly issuable only to serve the public need therefor. They are not properly issuable to serve private, individual interests. Generally speaking we have far too many liquor licenses in New Jersey. Disinterested studies of the subject indicate that one plenary retail consumption license to each 1,000 of population should be ample under all ordinary circumstances.

Assuming that three licenses are demonstrably sufficient to meet the public need in a municipality where the ordinance quota is five, it would appear the wise and proper course to amend the ordinance so as to reduce the quota from five to three.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

13. APPELLATE DECISIONS - SPRINGDALE WINES & LIQUORS, INC. v. WEST ORANGE - ORDER REMANDING.

SPRINGDALE WINES & LIQUORS, INC.,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWN OF WEST ORANGE,)
Respondent)

ON APPEAL
ORDER

Morris M. Schnitzer, Esq., Attorney for Appellant.
Gerald T. Foley, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the action of the respondent municipality denying the application of the appellant for a transfer to it of Plenary Retail Distribution License D-12 held by Anna Strauss for premises designated 18 Main Street, West Orange.

Following the introduction of testimony and the argument of the appeal, application has been made for an order remanding the proceedings to the respondent municipality for reconsideration. Both parties having consented to the entry of such an order, no reason appears why the order should not be allowed.

Accordingly, it is, on this 14th day of November, 1945,

ORDERED, that the above proceedings be and the same are hereby remanded to the respondent municipality for further consideration and such action as may be appropriate under the Law, State Regulations, and pursuant to the decisions of the Commissioner.

ALFRED E. DRISCOLL
Commissioner.

14. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against)
 GEORGE W. JACOBSON)
 T/a JAY'S BAR & GRILLE)
 139 S. Kentucky Avenue)
 Atlantic City, N. J.,)
 Holder of Plenary Retail Consumption License C-146, issued by the Board of Commissioners of the City of Atlantic City.)

CONCLUSIONS AND ORDER

George W. Jacobson, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he possessed one 4/5 quart bottle labeled "Paul Jones A Blend of Straight Whiskies", and a 4/5 quart bottle labeled "Old Sunny Brook Brand Kentucky Straight Bourbon Whiskey", both of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50. These bottles will hereafter be referred to as bottles "A" and "B."

On August 17, 1945, during the course of an inspection of defendant's liquor stock, an agent of the State Department of Alcoholic Beverage Control removed four bottles, including bottles A and B mentioned above, because his field test indicated that the contents thereof were not genuine as labeled. Subsequent analysis by the Department chemist revealed that the contents of bottles A and B were not genuine as labeled.

Defendant alleges that the variations in the contents of A and B were due to evaporation. While it is possible that the apparent variations in the two bottles not the subject of the present charges may be due to evaporation (and for this reason these bottles were omitted from the charges), the wide discrepancies in proof reported by the chemist in his analysis of the contents of A and B, as well as the substantial discrepancies in solids and acids of at least one of the latter bottles, completely eliminates the theory that the discrepancies were the product of evaporation.

Defendant has no prior adjudicated record. Pursuant to my repeated warnings, the license will be suspended for a period of fifteen days. Cf. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 13th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-146, issued by the Board of Commissioners of the City of Atlantic City to George W. Jacobson, t/a Jay's Bar & Grille, for premises 139 S. Kentucky Avenue, Atlantic City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 12:01 a.m. November 19, 1945, and terminating at 12:01 a.m. December 4, 1945.

Alfred E. Briscoe
Commissioner.