

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

BULLETIN 687

DECEMBER 19, 1945.

TABLE OF CONTENTS

ITEM

1. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, JUKE BOX AND CASH RECEIPTS ORDERED FORFEITED - INADEQUATE INVESTIGATION BY LESSOR OF JUKE BOX - APPLICATION FOR ITS RETURN DENIED.
2. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND MOTOR VEHICLE ORDERED FORFEITED.
3. EMPLOYMENT - QUALIFICATIONS FOR BARTENDERS.
LICENSES - AGREEMENTS PURPORTING TO SUBJECT LICENSES TO CONTROL OF LANDLORDS ARE INVALID.
4. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.
5. DISCIPLINARY PROCEEDINGS (Carteret) - PERMITTING KNOWN PROSTITUTES ON LICENSED PREMISES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - PERMITTING LEWD AND IMMORAL ACTIVITIES ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - POSSESSION OF CONTRACEPTIVES, IN VIOLATION OF RULE 9 OF STATE REGULATIONS NO. 20 - PERMITTING LICENSED PREMISES TO BECOME A NUISANCE, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - LICENSE REVOKED.
DISQUALIFICATION OF PREMISES - ORDER TO SHOW CAUSE DISMISSED.
6. APPELLATE DECISIONS - GOLUBOVICH ET AL. v. MONROE TOWNSHIP ET AL.
7. DISCIPLINARY PROCEEDINGS (Princeton) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.
8. DISCIPLINARY PROCEEDINGS (Garfield) - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (SUNDAY), IN VIOLATION OF LOCAL ORDINANCE - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Clinton Township) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.
10. DISCIPLINARY PROCEEDINGS (Union City) - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

STATE OF NEW YORK
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
ALCOHOLIC BEVERAGE CONTROL BOARD

RECEIVED

ALCOHOLIC BEVERAGE CONTROL BOARD
STATE OF NEW YORK
ALBANY, N. Y.

IN SENATE
JANUARY 12, 1933

REPORT OF THE ALCOHOLIC BEVERAGE CONTROL BOARD
FOR THE YEAR 1932

ALCOHOLIC BEVERAGE CONTROL BOARD
STATE OF NEW YORK
ALBANY, N. Y.

ALCOHOLIC BEVERAGE CONTROL BOARD
STATE OF NEW YORK
ALBANY, N. Y.

ALCOHOLIC BEVERAGE CONTROL BOARD
STATE OF NEW YORK
ALBANY, N. Y.

ALCOHOLIC BEVERAGE CONTROL BOARD
STATE OF NEW YORK
ALBANY, N. Y.

ALCOHOLIC BEVERAGE CONTROL BOARD
STATE OF NEW YORK
ALBANY, N. Y.

ALCOHOLIC BEVERAGE CONTROL BOARD
STATE OF NEW YORK
ALBANY, N. Y.

ALCOHOLIC BEVERAGE CONTROL BOARD
STATE OF NEW YORK
ALBANY, N. Y.

ALCOHOLIC BEVERAGE CONTROL BOARD
STATE OF NEW YORK
ALBANY, N. Y.

ALCOHOLIC BEVERAGE CONTROL BOARD
STATE OF NEW YORK
ALBANY, N. Y.

RECEIVED
JAN 12 1933
ALCOHOLIC BEVERAGE CONTROL BOARD
STATE OF NEW YORK
ALBANY, N. Y.

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

BULLETIN 687

DECEMBER 19, 1945.

1. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, JUKE BOX AND CASH RECEIPTS ORDERED FORFEITED - INADEQUATE INVESTIGATION BY LESSOR OF JUKE BOX - APPLICATION FOR ITS RETURN DENIED.

In the Matter of the seizure on) Case No. 6898
October 6, 1945 of a quantity of)
beer and whiskey and a music)
machine on the A. C. Clement farm,) ON HEARING
located on Allentown Road, in the) CONCLUSIONS AND ORDER
Township of Upper Freehold, County)
of Monmouth and State of New)
Jersey:)
-----)

Trenton Amusement Co., Inc., by Hy Pearl.
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, \$65.86 in currency, and a music machine containing \$1.10 in coins, seized on the A. C. Clement farm located on Allentown Road, Upper Freehold, New Jersey, constitute unlawful property and should be forfeited.

On Saturday night, October 6, 1945, at about 11:30 p.m., ABC agents entered the above mentioned farm and observed a large number of motor vehicles parked near a one-room shack. The agents entered this shack, in which there were many men and women, some drinking alcoholic beverages and others eating. There was a music machine in the place and a bar at the far end. Susie Brinson, Louise Brinson and Minnie Lee Jackson, none of whom held a license authorizing them to sell or serve alcoholic beverages, were tending bar. The cash on hand from the receipts of the business, amounting to \$65.86, was turned over to the officers by these women.

The agents seized the music machine and 107 bottles of beer and two bottles of whiskey. The whiskey and part of the beer were behind the bar, and the balance of the beer was in an outbuilding.

Susie Brinson and Minnie Jackson were arrested on charge of selling alcoholic beverages without a license. Louise Brinson and her husband Charles Brinson, who acknowledged that he was the owner of the establishment, were arrested on a similar charge as well as a charge of possessing alcoholic beverages with intent to sell such alcoholic beverages without a license.

The evidence establishes 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 the music machine and other personal property, including the receipts of the unlawful business, seized in the building in which such illicit alcoholic beverages were found, constitute unlawful property and 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 came on for hearing pursuant to R. S. 33:1-66, Hy Pearl appeared for the Trenton Amusement Co., Inc. and sought return of the music machine. No one appeared to oppose forfeiture of the other seized property.

The principles governing the return of property subject to forfeiture have been repeatedly stated. Under R. S. 33:1-66(e) and (f) I have the discretionary authority to return such property to a person who has satisfied me that he acted in good faith and (1) unwittingly violated the Alcoholic Beverage Law or (2) had no knowledge of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use.

The evidence of the circumstances under which the music machine was rented, the large income therefrom, and the opportunities which the employees of the company had to observe the activities therein, when delivering and servicing the machine and collecting its receipts, amply warrants the conclusion that, under like circumstances, a person of ordinary prudence would have known or at least would have suspected that the place where the machine was kept was a speakeasy.

In addition, there is a broader aspect of the case to be considered, namely, that the amusement company failed to make an adequate investigation of the character and background of the person with whom it dealt.

Even in a case where they had no opportunity to observe the subsequent use to which the property is put, there is a standard of care which finance companies or other persons who loan their property, either for profit or accommodation, must exercise. If they discover that the person to whom they entrusted such property has subjected it to forfeiture for violation of the Alcoholic Beverage Law and apply to the State Commissioner of Alcoholic Beverage Control for relief from forfeiture, they must establish their good faith, within the meaning of the Alcoholic Beverage Law, by presenting satisfactory evidence that they investigated the personal character of the person with whom they dealt and the nature of his business. See Bulletin 157, Item 10; Bulletin 163, Item 8, (certiorari denied Bulletin 163, Item 7); Bulletin 384, Item 8; Bulletin 433, Item 8.

According to the testimony by Hy Pearl, Trenton Amusement Co., Inc. is a family corporation, the stockholders of which are Hy Pearl, his wife Theresa Pearl, and his brother Irving Pearl. The company has been in the business of leasing coin operated music and bogatelle machines for about eight years. It generally places its machines in tap rooms and restaurants on a profit sharing basis.

Pearl testified that two persons came to his place of business in April 1945 and requested him to place a music machine on the Clement farm for recreational purposes for the employees. He thinks that one of these persons was Clement and the other Brinson. He did not know these men. Nevertheless, he agreed then and there to place a machine at the farm. He explains that his first consideration is to put machines to work. It was the first time that he agreed to place a machine on a farm and he considered it in the nature of an experiment as to how much income it would bring in. His record card discloses that J. Brinson was charged with the machine, and on his list designating his placement of machines, this particular machine is designated as having been placed in the "Crossing Inn - J. Brinson." After Irving Pearl delivered the machine, Hy Pearl has a vague recollection that he asked, "How did it look?", and that Irving answered, "You can't tell."

When Hy Pearl was asked what precautions have been taken to see that machines are not placed in speakeasies, he made no direct response, his answer being, "I never had any trouble and did not have any machines confiscated."

Hy Pearl's contention is, in effect, that the urgent requirements of the business of renting "juke" boxes and the manifold tasks involved in their placement, servicing and collection of receipts left little, if any, time to investigate the personal character of the persons with whom they do business. This contention is similar in many respects to the argument advanced and rejected in a case involving a U-Drive-It concern (Bulletin 157, Item 10), in which case the late Commissioner Burnett said:

"The necessities of its business can in no wise affect the legislative provisions and policies. It must adjust its affairs to comply with the law regardless of the extent of consequent economic disadvantages."

The juke box is apparently as much a part of the present day speakeasy as was the traditional sliding panel in the door during Prohibition days. The one-armed bandit, the bagatelle machine, the shady bar, the illicit liquor, and the juke box together create the atmosphere and constitute the attraction for the furtive citizens who patronize these unlawful places. Thus, those who lease music, bagatelle or other devices on a profit-sharing basis without an adequate or independent investigation to insure against their use in an illegal business should not be surprised by the seizure and subsequent forfeiture of their equipment. Their equipment has been part and parcel of an illegal enterprise which is not only contrary to law, but places in jeopardy the State's law enforcement program.

Corruption follows the speakeasy just as surely as day follows night. The most effective way to strike at the latter is to curb the former. This can best be accomplished by the stern punishment of those who operate speakeasies and by the forfeiture of property that has contributed to the success of the operation. To return such equipment to persons who have failed to make any reasonable effort to prevent its improper use would be to defeat the very purpose of the statute.

The application of the Trenton Amusement Company, Inc. for the return of the music machine is denied.

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: December 7, 1945.

SCHEDULE "A"

- 107 - bottles of beer
- 24 - bottles of whiskey
- 1 - Warlitzer Music Machine, Model #412, Serial No. 68909, containing \$1.10 in coins
- 10 - Music Machine records
- \$65.86 in cash

2. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND MOTOR VEHICLE ORDERED FORFEITED.

Case No. 6872

In the Matter of the Seizure on August 5, 1945, of 60 bottles of beer, 4 pint bottles of wine, and a Pontiac sedan on premises located on Jeffers Landing Road, Scullville, in the Township of Egg Harbor, County of Atlantic and State of New Jersey.

ON HEARING CONCLUSIONS AND ORDER

Irving I. Jacobs, Esq., Attorney for Norman Henderson. 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 60 bottles of beer, 4 pint bottles of wine and a Pontiac sedan seized on August 5, 1945 in the Township of Egg Harbor, New Jersey, constitute unlawful property and should be forfeited.

The seizure occurred on Norman Henderson's beach front property located at the end of Jeffers Landing Road, Scullville, Egg Harbor Township.

On Sunday, August 5, 1945, at about 10:00 a.m., an ABC agent, accompanied by a casual acquaintance, entered a frame one room shack on this property. The agent observed a bar extending across one end of the room. Three men, each with a glass of beer, were at the bar. William Strickland was tending bar. The agent ordered two glasses of beer from Strickland, who served the beer after the agent was vouched for by his companion. The agent paid Strickland for the drinks, and Strickland placed the money in a wooden box or "till" under the bar. Later the three men ordered and were served another round of beer, and the agent and his companion also were served with two more glasses of beer. Strickland placed the money which he received for the second round of beers in the "till."

The agent then left to make arrangements for other ABC agents to come to the premises. He returned to the shack in about a half hour. At this time there were seven men and one woman drinking beer at the bar. Three of the men were waiting for a boat, and the other four persons had been out in a boat, came to the shack for a drink and to go to the rest room, and were going out again in a boat. The agent ordered a glass of beer from Strickland, who told him he was getting low in quarts. Strickland then came from behind the bar, went to a Pontiac sedan parked immediately in front of an open door, and took therefrom a case of beer, brought it behind the bar, and put the beer in the cooler.

After a short interval, the agent purchased a bottle of beer from Strickland. This bottle of beer was in front of the agent when two other ABC agents entered. The first agent then purchased a bottle of beer for each of these men. At this time there were about ten or twelve other persons at the bar purchasing beer from Strickland from time to time. The agents observed these activities for five or ten minutes and then identified themselves to Strickland.

Neither Henderson nor Strickland held any license to sell or serve alcoholic beverages, and the motor vehicle was not licensed to transport alcoholic beverages.

The agents seized twelve bottles of beer and two pint bottles of wine which were in the ice box behind the bar, and the Pontiac sedan, and 48 bottles of beer and two pint bottles of wine found therein. There were about 25 beer glasses and a number of whiskey glasses in the shack, and several whiskey glasses in the car.

Strickland was arrested. Henderson was not there, but later came to the local Recorder's office. According to the agents who met Henderson there, he told them that he rented the shack and the land where the boat landing was located and that Strickland had been helping him for about four weeks; that if he (Henderson) had not been out in a boat the agents would not have been able to buy any beer there; that he had the beer for the accommodation and convenience of patrons from Philadelphia, who came down to rent his boats; that he would not let Strickland take the "rap" for him. Henderson was then arrested on charge of violating the liquor laws.

It is clear that the beer seized in the shack and in the car was intended for sale at this speakeasy. Hence, such beer intended for sale without a license is illicit. Such illicit beer and the wine seized therewith constitute unlawful property, subject to forfeiture. The seized Pontiac sedan likewise is subject to forfeiture because illicit alcoholic beverages were found therein and, further, because it was not licensed to transport alcoholic beverages intended for resale. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R.S.33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, Norman Henderson appeared and sought return of the motor vehicle. Forfeiture of the alcoholic beverages was not opposed.

The principal basis upon which Henderson seeks return of the car is his claim that he purchased part of the seized beer and two bottles of the wine for his personal use, purchased the balance of the beer for the personal use of a patron and purchased two bottles of wine for the personal use of a casual acquaintance; that he had never sold any alcoholic beverages; that Strickland was not in his employ on August 5, 1945 and if Strickland sold any alcoholic beverages it was without his knowledge and consent.

What actually took place at the shack tends to discredit Henderson's story. The bar, ice box and glasses, usual equipment for dispensing alcoholic beverages; the flow of patrons who apparently purchased alcoholic beverages openly and as a matter of course; and the "till" in which the receipts of the sale of alcoholic beverages were placed, all indicate a practice of selling alcoholic beverages at the shack. Such unlawful activities could not be carried on without Henderson's knowledge. It may be noted that this was likewise the conclusion of the Judge of the Special Sessions Court of Atlantic County, who found Henderson guilty, after trial without a jury, of unlawfully possessing alcoholic beverages, and aiding and abetting the unlawful possession and sale of alcoholic beverages. William Strickland was also found guilty of the unlawful possession and sale of alcoholic beverages. Henderson has not established to my satisfaction that he acted in good faith and had no knowledge of the unlawful alcoholic beverage activities which were being carried on in his premises. His application for return of the motor vehicle must be denied. See R. S. 33:1-66(e) and (f).

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: December 12, 1945

SCHEDULE "A"

60 - bottles of beer
4 - 1 pint bottles of wine
1 - Pontiac sedan, Serial No. 6BA6923,
Engine No. 6108673, New Jersey
1945 Registration AH-38-N

3. EMPLOYMENT - QUALIFICATIONS FOR BARTENDERS.

LICENSES - AGREEMENTS PURPORTING TO SUBJECT LICENSES TO CONTROL OF LANDLORDS ARE INVALID.

December 10, 1945

Mr. Walter Janesko
Garfield, N. J.

Dear Sir:

In order to qualify as a bartender, a person must be over twenty-one years of age, a resident of this state, a citizen of the United States or of a country with which the United States has a reciprocal trade treaty, and be free from any disqualifying criminal conviction. See R. S. 33:1-25, 26. If, however, the person lacks the requisite of either residence or citizenship, he may apply to the Department of Alcoholic Beverage Control for a special permit authorizing his employment as a bartender.

In addition, your attention is called to the fact that some municipalities have adopted regulations governing the employment of persons on licensed premises. It is also advisable, therefore, to contact the local issuing authority before hiring a bartender.

You further state that the license issued in the name of your wife is "subject to condition in lease" and inquire whether, "at the termination of this lease, we have the right to do as we choose with the license." I take it that the condition to which you refer is one by which the landlord seeks to prevent the transfer of the license to other premises, or purports to give the landlord a preferential right to compel an assignment of the license to him.

Such conditions 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....." It is clear that the purpose of this legislation is that licensees shall hold their licenses free from any device which would subject the licenses to the control of other persons. Any such agreements, therefore, are contrary to the policy of the law and void. See *Walsh v. Bradley*, 121 N. J. Eq. 359; *Lachow v. Alper*, 130 N. J. Eq. 588.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

4. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.

December 11, 1945

The next official publication of minimum resale prices pursuant to Fair Trade rules (Regulations No. 30) will become effective on January 14, 1946. Price listings must be filed at the offices of this Department not later than Thursday, December 20, 1945.

It is my decision that the publication shall combine all of the prices into one complete pamphlet superseding the January 1945 publication and the four separate succeeding supplements of February, May, August and October 1945.

In submitting price lists to the Department for this complete publication, it is further my decision that:

(1) A complete schedule of all items offered for sale by manufacturers and wholesalers in this state shall be submitted. Exceptions will be considered only if good cause be shown the Commissioner on or before Thursday, December 20, 1945. However, listers are placed on notice that pursuant to my ruling of October 22, 1945, brands of alcoholic beverages not listed in Fair Trade publications may not be price-advertised (including direct or indirect reference to price) in any periodical, publication, circular, handbill or direct mailing piece in New Jersey. Listers will recognize the extreme disadvantage they impose upon retailers who are restricted in the sales promotion of brands not listed in Fair Trade.

(2) While it is true that the OPA has suspended its price control over domestic wines and imported products other than spirits and whiskies, I desire the maintenance of the schedule of OPA markups (33-1/3% on spirits; 45% on cordials and liqueurs and 50% on wines) for all items listed in the forthcoming publication. It is of the greatest economic importance to retailers and to all branches of the industry alike that retailers shall be afforded fair markups.

(3) In order to properly identify brands of alcoholic beverages listed in Fair Trade when violations occur, Rule 5 of State Fair Trade Regulations No. 30 requiring the submission of labels was promulgated April 1, 1945. Since the last complete Fair Trade pamphlet was published in January 1945, three months before the promulgation of the rule, the requirement for the submission of labels was held in abeyance until the next succeeding complete publication. Therefore, in preparation for the complete minimum resale price pamphlet to be effective January 14, 1946, listers are placed on notice that they must submit with their price listings on or before December 20, 1945, front and back labels of the products set forth in their price listings, such labels to be true copies, photostats or reasonable facsimile of the labels affixed to the containers.

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

ALFRED E. DRISCOLL
Commissioner.

(1)

8* BETTY BRUDE - HOUSE OF COMMONS

BUTTERLIN 08A

1000 A

when the investigator returned to the licensed premises three days later, he had a conversation with Marshall, from which it clearly appears that the bartender knew that Dorothy --- was a prostitute.

Early on the morning of October 17, 1945, two ABC investigators, including the one previously referred to, visited defendant's premises. At that time John Zullo was tending bar. During the course of this visit John Zullo informed one of the investigators that another girl then present was also a prostitute. He also said that Dorothy ---, who was not then present, would be on the licensed premises on the evening of October 17th and that he would "fix it up." During the early evening of October 17th, Dorothy entered the licensed premises and had a further conversation with the investigator whom she had met on September 29th. As a result of this conversation Dorothy --- arranged to meet the investigator at her room. From conversations held during the evening between John Zullo and the investigators, it appears that John also knew that two other girls then upon the premises were prostitutes. John gave a contraceptive to one of the investigators, and a subsequent search of the licensed premises disclosed three boxes containing contraceptives in a drawer behind the bar.

Defendant requested and was granted leave to present circumstances in mitigation of the violations. On the argument it was stated that the stockholders of defendant corporation are James Zullo, his wife Anna Zullo, and Mary Zullo, who is the wife of Neil Zullo. Neil Zullo is the manager of the licensed business. It was stated and admitted that none of these stockholders was present when the violations occurred. It was also alleged during the argument that John Zullo was not an employee of defendant corporation and that, since the violations occurred, he has been barred from the licensed premises. The record herein, however, discloses that John Zullo was tending bar on various occasions when the investigators were present. It was also alleged on the argument that the other bartender referred to herein has been discharged. As a further mitigating factor it was stated that this is the first adjudicated violation against defendant since the members of the Zullo family became stockholders thereof. The records of the Department of Alcoholic Beverage Control disclose that a license held by defendant corporation was suspended for two days, effective December 13, 1943, by the Borough Council of Carteret upon licensee's plea of guilty to having mislabeled beer taps on its licensed premises in violation of Rule 1 of State Regulations No. 22. It is alleged, however, that at that time the Zullos were not stockholders of defendant corporation.

The vice in the claim of mitigating circumstances is that it completely overlooks the fact that had the stockholders, directors and officers of the defendant selected competent employees and provided adequate management, the serious violations described in these conclusions would not have occurred. Those who adopt the corporate cloak cannot escape the consequence of their mismanagement merely by entering a plea of personal innocence.

By its conduct the defendant has demonstrated that it is not entitled to the very special privilege granted it by the municipality. It is common knowledge that there are too many retail liquor licenses in New Jersey at the present time. One sure way to reduce this number is to revoke the privilege in all cases where the licensee has been found guilty of violations of the character described herein. That will be the ruling in this and all similar cases.

I have considered the additional statement made at the hearing, namely, that on October 16, 1945 the owners of the licensed building

entered into a contract to sell the building to one Frank Konkowich and that, on the same day, the stockholders of defendant corporation agreed to sell their stock to the same individual. Nevertheless I am convinced that, despite these additional facts, the only proper conclusion to be reached in this case is that defendant's license should be revoked.

Since the record fails to disclose that Carmen Zullo or Neil Zullo, the present owners of the licensed building, had personal knowledge of the violations referred to herein, the order to show cause why the licensed premises should not be declared ineligible to become the subject of further licenses is dismissed.

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

ORDERED, that Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of Carteret to Virginian Bar & Grill Inc., t/a Melody Cocktail Lounge, for premises at 35 Salem Avenue, Carteret, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

6. APPELLATE DECISIONS - GOLUBOVICH ET AL. v. MONROE TOWNSHIP ET AL.

JOHN GOLUBOVICH, CHARLES KOSTBAR,)
WALTER IVANISKI and MEYER SMITH,)
Appellants,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF MONROE (MIDDLESEX COUNTY) and)
ABE SHUMSKY,)
Respondents)

Guido J. Brigiani, Esq., Attorney for Appellants.
Henry C. Berg, Esq., Attorney for Respondent Township Committee.
Benjamin Kleinberg, Esq., Attorney for Respondent Abe Shumsky.

BY THE COMMISSIONER:

Appellants appeal from the action of respondent Township Committee whereby it renewed, for the present fiscal year, a plenary retail consumption license held by respondent Abe Shumsky for premises on the Old Bridge-Englishtown Road, Monroe Township.

On June 28, 1945, prior to the meeting of the Township Committee, appellants served upon the Township Clerk a petition objecting to the renewal of the license. At its meeting held upon the same day the members of the Township Committee advised a representative of appellants that a hearing would be held at a later date upon said objections. No hearing was ever held. Instead, the Township Committee, later on the same evening, adopted a resolution to renew the license and the license was thereafter issued pursuant to said resolution. The action of the Township Committee was highly irregular. Rule 6 of State Regulations No. 2 provides:

"Each municipal clerk shall immediately upon receipt of a written objection, duly signed by an objector, transmit forthwith to the issuing authority of the particular municipality said objection and everything pertaining thereto, whereupon it shall become the immediate duty of each issuing authority to afford a hearing to all parties and immediately notify the applicant and the objector of the date, hour and place thereof."

The Township Committee appears to have acted upon the advice of the Township Attorney that the objection was filed "out of time." This advice was erroneous because, while it appears that the notice of application requires that objections, if any, should be made "immediately" and that a period of ten days apparently elapsed after the second insertion of the notice of application, nevertheless the objection was filed before any action had been taken upon the pending application and, under the circumstances, the objectors were entitled to be heard.

Ordinarily the failure to hold a hearing after the due filing of written objections would require that the entire matter be remanded to the issuing authority for further proceedings. Retail Liquor Distributors v. Atlantic City, Bulletin 88, Item 11; Greifinger v. Newark, Bulletin 89, Item 2; Corado v. Camden, Bulletin 159, Item 13. If the license in question were a new license I would have no alternative except to remand the case, following the precedent established in Corado v. Camden, *supra*. In the present case, however, the appeal concerns the renewal of a license, and the objectors have been afforded full opportunity to be heard on this appeal which, as usual, has been heard *de novo*. Marsteller v. Somers Point, Bulletin 244, Item 7. Under these circumstances, I shall, despite the irregularity of the proceedings below, and pursuant to the power conferred upon me to make all the findings, rulings, decisions and orders in appeal cases as may be right and proper and consonant with the spirit of this chapter, decide this case upon the evidence presented herein. See R. S. 33:1-38.

At the hearing held herein appellants and three other witnesses who reside in the Township of Monroe testified that conditions outside of the licensed premises had been a source of annoyance to them over a long period of time. They complained principally about the unnecessary noises made by patrons leaving the licensed premises during the early morning hours on week-ends. They stated that at other times patrons who came from Shumsky's premises used indecent language, engaged in fighting and committed nuisances upon their properties. They stated also that the playing of a juke box on the licensed premises during the early morning hours had been a source of annoyance to them. Each of these witnesses admitted that he or she had never made any complaint about any of these conditions to respondent Shumsky.

Abe Shumsky testified that he has held a plenary retail consumption license at the premises in question for the past two years, except during a period from December 1944 until June 5, 1945, when the license was in the name of a Mr. Greenberg. He stated that he knows all of the appellants, and that none of them had ever complained to him about the conditions on the outside of his licensed premises. He testified that he did not think the juke box was bothering anyone because appellants' homes are situate at a considerable distance from his tavern. Shumsky blamed many of the disturbances complained of

upon a large group of colored people who reside in a boarding house located almost directly opposite his licensed premises. He stated that he has sanitary facilities in his place of business.

I have carefully considered all the evidence given herein. No complaint has been made as to conditions inside of the licensed premises, with the exception of the playing of the juke box. A licensee, of course, is responsible for conditions on the outside of the premises, as well as for conditions on the inside of his premises, when such unsatisfactory conditions are caused by his patrons. A licensee must keep his place and his patronage under control. Conte v. Princeton, Bulletin 139, Item 8; Rando v. Burlington, Bulletin 448, Item 8. However, respondent Shumsky denied that he had any knowledge of these unsatisfactory conditions and, as he stated at the hearing, "I cannot remedy something that I don't know exists." Since there is no testimony in the case to disprove the licensee's statement that he lacked any knowledge of the unsatisfactory condition, I conclude that the evidence does not warrant denial of renewal of the license. Suber v. Matawan, Bulletin 646, Item 8. Hence I shall affirm the action of respondent Township Committee.

The conclusions which I have reached herein apply merely to the renewal for the present fiscal year. The appellants may request the Township Committee to institute disciplinary proceedings at any time and may object to renewal for the next fiscal year if unsatisfactory conditions result from the continued operation of the licensed premises. In particular, the licensee will be expected to maintain order within his premises and to control the activities of his patrons so that their "goings and comings" do not cause unnecessary annoyance to persons living in the neighborhood. The juke box must be operated with reduced volume and, if necessary to prevent complaints, should be discontinued altogether by twelve midnight.

I will expect the municipal issuing authority to take appropriate disciplinary action whenever the facts warrant. A liquor license is a privilege, not a right. Licensees must govern themselves accordingly.

Accordingly, it is, on this 17th day of December, 1945,

ORDERED, that the action of respondent Township Committee in renewing the plenary retail consumption license held by respondent Abe Shumsky for premises on Old Bridge-Englishtown Road, Monroe Township, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

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

In the Matter of Disciplinary Proceedings against)

PRINCETON MUNICIPAL IMPROVEMENT INC.) T/a NASSAU TAVERN) Palmer Square, P.O. Box 168) Princeton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-33, issued by the State Commissioner of Alcoholic Beverage Control.)

Edgar S. Smith, Esq., Attorney for Defendant-licensee. Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, through its attorney, pleads non vult to charges alleging that, on October 1, 1945, it possessed on its licensed premises three 4/5 quart bottles labeled "Four Roses Fine American Whiskey A Blend of Straight Whiskies", which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The file discloses that, on October 1, 1945, an agent of the Federal Alcohol Tax Unit, after testing forty bottles of liquor in defendant's licensed premises, seized three bottles of "Four Roses Fine American Whiskey A Blend of Straight Whiskies" when the contents thereof appeared by the agent's tests to be darker in color than is usual for that brand. Subsequent analyses of the contents of the bottles in question by the Federal chemist revealed variations in proof, acids and solids when compared with an analysis made of a genuine sample.

It is contended by the manager on behalf of defendant that any refills made were apparently done by bartenders, three of whom were discharged because of inexperience. Despite personal innocence, however, the licensee must be held strictly responsible for any "refills" found in its stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. I shall, therefore, suspend defendant's license for a period of twenty days. Cf. Zeidner & Cohen, Bulletin 680, Item 2.

Accordingly, it is, on this 17th day of December, 1945,

ORDERED, that Plenary Retail Consumption License C-33, issued by the State Commissioner of Alcoholic Beverage Control to Princeton Municipal Improvement Inc., t/a Nassau Tavern, for premises on Palmer Square, Princeton, be and the same is hereby suspended for a period of twenty (20) days, commencing at 12:01 a.m. January 2, 1946, and terminating at 12:01 a.m. January 22, 1946.

ALFRED E. DRISCOLL Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (SUNDAY), IN VIOLATION OF LOCAL ORDINANCE - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against MARY DABROWSKI 415 Lanza Avenue Garfield, N. J., Holder of Plenary Retail Consumption License C-10, issued by the City Council of the City of Garfield.

CONCLUSIONS AND ORDER

Joseph Grossman, Esq. and Harry Kampelman, Esq., Attorneys for Defendant-licensee. Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to charges alleging that on Sunday, November 18, 1945, between 5:00 a.m. and 12:00 o'clock noon, she sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, in violation of Section 14 of the local ordinance, and that she failed to keep her premises closed and admitted and permitted persons to remain on such licensed premises, also in violation of Section 14 of the local ordinance. Both charges involve the same offense.

On the morning in question, about 10:45 a.m., agents of the Department of Alcoholic Beverage Control, having the premises under observation, saw a man go down the side alley leading to the side entrance and enter the building. One agent followed and entered the barroom through a small alleyway. He observed a patron being served beer and whiskey by the bartender, who later was identified as the husband of the licensee. The agent himself ordered and was served by the said bartender a whiskey and beer for which he paid the sum of sixty cents. After being served he identified himself. The licensee entered the place shortly after and stated that her husband had been sent in only to clean up the premises and not to serve anyone. The attempted explanation is not convincing and defendant is clearly guilty as charged.

Licensee has no previous record. In view of all the circumstances, I shall suspend the license for a period of fifteen days, less five days for the plea, making a net suspension of ten days.

Accordingly, it is, on this 17th day of December, 1945,

ORDERED, that Plenary Retail Consumption License C-10, issued by the City Council of the City of Garfield to Mary Dabrowski for premises 415 Lanza Avenue, Garfield, be and the same is hereby suspended for a period of ten (10) days, commencing at 4:00 a.m. January 2, 1946, and terminating at 4:00 a.m. January 12, 1946.

ALFRED E. DRISCOLL Commissioner.

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

In the Matter of Disciplinary Proceedings against

SAM LEBAR
T/a SAM'S TAVERN
N/S of Road from Clinton to High Bridge about 1 Mi. from Highway 30
Clinton Township
P.O. High Bridge, N. J.,

Holder of Plenary Retail Consumption License C-7 issued by the Township Committee of the Township of Clinton.

CONCLUSIONS AND ORDER

Anthony M. Hauck, Jr., 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 he possessed on his licensed premises one 4/5 quart bottle labeled "Old Grand-Dad Kentucky Straight Bourbon Whiskey Bottled in Bond", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On October 29, 1945 a Junior Inspector employed by the Alcohol Tax Unit of the Internal Revenue Service seized the above bottle when his preliminary tests indicated that the contents thereof were not genuine as labeled.

Chemical analysis by a Federal chemist disclosed a substantial variation in acids between the contents of the seized bottle and the contents of a genuine sample of the same product. This test disclosed that the contents of the seized bottle contained only 65% natural color whereas the contents of the genuine sample contained 100% natural coloring. There can be no doubt that the contents of the seized bottle were not genuine as labeled.

Defendant alleges that he is personally innocent and states that the violation may have been caused by the act of an employee in putting "the end of a bottle" of another whiskey into the seized bottle. As has been repeatedly pointed out, such refilling is illegal and, despite personal innocence, a licensee is strictly responsible for any refills found upon his licensed premises.

Defendant has no previously adjudicated record. I shall suspend defendant's license for a period of fifteen days. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 17th day of December, 1945,

ORDERED, that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Clinton to Sam Lebar, t/a Sam's Tavern, for premises on N/S of Road from Clinton to High Bridge about 1 Mi. from Highway 30, Clinton Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. January 2, 1946, and terminating at 2:00 a.m. January 17, 1946.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD -
LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

In the Matter of Disciplinary Proceedings against)
)
 JOSEPH KOVACS)
 4101 Park Avenue)
 Union City, N. J.,)
)
 Holder of Plenary Retail Consumption License C-72, issued by the)
 Board of Commissioners of the)
 City of Union City.)
 -----)

CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

Defendant-licensee pleads guilty to a charge alleging that, on August 1, 1945, he possessed two 4/5 quart bottles labeled "Gallagher & Burton's Black Label Blended Whiskey", a 4/5 quart bottle of "Three Feathers Reserve Blended Whiskey", and a 4/5 quart bottle labeled "Golden Wedding Blended Whiskey", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of N. J. S. 33:1-50.

Defendant admitted that he had refilled the bottles in question.

Defendant's license was suspended for a day during December 1934 by the local issuing authority, as a result of a conviction of selling alcoholic beverages during prohibited hours. Effective February 21, 1944, defendant's license was again suspended for a period of ten days by the Union City Board of Commissioners after being adjudged guilty of sale of alcoholic beverages to minors. Inasmuch as eleven years have elapsed since the first violation, it will not be considered in fixing the period of suspension in this case. However, the second violation must be considered.

Under the circumstances, I shall suspend defendant's license for a period of twenty-five days.

Accordingly, it is, on this 17th day of December, 1945,

ORDERED, that Plenary Retail Consumption License C-72, issued by the Board of Commissioners of the City of Union City to Joseph Kovacs, for premises 4101 Park Avenue, Union City, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. January 3, 1946 and terminating at 3:00 a.m. January 28, 1946.

Ref. E. D. ...
Commissioner.